

Working for Other Lawyers – Preview of Filings

Took a case involving a family of out-of-state lawyers. The client(s) are both partners in out-of-state firms.

Started out as a simple matter, but has since become complicated. The family wanted to hire another in-state attorney, but couldn't come to acceptable financial arrangements.

The initial engagement contemplated a matter which would result in payment at its conclusion.

Now that things have gotten complicated, the client has now stated that he wants all of my filings reviewed by one of the family (another out of state lawyer) prior to filing. Of course, the Client is now ignoring the questions I am asking him.

Instead of cooperating and giving me the information I need, he's asking for me to conduct outside research on other issues.

I've tried to make several strategic suggestions in how we approach this matter. Not just wild-assed guesses, but genuine strategic choices that would have minimized the impact of the complications. I've gone so far as to vet these strategies with several more experienced attorneys and found the other attorneys in agreement, but these suggestions apparently shock and disturb the two or three attorneys second guessing my decisions.

To me, this feels like death march. Uncooperative client, unnecessarily complicated matter. Feels like it's time to assist them in seeking other counsel.

Maybe if they hired another attorney (that they had to pay in advance) they'd have more confidence in the approaches taken?

Taken from a point of view of cooperation, it's already time to disengage.

What is the opinion of the collective? When working with attorney clients - do you give them the pleadings before you file if they ask?

How much interference do you accept? Has this view changed over your careers?

Whether or not you give them your file is something you need to address with your state bar. Kentucky requires it even if you do not get paid.

I would not waste any more time with them unless they advanced a substantial retainer against which you could draw. Concisely stated - put up or shut up!

Frederick G. Irtz, II, Kentucky

As an afterthought - what are your state bar rules on terminating a client? In Kentucky, you cannot terminate a client if it will jeopardize the client. If you are in the early stages of litigation, should be no problem for you. If you are close to trial, the court may not let you withdraw.

Frederick G. Irtz

I am sorry to hear you are stuck with this mess. Ughh.... Responding to your question about giving them the pleadings- Unless the client has clearly expressed a disinterest in seeing what documents I am submitting on their behalf, I send every document that I have drafted to my client beforehand. Most of the time my clients are pretty "hands-off", but I have had a few situations where I was able to answer some big questions the client had, about my strategy or why I worded something a certain way. In hindsight, I was glad I was able to deal with those questions earlier, rather than later. For me, there is always a benefit in letting them take a look beforehand. But I can imagine that having multiple attorneys as clients can pave the way for a lot of unnecessary attempts at back seat driving, and probably requires some heavy boundary setting conversations on your part. I am not sure how your representation agreement reads about client terminations, but if there is language in it about fundamental disagreements or irreparable communication issues, maybe it is time for you to ring those bells.

Best,

Tyler S. St Cyr, Vermont

Most of my work involves lawyers as the "client," particularly, in-house counsel. It is very much a partnership, with the client having input every step of the way, reviewing documents (sometimes making suggested changes, often not), and debating which path to take through a litigation. Even where the client is not a lawyer, I will typically send materials to client beforehand to review and comment on, unless they have made clear that they are not interested in that, in which case I'll send them copies after filing.

So there is nothing inherently wrong with a client, especially a lawyer-client, wanting to look over your shoulder and make suggestions.

Sometimes this can be very trying, especially where the client constantly pushes for a course of action, or an agenda, that you the lawyer feels is inappropriate or unhelpful. There can be debates, arguments, etc., and ultimately either you acquiesce to what the client wants, or you convince the client you're right, or you tell the client that it's your decision, not his.

I will say, as an aside, that as difficult as clients like this can be, they also are tremendous learning experiences. For every paper a lawyer files, and every word in every paper, the lawyer should be able to explain persuasively why it's there. But all too often, lawyers do a lot on autopilot, and do something because that's what they've always done. When a client wants to debate why you're going down path A instead of path B, it can be uncomfortable, but the process of explaining your reasoning will help confirm that you actually thought through what you're recommending, and considered the alternatives, before arriving at the particular recommendation. I learned this lesson early on from a partner who busted my hump constantly, and I quickly learned that, before I walked into his office to make a suggestion about the next step in a case, that I needed to consider a range of options, and have a cogent explanation why I thought we should do what I was recommending.

You have the separate/additional problem that the situation you have may not be the one you signed on for, or in which the retention terms does not match what you're actually doing. If that's the case, then it's time to sit down with clients and sort it out. Either withdraw if differences are irreconcilable; change the terms to reflect what they are asking of you; or lay down the law about what you will or won't do and let them go elsewhere if they choose

Patrick W. Begos, Connecticut

As a general policy, I always give clients an opportunity to review any document in which I am proffering their thoughts and opinions. I think this is good practice with the added client satisfaction factor. Client relations is high on my list of the way I practice. It also gives the client a certain ownership of the document to be filed.

In difficult situations, I will send a draft of a pleading to one or more attorneys for their comments and suggestions.

I used to mail clients with a copy of every paper generated by my office. Now, I scan and email the document. I am a firm believer that this is good malpractice avoidance.

Occasionally, a client will demand that I take a path that I do not believe is the right path. We discuss the alternatives. If we each possess strong feelings about which path to take, I will recommend that they see another attorney.

Frederick G. Irtz, II

This was my practice, too. Client previewed every filing except for the housekeepers like motion for continuance. The only time a client might not preview a filing was for stuff like Motion for Continuance (knew it was coming, but not previewed). Sometimes the review jogged client's memory and I had a chance to include good Stuff before I filed.

CJ Stevens, Montana

I think it is a great learning when you have a lawyer client, out of state on top, who wants to micro manage the case. As for me, I expect a client to respect my decisions and cooperate with me in the

evidence gathering process and that goes in my agreement and I take the time to explain it and reiterate if needed.

I am concerned with your client asking you to do outside research instead of directly answering your questions. There may be professional responsibility rules dictating what decisions can be made by clients and when the attorney can put his foot down. I have learned that at times it helps to sit down with the client and address their concerns directly. I may give them the freedom to rearrange the document but lay down what editing was not allowed and why. You win their confidence then and most micromanaging clients start to relax and cooperate. Eventually, they will let you take the reins. All the best!

Lalita Haran, Indiana

Here are my thoughts:

1 - It sounds like they want the out of state attorney family member to handle everything, but he or she can't, so they have basically said "you are going to be our attorney and use Geoff to get your stuff filed."

That's not your job.

2 - They want you to research stuff not contemplated by your agreement?

Fine. Make them sign a new retainer agreement, because the old one doesn't cover it, and include a monetary retainer for that new work.

3 - I have only had a few attorney clients, but the ones I've had are pretty hands off. I tell them the law. None of them know anything about bankruptcy or financial planning, so they don't challenge it. They review the documents required for their signature, but don't fuss about the rest of their file.

4 - I have had several sophisticated clients (business-minded, research-enthusiasts, etc.) who ask to see everything. Again, some of them will question the whys and hows, but it all comes down to trust. Either you trust me to do my job or you don't. If you don't trust me, then you should be with another attorney or represent yourself. They may also be researching and editing as a way of maintaining control and showing interest in their case. Their time spent on Google Scholar or at the local law library is free legal research, so I'm not going to belittle their interest or toss away their suggestions. However, it can delay paperwork by weeks or months until you agree on something.

5 - None of the above replaces your gut feeling. You want out. You should get out. You shouldn't feel guilty about it. They will get an attorney to appear for them or get sworn in pro hac vice to do what needs to get done.

Think of all the free time you'll have.

Corrine Bielejeski, California
