
CLIENT RELATIONS:

AVOID GRIEVANCES



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- Received Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education

THE TOP 5 GRIEVANCES

1. Communication - keeping in touch and responding.
2. Neglect – usually results in #1 above.
3. Mishandling the Attorney-Client Relationship
 - proper contracts, disclosures and conflicts
 - whose file is it?
4. Attorney Fees – disputes, overcharging.
5. Misuse of Retainers/IOLTA accounts.



PART 1

**COMMUNICATE
FROM DAY 1**

HOW DO YOU DEFINE GOOD, PRO-ACTIVE COMMUNICATION

- Reply to client, court or opposing counsel as soon as possible.
- Send newsy updates even when nothing has happened.
- Do your share of work.
- Don't withhold bad news/or try to "sugar-coat" it.
- Keep after someone who is not communicating with you (best protection from grievances).

INTERVIEW FOR SUCCESS

START COMMUNICATION AT THE FIRST INTERVIEW:

Question: What is the Goal of any client interview?

Answer: Both lawyer and client should have

REASONABLE EXPECTATIONS:

- ✓ What Attorney can do;
- ✓ What options exist; and
- ✓ Basis of Lawyer's Fee.



INTERVIEW FOR SUCCESS

DO NOT OVERLOOK THESE
IMPORTANT "HOUSEKEEPING ITEMS"

DETERMINE EARLY:

- Do I have any conflicts?
- Any previous lawyers?
- Client's Goals?
- Client's Motivations?

THE "TWO QUESTIONS"

MAKE SURE YOU ASK:

- What Do you think I can do for you? Is it realistic?
- What is opposing party saying about you?

Then **DISCUSS**: What they can expect in accomplishing their goals:

Time Line

Cost

Alternatives

THE MULTI-PARTY MATTER

IF CLIENT SUGGESTS MULTIPLE-CLIENT REPRESENTATION:

- Identify all entities involved.
- Make sure Client knows whom (which entity) you will represent, and how that affects communication.
- If a conflict is a “waivable” conflict, get it in writing.

BEFORE TAKING ANY MATTER, THE LAWYER MUST THOUGHTFULLY CONSIDER:

- Do I have (or can I acquire) the necessary skills?
- Do you have the desire?
- Do you have the technology?
- Is your “little voice” warning you about client’s sanity/ability to pay?



PART 2

DOCUMENTING YOUR REPRESENTATION

DOCUMENTING YOUR REPRESENTATION

Always have a written contract,
especially for NEW Clients!

With old clients, at least communicate
by email what you'll be doing *at their request*.

WHO IS PAYING ME?

- ✓ Discuss how the client plans to pay you.
- ✓ Does this client have the money?
- ✓ Don't even get started without a payment plan.
- ✓ Make it easy to get paid.



CONTROLLING THE NARRATIVE

Protect yourself by always responding when your client communicates incorrect information or if they have misinterpreted what you have said.

FEE AGREEMENT GOAL

Anytime you draft a fee agreement or send a bill, envision a Court or fee dispute committee reviewing your contract and your bills:

- ✓ Are your contracts clear?
- ✓ Are your bills comprehensible and reasonable?
- ✓ Don't use dumb billing entries!

DOCUMENTING THE FEE ARRANGEMENT

OTHER ISSUES INCLUDE:

- How you are going to reimburse expenses?
- The Client's Rights.
- Privacy Policy? Most states have, or soon will have a requirement for such policies.
- Termination/withdrawal by attorney.
- Venue for disputes.

THE FEE DISPUTE

BIG PICTURE: No practicing lawyer will escape fee disputes.

But you can minimize them.

LAWYER OFTEN SHARES FAULT BY:

- Ignoring warning signs on intake;
- Spending too much at the outset;
- Improperly budgeting the matter;
- Outspending your projections without communicating why to the client!

THE TRUTH ABOUT CLIENTS

No lawyer with a vibrant practice will ever escape an occasional client who runs out of money.

GOOD CLIENT:

They will do their best to work something out with you.

BAD CLIENT:

Will make up any excuse, accusation and complaint to avoid paying you.

SHOULD I SUE?

NEVER SUE WITHOUT HONESTLY ASKING YOURSELF
THESE QUESTIONS:

1. Would I be embarrassed to have my fees reviewed?
2. What is the timing of the controversy, i.e. how far am I through the case?
3. **MOST IMPORTANT:** Is it likely that this client will ever pay you, even with a judgment?

SHOULD I SUE?

Short Answer: **PROBABLY NOT!**

- Never sue unless it is an “existential threat” to you or your firm. (i.e., How badly do you need the money?)
- If you decide to sue, remember that counterclaims are usually compulsory.
- **PREFERRED OPTION:** Referral to ADR Fee Dispute Committee.

MORE REASONS NOT TO SUE

1. You will make more money with new business.
2. If you overcharge a client, that breaches fiduciary duty.
3. You could risk disgorgement of some or all of your fee.
Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999)
4. Even if you win, YOU PROBABLY STILL WON'T GET PAID!

DIFFICULT CLIENTS

BE "THE ADULT IN THE ROOM"

JUST BECAUSE YOUR CLIENT IS UNREASONABLY
EMOTIONAL DOES NOT GIVE YOU THE RIGHT TO BE THE
SAME WAY:

- Never write a letter you'd hate to see in a PowerPoint.
- Never threaten, even passively.
- Take a breath when you want to respond emotionally.

HANDLING BILLING COMPLAINTS

"Abandoning" Non-Paying Clients Improperly: Forfeiture of all fees

It is risky if you abandon your client before the proceeding reaches its termination; as, " he who commits a material breach of contract, forfeits all right to compensation." *Augustison v. Linea Aerea Nacional-Chile S.A.*, 76 F.3d 658 (5th Cir. 1996).

HANDLING BILLING COMPLAINTS

BEST LESSON: Because we are fiduciaries, there is always
a huge risk for suing for fees!

Make sure your withdrawal is ethical, regardless of
what your attorney fee agreement says!



10 BIGGEST MISTAKES

1. Not establishing reasonable expectations in the client from the very beginning.
2. Not resisting the client's invitation to "guess" or predict outcomes or costs without sufficient facts.
3. Not Keeping the client informed regularly, truthfully and aggressively to avoid mistakes and negative inferences.

10 BIGGEST MISTAKES

4. Failing to respond to client contact which changes the narrative, i.e., expression of client's mistaken interpretation of your communication, facts or options.
5. Stupid Billing: Not using correct, intelligent descriptions in billing, thus raising suspicions of overbilling;
6. Writing a letter or email that you would hate to see on a poster in front of a grievance committee.

10 BIGGEST MISTAKES

7. Telling a lie, or treating anyone involved in this matter with contempt or disrespect.
8. Making a threat, even passively.
9. Leading an opposing party to believe that you are neutral or "on their side."
10. Sending a communication to anyone that will "burn a bridge."

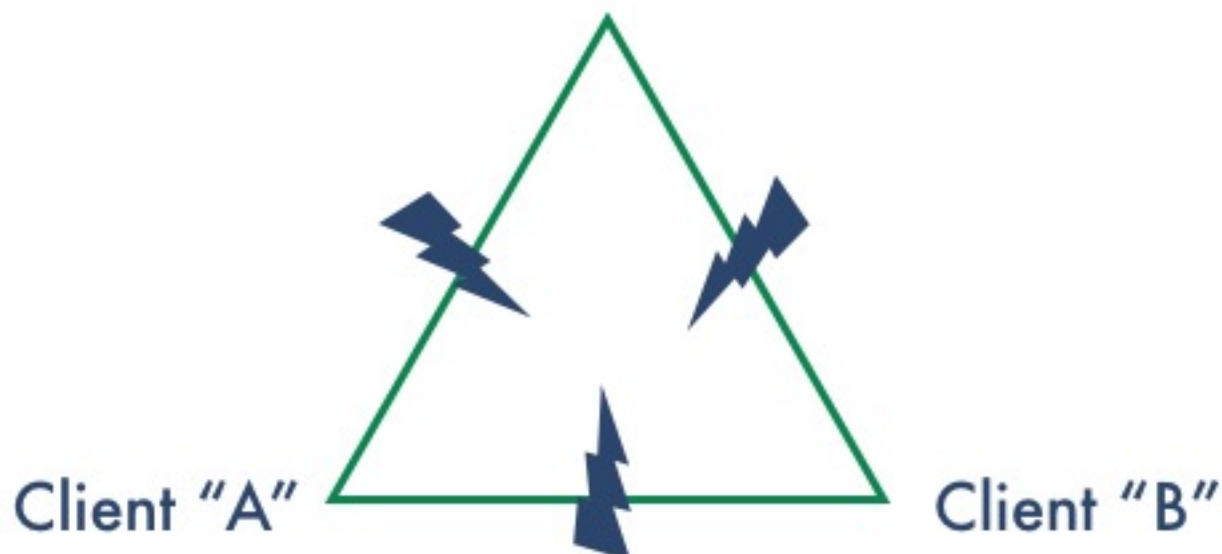


PART 3

CONFLICTS OF INTEREST

THE CONFLICTS TRIANGLE

The Lawyer's Own
Interest



THE FOUR SITUATIONS WHICH PROHIBIT REPRESENTATION

1

LITIGATION:

Representing parties in the same litigation
(psst...this includes “uncontested divorces.”)

THE FOUR SITUATIONS WHICH PROHIBIT REPRESENTATION (Cont'd)



BUSINESS:

Representing someone in a “Substantially Related” matter where interests are Materially and Directly Adverse.

THE FOUR SITUATIONS WHICH PROHIBIT REPRESENTATION (Cont'd)

3

OTHER DUTIES:

Representation when it "Reasonably Appears" your duties to another client, third party or to your firm conflict.

HINT:

Get outside counsel for multi-party litigation

THE FOUR SITUATIONS WHICH PROHIBIT REPRESENTATION



PAST MATTER:

Previous client's interest conflict when a dispute arises with same matter/same parties.

DISCLOSING CONFLICTS

How should “discovered conflicts” be disclosed?

- Disclosure must meet Applicable Disc.Rule Standards.
- Lawyer must “reasonably believe” their interests not affected by joint representation.
- Mere disclosure not sufficient.
MAKE COMPLETE DISCLOSURE AND SECURE PERMISSION.

WHAT ELEMENTS DO “COMPLETE” DISCLOSURES INCLUDE

1. The **existence** of the conflict;
2. The “**nature**” of the conflict;
3. The **implications** of the conflict;
4. Possible **adverse consequences** of common representation;
5. **Advantages** of common representation.

DANGEROUS SITUATIONS

LAWYERS TAKE RISKS BY:

- Member of Organization/Counsel to same;
- Inconsistent Positions before same Agency;
- Representing Company/Organization and its Employees/Members;
- Not securing permission (i.e. Corporate Resolution) before representing Corporation in lawsuit;
- Imputed Disqualification: If partner can't, your associate can't.

BAD THINGS HAPPEN

HANDLING A GRIEVANCE/ BAR/ ETHICS COMPLAINT:

- Always respond timely and completely.
- Never respond *pro se*; always have someone respond for you.
(Why? it is very difficult to be objective)
- Always read state's Rules of Disciplinary Procedure to understand deadlines and burdens.
- **BEST ACTION TO PROTECT YOURSELF DURING:**
Avoid unnecessary publicity. Act "with honor."

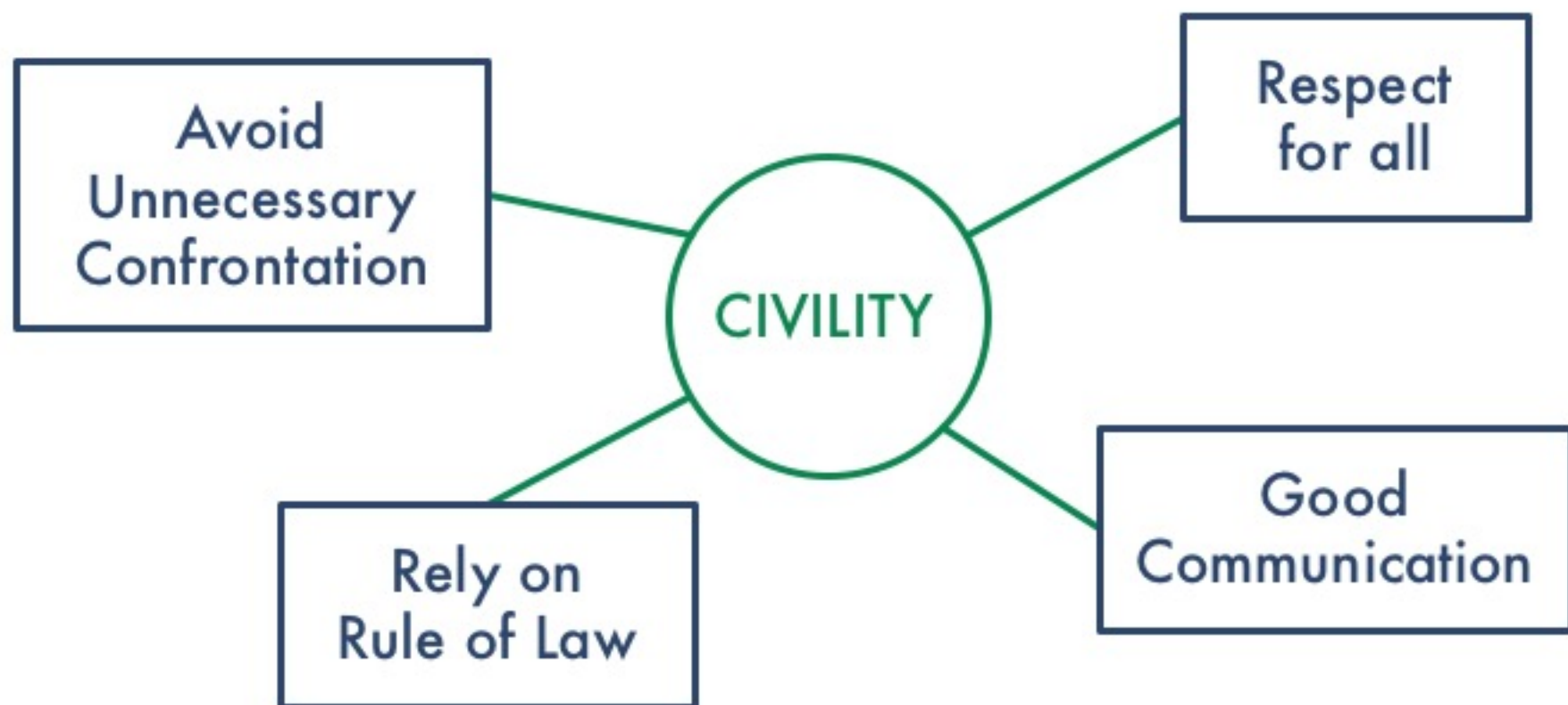
THE CLIENT TRIUMVIRATE



AKA "CLAUDE'S 3 RULES"

1. Remember to treat that client like you are going to live next door to them.
2. Always tell the truth – There is far less paperwork when you do.
3. Never sue your client.

CIVILITY IS A PROCESS



SUMMARY

AVOID GRIEVANCES!



1. Communicate proactively with clients. (Don't wait for "an event")
2. Don't take cases you shouldn't handle.
3. Don't sue if you get burned. Its all part of doing business.
4. Use ADR when available.

BE A GOOD TEAMMATE!



THE BEST WAY TO AVOID CLIENT COMPLAINTS IS:

- You and your client are on the same team... Be a Friend for Life.
- Always update the client in both good and bad situations.
- Be the adult.
- Be totally professional.
- Keep your client's confidences.

YOUR ETHICAL RESPONSIBILITIES



THE 4 COMPETING DUTIES:

- To your client
- To your fellow lawyer
- To the administration of justice
- To yourself

IMPROVE AND DEFEND YOUR PROFESSION



- Support the fair administration of justice.
- Make sure people understand the judiciary is the third branch of government.
- Speak out as a true professional when you see undue criticism.



THANK YOU!

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