

Sometimes You Have to Fire Your Client to Avoid Issues

It is never an easy decision to fire a client, but sometimes it is the right or necessary decision. The decision to fire a client should not be taken lightly, but you should not hesitate to make that choice when necessary.

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If you practice in legal malpractice defense or defend attorney disciplinary matters for any length of time, then you will hear your attorneys express their wish that they had terminated the attorney-client relationship sooner. Disgruntled clients are the cause of most legal malpractice and disciplinary complaints. While we often focus on what we can do to prevent legal malpractice and disciplinary complaints from the point of view of improving attorneys' practices, there are times when there is nothing the attorney can do to prevent a client from becoming disgruntled. A bad client will become disgruntled and adversarial no matter how good the representation. Recognizing bad clients, and being willing to fire them is an important step in avoiding professional liability.

Attorneys can be very reluctant to fire their clients. Obviously, if we fire every client that causes us some level of "agita" (as it is known in Philadelphia—short for stress, anxiety and agitation), then there would be no work. The attorney business model is undergirded by conflict. Difficult clients are the norm, and many of us make a living by representing people accused of doing very bad things. However, there are times when it becomes

obvious that a client is no longer worth whatever pot of gold may lie at the end of a particular rainbow.

Firing a client is (at least) a three-step process. First—in every matter, long before it becomes necessary, a careful attorney lays the groundwork for a potential exit from the attorney-client relationship. Second—recognizing the bad client and weighing whether or not it is time to exit the attorney-client relationship. Third—effectuating the termination of the attorney-client relationship.

Laying the Groundwork

The ability to smoothly terminate the attorney-client relationship requires some forethought. The importance of a good engagement letter is a frequent topic of malpractice avoidance seminars and articles, and can be an important part of terminating the attorney-client relationship.

A thorough engagement letter will address client responsibilities, as well as attorney responsibilities. Remember that an engagement letter is a contract that governs the relationship between the attorney and client—treat it as such. Think about outlining the minimum requirements you need from the

client including: providing truthful information; timely responding to communication; providing requested documentation; being available for meetings, depositions or court dates; and, very importantly, paying on time and keeping retainers evergreen. The engagement agreement should clearly state the attorney's right to terminate the attorney-client relationship if the client does not fulfill the client's obligations under the agreement. The engagement agreement can also address how disputes about the relationship will be governed. The engagement agreement can contain a provision that fee disputes will first be addressed by a bar association's fee dispute resolution program, designating the jurisdiction in which disputes will be resolved, or requiring arbitration. It can be a good idea for the engagement agreement to state the client consulted with, or had the opportunity to consult with independent counsel. The engagement agreement should be countersigned by the client.

Recognizing the Bad Client

Bad clients come in many forms. Sometimes, a bad client is easier to recognize than at other times. Some common things to look for are:

- **You are the third, fourth or fifth lawyer for the client:** It is not uncommon for clients to switch lawyers, and it is not always a bad sign. However, if the client had more than one prior lawyer in a matter, then a little investigation is in order. Sometimes, the client will telegraph the issue by describing how badly treated they were by prior counsel(s). A client who describes prior lawyers as incompetent, fraudulent, cheats, or crooks, may be correct, but this should also be a red flag that the client may someday be saying the same thing about you. It is generally a

good idea to get the client's permission to contact prior counsel to try and determine from the prior counsel's perspective why the client is seeking new counsel.

- **Communication extremes:** Client communication is vitally important (see R.P.C. 1.4). Good communication keeps a client happy and helps make sure the attorney is proceeding in the manner the client expects. However, extremes in communication can be a red flag. The client who does not respond, even after multiple emails, is a client who cannot be trusted to keep themselves (and therefore you) out of trouble. On the other extreme is the client who calls everyday and follows up with multiple texts and emails when they do not receive a response within the hour. This type of client is essentially telling you that they are/will be a problem.
- **Unrealistic Expectations:** Clients with unrealistic expectations come in many flavors. Unrealistic clients include: The client that thinks their matter will be quick and easy; the client who thinks their broken toe case is worth millions of dollars; the client who does not recognize bad facts or bad rulings; the client who is unwilling to compromise whether due to principle or emotion; the client who is overly emotionally attached to a grievance; and conspiracy theorists. Sometimes, unrealistic expectations can be tempered or managed, but a client who expects what you cannot deliver will inevitably be disappointed. When attempting to manage expectations, please put it in writing. There is hardly any-thing as frustrating for a legal malpractice defense attorney as having an attorney client tell defense counsel that he told the client either that their expectations were unreasonable or to take/not

take a course of action when that is not reflected in the file.

- **Dishonest/Criminal Behavior:** A client who engages in dishonest or criminal behavior during the attorney-client relationship is likely to bring their attorney down with her. This, of course, is different from the client who engaged in dishonest or criminal behavior that caused them to require an attorney's services in the first place.
- **Failure to Pay:** Nothing erodes the attorney-client relationship faster than a fight over the client's failure to pay. A client who does not pay for services is, in almost every circumstance, a bad client.

Once you recognize the client is "bad," you still need to weigh whether the client should or can be fired. Practically, if your income is heavily dependent upon one client, it may be very difficult to fire a client. You may also have ethical obligations that prevent you from firing the client. Among the factors to weigh are: Whether an issue appears to be a one-time problem, or is part of a reoccurring pattern; whether you realistically believe that issues with the attorney-client relationship can be resolved; how close to the end/trial is the matter/case; will termination of the attorney-client relationship materially prejudice the client's case; and will continuing representation expose you as the attorney to potential discipline or criminal charges. Once you have carefully weighed the factors and determined that you can and should fire the client, proceed quickly and carefully to effectuate the termination.

Firing the Client

There is no single right way to fire a client, but many ways in which it can go wrong.

Understand that if you reach the point of firing a client, it is reasonable to expect a legal malpractice action or disciplinary complaint may follow. It is important to make certain you documented the issues with the relationship and your attempts to fix or resolve them. Ideally, your file will already include substantive communications with the client about the issues that reflect the reasons you need to withdraw. However, if you have not been documenting issues as they happen, it is still worthwhile to create as detailed a memorandum as possible for the file to describe your decision-making process.

One of the most important things to remember is that if you represent a client in a matter before a court or tribunal, then you will likely need the court's permission or a substitution of counsel before you will be permitted to withdraw. You continue to represent the client, and must protect their interests until you are given permission to withdraw.

When firing the client, maintain your professional demeanor, do not engage in letter/email writing campaigns, do not lose your calm. Provide the reasons for terminating the relationship, but do not engage in name-calling or demean the client—try to avoid making it personal. If possible, provide the client an opportunity to ask questions and document both the questions asked and responses given. Try to, provide a roadmap for the client to move forward, possibly including information on how to look for new counsel—such as through a bar association referral. Make sure to document the termination of the attorney-client relationship with a letter to the client. If statutes of limitations are an issue, then remind the client of the existence of statutes of limitations and the importance of

retaining new counsel or otherwise protecting their interests.

It is never an easy decision to fire a client, but sometimes it is the right or necessary decision. The decision to fire a client should not be taken lightly, but you should not hesitate to make that choice when necessary. By carefully considering the issues outlined above, you can better evaluate your attorney-client relationships and take steps to protect yourself from malpractice liability or disciplinary action. When it becomes clear that you must terminate an attorney-client relationship, you should do so effectively, swiftly and in writing.



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