



PROGRAM MATERIALS
Program #35157
September 17, 2025

Don't Do That! A Practical Ethics Course For The Family Law Practitioner

Copyright ©2025 by

- **Donelle Ratheal, Esq. - Ratheal Family Law, PC.**

All Rights Reserved.
Licensed to Celesq®, Inc.

Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919



RATHEAL

FAMILY LAW

Don't Do That!

A Practical Ethics Course
For The Family Law
Practitioner

Donelle H. Ratheal
September 17, 2025



RATHEAL

FAMILY LAW

President
Ratheal Family Law, PC

Donelle H. Ratheal

Litigation Practice: Complex
Matrimonial and Family Law

Classical Pianist
Owner: Holiday House

Don't Do That!

First: Assume that your clients will be your biggest fans forever.

Second: Assume that no client will ever file an ethics complaint against you.

Third: Assume that you cannot reduce the likelihood of an ethics complaint being filed against you.

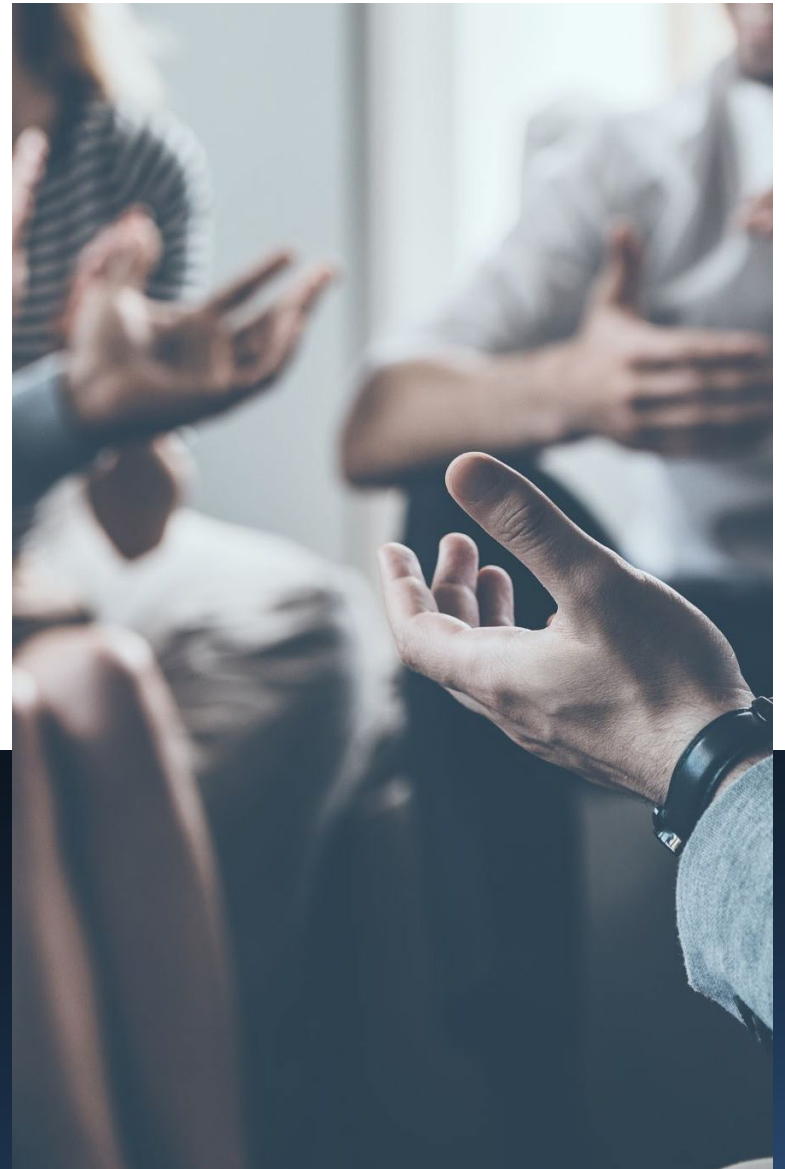
Top Ethics Complaints

Neglect
Silence
Disloyalty
Dishonesty
What You Agreed To Do
Fees

“Protect Yourself From Common
Disciplinary Complaints”

March 7, 2022

American Bar Association



The Best Way To Protect Yourself From Your Client

- Put everything in writing.
- Everything.
- Yes, it takes lots of time.
- It takes even more time to respond to your Client's ethics complaint.
- Heaps and heaps of time.



One Pathway To An Ethics Complaint

Assume that your Client will remember everything that you told her in the initial client meeting.

(Be honest, do you remember everything that you said to your Client in that meeting?)

THE DEFINITIONS IN THE MODEL RULES

Read them.
They are Very important.

Model Rule 1.0

Terminology: Belief

"Belief" or "believes" denotes that the person involved **actually** supposed the fact in question to be true.

A person's belief may be inferred from circumstances.

Rule 1.0(a)

Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Confirmed in Writing

Part 1

"Confirmed in writing," when used in reference to the [client's] **informed consent**, means informed consent that is (a) given in writing by the person or (b) a writing that a lawyer promptly transmits to the person confirming an oral informed consent.

Rule 1.0(b) (paraphrased)
Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Informed Consent

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

Rule 1.0(e)
Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Confirmed in Writing

Part 2

If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

Rule 1.0(b) (final sentence)
Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Reasonable Lawyer

"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

Rule 1.0(h)

Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Reasonable Belief

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

Rule 1.0(i)

Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Reasonably Should Know

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

Rule 1.0(j)
Model Rules of Professional Responsibility

Reasonable

In Practical Terms:

“Reasonable Lawyer” =
A cautious, thoughtful lawyer.

“Reasonably” =
Reasonable under the specific
circumstances.

“Reasonably Know” =
Don’t stick your head in the sand.

Reasonable: A Scenario

- Client = Former spouse in a post-decree enforcement case.
- Decree = Marital credit card debt divided 50/50 as of Petition date.
- Client's Credit Card = used during divorce.
- Former Spouse's Credit Card = closed when filed b/c joint application.
- Client insists her credit card's post-filing 21% annual interest rate be included b/c she had to use her card for living expenses during divorce.

Scenario Questions

- Does your Client have reasonable expectations about adding the interest to principal?
- Is post-filing interest allocation addressed in the Temporary Order, Interim Order or Decree?
- What alternatives can be offered to your Client?
- Does your Client understand the consequences of a court dispute over credit card interest, including legal costs?

Model Rule 1.0

Terminology: Writing/Written

"Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating [copying], photography, audio or videorecording, and electronic communications.

Rule 1.0(n) (first sentence)
Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Signed

A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Rule 1.0(n) (second sentence)
Model Rules of Professional Responsibility

Signed: A Scenario

- Client executes her signature to Retainer Contract through a “digital signature”.
- After the case is closed, Client refuses to pay remaining invoice balance.
- Client’s Defense: She did not review, personally approve and execute it. Her teenage child “signed” it.
- What digital signature application did you use?

COMPETENCE: A MOVING TARGET

Legal competence in 2000.

Legal competence in 2025.

The same?

Model Rule 1.1

Competence

Part 1

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.1
Model Rules of Professional Responsibility

Model Rule 1.1

Competence

Part 2

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.1, Comment 8
Model Rules of Professional Responsibility

Competence And Loyalty To Client: A Scenario

- You receive a call from a concerned adult that a 17-yr-old is suffering emotionally and physically from her father's excessive restrictions on all aspects of her life.
- The adult is will to guarantee your fees and costs.
- The adult also admits that he cares a great deal about the 17-yr-old.
- Who is the client?
- You have never handled this type of case before.

WHO DECIDES WHAT IN THE RELATIONSHIP?

There's a Rule for that.

Model Rule 1.2

Scope of Representation/Authority

Part 1

A lawyer shall abide by a client's decisions concerning the objectives of representation.

[limited by conditions in paragraphs (c) and (d)]

Rule 1.2(a) (excerpt paraphrased)
Model Rules of Professional Responsibility

Model Rule 1.2

Scope of Representation/Authority

Part 2

A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Rule 1.2(c)

Model Rules of Professional Responsibility

Model Rule 1.2

Scope of Representation/Authority

Part 5

A lawyer shall abide by a client's decision whether to settle a matter, waive a jury trial or enter a plea.

Rule 1.2(a) (excerpt paraphrased)
Model Rules of Professional Responsibility

Model Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.3
Model Rules of Professional Responsibility

TOOLS FOR EFFECTIVE, CONSISTENT CLIENT COMMUNICATION

How To Avoid Telephone Time
And Still Have An
Informed, Satisfied Client

Model Rule 1.4

Client Communications

Part 1

A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules[.]

Rule 1.4(1)(a)
Model Rules of Professional Responsibility

Promptness: A Scenario

- You receive a horrible offer from OC on the post-decree relocation request; you know that it will severely upset your Client.
- The forensic custody evaluator's report is due to you in three more days.
- Do you wait to forward the offer until after you receive the report?
- Do you forward the offer immediately after you receive it?

Model Rule 1.4

Client Communications

Part 2

A lawyer must reasonably consult with the client about how the client's objectives will be accomplished and keep the client reasonably informed about the status of the litigation, mediation or collaboration of the divorce.

Rule 1.4(a)(2) and (3) (paraphrased)
Model Rules of Professional Responsibility

Objectives: A Scenario

- Your Client is a Myers-Briggs textbook INFP.
- He keeps weighing his options of settling or going to trial after six months into the litigation.
- He wants to save money but knows that she won't be reasonable.
- The deadline to complete remaining discovery is getting closer.
- What do you say/recommend to him?

Reasonable Communications

When the case is not highly active:

- monthly
- summary of actions/strategies
- information updates
- document supplementation

Reasonable Communications

When the case is highly active:

- quick email after the hearing.
- in person/Zoom conference w/client re:OP's settlement offer
- direct client involvement in trial prep

Model Rule 1.4

Client Communications

Part 4

A lawyer shall promptly comply with [the client's] reasonable requests for information.

Rule 1.4(a)(4)

Model Rules of Professional Responsibility

Promptness In Responding: A Scenario

- Your Client emails constantly. He sends a follow-up email 20 minutes later if you don't respond. Then he calls the office and 10 minutes later he calls your cell phone.
- He pays for your time. Like clockwork. But he is exhausting.
- He wants a copy of every scrap of paper or information that you receive in his case. Unreasonable?
- How can you best accommodate his requests?

FORMAL COMMUNICATIONS

How You Begin
And End The Relationship

Personal Rule No. 1: All Client Contracts Must Be In Writing

- Attorney-Client Retainer Contract
- Email and Electronic Communications Contract



Model Rule 1.5

Fees

The 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, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Rule 1.5(b)

Model Rules of Professional Responsibility.

THE RETAINER CONTRACT: MORE THAN JUST A FEE AGREEMENT

Your Map For
The Attorney-Client Relationship

A Great Retainer Contract. . .

- Anticipates disputes
- Defines the relationship
- Outlines respective responsibilities & duties
- Explains actions & consequences
- Establishes *reasonable* client expectations



Manage Client Expectations Through The Retainer Contract

Client control
Is a good thing

Managing Expectations

“I attempt to communicate on a regular basis with my clients. The Firm generally returns client calls within twenty-four (24) hours. I am frequently out of the office due to court hearings and related matters.”

“You may leave a voicemail message with Firm staff, and someone will respond to your message as soon as is reasonably possible, based upon court schedules and commitments.”

“There is no guarantee that you will receive a quicker response through email or text than through telephone (24 hours). You understand and agree that you will be charged for all phone calls, emails and text messages relating to your representation.”

Anticipate Staff Protection

“No Firm member, other than an attorney, can give you legal advice. You agree that a Firm member may forward your questions to me and may forward my responses back to you. General information that I provide to the Firm for frequently asked questions is not legal advice.”

Explain Client Responsibilities & Duties

“Important: You must preserve all of your correspondence, communications, documents, images and information that might pertain to your case in their original condition and/or format. Do not damage, destroy, delete, alter, change or hide anything that might be requested from you during your case.”

“If you fail to follow the Firm’s recommendation, the judge assigned to your case could determine that you were guilty of “spoliation” of important evidence and impose evidentiary restrictions against you as ‘sanctions’.”

“These sanctions could include a court order preventing your witnesses from testifying and/or refusing to accept your documents as evidence. The judge could assess monetary fines against you and ultimately order you to pay the other party’s attorney fees and legal costs. If you have a question about what you can and cannot discard, please contact us first!”

Anticipate Fee & Cost Disputes

“You agree that you have five (5) days from your receipt of an invoice to dispute, in writing, any fees or costs.”

“If you do not dispute them in writing within the above time frame, then you waive the right to dispute any of the fees or costs on the invoice.”

Establish Boundaries

“If you call, email and/or text me outside regular office hours, and you request that I respond outside regular office hours, then you agree that you will be charged at two (2) times my hourly rate. This rate does not apply when I initiate contact with you outside regular office hours.”

Limits & Controls

“At the end of the case, or when our relationship terminates, you agree that you may obtain a complete duplicate copy of your client file **at your cost**, except those documents that belong to the Firm through its ‘work product’ and/or proprietary rights.”

Be Crystal
Clear About
What You Are
Doing For
The Client

“This Contract is only for the Marriage Dissolution representation.”

“If you wish to retain the Firm for another matter, such as an appeal, enforcement of a final order, post-decree matter or an estate plan, you must sign a new Attorney-Client Contract Letter Agreement and Email Communication Agreement, and you must pay a separate retainer.”

Explain How The Relationship Ends.

“It is understood and agreed that either of us may terminate the Firm’s representation in this matter at any time.”

“Upon such termination, you understand and agree that you are liable for all accrued and/or unpaid fees and costs.”

And Afterwards

“A final invoice will be forwarded to you after your case ends. Approximately three weeks later, if any retainer funds remain, they will be forwarded to you.”

“If you fail to pay the final balance according to our Agreement, the Firm will not accept you as a client for a subsequent matter.”

“Please be aware that the Firm may elect to pursue collection of the fees and costs that you owe.”

The Contract Clauses Establish Duties. . .

Attorney Duties:

Communication
Invoicing
Client Updates
Request Evidence
Representation Limits

Client Duties:

Communication Portal
Payment
Review Updates
Evidence Preservation
Representation Selection

...And Rights.

Attorney Rights:

Receive Client Information

Receive Documents

Reasonable Hours

Terminate Relationship

Clarity

(and peace of mind)

Client Rights:

Receive Case Updates

Receive Advice

Emergent Access

Terminate Relationship

Transparency

SILENCE = FAILURE TO COMMUNICATE

It does not matter how much you think about your client's case. What matters is that you actually share your client's case - - - with your client.

Inform the
Client

Update the
Client

Involve the
Client

Client Invoices

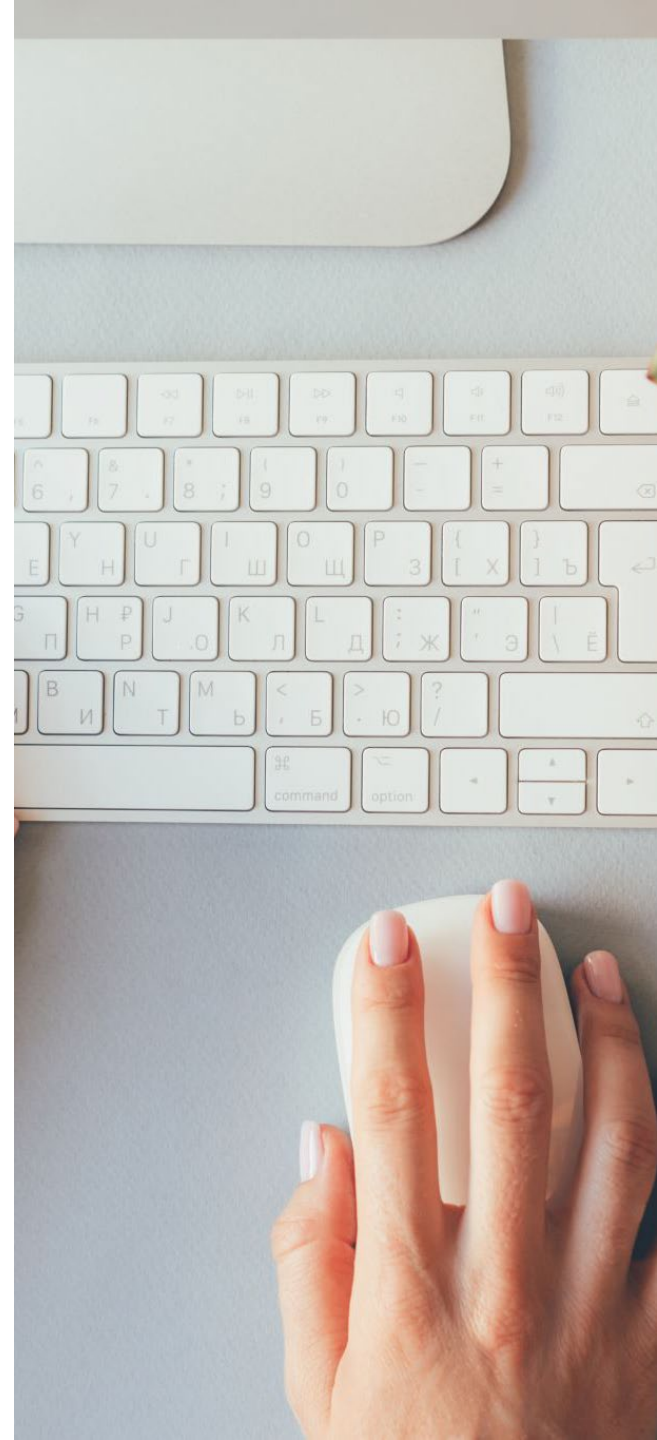
Forwarding Emails

Transmittal Emails

Copies of
Correspondence

Copies of Pleadings

Requests for
Document/Pleading
Review



Client Invoices = Communication

Each Invoice Should Tell The Story Of Your Client's Case And What You Did In The Story.

In Complete Sentences.
With Acceptable Grammar.
And Correct Punctuation.

It Really Matters.

AND: A Detailed Invoice Is Paid More Quickly Than A Generic Invoice.

Forwarding Emails: Good And Bad

Do not copy your client on an email to
opposing counsel.

Or to the Judge.

Or to the Judge's staff.

Or to the GAL.

Or to the Expert Witness.

Why?

Because you disclose your Client's
dedicated, privileged email address.

Instead:

Forward those emails to your Client.

Transmittal Emails

Treat your transmittal emails like formal transmittal letters.

Add a short update with each transmitted document.

Why?

Your Client pays lots of money for these emails (your billable time).

Make them worth it.

Keep The Client Informed:

Open mail. Scan mail.
Upload mail to Client file.
Email to Client w/short update.

Bill for the time.

Consistent Scans + Immediate
Email Transmissions =
Prompt Client Communication

Duty satisfied.
Money earned.

The Client Invoice: Their Story Their Money

Did they offer
an accounting class for law students?

Practice Tips For Fiscal Sanity

Good Habits



Scan and upload all Client-related costs into the Client's digital "Cost & Fees" folder.



Get a billing program you can use.




Print out invoice drafts on the 15th. Review/issue final invoices on the 30th.

Bad Habits

Put all expenses/costs in a box marked: "Tax Year 2025".

You plan on having your secretary handle it forever.

Your secretary does this. You don't have the time or patience. She'll figure it out.

A hand is shown placing a single white sheet of paper on top of a tall stack of papers. The stack is composed of many thin, white sheets, creating a textured, layered appearance. The background is a plain, light-colored surface.

Communication Through Docketing and Protocols

Engaged, involved, satisfied
clients don't file complaints.
They give 5-star Google
reviews.

Office, Calendar & Document Protocols:

Make them.
Follow them.

All team members.
Every day.

Or Murphy's Law will happen.
Oh, yes it will.

Murphy's Law is an ugly thing
at 1:30 o'clock a.m.
before a discovery hearing
or merits trial.

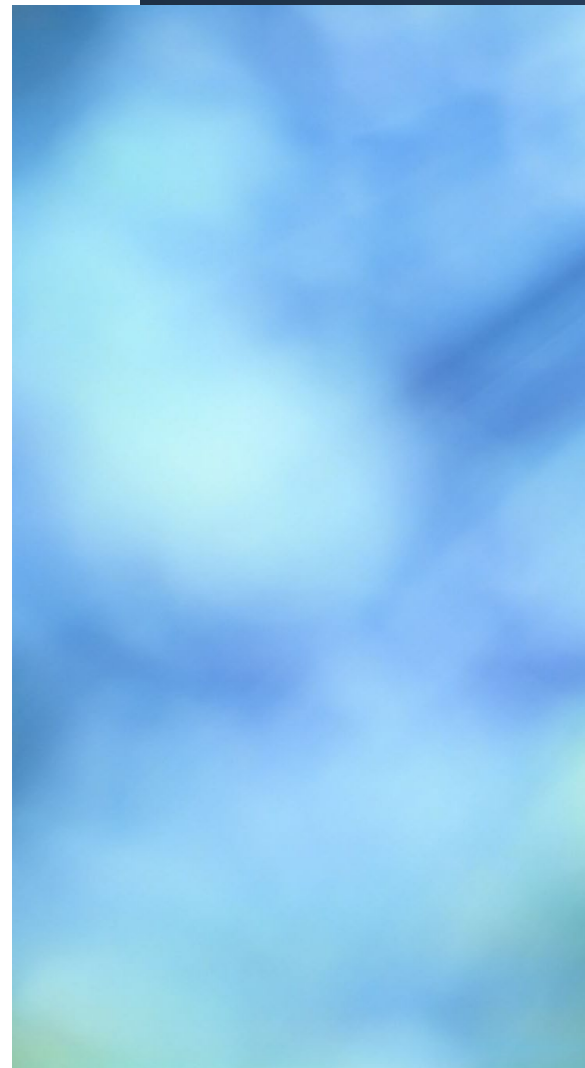
Protocols Help. . .

Reduce Human Error

Create Procedural &
Substantive Consistency

Minimize Last Minute
Stressors

Give You Peace of Mind



IMPORTANT! DON'T USE A FORM AS A COVER LETTER WHEN TRANSMITTING MAIL!

It looks tacky. You cannot bill for it.

If you bill for it, your Client will be very, very unhappy.

Unhappy clients tend to file ethics complaints.

Client Letter Topics: Client Education & Client Duties

Client Education

Initial Steps in Case

Purpose of Discovery

Answering Discovery

Preparing for a Deposition

Use of Experts

Preparing For Trial

Closing Letter

Client Duties

Preservation of Evidence &
Native Formats

Discovery Responses &
Obligations

Discovery Supplementation

Trial Preparation

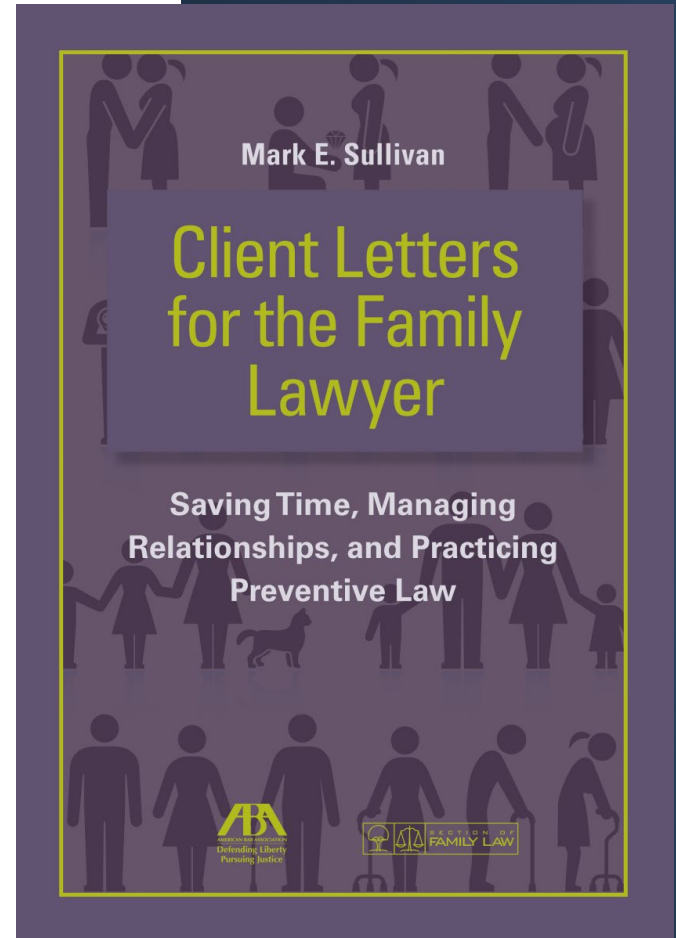
Invoke Appeal

Inspiration For Your Client Letters:

Mark E. Sullivan wrote this book to help colleagues master the art of regular, ongoing client communication.

And to lower the percentage of client complaints about failure to communicate.

Thank you, Mark!



DOCUMENT PROTOCOLS AND DOCUMENT LOGS

Information mastery
inspires client confidence.

Document Protocol

First Step: Document Capture

Hard Copy:
Scan-OCR-Upload
into File

Electronic Copy:
OCR-Upload into
File

Document Protocol

Second Step: File Name & Location

- Client File (single matter)
C:\Clients\Jones-Mary-Divorce
- Client File (multiple matters)
C:\Jones-Mary
 \Jones-Mary-Divorce
 \Jones-Mary-Estate Plan

You Must Be Consistent!

Document Protocol

Third Step: Document Location

M:\Clients\
Jones-Mary-
Divorce\Client
Documents

Documents
received from
Client

Electronic only

Hard copy
or original
returned to
Client

Document Protocol

Third Step: Document Location (continued)

M:\Clients\
Jones-Mary-
Divorce\Control

Bate-Stamped

Ready for
Discovery or
Trial

Electronic &
Hard Copy

Client File Document Log

Document Protocols +
Document Log =

No Lost Documents!

Identify/Find Doc
in @ 15 minutes

Avoid or Minimize
Discovery Battles

Minimize Evidentiary
Trial Battles

Document Log Benefits



Preserves
discovery
misconduct



Highlights
omissions



Identifies critical
documents



Confirms client
compliance

Document Log Benefits

Prevents unfounded discovery allegations

Undermines reptile tactics

Reduces discovery disputes

Prevents evidence exclusion

Loss of Critical Evidence Through Foundation Defects And Illegal Sources

Ignorance is not an excuse.

Model Rule 1.0

Terminology: Fraudulent

"Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction **and** has a purpose to deceive.

Rule 1.0(d)

Model Rules of Professional Responsibility

Model Rule 1.2

Scope of Representation/Authority

A lawyer shall not assist a client in conduct that the lawyer knows is criminal or fraudulent.

Rule 1.2(d) (excerpt paraphrased)
Model Rules of Professional Responsibility

Model Rule 1.2

Scope of Representation/Authority

A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent.

Rule 1.2(d) (excerpt paraphrased)
Model Rules of Professional Responsibility

Model Rule 1.0

Terminology: Know

"Knowingly," "known," or "knows" denotes **actual** knowledge of the fact in question. A person's knowledge may be **inferred** from circumstances.

Rule 1.0(f)

Model Rules of Professional Responsibility

Pathways to Disaster

- Assume the Client's evidence sources are legal.
- Avoid the ESI problem.
- Assume that the Client's evidence is admissible regardless of its format.

(Why are we talking about format?)

Avoid Illegal Evidence

1

Address the issue
in initial client
materials.

2

Require source
integrity through
document
protocols.

3

Counsel your
Client about
adverse
consequences.

Illegal Evidence: Examples



Third party audio recordings.



Text messages from OP's secured cell phone.



Email correspondence from OP's password protected computer/tablet.



GPS report of OP's vehicle titled in OP's sole name.

The Day Of Reckoning: Trial



You received the most important piece of evidence in your Client's case from:



***Your Client
But where did
she find it?***



You did not inquire about its ***source.***



You did not inquire about its ***native format.***

The Day of Reckoning: Trial (continued)



YOU DID NOT OFFER AN
ESI (ELECTRONICALLY
STORED INFORMATION)
PROTOCOL TO OC.



YOU DID NOT REACH AN
AGREEMENT WITH OC
ABOUT ESI PROTOCOL.



YOU DID NOT REQUEST
A DISCOVERY
CONFERENCE WITH THE
JUDGE TO RESOLVE ESI
PROTOCOL.

The Day Of Reckoning: Trial (continued)



The single most important piece of evidence in your Client's case:



Opposing Counsel objects to its admission.



The offered evidence does *not* pass through the judge's foundational "gauntlet".



The evidence is excluded.

The Day Of Reckoning: Trial (continued)

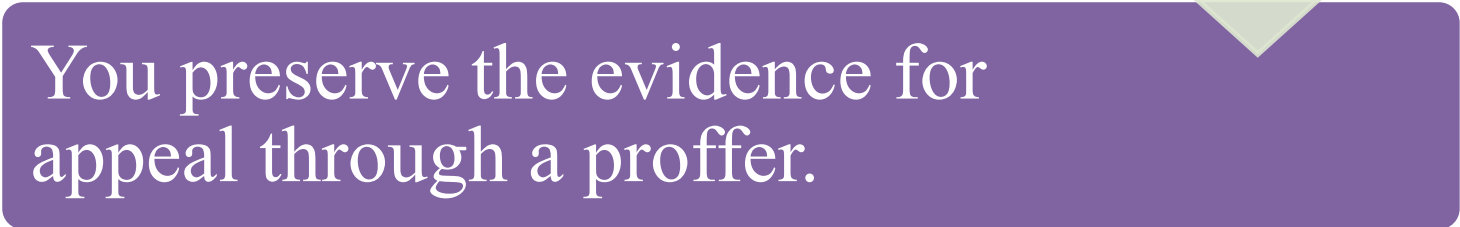
The single most important piece of evidence in your Client's case:



Was the sole/primary basis for your Client's case.



You preserve the evidence for appeal through a proffer.



The Day Of Reckoning: Trial (continued)

The evidence was excluded because:

Illegally obtained,

And/Or

Broken/incomplete chain of custody,

And/Or

Not preserved in its native format.

Post-Day Of Reckoning

Your Client insists that you appeal the ruling for free;

Your Client files a bar complaint after the appeal;

And then files a malpractice claim.

Against you. Sigh.

PROTECT YOURSELF FROM THE PROBLEM CLIENT

Do I need the retainer that much?

No.



Pathway to Disaster

- Assume your Client will take responsibility for failing to produce requested evidence in time to use at her trial.
- Assume your Client will admit that he intentionally altered the evidence that he gave to you.

Model Rule 1.16

Declining/Terminating Representation

- You will suffer financial harm/damage.
- Your health won't allow you to continue representation.
- The Client's goals/objectives are repugnant.

Rule 1.16 (paraphrased)
Model Rules of Professional Responsibility

Model Rule 1.16

Declining/Terminating Representation

- Representation could violate your professional ethics rules.
- The Client fires you.
- Catch-All: If you can withdraw w/o materially harming the Client, you give notice, and you give the documents/evidence back to the Client so another attorney can carry on.

Rule 1.16 (paraphrased)
Model Rules of Professional Responsibility

Advise Your
Client
Verbally.
Then Write
Your “CYA”
Letter.

“Dear Client:

Earlier today we discussed your directive to allow certain photographs of your spouse to be substituted as part of your evidence for the upcoming trial. I refer you to Paragraph No. 11 of our Attorney-Client Retainer Agreement. . . .”

“If you insist upon substituting photographs of your spouse to use at trial, I have no choice but to withdraw as your counsel of record. I am ethically prohibited from following your directive.”

**Do not be afraid to be blunt.
It’s your reputation.**

LIMIT AND CLARIFY YOUR ROLE

Establish boundaries.
Establish consequences.

When To Decline Or Terminate The Relationship

“I want you to make my husband’s life miserable.”

“I’m just too busy to find all these documents on your list.”

“It’s no big deal to change some of the words in the text history. There are too many texts for him to notice anyway.”

“I’ve fired two lawyers already. But I think you’re different.”

“This is a really simple case.”

“It’s her job to find the rest of the assets. I’m not making it easy for her.”

An Aspirational Standard

“Lawyers have a unique position in society as professionals responsible for making our society better. Our rules of professional conduct require more than mere compliance with the law. Because of our unique position as licensed professionals and the power that it brings, we are the standard by which all should aspire.”

ABA President Paulette Brown

February 7, 2016

(public hearing on amendments to ABA Model Rule 8.4)

If you have a question.
If you would like a template emailed to you.
If you want to share a funny story about the
courtroom. Or life. Please email me.

Donelle@RathealFamilyLaw.com