

Effective Client Screening Techniques: Ask Yourself These Questions and Learn to say “No!”

By the time a lawyer has been in private practice for 10 years, there is a very good chance that he or she will have been on the receiving end of at least one grievance or malpractice action. Some clients are simply destined by nature to be dissatisfied with any lawyer who represents them; however, if you are willing to carefully screen potential clients and cases, you can substantially eliminate the threat of complaints and malpractice suits while reducing the stress in your life and increasing the number of desirable clients you have.

Before agreeing to represent a new client, ask yourself the following questions:

What are the client’s expectations regarding the outcome of the matter and the time needed to complete it? If the client has already established unreasonable expectations about the dollar value of a case, the type of remedy which a court is able to award, or the length of time necessary to successfully conclude the matter, and you cannot alter those expectations, the client will inevitably be dissatisfied with the result you obtain, regardless of whether it is the best outcome that could have been had given the facts and the law.

You should also avoid doing anything to cause the client to have unreasonable expectations. From the beginning, make sure that you make the client aware *first* of all the things which are “wrong” with the case. If you start by telling the client he or she has a “good” case, they won’t hear or remember anything else you say warning of potential problems with the case.

Is the client overly concerned, or not concerned at all, about legal fees? A significant number of malpractice claims and grievances are filed in response to an attorney’s attempt to collect unpaid legal fees. Clients who are overly concerned with fees present a trap. These clients often encourage you, either directly or indirectly through the way they react to your bills, to cut corners to keep the bill as low as possible. When you make strategic decisions in a case based on the client’s budget and then fail to carefully document the fact that the need for the expenditure was fully explained to and rejected by the client, you are setting yourself up for a malpractice suit. If a potential client can’t afford your services, or isn’t fully committed to make the sacrifices necessary to be able to afford them, do not take the case. Regardless of the outcome, their satisfaction with the work will be overwhelmed by their dissatisfaction with the bill, and the value of the services will become less and less tangible as time goes on, resulting in an eventual fee dispute, nonpayment, or both.

Likewise, clients who are proceeding on “principle” alone, regardless of the cost, frequently do not understand or appreciate, nor can they be made to understand and appreciate, the limits of our judicial system. You will never be able to please them unless you obtain their preconceived notion of a proper outcome, and these are the clients who are the least likely to see any appreciable value from, or feel a need to pay for, your services once the case is over. In addition, undertaking to represent clients who cannot be brought to see *any* fairness in any part of their opponent’s position may cause you to have to espouse arguments or take positions which, at best, you do not believe are supported by the facts or the law and, at worst, you find personally offensive.

What is the client’s relationship and experience with prior lawyers? While there are instances (often made into TV movies) of great cases which had to be shopped from lawyer to

lawyer before the hero finally had the insight and the courage to seek justice on behalf of the poor, underdog client whom no one else would help, many such cases in reality are “dogs” due to the client’s actions and attitudes rather than the facts of the case and the applicable law.

Beware of the client who is always changing lawyers and has nothing but complaints about the ones he’s dealt with to date. If the case is a good one, don’t let that blind you to the fact that it may be impossible for *any* lawyer to work successfully with this particular client. Don’t let your ego convince you that you can succeed with this client where others have failed. If the case is otherwise so good that you are really reluctant to turn it away, at least try to determine why the client was dissatisfied with his past attorneys and realistically consider whether you and your employees can meet the client’s expectations for service. Often, clients change lawyers in order to avoid paying accrued legal fees. If your client has had more than one lawyer, *always* obtain a retainer before you do any work on the case.

What are the client’s attitudes toward other professionals such as doctors, accountants and bankers? If the client is resentful or disdainful of other professionals, he or she may also have a carefully concealed bias against lawyers, as well, which may make working with the client increasingly difficult as the case progresses. In addition, other professionals are often critical to the case as sources of information or as expert witnesses and the client’s inability to work with them may turn an otherwise good case into something you can’t win under any circumstances.

How does the client approach problems? Many clients, like some lawyers, tend to procrastinate, putting off working on unpleasant problems until the last minute. If a client comes to you two days before the statute of limitations in his case runs, or calls looking for representation in a criminal case a day or two before trial, think long and hard before you take the case. Even though you may be able to file something which can be amended or obtain a continuance or extension of time, the chances are good that the client will not be able to meet the deadlines you will set for obtaining the information necessary to adequately represent the client. Lawyers often feel an overwhelming need to help people who are in trouble. If the trouble is due mainly to the client’s own procrastination or failure to face and deal with the reality of his or her situation, it is unlikely that you will be able to change those behavior patterns.

Is the client of questionable moral character or financially unstable? This is not to say that you should turn clients away blindly on either of these grounds. You should, however, consider how these factors may effect both the representation and your reputation in the community, given the nature of the client’s legal problem. For example, it is a very different matter to represent someone reputed to be involved in fraudulent financial schemes in a criminal case than to represent them in transactional matters such as the issuance of securities. Often, clients do not tell their lawyers the whole truth and, by the time that truth comes out, frustrated investors or other third parties may be focusing on the attorney’s malpractice coverage as a way to recoup their losses.

Do you have a good “gut reaction” to the client? If your first impression of the client, or his or her course of action to date in the case, is unfavorable, you should probably decline to get involved. Lawyers who are sued for malpractice almost always report having had a bad feeling about the client or the case from the beginning but either thought they needed the work or felt compelled to help the client.

Lawyers who practice in highly emotionally charged areas such as family law are at higher risk for being on the receiving end of malpractice claims and grievances. Ask yourself whether the client is exhibiting bizarre or irrational behavior. Those who are distraught often ask their attorneys to undertake activities which they will later renounce when they have returned to a normal state of mind. Also, a distraught client is often of limited value in helping his or her attorney prepare for trial. If after several meetings the client has not gained sufficient confidence in your abilities to be able to relax and assist you in gathering the information you need, consider withdrawing from the case before it is too late to do so without prejudice to the client.

Is the client a close friend or relative? Most books on lawyer marketing suggest that the best place to look for clients is among the people you already know. While it is true that friends and relative can be a good source of business, especially for new lawyers just establishing their practices, there are traps associated with working with friends or family members. First, there is a tendency to become involved in matters which are outside your normal scope of practice because you feel you owe it to the person to help them with their problem. Second, lawyers who are working with friends or family members often fail to observe the same degree of formality that they would with an unrelated client. They fail to properly document client decisions and may discuss the problem with the client at his or her request while other family members are present, inadvertently destroying the attorney-client privilege. Finally, when representing a relative or close friend, it is often impossible to maintain the degree of emotional detachment necessary to provide the client with impartial advice.

Is the matter inappropriate for the size and scope of your legal practice? While it stands to reason that if you could never take a case unless you'd already handled one like it before, new lawyers would never get to practice, think carefully before undertaking a matter that is completely outside your areas of expertise or much more complex than matters you are accustomed to handle. Do you have the skill, expertise and time needed to pursue the case? Can you associate others who have more expertise in that area? Is the fee you will generate worth the risk of a potentially huge malpractice claim and the associated damage it would do to your reputation and practice? Plan carefully if you intend to move out of your practice "comfort zone."

Once you've assessed the client and the case, and determined that you are not the right lawyer for the job, how do you say no? It is extremely unpleasant and often causes a great deal of guilt to have to tell someone in trouble that you cannot, or will not, help them. After all, helping others and righting injustice is still the reason why most people go to law school, despite what TV and the movies reflect these days. Still, if you are going to be able to maintain a successful practice, which will enable you to help many of those who seek your assistance, you must be able to effectively turn away those who can't meet the tests set forth above.

First, you must decide whether you are turning down the client, or just this particular case. Many lawyers often forget to separate the client from the case when appropriate. If an initial interview reveals that the case is not a good fit for your firm, don't write the client off with the case. That client could be the source of much future business if you handle things properly. Take time to carefully explain to the potential client why you won't take the case and try to refer the client to another lawyer who might be interested or suggest other ways the client might solve the problem, such as free or reduced cost community mediation, community assistance agencies or small claims court. When the client leaves your office, he or she should feel that, while you weren't able to handle this case personally, you are still be his or her lawyer.

If your interview reveals that the client is someone you would never want to represent under any circumstances, it is still advisable to confine your turndown to the matter at hand. The most effective way to do this is by stating that, given the urgency, complexity, or remedy which the client is seeking, your existing cases and commitments will not allow you to give the client's matter the full attention which it and the client need and deserve.