



## Developing & maintaining successful client relationships

Return phone calls,  
don't over-promise results,  
stay in touch and make  
certain your bill doesn't  
come as a surprise

By **Christina Coleman**

The theory that the customer is always right doesn't necessarily apply to our clients. The key to any good relationship is communication. But, good fences make good neighbors. Our practices are built on relationships, with our clients, our co-workers, the bench and bar. We all need each other. But we cannot serve our clients if we have not learned how to develop good client-relation skills.



Christina Coleman

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Client relationships must be developed, and once the relationship is developed, it must be nourished. While client development may be initially more difficult than maintenance, we are fortunate to have a clear roadmap to success in both areas in the Rules of Professional Conduct. Follow the rules, and you're on the right path. So, once you've built your field, they will come...and then!

### Getting clients and developing relationships

#### *Don't chase an ambulance unless it's transporting a relative!*

I have never chased an ambulance in my life, and the old "ambulance chaser" stereotype is offensive to most attorneys. There are other ways to get clients!

Advertising and solicitation by attorneys is governed by the Rules of Professional Conduct and the Business & Professions Code, and an attorney seeking to market his or her practice should be familiar with the Rules.

Rules of Professional Conduct, Rule 1-400 prohibits false, misleading and/or communications or solicitations by attorneys to former, present or prospective clients, and also prohibits "solicitation"<sup>1</sup> of nearly any kind unless there is a family or prior professional relationship, or unless the solicitation is "protected abridgement by the Constitution of the United States."<sup>2</sup>

Business & Professions Code sections 6150, et seq also deal with unlawful solicitation, prohibits use of runners or cappers, or to solicit business (in-person) for an attorney on public or private property. Business & Professions Code sections 6157, et seq regulate legal advertising, also prohibit false or misleading communications, but also prohibit guarantees/warranties, statements/symbols implying the lawyer can obtain immediate cash or quick settlements (e.g., "\$ \$ \$"), lawyer impersonations, client impersonations, dramatizations or spokespersons unless disclosed, or contingency fee arrangements unless also disclosed that the

client is responsible for costs (if that is the case).

Rule 1-400 and the Business & Professions Code apply to Web sites, which cannot be false or misleading in any respect. Further, Business & Professions Code section 6157<sup>3</sup> applies to mass mailings and is not applicable to directed mailings to a specific person (which are still governed by Rule 1-400).

Simply stated, there is no blanket prohibition against a lawyer advertising his/her services, so long as the Rules and Business & Professions Code are followed. For those who are worried about running afoul of these rules, especially relating to the lawyer's Web site or other electronic advertising, a number of legal marketing firms can offer assistance in traversing the applicable laws in meeting your advertising needs.

#### **Word of mouth and lawful referrals**

"If you do build a great experience, customers tell each other about that. Word of mouth is very powerful."

— Jeff Bezos, CEO Amazon.com

Every person you meet is a potential client, period. Lawyering is no different than any other "service"-based business. A satisfied "customer" will tell their family and friends about a good experience...and one dissatisfied "customer" will do the same. Potential clients often do not know how to go about finding a lawyer, and will make first resort of asking family and friends if they "know a good lawyer." Be that "good lawyer"!

Keep in mind, too, that your lawyer colleagues are also an excellent source of "word of mouth" and referrals. A personal injury lawyer who gets a call from a potential wrongful termination client might not do employment law, but might know a "good employment lawyer" to whom to send that client. Be that "good lawyer" too! Or maybe the lawyer *does* do that kind of work, but is too busy, or has a conflict, or simply doesn't like the case but thinks you might. Most lawyers will not simply reject the client, but will try to refer

them somewhere. A lawyer who has referred a case to you in which you have obtained a good result is likely to refer future cases.

Not nearly as obvious, *opposing* counsel is also an excellent source of "word of mouth" referrals. Oftentimes your adversary only does defense work, and no doubt also receives requests from their own friends, families, and even defense clients, for referral to a "good lawyer" who will prosecute cases on the plaintiff side. Impress opposing counsel with your tenacity, skills and professionalism, and they too may send cases your way.<sup>4</sup>

Referrals in California are generally governed by Rules of Professional Conduct, Rules 1-320 and 2-200, and there is generally no prohibition (subject to the obligation to provide competent legal services) against accepting any client who is gratuitously referred to you by lawyers and non-lawyers alike.

Attorneys may not "compensate, give or promise anything of value" to non-lawyers to recommend the attorney or attorney's firm or pay referral fees to non-lawyers, with the exception of registered lawyer referral services established and operated in compliance with the State Bar of California's Minimum Standards for Lawyer Referral Service in California.<sup>5</sup>

Attorneys *may* pay referral fees (or fee sharing) with other lawyers, provided they comply with the written consent requirements of Rule 2-200(A), but may not "compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment ...by a client, or as a reward for having made a recommendation resulting in employment...by a client." However, "A member's offering of or giving a gift or gratuity to any lawyer who has made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or

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understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.”

Simply stated, while a lawyer cannot “buy” referrals from other lawyers, pure referral (or forwarding) fees are lawful in California so long as Rule 2-200 is complied with.<sup>6</sup>

***At the end of the day, provide good “service”***

The moral of the story to be gleaned from above is that your reputation as a lawyer will get you clients, whether the client comes from friends, family, other lawyers or even the Internet.

In this era of [www.howtosueyourlawyer.com](http://www.howtosueyourlawyer.com) and more “bad lawyer” blogs than I could count, do not be so naïve to think a potential client, even one referred to you with glowing accolades, will not do a simple Internet search to see what others are saying. Your chances are better that the potential client will not find the two-page rant of your incompetence if you have not given a former client a reason to rant.

**Maintaining successful client relationships**

Rules of Professional Conduct, Rule 3-110 makes it a violation for an attorney to “fail to perform legal services with competence.” This should go without saying. However, failing to act competently is not the only reason a client relationship will suffer or fail, and Rule 3-110 is merely the starting point.

Similarly, except to cite to the Rules, little discussion is needed about the importance of honoring the duties of loyalty and confidentiality, avoiding conflicts of interests, and refraining from requiring sexual relations with your client as a condition of professional employment.<sup>7</sup>

To confirm what I already suspected was true, I reviewed a number of Web sites purporting to list the most common complaints clients have about their lawyers, and there were a few

items, applicable to the plaintiff’s bar, that appeared on nearly all of them:

- Not returning phone calls or replying to e-mails;
- Not delivering on promises of outcome;
- Not communicating during long periods of inactivity; and
- Sending a very large bill without warning or preparation<sup>8</sup>

Each of these common complaints are, in fact, also addressed by the Rules of Professional Conduct and Business & Professions Code.

***Communicate with your client***

Let’s face it: many clients are needy in a number of ways. Some have a lot of questions. Some want to know about every single little thing that happens in their case. Some look at the online court docket every week, and want to know why every pleading was filed. Some just want an update...weekly, as though things happen every week.

Rules of Professional Conduct Rule 3-500 provides as follows:

A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

Similarly, Business & Professions Code section 6068 provides, in pertinent part:

It is the duty of an attorney to do all of the following:

- ...
- (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.
- ...
- (n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

The real question is what constitutes “reasonably informed” or

“significant developments” or “reasonable requests” or “significant documents”?

Some communications are deemed so important they have their own Rule or statute. For example, a lawyer must “promptly communicate” to the client “[a]ll amounts, terms and conditions of any written offer of settlement made to the client.”<sup>9</sup> Though not obligated by Rules of Professional Conduct or Business & Professions Code, well-respected treatises confirm that an oral settlement offer is a “material development” that must be promptly communicated to the client.<sup>10</sup>

Beyond settlement offers, how can an attorney ensure they are fulfilling their duty to communicate with their client?

Cases provide some guidance. At the outset, “[a]n attorney has a duty to speak with his or her client,”<sup>11</sup> and “violates that duty when he or she fails to return a client’s telephone calls promptly.”<sup>12</sup> “Simply stated, “[a]dequate communication with clients is an integral part of competent professional performance as an attorney.”<sup>13</sup> In this day and age, no doubt this maxim applies to promptly responding to e-mails.

“Significant developments” in the case includes disclosing *all* facts and circumstances necessary to enable the client to make free and intelligent decisions regarding the subject matter of the representation.<sup>14</sup> Other developments considered “significant developments” include the adversary’s filing of a discovery motion seeking sanctions against the client and/or the client and attorney<sup>15</sup> or the client’s matter being assigned to or handled by a different attorney then the client was first told or agreed to, including use of a contract attorney.<sup>16</sup>

In so many ways, the rule of common sense applies. Have you ever been to a restaurant, and mid-meal, a different server comes to your table and tells you they are now your server because your original server is on his or her break,

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<b>Settlement:</b>					
<b>Settlement Amount</b>	\$75,000.00	\$85,000.00	\$95,000.00	\$100,000.00	\$150,000.00
40% Attorney's Fee	\$(30,000.00)	\$(34,000.00)	\$(38,000.00)	\$(40,000.00)	\$(60,000.00)
Costs	\$(15,000.00)	\$(15,000.00)	\$(15,000.00)	\$(15,000.00)	\$(15,000.00)
<b>True Net</b>	\$30,000.00	\$36,000.00	\$42,000.00	\$45,000.00	\$75,000.00
<b>Trial:</b>					
<b>Judgment Amount</b>	\$75,000.00	\$85,000.00	\$95,000.00	\$100,000.00	\$150,000.00
40% Attorney's Fee	\$(30,000.00)	\$(34,000.00)	\$(38,000.00)	\$(40,000.00)	\$(60,000.00)
Costs	\$(80,000.00)	\$(80,000.00)	\$(80,000.00)	\$(80,000.00)	\$(80,000.00)
<b>True Net</b>	\$(35,000.00)	\$(29,000.00)	\$(23,000.00)	\$(20,000.00)	\$10,000.00

but the original server did not give you a heads up? Were you irritated? Or when your gardener of ten years sends his assistant whom you have never met to cut your grass alone, with unsupervised access to your yard, without telling you in advance?

These are basic customer service issues. Very seldom does a “customer” complain about too much information. A good practice is to send your client copies of *everything* that is even remotely significant, with a cover letter or e-mail to briefly explain the significance of a document that does not explain itself.<sup>17</sup> Indeed, now, where the practice of so many firms and even small solo practices is to scan correspondence, pleadings and discovery; transmitting these materials to your client can be both quick and cheap when done via e-mail. Your client instantaneously knows you are working diligently on his or her case, and will have actual notice of anything he or she is interested in reading.

Similarly, if your client fee arrangement is contingency with the client responsible for costs, a good practice is to send the client an itemized running costs bill, monthly or at least every other month, with a clear disclosure that “THIS IS NOT A BILL,” but is for informational purposes only. Increasingly mounting costs are no doubt a “significant development” to a client whose net recovery will depend on how high or low those costs are.

Maintaining regular and effective communication with the client would

appear to be the most productive way to maintain good client relationships, as this would eliminate three of the four top client complaints about their lawyers set forth above.

**Do not make any promises**

Only one of the top four client complaints about their lawyers does not involve inadequate communication; rather, it involves miscommunication about what the client can or should expect from your representation.

The Rules of Professional Conduct and State Bar “standards,” and Business & Professions Code prohibit making any guaranties, warranties, or predictions concerning outcome or results to potential clients in advertisements or solicitations,<sup>18</sup> and such communications are equally inappropriate during the representation. Indeed, managing a client’s expectations throughout the matter will at once satisfy your obligations to provide services competently, keep the client reasonably informed about all significant developments, and maintain the client relationship by avoiding unpleasantness when the client’s net result is less (sometimes far less) than the client was originally expecting.

Constantly reassess the case, and immediately let the client know if bad or good evidence or new law changes your view of the case or their likelihood of prevailing. Educate your clients on jury verdict trends and settlements, the value of cases, taking into consideration the economy and jury apathy if applicable (which is highly applicable now).

For the client who resists reasonable settlement discussions or rejects reasonable settlement offers, make sure that client fully understand the risks of losing at trial and being responsible for the adversary’s costs.

When discussing settlement offers, make sure the client understands what the “net” result to the client will be, and what that same number might mean later in the litigation or even after trial. For example, at mediation I usually have a spreadsheet ready to analyze the settlement offer with both the current value, and estimated value later when costs are higher, so they can see whether it’s worth it to fight for the additional \$25,000 or whatever the amount may be. An example from an actual “reality check” spreadsheet that I used at a recent mediation that was conducted before we had to shell out the cost for any depositions, experts or trial preparation is shown on page 60.

Simply stated, do not just avoid making promises you cannot keep, but make no promises at all except to work up the case and get your client the best result possible. The well-informed and well-advised client will usually be a satisfied client.

**Play by the rules and be a winner**

To build trust and better relationships with everyone you meet:

- Do what you say you will do. If you discover you cannot, admit it.
- Understand your client’s expectations.

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- Keep your client informed about the status of his/her case.
- Listen attentively to client concerns, thoughts, ideas and questions (remember – it is not all about you). Try this in your daily life.
- Show interest in what your client is saying and doing.

If you have never done so, read the Rules of Professional Conduct from beginning to end, and the Business & Professions Code sections dealing with attorney conduct. Comply with them. Not only will you protect yourself from disciplinary action (and some of the Business & Professions Code sections even include criminal liability for their violations), but you will help yourself by helping others, and will maintain successful client relationships and build a bigger and happier playing field.

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### Endnotes

<sup>1</sup> "Solicitation" is defined as a communication concerning availability for professional employment "in which a significant motive is pecuniary gain," and is either delivered *in person or by telephone*, or directed *by any means* to a person known to already be represented by counsel in the matter which is the subject of the communications. (Rules Prof. Conduct, Rule 1-400(B).)

<sup>2</sup> Cal. Rules Prof. Conduct, Rule 1-400(C); *Best Buy Stores, L.P. v. Superior Court* (2006) 137 Cal.App.4th 772, 777 ["Even were we to interpret rule 1-400(B) to include the proposed communication [letter to potential class members], the limitation in rule 1-400(C), based on 'abridgement by the Constitution of the United States,' creates an exception to any rule that would prohibit it. The state may not bar lawyers from sending truthful letters soliciting legal business for pecuniary gain. (*Shapiro v. Kentucky Bar Assn.* (1988) 486 U.S. 466, 472-478 [108 S.Ct. 1916, 100 L.Ed.2d 475]; see also *Bates v. State Bar of Arizona* (1977) 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810.)"]

<sup>3</sup> The definition of "advertise" or "advertisement" is "mailings directed generally to members of the public and not to a specific person." (Bus. & Prof. Code, § 6157(c) (emphasis added).)

<sup>4</sup> This is not a mere anecdotal theory; we frequently receive calls from clients who were referred by former opposing counsel.

<sup>5</sup> Rules of Professional Conduct, Rule 1-320.

<sup>6</sup> See, 1 Witkin, Cal. Proc. 5th (2008) Attys, § 162, and cases cited therein. *Compare*, referral or forwarding fees are not permitted under the A.B.A. Model Rules of Professional Conduct, Rule 1.5. Be careful to check the applicable rules when considering entering into a fee-sharing or referral fee agreement with a lawyer in another state.

<sup>7</sup> Rules of Professional Conduct, Rules 3-100, 3-120, 3-300 and 3-310.

<sup>8</sup> See, e.g.,

<http://www.howtosueyourlawyer.com/2010/06/top-10-things-that-annoy-clients/>

<http://www.lawmarketing.com/pages/articles.asp?Action=Article&ArticleCategoryID=58&ArticleID=998>

<http://lawyerist.com/attorneys-return-your-client-phone-calls/>

<http://toplawyercoach.com/2009/12/attorney-coach-client-complaints-annoying-habits/>

<sup>9</sup> Rules of Professional Conduct, Rule 3-510(A)(2); Bus. & Prof. Code, § 6103.5.

<sup>10</sup> Rylaarsdam & Edmon, Cal. Prac. Guide Civ. Pro. Before Trial (The Rutter Group 2012) Ch. 12(II)-H, § 12:1000, citing ABA Model Rule 1.4(a), and former ABA EC 9-2.

<sup>11</sup> *In re Daniel S.* (2004) 115 Cal.App.4th 903, 915.

<sup>12</sup> *In re O.S.* (2002) 102 Cal.App.4th 1402, 1411, citing *Aronin v. State Bar* (1990) 52 Cal.3d 276, 287.

<sup>13</sup> *Id.*, citing *Calvert v. State Bar* (1991) 54 Cal.3d 765, 782.

<sup>14</sup> *Lysick v. Walcolm* (1968) 258 Cal.App.2d 136, 147

<sup>15</sup> Cal. State Bar Form. Opn. 1997-151.

<sup>16</sup> Cal. State Bar Form. Opn. 2004-165; San Diego Bar Ass'n Form. Opn. 2007-1; Los Angeles Bar Ass'n Form. Opn. 518 (2006).

<sup>17</sup> Well-respected treatises similarly recommend this approach. See, Vapnek, Tuft, Peck & Weiner, Cal. Prac. Guide Prof. Resp. (The Rutter Group 2012), Ch. 6-B, §§ 3:214 ["PRACTICE POINTER: It is better practice to provide clients with too much rather than too little information. Therefore, in litigation matters, unless the client instructs otherwise, send copies of all correspondence, pleadings and discovery documents]; and 6:131 ["PRACTICE POINTER: Make it a practice to routinely copy your clients on significant correspondence, pleadings and papers in the case; include a cover letter explaining any enclosures that may not be readily understood. (This step will ensure compliance with your duty to keep the client advised of all pertinent developments and will also help the client understand your monthly billing charges.)"].

<sup>18</sup> Cal. Rules Prof. Conduct, Rule 1-400(E), Standard 1; Bus. & Prof. Code, § 6157.2(a).

