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Learning the Ropes
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CLIENT RELATIONS AND ATTORNEY FEES: TIPS FROM THE TRENCHES

The practice of law is stressful enough without having to endure sleepless nights and bar complaints over clients we do not like or clients who do not pay us. The proper selection of clients, judicious setting of retainers and careful tending to our clients can lead to better client relations and full payment of your fees.

PROPER CLIENT SELECTION AND DE-SELECTION.

The “I hate my client” syndrome. There are few things worse than taking on a client when it just doesn't feel like a good fit. Being selective in who you take on as a client can save you loads of stress down the road. It can also save you from the ethical embarrassment that comes from not working on a file because you don't like the client. Remember that the client needs to feel comfortable with you, you too need to feel comfortable with the client.

Remember that if you take in one \$50,000 case it will take ten \$5,000 cases to earn the same income.

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Don't accept clients when:

- You don't like sitting in the room with them.
- They need more hand holding or attention than you know you will be able to give.
- They have already burned through other good lawyers.
- You remind them of their soon to be "ex."
- They bring 3 grocery bags of papers to their first appointment.
- Taking the case appeals only to your ego.
- You know you don't want to have a case with the other lawyer.
- You are not qualified to handle the case.

Be cautious when:

- The client has a history of bankruptcy. If they will not pay their prior creditors, they may not pay you.
- You are faced with support reduction cases. These are rarely money makers for your firm.
- You are faced with young or poor clients. Do not assume that they cannot pay a fair fee, particularly when they are accompanied to their appointment by a friend or family member.
- They tell you that you are "the only attorney" who can help them and you are asked to be a crusader. The Crusades did not go well in the 11th century and what makes you think they are good in the 21st century?
- They want you to represent both sides.
 - My advice: Just don't do it. The financial benefits will never outweigh the potential consequences. Only represent one or someday you will be defending yourself over a claim that you did not make full disclosure or provide an informed consent. It is easier to represent only one party even if it means negotiating with an unrepresented party. However, counsel should make it clear that he is only representing one of the parties.

Don't be afraid to fire a client:

- ❑ It is OK to fire a client. Whenever possible, do so before your relationship becomes hostile. Unless there is a substitution of counsel, once the case is filed you will need the judge's permission but that can usually be achieved if it is done sufficiently before trial and does not prejudice the client.
- ❑ **ETHICS CAVEAT: It may not be ethically possible to provide a specific reason in your motion to withdraw as that could be construed as violating a client confidence. Most local or state rules require a reason but the Bar may feel that any detailed reason may violate a client confidence. Perhaps the simplest reason in an affidavit could be that *"for good cause and for reasons not stated in this affidavit the client-attorney relationship has broken down such that counsel cannot effectively represent the client's interests."* Make the issue you rather than your client.**
- ❑ Make sure your fee agreement has a Termination clause. A sample fee agreement provides in part that:

"Attorney may resign for non-payment of fees and costs or for any other reason, including those specified in paragraph 9 regarding custody, by mailing a notice to client's mailing address as reflected in client's file. Client may also terminate the relationship upon written notice but acknowledges that once the attorney is listed as attorney "of record" with the court, then the lawyer-client relationship cannot terminate without the court's consent."
- ❑ Some firms even have a very stern policy involving child custody so this provision is in our paragraph 9:

"NOTE: This office has a firm policy about child custody. If the client cannot convince the attorney that the child belongs in his/her legal custody, then it limits the attorney's ability to convince the court. If in the progress of a case the attorney concludes that it is not in the child's best interest to be in the custody of the client, and the client still wishes to continue to pursue custody, then the attorney may withdraw."

"Continuing to represent a client who does not listen, who is rude to your staff or who is someone you simply do not want to talk to is a recipe for disaster"

- ❑ Firing a client is never easy but continuing to represent a client who does not listen, who is rude to your staff or who is someone you simply do not want to talk to is a recipe for disaster.

REDUCE PROBLEMS BY BUILDING STRONG CLIENT RELATIONSHIPS IN THE FIRST APPOINTMENT

How do I get clients to Rely on Me?

- ❑ Be candid at the first meeting.
- ❑ **“a lawyer should explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”**
That obligation begins during the initial interview.
- ❑ Don't make promises you cannot keep. In fact, don't make promises.
- ❑ Tell them what they need to hear rather than what they want to hear.
- ❑ Make sure your client knows that you know the law and explain what is likely to happen
- ❑ Return phone calls, even if the purpose of that call is to schedule a convenient time to talk. If you cannot do this, have someone from your office call for you.
- ❑ Let your clients know there will be times you are not able to respond to their requests because other clients may come first and that their time in the Que will come.
- ❑ Clients who feel their lawyer has been honest with them are more likely to pay their bills and refer in more clients.
- ❑ Realize that clients only see lawyers because they have serious problems and therefore they are not at their best. Some may even have actual mental disorders. Don't become your client. And if you feel they have a mental problem, refer them to appropriate help.

“Always tell your client what they need to hear, not what they want to

RUN YOUR PRACTICE LIKE A BUSINESS.

Remember that the practice of law is a business and like all businesses, cash flow can determine whether you stay in business. A professional degree does not guarantee that you are a good steward of business income and expenses. Recognize your strengths and weaknesses and address them.

- ❑ ***Profitability is not based only on hours billed, billing rates and expenses.*** It is also based on payment or the realization of the time billed. If you bill \$6000 at \$300/hr. and collect \$3,000, your actual hourly rate, your *realized rate* is \$150/hr. Choosing cases where your *realized rate* more closely matches your billable rate will increase your profitability and reduce stress.
- ❑ ***Be competitive in the labor market.*** Pay or exceed competitive wages and benefits then expect employee production consistent with that level of pay. Being competitive encourages commitment, loyalty and productivity. Paying at the “low end” merely undermines productivity and your bottom line. The last thing you want is to spend time over and over again replacing staff that has left for *greener pastures*. Provide incentives to those employees who continually act in the best interests of your practice. That way you are not training your competitor’s next employee.
- ❑ ***Focus on recovering costs*** of fax, on-line services, copying, PDF construction, long distance, hand delivery, research and other costs related to client services. These can be direct billed or even billed as a monthly surcharge. If the hotels can add a “facilities fee” why can’t you add a basic service fee? **Just make sure it is in your fee agreement.** If you receive 20 faxes or hand deliveries each morning, your hourly rate is \$250 per hour and your minimum billing segment is .1, then you have billed \$500 before the day has even started.

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- ❑ ***Out-source things you cannot do well or economically.*** PAYCHEX is a payroll service that can handle your payroll, tax filings, annual W-2's, retirement contributions, etc. (www.paychex.com) Even CPA firms find they are cheaper than doing payroll “in house.”

- ❑ **Add Visa and MasterCard to your payment options.** Yes, there is cost so you do not make 100 cents on the dollar, but we live in a credit society and you make that up by receiving prompt payments. Accepting credit cards allows you to be paid now! No bounced checks, no waiting for checks to clear and, more importantly, the client is financing their own case rather than you doing it. Sometimes clients will split the retainer cost among multiple cards. It allows you to provide a service to a segment of the economy that has no access to cash but for their credit card.
- ❑ **Don't waste your office time giving free advice.** Frequently all you will be doing is using valuable time you could commit to your paying clients by being a cheap source for a second opinion. After they get your "free opinion," they will then hire the "real" lawyer who thinks his advice is valuable enough to charge for his time.
- ❑ **Do not advance costs, particularly expert fees.** Have the client sign the agreement with the expert. If you are paying, collect the fee in advance.
- ❑ **Make sure your employees bill their time,** when appropriate, and are timely completing and entering their time sheets.
- ❑ **Charge for internal costs.** If the court can charge up to \$1 a page for copies, why can't you charge 25 cents?
- ❑ **Bill your clients regularly.**
- ❑ **Write off bona fide errors** in your bill promptly and thank the client for pointing out the mistake.
- ❑ **Write off a portion of your bill** particularly if your instincts say that will avoid a complaint. Sometimes a bad ending deserves a "fee-ectomy."
- ❑ **Charge for travel** miles as well as time.
- ❑ **Do not charge for silly or unproductive time** but let the client know you did the work. Bill the time then discount it.

"Add Visa and MasterCard to your payment options. Accepting credit cards allows you to be paid now! No bounced checks, no waiting for checks to clear and more importantly someone else is the banker, not you."

TIPS ON SETTING AND COLLECTING FEES.

5 Cardinal Rules for Setting and Collecting Fees:

- Rule #1: “I would rather not do the work and not get paid, than do the work and not get paid** (and defend an ethics complaint).
 - Don't be manipulated into turning a fee case into a pro-bono case. No one likes her pro-bono workload to be artificially increased by clients who had agreed to pay and then elected not to.
 - If you take on a client who you know will not be able to pay your fee but you still want to represent him, then embrace that reality and forget about payment. Understand that any payment will be a gift and stop worrying. Pro-bono work should be something you choose not something imposed.

- Rule #2: Collection of Fees is largely dependent on the “gratitude curve.”**
 - Never be aggressive about fee collection when you are at the low point in a case.
 - When the case is over and the money has been disbursed you are not only at the bottom of the curve, you may not even be on the curve.
 - Collect your fees before or at the time the case is concluded.

- Rule #3: Make sure the cash flows through your hands.** In settlement documents make sure payments are made through your office, by certified U.S. available funds, that the obligation may not be off-set, released or otherwise delayed without your consent. Then make the deposit to the client trust account and disburse to your client and your firm.

- Rule #4: Don't let a client go way ahead of you on fees.** And if they do, use guilt as a motivator (i.e. a letter expressing your disappointment) rather than a threat.

- Rule #5: Do not practice law solely for the purpose of seeing how much money you can make.** If you do a good and ethical job for your clients the result will be that you will make a good living. Even Judges & Court personnel refer clients to the ethical lawyers who do good work.

TIPS ON SETTING FEES:

- Do not set fees over the phone:**
 - You know nothing about the case.
 - To set the fee over the phone you will need to hear the story and

then, if you are not hired, you will probably be conflicted out.

- ❑ If a prospective client asks what your fee is over the phone, they are probably not financially savvy or economically equipped to pay you in the first place.

- ❑ **Do not set fees too early in the first client conference:**
 - ❑ Until you hear the story you are not even sure you want the client.
 - ❑ Until you understand what the case really involves and what a realistic retainer may be.
 - ❑ Until you have determined that you can “bond” with your client. The client must have confidence in your ability to handle the case before you ever talk about the retainer.
 - ❑ Because you may realize you do not want the case or the client will not be able to afford you. However, sometimes a very high fee can increase the tolerability of a client and will increase your client control.

- ❑ **Talking about your Fee:**
 - ❑ Before you talk about the fee, talk about your “game plan” so the client has an idea about what needs to be done. If the client understands what will be involved, the client will better understand why it takes so much money to fund the case.

- ❑ Once you have gone over the game plan, go over the war chest and explain the budget and why you have budgeted certain items (i.e. expert witnesses, depositions, CPA’s, etc.). Explain who will be needed, what they will do and what they may cost. Move on to your fees after you have discussed your experts’ fees since the client will expect your fees to be at least double that of the expert. Once that is all discussed, you can move on to discussing how they will come up with the “war chest.”

“Before you talk about the fee, talk about your ‘game plan’ so the client has an idea about what needs to be done. Once you have gone over the game plan, go over the war chest and explain the budget and why you have budgeted certain items.”

- ❑ Some lawyers say to charge a large enough retainer such that if you were paid nothing more you would be satisfied. In this day and age of expensive litigation that is rarely possible. However, that does not mean you should not charge a retainer large enough that you give yourself breathing space to renew the retainer before you are too upside down in the case.
- ❑ Make parents, grandparents or siblings co-sign the fee agreement. Have them sign as “guarantors.”
- ❑ **ETHICS CAVEAT: Remember to advise the guarantor that their payment of the bill does not give them any rights to be privy to the inner workings of the case unless specifically authorized by the client.**
 - ❑ Make sure that the guarantee states that it is not revocable until the case is over and the fees are paid. Otherwise the guarantee is worthless paper.
- ❑ **Do not apologize for the amount of your fees. The client came to you believing you are the best in the business and you should not give them any reason to doubt their own judgment.**
- ❑ Do not set a fee that is unreasonably low.
- ❑ Do not set a fee that is unreasonably high unless you want to run them out of the office.
- ❑ Don’t “bait and switch” the client by asking for a retainer far below what you know it will cost.

“Remember, if their family who has known them their whole life will not loan them money and their bank who knows their finances will not loan them money, and their friends will not loan them money then why should you?”

SETTING AND GETTING A REASONABLE FEE FROM YOUR CLIENT

- ❑ Explain your expectations and the probability that the retainer will be exhausted and what you will do at that stage (i.e. take payments, refresh retainer, evergreen retainer, etc.)
- ❑ Always have a written fee agreement. Failure to do so limits you to a quantum merit claim which means no costs, no fees for collection, no

interest (late fees), no liens and an argument over your rate.

- ❑ Unless you want to be an expert in the Equal Credit Opportunity Act (ECOA), 15 USC 1691 and the Truth in Lending Act (TILA) 15 USC 1601, don't charge "interest", charge a "late fee."

- ❑ Make sure your fee agreement specifically provides for the late fee. Consider adding the following recital in your fee agreement:
"Sometimes the law firm may require that costs and expenses be paid in advance. All other bills for costs and legal expenses are due upon receipt. You will be charged a late fee at the yearly rate of 1 ½ % per month or an annual rate of 18% on any balance due that is not paid within thirty (30) days from the date of the bill."

- ❑ The late fee should be reasonable (i.e. 1 ½ % per month or 18%).

- ❑ Late fees encourage payment and they also give you something to discount at the end of a case to ensure prompt payment or settlement of an outstanding bill.

- ❑ Consider adding the following recital on each billing statement:
"All statements sent to the client must be carefully read. If the client has any complaints, claimed errors, discrepancies or objections to the billing statement, the Law Firm must be notified, in writing, within ten (10) days of the date of the statement. If no such notice is received, it is understood that the billing statement is accepted as correct, accurate and fair."

- ❑ Stay abreast of the rates of your competitors and stay competitive in your market regarding your rate.

- ❑ In setting your own rates you need to decide if you are billing "the Top Dog" rate or a lesser rate or even if you bill in .1, .2 or .25 increments. A \$400/hr. lawyer billing in .1 increments may make less income than a lawyer billing at \$300/hr. at .2 increments.

- ❑ While lawyers may be sensitive about their hourly rate, clients are not necessarily concerned about whether you charge \$200/hr. or \$400 per hour if the rate matches your reputation. There is nothing wrong with a reputation that says “he’s expensive but worth it.” Clients know the difference between a KIA and a Lexus. They know the Lexus costs more. If they do not have the money, they do not go into the Lexus dealership. When they do go to that Lexus dealer, they have the financial wherewithal to pay.

“Clients know the difference between a KIA and a Lexus. They know the Lexus costs more. If they do not have the money they do not go into the Lexus dealership. If they go they have the financial wherewithal to pay. The same principle applies to clients shopping for lawyers.”

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- ❑ **Do not negotiate with the client about your rate or retainer.**
- ❑ Make sure your fee agreement covers everything that is necessary.
- ❑ It is generally OK to “value bill” but it needs to be in the fee agreement and the charge still needs to be a reasonable fee.
- ❑ **Bonus Fees** are fees that are added at the end of a case either in lump sum or an adjustment of the hourly rate because of certain result. Many jurisdictions do not allow such a practice. If your jurisdiction does, make sure the concept is fully explained, orally and in writing, that your reputation and the strategy you develop may cause an early resolution or a result that is of great financial benefit to your client for which you would not be properly compensated if you only charged an hourly rate. It is the rare client, however, who will ever think you deserve a bonus for doing the job you were hired to do.
- ❑ Recognize that the age of consumerism has made us feel guilty and apologetic about our fees but we are selling a professional service not a widget.

COLLECTING A FAIR FEE

- ❑ Discuss with your client whether you will provide a “fee allocation” letter to help the client with taxes.
 - ❑ Certain legal fees are tax deductible to the client.
 - ❑ There are potential federal penalties that can be imposed on the lawyer where the lawyer affirmatively advises the client as to what is a deductible fee. That is why God created accountants.
 - ❑ Using Coded Billings will allow your client and his or her CPA to decide what to claim without you exposing yourself to liability. Also you will not need to expend unpaid “post-trial” time reviewing your bill for tax deductions.

- ❑ **SECURITY INTERESTS.** You may have a legal right to take a security interest in a client’s property to secure fees but not while the disposition of that property is at issue.
 - ❑ **ETHICS CAVEAT:** *Do you need to advise your client to seek independent counsel before signing a security interest over to you? Isn’t there a conflict of interest? Is it worth the possible bad blood?*
 - ❑ Although a client who will not give you security may also be one who will not pay you, the truth may be the request for security can generate the reluctance to pay.

- ❑ Remember that some judges may resent the lawyer when the issue arises of awarding fees.
 - ❑ The lawyer usually makes more money than the judge.
 - ❑ The lawyer may have a nicer home, car and benefits.
 - ❑ Make sure the judge knows how hard you worked and why the results would justify the award if they were the client.
 - ❑ Make sure your client understands that a judge’s right to award fees is discretionary and that even if awarded, it may never be collected.
 - ❑ Don’t give up just because a judge suggests he or she will award no fees.

- ❑ **Do not give in to the temptation to exercise your lien rights to the file.**
 - ❑ **ETHICS CAVEAT:** *Your professional responsibility to your client is far more important than your lawyer’s lien to the file. There is no faster way to get a bar complaint or get sued than to refuse to turn over a file to new counsel.*

- ❑ On the other hand, exercising a lien on the assets awarded to your client, if available in your jurisdiction, is an entirely different matter.

- ❑ **Non-refundable Fees.** If it is ethical in your jurisdiction and you charge non-refundable fees, return them when the client has a change of heart and does not want you to represent him or her.
 - ❑ Only charge for your time in the case and at a reasonable rate. Any other course of action will ask for trouble with the Bar and your client. Be gracious because burning bridges has no long term benefit.
 - ❑ Remember that sometimes a refund of more than is necessary or expected will generate good will and future referrals. More likely than not, the new attorney will not get the client the result they wanted and they will regret not sticking with you.

DON'T MAKE YOUR CLIENT'S PROBLEMS YOUR PROBLEMS

Make your Word your Bond.

- ❑ If you settle a case it should remain settled. Don't even consider participating in an attempt to renege.

- ❑ If your client wants to renege on a settlement, tell the client you are withdrawing. You want lawyers (and judges) to know that when you say it is done, they can rely on you. Your client may or may not have the right to get out of a settlement but that does not mean that you should risk your reputation by trying to get out of a settlement you have made.

“If you put a settlement on the record, stipulate that the judge will be the final arbiter on all issues related to language, form or unstated issues. Remove the ability of either side to blow the settlement. You will be less stressed and the judge will be happy to know that accepting a settlement on the record means it truly is settled.”

- ❑ **ETHICS CAVEAT: *Lawyers are supposed to be truthful.***
 - ❑ ***If your client reneges on the settlement, it places you in a position where your representations at the settlement may be called into question. Even if your statements were truthful at the time, your reputation will be based more on how you handle the client's change of mind than what you***

meant at settlement. If the opposing party seeks to enforce the settlement, you may become a witness which would not be possible if you continue representation. It is best to simply “get out” of the case when your client chooses to renege.

- ❑ **If you put a settlement on the record, stipulate that the judge will be the final arbiter on all issues related to language, form or unstated issues. Remove the ability of either side to blow the settlement. You will be less stressed and the judge will be happy to know that accepting a settlement on the record means it truly is settled.**

REDUCE STRESS CAUSED BY YOUR OWN MISTAKES

Be Candid.

- ❑ If a file has been sitting on the corner of your desk and you just have not gotten around to it, admit it.
- ❑ If your client is having trouble getting you discovery, tell the other side, don't wait for a motion to compel
- ❑ If you make a mistake, tell your client, your opponent or the court and do so right away. Clients respect candor and they respect their lawyer being human. Many lawyers are incapable of saying, “I am sorry” or “I made a mistake.” That failure only compounds the problem. There is nothing wrong with being fallible.

“If you make a mistake, own up to it right away.”

IMPROVE YOUR PRACTICE BY ACTIVELY CREATING HAPPY CLIENTS. It is the unhappy client that gives us sleepless nights and fears of lawsuits and bar complaints. It is the unhappy client who is most likely to aggravate your staff and not pay his or her bill. Cultivating a happy client takes more than just doing your job well. It takes the creation of a partnership with your client.

- ❑ Happy clients pay fees and unhappy clients file bar complaints.
- ❑ When you work late or on the weekend, make it a habit to call the client. They will appreciate that you are working hard for them.
- ❑ Use good manners. Drop a note or send flowers when good and bad things happen to your client like births, deaths, weddings, illnesses. They

appreciate good manners.

- Clients will be happier if you do not oversell the case or what you can do for them. It is better to undersell expectations than oversell them.

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- Do not argue with clients or dismiss their feelings. Their decisions may be wrong but their feelings are real.
- Buy lunch and don't add it to the bill. Clients resent that bill.
- Explain to your clients that you cannot answer every call and if you can, it may not be as soon as they want it. Explain what your staff does and how you handle the flow of information.
- Check on your clients during and after the case. Your clients will appreciate a call that just asks how they are doing. This builds goodwill.
- Do not conduct other business on your client's time.
- Personally call your client with the bad news as well as the good news.** They need to hear it from you not their ex-spouse. Don't ever delegate the bad news to your staff. Your client has paid you and you are the best one to explain a disappointing result.
- Do not be late for client appointments. . .you aren't a Doctor!!!
- Through a newsletter or website let your clients know your accomplishments. They like to see that their lawyers are well respected and involved.
- If you do not photograph your clients, get a copy of your client's drivers license as that is an easy way to get your client's photo and confirm who they are. If you want a good photo for the file, have them email to you their favorite and you can crop it.
- When clients say nice things about your staff, write them a letter thanking them (and do not charge for the letter).

- ❑ **Don't forget the need for human touch...**but not too much touching or the wrong kind

- ❑ **Sexual Relationships with Clients**
 - ❑ As attorneys in family law matters are dealing with uniquely vulnerable clients so the issue of sexual relationships with clients is worth noting.
 - ❑ Many states suggest you can have sexual relations under certain circumstances. Some say never. You should say never. Nothing good can come of it other than some initial excitement but that is nothing compared to the “excitement” your career faces when things go bad.
 - ❑ Clients do need to connect with you.
 - ❑ Sometimes it is just a hand on a forearm.
 - ❑ Maybe a sympathetic handshake.
 - ❑ An arm on a shoulder.
 - ❑ Sometimes it may be a hug.
 - ❑ Think of how you connect with people on a day to day basis and apply those techniques in your greetings and departures with client. Gauge the moment and act appropriately.

CONCLUSION

There is a reason why some lawyers never get sued no matter how many mistakes they make. The chief reason is that their clients “like” them. A successful practice can be measured in many ways.

When you do a good job and get personal satisfaction from the work you do, you will usually find that financial rewards are quick to follow.

Building solid relationships with your clients from the first meeting to the last is key to both personal and financial satisfaction in the practice of family law.