



## LAWYER TO LAWYER MENTORING PROGRAM

### WORKSHEET FF

#### INTRODUCTION TO DIFFICULT CLIENTS

Worksheet FF is intended to facilitate a discussion about how to deal with “difficult” clients.

#### WHAT WENT WELL?

Start by sharing with each other a brief story of something that went well in your practice this week:

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Share your reflection by on one of these questions: What caused the good event? What does it mean? How did you contribute? Others? How can you have more such events in the future?

#### ACTIVITIES FOR TODAY

- Discuss why lawyers should be concerned about difficult clients.
- Share with the new lawyer an example of a difficult client you had, how you handled him or her, how the difficult relationship affected the representation, what you might have done differently, etc.
- Identify characteristics of difficult clients of which the new lawyer should be aware at the earliest contacts with the potential client, as well as how to factor that into accepting the potential representation.
- Identify client behaviors that occur during representation which indicate your client is angry or dissatisfied. Provide suggestions of the best and most professional ways to address the client and handle his or her anger.
- Review and discuss the article by Andrew Tillman, *You Might Be a Problem Client If...*, Tennessee Bar Journal (07/21/2009).
- Discuss the importance of talking to a client as early as possible about realistic expectations of the representation, the scope of the representation, and the fee arrangement. Explain how discussing these (and other) issues can help to prevent misunderstandings and disagreement in your attorney-client relationship. See Tennessee Rules of Professional Conduct 1.2.



## **ACTION STEPS**

End the session by discussing what action steps you can take to either improve or set yourself up for future success based on today's discussion. Discuss how one or more of your Signature Strengths can help you achieve success in these steps.

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## **RESOURCES**

### **TENNESSEE RULES OF PROFESSIONAL CONDUCT**

#### **I. CLIENT-LAWYER RELATIONSHIP**

##### **Rule 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client about the means by which the client's objectives are to be accomplished. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(c) A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

#### **Comment**

##### **Agreements Limiting Scope of Representation**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such



limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See RPC 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., RPCs 1.1, 1.8, and 5.6.

View complete rules and comments at: <http://www.tsc.state.tn.us/rules/supreme-court/8>



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## You Might Be a Problem Client If ...

By [Andrew Tillman](#) on Tue, 07/21/2009 - 9:46pm

### Interrogatory Answers

Jeff Foxworthy claims to be able to identify a "redneck" through his combination of experience, skill and expertise. His specialty is reciting ad nauseum, "You might be a redneck if ..." followed by some descriptive involvement with mobile homes, fast food, obesity, chewing tobacco, NASCAR and incest.

My partner recently held an associates meeting where he gave the associates tips on spotting problem clients. I sat in on the meeting to show an interest in the associates and to get a free lunch. Shortly into his presentation I realized that I had experienced all these problems and then some. I am the Jeff Foxworthy of problem clients. What Jeff Foxworthy has done for rednecks, I am about to do for problem clients. Thus, I offer my own list of "might be" problem clients.

**You might be a problem client if you have sued the same person more than once for the same offense.** I can vividly recall one client who kept me busy for about five years through two and a half lawsuits. He seemed to have plenty of money, and he paid his bill very punctually. He required some sort of concession from the other side at the end whether or not the litigation made economic sense. The other party and his or her attorney seemed to take great pleasure in creating situations of technical breach that ultimately did not result in great damages to my client. I should also add that though the wrongs all evolved out of the same underlying dispute, they were not all exactly the same, but they all smelled the same. If we decline every case where our client hates the opposition a little too much, we may go out of business, but maybe we should draw the line at the second case that does not make economic sense for the client.

**You might be a problem client if you offer a post-dated check to cover the retainer.** I'm not sure what it is about broke that I did not understand. I guess early in my practice I thought money in the bank was some sort of a technicality for a high-stepper who litigated over lots of money and had lots of contacts and nice clothes and gadgets. Now I know that once they suck you in, they keep you until they're through with you. This one left owing me money, but probably less than he did any of his other lawyers. This one is easy to spot and generally easy to avoid.

**You might be a problem client if your existing lawyer is just too busy to answer the discovery that is pending.** This client is sometimes seen blowing smoke and telling you what great things he has heard about you, though the alleged source is unlikely. He or she may even try to claim some sort of distant kinship to your wife's family. (If it was your family you would know instantly that it's a lie.) He or she will say things about what a big-time lawyer you are and that he or she needs a big-time law firm to handle this case. He might even say that the local lawyer who has been doing his work for 20 years is really more of a corporate lawyer. Shortly, you will find that he's under an order compelling him to answer discovery that has gone unanswered because he will not furnish the documents to his local lawyer. You will learn that his finger picked you out of the phone book rather than some referral source. You will learn that his wife has no kinship to your wife. You will learn not to ignore all those subtle alarm bells that were ringing.

**You might be a problem client if you are a lawyer, even in-house counsel.** There are, of course, exceptions to this rule. I've had some excellent relationships with in-house lawyers who had the good sense to remember the reason they had hired a litigation firm. In fact, I've had even in-house lawyers who don't claim any particular litigation experience help me greatly to see the realities of the case, appropriate strategy, investigate the facts, etc. On the other hand, I've represented lawyers who long since have quit the practice of law in favor of telling me how to practice. I've had in-house counsel try to convince me not to file motions that needed to be filed and that ultimately won and disposed of case. I've had new in-house counsel come in who knew so little about the case it was scary.

**You might be a problem client if you have a case that can't be lost.** This client often has another lawyer friend that they talk to on a frequent basis. Their conversations with that friend are usually had over a urinal, or maybe even a cup of coffee. Nevertheless, when you question the merits of the suit, or say that the law is against you on some particular point here in Tennessee, you will hear how the lawyer friend in Georgia or Alabama said that if he just had the case down there it would

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be a slam dunk. You may in fact tell this client so many times about the bad points of the case that you begin to feel guilty, but don't worry. They are not fazed by any of this bad news. They just know that if they had a real lawyer, they would get a seven-figure judgment and punitive damages on top of that.

In fact, a corollary to this rule is that he might be a problem client if he wants a remedy that is far outside any normal sense of justice. For example, they may want to terminate a license agreement and take over the licensee's business altogether simply because the license payment on three consecutive months arrived late, or without the supporting documentation. This problem client is often very intelligent and can subtly escape detection unless you are on your toes. The best way to identify this problem is to carefully examine the documents, make sure you have identified each and every source of the breach, and then inquire carefully what their goals are. If your reaction to the breach is, "so what," and you think it will be a cold day in Hades before you can secure the result the client wants, pass.

**You might be a problem client if you're mad as hell at the other side but don't have any specific memory as to what happened.** Believe it or not, I had this client. The husband was not there at the accident, and the wife had amnesia from the impact. Needless to say, though the damages were great, liability was hard to prove. It seemed that everyone on the other side remembered what happened, and strangely enough their stories all matched. No one will take this case off your hand, and nobody will pay you to settle it.

**You might be a problem client if it's not about the money but about principle.** Most of these folks have no idea what your time is worth and how much effort it takes to get a case to trial. They can't afford to pay your expenses much less an hourly fee for your time. It's your principal that would be expended liberally to prove their principle. Incidentally, I've never been able to pay the landlord or the court reporter in principle.

**You might be a problem client if you regularly send letters to the editor of the local newspaper.** This client is a crusader. They will remain a crusader after they hire you. They will continue to write letters to the editor despite your admonitions to the contrary. They are a passionate witness when you need restraint. They are often swimming against the current and think you should also. Any rule of law that does not make sense should be thrown out in their case. For example, this nonsense of questioning the jury should be abandoned in favor of drawing straws and you should convince the judge of the wisdom of that approach. If you are unwilling to be the zealot, you are less of a lawyer. Warning: this one can sometimes fly under the radar. Obviously, you are not going to know about all the letters to the editor. The best you can do is study and watch out for tell-tale signs.

**You might be a problem client if you, the defendant, see yourself as the victim.** This rule is especially true if there has been a tragic outcome, such as a death, on the other side. Rather than exhibit compassion for the decedent's family, which has suffered a great loss, this person sees the lawsuit as a great inconvenience, or maybe an unjust persecution. The plaintiff's lawyer is greedy. The widow or family is greedy and untruthful. The decedent probably brought it on himself. The system sucks if it even allows this sort of thing. Despite your loyalty to this client, and your sympathy for his or her belief that they should not have been sued, you are not going to be able to explain to a jury why, two hours into the deposition, your client verbally attacked opposing counsel. To screen out this client, you need a person-to-person meeting rather than a face-to-face meeting. The trouble is seething just below the surface, and the least bit of probing will cause it to erupt and allow you to know what you're dealing with.

**You might be a problem client if you ask me to help you avoid paying someone else.** Don't get me wrong. Honest and legitimate disputes happen every day. There are true disputes of liability and differences of opinion as to damages. The adversarial system lets each person make the most of his or her position. The non-payer rule is most useful where the client most clearly got a benefit of some sort but wants to avoid paying on some technicality. This dead-beat client is the type person I despised long before I knew anything about the law. They make the whole world victim to their scheming state of mind. If they will scheme to beat your opponent out of their just pay, they will just as readily scheme to avoid paying you.

**You might be a problem client if you come to my office without the documentation I told you well in advance that you needed to bring to the meeting.** This is especially true if it's the kind of documentation that you would expect any normal person to retain or have readily available concerning a particular transaction. For example, if this client claims to have paid the bill but fails to bring along the check or other evidence of payment, the failure can mean several things, none of which is good. Maybe they didn't really make the payment. Maybe the wife has been telling the husband that she made the payment, but has spent the money on something else. Maybe they think that any lawyer worth his salt wouldn't be worrying about all this paperwork "the truth will come out and the truth will prevail. Maybe they are just such poor record keepers that they really can't find the documentation. Maybe they are a pro bono client who has absolutely no appreciation for the value of your time. Either way, this client is fairly easy to identify and should be avoided.

**You might be a problem client if you bad-mouth good lawyers on the other side or previous good lawyers whom you have fired (so you say).** There is often a dark side to this potential client that goes beyond simple dishonesty. I recall a line from Macbeth where witches stirred a cauldron and spoke of "double, double toil and trouble." Insist on making a call or two before you commit.

I could put a name with each of these scenarios. I have experienced these problems. They are part of that 80 percent of the work that brings in 20 percent of the return as opposed to the 20 percent that brings in 80 percent of the return.

You have not signed up your last problem client, but I suspect you will have less problem clients if you give them my Jeff Foxworthy Test.



ANDREW R. (ANDY) TILLMAN entered the University of Tennessee Law School in 1986 after too many years of being a broke saw-miller. He worked too hard in law school and performed well above his natural aptitude. After a two-year clerkship with the Hon. H. Ted Milburn, United States Court of Appeals for the Sixth Circuit, he began the private practice of law with Paine, Swiney, and Tarwater in Knoxville. He stayed with the firm 18 years until he had enjoyed all the practice of law he could stand. He left the active practice of law to accept a position as law clerk to Hon. Charles D. Susano, Tennessee Court of Appeals. To date he has not been fired, but it is early.

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