



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET FF
INTRODUCTION TO DIFFICULT CLIENTS**

Worksheet FF is intended to facilitate a discussion about how to deal with “difficult” clients.

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- Discuss why lawyers should be concerned about difficult clients.
- Share with the new lawyer an example of a difficult client you had, how you handled him or her, how the difficult relationship affected the representation, what you might have done differently, etc.
- Identify characteristics of difficult clients of which the new lawyer should be aware at the earliest contacts with the potential client, as well as how to factor that into accepting the potential representation.
- Identify client behaviors that occur during representation which indicate your client is angry or dissatisfied. Provide suggestions of the best and most professional ways to address the client and handle their anger.
- Review and discuss the chapter, *Handling a Difficult Client without Losing the Client or the Case*, from NOELLE C. NELSON, *CONNECTING WITH YOUR CLIENT* at 69-87 (1996).
- Discuss the importance of talking to a client as early as possible about realistic expectations of the representation, the scope of the representation, and the fee arrangement. Explain how discussing these (and other) issues can help to prevent misunderstandings and disagreement in your attorney-client relationship. See Prof. Cond. Rule 1.2.

RESOURCES

Ohio Rules of Professional Conduct

I. Client-Lawyer Relationship

Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

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(c) A lawyer may limit the scope of a new or existing representation if the limitation is *reasonable* under the circumstances and communicated to the client, preferably in *writing*.

Comment

Agreements Limiting Scope of Representation

[7] Although division (c) affords the lawyer and client substantial latitude in defining the scope of the representation, any limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law that the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See Rule 1.1.

[7A] Written confirmation of a limitation of a new or existing representation is preferred and may be any writing that is presented to the client that reflects the limitation, such as a letter or electronic transmission addressed to the client or a court order. A lawyer may create a form or checklist that specifies the scope of the client-lawyer relationship and the fees to be charged. An order of a court appointing a lawyer to represent a client is sufficient to confirm the scope of that representation.

[8] All agreements concerning a lawyer's representation of a client must accord with the Ohio Rules of Professional Conduct and other law. See, *e.g.*, Rules 1.1, 1.8 and 5.6.

View complete rule and comment at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule1_2

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.