

MENTORMATCH PROGRAM
WORKSHEET FF
INTRODUCTION TO CLIENT COMMUNICATION

Worksheet FF is intended to facilitate a discussion about the importance of client communication and how to maintain good on-going communication, including the use of retention and fee agreements, keeping clients informed about matters, confirming things in writing, being on time, etc.

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- Share with the new lawyer a personal example of how failing to communicate clearly with your client caused problems in the relationship. Conversely, share with the new lawyer a personal example of how communication with your client prevented or resolved problems that could have ended the attorney-client relationship.
- Provide tips to the new lawyer on effective communication. Read and discuss the attached articles. Stewart Levine, *Essentials of Effective Communication*, LAW PRACTICE TODAY, Feb. 2006. <http://www.abanet.org/lpm/lpt/articles/mba03071.shtml>; John Q. Lewis, *Client Relations Advice for the Newer Lawyer*, CLEVELAND BAR JOURNAL, Dec. 2003. (attached)
- Share best ways for communicating with clients, including practices like the following:
 - Sending copies of pleadings and correspondence to your clients.
 - Keeping clients involved in making decisions in their cases.
 - Returning calls personally and promptly.
 - Utilizing staff to provide exceptional customer service.
 - Confirming instructions and/or advice in writing.
 - Clarifying reasonable expectations about the representation.
 - Clarifying your role and scope of the representation from the outset and as it changes.
 - Explaining clearly the fee arrangement.
 - Promptly providing detailed billing records to your clients.
 - Being respectful to your clients in all communications.
 - Respecting clients' time.
 - Making sure your client understands the steps of the process, including what will happen next and the appropriate way to respond.

See Rules of Prof. Cond. 1.4.

- Discuss ways that a new lawyer can improve his or her client relations skills. Also read Jon Schmalz's article on *Choosing A Lawyer* on the perspective of the client looking for a lawyer. (Attached)
- Discuss professional and ethical ways to thank a client. Review and discuss the attached article. Wendy Werner, *How to Thank a Client*, LAW PRACTICE TODAY, June 2005. <http://www.abanet.org/lpm/lpt/articles/mkt06051.html>
- Discuss different types of client relationships (*i.e.*, people clients, government clients, corporate clients, etc.) and provide tips for the best and most professional communication practices with the type of clients that the new lawyer will have.

- Discuss how a lawyer clearly defines the scope of representation in a retainer or engagement letter. See Rules of Prof. Cond. 1.2.
- Discuss fee agreements
 - Discuss how to talk about and set a fee with your client.
 - Discuss why fee agreements should be in writing. Share with the new lawyer samples of fee agreements and engagement letters that you use in your practice. Or, if mentoring in-house, share with the new lawyer the fee agreements and engagement letters which are used in your firm.
 - Explain to the new lawyer why certain provisions are either included in your fee agreement or excluded from your fee agreement.
See Prof. Cond. Rule 1.5.
- Discuss terminating the lawyer-client relationship and suggest the best ways to document doing so. See Rules of Prof. Cond. 1.16.

RESOURCES

INDIANA Rules of Professional Conduct

Client-Lawyer Relationship

1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

(c) A lawyer may limit the scope and objectives of the representation if the limitation is *reasonable* under the circumstances and the client gives informed consent.

Comment

Agreements Limiting Scope of Representation

[[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be

used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant, unethical, or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

7

View complete rule and comment at

http://www.ngov/judiciary/rules/prof_cond/

1.4: Communication

Rule 1.4. Communication

- (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 or assistance limited under Rule 1.2(c).
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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http://www.in.gov/judiciary/rules/prof_cond/

1.5: Fees and Expenses

Rule 1.5. Fees

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution or upon the amount of maintenance, support, or property settlement, or obtaining custody of a child; or
 - (2) a contingent fee for representing a defendant in a criminal case.
- This provision does not preclude a contract for a contingent fee for legal representation in a domestic relations post-judgment collection action, provided the attorney clearly advises his or her client in writing of the alternative measures available for the collection of such debt and, in all other particulars, complies with Prof.Cond.R. 1.5(c).
- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
 - (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
 - (3) the total fee is reasonable.

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1.16: Declining or Terminating Representation

Rule 1.16. Declining or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the Rules of Professional Conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 - (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (4) a client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.
- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

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