



The Hazard: Failure to Screen Cases

BY KATJA KUNZKE

One of the best things lawyers can do to reduce their legal malpractice exposure is screen cases and clients in efforts to avoid, or at least be aware of, the ones that present the greatest risks for producing malpractice claims.

Certainly, lawyers must screen cases to make sure that they have sufficient time and resources to give to the matters they take on. But effective screening also seeks to identify three major risk factors: expectations, communication and control.

Expectations. In a way, all malpractice claims are the result of unmet expectations, some reasonable and some not. If the expectations that clients have for their matters and for the lawyers they re-

tain cannot be adjusted to attainable levels, and then met, a high malpractice claim risk exists.

If the lawyer discovers that the client wants an outcome that the legal system does not provide or that cannot be achieved under the circumstances, the lawyer must seriously consider rejecting the representation.

Motives play an important role in creating expectations. A client motivated by greed, vengeance or some lofty sentiment will expect you to further that motive, and that expectation should be discerned and addressed as early in the representation as possible.

A client's experience with other lawyers also can create expectations.

The risk of a malpractice claim actually is higher for more experienced lawyers—more than half of all claim dollars are spent on lawyers with at least 20 years' experience. Both clients and other law-

yers believe that the more you do, the more you can do.

Communication. Effective communication between lawyer and client is critical to keeping expectations in line.

But everyone has a different capacity for communication, and some clients require special handling to assure accurate communication and avoid unmet expectations.

For instance, an emotionally distraught client undergoing a difficult divorce or a seriously injured client learning to cope with a lifetime disability may be so distracted by their difficulties that comprehension of legal principles and case realities is temporarily beyond their capacity.

But clients who communicate an unwillingness to understand their matters should be avoided. If a client shows no respect for your need to spend adequate preparation time or sufficient money to assure proper representation, warning bells should go off.

Control. Beware of the client who wields too much control. The evidence of this is lawyer switching, avoidable delays, insistence on knowing everything or doing parts of the lawyer's job, telling the lawyer how to do his or her job, balking at retainers or fees, impatience, or simple refusal to comprehend the lawyer's cautions about associated costs and risks.

Equally as dangerous are clients who cannot control themselves. A client's personal history of serious drinking or drug problems, employment terminations or criminal activity may evidence self-denial, dishonesty or an entitlement perspective that places a lawyer in the position of being the next logical target of the client's destructive tendencies.

Knowing the malpractice hazards associated with representing these types of clients allows you to use appropriate safeguards.

Achieving a meeting of minds between lawyer and client through good communication will significantly enhance the chance for a mutually satisfactory outcome of the representation.

If that cannot be achieved, perhaps the lawyer and client simply were not meant for each other.

A client may not recognize that, but the lawyer must.

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