

Chapter 3

Client Intake and Communications

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Creating Your Interview Form

“In the old days...”, as we sometimes say, a New Client conference started out by scribbling notes on a yellow pad. That was all we had, so that was all we used. It was certainly better than nothing, if only slightly.

The seasoned attorney knew what to ask, and why to ask it. But the newcomer attorney not only found himself not being sure why something should be asked, but often having no idea what should be asked about.

Moreover, even the seasoned attorney could easily forget to cover everything. That is the whole reason for using a standard New Client Conference Form.

A New Client Conference Form should cover all of the basics, in a systematic and organized fashion that is easy to follow, makes sense to the attorney, and is easily followed by the client. The fundamental objective is to get as much information as necessary, as quickly as you can, and then to impart as much information as necessary as quickly as you can.

Ideally, the New Client Conference Form should facilitate the process of the conference by guiding and directing it (i.e. “keeping it on track”) and discussing every key aspect involved in such a conference — all in less than an hour of your time.

With that in mind, you can create your own New Client Conference Form.

Areas to be Covered

First, think about the areas involved in the usual new client conference: the basic information about the client, the basic information about the vehicle, the possible claims, and the attorney fee arrangement. In one way or another, everything else is only another part of one of these topics.

The structure of the New Client Conference Form should make sense to the client, as well as to you. Obviously, you have to “get” information before you can “give” an analysis back to the client. Thus, the first part of the form should be information-gathering and the last part of the form should be answer-giving.

Basic Information on Client

At the beginning you want identification of your client, including such obvious things as name, address, and telephone number. However, you should also ask for identification of the referral source (i.e., “how did you hear about me?”). This enables you to send a personal “thank you” to the referring source, and to gauge where to invest your marketing efforts for future business development. Also, ask for e-mail address information. Many people are “net savvy” and the instantaneous communication of e-mail is often greatly appreciated by the client (never mind the fact that it can be extremely difficult for the attorney when we are so used to dictation and transcription delays).

Finally, consider getting work telephone numbers and times. One way to get all of this information, and more, without the attorney ever asking a single question is having an “intake sheet” filled out by the client before the conference starts. The format can be similar to what doctors and dentists use for a new client.

Basic Information on Vehicle

The conference should then shift to the basic information about the vehicle. In a typical Car Case, the basic information about the vehicle includes the obvious and the not so obvious: make, model, year, odometer reading at sale and now, identification of dealer, and whether or not financed by dealer and identity of financier.

Obviously the New Client will bring many documents with them to this conference and much of the information can be readily obtained from the documents. You can either photocopy the documents or you can simply make notes from them or answers given by the New Client.

However, photocopying documents takes time and necessarily means either you leave the room or a distraction (someone entering the room and to get the documents and make copies and returning) will occur. The distraction for departure from the room will cause a loss of focus by both the New Client and the attorney and should be avoided for that reason. All of the focus during this conference should be on the new client.

You also will want to know if the client always received repair documents every time they picked the vehicle up from the repair shop. That will enable you to look through the documents to independently verify and identify the complaints and defects — and what the dealer did about those during repair attempts. A simple question with a “yes” or “no” response for you to circle, when going through the form, is sufficient (ie, “Did you get a repair order every time you got the vehicle back from the shop?”).

Also make a note of the warranty length and who the warranty is from (i.e., in the case of a used car, is there a warranty from the dealer?). Likewise, make a note on the existence of and length of any service contract (along with who the provider is — the dealer or some third party).

Many times a car dealer will argue that the only reason a consumer is complaining is because of “buyer’s remorse” or because the vehicle has been damaged in

an accident and the consumer wants a newer one. Anticipating that defensive argument, during the conference you can also ask the question: “has the vehicle ever been wrecked or damaged by you or while you had it?” and “can you afford the loan payments?” Having the answer in advance gives the ability to quickly retort if and when the defense argument is raised later.

At this point you have gathered the basic information about the client and the vehicle and you are ready to find out what is wrong with the vehicle. In a new car scenario you should probably start off with the Lemon Law definition questions for your jurisdiction to get a quick overview (i.e., days out of service, number of times in the shop, 3 or 4 times in for the same problem, etc.).

After the overview questions are out of the way, begin to make a list of the defects (item by item) and note whether or not each one has been fixed yet. Also make a note on the number of times that each defect was worked on by a dealer.

Of course, sometimes the New Client wants to talk more about the issues involved with a complaint or two (i.e., “it happened on the interstate while I was between two trucks and the kids were in the back seat screaming and I was afraid I was going to have an accident when it stalled”). You can be certain that the new client will always have more to say than merely what you are asking. For that reason, near the list of defects you should place 4 or 5 blank lines across the page so that you can make any additional notes that you deem necessary. Here you want to make note of those “silver bullet” remarks you can use later.

Some of these defects will be of a “deadly” nature and it is easy to put an asterisk by each of those as you go through the interview, for later emphasis. Sometimes you can recognize a complaint as being of a deadly defect, and sometimes you must ask a client what they thought about it (i.e., “was this problem serious enough that it could have caused an accident or someone could have been hurt?”)

By this time you now know everything about the client and the car and the problems they have had, right? Wrong.

Now it is time to ask the more fundamental question, which will help determine your “target” defendants: “looking back on what was said to you at the time you were first buying the car, do you think that there was anything that the car dealer lied to you about, or do you think we are really just simply talking about a bad car?”.

More times than not, this question will tell you everything you need to know about the relationship between the dealer and the New Client. You can explain the definition of “fraud”, but that can be confusing and misleading; a direct question can give you a “heads up” on the issue without getting into too much needless detail. Often, a client will not realize what is happening to them during the sales process, but “20-20 hindsight” always helps later and a “souring” repair experience often causes the New Client to reconsider the sales process more carefully.

With that out of the way, the only thing left for you to find out from the New Client is “what it is that you want”. Typically, a New Client is going to want one or more of several different things: a replacement vehicle, their money back (i.e., a “buyback”), repairs, or money.

Now It’s Your Turn To Talk

If you are on schedule, you should now be about 20 minutes into the interview. Now it is time to “turn the tables” and being telling the client what you think, what they can and cannot do, how long it would take, what it would cost, and what they can expect out of it. As you do that, you should be making notes on what you say on the rest of the form in a systematic manner. That way, at any time in the future, you can look at the notes you made and tell what it was you said and what you were thinking as you were talking about the client’s case with them.

The rest of the conference will primarily be concerned with explaining the New Client’s alternatives, what legal claims may exist, and the attorney fee arrangement.

The Possible Claims

At the outset of your explanation to the New Client of their rights, you need to explain what alternatives they are facing. Typically, the New Client with a “bad car” only has a few choices to make. They can go back to the dealer or call up the manufacturer and continue to complain. A second choice is they can file for arbitration, if the manufacturer has an arbitration process. A third choice is they can file a law suit.

Of course, while not desirable for most people, there is a fourth choice: they can simply give up and forget it.

After explaining the alternatives available, you need to cover the legal claims that can exist in the case. Remember, you are not trying to get the client to become a lawyer — only to get the New Client to understand the basics of the legal claims involved. At this part of the New Client Conference Form, you should have a list of all of the most frequently used claims that are brought in a car case being filed in court, by name only. That way you can simply circle those that are applicable. You should also make a note of who the “target” defendant is in each claim, along with the statute of limitation applicable.

One of those claims will likely be for fraud (after all, the seller is a car dealer). Fraud is “fact intensive” so it would be a good idea to draw one or two blank lines below that so that you can make a note on what the essential fact was that you had in mind for fraud.

The Attorney Fee Agreement

By this point in the process, you have obtained information and given answers sufficient for the client to know their legal rights. The only thing left to cover is the

attorney fee arrangement you would use if they decided to engage you.

Obviously, if the New Client Conference Form is to be kept short and simple, the attorney fee agreement is not likely to be contained within it. But in the New Client Conference Form, you should consider placing an outline of the attorney fee agreement. A separate written fee agreement should exist, but having an outline on the form will enable you to always know what the terms were for that particular case, and remind you to cover them during the conference. As you are reviewing that with the New Client during the conference you can simply “check off” each area as you discuss it.

Ideally, the New Client Conference Form should be no more than two pages long. Remember, the more pieces of paper you must “shuffle” as you go through the conference, the more distracting it will be for the client (and yourself).

The New Client Conference Form should be structured in a way that works best for the particular attorney. Your “style” may call for one section of the form to be moved to a different place than the sequence suggested here. You may routinely discuss something not even mentioned in this article, perhaps because of the peculiarities of the law in your jurisdiction.

The basic idea is to create a standard New Client Conference Form that you can use for every intake conference, and which will naturally and easily guide you through the conference, help you stay focused, obtain all of the necessary information for you to be able to advise the client, guide you through the answer-giving phase of the conference, and memorialize in a written fashion all important things that are said during the conference — in a simple and easy to use form, which enhances an methodical and systematic approach to the New Client conference.

With that, you can become more confident in yourself — and the New Client will see that and be encouraged to retain you.