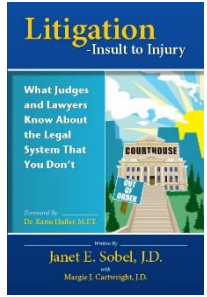
WHY CLIENTS TURN ON THEIR LAWYERS

Janet E. Sobel, Esq.
Author and Attorney

Litigation – Insult to Injury:
What Judges and Lawyers Know About the Legal System That You Don't

Available on Amazon



People are people, after all . . .

The legal profession is notorious for generating the kind of stress that makes people cranky – and crankiness leads to rudeness, even in people who are otherwise very nice and kind. The stress affects both lawyers and their clients.

- Some people are lawyers and some are clients.
- Lawyers are licensed without regard to temperament.
- Lawyers sometimes slight their clients – which can eventually result in antagonism towards the lawyer.
- Clients resent being disregarded, which leads them to suspect other wrongdoing!
- Clients are entitled to respect and attention.

The practice of law is undeniably stressful . . .



A study by Johns Hopkins University found that out of more than 100 occupations, lawyers were three times more likely to suffer from depression than any other profession.

After cancer and heart disease, suicide is the third leading cause of death among lawyers.

The National Institute on Alcohol and Alcohol Abuse estimates that 10% of the U.S. population is alcoholic or chemically dependent. Experts estimate that the numbers are between 18-20% among lawyers.

www.abnormalabuse.com

Besides the above data, the May 2, 2011, issue of Psychology Today reports in an article entitled "The Depressed Lawyer":

- An ABA Young Lawyers Division Survey concluded that at least 40% of female attorneys were unhappy with their jobs
- In 1996, lawyers took the number one spot as the profession with the highest rate of suicide
- The ABA estimates that 15-20% of all U.S. lawyers suffer from alcohol or substance abuse
- Seven in ten lawyers responding to a California Lawyers magazine poll said they would change careers if the opportunity was available

www.pychologytoday.com

QUERY: How does that kind of stress manifest itself?

What are some causes of lawyer stress?

What are the daily stresses that come from the practice of law?



- Workload and performance expectations
- Stress from deadlines, caseload, clients, and other lawyers
- Time pressures and long hours, lack of sleep
- Burnout and discouragement
- Lack of control over tasks and outcomes
- Life out of balance
- No time for relaxation, exercise, fun, healthy diet
- Financial problems

Here are some "D's":



Practicing law is . . .

- Demanding – taxing
- Difficult – nothing easy about it
- Dicey – unpredictable and fraught with risk
- Distressing – causes mental suffering
- Disreputable – to many, we are disgraceful, dishonest, and unprincipled

The legal system is . . .

- Delusive – its promise of justice is misleading and deceptive
- Disagreeable– despite lots of rules, it works poorly
- Demanding – requiring more than should be due
- Demoralizing – it corrupts the idealistic goals of lawyers
- Discouraging – it is disheartening and dispiriting
- Disconcerting – it is upsetting, confusing, and perplexing

It's no wonder lawyers are . . .

CRANKY . . .

We all know that stress can make anyone (even lawyers):

- Irritable
- Edgy
- Distracted
- Rude
- Impatient
- Touchy
- Disorganized
- Scattered
- Inattentive
- Dismissive
- Self-absorbed



Isn't it natural that we would direct these cranky behaviors at our clients? But what can come of treating clients that way?

CLIENTS . . .

- Can be a bother
- Can be demanding
- Can be irritable, edgy, distracted, rude, impatient, touchy, disorganized,, etc., just like lawyers can be

BUT . . .

Our clients are our Masters and we are their Servants
They are paying us – directly or indirectly

Like it or not – they expect our appreciation and gratitude for letting us work on their cases

Clients turn on their lawyers, because . . .

They are lost and confused and feel injured, either by the process or the outcome

- Lawyers must not forget that their clients have lives and jobs that are filled with stress
- Clients have problems besides the ones that brought them to a lawyer
- Clients do not understand the legal system and their lawyer is the only one they can turn to
- Clients experience fear, confusion, doubt, uncertainty, insecurity in regard to the legal system
- Except for a few sophisticated ones, clients are basically ignorant and full of questions

Lawyers are missing the main key to not being blamed by the client if they ignore these truths!



Clients: "Can't live with 'em, can't live without 'em"

More than one lawyer has been heard to say, "If we could just practice law without clients."

The Foreword to my book is by a MFT, Karin Huffer, Ph.D., who discusses "legal abuse syndrome" – a form of PTSD that comes from being inside the legal system

Lawyers would like blind faith from their clients – but that is NOT reality!

Welcome to:



So . . . How can we deal with clients so they will not turn on us?

1. Make sure your clients are not lost and confused, full of fear, doubt and uncertainty, insecure and full of questions.



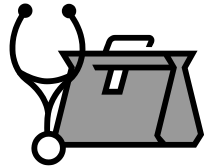
Looking to the lawyer



What will that do for the lawyer?

- An informed client who understands what is happening will be less likely to add to the lawyer's already stressful life.
- An informed client is less likely to blame the lawyer.
- An informed client is more likely to make better decisions.
- An informed client will be more cooperative.
- An informed client feels respected and appreciated. Many people will accept defeat if they have felt appreciated and respected along the way.

With medical doctors, patients who feel the doctor's concern are less likely to sue for malpractice.
It's human nature.



- Help the client to have a greater understanding of what is happening in their case



How can you do that?

The better question is: How can you not?

Confused clients are problem clients.
They have a right not to be confused . . .
And their lawyer is the ONLY one who can bring understanding

Arguably, lawyers are ethically required to make sure their clients understand the nature of their legal matter.

ABA Model Rule 1.4: Communications
(a) A lawyer shall:
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) **A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.**

So – How can you help your clients to have a greater understanding of what is happening in their cases?

- Surely NOT by giving them an 8-hour course in the law and charging them for it
- Surely NOT by giving them an 8-hour course in the law and suffering that cost *gratis*
- Surely NOT by sending them to law school



Then how?

ANSWER:

Make it the obligation of the client to read or listen to a discussion aimed at consumers that explains the reality of the legal system, what it can and cannot do for people, and the problems that can develop on the road from beginning to end. Clients should also be required to read or listen to a discussion about the advantages of mediation.

Next question: Where do you find such materials?

ANSWER:

- Search the web
- Write them yourself

An informed client is much less likely to blame the attorney! This takes some of the burden off the shoulders of the lawyer, which makes practicing law less stressful, which can make for kinder and gentler lawyers.

And . . .How else can we deal with clients so they will not turn on us?

2. Make sure your clients understand the terms of the fee agreement before they sign it.

Principles:

- Having a provision that the client understands the right to get the advice of separate counsel in reviewing the fee agreement is ineffective.
- It is too easy for a client to claim they didn't understand (and there was no meeting of the minds).
- Lawyers owe no duty to the client to warn of the dangers in the agreement.
- But a client that does not understand the terms ought not be signing it.
- Clients are mostly ignorant about the meaning of the terms of a fee agreement.
- Fee agreements need to be negotiable, but they can't be negotiable if the client doesn't understand the provisions.
- Clients are often uncomfortable knowing they do not understand what they signed – and feel mistrustful (which is never good).

The truth is:

- You want your clients to understand what they signed.
- You do NOT want your client telling some lawyer down the road that you pressured them to sign something they didn't understand.
- It is better to negotiate with your client and to say "no" than to not negotiate at all.
- Clients who understand the fee agreement are more likely to be agreeable in regard to a lot of matters.
- It is never good for clients to feel as though they signed something they didn't understand; it fosters mistrust of the person who had them sign it.

Clients who are provided with the means to understand the terms of the fee agreement will not be blaming their lawyers for some term in it.



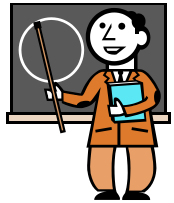
Your best risk management is to provide your clients with an explanation of the terms of an attorney-client fee agreement.

Clients don't really need to see a lawyer (and spend $250) to hear about the meaning of the terms in a fee agreement. They can learn it by reading an article or watching a video.

Next question: Where do you find such materials?

ANSWER:

- Search the web for written or video materials to pass onto your clients
- Probably best not to draft this explanation yourself – since there is an obvious conflict



And . . .How else can we deal with clients so they will not turn on us?

3. Go overboard in explaining that you do not guarantee an outcome and, in fact, the system is so crazy and unpredictable, the best you can do is your best! But promise to do your best – and mean it!

The standard language in fee agreements (i.e., "I am not guaranteeing the outcome of this matter") is too mellow. Lawyers need to speak much louder in the fee agreement:

"Client understands that this lawyer can only do his/her best because the legal system, and the law itself, is often changing, is unpredictable, and things happen beyond the control of this attorney. This attorney will endeavor to keep the client apprised of developments and to form strategies that will aim to maximize the best outcome for the client."

And . . .How else can we deal with clients so they will not turn on us?

4. Document, document, document!

Whenever you have a conversation with a client where something important is discussed or some confusion is aired, send an email (or a letter, if the client has no email) to document the discussion.

Principles:

- Clients are full of fantasies about the legal system and what lawyers do. Correct them when you hear such things.
- Clients often need to see something in writing before they understand.
- If they ever visit another lawyer to complain about you, you will have your advice in writing (but it better be right).
- You can use previous emails to remind the client about what you already told them.
- Clients are respectful of a lawyer who takes the time to put it in writing.
- Writing to the client often flushes out the confusion, which is good for lawyer and client.
- Clients are entitled to a careful dialogue.
- Put in your fee agreement that you will charge for these mini-reports.

And . . .How else can we deal with clients so they will not turn on us?

5. Don't square off against your client.

An irresolvable dispute between attorney and client should be avoided at all costs.

Principles:

- Angry clients are more likely to make claims against their lawyers, so every lawyer is well advised to seek to resolve disputes and put their efforts in writing.
- Lawyers should offer to mediate with an angry client before terminating the relationship.
- Lawyers should suggest the client find another lawyer to meet with you to see if there is some solution to be found that you haven't considered.
- Lawyers should try to avoid appearing as though the client was abandoned.
- Better to spend money getting the relationship back on course than fighting a claim.

And . . .How else can we deal with clients so they will not turn on us?

6. Calculate costs for the client, try to be accurate, and put it in writing.

A sure way to derail the attorney-client relationship – and the case itself – is to improperly analyze the costs involved, the ability to pay them, and the likelihood the other side will be insolvent.

Principles:

- There is no good way to protect a lawyer from the negative consequences of failing to thoughtfully and accurately calculate the costs of the case and the likelihood the other side will not become insolvent – so BE CAREFUL!
- If the fee agreement provides for the client to pay the costs, discuss with the client the realistic probability they can be paid.
- If the lawyer is to pay the costs, make sure you are being realistic. Nothing looks worse than a lawyer who "throws" a case because money gets tight.
- Sweat, if necessary, but be particularly careful when it comes to estimating costs.

And . . .How else can we deal with clients so they will not turn on us?

7. Don't forget to analyze the availability of insurance.

Even when an innocent, even seemingly excusable, mistake is the cause of failing to analyze the availability of insurance in some way, it can be one of the simplest paths to legal malpractice claims.

Principles:

- The nature of insurance (first and third party) and what it covers is easily learned on the internet. If you don't fully understand it, get some articles and learn about it! It's not rocket science and many lawyers are happy to explain the basics to any lawyer who might be a source of referrals.
- Paying a lost claim of insurance can easily exceed your malpractice policy limits.
- Insurance can come into play on both sides of a case: damage to property, claims against a business, lawsuits and cross-complaints. Pleading to trigger the availability of insurance must always be on your mind.

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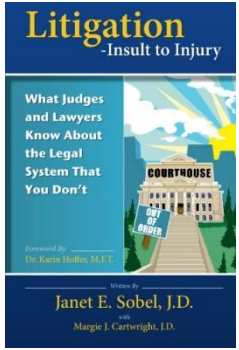
8. Always aim for Mediation and Collaboration!

Whether you are handling transactional or dispute resolution, look for opportunities to invite mediation or collaborative cooperation with your client's adversaries.

Principles:

- Clients are benefited by participating in voluntary settlement conferences – and the confidentiality of mediation, and the cost-sharing possibilities of collaboration – can be the best outcome for many, many clients.
- With the client's blessing, prepare your case for the strongest settlement position, with litigation (and trial) as the next-best thing.
- Identify the areas of true contention and seek concurrence from the other side so as to stay focused and simplify any dispute (or discovery in litigation).
- Understand the value of mediation, even where "unsuccessful."
- Learn the art of mediation – and how to be a helpful advocate.

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Janet E. Sobel, J.D.
Author and Attorney

www.counselingatlaw.com
www.judgingthelaw.com

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