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MAINTAINING
the Attorney-Client Relationship
and Law Office Procedure

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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.

Sample Client Activity Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

RE: File Subject or Matter Description
Our File _____

Dear Mr. Client:

Enclosed please find copies of the following:

1. _____;
2. _____; and
3. _____.

Please note the following:

- _____ We are sending this to you for your information and file only; no action is required at this time.
- _____ Review the enclosed and call me if you have any questions or comments.
- _____ Review the enclosed and call me after your review; I would like to discuss the enclosed with you.
- _____ Review the enclosed and call _____ in my office to discuss these.
- _____ Sign on the designated signature blanks and return same to me.
- _____ Sign on the designated signature blanks before a notary and two witnesses, and return same to me.
- _____ Note your comments on the enclosed and return same to me.
- _____ Have these documents reviewed by all appropriate parties and call me to discuss.
- _____ Forward copies of the documents requested so that we may proceed accordingly.
- _____ Other: _____

If you should have any questions, please don't hesitate to give me a call.

Sincerely,

FIRM NAME

Attorney Name

[NOTE: Instead of a letter, three-part carbon transmittal slips or message reply/memo sheets can be used for the same purposes.]

Sample Email Communication Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

Dear Mr. Client:

Please send me a reply to this e-mail so that I can be sure that I have your correct e-mail address before I transmit anything via e-mail. Also, as previously discussed, e-mail is not secure. If you are concerned about the security of our communications, please contact me immediately and advise me not to transmit correspondence via e-mail in the future. Otherwise, I will continue to assume that you desire for me to continue to transmit correspondence to you via e-mail.

All future correspondence transmitted via e-mail will be attached in an Adobe PDF document that is encrypted and password-protected for your security. If you cannot remember the password that I have supplied to you, please contact me via telephone.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

FIRM NAME

Attorney Name

Authorization for Release of Information from Former Attorney

TO: _____

RE: _____

You are hereby authorized to furnish to the law firm of _____, and their duly authorized representatives, copies of any and all information and/or documentation they may request concerning your prior representation of me in the following matter: _____.

This authorization shall constitute valid authorization for the firm of _____ to inspect all such items set forth above, and to copy, and to request and receive copies, including certified copies, thereof from you. You are also authorized to discuss any and all aspects of your former representation of me with said firm. It is my understanding that, to the extent provided by law, such information shall be deemed confidential.

This authorization is valid until you receive written revocation. A copy of this authorization shall be sufficient and as good as the original, and permission is hereby granted to honor a photostatic copy of this authorization.

Signed at _____, Louisiana, this ____ day of _____, 20__.

Signature of Client

Typed Name of Client

HIPAA Authorization to Disclose Protected Health Information

I hereby give permission for my personal medical information to be used and given out as described below.

Patient Name: _____

Patient Social Security Number: _____

Patient Date of Birth: _____

The following person(s) or organization(s) are permitted to provide the information:

The following attorney(s) or law firms(s) are permitted to receive and use the information (name, address and telephone number):

The above-named attorney(s) and law firm(s) are permitted to receive the information and are hereby appointed as my representative pursuant to La. R.S. 40:1299.96(A)(2)(b) for the limited purpose of obtaining and using any and all information the releasing person(s) or organization(s) may have concerning treatment or services rendered to the undersigned for any reason, including but not limited to notes (handwritten and/or typed), charts, medical reports, face sheets, discharge summaries, history and physical, consults, laboratory results, reports of x-rays and copies of any and all actual films and/or x-rays, outpatient records, test results, operative reports, pathology reports, physician orders, progress notes, emergency records, therapy records, nurse's notes, opinions, diagnoses, prognoses, histories, statements and/or bills, correspondence, pharmaceutical records, including but not limited to date of prescription, prescribing physician, name of drug, dosage and amount dispensed, and/or any other medical information regarding any treatment, whether inpatient or outpatient. This specifically includes documents to and from other health care providers, attorneys, insurance companies, etc.

The information will be used or given out for the purposes of handling the attorney's or law firm's duties in the investigation and possible litigation of claims in which I am involved. This authorization is initiated at my request, and the health information will be disclosed at my request. Health information released as a result of this authorization may be re-disclosed or shared by the persons or organizations receiving the information and might not be protected by federal or state regulations upon such disclosure.

I understand that I may refuse to sign this authorization. I further understand that my refusal to sign will not affect my ability to obtain treatment unless a third party requests that treatment and/or release of information.

I understand that I may revoke, or withdraw, this authorization at any time by sending a written notice to the above-named person or organization authorized to release the information. This revocation will be effective for future uses and disclosures of the information described above. The revocation will not have any effect on information already used or given out.

This authorization expires upon final resolution of the litigation entitled:

I authorize the release of records only, and do not authorize oral communications by the health care provider to the authorized requesting person(s) or organization(s).

The authorized requesting party shall provide to me or my attorney a copy of this authorization at the same time the authorization is provided to the health care provider(s) authorized above to release information.

The authorized requesting party shall mail to me or my attorney a copy of all records received pursuant to this request within seven days of receipt of the information.

A photocopy of this form will serve as an original.

Signature of Patient or Representative

Date

Printed Name of Patient

Relationship to Patient if Signed by Representative

A copy of this completed form must be given to the patient or the person signing on the patient's behalf.

Authorization for Release of Financial Records

TO: Custodian of Records

RE:

DATE OF BIRTH:

SOCIAL SECURITY NUMBER:

You are hereby authorized to furnish to the law firm of _____, and their duly authorized representatives, copies of any and all information they may request concerning any salaries, bonuses, commissions, allowances, travel expenses, stocks, investments, retirement and pension plans, stock ownership or option plans, pay deferral or provident funds, defined contribution plans, other employee benefit plans, incentive plans, termination benefits, mutual funds, growth funds, life insurance policies, bank accounts, credit union accounts, savings accounts, money market accounts, certificates of deposit, installment loans, mortgage loans, personal loans, signature loans, any other direct indebtedness or obligation incurred by me or on my behalf, any indirect indebtedness or obligation incurred by me or on my behalf (including, but not limited to, any indebtedness or obligation for which I am a co-borrower, guarantor, or surety), savings plans, 401(k) accounts, and Individual Retirement Accounts in which I may have or had an interest, or other information in your possession regarding me, as to the following:

This authorization shall constitute valid authorization for the firm of _____ to inspect all such items set forth above, and to copy, and to request and receive copies, including certified copies, thereof from you.

This authorization is valid until you receive written revocation. A copy of this authorization shall be sufficient and as good as the original, and permission is hereby granted to honor a photostatic copy of this authorization.

Signed at _____, Louisiana, this ____ day of _____, 20__.

Signature of Employee or Customer

Typed Name of Employee or Customer

Sample Court Appearance or Hearing Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

RE: {Case Name & Number}

Dear Mr. Client:

Your case has been set for hearing/trial on _____ at _____ o'clock in the parish courthouse, located at _____ in _____. Your case is before Judge _____ in courtroom _____.

You will find it most convenient to park {specify parking lots, etc.}. Judge _____'s courtroom is located on the _____ floor. I will meet you {location} at _____ o'clock the day of the trial.

This is a hearing on {issue}. {This is a trial on the merits.}

Please be present for this. If you have any questions, please feel free to call.

Sincerely,

FIRMNAME

Attorney Name

Sample Deposition Scheduling Letter

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

RE: Deposition
Our File _____

Dear Mr. Client:

Your discovery deposition has been scheduled for _____ at ____ o'clock here in our offices. I will meet with you in our office at ____ o'clock, one hour prior to the deposition, to answer any questions you may have concerning this matter. Please review the enclosed Deposition Instructions before we meet.

I look forward to seeing you on _____ for your deposition. Until then, if you have any questions, please feel free to call.

Sincerely,

FIRM NAME

Attorney Name

Enclosure

Deposition Instructions to Client

Note to Attorney: Some of the advice provided below is applicable primarily in personal injury cases. Practitioners will wish to tailor these instructions to suit particular cases.

Under the law, the other lawyer has a right to take your “discovery deposition.” This means that you will be put under oath, and the lawyer will ask you questions relating to this case. The lawyer’s questions and your answers will be taken down by a court reporter. One of your lawyers will be present at all times.

There will be no judge or jury present. However, after the deposition is over, the court reporter will type out all the questions and answers, and both your lawyer and the other lawyer will receive copies. The original may be filed in court.

The deposition will assist the opposition in evaluating your case for settlement purposes and can be used at trial if your testimony is different than at the deposition. For this reason, it’s important to prepare before your deposition and handle yourself well during the deposition. Below is a list of instructions.

Instructions:

1. You should be clean, and wear clean, neat clothing.
2. Consider this an important and solemn occasion, and treat all persons in the deposition room with respect.
3. Come prepared to exhibit any and all injuries which you have suffered.
4. If this is a personal injury case, have with you the facts and figures of time lost from work, lost wages, and all medical bills incurred as a result of your injury.
5. Tell the truth.
6. Never lose your temper.
7. Don’t be afraid of the lawyers.
8. Speak slowly and clearly, and answer “yes” or “no” rather than “uh huh” or a nod or shake of your head.
9. Answer all questions directly and concisely.
10. NEVER VOLUNTEER any information. After the question has been asked, answer it. If “yes” or “no” will answer the question, do so and then STOP.
11. Do not magnify your injuries or losses.
12. If you don’t know, admit it. It is IMPERATIVE that you be HONEST and STRAIGHTFORWARD in your testimony.
13. Do not try to memorize your story. Tell your story to the best of your ability.
14. Do not answer a question unless you have heard it and clearly understand it. Ask for the question to be repeated or explained.
15. Do not guess or estimate time, speed or distance unless you are sure that the estimate is correct. When you answer, state that this is your estimate. Review these estimates with us beforehand.
16. Many of the questions you will be asked will not be admissible at the trial. The opposition is entitled to an answer in order to help them prepare their case. Do not try to hide information because you are afraid it can be used at trial to discredit you.
17. If we object to a question, stop talking and wait for our instructions to answer or not answer.
18. If you want to discuss something after the deposition, wait until we are alone.

REMEMBER, if you give the appearance of earnestness, fairness and honesty, and if you keep in mind the suggestions we have made, you will be taking a great stride toward successful completion of the litigation in which you are involved.

Confidentiality Agreement

As an employee of (Law Firm), I acknowledge that I have been instructed regarding the confidentiality of all firm business, client disclosures, activity and records and, except as required by law in the course of my duties, or where instructed in writing by my supervisor, I am aware that all client disclosures, firm books, records, files and memoranda are to be treated in strict confidence. I pledge that I will not disclose information relating to the firm, its business or its clients during my employment or after termination thereof, whether such termination be voluntary or involuntary. I understand that any breach of confidentiality will be grounds for my immediate dismissal as a firm employee.

This the ____ day of _____, 20__.

Signature

Witness

Attorney's Signature