

Chapter 4

Maintaining the Attorney-Client Relationship and Law Office Procedure

Communication: The single most frequent complaint filed against lawyers by their clients is the alleged failure by attorneys to communicate with them. Rule 1.4 speaks to this ethical duty and provides:

“(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e) is required by these rules;
- (2) Reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
- (3) Keep the client reasonably informed about the status of the matter;
- (4) Promptly comply with reasonable requests for information; and
- (5) Consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.”

Recognize at the outset that, as a lawyer, **YOU WORK FOR THE CLIENT**. Keeping one’s ‘employer’ informed and responding to inquiries are just as naturally components of the attorney-client relationship as they are in any other employment setting. And yet we, as lawyers, often fall short in carrying out that duty, or fail to ‘meet the client’s expectations’ (see above!).

There are some things that we, as lawyers, can incorporate into our practice habits that will not only help to ensure that we are complying with our ethical obligations, but also will reduce complaints and/or provide a quality defense to allegations that we’ve shirked our duty to communicate.

- Honor the commitment you made at the start of the representation. Whatever you’ve committed to do when you were initiating the attorney-client relationship, keep your word! Making reasonable commitments to your client is only the beginning—you have to see it through.
- Send clients copies of relevant correspondence and pleadings that will keep the client abreast of developments in the client’s case.
- Return those phone calls! While not every phone call made to the lawyer by the client can be accepted on every occasion, **RETURN THEM TIMELY!** Where the phone calls become repetitive or excessive, call the client in to confront the issue right away.
- Make sure you identify decisions that are best left to the client and make the client take responsibility for a course of action to be taken in the client’s case.
- Set up periodic in-person office consultations with the client to personalize the representation and to get a sense of client satisfaction or frustration; **AND KEEP THE APPOINTMENT!**
- Develop a habit of confirming in writing all meaningful conversations held with clients. Not only does it give you the opportunity to make sure that both you and the client are on the same page, but it provides a powerful collection of evidence for the lawyer if confronted with baseless allegations that communications did not occur.

SPECIAL NOTE ABOUT TEXT MESSAGING WITH CLIENTS

Though a prevalent method of communication, text messaging with clients should be approached cautiously, if not avoided, for the following reasons:

- Short text messages are easily misconstrued;
- Text messages are often mistyped and/or “autocorrected” incorrectly;
- Text messages are not easily preserved;
- Short messages cannot convey enough information between client and attorney; and,
- Text messaging may be granting the client too much access, with an expectation of immediate access, to the attorney.

Instead, promote communication via other means: phone, in-person meetings, regular mail or email.

However, if a practice of client communication via text has already been established, keep it to a minimum, and avoid substantive discussion via text. Ideally, inform your client at the point of engagement that substantive discussions via text should be avoided. If substantive text conversations with your client cannot be avoided, at the very least learn how to screen capture the text exchange with your smartphone, and to email the screen capture to yourself and/or your client for preservation. If unable to screen capture texts, email yourself and/or your client the substance of the text exchange. Further, even if able to screen capture a text exchange, consider an additional email to yourself and/or your client if the text exchange is not self-explanatory or does not contain sufficient information.

Another very important reason to avoid text messaging with clients is to protect your free time. Rightly or wrongly, text messaging may set up an unmet expectation on your client’s part that you will be providing a response immediately, when in fact, you may have another idea altogether.

Documentation and File Organization

Standard procedures for documentation and file organization (preferably electronic) are important. A record should be kept of all contacts with a client or third party. Correspondence is self-proving. But telephone or in-person conferences should be memorialized, electronically if possible by the person who handled the contact and saved to the client’s electronic file. This will assist in ensuring that the status of the case is up to date every time you review the client’s electronic file. This procedure will help protect you should a dispute or confusion arise concerning actions taken by you or your office staff on behalf of a client. Keeping files organized and in chronological order will help you represent your clients and will document the services rendered in the representation should a disciplinary complaint or malpractice suit be filed. Further, it is advisable to maintain all drafts of pleadings and drafts of other substantive documents that reflect the date the draft was composed.

Below is an example of a brief and simple note to the file that can easily be electronically created and saved in the client’s electronic file from which a hard copy may be generated if necessary:

SMITH, Mary
11/20/13

Mary called in. She said that she had received the copy of the pleadings. Mary said that her husband has not given her any child support, nor has he attempted to see the children since he left home. She wanted to know what she could do to make him give her some money. I told her that I would ask you if there is something that can be done in the meantime and get back with her. gk (paralegal)

Law Office Procedures

Law office procedures are important to maintaining a positive attorney-client relationship because they keep you and your staff organized and your client treated fairly, competently and courteously. Your personnel should be polite, qualified and understanding. A few areas in law office practice deserve special attention: confidentiality, phone call and walk-in procedures, and mail procedure.

Confidentiality

Every member of your firm, from the senior attorney to the part-time file clerk, is under a strict obligation to protect the client's privacy. The following are some points to remember about client confidentiality:

- Do not discuss clients outside the office.
- Do not discuss client information with another client or in any place where another client or third person can hear.
- Remember that your duty of confidentiality continues even after the case is closed. It also continues after you leave the firm.
- You should be wary when clients or strangers want to use your office to make a few telephone calls. Make sure no client files or documents are lying around.
- Never release information to callers such as a client's accountant or an insurance adjuster without authorization.
- Be careful when disposing of confidential papers, even rough drafts or duplicates. Use shredders or other secure disposal methods for sensitive material.
- Never forget that the attorney-client relationship is built on mutual trust and confidence. Clients come to you expecting a form of sanctuary. You must honor that.
- A good idea is for firms to require all employees to sign confidentiality forms, which are placed in personnel files. A sample form is provided later in this section.
- Remember computer encryption and digital file security measures.

Phone Call and Walk-in Procedures

Office personnel should be trained to be courteous and accurate in taking messages and setting appointments. The staff should be trained regarding what to say when answering the phone or greeting walk-ins. When you are unavailable, a message — complete with date, time, caller's name, phone number and reason for the call — should be electronically documented, saved in the client's electronic file, and delivered to you immediately via email. If preferable, the emailed electronic message may be printed for your convenience.

Non-attorneys should not give legal advice. An electronic or written record of all client contact should be maintained. Except in cases of emergencies, you should not take any telephone calls or interruptions while you are with another client.

Mail Procedure

Establish a procedure for opening, date-stamping, distributing, scanning and electronically saving to the client's file all incoming mail. You or your staff should review the incoming mail immediately and enter any court dates and deadlines on the electronic and/or manual calendar system. File all hard copies of mail immediately upon review by you after scanning or copying and emailing or mailing the document to the client. To ensure that outgoing mail is properly reviewed, signed and sent, have a designated proofing stack and a separate stack for urgent matters. If copies are sent to any third parties, always note on the document the persons to whom copies are sent. Certified or registered mail procedures should be established to ensure that the proof of delivery, the "green card," is attached to the appropriate file copy of the letter or pleading when the card is returned.

On the following pages are sample documents which assist in maintaining the attorney-client relationship, including:

- client activity letter;
- email communication letter;
- authorization to obtain information from a prior attorney;
- authorization to release medical information;
- authorization to release financial information;
- court appearance letter;
- deposition scheduling letter;
- deposition instructions to client; and
- confidentiality agreement.