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Effective client interviewing



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Effective client interviewing

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Introduction

New clients seeking family law assistance may have little previous experience with lawyers and be very unsure of what to expect. In addition, they are often emotionally stressed by their underlying situations and facing significant financial pressure. "You never get a second chance to make a first impression" is a trite saying, but it includes a kernel of truth. The start of virtually every lawyer-client relationship is an initial interview, and mistakes made during that interview can have a lasting impact on the relationship. Interviewing may be thought to be a natural process that needs no special attention, but excellence in interviewing depends on theoretical knowledge as well as experience.

This article provides a few quick pointers that can help lawyers avoid common mistakes. It will cover:

- the functions of the initial interview;
- setting the stage and opening the interview;
- the first phase: listening;
- the second phase: questioning;
- the third phase: advising; and
- closing the interview.

The functions of the initial interview

Before discussing interviewing methods, it is useful to consider the functions of the initial interview.

Exploring whether a lawyer-client relationship should begin

The first function of the initial interview is to explore whether a lawyer-client relationship should begin. This is generally a two-way process: not only must the client choose the lawyer, but also the lawyer must decide whether he or she can capably represent this particular client. The "cab rank rule" prohibits refusing to accept instructions without "good cause".¹ The lawyer will need to acquire sufficient facts about the client's case to assess whether the lawyer has the necessary time and expertise, whether the client is willing and able to pay the lawyer's normal fee, and to ensure that agreeing to act will not breach any professional obligation. Other factors might also be relevant. For example, a solicitor who generally adopts a conciliatory approach to family law may be a poor fit for a client who wants a "no holds barred" approach to property division following the breakdown of a qualifying relationship. The lawyer can and should promote conciliation,² but not all such clients will be persuaded of the advantages of a less adversarial approach. It is currently unclear whether factors such as these would qualify as "good cause" to refuse to accept instructions from a client.

Beginning to build a relationship of trust and confidence

Another important function of the initial interview is to begin building a relationship in which the client will trust the lawyer and have confidence in his or her judgment. Rapport is an important ingredient for building this trust and developing an effective working relationship. In fact, unless time is extremely tight, developing rapport is more important than gathering information during the initial interview. If the underlying facts are complex and the lawyer and client have a good relationship, it will be easy to gain a more complete view of the situation at subsequent meetings. On the other hand, if the client feels uncomfortable around the lawyer, this has a greater potential to impact the representation detrimentally over the long run, and may result in the client going elsewhere.

The lawyer can facilitate rapport by using good communication skills. The most important factor will be the use of active listening, which will be described below. In addition, the lawyer should always treat the client respectfully, especially when dealing with sensitive matters, and maintain a non-judgmental attitude towards the client. The message should be conveyed that the lawyer's task is not to judge the client, but to help the client accomplish his or her legal aims. The client needs to believe that the lawyer can be trusted and will attend to the client's needs faithfully, free from compromising interests or loyalties.

Attending to emergencies

The final important function of the initial interview is to attend to any situations where time is of the essence. It must be ascertained whether there are any immediate steps that need to be taken in order to preserve the client's rights or options.

Uncovering all facts is not a critical function for the initial interview

While the lawyer will need to investigate the client's case to some extent, the lawyer should not view getting a complete account of the facts from the client as a major function of the initial interview. The client may not possess all the relevant facts, may forget to include certain details, may resist divulging them, or may even lie to the lawyer. Other sources of information often need to be investigated. Attempting to elicit every fact from the client may also make the initial interview seem like an interrogation, and thus interfere with the development of rapport between lawyer and client.

Setting the stage and opening the interview

Anticipating possible client anxieties and ignorance

It is useful to begin by considering what the client may be feeling. While some clients will feel at ease in discussions with lawyers, others may find an interview to be very challenging. A client who is inexperienced with lawyers and the law will be likely to feel nervous and uncomfortable. If the client has a legal problem (as opposed to less contentious reasons for seeking legal assistance, such as purchasing a family home or creating a family trust), that problem will be an added source of stress. The client may feel vulnerable, and fear losing his or her case or being otherwise disadvantaged. Clients may also be very ignorant of the law. Few non-lawyers are aware of its intricacies, and many base their understanding on extremely inaccurate foreign television shows. Finally, many (if not most) clients will be concerned about legal fees. If any of these factors are affecting a particular client, the interview will be more difficult. Keeping them in mind can help the lawyer to understand the client, to have patience with his or her anxieties, and to take steps to help put the client at ease.

Providing a welcoming environment

A number of factors contribute to a welcoming environment, including:

- being punctual, not keeping the client waiting;
- not remaining behind a desk, but coming around and greeting the client with a handshake and sitting across from the client in a less formal setting;
- maintaining an attitude of genuine curiosity about the client's position and respect for the client as an individual — and remaining possessed and professional throughout the interview;
- paying attention to the client, observing his or her body language, and remembering his or her words; and
- avoiding use of language or legal terms that the client may not understand (if it is necessary to do so, clear definitions should be provided).

Informing the client about the process

It will be useful for the lawyer to provide information concerning the lawyer-client relationship to the client (including aspects such as staffing, fees, conflict of interest checks and rules on client confidentiality). Some lawyers prefer instead to handle these topics at the end of the interview, or through the written packet of information that is given to new clients.³ It is also useful to explain the interview process, including how the interview will proceed, any time limits, and what types of notes or records will be kept.

The first phase: listening

In addition to the opening and closing, most interviews involve listening to the client, asking questions to elicit more detail, and giving some form of interim or final legal advice. Breaking the interview into three distinct phases of listening, questioning and advising, and keeping them in this particular order, is recommended.⁴ Deviations from this recommended sequence may be necessary or desirable in some cases. For example, the lawyer may perceive that the client is about to say something that could amount to a threat against a partner or other person, which could trigger a compulsory

duty by the lawyer to breach confidentiality.⁵ The lawyer may wish to interrupt to give the client immediate information about the legal consequences of making such a statement. Or sometimes the client may be distraught and demand immediate advice with respect to the law, without being willing to explain the circumstances motivating the enquiry. The lawyer must remain flexible in such circumstances. To the maximum extent possible, however, it is best to aim to follow the phased approach to interviewing.

The reason for using an approach involving separate phases and keeping advising at the end of the interview is that otherwise, listening is likely to be minimised. There is a natural inclination to interject with questions and advice as the client begins to tell his or her story, as illustrated by the following example:

Client: "I was in a terrifying road accident last week!"

The lawyer replies with a string of specific questions, including "Was anyone hurt?", "Were the police called?", "Have you notified your insurance company?"

The client answers each question, but is apparently agitated.

Lawyer [finally observing that the client appears to be getting very restless]: "My questions seem to be making you uncomfortable, but I assure you that all of these matters are very relevant."

Client: "But the reason I came to see you today is that all I could think about when I realised how close I came to death was that I haven't taken the steps to ensure that my children will be well-looked after if I die! I want my current wife, their step-mother, to be appointed as their testamentary guardian. I was widowed years ago, and the children love her. I know she would protect them and care for them if anything were to happen to me."

Many clients are unlikely to stand up to lawyers, as there is a natural power imbalance involved in the relationship. If lawyers control the interview by asking a lot of specific questions, these clients will go along. As the above example shows, however, this leads to the potential for misunderstanding. A shy and hesitant client might not be able to redirect the conversation back to provisions for the children. Even where the interview does get back to the desired topic, time will be wasted and lawyer-client rapport will not be off to a good start.

Premature questioning can cause additional problems. Interruptions tend to disrupt the client's train of thought, which can lead to frustration on the part of the client, the forgetting of which details have already been covered, and a disjointed and incomplete recitation of the facts. Premature questioning can also make "filling in" more likely. This occurs when the lawyer accidentally merges information based on his or her own past experiences and expectations with the client's situation, and thus gains an erroneous impression concerning certain details of the client's story. Binder, Bergman, Price and Tremblay suggest an exercise involving thinking about a situation where two cars collide in an intersection, or where a wife abruptly leaves her husband and their two young children.⁶ Many people will visualise details beyond those set forth in the described situations. For example, they may picture that the cars were entering the intersection from different directions, or they may expect that such a wife would be selfish and uncaring. Perhaps instead one car rear-ended the other, or the wife had been suffering abuse and

left the home intending to get help for herself and her children. A lawyer who is focused mainly on asking questions of the client rather than listening tends to control the discussion, and may overlook asking questions covered by the filled in details, and in so doing miss an opportunity to correct the erroneous information. Placing the client in charge of telling his or her story during a listening phase makes filling in less likely (although still something that must be guarded against).

To execute the listening phase of the interview, the lawyer should give the client ample time to tell his or her story. Some clients will launch into describing their situation quite readily. Others can be prompted to do so by asking general questions such as "How can I help you?" or "What brings you here today?". The client must be allowed to tell his or her story with minimal interruptions. The lawyer should make no attempt to direct the client's recitation. If a talkative client is truly going *way* off the topic (for example, if he or she starts giving an extended critique of the current government's economic policies), the lawyer can pull the discussion back on track without taking it over with by asking questions such as "How would you like me to help you with this situation?" or "How does this relate to your legal problem?".

Some clients may not be so talkative. For example, in response to the question "What brings you here today?", the client may simply reply "I want to leave my partner" and wait expectantly for the lawyer's next question. The lawyer should resist the urge to leap in with specific questions. Instead, he or she should prompt the client with another open-ended question such as "What else can you tell me?". It may be helpful for the lawyer to encourage such a client, for example: "It is very important for me to get a clear picture of your legal issue or issues. For that reason, please feel free to tell me all about the situation that brings you here today."

During the listening phase of the interview, the lawyer must listen carefully, taking notes as necessary, and remember what the client says. The next section discusses a specific listening technique that will help the lawyer to do this.

Listening actively

For maximum effect, it is not enough to listen passively as the client tells his or her story. "Active listening" or paraphrasing involves "reflecting back" some of the substance of what the client has said, and also usually the underlying emotions felt by the client (whether or not these are expressed openly). The goal is to make the speaker feel heard and understood, but not judged. Empathy has been called the "real mortar" of a relationship⁷ — people want to be understood, and by demonstrating that the listener has understood, active listening turbo-charges rapport between the speaker and listener.

The lawyer should use judgment in deciding when to paraphrase, how to translate the client's statements into the lawyer's own words, and how much to reflect back. Most client statements could support a variety of different paraphrases, as shown in the following example: or her story, as illustrated by the following example:

Client: "Of course I don't want to have to move. I have spent years painstakingly renovating and decorating that house. I love it, and so do our children. It's their home."

Paraphrase 1: "It would distress you to have to move out of the family home."

Paraphrase 2: "You feel that you have a better right to the house as part of the relationship property settlement than does your husband."

Paraphrase 3: "You love your children and want to safeguard their stability and sense of home."

The degree to which emotions should be reflected back depends on whether the subject that is being discussed is an emotional one. If the client shows emotion (irrespective of whether his or her words mention emotion), or if the subject is inherently laden with emotion (such as conflict, safety, relationship breakup, financial security), the best reflections back will include feelings. In most cases, feelings are relevant to the clients' problems, and to the remedies they seek. Some commentators have stated: "Lawyers can neither communicate fully with clients nor help fashion satisfactory solutions if they ignore feelings."⁸

Identifying feelings can require some deduction on the part of the lawyer; imagining being in the client's situation can help the lawyer to identify likely feelings. If reflecting back feelings seems difficult to the lawyer, he or she could begin by reflecting back substantive content, then adding reflections relating to feelings only once he or she has mastered the rest. Some lawyers prefer to make some sort of introduction before paraphrasing, for example, "Let me see if I understand what you've been saying. You ...".

Active listening is *not*:

- using minimal encouragers (eg head nodding, "uh-huh", "I understand" — there is a place for these, but they do not demonstrate understanding);
- parroting back the same words (this indicates hearing, but not understanding, and can give the impression that the lawyer is not fully engaged in the conversation);
- paraphrasing *everything* back (just an appropriate summary);
- asking questions (uncertainty is demonstrated, not understanding — if clarifying questions are necessary, the lawyer can ask and then reflect back the substance of the answers); and
- approving/agreeing with the speaker (this involves judging).

The advantages of using active listening:

- It shows respect to the speaker. It indicates that the listener genuinely want to understand the speaker's viewpoint. Thus, it helps to develop a good relationship between the speaker and the listener.
- By not judging the speaker, it facilitates further disclosure. This is especially important for dealing with certain sensitive topics (eg sexual matters), or with certain types of people (eg shy, reticent).
- It prompts the speaker to correct the listener if he or she has, in fact, misunderstood. (But listeners should try for accuracy: incorrect paraphrases can be frustrating for speakers.)
- It helps the listener to stay focused on the conversation, and to remember what he or she hears.
- It defuses conflict — there is no fresh fuel in the form of contradictions and arguments by the listener, and it allows the speaker to vent feelings.

It is possible that a client will interpret reflections back as agreement or approval of the client's actions. To prevent this, a lawyer may say something such as:

I want to make sure that I understand your perspective, and only after I am confident that I do understand will I go ahead to consider the application of the law to your situation and aims. The relief you are seeking may or may not be available. Let's begin by exploring your view of your situation.

When reflecting back, the lawyer might believe it to be best to slightly emphasise that it is the client's perspective that is being discussed, for example by saying "So your desire is to seek reconciliation" or "So the way it seems to you is that you were treated unfairly by your spouse."

Becoming adept at active listening requires practice. It can be practiced with clients, but also with others in casual situations. For example, if a friend were to state "Where do you think we should eat tonight? I've been thinking Thai would be nice, and there is a new restaurant on Main Street that we could try", the lawyer could reflect back "you'd like Thai food for dinner". It may seem artificial at first, but once a lawyer can reflect back unself-consciously, it will sound natural and unforced, and have very positive effects on communication.

Quick quiz

- 1) Client: "I am so upset that my ex-wife wants to relocate so far away with the children. I love my children, and they need a father in their life. It will stunt their emotional well-being if she is allowed to do this."

Which is the best active listening response by the lawyer?

- A) "Don't worry, you'll find out that you can have a good relationship with your children using the phone and extended visits on holidays."
 B) "You are anguished at the thought of your children living so far from you."
 C) "You wish your ex-wife would stay in New Zealand."
 D) "Don't worry, your ex-wife can't do this without you agreeing or applying to the court."

Response A not only interjects the lawyer's perspective, but does so in a way that negates and minimises the client's. C addresses something that the client may be thinking, but doesn't focus on the core issue. D moves to giving advice. There may be a place for these types of responses, but none of them is active listening. The best active listening response is B. It reflects the substance and feelings expressed by the client.

- 2) Client: "I don't care what the law says! No one told me that putting my inheritance in our joint account and using it to buy our home would make it relationship property. *He* left me! My parents worked so hard for their money and wanted me to have it. It would be totally unjust for it to count as relationship property now."

Which is the best active listening response by the lawyer?

- A) "Do you want your former partner to leave the relationship with nothing?"
 B) "You make an excellent point."
 C) "You would lose if you fought this in court."
 D) "You are outraged by the thought that your partner is going to benefit from the money your parents left you."

Response A asks a (provocative) question, B agrees with the client, and C gives advice. The best active listening response is D.

The second phase: questioning

Often, listening alone will not be enough to secure all necessary information. Clients are seldom legally trained. Not appreciating the relevant factors, they may not volunteer all necessary or useful information. They may also forget to include certain details, resist divulging them, or even lie to the lawyer. They may not possess that information. Thus, questions must be asked. Questioning is the next phase of the typical interview.

Different types of questions

Questions can take different forms. Closed questions aim for a specific response, for example "Did you buy the car using funds from your joint account?". Open questions allow the responder more flexibility in terms of the response, such as "What happened next?" or "Why do you wish to end your marriage?". Some open-ended questions are extremely broad, such as "What can I do for you?". Others are narrower, for example "What makes you believe that your ex-wife is placing your daughter's safety at risk?". Both open and closed questions have their uses. Open questions allow the client to choose what to talk about; encourage recall; facilitate disclosure; facilitate expression of feelings; give the lawyer insight into the client and the way in which the client sees the situation; and can ease the client into discussing sensitive or difficult issues.⁹ Disadvantages of open questions include that they can permit the client to ramble; are not good at eliciting detail; and can leave some clients flustered and unsure where to begin.¹⁰ Advantages of closed questions include that they provide specific detail and clarifications; help to direct ramblers and reluctant clients; and assist specific memory recall.¹¹ Disadvantages of closed questions include missing out on the positive features of open questions, and making an interview feel like an interrogation.¹² Leading questions suggest an answer and merely ask for confirmation, such as "You did not consult your former partner before taking the children overseas for a holiday, did you?". Leading questions are not generally recommended as they put words into the client's mouth.

Pursuing necessary and useful information in an organised way

The lawyer will need information about the situation in order to assess the applicable law and the legal options that may be available. It is also important to solicit information on the client's perceptions, including the desired outcome and any ideas the client may have for obtaining that outcome.

Questions that occurred to the lawyer during the listening phase of the interview and were jotted down can now be asked. Through effective questioning, the lawyer will take the client back through his or her story to fill in necessary details. Questioning can be organised based on chronology, potential legal remedies, or in other ways. In probing the client's answers for more information, the underlying reasons for perceptions or preferences should be addressed. For example, if the client says that he does not want his children's mother to raise the children in her religion, what are the reasons for that? If a client says that he or she does not want to proceed to Family Court, why is that?

Comprehensive questioning helps to prevent filling in, which is the previously-mentioned tendency to infer information from the lawyer's experiences and expectations.

Sensitive topics and reluctant clients

Clients are likely to be at least somewhat reluctant to answer certain questions or to discuss certain topics, including those which are extremely private, emotionally painful, damaging to the client's self-esteem, or which cast doubt on the merits of the client's case. The lawyer can indicate to the client that the lawyer recognises that it is not easy to be asked these kinds of questions. A normalising response can also help. Normalising legitimates the client's reaction by suggesting that other people feel or react the same way. Binder, Bergman, Price and Tremblay give this example of reassuring a client by including a normalising response:

You seem a bit uncomfortable. You know, many people feel that there are things they would rather not tell their lawyers. I understand that; after all, we do not know each other very well yet, and I can understand that many people find it difficult to confide in someone who is a relative stranger. But only if I have all the information can I fully protect your interests.¹³

The lawyer may also consider, in appropriate cases:

- ignoring the reluctance and pressing on with the interview;
- turning to less sensitive matters and postponing discussion of the difficult topic until the lawyer-client relationship is on a stronger footing;
- considering whether it is truly necessary to obtain the information or whether the lawyer might be able to counsel the client in the alternative or hypothetically; and
- sensitively asking the client whether the lawyer has raised a difficult issue or said something that is making the client feel uncomfortable (this may lead the client to deny the discomfort and press on, otherwise it will bring the issue into the open where it can be discussed).

It is important for the lawyer to explain why the information is necessary, so he or she does not seem to be on a "fishing expedition". Similarly, it is important for the lawyer to avoid looking judgmental, and to re-affirm a sincere desire to help. Using active listening can help to put the client at ease. Requesting the client's permission for the lawyer to ask the question may help in some circumstances (for example, "Is it all right if I ask you now about the details of the fight?" or "Would you mind telling me more now about the attack?").

If the reason for the reluctance is clear or can be guessed, the lawyer can address it with a targeted approach. For example, if the information is insulting, such as the details of verbal abuse hurled at the client by their spouse, it might be easier for the client to write the words, rather than say them. Some sensitive information, such as whether a client has ever used physical violence against their former partner, may be more easily related in response to specific yes/no questions. If the client seems to be reluctant to give information that may be damaging to his or her case in a Family Court proceeding, the lawyer should explain the need to be prepared for likely arguments and evidence that may be used by the other side. The lawyer can reassure the client that the lawyer:

- is, within the bounds of the law, entirely on the client's side;

- will not divulge the information without the client's permission, unless ethically obliged to do so; and
- is seeking the information in order to give the client the best possible advice.

Finishing with a recap

At the end of the questioning phase, the lawyer should provide a summary of what he or she now understands about the client's situation. Recapping demonstrates understanding. It can also prompt the client to point if anything has been omitted, or if the lawyer's understanding is incorrect.

The third phase: advising

The lawyer's role

The lawyer's role is to assist the client to make informed decisions by providing information and support. The lawyer should treat the client as a competent, autonomous decision-maker. The lawyer's legal expertise and judgment will be important, and many decisions are most appropriately left to the lawyer, for example how to cross-examine a witness in a proceeding. Nevertheless, it is the client who must make the fundamental decisions, such as whether to agree to a proposed division of relationship property or to an unwelcome term in a parenting agreement, or whether to proceed to Family Dispute Resolution. Recognising the client as the ultimate decision-maker makes sense because it is the client who will bear the consequences of these decisions. The client's preferences should be key. For example, the client is in the best position to decide whether maintaining a good relationship with a former partner is more important than the potential gains of pursuing a legal remedy against them. Lawyers who go too far in telling clients what to do may also find that the decisions reached in this way are not durable, as the client does not support them fully. Other clients may try to get the lawyer to make all the decisions, but the lawyer should resist doing so for the reasons given above. Further, if the lawyer becomes the decision-maker, it gives the client someone to blame if things go wrong.

Giving useful but not premature advice

Legislation may specify mandatory information that must be given when providing certain types of legal advice. For example, the Care of Children Act 2004 requires all lawyers, providing legal advice about arrangements for the guardianship and/or care of a child, to ensure that their clients are aware of:

- the mechanisms for assisting resolution of family disputes;
- the steps for commencing and pursuing a proceeding under the Act; and
- the types of directions and orders that the court may make if a proceeding is commenced.¹⁴

Importantly, the client must also be made aware that "the need for the child's welfare and best interests to be the first and paramount consideration when settling arrangements".¹⁵

There can be a tendency for lawyers to focus merely on the relevant law. While the law is important, other legal factors must also be taken into account in advising the client, for example, any difficulties involved in proving various elements if a dispute proceeds to court. The lawyer must remain

alert to possible ethical implications of certain advice, including prompting misbehaviour on the client's part (for example, indirectly encouraging the client to lie or conceal assets). Non-legal factors, for example the effect that pursuing legal remedies will have on relationships with others, should also be considered.

In giving advice to the client, the lawyer should be comprehensive in canvassing the options available to the client.¹⁶ If there are more than one, each should be explained to the client in turn, with relevant advantages and disadvantages pointed out.¹⁷ For example, a client's options might include approaching the other parent informally to seek a mutually-acceptable parenting agreement; or using the Family Dispute Resolution service; or, if these were unsuccessful, pursuing a parenting order in the Family Court. The pros and cons of each should be explored with the client. Nevertheless, lawyers acting for a party in a proceeding in the Family Court "must, so far as possible, promote conciliation".¹⁸ Low-level actions, such as writing a letter to the other party, may also be worth trying in certain situations.

The client should then be asked to give feedback on each option. If the client does not favour an option, it is important for the lawyer to investigate the reasons behind that reaction. For example, if a client does not wish to pursue shared day-to-day care because they would not enjoy such an arrangement, that may be a persuasive reason. But if the client does not wish to pursue shared day-to-day care because of some other reason (perhaps because they lack confidence in their parenting abilities, or because they mistakenly believe that this would bind them to a rigid schedule that could not be varied as needed), further discussion and consideration may be warranted.

The lawyer must avoid giving premature advice. As was mentioned earlier, the lawyer will seldom receive a complete view of the facts during the initial interview. Good advice depends on good information; if further investigation is necessary to resolve important facts, the lawyer must delay in giving advice, even if pressed by the client to give a definitive answer. In difficult or unusual cases, giving wise advice may also require reflection by the lawyer.

If the lawyer is not able to assist the client, the lawyer should consider referring the client to another lawyer. Referrals to non-lawyer service providers should also be considered. For example, even if a client does not have any available legal remedy, it may be that the client would benefit from budgeting advice or psychological counselling. Whether a lawyer would feel comfortable recommending counselling to a client would depend on the circumstances, but it should be considered if the lawyer is convinced that it would be beneficial for the client.

Avoiding leaving the client with unrealistic expectations

Clients are often searching for reassurance, and this can lead them to interpret the lawyer's words in an optimistic and unrealistic way. If the lawyer tells a client that he or she "may bring a proceeding to attempt to have the s 21 of the Property (Relationships) Act 1976 agreement set aside", many clients will interpret this as "you have a good chance of winning". A client with unrealistic expectations is sure to have them dashed at some point, which will undermine or destroy his or her trust in the lawyer, and may lead to further negative fallout such as complaints about the lawyer made to others.

To avoid giving unrealistic expectations, the lawyer must start by watching for excessive optimism on his or her own part. It is natural to want to help the client, but that should not hinder the objectivity of the lawyer's advice. The lawyer must also choose his or her words with care. Clients often will not understand legal concepts such as establishing a cause of action or one element of a defence, and may mistakenly believe that they represent ultimate success in the case. Lawyers should avoid hedging statements with short words such as "may" which the client may overlook. Being explicit about all possible outcomes better highlights any uncertainty. For example, instead of saying merely "If we offer to compensate your ex-wife for the time she spent supporting your business, she may be willing to drop her claim for a share of ownership of the business", the lawyer should follow this statement with "Of course, it will be her choice whether to accept our offer, and she may be determined to proceed to Family Court unless we agree to everything she has requested".

The client may push the lawyer to make predictions about uncertain events, such as the likelihood of success if a case were to go to Family Court. The lawyer should give the client the benefit of his or her expertise. It would be trite and unhelpful to merely state that the ultimate outcome is uncertain, as it is usually possible to identify potential outcomes and the important factors underpinning them, and it is sometimes possible to assign rough percentages. Nevertheless, the lawyer should resist any pressure by the client to give firm assurances in the face of uncertainty.

It is a good idea for the lawyer to back up advice given verbally to the client during the interview with a letter setting out the advice in writing. The letter provides a reminder, and allows the client to look at the advice as many times as desired, and in familiar surroundings rather than the more distracting and stressful environment of the law office. This approach is likely to minimise the chance that the client will mis-remember the advice, or retain unrealistic expectations.

Closing the interview

To conclude the interview successfully, it is important that everyone knows where he or she stands. It is very disconcerting for the client to leave the interview, not knowing what will happen next, what it will cost, or when he or she should expect to hear from the lawyer next.

Preparing for future contacts

The lawyer must make sure that he or she knows how to contact the client, and must let the client know when he or she can expect to hear from the lawyer next. Frequently, clients will remember further details about their case after the interview, or come up with further questions for the lawyer. Ongoing contact should be welcomed, but lawyers should guide the client with respect to the best manner and time for contacting the lawyer.

The lawyer must be clear about what he or she will do next

The lawyer should not end the interview without gaining clarity about his or her instructions. Has the client engaged the lawyer, or is he or she still considering what to do? If the lawyer has been engaged, the identity of the client must be clear. This will not always be straightforward. For example, if a lawyer is acting in a division of relationship property and the client owns a business, the client may assume that the

lawyer is representing both the client in his or her individual capacity, and also the business. Representing both could represent a conflict of interest in certain circumstances.¹⁹ The lawyer must secure the consent of the client before taking action on the client's behalf, unless required by law to act. The client must be informed of any actions the lawyer plans to take, give authorisation, and assume responsibility for likely associated legal fees. Again, if the lawyer puts the basics of his or her advice in writing, misunderstandings will be less likely.

Before ending the interview, the lawyer should be sure to ask the client if there are any further matters or questions that the client would like to discuss. New topics occasionally come out at the end of the interview. The client may have forgotten to mention something earlier in the interview, or may have been hesitant and waiting to raise a delicate matter.

The lawyer must be clear about what the client should do next

In bringing the interview to a close, the lawyer should remind the client of anything the client must do, for example providing documents to the lawyer. Depending on the facts of the case, the lawyer may also need to cover possible contingencies, for example what should the client do if someone from the Ministry for Vulnerable Children, Oranga Tamariki arrives to remove the children, or if the other parent fails to return the children at the set time. The lawyer may also want to caution the client against doing particular things if they are unwise in the circumstances, for example contacting the opposing party directly, destroying documents or talking to the children in very negative ways about the other parent.

Conclusion

The initial interview is very important in setting the stage for the ongoing lawyer-client relationship. This article has addressed some things to remember when interviewing a new client. Using active listening, being clear and non-judgmental, following a pattern of listening before questioning or advising, and managing client expectations will help to ensure a good start.

Footnotes

1. Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 4.
2. Family Court Act 1980, s 9A.
3. Rules 3.4 and 3.5 of the Lawyers: Conduct and Client Care Rules, above n 1, require practitioners to provide clients with particular written information, including information on fees, indemnity insurance, any limitation on liability, and procedures for the handling of complaints. Rule 1.6 requires practitioners to supply this information in a manner that is clear and not misleading, taking into account the identity and capabilities of the client as well as the nature of the information.
4. Avrom Sherr is recognized as an early advocate of this approach. See Avrom Sherr *Client Interviewing for Lawyers: an Analysis and Guide* (Sweet & Maxwell, London, 1986).
5. See rr 8.2(a) and 8.2(b) of the Lawyers: Conduct and Client Care Rules, above n 1.
6. David Binder and others *Lawyers as Counselors: A Client-Centered Approach* (2nd ed, West Publishing Company, Minnesota, 2004) at 76.
7. Binder and others, above n 6, at 49.
8. Above.
9. Jenny Chapman *Interviewing and Counselling* (Cavendish Publishing, London, 1993) at 53.
10. Chapman, above n 9, at 54.
11. Above.
12. Above.
13. Binder and others, above n 6, at 250–251.
14. Section 7B(b), (c) and (d).
15. Section 7B(a).
16. See r 13.4 of the Lawyers: Conduct and Client Care Rules, above n 1 (clients in disputes must be advised of alternatives to litigation that are reasonable available).
17. See r 13.3 of the Lawyers: Conduct and Client Care Rules, above n 1.
18. Family Court Act, s 9A.
19. See r 6.1 of the Lawyers: Conduct and Client Care Rules, above n 1.