



Expert Witness

Positive Client Control

... continued from P. 1

When there isn't a solid case, when you can tell the marriage is still intact, or when the client really won't benefit from the action they want to take, say so. A well-recommended practice comes from a realistic, fair and ethical approach, and not from opportunistically accepting a case. Strive to be professional; the legal community is small and reputation is all we possess.

The Client Says 'You're Hired'. Now What?

First things first. Get a contract or retainer agreement signed. This requires the client to make a moral, legal and financial commitment to the effort, and lets them know the clock has started. Take no action until the contract is signed and the full retainer is paid.

Second, give them a client kit, review its contents with them, and get a signed receipt for it so the client realizes it contains important information they must read. Our kit now weighs in at more than two pounds and contains about 24 different kinds of information. At a minimum, yours should contain the following:

1. **An explanation**, in non-legal language, of how they can expect their case to proceed and what they may be expected to do, provide or encounter (answers a multitude of questions and displays your knowledge).
2. **Your resume** and any background materials you'd like them to see, plus those of any other attorney who may be officially assigned to the case (builds confidence and tells the client about you).
3. **Forms** for any specific information they need to furnish to you (simplifies fact gathering).
4. **A glossary of legal terms** they may encounter (educates the client).
5. **A copy of their retainer agreement** (reminds them they are obligated to pay).
6. **Specific information on how to communicate** with you and your office (decreases unnecessary calls and encourages communication with staff).
7. **A list of all kit contents** (a copy of which is your receipt).

A carefully-developed, thoughtful and complete client kit says, very powerfully, "we know exactly what we're doing, and we're totally prepared to do it well; now you have to do your part because we're a team".

Third, get a written list of priorities the client wants to achieve. If they go off on a tangent later, you can remind them of their original, more realistic goals.

Fourth, explain that the success of their case depends largely on their active participation. They can't simply leave the case with you and walk away.

Fifth, explain that their case is a team effort, and introduce them to the team members. I introduce the client to every member of my staff, emphasize that each one is highly trained and expert at their job, and tell the client they should feel comfortable communicating with any staff member. Unless a client believes there's a strong team, they can waste a vast amount of time making the attorney call back on "urgent" and "confidential" matters that could have been handled by a staff member.

Caring's Important -- But So Is Your Bill

Regular billing and collection is an important part of client control, for several reasons.

First, it lets the client know that there's a cost for the action they're taking.

Second, it often decreases frequency and duration of telephone calls since they're all billed.

Third, it avoids surprises and disputes over a large bill following several months of work.

Show The Client You're Taking Action For Them

A client can head out of control if they feel "nothing is happening on my case", so always try to show the client some results while they're in the office or on the phone. Here are three techniques I recommend:

-- **Dictate a memo or letter while the client is in your office,** then in the client's presence, ask your secretary to type it up right away and copy the client.

-- **While a client is on the phone, conference them on a call to someone else for information,** negotiations, disputes, and so on. This lets them know something's happening, and lets them hear and perhaps even participate directly. Always announce everyone's presence on the call.

-- **Initiate a telephone call to the other side, in the client's presence.**

Techniques like these are also far more time-efficient for you. Telephone conferencing lets you discuss business with the client, even while you're on hold. Immediate dictation dispatches the matter, rather than putting it off for later. Days and weeks of letters and telephone tag are reduced to one-step, immediate processes.

Client Communication Becomes Documentation

Frustrated, angry clients are almost always the result of inadequate communication, so send copies of virtually everything to the client. Stamp the original with "copy sent to client on (date) by (person)", and send the client copies with that stamp. The client knows you have a record of it, and it also lets them know what's happening and keeps them on the team.

Defuse Those Always-Explosive Settlement Offers

All settlement offers must be thoroughly evaluated and communicated to the client in writing. There's no such thing as over-explanation or over-documentation of settlement offers. Your communication to the client must be as complete and comprehensive as the situation requires because, if settlement offers aren't handled with excessive caution, they can spell disaster.

And always, always have the client sign that they have received and understood your information, and then sign again indicating their response to it.

Client Control Begins Before It's Needed

Every client teaches us something about the next one. When a client says "I didn't know" or "why are (or aren't) you doing so and so", or even worse, "why isn't anything happening?", they're saying we didn't prepare them well enough at the beginning, or we haven't been communicating with them and keeping them involved.

Listen to each question and create an information piece, a process or a technique to prepare in advance for the next client. Positive client control -- and a more satisfying and safe practice -- will be the result.



RMM

RISK MANAGEMENT MEMO
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Opening Statement

How to Use the RISK MANAGEMENT MEMO

By **Duane H. Crone**
President
I'll admit it. Insurance, if it's done correctly, is pretty dull stuff. Premiums come in, claims get handled, contingency reserves are established, and so on.



The fun part is "sharing information", something few companies do well, or at all. We try hard.

Confidentiality rules make professional liability claims against lawyers mostly invisible, and many attorneys still think "it'll never happen to me". But with the **RISK MANAGEMENT MEMO**, we open the door a crack to let those at risk take a peek at what really does happen. We're providing a service to the profession by shedding some light on the darker side of practicing law.

Why? Simple. *Nothing teaches like experience.* If your brother burns his hand on the stove, you can

learn the lesson without ending up with a scar of your own.

All of the RMM "tips", "hints", "suggestions" and "advice" are the latest stuff -- it's "what's happening now", as they say. But it can only help if you make the connection; you have to consider whether or not any of the situations remind you of something in your own firm.

And yes, it's perhaps more akin to product manufacturing or health care delivery than we'd like to admit. Doctors now practice defensive medicine: engineers build redundancy into product safety designs. And the wise lawyer now practices "defensive law".

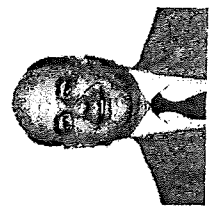
Yes, such precautions drive up expenses. But today, the goal is more than "making it" -- it's also "keeping it". There's no use working hard if someone else can take away all you've worked hard to build.

The RMM is designed to help. But you have to take it personally. Don't assume that someone else in the firm is "taking care of things." The responsibility is yours.

Expert Witness

Positive Client Control: How To Gain It, How To Keep It

By **Maurice Jay Kutner, Esq.**
Maurice Jay Kutner is one of the nation's most successful and respected trial and family law practitioners and frequently lectures on the subject of client and practice management. He has practiced Marital and Family Law in Miami for more than 20 years and is currently Chairman of the Continuing Legal Education Committee, Family Law Section, American Bar Association. He is also past Chairman of the Florida Bar Family Law Section, Board Certified in Marital and Family Law by the Florida Bar, and A-V rated by Marindale-Hubbell. A text he has authored for the ABA, Managing Clients and Cases, provides a comprehensive guide for the development of all aspects of a family law practice. Mr. Kutner credits his wife, Marisol, who is also his paralegal and office manager, with much of the development of his client management procedures and materials.



Prospective clients should speak with someone who is specifically trained for initial client contact, working with a standard, written format. Unless you work on a contingency fee, you should charge at least a minimum consultation fee for the first attorney conference, and this should be explained to the client prior to setting an appointment. If the client can get free advice and leave with no commitment, they're in control from the outset, and they know it.

The Crucial Initial Interview

The initial interview with the attorney is the single most important client contact, and it should accomplish many things. The structure established here can make or break the entire case, as well as the attorney-client relationship.

First -- establish that, when you are with your client, they will have your total attention. Avoid greeting them across a desk stacked with files, or signing letters, reviewing files or otherwise dividing your attention while you talk with them. In their presence, ask your secretary to hold your regular calls, but explain that you will take urgent calls from clients, just as you would take theirs.

Second -- tell and show your prospective clients that you won't pressure them to hire you. Encourage them to interview other lawyers and come back to you later. Names of other attorneys may even be mentioned (the client probably has them anyway). In the long run this approach will make them far more committed to their decision.

Third -- have a frank, detailed fee discussion, and give them a copy of your contract. The time to make the financial rules clear is when there's no outstanding bill or dispute.

Fourth -- know when to send them home. Encourage your potential clients to be realistic.

What is "Positive Client Control?"

Essentially, "positive client control" means anticipating what can go wrong -- what serious client objections, problems and crises may arise -- and preparing for them so well that they rarely occur, or can be managed effectively when they do happen. It means building such a strong aura of competence, communication and preparation that your client doesn't feel pressured to go "out of control".

It Starts Before You Start

Positive-control begins even before the client has retained you, with their first contact with your office, because this is where the tone of the entire relationship is established.



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Client Control

...continued from P. 2

The Result: Client Confidence and Trust

The client must believe in you and the legal process. When the lawyer and client are a team, there is rarely a serious dispute between the players.

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-- By Maurice Jay Kutner, Esq.