Aviod client problems by avoiding problem clients.

SOME “RED FLAGS” are obvious in suggesting a problematic client. Others are the product of data about legal malpractice claims, in terms of their frequency and severity. Lawyers who have been sued for legal malpractice often report that they had a “bad feeling” about the client or the case from the start, but they felt they needed the work, they couldn’t say “no,” or they felt compelled to help. Employing adequate and thorough screening procedure — applied by all firm attorneys to all prospective clients and matters across the board — not only helps lawyers avoid malpractice claims, but it reduces the amount of stress experienced in the day-to-day practice of law. Because effective client screening results in a greater number of desirable clients, this risk management technique contributes to a more fulfilling and rewarding professional life. Below are this author’s Top Ten client screening suggestions.

1. **Decline representation of clients who have retained multiple prior lawyers for the same matter.**

   Beware of the prospective client who has had multiple attorneys representing him or her on the same matter. This could mean that the client has failed or refused...
to pay his or her legal bills. It may be a sign that the case lacks merit or has insurmountable problems. Or, if the case does have merit, it may signal that the client is difficult to work with or impossible to please. Don’t let your ego convince you that you can succeed with others have failed. If the prospective client has had three or more lawyers on the case before you, and those relationships have perished, it is more likely than not that any subsequent relationship will meet a similar demise.

2. **Decline representation of clients who have an unexplained history of extensive prior litigation or who harbor a prejudice against professional advisors.**

Think twice about accepting the representation of a client who has an extensive history of involvement in litigation without some justification based upon the client’s line of work or other rationale. Prior suits against professional advisors are red flags in particular. Even where there is no prior malpractice lawsuit, a serial plaintiff is eventually bound to sue one of his professional advisors. Is the client disdainful or resentful of other professionals with whom he has been involved? If so, he may harbor a carefully concealed bias against lawyers as well.

3. **Decline representation of clients who have unreasonable expectations that cannot be altered.**

Clients inexperienced with legal matters often have unrealistic expectations of the process, timing, or outcome and must be carefully counseled. But there are some clients whose unrealistic or unreasonable expectations cannot be altered or influenced no matter the extent or content of their lawyer’s careful counseling. In screening prospective clients, the lawyer should explain the process, anticipated timing, and range of potential outcomes. This discussion should not be sugar-coated but should rather be couched in terms of the worst-case scenario. If during this discussion it becomes apparent that the prospective client has unreasonable expectations that cannot be altered, the representation should be declined.

The prospective client may have a hard-set preconceived notion about the outcome of the case, the results to be achieved, the time frame for achieving those results, the ability of the lawyer to guarantee a particular outcome, the operation of the judicial system, the value of the case, or the total fees to be charged for the services rendered. The prospective client’s unreasonable expectation may include a desire for the lawyer to achieve the desired result through “whatever means necessary.” The client who insists that she wants a “pit bull” lawyer is often the client who pressures her attorney to bend the rules, behave in an unprofessional, discourtesy manner, or stake out positions in the litigation that are unreasonable or distasteful. Beware of the prospective client who refers repeatedly to “advice” received from the friend of a friend, or their uncle’s sister-in-law who is a lawyer, or a separate case that they perceive to be similar, to insist on:

- The result to be achieved in their own case;
- The course of action to be taken in their case;
- The standard against which to measure success; or
- The reasonable value of services to be rendered.

Unwavering, unrealistic expectations in any of these areas means that the lawyer cannot satisfy the client, no matter the effort expended in trying to do so. Satisfied, happy clients generally pay their legal bills and rarely bring legal malpractice claims. Conversely, the unsatisfied client is more likely to refuse to pay or, worse yet, more prone to bring a claim for malpractice.
4. **Decline representation of clients who reach out for representation under urgent circumstances or in the face of impending deadlines.**

When a prospective client seeks your services on the eve of an impending deadline or event, such as trial, mediation, expiration of the applicable statute of limitations, a scheduled closing on a transaction, or other critical event, proceed with caution in deciding whether to accept the representation. This may be a sign that the client has been unsuccessful in convincing other lawyers to take on the representation, or it may be a sign that the client procrastinates or otherwise fails to face or confront problems in a pro-active, effective, timely way. A client who procrastinates in retaining counsel may also be dilatory, after the lawyer’s retention, in responding to requests for assistance in meeting the objectives of the representation. Moreover, the lawyer may find it difficult if not impossible to perform competently in the face of the urgency or limited time. And, the client may not be prepared to pay for the exceptional “crunch-time” work that will necessarily be required to meet the impending deadline or prepare for the upcoming event.

5. **Decline representation of friends and family.**

Think twice before agreeing to represent a close friend or family member. First, these engagements are often viewed as a “favor” rather than a valuable professional service. The lawyer may feel compelled to charge a reduced fee or no fee at all. Or, the client may resent receiving a bill for services that they believe should have been performed free of charge. Reduced fee or no-fee cases have a tendency to get placed on the back burner. They are not worked up as rigorously as higher priority cases are handled. Second, when representing friends and family, lawyers are no longer detached, impartial advisors but tend to become personally invested in the outcome in the matter. Third, these engagements often lack the formality of arms-length engagements. As a consequence, the lawyer will often fail to adequately document her file. She may decide to refrain from delegating tasks she would normally delegate and, as a consequence, tasks remain incomplete. She may communicate less frequently with her client, or may do so verbally as opposed to in writing. This lack of formality can lead to: (i) missed deadlines and other calendaring errors; (ii) an uninformed, misguided client; and (iii) an inadequate “paper trial” with which to defend a claim of malpractice. The behavior that is unfortunately driven by a friend or family engagement increases the risk of a dissatisfied client and, consequently, the risk of a legal malpractice claim.

Finally, representing friends and family members might also lead a lawyer to engage in another risky behavior: dabbling — or taking on a case or matter outside of the lawyer’s comfort zone. Hence, the sixth client screening tip: Don’t Dabble.

6. **Don’t dabble — decline representation of clients in matters falling outside your area of practice**

When approached by a prospective client, one of the first questions to ask yourself is whether you have the time, resources, experience, and competence to handle the matter at hand. This is not to say that a lawyer can never accept an engagement in an area that is new to him or her. Otherwise, new lawyers or lawyers seeking to expand their practices would have no opportunities. But it is important to be honest with yourself about whether you have the capacity to take on a case in an area that is new to you. Will you be able to get up to speed? Is the case in which you are being hired an “entry level” case for the practice area? Do you have firm support and the time to educate yourself in the new practice areas? Will you be able to “spot” the relevant issues despite your inexperience? Are there mentors avail-
able to you with whom you can consult or brainstorm? A high number of legal malpractice claims stem from cases where attorneys have “dabbled,” or taken on an engagement in a practice area with which they are unfamiliar.

7. Decline representation of clients who cannot afford your legal services

Disputes over fees often morph into claims of legal malpractice. Unless you are making a conscious commitment to take on a pro bono engagement for reasons that are important to you and your firm, you should decline to represent clients who you suspect are unable to afford your legal services. While this may seem to be an obvious suggestion, it is evident from attorney-client fee disputes and corresponding legal malpractice claims how many lawyers fail to have a frank discussion with their clients about their ability and willingness to pay legal fees, and what those legal fees might amount to depending on the various paths the representation may take.

During the initial client screening interview, it is important to talk about fees and expenses. This discussion should include the type of fee agreement that is most suitable, whether a retainer will be required, whether the retainer will need to be replenished and at what stages, how the client will be billed and for what tasks they will be billed, the lawyer’s expectations with regard to prompt payment, and the consequences of a late or failed payment. It is also imperative to talk about what the total fees and expenses might be. While it is often difficult to provide an estimate of the budget at such an early stage, the client should understand in a general sense how expensive or inexpensive the proposed representation might be.

Dig deeper about your prospective client’s ability to pay if there are any signs of financial insecurity. If your prospective client asks to pay her legal fees with a credit card, explore whether that client has the funds to pay ongoing fees after the initial credit card payment. What is her credit card limit? Does she have savings available? Why is she paying with a credit card? Is your client borrowing money to pay the initial retainer? What will happen after that retainer is exhausted? Has the client inquired about you taking on the case on a contingency basis, for a matter that is rarely handled for a percentage of the recovery? Has the client previously filed for bankruptcy? Consider whether your client screening procedures should include a credit check, a background check, or a check for prior or pending litigation (which may reveal bankruptcy filings or debtor-creditor actions).

8. Decline representation of clients who express too much or too little concern over legal fees

Another “red flag” signaling a potential problem client is that client who is overly concerned, or not concerned enough, about legal fees. Overly concerned clients often encourage — directly or indirectly, by virtue of their complaints about their legal bills — lawyers to cut corners in order to keep legal fees low. But it is a recipe for disaster when strategic decisions are made based upon budgetary constraints or considerations, and these decisions are not thoroughly discussed and well-documented. Regardless of the outcome, the client’s satisfaction with the work or results may be overwhelmed by his dissatisfaction with the fees.

Likewise, clients who express no concern for the ultimate total expense of the litigation may also be problematic. Clients proceeding on principle alone — regardless of cost — frequently fail to appreciate the limits of the judicial system or the risks of an adverse result. Consequently, they may be impossible to please. They can’t see any appreciable value from the services rendered, unless the exact result they desired is achieved in the time frame they predicted or wanted, and at a price they arbitrarily defined as “fair” or reasonable.
9. **Decline representation of clients whose personality or attitude is likely to make them impossible to work with or impossible to please.**

Beware of the prospective client who is overly emotional, irrational, displays a victim mentality, or fails to evince any accountability or responsibility for the situation in which he finds himself. A prospective client who is resistant in the initial interview to receiving any information about his case that is negative is also a potential problem client. If the prospective client’s story sounds too good to be true, or the story is contradictory or incredible, you may have a problem client on your hands. A client who displays a lack of trustworthiness during the initial meeting is not likely to change after you accept the engagement. A client who provides contradictory information about himself or his case is more likely to expect results regardless of the means employed to achieve them. If communicating with the prospective client is challenging from the start — if the client doesn’t listen, doesn’t comprehend, doesn’t understand, or doesn’t seem to appreciate the value of any feedback or preliminary advice given — consider declining the representation. If the client is unnecessarily confrontational or evasive, think twice before accepting the representation. If your gut reaction to the client or his case is negative from the start, the situation is not likely to improve over time. Hence, the tenth suggestion: Follow your instincts.

10. **Follow your instincts; decline representation of clients when your gut reaction tells you to do so.**

Lawyers who have been sued for malpractice frequently report having had a “bad feeling” about the client or the case from the start, and they often express regret about not having trusted their intuition when they decided to accept the engagement despite their gut reaction. Resist the temptation to accept an engagement regardless of the risk because you need the work, you feel compelled to help, or you feel you can be the knight in shining armor for this particular prospective client. In the end, your practice will be more rewarding and fulfilling if you carefully screen clients. Representing clients who are engaged, who listen, who understand your advice, who appreciate your efforts, and who pay for your services is an extremely gratifying professional experience that can be achieved if you learn how and when to say “no” to prospective clients who are bound to come problem clients.

To purchase the online version of this article—or any other article in this publication—go to [www.ali-cle.org](http://www.ali-cle.org) and click on “Publications.”