

Fee or Free Consultations?

Good morning firm: I am in my second month of solo practice. The first month was primarily devoted to getting the word out and getting website up, accounts open, choosing service vendors, etc. I am struggling with offering a free consultation. I really don't want to, but I have done 3 consultations to date and neither person is a client now. One was able to resolve her issue with the advice I gave her. If it helps, 2 found me through Google Ads and one knew me before I went solo. I think it's just slow starting out, but others say I should offer the free consultation because it will generate business faster. I am coming from 4 years at a nonprofit though so I have given out more than my share of free to low cost advice. I always feel like I got ripped off afterwards. My personal experience is that if people have to pay for something they will treat it differently....and treat ME differently. A few others say it just takes a few monthsor several months, to get a few clients. So my question is, starting out as a solo practitioner with some experience, did you or would you charge for consultations? What were the parameters? What about just free phone consultations? How about a 50 dollar fee for a 45 min consult by phone? That seems reasonable. People spend 50 bucks on dinner for two all the time. My research in my market and areas of practice show attorneys all over the board on this. Some charge about what I currently charge, others do free consults, still others charge more than I charge. I would say that most do some sort of free or low cost consultation option. Any thoughts are appreciated.

I did and do the first 30 minutes free then charge thereafter. It always lands in the thereafter.

Micah G. Guilfoil, Kentucky

When I started out, I never charged for the initial consultation. And like you, I'd spend time, give advice and sometimes feel cheated when client didn't hire me and used my advice to resolve matters. So I now charge a fee for the initial consultation.

In my view, if you are going to offer a free consultation, it should be more of a 'meet and greet', to get to know each other, find out about the case and if you want to take it, BUT not to give out advice about the case. It is the time to say, 'yes, I can help you. this is what it will cost, this is my retainer, etc.' Once that is all in place, and money in hand, you can give advice.

I was never able to do that. I always got right into the matter, trying to help. For that reason, I was much happier and my finances looked better when I started charging for the initial consultation. Most clients don't object, and many have said, after the meeting that they felt it was well worth it. I try to give them good basic information, explain things that are pertinent to their situation, etc. at the first meeting so they do get value. I do have a flat fee for the initial consultation, no matter how long it lasts. Most are about an hour, but some go longer. I do not credit the fee towards further work.

Sincerely yours,
Michael D. Caccavo, Vermont

A free consultation is a great opportunity to sell yourself as a lawyer. I'm at the end of my first year in solo practice, and I've come to the conclusion that clients want to buy your personality just as much as your legal expertise. For example, I have a client who consulted with three or four attorneys before deciding on hiring me. These attorneys had far more experience in the field than I did (one of them was practising law when I was learning how to crawl!) and charged in the same ballpark, but the client "liked the way I talked to her." Apparently, these other attorneys were kind of condescending. That one client opened up several files with my firm and ended up referring a substantial amount of business. This fact pattern has repeated itself time and time again.

Of course, I would not offer legal advice at one of these initial consultations. It's just to collect information on the facts of the case and make a good impression.

Michael Jack Kaczynski

This comes up periodically; there's tons of stuff in the archives.

It comes down to 1) what is your practice area and 2) what is the purpose of the initial consultation? With respect to practice area, clearly, some types of law almost require free consults; Personal Injury comes to mind; and some types of law almost demand paid consults, particularly those involving either people looking for advice so they can handle it on their own OR people looking to conflict out attorneys; family law comes to mind in both of those. A decent family law interview can take time, is very fact intensive, and frequently people think they can handle it on their own with just "a little advice". Charging for consults will compensate you for your time spent; and it tends to weed out the people who are looking for fast, free advice.

With respect to 2, the purpose; the more you are inclined to spend a lot of time gathering facts and giving substantive advice, the more it makes sense to charge for a consult. I, personally, almost always offer free consults unless it's an area of law that I suspect the people are unlikely to hire me. I usually see the initial consult as a sales meeting; get the client in the office, see if I can help them, and if they are willing to pay me to help them; I will try to sell them on my services. That's the purpose, that's the primary purpose and frankly that's the only purpose in most cases.

Now, sometimes it becomes apparent that either I can't help them or they don't need my help; typically, someone comes in who's spouse has died, surviving spouse is co-owner on all the property (deeds, vehicle title, bank and investment accounts) or is named beneficiary on accounts; guess what? They don't need a probate. They simply do not. I can determine that relatively quickly in most circumstances; and I will tell them what to do; take the death certificate, provide it to the banks, etc., and record the death certificate at the county clerk to transfer real property title. Most of the time, in fact, I'll even offer to record the DC; I tell them to give me the DC and \$10 and I'll do it; I got form letter to recording department, send it along with check for \$10 and SASE and get it recorded; when I get it back I'll drop it in the mail to the surviving spouse. I'm out of pocket three stamps, three envelopes and couple of sheets of letterhead; and maybe 15 or 20 minutes of my time; and the time I spent in the interview.

Why do I do that? Offer free consults and EVEN go so far as to spend a bit of my time and money helping someone whos' not going to pay me for the consult? Because: 1) it may turn out that they do need a

SoloSez Popular Threads, October 2013

probate; it turns out there's some property they got that needs probate; they'll be back. 2) They may know someone who needs probate; if someone mentions to them that a relative died and they don't know what to do, they will tell them to see that Nice Mr. Jones, who was so helpful when my Frank died. Lawyers spend a lot of time and effort worrying about "Referrals"; how do you THINK you get "Referrals" except from people whom you've got a relationship with; you don't form a relationship you aren't getting a referral. 3) Even if they don't hire you for the probate, you still may be able to make money from them, either at the time or later; Oh, by the way, Mr. Jones, do you do car accidents?, or Mr. Jones, I'm sure you don't remember, but 5 years ago when my husband died you took the time to help me out; I just had a car accident. Do you do them? Come on Down; we'll talk. Even if I send it to my local PI lawyer, I get a Referral Fee. Or if they know someone who has a car accident, they'll have them call me.

OTOH, if they DO need a probate, I very nearly always manage to close the sale; I sign them up there and then; if they got their checkbook they give me retainer before they leave office. I close probably 95%, or better, of potential sales.

Look, I understand the rationale to charge for consults and for some lawyers it may make a lot of sense; but I do think that a lot of lawyers are not real good at 'closing' a sale; some people can close sales and some people can't. Anybody can close a sale when the client comes in knowing what they want and are convinced that they need it; those people are the ones who are likely willing to pay consultation fee. Some people simply aren't going to buy, period; they want free advice, they're "tire kickers". But there's a broad middle; people who think they might need a lawyer, but they're not sure, they don't know whether they need a lawyer, they don't know what a lawyer can do for them, they don't know what it's going to cost. And some of those people can be "sold" on the deal; if you can show them why they need a lawyer and what it will cost they will hire you; but they're not inclined to pay for a consult; precisely because they don't know what the lawyer can do.

And, frankly, a lot of lawyers spend too much time on people who aren't going to hire them; when it becomes apparent that they won't, can't, or even shouldn't hire you, terminate the interview. Politely, but firmly, end it; get rid of the client. Don't spend 45 minutes analyzing their legal situation; simply say, I'm sorry, I don't think I can help you, or whatever, and end the interview.

Lawyers don't like this analogy but it's accurate; think of a car dealership; lots of people come on to a dealership; a few of them know they want to buy a car now; those are the easy sales. Some people want to buy a car but they're not sure; and some people are, frankly, tire kickers, who aren't going to buy the car. Any salesman can sell a car to someone who definitely wants to buy it; but the best salesman convince someone who's on the fence, who's not sure; those are the guys (and gals) who make the most sales. They close the deal.

Ronald Jones, Florida

Thanks for writing long and thoughtful advice Ron. As a new solo, I really appreciate hearing this type of great advice.

Of course, practicing PI, I have to give free consults. But somehow I have found myself giving lots of free advice to callers in other practice areas. Hopefully someday they will remember the lawyer who helped them for free.

Tina Willis, Florida

The root of the issue may be revealed in your email address, love2gab. I am an analytical person who enjoys helping people. As a result, I have always had very difficult time providing free consultations. I tried, and abandoned, free consultation when I was doing trial court and transactional law. But as an appellate attorney I provide a free consultation. Let me explain.

At its root, the initial consultation is a "meet and greet" of sorts where the potential client and lawyer can determine whether they wish to deal with each other for the duration of the relationship. It is not to provide legal advice--with the exception of a filing deadline or the like. The attorney's "stock and trade" is legal procedure and substantive knowledge. If you give that away for free then you will have a hard time keeping the practice afloat. The attorney, not the potential client, must decide when to undertake pro-bono representation. An initial consultation can turn into more by mutual agreement. Pull out the representation agreement and receive a retainer. That is when you provide your "stock and trade" in exchange for compensation.

I offer a "free telephone consultation" for appellate matters. I set the limit of my offering to a telephone consultation. I need to determine whether the caller has a viable appeal. For instance, I just received a call from someone who wanted to challenge a 2006 trial judgment--I referred them to trial counsel as it was not an appellate attorney they needed for what they desired. I refer many callers to trial counsel. I do appeals. I appreciate trial attorneys referring appellate matters to me. There is a line between the two practice areas--trial court and appellate court--where I and many trial attorneys prefer not to cross that line due to the significant difference in expertise required for each.

The dividing line between a consultation and representation is the level of what you set on applying your "stock and trade." During a consultation you spend most of the time listening and evaluating the potential client. Is this someone I want to work with? You also hear the facts. If, for example, it's a divorce matter then you learn the pertinent information to establish the retainer required. What is the chance of a negotiated

SoloSez Popular Threads, October 2013

agreement verses trial? What are the assets involved and can they afford what they seek? Is the client open to reason? For example, is there an at-home parent with the children but your potential client, insisting on obtaining sole physical custody, is a workaholic who spends 90% of the time on the road in Europe? This is issue identification not issue resolution. I always fought the urge to provide the solution prior to becoming engaged in representation. Granted you may test the potential client by saying that it is highly unlikely that they will obtain sole physical custody under the circumstances, but in doing so you will learn a great deal about that person's expectations and your ability to meet their expectations.

You determine the time and content scope of consultation, not the potential client. If they want, and you're willing to give, legal advice then the "consultation" should move to representation or you should probably be charging your full fee for consultations because you are then providing your "stock and trade."

I do not seek to answer your question; rather to provide a background from which you can think about what it is you wish to offer during a consultation so that you may value it accordingly.

Very truly yours,

Bill
William M. Driscoll, Massachusetts

When I first started out I gave free consultations. After a few years I was busy enough to hire a well known practice management consulting/coaching firm highly recommended by the Florida Bar. At their insistence I started charging for initial consultations. It had a devastating effect on my practice and income.

After several months I went back to free initial consultations and eventually built the practice back up to what it was before I started taking their advice.

Just one man's experience.

Ken Forman, Florida

SoloSez Popular Threads, October 2013

Hello all. I do primarily family law and charge \$100 for a 30 minute initial consultation. To me it becomes a measuring stick-- if the PC cannot pay a consultation fee then he cannot retain. I lose some consultations with this policy but I don't seem to lose any money or time. Plus it is good training for clients-- our time is our stock in trade.

Andrea Conarro

Thanks to everyone for your thoughtful responses. I greatly appreciate each of you for taking the time to give your perspective I have been busy this morning. After getting some calls this morning and booking another paid consultation , I have decided to keep my paid consultations in place, but add a shorter and (more affordable, more convenient, lower commitment level than a telephone consultation option. I think it will keep calls coming in, but keep me from feeling ripped off.Â If it doesn't work out, I can always stop using it. Oh, man. I love solo practice. I get to work until 1 am and if something doesn't work . . . I actually have authority to change it! As for my e-mail address, it is a pun.

Your bigger issue is not whether to charge or not, but how to close a client. You said one consult handled matters on her own based on what you told her. You told her too much. The only point of a consult is to answer enough questions to let the pc know you know what you're doing. If you give them too much info you get the end around like that client did. Too little info and you sound like you don't have a clue. I don't charge for consults. But I make sure that nobody leaves my office without opening their wallet. It's an art more than anything. I find that selling myself as a friend with a law degree works better than doom and gloom worst case scenarios.

Clark Stewart

Great advice on this thread.

I'm one year in and my guiding philosophy, which I share w/ PCs as they come in the door, has been that I don't charge to consult to the point of finding out whether I can help them-- I start charging when we decide I can help them in some way. If the consultation alone is what they need help with, then I charge a reduced hourly rate for that.

I'm in a very small rural town and can't afford to get a reputation as a greedy lawyer, & rely heavily on word-of-mouth referrals out on the fishing grounds. So my philosophy might not apply in a larger urban area. Been burned a few times, but more often PCs insist on paying me even when I told them there was no need. And our freezer is well-stocked with fish & moose meat.

Gabriel W. Scott, Alaska

I think the real question is, are you able to give competent advice that way. I mean, really think about it: advice as a lawyer, not procedural "you need to file an answer by X date or you'll default" answers.

I don't charge for the consultation but I realized pretty soon that over the phone, there's almost always a 'ok, I need to review that document in person to tell you the actual law intelligently' or in person, it's 'I need to look at it on my own time.' Others, I just say "look, I'm a lawyer which means I'll give you seven versions of maybe unless I pour through a pile of books and law if you want a legitimate, accurate complete answer."

What type of work are you doing that you can actually give someone enough advice in that short a time? I do a lot of landlord-tenant and we often get into the 'what can I do/I need to see the lease/I need to review the lease on my own time so pay me' arguments. Some people do get argumentative that I'm asking them in person to give me money to go back to my office, review things and give an answer. I look at them and say "how do you think this works? You ask me a question, you pay me, I review things to provide you an answer and advise you from there." If they don't care to get it then, they'll never get it.

Ricky S. Shah, California

Documents are exchanged prior to consultation with enough time for me to review. A questionnaire is also completed prior to the consult so that our time spent together is productive. So yes I should be able to give some constructive advice.

Oh, ok. Sorry, I wasn't being accusational but that was a mistake I remember doing. If you're reviewing documents beforehand, maybe say it's either a charge or incorporated into the initial retainer. I mean, you are doing legal work before the client meets you.

Mine, I generally admit I don't really give a lot of advice up front and say I have to look at things on my own time and have returned the rest of the retainer if I didn't see anything there. It's generally worked out for me.

Ricky S. Shah

I consider my free consultation (which 99 percent of the time is on the phone and 15-20 minutes long) as a "meet and greet." I do not solve their problem, nor do I give them legal advice. That is what you pay me for. I will ask a lot of questions about the facts of their case to determine if it is a case I want or a case I think I can help the client with. And asking questions seems to reassure the potential client that I am interested in their case. What I do is try to sell myself, my experience, I may give a broad overview of what can be expected if they go to court (e.g., in family law, go to mediation, attend children's first, but, again, no legal advice.. I see no reason to open myself up for possible malpractice liability for someone who has not paid me a single

SoloSez Popular Threads, October 2013

dime. The biggest thing is to weed out those with absolutely no \$\$ to pay you - and no one to borrow it from.

Patricia Dennis, Illinois

I don't see how you can have an in-person consultation where you are not giving legal advice. At some point the client is going to ask you a legal question point blank. When you don't answer and/or dodge it somehow, the client is going to wonder why s/he wasted her time coming in to your office at all.

Please explain to me the "art" behind free consultations so I can understand what I'm missing.

The only free "consultation" I give is when I am talking to a prospective client on the phone for the first time and I spend usually 2-5 minutes determining whether or not it is a case I can help them with (or a case I want). A consultation is paid only. Fees are generally not discussed over the phone (my practice is almost entirely flat fee). Instead I send prospective clients a detailed email explaining how fees are calculated, the type of work that goes into the case, and their individual fee quote. Then I let the client get back to me if they want to proceed. I implemented this approach this year and it has been working quite well so far (i.e. it has almost eliminated folks who want to bargain or who can't pay my fees).

Regards,

Amy A. Long, Virginia

Consultations should be offered only to those you have accepted as clients. It should never be suggested that you will take everyone as a client.

Happy results come from defined expectations. A phone caller is looking for assistance but all have some hope they can pick your brain to get enough to go it alone. You may do them a great disservice if you allow them to come to that belief. OTHER HAND, your objective is to see if there is a viable case that you can pursue EFFECTIVELY. To be effective, you must have control of the client. Everything you do up to the signing of an agreement SHOULD TEST YOUR CONTROL OF THE CLIENT. Otherwise, they will resist or ignore your advice and frustrate your efforts. They and you will be unhappy. If you do not believe you have control of the client (they don't trust you, you don't trust them) do not give any service.....any. You will know you have reached the threshold of professionalism when you refuse to represent a given client as a matter of your sole judgment.

SoloSez Popular Threads, October 2013

I offer to DISCUSS "your case and whether I can help." If you choose that, I will ask you to complete a Client Application with the necessary info. I will refer to our DISCUSSION as an INTERVIEW.... "I know it is an area of the law that I practice." "I want to understand your case to see if I can help and if we can work together. That is because I often have assignments for my clients that will speed my work and possibly reduce the cost." "If I decide to accept you as a client, I will explain how I work and my fees." Until we reach an agreement, you will not be my client and I can not give you legal advice."

If you understand that, I have some preliminary questions.

NO REASON YOU CAN'T GIVE PHONE CONSULT.
IF YOU HAVE QUALIFIED THE CLIENT.

John Page, Florida

I second Amy's opinion. How can you not give legal advice during a consultation? Inevitably the PC will ask a question about how they can get whatever they want. Even telling someone about filing deadlines, etc, is giving legal advice. Ditto with explaining that there are complaints, answers, deadlines, discovery, etc. Whatever they need requires something far beyond their comprehension. So, minimally, at least a basic explanation always comes into play.

Tina Willis

he meaning of "consult" and "consultation" include giving valuable ("actionable," to use a fashionable word) information, advice, or opinion, usually by a professional or other expert. The meaning of these words does not change based on whether the lawyer charges a fee. Lawyers who offer a "free consultation" offer to provide a valuable--something they or other lawyers could charge for--to induce prospective clients to walk in the door.

A "meet and greet," or sales pitch, does not satisfy the definition of "consultation." In my opinion, it is misleading to advertise a "meet and greet" or sales pitch as a free consultation.

Steven Finell, California

I feel it important that each attorney define the extent of consultation offered and that the extent may differ for a free consultation verses a paid consultation. Each attorney defines the extent of a consultation based upon the desired outcome. Are you seeking to define the scope and pricing of a representation agreement or to solve the person's problem?

SoloSez Popular Threads, October 2013

There will of course be some legal talk during a consultation; but the extent of "advice" provided is up to the attorney. Do you, as the attorney, wish to offer a consultation so that the potential client can obtain free legal advice allowing them to go off and handle the case pro se and to blame you when--what they thought they were told--does not work to their advantage? One red flag is when the potential client seeks to transcribe the pertinent law or strategy (they tend to be less interested in discussing a representation agreement).

For a consultation, my definition of "legal advice" does not include warning a potential client of a statute of limitations or filing deadline, or providing an overview of procedure (e.g., filing, answer, discovery, trial). It is all good information for a consultation. A consultation is designed to listen to the potential client--there will likely be time for little else. Because there are three sides to every story, plaintiff, defendant, and the ultimate findings, a consultation should not try to formulate a plan of attack or to determine the ultimate findings. Rather the consultation should carefully consider potential issues based on what superficial information is then provided--information provided by the potential client's representation. This information is required to define the scope of representation and to "price" the matter for the representation agreement. The duty to offer "legal advice" arises with the mutual signing of a representation agreement and that duty is limited by the scope of representation stated.

Very truly yours,
William M. Driscoll

You are providing a "free consultation" when you accept the 2-5 minute call to talk with the caller. You have determined the duration as well as the scope of the "free" consultation. If the caller desires an "in-person" consultation then you charge a fee. That fee is likely for a set period of time or on an hourly basis. Your "offerings" at the consultation, prior to representation, is likely limited in some manner. Or maybe not; that is your business decision. That is exactly what I am talking about (in my prior emails).

I offer a "free telephone consultation" for my statewide appellate services. I receive calls from distant locations within and without the state; an in-person initial "consultation" would otherwise often be impractical. I need to learn the nature of the caller's problem, determine whether it is a matter that I handle (i.e., Massachusetts appellate, not another jurisdiction or a case in the trial court), whether it is a matter I wish to undertake (e.g., viability of the appeal based upon the appellate standard of review), and formulate the scope the work for an appellate representation agreement. Callers are informed of filing deadlines (e.g., notice of appeal, entry in the appellate court, interlocutory deadline) that apply.

Very truly yours,
William M. Driscoll

Well said. I've found it stressful to be in this situation as well. Yes sometimes I may lose clients but overall as the months go by I'm less tolerant of tire-kickers. People are not stupid and mostly know they've got to couch their legal questions carefully because they know you're not giving it away for free. I like Ricky Shah's straight to the point approach and now when someone questions me about fees I'll say something about I'm running a business and have rent to pay and a family to feed, and the way I do this is by providing a service and in return people pay me money. Still, you need to be careful because it only takes a few crabby folks to start bad-mouthing you to the community.

That being said, I'm not as strict when a potential client calls from my referral sources who send folks my way on a consistent basis.

Rick Bryan, New York
