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■ Bulletin # 179

The Art of Client Selection

By Thomas J. Watson

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Like any business, running a law firm is a highly competitive endeavor. There are plenty of choices for the consumer. Practicing law requires many skills, and especially if you are running your own firm, that includes bringing business in the door. Developing or expanding a law practice isn't easy, especially for solo practitioners competing with larger firms.

Even in large firms, a lawyer often is measured by how much business he or she brings into the firm. Given all these pressures to attract new clients or new work in a different practice area from existing clients, how should meticulous client selection come into play in determining whether to accept a legal matter?

Saying "No"

You probably have more than enough files to keep you busy. You may have too many or the wrong kind. Facing real people in real crises makes it difficult to always make the right decision about which legal matters to accept. And turning away business is never easy. Solo practitioners and small firms often feel they cannot be finicky about the clients or legal matters they choose to accept.

Lawyers accept cases for different reasons, and sometimes they live to regret their decisions. If you're like every other lawyer, you have felt that regret. Sally Anderson, vice president of claims at Wisconsin Lawyers Mutual Insurance Co. (WILMIC), says, "If I had a nickel for every time I heard one of our policyholders involved in a claim say 'I never should have taken that case,' I'd be a rich woman."

As Anderson likes to say, "No" is a complete sentence. There are times when you simply have to turn away business. "Lawyers need to believe they can say 'no' and the phone will ring again. It doesn't take long to learn the clients you shouldn't have taken."

For newer lawyers, knowing when to say no is not easy. "When I was a new lawyer, I wanted to help every client who called, whether their case was viable or not," says Milwaukee-area attorney Kelly Centofanti. "I learned early on, thanks to my mentor, that if we try to help every client and sink our practice, we will never be able to help anyone. Over the years, that advice, coupled with time pressures, has helped me to 'just say no' to the iffy cases or the

problematic client."

Whitewater attorney Mark Bromley agrees. "I'm more selective now. In the close call cases that I do take, I confront problem attitudes immediately and forcefully. If the problem attitude doesn't go away, the client does. I get excellent client compliance that way."

Red Flags

So what factors should be considered when deciding whether to take on a client or legal matter? Consider seven red flags that lawyers should be aware of.

1) You want to take the case for financial reasons. Green Bay attorney Mark Pennow says greed can overtake even the best-intentioned lawyer. "It's tempting to take everything that comes in the door. Even with experienced attorneys, the seduction of a big payday can lead one to take a case outside of one's competence, either by virtue of its size or its subject matter, or both."

Centofanti says, "I think younger lawyers, or inexperienced ones, or those without enough business, clearly take cases they shouldn't take. I see it all the time." Centofanti urges lawyers to resist the feeling that they must get business of any kind. Instead, she suggests, use some time for family or hobbies. "It's a concept I call 'I would rather be horseback riding.' It is a mistake to take a case just to be busy."

What's the best way for lawyers to avoid this trap? Bromley says the school of hard knocks taught him this lesson. "I've failed some of those courses more than once. Every time I think I've graduated, I find myself repeating a class."

2) You are not the first lawyer. Some lawyers suggest staying away from representing a client who has already had at least one other attorney. First, it may be an indication that the client will never be satisfied no matter who is representing him or her, "especially if you recognize the names of the previous attorneys and they have good reputations," Pennow says.

Second, Centofanti says there's the matter of splitting fees. "In the contingent fee setting, the first lawyer who has a signed contingent fee agreement has the right to the entire fee. You must persuade a court to give you some amount, based on the work you have done and how much work was left when you took the case. It's not easy nor worth it."

Even if you work out a fee splitting arrangement, Centofanti says you should still be uneasy about taking on the case. "How long before the client leaves you? Will the client cooperate? Is the client going to make demands that are unrealistic or unethical?"

- 3) You lack expertise in the area of practice. Some cases are simply a bad fit because you lack particular practice-area experience. Maybe when that potential client with a real estate dispute came in the door, you saw it as an opportunity to help someone in need, while at the same time expand your practice and bring in some revenue. Too many lawyers often are tempted to take a case outside of their areas of expertise for financial reasons.

Anderson calls lawyers who take cases in practice areas in which they are not familiar "dabblers." A high number of malpractice claims are directly related to dabbling. According to WILMIC statistics, for example, more than half the claims in family law cases involve attorneys who practice in that area less than 20 percent of the time. Conversely, lawyers who do family law work almost exclusively account for less than one percent of family law claims. Anderson says, "Don't be afraid to refer a case if you do not have the required expertise."

- 4) The client has unrealistic expectations. In most cases, the honeymoon period, the time when the case is the best it will ever be, is when the lawyer and client first meet. You hear only the client's side and what the client wants you to know to get you enthusiastically in the client's camp. Only later, after you take the case and begin investigating the facts, do you learn the downside. Now, the client is primed for success, and that may not be possible. Worse, it's your job to pass along the bad news.

"We need to clearly set expectations with our clients. We are lawyers, not magicians, and the law isn't a reasonable cure for every wrong or perceived wrong," Anderson says. Bromley agrees. "I am careful of clients who believe that they can bring their problem to me and leave it to be solved."

Part of the problem sometimes starts with the lawyer. "I think lawyers often promise too much, or are vague about the timeline" says Centofanti. "This can only cause problems down the road. Be honest and upfront with the client. Otherwise, the client's high expectations will never be overcome."

Unrealistic expectations can result from poor communication. Your client should understand what you can and cannot do, how long it could take, and what the cost is likely to be. Lack of good client communication ranks near the top of the list of reasons for malpractice claims. Malpractice insurers like good engagement letters, detailing the scope of your engagement; what you're doing and what you are not doing; an explanation of fees and how they're to be paid; and how you can be expected to respond to mail, email, phone messages, and faxes. Such details can help alleviate a client's unrealistic expectations.

- 5) The client doesn't want to listen. Someone who "knows everything" and just wants you to carry out his or her wishes rarely, if ever, makes a good client. Pennow says there are some obvious warning signs. "This is the client who doesn't listen attentively while I'm talking and often doesn't allow me to even finish a sentence and explain things fully. This client wants to argue and goes into denial when I start discussing potential weaknesses in the case."

Bromley says, "These clients attribute all their problems to others, without taking responsibility for their part of the problem. If I have to push clients to acknowledge their part in the case, I'm better off letting them find other counsel."

- 6) You are already overworked. Overworked lawyers are more likely to miss something, whether it's a key fact in a case, a deadline, or something else critical to a case. Taking a case when you know you cannot devote the kind of attention and time it needs usually leads to trouble. Pennow says it's very simple. "Be candid with yourself about your capacity to take on more work. There is such a thing as too much work if you are not able to represent all of your clients zealously and competently."
- 7) You don't know enough about the case. Too often, lawyers take a case before they know all the facts or have elicited as much information from the client as possible. Centofanti says jumping in without all the facts is a big mistake and can be costly. "Always do the research first and take the case second." Even after you have accepted a case, continue to evaluate it. Too many lawyers put on blinders. They become advocates in the first meeting with a client and instantly believe in the case without stepping back and reviewing the strengths and weaknesses. Sometimes you'll discover you don't have as good a case as you first thought.

Pennow has a mandatory three-day cooling-off period between his initial meeting with a client and the decision to take on that client. "This gives me a chance to reflect, and it also gives the client the same opportunity. I use those three days to think about the desirability of representing this client and envision how things might go in the long run. I even have an associate or a trusted legal assistant sit in on the initial conference and get their impressions before I take a case."

Conclusion

Lawyers have a strong desire to help people who come to them seeking assistance and often take on clients against their better judgment. Sometimes lawyers take a case because it means more business. Whether it's for financial reasons or sympathy for the client, consider the potential risks with each client who walks in the door or calls on the telephone. The best way for you to control your practice instead of the practice (and clients) controlling you is to learn to say no and to pick the cases for which you are best suited.

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