

## Interviewing Instructions Memo

- ***Break the ice.*** The initial interview will typically begin with so-called ice-breaking. You welcome the client and offer her refreshments. Smile. Introduce yourself, using your first name. Shake hands. If s/he calls you by your first name call him by his. If she calls you Mr/Ms, do the same with her. Then you engage in brief personal small talk or chit-chat where you get the client to talk, e.g., ask him if he had any trouble finding the office or finding a place to park, apologize if he's had to wait, get him to give you a bit of personal background about himself. If you don't know why he selected you as a possible lawyer, you may ask him. If someone has referred him to you, you might briefly allude to that person. You determine if the client needs to place any time constraints on the length of the interview. You explain the confidentiality of the discussion you are getting ready to have. Explain your practice concerning fees.
  
- ***Listen to the client's story.*** To be an effective interviewer and communicator, you must employ essential listening skills. (1) Try to get a clear picture of the client's goals and concerns. Tell the client that you are not there to judge him and that your job is to try to get him out of the jam he's in, as painlessly as possible. Let the client know that you are giving him control of the interview at this point, e.g., "The way I like to do this is simply to let you tell me what happened to cause the police to charge you. I'll take a few notes. Then, I'll ask you some questions. Then, we'll try to diagnose what we can do to help you. Will that work for you?" Get the client to give you a narrative explanation of the problem that brings him to your office, e.g., "Tell me about your predicament (or situation)." or "Tell me what happened." Listen and observe. If you listen to someone, you are showing respect for that person. Show the client by your physical reactions that you are listening and understanding what s/he is saying. Don't fold your arms. Lean forward as s/he talks. To show him you're listening and to keep him talking, nod your head up and down, and say "Uh huh," or "I see," or "I understand." Echo back what the client said. Look at the client. Eye contact indicates your interest and concern. Take brief notes to help you with follow-up questions. Note taking also expresses your interest. [Are you a good listener? You can find out by testing yourself at [Randall's Listening Lab](#) a site that quizzes your listening skill.]
  
- ***Cede some control to the client during the beginning portion of the interview.*** As mentioned, it may be useful to concede control of the interview to the client at the beginning of the storytelling segment of the interview. (1) This allows the client to get his problem "off his chest" by sharing it with you the problem-solver. Most clients appreciate the opportunity to ventilate their frustrations, fears, anger, and anxieties. [Note: The only downside to the client free reign is that s/he may tell you more than you want to know at this early stage.] After you have heard the client's narrative, summarize it back to the client. That way the client knows that you have been listening to his story, and you know you've understood it. If the client has brought anything to the interview (You may have asked him to bring the papers in his case or some exculpatory item of evidence.), look at it. If the item is documentary, you may want to have copies made for your file.

- ***Avoid feelings and expressions of negativity and defensiveness that will be barriers to communication.*** Certain types of client behavior will trigger "blindness" that turn us off. Be aware of the behavioral characteristics of clients that grind on your sensibilities. Guard against becoming insensitive to your client. When you defend persons accused of crime, you have to learn to deal with negative vibes that would otherwise bring down a steel curtain between you and that person. Try to find the good in your client. Everyone has some good in them. Find that good person in your client.
- ***Watch for "red flags."*** Certain conduct on the part of the client may be a red flag that will presage future difficulties that you may have with the client. Red flags include the client who is in continued denial, i.e., the person who simply refuses to face facts, the argumentative client who wants to quarrel with everything you say, the hostile client who displays a high level of nonspecific or misdirected anger, the obsessed client who is totally preoccupied with the case and often has a thick file of self-generated gibberish about the case, the client who has already spoken with several other lawyers who have not taken the case, the know-it-all client who professes to know more about lawyering than you do, the passive client who appears to be under the thumb of a companion who typically does most of the talking for her/him, etc.
- ***Explore and clarify the client's story.*** Ask for clarification, e.g., "I'm not real clear on (*indicate the subject*)," Can you tell me a little more about (*indicate the subject*)?" "What happened when (*indicate the event*)?" "How will (*indicate the event*) affect (*indicate the area of concern*)?" Give the client plenty of time to answer your questions. Ask questions that inquire of only one new fact per question. If you wish to probe, start with open-ended questions, e.g., who, what, when, where, why, and how, and follow that with specific questions. Be cautious about asking too many narrow closed-end (leading) questions that force the client to make admissions. Avoid judgmental cross-examination in the initial interview. (Confronting the client with the holes in his story comes much later in the case, when you are preparing the client for trial. And even then, you may have a colleague do the practice cross-examination to avoid ill feelings between you and your client.) Never patronize your client. Avoid arrogance.
- ***Explain why you don't need to know everything now.*** Tell the client that at this stage you purposely don't need to know too many specifics. Explain that what you want from the client is enough information to understand the problem and begin assisting him. Explain that you do need basic information, e.g., bail information, name, age, address, employment, marital status, membership in organizations, social security number, names of witnesses, incidents involving police conduct during the arrest stage, e.g., searches and seizures, police conduct during any questioning at the police station, whether the client gave a written or oral statement to the police, polygraph examinations, psychiatric problems, etc. Tell the client that you are not going to ask

him in this initial interview to explain in detail what his involvement may or may have been. Make it clear that you will have plenty of opportunities in the very near future for a sit-down, in-depth fact interview with him later. Don't pigeonhole the client's unique story into a stereotypical category. Avoid questions and assumptions that lead the client to believe that you consider his case as bland and unimportant.

- ***Explain the legal procedure.*** Obtain further data to understand the client's plight. Paraphrase what the client said and see if the client agrees. Explain the relevant law, including the elements of the offense, potential defenses, and the range of permissible punishment. [Hint: Look the crime and range of potential punishment up in the penal code before the client arrives. You'll need to know the elements of the crime.] Provide the client with a copy of relevant penal provisions from the penal code, e.g., [Texas Penal Code](#), and procedural code, e.g., [Texas Code of Criminal Procedure](#), both of which [codes will probably be found on line in your state](#). Provide the client with any relevant forms, e.g., a personal data sheet, that you may use for information gathering.
- ***Caution the client that there are no guarantees.*** Be sure to inform the client, preferably in your employment contract that there are no guarantees of a particular result or outcome or a particular time frame for disposition of the case. At the initial interview, don't make predictions about outcomes, no matter how tempted you may be to read the tea leaves.
- ***End the interview with finesse.*** As the interview draws near to a close, explain *what you will do* as the client's lawyer. In effect, you are explaining your role as his defender in investigating the case and preparing, planning, and carrying out a defense to the charges. Next, you should try to *diagnose* the client's legal problem to the extent possible without giving dispositional advice. Be careful about giving dispositional advice, particularly the possibility of negotiated settlement or a guilty plea, too early. Your client will want to know immediately how the case is going to turn out. Don't shoot from the lip. Don't talk about "copping out." Approach the case, at this time, as though you are going to trial. Take time to identify the problem, fully investigate, and strategize before you give firm dispositional advice. Your client will understand why you can only give an initial diagnosis if you explain why you need to assess the situation more fully before deciding on the proper dispositional course of action. Explain the *next steps* in the criminal justice process. If you know you want to accept the case and the client wants to employ you, finalize *fee* discussions. In cases where you are retained and anticipate the need for investigative or expert assistance, get advance permission in your employment agreement to incur such expenses. Have the client sign a written fee agreement that clearly sets out the rights and obligations of the client and yourself. In some cases it will be useful to involve the client in self-help with the case investigation. Give the client a task, e.g., doing a write-out of a life-narrative explaining the story of his life in ten pages, getting names of fact or character witnesses, obtaining an item of evidence, taking a photograph, etc. Give the client practical

advice concerning legal and non-legal action, e.g., *advise him not to discuss the facts of the case with anyone*, tell him to explain to people that ask him about his case that you, his lawyer, have instructed him that he is not to talk about it with anyone, etc. Tell the client exactly what you want him to do. Give him a list entitled "To-Dos," e.g., a written chronology of events, a written story of his life. Tell the client to write "Attorney-Client Communication - For My Attorney's Eyes Only" on each page of any writing assignment that you give him. Schedule the next contact with the client. Make sure s/he knows how to get in touch with you. If you have various phone, fax, e-mail and/or pager numbers, give the client a card with the ones that are appropriate. If you have a secretary or paralegal who will be working on the case, introduce your client to that person as their "office contact," and tell the client how to contact that person. Give your client a prepared map to the courthouse that points out where off-street parking is available.