The Duty to Keep Your Client Informed
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I. Client Communication
a. Rules of Professional Conduct
   i. Rule 1.4 Communication
      (a) A lawyer shall:
         (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;
         (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
         (3) keep the client reasonably informed about the status of the matter;
         (4) promptly comply with reasonable requests for information; and
         (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
      (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

b. Letters v. Visits
   i. In a perfect world, we would be able to visit our clients routinely. We could introduce ourselves face-to-face, explain the process and provide updates. Unfortunately, that is not the case. Therefore, our primary method of communication is through confidential letters, which is why regular letter-writing is so important.

c. Q&A Guide About Appeal and Lawyer
   i. In every instance when a defendant receives an attorney through appointment by the Appellate Defender, the defendant receives a Guide designed to be a quick reference for the defendant in answering common questions.
   ii. On the very front page of this Guide, #3, it answers the question of “When Will My Lawyer Contact Me?”
iii. The Guide tells the Client that you will write to him when:
   1. You are appointed to represent him or her
   2. The Record on Appeal is filed
   3. The Brief is filed
   4. The State’s Brief is Filed
   5. An oral argument date is set, if the Court has an oral argument
   6. A reply brief is filed, if the Court does not have an oral argument
   7. The Court decides the client’s case
   8. Client writes with questions or concerns

iv. THIS IS NOT ENOUGH. If you only write your client during the above 8 examples, especially if it is a client who does not write often, you really aren’t communicating with your client. The best way to avoid “The Difficult Client” is to provide regular communication through status letters when anything happens in the case, whether it’s an extension or simply a “no news” letter.

v. One of the most important aspects of your job is client communication. You are representing individuals who are in prison, cut off from family and friends, who are relying on YOU. Your client has a right to know what is happening in his case, even if it is simply letting him or her know that you are still waiting on a decision from the Court of Appeals but you have not forgotten about him.

II. Types of Routine Status Letters (See “Sample Client Letters” in Your Materials)
   a. Introduction Letter
      i. You should write this about two weeks after the date that Staples sent the letter to your client informing him or her of your appointment. Put a reminder in your calendar. DO NOT WAIT FOR YOUR CLIENT TO WRITE YOU FIRST. Sending an introduction letter tells your client that you are on the ball, you are aware of his or her case, and that you care. It also tells yours client that you welcome letters from her.

   b. Early Status Letters
      i. Transcript Extensions
         1. In your intro letter, you told the client when the transcript was due but that the CR might need an extension. If that is the case, write your client and let them know.
ii. PROA Extensions
   1. If you have cases with several due dates together or are just super busy, and you need a PROA extension, write your client and tell him.

c. PROA Served
   i. Write your client when you serve the PROA on the DA. Include a copy of the Proposed Issues. This tells your client that the case is moving forward and you are on top of things. Also, be sure to remind your client that Proposed Issues are issues that may be raised in the Brief.

d. Settled Record Filed
   i. Explain that you filed it and that the brief will be due in roughly 30 days. If you already know that you will likely need an extension (or you aren’t sure) alert your client to the possibility.

e. Brief Extension
   i. Let client know that you needed an extension and the new due date.

f. Brief Filed
   i. Send Yellow Copy to the Client.
   ii. Explain to the Client that State has 33 days to respond and that there will not be much to report during that time period, but you will be happy to answer any questions the client has about the brief. Tell them you will let them know if the State requests an extension.

g. State’s Extension on Brief
   i. Let them know when COA grants State an extension of time.

h. State’s Brief Filed
   i. Send Pink Copy to the Client
   ii. Explain that you are waiting to hear what the Court decides regarding oral argument. Explain what this means. Explain that you have no way to predict when the Court will decide regarding oral argument.

1. NOTE: IF THE NOTICE OF APPEAL IN YOUR CASE WAS GIVEN AFTER APRIL 15, 2013, then your Reply Brief is due 14 days after you receive the State’s Brief. You can add 3 days to that if the State emailed you the brief or sent it to you via snail mail. (However, if the State hand-delivered it to you, then you are stuck with 14 days instead of 17).
2. Therefore, you can tell your client that you are writing a Reply Brief and will send a copy when it is filed.

i. Oral Argument v. Reply Brief
   i. If you get notice that the case will be heard with oral argument, then write client and let him know. If case will be heard without oral argument (and your notice of appeal was before 4/15/2013), and you have decided to write a reply brief, write the client when you file the Reply Brief
      1. Do not tell the client the date the case “was heard.” That date is meaningless, but your client will make it mean something. Just tell the client that “I recently received word that your case would be decided without oral argument.”

j. Status Letters Part Two
   i. Write monthly, letting your client know that there has still been no decision, but that you have not forgotten about him or her. This is EXTREMELY important.
   ii. These can be short, three-sentence letters but they are important and do not take up much of your time. And they will mean a lot to your client.

k. Court Decides Case
   i. If you lost, explain how sorry you are. If you think issue(s) should be PDRd, then tell him and include the permission form. Be sure to explain that you WILL NOT begin work on the PDR until you receive that signed, written permission from the client.
   ii. If you lost, and you are not filing PDR, explain options, etc., and tell them you are closing out the case but are willing to answer any questions they have about the opinion.
   iii. If you won, tell client the happy news and explain possibilities, (mandate issues, State could file Motion to Stay Mandate, State could PDR, etc.)

III. Client Writes with Questions or Concerns
    a. Hopefully, your client will write you with questions or concerns. When this happens, you should try to respond within 3 days but no longer than a week.
       i. Repeat the questions or concerns in the letter. Then Answer.
          1. “In your letter, you asked X, Y, and Z.”
       ii. If you don’t know the answer, or aren’t sure, or can’t answer yet because you haven’t read the transcript, be honest and tell him or her.
iii. If client writes you about something that is an obvious non-issue that can’t be raised on appeal, tell him.
iv. If the client gives an account of what happened at trial (and you haven’t received transcript), thank him and tell him you will be on the look-out for this while you are reviewing the transcript.

IV. The Client Who Writes Multiple Times a Week
   a. You may have a client who loves to write. The client might be a “Difficult Client” or might not. Regardless, if you have such a client, go ahead and tell them, “Because you write so often, I don’t want our letters to get mixed up, so I have decided that regardless of when I receive your letter, I will write you on Wednesdays.”

V. The Client Who Writes Telling You About the Same Issue Repeatedly and You Have Already Dealt with it in at Least Two Previous Responses
   a. If this happens, and your client continues to insist there was a conspiracy between defense and DA or continues to write with same issues or questions that you have already answered at least twice, it is appropriate to tell the client that you have already answered that question or dealt with that issue in your letters dated “INSERT DATES” and that you will not be answering it again. Explain that your time is valuable and that you are more than happy to answer new questions or deal with new issues but you are not going to continue dealing with same thing again and again.

VI. The Client Who Writes You and It Is Obvious From Previous Letters that This New Letter is NOT in your Client’s Handwriting
   a. Tell the client that you received this letter, that you are concerned because it is not in your client’s handwriting (it is likely coming from a jailhouse lawyer) and that you will only respond to letters that are in your client’s handwriting.

VII. Sticky Situations
   a. Occasionally, you may need to write your clients about withdrawing their appeal. Sometimes this happens because the client writes you and says he wants to withdraw and sometimes you look at his case, realize you have weak (not Anders) issues and that he will be getting out soon.
      i. Client has weak issues, etc.
      1. Sometimes there are cases where a client’s probation is revoked, you find maybe one or two weak issues, and the client will be released in 6 months
         a. In those situations, it is okay to explain to your client (NOT IN THE FIRST LETTER) that you
have reviewed everything and you want to discuss whether they want to continue.
b. Explain again that you have found issues (DO NOT CALL THEM WEAK ISSUES) but that given that appeals are difficult and that client will be released before the appeal is complete, you just wanted to make sure that the client wants to continue.
c. Emphasize that client has the right to appeal.
d. Explain that you are in no way discouraging him from continuing but that you just want client to have all the facts so he can make an informed decision. If you are unsuccessful, client will be charged for the time at the current IDS rate (go ahead and tell him the rate).
e. Don’t send a Notice of Withdrawal of Appeal with this Letter
f. Ask client to write you back in about two weeks. Tell client you will continue with representation regardless of whether he writes back or not.

ii. Client writes and says he wants to withdraw his appeal
   1. Write back and ask for clarification
      a. Ask why client wants to withdraw appeal
      b. Explain he only has one appeal of right
      c. Explain that appeals are tough; Court of Appeals is tough, and if unsuccessful, charged at rate.
      d. DO NOT SEND NOTICE OF WITHDRAWAL WITH THIS FOLLOW UP
      e. Tell client if after he has considered everything you have explained, if he still wants to withdraw appeal, you will send him the paperwork.

VIII. A Final Word on the “Sample Client Letters” Provided with the Materials
   a. These are sample letters or go-bys. These ARE NOT form letters. You must tailor these letters to your clients and your specific situations. These letters are provided as guides. It is important that the letter from you to your client feel genuine and not formulaic.