

The Attorney Client Relationship The Beginning and The End

◆ Beginning - Attorney Client Relationship

- Evaluate
- Communicate
- Realistic Expectations on Both Sides
- Conflicts and Independent Judgment
- Time Commitment
- Red Flag Clients

◆ Prospective Client - Rule 1.18(a)

- A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

◆ Confidentiality - Rule 1.18(b)

- Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

◆ Disqualifying Interests - Rule 1.18(c)

- A lawyer subject to paragraph (b) shall not represent a client with interests **materially adverse** to those of a prospective client in the same or a **substantially related** matter . . . except as provided in paragraph (d).

◆ Prospective Client Letter

- Date of Initial Contact
- Identify Matter
- Summary of Conversation
- Confirm No A/C Relationship Yet Pending Conflicts Check
- Free Initial Consultation?

◆ Red Flags

- Client Had Prior Attorneys on the Case
- Client Hates the Legal System
- Client Has Ax to Grind Against Opposing Party
- Client Thinks Case is Worth Millions of Dollars
- Client Has Serious Financial Problems

◆ Letter Declining the Representation

- Identify Matter and Date of Initial Meeting

- Inform Client of Deadlines (SOL)
- Inform Client of the Reason You Are Not Taking the Case
- Suggest A Consultation With Another Lawyer
- State That You Have Not Accepted the Representation and Have Not Given Legal Advice

◆ Taking the Case

- Communicate the Scope of Representation
- Communicate Fee Arrangement
- Type of Arrangement
 - ◆ Hourly or Advanced Fee (retainer)
 - ◆ Fixed or Flat Fee
 - ◆ Contingent Fee
- Written Required in Contingent Fee Case
- Hourly Preferably in Writing

◆ Scope of Representation - Rule 1.2(a)

- A lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued.
- 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.

◆ What Should Be In a Retainer Agreement?

- Fee
- Scope of Representation
- Costs and Other Expenses
- What Happens if Fired or Withdraw
- Refund (No such thing as non-refundable)
- Don't Guarantee Results
- Periodic Billing for Advance Fees
- Termination of Agreement

◆ Contingent Fee Agreements - Rule 1.5(c)

- Must be in writing, signed by client
- Not permitted in criminal or divorce cases 1.5(d)
- Be specific about who is paying experts, etc.

- Explain who has control over decision making - who to hire, when
- State when costs are calculated
- If co-counsel, what is fee arrangement? 1.5(e)
- ◆ Duties With Respect to Fees
 - Fees Must Be Reasonable
 - Put Money in Trust Until it is Earned
 - Advance Fees or Flat Fees
 - Keep Client Money Separate From Your Own
 - Send Periodic Billing Statements
 - ◆ If flat fee or contingency fee update the client as your services are performed or expenses incurred
- ◆ Fees - Rule 1.5(a)
 - A lawyer shall not make an agreement for, charge or collect an **unreasonable fee** or an unreasonable amount for expenses.
 - ◆ Time, novelty or skill requisite to perform the legal service properly
 - ◆ Likelihood that the acceptance of the employment will preclude other employment
 - ◆ Fee customarily charged
 - ◆ Amount involved and the results obtained
 - ◆ Experience, reputation and ability of the lawyer
 - ◆ Whether the fee is fixed or contingent
- ◆ Safekeeping Property - Rule 1.15(c)
 - A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- ◆ Flat Fees and “Non-Refundable” Retainers
 - *In re Jardine*, 2012 UT 67; EAO 12-02
 - Fee Must be Reasonable Rule 1.5(a)
 - Fee Must Be Earned Before It Is Withdrawn by Lawyer
 - ◆ When is it Earned?
 - ◆ Can it Be Earned on Receipt?
 - ◆ Towering Reputation
 - ◆ Lawyer’s commitment is value in and of itself
 - ◆ Disqualified From Other Representations
 - Fees are Always Refundable if Not Earned

- ◆ Division of Fees - Rule 1.5(e)
 - Referral Fees Not Allowed
 - Division of Fees OK
 - ◆ Must be Reasonable
 - ◆ Inform Client at Outset and Obtain Consent in Writing
 - ◆ Each Lawyer Needs to do His/Her Share
 - ◆ Ethics Opinion 121
- ◆ Ending the Representation
 - Keep in Mind Other Rules (Rules of Civil Procedure)
- ◆ Must Withdraw - Rule 1.16(a)
 - The Representation Will Result in Violation of the Rules of Professional Conduct or Other Law
 - The Lawyer's Physical or Mental Condition Materially Impairs the Lawyer's Ability to Represent the Client
 - The Lawyer is Discharged
- ◆ May Withdraw - Rule 1.16(b)
 - Withdrawal Will Not Have Material Adverse Effect
 - Client Persists in Criminal or Fraudulent Conduct
 - Client Used Lawyer's Services to Perpetrate a Crime or Fraud
 - Client Insists Upon Action That the Lawyer Considers Repugnant or With Which the Lawyer Fundamentally Disagrees
 - Client Fails Substantially to Fulfill an Obligation and Has Been Given Reasonable Warning
 - Representation Will Result in an Unreasonable Financial Burden
- ◆ Communication Regarding Terminating the Representation
 - Discuss Reasons for Termination
 - Discuss Payment Received and Costs, Amount Owing
 - Advise to Seek Counsel
 - Remind of Pending Deadlines
 - **Return File if Asked (copy and pay)**
 - **Provide Accounting if Asked**
 - Discuss Forwarding Notices and Other Documents
- ◆ Protecting the Client's Interests - Rule 1.16(d)
 - Lawyer Shall Take Steps to Protect Client's Interests

- ◆ Reasonable Notice to Client
- ◆ Allow Time for New Counsel
- ◆ Surrender Papers
- ◆ Refund Unearned Fees
- ◆ Refund Fees for Costs Not Incurred
- ◆ Provide File on Request at your expense
- ◆ Termination Letter
 - Identify Matter
 - Memorialize Recent Communications About Termination
 - Affirm That You Consider the Case Closed
 - Inform the Client of Any SOL that May Apply
 - Let Them Know How Long You Will Keep the File
 - If You Retain Original Documents, Let Client Know When They Will Be Destroyed
- ◆ Client Files
 - Retain As Long as Necessary to Protect Clients' Interests
 - Have Filing System And Clearly Label Files
 - When No Longer Needed
 - ◆ Arrange to transfer to former client or get client's written permission to destroy
 - If Solo - What if something should happen to you?
 - ◆ name Trustee to handle return or destruction of files if unable to fulfill obligations
 - Must Keep Trust Account Records 5 Years

