

OCDC SPOTLIGHT

Seven Things Attorneys Do Not Want to Say

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While wandering through the local bookstore recently, I flipped through the best seller, *The Seven Habits of Highly Effective People*. Deciding that I already had too many unread books on my reading table, and knowing that I certainly had enough habits, I passed on buying the book. The title of the book, however, grabbed my attention, and I soon began thinking that the “list approach” might be an effective method of communicating with busy attorneys.

I recognize that many attorneys have hectic schedules that simply do not include time for the luxury of reading non-case related materials, including these articles. This was pointed out some time ago by an attorney friend who told me that he saved my articles and put them in his “blizzard pile.” Thinking that this must be quite an honor, I asked and found out that the “blizzard pile” is the stack of non-essential materials he reads when the ravages of a Nebraska winter trap him in his office.

With strong delusions of adequacy and the desire to move out of the “blizzard pile,” I offer my own list entitled, “Seven Things Attorneys Do Not Want to Say.” Those attorneys who are very busy need only skim the bold print to get the general idea. Those with more time (or those facing severe weather) are invited to read the full text.

SEVEN THINGS ATTORNEYS DO NOT WANT TO SAY

1. Don't worry about fees. We'll talk about that later.

Clients do worry about fees and that is exactly why fees should be discussed at the onset of the attorney-client relationship. Early discussion of fees does not mean that you are less of a “professional” but demonstrates that you have an interest in creating an

open, trusting relationship with the client. Disputes concerning legal fees may escalate into other areas and may contribute to the deterioration of the attorney-client relationship. Some of these disputes can be avoided by full fee disclosure at the time of engagement.

Many attorneys are now using written fee agreements to avoid disputes. Written fee agreements are invaluable if a disciplinary grievance or a malpractice case is filed against the attorney.

2. I can win this case.

Promises or guarantees as to the outcome of a case should never be made to a client. Cases can often take unexpected turns. The only true guarantee is that the client will remember the initial promised result.

It is appropriate for an attorney to express reality-based confidence in a case or for an attorney to render a professional opinion as to an eventual outcome. An attorney should explain to the client that it is not possible to guarantee a specific result.

3. I used to practice law with this judge. She'll see things my way.

Like guarantees regarding the outcome of a case, comments about one's ability to influence a decision-maker will be remembered by the client and possibly passed on to others. Such comments are prejudicial to the administration of justice and reflect poorly on both the lawyer and unsuspecting public official.

4. I'll notarize this now. Have your husband sign it when you get home.

When an attorney falsely notarizes a document, the legitimate function of a notary public is defeated, and the attorney faces exposure from both a disciplinary and civil standpoint.

Misuse of a notary seal is sometimes the result of a well intentioned gesture, designed for the convenience of a client.

Good intentions are not a defense to an ethical violation and may backfire on an attorney if an affected party subsequently becomes dissatisfied with the notarized document.

5. I know I shouldn't talk to you without your attorney, but as long as you're here...

Occasionally an attorney will inadvertently have contact with an opposing party who is represented by counsel. Some clients, despite the urgings of their attorneys not to do so, will directly contact an opposing attorney. In either situation, the attorney should decline to communicate on the subject of the representation. To avoid false accusations and the appearance of impropriety, an attorney should promptly terminate any contact or communication with an adverse party who is represented by counsel.

6. I'll give you \$100 for every personal injury case you send my way.

Many successful law practices are developed through referrals from satisfied clients, friends and relatives. Referrals are ethical and proper as long as there is no payment made to the referring party.

7. Judge, you have to let me out of this case. This guy's a liar and I think he's dangerous.

In some circumstances, an attorney may rightfully request permission of the court to withdraw from a case. It is not ethically proper, however, for an attorney to make a “noisy withdrawal” in which the attorney reveals attorney-client confidences, secrets or information that will prejudice or damage the client. A motion to withdraw is not a chance to blast the client or an opportunity for the attorney to seek retribution.