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The Relationship

Whether we speak of disciplinary exposure or malpractice liability, at the heart of a lawyer's duty is the attorney-client relationship. While usually the presence of the relationship is virtually axiomatic, there are times that the presence of the relationship or the *scope* of that relationship, is not as clear as should be the case. In *Attorney Grievance Commission v. Akpan*, 405 Md. 277 (2008), the Court of Appeals determined that the scope of the relationship in an immigration case did not encompass certain services the client insisted were included. Even though Mr. Akpan had a basis to believe that his client had not engaged him for the additional work, he was nevertheless reprimanded for failing to inform his client of the limitations of the representation.

In *Akpan*, the Court relied on recitals of the Restatement (Third) of the Law Governing Lawyers: "A relationship of a client and lawyer arises when (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person, and (b) the lawyer fails to manifest a lack of consent to do so and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services." The Court found that while an attorney-client relationship existed with regard to an interview with an immigration representative, there was insufficient evidence to support the existence of the relationship for the purpose of later removal proceedings. The client made assumptions (that were reasonable, based on the conduct of the Respondent), but "scant, if any" testimony was presented that the client "manifested" his intent that Akpan represent him in removal proceedings. The Court found that Akpan had a duty to inform his client that he was *not* representing him in the removal proceedings and his failure to do so violated Rule 1.4 of the Maryland Rules of Professional Conduct.

It is well understood that no agreement as to a fee is necessary for the formation of the relationship. Perhaps less well understood is that discussion of the terms of the representation, much less a written agreement, is also unnecessary to establish the relationship. The focus of the inquiry is on the expectations of the person who wants the legal advice, not on the expectations of the lawyer. Under a negligence approach, simply put, an attorney-client relationship is created whenever an individual seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on such advice. 673 Minn.L.Rev. 751,759 (1979). In 2002, the District of Columbia Bar addressed the question of the nature of the advice: "Providing legal advice...involves offering recommendations tailored to the unique facts of a person's circumstances...Lawyers wishing to avoid formation of attorney-client relationships through...Internet communications should limit themselves to providing legal information and should not seek to elicit or respond to the specifics of particular individuals' situations." Opinion 316, District of Columbia Bar.

Lawyers must be cautious in their interactions with those seeking legal advice. My advice? Regularize the relationship: clients and potential clients should be advised only in

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confidential settings; use written retainer agreements; ensure all parties understand the scope of the relationship (again, in writing); and do not offer advice beyond the scope of the agreement unless you are comfortable with the possible repercussions.