

NYC BAR COMMITTEE ON PRO BONO AND LEGAL SERVICES
Pro Bono Representations: Tips for Volunteer Lawyers

You may be the very first lawyer your pro bono client has dealt with. Here are some general guidelines that you may find helpful. Please bear in mind that you and your client may have an arrangement that is atypical, and so it's always important to talk with your client to explain the attorney-client relationship as well as any arrangements that are unique to your relationship. Also remember that it may feel a bit off-putting for your client to raise questions about payment of fees and expenses, disclose confidential information, and the like. Try to make your client feel as comfortable as possible. One way you might do this is by being the one to raise delicate subjects. And please regularly encourage your client to ask questions.

What documents should I ask my client to bring when I meet with him?

Take a moment to remind your client to bring all relevant documents he has. You might refer not just to "documents," but also to "paperwork," as well as to all pleadings and submissions to any court and orders issued by courts. If your client previously spoke with another lawyer, ask him to bring all documents and correspondence he exchanged with the lawyer. You also can follow up by contacting the prior lawyer directly to confirm you have the complete file. It's also helpful to specifically request any contact information the client may have for any adverse parties, possible witnesses, governmental or law enforcement officials with whom the client has dealt that relate to the case, as well as a family member or friend who may be able to help you contact the client if necessary.

What should I tell the client about confidentiality?

Keep in mind that your client may not understand the scope of attorney-client privilege. On the one hand, she may not realize that she risks waiving the privilege if she reveals to others her communications with you. On the other hand, she may not be aware of your ethical obligations with respect to maintaining her confidences and secrets. Take a moment to explain this at the outset of your relationship. And be sure to periodically remind your client about the scope of the privilege and the implications of a waiver. For example, you may wish to assure your client that she can tell her family and friends about a court decision that is a matter of public record. As another example, though, you may want to remind your client that she should not discuss with others advice that you gave her. Bear in mind as well that any translator also might need to be reminded that certain matters are privileged or otherwise confidential.

Do I need a retainer letter or an engagement letter?

This may be determined by the ethical guidelines applicable in the jurisdiction in which you are practicing. New York, for example, requires engagement letters but there are some exceptions, including with respect to a threshold level of fees. Even when such a letter isn't required, it's useful to memorialize the scope of your engagement with your client, your expectations (such as with respect to obligations to be truthful with you, to cooperate, and to try to be on time for appointments), the absence of any perceived conflict of interest and an understanding that there will be reciprocal notification if either you or the client becomes aware of such a conflict, the arrangements with respect to both fees and expenses, and circumstances when it may be permissible for you to terminate the relationship. Having such matters summarized in writing promotes clarity, and also provides greater opportunities for the client to review and reflect about the terms set forth in the letter at his convenience.

May I expect the client to pay my fees or expenses?

Generally, when a lawyer agrees to represent a client on a pro bono basis because she is not in a financial position to pay for legal services, the client is not expected to pay attorneys' fees. Often a pro bono lawyer won't even expect the client to advance expenses. You should take a moment to clarify your expectations with your client. For example, if you want to reserve the right to recoup actually-incurred expenses from a favorable verdict or settlement, you should make that clear to the client (and again, it is advisable in such circumstances to put this in writing to the client and to check whether applicable state regulations require this to be in writing). Similarly, if you are teaming with other lawyers outside your law firm or company to represent the pro bono client, you'll want to clarify any expectations you may have about sharing expenses amongst the volunteer lawyers.

Must I represent the client with respect to all of his legal needs?

Typically, a pro bono lawyer agrees to represent the client with respect to a particular matter. The retainer or engagement letter can helpfully memorialize the scope of your representation.

How will I contact the client if he doesn't have a telephone number or an email address?

Please keep in mind that your client's financial situation may not make it feasible for her to incur the expense of a telephone, computer, or Internet access. Likewise, a client may be moving from place to place or for some other reason have unreliable access to postal mail and courier deliveries. Discuss with your client the best way for you to reach her. For example, it may be possible for you to leave a message with a friend or neighbor who is reliable about passing along messages to her. Your client can arrange for an email address without charge, and there are places where she can access the Internet to check email without charge; for example, you might suggest that she go to a public library to get Internet access and ask for help setting up an email address. Please note that even when your client has a telephone line, it may be appreciated if you place calls so that she can avoid incurring expenses.

What should I do if my client doesn't keep his appointments with me?

It is helpful at the outset to explain that any failure to cooperate may adversely affect the client's matter. When you are arranging appointments with your client, you might remind him to try to call you or your secretary if he can't keep the appointment or if he is running late. Explain that it is especially important to be on time for court appearances and other important meetings. Similarly, extend the courtesy to your client if you need to re-schedule by giving him as much notice as possible. Try to be flexible when you schedule appointments with your client; he may have difficulty meeting with you during regular business hours. For example, he may have to forego wages he otherwise would earn had he not taken time off from work. Understand, too, that even seemingly modest sums, such as round-trip subway fare, may impose a burden on your client's finances. Consider making arrangements to minimize the financial impact of such expenses.

Who represents my client if I leave my law firm or the company where I was working?

When you take on the representation discuss with your client whether you are doing so in your individual capacity or whether your employer is doing so. You may find it helpful to consult with the Pro Bono Attorney or Pro Bono Coordinator if your firm or company has someone acting in that capacity. Remember, too, that whether it is ethically permissible for you to withdraw from a representation may be addressed by applicable ethical rules.