

CHAPTER 1

Initial Client Contact

The lifeblood of any law practice is our clients. And our relationship with them depends on how we treat them from the first time they call the office. As you'll learn, primacy is a critical tool for trial lawyers. Good first impressions lead to success. If the client trusts you, you'll be more effective. Without that trust, you risk leaving an unhappy client, regardless of the result. In this chapter, I address techniques for building that trust from the start. I'll coach you on creating good first impressions for both you and your team, and how to gather information while building rapport with the client.

How Can We Help?

The new client call is your first chance to earn the client's trust. While digital scheduling options are increasingly available, they're impersonal. Traditionally, the first client contact is by phone, which provides an opportunity for some personal TLC and sets the tone for further interaction. Does the person taking the call greet the prospective client in a friendly and engaging manner? Does the receptionist treat the caller empathetically yet professionally?

It's worth the time and effort to train a staff member to manage new client calls. These calls can't be handled carelessly or capriciously. Develop a protocol for staff members when receiving inquiries. Discuss an appropriate response to routine questions:

- “Is there a consultation fee?” (There should be.)
- “What is discussed at the consultation?”

- “Will the information be kept confidential?”
- “May I bring a friend or a relative?”
- “May I take notes?”

Also consider setting forth reference information about consultations on your website.

Maintain a conflict index to avoid conflict of interests. Coach the scheduler on handling the awkward circumstance of telling the prospective consult that the firm is unavailable due to a conflict. I advise our scheduler to simply state, “we’re sorry, our firm is unavailable to help.” Again, the scheduler should be helpful, but must defer to the lawyer if the potential client seeks specific legal information over the phone.

The Initial Consultation

As noted above, first contacts shape the professional relationship. At the time of writing, the COVID-19 pandemic limits personal contact and many consultations are now by phone or an online meeting platform. This fundamental change may reconfigure consultations, but I am not certain. While technology provides alternatives to in-person meetings, I believe that people generally (and more so for those in crisis) prefer a personal first meeting with the person to whom they are entrusting their children and their finances. Regardless of the medium, you must provide information while simultaneously building rapport with the client. Whether the initial consultation is remote or in person, limit distractions and focus on the person you are meeting with.

It’s important to be truthful with the client. Some lawyers gloss over a client’s exposure to get retained. Some go further and actually paint a rosier picture than warranted. Regardless of the motive, it’s bad practice. Instead, truthfully address potential problems now rather than mollifying an angry client six months down the road. For the lawyer to be effective, the attorney-client relationship must be based on truth. When conveying information or answering questions, err on the side of caution, as it is always better to exceed expectations than fall short of them.

In-Person Consultations

When the potential client arrives for a consultation, make sure the client is greeted in a friendly and professional manner. Ideally have a staff member greet the client at the door rather than personally greeting them yourself. A surgeon doesn’t greet a new patient when the patient first walks into the office and neither should you.¹ Have fresh flowers in your waiting room and purge it of three-year-old

¹ However, I recognize that we are in an era of practice minimalism and this notion of having a support staff may be impractical for some. The point really has more to do with developing strategies to build a positive first impression.

Sports Illustrated magazines. Have current magazines and periodicals that appeal to your ideal client, not your personal interests. Make the waiting room tidy and fresh. Invest in comfortable and stylish furniture and artwork. Your physical space is a manifestation of your skill. If you want potential clients to perceive you as being effective and concerned with details, use your office to communicate that message. While “virtual law” is on the horizon, it’s not here yet and some physical contact is still craved by many in crisis.

Create an atmosphere of professional competence. This means that the staff should not be yelling about some irritation from the back room. Ensure that when clients are in the waiting room, the office appears still and serene. Background noise and commotion is off-putting for someone pouring out their emotions to a stranger.

Have the client fill out a brief questionnaire before you start, to have as a reference at the consult. (Item 1 in the Appendix is a consultation client intake form.) This document also serves as a future reference in the event you get retained months or years later.

While a consultation is routine for a busy lawyer, appreciate the client’s mindset. What are they thinking and feeling? For most, this isn’t like a trip to the dentist for a teeth cleaning. Rather, it’s one of the most significant moments of their life. People considering a divorce experience many emotions: fear, anger, stress, confusion, sadness, and uncertainty. Your job is to recognize those emotions, and empathetically listen to their story. At the same time, you must convey information to help them make informed choices.

With that in mind, start the consultation promptly. Don’t make the potential client wait any longer than necessary. Greet them warmly and confidently. They are embarking on an emotional journey with you and will be revealing their deepest fears and secrets. Respect and honor that trust. Ensure that you aren’t interrupted during the meeting. Give this person your total attention. At the consultation, I don’t take detailed notes; rather, I simply listen and try to connect. If retained, I arrange a follow-up meeting to gather specific information.

Strategies for a Successful Consultation

Focus both on what the client is saying and what is left unsaid. Often the unsaid reveals more. A good prompt to help people identify what’s bothering them is to ask them, “What keeps you up at night?” By helping people identify what they’re terrified about, you can help ease their mind. But you must *first* identify those fears. Another simple prompt is to ask, “how can I help you . . .” This is another way of finding out what’s nagging at them. In any event, make the client comfortable about opening up. Give them a safe place to discuss their worries, concerns, and general emotional state. This will help you connect and gather the necessary information to help them.

Sometimes people need to purge toxic emotions. Be patient and let them get it out. By the same token, your time is limited and there is much territory to cover. Learn how to redirect the discussion after a reasonable period, so that the client feels heard, yet allows you to provide important information. Move the discussion back to your talking points. First, empathize and then redirect, “that sounds very challenging. Maybe some information will help you better understand your options . . .”

Some want to bring a friend or relative to the consultation. While some lawyers believe that the existence of a third person affects attorney-client privilege, I don’t believe this is ordinarily the case. Allowing a confidante to participate in the consultation wouldn’t be considered a voluntary waiver under the circumstances.² The value and comfort the client derives from having a friend or relative at their side outweighs the remote risk that the case will be compromised by a third person at the consultation.

Approach each consultation with a beginner’s mind. While the law and the process are second nature to lawyers, the potential client is a stranger to this world. Speak plainly and introduce the client to the legal process, not with legal jargon, but in plain English. Don’t talk about interrogatories and depositions and assume the client will know what you are talking about. Instead, advise that “we will have a right to ask your spouse for information under oath.” Explain concepts as you might to a child. If done in a respectful and intelligent way, the client won’t feel patronized.

Consultations are a two-way street: the client is evaluating the lawyer, but just as importantly, the lawyer must evaluate the client and the case. It’s helpful to take a pulse on the client’s level of sophistication and emotional state. This will help both in guiding the discussion and anticipating the probable course of the case. You may determine fairly quickly that the case is fraught with landmines and problems you want to avoid. But be respectful and considerate, giving the client helpful information despite being wary about accepting the case. Advise the client of the benefits of counseling or coaching and offer other professional referrals.

Sometimes you sense that the client’s dishonest or wants to engage in fraudulent or illegal conduct. Advise schemers of your ethical duties to the court, and wind that consultation up sooner rather than later. At the conclusion of the consultation, wish the client well, but advise that you’ll be unavailable to help. It’s much better to reject a case from the outset rather than getting knee deep into an ethical quagmire. Some lawyers—either out of insecurity or out of ego—can’t reject any case. For your peace of mind, fight this impulse and use good judgment to avoid problem cases.

People differ in what they want at the consultation. Some want legal information to evaluate their exposure. Others are looking to understand the process. Still

² STEVEN N. PESKIND, *THE FAMILY LAW TRIAL EVIDENCE HANDBOOK: RULES AND PROCEDURES FOR EFFECTIVE ADVOCACY* 222 (2013).

others are looking for good old-fashioned hand holding. Identify the personality and cater to it. Offer the client options at the consultation. Some come in with a list of questions and just want answers. Others want to tell their story about their spouse's infidelity or abuse. Still others are a mixture of the two. Offer to answer the client's questions directly or alternatively give them a tutorial on the issues, procedures, likely outcomes, and so on. From my experience, most opt for the latter. In either event, invite the client to jump in with any questions as they arise.

Initial Information to Gather

Gather general background information about the family. Ask questions to identify likely issues. Here is a checklist of general information to start with:

- Find out if there are children or stepchildren.
- Ask about the ages of the children.
- Inquire about the children's health, academic progress, and whether any of them have special needs or disabilities.
- Ask about the use of assisted reproductive technology and whether any stored embryos exist.
- Inquire about past allocation of parental responsibilities and each parent's involvement with the children.
- Ascertain the parties' incomes and work histories, as well as the general financial holdings of the family. At this point you only need to gather enough information to help inform the client of the issues and procedures for resolving those types of issues.
- Evaluate whether any jurisdictional or venue issues are possible or likely. These issues manifest themselves more often if the parties have already separated.
- Determine whether there are any premarital agreements. Explain the general law and procedure for the enforceability of these agreements.
- Ask about any issues of domestic violence or abuse. Ask questions to determine whether the client or any family members have been victimized. Explain how local courts address domestic violence and the protections afforded by the law. Reassure clients who are terrified of their spouse that there are remedies and the situation is not hopeless.

Subjects to Discuss

After gathering a general overview of the family, give the client an overview of the process. Include the following in your discussion with them.

Explain the divorce process concisely. Discuss timing. Some cases need to be filed immediately to secure jurisdiction or venue. Other times, negotiations are attempted before the case is filed. Offer the client tips on how to advise their spouse about their intention to divorce (less is more) and how to tell the children. Advise the client of the importance of setting a tone of cooperation at the beginning of the case. If you sense someone is very angry and disinterested in cooperation, explore the negative consequences of starting a case by throwing bombs and urge restraint.

Be sensitive to safety issues. If there are concerns about a malignant or abusive spouse, be cautious with your advice. Explain about resources for victims of abuse and strategies for protecting the client and the children.

Give the client a context. While divorce cases don't always follow a distinct sequence, there's a three-part structure to most cases. During the initial phase, stabilization is the goal. Immediate issues are addressed, such as ensuring bills are paid and assets are secured. Temporary support and parenting issues are addressed as well. I call this period "crazy time" when the parties are working through the intense emotions of the breakup. Often it is akin to waiting out a storm. Once things settle down, the work of the case begins. This is the middle phase. During this phase, controversies are identified, and facts are gathered. This is the period when preliminary settlement discussions may commence. The final phase concludes the case, either by a settlement or a trial.

Most are focused on the children. Reassure them that children survive their parents' divorce every day and of the importance of the parents' cooperation in resolving parenting issues. Explain it is not the divorce that impacts children so much as the level of their parents' conflict. By this time, you should intuitively have some idea of the direction of the case based on the client's comments, and if it appears that the parents will be at odds with each other because of the children, describe the procedures for resolving parenting disputes. Discuss the intervention of mediators, guardians ad litem, and mental health professionals and how the court relies on those professionals. Explain the cost both emotionally and financially of contested child custody litigation and the possible (and likely) outcomes.

Discuss the financial aspects of the case. Explain the mechanics of classification, valuation, and division of property. Gather a rough inventory of the property. Solicit information about the various types of property owned: real estate, employment benefits, business interests, investments, and so on. Try to determine the nature of possible contested issues and direct the discussion accordingly. Determine whether there were any substantial contributions by either of premarital assets, family gifts, or inheritances and, if so, explain concepts of transmutation of assets and the likely implications. Ascertain whether the client has

concerns about hidden assets or improper expenditures by the spouse. Describe in general how experts are sometimes used to trace assets or identify unaccounted for money.

Investigate the existence of any pre- or postnuptial agreements. Assess the likely viability of the agreement by its circumstances. Advise the client to maintain a copy for later review. Discuss the implications if it is valid and the procedure for challenging the agreement.

Identify possible valuation questions. Explain how courts value assets in a divorce. Review how expert witnesses are used for this purpose. If there is a business interest, explain how the interest is divided in a divorce. Some clients will have extensive knowledge of the family finances and others will shrug their shoulders in dismay. Cater your discussion to the client's level of financial sophistication. Sometimes less is more for an overwhelmed spouse of a business owner.

Advise the client how courts determine support and maintenance. If possible, give the client ranges of the amount he or she will receive or owe. Sometimes anxious clients will try to pin a lawyer down on exact figures. Don't take the bait (they will later hold you to your estimates). Advise the client why you can't provide specifics because of the many moving parts affecting the outcome. Explain what factors the court will consider when calculating those sums. If one or both of the parties are self-employed, describe how income is determined for a self-employed person. Where concerns exist about a spouse not being truthful about his or her income from a cash business or otherwise, outline how forensic experts help identify income.

Explain the discovery process. Describe the process in plain language rather than abstract legal expressions. Discuss how and when depositions are used, "the lawyers have a right to ask both parties questions under oath at an informal court hearing conducted in the lawyer's office . . ." Discuss how some cases are fairly transparent and don't involve in-depth discovery, while other cases are murkier, requiring substantial investigation.

Discuss spoliation of evidence. Advise the client that people contemplating a divorce must preserve potential evidence, and of the consequences of destroying or altering such evidence.

Address how cases are concluded. Explain that parties to a divorce can settle their case without the court deciding the issues. While an understanding of this is fundamental to us, many don't understand it. Reassure the client that the majority of all cases settle rather than go to trial. I explain that while trials are sometimes necessary, they rarely are the first resort and typically result only where negotiations fail. Many lay people are confused about the role of the court in a

divorce case. Describe the role of the presiding judge: to resolve temporary issues, to oversee discovery, to assist in settlement negotiations, to make sure the case is moving toward conclusion, and so on. It is only at the end, if the parties cannot reach an agreement, that the judge will impose a resolution.

Discuss the alternatives to traditional litigation. Explain the pros and cons of mediation, arbitration, and collaborative divorce. In jurisdictions with mandatory mediation explain the mediation process and procedures. The truth is that most people are afraid of the cost and insecurity of court and are attracted to alternative dispute resolution. But sometimes those systems are ineffective or inappropriate considering the personalities and issues in the case. Explain how sometimes the adversarial process, while unpleasant, can result in a better result more quickly than with other forms of dispute resolution.

Advise the client of the typical length of a divorce case. I advise my clients that a case lasts as long as it takes to get a settlement and is concluded within a month of achieving an agreement. If the case cannot be settled, and needs a judge to decide it at trial, it may last several years. Explain that *your* goal is to help the client achieve *their* goal. To some, a speedy resolution is more important than achieving a windfall settlement. For others, getting every last dollar is their bottom line. Explain that the lawyer often cannot achieve both goals simultaneously and how you will help the client develop realistic goals and will work toward helping the client achieve those goals.

Costs are always on people's minds. Unless the lawyer uses a fixed fee format, fees are uncertain. When asked to give a range, I advise people that the costs will be "between \$2,000 and \$2,000,000 depending . . ." While not necessarily reassuring, it sends the message of the uncertainty of the total cost. Explain what factors affect the cost: the issues in controversy, the litigiousness of the opposing party and his or her lawyer, the skill of the judge at managing conflict, the mental health of the parties, personality disorders, and so on. Reassure the client that you will do everything within your power to efficiently resolve the case, but often the end result is outside of your control. I explain that there are four actors in every divorce: both parties and their respective attorneys. If one of the four don't want to conclude the case it goes on. This "lowest common denominator" description illustrates that there is no magic wand that can relieve their pain if difficult personalities resist closure.

Explain your billing structure and expectations. Outline the hourly rates of both the lawyer and the staff. Describe the firm's billing protocol and the costs that will be the client's responsibilities. Advise the client that the firm works from a written engagement agreement (retainer agreement) and offer to share that with the client. Also describe how the firm operates generally and the names and

roles of all of the staff members that will be working on the case. I conclude the consultation by giving the client a folder with helpful articles, including articles on “The do’s and don’ts of divorce” and “what to do if you are considering a divorce.” The folder also includes the firm’s contact information and procedure if the client decides to engage the firm. I also give them a copy of my book, *Divorce in Illinois*, which answers many of the questions that time didn’t allow during the consultation. Consider doing a book, self-published or otherwise, summarizing divorce law in your state. Giving a potential client this resource enhances your credibility and is a helpful resource for their post-interview questions.

Stay Engaged

As I noted above, I avoid detailed notes during the consultation. Instead, I prepare a post-consultation memo summarizing the issues discussed at the consultation, along with an indication of whether the firm would be a good fit for the case. The memo usually has triggers for me to remember the case, a summary of the issues, and the level of conflict. If it’s a case I have no interest in, I will indicate that as well.

Clients often want assurances that a lawyer cannot provide. But one thing is certain, a lawyer can and should communicate confidently that he or she is up to the task of helping them get through this difficult time in their life. I jokingly assure people at the conclusion of the consultation that “I haven’t lost anyone yet.” This little joke communicates that they, like those that have gone before them, will survive, and with determination and a positive mental attitude, their life after divorce will be better!

Final Thoughts

Building trust early in the relationship is critical to managing the case. You do this by managing first impressions, using your physical space, personal presence, confidence, diligence, and interest. You are asking vulnerable people to trust you with their children’s welfare, and their entire fortune and future. A good first impression can make the difference between a cooperative and collaborative working relationship and one resting on doubt and mistrust. And for you to do your job effectively, and help people resolve their issues, you need their trust. Most understand that you can’t wave a magic wand and make everything OK for them, but they want to feel safe and secure knowing you are doing everything you can for them and minding the store so to speak. You do this first and foremost by conveying that impression the first time you meet them.