Establishing the Attorney-Client Relationship

The establishment of the attorney-client relationship involves two elements: a person seeks advice or assistance from an attorney; and the attorney appears to give or agrees to give the advice or assistance. **If the client reasonably believes that there is an attorney-client relationship, then the lawyer does have professional obligations to that client.** Therefore, it is essential that both attorney and client understand whether the attorney-client relationship exists.

Before establishing an attorney-client relationship, you will need to determine if you have a conflict of interest prohibiting your representation. Because of its importance, Conflicts of Interest is addressed in a separate section in this Guide. (See page 20.)

Several steps lead to the formation of the attorney-client relationship:

- initial client contact;
- screening;
- interview;
- accepting or declining representation; and
- confirming the acceptance or declination in writing.

The following forms will assist you and your office in the decision whether to accept the representation and how to do it.

**Initial Client Contact and Screening**

The first contact a potential client usually has with your office is by telephone. Courteous, respectful treatment of all callers is important. The receptionist or designated staff member should complete a Consultation Form, similar to the one on pages 10-11, to obtain the basic information for you to determine if you even want to interview the potential client and to assist in screening for conflicts. A major consideration is whether you have the necessary expertise to handle the case. If not, you should refer the caller to another attorney. Failure to know or properly apply the law accounts for many malpractice claims in Louisiana.

Also, you should use the form to determine if there is an obvious conflict. As discussed in the Conflicts Section, determining conflicts of interest is ongoing, but many conflicts can be avoided by initial screening.

**Interview**

The initial interview is not just a way for the potential client to determine whether to hire you. It’s also your opportunity to decide whether you have a conflict of interest and cannot represent the client, whether you want to represent the client, and whether you have the expertise to do so. You should have the client complete the remainder of the Consultation Form, which you should review immediately before the meeting. Be thorough and listen carefully, both to what is said and how it is said.

First impressions are key. The prospective client should be warmly welcomed by you and your staff, thanked for coming, treated with respect, and seen timely.

If the initial interview reveals that you are not qualified to practice in the area of law at issue, decline the representation. If you take the case anyway, disclose your limitations. Do not make misrepresentations about experience.
Communication is key to a positive relationship. Ideally, communication with the client should not be set out separately as a discrete task; it should be a part of every action you take. But so many attorneys have difficulty with this aspect of representation that it is worth reviewing. Communication in the initial consultation involves (at a minimum) making sure that:

➤ the client understands the scope of the representation;
➤ the client understands the type of fee arrangement, what fees are charged, why, and what they will be applied to;
➤ the client understands how client trust money will be used;
➤ you have all the facts you need to make sure the client’s objectives have a good faith basis;
➤ the client understands what additional actions on her part are necessary to handle the matter (additional documentation, last attempt before suit to come to terms with opposing party, etc.);
➤ the client understands what you believe is the desired objective, but that you are not guaranteeing a particular result; and
➤ you understand exactly what it is that the client wants you to do.

**Client Screening — Avoid the Difficult Client**

As a rule, you should avoid inordinately demanding clients, untruthful clients, those with unreasonable expectations, uncontrollable clients, and clients with a personal vendetta. Also, clients who “lawyer shop” or have previously been represented by other attorneys in the same or a similar matter may be difficult to control or please.

**Accepting or Declining Representation and Confirming in Writing**

After you have screened a prospective client, conducted the conflicts check, and gathered information and impressions through an initial interview, you must tell the client whether you will represent her, preferably in writing. Sample letters of engagement and non-engagement are on pages 12 and 13, respectively.

The engagement letter welcomes a new client, confirms the scope of the representation, and clearly sets forth the fee arrangement. All new clients should receive an engagement letter. The fee arrangement should be put in writing and either made part of that engagement letter or attached to it. Contingent fee contracts are required to be in writing. Fee arrangement letters can be found in the Fees and Billing Section of this Guide. (See pages 44-51.)

And, yes, it is recommended that, when you decide not to represent someone, you should send non-engagement letters so it will be abundantly clear that you are not representing the prospective client and that you have no further professional obligations to the person. You should try not to make any judgment regarding the merits of the person’s case, but should urge the person to be mindful of time constraints and suggest that she may want to confer with another attorney. You should return any original documents the prospective client left for review.

If you decide to represent an existing client in a new matter, you should send a letter explaining that relationship. Again, the fee arrangement for that matter also should be confirmed in writing.

The following is a quick checklist to ensure that you are taking the major steps in establishing attorney-client relationships or in declining representation. Forms follow the checklist. These forms are on the CD as well.

**Additional Resources**

Establishing the Attorney-Client Relationship Checklist

Use this checklist to ensure that you are taking all the major steps to successfully establish the attorney-client relationship or decline representation.

- Have receptionist or staff member complete initial section of Consultation Form.
- Have staff member do initial conflicts check, making any judgment calls yourself.
- Review the Consultation Form to determine whether to refer the case or to have the receptionist set the appointment.
- Have the prospective client complete the Consultation Form when she arrives for the appointment.
- Review the Consultation Form immediately prior to interviewing the potential client.
- Do full consultation with the prospective client, including completion of substantive interview forms for certain areas of the law.
- Explain to the prospective client whether the firm will accept or decline representation, the scope of the representation, the fee arrangement, and what is still needed from the client.
- Send engagement or non-engagement letter to the prospective client.
- If you agree to handle a new matter, send another engagement letter to reflect the addition.
Appointment Date & Time: ____________________
Interviewing Attorney: ____________________

**Consultation Form**

TO BE COMPLETED BY STAFF MEMBER FOR PROSPECTIVE CLIENT:

Date: ________________________________
Name: ________________________________
Phone Number: __________________________
Alternate Contact Name & Phone Number: ____________________________________________
Re: ___________________________________

Served with papers: _________ When: _________ Court Date: _________ Judge: ______________

What Parish: ___________________________

Other Side’s Name: ______________________

Referred By: ____________________________

Have you or anyone you know been here before? Who? __________________________________

Do you have or have you spoken to an attorney in this matter? Who? ________________________

Told to bring in paperwork pertaining to consultation: ________________________________

Adverse Party Card Checked: _____________ OK? ________________________________

Conflicts List Checked: _________________ OK? ________________________________

Non-Client Interview List Checked: ___________ OK? ________________________________

Form Completed By: _____________________

Attorney’s Instructions: ________________________________

______________________________

1  Note to Attorney: Modify this as needed.
2  The first page of this form is used by the staff member to obtain basic information from a potential client prior to setting an appointment. The attorney will review it and give additional instructions.
3  The Non-Client Interview List is a list of people interviewed and the attorney-client relationship was never established. There may be a conflict if confidential information was obtained from the non-client.
TO BE COMPLETED BY PROSPECTIVE CLIENT BEFORE THE CONSULTATION:

Client: ___________________________________________ DOB: ________ SS#: ____________
Address: ____________________________________________________________
Home Telephone: __________________________ Fax: __________________________ E-mail: _________________
Client’s Employer: _____________________________________________________
Your Position: _________________________________________________________
Employer Telephone: ___________________________________________________
Spouse: ______________________________________________________________
Spouse’s Employer: _____________________________________________________
Spouse’s Employer Telephone: ___________________________________________
Emergency Contact(s), (Name) (Relationship) (Telephone): ______________________

Names of Associated and/or Related Parties: ________________________________
Name of Opposing Counsel: ________________________________
Please state briefly the nature of the problem you wish to discuss with the attorney: ________________________________

TO BE COMPLETED BY STAFF:

Initial and Date the Following Items When Completed: ________________________________
Fee Contract: ___________ Engagement Letter: ___________ Case Entered on Master List: ___________
Prescription/Time Deadline/Hearing Date: ___________________________________________
Form Completed By: ___________________________________________________________

__________________________

4 Prospective client completes this section when she comes in for appointment immediately prior to the consultation. The attorney again searches for conflicts before seeing the prospective client.
June 20, 20—

Ms. Jane J. Client  
123 Main Street  
Anytown, Louisiana 45678

Dear Ms. Client:

We enjoyed meeting with you on _________ concerning our representation of you against _________. We have completed a conflict of interest search and determined that there is no conflict at this time, so we can accept this matter. We will be doing the following to represent you:

--------------------------------------------------------------------------------------
--------------------------------------------------------------------------------------
--------------------------------------------------------------------------------------

Our engagement is limited to your claim against ________ for _______.

Our fees are outlined in our fee agreement, which we have already discussed and a copy of which is enclosed. Note to Attorney: If agreement has not yet been signed, send two signed copies of fee agreement and request that the client sign one and return it to you.

We will keep you informed as this matter progresses. In the meantime, if you have any questions, please call. Thank you for choosing our firm to represent you in this matter.

Sincerely,

FIRM NAME

Attorney Name

Enclosure

(Note: See fee agreements in Fees and Billing Section of Guide, pages 44-51.)
Sample Non-Engagement Letter
(General)

June 20, 20–

Ms. Jane J. Non-Client
123 Main Street
Anytown, Louisiana 45678

RE: Non-Engagement Letter

Dear Ms. Non-Client:

Thank you for coming into my office yesterday for a consultation. As we discussed, I will not be able to represent you because

Please feel free to consult with another attorney as soon as possible. Most legal rights have strict time limitations, so you may have a deadline to file something soon. For this reason, I suggest that you contact another attorney immediately if you plan to pursue this matter.

Sincerely,

FIRM NAME

Attorney Name
General Information Questionnaire  
(Privileged and Confidential)

Note to Attorney: Questions 1-12 in this questionnaire are designed to be useful in most civil and criminal representations. Questions 13-20 should be added when screening prospective personal injury litigation clients. The questionnaire can be completed by the attorney during a first meeting with prospective clients or mailed to the client in advance and reviewed at a first meeting.

PLEASE COMPLETE CAREFULLY. USE ADDITIONAL PAGES IF NECESSARY.

1. Personal and Family History

   Full name
   Present home address
   Home phone  Business phone

2. Have you ever used, or been known by, any other name than that shown above? If so, list here each other name, and state when and why each other name was used:

3. State the addresses where you have resided during the past 10 years, and the period of time at each residence, including dates:

4. Place of birth  Date

5. Are you presently married?  
   Date of marriage  Place of marriage
   Full name of spouse
   Have you ever been divorced or legally separated?

6. List the names, ages and addresses of all those (including children) who are dependent upon you for support, and your relationship to each:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>AGE</th>
<th>RELATIONSHIP</th>
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</tbody>
</table>

Continued
7. **Employment History**

   Social Security number

   Most recent employer

   Employer’s address

   Ending date  Beginning date

   Job classification

   Beginning pay rate  Ending pay rate

   Reason(s) for leaving

   Employer prior to last listed

   Employer’s address

   Ending date  Beginning date

   Job classification

   Beginning pay rate  Ending pay rate

   Reason(s) for leaving

8. **Educational Background**

   What education have you had, including any special job training?

9. **Military Background**

   Have you been in the military service? If so, give branch of service:

   If so, give service number:

   Type of discharge

   Dates of service

   Have you ever been rejected for military service because of physical, mental or other reasons?

   If so, explain:

   Do you have any service-connected injuries or disabilities?

   If so, give details:

   Percentage of disability

   Present condition of service-connected injury or disability

   Do you receive payments for service-connected injuries?

   **Continued**
10. **Prior Claims and Lawsuits**

Many cases have been damaged beyond repair by a history of other claims and lawsuits which your attorney did not know about. It is **NOT** the fact that one has had other claims or lawsuits that is important, for one will not be penalized by a court or jury if the claims are reasonable and genuine. It is the **DENIAL** of previous claims and suits that damages the case. List every claim you have ever made for personal injury or property damage, and give details:

a) Date __________________________ Nature of claim __________________________

   Against whom __________________________ Suit filed? __________________________

   Result _________________________________________________________________________

b) Date __________________________ Nature of claim __________________________

   Against whom __________________________ Suit filed? __________________________

   Result _________________________________________________________________________

c) Date __________________________ Nature of claim __________________________

   Against whom __________________________ Suit filed? __________________________

   Result _________________________________________________________________________

11. **Police Record**

Under the rules of evidence, there are circumstances under which a person’s prior criminal record may be relevant in a proceeding. The other attorney will make a complete investigation of your background, and we must be **PREPARED AGAINST** development of unfavorable evidence. List here any arrest(s) and state the date, place, charge, court, case number and outcome:

__________________________________________________________________________

__________________________________________________________________________

12. **Worker’s Compensation**

Have you ever made a claim for Worker’s Compensation? __________________________

If so, when was the date of your injury? __________________________

Are you receiving payments at present? __________________________

If so, explain: __________________________________________________________________

Who is handling your Worker’s Compensation action? __________________________

Are you receiving disability payments from any source other than Worker’s Compensation at present? If so, explain:

__________________________________________________________________________

13. **Date of Injury or Accident**

(If you are not certain about a specific date, please discuss with the lawyer immediately.)

Location of accident/injury __________________________

Names of other people involved in the accident/injury: __________________________
Have you missed any time from work as a result of your injury? __________________________

If so, list the dates you were unable to work:
FROM: ___________________________ TO: ___________________________

______________________________________________________________

14. **Prior Physical Examinations**

List here EVERY physical examination you have ever had during the last five years, for any purpose, including employment, promotion, insurance, selective service, armed forces, etc. State date, name of doctor, and result, as fully as you can recall.

a) Date ___________________________ Place ___________________________

   Name of doctor ___________________________

   Purpose ___________________________

   Result ___________________________

b) Date ___________________________ Place ___________________________

   Name of doctor ___________________________

   Purpose ___________________________

   Result ___________________________

c) Date ___________________________ Place ___________________________

   Name of doctor ___________________________

   Purpose ___________________________

   Result ___________________________

15. **Prior Accidents and Injuries**

Failure to mention other accidents or injuries can undermine a lawsuit, no matter how trivial they may seem. List here every such incident, whether it resulted in a claim for damages or not, stating the date, place, nature of the accident and extent of your injuries. If none, so state: ___________________________

______________________________________________________________

16. **Illness or Disease**

No matter how trivial an illness, either before or since your accident, we must know about it. This is particularly true if there is any connection with your present physical complaints. At the trial, the defendant will have a complete history of your past physical condition, made available through medical and hospital records, veteran’s records, insurance records, etc.

a) Date ___________________________ Nature of illness ___________________________

   Duration ___________________________ Treated by ___________________________

   Hospitalized? ___________________________ If so, give dates: ___________________________

   Name and address of hospital ___________________________

Continued
18. **ESTABLISHING THE ATTORNEY-CLIENT RELATIONSHIP**

b) Date ___________________________  Nature of illness ___________________________
   Duration ___________________________  Treated by ___________________________
   Hospitalized? _______________________  If so, give dates: _______________________
   Name and address of hospital ___________________________

c) Date ___________________________  Nature of illness ___________________________
   Duration ___________________________  Treated by ___________________________
   Hospitalized? _______________________  If so, give dates: _______________________
   Name and address of hospital ___________________________

Do you now, or have you ever had trouble with: eyes? ________  ears? ________
If so, give details: __________________________________________________________
Have you ever worn glasses? ________________________  an artificial eye? ________________________
a hearing aid? ________________________
If so, give details: __________________________________________________________

Have you ever worked with radioactive substances, asbestos or any other substance alleged to cause diseases, such as cancer? ________________________
Have you ever been denied life or health insurance? ________________________
If so, by which company and why? ________________________

17. **Alcoholism, Drug Addiction and Venereal Disease**
If you have ever been treated for these conditions, please be sure to discuss it with your attorney **CONFIDENTIALLY**, long before your case goes to trial.

18. **The Injury**
State all injuries known to be a result of the accident: ______________________________________
________________________________________
________________________________________
________________________________________
________________________________________
________________________________________
Length of time confined to bed ________________________
Length of time confined to house ________________________
State present physical condition, including scars, disabilities, deformities, discomforts, etc., due to the injuries:

Continued
19. List all physicians and surgeons you have seen for your injury/injuries.

   a) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________

   b) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________

   c) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________

   d) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________

   e) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________

20. List all nurses, therapists or other health care professionals that you have seen.

   a) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________

   b) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________

   c) Name ____________________________
      Address ____________________________
      Nature of treatment ____________________________
      Still under care? ____________________________