



**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.

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- Share with the new lawyer a personal example of how failing to communicate clearly with your client caused problems in the relationship. Conversely, share with the new lawyer a personal example of how communication with your client prevented or resolved problems that could have ended the attorney-client relationship.
- Provide tips to the new lawyer on effective communication. Read and discuss the attached articles. Stewart Levine, *Essentials of Effective Communication*, LAW PRACTICE TODAY, Feb. 2006. John Q. Lewis, *Client Relations Advice for the Newer Lawyer*, CLEVELAND BAR JOURNAL, Dec. 2003. KIMM ALAYNE WALTON, WHAT LAW SCHOOL DOESN'T TEACH YOU...BUT YOU REALLY NEED TO KNOW (2000) at 384-411.
- 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 Prof. Cond. 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 Prof. Cond. 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 Prof. Cond. Rule 1.5.
- Discuss terminating the lawyer-client relationship and suggest the best ways to document doing so. See Prof. Cond. Rule 1.16.

RESOURCES

Ohio Rules of Professional Conduct

I. Client-Lawyer Relationship

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

(c) A lawyer may limit the scope of a new or existing representation if the limitation is *reasonable* under the circumstances and communicated to the client, preferably in *writing*.

Comment

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Agreements Limiting Scope of Representation

[7] Although division (c) affords the lawyer and client substantial latitude in defining the scope of the representation, any limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law that 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 would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. 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. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See Rule 1.1.

[7A] Written confirmation of a limitation of a new or existing representation is preferred and may be any writing that is presented to the client that reflects the limitation, such as a letter or electronic transmission addressed to the client or a court order. A lawyer may create a form or checklist that specifies the scope of the client-lawyer relationship and the fees to be charged. An order of a court appointing a lawyer to represent a client is sufficient to confirm the scope of that representation.

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

View complete rule and comment at

http://www.supremecourtfohio.gov/rules/profConduct/profConductRules.pdf#Rule1_2

1.4: Communication

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* 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) comply as soon as practicable with *reasonable* requests for information from the client;

(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 Ohio 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.

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

]

(1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.

(2) A lawyer who is involved in the division of fees pursuant to Rule 1.5(e) shall inform the client as required by division (c) of this rule before the client is asked to agree to the division of fees.

(3) The notice required by division (c) of this rule shall not apply to either of the following:

(i) A lawyer who is employed by a governmental entity and renders services pursuant to that employment;

(ii) A lawyer who renders legal services to an entity that employs the lawyer as in-house counsel.

NOTICE TO CLIENT

Pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.



Attorney's Signature

CLIENT ACKNOWLEDGEMENT

I acknowledge receipt of the notice required by Rule 1.4 of the Ohio Rules of Professional Conduct that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

Client's Signature

Date

View comment at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule1_4

1.5: Fees and Expenses

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. 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.



- (b) The nature and 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, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.
- (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 division (d) of this rule or other law.
- (1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer 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 shall clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.
- (2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;
- (2) a contingent fee for representing a defendant in a criminal case;
- (3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.
- (e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:



(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;

(4) the total fee is *reasonable*.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

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1.16: Declining or Terminating Representation

(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if any of the following applies:

(1) the representation will result in violation of the Ohio 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;

(3) the lawyer is discharged.

(b) Subject to divisions (c), (d), and (e) of this rule, a lawyer may withdraw from the representation of a client if any of the following applies:



- (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 *illegal* 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 with which the lawyer has a fundamental disagreement;
 - (5) the client fails *substantially* to fulfill an obligation, financial or otherwise, to the lawyer regarding the lawyer's services and has been given *reasonable* warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client;
 - (7) the client gives *informed consent* to termination of the representation;
 - (8) the lawyer sells the law practice in accordance with Rule 1.17;
 - (9) other good cause for withdrawal exists.
- (c) If permission for withdrawal from employment is required by the rules of a *tribunal*, a lawyer shall not withdraw from employment in a proceeding before that *tribunal* without its permission.
- (d) As part of the termination of representation, a lawyer shall take steps, to the extent *reasonably* practicable, to protect a client's interest. The steps include giving due notice to the client, allowing *reasonable* time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. Client papers and property shall be promptly delivered to the client. "Client papers and property" may include correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items *reasonably* necessary to the client's representation.
- (e) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned, except when withdrawal is pursuant to Rule 1.17.

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http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule1_16

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Essentials of Effective Communication

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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 otherwise 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!

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02/07/2006 07:34 AM



John Q. Lewis

Chair | Young Lawyers Section

Client Relations Advice for the Newer Lawyer

New lawyers have plenty to worry about. Meeting minimum billable hour requirements, striving to gain meaningful experience, pleasing finicky senior lawyers or simply surviving the transition from law student to new lawyer, or from new lawyer to one with much more responsibility, can fill any young lawyer's day. With all of these considerations, who has time to think about "client relations?" And what does that phrase even mean?

While you may be focused on meeting the demands of the law firm, remember that clients, not the law firm, actually fund the young lawyer's salary. And clients ultimately determine whether or not your performance is satisfactory. Thus, regardless of how much "client contact" you have or whether you actually spend more time serving the needs of senior lawyers in your firm, your clients are the bread and butter of your practice. Do not forget this fundamental rule.

Clients have a right to good service. This does not necessarily mean obtaining a "good result" in the matter for which you and your firm were retained, although it never hurts. Good service to clients goes beyond results, and begins the moment your firm is retained and continues beyond the time that the matter has concluded. Keep the following in mind as you go along.

The client is the client, but your boss may be "the client," too. In various seminars and presentations I have attended on client relations for younger lawyers, I have often heard the following: "You have two clients: the actual client and your supervising attorney." This theory is usually presented to new lawyers who are employed at larger firms or who regularly practice with teams of lawyers. This is an important concept, especially for those young lawyers whose client contact comes mainly through supervising attorneys.

Viewing supervisory attorneys as clients does not mean you should lose sight of your ultimate responsibility. The client's goals and satisfaction matters most. Most of the time, your client's wishes will be consistent with your supervising attorney's. In that case, of course, there is no conflict. At the end of the day, however, if your client wants your draft brief a week before the deadline, but your supervising partner tells you not to worry if it is a day or two late (this is a rare example that has never happened to me personally), you should meet your client's demands. If the conflict between the supervising attorney and the client is more serious, you should raise your concerns and seek clarification from your supervisor, or, if necessary, consult another experienced attorney in your firm. On the one hand, I would not recommend sitting idly by if you believe your client's position is being jeopardized. But on the other hand, be prepared to stand down and defer to a reasoned course of action by a more experienced supervising lawyer.

Assuming, however, that there is consistency between the positions of your client and your supervising attorney, which is generally the case, the supervising-attorney-as-client theory makes a lot of sense. Younger lawyers often have little direct contact with the actual client, so competently performing your duties as a junior attorney allows the supervising attorney to do the job that much better and, ultimately, the client will be pleased. Additionally, proving your competence to a more senior attorney is an excellent way to showcase your talents and to convince a more senior lawyer that you have the ability and judgment to deal with a client directly. Thus, when considering the additional suggestions below, you could just as easily replace "client" with "supervising attorney."

The same rules apply to both.

Be responsive. If your client calls you, call her back. If she sends you an e-mail, return it. Or if you receive a letter from your client requesting that you do something, do it. You should substantively respond to your client within a day or, within that time frame, let your client know that you will be responding soon and when you intend to do so. While these guidelines may seem obvious, they are too often overlooked. Indeed, if we polled clients, I guarantee that "unresponsiveness" would be the number one complaint. Do not be the lawyer who helps keep that complaint at the top of the list.

Responsiveness also includes updating your client regularly on the matters you are handling, especially if you are the primary lawyer on the matter or otherwise are chosen to fulfill this role. You should develop, early in your career, a practice of informing clients about their matters before they ask you about them. You should select a time frame – weekly, monthly, quarterly or whatever works best for your client and your practice – and let your client know that you will be providing updates on that periodic basis. If you find that your client frequently has to contact you for an update on the matter, that is a sign that you are doing something wrong.

Know what is going on with your client. For those of us who work with major corporate clients, doing this requires little effort. Read the headlines in the local paper from the town where your client is based – it is probably available on the Internet – and otherwise keep up-to-date with your client's business. Many on-line national news publications permit you to design daily automatic searches to pick up news about a company or an industry. Try to avoid

the awkwardness of a conversation like this:

YOU: How is everybody doing there?

CLIENT: Not bad, except, we filed for bankruptcy two days ago.

YOU: Oh, I didn't know.

If you deal with individual clients or businesses that are not in the news on a regular basis, this may require a little more work. You will still want to keep up with the organizations and industries that may affect your client, even if your client is not directly involved. Most importantly, keep in touch. Have lunch with a client you have not heard from in awhile, or make a brief phone call to say hello. This will allow you to stay in the loop on what is happening.

Do not be afraid to say, "I don't know, but I will find out." Clients rarely expect lawyers to know everything about everything, right off the top of their head. If your client poses questions that you do not know the answer to, it is okay. When it happens, take a deep breath, and say, "I don't know, but I will find the answer." By doing so, you are building an important trust with your client. She knows at that point that:

(1) you do not think you know everything (because none of us do); (2) you are cautious enough not to give unsupported advice; and (3) you are diligent enough to make sure you give appropriate advice.

Advance your client's position at every step. Everything you do ought to be calculated to advance your client's position in some way. In litigation, for instance, this means everything from being punctual and prepared at court hearings (showing that you and your client take the case seriously) to being candid and not taking extreme positions in the matter you are handling (building credibility with the court or opposing party). Before you write a letter, file a brief or act in any way, ask yourself how it advances your client's position.

Another good example is how you deal with opposing counsel in a litigation matter. If you grant an opposing attorney an extension to file a brief, it should be done first to assist your client's case. i.e., Perhaps your client will need an extension or some other favor from the opposing side some day. Indeed, you should be cordial to opposing counsel not necessarily

because you are a nice person (although that is a good reason, too) but rather because having a good working relationship with opposing counsel usually advances your client's position. By being professional and courteous, you will not waste yours or your client's time and money wrangling about matters that do not advance your client's interests, e.g., writing nasty letters and attending discovery dispute hearings.

Be a competent lawyer. Above all, servicing your client well means being a competent lawyer. This is hardly surprising, but do not overlook it. You can be the most responsive lawyer, the nicest lawyer, the most efficient lawyer and the most cautious lawyer, but if you are not competent, your client inevitably will look elsewhere. Your decisions and proposed courses of action should be based upon well-thought-out considerations, after necessary research and study of the issues. And you need to be well-versed in the rules and the law that apply to what you are doing. At the end of the day, you will find that the competent lawyer is the one who always seems to stay busy. Make sure that is you. ■

Cleveland Bar Association Treasurer's Report

by Thomas M. Turner



As Treasurer of the Cleveland Bar Association, I am pleased to report to the Membership that on Sept. 11, 2003, Hausser & Taylor LLP, CPAs, delivered to the Board of Trustees of the Association and to the Cleveland Bar Foundation its *Independent Auditors' Report*

concerning the financial statements of the Association and Foundation for the fiscal year ended June 30, 2003. In summary, our auditors expressed an unqualified opinion that the financial statements are in conformity with generally accepted accounting principles. The audit was completed in record time and no accounting adjustments were recommended, both to the credit of Finance Director Alla Leydiker.

For the fiscal year ended June 30, 2003, the Cleveland Bar Association achieved total revenues of approximately \$2.2 million, of which \$952,000 constituted membership dues. With expenses totaling slightly higher than total revenues, the Association incurred a \$67,290 deficit from operations. Though not unanticipated due, in part, to lower than anticipated profit from CLE, lower publication advertising revenue and higher staff and related costs as we geared up for growth, the results were nevertheless disappointing. In order to meet the rising costs associated with providing services to its members, as reflected in the current year budget and to implement the newly adopted Long Range Plan, the Board chose to increase the regular annual dues for the current fiscal year by \$10. Also in keeping with the Long Range Plan to enhance Cleveland Bar Association services to its Sections' membership, the Board increased Sections dues in order to finance the new positions of Sections Director and Sections Assistant. In addition, many volunteer leaders of the Cleveland Bar Association have spent countless hours on other strategies incorporated in the Long Range Plan which will have a demonstrable effect on the financial strength of our Association for many years. Throughout the current fiscal year, as in the past, I can also assure you that the staff of the Cleveland Bar Association will continuously seek to find the most cost effective way to deliver the many valuable services that are offered to the Membership.

Please feel free to contact me with any questions or concerns you may have regarding the financial matters of the Cleveland Bar Association. ■

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A. HANDLING CLIENTS

If you work for any private employer, clients are the lifeblood of your business. Whether you deal with clients directly from the start or you grow into the "front person" under someone else's supervision, you need excellent client relations skills from the start. Here's what you need to know about clients!

1. The golden rules of client relations

a. The premier golden rule of client relations is—well—the golden rule.

As Harvard's Mark Weber points out, "Whenever you do *anything* for a client, remember the golden rule. Think of how you'd want to be treated if it was *your* case, if *you* were paying the bills. When I was practicing law, I once repped my family in litigation. Until then, I had no idea what it was like to be a client. Your client waits all day to hear from you! Your client's dog bite, their business deal, it consumes them. Be sensitive to them."

b. Remember that whether you agree or disagree with clients, like them or don't care for them—they pay the bills.

Lawyers at Sidley and Austin point out that "Sometimes clients are wrong, and sometimes they need to be told that. But summer clerks and new associates need to remember that law is a service business. Clients pay the bills!" One lawyer tells of how "When I was a new associate, I was talking to my supervisor about a client of ours, and I said, 'I can't believe how *stupid* this guy is. How does he get himself into problems like this?' My supervisor shot back, 'Watch it! His problems pay your salary. You need an attitude adjustment. "Thank God I'm here to help him" is what you have to think."

c. Keep clients in the loop on the progress of their case or deal.

You may be very conscious of what's going on with your client's case. Your client isn't—unless you keep them posted. As Lewis & Clark's Lisa Lesage recommends:

1. Copy clients on any correspondence and pleadings that you send out for them; and
2. If the case drags on for months, contact them by letter once a month, even if you've only got two or three lines to tell them: "The status hasn't changed, I'm waiting for X, I'll keep you posted."

d. Avoid a major source of malpractice claims: Return client calls *promptly* (and psst—how to make your supervisor look good).

Not hearing back from their lawyers makes clients *nuts*. No matter how busy you are, make a point of responding to clients within 24 hours at the outside. Even better, try to respond the same day. Lisa Lesage suggests returning client calls twice a day, once before lunch and once right before the end of the day. As Nova Southeastern's Jennifer Silverman adds, "Even if you haven't been able to do what you thought you could do since the last time you spoke with your client, return the call and tell them anyway. The *worst* thing for a client is just being left out in the cold."

This *doesn't* mean that you need to be a slave to the telephone. As Lisa Lesage says, "You don't need to answer the phone constantly. Put in blocks of time when you'll return calls, and let your secretary know when that is so (s)he can tell clients."

If you work for a supervisor who has primary responsibility for a client, you don't want it getting back to that supervisor that you ignored a client. As a lawyer at Waller Lansden says, "If a member of the firm has a client who says that (s)he left a message for an associate several hours ago and the associate hasn't returned the call, the member's first thought is going to be, 'If *I* have the time to return this call, then the associate sure should.'"

Incidentally, if your supervisor is out of town or otherwise tied up when a client calls, Marilyn Tucker points out that you can "Help your supervisor out, make him/her look good, and at the same time appease the client. Even though you are the new kid on the block and may not have an answer to the client's question,

return the call. Hearing from you is better than no communication at all. Then write a short note to the senior attorney and to the file recording the contact with the client.”

e. Don't ever forget your duty of confidentiality to the client. Keep secrets!

Everything your client tells you or your firm, every element of their business and their case, is a *secret*. If you're working on something interesting, it's a *huge* temptation to talk about it with your friends and family. Do whatever you need to do to resist the temptation! As South Carolina's Phyllis Burkhard says, "Even if you don't reveal names, you'll be in big trouble if someone passes on an 'amusing' story about a client, and the client or someone he knows recognizes who the story is about." So when you're out swapping war stories with friends from school, you're going to have to be very careful about what you offer. And at family picnics, when your mom says, "Oh, tell Uncle Frank about all the interesting things you're doing," you're going to have to be circumspect. As Dewey Ballantine's John Ragosta comments, "I suspect many a career has suffered from a partner's overhearing a casual business conversation unwisely held in a crowded elevator."

Also keep in mind that if you talk about another client's case with your client, they'll assume that you are, in turn, blabbing their case to others. If you must discuss analogies, use fact patterns sweeping enough that they aren't traceable to a particular client.

You should be similarly cautious when you prepare documents. As John Ragosta suggests, "In preparing any privileged document, always note PRIVILEGED AND CONFIDENTIAL across the top. This demonstrates professional awareness and is invaluable should your documents ever be subject to a discovery request."



CAREER LIMITING MOVE . . .

A junior associate is indiscreetly and loudly discussing his law firm, firm politics, and confidential client information with hi

wife at a restaurant. What he doesn't know is that a partner whom he doesn't recognize is sitting at a nearby table—listening to every word.



CAREER LIMITING MOVE . . .

From John Ragosta: "Early in my career I showed up unexpectedly for dinner one night, after I'd been working all my waking hours on one project for quite a while—and explained to my wife that the principals in a well-publicized antitrust suit had agreed to settle. The next evening my wife told me that a neighbor had been very interested to hear the case was settling. I lived in dread, until the news was publicly announced, that a leak might be traced back to my dinner table. My lesson was learned, however: Confidences—even small ones—must be protected."

2. Before you meet with clients for the first time—prepare yourself!

Whenever you start in a new practice area, ask your colleagues for the characteristics of problem clients in the practice area, and what you should be on the alert for. Also, look for tips from lawyers you meet at bar functions, CLEs, and even in chat rooms on the Web (some local bar associations have their own). As Hutton & Simpson's Mary-Lynne Fisher says, "80% of your problems come from 20% of your clients. The sooner you can identify the characteristics those clients share, the better off you are."

For instance, if you're a man and you do domestic relations work, anticipate that your female clients may fall in love with you. It's a matter of what Sigmund Freud described as "transference." Essentially, when a marriage is broken, the spouses typically haven't had a close confidant of the opposite sex for some time. When they can confide in *you*, they tend to transfer their affections to you. You may be thinking, "Hey—you consider that a *problem*?" Well, it *can* be. And it's certainly a professional

hazard. The point is, learn at the beginning what to expect from your clients, and proceed accordingly.

3. The business aspects of dealing with clients: retainers and billing

a. Preparing your clients for what their case will cost

Wake Forest's Bill Barrett points out that "Clients have no idea how much things cost." You have to *prepare* them for it. The most obvious way to do that is with a well-thought-out retainer.

As a new lawyer, unless you're a sole practitioner, you'll have other people to lean on when it comes to calculating an appropriate retainer in any given case. In essence, a retainer reflects how much time a matter is likely to take. If you are on the front lines when it comes to asking for a retainer, Jennifer Silverman points out that "You need to be firm about getting the retainer." As a new lawyer, you may feel funny about asking clients for money when you haven't done any work for them yet. But you *have* to. If a client balks at paying a retainer, maybe they won't pay at all. Would you be willing to do the work on a pro bono basis—or perhaps more importantly, would your boss want you to do that?

Ironically, insisting on a retainer lets your client know that you're savvy enough to help them solve their problems. After all, if you can't be firm with your client on a retainer, how will you stand up to people on the *other* side?



SMART HUMAN TRICK . . .

Junior associate, bankruptcy firm: "I sat in with a partner on an initial meeting with a client. The partner asked the client for a \$100,000 payment up front. The client responded, 'Wow, that's a lot of money. Can you cut the retainer? Can't we pay as we go?' The partner looked the client in the eye and responded, 'You wouldn't want a bankruptcy attorney representing you who was stupid enough to extend you credit, would you?' The client paid the full retainer without another word of protest."



SMART HUMAN TRICK . . .

As Joseph Cammarata, one-time attorney for Paula Corbin Jones, says: "If a client comes to you and says, 'It's not about money, it's about principle, remember this: Principle gets expensive.'"

b. Bill often—and in detail.

Jennifer Silverman advises you to "bill clients at least once a month. Get a billing program that generates bills frequently, so that clients aren't blindsided. It's a pain to send out frequent bills, but don't let it fall behind. That's where most lawyers at small firms make mistakes." Bill Barrett adds that you should "Make the bills detailed. Bill by tenths of hours. And include phone calls. Let clients know *everything* that's being billed." (For lots of details on billables, see the chapter called "Econ 101," on page 148.)

If clients are reluctant to pay, Golden Gate's Susanne Aronowitz advises that "You can only send reminders, or offer a payment plan. Have the senior person who negotiated the price call and ask the client for payment. Remember, you can't withhold further services just because a client doesn't pay. It's unethical. And sometimes there's a legitimate reason, like the client lost their job."

4. Communicating with clients

a. In the initial interview, rely on "intake sheets."

Lisa Lesage recommends that you "Have intake forms where you can record all pertinent information on the client's first visit. Don't annoy them with calls to follow up. Intake sheets are basically check-off sheets. You find them in CLE books and how-to books, or you can call an experienced attorney in the local bar for advice about intake sheets. Another place to start for certain kinds of issues is the law itself. For instance, if you're doing a fair housing law case, think about what facts you need, or ask a law librarian, or ask people at the young lawyers' section or appropriate specialty

section of the local bar. If you ask your client the right questions right from the start, you'll look like you know what you're doing!

b. Be on time!

No client wants to feel as though they're not your first priority. When you arrange a meeting with clients, be on time. If they're coming to your office to see you, come out to the reception area to greet them. If you just can't avoid being late meeting them, be certain that somebody else in your office (like your secretary) greets them promptly and makes sure they're comfortable. If you have to reschedule the meeting, have your secretary contact them, explain the delay, apologize for the inconvenience to them, and reschedule the meeting. Remember—treat clients as you'd want to be treated!

c. Give the client your full attention.

Lisa Lesage recommends that you “Develop a sense of rapport and respect from the start. Give clients your full attention. Don't let phone calls or visits interrupt.”

d. Remember that people don't have legal problems. They have problems with legal aspects.

The 19th-century physician Sir William Ostler said, “The good physician treats the disease, but the great physician treats the patient.” Similarly, a good lawyer understands the problem, but the great lawyer understands the client. You can't be an excellent lawyer without taking a holistic approach to client service. It's not spotting issues and applying the law. It's part psychology, as well. As Florida State's Stephanie Redfearn says, “Being a counselor means *counseling!*”

So what should you do? The client of one large firm said, “Be a friend first; establish trust.” Another said, “When I talk to my lawyers I want to sense from them, ‘I understand you and I like you.’” Kentucky Public Defender Sarah Madden says “You've got to make clients feel better when they walk out than when they came in. It's not all about winning. It's about showing that you care.” That counts for corporate clients, as well. Learn something about

their business. You can't give a corporate client the service it deserves unless you understand the context of the questions they ask you and their business goals.

Finally, give clients the level of service they want. As Stephanie Redfearn says, “If clients want their hand held through the process, then do it!”

e. Focus on your client's goal. Listen to them!

“At the initial interview, find out what's *really* bothering the client,” advises Mary-Lynne Fisher. For instance, Bill Barrett says that “When you get absurd disputes about absurd things, you've got to cut through what's said to what they *mean*. When people spend thousands fighting over a dog, is it really about the dog? No. It's about hurting each other.”

The key to figuring out your client's goal? Asking good questions, and *listening*, really listening, to the answers. If you get a sense that what's on your client's mind isn't what they say it is, ask questions to hone in on what's really going on. Elaine Bourne says that “When you ask a question, *wait* for an answer. Don't make assumptions. As a lawyer, you don't need to be the one talking. Listen to what's said and what's not said. Don't jump in and fill silences. Silences are *useful*.” In the “The ‘People Part Of Work’” chapter, I talk about the benefit of being a dynamic listener in getting the full story. Develop that skill. (you'll find that on page XX).

When you *do* get the full story, recognize that sometimes it's a problem neither you nor the legal system can solve. As Bill Barrett says, “You need to pull the ripcord when your client's problems are legal. Be sensitive to when you should make referrals to other people, like therapists and social workers. Build up a network of people in social services.”

One lawyer talked about getting a divorce case as a new lawyer. “The wife, our client, would call and say, ‘Can you believe he did this?’ I would respond, ‘We can do this and this and this . . . ‘ I wasn't listening! What she was really communicating was that she was hurt and she wanted to get back at him. She wanted revenge.

It would have been better to address the hurt than list her legal options.”

Focus on what you *can* do for your client, what their legal options are, and recognize that as a lawyer, that's *all* you can do. If your client comes to you with a claim for which the Statute of Limitations has run out, game, set, match. You can't do *anything*.

When a client *does* have a problem you can solve, focus on the client's *goal*. As one client complained to their law firm, “Sometimes we ask what time it is and you tell us how to build a clock.” Stories are legion about deals that got away because the lawyers got lost in the details. One corporate president talked about a time when “We wanted to buy this little company, we loved the products they made, we liked the people. I turned it over to the legal department to iron out the details and draw up an agreement. The lawyers started focusing on all kinds of remote contingencies and contingencies on contingencies. The people at the little company were getting angry and put off. While our legal department futzed around, another company swooped in and did the deal. I was *furious*.”



CAREER LIMITING MOVE . . .

Junior associate: “My first week with the firm, I worked on a matter for a huge client. This client wanted to lease a property, and I was assigned to review the lease. I met with the client, and the client asked, ‘Did you review the lease?’ I said, ‘Yes, there are 45 problems with it.’ The client said, ‘The question is, is it a property I want? Is it the rent I want to pay? Is it a 99-year lease? Can I combine it with other properties? If so, then I don't care about those 45 problems. Don't screw up this deal!’”

f. Keep your clients' expectations reasonable. Law is the art of the *real*.

People hear things much the way the dog Sandy does in the famous “Far Side” cartoon. Remember, it's the one where

Sandy's master is saying something like, “Bad dog, Sandy! You shouldn't drink out of the toilet, Sandy! If I have to tell you one more time . . .” and the whole time what Sandy is hearing is “Blah blah blah Sandy, Blah blah blah Sandy . . .”

Similarly, if you tell a client “We could recover as much as half a million dollars,” “The court should rule within three weeks,” “You might be able to do the deal for as little as a hundred thousand,” your client hears: I'll win half a million dollars. I'll hear in three weeks. I'll get the deal for a hundred thou.” People gloss over tempering language like “might,” “should,” and “could.”

Remember that when you give clients expectations. Be conservative in your wording, and **write things down**, either in an e-mail or in a follow-up letter. And build in cushions when you give time estimates. As Hofstra's Caroline Levy says, “Always build in extra time. For decisions on motions, maybe it ordinarily takes four weeks. Tell the client you expect an answer in six weeks—so the client is happy rather than mad when the answer is two weeks late!”

A lawyer at a small firm said that “We were representing a client who'd been in a car accident. This guy had it in his mind that he wasn't going to accept anything less than half a million bucks as a settlement, and we hadn't really addressed that with him. We got what we perceived as a good offer—80% of the policy limit, which was a hundred thousand dollars. We told the client about the offer, and he wouldn't hear anything of it. We didn't know what to do. We should have told him what he could realistically expect. He was never going to get an extra four hundred thousand dollars over the policy limit. Never.”

You need to rein in your clients for their own good. If your client demands so much that their opponent declares bankruptcy, that's not a positive for your client—or you. If you routinely overreach, pushing just because you can, you'll develop a reputation that will hurt your clients.

g. List problems for your client and immediately follow up with possible solutions. Inform them of consequences!

As lawyers at Goulston Storrs advise, "If you are aware of consequences to your clients' actions, it's your duty to inform the client of those consequences and let the client decide on the course of action. For instance, if the client is thinking about rejecting a settlement offer, you have to tell him/her that (s)he's likely to incur a substantial amount of legal fees preparing for trial in the next few months, and let him/her decide whether to proceed. Don't be afraid to counsel the client, rather than just take orders!"

h. Answering questions from clients—and how to say artfully "I don't know"!

Have you ever noticed that you just kind of assume that any doctor can answer any medical question, no matter what specialty they practice? You meet a podiatrist at a party, and it's "Doc, I have this tickle in my throat . . ."

Clients feel the same way about *you*. Once you've graduated from law school (or even while you're still *in* school), people think you know every single minute rule of law off the top of your head. They'll put you on the spot. "I just need a quick answer . . ." "Off the top of your head, do you think it's OK to . . ." "Listen, I don't want you to spend any time on this. I just need to know . . ."

Watch out! Until you've got some experience under your belt, you're treading on *very* thin ice. Here's why. Maybe you really *do* know the answer to their question, and you'll look like a genius. But when you're new to the practice, you can't be sure that you're right. Maybe you studied the exact issue the client's asking about just last semester. Well, maybe the law's changed since then. Or maybe the rule in this particular jurisdiction doesn't match the general rule you learned in school. Until you've handled a certain practice area for a while so that the issues repeat themselves and you *do* have the relevant rules in your head, *don't* give snap answers to legal questions from clients!

The downside risk of giving the wrong answer to a client is huge. As Cardozo's Judy Mender points out, "If you provide the wrong information, intentionally or not, you could set up a difficult

situation. If the client relies on your answer, you may have committed malpractice. Or if you answer and then do your research and return with a different opinion, then you've called into question your initial judgment and legal instincts, and you've set up expectations which may not be realistic. Either way, you can only irritate a client and weaken your relationship."

So you can't give an answer "right now." You also can't say, "Here's what I think the answer is, but I'm not sure." The client will immediately forget the "I'm not sure" and assume they have their answer.

You also want to avoid using the words "I don't know." Don't hit them over the head with your lack of knowledge! Instead, be subtle about it. Assure the client matter-of-factly that you'll get back to them quickly with an answer. Tell them *when* you'll call them back—and then do it! Ask someone else at the office who *is* familiar with what the client asked about—they *will* be able to give you an answer off the top of their head!—and if you can't get the answer quickly that way, research it. As Carlton Fields' Hardy Roberts points out, "Every lawyer gets questions every day that they can't answer. Look at the talking heads you see on TV. They talk without answering the question if they don't know the answer. They'll say 'It depends' and then talk about what they *do* know. With clients, say, 'I can find it out for you.'" Stephanie Redfearn adds "You can say, 'There are issues involved with it. We'll research it and get back to you quickly.'"

If a client leaves a question for you on voice mail, NYU's Gail Cutter advises that if you don't know the answer, "Don't dodge the call. Call them back and tell them you're working on their question, or that you're researching it or conferring with partners or associates, whichever is appropriate."

Sooner than you think, you'll develop expertise such that you really will be able to answer some questions without verifying your answer first. And even when you *are* a senior attorney, lawyers at Goulston Storrs point out that "Even the most experienced practitioners have to look up some things to answer clients' questions. It's not just you!"

In the meantime, as John Marshall's Bill Chamberlain says, "It's tempting to feel as though you have to give brilliant advice every time a client asks you a question. It's hard on you as a new lawyer to set limits and keep a sense of yourself—but you *can* do it!"

i. Ask your supervisor about what's OK to reveal to the client.

Don't assume that because you're working on the client's case, it's "open season" with anything having to do with the case. As Susanne Aronowitz says, "Getting interrogatories doesn't mean you can share strategy with the client. Clarify with superiors what's in-bounds to discuss before you say anything."

j. If your supervisor is the client's main contact, tell your supervisor when the client says *anything* relevant to you.

Susanne Aronowitz says that "If a client tells you something material, *immediately* tell a superior. The client assumes if you know, the firm knows. They may not bother to repeat what they told you to somebody else."

k. Don't ask your supervisor questions in front of the client.

When you're new, there's a *lot* you're curious about. If you see something go on when a client is around and you want to understand it better, wait until the client's gone before you ask. Write it down if you have to. Why? Because even though you feel as though you don't know much, the client views you as a fully-fledged attorney. They won't have much faith in you if they hear you asking your supervisor questions.



CAREER LIMITING MOVE . . .

Summer clerk at a medium-sized firm. He attends a trial with his supervising partner and the client. During a break in the trial, while the clerk, client and partner are sitting together, the clerk asks, "Why did their lawyer call that doctor back to the stand?" The partner quickly changes the subject. Subsequently, out of the client's hearing, the attorney said to the clerk, "Don't ask

questions in front of clients! The client hears a question and assumes, "This person doesn't know anything."

1. Be friendly but guarded with clients.

Lawyers at Hillis Clark point out that "Clients want to feel that their lawyer is a *real person*. Don't be shy about sharing appropriate information about yourself. Inevitably, the response is positive, and it is essential for good and lasting relationships with clients." Your hobbies, books you've read, movies you've seen, cute stories about your kids—that's all safe.

By the same token, as Harvard's Mark Weber warns, "Lawyers have a common phrase: your client can become your worst enemy. They can turn on you. If something doesn't go as they anticipated, they'll turn. No matter what, be a good communicator, but don't let your guard down. You can become friendly but you're still their attorney. When you're corresponding or communicating, that letter to the client or to opposing counsel can become Exhibit A against you."

When it comes to kidding around with a client, be careful. Even if your supervisor has a joky, friendly relationship with a client, that doesn't necessarily mean you can follow suit. The joshing they'll take from your boss doesn't open the door to *your* teasing. Err on the side of caution. As lawyers at Cowles & Thompson say, "It's a big mistake not to know where to draw the line in 'kidding' with friendly clients." Just as your colleagues are colleagues first and friends second, the same is true for clients—at least when you're the new kid on the block!

On the other hand, when you're socializing with clients, don't throw your work in their face. Let *them* set the tone.



CAREER LIMITING MOVE . . .

New associate at a large New England law firm. He's brilliant and a workaholic, and his superiors take advantage of this,

shoveling work at him. His supervising partner comes to his office and says, "I'm going out to dinner with client X tonight. You're doing some of their work. Why don't you come along, get to know them?" The associate balks, citing his workload. The partner reassures him, "Don't worry about it. Come on." The associate reluctantly goes, but he's very nervous—he has **lots** of work to do. While the others are having fun and drinking, he's getting more and more tightly wound. They have an 8 p.m. reservation, and at 8:45—when they're still not seated—he yells at the hostess, "Where's our table? We were supposed to have a table at 8 o'clock!" At 10:30, he excuses himself to go back to work.

The following day, his supervising partner walks into his office and **cremates** him. "Even if you've got work to do, don't make clients feel uncomfortable! I don't care if you have to come back here and work after dinner to meet your deadline. You made them feel as though you were shaky with your work, as though you don't have any confidence."

Finally, be **very** tactful about bragging to clients about perks when you're on their nickel. As George Washington's Jim Lovelace advises, "If a partner tells you to stay at the Four Seasons, be mindful of bragging to the client about the great accommodations or great meal you had last night. Their existence may be different than yours. If the client is very wealthy, there wouldn't be a problem. But if it's somebody who's middle management at a large corporate client, you've got to be more careful."

2. If you're starting your career at a large firm, here are some additional tips for you.

If you start your career with a large firm, you've got some client issues that are different from new lawyers in other settings. When you're not the lawyer on the "front line"—when it's a lawyer one or two or three layers above you who's dealing with the client—here's what you need to know:

a. Ask for opportunities to see clients.

One lawyer recommends that "The best way to learn how to interact with clients is to **ask** to sit in when the lawyers you work for meet with clients. Watch the relationship they have. See what's important to clients." One of the things that you'll find is that there's no such thing as an "institutional" client. Even if the client is a huge corporation, there's still a person who cares a lot. Don't forget that when you interact with them!

b. How to handle meetings with clients

As a new associate at a large firm, you won't be conducting your own meetings with clients. You'll be sitting in on meetings with other, more senior lawyers. What do you do? As Dennis Kennedy says, "I've seen more young attorneys go up in flames in this situation than any other. Understand that the client sees you as expensive surplusage, and you don't want to remind the client of that! Here are a few good rules:

- 1) Speak only when spoken to. I always believed that you went into a meeting with the client seeing you as the bright, young attorney. It's easier than you think to change that opinion!
- 2) There is no joke that you can tell that will be a guaranteed winner. Ever. Don't take the risk.
- 3) Never correct the lead attorney no matter how wrong you think (s)he is. It's more likely that you are wrong. Mention it after the meeting—the attorney will make the call to the client if the correction is necessary.
- 4) Most of the time you are in a meeting you are there to take notes and to observe and learn how to conduct a meeting. Do that. The fact that you won the client counseling competition in law school does not give you a license to think you've learned it all.
- 5) If you are asked to summarize your research for a client, try to hit the main points and finish within a minute. If the client

has further questions, (s)he'll ask. Almost no client will want to hear about the fascinating distinction you've found between two obscure cases on a tangential point. The client is thinking **action**.

- 6) The bottom line: talk with the lead attorney about what (s)he wants you to do in the meeting!"

As Dewey Ballantine's John Ragosta points out, "The note-taking function can be vital. Take **detailed** notes. Who said what? Who responded? Get quotes when possible. As an associate, I frequently found that my notes provided a detailed summary of a meeting that was often relevant even several years later. The notes might enable us to tell a government official or industry representative that 'At a meeting on X date, attended by Messrs. Jones, Smith and Ms. Wilcox, Mr. Jones indicated that there was no need to seek additional commitments, as recourse to sanctions is clearly provided.' This kind of attention to detail is a powerful tool for any lawyer, but it can quickly make a junior lawyer indispensable."

c. Watch what you say to clients. Don't overstep your bounds!

As a new associate at a large firm, you're in an interesting position. As I've mentioned in other chapters, like the "How To Crush Research Assignments" chapter, your superiors **want** to see you take the initiative. But what they mean is **intellectual** initiative in solving client problems, not taking client problems into your own hands directly.

As lawyers at Latham & Watkins point out, "When you interact directly with a client, the key is keeping the client happy while not overstepping the bounds of your experience. Always check back with supervisors! Taking 'ownership' of a project is good, but taking ownership too far and getting out ahead of supervisors in talking with clients and/or third parties can create awkward situations. Lawyers at Lord Bissell agree, saying, "Use your common sense. Don't take a position on behalf of a client or the firm without

checking with superiors first. We want people to show initiative and independence, but you can show that without being a 'cow-boy.'"

Although you never want to be dishonest with a client, remember that you're not the one with primary client responsibility. It's up to more senior lawyers to have "tough" conversations with clients, like explaining the weakness of their case or talking them out of a certain strategy.

d. Your cases are unlikely to be very emotional. The issue often is: Who gets the money? That's what your clients are interested in.

A lot of what's going on with clients of big firms is wealth distribution, according to a senior partner at one large firm. You won't get a lot of gut-wrenching issues. A partner at another firm, who handles bankruptcies, says, "There's no emotion in this work. It's creative lawyering. With large bankruptcies like the ones I handle, it's just money that's involved. Who's going to get the money? My client, or the other guy? With these big bankruptcies, you've got a situation where a bunch of wealthy guys put in money on a mortgage twenty years ago and they've all got their write-offs, you're just gladiators doing battle over a hunk of meat. It's a chess game against some vulture fund. Nobody's losing their house over it, nobody's losing custody of their children. It's just money. When I do a mass bankruptcy where there are hundreds of millions or billions of dollars at stake, I can get into some really creative lawyering because the amount in controversy is so large we have the luxury of lots of research and creativity. So does the other side, so it's law 'out on the edge.' Smaller bankruptcies are **much** more personal, more difficult, more meaningful. But for those, for consumer bankruptcy, lawyers run it more like a mill. They have lots of paralegals handling things, otherwise it's not profitable. In those situations you can't justify the time necessary to make it creative."

3. You're representing low-income clients. Here are some tips to keep in mind.

In many ways, the issues around serving low-income clients are the same as they would be for any client, no matter how wealthy. Treat them with respect. Return their phone calls promptly. Research answers to their questions; don't give them snap judgments. But there *are* some differences. Here's what you need to know:

a. "I'm not paying you. How good can you be?"

You may find that some clients will be disrespectful to you, figuring they "get what they pay for," and if they're not paying, you're no good. If you get that impression, stay calm and say, "If you want legal representation, I'm the one available. If not, you can walk out."

Especially if you are fresh out of school, you have to be aware of the fact that your context might not be helping you out. As America's Jill Barr, a former public interest lawyer herself, advises: "If you go to a law firm fresh out of school, clients see you with five other attorneys around. They *know* you're a lawyer. In legal services, they're only seeing *you*. They'll ask, 'Are you really an attorney?' Get that diploma framed and hanging behind your head!"

Also recognize that if the first time they see you you're talking to the judge and prosecutor, "They'll assume you're in cahoots," says former public defender Rebecca Katz-White. "You have to show them and say to them, 'I'm here and paid to represent you. The fact that I know the judge and prosecutor will help you because they trust me.' And sometimes it works to bluster in court for the benefit of your clients."

b. Expect that sometimes clients will be *very* grateful—and sometimes they won't be grateful at all.

Sometimes your clients will feel guilty that they're not paying you. You'll find that they want to make dinner for you, or give you a gift, or pay you what money they can afford. Your employer will undoubtedly tell you that you can't accept anything from clients that smacks of payment for services, because that calls into question whether or not your office will structure its services around who pays and who doesn't. It doesn't mean you can't accept *anything*

but you've got to be *very* careful. Some people make a rule of not accepting anything at all. As one public interest lawyer said, "I always make an excuse. If they want to make me dinner, I decline saying 'I have to be back at the office.' I don't want to offend them, but I want to keep it professional!"

On the flipside of that, there are some clients who won't be grateful at all, and you have to prepare yourself for that, as well. "Sometimes you'll get somebody their Social Security benefits, you turn to say 'congratulations,' and they're out the door. It happens," comments one public interest lawyer.

c. Fight the temptation to offer snap judgments.

Sometimes you'll have clients who've been mistreated, and you just *know* that what happened to them *has* to be illegal. As one public interest lawyer points out, "If you have a person who's been harassed by a collection agency, it's tempting to say, 'I'm sure that's not legal,' when it really is legal for the collection agency to say what they did." Instead, "Don't promise anything!" she adds. "Say something like, 'That sounds like a case we can take. We'll have to do more research.' You're thinking to yourself, 'Oh my God, I don't know a darn thing. I've got to prove that I do.' But you shouldn't. Don't make any commitments. You don't want an angry client!"

d. Don't judge your clients based on their living conditions.

One public interest lawyer points out that "Sometimes you have to go to the client's home. Maybe the bus isn't running and they can't come to you. You have to be prepared not to judge people based on their living conditions or how they treat their kids. Maybe the kitchen hasn't been cleaned in two years, maybe the kids are filthy dirty, and you're there to help them with a utility shut-off case. You have to keep your focus, 'I'm her lawyer,' and do what you can to help with the problem you're there to handle."

e. Handling the emotional aspects of the work. Have a support network ready!

There's no question that representing poor people is emotionally wrenching. The situations you'll see can be heartbreaking. As one public defender pointed out, "It's very intense. People's lives are involved. Even for a misdemeanor, they can go to jail for three weeks and lose their job." Even for civil cases, "They'll pull your heartstrings," says one Legal Aid lawyer.

Every public interest lawyer I talked to agreed that "You have to keep yourself at arm's length." While some said that "You can't do this work without some emotion—if you don't care you can't do it well," others said that "You can have emotion about the issue without getting wrapped up in the facts." One summed it up by saying, "You can't let it control your life." The temptation is to step in and start calling building inspectors, helping to get the house repaired, calling the employer to give the client time off, driving the kids to school. But you can't do it and maintain your sanity—and ability to help other clients. Instead, "You have to *focus* on the legal issue because that's where you *can* help them," says Jill Barr. "Don't be unsympathetic, but focus on what you can *do*. When the client tells a long story, you can say, 'I'm really sorry that happened to you, but we're here today to focus on X.'"

Remember that even if you can't help with non-legal issues, you can refer clients to people who *can*. Jill Barr says that "It's important to get involved in the community to have a circle of referrals you can trust, like someone in the social security administration, or Low Income Housing Development organizations, or people on the boards of directors of developers and banks. Get to know local social workers." That way, when you talk with a client in a particularly harsh situation, you can "Acknowledge the difficulty of the situation, and say, 'That's not something we can help you with here—at the end of today I'll give you a couple of referrals.'"

EMOTIONALLY DRAINING MOVE . . .

Legal Aid lawyer, West Coast: "I had a client whose boyfriend had stolen her credit cards and used them. That was the issue

But the rest of the story was heartbreaking. She and the boyfriend had been building a house together. They moved into it with her four kids before it was finished, living in one room while they worked on the rest of it. Once he maxed out her credit cards, he disappeared. She's stuck in this house that wasn't even finished—there wasn't a roof on some of the rooms! She was such a sweet woman and she was in such a fix, I stepped in and started helping her out. I cajoled local builders to help her, I helped with the kids, I ran interference with her employer. I finally went to my supervisor and said, 'I've gotten myself into this situation, and I don't know how to extract myself.' The fact was, the only issue I could really handle for her was the credit card problem. When I bailed out of everything else, I really let her down. In her eyes, I was her boyfriend all over again—I'd abandoned her. I learned an important lesson from that. You've got to **focus** on the legal issue. It's a matter of survival."

4. Handling sticky situations

a. Your client's case stinks. What do you do?

As a lawyer, you've got the obligation to act in the best interests of your client. But as Bill Barrett points out, "Sometimes what your professional discretion tells you is in your client's best interests isn't necessarily what the client *wants* you to do."

You don't want to blurt out, "What? Are you *crazy*? You've got no case!" Instead, you need to stress to the client that their odds of prevailing are very slim, and/or make plain to them how much their desired course of action is going to cost them. Obviously, if they want you to do something unethical, you just can't. Whenever you rein in your client, be sure to **write down** the points your client and you both made, either in a "memo to file" or in a confirming e-mail or letter to the client. Paper the world! When you've got a client who disagrees with you, you've got a potential malpractice suit, and you need all your ducks in a row.

If your supervisor is the “point person” with the client whose case is a stink-er-oo, “Don’t single-handedly destroy the relationship with that client,” says Judy Mender. “For all you know, the client may be a great source of business, a family friend of the partner, whoever.” You can always say to a client, “I want to do more research” to give yourself time to regroup and/or talk with others.

Finally, remember that it’s important not to alienate a client no matter *how* terrible their case is. As Kentucky Public Defender Sarah Madden points out, “Maybe the case they’re walking in with isn’t any good—but maybe their next case *will* be. It doesn’t do you any good to alienate them. Be gentle.”



SMART HUMAN TRICK . . .

As reported in *The New Yorker*: A new lawyer is accused of insider trading. Authorities had videotaped her accepting marked hundred-dollar bills, twenty-three of which were later found in her apartment. When her lawyer sees the tape, he tells her: “There are two phases of a criminal case—the guilt-determining phase and the sentencing phase. I think we should focus on the sentencing phase.”



SMART HUMAN TRICK . . .

New associate at a small firm. The president of a big client wants to sue his neighbor because of a noisy sprinkler. The sprinkler would go on at 6 a.m. and wake him up every day. A partner asks the associate to handle the case. The client barrages her with phone calls every day. He yanks her out of meetings constantly to rant about the case. He expects to win a huge settlement. Whenever she approaches her partner to talk about the case, he says, “Just handle it.” She eventually goes to another partner in the firm in desperation, and the other partner says, “That guy is a personal friend of X’s. He kisses his butt. So you have to, as well. Tell him that the odds of prevailing are slim, but

otherwise, put up with it.” After that, every time she gets a call from the client, she says, “Oh, it’s good to talk to you . . .” and listens calmly as he goes on and on.

b. Your client’s situation is emotionally heart-wrenching.

Some kinds of practice are exceptionally emotional. Domestic relations, for instance, can be draining. You might have a spouse violating a restraining order, pulling up to your client’s house at three in the morning to empty the house of furniture. If your client needs you to handle that problem at three in the morning, then you’ve got to do it. But as Hofstra’s Caroline Levy says, “Yes, you want to advocate. But you don’t want to adopt your clients’ problems as your own.” Bill Barrett agrees, saying, “You have to remove yourself emotionally. It’s easier said than done, but it’s necessary.”

If you don’t keep the emotional aspect of your work under control, you’ll have a hard time being a good advocate. As Caroline Levy says, “You need objectivity to represent your client. You want to be sensitive to problems, but don’t adopt their anger at the other side. Clients do sometimes need hand-holding. But keep your emotions at bay. When they tell you a heart-wrenching story, you can say, ‘This is not a great situation,’ and then point out what you can do for the client, talk to him/her about what the other lawyer is like, what the judge is like.”

c. You think your client is lying to you.

Sometimes you might have clients who lie. If you do criminal defense work, every criminal defense attorney I spoke with basically agreed with what one of them said: “Never trust your client. Always assume they’re lying.” Another commented, “I heard a criminal lawyer being interviewed on TV, and he said, ‘My job is to liberate the innocent.’ I thought, that’s swell, but what do you do the other ninety percent of the time?” One lawyer talked about a client he represented who was accused of arson. The client swore to him, “I *couldn’t* have done it. I was in jail that night.” The

lawyer checked into the alibi, and sure enough, the guy *was* in prison—the week before!

What do you do? Reread the Code of Ethics and *memorize* the sections on the kind of evidence you can put on. And whatever you do, “*Never* ask your client whether they did it! It’s a question whose answer you don’t want. When you see attorneys who withdraw from representing criminal clients and you can’t figure out why, I’ll bet you dollars to doughnuts that the client blurted out, ‘I did it. I didn’t mean to, but . . .’ After that, you can’t put on a case arguing that they’re innocent,” says one criminal defense lawyer.

Incidentally, if you want to spot liars in *any* context, their body language often gives them away. Here are the signs you want to watch for:

1. Their pupils dilate. Pupils enlarge due to emotional response or excitement.
2. Coughing or a cracking voice. A dry throat is the psychological response to being uncomfortable.
3. Speaking more quickly or slowly all of a sudden. If a person is trying to talk and form a lie at the same time, their speech will slow down. If they suddenly speak too quickly, they’re likely blurring out a lie they’ve already formulated, and they’re anxious to get it out.
4. Too much or too little eye contact. If someone stares you down, they’re trying too hard to be sincere. Looking away is a classic indication of a feeling of guilt.
5. Answers that are vague and evasive. If a person is asked, “What were you doing Saturday afternoon?” and they respond “We were just hanging out,” and to the follow-up question “Hanging out doing what?” there’s a shrug and a “Just hanging out,” they’re likely uncomfortable with the line of questions.

d. Your client wants you to do something inadvisable.

If a client wants you to do something against your best judgment, Valparaiso’s Gail Peshel recommends that you “Put things in

writing, pros and cons. In the heat of the moment a client can be upset, but will cool down later and be more rational.”

e. Your client is buggin’ or pitching a fit.

You’re in a service business, and sometimes the people you serve will be openly angry. How should you handle it?

A little bit of background spadework can save you a lot of trouble. As we talked about earlier in this chapter, you should always keep your clients’ expectations reasonable and avoid making promises you can’t keep. That can minimize client outbursts, because a common source of them is frustrated expectations.

But sometimes it’s unavoidable. Somebody’s going to call you and pitch a fit. How should you handle it?

- 1) Set your personal react-o-meter on “0.”

You’ve *got* to keep your cool even if the client is irate. As Georgetown’s Abbie Willard says, “No anger, fear, crying—keep your professional composure!” If you haven’t worked in a service business before, this may be tough. *Really* tough, especially if they’re spewing abuse directed at you or your firm. But what you have to remember is that nobody’s yelling at you *personally*. They’re yelling at a person in your position who just *happens* to be you. Don’t pour gas on the flame by screaming, “Oh, yeah! Your Mutha!” Take deep breaths and stay calm!

- 2) Don’t interrupt.

Listen carefully and sympathetically to what the client is saying. Don’t cut in until you understand why the client is irate. Gail Peshel advises that you “Look at the issue and not the emotion.” Use words like “I hear that you’re upset because . . .” and thank them for calling.

- 3) Take action depending on the nature of the client’s distress.

Sometimes clients just have to vent. That’s fine. You’re a counselor. It happens. If you perceive that they need other kinds of help—like therapy—that’s a referral you or your

superior may want to make (if you're working on a case with a more senior person, discuss the referral with them first)

If the client's anger has something to do with the matter your firm is handling *or* something you or anyone in your firm did, take **excellent** notes of the conversation. When the client is done screaming, repeat back your understanding of the problem. If it's something you or your firm did, apologize. And apologizing means not adding the word "but . . ." "I'm sorry, but . . ." No! Just apologize and don't offer an excuse. When someone is angry they don't want to hear excuses. They'll resent it. Tell them that you will pursue it immediately and get back to them yourself. Don't make any promises about the resolution unless it's a matter that you know for a fact you or someone you work for can resolve. And don't agree that somebody else's actions were incorrect! You have no idea at this point what happened; all you know is that the client is upset and they're giving you their version of the facts. You don't want to validate something that may, in fact, be incorrect.

4) Talk to lawyers who have been around the block.

"Bring the problem to someone more senior than you who has worked on the matter and talk to them about how the problem should be handled," recommends a lawyer at Goulston Storrs. Abbie Willard recommends that you "**Never** let a partner be surprised by an unhappy client! Let the partner know why the client is upset, and what, if anything, **you** can do about it."

5) Know when enough's enough.

While your prime directive is serving the client, you **don't** have to listen to someone berate you on and on and on. As lawyers at Goulston Storrs point out, "This **is** a service business, but that doesn't mean you have to fall on your sword. You don't have to take excessive verbal abuse from clients. As soon as you've got the point, you don't need to hear more

Take the matter to someone more senior and ask them how to handle it."

B. ADVICE FOR EVERYBODY WHO SPENDS TIME IN COURT, WHETHER YOU REPRESENT THE UNITED STATES, "THE PEOPLE," THE STATE, OR CLIENTS

1. Handling judges. Get out your kid gloves!

a. Get to know judges' styles.

All judges are different! Ask other lawyers in the firm (or other prosecutors in the office) for their impression **before** you argue a case before a judge with whom you're not familiar. As Jones Vargas' Karl Nielson says, "Knowing the judge's likes and dislikes, his or her requirements, pet peeves, and the like, is so much more critical than you can imagine just coming out of law school. Knowing the judge will help you avoid the many pitfalls involved in learning the ropes of practice before the courts."

It may be that some judges require you to call and conference a case before you make a motion. Perhaps the judge insists that you use his middle name when you speak with him. One lawyer talked about a judge who always, in matrimonial cases, had a policy of interviewing the family and then taking the lawyers to lunch at his house to discuss the family. Whatever a judge wants to do in his or her court, that's the way it is! Adapt your style and strategy accordingly. It's like that line from *To Kill A Mockingbird* about guests: "If he wants to pour syrup on the tablecloth and eat it, he can."

It also makes sense to get friendly with court reporters. Because they see judges all the time, they can clue you in to the judge's mood and anything that seems to be impressing or riling him/her on any given day.

b. Handle judges with kid gloves!

Always treat judges with respect, no matter **how** you feel about them or how they treat you. What does that mean?

Law Practice TODAY

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MARKETING

How to Thank a Client

by Wendy Werner

June 2005

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 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.

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