



Say No and Move On

You Do Not Deserve to Be Their Lawyer: A Discussion of Client Selection

By Stephen R. Crislip

This is my favorite double entendre because it so easily explains why you should not represent certain clients. It is easily recognized, after the fact, that certain clients cause problems with the court, dominate your time, and usually never pay you. The most common statement that I hear when interviewing legal malpractice defendants is, “I never should have taken that client.” So, the key point is to be highly selective of clients to avoid all these issues before the fact.

Good client selection is not new and has always been important. As the legal market and changing economic times have caused lawyers to be eager to get new clients, selection problems have increased on the back end. Resisting the impulse for new business, regardless of quality, can be the difference in claims loss versus income.

I pointed out in one previous article that 80 percent of your time can be dominated by 20 percent of your clients. Stephen R. Crislip, *Math and Loss Prevention*, *Lawyering for Lawyers Blog* (Oct. 7, 2013), <http://goo.gl/UqauVu>. Likewise, the client that is ethically challenged, difficult, and not inclined to pay will most often be the first one to name you in a professional liability complaint, even if it is baseless. Clearly, the old-fashioned “smell test” must be applied, and you need to trust your instincts. As President Reagan said, “Trust, but verify.” You are negligent to yourself and to your firm if you fail to exercise “due diligence” in searching internet and public sources about a prospective client, as well as the client’s personal references and prior counsel. You kind of deserve the “kick me” sign if you do not check all of this out. A new and

unknown client that declines to advance a retainer is not likely to pay you later, either. It is a hard-learned lesson of practice.

I have a neighbor who has taught college business classes. One of his best expressions is that “no” is a complete sentence. It is an unambiguous statement. There are many times when you just need to say “no” and move on. Your practice life will thank you.

A recent ABA “Eye on Ethics” noted some usual suspects in this decision process:

- The know-it-all client who wants to tell you how to practice.
- The non-listening client.
- The overly responsive, or equally, the unresponsive client.
- The client with lots of personal issues affecting his or her ability to be a client and to assist.
- The lawyer-switching client.
- The unrealistic client.
- The client who believes that you have to be his or her junk-yard dog to be effective.

Peter Geraghty & Susan Michmerhuizen, *Red Flags and White Whales: Beware of Problem Clients*, ABA Ctr. Prof’l Responsibility (Nov. 2017), <https://www.americanbar.org>. And there are many others.

So my message here is the usual, recommended, common sense approach. Take your time and check out every potential client carefully. If your instincts say, “this is not a good idea,” it’s probably not a good idea. Generally, ethics rules make it difficult to extract yourself from a representation after you accept it, especially litigation matters that typically require a court order. So it is prudent to investigate first to save you from a difficult and possibly lengthy breakup later.

Well, some may say to me that I do not need to advise on such basics. Of course, then I would say, why do we have to defend these “I never should have taken that client” cases? Maybe repeating common sense advice is not a bad theory, even with good lawyers. 



■ Stephen R. Crislip is the retired general counsel of Jackson Kelly PLLC and is now of counsel with the firm, in Charleston, West Virginia. He is a former president of the Association of Defense Trial Attorneys and served two terms on the DRI Board of Directors. Among his many other leadership positions, he formerly served as the president of both the Defense Trial Counsel of West Virginia and the West Virginia Bar Association. He writes the “Lawyering for Lawyers” Blog for lawyers and law firms.