

# Client Communication: The Union of Ethics and Self-Preservation

BY JEANNE M. HUEY

Every lawyer knows about the CYA email or letter sent to the client who is starting to become difficult. This often coincides with the end stages of a case when the client begins to realize—despite your earlier warnings—that their goals for the matter may not all be met. However, a single CYA letter recounting past communications is not the same as *effectively* communicating with a client during the representation. The good news is that if you communicate effectively and document and preserve your communications throughout the representation you may never have to send that CYA letter at all.

First, a refresher on Disciplinary Rule 1.03, titled “Communication.” Rule 1.03 requires that a lawyer (1) keep a client reasonably informed about the status of a matter (2) promptly comply with reasonable client requests for information and (3) explain any matter to the extent needed for the client to make informed decisions about

their case. “Reasonably informed” depends on what is happening when, and communicating with the client sooner is always better than later, especially when the news is not what the client wants to hear.

Being prompt is not, however, enough. To be effective, communications must be in an appropriate form. Is the message short and clear like a reminder of a call or meeting? A text message may suffice. Does it require discussing the pros and cons of an upcoming decision? A letter or formal legal memorandum may be necessary.

This is not only a question of length. Serious messages require serious words. Putting critical advice in a text message, even if the advice is only a few words long, may not convey the gravity of the matter. “Not a good idea” is not likely to be taken as seriously as “I strongly recommend against taking the action you propose,” even if both are sent by text message.

Also, your client’s preferred method of communication needs to be considered, even if it is something you would not regularly use.

If you know your client will only respond to text messages and what you have to say is not appropriate for a text then you should at least text the client to tell them an email or letter is on its way. If you do not know how to text, the disciplinary rules require lawyers to be competent in each technology utilized in their practice, so now is the time to learn.

That is effective communication under the Rule, but what about self-preservation? For your protection you must preserve a record of every communication. Brief communications with little substance can still be important if you need to prove the client was reasonably informed. More substantive communications should be recorded just to make sure there is no dispute about what was said. This is easy with written communications, but phone calls require more.

Many lawyers think recording phone calls is not permitted, but Texas Ethics Opinion 575 states clearly that “no provision of the rules specifically prohibits an unannounced recording of phone conversations. It is legitimate to record a client or third party to aid memory, keep an accurate record, gather information or protect the lawyer from false accusations.” If you are not comfortable recording a client conversation for the file, send a contemporaneous letter or email recounting the important parts as a follow up. This protects you and makes sure the communication was effective by giving the client a chance to ask additional questions or

correct your understanding of what was said.

If you do not have one, put an office policy in place to capture and preserve all forms of client communication. You would never think of deleting email communications with a client or throwing away a letter or a fax, but many lawyers allow old text messages to simply disappear. Fortunately, a number of applications to preserve and organize text messages are available at a modest cost. Voice mails are also communications that should be recorded and possibly transcribed. And do not forget, preserving more ephemeral forms of communication is also a useful way to make sure time spent on client communication is billed.

Finally, remember that time records are part of a court’s evaluation when awarding fees. A billing entry is probably not the place to put a lengthy description of a phone call or meeting but including enough information to justify the length of the call or conversation could help prove you communicated appropriately with the client and that your request for fees is reasonable.

Effective communication is an ethical requirement. Keeping good records of those communications is a necessity for self-preservation. Today is the day to start on both.

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## Moms in Law Events November

Being a working mom can be challenging. Being a working lawyer mom can be a different ballgame with its own unique challenges. Moms in Law is going on its third year of being a no pressure, no commitment, informal, fun, support group for lawyer moms. The November events are:

**Friday, November 8:** Noon, Ziziki’s (at Preston and Forest)  
RSVP [rfitzgib@gmail.com](mailto:rfitzgib@gmail.com)

**Tuesday, November 19:** Noon, at Belo | MCLE 1.00, pending  
*Women’s Guide to Building and Protecting Their Wealth,*  
sponsored by Moms in Law, DAYL, and DWLA.  
RSVP <http://tiny.cc/daylbuildingwealth>

Email [christine@connatserfamilylaw.com](mailto:christine@connatserfamilylaw.com) to join the Moms in Law email listserv.

## DVAP Presents: Bankruptcy Nuts & Bolts

**Friday, November 8, Noon-2:30 p.m. at Belo**  
MCLE 2.00, Ethics 0.50  
Questions? Contact [mmartin@lanwt.org](mailto:mmartin@lanwt.org)

The Dallas Bar Association is excited to announce  
an upcoming **CLE Abroad™**

**Taste of Lisbon and Northern Portugal:**  
**April 26 - May 1, 2020**  
with optional extension to May 3, 2020

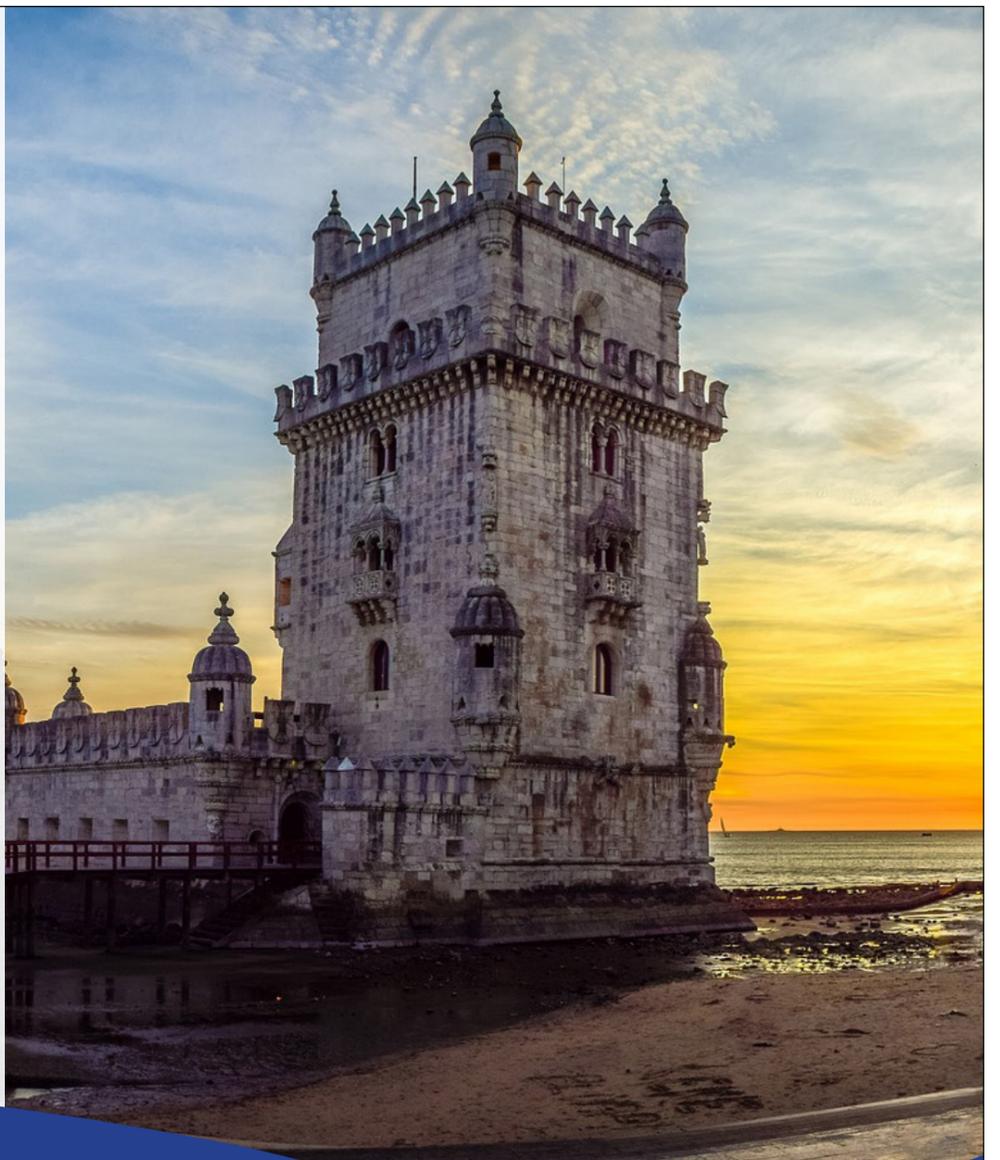
We invite you and your guest(s) to join our delegation for a journey through Portugal’s Old World allure and New World splendor, exploring Lisbon and Northern Portugal’s rich cultural delights, diverse wines, and vibrant culinary scenes.

Our immersive program will engage with local scholars, attorneys, musicians and artists offering poignant commentary on the Portuguese and EU legal and political systems, US-Portuguese relations, art, history, architecture, and religion.

You do not want to miss this opportunity to experience the heart of Portugal while receiving CLE credit! Portugal has more to offer than what can be seen in a mere week and those who wish to extend their stays in Portugal or Europe beyond our program dates may certainly do so at their discretion.

\* To request a brochure and registration information, please contact Judi Smalling at [jsmalling@dallasbar.org](mailto:jsmalling@dallasbar.org).

**Sign up deadline: November 8, 2019**



**PORTUGAL APR 26-MAY 1, 2020**