

# Six Clients in Search of a Lawyer: Or, Don't Take the Case

BY HAL R. LIEBERMAN

New lawyers starting out in practice, or even seasoned attorneys seeking increased business, are occasionally tempted to take on matters in which the client seems well able to afford the retainer but something else is wrong. Follow your instinct and don't take the case. As malpractice insurers, risk prevention counsel, and lawyers knowledgeable in the field of professional discipline will attest, the downside to representing certain kinds of clients generally exceeds by quantum degrees whatever potential financial or professional reward may result.

Remember, you are not required to accept employment by every person who approaches you for advice. Indeed, DR 2-109(A) imposes the obligation not to accept employment if it's obvious that the potential client intends either 1) to bring an action or take steps to harass or maliciously injure any person, or 2) to present a claim or defense that is not warranted under existing law unless a good-faith argument can be made for modifying or reversing the law. EC 2-26 provides:

*A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become a client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of a fair share of tendered employment which may be unattractive both to the lawyer and to the bar generally [emphasis added].*

Over the years, I've identified six types of clients who are presumptively to be avoided. No one will blame or criticize you if you reject them:

## **The "fickle" client.**

When you are the fifth lawyer the client has sought to retain in the past three years, forget it. There has to be an explanation for the many failed attorney-client relationships, and the chances are high that nonpayment of fees, unethical demands, or unrealistic expectations lie behind that history. Any or all of these circumstances will render an effective representation well-nigh impossible. Why should your experience be any different from the others? At a minimum, all prior counsel should be contacted to ascertain why those engagements were terminated.

## **The "procrastinator".**

When a claim is stale, assuming even that the statute of limitations has not expired, the likelihood is great that the person seeking your services sat on her hands for a reason. And the client's history of procrastination portends an unsatisfactory representation. That is because most normal people don't delay to assert a valid legal claim. While there may be exceptions, the lengthy passage of time between the moment when the alleged cause of action arose and now indicates that the case lacks merit, or, at the

very least, that documentary evidence and witnesses will be much harder to locate. At a minimum, therefore, clients who delay seeking legal assistance should not be accepted unless solid evidence exists to support their cases and a reasonable explanation is provided as to why they waited so long.

### **The "disorganized" client.**

You've probably encountered them in other contexts: people in shabby clothes lugging brown shopping bags or folders filled with papers and personal effects. They always seem to have a tale of woe. Someone has done them in. Their stories may well be valid. But when they try to communicate, their descriptions are garbled or incoherent. Then the large bag or folder is produced and opened on your desk. Hundreds of documents spill out in random order. You realize you must sort through this mess if you are to understand what has happened to your aspiring potential client. But once you (or, preferably, a paralegal) go down that road, the chances are you'll find that any claim your disheveled client once had was waived, judicially denied, time-barred, or nonexistent. You will have wasted valuable time. There are, of course, exceptions. Occasionally, disorganized or hopelessly inarticulate people may well have real cases and the means to pay you; these people deserve solid professional assistance. But these instances are exceptions, not the rule.

### **The "conspiracy" client.**

This is the client whose dire circumstances are the product of a conspiracy by many people who are all out to wrong her. As her story unfolds, you will learn that her prior lawyer was in cahoots with the adversary; that the judge was biased; or that various politicians were paid off to do nothing when she solicited their assistance to remedy the injustice that purportedly occurred. There is no way that any lawyer can adequately represent this client, whatever potential merit her claim may have. The first time something goes awry, the client will blame you, hold you personally responsible, and accuse you of being a participant in the plot to do her in. Don't go down that road.

### **The "Rambo" client.**

All this client wants is to use you as a vehicle to hurt the other party. You will be asked to pull out all the stops: to file as many motions as possible; to run up the adversary's legal fees; to seek every conceivable remedy; and under no circumstances to grant an adjournment. This client is fixated on the concept of hiring a "tough", street-wise lawyer who will bully the other side into submission; someone who knows how to use the legal system to inflict pain and achieve total victory. If you take on this kind of client and do not convince her that a moderate, professional approach is more appropriate, then sooner or later you will have to choose between engaging in unethical conduct or withdrawal. (See, DR 2-109, *supra*.) Rambo tactics will alienate the court, your adversary, and ultimately, the client as well, when your hard-line approach fails to achieve the desired result and the case cannot be satisfactorily resolved. Avoid these clients like the plague. Lawyers who engage in hardball tactics are unprofessional, doomed to failure, and do great harm to their reputation at the bar. Parenthetically, Rambo won't pay your bills.

### **The "controlling" client.**

Some clients want to dictate all legal strategy and every procedural move. They have probably prepared themselves by "boning up" on the law. They will insist that you file a complex motion within 5 days, argue a particular legal theory, cite a certain case. Some of these clients can provide valuable input with respect to various aspects of a proceeding and should be kept fully informed; but, though all clients are entitled to make important substantive decisions as a representation proceeds, no lawyer should be told by her client how to practice law. A client who does not (or cannot be made to) understand the distinction

between client and lawyer will not be happy with your services. Do not put yourself in a position in which legal strategy that makes little sense is forced upon you by an overly controlling client's inappropriate desire to be both client and barrister. The case will end badly and, once again, regardless of merit, you will be blamed for any poor outcome.

These client prototypes, though not the norm, nonetheless represent portraits of individuals whom many attorneys have encountered. Invariably, a lawyer will regret his decision if he is unwise enough to take one of these people on as his client.

Declining inappropriate employment is crucially important to a lawyer's financial and mental/emotional well-being. As experienced lawyers and risk prevention professionals will confirm, representing the wrong client often leads to some or all of the following occurrences: nonpayment of legal fees; malpractice claims; disciplinary complaints; and, perhaps of greatest importance, dissatisfaction with the practice of law. Save yourself the heartache. At the very first opportunity, decline employment unequivocally and in writing if you are approached by any of these people.

If you learn after the fact that an engagement was a mistake, and that you now represent an impossible client, do not despair. Withdrawal is usually an option. "Permissive" withdrawal can be accomplished under DR 2-110(C) in New York so long as you follow three basic steps: (1) avoid foreseeable prejudice to the client (DR 2-110(A)(2)(2)); promptly return the unearned portion of any advance fee paid (DR 2-110(A)(3)); (3) obtain leave to withdraw from the tribunal if the case is in litigation (DR 2-110(A)(1)) or, with consent of the client, file a notice of substitute counsel.

Various bases can be utilized under the Code to justify withdrawal from a troublesome representation, whether or not the client wishes you to continue. These include, *inter alia*: the client's insistence on presenting an unwarranted or fraudulent claim; his insistence that you engage in conduct contrary to your judgment and advice even if the conduct is not prohibited under the Disciplinary Rules; his deliberate disregard of an obligation to pay fees or expenses; and any other conduct that makes it unreasonably difficult for you to represent the client effectively.

Of course, when you are approached by a candidate from hell, the best strategy is not to accept employment at all.

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