

Client Interviewing

A July 2010 discussion on SoloSez, the email listserv for general practice, solo and small firm lawyers

Good morning All

I hope this isn't just me, but I find many of my clients leave out very important information (a nice way to say they lie).

I ask questions, I have them fill out a questionnaire before I sit down with them, and STILL! What is this? Today's example: client complains spouse left and doesn't send support for children or help with mortgage and isscared house will go into foreclosure. I just found out leaving spouse signed over house and paid it off before leaving, per their agreement (which agreement was never mentioned).

How do you get everything out of the client so you that you don't submit wrong information in your complaint? I realize it's my fault for not checking first-hand, but hind sight is always 20/20. Nonetheless, how do you check EVERYTHING?

Okay. It's really just you.

Consider: Everyone wants to present him/herself in the best possible light. That's even an officially accepted sentence and conclusion in a psychological evaluation to which parents often submit in contested parenting matters. We all want to present ourselves in the best possible light.

So do your potential clients.

So, after we've talked for a while and become comfortable with each other, I always say in the first interview with a prospective client, "So tell me the bad news. What is your (whomever) going to say in court that's going to leave me looking stupid because you haven't mentioned it here?" One prospective client said, "Well, uh, I was convicted of involuntary manslaughter" in a car accident case. Didn't apply now, after so many years and had nothing to do with a custody matter, but still . . . he should mention it.

"Is there anything else that you haven't mentioned? Don't decide it's insignificant, too old, not about this particular case. Let me decide that. Tell me anyway."

And if they don't want to tell you, they won't. They'll risk it not coming up in court. Everybody gets bit at one time or another. Sometimes repeatedly.

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Carolyn J. Stevens, Montana

Mostly a question of interview methods.

As to filing incorrect info, use verified Complaint. Explain need for absolute truth. When they swear, they should get the message OR you have a crook to deal with.

More often, I find clients omit detail they don't think is important--maybe embarrassing. Again that is q of interview methods.

Among other things, I always tell them EVERYTHING will come out--especially things that will be problems. Focus on falsified docs. Tell them these days there are copies of everything somewhere. Alterations will be discovered AND will be BIG problem.

THE TRUTH WILL SET YOU FREE-----we hope.

John Page, Florida

Those of us who are not trained in the art of lie detecting can only ask enough questions that we are satisfied we are being told the truth. I will ask things like, "What would your spouse say against you?" I also pay attention to how difficult it was to get them in for a consult and who they come into the office with. Are they listening to my advice or attempting to convince me that they are abused?

I also tell them that they might as well tell me the truth, because it's my job to help them figure out a way out of whatever mess they're in.

Jennifer Moore, Minnesota

I have troubles with this, too. I try to see a pattern, and add specific questions to my intake, for one thing. For example, you'd THINK in my pro bono life, that those folks who can't afford an atty don't already HAVE one (or didn't already have a private one earlier for the same matter). I've been surprised more than once with that, so I'm wary, even with the pro bono folks, if they have current or prior representation. For my private practice, I DEFINITELY ask about other attys up front.

Another thing I try to do is not just rely on word for things. I like to see with my own eyes the underlying documentation for what they're saying. For example, one of my pro bonos was claiming certain representations were made to her regarding a mod. I asked for the doc the bank sent. I read the docs. I pointed out the docs say X, no matter what the client was saying.

There is a lot of this that goes on. Some is downright manipulative (one pro bono client manufactured an emergency to get sympathy by claiming she'd been given 10 days to sign something and pressured--wasn't true). Some is putting themselves in a better light. Some is outright denial and wishful thinking.

Lisa M. von Biela, Washington

You can't get it all.

However, much of it is interview methodology. You need to understand that your clients do not trust you, at least not immediately. Similarly, they often fear that you will decline to represent them (or that you won't do a good job) if you know the "real" truth. So they lie, or withhold information. your job is to present the questions in such a way that they can deliver information without psychological conflict. Compare these two questions: "What happened between you and your husband, at last night's barbecue?"

"In order to do a good job representing you, I need to know what the other side is going to say. That is true even if--or especially if--they are going to lie. Please understand that my job is to represent you, not him.

I'm just trying to do my job. So: Imagine that someone asks your husband what happened at the barbecue. Whether or not he's lying, what do you think he is going to say?"

The first question asks the client for an objective report. But that is not possible to achieve: people are never objective. So the first question is going to give you your client's *subjective* experience, no matter how you phrase it.

The second question is an attempt to get the "other side" of the story, in a manner which permits your client to stay removed from it. She can tell you even if she thinks it's false, because you have convinced her that it is OK to tell you "lies her husband will say." This is crucially important, because *even if she has convinced herself that the statements are false,*they may be objectively true, or they may be supported by evidence in such a way that the husband will win.

Erik Hammarlund, Massachusetts

Some clients will never tell you anything; some tell you "everything" except the one thing you want to know; others will say whatever pops into their head, true or not.

In family law cases, I have the client verify the petition and any motions that allege specific facts. I make sure to tell them that the verification is just like saying it court to the judge, so they need to make absolutely sure it's 100% accurate.

Also, interviewing and asking the right questions. I never know if I have everything, probably never will know...

Russell D. Gray, Utah

This is frequently a problem with employee side employment law as well. For me, the following worked pretty well:

1. Never take what client tells you at face value.
2. review any documents you can
3. Ask client : what will the other side say? Tell me anything you think they might say because I have to be prepared to respond to it.
4. After they tell you the other side's possible story, say: What do you think they will use to try and prove that, and what do you have, besides your own statement, that will help me disprove it?

Number 4 was often key to getting into a conversation about why the client might lose on a particular point no matter what they think the truth is.

And if you keep finding yourself blindsided, consider withdrawal for lack of client cooperation.

Pam Parker, Texas

When I interview clients I explain to them that they need to tell me everything whether or not it presents them in their best light. I tell them if they have something negative and I know about it and the other side tries to use it, I will not be surprised, in fact I may even be able to put a positive spin on it depending on the circumstances. Play devil's advocate, explain that to represent them well you need to anticipate what the other side will do. As part of my due diligence, I also ask to see documents that I would use as exhibits so that I know when I am putting in papers that I can prove it. Better to find out you have no proof prior to making an allegation than afterward. In addition, in case despite my interviewing and due diligence I find that the client is problematic, my retainer agreement states that if the client does not cooperate or has not been truthful I have the right to withdraw.

Deborah E. Kaminetzky

This is all great advice. One thing I would add is that in document cases (and even in non-business cases, there will be emails, phone records, medical records or bills), insist that the client gather and provide the relevant documents at the outset (e.g., before filing the complaint). If there is a lack of supporting documents to go along with the client's story (when documents should exist), then be suspicious. Explain to the client that lack of documentation will undermine the client's credibility with a judge and jury.

David B. Newdorf, California

I have a problem with liars. I can handle the truth. I have been caught with my pants down too many times related to selective recollection of critical facts.

LaTonia Denise Wright, Ohio

Always make the client work. Most cases require a chrono. I tell client no one knows the facts of this case better than you. It is your job to make them easy for me to learn and look up.

Make them provide computer chrono in table form you can search and sort. At each meeting, begin by asking for changes IN FACTS OR OBJECTIVES since last meet and if any new remembered facts.

John Page