

# Recognizing the Grief Cycle to Help Your Client Settle

BY RYAN ALEXANDER, ESQ.



**“I can’t put a price on my pain!” your client cries, tears welling in their eyes. “No, I won’t take this!” Your client refuses to meaningfully participate in negotiations. They reflexively throw out high-demand numbers that are unrealistic before walking out.**

Early in my practice, I encountered clients who broke down emotionally when settlement was discussed. Why didn’t they want the case to end? Didn’t they want good money? Their response seemed irrational. While it is one primary objective, money is only part of the client’s situation. Psychiatrist Dr. Elizabeth Kübler-Ross’ Grief Cycle<sup>1</sup> (see page 21) showed me that some clients who refused to settle were still grieving. Grief is the intense emotional response to the pain of loss.

Kübler-Ross’ model of grieving involves five stages: 1) denial, 2) anger, 3) bargaining, 4) depression and 5) acceptance. These are not linear steps; a person can bounce between stages or cycle repeatedly through certain stages. The first revelation is identifying a client’s response as a manifestation of grief. Some polite questioning about their feelings might reveal the source. Give them a safe space to share their feelings. You must remain calm, not defensive or accusatory.

The grieving client has not finished processing a prior trauma. It may not appear rational or valid, but if you don’t address the grief you risk: the client refusing to settle, relenting but then wanting to unwind the settlement after signing, calling other attorneys for second opinions and talking badly about you to everyone who will listen, or a state bar grievance and/or fee dispute. Grieving clients may sign a settlement agreement and then file a bar grievance about the settlement terms or your contractual fees.

What might be upsetting clients, causing them to refuse money and close the case? They grieve: 1) new physical pain and the loss of their prior mobility<sup>2</sup>

and health, and 2) the loss of their new identity as a litigant.

## Denial

If your client refuses consideration of settlement and clings to a false reality, they may be experiencing denial. It is a defensive mechanism; denial and shock help coping and make survival possible. The client spins in circles, “What do you mean that is all they have!?! There must be more available!” You cannot progress until the client re-centers and moves through denial of the situation.

## Anger

If your client lashes out with statements like, “The defendant is a terrible person. The treating physician stinks because they didn’t put enough pain complaints in the records. The defense doctor who did the medical examination is a liar. The insurance company is crooked,” they may be experiencing anger. They may make veiled threats of legal malpractice because they think “something” must have gone wrong with the way that you worked the case. “No one cares what happened to me! I have to live with this forever,” they cry.

Anger stemming from grief is not necessarily logical, and it has no limits or social restraint. Denying anger can be perceived as rejection. Anger is a strength that can anchor the client mentally, but it can alienate others. I recently settled a case where the client was deeply offended how the defendant and their corporate manager treated him at the scene of the crash – they were not apologetic, did not offer a tow or ride, and did not provide first aid or water in summer heat. The case took an extra year because the client was caught in a repetitive loop of anger and bargaining. Recounting the scene and what the defendant said and did – or refused to do to help the client – sent the client into a rage, even three years later. The deposition took two days because they could not stay calm, and two mediations failed.

### Bargaining

“Am I not worth it?” “Surely you can figure something out.” “This can’t end like this.” “My life is ruined, and they walk away without an apology ... no, no. I think they should pay more and give a written apology.” “I don’t want anyone else to go through this.” If the client repeats the facts of the case

incessantly, they may be experiencing bargaining. Bargaining is a search for mental relief. Hallmarks of grief-related bargaining in the injury context are demands that are either beyond what the law provides [money] or ignores either the applicable policy limits or the weaknesses of the case.

### Depression

Distinct from clinical depression, normal depression is sadness that everyone feels at times: the common cold of mental illness. Empty feelings present themselves and deepen temporarily. In grief, depression is a natural protection of the nervous system, to adapt to something that feels insurmountable. Sometimes the client panics because their identity is coming to an end. Letting all the feelings in at once would be overwhelming. The client may have to wallow in the depression. Let them be sad a while. This circumstance may be uncomfortable, especially since American culture

stigmatizes depression and fixates on happiness. But depression allows processing of trauma.

### Acceptance

The client understands the case will end. A mediator lets the client tell their version of events at the beginning of mediation not to learn the story – we provided summaries – but to encourage the litigant to “let it out,” and get through to catharsis. The easiest mediations occur when a client has already broken through to acceptance. Acceptance is not being pleased with the outcome; it is being able to move on. For the angry, bargaining client above who was offended that the defendants left him at the scene of an accident, three years after the crash they called me calmly and said they were ready to settle. We closed the negotiation within

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CONTINUED ON PAGE 21

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days. They were not ecstatic about the result but reached acceptance.

## The Litigant Identity

Paradoxically, “winning” a case by settling can also cause emotional pain. While many clients are annoyed by the hassle of litigation, for some, being a party to a lawsuit is an escape from the mundane.<sup>3</sup> It gives them a purpose or goal that seems beyond their normal calling, and temporarily makes the plaintiff the focus of doctors, experts and judges. Busy, affluent, highly educated people are giving them attention and validation. They become the star of a courtroom drama. This meaning reaffirms them.

The popularity of *The People’s Court* and *Judge Judy* suggest that the strength of this litigant identity is not correlated with the severity of the incident. Participation in reality shows and *Tiger King* proves that people will be associated with tragedy to be the center of attention, even if ridiculed. The loss of the litigant identity can cause a crisis, because of the derived sense of self it provides. This grief manifests as a confusing refusal to settle, even when the defendant is offering “all the money.” “What about *justice*?” The client bargains. The plaintiff is getting money, but their newfound purpose is gone. The deeper the client connects identity or self-worth to the cause of being a litigant, the greater the sense of loss will be when they settle.

## A Way Forward

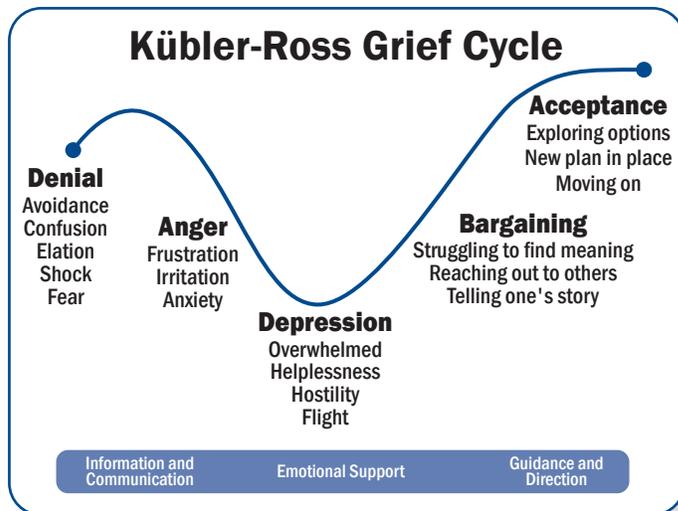
The initial consultation should emphasize that the claim process is about recovering money in compensation for pain and suffering, medical bills, lost income, etc. At some point, pain must translate into dollars. Describe this fact as early as possible. Money is what the system provides, and that is what encourages defendants to try to keep people safe or make

changes over time. No formal “apology” letter is provided, and confidentiality is commonly negotiated into settlement. If crying is needed, it is better early and in the quiet of your office. Make the process easier with ranges of possible settlement that do not have a client considering the very high end of cases, the ones that make national headlines. Reining in a client sometimes includes letting down their fantasies.

You cannot cut grief short or rush it. Talk calmly, ask questions about the reasons behind the client’s feelings. Affirm feelings without yielding to unreasonable tangents – bring them back to center later – but the client should express emotions and release their tension. If suppressed, grief can be a volcanic emotional pressure that will erupt later. Denying it may only make the client subdue it temporarily and cause resentment. They might sign the release ... and then three years later they tell a friend, revisit their negative feelings that night, and you wake up to a two-star Yelp review. You may have been procedurally perfect, but you don’t get the client’s referrals, and people share negative experiences far more frequently than positive. Let clients get to the catharsis before settlement.

The counselor role of attorney might be uncomfortable because of the emotions involved, but it is a skill to cultivate that will positively help beyond financial recovery. I had clients who came to me for a matter after settling a large claim for their child for a terrible injury. Despite a respectable trial verdict, they wanted to sue their first lawyer. I saw that they were still grieving their

child’s permanent disability. I affirmed my colleague’s solid results. That hour was more about letting the clients cry and express both denial and anger, than dealing with an issue of legal malpractice. I let them express those feelings, consoled their grief and we moved on. They became loyal clients and later referred their family.



1. Kübler-Ross E (1969). *On Death and Dying*. Routledge.; See also Kübler-Ross E, Kessler D (2014). *On grief & grieving: finding the meaning of grief through the five stages of loss*. New York: Scribner.
2. Studies show that Americans summarize their concept of health as mobility. *The Culture Code: An Ingenious Way to Understand Why People Around the World Live and Buy as They Do*, Rapaille, Clotaire 2006.
3. While rare, you may encounter a civil defendant who seems to derive some deep satisfaction from being in a lawsuit, even though they rant about the “baseless allegations” and challenge every bill.

**RYAN ALEXANDER** practices primarily plaintiff-side personal injury. A graduate of BYU-Hawaii and Harvard Law School, he has tried more than 30 civil cases to verdict or decision.

