

**What Does The Attorney Do When The Client Is Not Watching?
An Explanation of the Process of How the Work
Really Gets Done When You Retain an Attorney**

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A friend of mine recently made a comment that caused me to start thinking about how lawyers get the work done when a person hires them for a case. The friend was an attorney who was being fired by his client because his client said “you’re not doing anything on my case, so I am going to get another lawyer.” In fact, the lawyer was working diligently on behalf of his client, but because the client was in jail and the lawyer had only visited him once, the client had no way of knowing if the lawyer was working or not.

My friend’s situation reminded me that clients can see very little of the work that an attorney does for them. They simply are not around when the factual investigation and legal research are being done. They see their attorney working when they are in court, but they also see that much of an attorney’s time in court is simply spent waiting for his case to be called.

So what does the attorney do when the client is not watching? Every case starts with an interview with the client or a family member and proceeds to an investigation of the facts of the case. That investigation includes obtaining documents from the files in the clerk’s office, and obtaining documents and evidence from the prosecution. The attorney must then analyze those items in order to understand why the police officer brought those particular charges. The attorney must then identify all of the potential witnesses, including all of the eyewitnesses to the incident, and then interview those eyewitnesses. Additionally, the investigation will lead to the identity of law enforcement and forensic witnesses, such as the evidence technician who analyzed the crime scene, the chemist who analyzed the drugs in a drug case, the police officers who investigated the case, and the dispatcher who co-ordinated all of the police communications and whose logs and recordings often are invaluable in turning up additional leads.

All such potential witnesses must be interviewed, and their interviews reduced to writing so that decisions can be made about how to handle the case. As the investigation progresses, and more information is learned about the case, some of those witnesses will have to be interviewed again. Many times, those interviews lead to the discovery of eye witnesses not disclosed in the discovery because they were unknown to the investigating officers.

And many times, the defense must consult expert witnesses to see if an alternative interpretation of the evidence, different from the conclusions reached by the prosecution, is warranted from the facts. In that situation, the defense will want to ask the Court to give the defense access to that evidence so that a defense witness, often a chemist, fingerprint analyst, document examiner, or DNA specialist can conduct tests independent of those done by the prosecution. None of the things identified in these three paragraphs is ever visible to the client because the attorney does those things when the client is not around.

In my practice, I make it a point to maintain regular contact with my clients, either by office visits, jail visits, telephone, or mail. I do not think that I should baby-sit a client in jail, but I do think it is essential to visit that client every time important information is obtained about his case. Whenever police reports, witness interviews, or other evidentiary documents can be provided in written form, I also think it is vital to make copies and deliver those to the client so that the client can assist in analyzing his case.

One problem that continues to come up in this regard is with my non-English-speaking clients, who cannot read those reports and interviews, or my legal research, even if I provide copies. Very few of those clients can afford the additional expense of a person to translate everything into their native language, so it is even more important with those clients to communicate as frequently as needed in order to make sure that they understand what is being done on their cases. Ninety to ninety-five percent of an attorney's work is done before walking into the courtroom with his client on the day that the case is to be resolved. But because the client cannot see that work as it is done, communication between attorney and client is critical.

After his investigation into the facts and his research regarding the law are complete, the lawyer must be realistic in explaining a client's options to him. An attorney should be completely truthful with his client and never just say what he thinks a client wants to hear. If the client has no chance to win at trial, then a better option might be to work out a plea bargain that includes a reduction to less serious charges, or which includes an agreement to a lesser penalty than would otherwise apply to the original charges.

The client also must be realistic in making a decision after those options have been explained. A lawyer is not a miracle worker. He cannot make chicken salad out of chicken manure. And if the case must be resolved by plea bargaining between the defense attorney and the prosecutor, as the vast majority of cases these days are, that process can involve several negotiating sessions that can easily total several hours. Those negotiations are not attended by the client, and the client will only have realistic expectations about the goals and results of plea bargaining if the attorney keeps him fully informed.

It is the responsibility of a client to be attentive to his business and ask questions about the case when he has contact with his attorney. It is the attorney's responsibility to ensure contact with their clients and to keep them informed about the status of their cases. And all clients should remember, you simply will not see the work in progress when your attorney is working on your case. However, if your attorney fails to adequately communicate with you and satisfy you that he is in fact working on your case like you think he should be doing, you have a constitutional right to retain the services of any other attorney that you can afford.

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