

Thursday, September 25, 2008

Do you order from my client's restaurant menu, too?

Â Â - "I don't care what the contract says, it's my money that paid for your work and I am going to know from you what's going on in the case." - "He's my family. Blood is thicker than water, and I'm going to be involved in your discussions with my brother." - "My son has the mentality of a grade schooler. I know what is best for him." Â Â What criminal defense lawyer can avoid clients' overbearing family members? Sure, I can refuse the potential client's case at the outset --Â and have -- if someone else is paying for my services and if that someone else seems like s/he will blatantly disregard my standard contractual provision that says the non-client paying party has no rights under the retainer agreement and case any more than ifÂ s/he had paid anonymously. What happens, though, if such handwriting only appears on the wall in the very middle of the case? What happens if the client will not stand up to the overbearing relative or friend?Â Â I love my work. However, if asked what most annoys me about my work, it often is overbearing friends and family members of my clients. Certainly, criminal clients and their close ones often are worried about their cases, and clients sometimes feel more comfortable including them in discussions (good luck explaining how such discussions can lose attorney-client privilege protection when third parties are present). However, so long as the lawyer is doing a good job, what justifies perverting concern into being outright overbearing and abrasive? Â How to handle such problems? One approach is to use "I" statements, rather than "you" statements, for instance: Â - "Mr. _____; I will be delighted to defend you were it not my concern for your brother who's paying your bills. I need to be effective for your case, and your brother is already laying unnecessary obstacles in the way to effectively defending you" v. "You spineless wimp. Why can't you stand up to your family. Maybe if you had stood up to the cops the night of your arrest and remained silent, you would not have this criminal case against you in the first place?"Â - "IÂ need my evening family weekendÂ time toÂ be refreshed to do battle for the client" v. "YouÂ are are so selfish.Â What nerve you have to call my cellphone repeatedlyÂ late Saturday night, insisting that I should not wait until Monday to set the prosecutor straight through reciting the Magna Carta verbatim?"Â - I understand your frustration that I am holding private conversations with your brother on this, his court date. I am sure we will have some additional breaks where you will also be involved" v. "You WILL get out of my way now, and you WILL exercise at least a sliver of self control." Â - "You have the right to vent. The question is, though, whom to vent to, how politely to vent, and how long and intensively to vent. I already agree with points A, C, and D about your child's case, so might we move forward?"Â v. "You want to vent? Go find a psychologist to do that, while I do the real lifting in your relative's case."Â - "In all seriousness, [client's parent], I am not sure I am willing to take your son's new case. Just last month your spouse was monologuing on and on and on about nothing, to me, about this case" v. "How do you put up with such a selfish f--k of a spouse? He seems to have a mouth but no ears." Response from the parent to my "I" statement: "MyÂ spouse is ADHD; that's why he talks on and on." Â - "I am not so sure I want to take your son's new case." Parent: "Why?" JK: "You repeatedly drone on and on when you call me, without even asking if I have been interrupted" [Note: I take the case and the parent is no obstacle, after the parent explains that such droning is ingrained in him since elementary school] v. "The nerve of you to come back to me after all your abuse I deflected from you on the last case."Â I can count on one hand the number of potential clients I have refused to sign up due to ominous handwriting on the wall of irreconcilable differences with client's family members plus a client who does not seem likely to put his foot down.Â Some honest "I" statements and reasonable reassurancesÂ about the lawyer's time to talk with the family member and to prepare the case defense,Â sometimesÂ can make the whole problem go away. Also, some inward- and soul-Â searching and reflection can help the lawyer learn how much of such exasperation is internally-rooted rather than externally exacerbated. Â What do you do in such situations?Â Jon KatzÂ

Posted by Jon Katz in Criminal Defense at 00:00

Thanks for this post. It was extremely helpful. As a 1L considering the basics of being an attorney, we need more posts like this which explain the administrative stuff.

Explaining case law and rules established in a jurisdiction are all well and good, but this was really helpful.

Keep up the good fight, I read your blog every day.
Anonymous on Sep 25 2008, 19:46

Thanks, Ravi, for your message. Because learning good client relations is so important, it can be very beneficial for law students to start doing so through clinical programs and other programs that bring them in direct contact with good criminal defense lawyers. Then, they will be somewhat inoculated to such behavior as I have described here.
Anonymous on Oct 1 2008, 19:31