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PRACTICE MANAGEMENT > CLIENT RELATIONS

## Use Retainers Agreements to Establish Good Communication Policies

*Four tips to make sure advisor and client understand one another.*

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Clear and open communication is key to getting the facts necessary to effectively represent a client.

The retainer agreement/engagement letter can help establish policies to encourage good communication.

## Discourage Text Messages

In today's common practice of texting through various SMS and messaging platforms, clients assume that this method works as a means to convey important information to their estate-planning professional. But these messages raise concerns that practitioners need to consider in how they practice, and for the practitioner's protection, perhaps address in their engagement letters. An issue with text messages is whether they can be easily saved in the advisor's data-base as a client record. Trying to save a series of text communications, which can get lost or sent out of order, and documenting the date of each text can be tedious and often will require different procedures than those used to save most client communications. The engagement letter can specify that text or SMS messages aren't an acceptable manner of communication between the client and the advisor. The letter might even state that letters, emails and voice mail messages, which can be readily saved, are the only acceptable means of written communication. There are simply too many ways an SMS/text communication can be missed or fail to be preserved. For example, this can occur if someone changes phones or overtime the texts disappear. Understanding what will constitute an acceptable means of communication is clearer if the advisor's agreement stipulates that the client should assume texts aren't reviewed or received.

## Address Client Responsibilities

It can be helpful if the engagement letter addresses both the attorney's responsibility as well as what's expected from the client. For example, the engagement letter may outline what the attorney will do as part of the engagement but explain that the attorney is executing work based on information and instructions provided by the client. The attorney's efforts can be hampered by the client's provision of partial or inaccurate information. This disconnect can result in a plan that doesn't achieve the client's goals. Expressing the expectation of client cooperation and complete and accurate disclosure of relevant information can be an important facet of an engagement letter.

Sometimes, clients prefer to tell their attorney the least amount possible out of fear of the billable hour. They may provide very short tidbits of information rather than fully elaborating information. What they don't realize is that what they omit can be critical. For example, they may not disclose they have: a child out of wedlock; additional assets; secured assets; designated beneficiaries; or, placed assets in joint names. Not considering all those factors can undermine the estate plan. Having accurate information from the client is an important aspect of constructing the estate plan.

Advisors can deal with these issues expressly in a couple of ways. Consider making it clear in the engagement letter that if the information isn't complete and accurate, planning may not work. Some attorneys have clients sign a statement verifying the accuracy of the information provided and acknowledges that if the information isn't accurate, the plan may fail. The engagement letters might assign the burden to provide accurate and current information on the client.

There's another approach advisors might consider. Have clients sign a copy of the balance sheet on which planning is placed acknowledging the information is complete and accurate. Too often, assets are missing or title to assets is incorrectly communicated, which can devastate a plan.

## **Encourage Prompt and Responsive Communication**

Having provisions in the engagement letter regarding the need for prompt and responsive client communication required for the provision of services can also be helpful. Sometimes an advisor is working and, mid-stream, the client fails to return time-sensitive or critical documents or information. This can cause the plan to stall. Consider the impact of even a short delay at the end of 2012 when advisors were deluged with year-end sensitive planning. A few weeks delay even might have made it impossible for the advisor to complete the planning on time. Even in less time pressured situations, client cooperation is vital to the success of any engagement. Consider indicating that a client's failure to provide key and timely information may be grounds for termination. Communicate up front that the plan can't be completed

or implemented until all contemplated documents are prepared and executed. A client might drag the process out so long that he dies, or become incapacitated, before the plan is completed. The heirs might call and claim the client didn't understand that the plan wasn't completed. When planning stalls, it may then be desirable for the advisor to send a letter advising the client that the plan isn't complete, the client hasn't been responsive and, as a result, planning has stalled. Let the client know you're closing his file and will be happy to reopen it if he engages you again. However, some advisors merely let communications drop. Many practitioners struggle with these issues because they don't want to alienate a potential client or actual client.

There are ways to be unoffensive in this communication. It's important to clients to understand the implications of an incomplete plan. It's helpful for advisors to document why no plan is in place after an engagement is undertaken and to be able to brandish proof that they communicated with the client that additional information was required for the engagement to be completed. So again, it goes back to the core idea that an engagement letter can evolve, be supplemented and be a means of communicating important information to the client.

## Use New Technology for Communication

Another area the advisor may choose to address in an agreement/engagement letter is technology. For example, most people communicate via email. Advisors often use unencrypted email for most communications. Some use encrypted email for substantive documents such as documents that contain Tax Identification Numbers, but many clients just want a regular email. Many clients don't appreciate the extra modicum of effort to enter a password on a password protected document, or even to click through into a secure email. Consider including language that authorizes the attorney to use unencrypted email or that certain items will be sent by encrypted email, but that if the client prefers regular email, that will be used. Consider having authorization from the clients to waive using of encryption.

How the client is accessing email communications is also important. It could raise a privilege issue. If a client is using a company computer, he's likely using an email that other people have access to. Many firms have policies that express there's no guarantee or expectation of privacy regarding communications that use a company file server, computer or email. If an advisor notices the client is using a company email address, he may warn the client about potential privacy issues. Some clients choose to disregard the warning, and some even go a step further to store all of their planning documents on their work computer. If the client is fired, he may not have a chance to have access to his only copy. He may not have even backed up the documents to the cloud. The documents may be backed up to the company system. This shortcut could be costly. If the client stores his personal documents on the company computers, what happens when discovery requests arise? Others may obtain access to the client's personal financial information stored on the company server. People often don't think about confidentiality and privilege. Communicating those issues through the engagement letter helps clients make an informed decision.

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**Source URL:** <https://www.wealthmanagement.com/client-relations/use-retainers-agreements-establish-good-communication-policies>