

## Looking for Guidance on Dealing with a Client

I am in a litigation and my client insists on listening in on being on all discovery calls and on all calls with opposing counsel. He says he just wants to "sit in and listen and will stay muted". He trusts me, he is just very very hands on. But... I don't trust him and don't want him on these calls for various reasons.

What are the best things to say to him to keep him off these calls?

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One of my oft repeated lines to clients and friends is: "When all else fails, tell the truth."

Seriously, except perhaps for the issue of trust, why not explain to the client why you don't want him to be on the calls. If it were me personally, one of the reasons why I would not want the client on such a call is that sometimes attorneys have to be candid about aspects of the case and it is difficult to do this when the client is listening in on a call. In other words, I don't think I could be as effective in advancing the interests of the client under these circumstances. Also, if the client were to lose self-control during the call and volunteer information, or get into an argument, it could be disastrous for the case. Also, I am generally willing to discuss the issues that will be discussed in a forthcoming call with a client and brief the client on what transpired afterwards (especially if the client doesn't mind paying for the added time). In other words, I don't want to keep clients in the dark and like (for the most part) to receive their input.

Nonetheless, everyone has their own style, and clients need to respect that.

Bert Krages., California

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California case law says clients in civil litigation have the right to decide about settlement and whether to waive a jury. That is all. Clients do not have the right to tell lawyers how to perform or what to say or what tactics to use or not use. It is a mistake to let your client have such control or do such things as listening in on your phone calls with opposing counsel. That client will be impossible and unhappy when you get near trial and all that active trial prep entails. Yielding control to a client undercuts

your authority as the client's advocate and representative. If your client has surgery does the client insist on watching what the OR people do? Even if this client is good about paying bills, it is not worth the aggravation and loss of professionalism between you and opposing counsel. (In my practice - I sue lawyers and law firms - by definition I start with a client who is unhappy and does not trust lawyers, sometimes with good reason. But I learned early on that does not mean I must follow the client's dictates except as to settlement and jury or no jury. Better to lose that problem client and keep my sanity and ability to perform how I think I should.

Michael L. Boli, California

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I bet you're real popular at the bar association's annual holiday party. :)

Mike Phillips, North Carolina

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Dear Client,

Thank you for being so interested in your case. Unfortunately, if you were to sit in on a call, we would need to notify the other participants, and it will likely limit what they are willing to say. This could greatly damage your case. Therefore, it is my firm's policy that clients not be on calls.

Sincerely,

Stephen

Honestly, I have found that if I create an office policy and say "sorry, that's office policy," most clients back off. If he really wants to be on every call, he can find another attorney to do that to. I don't know how opposing counsel would take the other side's client listening in, especially during meet and confer calls.

Corrine Bielejeski, California

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Very simple. If they're on the call and presuming that they do not want to lie under oath that they were not on the call and presuming that you will readily admit that the

client was (as you should), then there goes the attorney/client privilege and the attorney-to-attorney exclusion of attorney discussions at the time of discovery and trial.

If they still insist, then withdraw.

Joseph G. Bonanno, Massachusetts

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Generally, I have conversations from the beginning of a client relationship, with examples, of what is a client decision and what is a lawyer decision. A request here would be met simply by a statement that the telephone conversations between attorneys are not available to a client. A client may attend any hearing, and has other specific roles in a case, but involvement in every aspect is not possible.

Darrell G. Stewart, Texas

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