ADVISORY BULLETIN

A RISK MANAGEMENT PUBLICATION FOR LEGAL PROFESSIONALS

CHOOSING THE RIGHT CLIENTS

Poor client selection is a recurring source of legal malpractice claims – and one you can control. This article offers tips for developing the right business while minimizing malpractice risk. Before we review these tips, it important to understand what you can't control: No matter how good you are at lawyering, a disappointed client may one day sue you for malpractice, whether the action is merited or not.

These tips have everything to do with what you can control. Among the most important risk variables within an attorney's control is the decision to accept or decline the representation of a new client. Done right, it can also be a sound risk management approach that is good for the firm's bottom-line.

The key to making the right client selection decision is to **develop and adhere to an effective client screening policy**. In designing the policy, consider the factors below and any others you feel are important, and which are in keeping with the nature of your practice, desired clientele, and business goals. Unless you are a solo practitioner, the policy should include some form of peer review.

Here are some specific questions to consider, based in part on the ABA's Desk Guide to Preventing Legal Malpractice, as well as our independent claims experience.

1. **Has the potential client gone through previous lawyers?**
   A client who comes to you dissatisfied with more than one set of attorneys may be the cause of their own problems. Perhaps the client doesn't pay bills or isn't straightforward with his or her attorney. Expectations on the merits of their position may be unrealistic. When clients who go through multiple attorneys on the same matter bring suit, they frequently include all of the lawyers in the chain. The last one in line sometimes bears the brunt for what has come before.

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2. **Are you dealing with an unreasonable potential client?**
   Unreasonable and unduly litigious individuals, who act on impulse or for vengeful motives, have a certain "cash-cow" attraction if you are hungry for business. Often their adversaries are those with whom they once enjoyed productive relationships. If the results of your representation are not to their liking, do you have reason to believe that they will behave differently toward you?
3. **Does the potential client have a difficult background?**
   Learn what you can about the potential client's background: financial problems, serious legal problems, chemical or gambling issues, etc. Pay attention to factors that may indicate instability or obsessiveness.
4. **Does the potential client require immediate action?**
   Beware of the intake interview that occurs at the last minute. If a pleading has to be filed before you have a chance to get up to speed on a case, any omission or error may in hindsight seem frighteningly obvious. The lawyer who fails to timely identify a potential source of offset, misses a critical appellate issue within a jurisdictional deadline, or who substitutes in on the eve of trial without time to thoroughly prepare, runs significant risk. Even if excusable, these are just the sort of standard-of-care issues that can turn into "battle of experts" malpractice litigation.

5. **Does the potential client expect more than legal advice?**
Business clients, especially the promoters of closely held corporations, may select a firm believing that the firm's contacts will be good for business. Networking is good, and you want to help. Be aware that fact-driven claims arise when, for example, clients think you actually undertook to arrange financing for them. The lawyer who, in the eyes of the client, wears more than one hat in regard to a transaction greatly increases the risk of a thorny claim.

6. **Is this a personal favor?**
Your qualifications and obligations as an attorney don't change when the client, or the person referring the client, is someone close to you. Sadly, kind-spirited lawyers who do "favors" outside their area of expertise do get sued, even when the disgruntled client suing them is a friend or relative. And the personal relationship tends to sour as well.

7. **Can the potential client pay for the legal services?**
Attorneys often feel obligated to take on a case, even if the potential client is unable to pay a retainer or the ongoing costs of the litigation. Unless this is standard practice, as in some plaintiffs' work, are you prepared to write off the bill if the client is unwilling or unable to pay? Nothing will draw a counterclaim for legal malpractice quicker than a suit for fees, whether or not the litigation is successful.

8. **What does your gut tell you?**
Trust your instincts. If something doesn't seem right, the best time to avoid a bad surprise is before you undertake an attorney-client relationship.

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