ETHICS: WHY CLIENTS TURN ON THEIR LAWYERS

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WHY CLIENTS TURN ON THEIR LAWYERS

I. The Attorney-Client Relationship is formed and maintained by lawyers and clients who are each under stress, which leads to the development of problems that result in malpractice claims against the lawyers.

HERE’S A COMMON UNDERSTANDING THAT APPLIES TO OUR LEGAL PROFESSION:

   All attorneys and clients are dealing with their own kind of stress. Stress can lead to disharmony in personal relationships. Disharmony between attorney and client can lead to finger-pointing. Finger-pointing between client and lawyer can lead to malpractice claims. Malpractice claims can lead to personal and professional disharmony

STRESS IS KNOWN TO CREATE PROBLEMS AMONG PEOPLE:

1. In the March 31, 2015, posting of the “Article Spotlight” on the American Psychological Association website, the feature discussion was on the February 2015 issue of the Journal of Abnormal Psychology that featured several articles about stress sensitivity.

   The online Spotlight provided a free summary of the articles in the February issue of that Journal, stating:

   “Stress is one of the strongest causal predictors of a wide range of psychopathology, and the role of stress is given prominence in most theoretical accounts of the cause and maintenance of psychopathological disorders. Nevertheless, it is increasingly understood that there are wide differences in individuals' sensitivity, or reactivity, to stress. Further, there is now a large amount of evidence suggesting that some individuals may become increasingly sensitized to stress over time. These joint processes of stress sensitivity and stress sensitization have enormous implications for understanding individual differences in risk for the onset and maintenance of psychopathology.”

2. The July 7, 2014, online issue of NPR (National Public Radio) reported the results of a study conducted by NPR, the Robert Wood Johnson Foundation and the Harvard School of Public Health. In a nationwide poll in March and early April, 2014, of 2,500 adults, the study sought to know the nature of stress and its relationship to people’s problems.

   The study found that about half of the people surveyed, 49%, said they’d had a major stressful event or experience in the past year. Health-related problems were the most
common source of stress. About 26% said they’d had a “great deal” of stress, and poor health and dealing with a disability were likely causes. People become stressed for a number of reasons, many of them being things that cause people to engage lawyers for help. For example, stress comes from being overloaded with responsibilities, financial problems, work problems, personal or family health problems, friendship or neighbor problems, or changes in the family situation.


3. In the online May-June issue of the American Bar Association Law Practice magazine, Carol Schiro Greenwald, a “pragmatic strategist and nurturing coach,” talks about how lawyers generally lack relationship skills with their clients.

“Often lawyers have only a superficial knowledge of their clients’ real lives: their challenges, priorities, successes, fears and desires. The superficiality stems from the legacy of “need to know” thinking, where lawyers are told only what is essential to implement the task at hand. Lawyers have not been trained to study the whole client in depth before beginning to work on a matter. This absence of a broad perspective and context in which to place specific legal activities has certain negative consequences:

- Lawyers find it difficult to proactively address client problems.
- Lawyers lack sufficient information to create cross-selling strategies that lead to greater “depth of client.”
- Lawyers often fail to move beyond the acquaintance level of conversation, which in turn inhibits progress toward becoming a trusted advisor of the client.

Instead of thinking the way lawyers always have in the past, modern lawyers need to do a 180-degree turnaround and embark on a research plan that generates a 360-degree understanding of clients in their own environments as well as an assessment of the lawyers’ own firms as they relate to client needs. The research should encompass both the internal and external features that affect the client’s goals, successes, opportunities, conflicts and problems.”


4. Bar examinations do not test for emotional maturity, nor is it taught in most law schools. Bar requirements, though, sometimes include an inquiry into recent disabilities related to mental condition or drug or alcohol dependency.

For example, the Rules of the Virginia Board of Bar Examiners includes:

“The Board’s obligation to the public requires the Board to address recent mental health and chemical or psychological dependency matters, which may affect, or if untreated could affect, an applicant’s ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent and professional manner. Accordingly, the Board
will inquire concerning (i) mental or emotional instability and (ii) existing and untreated drug or alcohol dependency. The mere fact of treatment for mental health problems or chemical or psychological dependency is not, in itself, a basis on which an applicant is ordinarily denied admission in Virginia, and the Board of Bar Examiners regularly licenses individuals who have demonstrated personal responsibility and maturity in dealing with mental health and chemical or psychological dependency issues. The Board encourages applicants who may benefit from treatment or counseling to seek it. A license may be denied or deferred when an applicant’s ability to function is impaired in a manner relevant to the practice of law at the time the licensing decision is made, or when an applicant’s responses demonstrate a lack of candor.”


Unlike Virginia, California does not consider “mental health and chemical or psychological dependency matters” in connection with licensing requirements. In California, the focus is on “moral” character. The State Bar of California website discusses “Factors Regarding Moral Character Determination”:

The Committee of Bar Examiners “evaluates whether an applicant possesses the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and for the judicial process. Involvement in activity that constitutes an act of misconduct or an act of moral turpitude does not necessarily preclude an applicant from admission to practice law in California; however, an applicant who has committed such acts must demonstrate rehabilitation prior to receiving a positive moral character determination. An act of misconduct may include, but is not limited to, behavior that results in a criminal conviction, behavior that results in a sustained accusation of fraud or a sustained allegation of unauthorized practice of law, the violation of a school’s honor code that involves moral turpitude or results in expulsion, professional discipline and license revocation or disbarment. Material omissions from the moral character application, misstatements in the moral character application, failure to provide requested information and misrepresentations during informal conferences conducted by the Committee are also considered to be significant misconduct.

It is the policy of the State Bar of California that persons who have been convicted of violent felonies, felonies involving moral turpitude and crimes involving a breach of fiduciary duty are presumed not to be of good moral character in the absence of a pardon or a showing of overwhelming reform and rehabilitation. The Committee will exercise its discretion to determine whether applicants convicted of violent felonies, felonies involving moral turpitude and crimes involving a breach of fiduciary duty have produced overwhelming proof of reform and rehabilitation, including at a minimum, a lengthy period of not only unblemished, but exemplary conduct.”

http://admissions.calbar.ca.gov/MoralCharacter/Factors.aspx
5. Both lawyers and clients deal with stress, and each person’s reaction to stress is always unique to them.

LAWYERS –

- The legal profession is notorious for generating the kind of stress that makes people cranky – and crankiness leads to rudeness, even in people who are otherwise very nice and kind. The stress affects both lawyers and their clients.
- A study by Johns Hopkins University found that out of more than 100 occupations, lawyers were three times more likely to suffer from depression than any other profession. After cancer and heart disease, suicide is the third leading cause of death among lawyers. The National Institute on Alcohol and Alcohol Abuse estimates that 10% of the U.S. population is alcoholic or chemically dependent. Experts estimate that the numbers are between 18-20% among lawyers. [www.abnormalabuse.com](http://www.abnormalabuse.com)
- The May 2, 2011, issue of Psychology Today reports in an article entitled “The Depressed Lawyer”: An ABA Young Lawyers Division Survey concluded that at least 40% of female attorneys were unhappy with their jobs. Additionally, seven in ten lawyers responding to a California Lawyers magazine poll said they would change careers if the opportunity was available. [www.psychologytoday.com](http://www.psychologytoday.com)
- The causes of lawyer stress are well-known: Workload and performance expectations; Stress from deadlines, caseload, clients, and other lawyers; Time pressures and long hours, lack of sleep; Burnout and discouragement; Lack of control over tasks and outcomes; Life out of balance; No time for relaxation, exercise, fun, healthy diet; Financial problems
- Stress can make anyone (even lawyers): Irritable, edgy, distracted, rude, impatient, touchy, disorganized, scattered, inattentive, dismissive, and self-absorbed. These are not traits that count as qualities when practicing law.
- Clients can be a bother, and are often irritable and all the other things that come with being stressed, which they are. After all, they have problems that brought them to engage a lawyer. The client’s stress pours over onto the lawyer.
CLIENTS –

- Clients have lives and jobs that are filled with stress, i.e., problems besides the ones that brought them to a lawyer
- Clients do not understand the legal system and their lawyer is the only one they can turn to. After all, the attorney-client relationship means the client cannot talk to others, and is left to depend on their attorney.
- Clients experience fear, confusion, doubt, uncertainty, and insecurity in regard to the legal system. Except for a few sophisticated ones, clients are basically ignorant and full of questions, some of which their lawyers may prefer not to answer, for a host of reasons.
- The Foreword to my book is by a MFT, Karin Huffer, Ph.D., who discusses “legal abuse syndrome” – a form of PTSD that comes from being inside the legal system

TOGETHER THE ATTORNEY AND CLIENT MAKE QUITE A COMBINATION –

- By and large, lawyers would prefer to practice law without clients, a wish that is rarely granted
- Clients are the Master, the lawyer is the Servant. Clients are the ones providing the compensation (or the promise of compensation) and resent being treated rudely or with disregard of their concerns.
- Lawyers are licensed without regard to temperament or emotional maturity.
- Mostly lawyers and their clients are strangers at the start of the attorney-client relationship.
- A stormy attorney-client relationship carries a high risk of malpractice, and the formal claims that result from that malpractice.

TAKE THE INESCAPABLE FACT OF STRESS INTO CONSIDERATION IN YOUR LIFE AND PRACTICE –

- Learn how to deal with stress. There are stress management books and classes that will improve your life and make the practice of law far more enjoyable. Becoming more patient and understanding of your clients will substantially reduce the risk of malpractice, leaving you to sleep better and more thoroughly enjoy the hours you spend away from work.
• Recognize that your clients may react to the stress of their legal problems in ways beyond your control – or liking. Developing patience and respect for their behaviors, which may be very different from what you’d like to see, will ease the burden of dealing with them. They are unique and unpredictable, but they are your “bosses.” Accept that fact. Being inconsiderate, short, or rude with your clients will bring heartache.

NOW, HERE ARE EIGHT REASONS YOUR CLIENTS MIGHT TURN ON YOU:

II. **ONE:** Clients turn on their lawyers when they feel lost, insecure, confused, and fearful.

• Thus, realize it is your job to help your clients not to feel lost, insecure, confused, and fearful. Put another way, the lawyer is to blame if the client feels lost, insecure, confused, or fearful.

• An informed client who understands what is happening will be less likely to add to the lawyer’s already stressful life, less likely to blame the lawyer if things go wrong with the case, more likely to make better decisions, and more likely to be cooperative.

• The American Bar Association Model Rules have been adopted, more or less, in all states except California. ABA Model Rule 1.4: Communications states: “(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the

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Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

- In California, the rule is set forth in Rule 3-500 of the California Rules of Professional Conduct. That Rule provides:
  “A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.”

The discussion under that rule, according to the California State Bar website, states: “Rule 3-500 is not intended to change a member's duties to his or her clients. It is intended to make clear that, while a client must be informed of significant developments in the matter, a member will not be disciplined for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, §6068, subd. (m).)”


- Lawyers sometimes think that their clients do not need to know what their lawyer is doing or why, but that is arguably a violation of these rules. When the time comes for decisions, the client’s ignorance and confusion will create anxiety, which can pour over onto the attorney.

- One way to keep the client informed is to provide them with copies of correspondence from other lawyers or parties in the case, to give the clients periodic email or telephonic updates.

- Lawyers must return phone calls and answer questions, promptly and courteously.

- Lawyers are also expected to take on the role of “advisor,” which, according to Rule 2.1 of the ABA Model Rules, means to “exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.”
III. **TWO**: Clients turn on their lawyers when disputes develop over the terms of the fee agreement.

- This means: Make sure your clients understand the terms of the fee agreement before they sign it.
- Having a provision that the client understands the right to get the advice of separate counsel in reviewing the fee agreement is ineffective. It does not get the lawyer off the hook if the client doesn’t understand some of the terms and later claims he was confused.
- Of course, lawyers owe no duty to the client to warn of the dangers in the agreement – unless the attorney-client relationship began without a written agreement and the lawyer already has been serving the client. Check the law in your jurisdiction.
- Importantly, a client who does not understand the terms ought not be signing it.
- Keep in mind, clients are mostly ignorant about the meaning of the terms of a fee agreement. Fee agreements need to be negotiable, but they can’t be negotiable if the client doesn’t understand the provisions.
- Clients are often uncomfortable knowing they do not understand what they signed – and feel mistrustful (which is never good). You want your clients to understand what they signed. You do NOT want your client telling some lawyer down the road that you pressured them to sign something they didn’t understand. It is better to negotiate with your client and to say “no” than to not negotiate at all.

IV. **THREE**: Clients turn on their lawyers when the clients fail to have realistic expectations about the outcome of the legal matter

- Sometimes – hopefully, rarely – lawyers tell clients they will prevail for sure. This is a huge mistake that lawyers must be careful to always avoid. In fact, go overboard in explaining that you do not guarantee an outcome and, in fact, the system is so crazy and unpredictable, the best you can do is your best! If your client wants to find another attorney, let him. You don’t need the headache.
- But promise to do your best – and mean it!
• An advantage of this approach is that you will also be helping someone (your client) understand the realities of our legal system, including its uncertainties, which will lead to an increased likelihood of compromise, which is always best for our clients.

• In my opinion, The standard language in fee agreements (i.e., “I am not guaranteeing the outcome of this matter”) is too mellow, too fluffy. Lawyers need to speak much louder in the fee agreement: I suggest no harm, and only good., can from the following language: “Client understands that this lawyer can only do his/her best because the legal system, and the law itself, is often changing, is unpredictable, and things happen beyond the control of this attorney. This attorney will endeavor to keep the client apprised of developments and to form strategies that will aim to maximize the best outcome for the client.”

• An important result of this language is that your clients will move forward with greater awareness that things could go badly. You want your clients to be realistic, and the surprising outcomes of the legal system are beyond the control or prediction of lawyers, who can only do their best. Clients should always expect no more than a lawyer’s best. Indeed, no harm comes from not taking on a client who expects more than the lawyer’s best. And it will surely work to your overall advantage.

V. **FOUR**: Clients turn on their lawyers when they can establish a lack of advice on some key aspect of their legal matter.

• Whenever you have a conversation with a client where something important is discussed or some confusion is aired, send an email (or a letter, if the client has no email) to document the discussion.

• Clients are full of fantasies about the legal system and what lawyers do. Correct them when you hear such things. Such conversations, confirmed in writing when important or repeated, will satisfy your fiduciary duty to advise your client and to be an “advisor.”
• Clients often need to see something in writing before they understand. Don’t make assumptions about your client’s level of comprehension; college achievements and career standing do not necessarily mean clients grasp legal principles.

• If your client ever visits another lawyer to complain about you, you will have your advice in writing (but it better be right, of course, and pleasantly worded).

• You can also use previous emails to remind the client about what you already told them. Clients are respectful of a lawyer who takes the time to put it in writing.

• Writing to the client often flushes out the confusion, which is good for lawyer and client. Clients are entitled to a careful dialogue.

• Put in your fee agreement that you will charge for these mini-reports.

• Should a claim be brought against you, you will be able to establish that you gave good advice. Save those communications. I like using an email folder in my computer, saved in the clouds. I know that a lawyer will need to read my emails if the client complains about me, and I know that lawyer will agree with the soundness of the advice I gave. Lawyers should never rely on the defense, “but I told the client” this or that.

VI. **FIVE:** Clients turn on their lawyers when their lawyers treat them disrespectfully.

• An irresolvable dispute between attorney and client should be avoided at all costs.

• Angry clients are more likely to make claims against their lawyers, so every lawyer is well advised to seek to resolve client disputes and put their efforts in writing.

• Lawyers should offer to mediate with an angry client before terminating the relationship. After all, skillful mediators can resolve many kinds of disputes, and one between attorney and client can be set right, which is best.

• Lawyers should suggest the client find another lawyer to meet with you to see if there is some solution to be found that you haven’t considered. And your mind needs to be as open as your words suggest.
• Lawyers should try to avoid appearing as though the client was abandoned. If you must abandon your client, seek guidance from another lawyer. Don’t try to make decisions about terminating a client relationship on your own. As Albert Einstein is famously known to have said, “No problem can be solved from the same level of consciousness that created it.” Extricating yourself from a client’s matter takes time and effort. Hopefully, you have written documentation to show your advice. Be open to letting another, sensible lawyer help you when the client relationship turns sour.

• Better to spend money getting the relationship back on course than fighting a claim. Dealing with claims from angry clients can disrupt the rest of your practice, and send your personal life into disarray.

• Depending on the law in your jurisdiction, exiting a client’s matter can affect your right to collect, or even keep, the fees for your work on that client’s case. In California, for example, the case of Rus, Miliband & Smith v. Conkle & Olesten (2003) 113 Cal.App.4th 656, shows how reacting rudely to a client’s legitimate questions can boomerang badly. Lawyers are required to answer a client’s questions, courteously, completely, and honestly. If the stress of the job, and the client’s annoying ways, get the best of you, then they will surely get the best of you.

VII. SIX: Clients turn on their lawyers when they are unpleasantly surprised about the costs of their legal matter

• Clients incur expense when dealing with legal matters. Be they corporate or individual clients, legal advice – and the costs related to it – can be expensive. Clients need to know what to expect over the life of the case, whether it be transactional or litigation.

• A primary part of taking on a legal matter involves estimating what the client will wind up spending (or incurring) in connection with the matter. Those costs include your fees – hourly, flat, or contingency – and all the other possible costs, including what the other side might claim against the client, depending on the outcome of the case.
A sure way to derail the attorney-client relationship – and the case itself – is to improperly analyze the costs involved, the ability to pay them, and the likelihood the other side will be insolvent. This is a common area for malpractice claims. An instructive appellate opinion showing what can happen when a lawyer fails to properly advise the client is the California case of *Charnay v. Cobert* (2006) 145 Cal.App.4th 170 [51 Cal.Rptr.3d 471]. That lawyer took a claim against his client for under $20,000 and turned it into a million dollar liability, which included over $400,000 in fees for himself. Oops!

There is no good way to protect a lawyer from the negative consequences of failing to thoughtfully and accurately calculate the costs of the case and the likelihood the other side will not become insolvent – so BE CAREFUL!

If the fee agreement provides for the client to pay the costs, discuss with the client the realistic probability they can be paid.

Be sure to discuss any possible claims for costs or fees that your client’s adversaries might later assert, such as an attorney’s fees clause in a contract or a statutory right to fees related to certain disputes.

If the lawyer is to pay the costs, make sure you are being realistic. Nothing looks worse than a lawyer who “throws” a case because money gets tight.

Sweat, if necessary, but be particularly careful when it comes to estimating costs. Clients will look to their lawyer if confronted with bills they can’t pay. Also, recognize that money is often required to keep a case alive, and underestimating costs can result in the death of a client’s case. You don’t want to be responsible for destroying your client’s claims.

VIII. **SEVEN:** Clients turn on their lawyers when their lawyers fail to raise the prospect of insurance for a client’s legal matter.

Even when an innocent, even seemingly excusable, mistake is the cause of failing to analyze the availability of insurance in some way, it can be one of the simplest paths to legal malpractice claims.

The nature of insurance (first and third party) and what it covers is easily learned on the internet. If you don’t fully understand it, get some articles or attend a
seminar and learn about it! It’s not rocket science and many lawyers are happy to explain the basics to any lawyer who might be a source of referrals. If you have a close relationship with an insurance broker, take him or her out to lunch and get the short course on insurance. But learn about insurance and don’t forget to think about it when taking on a new client.

- Paying a lost claim of insurance can easily exceed your malpractice policy limits. You do not want to be responsible for your client’s inability to collect insurance on a first or third party claim. Even good lawyers can forget to raise the prospect of insurance. Be sure to read the California Supreme Court case of *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739 [76 Cal.Rptr.2d 749; 958 P.2d 1062]. In that case, the highly respected lawyers representing Jordache in defense of a business claim failed to consider the availability of an insurance defense. After Jordache spent $30,000,000 defending the lawsuit, it changed lawyers and then learned there was insurance coverage. The case makes for interesting reading, for sure.

- Insurance can come into play on both sides of a case: damage to property, claims against a business, lawsuits and cross-complaints. Pleading to trigger the availability of insurance must always be on your mind. You don’t want to be the reason your client loses out on the payment of insurance benefits.

IX. **EIGHT:** Clients turn on their lawyers when mediation becomes a lost opportunity.

- Whether you are handling transactional or dispute resolution, look for opportunities to invite mediation or collaborative cooperation with your client’s adversaries. Finding a way for your client, with your guidance, to participate in a fair resolution of a matter, and avoiding the uncertainty of the legal system’s influence, is always the best course. Guiding your client to harmonious solutions will make for happier clients and a more satisfying career.

- Clients are benefited by participating in voluntary settlement conferences – and the confidentiality of mediation, and the cost-sharing possibilities of collaboration – can be the best outcome for many, many clients.
• If you are unfamiliar with collaborative dispute resolution as a strategy for helping your clients solve conflict, search the internet for “collaborative dispute resolution” and consider trying it out.

• With the client’s blessing, prepare your case for the strongest settlement position, with litigation (and trial) as the next-best thing. Don’t shortcut preparing for a trial event, of course. In fact, being prepared for trial will position your client for the best pre-trial resolution. Also, if your practice is transactional, don’t undervalue your role in providing your client with the tools for resolving disputes that may arise in the future.

• If you are into, or heading into, litigation, try to identify the areas of true contention and seek concurrence from the other side so as to stay focused and simplify any dispute (or discovery in litigation) by limiting discovery and the issues to be addressed to the areas of true contention.

• Understand the value of mediation, even where “unsuccessful.” Learn the art of mediation – and how to be a helpful advocate. Meet informally with a good mediator and get some guidance. Attend programs put on by local mediation centers and become a good facilitator of mediations. You may also get referrals from mediators, because often people contact mediation centers before they have gotten legal advice, and getting legal advice is usually valuable for someone embarking on a mediated course.

• Do learn the confidentiality rules applying to mediations in your jurisdiction. Few surprises are good surprises, and most jurisdictions have statutory rules that apply to mediations, especially having to do with confidentiality and the use of evidence in mediations. Study those rules if you do not already know them. California’s rules are found in California Evidence Code sections 1115 et. seq.
My book is intended to give clients (in any jurisdiction) an understanding of the legal system, what it can and cannot do for them. You may (indeed, probably) have a client who needs to understand these things, and you may not have the time to explain to them what they need to know. For a cost that is barely a fraction of one hour of your time, your clients can become better clients, and make your job much easier.

Litigation - Insult to Injury

What Judges and Lawyers Know About the Legal System That You Don’t

Foreword by Dr. Karin Huffer, M.D.

Written by Janet E. Sobel, J.D.

with Margie J. Cartwright, J.D.

It’s available on Amazon for under $30.00.