

CLIENT RELATIONSHIPS: DON'T FORGET THE FIVE COMMANDMENTS

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Alan S. Gassman,^{a1} Kateline Tobergte^{a2}

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CLIENT RELATIONSHIPS: DON'T FORGET THE FIVE COMMANDMENTS**WESTLAW LAWPRAC INDEX****GPR -- General Practice Approaches, Articles & Issues**

As lawyers what we do is business, it's not personal. But for our clients what we handle is very personal. The types of clients we take and the relationships we build will determine how successful our business is. The key to building a good client base and building good relationships is to remember the 5 client commandments: (1) Choose your clients wisely; (2) Connect with your client; (3) Clearly communicate with your client; (4) Know your client; and (5) Cover your behind.

COMMANDMENT ONE: CHOOSE YOUR CLIENTS WISELY

When building a house, it is important to have a strong, solid foundation. When building a law practice, it is important to have a good, solid client base. In order to get that client base, you must choose your clients wisely. There is a 60:40 ratio when dealing with a group of people: 60 percent will be good, but 40 percent will not be. The goal is to build a client base out of the 60 percent and avoid the 40 percent. The 60 percent are more likely to be reasonable and more likely to pay at the end of the day. People are more likely to continue paying once they make one payment, of any kind. There's also a psychological effect where people value things more when they pay for them. A good initial way to separate the 60 percent from the 40 percent is to charge for the initial consultation. It doesn't have to be a large fee but getting the clients to make that first payment will increase the chances of getting clients that are willing to pay for your services and avoiding the ones that are looking to take whatever they can for free. If someone asks you to do something for free, ask for something in return no matter how small. For instance, ask them for a written report of the situation. If they are asking for you for a free hour and are not willing to give an hour themselves, this is a red flag. Asking for value in return for your work shows that you value your time and yourself. People care more about things they give value for, and if they are not willing to pay or give something in return then they do not value your services.

At the consultation it is important to evaluate your client. Not just look at the case they are coming with,

although that is important, but how they conduct themselves. How do they present themselves? Look at how they are groomed. If someone is unable or unwilling to take care of and value themselves, they are not likely to take care of and value you and your services. This doesn't mean they need to have expensive clothes, but they should be clean, neat, and *16 appropriately dressed for the situation. How are their mannerisms? Keep in mind that the person is in your office because they need your help, so they are probably not going to be the best version of themselves. However, it's one thing to be upset and stressed, and another to be unbalanced. How do they talk about other people? If a client comes into your office saying their last couple lawyers were awful, but they are sure you'll be much better... run. It's possible they had one lawyer that wasn't great, but two is more unlikely. This is a sign that the client has unreasonable expectations and a misguided perception. Everything is everyone else's fault and if you don't get them what they want then you must have done something wrong too. This is not the kind of client you want. If they say they were unhappy with their last lawyer so they didn't pay them anything, this means that they are likely to not pay you either. However, as previously mentioned, the person is there because they have a problem, so they are probably not going to talk nicely about the other party, but this is different than blaming previous lawyers for their case.

A few other red flags to watch for when choosing a client is their financial sense, their ability to take criticism, and their motivation for being in your office. Financial sense doesn't mean they have to be wealthy, but that they have the sense to live within their means. Some people use high monthly spending to appear more well off than they really are. These clients will not be able to pay at the end of the day, and it shows that they are not the most honest kind of person. They may do or say things that they think you want to hear and would look good but could hurt the case and your reputation in the end. Ability to take criticism is important because the situation the client is in is difficult, and you are going to have to tell them things they will not want to hear. Those that become extremely angry easily are going to be difficult to work with and more likely to be unhappy with your services leading to issues getting them to pay and possibly malpractice suits. Lastly, what is their motivation for being in your office? Are they there to resolve the issue they said they had, or do they have ulterior motives? Look at a client's social media, google them, criminal history. See what kind of person you are dealing with.

There are three different categories of people: (1) those that are upfront, honest, and keep their word; (2) those that are entitled, selfish, and play games; and (3) those that are dishonest and unreliable. Evaluating the clients at the outset of the relationship will help you distinguish between the three kinds of people and establish a good client base.

COMMANDMENT TWO: CONNECT WITH YOUR CLIENT

Once you have weeded out the good clients from the rest, it is important to cultivate that relationship. This will ensure a lasting relationship no matter what the outcome is and lead to referrals. People refer others to the lawyer they used, so you can continue to grow your practice by positive word of mouth. Good people tend to associate with other good people, while jerks hang with jerks (which is another reason why a good client base is so important). To cultivate the relationship, it is important to connect with the client and make them feel respected, heard, and valued.

In a time when most of our friends are online and we text more than we talk to other people, face to face interaction is increasingly important. Having face to face conversations lets you look in the person's eyes as they talk to you. It is important to give them that eye contact. They can see that you are interested and engaged, and you can read their body language. Most of the information we get from communication is not from the words themselves, but everything surrounding the words: body language, tone, response time. Since the client is watching you too, it is vital that your body language conveys genuine interest in what the client is saying. Smile when you see them and let the person know you are happy to see them. The client is likely not happy to see you because the only reason they are there is to deal with a problem. A little joy goes a long way, and making them feel welcome will help lighten the mood and make the client more comfortable. Also, especially when people are going through tough times, a smile can turn around someone's day. Face to face communication lets the client know they are respected which will incentivize them to give you respect in return. It increases synergy and cooperation, decreasing the risk of non-compliance down the road. Also, even if they do not get a favorable final judgment, they are less likely to sue you because they feel like you cared and were invested, and therefore did everything you could for them.

The context of the conversations is equally important. The client doesn't want to feel like a dollar sign, or just another file in the drawer. Basic interpersonal skills go a long way in making the client feel like you care. Use ***17** their name and use it often. It will help you remember their name, but more importantly it makes humanizes the client. It makes it more personal and makes the client feel like you are more engaged and value them as an individual. It also humanizes you to the client which will make them more receptive and relaxed. Learn something about a person's family and passions and make mention of it when appropriate. This goes to show that you care about them as a person and are making a real effort to understand them. Also share some personal information with the client. Common interests help people connect, and it makes you vulnerable. Showing the client you trust them enough for you to be a little vulnerable and open up will make them more likely to trust you. Studies have shown that people have more trust and are more willing to go the extra mile for someone they know something about, even if it is something trivial. There are a few different opinions of lawyers out there, some positive and some negative, but your client sees you as a lawyer not as a person. A client's preconceived notions about how lawyers are will affect how they react to you. Connecting with your client as a person helps break down their walls, makes them more comfortable, and makes them feel like you really care. It establishes a good relationship that will make working with the client better for both of you, and create a lasting client that will keep coming to you and recommending you to others.

COMMANDMENT THREE: CLEARLY COMMUNICATE WITH YOUR CLIENT

Once you build a basic rapport and trust with your client it is important to keep it. This means being open and clear with your client about their case and your roll in their case. Explain the attorney-client relationship to your client, and very clearly let them know if you are not representing them. A client will likely assume that you are their lawyer for everything once they talk to you. You may also be their therapist at times and their friend at others. It is important to set clear boundaries so the client knows what you are and are not responsible for and capable of. Also make it clear who you are not representing if dealing with more than one person or a business. You do not want a non-client saying they were your client and thought you were protecting their interests.

Explain the scope of the representation and the costs associated with their case. When the status and scope of the relationship, or lack of relationship, is not undeniably clear the client's belief is always right.

If you decide to not take a person as a client confirm that you have not advised them about statute of limitation issues and that you do not specialize in the area of law involving their situation, unless you really do.

Manage the client's expectations. Many clients will want things out of their case that you cannot possibly get them, and it is important to let the client know that what they want is not possible. It is not always an easy conversation to have, and it's tempting to tell the client what they want to hear so you don't hurt them or anger them, but false hope is always worse than giving them the reality up front.

A client's dumb decisions are going to be blamed on the lawyer. Ignorance is not always bliss, and clients can do some serious damage to their case if they release confidential information or lose their cool and anger the other side. Even if the client's actions were the reason something went wrong, the lawyer will be the one blamed. This is because human tendency is to blame others when something goes wrong. You are the one in a position of authority and are supposed to have all of the answers, so if something happens the client will turn to you. It is important to explain to your client what they should and should not do in order to keep confidentiality and make the case go well for everyone. Of course, this does not mean coerce or impermissible coach your client, but talk to them about what can go wrong. Some clients will also ask you to do things that are ethically questionable or flat out illegal. Do not do it. Explain to the client what you will not do it because it is wrong and you will lose your law license, and they will go to jail (depending on what they are asking you to do). If the client is unaware that what they are requesting is illegal or wrong, explain why it is wrong or what law it is breaking, and the consequences associated with their proposed conduct. If a lawyer does assist a client with fraudulent activities there can be serious consequences. For instance, in 2002 a lawyer was indicted for assisting a businessman fraudulently conceal assets from creditors. His indictment lead to him committing suicide. He lost everything including his life. The Model Rules of Professional Responsibility prohibit assisting a client in fraudulent or illegal activity, but allow educating a client about the consequences of a proposed course of action. If the client refuses to move on and insists on the illegal conduct, you must withdraw from representation.

*18 It is also okay to not have all the answers and let the client know that. Being honest about what you do and do not know will help keep your client's trust and make you appear humble. While it can make some more worried that even their lawyer doesn't know the answer, it can make others more comfortable to know they are not alone and must not be dumb if even their lawyer doesn't know the answer. This also gives you the opportunity to let the client know you are willing to go the extra mile for them by doing extra research to find out the answer to their issue. It is also safer to admit not knowing than to guess and be wrong. This makes you look even worse and will break the trust you have established. Once trust is broken it is much harder to get back.

COMMANDMENT FOUR: KNOW YOUR CLIENT

Knowing your client goes beyond just knowing their name, their case, and a few personal details about them. It

is important to know how your client thinks and learns. A client's personality and thought process determines how to interact with your client, and what approach to take with issues.

People have different learning styles. Some people are kinetic learners, some are auditory learners, and others are visual learners. You can talk until you're blue in the face, but if your client is a visual learner they will not truly understand what you were trying to explain to them. Don't ask your client what kind of learner they are, instead present the information in multiple ways and see what they respond best to. This goes back to paying attention to your client. If you are talking and they are staring blankly at you, try writing down what you are trying to tell them. Make a chart or a timeline. Something they can hold and look at while you talk.

The type of client also depends on overall approach to discussing the case. Some clients, especially those with addictive personality types, will require much more patience and constant reassurance of how their case is going. They will need to be hand-held and walked through every aspect of their case... probably more than once. Some clients may want as little to do with the case as possible and expect you to take care of everything. Most of the clients in the 60 percent mentioned earlier will likely be open to advice and are coming to you because they know they need help. However, there will be those clients that resist advice, are looking for advice that will support their preconceptions or advice they have received elsewhere, or just believe that they know more in general. These clients can be frustrating and generally require one of two approaches. One approach is to be firm and authoritative with the client. Some clients in this area respect what they see as strength and confidence. The other approach is to give advice in a way that makes it seem like they said the right thing. This approach is a bit manipulative, but it is a non-confrontational way to get the client to listen when they think the idea was theirs. Overall, it is better to avoid these clients if possible.

COMMANDMENT FIVE: COVER YOUR BEHIND

At the end of the day, as long as you have put in good work and maintained a good relationship with your client they will be happy with you even if they are not happy with the outcome of the case. However, there will be a small number that will blame you. And if you were unfortunate enough to end up with clients from the bad 40 percent your risks will be much higher. In every case it is important to take all possible steps to cover your behind.

One of the most important and effective ways to protect yourself is to put everything in writing. People will lie, and those that are not lying may be mistaken. In either case you could get burned. Those that lie about anything is likely to lie about everything when the time comes. After the first meeting send a Written Fee Agreement explaining what was discussed, any advice given, whether or not you are representing them, the scope of the representation, the fee structure/cost of representation, and any other limits on representation. If you are not representing them clearly state that you have not advised them about statute of limitation issues and they should consult other counsel regarding their issue. Although law does not require these, it reiterates to the client everything you said to give them ample notice and protects you in case of future disputes. It is much easier to prove what was said when it is in writing than to prove what was not said. Also, make sure nothing in any writing can be used to show or appears in any way to be conspiring in fraud or illicit/illegal conduct.

Miami lawyer and law professor Denis Kleinfeld coined the term “evidence mail” for emails. His term emphasizes the fact that emails can and will often reveal problematic messages and communications in litigation. While they can be very beneficial record ¹⁹ keeping devices to prove competent representation and informed consent, they can lead to trouble. If the client discloses them to non-privileged parties, they become discoverable. Emails are often seen as a less formal form of contact as opposed to a traditional letter. This leads to less careful drafting increasing the chance of typos, poor grammar, and a tone that can appear curt or snappy. This can paint the sender in a negative light. Clients have the right to request their file, and if you put something flippant about the client in a note then that can be held against you. If you send a negative email about a client to another team member this might have to be included in that file and later used against you.

As stated earlier, make it clear who you are representing. It is important to be clear when dealing with multiple people or couples about who is and is not your client. What is and is not confidential. Inform everyone of their right to seek independent legal counsel. Make sure everyone signs disclosures regarding joint representation disclosures that explain their ability to seek legal counsel and why that is often beneficial for the parties, and states that they have been educated on the risks and their respective rights and give informed consent to the joint representation. Keep in mind conflict of interest rules regarding joint representation. It may not be possible to represent both and this should be explained to the clients and sent in writing in the follow-up letter. The rule of thumb is that you can almost never represent someone whose interests are adverse to someone you have represented before or are representing. For example, if clients have a prenuptial agreement or postnuptial agreement and things could get contentious during a divorce, you may need to represent only one spouse because the parties' interests are adverse. In the case of representing only one party, make sure the other party not being represented signs a document saying they recognize they are not your client and that you recommend that they get a separate lawyer. This way they cannot claim they are your client and prevent you from representing the other party based on conflict of interests, or blame you for future acts or omissions that a lawyer representing them should have informed them of. This is also important when dealing with entities such as corporations or LLCs. Make it clear who you represent to avoid future confusion.

Make sure you maintain confidentiality. While this seems obvious, in the days of email and IM it is easy to accidentally send correspondence to the wrong person (e.g. hit “reply all” instead of “reply”). Correspondence may not remain confidential under attorney/client privilege if it goes to someone other than the intended party.

Take copious notes during meetings. Afterwards dictate or type them in a memo for future reference. This will ensure preservation of all the information received from the client and, besides allowing you to reference them in case of a question regarding advice or decisions, it can help protect you from the client saying they told you something material when they never did. It will also help better your representation of the client because it allows you to think of things you forgot to mention during the meeting or call, questions you forgot to ask or did not think of, and better understand the work that will be involved in case you need to reconsider the fee agreement.

Include a mediation and arbitration agreement. Most issues arising under the attorney/client relationship can be resolved through mediation and arbitration. It can be quicker, cheaper, and more beneficial to all parties because they have control of the process and can agree to resolutions that could not be awarded in court.

CONCLUSION

As lawyers we encounter all kinds of people. Many will be great clients and make everything we do worthwhile, but about 40 percent out there will cause nothing but trouble. It is important to separate the good from the bad to allow you to continue a strong and successful practice. Once a client is chosen it is important to cultivate that relationship, communicate with the client, and know what kind of person your client is to give them the most effective representation possible; but always remember to cover your behind. Remember these Five Commandments of client relationships and your practice will thrive.

Footnotes

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ALAN S. GASSMAN is a Partner with Gassman, Crotty & Denicolo, P.A., in Clearwater, Florida. Author of more than 200 articles in national publications, symposia and law school text books on physician planning, estate tax planning and income tax issues, problems and solutions Contributing author, Leimberg Information Services (LISI) Contributing author, 2005 American Law Institute-American Bar Association Practice Checklist Manual on Advising Business Clients Contributing author, National Association of Estate Planners & Councils Representative Publications: "It's All in the Math: Financial Mechanisms, Structures and Questions Under the Accountable Care Organization Proposed Regulations," ABA Health eSource, April 2011 Special Edition "Accountable Care Organizations Proposed Regulations Reveal Significant Financial Opportunities and Structural Requirements," ABA Health eSource, April 2011 "After Olmstead: Will a Multiple-member LLC Continue to Have Charging Order Protection?" The Florida Bar Journal, December 2010 "Unconventional Uses of 529 Plans Should Not Be Ignored by Taxpayers and Their Advisors," BNA Tax & Accounting, March 11, 2010 "Creditor Rights Under Private Annuities and Grantor-Retained Annuity Trusts in Florida," The Florida Bar Journal, July/August 2009 "Recent Adventures in Florida Tenancy by the Entirety-- Important Developments," Leimberg Information Systems, Inc, June 18, 2009 "Mistakes Doctors Make Managing Their Practices and Investments," Leimberg Information Systems, Inc., May 20, 2009 "The Estate Planner's Guide to New Parent F Reorganizations," Estate Planning Magazine, May 2008. Lecturer: Co-chairman and presenter, The Florida Bar's annual Physician Representation seminar Vice chairman and presenter, The Florida Bar's annual Wealth Conservation seminar BNA national webinars.

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KATELINE TOBERGTE provided valuable input and assistance in the preparation of this article
64 No. 4 PRACLAW 15

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