

Techniques for Gathering Information from Clients in Estate and Trust Litigation

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While every litigator is faced with how best to obtain the necessary background information from a client, emotions and sometimes the family history can (and do) get in the way of 'cutting to the chase.'

Here are a couple of approaches that have worked for me in the past:

Ask For a Narrative. Ask the client to prepare a written account, explaining that since lawyers charge by the hour (and most people can read 250 words a minute, and some at twice that speed), they will save money by sending me something I can read rather than sitting down and telling me the story, which is often time consuming.

That narrative can then be sent back to the client, highlighting what is important to the case and interlineated with the important evidentiary questions like "who else knows about this fact?" and "is there anything in writing about this fact?"

Interrupting Their Story. A client who may want to "spill their guts" and tell me more than necessary, may take offense if I stop them to ask about a particular date or important fact. When first talking about the 'facts' with a client, particularly in such an emotional stressful arena as estate litigation, it's important to have a conversation about the following:

1. You will always know more about what happened, how it affects you, and how wrong it was than I, as a lawyer, will ever know;
2. However, as a lawyer, I know that certain, and very particular, details are important;

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3. I want you to tell me everything but please allow me to interrupt you if I need to get a very specific answer to a very specific question. It's still important for you to tell me the whole story, I don't want to miss something important that I would never have known to ask;

So please bear with me during our conversation when I eventually interrupt to ask you to focus on a specific question or issue (such as a date, or what particular words your mother used, or who else heard that conversation).

Get it all. Clients who haven't litigated before don't yet know that discovery can mean everything – every email, every letter, every Christmas card. Such clients have a natural tendency to bring just the documents or emails they think are important (and they might be right). But the opposing side is going to ask for it all so it is important to explain that to the client at the onset and put them to work compiling everything.