

What Do You Talk About at the Initial Consultation?

An April 2011 discussion on SoloSez, the email listserv for general practice, solo and small firm lawyers

For those of you that offer free consultation, how long do you schedule the meeting for? And is it a "meet and greet" sales type of meeting? Or is it a comprehensive analysis and offer legal advice meeting? I know that a lot of attorneys that offer free consults won't give any legal advice but I just don't see how that's possible since when I meet with a PC, they come in demanding answers.

We've been contemplating charging a nominal fee for initial consultation (\$50 - \$100) because I spend about 2 days out of the week meeting with PCs. That's 2 days that I am not getting paid for, which has to be subsidized by existing clients.

I'm just wondering how others handle this.

I'll be generic, which also means brief. I give them enough information to recognize what they're getting into if they hire me and enough information to decide whether they want to go forward. No more, no less.

Cheers,

David Allen Hiersekorn, California

First of all, you're getting paid for those initial consults. Not directly of course. But your overall fee structure should cover for the time you spend with those PCs. You can't look at it as lost time. It's the necessary investment to get more retained clients. Maybe you could decrease the investment by cutting down the allotted time for each consult.

As for paid vs. free, it largely depends on the practice area. For example, the norm around here is to provide free consults for criminal matters. I think everyone here charges for domestic issues.

For my traffic practice, I never charge for consults. That results in lots of calls. I also don't hesitate to tell people quickly that I can't help them. And my assistant does a GREAT job at referring out cases we don't handle without me even picking up the phone. So usually when I'm talking to a PC, it's a case we want.

99% of my consults are over the phone (or even email). If people want to come in for a meeting, I gently suggest that we could handle it over the phone so they aren't burdened with the trip to my office. If they still want a meeting, I schedule one.

I don't have an official time limit. But 10 minutes is typically enough for me to get the facts I need and tell the PC what I can do (or not do) for them. If it's not sounding like a hire at 15 minutes, I start trying to get them off the phone (gently, of course).

I lay it all out during the consult. I go over the case and what I think might happen. And how we can improve our situation. Then I explain my fee and how to hire me.

I've had a few folks listen carefully, ask questions, and not hire me. Then do everything I suggested, appear pro se, and get the exact result I told them we might get. It's frustrating, but that's part of the business. (One guy in particular did community service like I suggested. The judge asked why he did a certain number of hours, and he said an attorney suggested it. Then the judge reduced the charge. I wanted to stand up and say "you're welcome!")

Quite often people tell me they've talked to several attorneys and they feel most comfortable with me or I'm the nicest. :)

I don't know what my competitors are saying on the phone. But frankly, some of them must come off really rude for me to seem like the nicest.

Andrew

Andrew Flusche, Virginia

We schedule the first meeting for an hour - long enough for the potential client to vent and talk about their case. I do a lot of employment law, so some clients expect a free consult. I charge \$45, which seems to be high enough to screen out the frivolous claims. You cannot charge too much IMO if you ultimately tell the PNC they do not have a case.

It amounts to a lot of time per week, so yes, you need to get paid something. If you're in an area of law such as PI where free initial consults are the norm, then you may not have a choice.

Tom Crane, Texas

This is an interesting discussion and one I have debated often - whether or not to offer free consultations. My issue is that I can't really answer someone's questions in 15 minutes or less and I would not offer a free consultation lasting longer than that. About half of my consults do not turn into retained clients. My thought is that seasoned attorneys are able to afford free consultations because they have a solid grasp on their practice area such that they can weed out good

cases in that short time period. I am still fairly new and I usually need more time to think out the legal issues, weave together facts with law, etc.

Andrew you offer some good advice and make a point I never thought of -- offer free consultations only involving matters that I would take on anyway. For me that would likely mean no free consultation for removal or asylum cases. On the other hand, in family-based immigration and employment immigration matters the issues (and laying out the person's immigration history) can become quite complex.

I do toss this issue around a lot. As Andrew mentioned, he gets a "lot of calls" because he advertises free consults and maybe that is the way to get a vibrant practice off the ground. The way I do it now is I charge \$100 for the consultation and then I deduct that amount from the total cost of legal fees should the client chose to retain me. I do lose some potential clients for this reason.

So I'm still undecided. I've thought about experimenting with free consults by offering them one day per month or maybe offering just a 10 minute introductory consultation. Anyone else "advance" to offering free consultations as your expertise and ability to answer questions quicker grew?

Amy Long, Virginia

For the first two years of my practice I offered free consultations. Then, at the end of last year, I calculated how much of my time and free advice I gave away and was horrified. Now I offer free phone consultations and charge \$200 for an hour-long in-person consultation. (I have a virtual office, so meeting a client involves me leaving my house and driving somewhere.) I also apply that fee toward their first invoice if they retain me within 60 days of the consultation. I am still shocked at the number of people who opt for the in-person consultation. Many of them reason that the consultation "ends up being free."

I don't think the decision to offer free consultations should really have anything to do with how much experience you have. I stole this idea from Rick Rutledge, but I wrote a blog article on what people should expect during an initial consultation. And I include much of this article in my consultation fee agreement, where I take a credit card up front.

"There seems to be a significant difference between what lawyers have been taught to provide and what potential clients expect to get from an initial consultation. I blame those TV commercials that suggest lawyers can and will solve all your problems in one meeting. No lawyer can do that and if any lawyer tells you otherwise, call someone else.

An initial consultation serves three basic purposes: 1) for the lawyer to determine whether he or she can represent the potential client, 2) for the lawyer and potential client to determine whether they want to work together, and 3) for the lawyer to explain how the representation will proceed if the potential client decides to retain the lawyer.

A lawyer *cannot* represent every person who calls. Lawyers are required to follow a whole host of ethical rules, most of which aren't particularly obvious. In fact, we have to pass an entirely separate exam on the ethical rules in order to be licensed. For example, we are prohibited from representing someone when the relationship would create a conflict of interest with a current or even a former client. Lawyers use the initial consultation to learn more information about the potential client in order to make sure the relationship wouldn't create a conflict of interest.

A lawyer doesn't *have* to represent every person who calls. Because a lawyer and client work closely together for what could be years, the initial consultation presents an opportunity for both to decide whether they want to work together. Personality conflicts should not be ignored, especially if they arise during this first meeting. Lawyers are expensive and heaven knows you don't want to be shelling out thousands of dollars to someone you can't stand.

Lawyers are *not* required to provide legal advice during a consultation. People often believe they can have all their legal questions answered at this first

meeting, at little or no cost. Unfortunately, lawyers are not* supposed* to give legal advice until after they have been retained, which usually requires a signed fee agreement and payment. This protects the lawyer from having to decline future clients because of a conflict of interest they weren't compensated for, and it protects the potential client from being misinformed about a situation the lawyer hasn't had a chance to thoroughly research and analyze.

Lawyers *are* permitted to provide the potential client with information about the legal process. For example, a lawyer can describe the process of incorporating a startup and the fees involved, but should not discuss whether a company should elect to be an LLC or a corporation until the representation officially begins.

So go easy on us lawyers when we suddenly stop the conversation and insist on a signed fee agreement. We're just trying not to break our rules."

Gina Bongiovi, Nevada

On this topic, I saw this blog post at Solo Practice U by Rachel Rodgers on free v. fee consults.

<http://solopracticeuniversity.com/2011/04/07/consultations-free-or-fee/>

Rachel came to a similar conclusion as Gina - and also offers a \$250/hr "strategy session" which I think is a neat idea. There are many times that people call me and ask if they can pay for advice - and since I usually do free consults (common in my industry + not a volume practice) I generally just give them an overview and then some suggestions on how to proceed.

However, there are times when people really do just want to pay for an hour or two of advice and don't know how to go about it. It's not really a consult (where

you don't get advice) but it's not a retainer situation, per se (since it's just a short amt. of time). This kind of thing wouldn't work in, for example, Andrew's line of work, where people are making a decision quickly, but could work for areas like corporate, regulatory or employment where people may just want advice on what to do next.

Carolyn Elefant, District of Columbia