

Tip of the Month

Brought to you by:



By Erin McCartney, Esq., Risk Management
Lead, Attorney Protective

Originally published in AttPro Ally,
Spring 2017, Issue 22



AHERN Insurance Brokerage (AHERN) is the Endorsed Professional Liability Insurance Broker for the Bar Association of San Francisco. With AHERN, BASF members have the benefit of a valued consultant and insurance advocate.

Call (800) 282-9786 to speak with an AHERN professional.

Spring Screening: Snag 'em or Flag 'em?

Spring is the perfect time to take a fresh look at firm practices, including the firm's prospective client intake procedures. Effectively evaluating a prospective client should determine whether they belong in the "keep" or "toss" box!

Consistent and effective client screening can reduce the risk of engaging in representation with an undesirable client or on a matter not consistent with the firm's areas of expertise. A well-developed initial client screening process can capture information vital to saving the firm valuable time, and avoiding potential headaches. Without effective intake procedures the firm could easily get bogged down in chasing unpaid bills or absorbed by unnecessary coddling of a high maintenance client. So, what are the firm's typical intake procedures and are they effective?

A comprehensive client intake form should serve as the initial step in the client screening process. The form should be comprised of questions that elicit information necessary for efficient and effective representation. Templates available through most state bar associations can serve as a starting point for the development of a firm's own unique intake form, or as a comparator for refining an existing one. One size does not fit all, but forms still offer a great starting point to ensure that key questions are addressed and not forgotten. For example, understanding the prospective client's motivation and expectations could be crucial. So questions such as "Knowing that there are no guarantees, what outcomes can you accept?" are fundamental and illuminating. If a client's motivation behind a law suit is primarily revenge or retribution, a "thanks, but no thanks" may be the appropriate response to the proposed engagement.

The intake form should also inquire into prior representation on the matter. Questions regarding prior representation may offer a sense as to whether the potential client will be difficult to satisfy. If a potential client has already gone through three lawyers before contacting the firm, it may be an indication of

AHERN Tip of the Month *(continued)*

his or her unrealistic expectations, or a payment-avoidance strategy. Either way, the firm most likely does not want that client!

After the intake form is reviewed, the client interview should take the vetting process to the next level. During the client interview, an attorney should try and understand what the client wants to accomplish by means of the representation. This is the time to let the prospective client talk, by asking them open-ended questions and applying additional subjective assessments of their responses. The client interview can provide valuable insight into expectations and any underlying issues that could be a factor into whether the firm wants to take on the matter. Take adequate time to develop a feeling as to whether the client will be a problem- really listen to their responses and don't discount a "gut feeling" about a prospect! The interview process is a means to uncover unrealistic expectations and sense whether the client appears truthful and cooperative. The interview should also assess whether a client can afford the firm's legal services. Discussing a reasonable estimate of fees and expenses and gauging the potential client's reaction is simply good due diligence.

The bottom line is that effective client screening can preclude major problems for the firm down the road. If there is an established, repeatable intake process, the firm will be more likely to capture the information needed to ensure it is not taking on undesirable clients or matters. If the first reaction to discovering a problem with a client is "I knew this client was going to be trouble!" or "I knew I should not have taken this case!" the firm needs to do a better job screening potential clients. Changing lawyers in the middle of a case, trashing the lawyer they just left, reluctance to answer basic questions, providing inconsistent, incomplete information or wanting to use the legal system as a weapon for revenge or retribution are all red flags. Do not ignore these warning signs and don't forget to listen to that gut instinct warning,

"Danger ahead!" Remember, a lawyer has the right to decline a case or client. Just like that unopened gadget that has been gathering dust in the garage for months, sometimes the best decision for the firm is to place that concerning prospect in the "toss" bin and move on with a clear conscience.