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Keeping Client Expectations Realistic

Sometimes it seems life isn't fair. Two hours after wrangling a reasonable settlement offer out of the rarely reasonable adjuster from the Good Neighbor's Family Hands Insurance Company, and just a half an hour after receiving the congratulations of the partners at your firm on reaching your first settlement, you are trying to figure out how to tell them that you do not have your client's permission to settle the case. What went wrong? Did you undervalue the case, or is your client being unreasonable? Your review of the jury verdict research shows that this really is an offer that should be accepted, but you know that the final decision is your client's. After feeling sorry for yourself, you think back to what you could have done differently to avoid this dilemma.

Don't Sell Sunshine

Some attorneys may be tempted to overstate the value of a potential client's case in order to get retained. I've had conversations where a potential client shopping for an attorney claims that some other attorney told them that their claim was worth something far in excess of reality. My typical initial response is that, if that attorney can get that kind of compensation for them, they should hire him. I then explain that, because so many factors go into the valuation of a claim, it is very difficult or impossible to give a reliable estimate without knowing a lot more about the claim. I generally refuse to give anything other than a very general ballpark number at an initial conference, and then only in relatively simple, common types of cases.

The attorney who overstates the value of a claim to potential clients in order to get the case usually ends up with an unhappy client in the end, because either the jury verdict or the settlement amount is much lower than the attorney was promising at the beginning. Selling sunshine is a short-sighted marketing approach because, although it may get you an initial client or two, those clients end up unhappy and they won't recommend you to others.

Don't Wait Until It's Too Late!

Client expectations must be assessed, and if necessary tempered, at the initial conference. I usually try to get some idea of what the client expects to gain out of the claim fairly early during our first meeting. If I perceive that the client has unreasonable expectations, I have a candid discussion about that right away. I explain that jury verdict statistics show that Oregon has lower than average verdicts for comparable cases compared to most other states, that insurance companies know that, and that settlement offers generally reflect that reality. I also discuss the effect that insurance industry propaganda about runaway juries, jackpot justice, and frivolous lawsuits has had on many jurors. If it is clear that the client and I are not even in the same ballpark on the potential value of the case, depending on the case, I sometimes suggest that perhaps another law firm would be more appropriate for them, since my goal is to have a pleased, or at least satisfied, client at the end of the case, and I fear that they may be disappointed if I am not able to reach their goal. So far, I have not had a potential client follow that suggestion.

Expectations should be discussed at each subsequent conference, especially as the case develops and you are able to more accurately estimate its value. This is important because the client may not remember the details of the initial conference when it is time to resolve the claim, which can be many months, if not years, later. You do not want to find out that your client has unrealistic expectations when you are halfway through the day at a mediation.

Is Your Client Truly Being Unrealistic?

It is a mistake to automatically assume that, because your client has a different opinion than you do about the value of the claim, your client is being unrealistic. Sometimes there are cases that fall outside the typical valuation range, and it is important to take a step back and make sure that your own prejudices or previous experiences are not unfairly influencing your opinion of the claim's value. It is also important to consider your client's right to have a jury decide their case. If your client is willing to take the risk of rejecting what you consider a reasonable settlement offer for the chance to have their day in court, that is a strong consideration. However, if you are fronting the costs of litigation, then you should not be forced to throw money away if the decision to go to court is clearly unreasonable. In these cases, telling the client that he or she will have to either pay, or at least contribute to, the costs of trying the case usually persuades them to seriously consider the decision. Your retainer agreement should provide for this situation should it happen to arise.

Update and Communicate Changes in Valuation

Sometimes the estimated value of a case decreases, either because the liability case gets weaker or because the injuries or other damages are not as severe as once thought. It is very important that the effect of these changes be discussed with the client, preferably near the time the case changes. Clients tend to be more receptive to news that their case is worth less when the reason for that change is fresh in their minds.

Bringing the Unreasonable Client Back to Reality

If you have a client with unreasonable expectations, it is important to get them back to reality. One of the most effective ways to do this is by using jury verdict and settlement statistics. These are available in book form through companies like Jury Verdict Research, Inc. and Jury Verdicts Northwest, and in online databases. Sometimes showing clients just very basic, top-level average valuations for their particular injury or condition is enough to temper their expectations. Other times it might be necessary to use the forms provided by the publishers to get a much more specific estimation of the value of the client's case. These forms use detailed information about your client's case to give an estimate of the probability of a plaintiff's verdict and a valuation range. Because the information is detailed to the facts of your client's particular case, the results can be very persuasive.

Mediation is another way to persuade an unrealistic client to make a rational decision about the claim. If this is one of the goals of a mediation, it is important to choose an appropriate mediator. Some mediators let the parties make all the judgment calls about the value of the claim, while others take an active role in that effort. If your

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goal is use the mediator to bring your client around to a realistic assessment of the case, it is important to choose a mediator who is willing to do this and who will communicate effectively with your client.

As a last resort, you may wish to consider bringing in another attorney to evaluate your client's case. Sometimes just having that attorney reassure the client that an offer is reasonable based on their experience is enough to make the client comfortable with accepting an offer. Other times it might be necessary to have the other attorney review the medical records and other documents in the case, and then write a letter setting forth that attorney's evaluation. Hopefully, this kind of assistance will not be required very often, but it can be an effective way to persuade a client to agree to an offer that should be accepted.

Conclusion

One of our best, and least expensive, marketing tools is satisfied former clients. Keeping your clients' expectations about the value of their claim realistic throughout the process is crucial to having a happy client at the end of the case.