

## When a PC Asks for a Guarantee

What do you say when a PC asks for a guarantee in your case?

I usually say "It is illegal for an attorney in NJ to offer a guarantee in a case. If you call another lawyer and they offer you a guarantee, please get it in writing on their letterhead and bring it to me so I can report them to the Ethics Committee."

Perhaps it's a little heavy handed, but it nips that part of the conversation in the bud.

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I've never had anyone ask me for a guarantee. But as a matter of course I try to educate my clients about risk on an ongoing basis. If they were to ask for one I'd point out that it would be a violation of ethics rules. But more importantly I'd tell them that they need to not only have a theoretical understanding of the risk of losing, but an appreciation and respect for the real chance that they will lose, regardless of what we do.

Jacob M. Small, Virginia

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I quickly tell them that I am not in the guarantee business and it is best if they seek other counsel.

Robert "Robby" W. Hughes, Jr., Georgia

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Second Robert. Kick his ass out the door

Hieu Vu, California

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Usually when I tell people there is no guarantee they don't call back.

Jason Komninos, New Jersey

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I always tell clients up front that I cannot and will not provide a guarantee as to what can happen with their cases. I usually explain that I can tell them procedurally what will happen so they know what to expect and how long the case might take, but that I can't guarantee that the judge will rule any particular way, or that we can get the other

side to settle. The no guarantee language is also part of my retainer agreement. I haven't had any problems with my clients wanting any guarantees or expecting specific outcomes. I've only had one client claim that another lawyer promised a specific result, and I know that one imploded on the client when the lawyer walked away from the case - the client had hired that lawyer to replace me in a post judgment issue and the client came back to me to discuss what happened. (that one is a long and bizarre story)

Elizabeth A. Ferguson, Michigan

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I tell them that I don't make guarantees because I have seen sure losers win and sure winners lose.

Timothy A. Gutknecht, Illinois

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In law there are no guarantees including whether that any bill I send you will be paid.

John Davidson, Pennsylvania

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I kind of like when they ask, because (as lifelong Giants fan) it gives me one more reason to talk about the 2007 Super Bowl when the Giants beat the till-then unbeaten NE Patriots. I really like that SB win more than any other, because not only did the Giants win, but the Patriots lost, and they hadn't lost a game before that loss, making that loss all the more hard for them.

I explain that, no matter how much you think something is a sure thing, it really never is, and that's why nothing is every guaranteed in litigation.

Plus my retainer agreement says we don't make guarantees.

Patrick W. Begos, Connecticut

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I'm not a huge football fan but I agree that SB was one of the best and a great example to use with clients.

That SB was during my 2L year. The following year, I had a contracts professor give me a grade lower than I thought I deserved. I went to see her about it and she told me I needed to work on my essay writing skills.

Every prof I had before that told me I was a great writer. This contracts prof told me that I would have a hard time passing the bar exam with my sub par skills. I responded that no one expect the Giants to beat the Pats. She was speechless. Heh.

Jason Komninod

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I always tell people anytime an attorney offers you a guarantee on anything other than his or her best efforts, you should stand up, put your hand firmly on your wallet, back out of the room as quickly as possible, and never, ever go back or recommend that attorney to anyone.

James P. Moriarty, Iowa

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Sounds like a client you really wouldn't want to have anyway.

Miriam N. Jacobson, Pennsylvania

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I have it in my fee agreement: The Attorney agrees to perform these services faithfully and diligently. The Attorney cannot and does not guarantee a successful outcome in this matter.

I think I got my fine forms off the form back that used to be on this list serve years ago...what ever happened to that?

P. Jayson Thibodaux, Washington

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I leave any mention of ethics out. Most people don't get the details of our ethical rules. I simply say "There are no guarantees. Once you get before a judge, all bets are off. I can tell you likely outcomes, but I cannot guarantee anything." That usually takes care of it.

If they keep insisting, I tell them they need another attorney.

Elizabeth Pugliese, Maryland

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This is from the State Bar of Texas' law practice management / suggested language for engagement letters (emphasis added).

9. We cannot guarantee any expected outcome or conclusion of any matter due to numerous and complicated factors which are beyond our control. We make no express warranties concerning this transaction, and hereby expressly disclaim any implied warranties concerning it. It is expressly understood and agreed that no other representations have been made to you except those set out in this letter. \*In no event will our law firm be liable for any claims/counterclaim judgment against you.\*

Murtaza Sutarwalla, Texas

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I have heard the question as well. I wonder whether it is another sign of changing times. For example, I have been asked to “do the minimum” and charge less.

Some people seem to think everything is negotiable, including ethics. What would their heart transplant doctor say if posed with the same questions?

William M. Driscoll, Massachusetts

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My fee agreement has actually said for years "Client acknowledges that Attorney has made no representations or warranties as to any outcome or level of success in the within matter but that Attorney shall represent Client zealously at all times. " If they want a guarantee, tell them that Home Depot sells products with limited guarantees.

Joseph G. Bonanno, Massachusetts

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Good points, all around. I do have a no guarantee clause in my retainer agreements. The thing is, and I have no proof of this, but I wouldn't be surprise if some attorneys are offering guarantees.

I do a lot of traffic tickets. People call and want to know if they pay \$X for a lawyer, their traffic fines will only be \$Y. Otherwise, it does not make much financial sense to

many people to bring a lawyer to court. The savings wash out, at least on some minor tickets where you're not looking at a license suspension or jail time.

Compound that with the fact that our most often used 0 point plea bargain here, called "Unsafe Driving," comes with an additional \$250 surcharge on top of the fine.

It is still a good option for many people, but folks get sticker shock and want to pay a lawyer to try to get a "cheaper" plea bargain. This is very treacherous ground as less and less courts allow plea bargains to cheaper violations.

Now if I got a certain court a lot, I may very well have a good reputation in that court and get a lot of people their Unsafe Driving pleas. Maybe in some courts I have gotten that every time I went. However, that does not mean the next client will get the same. Maybe they have a bad driving record. Maybe they mouthed off to the cop. So yeah, no guarantees.

But I wouldn't be surprised if another lawyer tried to spin that to every new client that they're going to get their 0 points if they go with him or her. I just hope that if it's really going on, one day it catches up to them when they get that one client who had a bad record or a bad attitude with the police officer. It would be fun to be a fly on the wall to see how that attorney backpedals out of their guarantee.

Jason Komninos

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I add: "Litigation is inherently uncertain" to the disclaimer.

Roger M. Rosen, California

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I simply tell them that I do not offer any guarantees and that if they wish to receive one, that I am not the attorney for them. I then escort them out of my office or simply hang up the phone.

David W. Crosson, Pennsylvania

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I have the language in my contracts, but I also borrow a line from a Roseanne Barr SNL skit years ago: "If I could predict the future, would I really be here?"

That usually gets a laugh, especially in criminal court, and allows us to move on.

If they persist, especially if they say another attorney has promised them a result, I tell them to go with that attorney -- and snarkily suggest they ask the attorney if he or she has ever gotten a parking ticket. :)

Lisa Babcock, Michigan