

INTERVIEWING THE CLIENT (A CLERK'S REFERENCE GUIDE)

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"In many ways for lawyers the initial client interview is like a first date. You do not know each other that well and hope to get better acquainted. There is often a bit of tension or wariness. There are lots of unanswered (and unasked) questions, and it may have its awkward moments. But both of you hold out the hope that this may turn into a long term, mutually beneficial relationship."

Jim Calloway, Attorney, Oklahoma, US- May 11, 2005

In January of 2009, I presented a paper at the OTLA Law Clerk's Roundtable held at the OTLA offices; my topic at that time was "Preparation for Trial". I have been asked to present at the Spring 2011 Conference the topic of "Interviewing the Client". I am of the opinion that interviewing the client is exactly like preparing for trial. I will be borrowing from myself, some of the points made in my January of 2009 paper, in completing this presentation.

Interviewing the Client is a broad topic. There are so many reasons one might interview a client throughout the life of a claim, such as the initial interview, ongoing interviews, witness interview, pre Discovery interview, discipline interview, update interview, trial preparation interview.....and so on. Because my topic is so broad, and I can't possibly touch on every reason to interview a client, I have chosen to discuss what I think is the

most important interview, that being the initial telephone interview followed by the initial in office interview.

Every firm has different styles, and procedures. Some firms do not permit the Law Clerk/Paralegal/Assistant to conduct the initial telephone interview or even participate in the initial client meeting. If, however, the clerk/paralegal/assistant (I am going to call us “Clerks” from now on for simplicity sake) is involved in these two very important aspects of client contact and file management, then this article is for you!

In our practice, we prepare every file, yes, every file, as if it is eventually going to go Trial. Trust me, if you manage your file this way, you will have a lot less work in the long run and you will be prepared! It only takes a couple of extra steps along the way and saves a lot of time later. Treating every file as if it is going to go to Trial does not mean that each file is approached in an adversarial way and that negotiations never take place, all it means is that the “trial prep” – crossing the “T” and dotting the “I” is done sooner rather than later. I think it starts with the very first client contact whether that is by phone or my email or by initial in-person interview. Client interviews are “fact-finding” interviews and preparing for trial, is fine tuning those facts.

When you first meet the client you will form an opinion of the client and thereafter the claim. Often, the theory and foundation of the case is developed at the initial client interview. You will gather information along the way to support your theory and you may even obtain information that will change your theory and your opinion will be re-worked and built upon as the claim progresses.

INITIAL CONTACT – THE POTENTIAL CLIENT AND THE TELEPHONE INTERVIEW

Your first contact from the client likely will be by telephone. If you are fortunate enough to have the client call soon after the accident, your firm will have the opportunity to coordinate and control the case from the very beginning. This is a benefit to any personal injury case because it gives you a tremendous advantage in maximizing the damages. As a litigator, you can help your legal team avoid common pitfalls that occur during a personal injury claim, many of which are caused by the client's own conduct or failure to act.

When you receive the first telephone call, the object is to put the client at ease and elicit confidence in you, the lawyer you report to and as well, your firm, the legal team.

If you and your legal team ask a series of comprehensive questions at the outset, the prospective client will know you and your firm have a grasp of personal injury law and, more importantly, that you are interested in them and in their case. Attached to this paper is a basic client intake questionnaire. Like in an Examination for Discovery, every question that is answered will lead to another question allowing the interview to take on a natural flow. The questions posed to the potential client don't have to be answered in detail but after learning the answers, you will have an initial assessment of the potential client and be able to prepare a comprehensive memo to provide to your reporting lawyer in advance of the initial in office meeting.

You will want to be careful not to conduct too invasive of an initial telephone interview, as the client will eventually be meeting with the lawyer and you do not want the client to have to repeat himself or herself all over again. The more a client is forced to repeat the traumatic event the more traumatized he or she will become. As well, some clients are reluctant to divulge personal information over the phone, and so you will have to feel out the client to determine how much information they are willing to give. So for the initial telephone call, just "get the facts Jack".

During the telephone interview, the following is a brief outline of some of the questions that can be asked of a potential client:-

1. Who referred the client to the firm? This is an important question. The source of referral also will give you some insight into the sincerity of the potential client. You will need to note the claim for any potential referral fee to a lawyer who may have referred the file.

2. What was the date of accident? If the accident happened recently, your firm will be able to control the case from this point forth. If the accident happened quite some time ago or if the limitation period is approaching, be aware that the client might already have compromised his own case.

3. Run a conflict search. This is an absolutely imperative step in any personal injury claim and is required by the LSUC. After obtaining the obvious, the clients name and the name of other potential injured parties, get name of the defendant if available, and place the client on hold and run a quick conflict search.

4. Circumstances of the Accident. If you have established that there is no conflict of interest, you may begin to obtain other information. This is extremely important in determining the liability question. If the client fell down his own set of stairs or drove his automobile off the road into a tree, your lawyer might not want to waste more time discussing the case. If the client is vague or evasive as to how the accident happened, you can be sure that the rest of the case might be quite difficult. Liability for accidents can generally be “felt out” at this point.

5. Where did the accident occur? This question is important because it determines the applicable laws. In the Niagara Region, we live in a border town and we often run into clients that are involved in accidents in New York State. It may not be applicable to the area where you practice, although all border towns (Ottawa for instance) would likely ask this question as a matter of course.

6. What injuries occurred? A basic run down at this point is all that is necessary. You will obtain a great deal of information and insight into the value of a claim by the information provided to you by the client at this stage. Be sure to ask clarifying questions – clients like to dramatize their injuries by using words such as “*permanent nerve damage*” and “*catastrophic injuries*” when in our language what they are saying is “*WAD II*” and “*I have terrible injuries and I have been off work for 2 weeks*”. You can determine if the injuries are serious or if the injuries are likely to progress or have progressed into more serious injuries at this stage by asking about diagnostic testing, MRI’s etc. Try not to get too bogged down in the client’s information at this stage, clients like to talk about their medical problems to anyone that will listen. It is important at this stage to get a basic knowledge of whether or not the client is likely to pass the threshold in a motor vehicle accident but not much more at this point so as not to be on the phone longer than is necessary.

7. What are the client’s current physical complaints? This element also goes to the potential damage question. It would be premature to make a final assessment with this question, but if the injuries have resolved with little difficulty, you know they will not pass the threshold for an MVA client. As for a slip and fall client, you will be able to get a feel for the potential value of the case.

8. Were there any witnesses? This element will help your lawyer take control of an important liability factor. If the accident is serious and there are witnesses to the accident, their information should be obtained and they should be approached as soon as possible, after the initial in office client meeting if you are going to be retained.

9. In an MVA, if the potential client was the operator of the vehicle, obtain the name of the AB insurer. That will let you know two things: a) if he or she has a claim that is not precluded as a result of the mandatory insurance regulations and b) which AB insurer has carriage of the accident benefit claim. This is helpful information as generally you can determine how a claim is likely to proceed depending on the AB

insurer. If the accident happened quite some time ago and there has been no contact with the client's accident benefit carrier, you should question why. Try to figure out if there are any problems with the AB claim – seven times out of ten, that is why a client is calling a lawyer in the first place, because their benefits have been suspended or they feel they are being mistreated by the AB insurer.

10. Has the client had contact with the Defendant's insurance company? Find out if the client has been contacted by the insurer of the at fault party, and if so, the contact information for that person. Instruct the client to not to take any further calls from the adjuster and not to speak to that individual any more even if only to tell the adjuster that he or she has consulted legal counsel. A simple telephone call can turn into an inquisition and the client may divulge more information than he or she means to.

11. Has the client contacted any other lawyers? If the potential client is shopping around, beware. Either the other firms are not interested or the potential client is looking for the answers he or she wants to hear.

What to Tell the Client

After you have received answers to some or all of the questions, you (and your lawyer) will have a pretty good idea as to whether or not the case is worth exploring. If your lawyer believes it's likely your firm will accept the case, set up an appointment and instruct the client on what to do before coming to the office. **Don't delay the first meeting.** Tell the client that the first appointment is extremely important and that it should not be postponed unless the circumstances absolutely require it.

The following list includes instructions your lawyer might ask you to give to the client.

See a doctor. If the client has not yet seen a doctor or visited a medical facility, tell him or her to do so immediately if he or she is in pain or having physical difficulties. It's important that they get in to see their General Practitioner "GP" on a regular basis.

Obtain pictures. Instruct the client to obtain pictures of the vehicle involved or, in a slip/trip and fall, the place of injury or the item that caused the injury if it's a product liability case. If it is winter, and the client called right away – make sure they get pictures of where they fell that ice, snow or other defect.

Obtain witness contact information. Tell the client to bring in the names, addresses and telephone numbers of any witnesses to the accident. The importance of this information must be emphasized to the client.

Don't discuss the case with anyone. Instruct the client not to discuss the case with anyone other than their treating medical personnel and not to give information to anyone. It is no one's business that he or she is consulting legal counsel in this matter. Clients like to tell their problems to anyone that will listen. Encourage them not to do that and not to discuss the matter with anyone outside of their immediate family.

Bring documentation. Instruct the client to bring in any documents relating to his or her claim such as a copy of their own insurance policy (for optional benefits, renewal dates, OPCF44R endorsement, etc.) the police report, AB documents, photos, business cards of treating medical personnel, out of pocket expenses, prescriptions and income tax returns or other lost income documentation readily available at their home.

We are available. Tell the client that while they are waiting to come into the office that you or a member of your team will be available to them at anytime, in the event that they have questions or are contacted by someone related to the case. If they know that you are available to them, they will have confidence in you and your team.

Concern yourself with your recovery. Tell the client his or her primary duty at this time is to be comfortable and to pursue recovery of his or her injuries — the legal details are for your firm to worry about and his or her physical recovery is of the utmost importance.

You have now spent approximately a half hour on the telephone (hopefully not much more than that), and have invested time asking questions and the potential client has invested time answering them, there already is an open line of communication. You have established a bond, between the client and the legal team. This bond will lead the potential client into a sense of commitment and he or she will be unlikely to call another firm.

INITIAL IN OFFICE CLIENT INTERVIEW

Fact-Finding Interview

The day arrives that the client is scheduled to come in and meet with you and your reporting lawyer. She comes armed with a Wal-Mart shopping bag overflowing with paper, pictures, and the shirt she was wearing on the date of the accident, just in case you wanted to know what colour it was. The client is there because she wants to be. That's the first step in establishing the relationship. She is not there because she has to be.

As mentioned above, you have established a bond with the client. The client knows your name and your voice and she has come into the office because she felt confidence in the initial telephone interview. It is important therefore, for the potential client to put a name to a face and have you sit in on the initial interview. This works for many reasons: a) the client feels that he or she is getting the attention of a "team" b) the client feels that the information they have already reported on the telephone is known and understood by at least one person in the interview c) the client will feel less likely to repeat himself or herself to the lawyer d) the client will feel important and that the information they are sharing with you and with the lawyer is important to you.

The initial in office client interview is the easiest and yet the most difficult interview to conduct. It is easy because the client wants to talk to you and knows that you are ready to help with whatever legal problem is involved. It is difficult because clients often think the legal team needs to know everything they know and provide too much information or the wrong kind of information. The client interview is also an important part of establishing or maintaining a good client relationship. It is also a fact-finding interview, although the Client likely does not know the reasons that the questions are being asked of him or her and often may question the reason behind a question.

The supervising lawyer usually conducts the initial client interview; with you, the first line of contact, sitting in. The initial client interview is where the lawyer agrees to represent the client. A Clerk (or Paralegal) attending an initial client interview is often asked to take notes, make copies of documents, and provide the client with any materials the law firm usually distributes to new clients. This is not a trivial task for a Clerk or Paralegal but very important, because this will enable the Clerk to ensure that all the appropriate documents are copied, and distributed.

If the firm does not permit the Clerk or Paralegal to have an active role in the initial client interview, the attendance at the initial interview is still important, as it allows the Clerk to observe the questioning by the lawyer and to form your own opinions as to the potential client's information. This provides information about what facts the lawyer thinks are important and can be useful in guiding subsequent fact-finding interviews. In addition, clients usually provide background information at the initial interview. This background information can be a valuable tool in planning a later investigation and preparing for trial. Information imparted by a client to the legal team at the initial client meeting is most important because it is fresh in the client's mind. The information he

shares with you at that first meeting is almost always the correct information because his evidence or information has not been tainted by time.

When meeting a new client, it is important to make a strong first impression. If all goes well, this interview will establish the foundation for a successful working-relationship with that client. The client will most likely look to the lawyer for legal guidance and direction. If the lawyer is going to convince a client that that he or she is the right person for the job, trustworthiness and knowledge must be demonstrated from the onset.

1. Make the Client Comfortable.

Always start the initial client interview on a friendly note. Engage in small talk. Ask about the client's background, family-life, and children. Many clients have never been to a lawyer before and find the process very intimidating. They are nervous. It is important that we make them aware that we are people too, with similar life goals, families, etc. Do not hesitate to share a little of your personal history as well, such as a tidbit about your own family or the community in which you live.

2. Listen to the Client's Story.

Once comfortable, encourage the client to openly share what happened on the day of the collision. Most likely, that day was a very traumatic day and the client wants an opportunity to talk about what occurred. Take minimal notes. Make eye contact. You can always “double back” and gather the information at the end of the interview. Pay close attention to what the client is telling you. Ask opened ended questions. Clients may focus on irrelevant facts so attempt to keep the client on track, directing them back to the pertinent information.

3. Attempt to Create a Timeline of Events.

After the client has finished telling you what happened, attempt to create a timeline of events. Clients bounce around in their stories as information comes to them and we often get lost in the story telling. This is the time to ask the client questions to clarify the story and obtain pertinent details and to bring them back on track if the story has strayed. Now is when you need to take good notes and save those notes in your file. You may find it helpful to refer to them when preparing for Examinations for Discovery. Usually what the client tells you at the first interview are the facts because the information is fresh in their mind and not tainted by what they have heard or what they have been told.

4. Ask about Any Reports or Other Evidence in the Client's Possession.

You have asked the client to bring in everything they have relating to this case. Every stitch of paper, no matter how irrelevant they may think it is. Even though the client brought in what she has, ask again; make sure she has brought in all evidence in her possession. A lawyer handling an automobile case needs to engage in an in-depth investigation as to how the collision occurred. As a start to that investigation, consider asking these initial questions:

- Did the police press any charges? If so, what was the disposition of the Charges?
- Did the client or the other driver plead guilty to any charges?
- Are there any supplemental police reports? Was there anyone else investigating the collision, such as an accident reconstructionist?
- Did the client obtain or take photographs or video of the scene and the vehicles? Did she see anyone else taking photographs or video? Camera phones are often used to photograph the vehicles involved.

- Was a diagram of the scene prepared?
- Were 911 phone calls made? If so, you may eventually want obtain a copy of the 911 phone call transcripts.
- Was an ambulance called to the scene? If so, determine the name of the ambulance from police reports and subpoena those records.
- Did the Fire Department attend at the scene?

The client may or may not know the answers to these questions but you have to ask.

5. Sign Directions and Authorizations and Retainer

The client should sign the directions and authorizations at the initial meeting so that you can obtain all of his or her medical records and lost income documentation. This will also include medical records prior to the accident which may show any pre-existing conditions. Explain to the client why this is so important. Clients often feel their personal privacy is being invaded when this information is requested so if they know from the outset, that the information is necessary, they are that much likely to express displeasure when the time comes to obtain the information.

6. Explain the Legal Process.

Explain any and all legal terms that you use during the interview. Determine and explain the limitation periods. Diarize the limitation period immediately. Discuss the realities of litigation, including how long the process takes and the likely timeframe for obtaining a trial date. Also, discuss the possibilities of settlement before trial and the

role in which insurance plays in the potential resolution to the case. The lawyer has already likely explained the insurance legislation the threshold and the deductible.

7 Explain That There Are No Guarantees.

There are never any guarantees in litigation. Make sure the client understands that there are no guarantees. Do not promise what you cannot deliver.

8. Discuss Your Retainer.

Since most lawyers's dealing with auto collision cases enter into contingency fee agreements or payment based on a percentage with their clients, make sure that the client understands what a contingency fee agreement entails. The agreement should always be in writing, and the client should sign it before you begin representing them.

9. Obtain Pertinent Contact Information.

Obtain all contact information for the client before he or she leaves your office. Will the client be moving any time soon? Inform the client that she must provide you with new contact information as necessary. You must stay in contact with the client so that you can properly represent their interests. Consider using a uniform client in-take form to compile significant client contact information. Include home and work telephone numbers, cell phone numbers and email addresses. Having an emergency contact is very helpful as well, such as a parent or spouse's work number so that you can contact them in the event that you cannot contact the client. Get OHIP number, SIN number, and DL at this time as well. That will save you time, later.

Make sure you get a copy of the client's ID for the Client Identification and Verification form required by the LSUC By-Law #7.1.

10. Maintain Client Satisfaction.

Be sure to ask the client if he or she has any questions prior to ending the interview. Encourage the client to call or email you with any additional questions in the future. Although it is often difficult to juggle case loads while remaining available to address client concerns, it is imperative to make each client feel like his or her case is one of the most important cases in the firm.

There are no hard and fast rules for Client Interviews. Interviewing a person, for a job, as a witness or as a client, is really a matter of personal preference and personal style. Whatever style you choose to follow, whether that be a formal style or an informal style is your choice. The comments in this paper and presented to you today are meant as a guideline only. CHECK LISTS are the best way to go. I have attached a checklist to this paper. It is not necessarily a tried and true check list but more of a reference tool. Check lists should be individualized to meet the needs of each file.

Thank you for the opportunity of speaking to you today.