

Chicago Daily Law Bulletin

Chicago Daily Law Bulletin
December 22, 2010 Volume: 156 Issue: 249

The lawyer as Scrooge; the lawyer as Santa Claus

It's that time of year: holidays and good cheer. Lots of parties, drinking, eating, socializing and gift-giving. So, why do I feel like Ebenezer Scrooge? I am not sure, but my current theory is that it has to do with being a business owner. Yet, during this holiday season, I fight the urge to be such a grump.

At our firm's Secret Santa party, someone recently asked me, "What's the one thing you want to give to your kids this Christmas?" The answer — a no-brainer — extends well beyond this calendar year. I want them to be happy. Not just happy from receiving a new Wii game or the perfect gift from Santa, but truly happy in life.

This singular wish got me thinking about the very term "happiness." What is it? How do we get it? In law, must it come with a price? Or better yet, can we achieve happiness in an adversarial process?

Today, many of us have a much different perspective on happiness than our parents had. I'm pretty sure that my dad hoped that I would be successful when I grew up. But happy? Only as a result of financial success, I'm sure.

I like to consider myself a relatively "successful" person; however, I am not convinced that winning large verdicts or settling large cases has made me so. My success is rooted in great friends and family.

In fact, I am not naïve enough to believe that monetary compensation can provide happiness for all my clients. Some just want apologies; others, vengeance. Some want their loved one back and others want their "old" life back. Our system is not perfect. Money often is the only way to "help" these people. We cannot un-ring the bell and return our clients to their pre-accident state. Additionally, we all know that money can't buy happiness.

In torts class, we learn that the goal of any personal-injury lawsuit is to attempt to make the client "whole." I am not being facetious, but I don't buy it. Clients contact us daily with the hope that we can assist them in this imperfect pursuit. Can we feel



Balancing Life and the Law

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good about what we do as lawyers knowing that we can't please *all* of our clients? Sometimes we get a hit and other times we strike out. Keep in mind that most of the greatest baseball players only get a hit three out of every 10 times at bat.

Entering into contractual relationships with new clients is also about choosing clients that are the right fit for you and your practice. When I evaluate cases, I like to meet potential clients face to face, in their homes if possible, to evaluate whether or not I think that I can successfully work with the person. Yes, lawyers do and should make house calls.

I have referred out cases because I knew that I could not develop a working relationship with a particular person or provide them with what I thought to be unrealistic expectations for recovery. I have helped scores of clients, but I'm not pompous enough to fashion myself as a miracle worker. Actually, I am far from it. For me, a successful career as a lawyer is also about maintaining balance. I refuse to drain myself dealing with the paranoia and anger of unrealistic clients.

To that end, when I first meet potential clients, I actively listen to their story. More often than not, they are very emotional. By the time the person arrives at my office, he or she has been subjected to the rigmarole of doctors and the hardball tactics employed by insurance companies. I know that I'm not alone in thinking that at times my role as lawyer feels more like that of a therapist. Perhaps my bookcases should be replaced with a couch and a box of tissues.

Of course, while listening, I evaluate the story within a legal framework. Can I establish duty? Was duty breached? What are the causation issues? Aside from anger or hurt feelings, what are the *real* damages?

Some of us could probably use the assistance of Dickens' *Ghost of Christmas Past* to remember what it was like before we became lawyers — before we were hardened by the harsh realities of case law and statutes. Every client brings their preconceived ideas and notions about the legal system to the first attorney-client interview. We must respect this, but we must also be honest. A client's every ache and pain cannot and should not always be attributed to the injury-causing incident. Likewise, signing up cases that we never intend to file or putting cases that we consider "worth" less on a back burner tarnishes our profession and reputation. Let's face it, lawyers have it bad enough in the eyes of the public.

I never end a new client interview without providing an honest estimation of the strengths and weaknesses of a case. Over my 20 years of practice, I have had the pleasure of predicting some great outcomes. I have also been in the uncomfortable situation of telling a severely injured person that they did not have a viable lawsuit. Yet another reason why I probably feel like a Scrooge.

If I do accept a case, I make every effort to establish a relationship with the victim.

Many clients have invited me to weddings, bar mitzvahs, baptisms — you name the event, I've been invited to it. I truly enjoy becoming an active part of my clients' lives.

An effective advocate has a deep understanding of their client's plight, internalizing their situation to some degree. In my most memorable and successful cases, I have truly felt my client's pain.

To go there, I use mental exercises like imagining how a pebble in my shoe has annoyed me or how a headache has ruined my day. Then, I extrapolate 10- or even 20-fold these minor setbacks to gain some comprehension of the client's position. Ultimately, how can we create a sense of empathy among jurors and clients if we question the veracity of our clients' pain and suffering? If we treat clients like afterthoughts, our verdicts will reflect it.

I believe that managing client expectations starts the day you first meet your client. Many of our clients live with ghosts that will linger long after trial.

It is our pleasure, and sometimes our burden, to get them through the fretful nights knowing that we just can't make them all happy. Yet, there are those days where we truly do provide the ultimate service to our clients and repair their lives. It is a great gift. Now I know how Santa Claus feels. Ah, now I am back in the Christmas spirit.

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