

SoloSez Popular Threads, June 2012

Three Sizes, Some Days

I typically talk to all prospective clients on the phone first before a consultation is set up. This lets me pre-screen the client, and pre-close them so they'll come in expecting to hire me. Yesterday's call did not start out well -- when a client begins a conversation by telling me about the fraudulent documents in their case, the radar starts to bleep. I pull up the docket while we talk and see that she's already had three lawyers. Bleep, bleep, bleep.

The client is a lawyer with a different specialty, who's been having friends represent her and ghostwriting most pleadings. I pull up her counterclaim, it's pretty good. I talk to her about fees, the retainer I'd need. She hasn't got it, she says. She expects a large fee in a few months, though, to pay me from. I make her an appointment, but I'm troubled.

I spend the hours before the appointment planning to protect myself from the client. I fine-tune the cooperation language in the retainer agreement, and prepare a consent to withdrawal to hold in my file. I draft the agreement with the same fee arrangement I use for most foreclosure defenses. I don't want to represent anyone while in constant anxiety whether I'll be paid.

This whole thought process has been fine-tuned over 15 years in solo practice, representing mostly insolvent clients. I've learned that worrying about fees really takes the joy out of practicing law, and I like to avoid cases that will be marred by payment anxiety.

My intake interview in foreclosure cases is wide-ranging. I want to know about the house, the mortgage, and the client's circumstances and lifestyle. The story that comes out is always more than I expect. This client's recent bad times include bad marriages, domestic violence, a troubled adolescent son, and a couple bar complaints, for cherries on the sundae. Her manner is more agitated and scattered than most people, even facing financial stress. She'll take a lot of work if she has to testify. But. It is also apparent that this client is a good person, to whom bad things have happened. Not without her making bad choices, but still. I don't want her to be homeless as well.

The client readily agrees to sign the consent for withdrawal, and the other terms I want. She can't afford to pay me, and I tell her so. I send most indigent clients (and there are many in this business) to legal aid, with instructions to return after they've income-qualified. I don't see a point in jumping this client through that hoop. I cross out the payment

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provisions of the retainer agreement. This one's on me. The box of tissues I keep in the conference room has disappeared. The client excuses herself.

I make a pro bono decision in the middle of an interview every few years. I don't overthink these things. It is a gut call, and I've yet to be disappointed. My predominant feeling as this interview progressed, especially through the bar complaints, was that something like this could happen to me. If it did, would I want justice or mercy?

I tell this story because it flies in the face of so much of what we talk about on SOLOSEZ -- defensive lawyering, avoiding the nonpaying and the cocoo clients. Every now and then we even moan about the terrible expectation that we use our knowledge and skills pro bono, which nobody asks a stockbroker or a plumber to so. I tell this story because the best thing experience has brought me is knowing myself and being able to respond mid-interview to the knowledge that the client could be a source of fee anxiety, or a mitzvah.

I spent the first half of my career representing creditors, and the next half opposing them. It may not be healthy for me to love sticking my thumbs in financial institutions' eyes. But I do. They, not my clients, are the enemy. I can't be happy unless I'm flexible and creative enough to keep up a practice that doesn't have me hating my clients. It might not be everyone's cup of tea, but it works for me.

Wendell Finner, Florida

I already liked you Wendell. Now I wish we were best friends or neighbors. You are now officially my favorite lawyer on this list. I wish you the best of everything.

Duke Drouillard, Nebraska

This story is just as inspiring as reading Street Lawyer was for me. I hope this case works out well for all involved and that your gut feeling turns out to be correct as to this client.

Marilou, a nonlawyer who also admires Wendell (and who hopes she's Duke's favorite nonlawyer on the list)

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I think Duke is pretty great too but I have to say that was touching.
Way to take full advantage of being a solo.

Joseph Cohen

If nothing else, Wendell, you have one very lucky client. :-)

Renee Langley, South Carolina

I agree. I second Duke's response.

Mary Ellen Leslie

Nice, Wendell. Very nice. Give me hope for the profession.

Meg Tebo, Illinois

My last year of law school I worked for a company that made me truly believe all attorneys were schmucks. I spent most of my afternoons throwing old people out of their homes. Sickening...literally. I decided to not even go into the legal profession. I finished school but didn't take the bar exam. It wasn't until two years later that I decided that I owed my family more than what I was doing, so I took the bar exam, still wary of the profession.

Thank you, Mr. Finner, for showing me (and others, I'm sure) that there is more to life than the bottom line.

Joshua Tisdale

Thank you. Very well written.

I always like to apply the sleep test... If I do X, will I be able to sleep tonight.

I suspect you get plenty of sleep, Mr.Finner.

Laurie
Laurie Axinn Gienapp, Massachusetts

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Wendell, the value of your shared experience is already demonstrated on this thread and surely will reach shores more distant than we can imagine.

THANK YOU

John Page, Florida

Wendell,

Thank you. You made today brighter.

Gokhan Yazici, New York

There is a wisdom in accepting that you have developed a moral claim to your client's case and that worries about getting paid shouldn't enter into the picture.

I wish I could take these pro bono cases without worrying that my gut is wrong, but unfortunately, I've been burned. I've never regretted the decision to take a case pro-bono, but I have regretted taking the case altogether. I hope that I develop the instincts to make wise decisions in these matters in the future.

Jennifer Moore, Minnesota

Wendell - you go! Good for you and thanks for letting us reflect on your sense of being a lawyer. I once was a partner with Big Law (left that at the end of 1995) and really got tired that our first and most important inquiry was all about business - can the client pay, what is client's credit, etc. I always wondered: what happened to: "Can I help this person? Do I have something to offer that might make a positive difference to the client?"

Every once in awhile, and not too often because just like Big Law we solos do have to cover our overhead and make/eke a living, I will take a case that I know may never pay. I do so when I find the facts compelling and my clients to be sympathetic. Or - less often - when I want to try to change the decisional law even though I know the trial courts are bound by stare decisis so my case will be dismissed and we will go up on appeal.

Michael Boli, California
