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That's Why They Call it Practicing Law. CLE course materials:

Introduction.

The legal field is lacking in good customer service. Poor customer service can lead to a client perception of subpar representation—or even the loss of a client. Clients do not always recognize good lawyering, but they do recognize and appreciate good customer service. Lawyers are wise to recognize that a relationship lies at the heart of the practice of law; namely, the attorney-client relationship.

Lawyers provide better representation when the focus on improving the attorney-client relationship. This book was written for lawyers and others who desire to provide excellent customer service. I chose the title, *That's Why They Call it Practicing Law*, because providing the best representation requires persistent practice. We all possess flaws and imperfections and we also demonstrate differing levels of skill and competence. Regardless of our starting point, all of us can improve our craft—if we're willing to learn and engage in self-examination. The effort requires work.

If you provide great customer service, you'll profit in at least three ways:

- you separate yourself from other lawyers;
- you keep most of your existing clients satisfied; and
- you generate new clients—based on satisfied client referrals.

A lawyer cannot please all clients. There will always be the five percent who are unhappy no matter what you do; however, most clients will appreciate the extra effort. Of course, nobody is perfect—you will occasionally fall short. However, it's how you're characterized that counts.

Chapter 1: The Relationship Isn't About You.

A good starting point for providing great customer service to your clients is understanding the relationship isn't about you. As lawyers, we're important. As professionals, we possess technical skills and a high level of knowledge about our area of practice. Yet, we aren't the focus of the relationship—the client is.

Over the years, I learned clients' cases are better presented in court, when I get out of the way. If the attorney ego is less involved, clients receive better representation. While there is a place for theatrics, humor, or hyperbole in the presentation of the clients' case, the best lawyers leave the smallest footprints. This focuses the lawyer's attention where it belongs—on the client's story.

Chapter 2: Set Realistic Expectations.

Unmet expectations often cause conflict in relationships. This is true with clients. Clients expect a lot out of their lawyers. Establishing proper expectations in the relationship can be difficult, but it's worth the effort. Lawyers are not superheroes—we are finite. Various constraints limit our time, resources, intellect, and energy. Appropriate communication of these limits to clients is helpful.

Most lawyers like to help people and most want satisfied clients. So, this chapter encourages attorneys to begin early on with establishing expectations. For example, during an initial consultation, define the scope of the representation. Explain the time frames involved with the litigation. Provide details on proceedings. Tell clients how quickly they can expect a return phone call or email.

Chapter 3: Trust Your Gut.

Some of the best advice I received while in law school came when deciding which job offer to accept after graduation. I ran my two opportunities by my favorite law professor with a list of pros and cons. In response, he asked what my gut said. He told me that as a fledgling lawyer, I needed to learn to trust my gut when making a decision. This was great advice.

Lawyers constantly evaluate. We assess witness and client credibility. We also evaluate fact patterns. They often follow familiar paths. No matter which side we represent, we're looking for anomalies when analyzing these patterns. Recognizing the aberrations and trusting your instinct is invaluable, especially when deciding whether to take on representation of a new client.

Chapter 4: It's a Relationship, So Listen.

Lawyers are mouthpieces for their clients. We tend to think talking skills are our most important asset. Listening takes a backseat and the ability to carry an argument becomes paramount. This shouldn't be.

This portion of the book encourages lawyers to learn to be better listeners. It takes patience—and practice. But if you improve your listening skills, you'll be a better lawyer. You'll also likely improve your other relationships.

Chapter 5: Be Kind.

Plato often receives credit for saying: “Be kind, for everyone you meet is fighting a hard battle.” Regardless of origin, this adage is good advice for attorneys. We should be kind to clients. We should be kind to other lawyers and judges. Support staff also deserve our kindness. In fact, we should be kind to all who cross our path.

At a basic level, rude is wrong. Lawyers and litigants deserve our respect. As a practical matter, we don't want to burn bridges, because we never know when we'll need to retreat back over them. If you get along with judges and other lawyers, you are likely to get a better result for your client. As long as you're firm, but gentle, you certainly won't do any worse. Kindness often begets kindness. Benefits do accrue when we extend kindness.

Chapter 6: Be Available.

Being available to the client sets the tone for the relationship—starting with the initial meeting. When your clients come to visit, walk them back to your office or conference room. Don't have your staff do it. Offer them a cup of coffee or a glass of water—then go get it for them.

As you move forward from the initial consultation, remember representation involves a relational aspect. The client retains you. The client doesn't retain your staff. Your staff is an extension of you; they allow you to function at a higher level. So yes, do delegate where appropriate; however, stay in touch with your client. In the restaurant business, they call it “touching the table.” In the lawyer business, this touching aspect serves two goals:

- you keep the client well-informed; and
- you avoid neglecting the client and potentially running afoul of the rules of professional responsibility.

Being available to the client is a difficult balance to achieve. As indicated before, boundaries are appropriate and yet, failure to attend to the client in personal fashion can prompt a perception of poor representation.

Chapter 7: Be Truthful and Encourage Your Clients to Do So.

We should pursue truth in the practice of law. One can't overemphasize the importance of telling the truth. As a wise judge once told me, “David, it takes years to build a good reputation, and about five minutes to destroy it.” This was good advice. It's come to mind many times over the years.

The judge's advice stands in sharp contrast to an oft-heard joke, "How can you tell if a lawyer is lying? The lips are moving." Funny, but pathetic. People expect lawyers to lie, but we can rise above this popular perception.

When faced with the choice of presenting fact versus fiction, try to remember the words of Charles Spurgeon; namely, "Truth wears well." Put it on. Embrace it. You and your client will both profit.

Chapter 8: Act Like You Care.

In representation of the client, it is important to be empathetic. A family lawyer I know presents a seminar on client relations where he admonishes younger attorneys to, "act like you care." I like the advice. It makes me chuckle because I know what he means.

I don't need to tell you, however, we practice better law when we actually do care about each client. We need to understand the problem that led the client to us is significant and important to them. It may be a run of the mill case, but it helps to remember, for each client, the circumstance isn't routine. Communicating care to clients improves the attorney-client relationship.

Chapter 9: Keep it Simple.

Where possible, adhere to the old acronym, KISS. Spelled out, "keep it simple, stupid." I prefer to use "sweetheart." This applies when communicating with both clients and the court. Too bad so few lawyers practice this policy.

The effects of a legal education seem to linger long. Thick texts, long-winded decisions, and droning professors combine to produce the mentality that more is better. We're taught the "weight of the evidence" wins the case. As a result, we often confuse quantity with quality. And that is not true.

Chapter 10: Don't Procrastinate.

Procrastination constitutes the cardinal sin of a lawyer. Lawyer procrastination leads to more admonitions and discipline than any other malfeasance. What can start as a non-descript task on a lawyer's to-do list can slowly devolve into attorney misconduct worthy of discipline—if left unattended. We know this. Putting off work gets you in trouble.

I practice law at a busy office, handling plaintiff workers' compensation cases. We run a high-volume business. Technological advances over the last two decades were supposed to increase productivity, streamline the practice, and provide more free time. In reality, it made things more frantic. Keeping pace requires significant effort. And we must make this effort to avoid procrastination.

Chapter 11: Do the Work.

How do lawyers best serve their clients? By doing what they need. This service requires work. A client once expressed surprise when I called him back on a Saturday. As he put it, “I didn’t know you lawyer-types worked weekends.” Funny? No, he hired me to do a job—which requires work. And as my grandpa always said, “If it was supposed to be fun, they wouldn’t call it work.” I’m not promoting workaholism here, but to provide good service, you must do the work.

The practice of law can be a grind. As a mentor used to tell me, “Pace yourself, young man. This is a marathon, not a sprint.” A hardworking partner at a St. Paul firm described workers’ compensation lawyers as “white collar sweatshop workers”. Not a flattering title, but it hit the mark. We push a lot of paper. For many, it’s hard to cram all of our tasks into a reasonable work week. And yet, many lawyers need to be reminded to do the work.

Chapter 12: Be Prepared.

One cannot overstate the importance of being prepared. There are many things you can’t control. As previously stated, lawyers don’t create the facts. Witnesses don’t always say what you want them to say. The stress of the courtroom can cause your client to crumble. You can’t make the fact-finder rule in your client’s favor. And sometimes, as I learned, you may fall out of your chair.

The one constant you can control is the amount of time spent preparing. Good preparation won’t guarantee a successful outcome, but it strongly increases the likelihood of success. At minimum, you’ll know the strengths and weaknesses of your case—and you can respond accordingly.

Chapter 13: Communicate Clearly.

We should strive for clarity in speech and writing. We provide our clients with good service when we communicate clearly. This applies to all types of communication with all sorts of communicants. I call this the “try not to sound like a lawyer rule.” This directive gets violated frequently.

We all risk failure when we use flowery word pictures or big words. We do a better job when we avoid legalese, euphemisms, or speaking in code—which workers’ compensation lawyers do all the time. Shorter words and precise language improve our communication.

Chapter 14: Maintain Perspective.

Clients seek out lawyers because of problems. They often can’t see a way out of their circumstances. They believe the hopeless lie that tells them, “It will always be like this—it will

never change.” They feel mired in their situation and this can lead to despair or panic. Neither is good. Where possible, the lawyer wants to dispel these notions.

Lawyers provide good customer service when they maintain perspective and share it with clients. A lawyer’s temperament can play a role here. Some lawyers are more sensitive. Some emote, others don’t. Regardless of emotional makeup, lawyers can maintain perspective and share it with those they represent.

Chapter 15: Make Good Referrals.

A lawyer’s daily diet consists of varying client difficulties. Lawyers work to solve client problems and clients have lots of problems. But you can’t fix all of them. Don’t even try—that would be foolish.

We live in the age of the specialist. So when a client presents with an issue that exceeds your skill set, be a problem-solver and make a good referral. The business of law involves many relationships. Draw on those relationships to send your client to the person who can best solve their problem. Making good referrals constitutes good practice.

Chapter 16: Be Mindful.

We hear a lot about distracted driving. As attorneys, we can easily engage in a companion crime—distracted lawyering. We avoid distraction by being mindful of our current circumstances. A lawyer best serves the client by narrowing focus and engaging the present moment.

Attorneys achieve mindfulness through discipline. Choosing to stay our mind on the present allows us to fully engage a client’s current problem. When our minds wander—and they will—we need to recognize the detour, end it, and get back on track. This may take practice, but we can be disciplined. When we are, clients receive our full attention and efforts. Full engagement leads to better representation.

Chapter 17: If You Mess Up, ‘Fess Up.

This may come as a shock to some—but lawyers aren’t perfect. We are human and all lawyers make mistakes. Errors are inevitable. An accomplished attorney told me he gives himself permission to completely blow it once every five years or so. He shared this insight after I sought his counsel concerning a mistake of my own.

Lawyers are wise to accept input with humility. A humble response to rebuke usually softens the perceived blow of criticism. It also disarms your critic. Shorn of defensiveness, you can consider the proffered information. Perhaps the criticism isn’t accurate. But if it’s true, you’re wise to accept the input. After all, we can learn from our mistakes—that’s why they call it practicing law. And if we’re willing to learn, we can improve our craft over time.

Chapter 18: Know Your Audience.

Effective representation requires lawyers know their audience. Attorneys communicate with a variety of people throughout the day. These can include clients, peers, judges, juries, witnesses, Facebook followers, and the Twitter universe. These interactions can be formal or informal—short or sustained. They all differ.

Lawyers use a variety of methods to convey facts, themes, and arguments. We talk, argue, and write. We tell stories. And when we do, we seek to persuade, inform, and educate. We also market ourselves. As we move through the varied facets of communication, we need to target our audience—otherwise we risk missing the mark.

We all create impressions. And we have one chance to make a first impression. Don't overlook this opportunity. You probably won't prevail on this basis, but it helps. Remind your clients of the importance of first impressions before you head into court.

Chapter 19: Know Your Limits.

In the age of the Super Lawyer©, a multitude of voices tell us we can accomplish every goal if we possess enough resolve. Books instruct us on self-fulfillment; articles show us how to achieve self-actualization; seminars promote efficient practices. We're told if we act in the right way and at the right time, we can do it all—unfortunately, this isn't true.

We can't do everything, nor can we be all things to all people. We are finite. Each of us wears many different hats at one time. These can include lawyer, spouse, child, parent, friend—the list is long. These roles consume our energy and time. Each one of us possesses a different capacity and this capacity can change over time. But we need to recognize we are not infinite. We run out of time and energy.

We need to know our limits. We need to accept and respect them. Doing so, will make us better lawyers. We improve the attorney-client relationship by acknowledging our limits.

Chapter 20: Sharpen the Saw.

The practice of law can be a grind. Lawyers get into ruts. Sharpening the saw professionally means you periodically evaluate what you do, how you do it, and why you do it. This analysis promotes change and improves your practice. It might even help with your sanity. After all, Albert Einstein warned, "The definition of insanity is doing the same thing over and over again, but expecting different results."

Lawyers need to take time to think through how we perform our tasks. Attorneys want to avoid being too reflexive. And we don't want to use a cookie-cutter approach. Things change—

especially in the age of technology. We need to slow down enough to observe changes, respond to them, and adapt as we go. Simply put, the old ways don't always work.

Whatever means we employ, this chapter encourages lawyers to take to “sharpen the saw”—as this will improve our practice of law. Clients benefit when we improve professionally. And the lawyer who regularly receives refreshment from outside interests and hobbies improves their half of the attorney-client relationship. After all, clients receive better representation from healthy, rested, and sharp lawyers.

Chapter 21: Protect Yourself.

Attorneys that one can't please all clients. Relationships break down. Some clients aren't honest. Others aren't kind. A few of them are vengeful and a smattering are crazy. Unfortunately, if you practice long enough, you'll likely represent a person with one or more of these qualities. They will cause you problems.

Making wise decisions about who you represent will help you avoid a majority of these problem clients. Eventually, however, you'll likely find yourself with an unhappy client. Worse yet, you may find a client has turned on you. Watch out. Being pursued by an angry or upset client can be painful and expensive. General dissatisfaction and griping can morph into complaining to other lawyers, bad online reviews, ethical complaints, or worse.

Client accusations can strike any lawyer. No one is immune. Make sure to document your work and keep the client informed as both activities reduce the likelihood of a client turning on you. But if a client takes a negative turn—you possess the information needed to defend yourself. Practicing defensive law ultimately benefits both the client and the lawyer.

Chapter 22: Learn to Recognize a Sunk Cost.

Lawyers better serve clients by realistically assessing cases. Sooner or later, all lawyers encounter “the loser case,”—a.k.a. the sunk cost. Typically, the loser case doesn't start off poorly. If it did and you took it anyway, then hopefully you learned your lesson. Remember, trust your gut when it comes to declining new cases with red flags.

More often, the loser case develops over time. In theology, this concept is known as progressive revelation. Eventually, you understand the nature of what you're dealing with. The loser case may consist of bad facts, low value, unfriendly law, or a toxic client—the possibilities are endless. At its heart, this case is more trouble than it's worth.

Recognizing the case is a sunk cost and withdrawing will save time, money, and grief. In contrast, doubling down means wasting more resources. When a lawyer hangs on to the end, the usual outcome leaves everyone involved unhappy. Lousy cases either settle for nuisance value or get blanked in the courtroom.

Conclusion

Nobody calls it perfecting law. Rather, it's called practicing law—and for good reason. The practicing never ends; we don't ever achieve perfection. There is always room for improvement—we can become better lawyers. Through a combination of thought, effort, and willingness to learn, we can improve our craft. Continually refining the service we provide to our clients must remain central.