Anatomy of a Personal Injury Lawsuit

Volume I

Fourth Edition

Edited by John F. Romano

Trial Guides, LLC

AMERICAN ASSOCIATION for JUSTICE | AAJ Press

Anatomy of a Personal Injury Lawsuit

Trial Guides, LLC, Portland, Oregon 97210

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ISBN: 978-1-941007-26-6

Library of Congress Control Number: 2015931828

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Printed and bound in the United States of America.
This book is printed on acid-free paper.

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This book (including various related online resources that are referenced in the book) is intended for practicing attorneys. This book does not offer legal advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment; to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book); and to make independent decisions about whether and how to apply such information, ideas, and opinions to a particular case.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

The cases described in this book are sometimes real and sometimes fictitious. Sometimes the details are taken from transcripts, pleadings, and other court documents and sometimes they are based on the trial notes and recollections of the principal author and/or the various contributors.

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This book references a number of example documents, questionnaires, motions, jury charges, and other items available for you to download. These files are intended to provide concrete examples of the authors' methods and techniques.

To download these files to your computer, smartphone, or tablet, go to the following link:

http://www.trialguides.com/resources/downloads/anatomy-pi-lawsuit

Foreword: How to Be a Trial Lawyer

Gerry Spence

A young lawyer once complained to me that he couldn't win cases anymore. Something strange had happened. He felt as if an insidious malady had overtaken him. Fresh out of law school he had won almost everything—then he began to hone his technique. He read books by the experts and attended seminars conducted by the current stars of the courtroom. He became a fine cross-examiner and considered his final arguments just short of masterpieces. "I've gotten good," he said. "Real good. But I don't win anymore." He wanted me to tell him why, but before I could answer he said, "I already know why," and walked away.

Trial lawyers—some like to call themselves "litigators"—are an arrogant lot who see themselves as the vestiges of ancient gladiators, occupying a special high nob from which they peer down on the ignorant and mundane remainder of the human race. Jurors are objects to be fooled and manipulated; a trial is a game. Their clients are not frightened, suffering people but cases and money. The courtroom is the place where, to the amazement of all, they do their legalistic songs and dances, and where justice has become a sophomoric concept that no one can define anyway.

How well I remember my first days in law school, when I was urged by my professors to rise above the emotional pot that steams and simmers in most cases. The law that we were taught was not related to truth or justice, nor was it even related to human beings. The law was rarified stuff, a mysterious logic possessed only by lawyers and judges and adapted to the esoteric science of jurisprudence. In short, we were told to learn to "think like lawyers," which seemed to mean that we must shed our natural ability to think like

human beings. The goal was a risk-free, antiseptic profession, one that took the lawyer out of the law, the human out of the human conflict. We were to become surgeons dissecting bodies with no names, faces, personal histories, suffering, fear, or loneliness. We were to become legal machines—sweet, smooth, and uniform—and, like our professors, so far removed from the heart of human struggle that life would take on a new form; a dead word on a dead white page.

The young lawyer who came complaining to me had won his cases early on because he *failed* to learn the lessons of his professors. Without technical skill he had nothing to resort to in the courtroom except his raw, unsophisticated self. He possessed no fine techniques, no tricks, no cute arguments, no pretentious mannerisms. Often he stumbled. At times, he stood with his hands in his pockets, his face red, trying to form an unobjectionable question. Sometimes he looked silly. Sometimes his opponent laughed at him, and often the judge lost patience with him. Yet he won.

Now that his techniques were slick and smooth, the juries were rejecting him. He hated the jury. He railed at the gods. His argument, of course, was that he should be judged as he saw himself, a combatant in the pit who delivered the most telling blows with the greatest style. Unfortunately, his professors, most of whom had never peeped into the pit themselves, had neglected to tell him that jurors, though they might be amused, even enthralled, with a lawyer's fancy footwork, see their job as discovering the truth and delivering a just verdict. They failed to tell him that the very persons who would judge his case would demand of him something he had been taught to exclude from the arena—himself.

In my country of vast space and great mountain ranges, we provide guides for the tourist who would otherwise become lost. Such is the role of the trial lawyer with jurors. One would never select a guide based on his glibness or his cute way of walking down the trail. We demand a guide we can trust, one we can follow into dangerous places, who will bring us out again, inspired, blooming with new knowledge and glowing with a sense of satisfaction for having made the journey; and, of course, a guide always takes the trip with us.

Those who have struggled through these treacherous journeys called trials know they are hazardous to the soul. By the time trial lawyers walk into the courtroom they have spent many a day and long night inside the skin of their clients. To lose, to share the agony and despair of your client, to know you have laid it all out and the jury has rejected not only your client's case but you—well, it's like feeling the sword slip through your heart. I have never walked into a courtroom without feeling my guts drawn tight. I have never stood up to cross-examine the principal witness without wondering anew if I was up to it, without the fearsome fantasy of the witness running wild, turning my case into a shambles and revealing me the fool I sometimes fear I am. It makes no difference how many cases I have won before. Deep in my heart I suspect that, in the past, some magic fell over the jury like hot river fog and that the magical fog will never return to save me again. It's that excruciating pain of loss we guard against, and that very effort causes many lawyers to view their cases as mere legalistic exercises instead of human struggles for justice. Yet the pain-avoidance mechanism at work here almost always guarantees the lawyer will lose.

I have learned over the years that I won most of my cases because I *cared* a great deal, both about myself and my clients. My caring wasn't some high morality not shared by my brothers and sisters of the bar. I couldn't help myself. I tried not to get involved; I admit it. I tried to keep my personhood in my pocket, to be a clever, competent, impersonal technician who could win either side of a case—in the eyes of many, the hallmark of the skillful trial lawyer. But in the end, it was my miserable failure to do so that proved to be the secret to my success.

The dynamics at work with the jury, like most truths, are embarrassingly simple. What do jurors want? Do they lust for the blood of the witness and long to hear you fill the halls with your glorious oratory? Do they wish to be deeply impressed by your skills, your grace, and your beauty? I say jurors want the truth. They want to know they haven't been fooled and that they've been fair and have been rendered as good a brand of justice as they can. Too often clever trial lawyers stand in the way of these goals.

I subscribe to the notion that the jury is the most intelligent, the best informed, the wisest collective mind in the courtroom. The average juror is about forty years old, so the twelve jurors possess among them nearly 500 years of exquisitely varied life experiences. The worker who scrubs the latrines of a saloon for a living and goes home to a cold bowl of cereal and an empty bed knows more about the human condition than all the Harvard PhDs I can haul into the courtroom at $1,000 an hour. The workers who know the fear of being without jobs, and who have witnessed co-workers losing their hands and breaking their backs in those hellholes called the workplace possess a wisdom not taught in universities. Consider what the senior male litigator in the large firm knows about being a woman. Yet nowadays there are usually more women on juries than men.

Perhaps you can fool this enlightened conglomerate of humanity, the jury, for a while, but the pressure of the trial will almost always squeeze out who you really are and how you really feel—if you have dared to feel at all. After which the jury will ask themselves a simple question: What kind of human being stands in front of honest men and women asking them to do what he refused to do—to care about his client? After you have lost you can study the transcripts forever, but you will never discover the reason you were unable to fool the jury. It was the sound of your voice, the tempo of your words, the language of your body. They weren't in sync. It's like an expert who can tell a counterfeit hundred-dollar-bill a mile away, not by its print or its paper. It's just that the counterfeiter can never quite get it all together.

We hear a lot about ethics these days, and law students are taught a course by that name. However, I know of no professors who teach that to strut and preen and lay down long trails of pettifoggery emanating from places void of feeling and empty of caring is unbefitting one who purports to serve the cause of the injured, the forgotten, and the damned. I know of no professors who teach that a lawyer must learn to love his client. Yet whenever I begin these uninvited preachings, I am met with a high, whiny protest: "A lawyer can't love every client," and, indeed, I concede that not all clients are lovable. What I hear most often is "How can *I* (with a capital I) love *them* (with a lowercase t)?" The arrogance of the

profession is the enemy, the elitist idea that somehow I can take full credit for the gifts that have been showered on me—my good genes, my caring parents, my benevolent surroundings, my cornucopia of opportunity—but my clients, by reason of choice, are stupid, slothful, often immoral, and usually deserving of their lower station in the hierarchy of human worth. Find your self born deep in the ghetto, your father unknown, your mother selling her flesh by the trick to feed your face, and explain why you haven't attended Exeter and matriculated at Yale and why you're not blinding us with your blazing social graces and charm.

Caring is contagious. After a recent trial in which the jury returned a verdict for my client that surprised the media, the prognosticators, and the public, the client held a party for the jury. After collective hair was let down and souls bared, one juror came up to my client and said, "Do you know why we knew you were right? We knew because your lawyer fought so hard for you. No lawyer would fight like that unless you were right."

I say caring is contagious, but caring begins with lawyers caring about themselves. The lawyer who has withdrawn from the fray has already lost, for even if the jury found for his client, what he takes home from the experience is as empty as eggshells. To the same extent that lawyers must give their clients the gift of themselves, so, too, lawyers are entitled to gifts—their own raw feelings and the knowledge that they are, indeed, alive after all. Such gifts usually contain little joy or peace. The gifts are savage and brim with fear. They manifest themselves with eyes locked open, staring at the ceiling in the dark of night. They countermand one's right to quiet evenings at home with the kids. They leave one open to a variety of difficult questions, like, "How can you put some stranger ahead of your family?" and "Why is an opening statement on Monday more important than fishing on Sunday?" The compromises that are demanded of the trial lawyer come without excuse, without reason. Finally, they come without any justification. One is a trial lawyer only because one has no choice about it, like one cannot change one's weak chin.

The lawyer who never learns to use the tools of his or her profession—the art of witness examination and of argument and

oratory—is like the painter who has never mastered the brush or the surgeon whose brain is full of exotic medical data but who can't safely pare his own fingernails. The most successful trial lawyers are those who have not only acquired the requisite technical skills but who have mastered the highest art of all—truly being themselves. I think of the old cowboys who laughed at the dude who bought a $100 saddle for a $10 horse. All the known techniques of the great trial lawyers can be deposited in some intellectual machine who scored high on the LSAT, stunned the professors at Stanford, and astounded one and all with its score on the Multistate Bar Examination but who could never convince a jury that water is wet. I know an old-time Wyoming lawyer who, after nearly a half-century in the courtroom, has never learned the simple techniques of cross-examination, and who stumbles around in his final arguments like a kid trying to explain the dent in the fender of his father's new car. Yet he wins nearly all of his cases. Over and over he proves to the jury he is trustworthy. Plainspoken, open, and painfully candid, he tells it like it is, with words breaded in the stuff of his soul and soaked in the blood of his being.

I think of the people I have most feared in the courtroom, and they've always been either some young man struggling to get his honest feelings out to the jury or some neophyte self-conscious woman who wishes, for God's sake, that she could be anywhere else. She's only there because she has to be, because she cares. She has no choice, and so she struggles on. Over the years I have learned that the successful trial lawyer does not fit into any pattern of age or size or sex or looks or voice or education or even intelligence. The diminutive personality seems to be as successful as the dynamic spellbinder because the successful trial lawyers of this country have one thing in common—they strive to become whole people who put all of themselves into their clients' cases, including a deep sense of caring. For no fortress can stave off the onslaught of men and women who have given themselves to the cause of those who need them, God bless them all, our clients, who, through us and only us, seek that ephemeral jewel called justice.

Introduction

John F. Romano

The quest to become a skilled and effective advocate and courtroom lawyer never ends. It is filled with years of learning and education—from researching and writing motions, preparing for and taking depositions, suffering through losses at hearings and reflecting back proudly on wins, from the heartbreak of defeat in trial and from the magical moment of victory—our knowledge is our lifeblood. The greatest gift we have as trial lawyers is the cultivated wisdom that has been passed down through the generations by a multitude of mentors.

Many of the great lawyers in America are also splendid teachers who have given their time to turning students into lawyers and lawyers into advocates. That is exactly what this project is about—furthering the education of lawyers to enhance their skills and open their minds to bigger and better efforts and results. The publication of this fourth edition of *Anatomy of a Personal Injury Lawsuit* cannot take a single step forward without first giving recognition to those who brought the concept of this publication to fruition through their work on the first three editions.

The First Edition

It was Friday, May 10, 1974. I had just been sworn in as a member of the Florida Bar, and I met with Al J. Cone that afternoon. Al had served as president of the Association of Trial Lawyers of America (ATLA) in the mid-1960s, and he wanted to share a few stories with me about being a lawyer. In this meeting, he told me to become a member of both the Academy of Florida Trial Lawyers and ATLA. He then handed me my very own copy of *Anatomy of a Personal Injury Lawsuit*, the first edition of a handbook on basic trial advocacy. This was a very special publication as it was a basic teaching manual on representing personal injury clients, working as an advocate for injured persons and their families, and winning cases through effective advocacy.

I recently reviewed a chapter in the first edition entitled "Basic Medical Anatomy." I found an entire discussion of medicine and anatomy described verbally without illustrations, drawings, graphs, or charts. How times have changed. It was through the later teachings of the ATLA greats themselves that we would come to learn of the essential nature of demonstrative aids. However, this first edition could still serve as a bible of sorts for new trial lawyers, and we can always be appreciative of the ATLA pioneers who created the concept for *Anatomy of a Personal Injury Lawsuit*. Their dream became a reality that must be treasured by those of us who have followed their paths. Robert Dudnik served as editor in chief working side by side with assistant editors James Leonard and C. Glennon Rau. They oversaw contributing authors including Tom Anderson, Wade Dahood, H. "Brother" Hare, Lex Hawkins, Jimmy Hullverson, J. D. Lee, Jimmy Leonard, John Norton, Stanley Preiser, Paul Rheingold, Larry Smith, Shannon Stafford, and Ward Wagner. This edition had its first printing in 1968 and ultimately had eight printings over the next ten years.

The Second Edition

A new era in ATLA rolled out in the 1980s with the 1981 printing of the second edition of *Anatomy of a Personal Injury Lawsuit*. This second edition was, again, a bible of sorts. However, it brought new

meaning to the readers. Now, it was more than a how-to guide—it was a book of motivation, a book of inspiration, and a book about the vision of what we do and what we must do as plaintiff trial lawyers. Editor John Norton and his assistant editors H. "Brother" Hare, Ed Ricci, and Mary Frances Edwards took great pains to see that this second edition became necessary reading for plaintiff trial lawyers young and old. The second edition's contributing authors—Scotty Baldwin, Sidney Bernstein, Mike Colley, James George, Jimmy Hullverson, J. D. Lee, James Leonard, Stanley Preiser, Paul Rheingold, Larry Smith, and Ward Wagner—hit a grand slam. It was a time when every member of ATLA had his or her own copy of *Anatomy of a Personal Injury Lawsuit*. We owe so much to these trailblazing men and women who understood and appreciated the value of the efforts of plaintiff trial lawyers. They taught us, and they taught us well.

The Third Edition

The third edition of *Anatomy of a Personal Injury Lawsuit* was published in 1991. The great Gerry Spence of Wyoming wrote the opening chapter—aptly titled "How to Be a Trial Lawyer," and it is reprinted in its entirety as the foreword in this book because no edition going forward could be complete without it. Gerry reminded us that:

> The lawyer who never learns to use the tools of his or her profession—the art of witness examination and of argument and oratory—is like the painter who has never mastered the brush or the surgeon whose brain is full of exotic medical data but who can't safely pare his own fingernails. The most successful trial lawyers are those who have not only acquired the requisite technical skills but who have mastered the highest art of all—truly being themselves.

True to Gerry's words, this edition was the ultimate tool in the trial lawyer's toolbox of advocacy, persuasion, ethics, procedure, argument, and more. The third edition, edited by Jimmy Rogers,

took the series to a new level. In addition to teaching trial lawyers how to litigate, mediate, and try cases, the third edition taught us why the trial lawyer does what he does and how vital the role of the trial lawyer is in society. Linda Miller Atkinson obliterated old ways of thought with respect to how we conduct discovery, and Roxanne Barton Conlin taught us innovative methods for handling voir dire. Peter Perlman gave us expertise on experts, and Howard Nations taught us how to win cases through cross-examination tactics and techniques. The contributing authors of this third edition also included Doug Abrams; David Baum; Arthur Bryant; Phil Corboy; Abraham Fuchsberg; Mike Gillie; Dr. Carole Gutterman; Dale Haralson; Mitchell A. Karton, MD; James Leonard; Paul Luvera; Nicole Schultheis; Susan Schwartz; Deanne Siemer; Victoria Swanson; and Harvey Wachsman, JD, MD.

The Fourth Edition

Anatomy of a Personal Injury Lawsuit provides the plaintiffs' bar in America with an extraordinary resource that is concise, practical, and user-friendly in its approach. This book is meant to be a how-to guide with steps for the handling, litigation, and trial of personal injury and wrongful death cases. It is a true field manual that should be on the desk of every plaintiff lawyer in the U.S., providing her with the know-how to represent plaintiffs in virtually every type of personal injury lawsuit—a know-how that will result in the optimum outcome for the client and their case. This is not a textbook. This is not a philosophy book. This is not a law book. It is the ultimate resource manual for handling each and every aspect of a plaintiff's personal injury or wrongful death case.

Publishing field manuals such as this is no easy task. It has required thousands of work hours by a multitude of men and women. My special thanks go out to Jennifer Adams, Emily Smith, and Anjali Jesseramsing of the American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA®) for their efforts in planning and organizing the project. Thanks to Aaron DeShaw, Tina Ricks, Regan Fisher, Travis Kremer, Melissa Gifford, Missy Lacock, and Alexandra Haehnert

of Trial Guides for their nonstop efforts in staying so focused on the details and in keeping everyone's noses to the grindstone to get this done in a timely fashion. Our young lawyers, Dustin Herman and Geoffrey Schosheim, worked side by side with me for the better part of two years to make this happen, and I'd like to thank them for their constant communication with authors and representatives from AAJ and Trial Guides; for their editing efforts and skills; and for having such positive attitudes through the duration of this project even as they took depositions, handled hearings, and mediated and tried cases. Thanks to the one and only magnificent Bonnie Land of our Romano Law Group staff for all of the hours she gave to monitoring every aspect of this project; to transcribing, reviewing, and editing chapters; and to receiving dictations. Thanks to former presidents of the AAJ and to current president Lisa Blue, as well as past and present AAJ Board of Governors' members, for having the vision necessary to create, develop, and continue with this splendid organization. AAJ has the foresight to continue to teach, educate, and inspire the betterment of the justice system in America and the mind-set to enhance the results for our clients of the past, present, and future.

1

Initial Client Interview

Karen Roberts

Along your journey as a trial lawyer you will meet some wonderful and amazing people: men, women, and children you might never have crossed paths with had you not become their lawyer. These people will teach you courage, enduring optimism, and inspiring human perseverance—if you are open to the lessons. Perhaps the true richness in life as a trial lawyer is the privilege of witnessing firsthand how the best in human nature can arise from the worst of human tragedy.

Years from now as your career winds down, you will feel pride in remembering the good people you came to know as your clients: people whose lives you helped to improve. You may also remember other clients with mixed emotions: you agreed to help them, you obtained a good result, yet you were left feeling you had somehow failed. Clients like these are an inevitable part of life as a trial lawyer.

Fortunately, there are specific steps you can take and information you can obtain in the initial client interview to help develop more successful relationships with your clients. There are specific

facts you need to obtain in the beginning of every case.[1] To be a good lawyer you need to understand the relationship of the law to those facts, but to be a great lawyer you need to understand people.

The First Step to the Initial Client Interview

Your relationship with your client starts well before the initial client interview. The first step in this relationship is made when the potential client contacts your office. Your office's response to this first contact informs the potential client's impression of your office and is crucial in determining whether you will then have the opportunity to develop a relationship with this person.

Many lawyers invest large amounts of time and resources in getting potential clients to contact their office. Should the person become a client, lawyers then invest large amounts of time and resources into handling the case. But many lawyers take the steps between the client's initial contact and the client signing the contract for granted. When your staff is not equipped to respond quickly and professionally to your potential client's first contact, you can lose that client's business. Because we are so focused on properly handling our current cases, we can overlook properly handling our potential cases.

If you fail to prepare your staff to manage a potential client's first contact, you may never get to the important step of the initial client interview. Take time to create efficient screening questionnaires, train your staff on how to properly speak with a potential client, and give your staff the time they need to be able to professionally respond to new client inquiries. If your office determines that an initial client interview is desirable, ensure that interview takes place promptly. Simply put: the longer the delay between first contact and the initial client interview, the more likely that interview will never take place.

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[1] Please see "Ch1 Initial Client Interview Questionnaire," available for download at www.trialguides.com/resources/downloads/anatomy-pi-lawsuit. You or your office staff should fill out this questionnaire when your client first calls or when she makes her first visit to your office.

Assuming a new potential client contacted your office, your staff properly responded, a prompt appointment was made, and she is now sitting in your lobby, what is your task? What do you need to do in this initial client interview to be able to determine whether this is going to be a positive relationship for your potential client, you, and your staff? As with any significant relationship in your life, there are steps you can take in the beginning to lay the path for success.

The Path to a Good Relationship

Determine Who Is in the Relationship

When you sit down with a potential new client there is often another person in the room: perhaps a spouse, fiancé, the client's adult child, a friend, or even a roommate. Most of the time these individuals are there to support your client as she meets you for the first time. In some cases this individual is the person who guided the client to you. While you should be grateful for the confidence this individual has expressed in your services, be aware that this person may continue to influence your client's decisions and is someone you will also be dealing with during your handling of the case.

For example, if your potential client has a controlling spouse, you will need to determine if you can work not only with her, but also with her spouse as the "offstage" decision maker. The majority of people in your client's life are likely to be supportive of whatever it takes to improve her life, but you may encounter people who assert authority over your client for their own personal gain. These "pseudoclients" will identify themselves by the questions they ask. These questions often have less to do with the well-being of your client and more to do with the value of the case and the time it will take you to obtain it.

Your job is to recognize potential pseudoclients, consider how they will influence your relationship with the client, and determine how best to work with them. Your challenge is to politely but firmly make it clear to everyone in the room who the

potential client is and that your obligation is to her. The role of friends and family is to support your client and the work necessary to maximize her return to health. Should you accept the case, your client needs to leave the meeting with the clear understanding that you are her legal counselor and she can count on you to always advise her on what is in her best interest.

Avoid Conflicts

Occasionally, the other person in the meeting is another potential client. An important task in the initial client interview is to identify everyone involved in the incident and determine who may be potential clients. When there have been multiple people involved in an accident, identify those whom you can and cannot ethically represent. In the example of a car wreck case, a driver and one or more of his passengers may come to your office together. In this situation, a conflict of interest may exist regarding liability or damages claims between the two (or more) clients.

In regard to liability: if the finder of fact could decide that your potential client, the driver, is partially responsible for the accident, your other potential client, the passenger, may have claims against the driver of the vehicle they were in—as well as the other driver(s) involved in the collision. This creates a conflict of interest that prohibits you from representing both the driver and the passenger. Even if liability facts do not appear to present a conflict of interest, a conflict may arise regarding the division of money damages claims (the available insurance coverage). For example: in some states if there are more than two people with potential claims under an auto insurance policy, there will have to be some division of funds among some of the claimants, creating a conflict of interest between those claimants.

It is always difficult to turn away a meritorious case, but it is even harder to defend an ethics violation. The best practice is to prevent these issues from arising in the initial client interview by screening for these types of conflicts in the first contact the client makes with your office.

Establish Boundaries

Part of establishing a relationship with a new client is clearly outlining the claims that you will—and will not—be handling for him. You can avoid misunderstandings if you discuss the specific claims he wants you to handle in the initial client interview. Listen to him and make a list of issues he wants addressed. There may be claims he believes will be part of his case that the law does not recognize or provide a remedy for. Or there may be claims that the law recognizes, but you feel would not be beneficial to his overall case. By the end of the meeting, you and your client must have a clear understanding of the extent and the limitations of the claims you are handling.

Within forty-eight hours of the client signing your contract, send him a letter outlining your understanding of the claims you are handling. For example, if you are not going to represent the injured client's spouse for a loss of consortium claim, confirm that decision in writing to your client and his spouse. If the client's minor children were also in the car at the time of the wreck but were not injured, note in your letter that you do not represent his children for their potential claims. Obviously, you want to avoid letting the statute of limitations expire on the claims you are handling for the client, but you also want to avoid letting the statute of limitations expire on claims you did not realize the client was expecting you to handle.

Outline Expectations

While it is important to clearly outline the specific claims you can handle for the client, it is also important to determine what the client's expectations are regarding those claims. In other words: can you obtain what it is she seeks? The only way to know what a potential new client seeks is to ask. Let me repeat: ask in the initial interview what the client hopes to accomplish by hiring a lawyer.

Many people seek justice in ways we cannot deliver. For example, someone struck by a driver who ran a stop sign may want to see the driver arrested. Someone injured by a defective product may want sanctions against the manufacturer. Or

someone may want a careless physician's license suspended. These people want something done so that the harm they suffered does not happen to someone else—but these well-meaning goals and expectations are simply ones we can't promise to deliver on. In that first meeting, a potential client deserves to hear an honest explanation of what our civil justice system can and cannot do in a particular case.

Generally, a potential client's expectations focus on a fair resolution for her case. In other words, how much money she will receive in compensation. During the initial interview, it is usually too early to know the full extent of a client's injuries. But this does not prevent some potential clients from forming their own premature opinions on how much compensation they are owed. If it appears your potential client has an opinion on the amount of compensation she should receive, ask her for that opinion. The initial client interview is the time for you to determine if you will be able to meet the expectations of the client. This is your first opportunity to discover if you are at risk of investing your time, effort, and money into a case to obtain what a client does not seek or can never obtain.

Create Open Lines of Communication

One of the most frequent complaints from clients about their relationship with their lawyers is a lack of communication, by which they generally mean their lawyers do not return their phone calls. Clients want and need to stay informed about their cases. The good news is there are many ways we can maintain good communication with our clients.

The initial interview is the time to establish the best lines of communication with your potential client. During that first meeting, introduce the potential client to your staff. It is a good practice to have your staff members give the new client their personal business cards. If your staff will be handling most of the client's calls, each communication will go more smoothly if the client has met those staff members. If you emphasize the professionalism of your staff and your confidence in them, you will ensure your client has confidence in them.

Determine your client's contact preferences with respect to his case. Does he want his information through e-mails, letters, or periodic phone calls? You can offer to copy him on all correspondence sent out of your office on his case or attach that correspondence to an e-mail. The initial client interview is the time to explain how your office can and will stay in touch and provide updates on his case.

An additional way to help the client understand what will be happening in his case is to provide him with an informational brochure or FAQ handout. While this type of literature cannot address all contingencies, it may help the client gain a better understanding of how a case like his typically progresses. Most clients have never had to hire a lawyer, and they have no idea how you will handle their case once they walk out of your front door. Providing this information up front will save you and your staff time later.

Last but not least, find out exactly whom your client authorizes you to communicate with regarding his case. For example, if your client is elderly, he may prefer that your office communicate with one adult child—but perhaps not another one. Knowing exactly who should and should not be kept in the loop will help avoid problems should an interested family member call your office about the status of his case.

Define the Client's Role in the Relationship

If you accept the case at the conclusion of the initial client interview, your new client will feel relieved that you are stepping in to handle matters, but that is not to say she has no further responsibilities. In fact, she will often want to know what she needs to do next.

Of course, in the case of a personal injury matter, the most important job the client faces is recovering from her injuries. But there are a few things you can advise the client to do or to avoid doing as her case proceeds. One important rule she needs to understand and follow is to not talk about her case. You need to emphasize this rule and remind the client that it applies to all forms of communication—especially given the ubiquity of social

media these days. Make sure your client is aware that checking people's Facebook pages and other social media connections has become a standard practice for many lawyers.

For the client who is still under a doctor's care, emphasize the importance of following medical advice. Not everyone makes their health a top priority, and recommended procedures or treatments can go ignored. Make your client aware that her medical records are an important part of the evidence you will have to work with in the case. If a client decides to prematurely stop treatment for her injuries, it will create a false impression with the insurance company regarding the true extent of her injuries, and thereby make your job harder.

Before the new client leaves your office, she will need to sign authorizations for your staff to obtain needed information. Emphasize to your new client that as the case progresses, there may be many documents that she will need to provide to your office. Instill in her the importance of responding promptly to these requests for information.

The client should also understand the importance of advising your office of any changes in her information. If the client has a change of address, job, or health, she should know to inform your office as soon as possible. E-mail and user-friendly voicemail systems are ways to make your client's ability to communicate with you easy, especially after regular business hours. The easier you make it for your client to communicate with you, the easier your job will be.

Explain the Contract

If the initial client interview results in you and your potential client agreeing to enter into an attorney–client relationship, the next step is signing the written employment agreement, or the contract. At a minimum, the contract outlines how your fee will be calculated and the typical activities that generate legal expenses your new client will owe. Give as much detail as possible on the types of activities that will generate expenses such as copies, postage, obtaining medical records, accident reports, and hiring investigators or experts. You can avoid later misunderstandings

with your client if you discuss the types of costs associated with his case that he will be responsible for in addition to your fees.

Be clear that regardless of the outcome of the case, the client's medical bills are his personal obligation. In the case of a recovery, the client may be further responsible for repayment of some of the benefits he has received from his own medical, disability, or auto insurance company. While you can assure the client that you will obtain the best recovery possible in his case, you must also highlight what will be deducted from that recovery. Disclosure in the initial client interview is a two-way street.

You are now in a relationship with someone you have just met. It is a contractual relationship with obligations both legal and ethical. The job ahead involves extensive investigation into the circumstances that brought your client to your office. But the job does not only involve understanding the facts of the case—it also involves understanding the people of the case. When the people involved work in harmony, the end result can be one that positively impacts lives.

Avoiding a Bad Relationship

Listening to seasoned trial lawyers' stories about past cases and clients is always an opportunity to learn. Life as a litigator can be fraught with stress, but experienced trial lawyers will tell you that the rewards of advocating for justice for good people are worth a few sleepless nights. The sleepless nights you may resent are the ones you spend thinking about the cases you wish you had never taken in the first place.

The initial client interview is the time to identify potential problems and immediately deal with them, or sometimes make the difficult decision to turn away a potential case. Regardless of the merits of a case, there are times when possible harm to the morale of your staff and yourself may make a case not worth handling. Occasionally, it is better to recognize that a potential client's needs may be better matched with another law firm, perhaps even your competitor.

It is an inescapable fact of life as an attorney that you will encounter certain people with whom it will be more difficult to build the successful relationship you and your staff deserve. Below you will find a list of red flags to watch for when interviewing potential clients. This is by no means an exhaustive list, nor should you consider any of these to be deal breakers; these are simply insights into issues that should be given special attention.

The Obsessed Client

This person usually comes to the initial meeting with a briefcase, box, or large bag of papers he relates to the case. He has meticulously saved every scrap of paper and every note, and kept a list of dates, times, and places of every conversation regarding the case. If he reveals that he has secretly tape-recorded conversations with the insurance adjusters or his doctors, realize that he may also record you and your staff. This person has built a life around his potential case, and he will not be satisfied until you and your staff does the same.

The Disillusioned Client

She is usually switching lawyers because her prior lawyer gave her bad news. She may have been told the case was not worth as much as she had hoped for or that the jury may find she was partially at fault for her injury. This is not to say that people never have good reasons to terminate the relationship with their lawyer. While you must handle this topic delicately, you do need to explore the actual reason for the failure of the prior attorney–client relationship to avoid your relationship failing for the same reasons.

The Borrowing Client

This person may make your representation of him, in what appears to be a good case, contingent upon your firm advancing personal loans. Remember that a potential client seeking competent representation should understand that the loans your law firm advances are for the prosecution of his case and, when possible, needed medical care. If he needs a bank, let him go

elsewhere. You should guide a client in immediate financial need to any and all resources available in the community. Even if your rules of ethics allow you to advance money during the case, this practice can make it more difficult to resolve the case to the client's satisfaction in the end.

The Bargain-Shopping Client

This person lets you know that she is shopping around for a lawyer. She is not comparing experience levels between lawyers, but rather the attorneys' fee rates or willingness to advance money to her. This potential client wants to let you know that the lawyer across town is willing to handle her case on better terms, but she wanted to meet with you because she knows of your good reputation and wanted to talk with you first before making a decision on which lawyer to hire. Be aware that this client's bargaining attitude may not end upon negotiating your fee—her approach to you and your firm may reappear at the end of the case as well. In other words: despite getting a good result, when the final accounting is made, she may argue about paying certain legal expenses or other costs.

The Real-Deal Client

This person appears to have injuries that should result in a satisfactory return to health. Yet he describes these injuries as "excruciating" or "ruining" his life. He may tell you that he has always favored tort reform because of how other people have abused the system. However, he feels that his case is legitimate and is certain that any jury will view his case the same way. You can tell that his injuries are real, if not life-altering, and his case is viable. The problem with this sort of client may be that no amount of money you can obtain for him will ever be enough.

The Long-Distance Client

This person has driven hours to get to your office. She has driven past many of your well-known competitors' offices to come to yours. While it is flattering that she has traveled so far just to see

you, be aware that her search for a lawyer well beyond the boundaries of her community may have more to say about her than it does about you. Explore why she does not want a lawyer from her own community handling her case. If she has previously used many of the attorneys in her own community, she may have prior injury claims that will make her case difficult to effectively handle.

The Hidden-Problems Client

This person is the hardest to identify. He has issues in his background and he either does not recognize them as problems or will not willingly disclose them to you because you might not take his case if he does. Nonetheless, it is imperative that during the initial interview you ask him about bankruptcies, child support liens, any prior claims, or any prior crimes. Often you can assure the client that the problems of the past will have no bearing on his current legal matter. If past problems do create obstacles in his case, you can each determine how best to handle those challenges now as opposed to later.

Background Checks

Because some people honestly do not have a clear understanding of what in their past may or may not be important, it is in everyone's best interest that you always complete a background check on your new clients. The other side will, and these checks are a crucial part of your overall investigation. You should make these checks on every party involved. When you agree to take a new case, you are committing to potentially investing a large amount of your time, money, and energy into getting a good result. Finding out the likely success of a case early on is something both you and your client deserve.

In the End

The opportunity to work with good people is part of the enjoyment of life as a trial lawyer. But there will be times when the satisfaction of your work seems to elude you, and you will often

find that personal conflict is the culprit. We cannot eliminate conflict in our lives—it is part of life and at the very heart of what it is we do as litigators. But we can avoid conflict with our clients, the people with whom we should be most in harmony.

If you find yourself in conflict with your client, it may be the client's fault. But the fault may also be yours. Remember that you, more than the client, understand the journey you will be embarking on together. It is your role to guide the relationship toward a successful outcome. The initial client interview is the time for you to make the initial determination as to whether the relationship has the potential to achieve the outcome that both you and your client desire. If you can learn early on in your career how to establish and maintain good relationships with your clients, you will enjoy a rewarding career as a trial layer and you will be thankful for the people you meet along the way. Never forget that our clients are the ones who make the journey worthwhile.

About the Author

Before becoming a lawyer, **Karen Roberts** worked as a television journalist. She is a partner in the law firm Roberts & Roberts in Tyler, Texas. Ms. Roberts enjoys combining her communication and legal backgrounds to assist other lawyers in discovering the best strategies for communicating their cases to juries.

Having served on the Board of Trustees for the American Association for Justice's National College of Advocacy, she has helped implement continuing education for attorneys across the United States. Ms. Roberts is a former vice president of the Texas Trial Lawyers Association and chair of TTLA's Board of Advocates.