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Key Questions for Client Interviews

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While preparing witnesses to testify, some attorneys appear to have a knack for pulling surprising information from witnesses – information that can have significant impact on the case. Their secret? A client centered, open ended approach to questioning.

Most lawyers assume that clients will voluntarily tell them everything they need to know. This is a very dangerous assumption. Relying on clients to come up spontaneously with the needed information fails to take into account certain client characteristics that almost always lead to the attorney receiving inadequate information.

Some of these characteristics are:

- 1) The client may be unwilling to disclose all concerns immediately.
- 2) The client's description of the problem may be inaccurate or incomplete at the beginning of the interview.
- 3) The client may have little understanding of what the problem actually involves, and thus fail to reveal pertinent information.

By asking your clients open ended questions, you will help them get past these barriers and give you the information you need to win your case.

Open ended questions are questions that cannot be answered by "yes" or "no." They require a descriptive answer. They encourage clients to tell a story, or describe an event, feeling or situation in their own words.

Open ended questions allow clients to talk about problems or concerns from their point of view. Failure to ask open ended questions discourages clients from giving you the very ammunition you need in court.

By asking client centered questions you show that you are actively concerned and interested in your clients and their specific problems. Ask, for example, about the client's perception of case outcome, expectations of how the case might proceed, how the case may impact the client's life/business, reasons for choosing you and your firm and other questions that are of an exploratory nature.

For example:

"What is the best case scenario in your view? If you could have it your way, how would this matter proceed?"

"What are your greatest fears regarding the outcome in this matter?"

"What is the worst case scenario in your view? What's the worst way this matter might proceed?"

"All things considered, what do you expect to have happen? Both in the outcome of the trial and how the case will proceed?"

"If this case turns out to your advantage, how will it affect your life?"

"If this case goes according to your worst case scenario, how will you be affected?"

"What are some things that might come up in this case that you worry about, or that you'd rather not have come out?"

"What made you decide to take this action? What's the bottom line for you here?"

"What was it about me or my firm that led you to choose me to represent you?"

Different questions are appropriate to different cases and different situations, and of course, to whether your client is plaintiff or defense. However, the above list, although by no means all-inclusive, gives examples of client centered, open ended questions you can modify as needed.

For example, using a fictitious sexual harassment case, a plaintiff's lawyer in the scenario below conducted the initial interview in a very matter-of-fact problem solving manner without the benefit of open ended questions:

Client: "There was a change of management at my work. Since the new team has come in, it's been awful. There's two of them in particular who make sexual comments, very inappropriate, sexual noises and all sorts of gestures . . . I'm just going crazy, I'm stressed out, I feel nauseous all the time, it's got to stop."

The lawyer proceeds to solve the client's problem:

Lawyer : "We'll slap them with a sexual harassment, sexual discrimination suit so fast they won't know what hit them. What kind of documentation do you have on this?"

Client: "Uh, documentation.... But isn't that going to get me in trouble? I mean, I need my job"

Lawyer: "Don't worry about it. Leave everything to me. You'll be fine."

Here's how the lawyer could have used client centered, open ended questions to get more potentially useful information from the client after the client's initial description (as above) about the situation after the change in management.

Lawyer (using an open ended question): "Tell me more about it. You say the harassment started when this new management team came in. How did it begin?"

Client: "Well, our department hadn't been doing really well, our sales were down, and so the company hired these two new managers. The first thing they did was change all the procedures. I mean this was a pretty casual department, we worked hard but we did things our own way. We liked it that way. The new team was real aggressive in changing policy, I guess they wanted to let us know who was in charge. It made it rough on all of us. Then I noticed they would make comments like 'you're never gonna sell wearing that outfit' and 'what's with the 50's glasses?' and things like that. That's where it started."

The lawyer has just gleaned some very valuable information. Apparently, the client was somewhat disgruntled before the sexual harassment began. This is a point opposing counsel may use against the lawyer's client. Defense may say that plaintiff is just an unhappy employee trying to get back at what plaintiff saw as an overly tough management style. Plaintiff's lawyer, however, forewarned, can readily dispel such an argument. This is typical of the worthwhile information client centered, open ended questions will provide. Giving your clients the freedom to tell their stories in their own words is a very powerful tool.

Motivate your clients to be cooperative and open by acknowledging and appreciating the information they give you. Give clients direct, sincere praise for cooperation or help. For example:

"Your giving me that information is very helpful."

"That's very interesting."

"That's a valuable point."

Adding such acknowledgment further encourages useful client disclosure.

Using the sexual harassment example, the client has been telling the lawyer "how it all began."

Client: "The new team was real aggressive in changing policy, it made it rough on all of us. And then I noticed they would make comments like 'you're never gonna sell wearing that outfit' and 'what's with the 50's glasses?' and things like that that's where it started."

Lawyer (acknowledging and appreciating the client's disclosure): "That's very helpful information you just gave me."

Client: "That's not all. Managers from other departments would come down to see how the new team was doing because our sales were going up. I'll give them credit for that, and then they'd all start doing it together. I mean other managers would like chime in and there would be this round of dirty jokes and rough talk, stuff I wasn't used to. I find it all very unprofessional and upsetting."

By appreciating and valuing the client's disclosures, the lawyer has just been given another possibly useful tip. The company may be lax in self policing employee harassment if other managers "chimed in" as the client describes it. This information is helpful to lawyer's case if accurate, and certainly bears investigation.

If your clients are giving you sparse information, remember to praise them anyway for what they do provide. Continue to encourage them with more open ended questions. Clients who are parsimonious with their story are often simply reluctant to talk until they sense their disclosure will be valued. Help clients by giving them the needed reassurance. If, on the other hand, your client goes on for too long, direct your client to those areas where you do need information by asking more narrowly focused open ended questions, such as "So on the day in question, who were the other managers present?"

Asking client centered, open ended questions is a skill that requires practice and thorough preparation. The payoff is well worth the effort. Your clients will provide you with more detailed, descriptive information that will enable you to present a stronger, more compelling case at trial.

About the author: Noelle C. Nelson, Ph.D., is a trial and business consultant who provides trial/jury strategy, witness preparation and focus groups for attorneys. She is the author of the booklet, "101 Winning Tips: How to Give a Good Deposition and Testify Well in Court." Her published books include "A Winning Case" (Prentice Hall), "Connecting With Your Client" (American Bar Association) and "The Power of Appreciation in Business" (MindLab Publishing). <http://www.dr.noellenelson.com>, e-mail: nnelson@dr.noellenelson.com.