Chapter 3

THE INITIAL CLIENT MEETING

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§ 3.01 OBJECTIVES OF THE INITIAL CLIENT MEETING

For a new client, the initial client meeting marks the beginning of the attorney-client relationship. At this meeting, your objectives include:

(1) Putting the client at ease and developing rapport;
(2) Interviewing the client to get a basic factual picture of the client’s situation;
(3) Explaining the attorney-client privilege, if appropriate;
(4) Obtaining a sense of the client’s objectives;
(5) Determining whether representing the client would constitute a conflict of interest;
(6) Making a decision about representing the client and establishing the nature and scope of the representation;
(7) Giving the client appropriate preliminary advice;
(8) Establishing an initial course of action;
(9) Establishing attorney’s fees and other financial obligations for the representation; and
(10) Making arrangements for follow-up conferences and communication with the client.
It is important to keep in mind that the first meeting with a new client is only an initial meeting that will be followed by further client conferences. You and the client may have to meet a number of times before a final decision can be made about whether you will represent him and what that representation will entail. Moreover, even if it is decided at the initial meeting that you will represent the client, it is not uncommon for the scope of the representation to be initially limited to obtaining additional information or conducting further investigation before you and the client will be in a position to fully analyze and decide upon a course of action. Final decisions about the ultimate nature and scope of the representation may not be made until the second or third meeting with the client. Thus, in most cases, the initial client meeting is only the starting point of your representation and role as counselor to the client.

This chapter provides an overview of how you go about accomplishing the principal objectives of the initial client meeting in the context of the counseling functions outlined in Section 2.02, in which you “Establish a Professional and Interpersonal Relationship with Your Client” and “Obtain Information Relevant to Your Client’s Situation and Potential Courses of Action.” Chapter 4 provides specific techniques for client interviewing, which is a major component of the initial meeting and subsequent client conferences, and concludes with an illustration of an attorney-client dialogue during an initial client meeting and interview. Chapter 5 discusses the three remaining functions of the overall counseling process outlined in Section 2.02 that call upon you to: “Analyze Potential Courses of Action;” “Advise Your Client about Potential Courses of Action;” and “Decide Upon the Course of Action to be Taken and Implement the Course of Action.” Chapter 5 concludes with an illustration of an attorney-client dialogue during a decision-making meeting.

§ 3.02 HANDLING THE INITIAL PHONE CALL FROM THE CLIENT

New clients, or existing clients who have a new legal matter, rarely walk into your law office to see you unannounced. Typically, the client will initially contact your office by telephone to make an appointment. Lawyers usually handle this initial contact in one of two ways.

First, some lawyers use their secretary or a paralegal to “screen” all in-coming calls from prospective clients. The secretary or paralegal briefly talks with the client, determines the general nature of the client’s situation or legal problem, and, if the particular matter falls within the lawyer’s area of practice, advises the client about any consultation fee for the initial meeting and sets up an appointment for the client to see the lawyer.¹ One drawback to this approach is that there is no personal

¹ Under Rule 5.3 of the Model Rules of Professional Conduct, you are obligated to ensure that the conduct of your receptionist/secretary or paralegal is compatible with your professional obligations as a lawyer. This means, among other things, that you are obligated to ensure that your non-legal assistants do not engage in the unauthorized practice of law by giving legal advice and that they do not reveal information protected by the attorney-client privilege (see § 6.07). As a general guide, you should instruct your receptionist/secretary to do the following when receiving a “cold call” from a prospective client: (1) identify the general nature of the prospective client’s situation (and whether it is an emergency) to determine if the particular matter is clearly not one handled by your law office, in which case the prospective client should be referred elsewhere; (2) if the prospective client’s matter is ambiguous or even remotely related to your practice, the prospective client should be told that you (or another specifically-named lawyer in your office) will call the prospective client back and approximately when
§ 3.02 HANDLING THE INITIAL PHONE CALL

contact between the lawyer and the client before the initial meeting. Simply “signing up” the prospective client for an appointment is impersonal and affords no opportunity for the lawyer to get any sense of the client's particular situation. In addition, in the absence of having some conversation with the client before the initial meeting, the lawyer cannot determine whether there is some immediate action that must be taken to protect the client, or whether it would be useful for the client to take some interim action or obtain certain information before coming to the initial meeting.

Under the second approach, the lawyer will either personally “screen” all phone calls from prospective clients, or, if an appointment for the client has already been set up by a secretary or paralegal, the lawyer will phone the client in advance of the meeting to briefly discuss the client’s situation. In this way, the lawyer can obtain a general understanding of the nature of the client’s matter in advance of the initial meeting, determine if a statute of limitations is about to run, provide the client with any emergency advice if necessary, and instruct the client about any information that he should obtain in the interim and bring with him to the meeting.

Having a short phone conversation with the prospective client before the initial meeting will help you and the client be better prepared for it and help to ensure that the status quo is preserved until the two of you are able to meet. In light of what the client tells you over the phone, you might also be able to conduct some preliminary legal research or review certain documents that the client sends you in advance of the meeting. Most importantly, this personalized phone contact will go a long way in helping to build rapport with the client.

It is important to remember, however, that an initial phone conversation with the prospective client is not the time to hear his entire story or to decide whether you will represent him. Your goal is simply to find out just enough information to confirm your willingness to meet with him, and to determine whether he needs any immediate advice to protect his interests before you are able to meet. At times, you will discover in the initial phone conversation that, for one reason or another (including the existence of a conflict of interest), you will be unable to help the client with his particular situation. When that occurs, you can explain that you do not believe a meeting would be useful, and, if appropriate, refer him to another lawyer or some other person who might be able to help him. If you have determined that legal action on his behalf is time sensitive, explain to him the urgency of obtaining legal advice before the expiration of the relevant time period.

that return call will be made; and (3) if the prospective client asks about attorney fees, he or she should be told that such fees vary depending upon the circumstances and should be discussed with the attorney, except that standard fees for an initial office conference or for routine matters (e.g., the preparation of a simple will, incorporation, or other routine transactional document) may be quoted. As these narrow instructions indicate, the fundamental objective of the receptionist/secretary is to (1) only screen out prospective client matters that are clearly not handled by your law office; and (2) otherwise provide an appropriate time frame when you or another lawyer in your office will return the prospective client’s call. This will ensure that the evaluation of a prospective client’s situation is conducted only by a lawyer and not by a non-legal assistant.
§ 3.03 BEGINNING THE MEETING AND DEVELOPING RAPPORT

In representing any client, it is important to develop a relationship that is marked by close rapport. You want the client to trust you, have confidence in you, and be comfortable with you. You want him to see you as being honest, straightforward, and dependable, as being competent and diligent in your legal services, and as being a person with whom he feels comfortable in interacting. Developing this rapport of trust, confidence, and comfort begins with the first impressions you create when you greet the client and sit down to begin the initial meeting.

In greeting a client, the most personable approach is to greet him in your law office’s reception area and personally escort him to the office or conference room where you will hold the initial meeting. Introduce yourself by using your first name, shake hands, and address the client by first name if appropriate. Be on time for the appointment. Even if you are only a few minutes late, apologize for the delay.

If a friend or family member accompanies the client, remember that the attorney-client privilege generally does not extend to confidential communications between an attorney and client that are made in the presence of third persons. Therefore, exchange any pleasantries with the client’s friend or family member in your reception area, but do not invite any third person to attend your private meeting with the client unless there is a special need for the third person’s attendance.\(^2\)

Every effort should be made to keep the meeting free from unnecessary interruptions or distractions. Accordingly, make sure your secretary holds all telephone calls, and do not permit other persons to enter the room during the meeting unless absolutely necessary. It is essential that the client have your undivided attention throughout the meeting.

At the outset of the meeting, it is sometimes appropriate to engage in some “small talk” to put the client at ease. Some clients will be anxious or nervous at the beginning of the meeting, and some friendly “chit chat” usually helps to start the meeting on easy ground. However, be careful not to get carried away with this type of “ice breaking.” In most situations, after exchanging a few pleasantries, many clients are perfectly content to “get down to business.”

If there is a particular time constraint on the meeting (e.g., the appointment is scheduled for only one hour), you might mention the time constraint at the outset so that the client is not caught by surprise when the allotted time draws to a close. Tell the client that your overall objective for the initial meeting is to get a basic understanding of his situation and to find out whether you might be able to help him.

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\(^2\) Confidentiality under the attorney-client privilege is not waived when communications with the lawyer are made in the presence of family or friends who are reasonably necessary to provide support to the client or who are otherwise necessary to facilitate communication with the attorney. McCormick, Evidence § 91 at 335 (4th ed. 1992).
§ 3.04 INTERVIEWING THE CLIENT TO GET A BASIC FACTUAL PICTURE OF THE CLIENT'S SITUATION

Once the client is at ease, you should open the meeting with a general question that invites the client to tell his story and explain why he has come to see you. For example you might ask:

- How can I help you?
- What can I help you with?
- What can I do for you?
- So, what brings you here today?

Asking this type of opening question marks the beginning of your interview with the client. The process and techniques for client interviewing are detailed in Chapter 4. For present purposes, it is important to keep in mind that at this stage of the meeting your primary goal is get a basic factual picture of the client's situation. You want to find out: Why has the client come to see me? What are the basic facts and circumstances of his situation? Is his situation or problem something that I can help him with?

You will enhance your ability to obtain the factual information pertinent to answering these questions if you keep three points in mind. First, avoid interrupting the client at this stage. Let him talk, and let him vent if necessary. Second, encourage him to share his underlying interests, needs, feelings, and concerns about his situation. That is, let him share his story, situation or problem in his own way, from his own perspective. And third, hear what the client has to say empathically and non-judgmentally. This is the time to patiently listen to the client, not to counsel him.

In addition, be sure to ask the client if he has brought any documents with him to the meeting. If so, you might briefly review them before your client talks about them. However, regardless of whether the client has brought with him a contract, a lawsuit, or an indictment, it is imperative that you take the time to listen to the client’s situation in his own words. That is, resist any temptation to allow documents to inappropriately control the interview. At the outset, you want to know what your client has to say about the matter, not merely what some third person has written about it.

§ 3.05 EXPLAINING THE ATTORNEY-CLIENT PRIVILEGE, IF APPROPRIATE

In obtaining a basic factual picture of the client’s situation, you of course want the client to be honest with you and to confide in you. Frequently, as where the client has been sued or has been charged with a crime, his situation will be quite embarrassing and stressful. In these circumstances, it is sometimes useful to encourage the client to speak freely with you by reminding him that what he tells you is protected by the attorney-client privilege. In particular, most clients don’t know that the privilege applies even if you end up not representing the client (see § 6.07).

In practice, some attorneys do not explain the privilege in the initial client meeting. They think that their clients understand that speaking to an attorney is a confidential communication, or they fear that discussing the privilege may signal
that the lawyer believes that the client has done something wrong. Other lawyers feel that the nature of their legal services (e.g., drafting transactional documents) does not warrant any special discussion of the privilege.

These views are understandable. Discussing the privilege is sometimes unnecessary or doesn't make sense in terms of the case or the client. On the other hand, it is usually a good practice to include some statement about the privilege at some point during the meeting. One never really knows what a client has to say, or has to hide, when he walks through the door. The failure to discuss the privilege at all may even constitute malpractice in some situations. In any event, you don't want your client to unintentionally waive the privilege by disclosing what happened at the meeting to others such that the waiver will come back to haunt you and your client.

When you mention the privilege, be tactful. For example, at an appropriate time during the interview, you might simply allude to the privilege in an off-hand way: "Well, as you probably know, everything we speak about in this room is strictly confidential . . ." Expressed in this way, the privilege is mentioned in the context of general privacy concerns without implying that you feel the client is hiding information or is not being completely truthful with you.

§ 3.06 OBTAINING A SENSE OF THE CLIENT'S OBJECTIVES

When the client explains his situation, he will often indicate what objectives or goals he has in mind for dealing with his situation and how he thinks they may be accomplished. If he does not, probe his objectives or goals directly. This is important because obtaining a sense of the client's objectives will help you understand his initial expectations of you, and those expectations may be integral to deciding whether you will represent him, and, if so, what the nature and scope of your representation will be. In probing the client's objectives or goals you might ask:

- What are your goals?
- What do you want to happen?
- What do you want to do?
- Which of the things you mentioned is more important to you?
- What is the most important thing?
- How would you rank your concerns in the order of their importance?
- Do you have any ideas about how the situation might be resolved?

Of course, in many instances, the client will be unsure about his objectives and will have little or no understanding about how he might be able to help him. After all, the client's primary purpose in meeting with you will often be to find out what, if anything, you might be able to do for him. Nevertheless, to the extent you are able to obtain at least some perspective from the client about what he would like to accomplish, that information will be useful to you when you engage in the counseling functions of advising him about his options, helping him decide on an appropriate course of action, and when implementing the course of action (see Chapter 5).

In addition, having a sense of the client's objectives and his thoughts about how they might be accomplished will often alert you to the importance of his non-legal as well as legal concerns. In many cases, you will find that the client's primary goals,
interests, or needs relate to matters that the law either cannot solve or can only partially solve. For example, a client who has been sued for breach of contract may be far less concerned about the merits of the suit than with the impact that the suit may have on his reputation and business relationships with other customers. A spouse faced with a demand for alimony may be far more concerned about vindicating himself from accusations of marital misconduct than with being able to pay for the amount of the post-separation support sought by his wife. A truck driver who has been given a speeding ticket may be far less concerned with the amount of the fine he would have to pay if convicted than with the effect that a conviction may have on his continued employment with his trucking company. In short, knowing about the client’s non-legal as well as legal concerns is critical to understanding the exact nature of the client’s situation, which, in turn, may have a critical effect on the objectives and means of your representation.

§ 3.07 DETERMINING THE EXISTENCE OF A CONFLICT OF INTEREST

After you have listened to the client’s description of his situation and have some understanding of his objectives, you will usually have enough information to determine whether representing him would create a conflict of interest. The most common conflict-of-interest situations are discussed in Section 6.09.

If it becomes apparent that representing the client would be barred by an impermissible conflict of interest, you should cut the meeting short and explain to him the general nature of the conflict that disqualifies you from representing him. In explaining this conflict, you should, of course, be careful not to reveal any attorney-client privileged information that may form the basis for the conflict. You should also assure him that you will not disclose to others any information you learned from him up to this point. If your representation would not be automatically barred by a conflict of interest but would raise a potential conflict, the applicable ethical rules will only permit you to represent the client if you reasonably believe that your representation will not adversely affect your duties to another client or third person and if the new client consents to the representation after you have fully explained to him all pertinent implications of the potential conflict (see § 6.09).

§ 3.08 DECIDING WHETHER TO REPRESENT THE CLIENT & ESTABLISHING THE NATURE AND SCOPE OF THE REPRESENTATION

After conducting a preliminary interview with the client, a decision will have to be made whether you will represent him and what the nature and scope of that representation will be. Establishing a formal attorney-client relationship does not depend on any formality such as a written agreement, but arises upon the client’s express or implied request that you act on his behalf and your express or implied agreement to do so (see § 6.02). You and the client are generally free to limit the nature, scope, and objectives of the representation to certain legal services and not others. For example, you and the client may agree that you will represent him in the trial of the case but not on appeal, or that you will only represent him on a specific transaction but not on other transactions that may be related to the client’s overall situation. Under the rules of professional ethics, whenever you establish the nature, scope, and objectives of the representation, you are required to consult with the
client and obtain his consent (see § 6.03). In short, you cannot act as the legal representative of a client without having his authority to do so.

In the context of the initial client meeting, when relatively routine legal services are involved (e.g., the preparation of a simple will or deed of trust, representation on a misdemeanor charge, or representation in an uncontested divorce case, etc.), the nature and scope of the representation will usually be easy to agree upon. On the other hand, in many situations, the information you obtain at the initial meeting will be insufficient to allow you and the client to decide upon the exact nature, scope, objectives, and means of the representation at that time. That is, the preliminary nature of the initial meeting often gives rise to the need to obtain additional information, conduct further investigation, and conduct legal research before you and the client can meaningfully discuss potential courses of action and decide upon a course of action that will define the ultimate nature and scope of the representation. For instance, before you agree to sue a doctor for medical malpractice on behalf of your client, you will need to examine your client’s medical records and seek an expert medical opinion about the appropriateness of your client’s course of treatment.

Consequently, at the time of the initial client meeting, you and the client may only be in the position to agree upon a limited form of representation, such as an agreement that you will research the applicable law, conduct further factual investigation, and perhaps take certain limited actions to protect or preserve the client’s rights. After these tasks are performed, you will meet with the client again to counsel him about potential courses of action, collaborate with him in deciding upon a specific course of action, and begin to implement the course of action. Only then can the precise nature and scope of the representation be clearly established.

If you and the client decide you will represent him on a limited basis pending further client meetings, you should carefully define the scope of your representation by specifying the particular services you will render and confirm the scope of your representation in a follow-up letter. Similarly, if it is decided you will not represent the client at all, it is prudent for you to reiterate that decision in writing. Remember, any ambiguity as to either the existence or scope of the representation will often be resolved in the layperson’s favor.

§ 3.09 GIVING PRELIMINARY ADVICE

If you represent your client on a limited basis to conduct further investigation or research, it would of course be inappropriate for you to give him final legal advice about his situation before you have conducted the investigation or research. Nevertheless, a client will often press you for preliminary advice or a tentative assessment or prediction about the outcome of his situation. Receiving at least some preliminary advice is an understandable and legitimate client expectation.

There are essentially three ways in which you can, and should, provide your client with preliminary advice without rendering premature or otherwise inappropriate legal opinions about his situation. First, it will often be appropriate to provide your client with certain kinds of “protective” advice, such as advising him not to talk with other persons about the case, instructing him to refer any inquiries he receives about the case from other persons directly to you, or advising him to refrain from taking certain actions pending your next meeting with him.
Second, it may be appropriate to give your client a general overview of some of the legal considerations or legal processes that may affect his situation. For example, in a potential negligence case, you might briefly describe the elements of proof: the existence of a duty of care, breach of that duty, proximate cause of damage, and the types of damages recoverable. If litigation might be involved or your client has been charged with a crime, it may be appropriate to briefly outline the pretrial process, what happens at trial, and the process of taking an appeal. Similarly, it may be appropriate to provide your client with basic legal information about matters that may have to be considered in his situation, such as the statute of limitations for a particular cause of action, statutory guidelines for determining child support, or the maximum sentence for a particular offense.

Third, to the extent the information you obtain during the initial meeting at least indicates the types of options or courses of action that may be pertinent to your client's situation, these can be outlined in a noncommittal way. For example, if your client is interested in starting a new business venture, it may be appropriate to generally discuss the different options of establishing a corporation, a professional association, or a partnership. If your client is a defendant in a civil suit, you might outline various affirmative defenses that may be applicable to his situation. In doing so, however, you should emphasize that your preliminary advice or assessment of the situation is only tentative and is entirely dependent upon the further research, investigation, or information gathering that you and your client have agreed should be undertaken before you will be able to provide him with definitive advice.

§ 3.10 ESTABLISHING AN INITIAL COURSE OF ACTION

If you have decided to represent the client, before concluding the initial meeting, you should explain (1) what you will do next and when it will be done, and (2) what your client should do next and by when that should be done. As mentioned above, when the ultimate nature and scope of your representation have not yet been established, your tasks might involve researching the law or conducting additional fact investigation. Your client's tasks might include locating certain documents, obtaining other specified information, or even preparing a written account of key events. Appropriately involving your client at the outset of the representation sets the right tone for the attorney-client relationship and marks the beginning of a collaborative approach to the representation.

§ 3.11 ESTABLISHING ATTORNEY'S FEES

Rule 1.5(b) of the ABA Model Rules of Professional Conduct mandates that, except when charging a regularly represented client on the same fee basis or at the same rate, "[t]he scope of [your] representation and the basis or rate of [your] fee and expenses for which [your] client will be responsible shall be communicated to [your] client, preferably in writing, before or within a reasonable time after commencing the representation." (See also § 6.10). Your fee might:

(a) be fixed;
(b) be calculated on an hourly rate;
(c) include a retainer in the form of an advance fee payment, where the outstanding balance of the advance is reduced as you perform your services and earn the fee;
(d) include a nonrefundable retainer; or
(e) constitute a contingent fee that is calculated as a percentage of the total monetary amount or interest in property recovered for the client.

Regardless of the particular type of fee, you are obligated to inform your client about the rate of the fee or other basis on which it is calculated. With the exception of a contingent fee, which must be in writing, you may communicate the rate or basis of the fee orally or by furnishing your client with a simple memorandum or copy of your customary fee schedule.

Because misunderstandings about fees are a common source of client complaints about lawyers to disciplinary authorities, the best practice is to explain your fee to the client at the initial meeting and then put it in writing. Your explanation and written fee agreement should specify:

1. the particular legal services you have agreed to provide your client;
2. any limits on the scope of those services, such as whether your representation includes an appeal;
3. how the fee will be computed and how your client will be billed;
4. any anticipated change in the fee rate in the future, and what different rates will be charged for paralegals or other lawyers who work on the case; and
5. what costs and expenses (e.g., for court filings, expert witnesses, investigators, stenographers, transcriptions, photocopying, travel, computer-assisted research, etc.) your client will be responsible for paying.

In addition, many clients will ask you at the initial meeting to estimate the total fees and costs you anticipate for the representation. Use your best judgment in providing an estimate, and perhaps provide your client with a range: "I would estimate that total fees and costs will be no less than $10,000 and may be as high as $20,000 depending upon how things go." Always emphasize to your client that your estimate is only a rough approximation that is subject to change depending on the circumstances.

§ 3.12 MAKING ARRANGEMENTS FOR FOLLOW-UP CONFERENCES

Before adjourning the initial meeting, be sure that you have (1) obtained all necessary information about how to contact your client, (2) discussed what tasks you and your client will perform until you confer again (see § 3.10), and (3) made at least tentative arrangements for the next conference with your client. In addition, explain to your client your office hours and how he can best contact you during the course of the representation (e.g., by phone or e-mail). This includes explaining the roles of your secretary, paralegal, and any associate attorneys who will be assisting you in handling the client's matter. Emphasize, however, that even though other persons in your law office may be assisting you in the case, your client should not hesitate to contact you directly.

Most attorneys whose fees are based on an hourly rate charge their clients for phone conferences. If this is your practice, make sure your client understands it. At the same time, however, encourage your client to contact you whenever he feels it may be appropriate. Tell him that you are usually able to return your phone calls within 24 hours of receiving them, but that sometimes there may be an additional delay if you are involved in a protracted trial. Keep your promise about promptly
returning phone calls. Failure to return client calls is one of the leading sources of complaints about lawyers to disciplinary authorities.

§ 3.13 DOCUMENTING THE INITIAL CLIENT MEETING

Your documentation of the initial client meeting should consist of (1) any pertinent documents you have obtained from your client, (2) your interview notes or post-interview memorandum to the client’s file (see § 4.09), and (3) basic information for contacting the client, including notes about the initial course of action to be taken and any arrangements that have been made for the next client conference. The latter matters might be documented on a form like the following:

New Client Information Form

Date: _____________ File No. ________

Client name: ____________________________
(Nickname): ____________________________
Legal matter: ____________________________

Home address: ____________________________
Work/business address: ____________________________
E-mail address: ____________
Facsimile No.: ____________
Preferred address for receiving correspondence:

☐ Home ☐ Work/business ☐ E-mail ☐ Facsimile

Home phone: ____________
Work/business phone: ____________
Cellular phone/pager: ____________

Preferred phone number:

☐ Home ☐ Work/business ☐ Cellular phone/pager

Best time to reach client: ____________

Client’s legal situation & objectives: ________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

Attorney tasks: ________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

Client tasks: ________________________________________________________________
______________________________________________________________________________________________
______________________________________________________________________________________________

Deadlines/important dates: ________________________________________________________________
Other notes:  

Next appointment date/contact with client:  