
FAMILY MATTERS

INTERVIEW

Teaching Note

I developed this exercise for my interviewing and counseling course, referred to as “the Client Science Course, since the 2012 publication of my book by that name (with an unconscionably long subtitle). It is also readily available on the clientsciencecourse.com website (at least as long as I or someone maintains it).

Family Matters is directly based on a real family business dispute I mediated (ultimately unsuccessfully) a long time ago. While somewhat simplified from the real case, this remains a factually complex simulation. It is designed to challenge an interviewer seeking to learn chronology, financial dealings, and values, and reflects extremely complex client goals and interests in the context of family relationships. The client’s insistence that he cares only about recouping money may be distasteful to some lawyers, and the client’s statement of his interests may be short-sighted (or not). The exercise reflects many (certainly not all) of the difficulties inherent in family disputes, and raises questions as to a lawyer’s right, tendency, or ability to analyze and judge his client’s values, preferences, and awareness of self or others.

In recent years, before students practice with this or other lawyer-client exercises, I assigned my article: “Client Science: Advice for Lawyers on Initial Client Interviews” (2014). (I generally refer to this to as a supplement chapter for the *Client Science* book. Available on Clientsciencecourse.com website and (I believe) SSRN, this piece synthesizes a raft of other writing and research regarding establishing a client relationship, understanding the client’s perspective, and techniques for fact gathering.

Note that this chapter discusses Professor Linda Smith’s confirmation that asking questions in a funnel sequence structured around legal issues is difficult for less experienced lawyers, who are likely to be less familiar with the landscape of legal issues a potential client might bring to an interview. Particularly if this case is used for first year or early second year students (any students who have not yet completed a basic corporations course), many will be unable to spot the legal issues for “funneling” questions. Students are therefore called upon to practice eliciting information without legal knowledge.

Without doubt, the family dynamics and consequent emotions bubbling up in this dispute are fodder for *Client Science*, Chapter 4, “Emotional Effects and Affecting Emotions.” Its characters and plot line are also the basis for two of the short vignettes designed for law students or lawyers to work with Fisher and Shapiro’s “core emotional concerns” model, discussed in that chapter.

The *Family Matters Initial Client Interview* demonstrates the importance of eliciting and understanding a client’s emotions and his interests, goals, and values, while also obtaining



clear and detailed information about a complex set of facts regarding business transactions and family and corporate power and relationships.

In practice, there is a fine line between understanding a client's stated feelings and values and judging or substituting your own. To what extent is insight coercion, projection, or a refusal to listen? So, if the client says: "Really what matters to me is the money, I don't care at all about the family, and I'm not trying to best my brothers in some sibling rivalry play," must the lawyer believe it? Honor it? The lawyer is not a psychologist or a family therapist. Assuming the lawyer should not substitute his own preferences, it is wise or just manipulative to suggest further discussion and reflection on these issues?

Finally, at the very least, listening to the client's story should suggest to a wise lawyer that others' (siblings' and parents') perspectives and narratives will differ. Others will name the villains differently. To what extent should a lawyer consider these other perspectives at the initial interview?

Précis of the Family Matters Facts

By way of overview, the potential client (referred to generally as the client) owns a 13 1/3% share in a closely held corporation, his two siblings also each own 13 1/3%, while his parents own 60%, or 30% each. While no longer an active employee of the business (as a result of a dispute some years ago), he believes that his right to income distributions is being illegally ignored. The client's 77 year old father (who originally gave the shares to his sons), is now ill with cancer and has been estranged from the client since their earlier dispute, though it was not litigated. The client would like to claim his rightful share of the corporate profits and potentially reconcile with his father.

Briefly stated, the sequence of relevant past events and characters is as follows. The client presents as the dutiful eldest son – an accountant by training - who characterizes his brothers as irresponsible, one with significant substance abuse issues after military service. The father had founded and owned a successful sand and gravel business and some property. Shortly after the three sons started working in the business, the father granted each their 13 1/3% share. As it soon became clear that the siblings didn't work well together, the father offered each the opportunity to manage discrete segments of the business: sand and gravel operations, renting road equipment and machines to developers and road builders, and a commercial warehouse. Your client took over the commercial warehouse. By contract, each was to pay business expenses and a "rental and corporate fee," and receive a low but guaranteed salary, but was permitted to keep net profits from their operations. The rental and corporate fee was then paid to the parents as "salary" as they slowly retired.

The client managed the warehouse operation until five years ago, expending tremendous energy and long hours to slowly build profits. Then, he became involved in a bitter dispute with his siblings regarding the accounting services he provided to the corporation for an annual fee of \$5000. The client had to spend time worth far more than that on their



accounting to his “brothers’ incompetence and sloppy business practices.” “It drove [the client] nuts” that they charged their sports cars to their businesses, failed to invest in necessary technology and maintenance, worked few hours, and teased him about being the “family nerd.” The client “reached the boiling point” when his father turned down his request to hire a part time bookkeeper and wrongly accused him of sneaking the cost of your warehouse roof into company expenses (instead of against his own operation). Nothing could be further than the truth. As a matter of routine, all of the sub-businesses received advances from the corporation, to be paid back as receipts came in. December is a typically slow month, and he simply caused the roof funds to be advanced. Upset that his father questioned his integrity and believing his brothers had poisoned the father against him, the client left for two weeks. When he returned the locks had been changed; he had no job. The client and his family suffered financially for several years as he worked as a bookkeeper and hotel manager and did not receive any of his 13 1/3% of company profits.

A year ago, the business put the commercial warehouse property up for sale and the client took out a loan to buy it, through an agent (hiding his identity). When the company insisted on the full \$600,000 price (instead of negotiating in the \$500,000 - \$600,000 range the agent had predicted), the client suspected they had learned his identity. It didn’t bother him to pay more because he assumed the company would distribute the proceeds and he would receive his fair share. But he received nothing at the end of the fiscal year. Since owning and operating the warehouse, it has been a struggle to make any significant income.

The client has not been on speaking terms with his family for many years. While he feels sympathy for his 77 year old father, recently diagnosed with leukemia, the client isn’t overly concerned, based upon an oncologist friend’s suggestions that it’s likely to be slow moving). The client is very angry with his father, whom he believes should set his siblings straight and exercise his power to ensure proper distributions are made. He decided to consult with the lawyer to learn his rights and come up with a strategy for getting what he is owed.

The client knew of the attorney’s growing reputation, that he was from a good family in the community and recently helped a friend with a legal problem.

Note that “acting instructions” asks students to play the role as self-righteous and adamant about the desire to get his 13 1/3 percent and about his brothers as lazy ne’r do wells, blaming them for the warehouse decline and the father for being blind (to the health of the business?). The client role players are also asked to emphasize their own stress and financial pressures.

Role players are also asked to deliberately take on one of two client personality types: (1) The first type is someone reticent with information – reserved, perhaps shy (yet feeling stress), maybe a bit embarrassed. This client does not volunteer information or telegraph his state of mind. The role player is asked to permit little slips about what he might be feeling, but nothing obvious unless the lawyer explores it.



(2) The second type is a “real talker” who runs on with his story, not necessarily in logical or sequential order. The role player is asked to play it “over the top,” as highly emotional, stressed, and emphatic that he has done nothing wrong. The lawyer’s job will be to calm the client down, get the order of events and the facts, and elicit other details. Whatever client personality is presented, the lawyer’s challenge is to communicate understanding of and empathy for the client dilemma.

The attorney’s role information describes someone only five to seven years out of law school, who opened a general solo practice in his home county, after practicing in a law firm and as a local prosecutor. Before the initial interview, the attorney received a direct call from the potential client who explained that he holds minority shares in corporation owned by his parents and siblings. In the initial phone call, the client stated that he was seeking protection against being squeezed out of his rightful share and claims that his brothers have been lying to his father about the business and have been taking all of the profits as salary instead of distributing it.

The attorney-reader is told not to provide advice to the client in the initial interview but does remind of the need to explain confidentiality and fees. The attorney generally bills at \$150 per hour (with discretion to adjust up or down) but he has handled personal injury matters on contingency fee arrangements. For an extended litigation, the attorney sometimes requests a retainer, against which fees would be charged.

Practicalities and a Story for Teaching

While not essential, within the structure of my course, I’ve broken the interviewing exercise into two segments: the first on early stages – introductions, icebreakers, informal agenda, attorney-client privilege – possible discussion of fees. (See the referenced article on initial client interviews, which suggests offering the client the choice as to whether to discuss fees early in the meeting, or at the end – if and when it appears the lawyer and client could work well together. See also, the Instructor’s Guide on the Clientsciencecourse.com website.)

You can introduce and discuss ways to begin and topics to cover in an initial client interview, and use Family Matters (or Hapless Harvest, or any other simulation) to enable students to practice. For students to practice this portion (BEFORE hearing the story) takes about 10 minutes, perhaps add some feedback within pairs, and then debrief. The debrief can take anywhere from 15 minutes to an hour, depending upon how you choose to focus it. You can use the debriefing to put a spotlight on how best to explain the attorney client privilege; recognize the importance of building rapport with chitchat – as well as pitfalls to avoid etc. You can discuss the benefits of setting out a rough agenda (and inviting client input), and the question of whether to raise the fee issue in this initial interview phase or save it for later. (My article suggests mentioning it and letting the client decide which they prefer.)

After the initial phase, we move to the substantive portion of the interview – learning the facts, the client’s feelings about those facts AND the client’s goals, interests, broader context, etc. Given the complexity of the facts (including the family relationships and the business



history), that portion of the interview can easily take 25 minutes. Note that before letting the students launch into this, I do a unit on active listening (non-verbal and verbal, reflecting feeling and facts). They are encouraged to practice active listening during the interview. At the end of the class time with Family Matters, I always tell the sad story of the real case. You are welcome to tell it too; the story follows.

By the time I was asked to mediate this case, the client and lawyer had decided to file a lawsuit against the father, the brothers, and as a shareholder with derivative rights. As usual, the lawsuit generated yet more animus, and there had been numerous acrimonious squabbles about discovery, review of books and records, etc. As might have been predictable, the other family members were angry with this client; young cousins refused to speak to the client's kids (their cousins). The mother (father's wife, mother of all the brothers) was upset, and deeply regretted the family's inability to gather at Sunday dinners or holiday meals. The family had long, deep roots in their small town community. The father was much loved by many. Neighbors and others in the community refused to speak to the client in the grocery store or around town.

When the father's leukemia took a turn for the worse, the lawyers (or someone) suggested the parties try to mediate their dispute to achieve family reconciliation and peace – at least to repair the client's relationship with his father while he was still alive.

By this time, the father was quite ill, and able to go out only with a mobile oxygen tank unit. Because of his limited strength, we scheduled the mediation for half a day. Progress was made; the father and son did finally have a meaningful conversation, but it can't be said that there was peace, reconciliation, or a significantly restored father-son relationship. After the session, the lawyers and I worked on some tentative terms for agreement, but there remained a gap on dollars and, really, other material terms were by no means finalized. After a few weeks of drafts and phone calls, we learned that the father had passed away. I'm not sure, but I suspect he had already cut the client out of his will. With or without the will, this whole story ended sadly.

The real lawyer representing this real client was an honest, intelligent young man – not obviously greedy or aggressive. Perhaps “young” is relevant; he was, at that time, relatively inexperienced. I wondered whether he had asked this client to consider whether litigation was the best option. Had he asked the client to think about how filing suit would affect the family – how it would be felt by the cousins, his mother, and his father? Might there have been another way for the client to raise his concerns? Could they have arranged for a conversation, perhaps moderated by a family mediator?

I don't know the answer to that question for the real case. But I leave the class with the idea that we seek to enable a client to make wise decisions – decisions that are wise in the context of their lives. It's within the lawyer's role to discuss the impact of formal legal action and what alternative there might be. Otherwise, we risk very sad endings to a story.