



Building trust with clients

A system for building and maintaining client relationships in contingency-fee cases

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As attorneys, our job is to protect the interests of our clients and do everything we can to represent them in a legal matter. Regardless of how long you have been practicing, we have all faced situations where we have represented a client who may be perceived as “difficult.”

In a contingency-fee matter, it’s more likely than not that this will be the first, and perhaps the only time, you will be representing this client. Over the course of the representation, you may have challenges communicating with your client, and experience frustration in their refusal to follow your advice. If not handled properly, these situations may lead to the

breakdown of the attorney-client relationship. In the best case, the breakdown of the attorney-client relationship will lead to the lost opportunity to earn a fee for a case in which you have invested your time and resources. In the worst case, it can lead to a time-consuming fee dispute, or even a claim for legal malpractice.

The purpose of this article is to provide you with a systematic approach to help you navigate these issues, build better client relationships and ultimately enjoy a more successful practice.

Start by building trust with responsiveness

The diplomas on our walls, and the certifications we have received from various legal venues, are usually the first

items that our clients take note of when they first meet with us in our office. While those items establish our credibility and credentials, they do not establish the favorable impression that really matters. The indispensable element of trust between the attorney and client must be established in the very first phone call with the client.

Most plaintiff’s attorneys work either solo, or in a small firm environment, and the length of time it takes to respond to our clients’ inquiries may vary based upon caseload, availability, or other factors. The time it takes us to respond to our clients’ initial requests for assistance in a fast-paced, information-based environment, may be the difference in whether the client hires us, or instead



retains another attorney who is quicker to respond to the client's concerns.

As a practical matter, unless we are tied up in court or otherwise indisposed, we need to have a system in place to make a personal contact with the client as soon as practicable, even if that initial response is simply to set up a more convenient time to speak with the client later on that same day. The longer our initial client response is delayed, the more likely we are to lose the case to another attorney.

Set a convenient, timely follow-up

In responding to the client's initial request for assistance, it is best to answer the call, and at a minimum set aside a mutually convenient time that day to follow up with the client. It is important that you have ample time set aside to speak with the client when you are not under the stress of a deadline or harried for another reason. If you think the initial contact should take five or ten minutes, set aside 15 minutes.

Before you begin discussing any of the client's legal issues, take a few extra minutes to establish a rapport with the client by learning about the client's family life, hobbies or interests, and life goals. This information is not only useful with regard to how the client's injuries may have impacted their quality of life, but this short "cocktail conversation" also serves as an entrée to future conversations with the client that will make the representation more personal; it may also be helpful when you face challenges in the course of the representation.

Rather than immediately delving into the details of the client's claims in your first telephone conversation, try to find out the client's goals for the representation. This will enable you to determine the proper fee arrangement that makes sense for the client, and it will also help you determine whether there are any non-monetary elements important to the client, that will increase the chance of a settlement.

For instance, in employment cases, clients may be seeking reinstatement to their former position. Alternatively, clients may have an interest in their former employer reducing their termination to a resignation, or request that the employer remove negative information from their personnel file. These types of non-monetary benefits can be helpful in reaching an amicable settlement, along with any monetary recovery. For the most part, these items are easy to obtain in a settlement discussion and go a long way toward building client trust when it comes time to sign a settlement agreement.

Once the client agrees to your representation, you need to be specific in the agreement about what you intend to do on the client's behalf and explain that to your client. When reviewing the agreement with the client, have them initial any changes to the fee structure that apply over the course of the representation, as well as the fee arbitration provision. Prior to signing the fee agreement, you should ask the client whether they understand the provisions in the agreement and let them know that you will answer any questions they have, to ensure they understand the agreement.

If the client has any questions, you should immediately begin a three-step process that carries on throughout the representation, on all issues, large and small. That process includes (1) a verbal explanation; (2) a written correspondence (usually an email) confirming the discussion; and (3) a follow-up phone call to the client regarding the issue, if necessary. At each stage in the process, ask your client if your explanation makes sense to them, and then, if necessary, invite the client to ask questions so you can help them better understand the fee agreement.

"Touching" the file throughout your representation

It is important to continually "touch" the file over the course of your representation, even when there is seemingly nothing for you to report to the client. Whether your case is in the pre-litigation/

negotiation stage, or in litigation, you should continuously touch the file. Even if you report to your client that "there's nothing to report," or that you have no news, your client will appreciate it, and you will build goodwill. You should certainly explain whatever delays, or perceived delays there are, and invite your client to contact you at any time, if they have any concerns.

Continuously touching the file and having ongoing contacts with your client before they receive an initial denial of their claim, low-ball offer, or other negative news, will pay great dividends. Otherwise, the receipt of this news will feel like a "sledgehammer" to the client and cause unnecessary distress. Again, this cannot be stated with more clarity or certainty. We must keep touching the file, even when there is seemingly no information to report.

Practice attribution

Even when liability is clear and damages are certain, we as plaintiffs' attorneys generally know full well that the initial response from opposing counsel to our clients' claims, whether in response letter, or an answer to a lawsuit, will in all likelihood be negative, and in some cases, the defendant may deny that the claim has any validity at all.

In preparing your clients for such a response, it is important that you practice "attribution." That is, in your pre-response discussions, before the denial of the claim arrives from opposing counsel, you must anticipate the other side's response and begin preparing your client for the worst. In doing so, it is important to use words such as "the other side will likely say," or "you can expect opposing counsel to raise the following issues..."

You should let your clients know what response to expect so that when the response arrives, they are well prepared for it. Attributing expected negative information to the other side serves two purposes. First, it allows you to slowly begin reducing your client's expectations regarding the value of their case. Second,



it allows you to maintain your status as the protector of your client's rights by attributing the negative information about to be presented to them to the defendant.

If you fail to practice attribution when giving your clients negative information about their case, the client may come to believe that you have taken the defendant's side. In that case, you may completely lose your client's trust.

Importantly, the same three-step process used in the intake process to explain issues also applies to the information you provide to your clients during the course of the representation. Again, that process entails (1) a face-to-face meeting or phone call about the issue or concern; (2) written confirmation of your discussion about the issue or concern; (3) a subsequent phone call to the client to clarify any issues.

Significantly, this three-step process is effective only when you have repeatedly touched the file during the lag times. If you have not touched the file repeatedly from the outset, there is very little chance that the client will be receptive when it comes time for them to process the negative information about their case, even though you attribute it to the other side.

Summary

All plaintiff's attorneys who have practiced for any significant amount of

time have likely either lost out on a potential fee, or had a dispute regarding fees, based upon the breakdown of the attorney-client relationship. The tools prescribed in this article are designed to limit those negative results and enable you to earn fees even in cases where your clients do not appear interested in hearing about possible negative outcomes or are entirely resistant to your advice.

In some cases, you may find that the client's resistance occurs only at the end of the case when the client balks at your contingent fee and seeks a reduction or, even worse, rejects a reasonable settlement that cannot be improved upon. In those cases, what the client is really saying is that they don't trust your judgment, or that you are receiving an undeserved windfall.

To avoid these negative results, you must build trust from the very first contact. Take the time to 1) learn about your clients, their goals and aspirations; 2) continuously touch the file; 3) practice the three-step method for relating information and news to your clients; and 4) regularly practice attribution when it comes to informing your clients about difficult issues in their cases.

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