

THE LAWYERS WEEKLY

Saying goodbye to the difficult client

Lack of trust, second guessing and unrealistic expectations fuel breakups

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No matter what area of practice, every lawyer eventually comes across a certain type of client: the one with unrealistic expectations and impossible demands.

Regular evaluation of clients makes sense for any firm, both to ensure they fit within the firm's evolving vision and are not consuming excessive resources for little reward. Clients who negatively impact staff morale or drain time from more productive cases may need to be shown the door — and experienced lawyers know how to catch the signs early.



Criminal lawyer J.S. Vijaya, who has been in the business for close to two decades, recalls one client telling him a story along the lines of: "I spoke to my cousin, who had the exact same criminal charges [as me]. His charges were withdrawn on the second court appearance. The Crown personally apologized to him in open court and his lawyer charged him merely \$99.99 for the entire case."

While there are many variations on that theme, Vijaya said, it is generally a sign that the client is unprepared for the reality of the situation — and an early indicator the relationship will not work out.

"Raw emotions tend to be bubbling just underneath the surface in a typical lawyer-client relationship," Vijaya noted. "There can be a significant gap between what the client expects to be the final outcome versus what a lawyer can realistically deliver."

Felice Kirsh, who has been practising estate litigation for 27 years, cites a plethora of other behaviours that should quickly raise a red flag.

“When the client’s not following your instructions, when the client is second-guessing you all the time, when the client is making demands on you that just cannot be met ... Sometimes the personalities just don’t match,” Kirsh noted. “I say to people all the time, not every lawyer is for every client; not every client is for every lawyer.”

There are also the clients who fail to return calls or to show up for appointments, or who walk through the doors of a law office thinking they have a fantastic case, only to be told they have perhaps a 30 per cent chance of winning. That “reality check,” Kirsh said, can cause friction between the disappointed client and the lawyer delivering the bad news.

How lawyers end relationships with problem clients can vary, with some advocating a formal approach, and others preferring to handle the situation more casually.

Family lawyer Pei-Shing Wang points out that when the time comes to terminate a lawyer-client relationship, it is already “strained,” so some clients may not even agree to walk back through the firm’s doors. “Usually it would be an informal discussion on what exactly is the expectation and what doesn’t match up,” Wang said.

Andrew Feldstein, who also practises family law, notes that if the firm fires a client while a matter is before the court, the client must agree and sign a form, or the firm must obtain a court order permitting the withdrawal of services.

Kirsh says she typically ends client relationships orally — either face-to-face or on the phone — and then confirms it in writing, “because you don’t want it to be misconstrued.” It is crucial to let the client know that you have ceased working on their file, and, assuming the case is active, that a new lawyer must be enlisted to complete it.

“You have to really be sure the client realizes that you’re not doing this work anymore, and they’d better go get another lawyer because they have a court date in three weeks, or they have to get ready for discovery or the next step,” Kirsh said.

While severing ties with clients is sometimes necessary, there are a number of steps lawyers can take to prevent the degeneration of a relationship and to keep things amicable.

First and foremost, lawyers say, is good communication. Clients are

more comfortable when they feel their lawyer is paying consistent attention to their file, particularly in cases that take years to grind through the system.

"You've got to return the calls and e-mails...You have to let them know, yes, you're still on the file," Wang said.

Kirsh keeps a list of all her client files and goes through it every couple of weeks, making phone calls to provide case updates even if nothing major has developed. Sometimes months can go by without anything happening in the case, she acknowledged, "but it really helps to just call a client" to remind them what's next in the process and ensure they know their matter has not been forgotten.

Vijaya stressed the importance of treating clients with dignity and respect, noting he always lays out a "game plan" at the start of a client relationship, reviewing the potential outcomes of the case so there are no surprises later. Any good lawyer-client relationship is based on trust, he noted, and lawyers must earn that trust by fighting aggressively on the client's behalf.

When trust fails to take root in the early stages of a relationship, Vijaya added, "that initial bad start and related negative perceptions are very difficult to repair in the future."

Matching the right lawyer to the right case is also key to building successful relationships, Feldstein says. Different lawyers may take different approaches to the same case, and it takes time and experience to understand the nuances of appropriate pairings.

"We take into account things like the complexity of the case and the personality of the client when matching a client with one of our lawyers...Prior to retaining us, we get a pretty good idea of client attitudes and personality, and which of our lawyers would be suitable," he said. "Handling this stage carefully means fewer problems later."

Should a problem arise, it may be fixed by simply switching the client to another lawyer within the firm, Feldstein added.

But lawyers must also understand that sometimes, a relationship simply cannot be sustained.

"Some people will never be happy," Wang noted. "That's not within our control."

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