

Avoid Malpractice Claims by Screening Undesirable Clients

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Not every client is right for your practice. In fact, some clients are just plain trouble. The first step in any good loss prevention program is weeding out undesirable clients. You can establish an effective client screening program by implementing the following procedures:

Evaluate the potential client and matter. Before you agree to represent a new client (or to take a new matter for an existing client), ask yourself the following questions:

1. Is the legal matter inappropriate for the size or scope of your practice? If so, you must either decline the representation or engage a qualified co-counsel. Many legal malpractice cases are caused by practitioners who take on matters outside of their expertise. For example, if you routinely handle residential real estate matters, don't assume that you know enough to take on commercial real estate matters.

Avoid highly specialized or regulated areas such as securities work and environmental law. Ask yourself whether a few thousand dollars in fees is worth the risk of a potentially enormous malpractice claim and its damage to your reputation and practice.

2. Is the client overly concerned about cost? Taking on a client who can't afford your fees is a lose/lose situation. Even if you provide superb legal services, the client will more than likely be dissatisfied with the bill.

A significant percentage of today's legal malpractice claims are generated by fee disputes. Typically, the attorney sues his or her client for fees and is countersued for malpractice. The



Learn how to spot problem clients before they become problems for you.

attorney often spends thousands in defense costs before finally writing off the original fee in exchange for the former client's agreement to drop the malpractice claim.

Even worse, attorneys faced with cost-conscious clients sometimes cut corners to avoid increasing the bill, so that critical research is not completed and experts are not consulted. Such practices can lead to disciplinary complaints as well as malpractice claims.

3. Has the potential client changed attorneys in the past? There are several reasons to avoid such clients. First, they are often seeking your advice at the eleventh hour. As the newly hired attorney, you may not have time to properly investigate the matter or draft the required documents.

Second, clients dissatisfied with a previous attorney's work may well be dissatisfied with yours. Don't let your

ego overwhelm your common sense. At a minimum, try to determine why the client was dissatisfied with the previous lawyer. If you can't find a good reason, then the client, not the attorney, is probably the problem.

Third, clients who frequently switch attorneys may be trying to avoid legal bills. If you're representing a person who has had multiple attorneys, obtain a retainer.

4. Does the client have unrealistic expectations? If a person believes he or she is entitled to millions for a simple slip and fall, decline the representation. These clients will inevitably be unhappy with the results you get.

5. Is the client proceeding on principle alone? Avoid the client who wants blood at all costs. They often do not appreciate the limitations of our legal system and will not accept anything short of total victory, however defined.

6. Does the person exhibit irrational behavior? Over-stressed or emotionally distraught clients can be troublesome in two respects. First, they may be unable to assist you in the representation. Client participation is critical to the success of any legal matter. For example, an attorney cannot zealously represent the best interests of a client who withholds vital information or is constantly changing his or her story.

Second, emotionally distraught clients sometimes instruct their attorneys to pursue a course of action which they later regret. The classic example is the spouse who instructs the divorce attorney to extricate him or her from the marriage at any cost. The client may regret that decision a

few months later and blame the attorney.

7. Has the client created unreasonable time constraints by seeking your counsel at the eleventh hour? As pointed out above, you should never accept a client or matter if you will not have time to properly represent the client. For example, many malpractice claims are caused by attorneys' failure to name the proper defendant because they didn't have time to investigate the matter.

8. Is the client of questionable moral character? If so, you may not want to represent him or her. For example, attorneys may defend individuals in criminal or civil matters whom they would not represent in business matters such as securities issues.

Corporate attorneys must be particularly careful of start up ventures. The attorney often discovers too late that the client is dishonest or financially incapable of consummating the

deal. Frustrated investors and other third parties may then seek relief from the innocent attorney's deep pocket. Today, a growing number of transactional attorneys investigate the background of new clients before agreeing to represent them.

9. Do you have any conflict of interests in representing the client in the matter at hand? Don't forget to check thoroughly for conflicts; remember that some cannot be waived by the client.

Reassess past problem clients. There is one final step you can take to guard against the troublesome client. Make a list of the problem clients you have represented in the past and search for common themes. You will often find patterns in the clients, their legal matters, or the circumstances surrounding the representation. You can then avoid these situations in the future.

Use nonengagement letters. Final-

ly, if you decide to decline representation, *send a nonengagement letter*. Many attorneys have been surprised by malpractice suits brought on behalf of individuals they met only briefly during an initial interview.

Remember the following rules in drafting nonengagement letters: (a) clearly state your decision not to represent; (b) send the letter by certified mail, return receipt requested, particularly when a statute of limitations is approaching or you reviewed personal documents; (c) avoid stating opinions about the liability of various parties or saying that the case lacks merit; (d) if applicable, point out that a critical deadline is approaching, such as a statute of limitations, *but do not specify the date*; and (e) advise the declined client to seek other counsel as soon as possible.

Following these rules will help you select the proper clients for your practice and avoid costly malpractice claims.