

# Best Practices for Conducting the Initial Litigation Client Interview

By Jonathan B. Frank

**A**s my wife told my kids on the first day of elementary school, you only get one chance to make a first impression. This is equally true for the initial client interview. Envision yourself meeting a doctor for the first time. You believe you have a serious disease and need someone with experience you can trust. Imagine how long you've been thinking about this first appointment and how hyperaware you are of your condition, your surroundings, and the person you are about to meet.

Your new or prospective client feels the same way. Whether an individual or a business owner, a potential plaintiff or defendant, he or she has experienced something serious and frightening and has thought long and hard about what to do. This person has probably done some research (online and otherwise) into potential legal claims and potential lawyers, and has selected you for a meeting. Perhaps others have been selected, too.

## Establishing a trusting relationship

What does the client need from you? First, he or she needs to trust you. Everything you do, from the very beginning of the interview, should inspire trust. The way your office looks; the way your receptionist or assistant greets the client; even the way you say hello matters. And everything you say and do from that point on, whether it's a discussion of legal principles or questions about the individual's background, matters.

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If you're retained, you and your client will go through some difficult times together. If the client can't trust you in the first 10 minutes of your meeting, there's no chance he or she will trust you when things get difficult.

To earn the client's trust, you should follow some basic rules:

- Acknowledge his or her stress.
- Ask good questions and be an active listener.
- Understand what he or she wants.
- Communicate effectively.
- Explain what you can and can't realistically accomplish.
- Create a friendly and professional working environment.

There are issues to avoid as well. Don't patronize. Don't speak in legalese. Don't go too fast. Don't do too much thinking out loud. Don't assume your client knows anything about the legal process other than what he or she has seen on TV and in movies.

The best way to begin the interview is with a "roadmap," just as you would begin an argument in court. Briefly tell your client what you'll be accomplishing during the interview: gathering background information, explaining basic legal concepts, developing a plan of action, discussing different fee agreements, and reviewing next steps.

## Gathering information

While it may sound easy to gather background information, this is the most challenging aspect of the interview. Remember, your client is under extreme stress in an uncomfortable situation, without any knowledge of what will happen next. You, on the other hand, are trained to analyze a given set of facts, usually presented in a sequential order. You're also trained to give opinions; there will be plenty of time for that later. Now is your chance to hear as much of the story as your client is willing to tell you.

As you gather information, don't expect too much from the client. You may have explained that this interview will be kept confidential and that you are held to a high ethical standard concerning disclosure. And though this individual has been referred to you or has found you in a way that suggests you are potentially trustworthy, the client is unlikely to reveal all of his or her secrets in the first interview. This is why a trusting relationship is critical; the sooner your client trusts you, the sooner you'll hear the whole story.

There are some simple steps you can take to facilitate this process. Ask open-ended questions. Demonstrate that you're an active listener. Probe into less-threatening areas first. When probing deeper, provide a safe environment for the client to reveal

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sensitive information. Explain again that you will maintain this information with the highest degree of confidentiality. Reassure him or her that you're gathering information to help analyze the case, and that neither you nor the client wants any surprises later. When you think you've heard everything, pause, take a breath, let your client take a breath, and ask if there's anything else. Be sensitive to the fact that even though the answer is no, there may still be critical details yet to be revealed.

After you've gathered basic information, replay that information to the client. This is your first chance to demonstrate that you've heard and understood the story your client has been anxious about telling you. If you do this well, he or she may relax for the first time and start to believe (and I reiterate *start* to believe) that you are trustworthy. When you're done, ask again if there are any facts you've missed. This provides an excellent opportunity for the client to fill in the gaps and maybe disclose details he or she was hesitant to tell you before. If you've done your job well, you've earned the right to hear this information.

### Talking about the law and legal process

Now that you've heard the story, you can introduce some basic legal concepts. Keep the client's perspective in mind. Don't go too fast. Your client won't be ready to hear everything you have to say. Pause along the way. Make sure he or she is following you. Repeat yourself, if necessary, keeping in mind that most of what you're saying might as well be in a foreign language. Conclude with a summary and ask the client for his or her reaction to it.

You can now begin to talk about how the law applies to the facts you've heard so

far. In this next phase of the interview, be keenly aware of your client's reaction. Do his or her facial expressions and body language demonstrate understanding or confusion? Is he or she asking good questions? Is he or she taking notes? It's important during this part of the interview to provide enough information to show your grasp of the issues without going beyond your client's ability, or desire, to comprehend everything you know will happen if the case goes forward.

Once you've discussed some general legal concepts, ask about your client's goals. How does he or she view a successful resolution of the problem? The answer might surprise you. While you're aware of the range of possible outcomes that would normally be available, you have no idea what the client thinks is possible. This is an excellent time to reassess his or her understanding of what has happened in the interview so far. If the client has unrealistic expectations, now is the time to identify those and try to address them. There is nothing more dangerous to your budding lawyer-client relationship than having your client leave this meeting with unrealistic expectations.

This is a good time to discuss the legal process. Remember, you're the translator of a foreign language. Consider using a whiteboard or notepad to explain key terms and the timeline of the case. Keep in mind that your client has no idea how "legal time" differs from regular time. If a case in your jurisdiction normally takes 14 months to get from filing of a complaint to a trial date, let the client know.

Of course, trials aren't the only form of dispute resolution you'll discuss. Explain various alternatives such as arbitration, mediation, and other forms of settlement discussions. Some things that are obvious to you won't be obvious to your client. For example, he or she may not understand that a

case can be settled at any time and likely doesn't know the difference between mediation and arbitration.

### Concluding the interview

Finally, it's time to outline your next steps. Will you gather more information? Will the client send you documents? Will you meet with your client again? If the situation is urgent, demonstrate that you understand the urgency. If you will be moving more slowly than you believe the client expects you to, now is a good time to explain why. Again, it's important to understand and manage your client's expectations.

After completing all the items in the roadmap, wrap up the meeting. Have your client explain to you the strategy you've agreed on. This is a good opportunity to fine tune the plan and make sure he or she fully comprehends it. If you've given your client homework assignments, repeat those and make sure he or she understands them. Set a time for your next phone call or meeting. Take care of administrative issues such as billing, collecting contact information, and staffing. Finally, end the meeting as confidently as you started it. Your client should leave the interview knowing you understand the problem, you're prepared to offer realistic solutions, you have his or her best interests in mind, and you'll do your best to provide quality legal representation. If those things happen, your initial client interview has been a resounding success. ■



*Jonathan B. Frank is a graduate of Stanford University, with distinction, and the University of Michigan Law School, cum laude. He is of counsel to Maddin Hauser Roth and Heller in Southfield, focusing his practice on resolution of business and real estate disputes. He is a member of the OCBA Business Court and Counsel Committee and a past chair of the OCBA Circuit Court Committee. He is also a SCAO-trained mediator and a neutral arbitrator for the AAA.*