

**Bridge the Gap Mentoring Program
Introduction to Legal Counseling
Resource 34**

Resource 34 is intended to facilitate a discussion about proper legal counseling techniques, and duties and responsibilities of advising clients.

- Discuss the different roles a lawyer plays with clients in advising them. Discuss how to share with clients non-legal considerations for your informed decision-making while not delving into areas which are outside a lawyer's expertise. See The Preamble to the Code of Professional Responsibility. (See attached.)(find at <http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0> or <http://www.law.cornell.edu/ethics/nm/code/>) and the attached book excerpt, from Clawar, Stanley S. *You and Your Clients: A Guide to a More Successful Law Practice* (2nd Edition). American Bar Association, 1988.
- Provide examples of the types of decisions in the mentor's practice in which he or she involves the client. Share tips on counseling the client for each of those decisions.
- Discuss the importance of being sensitive to emotional aspects of clients' cases but not becoming emotionally involved in their matters. Discuss what to do if you do become emotionally invested in a case.
- Discuss the ethical obligations a lawyer has in advising his or her clients. What does it mean to make sure clients are informed in their decision-making? What should you do if your client elects a course of action against your advice? See Rule 16-104 NMRA. (find at <http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0> <http://www.law.cornell.edu/ethics/nm/code/>)
- Discuss the basic elements and techniques for counseling a client, including the following:
 - Talking to the client about time. How long the case will take, what could delay it, what the opposition could do to prolong it, etc.
 - Considering cost. What types of expenses should be expected, how much the case could end up costing.
 - Discussing the upsides and downsides of the case.
 - Focusing the interview. How to outline what will happen during the meeting with the client and keep on track.
 - Being a good listener.
 - Advising fully on all relevant considerations or consequences to a course of action.
 - Following up.

Resource 34

- Informing the client of privilege issues when the client wants a third party involved during meetings. See Rule 16-106 NMRA and Restatement Third Law Governing Lawyers § 68-86. (find at <http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0> or <http://www.law.cornell.edu/ethics/nm/code/>)
- Discuss how to inform clients of problems in their cases. Read and discuss the attached book excerpt from Nelson, Noelle C. *Connecting with Your Client*. American Bar Association, 1996.

Resource 34

Rules of Professional Conduct

Preamble — A Lawyer's Responsibilities

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.*, Rules 16-112 and 16-204 NMRA of the Rules of Professional Conduct. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 16-804 NMRA of the Rules of Professional Conduct.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest

because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

Scope

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms "shall" or "shall not". These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may", are permissive and define areas under the rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the lawyer and others. The rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the committee commentaries use the term "should". Commentaries do not add obligations to the rules but provide guidance for practicing in compliance with the rules.

The rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The commentaries are sometimes used to alert lawyers to their responsibilities under such other law.

Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile

human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 16-106 NMRA of the Rules of Professional Conduct, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. *See* Rule 16-118 NMRA of the Rules of Professional Conduct. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These rules do not abrogate any such authority.

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a rule does not necessarily warrant any other non-disciplinary remedy, such as disqualification of a lawyer in pending litigation. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Nevertheless, since the rules do establish standards of conduct by lawyers, a lawyer's violation of a rule may be evidence of breach of the applicable standard of conduct.

The committee commentary accompanying each rule explains and illustrates the meaning and purpose of the rule. The Preamble and Scope provide general orientation. The commentaries are intended as guides to interpretation, but the text of each rule is authoritative.

[As amended by Supreme Court Order No. 08-8300-29, effective November 3, 2008.]

Are You Counselor or Therapist?

"This is the third time my son has been caught stealing. Would you kick him out?"

"Is there any way to stop my wife from cheating on me?"

"If I lose all my money on this case, I think I'll do myself in. What should I do?"

It happens all the time. In talking to you about the legal matter a hand, a client asks you questions that are entirely out of your technical province. It's easy to get caught trying to help, perhaps on a purely personal level, but it's much smarter not to. Your professional status too easily gets transferred to your personal advice, and suddenly you have played the role of social-psychological counselor, not legal counselor.

Why do clients place their lawyers in the role of therapist? And, more important, what can you do about it?

Don't Clients Know the Difference?

The answer is yes and no. Intellectually, most clients probably do know that certain questions are technically outside your domain. Emotionally, however, they still have a need for some input, and that need takes precedence. People generally do not limit their conversations with their lawyers, doctors, or accountants to their respective professional expertise.

Legal clients may feel a sense of rapport and trust, which makes a natural bridge for sharing emotional and social concerns. A client may begin talking about a child support issue, but end up discussing a problem about child rearing. It is also convenient. The client is already in the lawyer's office and doesn't have to visit another professional.

Sometimes it is an effort to save money. Clients know how expensive legal and mental health services are and can try to extract advice from one professional that is in the other's territory. Of course, this isn't very logical, in that they are also paying for your time.

The most common reason is confusion. The demarcations between the lawyer and the mental health professional are not always clear, and clients may not fully understand the limitations of each role.

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From *You and Your Clients: A Guide to Client Management Skills for a More Successful Practice*, 2nd Ed. 1996, by Stanley S. Clawar

Know the Signs

Listen carefully for questions that are more therapeutic than legal, such as those that involve emotions, social relationships, and personal life. Certain key phrases suggest a client is crossing over into this territory, such as "I'm feeling depressed," "I feel lost," and "I feel self-destructive."

Sometimes the boundaries of the domains are fuzzy. For example, if a client is having a business problem with a partner and seeing the partner daily, the communication between them could be damaging to the case. In this type of scenario the lawyer must tell the client about potentially damaging situations. Or if a client is being abused, you would want to explain that certain statements or actions might instigate more abuse. These are sticky situations; you must provide the information in a way that communicates that you are talking specifically about the case. Beyond these confines, the client should be urged to seek mental health counseling or other assistance.

Sometimes listening is all the client needs, and soon you can turn the discussion back to the legal issues. Other times you may have to point out the problem, as in the following example:

I'm going to listen to your concerns, but the questions you are asking are really therapeutic matters, outside my domain. I think we should focus on the legal issues.

Still other times you will want to suggest other possible professionals who can provide help. You will benefit from having a ready list of psychiatrists, psychologists, clinical sociologists, social workers, family counselors, sex therapists, and pastoral counselors. After giving a referral, be sure to get feedback from the client. Find out who was selected and how the client is progressing. This will allow you not only to keep current on your client's status, but also to adjust your referral list as necessary.

Confidentiality

If you and the mental health professional are going to work together, confidentiality issues must be discussed. Some clients do not want any contact between their therapist and their lawyer. If the therapist will not be used in any way for the legal process, interprofessional communication may be a moot point. But if you plan to use the client's therapist in the case, communication must be discussed and clarified. Be sure to get a written release from the client acknowledging that this communication can take place.

It is also wise to keep a log of all phone calls to the therapist both for the record and for billing purposes. Be sure to explain beforehand what the billing rules are.

Crisis Calls

A common problem for lawyers is how to handle crisis phone calls. Start by sorting out the caller's legal problems from the social-psychological concerns. If both are at play, say something like this:

I hear your distress, and I can help in the following ways . . . But for the other personal problems, I suggest you get in touch with your counselor.

This delineates the realm within which you will work, and it also suggests that additional help from a mental health professional may be in order.

If you are unsure where to draw the line, the general rule is: "When in doubt, don't talk it out." Talking too much, probing too far, or analyzing too much could unearth material that you cannot—and should not—handle.

CHAPTER

5

INTRODUCTION

EVERY CASE HAS ITS PROBLEMS—some can be anticipated, others cannot. In their eagerness to maintain their credibility and be effective problem solvers for their clients,

lawyers frequently make the mistake of failing to inform clients of problems in an appropriate manner or in a timely fashion. Inevitably, you will find yourself with the double headache of trying to appease an unpleasantly surprised and irritated client and trying to resolve the original problem. In this chapter, we'll look at how to handle this situation in a way that will contribute to client satisfaction.

Keeping Your Client Satisfied While You Deal with Troublesome Aspects of the Case

HOW TO INFORM CLIENTS OF PROBLEMS

Most clients need and want to be informed about the troublesome aspects of their case. Client satisfaction surveys show that clients complain that lawyers do not inform them about problems until the problems are so big they can no longer be ignored, and that lawyers are unrealistic, usually minimizing problems and overestimating their ability to deal with them quickly and easily.

As stated in chapter 4, clients dislike surprises, especially unpleasant ones. This holds true for small surprises, such as finding out at the last minute that a meeting was rescheduled, and for large surprises, such as suddenly realizing that the worst possible jury has just been impaneled for their trial. Even the most ordinary cases may bring about a surprise or two.

Reduce the risk of a surprise by informing your clients of the problems you foresee during the initial client interview, or as soon as you have had an opportunity to properly review the case.

You earn cooperation and trust by discussing problems with your client as soon as issues arise. Don't wait until a problem assumes such giant proportions that it threatens to ruin the case outcome. Clients may not like problems, but if they are informed of difficult issues as they develop, they have time to adjust and will most likely remain cooperative. Almost nothing makes clients angrier than when they think their case is proceeding well, only to find out without warning that something has gone wrong. Let's look at an example of just such a situation.

In the course of negotiating a particularly complex settlement agreement, a lawyer realized the other party was remaining firm on an issue that was not according to client preference. The lawyer decided that the issue would not make much difference in the overall scheme of things at the time of the final settlement agreement.

As negotiations proceeded, the lawyer told the client that negotiations were going well. The lawyer failed to mention that the other party would not budge on the point in question. When the client sat down for final negotiations, he was shocked to learn that not only was the other party remaining firm, but opposing counsel was making this particular point a condition of the agreement. The negotiations broke down, the client was extremely angry at the outcome, and the lawyer lost the client's trust. Had the lawyer simply kept the client informed, another approach could have possibly been attempted, or, at the very least, the lawyer could have kept the client's confidence.

Be realistic about the nature of a problem and your ability to resolve it. Don't lead the client to believe that a problem is insignificant when it is actually very important to the case. Let's take a look at what can happen to a lawyer who underestimates the gravity of a problem.

Plaintiff's lawyer was having trouble finding an expert witness who could testify in a complex engineering design defect case. The lawyer finally found someone he deemed to be an appropriate witness. During direct examination, the expert loudly proclaimed that the defendant was grossly incompetent by failing to take certain design specifications into account before constructing a building. During cross-examination, however, the same expert admitted that *she* never checked those specifications when working on similar construction jobs.

Although the plaintiff's lawyer was inwardly groaning at the damage the expert had caused, he told the client the damage could easily be undone. That wasn't true, of course, and the plaintiff lost. In post-trial debriefings, jurors said the plaintiff lost because of the expert's testimony. Naturally, the client was irate.

In this example, plaintiff's lawyer erred on two counts. First, the lawyer should have let the client know *at the outset* that he was having difficulty finding an appropriate expert. The client, who was highly qualified in the field, might have been able to offer suggestions.

Second, once the expert testified the lawyer should have told the client that there was considerable damage done to the case. The lawyer

should have been more realistic in the assessment of how the testimony was going to affect the outcome.

When a lawyer says a problem is insignificant, the client assumes the issue will be resolved promptly and will have only a minor impact on the case. By not resolving the problem quickly or not being truthful as to its importance, the lawyer damages client trust. The client may think legal counsel is either dishonest or incompetent. On the other hand, remember not to make mountains out of molehills. If a problem really is minor, let the client know of its existence and then handle it quickly. Let's look at an example of appropriate handling of a troublesome matter.

Defense counsel represented a corporate client in a sexual harassment case. Three individuals were named as defendants. Two of the defendants were very reputable and credible while the third was lacking in credibility. Although very bright, the third defendant was considered to be somewhat strange, even by his peers.

After a relatively short time, the defense lawyers decided that the disparity among the three defendants was a problem and they informed the corporation. The corporate client was willing to cooperate to find a workable plan. After a series of meetings, the lawyers and client decided to seek separate counsel for the third individual and to do what was necessary to remove the third defendant from the original case.

In this example, because the members of the defense team were willing to keep the corporate client informed, they not only maintained cooperation through a difficult period in the case but their ideas were valued by the client, who appreciated being a part of the problem-solving process.

Lawyers may think they get extra credit for being superhuman, but, in fact, most clients would rather be informed and allowed to participate in the decisions that affect their case. Informed clients are most likely to develop a strong trust in their legal counsel, which is a cornerstone for a successful attorney-client relationship.

How to Present the Problem Without Losing Client Confidence

Lawyers are often hesitant to talk to clients about problems because they aren't sure of the best way to break bad news. This is very understandable; it is not easy to find ways to tell someone something they don't want to hear without upsetting them. It is, however, possible to phrase what you have to say in such a manner as to minimize how upset your client becomes.

Use Nonthreatening Language

Let's take the previous example of the case in which plaintiff's lawyer was having trouble finding an expert witness who could testify in a complex engineering design defect case. In the case cited, the lawyer did not advise the client of any difficulties, although the client, who was highly qualified in the field, might have been able to offer suggestions.

Here's how the lawyer could have approached the client so as to present the *problem* without losing the client's *confidence*:

Lawyer: *I have some concerns* about the expert testimony in this case.

Client: Oh? How's that?

Lawyer: Well, this is a particularly complex and unusual specialty, as you know. I'm having trouble finding an expert that *I feel is truly qualified* to testify appropriately on our behalf.

Client: Hmmm. Well, let me give it some thought, maybe I can come up with something.

The key words here are *I have some concerns* and *that I feel is truly qualified*. Saying "I have some concerns," lets the client know you are taking the case seriously and want to provide the best expert testimony for the case. Avoid saying "I'm worried about," or "I'm afraid that," which could imply that there is a major problem, thereby putting your client on immediate defensive alert.

When speaking of the difficulty you're having finding a decent expert, avoid saying something like "I'm having trouble finding an expert," which could put your competence in question. Qualify your difficulty by adding "that I feel is truly qualified," thereby reinforcing the fact that you want the best for your client. The problem then becomes not that you can't find an expert, but that you are having trouble finding one *who will do the very best job possible* for your client.

By phrasing your concerns a certain way, you've let your client know that there are problems without putting your own expertise into question. You've also given yourself the opportunity to use your client's resources, which may be far greater in this area than your own.

Clients are not always as responsive to logic and reason as the client in the previous example. Let's take a look at a case in which the client responds adversely to your concerns, and how you can handle that situation to your advantage.

In this example, the lawyer is having difficulty finding a medical expert to testify on behalf of plaintiff. Plaintiff is a layperson, whose knowledge of medical experts is limited to the three doctors the plaintiff has consulted in this case.

Lawyer: *I have some concerns* about the expert testimony in this case.

Client: What do you mean, concerns?

Lawyer: Well, yours is a particularly complex case, and it's important that I get a really strong and well-qualified expert.

Client: OK, so what's the problem? You're the lawyer.

Lawyer: When we're dealing with this kind of highly specialized area, finding a truly qualified expert takes a good deal of time and research. We may not be able to go to trial as quickly as I'd originally anticipated.

Client: So what you're saying is it may take more time.

Lawyer: Yes.

Client: Oh. Well, I guess that's all right.

Notice that the lawyer did not let herself become affected by the client's somewhat sarcastic "OK, so what's the problem? You're the lawyer." The lawyer simply went on to make the necessary point.

Don't Respond Defensively

This is where lawyers generally have the most difficulty. You may think you have to respond to your client's jibes and attacking comments, but don't. Your client's jibes and attacking comments are frequently the only way they know how to deal with their fear and lack of control. Few of us feel entirely comfortable when our fates are in someone else's hands, and clients are no exception. In chapter 6 we'll talk about difficult clients, and you will learn how to deal directly with such comments. In this particular case, your client is simply responding reflexively to a possible threat. You can safely ignore that response and just stick with the information you need to transmit.

Keep Tempers Cool with a Neutral Tone

Keep the vocal emotional tone of your problem-related conversations neutral. Don't try to sound like what you're saying is totally off-the-cuff, but keep your voice cleared of unnecessary emotion. Make sure your tone is concerned and sincere. This will convey to your client that there is something serious that needs to be dealt with, but will not allow the client to sense your anxiety. Remember, you are the professional, and the client hired you to take care of these problems. You may express your personal worries and fears to your colleagues, but to your client, present a calm facade that does not reveal your emotional state.

KEEP YOUR PROMISES

Lawyers too frequently make the mistake of trying to create an excellent first impression by promising whatever they think the client wants in order to get the client's business. Then, once the lawyer gets the case, he or she ignores those promises and treats the client as a file number for the duration of the case. The client's expectations and hopes are unfulfilled. When this happens, the trust and cooperation you need in order to do your job are very difficult to achieve. Broken promises are a primary area of client dissatisfaction.

Keep your promises. Honor all agreements you made with the client as to what work is to be done, time frames for work to be completed, and so forth. Do not make agreements you do not fully intend to keep. Client trust is built steadily over time as you behave in ways consistent with your agreements. Facilitate keeping your promises by backing up agreements made with your client in writing. You can use follow-up letters, as discussed in chapter 6, to accomplish this.

Most lawyers, being ethical and professional, don't make it a habit to ignore agreements made with clients. More frequently, lawyers fully *intend* to fulfill the agreements they made but do not have the *maintenance systems* that allow them to fulfill those agreements. Unfortunately, clients don't distinguish between promises broken willfully and those that fall through the cracks as a result of lack of maintenance systems. The client feels cheated and you suffer the loss of client trust and cooperation.

Develop Good Maintenance Systems

Maintenance systems allow you to translate agreements made into practical reality. An effective maintenance system relies on three elements: timely scheduling, client updates, and clear communication.

Use Timely Scheduling

An excellent way to guarantee that you will do the work you promised is to have a master schedule on which is set out all the work you need to do for all of your various clients. This is different from the master calendar that keeps track of appearances, filings, and such, but certainly must be made to coordinate with the master calendar. Look at your master schedule and set a specific time to do the work for a particular client. Some work is much more difficult to schedule—trial dates, deposition dates, and so forth—but you can set dates that you can then change as necessary.

Use Client Updates

Client updates are essential. Clients are vociferous about their resentment at being kept uninformed. They heartily dislike not knowing what's going on.

Reinforce your position as a responsible professional by taking the initiative to inform your clients rather than waiting until they call and demand to know what the situation is.

Common sense and good manners are much easier to observe when you make them part of the routine of case management. Do so by using updates.

For the Record

Clients really get upset when the only communication with a law firm regarding ongoing matters is the monthly bill. Nothing gets clients angrier than getting the silent treatment from their lawyer, followed by an unexpected large legal bill at the end of the month. More and more firms are encouraging lawyers to write brief letters advising clients of the status of their case, either after a significant stage has been completed or monthly, which is what happens particularly in cases of litigation. This is in addition to ongoing verbal communication between client and lawyer. Clients have been very enthusiastic and approving of such efforts. Clearly this kind of highly responsive lawyer-initiated communication greatly enhances the client's positive perception of the lawyer.

—Marcia G. Lamm, Ph.D., Mediation Psychologist, Executive Director, West Valley Psychological Clinic

For the Record

The recipe for disaster is not keeping a constant communication with the client. Whether it's good news or bad news, they want to hear it. If it's no news they want to hear it.
—Christopher P. Blsgaard, Managing Partner, Lewis D. Amato, Bristol & Blsgaard

Updates can be as simple or as complex as you like. Clients are generally quite satisfied with the simple version, which consists of a brief written memorandum that updates your client on the status of their case. As brief as an update may be, it must be in writing. As explained previously, oral communication can be too easily misunderstood or misinterpreted.

There are three types of updates that are very useful: routine updates, updates that announce a new development, and updates that inform the client of an important change.

1. Routine Updates. Send your client a regular update, on a bimonthly or monthly basis depending on the case, to keep your client up-to-date on what is going on. This should include notations regarding new items, for example, "Trial date: trial continued to January 8," and old items such as, "Date of deposition: no change."

Lawyers too often feel that clients only want to hear new items. Not so. Your client wants *all* the news. Sending your clients routine updates increases their sense of security, and their sense that you are taking care of business as agreed upon.

2. Updates That Announce a New Development. Let your clients know of a new development that is sufficiently important to be brought to their attention in between the routine updates. Clients do not like to be told at the last minute of an important development in their case, or to find out about it by overhearing a conversation with someone else. Letting them be the first to know of such developments lets them know of their value to you, which automatically increases your value to your clients.

This is an extremely valid and often overlooked part of keeping your client updates—the educative function of client communication. You increase client satisfaction not only by keeping your clients regularly informed, but also by letting them know how what you are doing benefits them and their case.

For the Record

It doesn't do any good to litigate a case for a year and not keep the client advised as to what you're doing and send them a big bill and say, "Gee, we did a great job." The client wants to know what efforts you made to terminate this litigation short of two years of daily depositions which cost them \$2,000,000. If the client doesn't understand what your efforts are doing for them, then they are not going to appreciate them, so it's really an education process as well as a communication process.
—Michael L. Kelly, Managing Partner, Kilmann & Packard

3. Updates That Announce a Change. Use an update to keep your client informed any time something happens that leads you to make a change in the agreed-upon strategy. It is disconcerting for a client to expect you to be going about their case one way, only to find out either accidentally or at the last minute that you've changed course. Keeping the client informed as you go along, giving them reasons for whatever changes you make, reassures clients that you are on track with their case, adjusting consciously and deliberately to different circumstances, and not just responding at the last minute to a crisis.

Keep your update simple. Let your client know what has come up to make you change course, and briefly explain why you've adopted the new strategy or approach.

You can also use an update to inform clients of a change of staffing. If your client has been working with, for example, lawyer A in completing interrogatories, and one day without notice is told by the receptionist that lawyer B is now handling those interrogatories, the client is not going to be very happy. The client may feel passed off to whomever happened to be available, instead of feeling that the assistants and colleagues assigned to work on the case are in fact those best suited to the task. Inform your client of a change in staffing, and justify it in one brief sentence so that the client is reassured that the change is to their advantage.

Fulfill Communication Agreements

Be reliable. Follow through on communication agreements. Once you have established clear guidelines for communication with your client as recommended in chapter 2, maintaining the communication as agreed upon will greatly enhance client satisfaction. If you say you will return calls promptly, and then proceed to do so, client satisfaction grows. If you say that your assistant or secretary is qualified to handle calls and answer requests, their so doing increases your client's satisfaction.

Document Everything

The memo system makes documenting very easy, as long as your filing system is adequate. Telephone calls must be documented, albeit

For the Record

You need to keep a client apprised so that there are no surprises. No matter what you're working on, you're anticipating the developments and you tell the client what's going to happen. These are the possibilities, these are the choices you have to make and these are the decisions you have to make. You need to give them advance warning. Give them the pros and cons. That's the first level of communication.

—Richard D. Hybel, former Managing Partner, Los Angeles office of Morrison & Foerster

briefly, making note of what you said and what your client said. In addition to facilitating memory and helping to prevent misunderstandings, documenting impresses the client with the seriousness with which you take his or her case.

USE SUPPORT STAFF TO KEEP CLIENT SATISFACTION HIGH

Your support staff can contribute significantly to maintaining client cooperation while dealing with troublesome aspects of the case. If your support staff is sensitive to the need for client satisfaction, they will provide a backdrop of excellent client service that will facilitate your client's trust and cooperation during the rough times.

Support staff must maintain the client-centered caring attitude you have so carefully established. Each interaction that your client has with a member of your staff matters.

Educate and Motivate Support Staff

Do not expect support staff to automatically know how to treat clients in a manner that fosters trust and cooperation. Support staff must be educated and motivated to maintain and enhance client satisfaction. Explain your objectives for the whole of your practice, as well as your objectives in terms of client service, and let staff know exactly how they fit in to those objectives. Letting your support staff know just how important they are to the overall success of your practice is a terrific motivator. Too many lawyers want to hog the success all to themselves. This approach will hardly endear you to your staff, much less encourage them to "go the extra mile," an attitude that is important to achieving client satisfaction.

Bonuses and other incentives are useful as well. Designating an "Employee of the Month," for example, may seem hokey to you, but genuine and sincere public appreciation is always welcome. The more you let staff know how valuable they are, the more likely they are to value you and your clients in return.

For the Record

If you really know what you're trying to accomplish and everybody up and down the entire line is familiar with that, you'll get good client service. You empower everybody up and down the chain of service to do everything that they can to improve service to clients.

—Dr. Ann M. Lee, Director of Client Services, Nossaman, Guthrie, Knox & Elliott

Handling a Difficult Client Without Losing the Client or the Case

INTRODUCTION

JUST AS IT IS IMPOSSIBLE TO HAVE A CASE WITHOUT PROBLEMS, so too is it impossible to have a client roster full of

only understanding, upbeat, sympathetic clients. Every lawyer has his or her share of difficult clients. Some clients by the very nature of their personality make the creation of a mutually satisfying client-lawyer relationship a challenge. Other clients do not have a particularly difficult personality, but respond to certain situations in ways that make them difficult to deal with. In both circumstances, it is important to work with your client in such a way that you lose neither the client nor the case.

This chapter is devoted to techniques that will help you deal successfully with specific types of difficult clients. For each type of client, a specific set of guidelines is given that describes how to work with that client to obtain the information or cooperation it is that you need while preserving a good relationship. An example is then given, showing you how to implement those guidelines in the context of your practice.

The best way to use this chapter is to read through it so you get an idea of the different types of difficult clients and the skills involved in working with them, then go back to a specific section when you find yourself face-to-face with a particular kind of client.

HANDLING THE ANGRY CLIENT

When a client is angry, denying their anger is ineffective. Telling them they shouldn't be angry won't work, and can serve to make your client even more angry. Instead, acknowledge your client's anger and lead them to a more stable emotional state. Acknowledging your client's current state can be effectively done with a technique called *pace and lead*. Pace and lead involves first mirroring your client's body language and reflecting

their words (pacing), and then gradually "leading" them with your body language and with your words to a different emotional state. The following example illustrates how to use pace and lead with an angry client.

Pace and Lead

Client: *(arms crossed, legs crossed, scowling, speaking in an angry tone)* I cannot believe that we have another continuance. I am so sick and tired of that word I could puke. Every time that judge decides to continue the case, I've lost time out of my business to be here, and that's money down the drain for me. I'm about ready to walk away from this thing. And another thing—what are you doing about it? Am I paying you just to sit around dreaming up new motions and other ways to spend my money? I want this thing settled and I want it settled now!

Lawyer: *(As the client was talking, the lawyer mirrored the client's body language. She speaks in an angry voice, scowling, reflecting the client's anger)* Tell me about it. Continuances drive me nuts! It means I have to go back with the same material, there's no progress, and believe me, I want this settled too!

At this point, the lawyer "leads." She starts to shift her body posture to a more-relaxed and less-defensive posture. If the client follows her lead, then she knows they are on the right track, and that she has sufficiently acknowledged the client's anger. If the client maintains his strictly defensive body language, then the lawyer further acknowledges his anger with reflection, and returns to the defensive body posture for a while. The lawyer then tries the lead again. If her body language lead is successful, she then begins to lead with content.

Lawyer: *(starting to drop some of the vocal anger)* Having this thing go on and on is very frustrating. And what I see as our strategy for right now is . . .

Notice that the lawyer did not, in acknowledging the client's anger, reflect the entirety of its content. The lawyer did not reflect anything she did not agree with. What the lawyer did reflect is the client's *emotion*, and what parts of the content she did agree with. Most of the time, this is sufficient. The client feels that the lawyer is paying attention. Once a client's position is acknowledged, he or she is usually willing to change the subject. If, however, the client doesn't feel thoroughly acknowledged, and goes on to request (or in this case, demand) specific responses to specific items, the lawyer should maintain the use of pace and lead throughout. Let's continue from where we left off in the previous example:

Client: (somewhat mollified but still demanding, voice frustrated) OK, I understand your approach, but I want to know the bottom line—how much is this continuance going to cost me?

Lawyer: (voice frustrated, reflecting the client's continued frustration, pacing) The continuance is costing you extra money you don't want to spend—I know it. I don't like that you have to spend it. Which is why we're going to . . . (The lawyer now goes on to lead, and drops some of the frustration from her voice as she speaks of the new strategy.) That way I can keep costs down.

Maintain the pace and lead as long as necessary to get your client to move in an appropriate emotional direction.

Psychologically speaking, when you use pace and lead you remove yourself from a position of having to defend yourself to the client, choosing instead to *align* yourself with the client. By resisting the temptation to answer client accusations or anger with defensiveness, you instead become partners with your client in a mutual problem-solving venture. This is a very powerful and highly functional position.

The above example focuses on dealing with a client's anger when it is centered on a particular issue. Any client can get angry over a particular item, but some clients are just plain angry people. Let's look at how best to deal with a client who has a negative attitude.

HANDLING THE NEGATIVE CLIENT

When your client is basically an angry or negative person, pace and lead is most useful when you need to get your client's agreement and cooperation for a specific matter. You can use pace and lead in such a case, but bear in mind that your client is basically an angry person, and that your leading will not be as successful as it would be with a person who just happens to be upset over a particular issue.

Guidelines

Here are some guidelines to follow when dealing with an angry client. First, don't take it personally. When a person is angry or negative virtually all of the time, that anger has nothing to do with you. Anger is simply the filter through which that person chooses to experience the world. Your best approach is to use reflection to build rapport at the beginning of each interaction, and then to simply tend to the business at hand.

Second, maintain a serious demeanor, don't make jokes, and don't try to get the person to lighten up. It isn't your job to make them cheerful. You need their trust and cooperation, not their good humor. Respecting their negative mind set, in which they feel totally justified, will earn their trust.

The operative word is *respect*. Respect your client's negative attitude, but do not *accept* the negative attitude. Let's look at an example:

Client: (*complaining, as usual*) Coming down here is a real nuisance. The traffic is awful, it's hot out, I couldn't find a place to park, and that parking attendant is rude. I suppose you want me to fill out another ridiculous bunch of forms.

Lawyer: (*serious concern, nodding, frowning*) That traffic can really be a bear. It doesn't improve the parking situation, that's for sure. I need you to sign these here, please.

Notice that the lawyer did not accept or agree with all of the client's complaints. What the lawyer did was reflect, in a generic sense, complaints that are true for all of us—traffic can be a bear, and nobody likes not being able to find parking. The lawyer completely ignored the client's dig about signing papers, and as soon as the lawyer had reflected a couple of the client's statements, went right to the heart of the matter. The lawyer did not try to cheer up the client or make the client feel better. First, it probably wouldn't work, and second, it's not the lawyer's job. Let's continue with the example:

Client: (*complaining as she signs the papers*) I knew it, I knew you'd have another bunch of idiotic forms for me to sign. That's all you lawyers do, draw up reams of paper and it costs me a fortune every time.

Lawyer: (*ignoring the digs, not taking it personally, taking the papers back, getting to what is important*) Thank you. I appreciate your coming down today to take care of this.

Client: Yeah, well you're lucky I made it. My back is killing me, and no thanks to your lousy elevator that bumps people around. Don't you have any decent chairs in this office?

Lawyer: (*reflecting the portion that wasn't a dig*) Back pain can be really rough. My secretary will call you as soon as we have some news. Thanks again for coming down.

Remember, you are not a punching bag. If an angry client verbally swats at you, your profession, or your office, ignore it unless you can come up with a generic comment that doesn't implicate you. For example, "You lawyers are all out to take us for everything we've got" could be reflected with "It's a shame that some lawyers are unethical." But it is usually better to just ignore personal digs. Reflect other negative or hostile comments in a way that acknowledges the *general meaning* of the comment, not the specifics. For example, "traffic can be rough," acknowledges the general meaning of the comment, as opposed to "I'm sorry you had a terrible drive coming down here," which puts you in the same frame of mind as your client, which is not conducive to dealing effectively with your client.

HANDLING THE BULLYING CLIENT

Although you may not encounter this type of client frequently, when you do, you will find these techniques to be very helpful. The bullying client is generally an insecure person who is trying to establish a personal power they in fact do not feel. The more a bullying client feels powerless in a certain situation, the more likely he or she is to act like a bully. Bullying clients generally attempt with body language or obnoxious language to intimidate others.

When dealing with this type of client, adopt a task-oriented approach. Keeping the bullying client very task-oriented works well because it reinforces a sense of control, of things being done and getting handled. It also helps you keep meetings to a minimum and the time involved short. You are not likely to change the bullying client's behavior, but you can work with it so it interferes less with your work.

Guidelines

When dealing with a client who is a bully, don't take it personally. The bullying client probably is not out to get you personally. The bullying client bullies as a way of life. It is the client's unfortunate way of getting what he or she wants, and as long as it works, they will keep doing it.

Don't accept bullying; however, counter a crude or disparaging comment or action with a sidestep, so that you don't antagonize your client, but don't lie down and become a doormat either. Let's look at an example.

A client who is a bully enters your office, gives your secretary an irreverent look on the way in, and plops down in a chair. He pushes the briefs you have on another chair roughly out of the way, and, without asking your permission, dumps his files down in place of yours within easy reach. He then pulls out a cigarette even though your desk has a "Please Do Not Smoke" sign clearly in evidence on it, and starts to light up.

You ignore the client's disrespectful actions; you will deal with them later. You say with a smile, "Good to see you. Oh, by the way, we have a special smoking area set aside. My assistant will show you where it is, and we can start after you've had your cigarette." You then call your assistant and have him escort the bullying client to the smoking area (even if that's outside) and turn your attention to another file.

By taking these actions, you have avoided getting sucked into your client's attempt to intimidate and antagonize you. If this is your first meeting with this client, it is understandable that you didn't know about their disrespectful behavior. These behaviors are rather crude attempts at intimidation. They try to make the statement: "Look how powerful I am. I own everything around me, and I can use things any way I want, regardless of whether they belong to me."

When the client comes back from having his cigarette, you have removed his files from the chair, placed your briefs back where you

wanted them, and provided your client with a small table by his chair on which you've placed his belongings.

Client: I see you moved my stuff off your chair. Didn't like my messing with it, huh?

Lawyer: *(staying pleasant)* You know, if I don't keep my briefs in my own orderly disorder, I end up losing everything. Now, here are my recommendations for that contract. . . .

At the end of the meeting, the following exchange is likely:

Client: *(getting up to leave)* Well, I don't expect much out of you—never do, from lawyers. You'll probably have to bribe a few people along the way. Just don't expect that to come out of my pocket.

Lawyer: *(not taking it personally, staying calm, ignoring the invalidating remark, not getting intimidated)* I wouldn't think of it. Now, we have a lot of work to do here. Thanks for coming in today. I look forward to getting those documents from you later this week.

As you keep ignoring the bullying client's attempts to bully, the bullying will drop off. Your client is not getting any attention for the bullying, so eventually he or she will have to rely on another approach. Getting the client to focus on the task at hand gives them something else to do. Keeping interactions with your bullying client to a minimum helps you keep your cool.

HANDLING THE SEDUCTIVE CLIENT

The seductive client is a person who secretly feels powerless and therefore relies on sexual manipulation and ploys in order to give him or herself some sense of control over the situation. Seductive clients can be of same or opposite sex as the lawyer, and can be of any age.

The seductive client can be very disconcerting to the lawyer and requires delicate handling. The example given in this chapter is of fairly overt seduction. You may encounter everything from light flirtation all the way to heavy-handed sexual overtures. Although in the movies it may seem that the mix of sexuality and lawyering is harmless, in real life that is rarely the case. Be very cautious when you suspect you may be dealing with a seductive client. Use the guidelines given below, and adapt them as needed to the specifics of each situation.

Guidelines

When you are confronted by a seductive client, don't take it personally. The seductive client is not passionate about you personally. The seductive client seduces as a way of life. It is this client's way of getting what he or she wants, and as long as it works, the client will keep doing it.

Don't accept the seduction. Counter a flirtatious or intimate comment or action with a sidestep, so that you don't antagonize the client. Let the client know that you don't buy into the seduction. Let's look at a situation in which a lawyer must deal with a seductive client:

A seductive client enters her lawyer's office. She is inappropriately dressed in an outfit that is very tight and revealing. The client sits, posing in the chair in a way that shows off her figure.

Lawyer: Ms. Smith—

Client: Call me Sharon.

Lawyer: *(sidestepping the ploy for intimacy, not changing voice or demeanor)* Sharon, I've reviewed the documents you sent me and I find that this case is indeed complex.

Client: *(sighing)* Oh, I know, I know— isn't it just awful, Sam. You don't mind if I call you Sam, do you? It makes me feel closer to you.

Lawyer: *(keeping appropriate professional distance)* Sam is fine. I recommend that we have a preliminary meeting with opposing counsel to see where they stand on this.

Client: *(eyes downcast, rearranging her body posture for better display)* Oh, do we have to? They're so *(sighing)* unpleasant. Of course *(brightening up)* if you're there with me, well *(smile)* you're so good, I'm sure it will be just fine.

Lawyer: *(maintaining professional distance)* Good. Then I'll have my secretary set up an appointment for next week. Now the next item is . . .

Note how the lawyer sidestepped the client's attempts at seduction. These actions are simply a manipulative attempt to get people to do things the way they want them done. This gives the seductive client a sense of power. The way the client wants things done has little to do with how you need to actually go about doing them to best represent the client. The sidestepping in this case is very similar to the sidestepping recommended when dealing with a bullying client. It consists of ignoring the parts of the communication that have nothing to do with the business at hand, and replying in an appropriate fashion to inappropriate comments.

Resisting seduction is important. Most lawyers recognize and can sidestep sexual seductiveness, but lawyers often fail to recognize the *ego-stroking* inherent in sexual seductiveness (i.e., ". . . if you're there with me, well, you're so good, I'm sure it will be just fine"). This can get you into difficulty if you believe what is in truth nothing but a power play.

HANDLING THE BOSSY CLIENT

The bossy client is often a fellow professional—a lawyer, surgeon, or CEO—who, because they have high standing in another field, think they

know everything about your field. It is very frightening to certain people to be in a position of powerlessness; the bossy attitude is basically a defense against that powerlessness. In this respect it is very similar to bullying, and can be thought of as simply an intellectual and more sophisticated form of bullying.

Since the bossy client will try to tell you how you should conduct your business, and will spend a lot of time giving you extensive analyses and rationalizations of why you should do it his or her way, the best approach with a bossy client is to keep the client focused on facts.

Guidelines

When you are faced with a bossy client, don't get defensive. The bossy client will try to convince you that he or she knows what to do better than you do. This is bound to push your buttons. Resist the urge to attempt to convince the client that you really do know what is best. It won't work. The client won't believe you, regardless of what you say, and you will only succeed in antagonizing him or her.

Always take the bossy client seriously. The bossy client has an underlying fear of being exposed as powerless. It does not help your relationship with the client to aggravate that fear. Don't wave aside the client's arguments. Treat this client's analyses and suggestions with respect, then go on doing whatever you think is best.

Let's take a look at an example of an interaction with a bossy client:

Lawyer: I'm thinking of calling in an additional expert, someone well-versed in testing metal stress.

Client: (*sounding disparaging and somewhat condescending*) I don't know why you want to do that. I know my own product better than anyone. I will testify as to its soundness.

Lawyer: (*not getting defensive*) Good, I'm glad you'll testify. You'll do a great job. And I want to reinforce your description with an outside opinion. Now, I also want us to look at . . .

Note that the lawyer does not try to compete with the client, and the lawyer listens respectfully to what the client says, but has no intention of adopting the suggested behaviors. The lawyer will still have the expert testify. The lawyer did not agree to do anything that he actually wasn't going to do. It is important to be truthful with your clients if you want your clients to be truthful with you.

HANDLING THE SUSPICIOUS CLIENT

The suspicious client lives in fear that someone is out to get him or her. The suspicious client doesn't trust anyone, and that includes you.

The suspicious client is sure there is some underhanded plot, some devious motive, some covert tactic you and everyone else is using that will cost the client his or her job or money.

Guidelines

When dealing with a suspicious client, don't try to change this client. Suspicion is the coping mechanism the client uses to get through life. If you try to prove to the suspicious client that there is no real reason to be suspicious of you or of a situation, he or she will be suspicious of why you're trying to prove that. It's a losing battle, and one you do not need to engage in. It is entirely possible to engage the suspicious client's cooperation and a certain level of his trust without playing rescuer to his suspiciousness.

A good way to handle a suspicious client is to pace and lead. The suspicious client is the most vigilant of the difficult client types; this client will watch your every move, pin you on every word, and if you fall into the trap of correcting and defending everything you do and say, you will expend a great deal of time and energy. Allow your suspicious client their suspiciousness, and reflect those portions of it that you can without compromising your integrity. Then proceed to lead your client where you need the client to go. Here's an example:

Client: I don't like what went on in that meeting. That other lawyer knows something, I can tell. Did you see the way she was looking at me? She's got something cooking, she's out to nail me, I'm positive.

Lawyer: *(making no attempt to make the client see the interaction differently, pacing the emotional dimension of the message, ignoring all the content)* That lawyer made you uncomfortable at the meeting.

Client: Boy, you can say that again. And you know what else? I don't see why I have to make an appointment with that doctor of yours. I've already seen a doctor. Is there something this doctor thinks is there that the other one didn't already find out? Or is this just another lawyer way of getting money for your pals?

Lawyer: *(making no attempt to change client's point of view, or to defend anything)* The doctor I'm asking you to see is the expert who testifies for our side. This doctor's report helps either confirm or suggest something different from what opposing counsel's doctor came up with. It's important to the success of your case. My secretary will set up the appointment for you at your convenience. Now, let's take a look at . . .

The more direct and informative you are when interacting with your suspicious client, the better. The more factual you remain, the less room

there is for this client to be suspicious. Suspicion flourishes in a context of comments, opinions, suppositions, explanations, and rationalizations. Avoid these as much as you can. Notice that in the above example, the lawyer declined to comment on much of what the client said. The lawyer chose to respond first with *reflection*, then with *information*. These are the most valuable skills to use when dealing with a suspicious client.

A suspicious client will try to maneuver you into discussing and considering their concerns, rather than letting you attend to the business at hand. This is basically why difficult clients are difficult. They pose all sorts of obstructions in the way of doing the work that you were hired to do. With the suspicious client, as with all difficult clients, hold tight onto what you need to get accomplished, and keep that as a point of focus for yourself. Any time you find yourself thrown off your focus, get back to it as soon as possible. Ironically, the difficult client will complain that you are not getting your job done efficiently when their behavior is the very reason you can't get it done. Avoid this trap by being aware and staying focused.

HANDLING THE CLIENT WHO LIES

The client who lies falls into one of four categories:

1. The client who lies out of a mistaken understanding of the legal process
2. The client who lies out of embarrassment or shame
3. The anxious client, who only appears to lie
4. The pathological liar

Remember, the lying client is not to be confused with the client whose perception of an event is different from what you think it should be. When a client is absolutely adamant that they are telling the truth, it is wise to give them the benefit of the doubt and explore further what the truth might be. Perception is a subjective phenomenon. What may appear to be a lie may simply be a difference of perception.

There are, however, occasions when your client most definitely is lying, and you usually find that out when a piece of information you acquire conflicts with something your client has told you. Before you can deal with the lie itself, find out why the client is lying.

The Client Who Lies Out of a Mistaken Understanding of the Legal Process

Lawyer: When we talked during our first meeting, I asked if you had any prior felony convictions, and you stated that you didn't. I'm confused. The routine investigation we did turned up a felony conviction at age twenty for car theft. Can you tell me something about that?

Client: Oh, well, you know that was so long ago, and well, I thought if I told you, people would hold it against me and I'd lose my case.

Lawyer: I can understand your concern, but frankly, that's not how the system works. Everybody has the right to a fair trial, and it's up to me to see that people don't hold things against you. Your job is to tell me everything you can. You see, I can deal with anything as long as I know about it. It's what I don't know that will undermine our chances of winning this case. Because I can guarantee you that either our investigators or opposing counsel's investigators will dig up whatever you might want to hide. And it makes it much better for us—for you—if I know everything up front so I don't have to worry about our investigators missing something that opposing counsel finds out about and throws at me in the middle of trial. Got it?

Client: *(somewhat abashed)* Yeah, OK.

Lawyer: All right. So let's go through your life, decade by decade, and see if there's anything there that we need to look at, including all the parts you'd like to forget about. . . .

Clients do not necessarily understand how the legal process works. Most often, their knowledge comes from television and the tabloids, both of which distort the truth in the interest of entertainment. It is important to inform this kind of client why lies are damaging to them. You may have to repeat the instruction once or twice before the client really understands, but this type of lying client will generally cooperate fairly easily with your instructions.

The Client Who Lies Out of Embarrassment or Shame

Lawyer: When we talked during our first meeting, I asked if you had any prior felony convictions, and you stated that you didn't. I'm confused. The routine investigation we did turned up a felony conviction at age twenty for car theft. Can you tell me something about that?

Client: Well, I didn't see why I should bring it up. I mean, it doesn't have anything to do with what's going on now. My life is totally different now.

Lawyer: Yes it is, you've done very well for yourself. But it's important for us to know things, even if they happened in your past and even if you don't think they're important. Something you think is unimportant may in fact make a significant difference to your case.

Client: *(not happy, not totally convinced)* Yes, but I don't want to bring up a lot of embarrassing things.

Lawyer: Of course you don't, that would be very uncomfortable. It's not about bringing up a lot of embarrassing things. It's about knowing whatever might contribute to the success of your case.

Client: OK.

Lawyer: All right. So let's go through your life, decade by decade, and see if there's anything there that we should look at, that might help you win your case. . . .

All of us have had events in our lives that we are not proud of, and for some it is downright humiliating to have to bring these situations up. In this case, compassionate explanation is the best approach. Let your clients know that you are not delving into the embarrassing moments of their life out of prurient interest, but only as much as is necessary to represent them properly.

The Anxious Client Who Only Appears to Lie

Lawyer: When we talked during our first meeting, I asked if you had any prior felony convictions, and you stated that you didn't. I'm confused. The routine investigation we did turned up a felony conviction at age twenty for car theft. Can you tell me something about that?

Client: Oh, I'm sorry. This whole thing has got me in such a muddle. Of course there was that car theft. Oh, it was a stupid thing. We were twenty years old and stupid. A bunch of us hot-wired a car for a joy ride. And we thought we were so smart.

Lawyer: Well, I know how easy it is to get muddled, but it's important for us to know what has gone on in your life that might have an impact on this case.

Client: I know, and I'm so sorry. I just get all wound up and then I forget all sorts of things.

Lawyer: I understand. So let's go through your life, decade by decade, and see if there's anything there that you might have forgotten that we should look at, that might help you win your case. . . .

When people are anxious they can forget things that may be important to their case. Generally they forget them to such an extent that they even forget they forgot them. As with the client who fails to mention situations out of embarrassment or shame, the best approach is to have compassion. Little explanation is usually necessary, since the client is usually used to forgetting when anxious and probably already apologetic. Simply guide your client through subjects that are of interest to

you, and take enough time with your anxious client so his or her memory can function properly. It often helps to remind the anxious client that it is fine if they really can't remember something. Otherwise, the pressure to remember absolutely everything may increase your client's anxiety to the point that the he or she is not likely to remember anything at all.

The Pathological Liar

Lawyer: When we talked during our first meeting, I asked if you had any prior felony convictions, and you stated that you didn't. I'm confused. The routine investigation we did turned up a felony conviction at age twenty for car theft. Can you tell me something about that?

Client: Oh yeah. I guess I forgot.

Lawyer: Forgetting is certainly understandable, but it puts us in a difficult place. You see, I can deal with anything as long as I know about it. It's what I don't know about that will undermine our chances of winning this case. Because I can guarantee you that either our investigators or opposing counsel's investigators will dig up whatever you might have forgotten. So let's go through your life, decade by decade, and see if there's anything you'd forgotten that you might remember now. OK?

Client: *(not caring)* Sure.

If after this exchange you catch the client in other instances of "forgetting," or contradictions, or outright lies, then your client is probably a pathological liar. Pathological liars, if they can be motivated to tell the truth at all, are only motivated by self-interest. The best approach is to tell your client directly and as firmly as you can that every "forgetting," contradiction, and fabrication is costing your client his or her own skin. The unfortunate bottom line is that although this approach is the best available, most of the time the pathological liar remains a liar.

A characteristic of pathological liars is their inability to feel remorse. Generally, that is expressed by a complete lack of guilt or apology, as is the case in the above example. However, not all pathological liars are cold blooded and emotionless. Some swing to the opposite extreme, and become overly apologetic. Their effusiveness, however, is phony and often comes across as such. Let's look at an example of an effusive pathological liar.

Lawyer: When we talked during our first meeting, I asked if you had any prior felony convictions, and you stated that you didn't. I'm confused. The routine investigation we did turned up a felony conviction at age twenty for car theft. Can you tell me something about that?

Client: (*looking woeful and distressed*) I did! Oh, I am so sorry, I don't know what I was thinking, gosh darn (*slaps forehead with open palm*), I must have been wandering off, I just don't know what to say. I'm so sorry, I really am.

The effusive pathological liar should be handled the same way as the cold-blooded variety. Don't buy into the apology.

HANDLING THE TEARFUL OR EMOTIONAL CLIENT

The legal process can be a distressing and difficult experience for certain clients. Even if the process itself is not distressing, remembering and reliving the emotions attached to the case can be devastating. Some lawyers find clients' emotions very upsetting, and rather than deal with those emotions, try to minimize the emotions or brush them away.

This is a big mistake—how people feel strongly influences how much information they are willing to disclose and to what degree they are willing to disclose it. As their lawyer, you need all the information you can get. If you find your client's outpouring of emotion uncomfortable, don't panic. Once the client has had an opportunity to express his or her emotions, the client will be "spent," and the emotions will die down. It won't go on forever. Just stay with your client, pacing them as best you can. You will grow hugely in your client's esteem by your willingness to accept the client's emotions rather than trying to avoid them.

Guidelines

When dealing with an emotional client, don't deny your client's feelings. Everybody is different. For some people a critical comment is an overwhelmingly painful experience; for others only the death of a loved one qualifies as painful. Accept your client's feelings as real for him or her.

Also, don't disparage your client for feeling. Talking down to a client because of a display of emotions, calling your client "weak," or "overly emotional," is not likely to build client trust or cooperation. Help your client deal with the expression of his or her feelings so they are appropriate for the different situations your client will encounter on the journey through the legal process. Let's look at an example of a lawyer successfully handling a client's emotions:

Lawyer: I'd like to know more about the nature of your associate's involvement with the company.

Client: Well, let's see. You know my associate was the CFO of the company, of course, but in addition to that I trusted him with our family portfolio. I mean (*voice starting to waver*), he was my friend. We'd known each other forty years

(voice cracking). To have such a close friend of all people do this (client begins to cry).

Lawyer: It's very painful, I know, very painful. Take your time. Would like a glass of water?

Client: No, it's all right. I'm so embarrassed to be crying like this, like a baby.

Lawyer: You were hurt—it's OK. Take your time.

Such a compassionate approach will calm your client much more quickly and effectively than telling your client he or she is a crybaby or to just get over it. If you find it too difficult because of time constraints to wait for your client to get calm enough to proceed, you may wish to consider having your client primarily write out his or her responses to whatever questions or concerns you have in the future.

HANDLING THE ANXIOUS OR INSECURE CLIENT

The anxious or insecure client is generally someone who takes a worried approach to life, thinking and rethinking all the negative possibilities, worrying themselves sick over even the most remote untoward event. An anxious client is easy to recognize because he or she will want to view and review with you every detail of the case, and may end up making you worry as much as they do.

Worrying is a protective device, an attempt to ward off anything bad with compulsive thinking. As such, it deserves compassion and reassurance. Resist the temptation to wave off your client's insecurity with a cavalier "Everything's fine, trust me!" that will only aggravate their anxiety.

Guidelines

When dealing with an anxious client, respect your client's feelings. Worrying is useful to this type of client, and you're not there to reconfigure your client's way of taking care of him or herself. Accept your client's worrying as belonging to your client, and don't take it on as yours.

If your client is insecure, reassure your client. Be as reassuring as it is realistically accurate to be. Don't deny your client's anxieties, but counter them whenever possible.

Another way to deal with an anxious client is to make sure he or she is always prepared. An anxious or insecure client requires more thorough preparation than other clients before any meeting, deposition, etc. Be sure to inform your anxious client thoroughly about who will attend meetings, for how long, what will be discussed, what your approach will be, what the purpose of the meeting is, and so forth. Even if you have little time in which to do so, prepare your client. The anxious client may

fall apart on you if not at least somewhat informed ahead of time. Here's an example of preparing an anxious client for a meeting:

Client: It's probably foolish, but I'm worried sick about the meeting tomorrow. I mean, what if they want something we haven't thought of? What if they don't want to settle at all?

Lawyer: This kind of meeting can be scary, especially when you haven't done a lot of them. Fortunately, I have. My experience is they will want to settle if at all possible. Look upon this as a negotiation. Whatever they want, we'll work with, just as they'll work with what we want. *(The lawyer now goes into the preparatory phase.)* Now, here's what I expect to happen. . . .

Notice how the lawyer did not make the client feel wrong for worrying, but acknowledged the legitimacy of the client's worry, and defined the worry for the client as a function of a new situation. Thus the lawyer was able to go on and reassure the client from the lawyer's position of greater knowledge in this arena. The lawyer then went on to inform the client of the specifics of the upcoming meeting, which will allay the client's insecurities in that regard.

If an anxious client calls you several times a day and makes it difficult for you to do your work, suggest to your client that the memo system is most effective, because it allows you to read the memos with your full focus and concentration when you have ample time. The memo system has the dual advantage of giving you a respite from what can be a very painful situation, and assuring your client that you are taking their comments and thoughts seriously.

HANDLING THE WITHDRAWN CLIENT

Although the withdrawn client appears less frequently than the others, one will cross your door occasionally. They are often a minor or spouse who is the main party to the case, but who is not the one who wanted to bring the case to a lawyer. Your task is to solicit enough cooperation from your client to enable you to work with them effectively.

Guidelines

If your client is withdrawn, recognize and acknowledge your client's lack of desire to deal with the subject at hand. Your best bet is to start by fully acknowledging and accepting their reluctance to say anything, and their desire to be anywhere but in your office.

Then motivate them to speak. Find something that will motivate your client to be more cooperative. Many people can be motivated with a statement along the lines of "Well, as long as we're here, we might as well do

it as best we can!" Say this with friendly humor and tell your client that you need his or her help to proceed with the case.

Other people can be motivated not for themselves, but on behalf of the other persons involved in the case. This can take the form of "Your parents really care about what happens to you. They want to make sure you're going to be all right as you grow up. I need you to work with me to help them make that happen," or "It's not OK that this individual did this to you. And they will probably do it again to someone else if you don't speak up. I need your help."

Ask for help. Notice in the suggested comments given above, the final statement always includes a request for help. People who are withdrawn are, at least in this circumstance, usually more amenable to helping others than they are to just speaking up for themselves. A genuine request for help can be very powerful. Here's an example of working with a withdrawn client:

Lawyer: I'd like to ask you some questions about what happened to you back in August of 1992.

Client: Mm.

Lawyer: Tell me what you remember.

Client: Mm-hm.

Lawyer: *(waiting, letting some time go by)* This is hard for you.

Client: *(sighs)* I don't wanna be here.

Lawyer: *(acknowledging)* I can appreciate that. This is not a fun thing for you.

Client: *(silence)*

Lawyer: What's the part you hate the most?

Client: *(resentfully)* Talking about it. It's over, why do I have to keep talking about it?

Lawyer: *(acknowledging)* You're right, that's a bummer. And I'm sure there's nothing you'd like more than to leave it behind you. *(Going on to motivate the client)* And frankly, that's what I'm hoping to help you do. Leave it behind you, once and for all. But the only way I know to do that is for you to talk about it—and I'm really sorry about that.

Client: *(sighs)* I really want to be done with this. I want to go on with my life.

Lawyer: *(recognizing)* I know. And that's what I want for you. Only I want you to go on to a good life, and that's what we're trying to get for you. *(Moving on to a request for help)* And I need your help. I can't do it without you. If I could, I would, believe me. Will you help me?

Client: *(giving in)* Yeah, OK. What do you want to know?

This type of client takes a great deal of patience and forbearance. Notice how the lawyer built up to the request for help very slowly, one small step at a time. If you rush a withdrawn client, you take the risk of losing his or her cooperation entirely. Go slowly, empathize with their lack of desire to become involved, and make your goal to get whatever minimal cooperation will enable you to do a good job. Be sure to thank them and express your sincere gratitude for their cooperation once you get it.

HANDLING THE DOORMAT CLIENT

The doormat client is the client who says yes to everything but leaves you completely confused as to what he really wants until some critical moment down the line when the doormat client unexpectedly has a complaint. A doormat client is someone who is unwilling or afraid, usually out of shyness or because he is intimidated (for a variety of reasons) to express his wants, needs, and opinions until he absolutely can no longer hold them in. By then, it's usually too late for you to incorporate those desires successfully.

Guidelines

When dealing with a doormat client, ask direct open-ended questions. Let your client know that his or her opinions, wants, and needs are important to you. Ask clear, focused, open-ended questions to solicit your client's opinion. Be patient. Be supportive. Help your client answer your questions as illustrated in the example below.

Rely on written comments, not verbal ones. Verbal expression is very difficult and anxiety-provoking for certain clients. They may feel they are being put on the spot in your presence and find themselves tongue-tied. Request written comments from your clients for areas where their input is important. Here is an example of working with a doormat client:

Lawyer: . . . and that covers the important points I think we should bring up tomorrow.

Client: *(nodding)* Um-hm.

Lawyer: Do you have anything else you'd like me to bring up?

Client: *(no apparent emotion)* No.

Lawyer: *(beginning to suspect the client is of the doormat variety, testing it out)* OK. Now I'd like to submit a report from an additional expert. What do you think?

Client: *(no emotion)* Fine.

Lawyer: *(providing supportive guidance and a direct focused open-ended question for the client)* Your opinion and your

thoughts are important to me. Knowing them helps me do a good job for you. Bringing in an additional expert is going to cost more money, but it may reinforce our position. How do you feel about that?

Client: (*hesitant, gathering his thoughts*) OK. Umm. Well, how much would . . .

Notice how the lawyer in the above example did not make the client feel bad for not proffering his thoughts and opinions earlier. The lawyer facilitated the client's talking by emphasizing the importance of the client's thoughts, and giving the client guidance in terms of defining the issues where commentary would be helpful.

In the future, the lawyer would probably benefit from written question-and-answer correspondence. This would save considerable time for the lawyer, and would have the added advantage of setting down in writing the client's wants and comments or lack thereof. This would protect the lawyer from the client suggesting in the future that the lawyer never asked what he or she wanted.

Whenever a client agrees too readily with everything you suggest and offers no suggestions of his or her own, be suspicious. It may be flattering to have someone always agree with you, but it bodes ill for a successful client-lawyer relationship.

SUMMARY

You now know how to cope with one of the thorniest aspects of good client-lawyer relations—handling the difficult client.

To round out your understanding of how to create a satisfying client-lawyer relationship for both yourself and your client, we'll take you step-by-step through a practical example of developing such a relationship right from the start in chapter 7.