

Policy Paper

The Client's Bill of Rights

Clients are often ill-informed about the rights they enjoy when they retain a lawyer. Responsive Law has created a list of ten essential rights every consumer should have and be aware of from the moment she decides to hire a lawyer through the conclusion of that lawyer's representation.

Many of these rights are already guaranteed by law. Others are ones that a client, like any other customer in a free market, can insist upon as a condition of hiring a particular lawyer.

Responsive Law believes that both clients and lawyers are best served when clients are aware of these rights. Therefore, states should require that lawyers present a written copy of the Client Bill of Rights to a client before beginning a representation.

The following is a list of the rights outlined in the Client Bill of Rights and a description of each one. There are also references to the New York Client Bill of Rights (22NYCRR§1210.1) (hereinafter, "NYCBBR"), which lawyers in New York are required to post in their offices.

Rights Existing Under Current Law

These rights are guaranteed in any state whose lawyer ethics rules follow the American Bar Association Model Rules of Professional Conduct.

- 1) **You have the right to have your calls, letters, questions and concerns addressed promptly.**

One of the most common complaints clients have about their lawyers is that they are left in the dark; unaware of how their matter is proceeding. A lawyer should make sure her client is regularly updated on the status of her case and promptly address any concerns or questions about the case the client may have.

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This right is contained in ABA Model Rule 1.3, which requires a lawyer to “act with reasonable diligence and promptness in representing a client” and Model Rule 1.4, which requires a lawyer “to keep the client reasonably informed about the status of the matter” and to “promptly comply with reasonable requests for information.” The comments to Model Rule 1.3 point out that “perhaps no professional shortcoming is more widely resented than procrastination.” This is true for most professionals, and even more important when legal rights are at stake. Item 5 of the NYCBR has a nearly identical provision, stating, “You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.”

- 2) You have the right to be present at all meetings and court appearances related to your matter, unless a court orders otherwise.

Being present during meetings and court appearances is essential, not only so that the client can witness firsthand how their matter is being handled, but also so the client can understand and appreciate the details of their matter and make informed decisions on how to proceed.

Clients have the fundamental right to be present during all court proceedings as guaranteed under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. ABA Model Rules 1.2 and 1.4 further require a lawyer to consult with her client and keep her fully informed about the matter.

- 3) You have the right to have your goals respected by your lawyer, including whether to settle.

Just as a doctor should not make the final decision as to whether a patient should have surgery, a lawyer should not make final decisions about what actions a client should take. A lawyer's job is to help her client make the best possible decision; it is never to make that decision for them.

ABA Model Rule 1.2 encompasses this right, requiring a lawyer to “abide by a client's decisions concerning the objectives of representation” and to “consult with the client as to the means by which they are to be pursued.” The same rule explicitly states that “a lawyer shall abide by a client's decision whether to settle a matter.” The NYCBR also notifies clients of this right in Item 7, which says, “You are entitled to have your legitimate objectives respected by

your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).”

- 4) You have the right to confidentiality from your prospective lawyer, the lawyer you hire, and people who work for your lawyer, both during and after the engagement.

It goes right to the heart of the attorney/client relationship that the client be able to convey to her lawyer all relevant information with the implicit understanding that it will be kept in the strictest confidence. If that trust does not exist, a client may well be reluctant to divulge critical information to her lawyer limiting the effectiveness of the representation.

ABA Model Rule 1.6 requires that “a lawyer shall not reveal information relating to the representation of a client.” Comments to this rule establish further that “a lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.” This required confidentiality is enforced not only during the course of the matter, but long after the matter is concluded; even after the attorney/client relationship has ended. Item 8 of the NYCBR provides that “You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.”

- 5) You have the right to have access to sufficient information to allow you to participate meaningfully in your matter, including access to all materials provided to your lawyer or prepared by your lawyer, during and after the representation.

Everything that happens in a client's case could potentially affect the outcome. Therefore, lawyers should provide clients with all memos and court filings in their cases.

As discussed above, ABA Model Rule 1.4 requires that a lawyer keep her client informed with all information relevant to the matter. The Rule also requires a lawyer to “promptly comply with all reasonable requests for information.” Similarly, the NYCBR, in Item 6, provides that “You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.”

- 6) You have the right to fire your lawyer for any reason at any time even if he or she was hired on a contingency fee basis, and to hire a new one or go it alone.

In every professional relationship, no matter the service provided, the client has the right to fire the professional and seek assistance elsewhere. The Client Bill of Rights is intended to help lawyers and clients avoid the kind of problems that might otherwise result in the client ending the representation, but when things don't go the way the client had hoped and the relationship between the client and her lawyer is beyond repair, the client should feel free to fire her lawyer.

ABA Model Rule 1.16 gives the client the power to discharge her lawyer at any time, with or without cause. The Rule further requires that, after being discharged, the lawyer must take reasonable steps "to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred." Also, it is important to note, as discussed above, that Model Rule 1.6 requires the lawyer to maintain confidentiality regarding the matter even after she is fired and to take "all reasonable steps to mitigate the consequences to the client." This provision is similar to Item 2 of the NYCBR, which states, "If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge)."

The following rights are not guaranteed, but you might want to ask your lawyer to agree to them

Unlike the rights described above, the following are not explicitly required by the ABA Model Rules. However, there are portions of the Model Rules that address issues similar to the rights listed.

- 7) You have the right to receive a written engagement agreement outlining the scope and objectives of the representation, the likelihood of success, and the risks involved.

It is customary in most professions, especially those that carry a heavy cost burden, that a client be provided up front with a written

estimate detailing the nature of the services to be performed and explaining all potential risks. Clients should be aware that they can ask for a written description of the work to be performed, as well as the risks involved, just as they could do for a financial planner or a home contractor.

- 8) You have the right to have a written fee agreement describing how fees and expenses will be computed, as well as the terms of payment.

Any smart lawyer would advise her client to get any business agreement in writing. No smart consumer would buy a car or conduct major home improvements without a written statement containing a precise description of how much she would pay and what services will be provided. In this respect, a contract for legal services is like any other: it should be easily understood by the client and it absolutely should be in writing.

ABA Model Rule 1.5 governs fees, and while it does not generally require fee arrangements to be provided up front or in writing, the Rule does clearly state a preference for written agreements. If the fees in the case are to be paid to the lawyer on a contingency basis, however, ABA Model Rule 1.5(c) does require that the lawyer provide the client with a written agreement explaining the exact nature of the fee arrangement and that this agreement be signed by the client.

The NYCBR has a similar provision in Item 4, which provides a right “to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing.” The same item also states, “You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals.”

- 9) You have the right to receive itemized bills on a regular basis describing the specific tasks performed, the name and title of the person who performed them, and, if you are being billed by the hour, the hourly rate and time spent by each person on each task.

It is rare these days for almost any service provider not to send customers a regular itemized bill. Without such information, it is impossible not only for a client to know what services are being performed, who performed them, and at what cost, but also for that client to challenge her bill if she feels she's been incorrectly charged for services.

- 10) You have the right to be informed of the education, training, and relevant experience that each lawyer working on your case has.

Choosing a lawyer can be a daunting proposition for most people. That is why it is essential that lawyers be as forthcoming as possible about who they are, where they went to school, and their experience with the kind of cases for which the client is considering using them.

Conclusion

These ten basic rights are intended to help restore much needed balance to the relationship clients have with their lawyers. It is the job of lawyers to help guide their clients through the legal system and to be a trusted advisor in what can often be a hostile and unfriendly environment. These rights help make that role clear to legal consumers, so that they may pursue legal matters with confidence.