



LAWYER TO LAWYER MENTORING PROGRAM

WORKSHEET GG

INTRODUCTION TO CLIENT COMMUNICATION

Worksheet GG 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. such as how to protect oneself, advising clients and withdrawing from cases.

WHAT WENT WELL?

Start by sharing with each other a brief story of something that went well in your practice this week:

Share your reflection by on one of these questions: What caused the good event? What does it mean? How did you contribute? Others? How can you have more such events in the future?

ACTIVITIES FOR TODAY

- 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. John Q. Lewis; Timothy J. Gephart, *Malpractice: What We Have Here Is a Failure to Communicate*, GPSOLO (Jan./Feb. 2008); and Tennessee Bar Association, *Client Relations and Communication*.
- 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 Tennessee Rules of Professional Conduct Rule 1.4.
- Discuss ways that a new lawyer can improve his or her client relations skills.
- 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.
- 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 Tennessee Rules of Professional Conduct Rule 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 Tennessee Rules of Professional Conduct Rule 1.5.
- Discuss terminating the lawyer-client relationship and suggest the best ways to document doing so. See Tennessee Rules of Professional Conduct Rule 1.16.

ACTION STEPS

End the session by discussing what action steps you can take to either improve or set yourself up for future success based on today's discussion. Discuss how one or more of your Signature Strengths can help you achieve success in these steps.

RESOURCES



TENNESSEE RULES OF PROFESSIONAL CONDUCT

I. CLIENT-LAWYER RELATIONSHIP

**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY
BETWEEN CLIENT AND LAWYER**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client about the means by which the client's objectives are to be accomplished. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall 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.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

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 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 RPC 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., RPCs 1.1, 1.8, and 5.6.

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 RPC 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.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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;
- (8) whether the fee is fixed or contingent;
- (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
- (10) whether the fee agreement is in writing.

(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 divorce or the award of custodial rights, or upon the amount of alimony or support, or the value of a property division or settlement, unless the matter relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital estate and the fee arrangement is disclosed to the court; or
- (2) a contingent fee for representing a defendant in a criminal case.

(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, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable.

(f) A fee that is nonrefundable in whole or in part shall be agreed to in a writing, signed by the client, that explains the intent of the parties as to the nature and amount of the nonrefundable fee.

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 a 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) the client insists upon taking action that the lawyer considers repugnant or imprudent;



(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 unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) other good cause for withdrawal exists; or

(8) the client gives informed consent confirmed in writing to the withdrawal of the lawyer.

(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) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include: (1) giving reasonable notice to the client; (2) allowing time for the employment of other counsel; (3) cooperating with any successor counsel engaged by the client; (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated; (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation; and (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.

View complete rules and comments at: <http://www.tsc.state.tn.us/rules/supreme-court/8>.



Client Relations and Communication

Client communication (or lack of adequate client communication) represents a significant percentage of the total number of malpractice claims and ethical complaints received by insurers and the Board of Professional Responsibility. The following general procedures should be implemented in a law practice to avoid client communication problems.

Correspondence & Communication

The attorney should communicate with the client and document all aspects of case acceptance, declination and status to the client as follows:

- Use engagement letters and/or fee agreements for all new matters.
- Use non-engagement letters for all matters declined.
- Use file-closing letters for all matters.
- Copy client with all correspondence/documents relating to client matter.
- Confirm in writing substantive issues of case, the process required to handle the case, legal advice, choices, and other information that may be difficult for the client to understand or contrary to what the client expects or wants to hear.
- Respond within seven days if reciprocal communication is required.
- Return phone calls within 24 hours.
- Use client surveys to determine level of client satisfaction with services rendered.
- Client dis-satisfaction should be addressed immediately upon attorney's notice of same. Develop standard procedures for handling client complaints.
- Send detailed client billing monthly - regardless of fee arrangement. Monthly detailed billing apprises the client of the work you are doing for them and the cost of the work to date.

Links

- [Acknowledgments](#)
- [Case Acceptance and Client Screening](#)
- [Case Management](#)
- [Checklist for Opening a Law Office](#)
- [Client File Management and File Retention](#)
- [Client Relations and Communication](#)
- [Conflict of Interest Systems](#)
- [Disaster Planning](#)
- [Insurance](#)
- [Tickler and Calendar Systems](#)
- [Trust Accounting Procedures](#)

Non-engagement

Engagement Letter

Contingent Fee

Disengage

Client Services

Questionnaire

Member Services

- Fastcase
- Member Search
- Member Benefits
- Cert Search
- Law Practice Management
- Legal Links
- Legislative Updates
- Local Rules of Court
- Mediation

CLE

- Course Catalog
- **Programs**
- Celebrate Pro Bono
- Corporate Counsel Pro Bono Initiative
- Law Student Outreach
- Leadership Law

TBA Groups

- Committees
- Leadership Law Alumni
- Leadership Law 2012
- Sections
- Task Force on Judicial Conduct Rules
- TBASCUS
- Tennessee Legal Organizations
- YLD
- YLD Fellows

Publications

- Blog Listing
- Bookstore
- Current Legal News
- Disciplinary Listings
- TBAConnect
- TBAToday
- TBA All Access Network

Access To Justice

- Access to Justice Committee
- Attorney Web Pages
- Celebrate Pro Bono
- Corporate Counsel Pro Bono Initiative
- Disaster Relief Resources

Contact

- Staff

Help

- Website Map
- Website Search
- Bar Center Information
- Frequently Asked Questions
- What is Where

- Opinion Search
- Tennessee Rules of Professional Conduct
- TLAP
- Update Information
- Public Education
- Tennessee High School Mock Trial
- TLAP
- Youth Courts
- 2012 TBA Convention
- Tennessee Bar Journal
- Tennessee Volunteer Attorney
- Finding an Attorney
- Hometown Support: Legal Help For Our Military
- I Want to Do Pro Bono
- Justice for All
- Member Search
- OnlineTNJustice.org

© Copyright 1996 - 2012 Tennessee Bar Association. All rights reserved.

Law Practice TODAY

Management by Agreement

Essentials of Effective Communication

by Stewart Levine

February 2006

It's no secret that people are the most important element of any effective organization, and any collaboration within that organization or with others. In fact, people ARE the Organization. In some sense it does not matter how hot your technology or skill is because in order to deliver the full potential of what you think you can do you must create the context and terms around which that will happen. If you do not build that bridge effectively within and without your organization you will not get the opportunity to deliver on your technical Skills. Effective communication is not just a necessary skill you need to play the game well. Effective communication IS the game!

Many of you reading this column are already saying to yourself "I'm a lawyer, I know how to communicate!" You're right. But we all can use an occasional tune-up, a reminder of key principles, tools and tactics that will help you get the results you. So as you move through this column please do your best to catch yourself. For each communication topic I introduce catch yourself saying "I know that" and before you just move on ask yourself "how and where do I need to apply that in my everyday interactions with others." That is the best way you can serve yourself. Please let these reminders guide your engagements with others.

1. **Building Bridges:** Please remember that the object of any communication is building a bridge to the other. It's not just about speaking, it's making sure you provide the verbal links that join you with the object of the influence you want to have.
2. **What They Hear:** *It's not what you say, it's what they hear! It's not what you say, it's what they hear!* *It's not what you say, it's what they hear!* And always remember it's your responsibility to make sure they hear what you want them to.
3. **Kindergarten:** Everything you need to know about communication you learned in kindergarten. The simple courtesies make such a big difference. Please, thank you, and I'm sorry can have a huge impact.
4. **Education:** Think of the process of communication as an educational experience. You are teaching others what you see and want them to do, and they are doing the same. Educating is much more important than winning
5. **Differences:** We often get into trouble when we forget that the people we are dealing with are very different from who we are. There are a number of great instruments that measure personal style difference: Meyers Briggs; Personal Style Inventory; DISC to name a few. These instruments serve the purpose of showing us how we are different, and, more important, how critical it is to FLEX your own style to build that bridge if you want your communication to be effective.
6. **Listening:** I'm not alone in saying that the most important communication skill we have is our ability to listen to others and to hear what they are saying - not just the words, but a full

understanding of the impact our communication is having on them. Most of us are just impatiently waiting for them to finish before we start speaking and we end up talking at each other, not talking too and with each other. If you want to find out how critical listening is hang a sign around your neck and say: I'm not speaking today, just listening. Then go about your regular day and notice how much of your environment you routinely miss because most of the time we are listening to ourselves, waiting for the other to stop speaking so we can get our words in.

7. **Slow Down:** We're all moving along at about 800 MPH. At that speed it's really very difficult to take in new information and hear what someone is saying. Perhaps even more important, we can't hear ourselves speaking.
8. **Clarity:** Think of speaking as an opportunity for clarity. Before you begin communicating, whether it's spoken or written, ask yourself what do you want them to know, do, and feel as a result of your message? Then put yourself in their shoes and ask what you would need if you were them and design your communication accordingly. Make sure the what, where, how, why and when is satisfied.
9. **Jargon:** Be careful of the way you use jargon. Unless you know do not assume they know your jargon, so make sure you define the terms you use.
10. **Win/Win:** When negotiating always make sure THEY have incentive to continue performing. Make sure they are motivated to keep promises otherwise they won't perform When I say Win / Win I mean Win/Win, not win/win as long as I win a bit more.
11. **SOFTEN your communication:**
 - o *Smile* - people naturally smile back. It relaxes people and takes away their need to defend
 - o *Open Posture* - demonstrate you have nothing to hide
 - o *Forward Lean* - show you are interested by moving closer
 - o *Territory* - as you move forward be respectful of their territory
 - o *Eye contact* - about seven seconds other wise people will think you are staring
 - o *Nod* - show you are engaged, even on the telephone by saying yes, ahha and the like
12. **Platinum Rule:** The Golden Rule is great, and very powerful to treat others as you would like to be treated. But I have discovered that it's even more powerful to use the Platinum Rule: Treat others as they would treat themselves. Find out what motivates them and honor that Platinum is more valuable than Gold.
13. **Character:** The Chinese Character for communication consists of three separate symbols.
 - o Eyes
 - o Ears
 - o Heart

Please remember all three elements when communicating with others!

[Back to Top](#)

About the Author

Stewart Levine, Esq., is a consultant, trainer, mediator and facilitator. He is the author of the award winning “Getting to Resolution: Turning Conflict Into Collaboration” and the recently

released “Book of Agreement” that has been called “more practical than Getting to Yes.”
www.ResolutionWorks.org.




[Current Issue](#) | [Article Archives](#) | [Subscribe](#) | [Advertise](#) | [Contribute](#) | [RSS/XML](#) | [Feedback](#)

© 2003-2012 American Bar Association -- [Copyright Statement](#) | [Privacy Statement](#)

November 2005

Law Practice TODAY

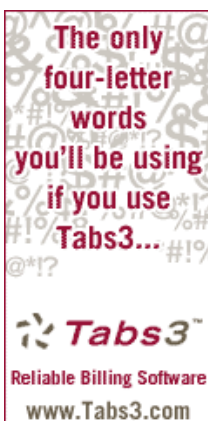
Search LPT




Articles

[Current Issue](#)[Marketing Articles](#)[Management Articles](#)[Technology Articles](#)[Finance Articles](#)[Contribute](#)[Subscribe](#)[ABA Law Practice
Management Section](#)[Advertise](#)

XML



The only
four-letter
words
you'll be using
if you use
Tabs3...

 **Tabs3**[™]

Reliable Billing Software
www.Tabs3.com

Sponsors



Related Publications

MARKETING

How to Thank a Client
by [Wendy Werner](#)
June 2005

 [Print This Article](#)

Each year law firms large and small hold client events, and give gifts, notes, or cards that tell the people who make their business possible, “thank you.” Marketing committees, partners, and individuals rack their brains for just the best way to express gratitude for client work, and as a way to further those relationships. But what is the best way to send that message in a way that is both appropriate and timely? And why discuss this now? And, if we often recognize those relationships at the holiday season at the end of the year, when is the best time to think about this process? What better time than now, when time constraints are not upon you, and there is time to gather data that may help you make an informed choice months from now. In addition, part of what you want to think about is how a formal “thank you” and gift giving fits into your overall marketing plan. The early part of the year is a good time to think about how you want to go about fostering those client relationships for the year, including those end of the year recognitions.

Cards at Other Times

Many firms and individual lawyers send holiday cards. It’s traditional, it is recognized as a good time to acknowledge relationships, and it comes at the end of the year when we are reflecting upon our client work. That’s the upside. But if one of the purposes of sending cards is to stand out to a client and to be recognized, this is the time of year when there is the most traffic. One of the other times when it might be preferable to send a card would be for Thanksgiving, a holiday devoted to giving thanks for the good things in life, and one that is not associated with any specific religious faith. Valentine’s Day can be another time to recognize your clients and you can probably be assured that you will be the only professional service firm who will express your affection for your clients on that day. If you have a closer relationship with a client, thanking them on their birthday could also be a way of creating a more personalized response to their use of your services. Just as the holidays may not be the best time to send a card, it may also not be the best time to hold a client function. Some firms hold a Thanksgiving, or harvest oriented event to make the passage of the season into winter, and say thank you at a time of year when clients may not be as besieged by holiday activities. Events held in the summer as a picnic or at a baseball game can foster a more informal environment, and can also offer the chance to get to know clients’ families as well.

One of the other benefits of client events is the chance for clients to meet one another. Business relationships or connections can be forged in these settings between clients as well as with the hosts of the event.

Individualize Your Recognition

There is nothing wrong with recognizing all of your clients in the same way, but there can be some great advantages to trying to recognize clients as the



The Successful Lawyer:
Powerful Strategies for
Transforming Your Practice

Buy Now

individuals that they are. One size can fit all, but the best recognition is often that which acknowledges the uniqueness of the individual responsible for sharing business with you.

If you know that your client is a golfer, sending golf balls with your firm name, or his or her name might be an appreciated gift, but if your client doesn't golf, this "one size fits all" response can be a clunker. The same thing goes for sending wine, food, or candy. Above all, you want to make sure that anything that you give your client as a gift is not in violation of any internal policy of their organization about receiving gifts.

One of the best ways to think strategically about gift giving is to observe your client during the year and to pay attention to the things that they talk about in your more casual conversations. Twenty years ago most attorneys were men, and most clients were men. But times have changed, and it's important not to make assumptions about your clients and what they might be of interest to them based upon their gender.

At the same time, firms recognizing that women clients and women attorneys may have different ways of connecting than their male counterparts, are trying to engineer events and gifts that may be of greater interests to female clients. These may include events such as a female client and attorney weekends at a spa, with scheduled and unscheduled activities, or a charitable event that offers women clients and attorneys an opportunity to hold an event benefiting a charitable organization whose primary client populations are women or children.

Another aspect you might consider is how critical this client is to your business success. You may not want to give the same recognition to a client responsible for 25 percent of your business than you would to a client who has sent you two matters in a year.

A two-attorney firm I know gives their clients cookie gift boxes every year. The principal happens to be married to a caterer; and together they bake hundreds of fabulous cookies for his clients. The two attorneys then deliver the boxes of cookies themselves to the many not for profit agencies they represent. Their clients have come to look forward to this gift every year with great anticipation. And the "sweat equity" and personal approach always makes a great impression.

Remember, It's About Them

Sometimes when law firms mix marketing with gift giving, they have a tendency to want the gift to be a reflection of their firm. Hence the coffee mug with logo, the key chain with logo, and/or the umbrella with logo. This is not the time to be self-serving. If the gift is truly about the recipient, giving brand-oriented materials may not show your true appreciation. Sometimes people give their clients gifts that include gift certificates for restaurants. Although your client may enjoy your time, it may be more of a gift to let them have a great meal with their spouse or friend without an attached business component. On the other hand, time with their attorney without an accompanying bill can be perceived as a gift. The key is to know your client and what will make them feel appreciated.

Recognizing Others through Charitable Giving

One of the best ways to make an impression on a client is to recognize a charity. This can be done in a firm wide way, or you can instead make a donation to a charity or not for profit organization most favored by your client. Does your client sit on the board of any not for profit groups? Does this

business entity participate in a particular charitable giving program? If you take note of the charitable events to which your client may have invited you over the past year you may find a key to something they would appreciate receiving in terms of recognition. Some firms simply tell their clients that in lieu of individual gift giving that the firm has decided to name a specific charity as their recipient of a charitable donation for the year – or that they are donating the money they might have spent on a holiday event to a charitable organization.

Be Spontaneous

Sometimes the best way to recognize the client is by acting on the moment. If you have received a particularly nice piece of business, or if you have completed a large transaction that involved a significant time commitment on the part of the client, acknowledging that commitment with a letter, or a gift at the time, once again being mindful of potential gift policies on the part of the client. A note at a time when you aren't heavily invested in a clients' work, thanking them for their past commitment to your firm is also welcome. Tending the relationship in times when you are not doing a significant amount of work for someone can help keep your firm front of mind, and serve as a reminder that you might be a good firm to recommend to someone else.

Being There

Of course the best way that you can show your appreciation of a client is through doing good work. And the best way to tend the relationship is through good communication. From the highest grossing partner to the front line receptionist, everyone in your organization needs to understand the importance of all of your clients. Returning phone calls, responding to e-mail, checking in, and treating all client matters with the seriousness they deserve is the best acknowledgement of all.

[Top](#)

Wendy L. Werner is the owner and principal of Werner Associates, a legal consulting and career coaching organization. She can be reached at www.WendyWerner.com/associates.

[Home](#)

[Calendar](#)

[Committees](#)

[Contact the Division](#)

[Sponsors](#)

[Periodicals](#)

[Publications](#)

[Resources](#)

GPSOLO January/February 2008

[BACK TO GPSOLO JANUARY/FEBRUARY 2008 ISSUE](#)
[BACK TO GPSOLO MAGAZINE'S HOMEPAGE](#)

Malpractice: What We Have Here Is a Failure to Communicate

By Timothy J. Gephart

That famous line from the movie *Cool Hand Luke* aptly describes the issue that underlies a large percentage of the malpractice claims asserted against lawyers: A failure to communicate. In fact, nearly 17 percent of clients asserting claims against lawyers insured by Minnesota Lawyers Mutual indicate that the lawyer's failure to provide sufficient information led to the claim. The *2000-2003 Profile of Legal Malpractice Claims* published by the [ABA Standing Committee on Lawyers' Professional Liability](#) indicates that 5.75 percent of the claims in their sample cited an alleged failure to obtain client consent or inform the client.

Failing to properly communicate with clients will not only land a lawyer in malpractice trouble, it is also an ethical violation. ABA Model Rule 1.4 Communication states that a lawyer "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" and shall

1. promptly inform the client of any decision or circumstance with respect to the client's informed consent, as defined in Rule 1.0(e) . . . ;
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.

As stated above, a frequently cited error leading to malpractice claims and ethical complaints is a failure to provide the client with sufficient information. Rule 1.4 makes it clear that a lawyer has a duty to keep clients reasonably informed about the status of their matter, and that a lawyer must comply promptly with requests for information and clearly explain matters to the client so that the client can make informed decisions about his or her case.

In some situations, it is clear how and what to properly communicate with the client. For example, offers of settlement must be discussed thoroughly and promptly.

[Back to Top](#)

Other situations are not quite as clear. A lawyer cannot always be expected to describe in detail trial strategy or settlement negotiations, but general strategy and prospects of success should be explained to the client.

Keeping the client well informed means communicating with the client whenever there is activity on the client's case. It also means contacting the client regularly when the case is inactive, if only to let the client know the case is still being attended to by the lawyer.

Attorneys should communicate with their clients in at least the following ways:

- Copy all letters to the client. By sending clients copies of all correspondence that pertains to their case, clients can be satisfied that their lawyer is attending to their case. This procedure also eliminates possible future questions as to whether or not the client was informed of crucial case activity.
- Contact the client at least once every 30 days. If you cannot make the contact, staff should be trained to do so. If a telephone call cannot be made, use e-mail or regular mail. Make certain telephone calls are well documented in the file. If you do not have time for this procedure and do not have staff to make the contacts, it is a sign you have too many cases, and the risk of a malpractice claim or ethical complaint greatly increases.
- Return all telephone calls and respond to all e-mail from the client. A simple breakdown in communications as the result of a lost or forgotten e-mail or an unreturned telephone call can be the beginning of irreparable loss of client trust. Keep all telephone call slips and all e-mails in the client file. This documentation will support your recollection of the communication and show that you properly provided legal advice.
- Take detailed notes of all communications with the client. Nothing is more valuable to the defense of a legal malpractice action or an ethical complaint than the file notes that describe all communication with the client.

It is important to remember that clients must be treated the way *they* want to be treated. Do not expect the client to learn "legalese." Instead, the lawyer must learn "client speak." Ensure during your communications that clients understand exactly what you are communicating to them. Often, clients will acknowledge remarks with a nod, even though they haven't the slightest idea what you are saying. If you have any doubt whether the client understands your advice, ask.

Pleasing every client is most likely not possible. But by following the above recommendations, the risks of becoming the subject of a malpractice claim or ethical complaint diminish significantly. Maintaining strong

professional communication skills is an integral part of being a successful lawyer.

Timothy J. Gephart is vice president of claims at Minnesota Lawyers Mutual in Minneapolis. He may be reached at tjg@mlmins.com.

Copyright 2008

< /