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Bulletin Features

Legal Practice Tips***How to Fire a Client:******Do's and Don'ts When Ending Representation***

By Beverly Michaelis

Do you have a file in your office that you just can't stand to look at? (Hint: It's often related to the client you don't like.) Has it been languishing on the corner of your desk or pushed out-of-sight on your credenza? Is a deadline approaching, but you just can't seem to get started? These unwanted files are a major cause of ethics complaints and legal malpractice claims. And most lawyers have at least one. To free yourself from this potentially dangerous situation, gather your courage, take a stand, and fire your problem clients. The first step is to identify the clients and cases you should let go.

Whom Should I Fire?

Some lawyers can easily identify their "dog" files. Others may find this task more difficult. Whether or not you think you know your "dog" files, it never hurts to stop and thoughtfully evaluate your caseload three or four times a year. Try to make it a regular, quarterly practice. When you do, ask yourself if any of these situations sound familiar:

The Client Who Owes You Money

Whether the client never had the money to pay your fees to begin with, or somewhere along the way the account just became delinquent, involuntary pro bono cases are a bad idea. When you continue working for a client who is not paying your bill, you are sending the message that you are not worth the fee you charge. This practice not only emboldens the non-paying client to continue not paying you, but also can be demoralizing and financially damaging to you, your family and your staff. Instead, establish specific billing and accounts receivable practices, spell them out clearly in your fee agreement, and enforce the rules. These situations rarely get better, and the longer you stay on the case, the harder it will be for you to withdraw.

The "Difficult" Client

Also known as the client you hate working for. You know who they are: The client who tracks down your home phone number and calls you on the weekend for non-emergency matters. The client who makes a habit of dropping by your office unexpectedly. The client who complains about every bill and pushes the limit by paying late or at the last possible moment to avoid late fees. The client who won't listen to your advice and fails to cooperate in keeping appointments, providing documents or answering questions. The client who wants to be your co-counsel. The client who is rude to you or your staff. Letting this client go will lift your spirits and instantly lower your stress level. Keeping this client may lead to an ethics complaint or a legal malpractice claim, since this file is generally the last to be worked on, if it receives any attention at all. Learn to spot (and fire) this type of client early in the case. Better yet – avoid representing this client in the first place.

The Case Better Left to Someone Else

Even when you get along famously with your client, and finances are not an issue, some matters simply aren't worth keeping (or taking on). If your favorite client has talked you into helping him or her with a matter that is outside your area of expertise, heed the red flag.

Many a legal malpractice claim can be traced back to a lawyer's initial bad judgment in accepting a case that should have been declined. When friends, family and long-time clients apply pressure, many lawyers succumb to the hero syndrome, believing they can save the day. Resist this temptation. You wouldn't suggest that a loved one see a dermatologist for chest pains. The practice of law is no different. Act in your client's best interests and match him or her with the right professional. This advice holds doubly true in the case of friends or family, where the combination of inexperience plus lack of objectivity and client control can spell ethics or malpractice trouble. You can never go wrong by directing your potential client to the right practitioner. As the friend, family member or long-time lawyer, you can then assume a more fitting role: remain associated with the matter – if appropriate and helpful – or lend moral support. But leave the primary representation to the capable, disinterested colleague who is best suited to handle it.

How Do I Fire My Client?

Oregon Rule of Professional Conduct (ORPC) 1.16(b) specifically permits a lawyer to withdraw from representation if:

Withdrawal can be accomplished without material adverse effect on the interests of the client. ORPC 1.16(b)(1).

The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. ORPC 1.16(b)(4).

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. ORPC 1.16(b)(5).

The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. ORPC 1.16(b)(6).

Other good cause exists. ORPC 1.16(b)(7).

Any one of these grounds, in addition to others listed in ORPC 1.16(b), is sufficient. To withdraw from representing the non-paying client, the difficult client, or the case better left to another practitioner, follow the steps set out in ORPC 1.16(c) and (d):

Give reasonable notice to the client.

Allow time for employment of other counsel.

Surrender papers and property to which the client is entitled.

Refund any advance payment of fees or expenses that have not been earned or incurred.

Comply with applicable law requiring notice to or permission of a tribunal to withdraw.

Take other appropriate action necessary to protect the client's interests.

Lawyers who inappropriately seek to enforce attorney fee liens over client files, withhold file contents or charge clients for file copies risk an ethics complaint or a legal malpractice claim. (See "*Difficult Paradigm: Are Lien Rights Absolute?*" and "*Client Files Revisited: More Light on a Topic That Won't Go Away*," by Helen Hirschbiel, OSB assistant general counsel, published in the *OSB Bulletin*, May 2006 and January 2006, respectively.)

In addition, you should:

Advise the client of (or confirm) the reason for termination in writing. Avoid commenting on the merits of the case. Since you are terminating representation before conclusion of the matter, advise the client *generally* that time limitations may or do apply, and stress the need to hire another lawyer immediately.

Keep a copy of any documents returned to the client and preserve your file for at least 10 years.

Cooperate fully with the client's new legal counsel, if any. Provide that person with a complete copy of the file, and make sure a substitution of counsel is timely filed with the court by the client's new legal counsel.

Reviewing your caseload three or four times a year will help you identify and promptly withdraw from problem cases. Then take the wisdom you've gained and apply it the next time you are screening a new client or matter. If unpaid fees are a perennial problem in your practice, follow the suggestions below to keep on top of overdue accounts. And above all, keep up these practices. Your vigilance is the key to successfully avoiding or withdrawing from the "dog" files.

Other Practical Tips

Keep an Eye on Your Accounts

Do not allow outstanding fees to accumulate. If you are not paid as agreed, call the client as soon as possible and discuss the situation. You may find that the client has new financial circumstances and that you are willing to renegotiate the terms of the client's account. Or you may find that you need to address issues related to your attorney-client relationship. For example, the client may be dissatisfied with an aspect of your representation. Speaking with the client helps you to decipher and address the real issues behind the client's non-payment. Once you understand the situation, you can decide whether you want to continue or withdraw from the representation. Do not discontinue providing essential legal services due to non-payment unless you have properly withdrawn from the case.

Streamline the Process with Form Letters

Creating form letters to have on hand when you want to withdraw from a case will make the process much simpler. For the prospective client who did not sign and return your fee agreement, pay your retainer or respond as requested, your letter might say something like this:

Dear Client:

Since I have not heard from you for the past (30, 45, or other number of your choosing) days, I assume you do not wish to retain me further or to proceed with this matter. For that reason, I am now closing my file and will take no further action in the matter.

You (are) (may be) facing some time deadlines. If you decide to proceed, you should contact another attorney immediately. If you fail to do so, your legal matter may be barred by a time limit.

Very truly yours,
Sam Lawyer

If your client owes you outstanding fees and costs, download and use the PLF form letter, "Disengagement Letter 3 – Unpaid Fees," available on the PLF website at www.osbplf.org. Once there, select *Practice Aids and Forms* under Loss Prevention, and follow the link to "Disengagement Letters." While at the website, consider downloading the eight other nonengagement and disengagement letters for your forms file.

For the client or case you should never have taken, your letter might say:

Dear Client:

The purpose of this letter is to confirm, based on our conversation of (date), that (firm name) will not continue to represent you in (describe matter) because (give reason for declining if possible and appropriate to state it). OR: The purpose of this letter is to confirm, based on our conversation of (date), that (firm name) will not continue to represent you in (describe matter). We feel that your interests would be better served by retaining another lawyer to assist you in this matter.

You should be aware that any action in your case must be filed within the applicable statute of limitations. I strongly recommend that you consult with another lawyer concerning your rights in this matter. Our decision should not be taken as a statement of the merits of your case.

Very truly yours,
Samantha Attorney

To Sue or Not to Sue

As a general rule, avoid suing clients for fees. Make an effort to determine the root of the client's dissatisfaction. It is natural to be defensive about your work on a case, but try to put your emotional investment in the matter aside while attempting to resolve a fee dispute. Really listen to the client's side of the argument. If appropriate, offer to arbitrate the fee dispute through the OSB Fee Arbitration Program, or consider other alternative dispute resolution methods.

Before suing a client for fees, consider the following:

Do you stand to gain or lose a substantial amount of money?

Was a good result obtained in the underlying case?

Has an uninvolved, experienced lawyer reviewed the file for possible malpractice?

Does the client have any grounds to credibly dispute the debt or any part of it?

Have you offered to arbitrate or compromise?

Will a judgment be collectible if obtained?

Will a lawsuit result in bad publicity reflecting negatively on you or your law firm?

Exercise extreme caution in deciding to sue to collect a fee. Many legal malpractice suits result from counterclaims to a lawyer's action to recover fees. Frequently, your effort to sue for fees is rewarded only with further aggravation, wasted time, wasted money and poor client relations. A straightforward discussion of fees, financial arrangements and billing procedures at the beginning of the attorney-client relationship will reassure clients, reduce the possibility of fee disputes and eliminate the need for collection litigation.

Perhaps Abraham Lincoln said it best: "It is more important to know what cases not to take than it is to know the law."

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