

Keeping Initial Consults to Limited Time Periods

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

Good evening, Firm.

I recently had my first family law initial consult. It was a learning experience, to say the least.

My first mistake: I spent 2 hours on the phone with the prospective client, pre-consult. As a newbie, I wanted to be sure I knew what issues to address in our consultation, so I decided it was worth it to take extra time to get info beforehand. Not something I would do in the future, but for my first time, it seemed a reasonable plan.

My second mistake: I expected the consultation to take 2 hours, max. Particularly given the lengthy discussion we had had on the phone. Unfortunately, it took 4 hours, because when I tried to keep the client focused on my bullet point list, he kept interrupting me to keep telling me more info. It made staying the course pretty difficult. This might have been ok with me, if he had signed the retainer agreement and handed me the retainer check, right away, but he didn't.

In thinking about what went wrong and how to better prepare for future initial consults, I would love to get the input from other, more experienced, members of the firm.

How do you normally run an initial consult? I'm thinking Let the client tell his/her story. Then give general legal rules. Then hand him/her a packet with info related to their type of case and a copy of the retainer agreement. Explain the retainer agreement. Let client go home to think about it.

Do you follow this type of pattern? Do you plan to collect the real meat of the matter during a follow up consultation after they have retained you? Keeping the information gathering at the initial consult to a minimum?

Just curious.

Thanks!

I schedule appointments back to back, with a little breathing room. And I make it clear that the consult is only one hour.

Shawn M. French, Sr.; South Carolina

I do commercial litigation. So my initial consultations can run the gamut from someone who was fired who is contemplating a discrimination claim, to a lending looking to collect a multi-million commercial debt; to a complicated partnership dispute. The only rules I have are:

1. I prefer to talk on the phone before meeting, to get a sense whether I think the case might be one we could possibly handle. If client wants to meet in order to decide to hire me, that comes after I decide whether I might be interested.
2. I'm not going to review documents (or more than a few), until after I'm retained. I will break this rule if it appears to be a very interesting (i.e., potentially lucrative) case.
3. I try to keep the discussion focused on what I need to know to decide whether I want to take the case, and under what terms.

I can often learn enough to know I don't want a case in 5-15 minutes or less. If I'm still interested after that 5-15 minutes, I'll talk as long as it takes to (a) get enough of a sense to figure out what the case might be, whether I'd be interested in it, and under what terms; (b) discuss those terms with client; and (c) get client comfortable enough with me to hire me. This could well involve a follow up meeting. I can't recall an initial consultation for me taking more than an hour, and that would probably only be if the potential client was referred by a good source and I'm bending over backwards for them.

So I generally view initial consultations as a way to efficiently use MY time to determine whether *I* am interested. A second consultation would come after I'm interested, to satisfy client's questions about me.

Patrick W. Begos, Connecticut and New York

Shawn is right. You need to pick a length for the consult and stick to it.

Use the consult to determine if you want the case and sell your services to the client. Explain how to hire you. Done.

For a complex matter, I don't think there's any way you'll get all the pertinent facts even in 2 hours. So the goal should be to get a basic set of facts as a starting point.

You'll have to figure out a way to wrap things up at the deadline. You can politely say that you have enjoyed meeting them and would like to continue the conversation later, but you have another commitment you cannot break.

Personally, my practice is traffic. My consults are typically 20 minutes max, usually less. There's just not that much to discuss. If a client isn't ready to hire after 20 minutes, they simply need time to think (or compare rates), and they'll say that. If they still want to talk, they're usually just trying to get enough free advice to go pro se.

I hope that helps,

Andrew

Andrew Flusche, Virginia

Very relevant and timely thread to my practice as well. I just had an influx of new potential clients calling me lately. Some do not have the gift of brevity. For my own sanity and time-management, I am now informing all new prospects that I will talk with them for 15 minutes on the phone. I will give them a 5 minute warning to wrap things up. From there I decide if I'm interested in the case, and I will give them my fee options. If I don't like it after 15 minutes, I know I won't like it after 15 months of litigation.

-Brian Pedigo, California

In family law matters it is particularly important to charge for consultation. After all, you are conflicted out after that whether hired or not. Several hundred dollars an hour tends to impact sooner or later.

You have to learn to set expectations and control conversations without driving clients away. This is a mix of tact and bluntness at times.

Clients are emotional and want to tell someone all his/her troubles in this area. Empathetic control is the key to progress.

If the client won't ever listen to you or your attempt to direct interview, don't expect the client to listen later. Take control early and don't give it away. If the client cannot listen or accept the process it will be a long hard road if you take the case. I prefer to weed out those potential clients myself, but it is your choice and your pain.

Please note that those of us who have been there and done that are reporting experiences, not trying to be preachy about what others choose to do. My methods are my own, and typically serve me well, but other approaches exist also.

Darrell G. Stewart, Texas

Most clients want to start out by telling their entire life story, especially family law clients who feel like the other side has been playing them. With any consultation, I always ask what they hope to accomplish first. Then I can use that to direct the conversation to what I need to know to figure out if what they want is do-able. If they are asking about a divorce, I explain the steps it will take to get the divorce started and finalized. I ask them if there are children and property issues, that way I know if child placement/custody/support and property division are going to be a problem. If they try to launch into a lengthy narrative about how bad their marriage has been for the last 10 years, I explain that WI is a no-fault divorce state, so most of that will not be considered. But if they feel it is necessary for me to know, I will be happy to discuss it at a later meeting (once I have been hired and am getting paid more).

The key is figuring out what you absolutely need to know before agreeing to take a case, and asking questions that get those answers. I often find myself saying things like "Mr. Smith, I understand you think your wife is cheating, but that does not answer my question - are you going to ask for maintenance/alimony?".

Hope this helps,

Brian C. Hagner, Wisconsin

My practice is almost exclusively family law...and I've been doing it for about 19 years. how much time I spend with someone on the phone is determined by a) how busy I am , and b) my mood. Yes! my mood! If I'm in a good mood, and the PC seems reasonable, and seems like they're truly looking for an attorney they feel comfortable with (as opposed to a tire kicker of price shopper)..I may very well give them 30 minutes on the phone. if I'm not in a good mood, or PC seems unreasonable, or annoying (probably related to my mood), by the end of 10 minutes I'm telling them that I'm willing to meet with them if they wish (ie, no longer willing to talk).

I try to limit initial consult to an hour....although I'm not as good at this as I should be. Whether I charge or not, is based on a gut reaction, during the phone call. Again, I know, this isn't a good answer....but if someone is truly trying to figure out what they want to do, and they're reasonable, and it 'feels' like they just need that face-to-face contact, to decide....I'll give them some time, free. Or if we spent almost no time on the phone, they just asked for an appointment, I'll tell them the first half hour is no charge...if they wish to continue, there's a fee.

Especially if I'm not charging....if they go on for too long, or keep trying to stray, I point out that - once they're paying for my time, they can decide if they want to go off on tangents, but while the meeting is on my nickel, I get to determine what we discuss. If I am charging, and the PC won't stay on track, I look at the clock, and tell them I only have another (x) minutes, before I have another commitment, so we need to wrap things up.

However you do it, remember the following:

You are allowed to turn down potential clients

Just because they've hired you, doesn't mean they are in control. Being hired, isn't the same as being an employee.

I've had clients dispute both of the above statements...yes, actually had a PC say I wasn't allowed to turn down business, and then decided I wasn't allowed to turn down business without giving a reason....and I've had a PC say that bc they're paying me, I have to do what they want, and do it how they want.

Good luck. Hope some of this helps.

Laurie Axinn Gienapp, Massachusetts

This is REALLY, REALLY good advice. It is especially important to follow this advice when you have a really "sad story" in front of you. It is way too easy to get involved in the sad story and empathize. This is not a good set up. Not that you shouldn't have empathy, but be very careful in how it affects the consultation's tone and progress. The consultation will set up the relationship's tone.

I say this b/c I made the mistake of being too empathetic with a "sad case" that came in to my pro bono side. I thank the heavens and stars this case came in at my pro bono side and I have learned oh, so many things from it NOT to do in my private practice.

Client had this horrible story of all this sickness in the home, impending foreclosure, the bank had done her wrong, the contractor had done her wrong, the subcontractor was doing her wrong, she had less than 10 days to be forced to sign an onerous contract with the bank(wasn't true, as it turned out, but she set up an "emergency" with that bit and sucked me in). The call was an hour and a half. This set the stage. Nearly all calls since have been of that or similar length, hard to control. She pulls the sickness in the family card on a routine basis to justify certain behaviors or to try for sympathy when another flaw in her story comes out.

Were this client on my private side, I would (now) be more careful about controlling the interview and keeping it professional. I'm (potentially) your lawyer, not your best friend, not your social worker, not your psychiatrist, not your doctor--I can only address your legal problems. I would perhaps have seen past some of the "sad story" to see she had a prior lawyer, that there were other red flags. As time has gone on, various important untruths have come out and she has been the most time-consuming client bar none.

Hindsight is a beautiful thing. Not saying to be cold, just advising caution.

Lisa M. von Biela, Washington

Good advice all around.

Thanks, Darrell, for saying we should charge a fee for a consult. It's time lost to a paying client, it needs to be worth the PC's showing up, and it helps keep the PC on target knowing all tangents are on PC's dime.

"Try to" is something I've trained my self to avoid if at all possible. I (try to) say yes or no rather than "I'll try to." So if I want to limit the time to 60 minutes, I'll set my phone to ding a couple of times when we're at 45 minutes.

If the PC has brought documents, I will take them and hand over the Service Agreement for PC to read while I skim the documents.

At the 45 minute mark, I start moving the conversation to a close -- From what you've told me, I see these issues [1, 2, 3] I think this issue is emotionally important to you, but I'm not sure the court will entertain it without solid proof of some kind of injury to you. What I mean my "injury" is But the other issues appear to have solid information supporting them. So. (finality in that "So.") Do you have any questions about the Service Agreement?

If PC isn't ready to sign, fine, I've been paid for the consult. If PC is ready, I go back to the office and assemble the file opening packet and client information sheet for mailing to Client.

If I've decided to turn down the case for any reason, I tell the PC that, given what you've told me, I think the scope of this case is beyond the time I have available for it. But I can give you names of five attorneys I would send my kids to. If I get that feeling early on, I probably will cut the meeting short. I'll return the money if I cut it way short and offer scant or no legal analysis/suggestions.

cj

Carolyn J. Stevens, Montana

Fantastic thread. Thanks for the great consultation pointers.

Jason Beahm

I no longer accept family law cases. However, I found that using a questionnaire was very helpful for screening cases before or serving as an initial interview. The questionnaire helped the client to isolate and provide relevant legal facts. I also included a short space for

clients to provide a short narrative of the facts. This allowed PC to "vent" on paper as opposed to using my time for psychotherapy type purposes. Plus if the client balked that filling out an intake sheet was a waste of time, then it gave me an idea of how important the issue/case was to them. I also have a bad habit of giving out free advice. The questionnaire/intake sheet allowed me to avoid that trap.

If possible, it is also helpful to use someone for initial telephone intake, perhaps to help the client complete the questionnaire. It doesn't have to be someone expensive. A helpful relative or intern (undergrad or law student) can be trained to do the job (handhold) from any location by dialing *67 and then the number.

Denise Baker, Florida

Thanks everyone for the great advice/suggestions.

I DID charge an initial consult fee. I would have lost a little money if the consult had gone into the 2 hour mark, but that would have been fine. At 4 hours, it was a major loss, particularly when you add in the 2 hours I had already given the client on the telephone. One I would suck up, if I get retained, but this client is not ready to rock a boat and incur the Wife's wrath by making any moves. So he is holding out on starting anything.

The follow up I have is whether I need to inform the potential clients that "I charge \$X for an initial consultation which typically runs 1 1/2 hours. If the consultation extends beyond that time, I charge my usual hourly rate of \$Y/hour." My thoughts are that, by saying this at the outset, I may be able to stop them from having verbal diarrhea at the initial consult. And if they DO go on, I don't lose money.

Anyone's thoughts on this?

Dana West

My engagement/confirmation letter for an initial in-office consultation states a flat fee for a 30-minute consultation (I use 30 minutes for the flat block to remain consonant with the bar referral service), and an hourly rate thereafter, charged in decimal hours. I explain what can reasonably be expected from the first 30 minutes (http://www.rickrutledgelaw.com/lhtml/en/initial_consult.php), and that I have scheduled a one-hour block (by default), should they feel a need for more time.

Richard J. Rutledge, Jr., North Carolina

Part of the problem is this: what's the purpose of your initial consult? Depending on the area of law, they can be for different things. Normally, my initial consult is to make a sales pitch; client needs to hire me to handle the problem. If in fact they do need to hire me. Once the decision has been made to hire me then I gather detailed information. But normally, I'm pitching estate planning or probate.

Back when I did bankruptcy and did a tiny little bit of family law, I used questionnaires; I'd send detailed questionnaire to client and tell them to bring it, completed, to the interview. If client more or less completed the questionnaire, I'd go over it and clarify stuff that may have been ambiguous and complete stuff that was blank; if it was essentially uncompleted I'd hand it back to the client and tell them to call when it was done.

You got to resist the temptation to spend bunches of time on a client who hasn't paid you. If it's a complicated case then charge, and charge enough, for the consultation. If it's 'routine' case that still involves a lot of information gathering (i.e, bankruptcy or family law) then make use of written questionnaires. But don't spend a lot of time on a case uncompensated. Either try to limit the meeting to a sales pitch, or find a way to cut your information gathering time. And you NEED to be in CONTROL of the interview; a checklist helps; it keeps you and the client focused on what you need to figure out what you need to know.

Ronald Jones, Florida

I think you should put a different spin on it. I believe you stated this was your first client meeting. You charged an initial consultation fee, and got paid. As far as I'm concerned, you made money. You certainly had a learning experience, which is invaluable. While I understand you could have been using those 6 hours for doing some marketing, the truth is probably that you did not give up other billable hours...so, you made money. Just not as much as you think a lawyer should be earning per hour. And your feelings are probably hurt that you spent 6 hours with someone and they did not hire you. Yet. If someone has made the step to spend 6 hours with an attorney talking about divorce, I suspect they may be back.

Ellen Victor, New York

For my estate planning clients, I have actually started charging a significant amount for the first meeting. I let them know we will be spending 2-3 hours going over the big picture and commit to a memo with recommendations for the next step. The meeting and memo are a flat fee. I spell out for my clients that the initial meeting will help them to understand and organize their needs in this area, which is one of the essential roles of the attorney. So far, no resistance. My fee is openly a (mildly) discounted version of my hourly rate for that same time period.

Manuella W. Hancock

For me in consumer protection, I have several goals:

1. What's the nature of the claim, and does it have legs? Folks may think they have been wronged, but have they really in a legal sense? Need to try to weed out gripes from claims as best I can.

2. Is it something I can handle, based on the sort of claims that at least seem apparent at that point? Being new, and consumer law being so broad, I'm cautious.

3. Red flag evaluation/risk reduction. As I've mentioned, I've learned a lot in my pro bono side of various red flags for clients that will turn out to be very difficult. Bad enough in my allocated pro bono time, worse if they're in private practice. I'd rather politely decline a red flag client before getting involved than have to deal with it later. Indeed, I had a PC recently that I spent 30-40 minutes on the phone with in an initial call. At that point, I was just returning his call to me, had no idea what to expect. He explained the situation, then got more chatty and I really did want to end the call, do some quick research on pool defects and schedule time for a more focused conversation. However, it was toward the end of that call that he let out a couple of really big red flags that worried me. Several issues with his prior atty, some things the atty said to him and some things about his wife's behaviors that prompted the remarks. I was able to speak with the referring atty, who had actually spoken with PC's prior atty by that point. Confirmed my concerns and then some. Politely declined the case, and also sent a declination letter for good measure.

So one of my main concerns is striking a balance btw efficient and effective consults, and letting the PC talk long enough to reveal red flags I should know about. (Some I can obviously directly ask, like prior atty, but others can fall out in conversation...)

Lisa M. von Biela

For family law consultations, I first attempt to weed out the crazies or those whose ambitions are so unreasonable they will never be happy. That takes about 5 minutes on the phone.

Who am I kidding?

Anyway, when someone calls they usually tell me what kind of issue they're dealing with right off. That helps narrow it down. Others just have a "quick question" which would take several court hearings to answer. But I always try to narrow down what they're looking for.

Next I get name, address, and phone number. That question weeds out probably 10-15% of callers, and that's fine with me. If they won't give the info now, they won't cooperate with me later.

Then I ask directed questions: kids, property, debts, assets, and a very brief outline of what they want. Then, if the case sounds like one I could/would handle I invite them in for an appointment.

I do initial consultations with 15 minutes free. That's when I listen to their story, make suitable sympathy noises, and then tell them my hourly rate and retainer. More difficult/chatty people get a higher retainer, on the theory that if they can afford the high retainer I'll gladly spend time talking to them - at my hourly rate. And I make that clear to them.

If they want more than 15 minutes I charge \$100, and I won't talk until they give it to me. If they don't I politely escort them to the door. If they do, I'll let them talk for another 45 minutes and try to answer their questions. Then I quote the hourly rate and retainer again and send them on their way.

There are always going to be potential clients (and clients) who want to waste your time. My attitude is if I can bill them for it, I will (after full disclosure, of course). If I can't, I won't talk to them.

Russell Gray, Utah

Hi Ellen! (Gah, it's been ages!)

I don't disagree. I willingly and more than happily gave of my original 2 hours, gratis. *I* needed that time. And I know that the time I spent with this PC was useful time, in that, when he is ready to move forward, I feel pretty confident he will hire me. He had multiple legal issues, and he HAS retained me (as of today) to attempt to resolve one of these. The big, meaty family law issue is one that HE needs to be ready to tackle, not just economically, but also emotionally. And he isn't there yet. When he is, he'll hire me, I feel pretty confident believing.

So, it WAS worth it. The time I invested in listening to him and the information I gave him, which might have been beyond the basics typically in an initial consult, will go a long way to encouraging him to hire me. I also, as you put it, got paid. So there is nothing but bonus in that. I also valued it as a learning experience.

My question really is pertaining to how I should approach things the next time, with the next potential client. I want to start off right. I am happy to be somewhat flexible, when it is my choice to be so. I just had thought about what I felt like had been my own missteps in the consultation- asking him too many detailed questions that would have been more

appropriate for a follow up conversation, post retention; not having my game-plan fully thought out so that I could fully direct the process of the consultation; not knowing when I had said and done enough to end the consultation; and perhaps even choosing to meet at night and allowing him to feel like my evening time was not valuable enough to keep things short. These were MY mistakes, not the client's. But I don't want to repeat them (by accident) in the future.

Being able to grasp how others control similar consultations, to apply some of the recommended techniques to my own, helps me to find a better solution that also works for me.

So, I appreciate everyone's input on this topic. Coincidentally, the same topic will be discussed tonight during one of my local bar association's Solo group meeting.

Thanks again, y'all!

Dana West