

ONLY AN IDIOT COULD LOSE THIS CASE!

Dealing with client expectations

As I leave my office and head out to court, I say, “Only an idiot could lose this case.” This is my equivalent of “break a leg” in the acting realm. As that idiot, I feel like I’ve come back from court rethinking my career choice and whether the courts aren’t more akin to the Bermuda Triangle of logic and reason. Like the pilots of these unwitting ships and aircraft I have sailed more than one case into legal oblivion.

As an egocentric personality, I am slowly coming to the realization that other people may see things differently than I. This is still hard for me to swallow, but after 54 years of reproof, I may have to grudgingly accept it (eventually).

The harder part is explaining to my client and my client’s posse, peeps, relatives, or general entourage what the hell just happened. This is made all the more difficult because we all met and told and retold the story to one another and we all agreed that the case was “air tight,” self-evident, and holds together so perfectly that only an idiot could lose it. My client, you see, has already run this situation past “everyone” and “they all agree” that he should win big. And by the time he hired me, the righteousness of his position was pretty firmly entrenched.

In fact, prior to the first interview the client had his outrage reinforced and feels he is doing me a favor by bringing this big, whopping case to me. Its either a sure fire million dollar settlement or so darned unfair that he shouldn’t have to pay any attorney fees. The first category is usually announced with statements like, “Once you send in a demand they’ll want to settle right away.” The second category is the famous statement, “Can’t we make them pay the fees?” If it is a retainer fee case, the third most popular statement (and my personal favorite) comes just after I quote the retainer fee and the client says, “Can I make that in payments?” My answer is usually, “Yes, I’ll take that in one payment.”

The unpleasantness of meeting with a client after the defeat can often be avoided by initially reducing my client’s expectation so low that it could walk under a snake wearing a top hat. But if I do that too well, he leaves my office, taking with him the retainer or the big whopping case. How do I get him to give me a retainer (necessary to me paying bills and making a living) and at the same time be so discouraging that he puts little or no stake in the outcome. Ay, there's the rub.

So if I am pessimistic about the likelihood of success in the court system, won’t that so totally undermine the client’s confidence in me that I won’t be hired? I mean, I want to get hired, but I really don’t want a client at the end of the case say to me, “Why didn’t you tell me that at the beginning?” I think I’d rather lose the client up front, than

have that latter confrontation. How do I sell my services to the client on a hopeless matter?

Some years ago I was in a completely futile case (and even I knew it at the time) and I was totally frustrated about it and even though the victory was unattainable (realistically) I discovered another motivating purpose: to tell the client's story to the best of my ability. Could it be that the thing that I can "sell" to the client isn't the outcome per se, but the ability to have his or her story told to the court? In that case the client was entitled to have her story told to the court to the best of my ability. After I had already advised her emphatically of the discouraging possibilities, I could just as emphatically promise a telling of her story.

Occasionally I receive a letter from an attorney who, bless his or her heart, most definitely believes the goofy story of their client and is trying to bust my chops with this belief. I think its so cute when they do that. I mean: telling me that my client is lying, when she says that she didn't do drugs. How the heck does the attorney know? Kind of brings a tear to my eye as I recall my own naive years of innocence and trust. When I first started out, I was told by law professors that I needed to zealously represent my clients. I believed that this meant the "willing suspension of disbelief." I think sometimes the higher the retainer, the higher the suspension of disbelief. The only problem is that what is suspended may range from a harmless fantasy to a grand piano, and when it fails to remain suspended, it falls and does damage in accordance with its mass.

I don't mind being a willing idiot, suspending disbelief, in the attempt to tell the story, but I now insist on letting my client in on the realistic rather than fantastic expectations. Right now I have new client in the waiting area. She wants to sue for the emotional damages she suffered when Oprah's "Book of the Month" turned out to be false. Here we go again.