

Client Interviewing Techniques
An excerpt from Paralegal’s Litigation Handbook
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I. Introduction

This chapter¹ will cover legal interviewing techniques for interviewing clients. Chapter 7 covers interviewing methods for investigations. The purpose of this chapter is to help you clarify your role in conducting the client interview. It includes guidelines, forms, and checklists for conducting the interview and documenting it, and procedures for following up the interview.

The client interview usually begins with the attorney, who then turns the client over to the paralegal for more comprehensive fact gathering. This initial interview, called the intake interview is followed by a follow-up interview. The purpose of the intake interview is to identify the client's problem and gather sufficient information to enable the attorney to seek a solution on behalf of the client. The follow-up interview is intended to make sure certain things have been done or to decide another way or a further way to proceed in the matter.

Legal interviewing is a learned skill. You must make the client feel comfortable enough to reveal very personal information to a stranger-you. This requires an ability to build an atmosphere of trust and rapport. You must know what questions to ask as the interview proceeds and how to ask them properly.

II. Preparing for the Client Interview

Preparing for the interview is as important as the interview itself. It is imperative that you have all the information and documents you need at hand and that you have carefully thought through the interview in advance. If you are unprepared, the client will pick up your uneasiness, and the tone of the interview will not be conducive to your purpose.

A. Setting the Appointment

The first step, of course, is to set up the date, time, and location for the interview. Most likely the interview will be in the firm's offices, either in your office or the conference room, depending upon the preference of the firm and your comfort zone. If the interview is to be conducted in the firm's conference room, make sure that you schedule the conference for that time and that the receptionist is aware of it.

B. Confirming the Appointment and Requesting Information from Client

Once the date, time, and location of the interview are set, write the client a letter confirming these details. Make sure the appointment is entered on your personal calendar, the firm calendar, or tickler system. After you review the file, include in your letter any information or documents that you want the client to bring to the appointment. The best way to do this is to enclose a list with your interview confirmation letter. Exhibit 5.1 presents lists of items types of litigation matters. These lists are not all-inclusive, nor are all the items necessary for all cases, but they give you a starting point for developing your own lists.

C. Reviewing the File and Other Documents

Gather all the files and other documents and information on the case prior to the date of the interview. Organize them and check to make sure all the information is there. Review the information to spot omissions, formulate questions in advance, check inconsistencies, and make lists to prepare for the interview. Make sure that your attorney takes the proper time to brief you on important items to cover during the interview.

D. Preparing the Interview Location

The interview area should be comfortable, clean, free of clutter, and non-distracting. No files pertaining to other clients should be in view. If one client sees another client's file, it is a breach of client confidentiality. Interruptions should be prevented by instructing that your calls be held. Picking up the phone will diminish the importance of the interview in the client's eyes. Close the door, and give the client your full attention.

Discuss with your attorney whether you should tape record an interview. Under no circumstances should you ever make a tape recording of the client without his or her knowledge. If it is the practice of your attorney to have the interview recorded, get the client's permission, and then put the tape recorder out of sight so the client is not so conscious of it that he or she is made nervous. Tell the client what the purpose of the recording is and that it will be used for that purpose only unless you obtain his or her consent to do otherwise.

E. Interview Forms and Other Forms

Most likely, you will develop your own set of interview forms for gathering information as you gain experience. Depending upon the type of practice in which your firm engages, you may have specialized forms such as personal injury or automobile negligence, or medical malpractice, workers' compensation, corporate information, and others. Included in this chapter are some forms that you may use as a skeletal form to gear to your firm's needs. Remember that forms should only be used as a guide for the interview, not a control of the interview. For example, when you ask one question, the response may prompt other questions that are not on the form.

Also, keep in mind that you or the attorney may need to provide some of the information called for on the form, such as, for example, any statute of limitations information.

Hand in hand with conducting the interview is the art of listening. Try not to be so intent on filling out the form and going through the motions that you forget to listen to the client's answers. The answers the client gives you should serve as much as a guide to your next question as the form, if not more so.

F. Preparing an Instructional Folder for the Client

Consider various information, forms, checklists, and other documents that might be helpful to the client. Get your attorney's approval to include them in a folder that you will give to the client. For example, you might include a checklist on how to have your deposition taken, or a blank diagram for the client to diagram the accident.

G. Getting Forms Ready for the Client's Signature

In preparing for the client interview, you should gather any forms that the client may need to sign so that the case can proceed. The Consent to Release Medical Information, Form 5.1, may not be honored by hospitals or doctors if it is more than 30 days old. It might be best not to have the client complete the date on the form in the event that there may be additional medical reports for future treatments. Other commonly needed forms are the Consent to Release Military and Personnel Information (Form 5.2), consent to Release Federal and State Income

III. Handling the Client Interview

One of the most difficult areas in which to define the paralegal's responsibilities is in the paralegal's relationship with a client. Most attorneys take the position that the paralegal may deal directly with the client as long as the attorney is the primary contact. Some give paralegals great latitude in dealing with and in advising clients, and it is the paralegal's responsibility not to overstep his or her abilities and training. Caution in this delicate area cannot be overemphasized. Always check with your attorney should you have any doubt about the parameters within which you may operate. There are ethical considerations in addition to the legal limitations on a non-lawyer giving legal advice to a client. Along with the attorney, the paralegal has a responsibility to protect the legal welfare of the client:

A paralegal shall maintain the highest standards of ethical conduct.

Discussion: It is the paralegal's responsibility to avoid unethical conduct. Ethical principals are inspirational in character and embody the fundamental rules of conduct by which every paralegal

A. Introducing Yourself to the Client

You and your attorney should realize the value of and the necessity for your proper introduction to the client. The following method of introducing the paralegal to the client has been used by numerous attorneys. However, you should discuss how to handle your introduction with your attorney and work out an arrangement comfortable to both of you

Your attorney brings you into his office at one of the initial interviews with the client and introduces you to the client. He tells the client that you are a paralegal (or legal assistant), explains what you do, and states that you will be working closely with the client and with himself (the attorney). He tells the client to feel free to call you should the client have questions or problems, or in the event that the attorney is unavailable.

The attorney explains that you will be conducting an intake interview, and that the client will be billed at a lower rate for your services, specifying what your hourly billing rate will be. By telling the client how you will save the client legal fees, your attorney will make the client more receptive to your services and will help explain why you are involved in the legal handling of the case.

B. Establishing Rapport and Building Trust

In all communications that you have with the client and in all the work that you do on his behalf, you should always maintain the highest ethical standards of your profession. Exhibit a professional manner at all times, whether on the telephone or in person, and you will gain his confidence and respect. In addition, it is important that the client have confidence in you and know that you are dependable, trustworthy, and loyal. Remember, he is entrusting you with his personal legal problems. The attorney is bound to exercise reasonable care to prevent her employees, associates, and others whose services she uses from disclosing or using confidences or secrets of a client. There should be the same bond of trust between you and the client as between the attorney and the client. Always preserve and respect all client confidences.

Rapport and trust are also important to client cooperation. To do an efficient and timely job, it is essential that you have this cooperation. For one thing, you will have less difficulty in obtaining necessary information and documents if you have the client's cooperation.

The following pointers should assist you in obtaining the cooperation of the client-or a witness in an interview situation:

- * 1. Be friendly, courteous, and polite at all times.

- * 2. Practice the art of conversation.

- * Do not try to impress the client or witness with big words and stuffy conversation. The client or witness will be more impressed if you are at ease and conduct yourself in a businesslike manner. Many times the client or witness will look to you to interpret in layman's language what the lawyer has told him. He or she will be relieved when you explain seemingly complicated legal points in simplified terms. If you act confident, as if you know what you are doing, the client or witness will feel comfortable with you and will likewise be confident in your abilities. Consequently, she will be more apt to cooperate with you and relate confidences to you. This confidential relationship with the client or witness is essential for you to perform your job thoroughly, expeditiously, and efficiently. If the client or witness is inclined to reveal personal matters to you, then she will spend less time with your attorney, and you will succeed in saving her legal fees and in saving your attorney valuable time. In addition, you will be instrumental in your attorney having a satisfied client or witness. If you maintain a positive and cooperative attitude toward the client or witness, you will most likely engender the same response from him. By offering assistance to the client or witness in every way you can, you will make him realize

your value to him; as a result, he will be more cooperative with you. If you offer guidance-and consolation-when necessary, he will tend to rely upon you more. His satisfaction with you will become evident to your attorney. Your attorney wants to make the client or witness happy, and he will be extremely pleased if you help in that endeavor.

- * 3. Exude confidence.

- * 4. Maintain a good attitude.

Keep a positive attitude toward the client or witness. Beware of any personal negative feelings affecting your manner. Always call the client or witness by his or her surname, e.g., Mr. Arnold or Ms. Arnold, unless otherwise requested. In your communications with the client or witness, remember to spend a little time with the witness conversing about subjects other than business to establish a friendly rapport. In other words, begin your conversations with common pleasantries to break the ice.

C. Procedures for Conducting the Interview

Following are some guidelines for conducting the initial interview with the client or witness:

- * 1. Explain that the purpose of your interview is to record information and facts.
- * 2. Let the client or witness tell you the facts in her own words.
- * 3. Extract the pertinent facts and information.
- * 4. Ask specific questions regarding the information she gives you.
- * 5. Answer basic questions without giving advice to the client or witness.
- * 6. Take meticulous notes.
- * 7. Have the client or witness sign the necessary authorizations that the attorney previously reviewed.
- * 8. Obtain all necessary documents and other tangible evidence the client or witness has in her possession.
- * 9. Arrange for follow-up information from the client or witness, if necessary.

The use of forms to be used as checklists will ensure that you obtain all the necessary information from the client or witness during the interview. You may develop your own forms or checklists or personalize any of the ones in this book or other books. Form 5.6 serves as a general checklist for any client or witness interview. Use it as a basis for any form or checklist that you develop.

The form for the initial interview in Form 5.7 is primarily for personal injury cases but may be adapted for medical malpractice cases. You may be able to send this questionnaire to the client ahead of time and have him bring it back into the office for review by you or your attorney. Form 5.8 serves as a checklist for automobile accident cases.

D. Types of Interview Questions

One of your tasks in conducting the interview is to determine what types of questions to ask-and that will depend on the information you wish to elicit. A big part of the interview is to separate facts from beliefs. For example, if the witness says, "It happened around 12:15 P.M.," the interviewer should ask, "How do you know it happened around 12:15 P.M.?" to make sure that you are getting a solid fact, not a guess or belief. In general, questions can be classified in terms of the breadth of information they seek to elicit.³ Asking a question the right way can facilitate getting the proper answer. Basically, there are four categories of questions: open-ended, leading, yes/no, and narrow.⁴

1. Open-ended Questions

Open-ended questions give the client or witness the latitude to control the subject matter. For example:

- * What can we help you with?
- * What have you been having problems with?

This type of question lets the client or witness tell his story in his own way. Usually, the interviewer loses control, and the client or witness tends to ramble. Some people will not talk at all when asked this question. In general, the use of the open-ended question is limited. There are times, however, when it can be very useful, as is illustrated later in this chapter under "Learning from Interview Models."

2. Leading Questions

Leading questions tend to call for a direct-possibly a yes or no-response, often suggesting the desired answer. For example:

- * You didn't have your seat belt on, did you?
- * You were going 65 mph, weren't you?

This type of question does not test the validity of the response and may distort the response. On the other hand, it tends to get an answer from the client or witness that she may not voluntarily give.

3. Yes/No Questions

Yes/no questions definitely call for a simple yes or no answer. For example:

- * Were you driving the car?
- * Was your driver's license valid at the time of the accident?

4. Narrow Questions

Leading questions and yes/no questions are two types of narrow questions, which are the opposite of open-ended questions. They not only select the subject matter, but also can select certain aspects of the subject matter to be discussed. For example:

- * Where was the stop sign located on Elm Street?
- * Who was in the car at the time of the accident?

You should vary your questions to include all types. Determining the type of question that will elicit the desired information is a skill developed over time and through trial and error. Of course, the client or witness's personality will guide you as well.

E. Importance of Listening

Listening well is just as important as questioning well. First, by listening to the client or witness, you establish a good rapport. Everyone likes to talk, and client or witness will probably be eager to talk about the problem. He will appreciate your attentive listening. In addition, by controlled listening, you will obtain a lot of information. Controlled listening is knowing when to interject a question and when to steer the client or witness in another direction. He will likely ramble at times and you must redirect him to the point of the interview.

When you encourage the client or witness to keep talking by your silence, or by an expression indicating that she should continue, you are practicing passive listening. When you reflect upon what the client or witness is saying by a comment or a repetition of something she said, you are practicing active listening, meaning that you are participating openly in the listening process. You should probably practice active listening more often than passive. In addition, you may summarize what the client or witness has said to let her know that you understand and to give her the opportunity to correct any misunderstandings on your part.

F. Learning from Interview Models

Here is a three-stage model for conducting a client or witness interview:⁵

Before you enter any interview, it is imperative that you be properly briefed by your attorney. The paralegal-client dialogue typically begins with your having a preliminary understanding of the client's problem and having a grasp on what the salient points are in the attorney's eyes. Your goal is to assist your attorney in gathering the facts necessary so that your attorney can properly represent the client. When you understand what your attorney needs from the client, you can proceed to gather information.

1. A Three-Stage Interview

There are undoubtedly several ways of approaching the task of ascertaining the facts relating to the client's problem and tentative or possible legal position. This general approach should be useful. Under this approach, the process of ascertaining the facts surrounding the client's problem and legal position is divided into three stages: (1) Preliminary Factual Identification, (2) Chronological Factual Overview and (3) Factual Development and Verification.

A case may require one or more interviews for you to complete these three stages. It is important to gauge the time spent on the interview and to break into separate sessions. The client is usually feeling emotional during the first interview, thinking that he or she has been wronged and is seeking justice. Fatigue in you, as the intent listener, and on the part of the client, as he unravels emotionally, will make a long interview lose its effect. Consider having a second and perhaps a third interview before advancing to the Chronological and Factual Development and Verifications Stages.

- a. Preliminary Factual Identification Stage
- b. Chronological Factual Overview Stage

The purposes of the Overview and the restrictions against detailed probing, this form of question seems quite appropriate as the chief form of interrogatory. The question attempts to keep the client focused along a chronological track, and may minimize the risks of interrupting normal paths of association. This form of questioning gives the client an opportunity to provide clues that might be lost if the paralegal were to try to discover all significant facts through a series of narrowly focused questions. As will be repeatedly noted in this chapter, the paralegal will not have the capacity to develop all the facts concerning a particular transaction by sitting back and thinking about how such an event might have occurred, and then asking did this, that, and the next thing happen. The objective of the Factual Development and Verification Stage is to conduct an investigation that will reveal what facts will be necessary to be supported or verified through investigation and evidence. To accomplish this objective, the paralegal should undertake at least two tasks. There should be an endeavor to determine (1) what facts need to be ascertained, and (2) which of the possibly applicable facts must be further explored or investigated. Why the distinction between possibly ascertainable facts and the facts that need further study? One of the major defects that occur in legal interviewing by paralegals is distinguishing solid facts from weaker facts. The paralegal recognizes facts that suggest the possible applicability to the case, investigates these, and concludes the inquiry. The paralegal fails to look into other facts other than those that immediately "leap to mind." If the paralegal can learn to think of the Factual Development and Verification Stage as requiring, first of all, an effort to see how many facts might be applicable before trying to determine which are viable. Line up all points and let the attorney make the final judgment.

- c. Factual Development and Verification Stage

Determining what facts may possibly be applicable requires a very specific focus. At the

conclusion of the Overview stage, you must consciously ask, “Given these facts and what I know about the attorney’s desires and concerns, what other facts, regardless of how weak or strong they may now appear, might my attorney need to properly represent the client? Certain facts and information will perhaps be obvious, but your mental effort must be geared toward the development of the maximum number of possibilities. Critical to the success of this endeavor will be your knowledge of the substantive theories your attorney has determined may need support; the more substantive knowledge that you have in your head; the more successful you will be in executing this task.

In [this] stage, the paralegal asks the client to provide a general description of at least the following: (1) the underlying transaction or incident that caused the problem, and (2) the facts surrounding the transaction or incident. During this stage, you should encourage the client to describe the foregoing matters in whatever way seems comfortable. You should refrain from imposing any particular order on the client’s presentation and allow the client to proceed in a free-flowing narrative. You should ask only for a general description and refrain from asking for any details or interrupting with questions. During [this] stage, encourage the client to provide a step-by-step chronological narrative of the past transaction or incident which underlies the client’s problem. Ask the client to proceed from the point where the client believes the problem began, and follow through, step-by-step, up to the present. During the Overview, you should not attempt to obtain a detailed elaboration of the various points mentioned by the client during the chronological narration.

d. Other Considerations

What about the situation where you, for one reason or another, have little or no substantive knowledge of the legal theories that are potentially relevant and what facts are needed to support it? (By my definition, you have substantive knowledge of a legal theory when you have general familiarity with the basic substantive elements of the cause of action or defense involved as set forth by your attorney.) Where you lack adequate substantive knowledge the available choices seem to be: (1) adjourn the meeting and ask your attorney for guidance; or (2) go back through the Overview to learn more detail about the story in general since the additional detail might aid subsequent investigation. What must be noted, however, is that if the client appears to need immediate help, the latter choice will probably be called for? Keep the client’s interests foremost in your mind and get guidance from your attorney when necessary.

This model is an example, but not a hard and fast way in which you must operate. Through time you will develop your own style of interviewing, and you should.

G. Ending the Interview

You need to be aware of the time so that you end the interview within the time constraints you and the clients have in your schedule. If you begin the interview by telling the client or witness how much time you will spend with him, it will be easier to culminate the interview when

necessary.

A good way to end the interview is to summarize what will be done next and what needs to be done. It is a good time to present documents that need to be completed or forms to be signed. Make sure that the client or witness understands completely what he is supposed to do next and also when you or your attorney will be back in touch with him. Letting the client know what steps you and your attorney will take next will ease the client's mind and prevent an unnecessary call from him.

Walk the client or witness to the door, shake her hand, give her your business card, and explain to her that you may have to call her again. (Even though you think that you have all the information, often you will find that you have to call her again and ask an additional question or clarify a point.) Exhibit 5.2 is a checklist of the basic instructions you might give a client in a personal injury case.

IV. Documenting the Interview

Documenting the interview is usually accomplished by preparing an intake memo, an end product of the interview. The intake memo is comprised of the notes taken during the interview. It serves several purposes:

(1) It documents the interview; and. 2) It prevents any future misunderstanding about the information

* Avoid speaking to anyone about the accident unless authorized by your attorney. (This includes the client's own insurance company unless otherwise directed by your attorney.)

* Send to your attorney copies of all bills incurred as a result of the accident. Include bills for property damage such as, vehicle repair or vehicle rental expenses, personal property that was in the vehicle at the time of the accident and was damaged. In addition, include medical and hospital expenses, pharmaceutical expenses, and medical supplies such as, crutches, braces, and other necessary items.

Portions of this model were taken from Binder and Price Legal Interviewing and Counseling, Ch. 5.