



## **TIPS FOR AVOIDING DISCIPLINARY PROBLEMS**

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Frequently I write articles about marketing topics, like how to surpass client expectations in order to improve the firm's book of business and the bottom line, or technology issues, like how to pick the right billing system. But sometimes I think it's important to return to the basics. So this article focuses on some of the most frequent causes of disciplinary proceedings, and how to avoid them.

Good practice management begins with the intake process. First, a proper assessment of the potential client is in order. You should not accept any client or case which walks in the door. While this sounds self-evident to many, it unfortunately is not obvious to all.

Determine whether the client has the capacity to pay for the services you are being asked to provide. Ask whether the client had prior representation, and if so why that ended. An early warning sign of a potential problem client is one who has had one or more attorneys for the same matter and has made a change because of disagreement over how the attorney handles the matter. If the former attorney has not been paid, other than for a contingent matter, that's a sure sign there will be trouble ahead. Another warning sign is a client with unrealistic expectations.

Before taking on the matter you must also determine that you have the expertise and available resources to properly handle the matter. One of the real dangers of a tendency to accept any matter which comes in the door is that it often results in taking on matters one is just not capable of properly handling.

It is important to use an engagement letter which properly sets out the terms of the relationship. It should include not only what you will do in the scope of your representation, but also equally important is to state what is not included. For example, you might need to state that you do not provide accounting-type services for certain types of matters. It should clearly set forth the obligations of the client, and the client's rights.

You need to educate the client as to the legal process in which they are about to enter. And more importantly, you need to create reasonable expectations on the

part of the client. Some attorneys inadvertently create unreasonable expectations by stating what they believe the value of a case is before having all the facts before them.

Finally, with respect to intake procedures, don't fail to do a proper check for conflicts of interest before you begin work. A surprising number of complaints are a result of poor case acceptance, poor client screening, poor intake procedures and failure to check perform a thorough check for conflicts of interest.

Poor date control is another process which leads to disciplinary proceedings. You should use a centralized computer-based calendaring process, and be sure to back it up regularly, and take the back-up offsite. Not sure where to turn for affordable back-up devices? Contact me for a comprehensive listing.

Now this may sound really self-evident, but your calendaring system only helps if you actually use it. That means being sure to enter all the critical dates into the system. It also means responding to those calendared dates when they come up.

Be sure to enter file review dates too, so that all files are reviewed on a regular basis. Too often, when I ask an attorney what triggers their review of a file, the answer is "the client calls." Wrong answer! Don't count on your floor serving as an informal "tickler system." Aside from creating the chaos of a superfund site in your office, it provides an excuse for your staff to avoid filing necessary documents in the file. And it almost ensures that some of the files will become problematic from neglect.

The trust accounting process can frequently be a source of exposure to complaints. First, you want to make sure that the trust account is reconciled monthly. Second, you should maintain a separate client ledger for each client who has money in your trust account, and you need to reconcile the total of those ledgers to your trust account balance monthly. The number of firms I visit that cannot reconcile client ledgers to the trust bank account is more than a little scary. Be sure to wait the appropriate amount of time for deposited checks to clear before writing checks against them. Remember that bounced checks written on a trust account must be reported automatically to the Disciplinary Board by the bank. Finally, as a safeguard against fraud, be sure to get the bank statement unopened on a periodic basis, and review the cancelled checks and statement yourself for anything suspicious.

Poor financial management of the firm, or lack of profitability, can often lead to problems for the attorney from resulting poor client relations, overwork, sloppy client screening, or even a temptation to temporarily play fast and loose with trust



funds. Failure to automate the firm's client billing process and the firm's accounting process exacerbates the inability to financially manage the firm. If your firm is not producing sufficient revenues to cover the overhead and provide you with a reasonable income stream, get some professional assistance to determine how to make improvements.

An attorney who is fortunate enough to have a high-quality paralegal, legal assistant, and/or legal secretary sometimes tends to misuse the staff member by delegating inappropriate work; leading to the unauthorized practice of law. The line of demarcation between assisting the attorney and practicing law is often not quite as distinct as should be. Add to that the fact that most attorneys are overworked and seek to delegate as much as possible to capable assistants, and problems often arise. To safeguard against this, ensure your staff members know the limits of the services they can provide. Send them to seminars on the topic, or if none is available in your area, look for other educational resources. Not sure where to look? Contact me for assistance.

While this article is not wholly inclusive of the errors which often result in disciplinary proceedings, it includes some of the most common. If you're not sure whether your firm is properly managed, perhaps it's time for you to have a practice management audit. You can perform one yourself by purchasing the publication *Easy Self-Audits for the Busy Law Firm* by Nancy Byerly Jones. It is available at a member-discounted price through PBA. Or contact a qualified consultant to assist you. Poorly managed firms often suffer disciplinary problems for the attorneys, despite their abilities in zealously and competently handling client's matters. Don't let that be you.

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