

Tough Clients, Tough Issues

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Law school doesn't usually prepare a lawyer for dealing with an overly-angry client or someone who always goes into hiding when you want to ask them why they haven't paid their bill. But how you handle yourself during certain, crucial client interactions can make the difference between a successful client matter and a possible malpractice claim.

Tough clients come in all forms. Most don't realize the problems they create for their lawyer and their troubles often stem from a lack of understanding regarding the legal process. Simply put, they are well meaning but don't understand how you do your job. Others are a disaster waiting to happen, and a reasonable lawyer will recognize at the outset that the client will be trouble to work for.

Identifying the obstacles to successful client advocacy, and declining an offer to represent those who display the characteristics of a troubling client, are keys for avoiding tough issues with your clients. Declining representation is not always easy, especially for newer lawyers establishing their law practice or a lawyer whose practice is challenged by tough economic times. But experienced lawyers usually recognize that the cost of declining representation is an affordable price to pay after considering the expense of wasted time for which the lawyer will never get paid. Or worse, after incurring the expense of a malpractice claim asserted by a client that your gut told you from the start could never be made happy.

It's been said that no lawyer ever looked back on the day of their retirement and wished they hadn't fired that one client they knew would be trouble. Unfortunately, the reverse is often true. Ignoring your gut instinct and taking on an offer to represent a client who

displayed all the signs of trouble is a regret that too many lawyers know all too well.

It may not be too late to terminate representation of a matter for a client who is fast creating the conditions for an unsuccessful outcome. But withdrawing from representation needs to be done correctly or your client problems could go from bad to worse.

A lawyer's obligations to a client upon withdrawal are primarily governed by local and state court rules. Court rules vary depending on the jurisdiction, but there are some common requirements that you can expect to see when investigating what's required for an attorney withdrawing from representation. For example, the courts will almost always require that an attorney who has appeared in a legal proceeding and is withdrawing from the matter, provide a notice of withdrawal to all parties and the court administrator. Typically, the notice of withdrawal will include the address and phone number where your client can be served or notified of matters relating to the action.

In most instances, once an appearance has been made on behalf of a client, you should assume that you must have approval of the court in order to withdraw. The court, when considering whether the lawyer has stated reasonable grounds for withdrawing from representation, doesn't always consider the client's failure to pay your fee as a reasonable excuse for terminating representation. Courts will want to

look at the terms of payment and whether the lawyer gave the client sufficient warning that the lawyer would withdraw from representation unless their obligation to make payment has been fulfilled.

ABA Model Rule 1.16 Declining or Terminating Representation, also defines several instances where withdrawing from representation may be permissible. Good cause for withdrawal exists when:

- Withdrawal can be accomplished without adverse effect on the interests of the client;
- The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- The client has used the lawyer's services to perpetrate a crime or fraud;
- The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client.

The professional rules of ethics also define certain circumstances where terminating client representation is not just an option, but it is mandatory to do so. ABA Model Rule 1.16 Declining or Terminating Representation, states that a lawyer must withdraw from representation if the lawyer has been discharged by the client, the representation will violate the rules of professional conduct or other law, or the lawyer is impaired in such a way that the representation will be affected.

In no case does attorney withdrawal create an automatic right for a continuance or any other rights for your client. The pace of litigation

will not slow down because you are off the case, so you need to make sure your actions do not prejudice the client's standing with the trial courts and that there is reasonable time for substitute counsel to transition the matter.

To further emphasize this point, ABA Model Rule 1.16(d) states that the lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

Tough, Tougher, Toughest

If a client never returns your phone calls, or stops in the office without calling ahead for a daily personal update, sometimes a direct and honest conversation with the client about their problem behaviors is all it takes to get the matter back on track and free from distractions. You should be prepared at all times to discuss issues head-on with clients. Clients who are never told that the firm expects to be paid within 30 days from the date of invoice will often assume you have a lax payment policy and are usually more than happy to take advantage of the situation.

Other client matters may not be so quick to resolve, and some may be doomed from the start. The following list is a sampling of the tough issues attorneys routinely encounter with troubling clients, and some practical advice for dealing with the problems they create.

The Super-Saver Client

The Super-Saver client wants to handle many of the tasks and chores related to their legal representation in order to save costs and fees. To these clients, the lawyer-client relationship is one where the lawyer can work closely with the client, dividing the tasks related to investigation and negotiation in order to save some of the lawyer's time, and consequently, some of the

costs of their legal services. To the lawyers faced with these client requests, they usually see these kind of lawyer-client relationships as nothing but trouble. Problems can arise quickly when the client wants to do some of the work, usually because the lawyer and client fail to perform a critical task because they each assume the other has it under control. There are times that it is appropriate for a client to take on certain tasks related to their legal matter. The key to keeping the matter on track is that it should be the lawyer – not the client – that identifies which, if any, of the tasks related to the matter should be assigned to the client. Additionally, the lawyer should oversee the client's progress just as they would if they were working with their own non-lawyer staff.

The Friends and Family Client

Sometimes trouble comes in nice packages. It may not seem like it at first, but representing a friend or family member is frequently the cause for lawyer anxiety and regret. How could the people that care about you the most be one of the biggest sources of headaches and potential malpractice claims? The answer is that quite often a lawyer representing a friend or a family member throws out all their usual rules for controlling a client matter and keeping it on track when a friend or family member is asking for legal help. A friend or a family member that has a very high level of trust in you will seek you out for legal assistance, without regard for your area of practice or specialty. Lawyers should resist the urge to dabble in unfamiliar practice areas, or even worse, unfamiliar jurisdictions, because someone close to them needs help. If you are called upon for legal help, be mindful of the systems and methods you have developed to help keep your legal matters on track. Ask that the individual meet you in your office and establish a client file and, calendar all important deadlines for the matter, just as you would for any other client.

The “You'd Better Fix it” Client

It's a rare thing when a lawyer can continue to represent a client after making a mistake on that client's matter. Although your instinct may be to continue with the matter to fix the problem you may have created, the continued handling of the matter creates a conflict of interest with your client that is likely unwaivable. Once a critical mistake is made on a client's matter, the lawyer's independent professional judgment is invaded by thoughts that may run contrary to the client's best interest and toward the lawyer's own – such as taking the next settlement offer that comes in. Depending on what kind of mistake you made, your error could be the type which unwittingly makes you a party to the matter. In that case, most states have professional rules modeled after ABA Model Rule 3.7 Lawyer as Witness, that preclude a lawyer from acting as an advocate in a matter where the lawyer reasonably knows they may be called as a witness. If you are unsure whether you can continue representing a client in a particular matter because of an error that you may have made, the best thing to do is to contact a claims representative from your professional liability carrier for advice on continued representation. A conversation about continued representation is in order to make sure the client's matter is on track and safely handled by their legal representative – whoever that may be.

The Always and Forever Client

Even the most sophisticated clients will sometimes presume that you are their lawyer for all their legal matters – past, present, and future – even though you may have been retained to handle only a single matter. Clients often appreciate having an open-ended relationship with their lawyer, giving them the ability to stop in the lawyer's office and discuss just about any matter that gives them concern. Problems arise when the lawyer, who is focused on the matter for which they've been retained, don't realize that from the client's perception, they have been keeping you informed about

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other matters for which they assume you are looking out for their best interests. Things get more complicated when you are handling multiple matters for the client, some of them ongoing. The key to avoiding these difficult misunderstandings is to separate out each representation with an engagement letter and ending each representation with a closing or termination letter. If a client engages you regarding other matters, clarify that you are not equipped to provide adequate advice on matters you have not been retained to handle, and if necessary, follow up with a note or letter to the client clarifying that you do not represent them in the other matter.

The Missing Client

Nothing can be more frustrating for an attorney than when you find yourself prepared to represent a client – but finding the client is not nearly so easy. A common problem for busy lawyers is locating a client who has moved their residence but didn't think to tell you about their change of address. What's worse is when you are unable to find a prospective client to inform them that you do not plan on handling their case, after they left you with their personal legal documents. A little preliminary work at the first client meeting can go a long way to prevent these troubling situations. At the outset, stress to the client the need for them to stay in regular contact with you so that critical decisions can be made in a timely manner. Ask that the client not only provide you with a current phone number, email, and address, but also the same contact information for a close family member that will presumably, always know how to contact the client. If you are unable to contact a client and a critical deadline is approaching, sending the client a registered letter through U.S. Postal Service with return receipt requested is a good method for locating the client. Many individuals forward their mail, and the return receipt is evidence you've taken reasonable steps to locate the missing client.

The Remorseful Client

A client who is experiencing difficult problems in their life may be anxious to resolve their legal matters quickly. In their desire to get the matter over with and "get on with their life," they may push for a quick settlement without regard to the long-term consequences

of their decision, and completely ignoring your better advice. Trouble comes when the client's life is finally back in order, and they begin to look again at their legal matter and have remorse for the decisions they may have made. For clients anxious to get their legal matter over with, it is more important than ever to accurately document the client file to show that you have given the client advice and the client has chosen to disregard it. In these circumstances, it is wise to follow up the advice with a letter to the client, or some other documentation memorializing the conversation and your client's decision to pass up your recommendation. If the client's disregard for your advice can only lead to negative possible outcomes, you may want to consider withdrawing from the case for some of the reasons stated above in ABA Model Rule 1.16(d).

The Client Who Won't Pay

Many lawyer-client disagreements start with the client's unwillingness to pay the lawyer's fee in a timely manner. Suing a client for payment of fees frequently makes the problem worse as many clients respond with a counter-claim for malpractice. The best way to handle a matter involving a client who won't pay your fee is to address the client head on. Contact the client and ask them if there is a problem with your fee or the legal services you have provided to them. Often a client who won't pay a bill has failed to do so because it slipped their mind, or they are having trouble coming up with the resources that are owed for your services. Either way, a quick conversation with the client on the matter can clear up a lot of misunderstanding. It is important for lawyers who are owed a lot of money to ask themselves, why did they ever let the bill get so high? Delinquent payments that are dealt with immediately can train the client early on that they are expected to pay your invoice just like any other bill or you will simply be unable to continue to represent them.

The Sneaky Client

Desperate people will do desperate things. Even so, it is often a great surprise when your client, who is wrapped up in a difficult and painful legal case, reveals to you that they have taken matters into their own hands and have broken the law in order to get a leg up on the

opposing party. With the rapid development of personal technology, more and more lawyers are reporting that their clients have taken questionable steps, such as recording telephone conversations, reading other people's email, and hacking into an opponent's computer, in order to gain a competitive advantage in their case. If the client's activities are clearly illegal then you have no choice but to withdraw from representing the client for the reasons stated in ABA Model Rule 1.16(d) Declining or Terminating Representation. Even if it is not so clear that the activities were illegal, such questionable conduct can so severely taint the client's reputation in the eyes of a judge – and possibly yours – that prudence dictates you should inform the client that their activities have caused you to withdraw from representing them on their case.

The Angry Client

No matter how far along you are in your legal career, and despite the high quality of work and service you deliver day-to-day, at some point you are likely to run into a very angry client. Increasingly, lawyers are reporting significant security concerns as very angry clients see their lawyer as the sole person making their life difficult. The level and severity of the client's anger may come without warning, but it is important for your safety and the safety of the others you work with to handle the matter calmly and with some compassion for the client. If such an episode of anger occurs in your office, try to meet with the client in a conference room or a common area so others may be aware of what's going on. Also, try to listen to what the client is saying and validate their points in order to diffuse the high level of tension. Do not attempt to give the client advice or get into details about their matter – the goal is to diffuse the situation and take an extended break from the discussion until the client has had some time to calm down. It is also important to train your staff to recognize these situations when they are happening and to know how to call someone for help, such as another colleague, a security guard, or the police. Your staff should be trained to understand that these situations will likely occur and therefore, they need to be ready to help bring the situation to a peaceful ending.