



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET DD
INTRODUCTION TO CLIENT DECISION-MAKING & INVOLVEMENT**

Worksheet DD is intended to facilitate a discussion about the responsibilities of the client and the lawyer in decision-making and the best ways to involve a client in their case.

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- Discuss the importance and necessity of involving clients in decision-making in their cases. See Prof. Cond. Rules 1.2, 1.4, 1.6, and 2.1.
- Provide examples of the types of decisions in the mentor's practice in which he or she involves the client, including the ways in which the client are involved, the reasons for involving the client in those instances, and the reasons for not involving the client in certain decisions.
- Discuss the difficulty in knowing what instructions are given (or not given) by a client and some traps that a lawyer (particularly in the new lawyer's practice area) can fall into regarding identifying the client instructions.
- Share best practices that the mentor has adopted in his or her practice to document client instructions, including confirming in writing to the client about the instructions that were given and the steps that were or were not taken.
- Discuss the suggestions given in the attached book excerpt. HENRY W. EWALT, THROUGH THE CLIENT'S EYES: NEW APPROACHES TO GET CLIENTS TO HIRE YOU AGAIN AND AGAIN at 71 – 88 (2nd ed. 2002).

RESOURCES

OHIO RULES OF PROFESSIONAL CONDUCT

**I. CLIENT-LAWYER RELATIONSHIP
RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION
OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the

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client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision as to a plea to be entered, whether to waive a jury trial, and whether the client will testify.

(b) [RESERVED]

(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.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(e) Unless otherwise required by law, a lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional misconduct allegations solely to obtain an advantage in a civil matter.

View comments at

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

RULE 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.

View complete rule and comments at

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

RULE 1.6: CONFIDENTIALITY OF INFORMATION

(b) A lawyer may reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary for any of the following purposes:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the commission of a crime by the client or other person;

View complete rule and comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule1_6

II. COUNSELOR

RULE 2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social, and political factors, that may be relevant to the client's situation.

View comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule2_1

INVOLVING THE CLIENT IN THE DECISION-MAKING PROCESS

If one is part of the decision-making process, it is far less likely that the involved person will second-guess the decision made than the person who did not participate in the decision-making process. Why? Because the person is fully informed, "invests" some ego in the decision and accepts responsibility for the outcome, whatever it may be.

It follows that if a client participates actively with the lawyer in the decision-making process about strategy on the client's legal matter, it is far less likely that the client will be dissatisfied regardless of the outcome. It is also unlikely that the participating client will bring a malpractice action. Even if a malpractice suit is brought, the client's participation in decision making significantly diminishes the client's chances of winning.

Team psychology in sports or legal projects spreads the result's joy and disappointment. Watch the reactions of benchwarmers on a football team when a starter returns to the sideline after making a good play. Their enthusiastic and genuine congratulatory antics stem from the part they played in practice. The obvious disappointment of a lost game can also be observed in the team member who didn't get in the game. I have experienced a like emotional connection with clients when they have participated in the fate of their legal matter.

We lawyers must learn how to think like our clients, rather than like their lawyer. This includes focusing on how a legal matter fits into an individual's life or a corporate client's business plan. The suggestions

contained in this chapter are intended to facilitate breaking down the wall many lawyers construct between themselves and their clients.

"MY-CASE" SYNDROME

Ever heard yourself or other lawyers use these expressions? "I'll take your case." "I got the judge to grant my motion." "I'm going to depose every person I can think of on the other side." "My case is going to trial next week." "Your facts are bad."

Our very lawyer language suggests that we consciously exclude the client and other lawyers in our firm from any case we brought to the firm or on which we are working. (An exception is, even if an associate is working almost 100 percent of the case with a partner, then the case becomes partner Smith's case or shareholder Jones' case instead of the lawyer associate's case.)

The "my-case" syndrome may be caused in part by (1) the lawyer's ego, which operates without regard to the facts on the assumption that only "I" can do the best job on this without regard to the truth of who all is required to service the matter, and (2) the system of compensation that most law firms use to reward those who bring in business and/or work on matters.

When lawyers take exclusive possession and sole proprietary interest in a client's matter, it takes on an existence of its own, separate from the client. This process of cutting out the true owner, the client, has the same psychological effect as foreclosing on the property of a delinquent mortgagee or executing on a judgment. In fact, the lawyer's grabbing possession of a case is more analogous to the bully's grabbing sole possession of the baseball on the sandlot because there is no formalized process of review, as in the instances of foreclosure or executing on a judgment.

Client resentment must naturally flow from lawyers stealing the right to make decisions from clients. If your spouse or significant other makes a decision on a matter you deem important without involving you, your likely reaction is to be upset or resentful. If the result of the decision is bad, this feeling is magnified in retrospect. Your client's feeling is the same when the lawyer makes a critical decision without the client's input. Unilateral decisions affecting another adult are sources of conflict in all aspects of life. The lawyer-client relationship is no different.

Many frequent users of legal services are troubled, panicked, and angry when they lose control of "their" case. In fact, a first-time or occasional user of legal services may be even more disturbed since he or she has never previously experienced the loss-of-control feeling in business or personal matters.

Even if the lawyer is victorious at trial or achieves everything the client sought in a business deal, the client may be resentful. The root of that resentment is not the result, but the process in which that the client was denied the chance to feel he or she contributed to the victory. One client antidote to this resentment is for the client to conclude that the lawyer's service was irrelevant to the victory since the client's prior actions were vindicated. In such instances, the fees charged become primary because that is the only aspect of the process in which the lawyer is permitting the client to participate—the paying part. People just cannot feel a sense of responsibility for success or failure if they have not been involved contributors. It is even worse when clients have been involved and the selfish lawyer gives no recognition or credit.

Separate and apart from all these client-relations reasons for actively soliciting the client's participation, the Model Rules mandate unequivocally that lawyers accept the client's authority to make decisions about the matter and to keep the client informed concerning those decisions. Yet the Model Rules are only the starting point for lawyers to create and develop relationships with clients. For lawyers to maximize their effectiveness for clients and to earn the clients' respect, they must do much more than the Model Rules specify.

In the remaining portion of this chapter, I'll suggest a number of ideas for your consideration to break down the "my-case" syndrome.

USING PRONOUNS APPROPRIATELY

To break the "my-case" syndrome, proper use of pronouns is of prime importance. Consistently strive in all oral and written communications to and with clients to replace "I" and "my" with "we," and substitute "our" for "your."

Instead of "I need to consider the implication of these new facts," it becomes "we need to consider the implication of these new facts." Similarly, "the IRS's position is that your forms were not filed on time," becomes "the IRS's position is that our forms were not filed on time" (regardless of the fact that the lawyer was not aware of or involved with the filing of the forms).

The use of the appropriate pronouns for a joint lawyer-client relationship will go a long way toward replacing the "my-case" syndrome with the "our-case" lawyer-client relationship. It will also convey and reinforce that the client is an important participant. Communications alone will result in greater client satisfaction.

Coincidentally, this team approach will also reduce stress on the lawyer. Team decisions optimize opportunities to have all of the relevant

information before committing to a course of action. They lessen the chances that the course will have to be changed mid-stream. When the lawyer does everything possible to arrive at the team's destination, and it turns out to be an undesirable one, at least the lawyer does not bear the burden of having selected the destination.

THE ALPHA OF CLIENT INVOLVEMENT

The initial face-to-face meeting between the client and lawyer usually sets the expectations and tone for the lawyer-client relationship for the course of that particular case or matter. The relationships may change from case to case and during the same matter, even between the same lawyer and the same client. Likewise, the client's relationship with one lawyer may be entirely different than the client's relationship with another lawyer in the same firm.

Even if the lawyer-client relationship has not been what it should have been in the past, it may be altered on any new matter, or even during the same matter. The lawyer bears the responsibility for the client relationship regardless of the personality of the client. So, regardless of how difficult a client may be, the lawyer must be constantly proactive in shaping and reconstituting the lawyer-client relationship.

The client has selected the lawyer. From that very act, the client has demonstrated a willingness to pay the lawyer for advice, representation, and a relationship. The lawyer may reject the client's offer to retain his or her services. However, after the engagement, if the foundation of the relationship does not develop at the initial meeting and become stronger over time, the lawyer is responsible in 99 percent of the cases. To put the blame for a poor lawyer-client relationship on the client is a lawyer copout. If the lawyer agrees to represent the client, the lawyer must be sure that the relationship thrives within legal and ethical boundaries.

The client is in large part willing to pay the lawyer's fees in order to have a professional relationship with the lawyer. The client could probably obtain the objective reading of the law from any number of sources that now include thousands, including ones on the Internet. The client has chosen you not because you are the sole source of the needed technical legal knowledge, but because, for whatever rational or irrational motivation, the client desires to have a professional relationship with you—a client-lawyer relationship. The shift in perception from lawyers thinking they have been chosen to work on a legal matter to being selected as one party to a professional relationship is helpful for reorienting lawyer's attitudes about law practice.

Before asking the client to tell you about the situation, it is a good idea to discuss with the client the principle of attorney-client privilege. You might expound on that by stating that a lawyer can be most helpful to a client when the lawyer knows the worst about the facts. Explain that belated surprise about new facts involving any portion of the matter is the most devastating thing that could happen at trial or during final business negotiations. Assure the client that the attorney-client privilege extends to all those in your office as well as yourself. This assurance of confidentiality usually puts the client-lawyer relationship on a special and unique basis instantly.

THE INITIAL MEETING—THE FOUNDATION OF THE RELATIONSHIP

A couple of things should never be done in an initial meeting, or ever, with a client. We will discuss them before we explore what should be done.

First, it does no good to guilt-trip the client by saying that if he or she had come to you before, the client would not be in all this trouble. Frequently, lawyers who are replacing another lawyer on a matter enjoy expounding on the failures and shortcomings of the previous lawyer. What lawyers who do this don't realize is that no matter how dissatisfied the client is with the previous representative, such comments are slamming the client for bad judgment in choosing the first lawyer.

Most lawyers who use this approach are trying to obtain a superior-inferior relationship with the client and also to position themselves as blameless in case the situation becomes worse. Regardless of how pleasurable or protective to the lawyer it might be to guilt-trip the client or bash the previous lawyer, this paternalistic, judgmental, less-than-civil approach obviously is not the way to build a good working relationship between adults or attorney and a child client.

Second, telling the client how busy you are and how many other matters you have to handle will not build the confidence of the client. The initial meeting with the client provides the lawyer with the perfect audience for boasting; however, to boast about how busy one is will only worry the client about whether you will devote sufficient time and effort to the client's business to render effective representation. Instilling doubt in the client that the lawyer will not meet scheduled milestones is not an objective of client relations. It sets up the client conclusion that the first time the lawyer is late on a deadline—no matter how minor—it is because the attorney was working on some other client's

business. Sometimes, resulting resentments hatch malpractice claims, even when the other client's matters had nothing to do with the delayed performance.

Now let's examine some things that should occur between lawyer and client early in the relationship.

The initial meeting with the client is critical to setting the substance and tone for the entire relationship. The most crucial aspect of that relationship is full, free and open two-way communication. The client-to-lawyer communication portion is paramount. Permit the client to tell every detail, even irrelevant ones, and to express feelings. Ask questions to gain relevant information about facts, feelings and goals. This is necessary information to serving the client well and will show you are interested. Take notes to demonstrate that what the client is saying is important to you and so you can remember what the client said. But, don't be so wrapped up in taking notes that it distracts you from listening to the client as a person or detracts from showing empathy for the client's situation. Discuss some of the general aspects of the law so the client is reassured that he or she has retained a lawyer knowledgeable about the relevant field of law.

Ask what goals the client wishes to accomplish jointly with you, as his or her lawyer. What does the client want from your representation on this matter? Make a list of mutual client-attorney goals. Read it back to the client. Ask the client whether any other items should be included on the list.

Some clients need assistance in thinking through their real goals. They also may need help clarifying what they can realistically expect from the legal intervention and their lawyer. You should use all of the information acquired from clients about what is to be accomplished to assist in joint goal setting (or refinement) and the clients' expectations of their lawyer. If the lawyer permits the client to leave the initial meeting with expectations soaring well above reality, the lawyer will eventually pay dearly.

The success and strength of a lawyer's relationship is largely governed by acquiring relevant facts and personal information and then using them effectively to guide the client while building the relationship. If the client does not articulate the expectations, the lawyer, in the interest of developing a fruitful relationship, must politely probe to marshal the materials necessary to construct the desired mutually advantageous relationship. The foundation of the "advantageous relationship" has to be that the client and attorney are working together to achieve common, realistic goals.

In addition to goals, the lawyer should learn, at a minimum, enough information to answer the following questions by the end of the initial meeting with the client:

1. What does the client subjectively expect from the lawyer?
2. How much time, effort, and money is the client willing to commit to this matter?

Each client brings unique expectations based on prior experiences with lawyers or the lack of them. If lawyers are going to meet those expectations, they must be known. These not only encompass goals, but other things like the frequency, nature and mode of communications. Some clients will invest large sums of money in a legal pursuit but not the time required to research a deal or prepare for trial. Others have limited funds to expend or think a matter is only worth a limited investment of money. The lawyer needs to know the extent of a client's commitment on all aspects required to see a matter through to a conclusion. This is necessary because that information will determine what course-of-action options are available for the lawyer to recommend to the client. It is also an obligation of the lawyer to educate the client about the real-world quantity of client time and money that will be required to best pursue the matter. Further, the attorney must be forthright in explaining when such expenditures are likely to be futile.

Being judgmental about the client's goals will accomplish nothing. For instance, saying that no one has ever won a case like this will do more to undermine the client's confidence in you than convince the client that the situation faced has little prospect of successful resolution. If you feel the client's goals are totally unrealistic and that you won't be able to convince the client over time to modify them, you will probably be better off declining to undertake the representation. Under these circumstances, it is highly unlikely that you will be able to achieve the client's desired result, you won't develop a satisfactory relationship with the client, and the client will most likely make comments disparaging your efforts.

You don't want to be dubbed ineffective, even if the client pays your invoices in full.

Failure to develop a satisfactory client relationship—regardless of cause—will, in the long run, do your practice more harm than good. It will be detrimental because you will not be building toward repeat business and the client is very likely to "bad-mouth" you to others which adversely affects existing clients and prospects for new business.

ESTABLISHING A TIMETABLE

Develop a mutually acceptable timetable with the client for at least the initial actions to be taken in the matter. This timetable should set out what will be done, by whom (including the client), and when it will be completed. A simple example of a timetable is the drafting of an estate plan. It might appear as follows:

October 2: Lawyer first meets with Client.

October 5: Client gathers and mails asset inventory and insurance policies to Lawyer.

October 15: Lawyer mails draft of estate plan to Client.

October 20: Client reviews document and raises questions or make any changes to draft and sends them to Lawyer for legal analysis. If none, the client will notify lawyer that there are no changes or questions.

October 25: Client scheduled to meet with Lawyer in law firm conference room at 2 p.m. to execute estate plan.

An alternative to this specific date timetable is one that clearly ties the lawyer's performance to when the client performs. Such a timetable could appear as follows:

October 2: Lawyer first meets with Client.

October 5: Client gathers and mails asset inventory and insurance policies to Lawyer.

Ten Days after
receiving
complete
materials

from Client: Lawyer mails draft of estate plan to Client.

Five Days after
receiving draft
of estate plan
from Lawyer:

Client reviews and raises questions or makes any changes to draft and sends them to Lawyer for legal analysis—if none, the Client will notify Lawyer that there are no changes or questions.

Within Two
Days of receiving
Client's
comments on
estate plan draft:

Lawyer will schedule and notify Client of appointment time and date to execute the estate plan.

Obviously, in setting such a timetable one would substitute the client's name for "Client" and the lawyer's name for "Lawyer." Additionally, if it is appropriate to have an associate, legal assistant, or legal secretary involved, that person's name should be in the timetable. Be sure you introduce the client to everyone else whose name is in the timetable before the client leaves the office from the initial meeting.

By constructing a timetable, the client becomes a part of what is going to be done, deciding who will do it and when it is going to be completed. The client is also assured that even though there is not a daily communication from the lawyer, the lawyer and the firm have certain responsibilities and that the client can judge whether they are met. The timetable also has the advantage of providing the client with an early understanding that if the client does not provide information in a timely fashion, the lawyer can't be blamed for failing to meet the subsequent deadline.

TALKING MONEY WITH THE CLIENT

No matter how uncomfortable or painful, a full explanation of all fees and charges must be given to the client in the initial interview. If possible, quote for a specific fee, otherwise give estimates and ranges of total fees and costs. If totals are too uncertain to estimate or the matter is complex, tell the client a ballpark-number for the entire matter and the approximate cost of the first several steps that must be taken to achieve the agreed upon goals.

This is critical, not only to establish an essential element of the lawyer-client relationship, but also to give the client an idea of the cost of accomplishing the goals set forth. When the approximate cost is factored in, the client may choose to change those goals.

A good practice is to go over the fee structure, expense charges, and billing practice and payment expectations. Always ask if the client has any questions. Clients need to be put at ease or at least on notice about fees. You might offer some comment about the cost of quality. Remember, most first-time individual users of legal services are familiar only with the TV, newspaper or phone-book advertising for cheap divorces and lawyer pitches that promise, "You don't pay unless I get you money!" Explain the economic premise on which your practice and fees are based.

Many lawyers and firms do not show, or have a great reluctance to share, information concerning the cost of doing business with others. This is so even with people with whom we practice—for instance, partners generally don't let associates know the financial status of the practice, though the health of the practice is dependent on associates. There

course of action than what was discussed in your office and that you hope the client will decide to use your services at some point in the future.

This process may have to be modified to comply with all state and model ethical requirements, but you must clearly negate any possible inference of a lawyer-client relationship where there is none after an initial telephone or face-to-face discussion of a specific legal problem.

EXTRAS

A nice touch after the client has actually retained you is to give him or her an empty file folder, labeled with the name of the client and matter, in which the client is instructed to keep all correspondence and other documents pertaining to this matter. The file should be a distinctive color with the lawyer's law firm's name, address, e-mail, and phone number on the outside.

On the inside flap may be printed a complete list of all of the services that the law firm offers and repeat the name of the firm, address, e-mail and phone number of all offices. The file folder should contain the law firm's current brochure. The individual lawyer's business card should also be inside, but removable. The lawyer might give the client another business card for the client's purse or wallet. Thus, the client leaves the initial meeting with more information on the lawyer, law firm and its services. All of this information assists in building the relationship and cross marketing of other services.

Immediately following the initial meeting with the client, dictate a letter to the client that reflects a summary of the meeting just concluded. Extract the information for the letter from the information you recorded on your legal pad. This should include the timetable for performance and the mutually agreed goals. The letter should be framed with initial and concluding paragraphs that reflect (1) your gratitude at being retained to represent the client in this matter and (2) your enthusiastic commitment to represent the client.

INVOLVEMENT DURING THE PENDENCY OF A MATTER

After the initial communication, practicing lawyers have all been frustrated by "urgent" messages from clients that turn out to be unimportant, by clients posing naive questions, and by clients requiring unnecessary meetings to be added to your already overburdened calendar. It took me a long time to learn not to resent returning "urgent" phone calls that are not urgent, answering "dumb" questions, and schedul-

ing seemingly "unnecessary" handholding meetings. The client will perceive any resentment or reluctant attitude. Instead, be thankful that the client wants your advice on something urgent and important to the client and desires to use and develop the relationship with you. The magnitude and substance of the contact are unimportant compared to the fact that the client wants contact with you.

Next stop and ask yourself where you have previously fallen down in the development of client relationships. How can you satisfy this particular client's need for the relationship with you as a lawyer in the future? The client may be seeking an avenue to develop the long-term relationship, rather than only seeking the answer to a technical legal question. Focus on the relationship, not the matter.

THE KEY TO YOUR FUTURE

Many lawyers resent the time they must spend "hand-holding" with a client. The urge is to get back to "work" researching, doing deals, writing, or trying cases. If, as I believe, the relationship with the lawyer and not the legal work brings the client back, few things could be more important than "hand-holding."

The doctor with a superior bedside manner will almost always have more patients than the physician lacking in such skills. Barbers and hair stylists build their trade on the relationships they establish with their customers, rather than purely on skill cutting and styling hair.

Clients of lawyers have a strong desire for relationships with the lawyers they hire. Lawyers who want to build a practice must respond accordingly. We attorneys must elevate the importance of the relationship to the same top shelf on which the client places it. Take every opportunity to spend time and effort developing the client's image of that unique human connection known as the lawyer-client relationship.

We must reflect, study, understand, and implement practices that satisfy the client's need for the client-lawyer relationship. This should be in the forefront of the lawyer's mind in everything he or she does with and for the client. For it is on the quality of the relationship that the client makes decisions critical to the lawyer's future.

SEND COPIES; GIVE UPDATES

It should go without saying, clients must receive not only a copy of every pertinent communication the lawyer sends out, but also a copy of every communication the lawyer receives concerning the matter or case.

However, it is astounding how many lawyers fail to fully execute on this basic tenet of client relations. These copies need to be sent to the client promptly with a record of their being sent kept in the client's file at the law firm. Clients really do read these communications and are very concerned about them. If they call with a question or comment, be patient and give a full explanation no matter how busy you are or how naive the question.

This copy requirement of good client communications inherently carries with it the mandate that the lawyer write in language understood by a layperson. If the correspondence received and forwarded is written in legalese, most clients will appreciate a note translating the essence of the document. Paralegals or experienced legal secretaries should be able to compose the large majority of these letters. However, guard against writing that explanatory note in a condescending style. Using phrases like "It appears that our opponent is taking the position that . . ." is far superior to "In case you don't understand. . . ."

The client should also receive regular status reports on what is happening with a case. These may be routinely produced by legal assistants or, in smaller offices, experienced legal secretaries. They need not be done monthly, but the frequency should be clearly understood in the initial meeting and confirmed in the letter summarizing that meeting. Then procedures must be implemented in the law office to guarantee these reports are sent to the clients on time. Legal and administrative assistants or secretaries are much better suited to assure the execution of this function than lawyers.

Additionally, the client should have a written communication summarizing any phone conversation of importance concerning the matter being handled by the lawyer. This is especially important if the client was not privy to the call. On more significant and urgent matters, the lawyer should call the client to report before dictating the written record.

The substantive material of these written and telephone reports is important, but even more important is using them as a vehicle to build a strong relationship with the client through increased client contact and involvement. They reassure the client that the lawyer is working on the matter and, interestingly, force the lawyer to pay attention to and work on the matter.

Inadvertently, I discovered that e-mail communications were causing me to fail to fully communicate with my clients. I shoot off e-mail to an opposing counsel, or received them, and failed to copy the client. As e-mail communications increased, the frequency of this oversight grew. One reason for the oversight is lawyers' reliance on secretaries or administrative assistants to be sure the client is always copied on all

correspondence. When a lawyer types an e-mail, the mind-set is dictation, which leaves the details such as copies to others.

Regardless of the reason, the client must receive a copy of relevant e-mails sent and received. Sometimes putting a colored "sticky" on the computer on which you have written "Copy the client" helps establish the habit.

While thinking about e-mails, I want to remind you to have a hard copy of your e-mail correspondence with your client and between you and opposing counsel placed in the client's matter file. I was working on a number of large matters shooting an unknown number of e-mails to the client requesting information, giving advice and obtaining involvement in the decisions. Additionally, I was exchanging e-mails with opposing counsel—sometimes at a rapid fire pace—on very crucial aspects of matters. It hit me one day that I was deleting these messages and thus there was no record of the communication in our client file. This was an easy way to create disputes with opposing counsel and possibly with your client. Plus, there was no documented record as to what you advised.

To solve the problem I had created, I told my administrative assistant, that I'd be sending her blind copies electronically and that she should print a hardcopy and file it in the matter's correspondence subfile. This is now working well. I hate to think what might have happened if a dispute had arisen between a client and me or with opposing counsel about the terms of a deal which were only documented in the permanently deleted e-mails!

Voicemails pose a similar problem. I forward key ones I receive to my assistant to be transcribed, and where appropriate sent to the client, then filed. Dictating a memo to the file with a copy to the client is the only way I've recorded the content of voicemails I've left. How you record voicemails isn't of import; that you do it is.

The lawyer should request client input with respect to the strategy and direction of the matter. A lawyer has an obligation to describe the impact of the law on the facts that have been communicated, investigated, or formally discovered. Then the client needs to be a full partner in deciding what to do. Alternative courses of action, including the cost of each, need to be laid on the table, preferably in writing, by the lawyer for discussion with the client.

Posing several options for the client to consider is not difficult because the competent lawyer should be considering a number of different approaches to resolve the client's problem anyway. Asking the client, "What do you want to do?" will not be viewed as the lawyer's uncertainty of action, but rather an involvement of the client in deciding his or her future as it may be influenced by the outcome of that

particular legal event. If the client declines your invitation to participate in decision making, as some clients do, take firm control by giving clear recommendations. Then get the client to agree to or alter the approach before pursuing it. If the client wants time to consider, give it. But, give it with a deadline, for some prefer to ignore difficult decisions hoping the situation will resolve itself. And sometimes it does, but as the client's lawyer, you can't count on it.

If the course of action costs money, even with participation, clients may still tell others, "My lawyer made me do it." At least, the clients themselves will know they made the decision and your relationship with that client will be preserved.

Never assume that the client does not care. Some clients deal with their lawyers as with their doctors: "Just Fix It". This does not mean that they don't care about their injury or disease. It may mean they just don't know what to do because they don't understand either their predicament or their options. Recent medical studies have proven that patients who take more control of their physical condition by meaningfully participating in medical decisions heal better and faster.

The same holds for the cure of legal maladies. So, it becomes an essential part of the lawyer's job to get and keep the client involved. It may seem curious to some that when lawyers take steps to assure that clients maintain control and substantially determine the course of a matter, even if not the outcome, that the relationship with lawyers improves. When lawyers take the cooperative rather than the paternalistic approach with clients, the clients increase their reliance on lawyers. This seems like paradox. Those who have experienced the joy of being on an effective team in athletics, war, or work, will recognize that that it is a fundamental truth rather than a paradox.

It is imperative that the client remains involved with the legal process through the conclusion of the reason the client consulted with the lawyer in the first place. In many cases, the strength of the lawyer-client relationship is directly related to the degree the lawyer has allowed, enabled, or required the client's participation in the client's own legal affairs.