

9/20/17

Let's Face It.

There **Are** Difficult Clients. Always have been.

He appears like this...

But deep down the Difficult Client is **really** this guy: The Joker.

So Today Is:

Joker Management 101

In 3 Parts

First: Warning Signs of the Joker (the Red Flags)

Then: Tactics of the Difficult Client

Third: Tools: (What We Can Do About the Difficult Client)

WARNING SIGNS

Picture This...

It starts in conference...

You are...**listening**

You get...**The Story**

You have...**some Questions**

You get... **Opinions...**

Some Opinions have Red Flags...
These Red Flags are Warnings

The Difficult Client speaks:

“You are my 2nd (or 3rd) lawyer.”

“My former lawyer was an **idiot...**
and he was in a firm of **all**
idiots...”

“My former lawyer was in a
conspiracy with the other
lawyers...

the **witnesses** were out to get
me...

the **judge** was biased.” (Judge
Chamberlain Haller)

“This is **my crusade** for **my** beliefs”

The No. 1 Opinion: “It is **not** about
the money...it is the **principle** of the
thing.”

“This case will **make you a lot of**
money.” (or famous)

“I have a large unpaid bill with my
former lawyer.”

“This is an “open and shut” case.”

“The other side will **settle** when you write **just one** letter.”

“I expect total victory.”

“I want **you** to decide for me.”

“How do **you** want me to answer?” “I **must** have your cellphone number.”

- call then e-mail

“I have **put off** hiring a lawyer for a long time.”

“I need **you** to negotiate a **contract** that **I** signed last week.”

“An important **deadline** is very soon.”

(the statute)

“Everything you need is **somewhere** in this stack of papers.”

“I have already done **all** the research and **this** is how you should proceed.”

“I got tired of all the bad press so I spoke to the media and **I** told them my side.”

“My **relative** is a lawyer advising me.”

- may practice in an unrelated field
- may practice in another jurisdiction

TACTICS OF A DIFFICULT CLIENT

Picture This:

Your representation is underway...

Then things start to happen...

- you have walked into a **mine field of**

Tactics of the Difficult Client

Here they are:

- they **love everything** to be verbal
“you said...”
“I told you...”
- they will turn on you in a minute..
...it is not personal
because ...they know little
about you
- take no responsibility for problems
they helped create
- interrupt and insult you

- speak only of **themselves**,
their opinions, and their
experiences
- fail to show for appointments
or always arrive late
- focus on personalities and gossip
- **everything** is an emergency
- **screen lawyers** like a beauty
contest
- use “code words” for racial, ethnic, or
sexist terms
- view **compromise** as a reward for
someone else’s misconduct
- view trial as **their** public vindication
(way too much TV)
- have friends and family
know-it-alls
bomb throwers
Question: do you bring them
in?

- have an **enabler** making excuses for their behavior
- write **long memos** unnecessarily complicating simple facts
- expect **you** to make their decisions
- have **unrealistic expectations** as to:
 - your legal services
 - time to conclude results
 - your fees
- want a guaranteed maximum bill...
No Way
- want a guaranteed minimum result
No Way
- can be: No Pay or Slow Pay

- **Why do Difficult Clients use these tactics?**
 - ...because these tactics work for them
- Difficult Clients may display symptoms of an illness

Here are characters with symptoms:

Here are some symptoms:

dementia

diminished
understanding and
memory

depression

may not respond to
your calls and
emails

obsessive/
compulsive
behavior

micromanage
the case

narcissism

It is all about me. It
is never my fault. I
never apologize.
Any criticism of
me is a personal
attack.

antisocial
behavior

Sociopathic
Personality shows:
No conscience.
Takes advantage
of others.
The Charming Liar.

HANDOUT

OHIO RULES OF PROFESSIONAL CONDUCT

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

- (a) When client has diminished capacity to make decisions due to mental impairment...lawyer must maintain the lawyer-client relationship...except**
- (b) When the lawyer reasonably believes the client with diminished capacity is at risk of harm...the lawyer may counsel others to protect the client including appointment of a guardian.**

In taking clients...

It is easier to stay out than get out.

**AND IN SPITE OF THESE TACTICS,
TOXIC CLIENTS ARE NOT MORONS.**

More Tactics of Difficult Clients:

- may negotiate with the other side
- can be **more difficult** with your Staff than with you
- tell you lawyer jokes regularly
- are unable to produce **simple documents**
 - like bank records
- require repeated explanations of **routine matters**
- the Not Guilty plea
- are **uncooperative** in depositions and expert exams
- are **inflexible** in scheduling

- may **refuse** your recommendations
- show up for depositions and court in **inappropriate attire**
- show **disrespect** to the Court and attorneys
i.e. the “Attitude”
- may “**double check**” your **opinions** with your associates, staff, and other lawyers
- may decide to go in a completely different direction **after** you have completed their project
- may be **dishonest** with you
- when the case is over they may **retaliate with claims** that you were unprepared

- may “remember” the letter they swore did not exist
- may try to date your staff (or you)
- may make partial payments on their bill while their balance grows
- may propose **your** unethical conduct

HANDOUT

OHIO RULES OF PROFESSIONAL CONDUCT

RULE 1.2: SCOPE OF REPRESENTATION

(a) Lawyer shall follow the client's decisions except:

Clients objective: offensive tactics or lack of respect

(d)(1) A lawyer shall not counsel a client to engage...in conduct that the lawyer knows is illegal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct...and may counsel a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

Clarence Darrow

Like the spots on the Leopard...

The Tactics of the Difficult Client never change...

TOOLS (WHAT WE CAN DO)

Managing Difficult Clients!

Inquire (polite for investigate)

Investigate Who? clients, witnesses and parties
How do we investigate?

Google search
public records
social media

Also...we can investigate other counsel
and judges

We can communicate our value to the Difficult Client

First, **listen** the client's objectives
(LISTEN/SILENT)

Then...**define** the problems

Then...**Find the solutions without** the drama of
our Difficult Client.

That is value.

How can **our experience** be of help?

law review?

a Nobel Prize?

parent/child relationships

commercial arbitration

end of life...living will

So...Our story is our value.

Really, what Do Clients Want?

What can you do for me?

Ask...

and we get opinions from clients

question those opinions

“Have you considered...?”

“Could a court conclude...?”

Know Our Role

an example...

Coca Cola

one product: syrup...they call it
concentrate

two kinds of customers:

- (1) franchised bottlers
- (2) soda fountains that dispense
Coca Cola syrup

So...Coca Cola has an easy to understand role

Know Our Role:

Two parts:

- (1) Describe the Options
- (2) Let the Client Decide

- (1) Describe the options
who, what, when, where, why

Don't Forget -

The "Do Nothing" option -

Edward Bennett Williams

The Famous. The Infamous

- The Story

- recommendation

so... First Describe the Options

- (2) Then...let the Client Decide

I say...:

"We are attorneys to the stars!"

My story:

Meeting with my team

Included a psychologist

Assertive

psychologist: "Who elected you...?"

Let the Client Decide

Discuss: “Lawyersplaining”

Results and outcomes

- risks and benefits of each
- **Rules** for communications:
 - how and when: calls, emails, etc.

explain: Telephone Appointments

Rules for civility to everyone involved

Appearance and attitude

Fees and project budget or trial budget

including the cost of experts and your time to interview the witnesses

Explain each step to conclude

- use a flow chart...why? Because clients

understand flow charts

Title 21

handout

Probate - No Will

Clients understand flow charts

Discuss: the **Timetable**

- CSI takes an hour...**not** our world because...

Delays are built into the system

- schedules
- extensions of time (continuances)
- mediation / arbitration
- pretrial diversion

Multiple Clients

antenuptial agreement

Picture This:

The Engaged Couple

Divorces

Hope Over Experience

But **They** Want An Agreement And

You Can Represent Only One

footnote: **no nup**

a romantic joint venture agreement

More Multiple Clients:

Musicians

**Everly Brothers, Simon and Garfunkel,
Guns 'N Roses, Eagles**

What do these bands **all** have in common?

earned hundreds of millions

Americans

each group started as one unit (one lawyer or
one law firm)

then...each group **famously** broke up

So...these musicians **know** lawyers

With Multiple Clients...the question is always

...**Who do I represent?**

- conflicted out **Confirm**

- this is Obvious.

fee agreement or...

retainer letter - client signs

Trust But Verify

My opinion:

Interview all witnesses (even if there is a report)

“is there more?” Study the records

A Difficult Case

Until Proven Innocent

Duke University Lacrosse rape case -

A Records Case

The Records:

medical information...Three lacrosse players were indicted. A detailed discovery request was filed for them.

Over 2000 pages of DNA records were reviewed by the defense...

These DNA records covered 40 some lacrosse players and the accusers

During a motion hearing the cross of the

Prosecutor's DNA expert showed

unreported exclusions of the 3

students...as well as all of their teammates.

More records used in the lacrosse case:

swipe cards

credit cards

ATM

...and this was 2006

Today...video surveillance
and cell phone cameras and cell phone video
And Social Media and even Amazon Echo...
lots of records

My opinion...

Trust **But** Verify the witnesses and the
records

Trust In Allah But Tie Your Camel

Inform the Difficult Client

copy the Client with everything

Show the Difficult Client that:

“I am paid to tell you the truth”

a footnote: attorneys are being disciplined
for failure to keep clients
informed

Get Paid

bill regularly and in detail

renewable retainer

The No Pay/Slow Pay Client must be told that: “I am not a bank” and “this is not Legal Aid.”

Choose Clients With Caution

You are not a bus

pay attention to your instincts

- the Family Dog

- Think About It

so...Choose Clients With Caution

When necessary:

Fire the Difficult Client

It is counterintuitive but...

When it is time...

Don't wait...Do it now.

Do not give the Difficult Client **yet**
another chance

because you have already lost control.

First: Check the Rules

- Rules of Professional Conduct
- Local Rules...because you may not **automatically** get out
(set for trial)

What are the Steps to Get Out?

Disengagement Letter

No Charge Hand Off Conference

Bill the client

Deliver the files and get a receipt

Save a .pdf of the entire file...

and save it for a long time... consider
using Adobe Professional

Collection suit for unpaid fees

- 1 year
- The Difficult Client Affirmative Defense
 - your legal negligence as a set off to your bill
 - ? notify your carrier ?
- **Difficult Clients Are Not Morons.**

HANDOUT
OHIO RULES OF PROFESSIONAL CONDUCT

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

- (a) (1) you may withdraw when your representation will result in violation of the Rules...**
- (b) (2) you may withdraw when your client persists in a course of action involving your services that you reasonably believe is illegal or fraudulent;**
- (3) you may withdraw when the client has used your services to perpetrate a crime or fraud;**

EASIER:

- (4) Withdraw When you figure out that This Is Not My Crusade**
- (5) Withdraw for No Pay**
- (6) Withdraw when your representation will result in an unreasonable financial burden on you...or you have a Difficult Client**

My Recommendation:

Attach a copy of Rule 1.16 to your motion to withdraw

SET BOUNDARIES

WE KEEP OUR DISTANCE FROM ALL CLIENTS

The Excuse For Not Keeping Our Distance.

The Boss. “Take This Client. Play Golf. Socialize” And there may be problems.

Any problems...report and document the file.

Question: Should close friends and family become our clients?

Answer: You Decide.

THE RELATIONSHIP

Which is it?

Professional or Personal?

Professional:

paid

time billed

power over the relationship

fee agreement

Personal:

unpaid

equal power

The Question is:

Professional:

Can I work with this person?

Personal:

Do I like this person?

My opinion:

We do not have to “**like**” clients because...

There are some **disagreeable** people that can be good clients.

NO CLIENT IS MORE IMPORTANT THAN YOUR STAFF

Our staff is a Boundary.

First: Introduce Staff

...then in the retainer letter...Confirm

“Our services will be carried out with the help of _____. She will maintain a continuing, working knowledge of the professional services provided to you.”

Expect Staff to report on clients to you.

Deal with **any abusive treatment:**

- **directly** (in person or phone)
- **now**

I have told clients:

“My staff is not paid to take your abuse.”

Court Staff

Question: What is a **very effective way to communicate** to the Judge?

Answer: Your conduct **towards** the Court Staff...

And your behavior **in front of** the Court Staff

And... the Court Staff is **watching** your
Difficult Client.

PROTECT YOURSELF:

Malpractice defense counsel and ethics defense counsel **expect** us to have documented files and detailed time records... and Notes.

Notes? Who takes notes?

Well...for example, FBI lawyers.

Put In the File...and Send to Client:

instructions from the client

your recommendations and reasons
for your recommendations

“Needs”

notes (or a summary):

meetings

interviews

court conferences

conferences with the other side

and send it all to the Client

Documentation equals confidence

Why? Because there could be:

investigation

legal negligence claim

fee dispute

Documentation equals confidence

**Managing the Difficult Client
Starts With:
MANAGING NUMBER ONE**

The **First** Rule of Self-Management Is:

STAY CALM AND BE CLEAR

Why? It shows:

reason

authority

trustworthiness

patience

respect

Picture This:

Paris. Banquet for diplomats.

Madame DeGaulle speaks...

saying “I should like...”

Husband Charles DeGaulle...

calm & clear

Stay Calm and Be Clear

An Expert:

Chris Voss - a FBI Hostage Negotiator. His book, **Never Split the Difference**, has the subtitle: **Negotiating As If Your Life Depended On It.**

He says: Stay Calm and Be Clear.

Chris Voss says to speak with:

The Late Night FM DJ Voice / NPR Voice

The NPR Voice is:

deliberate

assertive

measured

steady

downward inflection

In other words...

Slow. It. Down.

Who uses the NPR voice? Bill Kaufman /
Renee Crist / Rob Kaufman

They all speak with the NPR voice

the **WHO'S WHO** of
Stay Calm and Be Clear

stays calm

President Reagan

President Obama
(No Drama)

Billy Graham

Tony Bennett

Nora Jones

Warren Buffet

not so much

James Carville

(Ragin' Cajun)

Ann Coulter

Billy Sunday

Billy Idol

KISS

Jim Cramer

Mirroring: Have the Difficult Client tell **The Story** and then you repeat it back.

Say...“So what you are saying is...”

Mirroring is Active Listening.

Maintain eye contact and
open posture

Why? It shows:

your authority
trustworthiness
respect

Acknowledge: Say: “I can tell that you are
upset by this.”

Focus on the problem not the **Personalities and
the Drama** of the Difficult Client

Summarize your client’s objectives (and confirm
in writing)

Sympathize: Let each client know they are not alone

I say:

- “you are not the only person in the history of the world to go through this”
- not the only family
- not the only business

You are not alone.

How can I do all of this with a Difficult Client?

From the Get Go: Set The Rules:

civility to everyone

Rules for communications - how & when
know it all

attire

the “attitude”

make the **budget** clear

Our Mission: 4 parts

- (1) **identify** the problems and issues
 - (2) explain each step to conclude
 - (3) explain what you need
 - (4) provide solutions and a plan
- and put it all in writing

So...Really...How can I do this?

Fake It 'Til You Make It.

Nike...Just Do It.

OVER AND OVER

USE THE TOOLS:

Stay Calm & Be Clear

NPR voice

Copy everything

Let The Client Decide.

KINDERGARDEN

Little Golden Books

...are self management

Get Enough Rest

Exercise Every Day

Work Hard.

Play Hard.

But Not **Too** Hard

Toot Your Own Horn - (Kindergarden) Speak for
Yourself

The Week - My Story

Never Take Candy from Strangers

”Get to know you better...drinks”

“**Translate**” Kindergarden into adult terms like:

stretching

deep breathing/meditation

prioritize the work

hand off (delegate and/or get co-counsel)

no whining

Last from Kindergarden:

Look Your Best.

ZZ Top - "Cause every girl crazy 'bout a sharp
dressed man"

SUMMATION

The 3 Parts:

(1) Warning Signs of the Joker - The Red Flags

(2) Tactics of the Difficult Client

(3) Tools (What We Can Do About the Difficult Client)

What are the Tools?

Investigate

Communicate Your Value

Set Rules for Civility

You are Not a Bus

Copy the client with everything

Explain the Steps to Conclude

Use flow charts

Trust **But** Verify (Duke lacrosse records...tie your camel)

When necessary...Fire the Client

Set Boundaries - We Keep Our Distance From All Clients

No Client Is More Important Than Our Staff

Walk Tall - Think of Ghandi

Do the Right Thing.

The result can be:

loss of the client

no pay

Stay Ethical.

Edward Bennett Williams

He said:

“If anyone is going to jail, make sure it’s your client and not you.”

Improve.

George Burns - The Story

Questions? Comments?

Each of you could write this.

NOTES

Warning Signs / Characteristics of a Difficult Client

Hal R. Lieberman, New York Legal Ethics Reporter
Six Clients in Search of a Lawyer: Or, Don't Take the Case

Richard A. DiLiberto, Jr., *The Difficult Client, the Difficult Case - How to Handle Them*

Justice Carole Curtis, *Dealing with Difficult Clients*, Law
PRO

Joe Forward, *At Wit's End: Dealing With Difficult or Challenging Clients*, Wisconsin Bar Inside Track

Gabriella Soyanova, *How to Deal With Difficult Clients*

Paul Fisher, *Identifying and Managing Difficult, High-Conflict Personality Clients*

Richard A. Seterberg, *The Difficult Client*, the Healthcare Law Forum, Northern Kentucky University

Jerome Fiskin and Lindsay Slatter, *Toxic Client Syndrome*, FORUM magazine

What We Can Do

Allison Shields, *Dealing with Difficult Clients*
Understanding Your Role

Steven A. Meyerowitz, The Pennsylvania Lawyer, *How to*
Handle Difficult Clients

Justice Carole Curtis, Id.

Erin Coe, *How to Handle the Client From Hell* - Law 360

Stuart Taylor Jr. and Casey Johnson - Until Proven Guilty

Set Boundaries

Nancy Zalusky Berg, Walling, Berg and Debele, P.A.
Dealing with Difficult Clients, Difficult Lawyers and Difficult
Judges

Protect Your Staff / Yourself

Justice Carole Curtis, Id.
Richard A. Setterberg, Id.

Mark Herrmann,

I'm Not A Difficult Client; You're A Difficult Lawyer!

Managing Number One

Chris Voss, *Never Split the Difference*

Allison Shields, Legal Ease Consulting, Inc.
Effectively Dealing With Difficult Client Situations

Nancy Zalusky Berg, *Dealing With Difficult Clients, Difficult Lawyers and Difficult Judges*

Roger Fisher and William Ury, *Principled Negotiation, Harvard Negotiation Project, Getting To Yes, Negotiating Agreement Without Giving In*

Some Rules

Robert Fulghum, All I Really Need To Know I Learned in Kindergarden

Diane Muldrow, Everything I Need To Know I Learned From A Little Golden Book

Maeda Riaz, *The Healthy Lawyer: Stress Management*