

**KEEPING YOUR PRACTICE ON TRACK –  
CREATING AND CLOSING THE LOOP - 2010  
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**Key Rules:**

The rules of professional conduct and accompanying notes provide considerable guidance on issues that arise when working with a difficult client. The following in particular should be carefully reviewed:

- 4-1.2. Scope of Representation (note also definition of “informed consent” in Rule 4-1.0)
- 4-1.3. Diligence.
- 4-1.4. Communication
- 4-1.5. Fees.
- 4-1.14. Client with Diminished Capacity
- 4-1.16. Declining or Terminating Representation

**Checklist:**

- When you return from court you put your files \_\_\_\_\_
  - When you return from out of the office you routinely \_\_\_\_\_
  - When you pick up a message you \_\_\_\_\_
  - When your assistant takes a message he or she \_\_\_\_\_
  - My policy for returning calls is \_\_\_\_\_
  - Forms that help me communicate include \_\_\_\_\_
  - I review files by \_\_\_\_\_
  - Other procedures that help me keep in touch with clients are: \_\_\_\_\_
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**Some Guidelines:**

1. Planning Ahead. Think in advance about what type of clients you want to work with, what type of work you want to do, and what risks you are willing and able financially to take. Having a profile of preferred work will make it easier for you to screen clients and evaluate the costs and benefits of representation. Think about what forms of communication you like to receive and how you are most comfortable communicating in return. Develop forms and procedures to help you screen for compatible clients and to stay in touch. These forms and procedures can also help you with your revenue flow. Taking anything or everything that walks in the door is not a good business strategy and leaves you particularly vulnerable to difficult clients who walk in with a retainer in hand. Instead, set fees and procedures that will help you recover extra costs imposed by difficult

clients. Your forms and procedures should inform clients about your fees and also about how to work with your office. These forms and procedures will also help you manage client expectations and set and enforce boundaries later. Train your staff on what to say, how to say it, and when to alert you of a need to intervene. Build a support network that you can turn to for advice when a client turns on you.

2. Laying The Groundwork. From the initial interview on, make sure the client is aware of your expectations regarding billing. Talk with the client about how, and when, to communicate with your office. Ask clients about their own preferred mode of communication. Ask about their goals and expectations for the matter and listen carefully. If there are unrealistic expectations, address those and document that you did so. Use engagement letters that spell out the scope of work and incorporate the forms and procedures discussed above. Find out their preferred mode of communicating. Consider preparing a “work plan” with the client and giving the client assignments. Give the client a folder with your procedures and a brief outline of the stages of the case or a timeline for the matter. Confirm the client’s understanding of what you have reviewed and allow client to ask questions. Make a personal connection and let them know that the attorney’s job is to be an independent advisor and to evaluate and advise not only on the strengths but also on the weaknesses or problems inherent in a matter. Ask if they understand that role and agree that you should give your best advice, pro or con. You may need to refer back to this agreement at a later date.
3. Maintaining Boundaries. If your client shows up late or without an appointment, you do not need to rearrange your day: ask them to reschedule. If the client fails to pay you, ask for payment. If the client fails to give you information remind them that it is their case and they bear the responsibility of full participation. Remind the client of agreements made in the initial interview and follow-through on consequences outlined in your forms and procedures. If the client screams or curses at you (try to) stay calm and say something like: “You are very upset. It is difficult for me to listen when you are screaming. I will call you back when you are calmer.” Be sure to follow-up
4. Communicating Effectively. Be clear, direct, and straightforward in your communications, yet also consider your client’s reaction. To lead into a difficult topic you can ask questions like “remember when we discussed the difficulties in your proof?” Or you might start with a soft statement like “I am sorry to have to tell you this”. When the client reacts, allow them to process their emotions as well as the information you have provided before moving on to another topic or pushing for a decision. Listen, reflect, and empathize. You can also give the client choices; for example would they like to continue talking, take a break, or reschedule and come back later? At some point you will have to help the client focus forward: “I know that we both wish it were otherwise. Let’s review where we are and what might be done.” Often difficult behaviors are driven by emotions and the client may be feeling unsafe or insecure when acting “difficult”. Consider

reflecting back the emotion you are seeing (“you are very upset”), and asking questions like: what do you think would help? How can we move forward? What raised that concern? You might also make a soothing statement like: I’m sorry if I was unclear. . .” I think there is a misunderstanding. . .” Never debate the client! Instead use phrases like: “we see things differently”; “I’m sorry you feel that way”; “I know you don’t like my advice and yet that’s my advice.” Also don’t bargain with a client who is threatening you. Instead consider a statement like: “that is a choice you can make, and I’m sorry you feel that way. I have represented you to the best of my ability and I trust that on thinking it over you will reconsider.” As the client calms down you can also ask, “what would you like to see happen now?” or “what do you think would be the next step?”

5. Listening Carefully. Conversations occur on three levels – information, emotions, and identity or trust. You need to know the level your client is on and try to speak so your client can listen and understand. Clients who are feeling and expressing a lot of emotion may not be tracking the information you are providing. Acknowledging the emotion, and allowing them time to process it before giving instructions and details can help. Providing “take home information” and following that up with a call can help as well. Clients who are highly resistant to your advice and direction are often exhibiting a lack of trust. Reflecting what you are hearing and giving your client a chance to respond (“you seem very uncomfortable with that, is there something you’re concerned with that we should talk further about?) will give you valuable information and help build trust. Note that to really hear and evaluate what your client is saying, and whether they understand what you are saying, you need to listen to words, tone and body language and ask follow-up, open-ended, questions. An open-ended question is the opposite of the type of directive, close-ended questions used in cross-examination. If a question can be answered with a “yes”, “no” or single word it is a close-ended question. Open ended questions provide you with more information. Example: “Do you understand?” v. “Let’s review, can you tell me what you understand about our next steps?”
6. Knowing When To Get Help or To Cut Your Losses. If you find yourself avoiding the client’s calls; if your stomach aches and your head hurts when you think about the case; if you are putting off work that needs to be done, yet you just can’t bring yourself to terminate the relationship or talk the problems through with the client, you need to get someone else involved – a partner, a coach, the state’s ethics counsel, the Missouri Lawyer’s Assistance Program – *someone* who can help you move forward *before* a complaint is made.

If you are not being paid, the client is consistently uncooperative, or the client is rude, demanding or otherwise very unpleasant to work with, you should seriously consider ending the relationship. Give the client notice, and an opportunity to reform. Be firm and gentle when delivering this kind of message. Refer back to your forms and procedures and initial agreements and give the client a choice:

detail what it will take to get the relationship back on track, and if the client chooses not to do so, then he or she is choosing not to work further with you.

7. Recognizing The Difficult Client. The following are all warning signs that a prospective client will be difficult to work with, that a positive attorney-client relationship will be difficult to maintain, or that your relationship is eroding. Many of these were identified by lawyers at past trainings. The more factors present the more risk, and the more you should consider saying “No!” to the representation at the outset, or withdrawing later. In any event you should plan your communications with such a client very carefully, and document well. Beware when the client:

- cries excessively and has trouble giving you a coherent overview of the matter.
- launches into an aggressive “sales pitch” as to all the reasons why you should take this case or pursue a course of action you do not recommend.
- is unable to answer your questions or is very evasive.
- argues with your summary of how the case might unfold.
- is “just shopping” and wants you to know others have offered a lower rate, or regularly challenges your bills, comparing them to what others they know have paid for legal services.
- is leaving their prior lawyer (and especially beware if he or she does not want you to talk to the prior lawyer or announces that a complaint has or is going to be filed against that lawyer).
- is rude and demanding.
- shows disrespect for lawyers or the legal system.
- demonstrates a complete lack of understanding of how he or she contributed to the problem at hand or refuses to discuss that.
- blames themselves completely and isn’t sure any defense is appropriate.
- voices threats against the other party or others involved.
- is overly dramatic in his or her presentation.
- Claims you said things you don’t remember saying.
- wants you to be the “rescuer”, or claims to be otherwise friendless and without support.
- is a “pseudo lawyer” who has the case all figured out (and can even point to statutes and cases you can cite) or quotes “shadow advisors” – spouses, significant others, friends, relatives etc. who have provided advice on arguments to be made or on the expected outcome of the case.
- makes lots of excuses as to why things did or did not occur and does not appear willing to take responsibility for any decisions.
- has an addiction or a mental illness.
- is a “crusader” for ill-defined “rights”.
- promises to pay but doesn’t have money just now – it will come!

*-Note: An Addendum to This List Will Be Handed Out During the Session-*