

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 2<sup>nd</sup> (or 3<sup>rd</sup>) 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

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)●

## **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

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.



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 all ●

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*