**Chapter 7: Legal Interviewing**

**Review Questions**

**7.1.** State two reasons attorneys are sometimes portrayed negatively in the media.

**7.2.** Give two definitions of the word *retainer*.

**7.3.** What do we mean when we say someone has a deep pocket?

**7.4.** If an attorney decides not to represent someone, he or she should send that person a letter of \_\_\_\_\_\_\_\_\_\_ that explicitly says this.

**7.5.** List the three main kinds of legal interviews.

**7.6.** A competent initial client interview sets the foundation for what six events in litigation?

**7.7.** What are the five components of the structure of an intake memo?

**7.8.** What two cautions are needed when using a checklist?

**7.9.** What is the relationship between legal analysis and legal interviewing?

**7.10.** What does it mean to particularize a fact?

**7.11.** Name eight categories of questions that you can ask about a fact in order to particularize that fact.

**7.12.** Give one of the main reasons clients sometimes have difficulty telling an interviewer what the client wants.

**7.13.** Define bias. What is the opposite of bias?

**7.14.** When is it appropriate for an interviewer to express his or her personal feelings about the case to the client? And what is the danger of doing so?

**7.15.** What is the “stomach test” for determining your own bias?

**7.16.** Name seven steps you should take to prepare for an interview.

**7.17.** Under what circumstances can a law firm be sued for breach of contract?

**7.18.** Technical language that does not have an everyday meaning is called \_\_\_\_\_\_\_\_\_\_.

**7.19.** List seven do’s and don’ts when beginning an interview.

**7.20.** “What’s the problem?” is an example of a question that is \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_.

**7.21.** “What’s your maiden name?” is an example of a question that is\_\_\_\_\_\_\_\_\_\_.

**7.22.** “Why were you in Detroit?” is an example of a(n) \_\_\_\_\_\_\_\_\_\_ question.

**7.23.** “Who saw you take it?” is an example of a question that is \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_.

**7.24.** “Did you return the file to the owner or give it to the police?” is an example of a(n) \_\_\_\_\_\_\_\_\_\_\_ question.

**7.25.** “Why did you return to the house and what did you find there?” is an example of a(n)

\_\_\_\_\_\_\_\_\_\_\_ question.

**7.26.** List seven techniques for practicing attentive listening.

**7.27.** List five ways to achieve factual comprehensiveness during the interview.

**7.28.** List seven ways to avoid ethical problems during the interview.

**7.29.** List seven things to do when ending the interview.

**7.30.** List six ways to improve your interviewing skills.

**7.31.** Name four categories of “difficult” clients.

**ANSWERS**

**Chapter 7: Legal Interviewing**

**7.1.** Attorneys are sometimes portrayed negatively in the media because they:

1. take unpopular cases.
2. are often in the middle of bitter disputes where they become

 lightning rods for hostility.

1. may try to portray their accused clients as victims.

**7.2.** A retainer is:

1. The act of hiring or engaging the services of someone, usually a professional. (The verb is *retain*.)
2. An amount of money (or other property) paid by a client as a deposit or advance against future fees, costs, and expenses of providing services.

**7.3.** A person with a deep pocket is someone who has resources to pay a potential judgment.

**7.4.** If an attorney decides not to represent someone, he or she should send that person a letter

of nonengagement that explicitly says this.

**7.5.** Three main kinds of legal interviews:

1. initial client interview
2. follow-up client interview
3. field interview of someone other than the client

**7.6.** A competent initial client interview sets the foundation for the following six events:

1. field investigation
2. follow-up interviews
3. legal research
4. negotiations for settlement
5. trial
6. appeal

**7.7.** The five components of the structure of an intake memo are:

1. heading
2. personal data
3. statement of the assignment
4. body of the memo
5. conclusion

**7.8.** Cautions are needed when using a checklist:

1. Know why every question is in the checklist.
2. Be flexible enough to ask relevant questions not on the

 checklist when needed.

**7.9.** Legal analysis helps identify questions that should be asked in the interview (particularly

with respect to what is legally relevant) and raises doubts about the meaning of the law.

 These doubts should prompt further questions during the interview.

**7.10.** When you particularize a fact, you ask an extensive series of questions (who, what,

where, how, when, and why) about a fact in order to explore or bring out its uniqueness.

**7.11.** The eight categories of questions that you can ask about a fact in order to particularize that fact are:

1. time details
2. place and environment details
3. details on other participants
4. extent of certainty
5. extent of uncertainty
6. verification details
7. analogies
8. miscellaneous details

**7.12.** One of the main reasons clients sometimes have difficulty telling an interviewer what the

 client wants is the fact that people are confused about the law and make requests based on

 misinformation about what courses of action are available to solve legal problems.

**7.13.** An inclination or tendency to think or to act in a certain way; or a danger of prejudgment. Bias is prejudice for or against something or someone. The opposite of bias isobjectivity.

**7.14.** It is appropriate for an interviewer to express his or her feelings about the case to a client

when it would be natural to express those feelings or when it would be awkward or

 unnatural not to express them. The danger of not expressing them is appearing uncaring.

 The danger of expressing these feelings is losing objectivity.

**7.15.** The “stomach test” is as follows: if your gut tells you that your personal feelings about

the case are so intense that you may not be able to do a quality job for the client, you

 need to talk with your supervisor or take some other action to prevent this interference

 with the client's right to 100% of your energy and skill.

**7.16.** Steps to take to prepare for an interview:

1. Schedule the interview to avoid interruptions.
2. Find a place that is private and convenient for the client.
3. Find out if the client has any special needs, such as a need for wheelchair access.
4. Contact the client to confirm the time and place of the interview.
5. Anticipate and prepare for the client’s comfort.
6. Read everything in the file to date.
7. Have a final brief meeting with your supervisor to go over your instructions.
8. Find available checklists in the office.
9. Do some overview research in the law library.
10. Prepare any needed forms.
11. Get supplies for note taking.
12. Develop an attitude of freshness about the interview.

**7.17.** A law firm can be sued for breach of contract if it promises or guarantees a result to the

client that does not occur.

**7.18.** Technical language that does not have an everyday meaning is called jargon.

**7.19.** When beginning an interview:

1. Introduce yourself by name and title.
2. Do not call the client by his or her first name unless invited to do so.
3. Express appreciation to the client.
4. Make clear to the client you are not an attorney.
5. Start at a personal level.
6. Review the goals of the interview with the client.
7. Make the client feel his or her case is special to you.
8. Do not tell the client how busy you are.
9. Express understanding and empathy.
10. Do not be judgmental.
11. Make sure the client understands that what he or she tells you is confidential.
12. Find out if the client has immediate concerns.
13. Avoid unnecessary legal jargon; explain necessary jargon.
14. Explain why you are taking notes.
15. Listen for clues to other legal problems and relevant nonlegal problems.
16. Begin with open-ended questions.
17. Get an overview/outline of the entire event or transaction.
18. Encourage the client to give you the facts chronologically.
19. Provide reassurance without promising results.

**7.20.** “What’s the problem?” is an example of a question that is open ended.

**7.21.** “What’s your maiden name?” is an example of a question that is closed-ended. (**Caution**:

it may also be an example of an illegal question.)

**7.22.** “Why were you in Detroit?” is an example of a leading question.

**7.23.** “Who saw you take it?” is an example of a question that is leading and corroborative.

**7.24.** “Did you return the file to the owner or give it to the police?” is an example of a

combination (multiple choice) question. (It is also a leading question.)

**7.25.** “Why did you return to the house and what did you find there?” is an example of a

combination (add-on) question. (It is also a leading question.)

**7.26.** Techniques for practicing attentive listening:

(a) Make it obvious to the client that he or she has your full attention.

(b) Occasionally lean forward as the client speaks.

(c) Avoid being fidgety or appearing nervous.

(d) Take notes on what the client says.

(e) Maintain eye contact as often as possible.

(f) Occasionally nod “yes” or say “ah hum” or “I see” in response to what the client is saying.

(g) Let the client know he or she is providing useful information (without promising that the information will lead to a particular result).

(h) Be aware of the client’s body language.

(i) At appropriate times, restate a feeling the client is expressing.

(j) Occasionally read back to the client from your notes.

(k) Ask spontaneous questions that occur to you.

(l) Refer back to what the client said earlier in the interview.

(m) Never express impatience.

(n) Avoid interrupting the client.

(o) Do not finish the client’s sentences.

**7.27.** To achieve factual comprehensiveness:

1. Pursue fact particularization.
2. Ask corroborative questions.
3. Encourage the client to tell you negative facts.
4. Probe for underlying facts.
5. Use available checklists, but go beyond them when appropriate.
6. Determine the extent of certainty/uncertainty the client has about facts he or she is telling you.

**7.28.** To avoid ethical problems during the interview:

1. Do not discuss the facts of other cases in front of the client.
2. Do not have open files of other cases while the client is in the room.
3. Do not let the client wander in the law firm corridors where he or she might hear other staff talk about other cases.
4. Make sure the client understands you are not an attorney.
5. Avoid giving legal advice.
6. Be alert to conflicts of interest.
7. Do not discuss fees with the client.

**7.29.** What to do when ending the interview.

1. Ask the client to sign necessary forms.
2. Ask the client if anything remains on the client’s mind that he or she wants to discuss.
3. Let the client know what the next step will be.
4. Remind the client how to reach you.
5. Thank the client for the interview.
6. Start preparing a draft of your intake memo.
7. Make a note in the file that you conducted the interview, including the date and time.

**7.30.** Ways to improve you interviewing skills.

1. Read literature on interviewing.
2. Attend seminars that cover legal interviewing.
3. Ask someone in the office to observe your interview and to critique you.
4. Ask someone in the office to read and critique your intake memo.
5. Watch others interview.
6. Ask attorneys and paralegals about their interviewing experiences.

**7.31.** “Difficult” clients can include:

 (a) the client who thinks he or she knows all the law

 (b) the angry client

 (c) the demanding/suspicious client

 (d) the client who lies