Toxic Client Syndrome

By Jerome Fishkin and Lindsay Slatter

The State Bar discipline system is largely driven by disgruntled clients who complain about their attorneys. Many of those likely complainants can be identified well in advance. We use the term Toxic Client Syndrome to describe those clients who are likely to cause trouble for the otherwise competent, ethical attorney. These clients will lodge State Bar complaints against you, challenge your fees, and try to find ways to sue you for malpractice. Even when the client’s underlying case is just, the client is going to be a source of trouble for you.

I. TOXIC CLIENT CLUES AT THE PRE-RETAILER STAGE

When a prospective client comes calling, the following are examples of people who are likely to be toxic clients.

Whenever a client comes to you after being represented by multiple attorneys, the sheer quantity of those previous attorneys tells you that this is a difficult client. Typically this sort of client has unrealistic expectations, either as to case outcome or attorney fees. Or both.

Be very suspicious of the client who comes to you on the eve of an important deadline. People with good legal cases seldom wait until the last minute to seek counsel. Typically, they have been rejected by several attorneys before you, for reasons you will soon discover. Be doubly suspicious if you are a new attorney with no connection to the prospective client.

*JF: In my first year of practice, I accepted a dog bite case on the eve of the expiring statute of limitations. It turned out that the “vicious dog” was a miniature poodle, there were no medical records, and the client had been street-walking in front of the defendant’s house at the time of the alleged attack. Watch out for the overbearing client.*

This person rejects your initial observations and advice. Or they will constantly interrupt you to make a point. They wave off your observations of problems in their case. They will later blame you for the bad outcome and deny that you ever warned them of the downside.

Also be wary of the client who assures you that the other side will settle or cave in as soon as you write “just one letter.” Or the one that reiterates that the case is a “slam dunk” and won’t take much time.

If the prospective client makes dishonest overtures up front, they will generally do dishonest things later. The person who offers a discount cash payment (wink wink) will probably lie under oath, too. So will the client who asks, how should I testify about how fast I was going at the time of the accident?

The prospective client who can’t afford your retainer, or objects to your hourly rate, is going to be a person who won’t keep up with the bill. Remarkably, that client gets angry at you for wanting to be paid. Ironically, the client who is starting a lawsuit “for the principle, not the money,” is never going to be satisfied with the outcome of the case or the attorney.

The foregoing are types of cases that the objective, thinking attorney can see coming. But there are situations that rely less on facts and more on feelings.

Thus, we advise attorneys to decline people with whom there is a personality clash. Sometimes two people just don’t mix well. They may be perfectly good clients, but not for you.

Hardest for attorneys is the rule, *obey the queasy feeling in the pit of your stomach.* We attorneys are trained in reason and logic. We sometimes feel there is something wrong with the prospective client, but we overlook our internal warning system because we can’t figure out what’s wrong. If you don’t follow your intuition, you will find out later (read the rest of this article).

**Our Advice: Turn down the prospective client**

Do so with neutral language. Skip the urge to bill for the consultation. Do not quote an outrageous retainer to scare them off. Sooner or later, somebody will pay it, and you will rue the day you overrode your good judgment to accept the client.
The good news is that this is the group of toxic clients least likely to cause you trouble, if you simply decline the case. However, it is always a good idea to stick to neutral language; you never know where that letter will surface. And always document your declination.

JF: As this article is written, an opposing party has made a motion to disqualify me because he alleges we spent 15 minutes discussing his case. My phone bill shows 2 minutes, and my phone note shows that he told me he had already employed other counsel by the time I called him back.

We now turn to two categories of toxic clients who cause you a lot more trouble – those whose problems surface after you have accepted the case, and those whose problems surface after the case has settled or gone to verdict.

II. CLIENTS WHO BECOME TOXIC ONCE THE RELATIONSHIP IS UNDERWAY

Beware of the partial bill payer. This person makes partial payments on all bills, but the balance keeps growing. You can’t just quit working on the case. Rule 3-700 expressly requires us to continue protecting client rights until we are discharged.

LKS: The State Bar is not concerned with the balance due when evaluating a possible disciplinary case, only the process by which you withdrew.

Be suspicious of clients who cannot produce simple documents, such as bank statements or phone records. Perhaps they cannot document work history or obtain mechanic’s bill for car repair. They are generally hiding something. The defense will probably find it, and the client will generally blame the attorney for what goes wrong when the hidden information finally surfaces.

There are demanding clients, and there are overly demanding clients. The latter call you daily, or ask you to repeat explanations of routine things repeatedly. They get overwrought about simple things. They get upset if you don’t call back within an hour, or if you are unavailable at odd hours.

JF: I will be trying a case later this year, where the client showed up at random times at the attorney’s office to inspect the file. When the case ended, sure enough, a lot of paper was missing from the file.

Unrealistic clients are always a challenge. Most clients hope for a better outcome than we can reasonably achieve. The Toxic Clients want promises of success. They want a guaranteed maximum bill, or a minimum guaranteed recovery. The unrealistic will hold to their goals in spite of all reason or logic. The spouse who wants 90% of the community property, the client who insists on a $1,000,000 offer for whiplash, the parent who believes you can magically make a juvenile offense disappear – those are a few of the common examples.

LKS: The State Bar is not concerned about the viability of the client’s claim, simply with what you did (or did not do) during the course of the attorney-client relationship.

How do you deal with clients who threaten you with malpractice suits or State Bar complaints in the midst of the representation? Even if you finish the case with an outstanding result, they will probably do so anyhow.

Never put up with abusive clients. In our office, staff has authority to hang up on abusive callers. The lawyer then explains to the client, we do not tolerate any personal abuse, and if it ever happens again, we will fire the client.

Once again, the foregoing can usually be assessed primarily on objective facts. The next group can slip by you for a long time, unless you are attuned to the signals.

I can’t stand it anymore

Sometimes there are clients who grate on me over time. They were okay for a week or a month or a year, but I wake up one day and realize that I dread dealing with that person any more. Time to send the client to somebody who can deal with their sh*t.

Bad people mix. Sometimes I get along quite well with the client, opposing counsel, and judge, as long as I don’t put them all in one room at the same time. Some groupings of people just don’t work.

The Solution: Get Out of Dodge ... but do it in accord with the rules

LKS: Remember – The State Bar does not care why you withdrew, only that you withdrew in accord with the rules.

The disciplinary principles that govern client withdrawal are:

1) We have to give the client adequate notice, so the client has a reasonable time to try to employ another attorney. The more complicated the case, the more lead time the client needs.

2) We cannot withdraw at a time or in a manner that would prejudice client rights. We can’t withdraw on the eve of trial or a hearing on MSJ. Client consent may not save you from the State Bar case, as the client may not realize the significance of substituting you out at the last minute.

3) If we are in litigation, we have to follow the rules of the forum for withdrawal. The closer you are to a trial date, the less likely you will get an order of withdrawal. Judges are very protective of their calendars.

The decision to withdraw from a case should be viewed as a business decision. That is, I have decided to quit doing business with a specific customer. I now want to cut my losses and move on with the profitable side of my business.

Generally speaking, the longer you represent the toxic client, the more grief you will see at the end. So make the decision, organize the file, tell the client, and persistently push the withdrawal until it is completed. Keep your cool, act like the professional you are, and always use neutral language. I like to tell the fired client that the attorney-client relationship is no longer working, so it is time for them to get another attorney. No blame, no detailed explanations. This person will never speak well of me, but I don’t want to give them more ammo to use in State Bar complaints, malpractice cases, fee disputes.

Be careful about suing for fees or asserting liens, especially when the amounts are relatively low. Your time is probably better spent on happy, fee-paying, current clients. Remember: this is a business decision, not a religious epiphany. You can easily spend 20 – 30 – 40 hours on a fee dispute. Even if you are successful, and even if you are not cross complained for malpractice, what kind of results can you expect in the fee dispute versus the next case, for that sort of time?

In these circumstances, don’t be petty, and do avoid useless arguments. For example, don’t have the client come pick up the file; send it via some form of delivery that will show proof of delivery. Don’t ask
the client to sign a document that says they got the whole file. (How does the client know?) Don’t get in the blame game, because you can’t win the argument.

III. CLIENTS WHO CATCH US AT THE END

Gotcha! The case is over, and the client tries to get leverage by one or more of the following:
• The client demands a fee waiver or concession because you didn’t get a written fee agreement, or you got sanctioned in discovery, or the judge made disparaging remarks about your presentation.
• The client refuses to complete a settlement.
• The client threatens a State Bar complaint if you don’t reduce your fee.
• The client threatens a legal malpractice suit if you don’t reduce your fee.

This is probably the worst time to develop attorney properitis (the hidden disease that renders attorneys totally unable to act rationally while representing themselves). We have seen attorneys turn what should be low grade disputes into unmitigated disasters by taking steps on their own behalf that they would never take on behalf of clients. (“But,” they exclaim to us, “that ungrateful client … (well, reader, you fill in the blank here) …”)

The Solution: One size does not fit all

Sometimes, a frank chat with the client will resolve the issue. If the client won’t consummate a settlement, explain (first orally, then in writing) the time and cost of resisting a valid settlement. Explain what your role can, and cannot, be.

Many clients believe that you forfeit your fees due to some perceived breach, when in fact you are entitled to a reasonable fee. (See Bus. & Prof. 6147(b), 6148(c), and Huskinson v. Wolf (2004) 32 Cal.4th 453.) Many clients get third-hand advice about fee forfeiture and back off when confronted with the reality.

Other times, you have to offer a concession, or it is practical to do so. (See business decision vs. religious epiphany, above). Other times, it is more prudent or actually necessary to hold firm to your position.

LKS: We used to joke in my previous law firm that the real negotiations did not begin until the settlement was collected.

DON’T MAKE ROOKIE ERRORS WHILE DEALING WITH TOXIC CLIENTS

While lawyers should always document their files, it becomes very important to do so at this juncture. Your actions may be scrutinized, so don’t stay stupid things. Especially in print.

Stay on message and use neutral terms. For example:

I am entitled to a reasonable fee for my services and will enforce my rights.

or

I am going to ask the court to let me withdraw. I will file my motion next Friday if you have not obtained new counsel.

Remember: you still have to protect client rights while getting out of a case. So you can’t let deadlines pass, even if the toxic client is resisting your efforts and not paying. Similarly, you cannot make any agreement that the client will not make a State Bar complaint, or withdraw one, or not cooperate, as part of a civil settlement. You cannot threaten the client with criminal prosecution, bad publicity, or release of client secrets. And no, you can’t “sort of imply” these things.

Don’t swap insults, try to one-up the client, or otherwise demonstrate that you can be a bigger jerk than the client. If your conduct is reviewed by a third party (State Bar, malpractice lawyer, fee arb panel), you want to look better than the complaining person. If you have to defend yourself at the State Bar, or in any other forum, you want to look professional. Nobody likes a screamer or a name caller.

LKS: We have sometimes heard State Bar personnel complain about the complainant, compliment the attorney, then follow by closure of an investigation that, maybe, could have gone forward if the roles had been switched.

Annoy, self righteous letters, rarely do you any good. Dispassionate ones generally do. Long, self-serving file notes always look suspicious.

JF: I recently represented a person in a State Bar settlement conference, in which the judge’s first comment was, why didn’t he fire the client early on?

CONCLUSION

The readers of this article represent injured consumers in an adversary system. Most of our clients appreciate what we do and how we do it. Some do not, and we should be aware of that latter group of people. The writers preach the gospel of “business decision.” That is, the more you can regard these sorts of people as bad business, and the less self-righteous you are about the situation, the more likely you are to make sensible decisions about what to do.

Toxic clients are likely to lodge State Bar complaints, file fee arbitration for refund of fees, and shop the file around for a legal malpractice suit. In the more extreme cases, they will complain to the D.A., picket your office, or set up an attack website. Thus, the sooner you identify this sort of client, the sooner you can take preventative action.

POST SCRIPT

We wrote the last draft of this article while in the middle of representing an attorney who was the victim of a toxic client, who in turn was part of a group of otherwise nontoxic clients. He had to file several motions in the main case, just to deal with the problems caused by one client. He has been through a one-week malpractice trial. Everything he did in both cases is now being challenged in a State Bar trial that will take 10 to 15 days to complete. Even if he is fully vindicated, the time and cost are enormous. And that is before the aggravation and sleepless nights second-guessing more than ten years’ worth of decisions.