

Law Office Management Chapter 4

Chapter 4

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The Attorney-Client Relationship

OBJECTIVES

After completion of this chapter, you should be able to:

- Describe the variables affecting client relations.
- Explain a bar association's involvement in client relations.
- Discuss a lawyer's ethical responsibilities to a client.
- Explain what clients expect from their lawyers.
- Describe the various methods lawyers use to attract clients.
- Describe the difference between public relations and advertising.
- Identify when an attorney-client relationship begins and ends.
- Define confidentiality, the attorney-client privilege,

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- Identify when an attorney-client relationship begins and ends.
 - Define confidentiality, the attorney-client privilege, and the attorney work-product doctrine.
 - Check for conflicts or potential conflicts.
 - Identify the various types of discipline that may be imposed on lawyers.
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Key Terms

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1. **Admonition:** A reprimand given to a lawyer.
 2. **Amicus curiae:** Friend-of-the-court brief that states the position of the author relating to a case pending before the court.
 3. **Arbitration:** The resolution of a dispute without court involvement.
 4. **Capper:** A person who is paid to obtain cases for a lawyer.
 5. **Compulsory organization:** An organization to which all persons of the same class must belong.
 6. **Confirm:** To corroborate or verify (ratify) the ruling of a lower court.
 7. **Contingency:** A case in which a lawyer receives a percentage of the recovery rather than a flat amount of money.
 8. **Direct conflict:** When an attorney or firm has a relationship with a person who may be involved in the conflict or when the attorney or firm has a financial interest in an entity involved in the conflict.
 9. **Disbarment:** The taking away of a lawyer's right to practice law.
 10. **Joint venture:** A grouping of two or more persons for a common goal.
 11. **Netvertising:** Advertising on the Internet.
 12. **Overrule:** To reject or supersede an existing judicial opinion; to invalidate.
 13. **Positional conflict:** An attorney's or firm's representation of the competition of a client.
 14. **Positioning:** Determining a firm's strengths and weaknesses in relation to those of other firms in
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the community.

15. **Potential conflict:** Arises when an attorney has an indirect relationship with a person who may be involved in the conflict.

16. **Precedent:** A court decision on a question of law that gives authority or direction on how to decide a similar question of law in a later case with similar facts.

17. **Probation:** A form of discipline that allows a person convicted of an offense to forgo more drastic punishment under supervised conditions.

18. **Rehabilitation:** Restoration to a useful life through education and therapy.

19. **Reinstatement:** The restoration of a right that had ceased.

20. **Reprimand:** A formal rebuke; to criticize strongly.

21. **Spam:** To send unsolicited commercial e-mail messages to large numbers of persons on the Internet in an indiscriminate manner.

22. **Suspension:** The temporary cessation of the right practice law as punishment for wrongdoing.

23. **Target market:** A group of people a firm wants as clients.

24. **Zeal:** Enthusiastic and diligent devotion.

Internet Projects

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1. The Cybersites sidebar found on page 132 lists the top 20 law firm Web sites. These Web sites were found to be in compliance with ethical guidelines and contain a wealth of information about the firm. Research these Web sites and determine what sets them apart from other law firm Web sites.

2. The Cybersites sidebar found on page 122 lists some Web sites that deal with the ethics of lawyers' marketing on the Internet. To get the latest of cyber ethics for lawyers, visit <http://www.legalethics.com>. It is the best resource for the latest opinions from each state in the union.

ADDITIONAL ETHICS RESEARCH SOURCES

The following are cases that address lawyers' ethics that you may assign to students as a research or extra credit assignment:

1. Lawyers lying to clients to disguise their own negligence-Attorney Grievance Commission v. Pinkney, 532 A.2d 1367 (1988).
 2. Planning to mislead a court as to the identity of the client-Attorney Grievance Commission v. Rohrback, 591 A.2d 488 (1991).
 3. Client neglect-Attorney Grievance Commission v. Montgomery, 460 A. 2d 597 (1983).
 4. Endangering the interest of the client for the attorney's own interest-Attorney Grievance Commission v. Baker, 399 A.2d 1347 (1979).
 5. Attorney addicted to alcohol or drugs accepting client retainers-Attorney Grievance Commission v. Miller, 483 A.2d 1281 (1984), and Attorney Grievance Commission v. Kolodner, 557 A.2d 1332 (1989).
 6. Failing to disclose physician whose identity is
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called for in a valid discovery request-Florida Bar v. Rood, 569 So.2d 750 (1990).

7. Excessive fees-Attorney Grievance Commission v. Korotki, 569 A.2d 1224 (1990).

8. Lack of preparation-Attorney Grievance Commission v. Manning, 569 A.2d 1250 (1990), and cases cited therein.

9. Commingling funds of clients with those of attorneys-Attorney Grievance Commission v. Dacy, 542 A.2d 841 (1988).

10. Declining to correct false testimony of a client at a deposition-Attorney Grievance Commission v. Spring, 463 A.2d 868 (1983).

11. Creating the attorney-client relationship-Fink v. Montes, 44 F.Supp.2d 1052 (1999), and Morrison v. Hancock, 81 Cal.Rptr. 2d 425 (1999).

12. Attorney's duty of loyalty to the client-Morrison Knudson Corp. v. Hancock, Rothert & Bunshoft, 9 CA4 223; 81 CR2 425 (1999), and State Farm v. Fed. Ins. Co, 72 CA4 1422; 86 CR2 20 (1999).

13. Conduct of attorney: Example of how an attorney should not conduct him or herself at trial-People v. Chong, 76 CA4 232; 90 CR2 198 (1999).

14. Confidential attorney-client communications-State Compensation Ins. Fund v. WPS, Inc., 70 CA4 644; 82 CR2 7999 (1999).

Answers to Chapter Review Questions

Tab Text

Following are answers to the Chapter Review Questions found in the text.

1. The factors that have affected the traditional attorney-client relationship are:
 - A. Economics;
 - B. A demand for specialties;
 - C. Marketing activities;
 - D. Business management changes;
 - E. Rules of bar associations; and
 - F. Increased number of attorneys (p. 116).

 2. The three functions of a lawyer are:
 - A. Adviser;
 - B. Advocate; and
 - C. Agent (p. 117).

 3. The four items that are most important to clients are:
 - A. Commitment;
 - B. Integrity;
 - C. Commentary; and
 - D. Fairness in fees (p. 119).

 4. Firms employ the following types of marketing activities:
 - A. Client surveys;
 - B. Advertising in print, on radio, and on television; and
 - C. Promotional activities (p. 121).

 5. The case that permits lawyer advertising is *Bates v. State Bar of Arizona* (433 U.S. 350 [1977]) (p. 124).

 6. The type of advertising most commonly used by lawyers is yellow page advertising (p. 127).

 7. The following are exceptions to solicitation allegations:
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- A. Public defenders;
- B. District attorneys;
- C. Attorney referral services; and
- D. Prepaid insurance plans (p. 141).

8. The five Cs of client relations are:

- A. Competence;
- B. Commitment;
- C. Communication;
- D. Conflict of interest; and
- E. Confidentiality (p. 142).

9. The attorney-client privilege permits a client to refuse to testify and to keep his or her attorney from testifying in a legal proceeding about communications made between the two in strict confidence (p. 148).

10. The differences between confidentiality and the attorney-client privilege are:

- A. The attorney-client privilege protects only information covered by attorney-client communication. It does not protect the facts generating the confidences nor the knowledge of the client.
 - B. Information that is open to the public is not covered by the attorney-client privilege. However, the lawyer's obligation to keep information confidential includes information that is public.
 - C. The attorney-client privilege includes information that the lawyer obtains from the client only. Confidentiality includes all information "relating to the representation of a client," regardless of its source.
 - D. The attorney-client privilege prevents disclosure in the litigation process. Confidentiality prevents disclosure anywhere at any time, even after the death of the client.
 - E. The attorney-client privilege does not include conversations between government attorneys and officials in response to investigations that might involve criminal law issues. (p. 148)
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11. Paralegals are obligated to abide by the attorney work-product doctrine. Paralegals' work is subject to the work-product doctrine (p. 149).

12. The five types of attorney discipline are:

- A. Admonition;
 - B. Reprimand;
 - C. Probation;
 - D. Suspension; and
 - E. Disbarment (pp. 150-151).
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Examples for Discussion



The screenshot shows a software interface with a sidebar on the left containing six buttons: 'Key Terms', 'Internet Projects', 'Answers to Chapter Review Questions', 'Examples for Discussion' (which is highlighted), 'Possible Answers to Assignments', and 'Quiz'. The main content area is titled 'Examples for Discussion' and contains the following text:

1. The New Client

Tim's behavior violates rules of professional conduct in the following circumstances:

1. Visiting a person in the hospital who has been injured to promote his services is soliciting under the Code of Professional Conduct of many states.
2. It is ethical to promote his services to a family member under the Code of Ethics of most states.
3. Offering pro bono legal services to the indigent is not considered soliciting under the Code of Ethics of most states because Tim would not benefit monetarily thereby.
4. Offering pro bono legal services to a potential client for the purpose of gaining notoriety is unethical in most states. Tim would

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4. Offering pro bono legal services to a potential client for the purpose of gaining notoriety is unethical in most states. Tim would ultimately benefit monetarily by the representation of a high-profile case.

5. This scenario is capping. A "substantial bonus" is payment for obtaining a case for the lawyer. Paralegals should be alerted that this practice is a potential ethical violation.

6. ABA Model Rule 7.3 applies to these circumstances (pp. 136-137).

2. The Battles' Battle

1. Gary should not represent Sam Battle because he has an attorney-client relationship with Brenda Battle. Gary would have a conflict of interest in representing Sam.

2. Model Rule 1.7 (p. 145) applies to this case.

3. Where Is the Client?

Client Bristol is obviously upset at the actions of his attorney and would not be pleased to receive a bill for the missed deposition. The incident did irreparable damage to the attorney-client relationship.

Steven's attorney should have returned his telephone call. If the attorney was too busy to return the call, he should have directed his paralegal to contact Mr. Bristol, either by telephone or by letter. This scenario falls under communication of the five Cs of the client relations, and Model Rule 1.4 (p. 144).

4. The Initial Client Interview

Norma, the Paralegal, is in an awkward situation. The discussion should be halted until Rick returns from his telephone call.

1. Norma should ask Charles to stop discussing the case until Rick returns.

2. The attorney-client privilege applies to this situation so long as Rick is in the room. Norma's presence does not void the attorney-client privilege. The presence of the

guard does not void the attorney-client privilege.

3. When Rick is out of the room, Charles's comments are not subject to the attorney-client privilege because an attorney must be present for the privilege to be in effect.

4. Individual response.

5. Norma could protect the attorney-client privilege by asking Charles to wait until Rick returns to resume the conversation.

5. The Web Page

Guidelines for Web sites are new, and it is anticipated that more explicit guidelines will be developed in this decade. The ABA has determined that their ethics codes apply to Web pages.

1. ABA Model Rule 7.1 applies to Web sites (p. 125).

2. Elements B, E, and F are ethical.

3. Elements A, C, and D are unethical. The title page, "The Best Lawyer in Town," violates Model Rule 7.1 because it is a comparison with other lawyers in the community. The specialist phrase is misleading because it infers that Irene is a certified specialist in those areas of law when no certification is available in her state. The list of clients violates confidentiality doctrines.

Possible Answers to Assignments

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Following are possible answers to Assignments provided in the text. The responses below are a guide to what an instructor would look for within the student's response. Some assignments are based solely on individual experience and/or opinion, and a general response for such questions is not provided.

1.

Situation 1:

This situation is a difficult one for law firms. If the firm pays the deposition service, chances are there will be a problem being reimbursed by the client. However, the firm has an ethical obligation to represent the client with diligence, and paying the deposition service seems like the only option for the firm. If the firm did not take the deposition of the witness, the firm may be exposing itself to a legal malpractice suit. The Model Rule applicable to this situation is 1.3 (p. 143).

Situation 2:

Yes, an attorney may take a case to change the law. Model Rule 3.1 (p. 118) applies to this situation.

Situation 3:

This situation has three parts. For the first part, yes, the interview was proper, even though Lee's reason for the interview is to attract clients. There is no ethical rule that states an attorney may not work hard to attract clients. In the second part, the ad was proper. However, this may vary state by state. Be sure to check your Code of Professional Responsibility. Both parts one and two fall under Model Rule 7.1. In the third part, Lee's conduct was improper. He is clearly guilty of solicitation in violation of Model Rule 7.3 (pp. 136-137).

Situation 4:

No, Zoua should not accept the case because to do so would be a conflict of interest against a

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client. This situation falls under Model Rule 1.7
(p. 145) or Model Rule 1.9 (pp. 145-146).

Situation 5:

Eric should say that the confidential nature of his representation prohibits him from discussing the case. Model Rule 1.6 (p. 147) applies to this situation.

Situation 6:

Angela has an obligation to keep the confidences of her client a secret. However, Angela also has an obligation to promote the public good and uphold the integrity of the legal system. Therefore, Angela should persuade her client to give the IRS correct financial statements or refuse to represent the client. Model Rule 1.6 (p. 147) applies to this situation.

Situation 7:

It is permissible under most Codes of Professional Responsibility to accept a case for which the lawyer has had no experience if the lawyer can become knowledgeable about the area of law without jeopardizing the client's case. Model Rule 1.1 (p. 142) applies to this situation.

Situation 8:

A lawyer is under an obligation to abide by a client's decision but not to do all the client demands. If the lawyer does not believe that a good-faith argument can be made for an appeal, she should withdraw from the case. Model Rules 1.2(a) (p. 119) and 1.16 (pp. 149-150) applies to this situation. Model Rule 3.1 also applies.

Situation 9:

Rochelle should decline the lawyer's offer and probably look for another job. Legal assistants should not tolerate unethical behavior. Model Rule 7.3 (pp. 136-137) applies to this situation.

Situation 10:

Renee should not take the case because it is

obvious that Brett is harassing his opponent. As an advocate, a lawyer has an obligation to reject frivolous cases that take up a court's time and resources. A lawyer is prohibited from representing a client for spiteful reasons in most states. Model Rule 3.1 (p. 118) applies to this situation.

- 2. Individual student response.**
 - 3. Individual student response.**
 - 4. Individual student response.**
 - 5. Individual student response.**
 - 6. Individual student response.**
 - 7. Individual student response.**
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Quiz

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[Click here to take the Chapter Quiz.](#)
