



How to Un-Crazy Your Client!

Seminar Topic: This material provides an in-depth examination of the process and procedure of protecting yourself as a lawyer, identifying the dysfunction in the client relationship and managing client expectations.

This material is intended to be a guide in general. As always, if you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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(81 NOTRE DAME L. REV. 1945).

Charles runs his own firm, concentrating on real estate related litigation issues. At one time focused on foreclosure defense, the slow rebound of the construction industry had lead him back to his first area of practice, mechanic's liens.

Charles is a firm advocate for small businesses, and he donates his time to the Decalogue Society of Lawyers, serving as its Treasurer.

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How to Un-Crazy your client!

(Aside from 720 ILCS 5/9)

Communicating, Defusing, and Hopefully Enjoying Your Job

1. THE LEGAL PROFESSION INVOLVES ARRANGING INFORMATION DEFUSING YOUR CLIENT DOES TOO!

Why does your client need you? In other words, why wasn't this settled without a lawyer?

Identify the dysfunction, and you will identify the communication issue

Example #1: The emailer

Explain the law to me!

The issues are your time, and the weaknesses of email.

Solution: Client needs to be told the cost of emailing.

Immediate email response, and a quickly disintegrating back-and-forth

The issue is that printed words do not soothe anxiety. Client needs a phone call.

Solution: Use email to set phone appointments, and set an agenda. Do NOT rely on email.

Example #2: The rambler

But then there's also...!!!! And you didn't, and there isn't...!!!

The issue here is that the client has an avalanche of issues (in his mind).

Solution: Client requires re-direction. Remind the client that in order to help them you need them to break it up point by point.

Example #3: I need to talk to the Attorney! Oh do you?

The issue here is that the client doesn't get that their file is not your only file. Or they don't care. They client doesn't believe in phone appointments. Or appointments.

Solution: On the phone, refuse to speak to them about what they called about, discuss how the phone appointments work. In person, come out of your office, and tell them you could see them, but you are not going to. This 'Tough Guy' approach is for clients who persist in being self-centered. If the client is merely clueless, explain that you can see them in an hour, go see the sights and come back.

Second solution: Use staff. Have them transmit questions 'by text.' Have them give status.

Every day of your practice is a triage. You need to make the decision of what is priority, not the client.

Emergency room explanation, if you are waiting, that means you are in better shape than someone else.

Example #4: Mission Creep

The issue here is that you worked towards one thing, and now they want another

Solution: Get the goal written down BEFORE retention. Have a penalty for going off-goal.

Example 5: I don't know what's going on with my file! (Which will rapidly become: You didn't do anything!)

The issue here is that the client does not know what you are doing. The best solution is pro-active, you should be communicating monthly. The second best solution is to have a prepared statement.

If you have a prepared statement or saying, you –

- Avoid emotional answers
- Redirect the client's emotions
- Avoid a deer in the headlights problem

Best Solution: Client gets a **letter** once a month (not an email).

Problem with the solution: What to write? (Content challenge)

Answer: They want to know that you are thinking of them. "This day I have a lot of court, you may not be able to get ahold of me." "Yes, I am open on Columbus Day." "Remember that our goal is to..."

A running theme in these solutions involves the beginning of the relationship.

2. INITIALIZING THE CLIENT RELATIONSHIP

(Note that this section header is 'all caps')

"Good seasons start with good beginnings." - Sparky Anderson

Set the relationship before there is a relationship

Disclaimers – BEFORE THEY MEET YOU

- No one can promise me to...
- I understand that I must be truthful
- I understand that paying \$ does not mean attorney will take my case

Consultation fees – ALWAYS

This screens out the lunatics

“Salvaging” a client intake with a low price

Location, location, location.

The biggest headaches will be the people who you meet on their turf

The Client must understand who the Client is, and who the Lawyer is

- Relatives, organizations
- The Internet

Interviewing the Client **IN PERSON**

- Do not let them ramble
- Identify the source of the problem – what is the dysfunction; why are they where they are; how did this happen
- Listen to what they avoid saying, listen to what they repeat
- Make them elaborate about what they do not want to elaborate

So what do you do on the phone?

- Do you understand what I do?
- Do you understand what you want?
- Find out the statute of limitations, and when the next court date is



“No, if you want to tell me more you have to pay me.”

The goal goes in the retainer agreement. ALWAYS.

BEWARE:

“I’m calling for a friend” – have your friend call (You won’t be able to answer by questions)

“I want to find out how much it costs.” – I don’t know everything involved (Car mechanic explanation)

“It’s very simple.” – How do either of us know that?

3. WHY ARE WE HERE? WHAT IS IT ALL FOR ANYWAY?

(This is still in the first meeting)

Therapist vs. Attorney

The client’s goal vs. your goal, did you solve my problem? Did you solve our problem?

Relationships have boundaries, Relationships have purposes, Meetings have agendas, and a client-relationship is a series of meetings. Each meeting must have a purpose.

You have a fiduciary relationship with someone that you are in an adversarial relationship with

Your client resents you

- Unless they understand what you do (and they don’t), they resent needing you.
- You don’t do a physical thing that they can see, and you need to understand that people believe in what they can see

A fiduciary to someone in an adversarial relationship. Contrast other fiduciaries.

- Most of the time people are honest with their doctor
- People don’t deal with billing from their doctor

- People are honest with their architect, their accountant, and other fiduciaries – but not you. Because they want you to be devious.

Identify the real objective. To you it's a legal thing, to them it is...what?

Manage expectations, identify what they will not get

Personal notes, likes

**Always have a written retainer agreement. The one exception is –
THERE IS NO EXCEPTION**

For each and every time you meet, write a Memorandum of Understanding.

Keep a log of every time you do anything or say anything. Various services and google pro.

4. RETAINER AGREEMENTS

Always, always, always! (And note Illinois Rule of Professional Conduct 1.5(c))

Illinois Rule of Professional Conduct Rule 1.2(a) and (c)

RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER. (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued...(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

“Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

How do you prove that you did this?

Necessary elements of retainer agreement:

- 1) Venue and jury waiver
- 2) State what you are retained for, and what you are not retained for
- 3) Special warnings, repeated
- 4) Who is the lawyer
- 5) Who is the client (and who is not)
- 6) Clearly state the **objective**, and what is not possible
- 7) Courtesy to your staff
- 8) Honesty with Attorney
- 9) Phone conference preference
- 10) No oral changes or promises
- 11) Methods used

If you go off-goal, they must give you more money.

If they insist on seeing you when they do not have to, make them come in.

5. FEES

Rule 1.5 – comprehensive list

Points to remember:

- 1) The ARDC looks to quantum meruit
- 2) Flat fee problems and cold feet clients
- 3) There has to be a cost for calling you.
- 4) Never do pure contingency
- 5) Evergreen fees (not IOLTA)
- 6) Trial retainers

6. COMMUNICATION

RULE 1.4: COMMUNICATION.

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) **reasonably** consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client **reasonably** informed about the status of the matter;

(4) promptly comply with **reasonable** requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent **reasonably** necessary to permit the client to make informed decisions regarding the representation.

What does "reasonable" mean? It means have a reason!

None of the above says you have to do it. Use staff. Even part-time staff. Law students. Paralegal students.

To repeat:

- 1) Document the file with short letters
- 2) Letters, not emails. Avoid emails. Emails increase emotion.
- 3) Keep them informed, but – when explaining the law, make your time important
- 4) Use your staff as a filter
- 5) Use your staff as a 'heavy'
- 6) Avoid banana meetings

7. DESPITE ALL THIS, YOUR CLIENT STILL...

- 1) Is impatient. Ask prepared questions that remind them of what you have done and what they signed to. “Why is it taking so long?” Why do they think it should be quicker? What didn’t you tell them?
- 2) Is greedy. They argue about the bill. WITHDRAW.
- 3) Is lazy. Reminders about client performance, e.g. documents, certified mail gets people’s attention. Make sure they know they are hurting themselves for failure to produce.
- 4) Is prideful. Why should I have to...There was a failure to initialize the file properly. Again, prepared questions, this is the rule, the system is this. Fair has nothing to do with it. “Trial court is not about the truth, it is about the evidence.”
- 5) Is envious. “How come so-and-so got...” they aren’t you, and you don’t know that they got what they say they did. Prepared question: “Do you suppose that your circumstances are identical to theirs?” “But I read on the Internet that...” “I read on the internet that Bigfoot went to the prom with the Loch ness Monster.”

The key to all of these is redirection with prepared questions. The best prepared questions work off of their dysfunction.

Withdrawing: See Illinois Supreme Court Rule 13. Put the disclaimers on the notice.

Tip: Put the certified mail number on the notice.