



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET EE
INTRODUCTION TO CASE EVALUATION**

Worksheet EE is intended to facilitate a discussion about the best ways to evaluate a potential case and how to decide whether to accept a proffered representation.

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- Share with the new lawyer the steps to a successful and relevant client interview. Discuss the following:
 - What types of information should you seek in this interview?
 - What kind of questions must be asked?
 - What types of things should you tell your potential client or avoid telling them?
 - How should you interact with your client during this interview?See the attached article, Tim W. Hrastar, *Meeting a Prospective Client*, CLEVELAND BAR JOURNAL, Dec. 2003.
- Review the concept of the client-centered interview discussed in the attached book excerpt. NOELLE C. NELSON, *CONNECTING WITH YOUR CLIENT* at 28-32 (1996).
- Share with the new lawyer details about the steps you take once you have met with a potential client, including the following:
 - Adding information to your conflict database regarding the potential client you interviewed.
 - Opening a case file for the individual.
 - Preparing an engagement or disengagement letter to send to the potential client.
 - Preparing a fee agreement for the potential client.
 - Doing research on the potential case to make a decision about taking the representation.
 - Preparing case analysis documents and evaluating a client's case. See the attached article, Greg Krehel, *Getting Case Analysis Off to a Fast Start*. <http://www.casesoft.com/download/analysis.pdf>.
- Explain to the new lawyer ways you can assess your client's credibility.
- Identify ways to create trust with your potential client in the initial interview.
- Share with the new lawyer the types of factors you consider when deciding whether you should take a case. To the extent that the mentor can offer tips to the new lawyer about



factors that should be considered in taking cases in the new lawyer's practice area, offer those as well.

- Discuss the obligations you have to a potential client (even when you do not take his or her case) regarding conflicts of interest and confidentiality. See Prof. Cond. Rule 1.18.
- Discuss the potential for gaining an unintentional client and ways to avoid doing so.
- Discuss the importance of talking to a client as early as possible about realistic expectations of the representation, the scope of the representation, and the fee arrangement. If helpful, share with the new lawyer samples of fee agreements and engagement letters that you use in your practice. Or, if mentoring in-house, share with the new lawyer the fee agreements and engagement letters which are used in your firm. Explain to the new lawyer why certain provisions are either included in your fee agreement or excluded from your fee agreement. Discuss why a fee agreement should be in writing. See Prof. Cond. Rule 1.5.

RESOURCES

OHIO RULES OF PROFESSIONAL CONDUCT

I. CLIENT-LAWYER RELATIONSHIP RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;



(8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement shall clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case;

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.



(e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:

(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;

(4) the total fee is *reasonable*.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

View comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule1_5

RULE 1.18: DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to division (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a *substantially related matter* if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in division (d). If a lawyer is disqualified from



representation under this paragraph, no lawyer in a *firm* with which that lawyer is associated may *knowingly* undertake or continue representation in such a matter, except as provided in division (d).

(d) When the lawyer has received disqualifying information as defined in division (c), representation is permissible if either of the following applies:

(1) both the affected client and the prospective client have given *informed consent, confirmed in writing*;

(2) the lawyer who received the information took *reasonable* measures to avoid exposure to more disqualifying information than was *reasonably* necessary to determine whether to represent the prospective client, and both of the following apply:

(i) the disqualified lawyer is timely *screened* from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) *written* notice is promptly given to the prospective client.

View comments at

http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule1_18

By Tim. W. Hrastar

Meeting a Prospective Client

Many times I get questions from clients I am coaching about how to follow up with a prospective client.

Consider this scenario: Let's assume you have been referred to this prospect by a mutual acquaintance. Your acquaintance has gone as far as calling the prospect to let them know that you will be following up. Therefore the road to meeting this prospect has been paved hopefully with kind words about you. Your prospect has been told a little bit about who you are and what you do. Now it's time to make the call to set an appointment to meet.

Make an Appointment

The first step is to set an appointment to discuss their needs. Call the prospect as soon as possible. Introduce yourself and let them know that you would like a few minutes of their time to get acquainted and discuss their needs. (Notice I didn't say to tell them what you can do for them, but ask them about their needs.)

Usually with the first appointment it's a good idea to meet at their office instead of a lunch meeting. This is less threatening. After all, you're basically strangers to each other; it's perhaps too early to break bread. However, this is only a guideline. If there seems to be good rapport as you talk on the phone, perhaps because of the connection of your mutual acquaintance, it might be appropriate to set up a lunch date. But let it be their idea. Now that you have a meeting set you need to prepare for it.

The Four-Step Meeting

There are four things you want to accomplish at this first meeting with a prospect.

1. **Establish rapport.** You can't have a relationship without it. Get to know the prospect as a person. Find out what you have in common.

You'll probably discuss your mutual acquaintance [that's someone you have in common], move on to light subjects; experiences, family, other interests. Relax and have fun. This is the time you are both deciding if you want to do business with each other. The idea is to follow the prospects lead. Sometimes they want to get right down to business and then move onto social topics. Go where they want to go.

2. **Find out and understand how the prospect can personally win in doing business with you.** In other words what are their personal needs about the work they do? Do they have a concern about working within budget constraints? Do they have a driving need to look good in front of their boss? Do they need to be in control? Do they need to feel valued? Do they need to have fun while working? These are personal needs. If you can't satisfy someone's personal needs you probably won't even get to the point of satisfying their business needs. Much of this information can be discerned from your rapport building conversation. But you can also gather some of this information from your mutual acquaintance, the type of organization the person works for and so on before the meeting.

3. **Prepare three to four open-ended questions.** These questions are designed to probe deeper into the personal and business needs of the prospect. Ask the questions and remain silent and really listen to the answers. Here is where the gold is mined. By asking open-ended probing questions you'll gather information to determine what you need to emphasize in your responses. For example, if you go into the meeting with pre-conceived notions of what you think this prospect needs, you'll be looking at the situation from your perspective, not theirs – and you'll probably be wrong. The only

way you can really help someone is to listen carefully to what they are saying.

Here are just a couple of typical open-ended questions you may want to consider:

- a. Describe the problem you are having now.
- b. What do you want to accomplish?
- c. What have you done in the past?
- d. What is your greatest need?
- e. What is your greatest fear?
- f. Do you have any specific objectives in mind?
- g. How would you see us helping you address your current challenges and opportunities?
- h. What do you want to make sure you avoid?
- i. What don't you want to change?
- j. What three things would you like to accomplish now?
- k. How do you see this matter being resolved?
- l. If the problem were fixed, describe how it would be.

4. **Never leave the meeting without a commitment or advance to the next step.** Don't leave it open with a "we'll stay in touch" line. Set a time for the next meeting, have the prospect commit to sending you additional information you can review, or get a commitment to introduce you to another person to talk to within the organization. ■

Tim W. Hrastar Associates Rapport Marketing/Coaching and consulting helps lawyers present themselves confidently, credibly and persuasively to clients, colleagues and in the courtroom. Member ABA and Legal Marketing Association. Contact Tim W. Hrastar at 937-836-9881 or email twb@rapportmarketing.com.

For the Record

The key talent in good selling is being good at getting me, the client, to reveal my problem, needs, wants, and concerns. If I'm talking, telling you about my company and my needs, you're ahead. If you're talking, you're losing. Professionals talk too much. Ask good questions and listen. . . . I do not want to hear about you and your firm. I want to talk about me and my situation. The only way to influence me is to find out what I want.
—David H. Malster, *How Clients Choose: Managing the Professional Service Firm* (The Free Press, 1993, pp. 45, 117)

Every client has their own perception of their priority or their problem. . . . even though you as the professional know the issue is something else, you must deal with the client's perception first. . . . I don't think you can get to the real issue until you get past the [client's] perception of what their problem may be.

—Connie S. Brown, National Director of Marketing, Loeb & Loeb LLP

THE AMAZING EFFICACY OF THE CLIENT-CENTERED INTERVIEW

A client-centered interview is an interview in which you discuss the matter at hand primarily from the client's point of view. Especially in the initial interview, it is important to explore the client's hopes and fears, rather than jumping in to tell the client your concerns.

Client-Centered Questions

Ask questions that demonstrate your active concerned interest in your client and in this client's specific problems. Inquire as to the client's perception of case outcome, his or her expectation of how the case might proceed, fears both of the case itself and how the case may impact the client's life and business, his or her reasons for choosing you and your firm, and other questions that are of an exploratory nature.

A client-centered interview might include the following questions:

- "Ideally, if you could have it turn out precisely the way you want it, what would the outcome of this action be?"
- "What are your greatest fears regarding outcome in this matter?"
- "What is the worst-case scenario in your view? What's the worst way this matter might proceed?"
- "All things considered, what do you expect to have happen—both in terms of what the outcome is and how the case will proceed?"
- "If this case turns out to your advantage, how will it affect your life?"
- "If this case goes according to your worst-case scenario, how will you be affected?"
- "What are some things that might come up in the course of this case that you worry about, or that you'd rather not have happen?"

- "What made you decide to take this action? What's the bottom line for you here?"
- "What was it about me or my firm that led you to choose us to represent you?"

Different questions are appropriate for different cases and different situations, but the above list, although by no means inclusive, gives examples of client-centered questions that can be modified as needed.

As you encourage the client to open up to you with client-centered questions, you assure the client of your interest in them and their opinion. The client feels valued and respected by you, which contributes greatly to his or her overall sense of satisfaction.

Let's look at a typical situation where the lawyer failed to take the client's point of view into account.

An Interview That Is Not Client-Centered

Client: There's been a change of management at my job. Since the new team has come in, it's been awful. Two of them in particular make sexual comments, sexual noises, and all sorts of inappropriate gestures. I'm just going crazy. I'm stressed out, I feel nauseous all the time—it's got to stop.

Lawyer: No problem, we'll slap them with a sexual harassment, sexual discrimination suit so fast they won't know what hit them. What kind of documentation do you have on this?

Client: *(suddenly very uncomfortable, it's all going too fast)* Uh, documentation. Umm, right . . . But isn't that going to get me in trouble? I mean, I can't afford to lose my job.

Lawyer: Don't worry about it. Leave everything to me. You'll be fine.

In this example, the client has very real fears. Regardless of the illegality of retaliation, workplaces can be made extremely uncomfortable for those who sue for harassment. The lawyer's failure to explore the client's fears is unwise. Jumping into the heat of the action without first determining what kind of outcome the client wants yields one very nervous and potentially highly dissatisfied client.

Now let's look at the same situation, but this time the lawyer does take the client's point of view into account.

A Client-Centered Interview

Client: There's been a change of management at my job. Since the new team has come in, it's been awful. Two of them in particular make sexual comments, sexual noises, and all sorts of inappropriate gestures. I'm just going crazy. I'm stressed out, I feel nauseous all the time—it's got to stop.

Lawyer: So, if you could have it your way, what would you like to see happen here?

Client: Well, ideally, I'd like both of them behind bars. I want to see them punished for this. It's not right what they're doing.

Lawyer: And what are you most afraid will happen in the case?

Client: *(looks down, sighs)* They'll get away with it and be laughing at me and I'll have to quit and I'll be humiliated.

Lawyer: That is scary—I'll try to do my best as we go along to minimize the possibility of that kind of thing happening to you.

The lawyer's client feels taken seriously. The lawyer deliberately sought out and respected the client's thoughts and fears. The lawyer is much more able now to represent the client successfully, in a way that promotes the client's overall satisfaction.

Asking "What" Is Better Than Asking "Why"

Notice that in the client-centered interview, the word "what" is used rather than the word "why" when the lawyer asks the client about moving. "And what are you most afraid will happen in the case?" is asked rather than "Why are you scared?" Studies have demonstrated that "why" questions tend to put people on the spot, which is not your objective. It is easier to elicit information with the word "what," which is not perceived in the same threatening way. Even when what you're really getting at is the "why," using the word "what" is less threatening to the client. For example, "What do you think it was that made them do that" is more client-friendly and likely to elicit valuable information than "Why do you think they did that?"

Become Your Client's Ally

Client-centered questions are the basic building block of the client-centered interview. Increase the efficacy of this approach by using *reflection* as described in chapter 2. Your willingness to explore your client's point of view assures the client of the sincerity of your interest.

Empathy

Empathy is the ability to identify with another person's situation and feelings. It is something that must be actively demonstrated. The easiest and surest way to demonstrate empathy is to work with reflection, as described in chapter 2.

Let's take another look at the example of a client-centered interview, this time adding reflection to the lawyer's responses.

Client: There's been a change of management at my job. Since the new team has come in, it's been awful. Two of them in particular make sexual comments, sexual noises, and all sorts

For the Record

In interacting with our clients, we should always be able to understand and identify with their concern(s). However, to the extent that we believe their position to be wrong, we are obligated to tell them so, as opposed to telling them what they might like to hear. In my opinion, if we use our energies to help our clients in understanding where their position is correct or where it may be wrong, and thereby assist in better understanding the issues involved, I believe we are being more effective in serving the clients' interests.

—Phillip Levy, Executive Director of Tropp, Malsinger, Steuber & Pasich, LLP

Above all else, what I, the client, am looking for is that rare professional who has both technical skill and a sincere desire to be helpful to work with both me and my problem. The key is empathy—the ability to enter my world and see it through my eyes.

—David H. Malster, *How Clients Choose: Managing the Professional Service Firm* (The Free Press, 1993, p. 120)

of inappropriate gestures. I'm just going crazy. I'm stressed out, I feel nauseous all the time—it's got to stop.

Lawyer: *(reflecting the client's feelings)* This situation is very distressing to you; it's actually making you sick.

Client: Yes, it's just awful.

Lawyer: So, if you could have it your way, what would you like to see happen here?

Client: Well, ideally, I'd like both of them behind bars. I want to see them punished for this. It's not right what they're doing.

Lawyer: *(reflecting the client's attitude)* You want to see justice done.

Client: Yeah, you got that right.

Lawyer: And what are you most afraid will happen in the case?

Client: *(looks down, sighs)* They'll get away with it and be laughing at me and I'll have to quit and I'll be humiliated.

Lawyer: *(reflecting the client's fearful assessment of the situation)* You have a lot at stake here. The consequences can look downright devastating.

Client: Yeah, it's really terrifying. I mean, we're talking about my career here.

By reflecting the client's feelings, the lawyer has clearly demonstrated serious concern about how the client perceives the situation, and has expressed that concern effectively to the client. Having done so, the lawyer can now move on successfully to the action-suggestion stage of the interview.

Your clear and unequivocal interest in your client's answers and understanding your client's answers solidifies your client's trust and encourages your client to cooperate with you. Your client believes that you have truly become *an ally*.

GET ADEQUATE AND COMPLETE INFORMATION

In the process of asking client-centered questions to increase the client's confidence in you, you can obtain very valuable information regarding the case and your client. A frequent client complaint is that lawyers analyze cases on the basis of inadequate information, thereby either losing the case or winning less substantially than would otherwise be possible.

Lawyers sometimes assume that they know what the client wants, and of course, in a general sense, they do. However, failure to *ask* the client what he or she wants can mean that you'll only get general information, which, from the client's point of view, is inadequate. This problem can easily be remedied by asking client-centered questions.

A second assumption lawyers sometimes make is that the client will voluntarily tell the lawyer everything the lawyer needs to know. This is a very dangerous assumption to make. Relying on the client to provide the needed information spontaneously and voluntarily can lead to your receiving inadequate information. You must keep certain possibilities regarding your client's situation in mind. For example:

- The client may be unwilling to disclose all of his or her concerns immediately.
- The client's description of the problem may be inaccurate (or incomplete) at the beginning of the interview.
- The client may have little understanding of what his or her problem actually involves, and thus may fail to disclose pertinent information.

If you do not receive all pertinent information about a case, you will have an incomplete or inaccurate picture of the actual problem.

Ask Open-Ended Questions

So far, we've looked at how to use client-centered questions in order to focus on the client's point of view, and how to use reflection to increase the client's sense of importance in your eyes. In order to obtain accurate and complete information from your client, *ask open-ended questions*.

Open-ended questions are questions that cannot be answered by "yes" or "no"—they require some sort of descriptive answer. In the attorney-client relationship, open-ended questions are those that encourage the client to tell a story, or describe an event, feeling, or situation however the client wishes to. Open-ended questions allow clients to talk about their problems or concerns from their point of view.

For the Record

Clients are not interested in a treatise on the law but in having their problems solved. You can't solve a problem without the proper information.

—Forrest S. Mosten, Partner, Mosten & Tuffas, Executive Chair, International Client Counseling Competition

Getting Case Analysis Off to a Fast Start



By Greg Krehel

From your first conversation with a prospective client, you're learning about the dispute that led the individual or corporation to seek counsel. This article presents a method for systematically organizing and evaluating this knowledge. And it illustrates how the results of this dispute analysis process can be used to great effect in an initial case analysis session with your client.



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From your first conversation with a prospective client, you're learning about the dispute that led the individual or corporation to seek counsel. There are many benefits to taking a systematic approach to analyzing this knowledge. Not least of these is the favorable impression you'll make on those who retain you.

The following article presents a method for organizing and evaluating the facts about any case. And it illustrates how the early results of this dispute analysis process can be used to great effect in an initial case analysis session with your client.

Standardizing the Case Analysis Process and Work Product

My partners at DecisionQuest and I have spent the past 15 years conducting jury research studies on all manner of civil and criminal cases. In the course of this work, we've had the opportunity to try many methods for analyzing case knowledge. We've developed a process that I hope you'll find both simple and useful.

When you take this approach to case analysis, you'll gain a thorough understanding of the dispute and clarify your thinking about it. And, as you sort out what you do know about the case, you'll find it easy to identify what you don't know and need to find out.

The process focuses on creating four analysis reports – a Cast of Characters, a Chronology, an Issue List, and a Question List. These reports provide a framework for organizing and evaluating critical case knowledge. If multiple people are involved in the analysis process, the reports provide a way to divide responsibility and share results. Moreover, once you standardize the analysis work product, it's easy to compare the findings in one matter to the analysis results from other similar disputes.

You should begin the dispute analysis process as soon as you've had your first discussions regarding a new matter. Perform an initial round of case analysis to organize the lim-

ited information you have about the case. Then meet with your client to review the reports you've created.

You'll discover that a case review session conducted as a structured walk-through of your dispute analysis reports produces far better results than an unstructured discussion of case details. It gives you a firm grasp on critical case details and confidence that you've eliminated any points of miscommunication between you and your client. We provide the agenda for such a meeting below.

Please note that the value of early organization and evaluation is not limited to instances when you've already been engaged. I believe you'll find that performing a quick dispute analysis and sharing the results with your prospective client is a terrific way to differentiate your firm from the others seeking to be retained on a matter.

I encourage you to make these analysis techniques standard operating procedure, a process you employ on every case, even ones that may be simple. Why? First, we're all familiar with disputes that appeared minor but which turned out to be costly disasters. By analyzing all cases, including those that seem small, you ensure that you

aren't just seeing the tip of the iceberg. Second, even small matters have more facts, more players, and more issues than anyone can meaningfully organize and evaluate in his or her head. Third, the practice gained analyzing small cases makes you more proficient when working up larger ones. Finally, the amount of time required to analyze a case is proportionate to its size. If the case is as small as anticipated, it will take little time to do the analysis.

The Analysis Work Product

The analysis reports we encourage you to create are essentially tables listing critical information. They are long on knowledge and short on prose. They are tools that

The analysis reports we encourage you to create are essentially tables listing critical information. They are long on knowledge and short on prose. They are tools that you use throughout the organizational process, not a summary created once analysis is complete.

you use throughout the organizational process, not a summary created once analysis is complete. In fact, once you begin to employ these analysis reports, you may find a narrative summary unnecessary. When you write a narrative case summary, a great deal of the total effort must be devoted to working on the style of the report (the outline, phrasing, and grammar). Is the narrative summary adding enough value to the analysis to justify the hours spent eradicating split infinitives and other grammatical evils?

You should create your case analysis reports using database software, not a word-processor. Database software makes the knowledge you're organizing far easier to explore and evaluate. For example, using database software, it's easy to filter your Chronology so that it displays only facts that have been evaluated as being particularly troublesome.

Another advantage database software has over word-processors is support for replication and synchronization. A replica is a special copy of a database file. Synchronization is the process of merging the changes made to the information in the replica back into the master version of the file.

When trial team members go on the road, they can take replicas of the case analysis file along, and make additions and updates to the Cast of Characters, Chronology, and other analysis reports. While these individuals work in replicas, trial team members back in the office are free to make changes to the master version of the case file. When a replica is returned to the office, it is synchronized with the master version of the case file, thereby automatically melding changes made in the replica with changes made in the master. These sophisticated features are available in some database packages. You won't find them in any word-processor.

Here are the details that should be captured in each of our recommended dispute analysis reports:

Cast of Characters

Create a Cast of Characters that lists the individuals and organizations you know are involved in the dispute. This report should also catalog key documents and other important pieces of physical evidence. Capture each player's name and a description of the role the person, organization, or document plays in the case.

Also include a column in which you can indicate your evaluation of cast members. Even if you don't evaluate

every player, it's essential to note the people and documents that are particularly worrisome, as well as the basis for your concerns. If you follow my recommendation that you build your dispute analysis reports using database software, you will find it easy to filter the entire cast list down to the problem players you've identified.

Chronology

A Chronology of key facts is a critical tool for analyzing any dispute. As you create the chronology, important factual disputes and areas of strength and weakness become obvious.

Begin by listing the fact and the date on which it occurred. As you enter each fact, be sure to make

the important details about the fact explicit. For example, rather than simply stating "Gayle phoned David," write "Gayle phoned David, and asked him to shred the Fritz Memo." Remember that your chronology should be a memory replacement, not a memory jogger.

Since you're analyzing the case within weeks of being retained, there will be many facts for which you have only partial date information. For example, you may know that Gayle called David about the Fritz Memo sometime in June of 1999, but be unsure as to the day within June. When you run into this problem, a simple solution is to substitute a question mark for the portion of the date that's undetermined, e.g., 6/?/99.

In addition to capturing the fact and the date, be sure

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to list a source or sources for each fact. Now, in the early days of a case, it's likely that the sources of many of the facts you are entering in your chronology are not of a type that will pass muster come trial. However, by capturing a source such as "David Smith Interview Notes," you know to whom or what you will need to turn to develop a court-acceptable source.

The mission in early dispute analysis is to take a broad look at the potential evidence. Therefore, your chronology should be more than a list of undisputed facts. Be sure to include disputed facts and even prospective facts (i.e., facts that you suspect may turn up as the case proceeds toward trial). You'll want to distinguish the facts that are undisputed from those that are disputed or merely prospective. Include in your chronology a column that you use for this purpose.

Finally, include a column that you use to separate the critical facts from others of lesser importance. A simple solution is to have a column titled "Key" that you set up as a checkbox (checked means the fact is key, unchecked means its not). If you're using database software, filtering the chronology down to the key items should take you about 20 seconds.

Issue List

Build a list of case issues including both legal claims and critical factual disputes. If the case has yet to be filed, list the claims and counter-claims or cross-claims you anticipate.

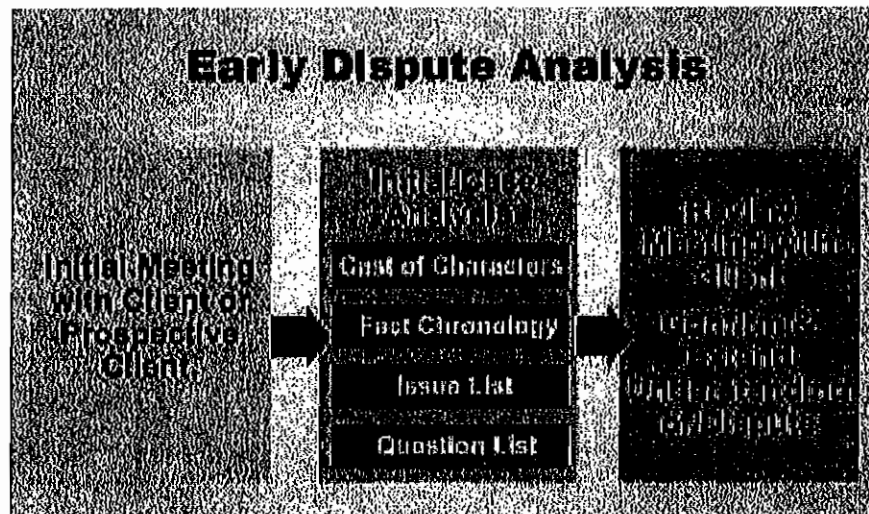
Rather than listing just the top-level issues, consider breaking each claim down to its component parts. For example, rather than listing Fraud, list Fraud: Intent, Fraud: Reliance, and so on as separate dimensions.

In addition to listing a name for each issue, create a more detailed description of it. The description might

include a brief summary of each party's position on the issue and, if it's a legal issue, the potential language of the judge's instruction.

As your case proceeds to trial, your Issue List will increase in importance. You'll use the Issue List to return to the Cast of Characters and Chronology and establish relationships between each fact, each witness,

each document and the issue or issues to which it relates. Once you've made these links, it will be easy to focus on the evidence that's being developed regarding each issue and to make decisions about case strategy based on this analysis.



Question List

When you start case analysis early, your knowledge of the dispute is sure to be incomplete. But as you map out what is known about the case, what is unknown and must be determined becomes clear.

Each time you come up with a question about the case that you can't readily answer, get it into your Question List. You'll want your report to include a column for the question and another column where you can capture notes regarding the answer. Also include a column for evaluating the criticality of each question. Use a simple A (extremely critical), B, C, and D scale to make your assessment. Other columns to consider for your Question List are "Assigned To" and "Due Date."

The Initial Case Review Session

Once you've completed your first round of case analysis, it's time to meet with your client to discuss the results. At the client review session, you'll: (1) confirm your initial understanding of the case and eliminate misunderstandings, (2) prompt your client to provide further details about the case, and (3) educate your client regarding case issues.

Before you head off to meet your client, decide whether you want to work offline or online during the client session. By offline, I mean using printed copies of your four analysis reports. By online, I mean working with a laptop and an LCD display, and capturing updates to your case knowledgebase in real time.

The first time you try our method, it probably makes sense to work offline. Once you're comfortable with the flow of the client review session, switch to working online; it's more efficient and more impressive to your client.

Here's the meeting agenda:

Review the Cast of Characters. Ask your client: Who and what is missing? How would you improve on the description I've provided of each key player? Which members of the Cast of Characters do you consider particularly important? Why? Which of these players do you feel are the most problematic? Why?

Review the Chronology. Ask your client: Can you provide complete dates for these partial dates I have listed? Can you provide additional sources for these facts? What important facts are missing? There don't seem to be that many bad facts in our chronology at this point. There must be other facts that will become problems for us. The sooner I know these facts, the more likely it is I can keep them from causing irreparable harm to our case. Are you aware of any such problem facts?

Review the Issue List. Use it to show your client about the legal and factual disputes likely to be at the heart of the matter. Ask your client: Do you see other issues in the case that I've overlooked? Do you know of any other facts, witnesses, or documents that pertain to these issues that you don't recall seeing in the Cast of Characters or Chronology?

Review the Question List. Use it to show your client the areas that will need to be investigated early in case preparation. Ask your client: Do you know the answer to any of these questions? What other questions do you have about the dispute that don't appear in my list? Which of the questions in the list can you take responsibility for getting answered?

If you've been working offline and marking up paper

copies of your reports during the meeting, when you return to your office, transfer your notes into your computer. If you've worked online capturing information in your computer as the session proceeds, your work to update your analysis reports is effectively done when the client meeting ends. Either way, after the meeting, print updated reports and send a copy to your client and anyone else on the trial team.

The analysis reports you've begun are "living" ones. As you head towards trial, keep working on your Cast of Characters, your Chronology, your Issue List and your Question List. These analysis reports will do far more than help you think about your case. They'll serve a myriad of concrete purposes. They'll help you keep your client up to date, plan for discovery, prepare to take and defend depositions, create motions for summary judgment, and make your case at settlement conferences and at trial.

Thank you for reading *Getting Case Analysis Off to a Fast Start*. I would enjoy your feedback. Please contact me at gkrehel@casesoft.com.

About the Author

Greg Krehel is CEO of Bowne-DecisionQuest's CaseSoft division (www.casesoft.com). CaseSoft is the developer of litigation software tools including CaseMap and TimeMap. CaseMap makes it easy to organize and explore the facts, the cast of characters, and the issues in any case. TimeMap makes it a cinch to create chronology visuals for use during hearings and trials, client meetings and brainstorming sessions. In addition to his background in software development, Mr. Krehel has over 15 years of trial consulting experience.

Also of Interest ...

Chronology Best Practices: A fact chronology can be a tremendous asset as you prepare a case for trial. Yet the majority of chronologies fail to live up to their full potential. We've written an article that presents a series of simple ideas that will help you get the most out of your chron. Download a copy from: <http://www.casesoft.com/articles.htm>.