

Improving Client Relationships by Keeping Grizzly Bears from Eating the Clients & You

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Sometimes client relationships can become so difficult that a lawyer begins to fantasize about covering the client in honey and tying them to a bush of ripe huckleberries in late August while the bears are desperately looking for whatever food is available to eat. However, this form of client control is dangerous to the lawyer and tends to have severe negative consequences on the attorney client relationship. Client relationships can keep a firm afloat or sink it so attorneys must pay attention to the figurative grizzly bears lurking behind the file cabinets and under the conference tables and trying to slip into the firm through the telephone lines and email addresses.

Law practice management experts say that 20% of an attorney's clients generate 80% of the attorney's income. This means an attorney is working 80% of her time to generate only 20% of her income. Much of that time is working for clients that are difficult or not paying or both. Logic would say attorneys should then be focused on finding those clients that fit in the category of the 20% that generate 80% of income. But, do attorneys put their efforts into finding new clients who are in the elite 20% or training the clients they do have continue to get to be part of the elite 20%?

Attorneys should naturally strive to obtain better clients. However, attorneys should also work to improve client relations so they are spending less time on those incidents that lead attorneys to the fantasies about honey-covered clients being eaten by grizzly bears.

The first step is the problem client—identifying them and avoiding them. When attorneys look back at a case or client that has turned their office into a nest of angry hornets, the attorney can always see there were warning signs that a client was a problem and junctures where the attorney believes she could have done something different. Each attorney should develop a list of those warning signs that they observe of bad/problem clients. There are also many lists available in law practice materials. Some examples of warning signs include:

- A client with unrealistic expectations
- A client who has previous been fired by one or more attorneys
- A client who refuses to pay or attempts to negotiate down the retainer
- A client who has a large outstanding balance with a previous firm
- A client who has a bad attitude toward or about lawyers
- A client who expresses that “the principle” is all that matters
- A client who is unable or unwilling to accept responsibility for any actions they take in a matter
- A client who arrives with an emergency that is a result of their own action or inaction
- A client who demands the firm's attention without regard to appointments, business hours or limits of representation
- A client who lies about their status in, the facts surrounding or circumstances of their involvement in a matter
- A client who refuses or fails to provide requested information

- A client who complains about following basic firm procedures
- A client who fails to follow instructions
- A client who fails to pay its bill or pays its bill late
- A client referred to the firm by another bad client
- A client referred to the firm by an attorney with whom your firm has had unusual difficulty
- A client who treats staff members badly

Attorneys should develop a form by which to track these various warning signs. Problem clients start exhibiting the signs of difficulty from the first contact they make with an attorney's office. If staff are made aware of the problem signs and trained to spot and track them, an attorney would begin to see the difficult client before they agree to represent the problem client.

The second step is the Intake process an attorney uses to bring in and screen potential clients. The intake process is important because it begins setting the potential client's expectations of the firm and training the client how he is expected to behave when working with the firm. Each step of the intake process should be reviewed:

- Who takes the call from the potential client? Does the potential client have to provide information to a staff member and set an appointment to talk to an attorney? Or, do they immediately get to talk to an attorney who spends time (even a small amount) listening to the potential client's problem before the client gets to become a client of the firm?
- Are there standard questions that are asked of potential clients when they first contact the firm? If standard questions are asked, is the information gathered and stored on standard forms or in the same manner each time so warning signs can be tracked?
 - Name, address and telephone number
 - How the client found out about a firm
 - Names of other parties (for conflict checks)
 - Court information
 - Basic case facts
 - Type of case
- Is there a standard process by which an initial client appointment is scheduled? Is a reminder letter sent with instructions regarding how the intake process takes place, including whether the firm charges an initial consult, takes credit cards and expects information to be returned in advance of the initial appointment?
- Is the client asked to complete an intake form for the particular type of case the client may be seeking assistance for? Is the client provided instructions about this form?

The initial intake process makes a significant impression on clients. If an attorney thinks about his experience with a physician's office, an attorney can clearly see the impression initial contact makes. In a physician's office, there are procedures that set the parameters of how both the

patient and the doctor will interact with one another. A law firm does not need to be run like a doctor's office. However, an attorney should strive to establish a process that leads the clients to behave in a way that is most helpful to the client and the attorney in completing the tasks the attorney is hired to complete. This "training" of the client will help a client behave more appropriately throughout the process.

The next step in the process is to look at how initial information is collected. Is a client expected to provide information about their situation or does the attorney or staff collect it verbally at the initial appointment? Asking clients to complete intake forms or provide information tests a client's ability or willingness to follow directions or provide appropriate information. It also invests the client in the process. A client who is invested appropriately in the process and has "skin in the game" seems to behave better. A client who is invested in the process also feels like he or she has more control in the outcome. Sometimes, when clients feel no control, they try to regain control by derailing the attorney's processes.

When the potential client is "hired" by the firm, the next step is to make sure that the client understands fees and the limitations of representation as well as the firm's expectation for payment. This can be done with a good, written representation agreement. A representation agreement need not be long, although some instances call for longer agreements than other situations. However, it should clearly state the rate the attorney is charging, the retainer required, an "evergreen clause" that allows the firm to get additional retainer as needed, and exactly what the attorney will be doing for the client. The agreement should also outline the most common costs a client will incur in the representation.

The representation agreement should be signed by the client and the attorney and the client should get at least one copy. (Our office provides clients with at least two copies of the agreement in our initial processes.) Any changes or additions to the relationship should also be made in writing so that questions regarding the extent of representation and any additional fees are limited and reduce the potential friction that could arise.

Most clients have not dealt with attorneys in their lives and their impressions of an attorney often come from watching too much television or too many legal thriller movies. In short, they have no idea what to expect outside the distorted fictional characters in film. It is the attorney's job to help the client understand the reality of being working with an attorney. The best way to do this is to provide written guidance regarding exactly what is expected of a client and what the client can expect from the attorney and her staff.

Provide the client with the firm's policies in writing. Our firm sends out a short firm manual for clients. Our written policies include:

- Telephone
- Email
- Scheduling Appointments

- Scheduling Telephone Conferences
- Office Hours
- Holidays
- How to Deal with Mistakes
- Interactions with Staff
- Interactions with Court and Department of Children & Families

Our firm even provides tips on how a client can control and limit attorneys' fees and costs in their cases.

Clients may also find it helpful if they are provided specific instructions regarding the legal proceedings they are involved in and the events that surround those proceedings. Our firm client packet includes instructions on dealing with Department of Children & Families during the Medicaid process and what we expect of our clients in that process. We also include explanations of probate and guardianship as well as discovery and generally what our courts expect at hearings.

Once a client receives the written policies and procedures, the firm should be prepared to reference those procedures when the procedures are violated. Training a client is sometimes like raising a teenager; they test the boundaries to see if you were serious when you set them. Consistency makes good child rearing and good client training.

For example, our firm's policies clearly state that no drop in appointments are allowed. When a client drops in unannounced to see the attorney, the receptionist gets out the appointment book and makes them set an appointment or writes down the questions the client might have for the attorney and then references the client packet portion about making appointments. This process allows the firm to help the client without rewarding the client for violating firm policy with immediate access to the attorney and disrupting the firm's day for the client. It also gently reminds the client of the expectations the firm has of them. If the client refuses to make an appointment or to leave a message, that is noted in the client's file on the "problem client warning" notes in the file.

Over the course of a case, our firm has now started collecting the "warning signs" and every quarter, the firm evaluates the cases that have more than three "warning signs". The firm evaluates whether these problems are the result of an unusual stressor or are systematic. If they are systematic, we evaluate whether we should and can terminate the relationship with the client. If the situation calls for termination, we do so immediately. Keeping a client that causes problems for the firm only increases the stress for the staff and attorneys as well as the client. It also increases the likelihood that the firm will be left with a large outstanding bill, be threatened by the client with lawsuits and bar complaints, and be bad-mouthed in the community by an unhappy client. It is best to encourage the client to seek a firm or attorney that can be more

accommodating to their peculiarities before the representation reaches a point where neither the firm nor the client can terminate the relationship.

Once the case is moving forward, attorneys can provide written instructions on many of the common tasks a client must do in a case. These tasks can include opening and closing an income-only trust account, completing annual accountings and annual plans, opening and closing guardianship or estate accounts, maintaining time records for personal service contract providers, preparing for mediation, preparing for a hearing, etc. Our office has an entire file dedicated to written instructions for the various tasks required of a guardian. Instructions are sent out periodically as the tasks arise and each time the task arises thereafter. Written instructions provide a benefit for the firm in that firm staff can reference the instructions instead of verbally explaining things and being blamed for bad instructions when the client fails to follow the instructions. Written instructions also provide a benefit to the client by reducing the client's legal bills because the client has written instructions to reference instead of having to call the firm each time the task needs to be done. Each firm has its own processes, procedures and expectations and providing them to clients, keeps the client from having to guess and get it wrong.

When the case finishes, attorneys also have an opportunity to evaluate their work, their processes and their expectations. Attorneys can solicit evaluations from their clients either with exit interviews or anonymous surveys. These interviews and surveys should be sent to all clients no matter how they are exiting the relationship or whether they are happy with their experience or not. Often, attorneys can learn more from the disgruntled client than the happy client. That information can be used to better evaluate clients, adjust procedures and set the expectations of the next client.

SAMPLE WRITTEN
OFFICE POLICIES
AND PROCEDURES

Telephone Policy

Office telephones are answered during regular business hours. No staff or attorney cell phone numbers will be provided to clients. A voice mail system is available for messages after hours or when we are unable to answer the telephone during business hours. You are entitled to make reasonable requests for information concerning your case. To accommodate your need for information, we have instituted the following telephone policy:

1. When you call the office, please identify yourself and your case. If it is a routine question such as the time of a hearing, whether you must be present or what a term on a form means, please ask the administrative assistant for the answer. All scheduling questions must be directed to our assistants and paralegals because they keep the calendar.
2. When an attorney or staff member is unavailable, please leave a message. If we are unable to answer, leave a message on the voicemail or we do not know you called. Your message is given to the individual you are trying to reach as soon as they are available and will be returned as soon as possible. Please do not leave multiple messages for the same question unless there is a change in the status or your contact information. If your question requires more detailed discussion, our staff may arrange a telephone conference.
3. In the event of a true emergency occurring after hours, our voicemail system has a direct paging feature through which an on-call staff member can be paged with your message. This will allow us to assist you in the event you have an emergency after hours. If a non-emergency message is left on our emergency paging system, your message will be returned the following business day. To honor our attorneys' and staff members' privacy, please do not call them at their homes or on their cellular phones.
4. Non-emergency messages left on the voicemail system after hours will be returned the first business day following your message.
5. For all telephone calls and consultations you will be billed in the same way you would be billed if were discussing the case in our office with a legal assistant or attorney. If your call is merely to replace previously provided written information, make the request to a legal assistant and you will not be charged for a call requesting an extra copy of that information if that is the only reason for your call.

E-mail Policy

Because e-mail is not a secure or reliable form of communication, we do not require our staff or attorneys to communicate with clients via e-mail. If the individual staff member or attorney chooses communication via e-mail, the following policies apply:

1. All e-mails are treated for file management, billing and responsive purposes as written communications. In other words, your e-mails and any responses will be printed and placed in your file and the staff member or attorney will bill for your e-mail correspondence in the same way they bill for written correspondence.

2. E-mails cannot be responded to instantly and some may not be answered for several days. Please do expect an immediate response and do not send multiple e-mails regarding the same question.
3. Emails sent outside business hours will not be received until the next business day after the email was sent.
4. E-mails are not a secure form of communication and we cannot guarantee that they will not be exposed to viruses, security breaches or other problems that plague electronic communication. You send and receive e-mail with our firm at your own risk.
5. We cannot guarantee that we will receive your e-mails or that you will receive ours. There are many reasons why e-mails are blocked by systems or just lost.
6. Never transmit secure information such as social security numbers, credit card information and/or financial information via e-mail. There is no guarantee that the information sent will remain secure at all times.
7. Finally, if you are going to communicate with our staff members and attorneys via e-mail, remember that these are professional and business addresses. Do not send spam or mass e-mail to these addresses. Do not add these addresses to your general “joke” e-mail list. If our staff members’ or attorneys’ e-mail addresses receive spam, mass and/or “joke” e-mail, our system may block all other e-mails from the offending address to protect our network, which means you will be unable to communicate via email.

If you would like to communicate with an attorney or staff member via e-mail, please ask if they would prefer that form of communication. If you attempt to communicate with them without first obtaining their permission, they may not respond due to security concerns associated with unsolicited email or emails received without permission. Do not be offended if our attorneys or staff would prefer a more secure and reliable form of communication with you.

If you ever feel we are not living up to these policies, please let us know.

Mistakes

Do not think we are perfect. Do not think the courts or clerks are perfect. Do not think that government agencies and personnel are perfect. Mistakes occur in the system despite everyone's best efforts.

We are competent attorneys, but we make mistakes. We will correct a mistake if we find it or if you point it out. Please do not yell at us, accuse us of not doing our job, or insult us over a mistake. We always reserve the right to terminate representation of clients who act inappropriately.

If you believe you have found a mistake made by a court, a clerk, government agency or employee in your case, politely bring it to our attention. Do not call the court, clerk, government agency or employee directly. Do not yell at them or us. Do not accuse us of not doing our job or otherwise insult us over the mistake. To the best of our ability, we will provide you with an explanation of the issue and, if possible, make efforts to have the mistake corrected.

Access to the Attorney

We do not work on weekends or holidays. Attorneys work by appointments only and only during business hours. Please do not show up at our offices to speak with an attorney without an appointment. Unexpected visits delay necessary work and never result in access to the attorney.

Leaving Messages

Throughout your legal proceeding or experience, you will become frustrated and upset and want an immediate response to your concerns. You may call our office for information or confirmation of your concerns (please see our Telephone Policy included in this packet). When you call our office, please leave a message. If you do not leave a message either with a staff member or on voicemail, we do not know you called no matter how many times you may call the office and hang up. We are good at our job, but we are unable to read minds. If you do not leave a message, we do not know you called. Accusing us of failing to communicate with you or failing to return calls when you do not leave messages is inappropriate client conduct and only causes friction between you and our office when we are doing our best to assist you. This also makes it more difficult and more expensive to assist you because we will be required to reduce all contact with you to writing to avoid accusations and allegations that you may make in the heat of frustration.

Advice from Friends, Family and the Internet

Most of the research you do about your case online or the advice you get from friends or family will be incorrect or not applicable to your case so you should not compare what is happening on your case to what you find online or what friends or family may tell you. As your attorneys, we are the only reliable source of information regarding the process and status of your case. Take no action based on information from friends, family or the internet. The actions you take based on that information will likely result in additional work for us and that only increases your legal bills and may lead to us withdrawing as your attorney. If you are confused or concerned, we are happy to discuss the issue with you.

Department of Children & Families Processes

We cannot control the Department of Children & Families' actions. While the law states that Medicaid applications are to be reviewed and acted upon within a certain number of days, with budget cuts and lack of personnel, rarely are Medicaid applications reviewed and acted upon within the required time. Neither you nor the nursing home will be happy with the time it takes Department of Children & Families to review and act on a case, so please do not expect to be. To help alleviate this problem as much as possible, our office will not submit your Medicaid application until you provide us with all the paperwork necessary to submit and substantiate your application. If you do not timely submit the paperwork, we cannot timely submit your Medicaid application. There are NO exceptions to this rule.

Filing Fees and Court Costs

To begin a case or file certain documents or pleadings within an open case, courts require parties to pay filing fees. Sometimes these fees are hundreds or even thousands of dollars and our firm requires the parties to pay these fees. We do not pay court filing fees, even in cases we handle on a pro bono basis. We will notify you of these filing fees in advance and provide you with direction for paying those fees either directly to the court or by providing our firm with a cost deposit in advance of the particular filing that will be held in your client trust account until the filing fee is paid. If a particular document or pleading requires a filing fee and you do not provide it, we will be unable to file the document or pleading. There are NO exceptions to this rule. If you are considered indigent by the court and an applicable statute or rule waives a fee, we will provide you with the information or documents for applying for that waiver upon request.

Other costs are also incurred in legal proceedings. Standard costs such as regular mailing and photocopies done in the regular course of business are usually billed to you as part of your periodic billing. However, larger costs such court reporter fees, transcript charges, publication of notices in a newspaper, the costs of having someone served with process, expert witness fees and investigative fees must be paid by the client. There are NO exceptions to this rule. Our office will provide you with an estimate of the particular cost. You will either be asked to provide a cost deposit for the estimated amount which will be held in your client trust account until such time as the payment must be made or introduced to the particular provider (such as an investigator) so that you can retain and pay the provider directly. If you retain a provider, you are responsible for directing them to provide us with their information or reports.