

The Attorney-Client Relationship: Keeping the Lines of Communication Open

PLUS Blog

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One of the most important aspects of the attorney-client relationship is communication. Too often, we see legal malpractice claims and disciplinary complaints arise because a client felt that his or her attorney was inattentive, hard to reach, or non-responsive. The simple practice of keeping your clients informed is not only required under the Rules of Professional Conduct, but it can save you from dealing with unwanted claims down the line. At a minimum, there are ten times you should always communicate with your client.

1. To begin the attorney-client relationship.

Every attorney-client relationship should start with an engagement agreement, including at least six components: (1) the identity of the client, (2) the scope of the representation, (3) details of the fee arrangement, (4) disclosure of any conflicts of interest, (5) file retention and destruction procedures, and (6) the client's signature. This is the time to set the tone for the representation and to ensure you manage client expectations from the start.

2. **To set boundaries.** It is important to set reasonable expectations for your client and to make your client aware of any boundaries you are putting in place. You should provide phone numbers and email addresses where you are comfortable having your client reach you. With respect to your client's contact information, make sure your client understands the importance and applicability of the

attorney-client privilege. Your client should only share privileged information with you in private, away from family members, co-workers, or other individuals who may be listening to a conversation. You should discuss cyber security issues with your client, including the possibility that the same email address your client uses for shopping and social media accounts may not be secure enough for attorney-client communications. You may want to consider discouraging your client from communicating with you via text message. These conversations can be revisited throughout the representation, as appropriate. For example, if your client routinely sends you text messages on the weekends but you intend only to communicate via email or telephone during the work week, this should be explained.

3. **At the first substantive development.** It is a good idea to update your client when you have taken the first step in advancing your client's position. If you have filed the complaint you and your client have prepared, or the first draft of the deal document has been exchanged, take the time to let your client know that the matter is progressing.

4. **As the matter proceeds.** Do not forget to keep your client informed after that first step, as well. You filed the complaint and let your client know, but you should tell your client when the complaint has been answered as well. Keep your client updated throughout the whole deal negotiation.

Make sure your client feels kept in the loop on his or her matter throughout the representation.

5. In connection with key strategy decisions.

The client, in consultation with the lawyer, should make the key strategy decisions. You must give your client sufficient information to allow the client to make informed decisions regarding the representation. It is okay to have strategy discussions telephonically or in person so that you can address your client's questions and concerns in real time. However, it is a good idea to confirm the ultimate strategy to be pursued, in writing. This is particularly true when your client has chosen to ignore your advice. This is also true when your client has asked you to do something you are either unwilling to do or unable to do without running afoul of the Rules of Professional Conduct. In both cases, document your file.

6. During settlement negotiations. You are obligated to communicate all settlement offers and demands to your client. Do so in writing. It is a good idea to get your client's response in writing, as well. Make sure your client understands the difference between a demand and a deal, and get consent in writing before accepting any settlement.

7. At regular intervals. Keep a calendar for each matter and update your client at regular intervals. Even if nothing has occurred since your last update, it is useful to let your client know what is (not) happening. This will prevent your client from thinking the delay is due to your inattention to the file.

8. When your client asks. The Rules of Professional Conduct require you to "promptly comply with reasonable requests for information" from your client. Do not ignore communications from your client,

and provide as much information as reasonably possible, in the soonest time possible, when asked. Of course, there can be reasons for a delay in responding, but those should be adequately explained and a response given as soon as you are able.

9. When the matters resolves. Update your client as soon as the matter resolves. You should provide copies of the outcome, whether a Court order, executed documents, or a settlement agreement. Explain what the documents mean, and identify any additional steps that should be taken following the resolution, such as the availability of an appeal, any post-closing obligations, or otherwise.

10. To conclude the representation. When a contingent fee arrangement ends, the attorney is required to provide the client with a written statement showing the outcome of the matter and a calculation of any recovery with the amount to be remitted to the client and how that amount was determined. At the end of any representation, it is a good idea to send your client a disengagement letter. At that time, you can ensure the client knows the representation has ended, and use the opportunity to remind the client of any relevant file retention and destruction policies.



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