

AHERN Update



Daniel W. Hager is Corporate Counsel to AHERN Insurance Brokerage and has spent his career practicing in the fields of lawyers' professional liability, risk management, and legal ethics.

AHERN Insurance Brokerage is one of the largest full-service insurance brokerages in the country specializing in the insurance needs of law firms, with over 5,000 law firm clients.

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How to Screen Clients Effectively to Reduce Your Risk

By Daniel W. Hager, Corporate Counsel, AHERN Insurance Brokerage

At some point all lawyers ask themselves, "Why did I accept that client in the first place?" Effectively screening prospective clients for red flags is perhaps the single most important tool for avoiding later fee disputes, malpractice claims, and ethics complaints. Making the following considerations part of evaluating new clients and matters will greatly reduce your risk, and lead to a more satisfying, less aggravating practice.

Ethical Evaluation

Consider the following for new matters: Have all appropriate entities/individuals been checked for conflicts? Did the conflicts report disclose any actual or potential conflicts? Is proposed joint representation possible with informed written consent? Might the representation require taking positions on issues that are contrary to the positions of other clients?

Compatibility With Practice And Resources

Ask yourself: Is this matter within your present areas of expertise? If not, can you educate yourself promptly enough to handle it competently? Will the matter require time or special logistical or technical capabilities you presently lack?

Professional Desirability

Consider whether the following factors are positive, negative, or neutral in deciding whether to accept the prospective client: relationship and experience with prior and current attorneys (changing lawyers on this matter; suits against lawyers; references checked); relationship with other professionals (references checked); personality (motivation for using your services; reasonableness of expectations; degree of patience; insistence on controlling details of the representation); background and behavior (alcohol or drug abuse; excessive gambling; history of personal legal problems); business background (employment history; experience in the business involved or similar businesses); whether there will be any relationship other than that of attorney-client (officer/director/partner in

the client's organization; business transaction with or investing in the client; helping the client find funding sources or third parties to do business with); risk of claims against you by third parties (claimed third party beneficiaries; government entities like the SEC/FDIC; risk of sanctions or malicious prosecution claims); and your gut reaction (comfortable with the prospective client; willingness to follow advice).

Financial Review

Consider: the range of fees and costs you expect the matter to generate; ability to pay those fees and costs; ability to post an adequate retainer/deposit; business reputation and financial status (from credit report, Best's Reports, Dunn & Bradstreet, Standard & Poor's); and outstanding judgments or bankruptcies. A simple Google search may provide a wealth of relevant information.

For existing clients, consider whether outstanding bills have been written off and the client's history of accounts receivable.

Other financial considerations include: the fee arrangement (hourly/rates, contingency, fixed fee); need for retainer/deposit (amount, one time, replenishing); client's reaction to proposed payment arrangement; in contingency cases estimate the amount of likely recovery, the time to conclude the matter, and the likelihood of obtaining no monetary recovery); and whether the matter appears to be a one-time representation or may develop into an on-going relationship.

Regularly considering these factors (and requiring other lawyers in your firm to do the same) will reduce the risk of taking on clients who are the most likely to trigger fee disputes, malpractice claims, and ethics complaints. When in doubt, trust your gut reaction; if a prospective client gives you a bad feeling, err on the side caution by tactfully declining the case.