

# Our Clients and Us

by Joseph Shaub

If you really want your client to have confidence in you, is it better to demonstrate a command of the relevant legal principles or to appear warm, reactive and animated?

Most of us would say the former - pointing out that the more people-friendly skills, while helpful, are certainly not essential. After all, what do clients want from us *lawyers* if not *legal competence*. However this may be a serious misconception, according to the work of Stephen Feldman and Kent Wilson.<sup>i</sup> Some years ago these faculty members in the law and psychology departments of a Midwestern university conducted a research study that bears consideration.

Their study design compared indicia of "legal competence" and "relational skill" to see how each might bear on clients' desire to work with the professional. They created two axes. At one end of the "competence" axis, they instructed their lawyers to be sure to obtain factual data, explain court jurisdiction and procedure, give practical advice, provide appropriate forms and explain relevant case law. On the other end, the lawyer failed to do any of these things.

Feldman and Wilson actually conducted a literature review to determine what might be the components of "relational skill." They identified the following: the lawyer introduces him/herself using their first name, shakes hands, makes small talk, lets the client talk, leans forward, looks at the client, reflects the client's content and affect and appears warm, reactive and animated.

The researchers, then, recorded four different attorney/client interview scenarios, in which the lawyer demonstrated (1) high legal competence/high relational skill, (2) high legal competence/low relational skill, (3) low legal competence/high relational skill and (4) low legal competence/low relational skill. These four tapes were then shown to a large number of subjects who were asked to rate the lawyers in relation to the following statements:

This lawyer will do all he can to help the client; I would have confidence in this lawyer; This lawyer will charge a fair and reasonable fee for his services; The client will accept and follow the lawyer's advice; I would recommend this lawyer to a friend in need of a good divorce lawyer; I would recommend this lawyer to a friend in need of a good tax lawyer; I would consult this lawyer if I had a divorce problem.....or a tax problem.

Obviously, the lawyers who demonstrated high competence with high relational skill were the first choices in every context and those with low competence/low relational skills were at the bottom. Yet, which combination came in second? Was it the lawyers with high competence/low relational skills or low competence/high relational skills?

What Feldman and Wilson found, consistently, was that people preferred to work with - and tended to trust - the lawyers demonstrating high relational skills. This applied not only to the divorce lawyer scenario (which would make sense due to the emotional issues usually presented) but to the tax lawyer, as well.<sup>iii</sup>

Demonstrating relational skill resulted in the client being more likely to follow the lawyer's advice and to refer others to that lawyer. Thus, high relational skill strongly promotes client control, as well as practice development through referrals from clients (a highly gratifying source of business for any attorney).

We may look at these behaviors associated with "relational skill" as simply a set of techniques to be learned. Yet this would be a mistake. Our clients are usually perceptive enough to know if the concern is sincere or they are being worked by a clever "to do" list for clients.

Pete Roberts, who runs the *LOMAP* program for the State Bar <sup>[iii]</sup> has written a useful guide available through his office entitled "Up and Running: Operating Instructions for the Small Law Office." Many of its nuggets are applicable to the lawyer practicing in any firm environment. One chapter, entitled *Client Relations* notes (perhaps self-evidently) that, "Relationships with clients can make or break a law practice. In addition to providing competent legal work (which we assume to be the case), happy and successful lawyers know how to treat their customers."

Too often, lawyer's think of their clients only as problem delivery systems. Solve the problem, earn the fee, move on to the next problem. However, as Pete Roberts, once again, notes, "Many of us have experienced insensitive treatment by another professional...We come away from the experience feeling uncared for, disrespected, and angry, even if the professional performed competent work. Likewise your clients will form a distinct impression of you based on how you treat them. They may also share this impression with everyone they know, directly influencing your success as an attorney."

Dr. Andy Benjamin has counseled hundreds of Washington attorneys and law students over the past dozen years. In that time, he has observed that attorneys who have fallen into professional and personal difficulties, didn't follow what he calls "the rule of two." According to Dr. Benjamin, in order to maintain a basic sense of satisfaction with a particular case, we need to satisfy at least 2 of the following 3 criteria: We must (1) love the type of law involved; (2) enjoy working with that particular client and/or (3) have a satisfactory advance fee deposit in the bank, so that the case does not cause financial stress (his "no involuntary pro-bono" rule).<sup>[iv]</sup>

I want to suggest, here, that in order to be truly satisfied in our practices, we need to view these criteria as legs on a stool, each of which is essential to personal and professional enrichment. Who wants to worry about money, even though they love the kind of law they practice and enjoy their clients? How long will you last if you like your clients and have no money worries, but think the kind of law you practice is boring or even distasteful? By the same token, if you don't like your clients, how much gratification are you going to get from your practice?

More to the point, here, if you don't like your clients, how are you going to be able to believably demonstrate the "relational skills" discussed earlier? Thomas Shaffer and James Elkins in their gem, *Legal Interviewing and Counseling in a Nutshell* say that, "There is common agreement that an open, reflective, supportive atmosphere in the office, is likely to produce better rapport than a climate in which one or both parties in the relationship have secret agendas. An open, reflective atmosphere suggests the use of these devices: (1) active listening, (2) evidence of empathic regard for the client's feelings and (3) acceptance." These comprise the foundation for the counseling relationship, as identified by Carl Rogers over 50 years ago.

My practice focuses on domestic relations and estate planning - which represent the intersection of personal-life concerns and the law. The connection between so-called "family law" and the principles, above, are pretty much a no-brainer.<sup>[v]</sup> I have often wondered about the degree that strong client rapport, which is marked by a high degree of empathy and legitimate concern, informs the successful and rewarding practices of the plaintiff's PI lawyer; the patent attorney, the employment specialist or the securities lawyer. I have yet to hear that these practice areas can safely eschew the principles of honest empathy and concern for the client and that the successful rainmaker views clients as nothing more than inconvenient carriers of a legal problem and a satisfactory fee.

<sup>[i]</sup> Stephen Feldman has long been native son of the Pacific Northwest and now maintains a successful and very well regarded mediation practice in Pioneer Square.

<sup>[ii]</sup> Feldman, S. and Wilson, K, *The Value of Interpersonal Skills in Lawyering*, 5 *Law and Human Behavior* 311 (1981)

<sup>[iii]</sup> Law Office Management Assistance Program.

<sup>[iv]</sup>This rule has also been cleverly stated by Jay Foonberg, the national expert on building and maintaining a law practice as, "I'd rather not work and not get paid than work and not get paid."

<sup>[v]</sup>Although I am certain that the adversarial family lawyers in the community would heartily disagree.