



New client screening checklist

Prior attorney-client relationships

Whether a potential client shows a history of dissatisfaction with prior attorneys may be the greatest indicator that the client may complain of dissatisfaction with your services. Listen carefully to a client when they complain of prior attorneys.

- Has the client retained and then discharged prior attorneys in the same matter? Does the client complain about prior attorneys? Are the issues overly subjective critiques that you will likely be accused of replicating?
- Why did the previous attorney-client relationship(s) terminate?
- Has the client filed bar complaints against any prior attorneys?
- Are prior legal fees/costs still outstanding?
- Has the client refused to pay legitimate invoices for legal fees?

Subject matter

The “failure to know or apply the law” was the leading driver of claims according to the 2012-2015 ABA Profile of Legal Malpractice Claims study.

- Is the client’s matter within your primary area(s) of practice? *Dabbling may lead to legal malpractice issues.*
- Are there any imminent deadlines or time limitations? *Procrastination when you do not ultimately believe that you will take the case leads to missed deadlines. If you do not want the case, turn it down immediately and document the non-engagement to the client in writing.*
- Is the case too time consuming or expensive for your law firm to handle?
- Does the client have evidence to corroborate his/her story?
- If the case is one that must be filed in another jurisdiction, are you familiar with the local substantive and procedural rules? Do you know enough about the foreign jurisdiction to evaluate the value of the case?
- Does the case involve a municipality or is the potential defendant owned by a governmental entity (e.g. school or hospital) that may have notice or additional filing deadlines? *Missing governmental deadlines is a common mistake that leads to malpractice claims as the deadlines are generally much shorter than the standard statute of limitations.*

Referring the case

- If the case is outside your area of practice, do you know an attorney with whom you could associate or refer the case?
- If you refer the case, do you remain active in the case so that the client may believe that you are still his or her attorney? *Many attorneys wish to satisfy the client that they are keeping up with the case or “watching” the case after the referral which may lead to exposure if the receiving attorney makes a mistake.*
- Do you trust that the receiving attorney is competent and will not expose you to a malpractice claim or ethical grievance? Disclaiming language may be appropriate to help avoid a negligent referral recommendation.
- Do you use written referral agreements in all cases that are referred to and from the firm?
- Is the receiving attorney insured? Do you have a copy of his or her insurance declarations page or a certificate of insurance for your file? *If the receiving attorney is uninsured, you are indemnifying him or her for their mistakes.*
- Are you aware of all disclosure and consent requirements imposed by state ethics rules?
- If fees are split, is this arrangement communicated in writing to the client and allowed by state ethics rules?

Client issues

- Is the client financially capable of retaining you for legal services? Is the client evasive or reluctant to accept or sign a fee agreement? *Some attorneys suggest charging for the initial consult to prepare the client for the receipt of invoices.*
- Is the client overly critical of your billing guidelines or projected expenses? *Once the case is accepted, invoicing the client monthly may assist with keeping account receivables current and the client's failure to pay will be limited to one month's services. Demand that the client stay current on invoices to avoid a future fee dispute.*
- What are the client's expectations with both the outcome and the time involved? Are they reasonable? *Document in writing for the client what you can reasonably accomplish.*
- Are you and the client able to agree upon what defines a win? If not, is the client able to adjust his/her expectations to make them reasonable?
- Does the client's motive include unreasonable anger or a vendetta? Is the motive likely to cause the client to refuse to accept a settlement or question a reasonable result as insufficient?
- Has the client shown himself/herself to be dishonest or to lack integrity? Do documents contradict the client's verbal representations?
- Has the client indicated that he/she will be difficult to control as a witness? Is the client controlled by a third party?

Protecting yourself

- Have you sent the client an engagement letter for the client to sign, indicating "who is the client", and setting forth the scope of the retention and the fee agreement?
- If you have referred the client to another attorney and expect to receive a referral fee, have you sent the client a letter disclosing what is required by the applicable ethics rules and have you obtained the client's consent?
- If you have declined to represent the client, have you sent a non-engagement letter that clearly informs the client that you are not representing him or her, that you express no opinion about the matter, that the matter may be affected by a statute of limitations (this information may be controlled by state specific requirements) and that he or she should seek other representation as soon as possible?
- Have you assumed the client is satisfied without verification? *Always communicate with the client, return phone calls, and listen to any concerns.*

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