

Ethical Duty to a Client

Hi, opposing counsel sent me an inflammatory letter last night that also contains a viable settlement offer. Obviously, I plan to convey the settlement offer to my client. However, do I have to send my client a copy of the letter? Since the letter is addressed to me I don't think I have to forward it to her, unless she specifically asks for it. Basically, I plan to call up my client and say I have an offer and give my client the details.

Thoughts?

You don't have to send the letter to your client. Conveying the money offer or terms of the offer to her, even verbally, is sufficient. If the letter contains what you think are good rationale for accepting the settlement, I would let her know that as well.

Tracia Y. Lee, Texas

Nothing wrong calling the client or sending an email or letter stating that OC has proposed a settlement, and the terms are....

If the client asks to see the letter, however, I think you need to give it to her and explain why its contents are inflammatory, inaccurate, etc.

My \$.02.

Scott I.Barer, California

I wouldn't send client copy of letter unless asked. Normally I will forward correspondence from other counsel, but if I think it's going to lead to problems I'll send a letter saying "OC said this... offer of settlement of... he made these points....".

Ronald Jones, Florida

SoloSez Popular Threads, October 2012

I would call your client but follow up with the details of the offer in writing -- email if that is something client is comfortable with, otherwise letter mailed or letter faxed. When accepting settlements, my new practice is to always get client's YES in writing as well - if a settlement is decent and turned down, I'd say get a NO in writing too. Again -- for most of my clients, "writing" means emails.

I would never pass on correspondence between counsel to a client, the client is paying you to deal with the petty arguments, scorn, derision, and inflammatory accusations. You're the buffer!

-- Amy Clark Kleinpeter, Texas

I don't think it's required, but I strongly disagree with the notion that certain communications (or all letters between counsel) should not be disclosed to clients. It's the client's case, not the lawyer's, and the client is entitled to know what is going on.

Matt says the letter was inflammatory. That means 2 possible things to me.

1. The OC is saying bad things about Matt that are not true. If Matt's client has been copied on all documents during the litigation, the client will know (or will understand once explained), that the OC is full of S***.
2. The OC is saying bad things about Matt's client. Our job is not to shelter clients from bad words. We might want to explain to client that, notwithstanding the fact that OC is an ass, the settlement offer still merits consideration and why. But client might legitimately decide that what OC is saying is justification for taking some different step in the case.

I think that only bad things await at the end of the road that begins with the lawyer deciding that it would be better if the client didn't know something about her case.

If the client says he doesn't want to know details, they make him upset, just tell me when I have to make a decision about something, then that is a different situation.

Just to reiterate, I'm not saying Matt is obligated to send the letter to his client. He can convey the settlement offer in another form. I'm just saying I don't see a reason not to send it, and I see several reasons why it wouldn't be a good idea to withhold it.

Patrick W. Begos, Connecticut

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I agree with Mr. Begos; however, to go even further, since this is essentially a settlement proposal, and not ordinary correspondence, the safest bet for you, as the attorney, is to forward the communication to the client so that you avoid any miscommunication of the terms of that settlement proposal. As Mr. Begos alluded, the exact nature of the inflammatory content is unknown, and so you need to make a personal calculation as to whether a decision not to disclose the letter is really justified.

Hope that helps.

Best regards,
Joseph D. Kamenshchik, New York

Alternatively, you could convey the settlement offer through interpretive dance, a symphonic tone poem, or abstract art. Should you succeed in doing so through one of these non-verbal media, I look forward to seeing it recreated on YouTube.

Remember, folks, there are (primarily) two types of VERBAL communication: WRITTEN and ORAL.

(If you wish to split hairs, Signed Exact English is both verbal and gestural, because it is a word-for-word articulation of English, and requires a knowledge of same. It is, admittedly, neither written nor oral.)

In one of those moods,
-Rick
Richard J. Rutledge, Jr., North Carolina

I would manage it according to client and circumstances. Options include telling the client about the settlement without comment, telling the client about the settlement and that it was contained in an inflammatory letter that you are not initially showing the client to get clarity of reasoning, to sending the letter with a note that obviously there is disagreeable language in it but that client should look past that to focus on the proposal for discussion. Depending on other circumstances, all could be reasonable approaches.

Darrell G. Stewart, Texas

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This is a family law case. OC referred to my client as a thief, liar and a bad parent. I decided to convey the offer to my client verbally without discussing the extraneous (and inflammatory) comments. I appreciate everyone's perspective on this issue.

-Matthew

Wow that's surprising, I'd expect some sort of decorum from opposing counsel. Seems like you made a good call protecting your client from that sort of nonsense. Good luck with your case.

Best regards,
Joseph D. Kamenshchik

I think Rick's approach best.

Client is entitle to the letter and keeping things like this from client can come back to bite later.

I would err in sending letter with a diffusing note of your own.

Regards,
Phil A. Taylor

Good call on keeping a lid on the inflammatory stuff from your client, Matthew. The case will never settle if your client knows OC called him/her a thief, liar and a bad parent. Those are fighting words, not settling words.

Tracia Y. Lee

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Sounds like OC is posturing for the purpose of entertaining and satisfying his client. During my divorce, the part when I had an attorney, I enjoyed watching my attorney make my ex look stupid. I will be forever indebted to his memory for his performances in the courtroom. After he withdrew from the case (I was a difficult client), I picked up where he left off. I lost some money in ED, but being able to say what I did was well worth it, and I don't regret it.

It also sounds like OC was trying to rob the husband of some dignity and peace and turn him into a vengeful hothead, one who might make a bad mistake. This vindictive secretary who still has it in for OC from her divorce votes for keeping the mishegoss away from the client, at least until it's over. All he needs is the gist of the offer.

Marilou, a nonlawyer who's mad at OC all over again and who should not have read this thread!!!.

Send client the letter AND your transmittal letter should explain ONLY that you will address the OC's letter and offer, evaluate it and make recommendation, under separate cover. Why? because CA has a peculiar and little known provision that a party can conduct discovery into whether a written settlement offer was conveyed to the client. I am not in a place where I can find that statute but will do so later, IIRC its in B&P Code or CCP.

Michael Boli, California

You can prove you conveyed a settlement offer without mailing the full letter, just type out the actual offer.

I am very surprised at the differences of opinion here -- this has been a very enlightening discussion! I think I will begin discussing this in my initial consult with clients from now on -- that I will not be providing all communications, only the information, unless they specifically disagree and want every bloody detail.

I really do feel that passing on this letter would have meant much more litigation for Andrew's clients and that means more fees for him, more expense, upheaval and stress for his clients. None of you have convinced me that would have been a good thing but I appreciate knowing that despite my idea of the best way, others feel differently - perhaps including some of my clients!

-- Amy Clark Kleinpeter

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I don't see why. The client is entitled to know what's going on -- and you tell him by conveying the offer. I don't see any reason you need to forward the letter any more than you need to record your telephone calls with opposing counsel and then play them for your client.

I'm not saying that you can refuse to show the letter to the client; presumably, it's part of his file and belongs to him if he wants it. But I don't see any reason you need to proactively provide it to him as a matter of general practice. (Of course, if there's something you need to respond to and you need input from your client, that may be a different story. I'm assuming from the description of the original fact pattern that this isn't the issue.)

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Sincerely,
David M. Nieporent, New York
