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Screen clients first; avoid problems later

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Problem clients never get better with time. Instead, over the course of a representation, problem clients often go from being challenging relationships to legal malpractice claims in progress. As a result, screening clients has become an increasingly important part of legal malpractice claim prevention.

For many attorneys in today's difficult economic world, screening clients seems like a far-fetched concept akin to telling a starving man to watch what he eats. Many firms are just glad to have clients, and screening the few they have appears to be the least of their worries.

But the truth is that, according to the data, problem clients are often worse than no clients at all. After all, clients who do not pay fees but do bring legal malpractice claims only hurt, not help, the average law practice. Of course, the challenge is to screen out the problem clients without giving up on the clients attorneys need to survive.

Screening clients means different things depending on the size, type and location of a law practice. For solo practitioners, it means identifying the risk factors for new clients (preferably with a checklist) and then balancing the risks against the rewards of the representation.

For small and midsize firms, screening involves identifying standard practices and procedures suitable for the needs and expertise of the law practice so that all of the lawyers in the practice are following the same rules and those rules have been tailored to the firm. And for larger firms, effective screening includes systems to assure compliance with the firm's rules so that every attorney follows the rules.

In the end, every representation necessarily involves the exercise of an attorney's judgment about whether to accept a new client. Because it involves judgment, there is no singular formula for every decision regarding whether to accept a new client. But there are some common characteristics to watch for. When combined, they can be used to create checklists and systems for gathering the kind of information that is most helpful to attorneys in deciding whether to accept a new client.

Some indicators for problem clients seem obvious. Others are the product of data about legal malpractice claims and the risks of the modern day law practice. The most important part of client screening is to in fact have practices and procedures that include a screening checklist that applies to every new client and matter.

ASK THE RIGHT QUESTIONS

Common sense goes a long way in detecting and avoiding problem clients. For example, one of the most telling questions to ask a new client is: "How many attorneys have represented you in this matter before now?" If the answer to that question is "seven," then an attorney should think long and hard about becoming the eighth. Clients who have been unhappy enough to hire and fire seven attorneys before are unlikely to be happy with the eighth. Worse yet, if their case or transaction does not go well, then they will likely hire a ninth to sue the eighth for legal malpractice.

There are other similar common-sense questions. For example, another question to ask every new client is, "How many times have you been a party to litigation before?" Potential clients who have regularly been a plaintiff or defendant but

only now show up should raise some additional questions. This is especially true for potential clients who have made a career of suing other people. Eventually, these serial plaintiffs eventually make their way to suing their attorney.

Beyond the seemingly obvious, there are the realities of the proposed representation. In making this assessment, consider three things. First, when must the work get done? Basically, this involves calculating the first deadline for the new matter.

The fact is that representations often do not end well if they begin on the eve of (i) the expiration of the statute of limitation for a plaintiff's claim; (ii) a scheduled closing for completion of a transaction or deal; or (iii) some other imminent deadline. Unrealistic deadlines are red flags for a new representation.

Sometimes, there are good reasons why a client is just now reaching out to an attorney to undertake a representation on the eve of a pressing deadline. On the other hand, they are sometimes the same reasons why an attorney should have second thoughts about accepting the representation. It could be that an earlier attorney fired the client because the client did not pay. Or there could be insolvable problems which have left the client at the end of his rope.

Regardless, the most significant questions that attorneys should ask (and answer) are: "When is the earliest deadline," and "Why is the client just now reaching out?" The answers to these questions are important data in deciding whether to accept a representation.

Second, ask whether the client can actually pay the attorney's fees associated with the representation. Nothing good comes from a representation when the attorney starts out with no realistic chance of getting paid. The attorney assumes the risks of liability with no opportunity for compensation. It is a lose-lose proposition. This makes it an important pre-representation topic that careful attorneys should address in a candid way.

There are other things about which to ask. These can include issue conflicts with other clients, the expertise required to fully address all of the client's issues, and the role that the client expects the attorney to play in the context of the client's overall situation.

CONSIDER WHAT'S EXPECTED

Next, inquire about the prospective client's expectations — for both the representation and the attorney. Sometimes clients expect the unrealistic. They expect their attorney to achieve the impossible through whatever means are necessary. Rarely do these representations end well. Instead, a candid conversation about what is possible, along with a description of what the attorney can and cannot do, is important. If there are things the prospective client expects that the attorney is unable, or unwilling to do, decline the representation.

One other thing to watch for is a client who is "too good to be true." Often, these are the same clients who expect attorneys to bend (or ignore) the rules. Their stories are full of contradiction, and they expect results regardless of means. Avoid the temptation — these are problem clients, too.

CONDUCT BACKGROUND RESEARCH

The Internet provides attorneys with cost-effective and fast tools for conducting some preliminary background research regarding prospective clients. The research might turn up little. On the other hand, the research may reflect a prospective client who has a history of problems that often extends to anyone and everyone around them. Credit checks could reflect a prospective client that either cannot, or does not, pay.

Finally, a simple litigation search might reflect a prospective client who has sued his attorneys before. Of course, these are all clients that require a long look before agreeing to the representation.

MAKE CLIENT SCREENING A SYSTEM

Inevitably, it is the one prospective client that escapes the screening filters that creates the most problems. In fact, it is their ability to persuade others to abandon the rules and ignore the systems that makes them the most risky clients. To avoid this problem, effective systems make it next to impossible to circumvent them. This means that a file cannot be opened or a matter billed unless the screening questions have been asked and the data collected. Hence, the certainty of the system is as important as the content of the screening.

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