

Interviewing 101

Techniques and Best Practices for Effective Interviews



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Introduction to Interviewing



What is the purpose of the interview?

- ▶ Get the story.
- ▶ Test theories
- ▶ Identify strengths and weaknesses
- ▶ Assess credibility





Before the Interview



Prepare, prepare, prepare!

- ▶ Know the facts of your case
- ▶ Know the theory of your case
- ▶ Know the cast of characters
- ▶ Identify the factual gaps you need to fill in



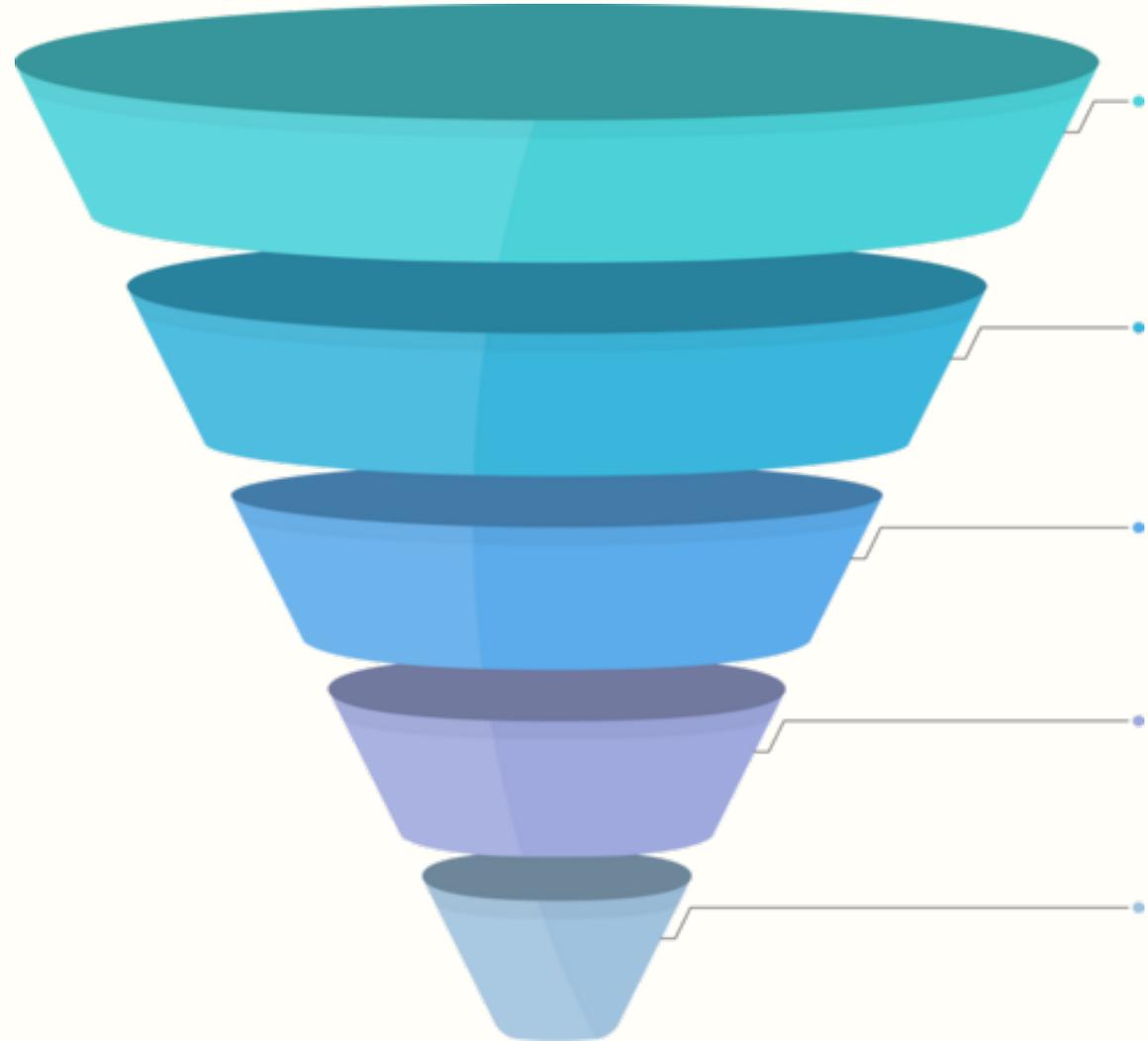


Techniques and Best Practices



The funnel

- ▶ Explain and describe
- ▶ Follow-up
- ▶ Fill-in
- ▶ Exhaust
- ▶ Recap



Active listening

- ▶ What is active listening?
- ▶ Why is active listening important?



Active listening techniques

- ▶ Open-ended and follow-up questions.
- ▶ Paraphrase and clarify.



Assessing credibility

- ▶ Inherent plausibility
- ▶ Demeanor
- ▶ Motive to falsify
- ▶ Corroboration
- ▶ Past record





Application



Scenario no.1 – complainant initial interview

Facts:

- ▶ Chloe works as a sales associate at Reems-4-U, a large paper distributor.
- ▶ Chloe has been with Reems for 1.5 years and it is her first job.
- ▶ Chloe works in the office on a team of 12 people, led by manager Henry. Chloe liked working for Henry at first, he joked around a lot. But eventually a few coworkers warned her about Henry.



Scenario no.1 – complainant initial interview

- ▶ Henry started to comment on Chloe's clothing and ask her increasingly personal details about her life outside of the office.
- ▶ Chloe tried to ignore him to no avail.
- ▶ She eventually reported Henry to Susan, a warehouse supervisor.
- ▶ In recent weeks her call sheet has been reduced by more than half.



Scenario no.1 – debrief

- ▶ What else do you want to know?
- ▶ Who else do you want to talk to?
- ▶ What interview techniques were effective?



Scenario no.2 – the coworker

- ▶ You conducted a great initial interview, and Chloe proceeded to submit a complaint against Reems.
- ▶ You're now conducting witness interviews.
- ▶ This interview is with Wanda, a former coworker of Chloe's who worked for Henry for over 9 years and at Reems for 15 years.
- ▶ She was recently fired from Reems.



Scenario no.2 – the coworker

- ▶ You conducted a great initial interview, and Chloe proceeded to submit a complaint against Reems.
- ▶ You're now conducting witness interviews.
- ▶ This interview is with Wanda, a former coworker of Chloe's who worked for Henry for over 9 years and at Reems for 15 years.
- ▶ She was recently fired from Reems.



Scenario no.2 – debrief

- ▶ What else do you want to know?
- ▶ What would you consider when assessing Wanda's credibility?



Scenario no.3 – the alleged harasser

- ▶ You interview Henry.
- ▶ Henry is very angry at being brought into the conference room for questioning in front of the company lawyer.
- ▶ He insists the allegations are baseless and that he and Chloe have a good working relationship.



Scenario no.3 – debrief

- ▶ How can you handle a “hostile” witness?
- ▶ What strategies elicited the most information?
- ▶ What strategies were unsuccessful?



Scenario no.3 – debrief

- ▶ How can you handle a “hostile” witness?
- ▶ What strategies elicited the most information?
- ▶ What strategies were unsuccessful?





Special Considerations



ESI and preservation

- ▶ Digital documents and data (on the cloud, on hard drives, etc.)
- ▶ Text messages, instant messages, tweets
- ▶ Email
- ▶ Voicemail and Video
- ▶ Social media posts and pictures
- ▶ Information in job search accounts



ESI and preservation (continued)

Remind charging party:

- ▶ Do not delete, replace, alter, wipe, or clear computer hard drive, electronic tablet, or cell phone.
- ▶ Ensure that settings for emails and text messages are not set to delete content after a certain period of time.

ESI and preservation (continued 2)

- ▶ If they experience a hard drive failure or need to upgrade their phone or device, please keep the hard drive or original phone or device.
- ▶ If they post to any social media platform like Facebook and Instagram, do not delete posts related to the discriminatory conduct and consider making accounts private.



Interviewing former managers

ABA Rule 4.2: Communication with Person Represented by Counsel:

- ▶ In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.



Comments to ABA Rule 4.2

- ▶ Comment [3]: The Rule applies even though the represented person initiates or consents to the communication.
- ▶ ABA Comment [4]: This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation.



Comments to ABA Rule 4.2 (continued)

- ▶ ABA Comment [7]: In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent.
- ▶ Ky. R. Sup. Ct. 3.130 (4.2) and Ind. R. Prof'l. Cond. 4.2 follow ABA Rule 4.2 and its comments.



Comments to ABA Rule 4.2 (continued)

- ▶ ABA Comment [7]: In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent.
- ▶ Ky. R. Sup. Ct. 3.130 (4.2) and Ind. R. Prof'l. Cond. 4.2 follow ABA Rule 4.2 and its comments.



Ethics opinion to ABA Rule 4.2

- ▶ “The prohibition of Rule 4.2 with respect to contacts by a lawyer with employees of an opposing corporate party does not extend to former employees of that party...Accordingly, it is the opinion of the Committee that a lawyer representing a client in a matter adverse to a corporate party that is represented by another lawyer may, without violating Model Rule 4.2, communicate about the subject of the representation with an unrepresented former employee of the corporate party without the consent of the corporation’s lawyer.” ABA Formal Opinion 91-359 (emphasis added).

Ethics opinion to ABA Rule 4.2 (continued)

- ▶ “Rule 4.2 does not bar *ex parte* contacts with an organization’s former employees. We note that a former employee is no longer subject to the control of the organization nor in a position to speak for the organization and cannot make vicarious admissions under the state and federal evidence rules.” Kentucky Ethics Opinion KBA E-381 (following ABA Formal Opinion 91-359) (emphasis added).



Notetaking and recording impressions

- ▶ Take good notes during and immediately after the interview
- ▶ Contemporaneously record your impressions of the witness



Questions? Thank You!



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