



PRE-CONFERENCE THE INTAKE PROCESS: EFFICACY AND ETHICS IN THE LAW OFFICE

**Wednesday, October 20, 2010
11:15 A.M. – 12:15 P.M.**

Interviewing Techniques and Frequently Encountered Issues

Presenter:

Kelly M. Feeley
Stetson University College of Law
Gulfport, FL

- Interviewing Techniques and Frequently Encountered Issues

Stetson University College of Law presents:

2010 SPECIAL NEEDS TRUSTS
THE NATIONAL CONFERENCE
October 21-22, 2010
Don CeSar Beach Resort
St. Pete Beach, Florida

**STETSON
UNIVERSITY**

Center for Excellence in Elder Law

ACCESS AND JUSTICE FOR ALL®

INTERVIEWING TECHNIQUES and FREQUENTLY ENCOUNTERED ISSUES

Professor Kelly Feeley—feeley@law.stetson.edu

One of the most important aspects of an initial interview is relationship building. If a potential client feels comfortable with both the attorneys and staff, that client is more apt to provide more accurate and complete information. It is this accurate and complete information that allows an attorney to best represent a client or determine that the attorney cannot represent the client. Here are some suggestions on creating that relationship.

PRE-INTERVIEW/MEETING:

Many law firms send out welcome packets to potential clients to prepare them for the initial interview/meeting. Because meeting with an attorney is often stressful as it is the result of something bad happening to the client, trying to prevent something bad from happening, or because clients do not understand the impact of something that has happened, letting the client know what to expect during the initial interview/meeting can be a great way to prepare clients and reduce their stress level.

Explaining up front what services your firm offers, the types of law your firm practices, and confidentiality and the attorney/client privilege can better prepare the potential client for what your firm can and cannot do and to be prepared to provide as much information to the firm as possible.

One common problem with potential clients is unrealistic expectations regarding the services a law office provides, the amount of time those services might take, the cost of those services, and what clients might need to do to assist with their case. Establishing boundaries about the firm's limits and abilities as well as setting forth the firm's expectations of the clients' participation in the process, can eliminate some of the unknown and uncertainty for the client in the beginning. These boundaries can avoid clients from assuming a certain result from the representation and make the firm more human in that it cannot wave a magic wand and fix the client's problem immediately, for free, and with little or no help from the client.

If a client is a walk-in or a last minute appointment, your firm may want to make this welcome packet available upon arrival and just like at a doctor's office, have the client read the packet and forms before meeting with either the attorney or intake personnel.

However, if there is time for neither, then the attorney or intake personnel should review the most important aspects of these documents to the client before the interview begins. Sharing with the client that you understand that it is common to be stressed about coming to an attorney's office but that your firm's goal is to have them understand and feel comfortable with the process so that your firm can best serve them are good ways to get a client more at ease.

ACTUAL INTERVIEW/MEETING:

Intake personnel are crucial to a law firm because they are usually the first contact with the client, conduct the initial interview, and can continue to be the point person who the client interacts with the most. Having a good working relationship with your intake personnel and taking the time to be a good mentor will be keys to success.

There is no set method to conduct the perfect interview, but there are guidelines to help structure an initial interview¹:

- Ice-breaking/Introduction.
- Identifying the client's problem(s) and gathering information.
- Identifying the client's goal(s).
- Reviewing the client's story.
- Delegating duties.
- Closing.

Rarely will the interview go just as planned, but it is important to understand the type of information that you could and should obtain during an initial interview. Although the interview may not go exactly in the order listed above, these points can still provide a checklist of what to cover during the interview.

Also, many intake personnel have good interviewing skills because they can truly say that they are a "people person." They can converse with others with ease, find common ground, read non-verbal communication, and know when they should back off and know when they need to push. Others can become better interviewers if they understand some of these traits and someone spends time with them explaining what information is important to obtain during the interview process and how to obtain it. It is both the information about the case and the difficulty level of the client that can be equally important.

To have a close working relationship with intake personnel and to assure that they understand what is needed during an initial interview, require time on the attorney's part. Checklists of required information can be a helpful tool during the initial interview, but the attorney must spend time with intake personnel explaining why that information is crucial to representation. If they understand the why, then it provides intake personnel with opportunities to ask the client questions in different ways to acquire the needed information.

¹ The breakdown/steps of an initial interview were taken from Stefan H. Krieger & Richard K. Neumann, Jr., *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* (3d. ed. Aspen Publishers 2007).

There are also numerous techniques to employ during an interview to obtain information from a difficult client. Here are some common difficulties and some suggestions to deal with these types of clients:

1. The client who does not want to tell the intake personnel anything because the client only wants to talk to the lawyer.

Approach: Explaining that confidentiality extends to intake personnel is a good first step. Also explaining how intake personnel and the attorneys work together on a client's case—the interview is designed to give the attorney as much information as needed to use the client's time and the attorney's time wisely. The more the attorney knows from this initial interview, the quicker the attorney can determine whether to take the case, can keep costs down because the client is not paying the attorney for this interview, and to establish a relationship between the client and the intake personnel who might be spending as much if not more time with the client than the attorney.

2. The client who knows about the law because of something he/she read, saw on TV, or heard from someone else.

Approach: Acknowledging that the client shows initiative about looking into his/her problem before coming to the lawyer but explaining that usually what you hear, read, or see about the law is not the whole picture. Newspapers and TV shows often give you a general overview of the law, but that a single fact can change the outcome and it is an attorney's job to determine how the facts will affect the client's case. Also, rarely does a client want cookie cutter representation so instead, the law firm will tailor its representation to that client, which may or not be what the client has heard, read, or seen. Explain that the client has come to see the lawyer because of his/her expertise and so the lawyer will make sure that the client is well informed about what is best for that client.

3. The client who will not give a straight answer or goes off on tangents.

Approach: It may be that the client is nervous, so laying out an agenda of how the interview will go and what the client can expect can be helpful. However, sometimes that is not enough. Also allowing a bit of a tangential story or two is not a horrible thing because you can learn a lot about a client just by listening. Even though the story may be completely unrelated to the client's legal problem, you can learn other helpful things about the client in terms of attention to detail, memory, eye contact, etc.

If the client refuses to stay on task, then perhaps letting the client know that there are some time limits to this interview could help—"We only have 30 minutes (or whatever the time frame is) scheduled for your interview and we

need to obtain certain information from you for the attorney to be able to decide whether to take your case, I would like to ask you some specific questions so I can get this information to the attorney. Otherwise, we may have to reschedule your appointment or charge you for an additional interview, which we would hate to do.” The pressure of time and/or money can often help keep a client on task. And if a client just cannot stay on task, then this may be a tell tale sign that this is not a client that the firm is able to represent because it would be too time consuming. Another option is for the attorney to increase fees for this client because of the extra time involved in representation—or always scheduling a longer appointment that the client will be charged for because it takes longer to obtain information from the client.

4. The client who wants a guarantee about the outcome of the case.

Approach: As the intake personnel, you cannot give legal advice so that should protect you from answering this question any other way than “I cannot say because I am not a lawyer.” As for the lawyer, you do not want to promise something that you cannot produce, so avoiding guarantees is always the smartest thing to do. However, sometimes clients push so hard that you feel you have to say something, so the right approach might be simply to give a range of likelihood of success if you feel strongly and confidently enough doing so—i.e. you have a 30-40% chance of success. Or telling the client that you cannot make a promise because that could be misinforming the client or giving false hope, which is not what the client hired you to do. What you can promise is that you will do the best that you can for the client but that there are some uncertainties that prevent you from guaranteeing a result—the law, the judge, and the opposing counsel, etc. What the law says about a particular issue will control the outcome of the case, but how a judge will interpret or apply that law and what the opposing counsel will argue will be important factors too.

5. The client who has a disability who might require additional time or assistance for an important.

Approach: If you can learn before a client’s interview whether the client has a disability and what accommodations, if any, they need, that would be best. However, if that is not the case, then you should make sure that your office is accommodating to wheelchairs, scooters, and walkers. You might need a variety of chairs for clients to choose from if they have disabilities—soft chairs versus stiffer, high back chairs. You may also need several chairs in your office or a conference room in case a client requires an assistant to be present during the meeting.

Some suggestions on how to address clients with disabilities²:

- Generally:
 - Speak directly to the client and not his/her assistant.
 - Ask the client where he/she would be most comfortable instead of assuming that you know best.
 - If you believe the client needs help, offer it, but wait for the client to actually accept the help before doing so.
- Clients with hearing disabilities:
 - Tap them on the shoulder or wave at them when you want to get their attention.
 - Look directly at the client and speak clearly and slowly without putting your hands in front of your face, eating, or drinking.
 - Do not yell, shout, or exaggerate your gestures.
- Clients with visual disabilities:
 - Identify yourself and anyone who is with you.
 - Use spatial cues and measurements—i.e. to my right, about 10 feet in front of you, etc.
 - State, “Shall we shake hands” before doing so to let the client know what to do next.
 - When guiding a client to a seat, place their hand or arm on the chair/couch.
 - If you need to leave the room, announce that you are doing so and announce again when you return.
- Clients with speech disabilities:
 - Try to ask short questions that require short answers.
 - If you do not understand a client’s response, ask for clarification rather than pretending you understand. Or try to repeat what you believe the client said to confirm whether you understood it correctly.
- Clients using wheelchairs or crutches:
 - A wheelchair is an extension of the client, so do not lean on it.
 - Try to place yourself at the client’s eye level.

And even these tips are general tips meaning that ultimately you should treat clients as individuals and try to determine what works for them.

POST INTERVIEW/FOLLOW UP:

Putting things in writing is another integral step to effective representation because it will help you remember the specifics of a client’s case and it can help you communicate with a client to document things you talked about where you can choose your words carefully and make sure

² Easter Seals Disability Services, *Interviewing People with Disabilities*, <http://www.easterseals.com> (accessed September 20, 2010)

that the client has time to read the documents. Follow-up letters after an initial interview can be powerful ways to clarify with a client what was decided, who will do what, what the time frame will be to initiate or complete a task, etc. An initial interview can be overwhelming so giving the client a memorialized version of what happened, acts as a good point of reference for future discussions. Just make sure that the written version does in fact document what you discussed with the client.

Also, sending clients copies of documents that go out on their behalf with a cover letter explaining what has been done, whether on a monthly or other basis, is a great way to keep clients informed about the progress of their case. One of the most common client complaints is that they do not know what is going on in their case. Periodic updates, even if the update is that nothing has happened yet, can help you to avoid problems later.

Letters rejecting a client's case are also crucial to document that you do not represent a client. Sending these letters certified mail/return receipt requested is a good way to confirm your client's receipt of the letter. If you know the statute of limitations that applies to this case, you should include that too. If you do not know, then at least let the client know that there are time limits that the law places on legal matters and that you encourage the client to seek other counsel. Last, providing the client with an attorney referral service is a good way to guide them to additional help.

Although the art of interviewing is just that, an art, above are some tools, suggestions, and techniques that might make your interviewing process that much smoother.