

RISK MANAGEMENT INSIGHTS

by Rian Jorgensen, JD

CLIENT INTAKE:MAKING RAIN OR CREATING A FLOOD?

very young lawyer is told that in order to reach the Holy Grail of law firm partnership, it is not enough to become a smart, technically superior practitioner. He or she must also master the art of developing their own book of business, bringing in new clients who will require the thousands of hours of legal work that the firm's lawyers are eagerly waiting to provide. This pressure to bring in new clients, however, needs to be tempered by a clear-eyed realization by firm management that probably the single greatest way to avoid severe legal malpractice claims is to enforce rigorous client intake.

There are a number of red flags that provide clear warning signs that a potential new client presents a high malpractice risk for the firm:

- Has the client had prior counsel? Is so, were there any disputes with that counsel? Are we being asked to step in at the late stages of a matter?
- Is the client requesting an unusual fee arrangement, or requiring significant changes to the firm's proposed fee agreement? Can the client afford to pay us?
- Is gathering information from the client difficult? Is there a sense that the client is being untruthful or evasive?
- Does the client have unrealistic expectations about their case?
- If the client is a referral, is the source legitimate?

Aside from questions about the potential client, the firm also needs to look in the mirror and honestly answer the following questions about the potential new engagement in the affirmative:

- Do we have the time and capacity to take on this matter and give it the attention it needs?
- Do we have the necessary expertise?

Moreover, it is critical that the decision to take on a new client or matter must be subject to independent review — any one individual attorney (no matter how powerful or senior) should not have the authority to unilaterally take on a new engagement. Many of the most severe legal malpractice complaints against law firms have been generated by clients brought in by "lone wolf" attorneys, whose zealous allegiance to the client totally eclipsed any duties owed to the firm or its partners (or the profession).

Having the discipline to recognize and avoid high risk clients is difficult, but the willingness to "just say no" to signing up such clients is a critical risk management tool. As tempting as the potential high billings might be from such clients, those amounts pale in comparison to the cost of a significant malpractice lawsuit.

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