DIFFICULT, IMPAIRED OR ABUSED CLIENTS: HOW TO RECOGNIZE AND HANDLE

Sponsor: KYLAP
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Thursday, June 14, 2018
3:45 p.m. - 4:45 p.m.
Thoroughbred 1-3
Lexington Convention Center
Lexington, Kentucky
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Printed by: Evolution Creative Solutions
7107 Shona Drive
Cincinnati, Ohio 45237
Kentucky Bar Association
# TABLE OF CONTENTS

The Presenters........................................................................................................................................... i

Tips and Techniques for Dealing with the Difficult, Impaired or Abused Client......................................................... 1

What Type of Client Do You Want ................................................................. 1
How Does a Client become Difficult ............................................................ 1
Difficult Clients Are ........................................................................................ 2
How and Where to Draw the Line ................................................................. 2
The Initial Interview ........................................................................................ 2
Telephone Contact .......................................................................................... 3
In Person Interview ......................................................................................... 3
Developing Expectations ............................................................................... 6
Expectations about the Work ....................................................................... 6
Helping Clients Understand Their Options – Educate Your Clients ......... 7
When You Have a Difficult or Impaired Client ............................................. 7
Withdrawal from Representation ................................................................... 8
The Relationship after the Case ..................................................................... 9
Defense Mechanisms ................................................................................... 11
Personality Disorders .................................................................................... 11
Parking Lot of the Personality Disordered ................................................... 12
Confronting the Role .................................................................................... 15
Narcissism – Roles & Defenses ................................................................. 16
Narcissism – Protection ................................................................................. 16
Antisocial – Roles & Defenses ................................................................. 17
Antisocial – Protection .................................................................................. 17
Borderline – Roles & Defenses ................................................................. 18
Borderline – Protection ................................................................................. 18
Dependent – Roles & Defenses ................................................................. 19
Dependent – Protection ............................................................................... 19
Obsessive-Compulsive – Roles & Defenses ................................................. 20
Obsessive-Compulsive – Protection ............................................................. 20
Setting Down the Rope ................................................................................. 21
Working with Difficult Clients ....................................................................... 22
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I. WHAT TYPE OF CLIENT DO YOU WANT

Have you ever thought about what type of client you want; or like most of us do you just take what comes in the door? What if you could control the types of clients you have? We all have clients we love to represent and others we would like to see boil in oil.

Consider those characteristics that you like about the clients who you enjoy representing and those characteristics that make you want to torture certain clients. Make a list of both the good and bad characteristics. When you interview clients seek only those clients with those characteristics you like; more importantly avoid the clients who make your blood boil or make you have a poor "gut" reaction.

II. HOW DOES A CLIENT BECOME DIFFICULT

Are some clients simply difficult when they come in the door or do they become that way? I would suggest that it's a little of both. We have to acknowledge that generally clients are not coming to us when everything is rosy and wonderful. In most circumstances by the time the client gets to calling, something is difficult, bad, tragic, etc.

The real issue is how do we define difficult or impairment? Is it a client who is yelling at you or your staff? Is it a client that is overly demanding? Is it a client who is overly dependent on you or your staff? Is it a client who has unrealistic expectations? Is it a client who will not pay your bill in a timely manner? The answer is yes. Yes to all of these. So what do we do?

As we will discuss below it is our job to remember that clients are humans and subject to all the human emotions of any person. Thus, while giving legal advice is your stock in trade, dealing with a human being is a necessary consideration in every attorney-client relationship.

Please consider why you "feel" (yes, I said feel ...like what is your emotional reaction or your gut feeling) the client is being difficult. What is the client's behavior tapping into within you? Perhaps it is you that is feeling uncomfortable with this particular client? In order to address difficult or impaired clients one must be introspective. This means you need to be aware of what is causing you to feel the way you do in dealing with this client or this client's issues.
III. DIFFICULT CLIENTS ARE ...  
- Distrusting  
- Angry  
- Discouraged  
- Bored or boring  
- Confused or confusing  
- Chaotic  
- Reactionary  
- Noncompliant  

IV. HOW AND WHERE TO DRAW THE LINE  
Each of us has to determine where to draw the proverbial line in the sand with a client. Some of us are in areas of practice where the clients are subject to enormous pressure or personal embarrassment. Others of us practice in areas where the issues are personally very difficult for the client and outcome can be financially disastrous or even life threatening. Do these circumstances make a client difficult in and of themselves? Is it the emotional pressure that we are under or the emotional pressure that our client is under causing the “difficulty”? Is it both?  
To practice law well with difficult or impaired clients one must be able to measure one’s self emotionally and physically. One must be willing to look into the mirror and honestly evaluate the person looking back at us. Most importantly, you must learn what you can take and what you are willing to take in dealing with a difficult client. Most importantly, you must put your ego aside and do your job as you believe it needs to be done.  

V. THE INITIAL INTERVIEW  
The prospective client is the most important time to assess a client and is the vital first step toward figuring out if the client is going to be "one of those clients."
VI. TELEPHONE CONTACT

Generally, every client begins his/her relationship with an attorney through a telephone call and/or a referral. It is important to glean as much information as possible from the initial conversation, whether by telephone or from the referral source. While it is my habit to make no commitments regarding an attorney-client relationship or give advice over the telephone, I do obtain some basic information which will give me an idea as to whether I want to accept the client in my practice.

I generally find out from the prospective client exactly why he/she is seeking an attorney. If they tell me it is a "general divorce," then I try to determine what issues will exist within the divorce and if there are emergency matters that need to be addressed. I also make sure I get their full legal name, their address and a telephone number. Remember, much can be learned from addresses and telephone numbers especially in a smaller community. Once I have this information, I suggest that we schedule a meeting to discuss their problems and to determine if we are going to establish an attorney-client relationship.

I always ask about their referral source. You can bet if the prospective client is being referred by a former difficult or impaired or abused client you can bet the prospective client is going to have some similarities with the referring party.

You must evaluate this information and listen to the prospective client. This cannot be repeated sufficiently. LISTEN to the prospective client during the initial call. If you are not going to listen and process this information, why bother asking the questions?

During this initial discussion if I start having "those feelings," I end the conversation. It is much easier to not undertake representation than eliminate the client once he or she becomes difficult. It is better for you, your practice and more importantly for the prospective client.

Tell the prospective client that you simply do not feel that their goals and how you practice are compatible. This is not a judgment statement but simply that people are different and your practice is different (not good or bad...just different) than other lawyers who may be better suited to address the prospective client's needs as they see fit.

VII. IN PERSON INTERVIEW

Upon meeting a prospective client for the first time, it is important to make sure that they understand that the interview process is a "two-way street." I make it very clear that while they may be interviewing me to determine if they want to hire me, I am also interviewing them to determine if I want to represent them. While it is very difficult for any of us to tell a prospective client we are not interested in taking their case, I have found over the years that some of my best decisions about clients have been when I said "no." If you are not willing to reject a prospective client then why do you want to take your valuable billable time to interview him/her?
The initial interview is your first (and in my opinion the best) opportunity to control a difficult client. This is your opportunity to explain to the prospective client how you do business. This is your opportunity to educate the prospective client on how you practice: what you will do and what you will not do; what you will expect of them and what they can demand of you; how you will communicate and how you expect them to communicate; what you will tolerate and what you will not tolerate. If done correctly, this either stops a difficult client in his/her tracks or gives you the opportunity to say: "I told you so . . . ."

This is also the first opportunity to judge how the client will react to you. Are they distrusting, angry, chaotic, reactionary, paranoid, histrionic or obsessive? In order to judge these things you must listen (critically) and give the prospective client an opportunity to talk. I suggest developing questions you ask every prospective client.

Use your lawyer skills to develop questions appropriate to your area of practice that will cause the prospective client to expose their emotions and emotional reactions to you. Then listen!

During the initial interview with every prospective client, I explain to them that I insist they follow three (3) rules, all of which are reciprocal.

1. I insist upon the truth and nothing but the TRUTH; this includes the "Good, the Bad and the Ugly." I explain to them that I must know the "good, the bad and the ugly" about their case. I explain the consequences of not being truthful with me. I make sure they understand that I will, in return, provide them with honest, blunt analysis and advice. I make sure they understand that I do not "paint rosy pictures" nor do I paint "gloom and doom" pictures. My job is to counsel them on the law. In a perfect situation, I hope I can provide a client with a series of options, an analysis as to the "upside" and "downside" to each of the options; and, provide them with my advice as to which option I believe best serves their interest. However, I also advise each client that I am not a perfect attorney. I explain that my advice is based upon my experience before a particular judge. As we all know, judges can be unpredictable, (of course that was never the case when I was on the bench). Therefore, I explain to them that my advice is merely my "opinion" based upon my knowledge of the law and my experience and not, in any way, a guarantee.

Tell every prospective client that the only person who gets "hurt" in a case when he/she does not tell the truth is them. There are two really good reasons for this: First, the judges and other lawyers know you and know your propensity for truthfulness. Thus, if you make a statement that is untruthful most judges and lawyers know you got the information from your client. Second, if they do not tell you the truth, you are not going to get hurt only they are. Thus their credibility is hurt.

See the attached opinion by Judge Philpot on the definition of "the truth".

2. My second rule requires a MUTUAL COMMITMENT to their matter and legal work. I explain to my clients that if they want me to work on their
case, then they must reciprocate by working on their case. I will not serve as a "hired gun." I explain to them that it is imperative that they read all of the information I send to them, whether in letter form or simply by providing them a copy of a particular document. I make a habit of sending every piece of paper, e-mail and document that comes across my desk pertaining to their case. I explain to them that it is their responsibility to keep up with their case and, if they do not understand what they have received, they must communicate with me. I am very blunt about the fact that I cannot read their mind. Rather, if they have a question or do not understand something having to do with their case, they must contact me. Once again, only one person gets "hurt" when they do not understand - not you and me.

In return, I tell them that I will always return their calls in a timely manner. Remember that the vast majority of bar complaints in Kentucky occur as a result of an attorney failing to adequately communicate with clients. In my opinion, this is stupid! Communicating with our clients is the only area in which we, as attorneys, have total control. There is no excuse for not returning a client's call or working on a case in a timely manner.

You will be amazed at how a difficult or impaired client can be controlled and in many cases eliminated by returning telephone calls quickly and responding to e-mails and correspondence quickly; of course, using the defensive techniques outlined in this seminar will help too. As you know, there is nothing more frustrating than trying to reach an attorney or a judge who never returns your call. Why would you think it would be any different for a client?

3. Finally, I always discuss my fees with a prospective client. Want me to work for you ...PAY ME! This is not optional nor is it a "dirty" subject. It is how we all make an honorable living. Disclose every aspect of your fees: the hourly rate, the time increments of billing, the other out-of-pocket expenses for which you charge, and any additions, extra trial preparation costs.

Frankly, there is nothing different about the way we make a living from our clients. The only difference is that we bill on a monthly basis, (or should). If your clients' employers came to them and told them they were not going to receive a paycheck, they would be in a panic, as they have bills and other obligations. Our lives are exactly the same. If a client does not pay our bill in full when presented with a bill, then we can be in a panic. I am very blunt and direct with my clients in this regard. No payment, no work.

I explain to every client that I will not work for them if they do not pay my bills in full. This is simply a necessity of the practice of law. I believe it is extremely important to have this kind of honest and direct communication with every client long before an attorney-client relationship is established.

I explain to each client that at the conclusion of our initial meeting, I will prepare and send to them a Retainer Agreement setting all of this out in
detail. In order to retain me, and before I will do any work on their behalf, they must execute the Retainer Agreement and return it to me.

The Retainer Agreement will be your ultimate device to control and manage a difficult or impaired client. It may also be your best protection from that same client.

VIII. DEVELOPING EXPECTATIONS

"Do not judge other people... Unless they're particularly stupid."
- Buster Guru

The best way to eliminate a difficult or impaired client is to set expectations. As you can see from the above I begin doing this BEFORE I am even hired. Recognize that there are two (2) facets to every representation. There is the legal aspect or doing our jobs as attorneys; and, the emotional aspect of what the client is facing or experiencing. There is always an emotional aspect! The vast majority of attorneys become experts in the first aspect and tend to completely ignore the second. Clients ARE human beings. Treat them as such. The "Golden Rule" will never fail you. Treat your client exactly how you would want to be treated.

IX. EXPECTATIONS ABOUT THE WORK

I do not promise or guarantee my clients anything except that I will return telephone calls timely, and work on their case diligently and bill them regularly. Make sure every client understands that he/she is not your only client. Explain how you prioritize your work daily, weekly and/or monthly. Let them know that their case is not always your top priority every day. Explain that our jobs do not happen 9:00 AM to 5:00 PM. In our world emergencies do happen. Thus, we cannot always be able to react immediately.

You must be introspective here. What do you do when you are getting ready for trial or a big closing? What happens within your practice to the normal business routines for you, your Associate(s) and your staff when you have a big case or a difficult deadline? Tell the client up front. In order to do this you have to know yourself and your practice.

While you are comfortable practicing law, most clients are involved with the legal system for the first time in their lives. Remember there is a great deal of misinformation about our jobs and how we do them. The internet, Google and Hollywood are wonderful sources but most of the time they are horribly inaccurate about our real world. You never know what the client's experiences are or their knowledge of the law and how the process works.

Most clients are under a great deal of stress when they appear in an attorney's office. Make every client comfortable and welcome. Let them know that you will address their needs, how you will address their needs and that you will do your best to obtain the goals they seek. If their expectations are unreasonable tell them so. This human connection will go further than any result you can obtain.
X. HELPING CLIENTS UNDERSTAND THEIR OPTIONS - EDUCATE YOUR CLIENTS

I believe one of the most critical aspects of the attorney-client relationship and eliminating or dealing with a difficult or impaired client is solely within our control. Educate the client. This is done through open and frank communication from the beginning. I ALWAYS put these conversations in writing to protect my precious backside. Remember, most of us are no smarter than our clients, while we could talk in legalese; this will not result in good communication and leaves you exposed for complaints. The most difficult part of being an attorney is communicating very complex issues (to clients and the courts) in simple terms. There are no extra points for using "big words", except in Scrabble.

There is a "method to the madness": the more information you give your clients about the law and the process, the more able they will be to give you facts and information that is relevant to the case; thus, the better your advice. You see the attorney-client relationship is truly a partnership.

XI. WHEN YOU HAVE A DIFFICULT OR IMPAIRED CLIENT

Before you diagnose yourself with depression or low self-esteem, first make sure that you are not, in fact, just surrounded by assholes.

What happens when the good client turns into a nightmare? Generally after I spend some time evaluating and identifying the "difficulty" or impairment, I have a face-to-face meeting with the client. I have been very successful in talking with clients and bringing them back from that "Snickers moment" when they are acting like Dr. Jekyll.

Identify the difficulty or impairment. Is the issue something you did or didn't do? Is it something the client has done or not done? Is it a personality trait or disorder of the client? If you have made a mistake, tell the client you made a mistake. While this takes real guts, it is the best way to deal with clients. Apologize for the mistake and tell the client your plan for fixing the error. I have been in practice for more than 31 years and I assure you I have made some whopping mistakes. Luckily, I have never been sued nor had an ethical complaint brought against me by my clients. I attribute this to honesty and saying the magic words: "I am sorry, I made a mistake."

Is the issue that the client is behaving poorly or is mentally impaired? Why? What if we assume that the client's behavior toward us is driven by some other primary emotion, impairment or fact(s)? Fear can do a lot to people. Does reframing our analysis of our client give us a broader insight into their behavior? If so, does that provide us a way to address the behavior?

Using the advice set forth herein you now have the tools to go back to the client and say let's talk about what we discussed BEFORE you hired me. Remember: "I told you so" .... are very powerful words.
Listen! I always talk with my client and discuss what I think the issue is and then I listen. What do they think the issues are? I try very hard not to get defensive or react but let them say everything the client needs to say. I repeat the issues back to them as they have framed them to make sure we are really communicating, not just talking to each other.

Draw the line. What can you accept and what can you not accept? I will never tolerate a client mistreating my associates, paralegals or staff. I tell this to every prospective client and I tell them a story about a client that I terminated because he yelled at my secretary. I insist that those who work with me treat our clients as royalty and insist they do the same to them. I understand clients get scared, angry, hurt, frustrated and experience a bevy of other emotions. I tell each client they may come vent to me any time (I might vent back at them). They cannot vent to others in my firm.

XII. WITHDRAWAL FROM REPRESENTATION

Did you know that you can terminate a client? Surely, we all learned this in our ethics classes in law school. Then why do we not exercise this right more often?

We are subject to the Rules of Professional Conduct that require or allow us to withdraw from representing a client in several circumstances, including:

- Circumstances where we discover that a client seeks our assistance to engage in criminal or fraudulent conduct;
- Circumstances where our continued representation of the client will result in violation of the Rules of Professional Conduct;
- Circumstances where the client fails to fully cooperate by honestly and fully providing us with records, information, documents and your personal assistance with interaction with the staff.
- Circumstances where our client insists on pursuing an objective that we consider repugnant or imprudent;
- Circumstances where a client fails substantially to fulfill an obligation to us regarding our services (including prompt payment of fees and other charges); and,
- Circumstances where our continued representation of the client will result in an unreasonable financial burden on us or has been rendered unreasonably difficult by the client.

I assume you know that your client may terminate your representation at any time simply by notifying us. I ask every client for this notification in writing.

Tell your prospective clients that the termination of your representation will not affect their responsibility for the payment of fees and other charges incurred before the notice of termination is given or in connection with an orderly transition to successor counsel, if necessary. Upon request, I will return all of their papers,
property and funds promptly upon your payment of those fees and other charges. You should always retain your files pertaining to the matter but make copies for the client at his/her request and cost.

We will, as a matter of course, withdraw as your attorney at the conclusion of your case. Obviously, if any post-representation issues arise, we will be pleased to re-enter our appearance upon mutually acceptable terms.

There are times when a client simply "wears you out." When this happens, talk with the client and then withdraw. Remaining in such a case will only lead to a bar complaint. There is NO rule that says you have to continue to represent a client. You do have to be judicious when you withdraw so as not to harm the client in any manner.

XIII. THE RELATIONSHIP AFTER THE CASE

Remember that clients are your best form of advertising. They are the ones who will tell others about the work you did and how you did it. My experience has been that regardless of the outcome, most clients will quickly refer other clients to you if you have treated them with dignity, respect, honesty and professionalism.
DEFENSE MECHANISMS

- Protect you from the anxiety of confronting your weaknesses and foibles.

PERSONALITY DISORDERS

- Enduring pattern of inner experience and behavior that deviates markedly from (relational) expectations

- Causes
  - Genetics
  - Childhood trauma
  - Verbal abuse
  - High reactivity
  - Lack of peers
Parking Lot of the Personality Disordered

1. PARANOID - Cornered again!!
2. NARCISSIST - Largest car; prominent hood ornament
3. DEPENDENT - Needs other cars to feel sheltered
4. PASSIVE-AGGRESSIVE - Angles car to take 2 spaces
5. BORDERLINE - Rams into car of ex-lover
6. ANTISOCIAL - Blocks other cars
7. HISTRIONIC - Parks in center of lot for dramatic effect
8. OBSESSIVE - Perfect alignment in parking space
9. AVOIDANT - Hides in corner
10. SCHIZOID - Can’t tolerate closeness to other cars
11. SCHIZOTYPAL - Intergalactic parking
<table>
<thead>
<tr>
<th>Personality Disorder (Condition)</th>
<th>Role (Who you see)</th>
<th>Defense/Coping Style</th>
<th>Core (What is protected)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obsessive-Compulsive</td>
<td>Rescuers</td>
<td>Suppression</td>
<td>Shame</td>
</tr>
<tr>
<td>Dependent</td>
<td>Victims</td>
<td>Blame Others</td>
<td>Loneliness</td>
</tr>
<tr>
<td>Borderline</td>
<td>Black Sheep</td>
<td>Splitting</td>
<td>Pain</td>
</tr>
<tr>
<td>Antisocial</td>
<td>Rebels</td>
<td>Acting Out</td>
<td>Anger</td>
</tr>
<tr>
<td>Narcissism</td>
<td>Tyrants</td>
<td>Devaluation</td>
<td>Fear</td>
</tr>
</tbody>
</table>

Roles: Bully, Tyrant

Defenses: Devaluation, Eminent

Core: Fear, Anger, Pain, Loneliness, Shame
CONFRONTING THE ROLE
NARCISSISM- ROLES & DEFENSE

- Roles
  - Bully - person who uses superior strength or influence to intimidate someone
  - Tyrant - a person exercising power or control in a cruel, unreasonable, or arbitrary way

- Defenses
  - Devaluation - the reduction or underestimation of the worth or importance of something
  - Externalization - to attribute to causes outside the self

NARCISSISM- PROTECTION

- Fear
  - Being seen
  - Being less than
  - Not good enough
  - Not smart enough
ANTISOCIAL - ROLES & DEFENSES

- **Roles**
  - Rebel - rejects rules

- **Defenses**
  - Acting Out: direct expression of an unconscious wish or impulse in action, without awareness of emotion driving the behavior
  - Omnipotent Control: fantasy that the source of everything that happens is oneself

ANTISOCIAL - PROTECTION

- **Anger**
  - Abused as a child
  - Not being heard as a child
  - Not allowed to set/have boundaries
  - Overly controlled as a child
BORDERLINE- ROLES & DEFENSES

- Roles
  - Black Sheep: identified patient who causes shame to the family

- Defenses
  - Splitting: separating the world into good and bad to reduce complexity of threatening situations
  - Projection: unconscious act of attributing something inside ourselves to someone else, usually an unwanted attribute

BORDERLINE - PROTECTION

- Pain
  - History of Abuse: physical, sexual, emotional, verbal
  - Chaotic family of origin
DEPENDENT- ROLES & DEFENSES

- Roles
  - Fabrication of victimhood: to justify abuse of others, to manipulate others, and/or a coping strategy or attention seeking.

- Defenses
  - Blames Others: is laying the judgment for your problems upon someone else.

DEPENDENT – PROTECTION

- Loneliness
  - Victim of rejection throughout life
  - Victimized in many ways
OBSESSIVE-COMPULSIVE - ROLES & DEFENSES

- Roles
  - Rescuer: help people in a way that really helps no one and is instead meeting personal needs

- Defenses
  - Suppression: dealing with stress by intentionally avoiding thinking about problems/feelings/experiences
  - Undoing: unconscious effort to compensate a painful emotion - generally guilt or shame - with behavior that will erase it magically

OBSESSIVE-COMPULSIVE - PROTECTION

- Shame
  - Emotional needs are not met
  - Taught that they are NOT nor will EVER be good enough
  - Core feelings of being bad or incompetent.
SETTING DOWN THE ROPE

PULL
WORKING WITH DIFFICULT CLIENTS

• Try to understand the function of their difficult behavior
• Developmental perspective
  ○ They didn’t wake up this way one day!
• What are the fears?
• Why does the person hold onto this behavior?

WORKING WITH DIFFICULT CLIENTS

• What is this tapping in me?