

SKILLS SAVVY

Initial Client Interviews and Contract Basics

By Cindy Tisdale



Here is some basic information about initial client interviews and attorney-client contracts.¹ Although it is provided in the context of family law cases, it may be helpful to practitioners in other areas as well.

1. The Consultation

The first interview is sometimes the most important. You and the client are assessing each other to know if you will be a good fit. This is also a good time to begin educating your client as to what will happen in the coming months. Provide a basic explanation of important legal concepts that are relevant to the case, such as child support, standard possession schedules, separate property, and community property. Brace your client for the amount of time and work involved in most family law cases. You can present a basic timeline of steps that are involved in family law cases and educate your client on the fact that some cases are more complicated, or require additional time, experts, or hearings. Many clients want to know the exact price and the exact timeframe. Unfortunately, it is impossible to know these things, and you must explain this, too. Initial consultations are an excellent opportunity to provide a clear, realistic explanation to your client of potential options, challenges, costs, and remedies.

2. The Contract

Every client needs to sign a contract for representation, even if the client is pro bono, limited representation, or your own mother. Do not begin working on a case until the potential client has signed a contract. Even when a potential client has an approaching deadline, it is imperative not to begin work until the contract is signed. As an attorney, your fiduciary relationship with the client begins when you begin representation, which is the moment you start working on the case. Without a contract prior to representation, a disgruntled client may later question if it was in his or her best interest to sign the contract for representation and if it was a breach of your fiduciary duty to request that the contract be signed. Include not only what tasks you will handle for the client, but also include what you will not handle. For example, in a divorce, you may include language that you will not give tax advice or that you will not prepare a qualified domestic relation order (QDRO), if needed.

3. Legal Fees

Texas Disciplinary Rule of Professional Conduct 1.04(c) requires that the basis or rate of a legal fee be communicated before, or within a reasonable time after, commencing the representation. Even though there is no requirement that the fee agreement be in writing, the best practice is to include it in your contract. Both you and your client should sign the contract. If your services are for a limited scope, then you need to make sure that the scope of representation and fee are clearly stated and agreed upon.

4. Billing the Client

You should bill regularly, such as monthly or bi-monthly, and send the client an itemized bill. Texas Disciplinary Rule of Professional Conduct 1.15(b)(5) allows a lawyer to withdraw if the client fails to pay the lawyer's fee as agreed and if a reasonable warning has been given that the lawyer will withdraw unless the payment is fulfilled. If your contract has an evergreen clause, make sure you have the client sign a credit card authorization form for your file. An evergreen clause that is helpful to have in an attorney-client contract is basically an agreement that the client will maintain a minimum amount in your trust account. The credit card authorization allows you to bill the client's credit card each billing cycle.

5. Skeletons

I have found, especially at initial consultations, that clients want to tell you the parts of their story that put them in the best light. Many very important details that my clients thought were "minor details" were often left out of the initial consultation. You should question your client about any skeletons they may have and ask what the opposing party may say about them that is negative. Take the time to google your client. With social media sites like Facebook, there is a lot you can discover about your client and possibly his or her case. Advise your client not to delete any social media posts, but he or she can deactivate them or restrict the privacy settings. The account can be reactivated at any time, and this would not be considered spoliation.

6. Strategy

You should begin a case with the end in mind. You need to know what the ultimate goal is for your client. Having your client fill out a questionnaire in the beginning gives you insight into his or her ultimate goals. You also need to know if there are any pressing short-term needs that must be handled immediately. What you need is a plan. In the initial consultation, a goal is to provide the client with information about the process while discussing individualized concerns. Once the potential client becomes an actual client, then you should schedule another meeting. It is important to schedule this meeting to discuss next steps and case strategy. Talk about short-term needs and long-term goals. Discuss expectations and various options. The goal is to make sure that you are proceeding in the direction of the client's goals while maintaining your ethical responsibilities. The financial costs should be considered while weighing options in strategy meetings. For example, if the proposed strategy would require expert testimony, discuss that expense. At the end of the strategy meeting, you can then

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discuss what paperwork needs to be completed. This may include sworn appraisals and inventories, proposed support decisions, and financial statements. It is good to schedule meetings every so often to revisit goals and expectations.

7. Conclusion

To summarize, (a) be up-front and honest with your client about their case, (b) do not give up your integrity to fulfill a client's wishes, (c) have a contract for every client, (d) review and update your contract frequently, and (e) communicate with your client throughout the case about strategies and goals.

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¹ If you would like the original full paper on this topic, along with attachments of examples of contracts, questionnaires, etc., please feel free to email me at cindy@cindytisdale.com.

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