

Dealing With Client Related Nightmares
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Key Rules:

The rules of professional conduct and accompanying notes provide considerable guidance on issues that arise when working with a difficult client. The following in particular should be carefully reviewed:

- 4-1.2. Scope of Representation (note also definition of “informed consent” in Rule 4-1.0)*
- 4-1.3. Diligence.
- 4-1.4. Communication
- 4-1.5. Fees.
- 4-1.14. Client with Diminished Capacity
- 4-1.16. Declining or Terminating Representation*

* Note changes that take effect July 1, 2008!

Checklist:

1. Recognizing The Difficult Client. The following are all signs warning that this may be a difficult client! The more factors present the more risk, and the more you should consider saying “No!” to the representation. Beware when the prospective client:
 - cries excessively and has trouble giving you a coherent overview of the matter.
 - launches into an aggressive “sales pitch” as to all the reasons why you should take this case.
 - is unable to answer your questions or is very evasive.
 - argues with your summary of how the case might unfold.
 - is “just shopping” and wants you to know others have offered a lower rate.
 - is leaving their prior lawyer (and especially beware if he or she does not want you to talk to the prior lawyer or announces that a complaint has or is going to be filed against that lawyer).
 - is rude and demanding.
 - shows disrespect for lawyers or the legal system.
 - demonstrates a complete lack of understanding of how he or she contributed to the problem at hand or refuses to discuss that.
 - blames themselves completely and isn’t sure any defense is appropriate.
 - voices threats against the other party or others involved.

- is overly dramatic in his or her presentation
- wants you to be the “rescuer”, or claims to be otherwise friendless and without support.
- is a “pseudo lawyer” who has the case all figured out (and can even point to statutes and cases you can cite) or quotes “shadow advisors” – boyfriends, relatives etc. who have provided advice on arguments to be made or on the expected outcome of the case.
- makes lots of excuses as to why things did or did not occur and does not appear willing to take responsibility for any decisions.
- has an addiction or a mental illness.
- is a “crusader” for ill-defined “rights”.
- promises to pay but doesn’t have money just now – it will come!

2. Planning Ahead. Taking anything or everything that walks in the door is not a good business strategy and leaves you particularly vulnerable to difficult clients who walk in with a retainer in hand. Think in advance about what type of clients you want to work with, what type of work you want to do, and what risks you are willing and able financially to take. Having a profile of preferred work will make it easier for you to screen clients and evaluate the costs and benefits of representation. Develop forms and procedures to help you screen clients. Also plan to be paid! Set fees that will help you recover extra costs imposed by difficult clients. Develop forms and procedures to inform clients about your fees and also about how to work with your office. These forms and procedures will also help you manage client expectations and set and enforce boundaries later. Train your staff on what to say, how to say it, and when to alert you of a need to intervene. Build a support network that you can turn to for advice when a client turns on you.

3. Laying The Groundwork. From the initial interview on, make sure the client is aware of your expectations regarding billing. Talk with the client about how, and when, to communicate with your office. Ask clients about their own preferred mode of communication. Ask about their goals and expectations for the matter and listen carefully. If there are unrealistic expectations, address those and document that you did so. Use engagement letters that spell out the scope of work and incorporate the forms and procedures discussed above. Consider preparing a “work plan” with the client and giving the client assignments. Give the client a folder with your procedures and a brief outline of the stages of the case or a timeline for the matter. Confirm the client’s understanding of what you have reviewed and allow client to ask questions. Make a personal connection and let them know that the attorney’s job is to be an independent advisor and to evaluate and advise not only on the strengths but also on the weaknesses or problems inherent in a matter. Ask if they understand that role and agree that you should give your best advice, pro or con. You may need to refer back to this agreement at a later date.

4. Maintaining Boundaries. If your client shows up late or without an appointment, you do not need to rearrange your day: ask them to reschedule. If the client fails to pay you, ask for payment. If the client fails to give you information remind them that it is their case and they bear the responsibility of full participation. Remind the client of agreements made in the initial interview and follow-through on consequences outlined in your forms and procedures. If the client screams or curses at you (try to) stay calm and say something like: “You are very upset. It is difficult for me to listen when you are screaming. I will call you back when you are calmer.”

5. Communicating Effectively. Be clear, direct, and straightforward in your communications, yet also consider your client’s reaction. To lead into a difficult topic you can ask questions like “remember when we discussed the difficulties in your proof?” Or you might start with a soft statement like “I am sorry to have to tell you this”. When the client reacts, allow them to process their emotions as well as the information you have provided before moving on to another topic or pushing for a decision. Listen, reflect, and empathize. You can also give the client choices; for example would they like to continue talking, take a break, or reschedule and come back later? At some point you will have to help the client focus forward: “I know that we both wish it were otherwise. Let’s review where we are and what might be done.” Often difficult behaviors are driven by emotions and the client may be feeling unsafe or insecure when acting “difficult”. Consider reflecting back the emotion you are seeing (“you are very upset”), and asking questions like: what do you think would help? How can we move forward? What raised that concern? You might also make a soothing statement like: I’m sorry if I was unclear. . .” I think there is a misunderstanding. . .” Never debate the client! Instead use phrases like: “we see things differently”; “I’m sorry you feel that way”; “I know you don’t like my advice and yet that’s my advice.” Also don’t bargain with a client who is threatening you. Instead consider a statement like: “that is a choice you can make, and I’m sorry you feel that way. I have represented you to the best of my ability and I trust that on thinking it over you will reconsider.”

6. Cutting Your Losses. If you are not being paid, the client is not cooperating, or the client is rude, demanding or otherwise very unpleasant to work with, you should seriously consider ending the relationship. Give the client notice, and an opportunity to reform. Refer back to your forms and procedures and initial agreements and give the client a choice: detail what it will take to get the relationship back on track, and if the client chooses not to do so, then he or she is choosing not to work further with you.

7. Knowing When To Get Help. If you find yourself avoiding the client's calls; if your stomach aches and your head hurts when you think about the case; if you are putting off work that needs to be done, yet you just can't bring yourself to terminate the relationship or talk the problems through with the client, you need to get someone else involved – a partner, a coach, the state's ethics counsel, the Missouri Lawyer's Assistance Program – *someone* who can help you move forward *before* a complaint is made.

Your "Rights" As A Lawyer*:

- You have the right to decline representation.
- You have the right to be paid for your work.
- You have the right to tell the client "no".
- You have the right to be treated with courtesy and respect.
- You have the right to end the attorney/client relationship when it is not working.

** Note: These "rights" are qualified in some instances and the rules set forth in above should always be consulted. However, these "rights" broadly define what are reasonable expectations for your professional work.*