

CLAIM OF THE MONTH

WHEN FOOLS RUSH IN:

THE SIGNIFICANCE OF CLIENT SELECTION

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Professional liability claims often arise not directly from practitioner error or omission, but rather indirectly from poor client selection. In today's complex professional environment, the focus of practice typically revolves around the provision of legal services. However, one crucial and frequently overlooked aspect of success hinges upon the presence of a cooperative and diligent client. Recent instances of claim activity serve as cautionary examples:

In one case, an individual involved in an ongoing divorce sought the assistance of an insured attorney midway through the proceedings. Although the insured attorney knew they were replacing a previous attorney, they were unaware that they were the fourth counsel to represent the client. After enduring months of dealing with an uncooperative client, the insured attorney withdrew from the case without receiving payment. Consequently, the client retaliated by suing the insured attorney for ineffective assistance of counsel.

Another insured attorney, primarily focused on real estate and family law, was approached by a long-term real estate client for help with a personal injury matter. Despite possessing limited experience in personal injury cases, the insured attorney agreed to handle the case out of respect for the loyal client. Although the insured attorney identified the statute of limitations easily, they failed to recognize that the defendant was a governmental entity subject to a short notice deadline. As a result, the insured attorney filed the case after the deadline, leading to the client's claim being barred. The long-term client promptly severed ties with the attorney and initiated a malpractice claim.

A commercial attorney took on a case during the late stages of the discovery process. The client, who had multiple businesses involved in both divorce and bankruptcy proceedings, either withheld or couldn't produce records substantiating their businesses. Consequently, the insured attorney was left with incomplete and disorganized records to present. As a consequence, the attorney faced sanctions for failing to comply with discovery. The client terminated the attorney's services and pursued both a grievance and a malpractice action.

As mentioned above, the adage "as goes the client, so goes the case" should be considered prior to accepting representation. The initial client consultation plays a vital role in assessing the client's character and the viability of the case. Some inquiries and statements that can aid practitioners in deciding whether to take on a case include:

- Can you explain the issue you are facing and what are your expectations?
- When did the injury, action, breach, problem, etc., occur?
- Who is the opposing party? Is it an individual, corporation, governmental entity, etc.?
- Why do you believe you have a case? Please elaborate on the strengths and weaknesses.
- Have you previously worked with an attorney on this matter? If so, who was it and why did you discontinue their services?
- What is the current status of the case/discovery?
- Do you possess any documents or evidence that support your claims?
- Is the client prepared to cover legal fees and expenses?
- It is essential to note that success is not guaranteed if we proceed.

While there is no universal set of standard questions for every client situation, various bar associations provide sample questions that can be very useful in evaluating whether to accept a case or engage with a client. Lastly, although questions are valuable in selecting clients, ongoing communication and establishing clear expectations are vital to increasing the likelihood of favorable outcomes and avoiding the numerous pitfalls that can undermine the attorney-client relationship.