

MANAGING THE DIFFICULT CLIENT

Let's Admit 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) ●

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."

- e-mail then call ●

"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

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
 - ...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

depression

obsessive/

compulsive

behavior

narcissism

diminished understanding

and memory ●

may not respond to your calls and emails ●

micromanage

the case ●

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.

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 ●

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) ●

Inquire (Investigate) ●

Investigate Who? clients, witnesses and parties ●

How do we investigate?

Google search

public records

social media ●

Also...we can inquire about other counsel

and judges ●

It helps to 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 ●
living will ●

That is value. ●

Really, what Do Clients Want?

What can you do for me? ●

Ask

we get opinions from clients ●

question those opinions

Ask: “Have you considered...?”

“Could a court conclude...?” ●

Know Our Role ● - Coca Cola

one product: syrup/concentrate ●

two kinds of customers:

(1) franchised bottlers

(2) soda fountains that dispense their syrup

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) 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.

- 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 ●
- Title 21
handout ●

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 groups **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

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...3 lacrosse players were indicted. A detailed discovery request was filed. 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 exclusion of the 3 students...as well as all of their

teammates. ●

More records 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

copy the Difficult Client with everything ●

Show the Difficult Client that:

“I am paid to tell you the truth” ●

attorneys are being disciplined for failure to keep clients informed ●

Get Paid

bill regularly and in detail

renewable retainer ●

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 ●

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 unpaid 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 ●

KEEP YOUR DISTANCE FROM ALL CLIENTS ●

The Excuse For Not Keeping Your Distance.

The Boss. "Take This Client. Play Golf. Socialize."

Any problems...report and document the file. ●

Question: Should close friends and family become our clients?

Answer: You Decide. ●

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 my (legal assistant). 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 conduct **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. ●

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

client instructions

your recommendations and why ●

“Needs”

notes (or a summary):

meetings

interviews

court conferences

conferences with the other side ●

and send it all to the Client ●

Documentation equals confidence ●

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, quietly ●

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. ●

He speaks with:

The Late Night FM DJ Voice / NPR Voice ●

The NPR Voice is:

- deliberate
- assertive
- measured
- steady

downward inflection ●

In 3 words...

Slow. It. Down.

Who uses the NPR voice? John Phillips

- deliberate
- assertive
- measured
- steady
- downward inflection ●

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

stays calm

President Reagan

not so much

James Carville ●

(Ragin' Cajun)

President Obama
(No Drama)

Ann Coulter ●

Billy Graham

Billy Sunday ●

Tony Bennett

Billy Idol ●

Nora Jones

KISS ●

Warren Buffet

Jim Cramer ●

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

You 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: You say: “I can tell that you are
upset by this.” ●

Focus on the problem not the **Personality Drama** of the Difficult Client ●

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

Sympathize: Let each client know they are not alone

I like to convey this as a take away...

(in so many words...)

- “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 alls ●
- attire ●
- the “attitude” ●
- make the **budget** clear ●

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

Copies

Let The Client Decide. ●

KINDERGARDEN ●

Little Golden Books ●

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...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 With 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 ●

flow charts

Trust **But** Verify (Duke lacrosse records) ●

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

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*