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Tips from the Trenches »

Client Expectations: Discovering Them, Understanding Them, Managing Them

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Have you ever (a) obtained what you thought was a good result for a client, only to have her get angry and refuse to pay you; (b) lost a client while doing exactly what you had agreed to; or (c) failed to land a new client because you could not quite understand what he wanted you to do? If you answered yes to any, take the following test to see where you fall on the "client expectations scale."

1. A client wants the following from his lawyer:

- (a) The best result at the cheapest price
- (b) Victory at any cost
- (c) Vindication at a negotiated price
- (d) Some of the above
- (e) All of the above
- (f) It depends

2. A client wants her lawyer to do the following:

- (a) Fight tooth and nail for everything she is entitled to
- (b) Be very cost conscious and manage costs above all else
- (c) Prepare the most impeccable, professional documents possible
- (d) Some of the above
- (e) All of the above
- (f) It depends

3. A client will come back if his lawyer is:

- (a) The most aggressive, argumentative lawyer
- (b) The least expensive lawyer
- (c) The most creative and inventive lawyer
- (d) All of the above
- (e) Some of the above
- (f) It depends

If you chose answer (f) each time, you are probably in tune with your clients and rate fairly high on your clients' success-o-meter. What your clients expect you to do, how they expect you to do it, and what will bring them back usually depend on how you connect with your clients and their expectations.

The traits that bind a client to any particular lawyer are as varied and dynamic as any found between partners in a marriage. A client's personality and personal or institutional preferences have a great deal to do with what he perceives as success in litigation or negotiation. Almost every client wants one thing from a lawyer, but the thing varies from client to client. For most, however, it comes down to one identifiable trait, whether aggressiveness, experience, intellect, earthiness, or any one of a host of personal traits the client finds comforting. The trait may not even make sense to anyone else, but it makes one particular client feel comfortable with the lawyer he has selected. Feeling comfortable with a lawyer and her work is what brings clients back.

For example, I have occasionally opposed a lawyer who seemed to be schizophrenic at times. On most cases he would be friendly, professional, and reasonable in dealing with the issues, negotiating problems, and arguing points of law before the court. On a few cases he was nasty, overbearing, unreasonable, and an outright jackass. I watched him alienate opposing lawyers, the judges, their staffs, and the juries he appeared before. One day I asked him to lunch to see whether I could get to the bottom of his split personality.

He laughed when I asked him about it, and he seemed almost embarrassed. What he told me was striking: He had a client who had a lot of cases but had bounced around from lawyer to lawyer for years, never satisfied with the representation he was getting. The lawyers were never "aggressive enough" for him to feel he was getting his money's worth. The client watched his former lawyers try cases, and they had always seemed way too chummy with opposing counsel, too deferential to the judges, and almost obsequious toward the juries. Understand—these were good, professional trial lawyers he was saying this about.

My luncheon companion revealed that in order to satisfy this particular client, he had adopted a persona the client seemed to find reassuring. Results seemed less important to the client than the feeling that he had a lawyer who was willing to fight for him. The fact that the lawyer alienated everyone else involved in the cases he handled for this client seemed immaterial and unimportant. It was the ultimate in style over substance. Further, he was convinced that by creating this comfort zone with the client, he was able to persuade the client to settle several matters that otherwise would have gone to trial.

Just as this lawyer created an emotional comfort zone for the client, so too can a lawyer create a "results" comfort zone for the client by striving to protect him from unpleasant surprises. Telling your client in advance about a summary judgment argument that may be dispositive against him makes breaking the bad news that you lost it somewhat less stinging (unless you foolishly promised you were going to win). When you set parameters for potential results, a discussion of key events and the likelihood of success (including a realistic appraisal of the possibility of failure) at each step can be important in keeping your client's expectations realistic.

Which of the following phone conversations would you prefer to have?

1. Lawyer: I have some bad news. We just had our case dismissed on summary judgment. I think the judge made a huge mistake, and of course we need to discuss our appeal.

Client: We lost? How did that happen? I thought you said we had a good case.

L: We do have a good case. I made a good argument, and I am convinced the judge is wrong, but you know, he is the judge. We have 30 days to file our appeal. When can you come in to talk about it?

C: Let me get back to you on that.

2. L: I have bad news. The judge ruled against us in that summary judgment motion we discussed last week. He ruled against us on the issues I told you were troublesome. Now we need to make a final decision about whether to appeal.

C: You said we had only a 50/50 chance with this judge. What is the likelihood we will win on appeal? Is it worth the time and money?

L: I think our chances are good. I think the judge misunderstood the law. Our case falls squarely within some recent precedent. We can use much of what we presented to the trial court, so an appeal should not be that expensive.

C: Okay. Let's go forward.

Notice two things. In the first conversation, the client had no idea that trouble was on the horizon. When the lawyer called out of the blue to tell him he had lost, he was taken by surprise and probably felt a little betrayed by the lawyer. All along that same lawyer has been telling him he has a good case—and sending substantial bills. In the second conversation, the lawyer also told the client the case was sound. Yet, by giving advance notice of the impending argument and the troublesome issues, the lawyer professionally managed the client's expectations; when the result was negative, the bond of trust and reliance between the lawyer and client remained essentially intact.

Getting what you think is a good result given the facts and the law may not be enough to please the client. Getting what she really wants may not be possible for you, or for any lawyer. Finding a language the two of you can share that allows for the discussion of this dilemma is crucial. You need to make certain that any disparity, whether it exists to a greater or lesser degree, does not go unexamined or undiscussed. This conversation should begin at the start of the case and continue to its conclusion.

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