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Looking back at the end of the case


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By Donna Bader

Through the years, I have attended many hours of seminars on the practical and substantive areas of the law. Little time was spent on trying to teach attorneys how to make a connection with their clients and gain the clients' trust and respect. It is an area that I feel is sadly neglected by the Bar in general. I have had a favorable impression of the work done by the Trial Lawyer's College because the attorneys involved spent hours trying to get to the client's story, and going beyond to even understand what made the defendant tick.

As an appellate attorney, sometimes I feel like the cleaning lady who picks up the trash after a trial. My role usually follows the trial, and I have a unique opportunity to hear the clients' opinions about attorneys, judges and the legal process. In this article, I want to share some of those observations with trial attorneys in the hope that, with some effort, we can improve the image of trial attorneys, at least with our own clients.

Changing a poor image

Most clients have little experience with our legal system. What they know about the courtroom, judges and attorneys, they have learned from the movies, television and the media. And, quite often, that coverage is not favorable. The trial attorney has the opportunity to educate clients that attorneys are indeed human, and while the system is flawed, there are attorneys who will fight diligently for justice for their clients. But that education cannot be accomplished through language and proclamations; it must be demonstrated by conduct. In addition to the work I perform for my clients, I also share some personal information about myself so that my clients can see me as a human being. And if I don't have an immediate answer to a question, I let the clients know that as well.

The number one sin

By far, the biggest complaint I hear is that clients cannot reach their attorneys. This lack of communication signals an attitude that the attorney's time is more important than the clients' or perhaps that the clients are simply not intelligent enough to understand the ongoing developments in a case. We have all had the experience of clients who constantly telephone or send e-mails to discuss their cases, but a balance must be drawn. Sending to the clients copies of all correspondence and documents is a good idea. They may never read some of those documents, but at least they feel they are being made aware of what is going on in the case. I'd prefer having them tell me that they don't need to see every document rather than wonder what was omitted. After all, it's their case.

When I was a new lawyer, I was taught to return phone calls within 24 hours. Maybe that is no longer possible. With our heavy workloads, perhaps 48 hours is a more legitimate deadline; however, if you have office staff, it shouldn't be a problem to have your secretary contact the clients, advise them that you are unavailable, and determine if there is an emergency. The importance of returning phone calls is to validate the clients' right to know the status of the case, and to reinforce their belief that you really do care about them and are on top of the case.

Clients use the tools on the Internet

Since the advent of the Internet, clients have become more sophisticated in researching answers to their questions. Those same clients will go to their physicians with a "diagnosis" of their medical problems. Some of those clients will also have access to legal research programs. Quite frequently, clients call to inquire about filing an appeal, only to tell me about the Supreme Court decision that affects their case or ask whether a particular code section precludes the defendant from acting as he or she did. Some clients will have researched the judge hearing their case or the defense attorneys. They may have even researched you!

There is a wealth of knowledge available on the Internet; however, most of those clients don't know about Shepardizing cases or how those cases intersect with other cases. These clients will have a basic understanding of the law applicable to their case and may wonder why you haven't deposed certain witnesses they deem crucial to their case, subpoenaed documents to dis-

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cover the real dirt on the defendant, or applied doctrines of law to the case that you haven't heard of since law school. Those clients may be constantly second-guessing you and by the time they reach my office, they will be able to cite case law and statutes to show that they have a viable appeal.

Rating the attorney

As I mentioned, the Internet is a virtual treasure trove of information. We can rate our hotel stays and the food served to us in restaurants. If a check-in clerk at a hotel is having a bad day, that snippy attitude may translate into lost customers as others read how the service at a posh hotel is "poor" or "indifferent." Clients turn to their friends for referrals, so why not check with their Internet buddies? If those same clients pore over movie reviews, why wouldn't you be the next subject for review?

A Seattle company recently started a Web site called Avvo.com that rates lawyers. Within nine days of launching the service, several attorneys filed a lawsuit to stop the Web site. Why? The plaintiffs claimed the rankings were not objective; Avvo.com argued that the lawsuit was seeking to violate their rights and those of the people who respond to free speech. Ultimately, a question arises as to if the public can rate us in a public forum and share those opinions with others. What are we so afraid of? If we are doing a good job for our clients, wouldn't we want others to know?

I imagine our fear is that our indifference (remember that phone call you didn't return) or inattention to the case (otherwise known as "flying by the seat of our pants") has been observed by the clients, and they want others to know. If you conduct yourself as if your clients had the ability to critique you and post it for the Internet world to see, perhaps you would act differently. If clients are asked about referrals from their friends, wouldn't you think they would share their negative recommendations as well as the positive ones?

Clients ask a loaded question

Years ago I would meet with clients, and if they had lost at trial, they often suspected there was something wrong with the judges or the jury. They sometimes spoke of conspiracies or pay-offs. Seldom did I hear a complaint about the client's attorney. Well, times have changed. I don't know if it is because of the abundance of information out there, the fact that everyone knows an attorney or is related to one who advises from the sidelines, or that perhaps we are messing up more than ever before, but it is a very common question now. The client wants to know if the attorney did something wrong or has committed malpractice. If that question is asked, it is usually because the client has lost faith or trust in the attorney, and *suspects* the loss may be attributable to something the attorney did or did not do.

When I am asked this question, I often ask the client how he or she thinks the attorney erred. Never once has a client responded, "I dunno, just wondering." They always have a story, whether it is the witness they told the attorney about (who is not appearing at trial) or that the proof they needed was available – they told the attorney how to get it – and the attorney did nothing.

Some people might attribute this question to a society that seeks to shift blame to someone else. After all, once the clients enter the legal arena, they are hoping to hold someone else responsible for their injuries. Experts spend hours analyzing cases, products or human beings to determine who messed up and how. So, at the end of it, why shouldn't your clients try to analyze why they lost? (Of course, they rarely analyze why they won.)

It's also been my observation that clients can be forgiving of an attorney's negligence if somehow that attorney tried to do the best thing for clients or was responsive to the clients' needs. Clients find it difficult to blame an honest and caring attorney.

The attorney-client relationship is fragile

When clients come to you, they are not looking for a new friend or buddy. They usually don't want to hang out with you. Clients want you to solve a problem, usually by getting them money. They may be in physical or emotional pain. They could also be under considerable pressure, whether it be physical, financial, or marital. They wouldn't choose to be in your office if they could avoid it.

If you accept the premise that lay people are often suspicious of attorneys, believing them to be "money-grubbing trial attorneys," but find themselves seeking you out to help them take legal action, then you must also accept that the attorney-client relationship is not a stable one – at least, in the beginning. Hopefully, it will evolve over time, as you and the clients get to know each other, and by the time you walk into trial, you will have earned your clients' trust and respect.

Sometimes, unfortunately, the opposite occurs. By the time the clients are ready to go to trial, they have entertained some doubts about the attorney's ability to handle the case or the attorney's preparation. And why not? If the trial attorney operates on an "emergency basis," paying attention to the most pressing business first, why shouldn't the clients wonder if the attorney will be prepared for trial when their case is called? After all, weren't you the one encouraging the client to settle at mediation? Didn't you express some doubts when you identified the problems or the defenses that would be raised at trial?

I wish I had a dime for every client that insisted the judge had been paid off or believed that the judge was corrupt. They might find some "proof" showing the judge was a defense attorney 20 years ago or was appointed by a Republican or a Democratic governor. They are positive the defense counsel is a liar and a cheat. But you must also realize that there is a potential you will be thrown into this cauldron of suspicion. The clients might

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believe that you seemed to soften when facing opposing counsel or you wouldn't present key evidence that would win the case. They question why you would take such action if you hadn't been paid off as well. In my experience, covering far more years than I want to admit, I have never been able to find proof of such wrongdoing.

Understanding the case

Clients frequently ask me why an attorney refused to present evidence that they handed to their attorney. They are sure that if the jury had heard that evidence, their case would have been won. They certainly understand the concept of proving a case, but they rarely have a grasp of the rules of evidence. They may have heard about hearsay from the TV or movies, but they don't know about relevance, authentication of documents, foundation, custodian of records, and a host of other objections to evidence. They just know you didn't even ask the witness that all-important question.

While an attorney may not be required to give the client a mini-course on the law of negligence, I think it is important to explain not only how you are going to present the case but also inform the client of the obstacles to success and what the defendants will say about them.

Clients feel left out

Many of us have attended a number of mediations. We know the drill and what is expected of us. Mediation is not a subject that a layperson hears much about. It doesn't make for a sexy movie or a television show. Most of us experience an initial joint meeting followed by a private caucus while a mediator runs back and forth between the separate conference rooms. Clients may not understand the mediation process, and it is your job to let them know what to expect.

I recently attended a mediation where the plaintiffs' attorneys spent much of the time in a conference with the mediator. The clients later expressed the feeling that they had been left out and wondered why they couldn't be included in those meetings. They believed the attorneys were talking behind their backs. Since they didn't know who was in what room, they believed the mediator was spending more time with the defense. If they heard laughter from the room filled with defense attorneys and adjusters, they were sure the defendants were laughing at their settlement demands.

The same applies to trial preparation. It is the clients' case, and yet we so often push them aside while we pore over medical records and accounting statements. We try to cram, as if we were taking an exam, forgetting the clients need to be part of the process, to prepare them for their day in court and to work through some of the negative feelings they have about their losses.

Demands on clients

Some attorneys are just too busy or perhaps they are spread too thin financially. Even so, I question the wisdom of having your clients run around and perform errands to prepare the case for trial. The clients might explain that they are simply trying to avoid expending costs. The usual response is that the attorney needed money for costs, but rather than paying for costs, the clients volunteered to perform some of that work. I wonder if the clients don't somehow lose respect for an attorney who asks them to perform tasks that they deem part of the attorney's job.

It also increases the risk of error if the clients don't fully understand the task given to them. While you might ask the clients to look at medical records to help construct a history of the case, don't expect your clients to be medical doctors who can interpret every squiggle or notation. And don't expect the clients to know what to do when the clerk rejects a document for filing because you have failed to serve the Attorney General or filled in the proof of service. Just as a physician wouldn't have a patient perform the duties of a nurse, you should avoid having your clients perform services that should be done by an attorney service or paralegal, even if it saves a buck.

Some clients feel their attorneys don't care

Now here is a subject I could go on and on about. By the time the client comes to me, I hope they have had their "day in court" and the judge or jury has simply made an error that can be corrected on appeal. They want a fair shot at justice. That means being able to tell their story. At times, attorneys have reached a breaking point with the client, especially those doing tons of Internet research and those trying to second-guess everything the attorney does. No one wants a client who is constantly whispering tips to an attorney during trial or writes little notes on post-it papers.

Many clients can live with a loss if the jury can hear the story of what happened to them. The same principle applies to the attorney. Clients want to feel the attorney is taking their case partially because he or she really, really cares about seeking justice for them. They don't want to believe the attorney is only taking the case just for the money.

If you want the clients to feel you care about them and their case, that means showing you care. Part of that occurs when you listen – and the clients see that you are listening – to their story. And not just the facts of the case. There is always a back story, for both the plaintiff and the defense. Caring means going beyond the case and finding out what brought them to the scene of the incident. If the clients feel they are being heard and cared about, they will understand that you are trying to do your best for them.

Conclusion

By getting the clients involved at the earliest stages of the litigation and making them a part of that trial preparation, the clients would get an idea of how much the attorney cares and what goes into preparing for trial. That preparation would also give them a sense of what

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proof was admissible and what objections might be sustained.

At the end of the case, the clients should be proud of the work done by their attorneys and honestly feel the jury heard their case, so that any decision was either part of the risk of trial or an error by the court that could be remedied by an appeal. In those cases, they would have nothing but good things to say about their attorney. That would be a fine result, in my opinion.

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