

MENTORMATCH PROGRAM
WORKSHEET DD
INTRODUCTION TO CASE EVALUATION

Worksheet DD is intended to facilitate a discussion about the best ways to evaluate a potential case and how to decide whether to accept a proffered representation.

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- Share with the new lawyer the steps to a successful and relevant client interview. Discuss the following:
 - What types of information should you seek in this interview?
 - What kind of questions must be asked?
 - What types of things should you tell your potential client or avoid telling them?
 - How should you interact with your client during this interview?

- Share with the new lawyer details about the steps you take once you have met with a potential client, including the following:
 - Adding information to your conflict database regarding the potential client you interviewed.
 - Opening a case file for the individual.
 - Preparing an engagement or disengagement letter to send to the potential client.
 - Preparing a fee agreement for the potential client.
 - Doing research on the potential case to make a decision about taking the representation.
 - Preparing case analysis documents and evaluating a client's case. See the attached article, Greg Krehel, *Getting Case Analysis Off to a Fast Start*. <http://www.casesoft.com/download/analysis.pdf>.

 - A fact chronology can be a tremendous asset as you prepare a case for trial. Yet, the majority of chronologies fail to live up to their full potential. Here are some simple steps that will help you get the most out of yours. Chronologies Help Win Cases! Read the following article <http://www.casesoft.com/download/chrons.pdf>

A cast of characters is extremely easy to create. It takes just a few hours work to develop one, even for a complex case. Yet, this case analysis tool can be put to work in many practical ways. One example explained herein: a cast of characters can be used to dramatically enhance the results of witness interviews. Making the Most of a Cast of Characters Read the following article: <http://www.casesoft.com/download/cast.pdf>

- Explain to the new lawyer ways you can assess your client's credibility.

- Identify ways to create trust with your potential client in the initial interview.
- Share with the new lawyer the types of factors you consider when deciding whether you should take a case. To the extent that the mentor can offer tips to the new lawyer about factors that should be considered in taking cases in the new lawyer's practice area, offer those as well.
- Discuss the obligations you have to a potential client (even when you do not take his or her case) regarding conflicts of interest and confidentiality. See Rules of Prof. Cond. 1.18.
- Discuss the potential for gaining an unintentional client and ways to avoid doing so.
- Discuss the importance of talking to a client as early as possible about realistic expectations of the representation, the scope of the representation, and the fee arrangement. If helpful, share with the new lawyer samples of fee agreements and engagement letters that you use in your practice. Or, if mentoring in-house, share with the new lawyer the fee agreements and engagement letters which are used in your firm. Explain to the new lawyer why certain provisions are either included in your fee agreement or excluded from your fee agreement. Discuss why a fee agreement should be in writing. See Rules of Prof. Cond. 1.5.

RESOURCES

Review the concept of the client-centered interview discussed in the book excerpt. NOELLE C. NELSON, *CONNECTING WITH YOUR CLIENT* at 28-32 (1996). THIS BOOK CAN BE PURCHASED AT THE FOLLOWING LINK
http://www.noellenelson.com/Book_CONNECTING_WITH_YOUR_CLIENT.cfm

INDIANA RULES OF PROFESSIONAL CONDUCT

CLIENT-LAWYER RELATIONSHIP

RULE 1.5: FEES

Rule 1.5. Fees

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (b) 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.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution or upon the amount of maintenance, support, or property settlement, or obtaining custody of a child; or
 - (2) a contingent fee for representing a defendant in a criminal case.
- This provision does not preclude a contract for a contingent fee for legal representation in a domestic relations post-judgment collection action, provided the attorney clearly advises his or her client in writing of the alternative measures available for the collection of such debt and, in all other particulars, complies with Prof.Cond.R. 1.5(c).
- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
 - (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
 - (3) the total fee is reasonable.

RULE 1.18: DUTIES TO PROSPECTIVE CLIENT

Rule 1.18. Duties to Prospective Client

- (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
- (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).
- (d) When a lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
 - (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:
 - (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
 - (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (ii) written notice is promptly given to the prospective client.

View comments at http://www.in.gov/judiciary/rules/prof_cond/