

The Practice

Advice for the busy lawyer

The attorney-client relationship 101

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The existence, terms and scope of an attorney-client relationship are generally straightforward and understood between the parties. There are times, however, when a miscommunication between attorney and client creates unintended consequences — such as fee disputes, lawsuits or ethics complaints.

Here is a list of helpful tips to follow before, during and after representation of a client.

1 Be selective. You do not need to accept every client who calls you. Some clients create more problems than they are worth. Red flags include clients who complain about rates or have unreasonable expectations from the outset. You should consider whether the representation is worth the potential disputes.

2 Be wary of implied representation. If you decide you do not want to accept a client or case, make sure to communicate that promptly to the client and that the client understands he needs to consult with another lawyer about his rights. This is especially true when there is a statute of limitations issue or when the potential client might lose rights if he waits too long to consult with other counsel.

3 Define the scope and terms of the representation in writing. Engagement letters are required under the Rules of Professional Conduct. Except in limited circumstances, you must provide a written fee agreement to your client that also describes the scope of the representation. Make clear who the client is and, if not the same person, who will be paying the

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bills. It is also helpful to have the client countersign the letter.

4 Do not over-promise. Never promise a certain result, and be cautious when providing budgets, especially in litigation matters. Unless you have agreed to represent a client for a flat fee, make sure the client is aware that a budget can change based on unpredictable factors. Communicate to the client any developments that make a previous budget inaccurate.

5 Always communicate important decisions. Some clients may not care to be involved in day-to-day

decision-making during representation, but make sure you always involve them in important ones such as settlement offers, alternative dispute resolution, where to file a case, whether to request a jury, and strategy decisions that could alter the budget of the case. You should provide your best advice on the client's options, but let the client make the ultimate informed decision.

6 Avoid or disclose conflicts of interest. Though it should be obvious that you cannot represent a client whose interests are materially adverse to those of another client, conflicts

often arise during representation, especially when you represent more than one client at a time. Always provide written notice of the potential for conflict at the outset, and notify the clients that you may have to withdraw from representing one or both of them if a conflict does arise.

7 Be wary of withdrawal. At some point during the representation, you may find it necessary to withdraw because, for example, the client has stopped paying or there is a material breakdown in the attorney-client relationship. In litigation cases, you may have to seek permission from the court, which it may not allow if the withdrawal would prejudice the client. If possible, make sure the client has another lawyer available to enter an appearance at the time you seek to withdraw.

8 Send a disengagement letter. Although not required by the Rules of Professional Conduct, sending a letter to mark the end of an attorney-client relationship is a good practice. The client will then understand that he will have to re-engage you if he needs continuing advice on a matter.

9 Remember your continuing obligations. Notwithstanding the termination of an attorney-client relationship, your duty of confidentiality to that client continues. You also have an obligation to provide the client his file upon request or otherwise to keep the file for at least six years, depending on the circumstances.

10 Think carefully before suing a client for fees. Sometimes clients do not pay, even if the lawyer provided diligent and competent services. Before suing a client for fees, however, consider the possibility that you may receive, rightly or wrongly, a counterclaim for malpractice. Arbitration or mediation over fee disputes is likely a better option.

These tips are not exhaustive, and you should always consult with the Rules of Professional Conduct for more detailed explanations of specific rules governing lawyer conduct. Remembering to follow these tips, however, can save you from unnecessary complications and disputes with your clients. **MLW**