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# Dealing with difficult clients

*The following is excerpted from a paper "Dealing with the difficult client" prepared by Toronto lawyer Carole Curtis, B.A., LL.B.*

*The full text of this paper, as well as a copy of the **Client Billing and Administrative Information** documents used in Ms. Curtis's law practice are available on the practicePRO Web site [www.practicepro.ca/difficultclients](http://www.practicepro.ca/difficultclients).*

## How to deal with the difficult client during the retainer: Five tips to stay sane and stay in practice

### 1. Understand your role

Your role as lawyer is usually pretty straightforward, but may appear to be less clear with a difficult client. Your role is to analyze a given situation and offer a solution to the problem presented, or a means of achieving the goal the client has presented. Sometimes,

there are several possible solutions or means, all of which should be offered to the client. Don't forget that "do nothing" is always a possible solution (although that solution may have outcomes that are unacceptable to the client). The lawyer's role then is to advise on the consequences of the different courses

of action. It is the client's job to make decisions about which course of action to follow, not the lawyer's. After all, it is the client's life, or the client's business, or the client's estate, or the client's litigation.

Some categories of difficult clients (dependant clients, for example) are often totally unwilling to make decisions about their legal issues and want the lawyer to do that. **DO NOT DO IT.** Let some other influential person in their life help the client with the decision. Your job is to help the client understand the choices.

## 2. Protect yourself throughout

Document everything you possibly can, including telephone calls, voice mail messages and e-mail messages. The verb "document" means "to record in a document; to provide with citations or references to support statements made".<sup>1</sup> Confirm the client's instructions to you in writing, and confirm your instructions to the client in writing. It is also necessary to include, in writing, the possible consequences of various courses of action the client may be contemplating.

If you deal with this client or their work electronically, save messages and instructions in your usual way as part of the permanent record of the file (which may be electronic or on paper). The difficult client has a way of turning on the lawyer more often and with more damaging consequences than other clients.

Documenting (in this context) means recording sufficient details to assist you in a future disagreement. The record you make is not of any use if there are insufficient details to assist you. This means recording at least the following:

- the client's name,
- the file name,
- who the contact was with,
- the date of the contact,
- the nature of the contact (telephone call, meeting, voice mail, e-mail, etc.),
- how long the contact took,
- the details of the contact (who said what, including what the lawyer said), and
- any instructions given (by the client or by the lawyer) during the contact.

Practice management software programs can make this task less cumbersome and more reliable than scraps of paper the lawyer scribbles on.

It may also be wise to discuss the advice you give this client with a colleague, including discussing the fears you have about the client.

In notes of meetings or conversations with the client, be sure to record the information and advice you gave the client, not only the information the client gave you. Where there is a dispute between lawyer and client, this area may, in fact, be the biggest area of disagreement, and is also among the least documented. In litigation between the lawyer and the client, where there is disagreement about the information provided or the legal advice given to the client and that advice is not documented, courts have often preferred the evidence of the client on this issue.

Practice management software is undoubtedly the most powerful tool for keeping track of all the work that has to be done on a legal matter. The two most widely used practice management products – Amicus Attorney ([www.amicusattorney.com](http://www.amicusattorney.com)) and TimeMatters ([www.timematters.com](http://www.timematters.com)) – are powerful law-office specific tools that allow you to collect and organize information around a single matter. These "practice management systems" contain, in one database, almost all the information you need to handle files and run a law practice. They provide functionality that was often found in separate, software programs, including time and billing, accounting, automated document generation, document management. When used properly, a practice management software unifies all the data about a client, potential client or matter into a single point of reference. You can instantly and easily see, in one place, every letter, e-mail, appointment, to do and so on.

– Dan Pinnington, Director, practicePRO

## 3. Be calm, be patient, be clear

Do not let the difficult client turn you into the difficult lawyer, or the unhappy lawyer, or the depressed lawyer (or worse, the yelling lawyer, the drinking lawyer or the swearing lawyer). It will require more patience than usual to deal with this client. If you find you are becoming the difficult lawyer, perhaps it is time to transfer the file to another lawyer.

Be explicit, and be very clear with the client, about everything. The more information given to the client in writing, the less likely there will be misunderstandings. It is also advisable to give the client this information early on in the retainer. Included are examples of information given to clients early on, to help avoid conflict in the retainer (see schedules attached, Administrative Information for New Clients and Billing information for New Clients, which clients are asked to read in the reception area before they meet with lawyers in this law firm).

Be clear with the client about the expectations you have of the client regarding the client's treatment of you and treatment of your staff.

Be sure the client understands whom to deal with on which issues (for example, who to call to get certain information, when they need to speak to the lawyer, when they can deal with staff).

<sup>1</sup> Katherine Barber, ed., *The Canadian Oxford Dictionary*, Toronto: Oxford University Press, 1998, p. 409.

Many difficult clients want to deal only with lawyers, which is expensive, not very efficient and not often necessary (see Managing Expectations, below).

#### 4. Include your staff in the plan for the client

Make sure the staff understands the risks of acting for a difficult client, so they can behave in ways that minimize those risks. Usually, the staff will easily be able to identify the difficult client. The staff may have identified this client as a difficult client before the lawyer. Make sure the staff is dealing with this client the same way that the lawyer is, especially in terms of documenting contacts, instructions or information.

Also, difficult clients are often much more difficult with the staff than they are with the lawyers. Trust your staff and believe them when they describe the client's behaviour. Deal directly and promptly with the client about bad or inappropriate treatment of the staff, to ensure that the client understands what the staff's role is in their retainer, and more importantly, to ensure that the behaviour is not repeated. Never let the difficult client treat your staff poorly or abusively. No client is more important than your staff. Institute a zero tolerance policy on abusive behaviour towards staff.

#### 5. The lawyer's job is managing expectations

Often clients are difficult for lawyers to deal with, at least in part, because they have unrealistic expectations about the services you will provide, or the outcomes you can achieve for them. Some clients' expectations or goals are totally outside the realm of what legal services could ever achieve. It is important to identify, as early as possible, what the client's expectations are in retaining a lawyer to deal with this particular issue. Consider asking the client to reduce their expectations to writing, or at least, have a frank, early discussion with the client about their expectations.

Clients' unrealistic expectations take many forms, but fall into the following general categories:

- expectations about service;
- expectations about time to conclude;
- expectations about result;
- expectations about cost.

Many difficult clients have very high service expectations. If the client has service expectations which are impossible to meet (e.g., phone calls always returned by the lawyer within 15 minutes, or performing all of the work for free) be clear from the outset that you cannot provide that level of service or that kind of service, and that perhaps the client should find a lawyer who can (good luck to them). If the client has service expectations which are unrealistic, or very expensive (dealing only with the lawyer, or

## Dealing with the difficult client: Topics covered

Other topics covered in this paper and available in full on the practicePRO Web site at [www.practicepro.ca/difficultclients](http://www.practicepro.ca/difficultclients) are:

- Why should the lawyer be concerned about the difficult client?
- The basic three steps of your involvement with the difficult client:
  - a. Whether or not to act for the difficult client
  - b. How to deal with the difficult client during the retainer (this section is reproduced in its entirety in this issue of LAWPRO Magazine)
  - c. Know when to fold – Ending your relationship with the difficult client
- Categories of difficult clients
  - a. Angry/hostile
  - b. Vengeful/with a mission
  - c. Over-involved/obsessive
  - d. Dependant
  - e. Secretive/deceitful/dishonest
  - f. Depressed
  - g. Mentally ill
  - h. The difficult client with the difficult case
  - i. The client who is unwilling to accept/follow/believe any of the lawyer's advice

having all work done only by the most senior lawyer) be clear with the client as to whether or not you can meet that expectation, or whether another kind of service will be provided. It is especially important to bill clients with high service expectations frequently and regularly, so they can understand the cost of those expectations.

Clients who are unlikely to be successful in achieving their goals need to be told that clearly and explicitly from the start of the retainer, or at the earliest possible moment in the retainer. It is far more important to be honest with the client who cannot achieve their goal, than it is with the client who can.

Clients are far more interested in honest and clear information about the cost of legal services than at any time in the past. The introduction of technology to the billing process has also changed clients' expectations and their tolerance. The difficult client is also a client who is likely to be unhappy about fees. Again, it is advantageous to ensure this client is billed frequently and regularly, and is provided with as much detail as possible.