

ROY M. SOBELSON, INTERVIEWING CLIENTS ETHICALLY

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There are two common myths about interviewing. One is that everyone can do it and that training is unnecessary. This myth is encouraged by traditional legal training which makes no attempt to teach the three skills most often used in practice: interviewing, counseling, and negotiating. The second myth is that people are born as good or bad interviewers and that training is a waste of time.

My own experience tells me that neither one of these myths is true. You can and should learn proper interviewing techniques. Since it's never too late to learn, here are some questions that may prove helpful in evaluating your own interviewing techniques. Every "no" answer" points to a potential problem.

Did I "Break the Ice" First?

Studies indicate that people may fear going to lawyers as much as opposing them. Lawyers need to "acknowledge" the fear by making explicit attempts to put people at ease by "reducing the strangeness" of the experience.

Did I Explain the Interview Process to the Client Before We Got Started?

Was there really a process at all? Once I explained the process, did I live up to the "contract" to conduct the interview in the manner promised? If not, did I acknowledge the reason for varying from my stated format?

Suggested Five "Stages" in the Process

My interviews are composed of the following five "stages":

-Icebreaker. Noncontroversial introductions, including an introduction to the process (i.e., methods, time limits, follow ups, etc). This is also a good place to initiate the "conflicts screening process." You must get enough information to decide whether it is even appropriate to continue;

-*Initial problem identification.* Sometimes known as the "gush," this is where the client first gets to talk openly. In addition to identifying the "problem," the lawyer should ask the client about expectations and goals. Try to limit note taking to "trigger notes" (i.e., notes that will trigger later questioning);

-*Chronological overview.* This is the stage where the client retells the story, with an emphasis on chronological order. It's still too early to ask too many questions. Whatever questions are asked should be for clarification only;

–*Verification*. The aim here is to support potential solutions to the problem by filling in gaps. This is the point when you start to “funnel” your questions, using “secondary” or “follow up” questions;

–*Closure*. Where do we go from here? The most important question to deal with is whether you now have an attorney-client relationship.

Did I Explain Confidentiality?

There is little, if any, evidence that confidentiality plays a major role in the attorney-client relationship. Nevertheless, you must make the client understand that a relationship of trust is partly supported by the promise of confidentiality.

Did I Give the Client My Undivided Attention?

Think about possible distractions here. They may range from the papers on the desk to the ringing telephone to a client’s peculiar habits, looks, speech, etc. Notes are often nothing more than a distracting crutch. Do you listen more than you talk?

Did I Control the Interview Without Being “Controlling”?

Lawyers often approach clients as if they were “cases” that can be handled by using a checklist, whether that list is in the lawyer’s head or on paper. Consider who determined what subjects were covered in the interview and at what time.

Did I Ask Mostly Open-Ended Questions Before Closed-End Questions?

Open-ended questions and narrative answers elicit more information than closed-ended or directed questions and answers. Although open-ended questions are generally better at getting the conversation started, they may not always be preferable. Varying the types of questions is helpful.

Did I Periodically Check My Understanding with the Client?

Summaries are valuable. They tend to: show the client you are listening; keep the interview on track; aid memory; and clarify things for the speaker and the listener.

Did I Avoid Concluding Too Early in the Interview What the Problem Was?

The danger of the “premature diagnosis” is a very real one. It can mislead and stifle the process.

Did I Find Out What the Client’s Real Objective Was?

Find out exactly what it is that the client wants. Lawyers think in terms of legal solutions and approach problems accordingly. The fact that a client has sought a lawyer's help does not mean that the best solution is a legal one.

Did the Client and I Nonjudgmentally Explore Alternative Solutions?

Did I recognize the existence of non-legal problems or solutions? Brainstorming with the client is essential.

Did I Communicate Empathy and Understanding?

The evidence is overwhelming that clients are more likely to be complete, accurate, and honest if they believe the listener is empathic.

Did I Effectively Handle Questions I Was Unable To Answer Immediately?

Did I say "I don't know" when I didn't know? Did I say "no" instead of "maybe" when the answer should have been "no"? Did I make sure that important questions or concerns were adequately addressed?

Did I "Hear" Things the Client Didn't Say?

Did I pay attention to "when" and "how" things were said? Pay particularly close attention to: word emphasis; unresponsiveness; adjectives; and gestures.

Did I Acknowledge and Respect My Client's Feelings?

Although you are not expected to be a therapist, remember that feelings are facts. Even if you can't make the problems go away, you can at least acknowledge them. This will help in your honest evaluation of your client's strengths and weaknesses, as well as showing the client that her feelings "count." Try to focus on "what" questions instead of "why" questions.

Did I Leave the Situation Where Fairness and Honesty Demand That It Be Left?

Sometimes the hardest thing to do is to say "no." Considerations of fairness and honesty, as well as potential liability, demand that you give clients the bad news when it is warranted.

Did I Deal With the "Hard Stuff" Myself?

Some lawyers don't like to talk about money with their clients, leaving fee agreements, etc. up to their secretaries, paralegals, assistants, or (even worse) the mail!

Did I Pay Attention to the “Environmental” Factors?

These factors include proximity, lighting, and seating. They are very powerful in communicating messages about importance, sharing of responsibilities, etc. Are they communicating the messages you want them to communicate?

Do My Client and I Have a Relationship Based on Mutual Respect, Trust, and Understanding?

Keep in mind that although the client is the boss and you are the employee, this relationship is unique and requires open communication.

Does My Client Know What His “Role” Is?

Clients should not be treated as passive recipients of services. Give them a stake in the enterprise and they will be more likely to help you. They'll also be more likely to accept responsibility if things don't turn out exactly as planned.