

2012

Not Rules, Relationships!

Practical resources and tools to accelerate your success from the start!

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How do you build successful client relationships?

Maintaining successful client relationships can be one of the most challenging aspects of your career. The steps in developing and maintaining good client relationships are fluid, sometimes seamless, yet always continuous. These steps align with applicable skills and values identified in the MacCrate Report¹.



Address client expectations, evaluate the case and the client

Identifying and diagnosing the problem

Conducting legal analysis

Screen for conflicts of interest

Planning, directing, and participating in factual investigation

Build rapport - maintain good communications with the client and keep the client informed

Assessing the perspective of the recipient of the communication

Using effective methods of communication

Establishing a counseling relationship that respects the nature & bounds of a lawyer's role

Gathering information relevant to the decision to be made

Analyzing the decision to be made

Counseling the client about the decision to be made

Ascertaining and implementing the client's decision

Attaining and maintaining a level of competence in one's own field of practice

Representing clients in a competent manner

Developing systems and procedures to ensure that work is performed and completed at the appropriate time

Developing systems and procedures for effectively working with other people

Developing systems and procedures for efficiently administering a law office

Terminate the lawyer-client relationship

Developing systems and procedures for effectively working with other people

Developing systems and procedures for efficiently administering a law office

Learn More

In this program...	See Managing Your Legal Career, "What the skills that will help you succeed?"
At the Bar...	Legal education programs, pro bono clinics and other legal service providers may offer opportunities for you to increase your skills in these areas. See the MCLE Activity Search for courses.
On the web...	Client Relations, Preadmission, CLE, NLE, New Lawyer Education

¹ MacCrate Report. American Bar Association. *Overview of Fundamental Lawyering Skills and Values*, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATION CONTINUUM [MacCrate Report] pp. 138-141 (Chicago: ABA, 1992).



When to be cautious upon meeting a prospective client

Be cautious about providing legal advice (or failing to give it) during the first meeting with a new client. You might not take the case, or the client might not hire you. Regardless, you are responsible for acts of negligence. For example, a court could hold you responsible for failing to warn about the statute of limitations or negligently advising a client she did not have a case.

The Washington Supreme Court has adopted a multifactor test to assess when a lawyer owes a duty to a non-client. *Trask v. Butler*, 123 Wn. 2d 835, 839-40, 872 P.2d 1080 (1994). An attorney may owe a duty of care whether or not the client actually hires the attorney. Under the test, a court is required to evaluate:

- the extent to which the transaction was intended to benefit the client
- the foreseeability of harm to the client
- the degree of certainty that the client suffered injury
- the closeness of the connection between the attorney’s conduct and the injury
- the policy of preventing future harm
- the extent to which the profession would be unduly burdened by a finding of liability

Refrain, whenever possible, from advising the client on the first meeting. Give yourself (and the client) time to exchange more information. There may be alternatives and outcomes that you cannot realize during the first meeting.

Another concern is that a meeting with a prospective client may disqualify you from representing other clients due to a conflict of interest. Additional information regarding conflicts of interest is later in this material.

Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! nle@wsba.org
At the Bar...	Casemaker search for “ <i>Trask v. Butler</i> , 123 Wn. 2d 835, 839-40, 872 P.2d 1080 (1994).”
On the web...	Client Relations, Preadmission



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How do you evaluate the case and the client?

Clients with problems come to see you looking for solutions. While not all clients with problems are problem clients, some are more difficult to handle than others. One difficulty may be that the case is unusually complicated. Some clients have emotional problems that complicate the professional relationship. You must decide whether to accept the client or, if working with a client becomes difficult, whether to terminate the relationship.

Deciding whether to take on a particular client is not always a simple matter and, sometimes, it is not easy to recognize a difficult client at the beginning. Here are some tactics for understanding the client and their needs:

1. Understand your role and the client's role
 - a. Your role as lawyer is to analyze the situation presented by the client and offer a solution or help the client identify the means of achieving a goal. There may be more than one solution or your advice to the client may be to do nothing. It is your role to advise the client of these choices and possible consequences of the different courses of action.
 - b. The client's job is to make decisions about which course of action to follow. It is, after all, the client's life, or the client's business, or the client's estate, or the client's litigation.
 - c. Some clients are unwilling to make decisions about their legal issues. They want the lawyer to do that. That is not your role; your job is to help the client understand the choices.
2. Document everything
 - a. The client has a way of turning against their lawyer. Document all verbal communications, including telephone calls, voice mail messages and e-mail messages. Confirm the client's instructions to you in writing, and confirm your instructions to the client in writing. Send written advice to the client regarding the possible consequences of various courses of action the client may be contemplating. Save electronic messages as part of the permanent record of the file.
 - b. Your purpose in establishing this detailed record is to preserve sufficient details to assist you in a future disagreement. Check the advice you give this client with a colleague, letting the colleague know any fears you have about the client.
3. Be calm, be patient, be clear
 - a. Communicate clearly, explicitly, and politely with your client. Written communications reduce misunderstandings. Clear communication can keep the client focused. Summarize verbal communications as a conversation proceeds to be sure the client is clear on what you said. If you find that you become a difficult lawyer because of this client, it may be time to "fire the client" and pass the case on to another lawyer.



4. Include your staff in the plan for client management
 - a. Make sure your staff understand the risks of acting for a client, especially the difficult ones, and let them know ways to minimize those risks. Because staff deal with clients on the front lines, they may have identified the challenges of this client before you do. Trust your staff and believe them when they describe the client's behavior. Deal directly and promptly with the client about bad or inappropriate treatment of the staff. Never let the difficult client mistreat your staff. No client is more important than your staff.
5. Manage client expectations
 - a. One of the best ways to deal with any client is to manage their expectations. Communication is critical. As early as possible, identify the client's expectations regarding his case. Be honest with the client whose goal you cannot meet through your legal services. Include in your written fee agreement the parameters of the legal services you agree to render.
 - b. Communicate clearly your expectations regarding the client's treatment of you and your staff, and payment of your fee. Be sure the client understands any additional costs involved in his case. Send regular bills with detailed entries regarding services rendered.
 - c. Be clear about limits on expected services. For example, explain your policy is to return phone calls or emails within 24 hours (not 15 minutes). Deny special requests that disrupt your practice, duties of staff, and your personal life. Do not meet clients away from the office or after hours. Do not submit to requests for frivolous legal motions or hard ball tactics.

Difficult clients can be very hard to satisfy and be quite demanding. They can frustrate and upset staff and office routine. They often ignore your advice. A difficult client is more likely to:

- Fail to pay the lawyer
- Complain to the bar association about the lawyer
- Sue the lawyer for negligence

Consider withdrawing from representing a client who is unwilling to follow your advice.

Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! nle@wsba.org
At the Bar...	Suggestions?
On the web...	Client Relations, Preadmission



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How do you screen for conflicts of interest?

The conflict of interest rules apply to all personnel in a law firm, not just the lawyers involved in representing a particular client. Non-attorney staff members must follow the same ethical rules as lawyers. Additionally, you have a duty to supervise both non-lawyer and subordinate lawyer personnel to ensure that all employees of the law firm follow the rules of professional conduct. See RPC 5.3. Coordinate screening mechanisms within your law firm to be sure to identify all potential conflicts.

Use and review of client intake forms

One method to avoid conflicts of interest is to require each potential client to complete a new client intake form prior to the initial consultation. Develop a form to include all pertinent information regarding the client and any other people who are peripherally involved or who may become parties to the action

Exception for nonprofit organizations or court programs: With some restrictions, the conflict of interest rules do not apply to lawyers who represent client for short-term limited legal services under the auspices of nonprofit organizations or court programs. Use screening mechanisms to protect client confidences and secrets and notify the client of any potential conflict of interest. See RPC 6.5.

Example of Information needed for client intake conflicts screening

- Full name and any other names by which the client may be or has been known
- Current address and telephone number(s)
- Employer's name, address and telephone number
- Former employer's name, address and telephone number
- Emergency contacts
- The name of anyone the potential client knows who has been a client of the firm or had contact in some manner with the firm
- Full name and any other names by which client's spouse/partner/significant other may be or has been known
- Full name and any other names by which client's former spouse(s) may be or has been known
- Full name and any other names by which the client's children may be or have been known (especially adult children and their spouses)
- Referral information
- Social security number
- Opposing counsel's name, if known
- For a corporate client, include detailed information on the officers and directors (including information on spouses) of the corporation.
- For a corporate client, it is important to know the background of the company (i.e., former corporate name[s], companies incorporated through mergers or acquisitions, previous owners, and so forth).



Screening during the interview

During an initial consultation with a prospective client, evaluate the case (merit, time involved, familiarity with area of law involved, etc.) and evaluate the client (client's expectations, comfort level in working with this client, trustworthiness, etc.).

Trust your instincts regarding the client. If the client seems uncomfortable with you, or vice versa, or something just does not feel right about the situation, it would perhaps be best to refer the client to another source of legal services. If you go against your instincts and take on a case just for the potential fees, you may regret that action at some point down the road. Philosophical differences may present a conflict of interest between you and the client.

If you decide to take the case, explain which other firm employees are likely to be working on the case and what their contribution (and fees) will be. Introduce the client to office staff with whom he/she may come in contact. This simple exercise may uncover potential conflicts of interest involving staff members, but should not take the place of a formal conflicts check.

Screening individual lawyers and staff

Lawyers moving from firm to firm may transfer conflicts of interest to the firm. Effective screening mechanisms as described in the rule may help the firm avoid the conflict. The firm must be able to assure the client that no client information that is material was transmitted to the firm by the personally disqualified lawyer before implementation of the screening mechanism and notice to the former client.

Client screening lists

Maintain an accurate listing of all clients and former clients to ensure that you do not accept conflicting representations. Conflict of interest systems range from specialized database programs to simplified hand-written card catalogs.

At a minimum, maintain the following information in the client file:

- Complete formal names of all clients and any alias, "doing business as," or other names for a client (used for identification of clients)
- Owners, managers, and partners of clients should also be considered clients for conflicts purposes (used for identification of clients)
- Subsidiaries and parent companies of corporate clients (used for identification of clients and possible material limitation conflicts)
- Names of all adverse parties and current status of each (used to determine whether potential new client is a current adverse party)

According to RPC 1.10, if a lawyer in the firm is disqualified from representing a client, the law firm is also disqualified, with some exceptions.

An "ethical screen", under procedures described in the RPCs, may allow a law firm hiring a personally disqualified lawyer to avoid imputed disqualification. Such "ethical screens" traditionally have been allowed with new lawyers who leave government service to join a firm. See RPC 1.11.



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- An accurate description of all of the work done for a particular client (used to determine if matters are substantially related)
- The names of the lawyers that performed work for each client in each matter (used to determine if lawyers that worked for a client have left the firm)
- The opening and closing date of each matter (used to determine if adverse parties are still adverse)

Options for Conflicts Checking Systems

A best practice is for each firm to have a written policy regarding conflicts and how to screen for client conflicts. Procedures included in the policy are:

- a. maintaining a conflicts filing system
- b. checking conflicts before a prospective client is interviewed
- c. checking conflicts before hiring new lawyers or staff

Systems need not be complex. Ask colleagues how this system is managed within their practice. Two options for are:

Conflicts Checking Systems	
Non-Electronic	Electronic
<p>An alphabetical file card system of all clients and opposing clients may be adequate for some practices. For each client, list:</p> <ul style="list-style-type: none"> • the type of legal service performed • the date the file was opened and closed • the lawyers in the assigned to the case • if the client is corporate, include information about officers, directors, subsidiaries and parent companies, principal owners, and other professionals serving the entity • keep track of the prospective clients you initially interview, but that do not engage your services 	<ul style="list-style-type: none"> • Time and billing or case management software may include all essential information that can be searched electronically for conflicts. • Create your own computer-based system conflict system using a word processing file that includes the names of all potential conflicts. You can then search that document for possible conflicts using the "Search" function in the word processing program.

Learn More

In this program...	See other topics in this section. Would you like more information or continuing legal education (CLE) on this topic? Let us know! nle@wsba.org
At the Bar...	Search Advisory Opinions for "conflicts". Inquire at LOMAP regarding screening systems and tools.
On the web...	Client Relations, Conflicts of Interest, Preadmission, RPC 1.11, RPC 6.5



How do you identify and resolve a conflict of interest?

The general rule, simply stated, is that a lawyer may not represent a client if the representation would involve a conflict of interest. This rule recognizes the lawyer's obligation of undivided loyalty to the client and duty to protect client confidences.

A conflict of interest is involved if there is a **significant risk** that the lawyer's representation of the client would be **materially** and **adversely** affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person. Under certain conditions, affected clients can waive the conflict and consent to the representation; the Rules of Professional Conduct provide those limitations.

Types of conflicts of interests

The majority of conflicts of interest problems fall within two main categories:

- a. those involving the interests of a current client and the lawyer's own interest
- b. those involving a conflict between the interests of a current client and another current client

For detailed lists of potential conflicts under these categories, see the RPCs.

Many situations may present potential conflicts between you and your clients. In most instances, avoiding the conflict is a simple matter of making full disclosure, or having a frank conversation with your client about the concern, and obtaining a written acknowledgement from the client that he understands the potential conflict yet consents to it.

Informed consent requirement

Washington's Rules of Professional Responsibility now require, in all instances of conflict of interest, a client's informed consent, confirmed in writing, in order to waive a consentable conflict. Keep in mind that not all conflicts are consentable.

To resolve a conflict of interest problem under RPC 1.7, the lawyer must take several steps:

- clearly identify the client or clients
- determine whether a conflict of interest exists
- decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable

Under RPC 1.7, there are two ways to identify a conflict of interest:

(a) the lawyer's representation will be directly adverse to that client OR (b) there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. See Comments 6, 7, and 8.



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- if the conflict is consentable, consult with the clients affected and obtain their informed consent, confirmed in writing

The “clients affected” include those whose interests are directly adverse as well as those whose representation might be materially limited.

Consequences of failure to comply with conflict of interest rules can be serious. A client or former client has several remedies available in this situation:

- a. File a grievance with the WSBA Office of Disciplinary Counsel
- b. Move to disqualify counsel from representing an adverse party
- c. File a claim for legal malpractice or disgorgement of fees

Learn More

In this program...	See the Hypothetical Case Studies in this section.
At the Bar...	Resources provided by the Professional Responsibility program for the ethical practice of law can be found on wsba.org under Resources and Services > Ethics Open during normal business hours, the Ethics Line (206-727-8284), call when you need assistance navigating tricky waters of legal ethics. Focus on Ethics (Articles from the Bar News) Advisory Opinions
On the web...	Rules of Professional Conduct Client Relations, Conflicts of Interest, Malpractice, File Grievance, Preadmission, RPC 1.7



How do you build rapport with your clients?

Building and maintaining rapport with a client begins the first time a potential client enters the office. If you are a government or corporate lawyer, it begins the first day at work. Law school prepared us to “think like a lawyer”, recognize legal issues and propose solutions. It did not train us in customer service. Legal competence -- the ability to provide the service requested -- does not guarantee client satisfaction, repeat business, or referrals. Providing high quality legal services does not guarantee absence of complaints.

One of the most frequent causes of bar complaints is poor lawyer-client communication. The breakdown of the client relationship may begin when the lawyer fails to build rapport or connect with the client or when that connection unravels.

Exhibit competence and diligence

The duties of competence and diligence are parallel. A lawyer must be both. As a new lawyer, you may be concerned about whether you can be both competent and diligent in your work when you are inexperienced. If you work in a law firm, rely upon your colleagues; if not, expand your legal network and rely upon your legal community.

The diligent lawyer:

- is prepared
- thoroughly investigates facts
- carefully researches applicable law
- discovers readily available evidence
- adequately prepares for a hearing
- is prompt
- meets deadlines
- follows up on promises

Time and case management systems and standard office procedures are keys to ensuring that work is performed and completed at the appropriate time.

Keep the client informed through effective communication

The most common complaints about attorneys relate to a failure to communicate. Effective communication begins before the potential client walks in the door the first time. Prepare for meeting with the potential client and consider their comfort when they walk into your office for the first time.

RPC 1.1 on competence states: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Competence is the minimum standard that a lawyer may not ignore. This includes your duty to plan for your absence from the office due to emergency, unexpected absence or death and disability issues.

RPC 1.3 on diligence states: “A lawyer shall act with reasonable diligence and promptness in representing a client.”



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Structuring the Client Interview: A Checklist

<i>Try to have a general idea about the nature of the client's problem before the client arrives.</i>	Keep in mind that the client's perception of the problem might be different from what the facts present. Often, the client might have identified a certain problem, but during the interview, you might discover there are other problems.
<i>Put the client at ease.</i>	<p>Your client may be intimidated and nervous about the appointment. The client may feel uneasy because she feels outranked by you. She does not want to look stupid and may have trouble speaking frankly to you about her problems. Help the client relax by creating a receptive environment.</p> <p>Greet the client in the waiting area. Shake hands, introduce yourself, and show the client to your office. Do not have the receptionist point the way.</p> <p>Provide a comfortable environment in your office. Expensive trappings are not necessary to exhibit a warm, inviting atmosphere. Lighting, seating arrangements and refreshments can make the difference.</p> <p>Let the client choose where to sit. Move your chair to accommodate the interview. Try to avoid placing your desk between you and the client. Smile and be pleasant. Be yourself. Small talk may break the ice, but is not required. Many times, the client wants to hear, simply, "How can I help you?"</p>
<i>Discuss attorney-client confidentiality to put the client at ease.</i>	Reassure the client that whatever he tells you is confidential and you will not disclose anything. Remind the client not to discuss the legal issue with others. Explain that you will share certain information with the legal staff in order to represent the client effectively. Obtain the client's permission to share any information otherwise. Get the client's permission to discuss a difficult case with other attorneys in the office.
<i>If possible, exclude third parties from the interview.</i>	Your client might bring her neighbor, parent, or even children. Not only does the presence of third parties interfere with attorney client confidentiality, it inhibits conversation. Be cautious if your client brings his children to the office and begins to discuss marital problems in front of them. Avoid this at all costs, even if it means setting up another appointment for the client alone or providing coloring books or toys for the children to use in the waiting room. A family law practice should be family friendly, so forego the fine leather chairs in favor of a sturdy sofa and a toy box.
<i>Explain the "supporting cast"</i>	Identify members of the law office that may play a role in the client's case (paralegals, legal specialists, clerks, other attorneys, etc.).
<i>Avoid interruptions</i>	Consider an office policy in which the receptionist takes phone messages that are not urgent when you are with a client. If needed, use a "do not disturb" sign. Make the client feel like the most important person in the world to you for the time that you have. Do not show your concern about how much time you are taking with the client. With experience, you will know how to focus on the client's problems, get from him the important information to help him, and send him on his way within



	<p>a reasonable time. If you are pressed for time during an interview because of deadlines, a court appearance, or a backed up waiting room full of other appointments, simply tell the client that his problem is more complex than time allows at the moment and schedule a follow-up appointment. Schedule the follow-up before the client leaves; do not let the client dangle.</p>
<i>Are you the second opinion?</i>	<p>At the beginning of the interview, determine whether the client has seen another attorney and if so, whether the client or a potential adversary (or opposing party) is already represented. Find out what the other attorney told the client before you hear his full story. Sometimes, a client will attorney-shop to find someone who will tell him what he wants to hear or to get a valid second opinion. In addition, hearing what another lawyer advised can help you focus rapidly on the issues or spot ones not addressed.</p>
<i>Structure the interview</i>	<p>You do not need to tell the client how you structure the interview, but the client will want you to be effective and competent. Be sure you have prepared for the interview before the client arrives. Try to be aware of the general nature of the client’s visit and brush up on the subject matter basics, if needed. Be sure to have paper, pens, and an interview questionnaire to help guide the interview. A note of caution: the questionnaire form is a guide; do not let it interrupt the conversation nor your client’s narrative.</p>
<i>During the interview, find out what the client wants.</i>	<p>Try not to make assumptions by the nature of the legal problem. The client with marital difficulties might not want a divorce; perhaps the client wants financial counseling or to maintain status quo while undergoing marital counseling. Ask for clarification about what the client wants. Some clients you talk to will not need legal services or will need greater expertise than you have. Refer them to appropriate agencies or other attorneys.</p>

Learn More

In this program...	How do you build rapport with your clients?
At the Bar...	Bar News, May 2011, What I’ve Learned: Tips and Advice for Working with Vulnerable Clients, by Merf Ehman
On the web...	Client Relations, Interview, Preadmission, RPC 1.1, RPC 1.7



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How do you follow-up to the client interview?

Before the client leaves your office, after the first meeting, ask if he has any questions. Be careful to confirm that the client understands the nature of problem. Restate what you think the problem is and ask the client if you grasped his point.

Communicate the scope of the relationship. Help your client understand the structure of the attorney-client relationship. Make sure that the client is clear about what you are going to do about the problem, and what you are not going to do. Does the client understand her role? Outline the steps you have already decided upon and give the general timeframe. Discuss how you plan to keep the client informed of progress in her case. Communicate clearly the realistic costs and discuss your office policies on fees and billing.

Set a date to follow-up with the client and write down what you expect him to do. Does the client have homework? Client “homework” might include:

- Get more paperwork and bring it back the next day
- Go to financial counseling services and work up a budget for the family
- Bring back the witness list with complete addresses and telephone numbers

Have you or the client decided not to proceed with the case?

If you decide not to take the case, or a prospective client chooses not to engage you, it is always wise to send a declination letter. The declination letter affords the opportunity to confirm that you will not perform services on his or her behalf, disclaim any ongoing obligation to monitor any changes in the law or factual circumstances, and provide information regarding any applicable statute of limitations or upcoming deadline. Such a letter provides grounds for arguing that any belief by the purported client that an attorney-client relationship exists is unreasonable.

If the attorney has received disqualifying information from a prospective client during the initial contacts, representation is permissible if the prospective client is informed in writing of specific measures the lawyer has taken to protect the prospective client information. The notice letter should include a general description of the subject matter of initial meetings and the screening procedures employed, as soon as the need for screening becomes apparent.

Learn More

In this program...	How do you build rapport with your clients?
At the Bar...	LOMAP
On the web...	WA RPC Client Relations, Interview, Declination Letter, Preadmission



WSBA’s Suggestions for Client Communication

1. Discuss expectations in plain language at the first meeting with your client. Explain to your client’s understanding what you can and cannot do and the anticipated costs involved, including your services and expenses. If you can, give the client an estimate of how long the legal process will take.
2. Be sure your fee agreement is in writing, provides details in plain language about what you will do and not do and what is covered or not covered by the fees. Include specific language on matters you feel are important to you and to the client.
3. Give your client a copy of everything – send paper copies of documents, forward emails, etc. Give your client regular written updates, even if there is nothing to report.
4. Return all telephone calls within one business day. If you are busy with other matters, have your office assistant return them for you. There is no valid reason to ignore a phone call from a client. If you are unable to reach the party who called, leave a voice-mail message or a written reply (e-mail, form letter, etc.) acknowledging your effort and suggesting a time to reach you.
5. Be candid with the client about the outcome of the case. Never try to deceive, even if the news is bad. Give the client a report immediately when you receive information.
6. Follow the rules on client trust accounts to the letter.
7. If you are discharged or withdraw, cooperate fully with the next lawyer and the client.
8. Respond immediately to communications from the WSBA. Be open with information requested by an investigator or disciplinary officer. Your candor may affect the outcome of any purported complaint filed against you. If you have concerns about a particular client matter, seek advice from a lawyer who is familiar with legal malpractice claims.
9. Document everything. Keep detailed records detailing what you did, when you did it, and how long it took. Archive a copy of every file, including notes of telephone calls, handwritten notes from meetings, printed copies of emails, and the like, until the statute of limitations for malpractice expires.
10. Periodically review the Rules of Professional Conduct and keep a copy on your desk.
11. Do not take a case if you do not have time for it. This could mean that you do not take a case in an unfamiliar practice area unless you have adequate time to research and study to become familiar with the applicable legal principles. It could mean that you do not take a case in which the client demands an inordinate amount of your time, unless you are patient and willing to spend that time with the client.

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In this program...	How do you build rapport with your clients?
At the Bar...	LOMAP
On the web...	Client Relations, Interview, Interpersonal Communication, Preadmission



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How do you communicate well with clients?

1. Listen and let the client do most of the talking.
2. Rephrase the client's statements to ensure understanding.
3. Acknowledge the client's emotions. ("I hear that you are angry.")
4. Speak clearly and simply using language and terminology the client understands.
5. Be positive.
6. Let the client know you genuinely care for him as an individual, not just as a customer. Show empathy, understanding, and kindness within the bounds of professional behavior.
7. Communicate in a variety of ways. You can communicate information about the case in detailed billing statements and transmittal letters enclosing copies, as well as telephone calls.
8. Answer your own phones once in awhile. (There will be no more complaints about unreturned phone calls!)
9. Make eye contact and S-M-I-L-E!
10. Be objective - ask yourself if there are ways you can enrich your customer service and create a more satisfied client at the same time.

Learn More

In this program...	How do you build rapport with your clients?
At the Bar...	LOMAP
On the web...	Client Relations, Interview, Interpersonal Communication, Preadmission



How do you render advice?

Give the client a broader perspective.

For example, you would not want to tell a client to sue for child custody without talking about the high costs involved in the suit or the impact of the litigation upon the family members.

You may want to find out how judges are treating certain types of cases within your jurisdiction. Consult with other attorneys or professionals to help work out a solution for the legal problem.

Be candid with the client.

Know your capabilities and limitations. This is the competence aspect of rendering advice to the client. If you are unsure of the law in a particular area, explain to client that you want to research the issue and that you will get back to her. Do not guess at the law.

Talk to your client about negotiation and compromise. A case should not always go to court or even be resolved in favor of only one party. A wise lawyer can solve many problems with common sense and compromise. Do not rush into a battle when there does not need to be one.

Be honest with your client. If she has a loser of a case, tell her. Conversely, do not make promises that she will win. Help the client understand that all cases have weaknesses. Encourage your client to disclose all the facts, good and bad. You never know how a case will play before a judge or jury.

Remember, very few clients actually lie to their lawyers. Every client tells you the truth and gives you the facts from his/her perspective. Your client is not supposed to be objective, you are. Give your client an independent and frank assessment of the situation. Help the client understand that what you think, what others might think, or what the client thinks might be only minimally relevant to getting resolution.

Advise the client of the law and the risks completely and competently. Explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Allow the client to make the final determination.

You are an attorney and an adviser. You are not there to tell the client what to do. The client always makes the choice. You can try to guide her on the right path, but ultimately it is the client's life

RPC 2.1 provides "In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation."

The client's role: A lawyer shall "... abide by a client's decisions concerning the objectives of representation and ... consult with the client as to the means by which they are to be pursued. ... abide by a client's decision whether to settle a matter. In a criminal case ... abide by the client's decision after consultation with the lawyer as to a plea to be entered whether to waive jury trial and whether the client will testify." (RPC 1.2)



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and decision to make.

Set the framework for reasonable expectations

Explain the “time line” or the pace of the case to reach the possible remedy. Make it clear to the client what will be involved and how long it will take to reach the goal. Your client may walk into your office expecting instant results (e.g., receipt of support money immediately).

If your client presents a negative attitude toward you, the attorney, ask the client if he would feel more comfortable with another attorney.

Your client has many options when choosing an attorney. Make sure you are someone that your client can know, like, and trust. In everything you do for him, earn his confidence. To the client, his case is the most important one you are handling.

A lawyer should always be prompt when providing information to a client and keep a client reasonably informed about his/her case. See RPC 1.4.

Be honest and caring with your client. When you make a mistake, and you will, admit it and then try to rectify it. A client will respect that much more than an attorney who persists in trying to cover up an error, takes a course of action that will not benefit the client, blames others or even fabricates to escape responsibility.

Learn More

In this program...	How do you build rapport with your clients?
At the Bar...	
On the web...	Client Relations, Interview, Declination Letter, Preadmission, RPC 2.1, RPC 1.2, RPC 1.4



How do you terminate the lawyer-client relationship?

Despite your best efforts, sometimes attorney-client relationships can end badly. Your client can fire you at any time and for any reason, even a bad reason. You may decide to “fire the client.” Either way, there are some sensible steps to take to avoid worsening a potentially bad situation. Termination of the lawyer-client relationship can become nasty and complicated rapidly, resulting in fee disputes, bar complaints, and potential malpractice claims. You could face (formal and informal) unfounded accusations against your reputation and integrity. Taking responsible steps in response, rather than reacting to the prospect of termination, will determine the result.

Withdrawing from representation

You could decide to withdraw from a client’s case for a variety of reasons. Perhaps you lack rapport with the client and it would be in the client’s best interest for you to withdraw. Perhaps the client was untruthful and refused to cooperate with your recommendations. Perhaps you are experiencing a conflict of interest because your fee remains unpaid.

Whatever the circumstances, trust your instincts to walk away early once you recognize the signs of a problem client. Withdrawal is better for you and the client. Withdrawal is the better choice when the alternative could be dealing with bar complaints, fee disputes, and allegations of malpractice brought by a disgruntled client. This client will distract you from your other work, deplete your energies, and destroy the pleasure of your law practice.

Mitigate harm to the client

As a fiduciary, make the decision as soon as possible so the withdrawal can proceed without material adverse effect on the interests of the client. Make sure that the client has plenty of time to find another lawyer. If the client is receptive, help the client find another lawyer.

When litigation is pending, you must ask court permission to withdraw. Factors that may influence the court’s decision to permit withdrawal include:

- withdrawal will delay trial or otherwise interfere with the functioning of the court
- the client has no opportunity to secure substitute counsel
- the client has no sufficient prior notice of the lawyer’s intent to withdraw
- the client will not have the ability to prove a prima facie case
- the client has failed to pay the lawyer’s fees
- the client has failed to cooperate with the lawyer
- a denial of withdrawal will cast an unfair financial burden on the attorney
- the lawyer is unable to find or communicate with the client
- any other prejudice to the client or lawyer
- a signed fee agreement reserves the right of the lawyer to withdraw at any time



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Areas of concern

When the attorney-client relationship terminates before the client's matter has concluded, the lawyer will need to handle additional concerns, including:

- Collection of unpaid fees
- Cooperation with the new lawyer
- Disposition of the client's file

Collection of unpaid fees

Questions about unpaid fees might be resolved with a face-to-face meeting with the client. If prudent, negotiate an amicable compromise. Resolving the fee problem, even if it means discounting the fee, is preferable to asserting a lien or filing collection action for unpaid fees. Taking action against your client may result in a retaliatory bar complaint against you or an angry client who makes unfavorable comments about you to other clients.

If the client refuses to negotiate the unpaid fee, your collection options may be limited by the terms of the attorney-client fee agreement.

If you decide to assert a lien on client funds that you hold in trust, the matter of disputed funds may need to be resolved through fee arbitration or court action.

Cooperation with the new lawyer

Never interfere with a client's ability to obtain a new lawyer. Cooperate as much as possible. Remember, you owe a fiduciary duty to the client, even if she fires you. Consider working out an acceptable settlement on fees with the new lawyer.

Disposition of the client file

Because of the fiduciary duty owed to a client, if the client requests the file, you must provide it. If a former client requests the file, you must bear the cost of retaining a copy of the file, unless the attorney-client fee agreement provides otherwise. For example, you and your client can agree that the files generated or accumulated will belong to you and that the client will have to pay for all copies sent to the client.

Asserting an attorney fee lien against client papers in an attempt to coerce fee payment causes more problems than it solves. There is no assumption that in every case the assertion of a lien will prejudice the client. If there is no dispute about fees and the client has the ability to pay the outstanding charges, it is proper for you to assert the lien. However, if there is a dispute about the amount owed, or the client does not have the ability to pay, you cannot assert lien rights if there is any possibility of interference with your former client's effective self-representation or representation by a new lawyer.

A lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ... surrendering papers and property to which the client is entitled....The lawyer may retain papers relating to the client to the extent permitted by other law. RPC 1.16(d)

According to WSBA Ethical opinion 181, if assertion of an attorney possessory lien, to secure an unpaid legal fee, would prejudice the former client, the duty to protect the former client's interests supersedes the right of the attorney to assert the lien.



Learn More

In this program...	See "Managing Your Practice" on good billing and collection practices. See also How do you build rapport with your clients?
At the Bar...	
On the web...	Client Relations, Fee Agreement, Preadmission, RPC 1.16(d), Advisory Opinion 181



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Hypothetical Case Studies in Conflicts of Interest

These hypothetical cases represent actual cases heard before the Disciplinary Board of the WSBA. You can search for these and additional cases on the WSBA website: <http://mcle.mywsba.org/IO/> by entering “conflicts” into the “keyword” search box.

Case #1

During a motion hearing to exclude an expert witness, Dean gets all frustrated with opposing counsel’s argument and states to the judge, “Your honor, I object. Counsel is making these statements, which she knows not to be true, and she is just angry with me because I won’t go out with her!” “She flirts with me all the time, wearing those tight clothes and uplift bra’s and quite frankly, probably would settle this case if I didn’t turn her down flat.” Margaret, opposing counsel is stunned. She say’s quite flatly, “Don’t flatter yourself counsel, I am not interested in you.” The judge takes a short recess to gather his thoughts.

What happens when attorneys say things in anger?
What happens if the statements are not true?

Your Solution:

Case #2

Joan is a single attorney in family law practice. She represents Tony, a general contractor, in his divorce. As in most dissolution cases, court appearances are plenty and there are many issues to contest. The case goes on for over a year, whereby Joan and Tony become close friends. About a week after the trial, but before her representation ends, Joan and Tony enter an intimate relationship. Joan is friends with the assigned GAL and tells the GAL of her great new relationship.

- A.) What if anything is wrong with this picture?
- B.) What, if anything, does the GAL have a responsibility to say or do?

Your Solution:



Case #3

Josh is a new prosecutor assigned to handle a Felony Vehicular Assault case. The defense contested that the victim was wearing a long black coat and could not be seen anyone driving down that road. The coat is not produced by the prosecutor in discovery, even though the victim has told the prosecutor while she does not have it, it was a very expensive leather, full length coat, so she gave it to her sister who lives in NY shortly after the accident. Josh does not tell the Defense about this.

Your Solution:

Case #4

Jean represents Alan, a pharmaceutical rep, who travels extensively. Alan was hurt in a car accident and is seeking damages for his injuries against the opposing insurance company. Jean speaks with Alan daily, though mostly on the phone, due to his travel. Jean mails out the completed interrogatories to Alan and indicates where he needs to sign. When they are returned, it is the day they are due, and Alan has missed a spot where he needs to sign. Jean looks at the document and thinks, “well, they are his answers, and signs for Alan before mailing them out to the opposing side. How much trouble is Jean in?

Your Solution:

Learn More

In this program...	How do you build rapport with your clients?
At the Bar...	Advisory Opinions
On the web...	Client Relations, Advisory Opinion, Preadmission