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Ready, Aim, Fire...or Maybe Not: The Ordeal of Terminating a Client



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It's fairly easy for clients to fire their attorney. Some clients might issue an overt announcement like "you're fired!" Others might just make a polite statement that sounds more like a request such as, "Would you please give me my file so I can find another lawyer?" On the other hand, it's not always easy for lawyers to fire their clients. For many lawyers, terminating a client is a big ordeal that involves ruminating over many factors and then eventually delaying the actual firing. Issues such as the lawyer's ethical obligations toward that client, how and when to fire, or the client's response to being fired — including possible retaliatory action — are all worthy of consideration. While firing a client is not pleasant, it's sometimes a necessary risk management step that can preserve the lawyer's well-being and ultimate practice success.

Why fire clients

Certain types of clients make it challenging for lawyers to do their job and enjoy the practice of law. If not properly dealt with, these clients can become a malpractice risk. They may be more likely to blame the lawyer for a bad result in their matter, or they may not even be satisfied with the desired outcome stated at the outset. They may be more likely to find fault and nitpick any course of action that the lawyer takes and use that as a basis to file a malpractice claim against the lawyer. At some point, the lawyer needs to cut his or her losses and terminate those types of clients.

Let's examine some types of clients that lawyers normally fire: (1) difficult clients; (2) lying clients; (3) involuntary "pro bono" clients; and (4) clients whose cases missed initial screening for red flags.

Difficult clients

Difficult clients are hard to work with because they can be combative, angry, hostile, or unpredictable. They mistreat you or your staff, demand a lot from you, but are not responsive to you. These clients are uncooperative and regularly miss or show up late to appointments. They also have unrealistic expectations that cannot be changed or managed. Clients who want to be the "lawyer" can also be difficult to work with. They second-guess your professional judgment and don't listen to your advice because they think they know better than you.

It's best to screen out these types of clients during the initial intake process. Sometimes, difficult clients are tricky to screen out because they may appear easy-going, sweet, and cooperative at the beginning. When those clients start to reveal their difficult side, try to work with them and explain how their behavior is harming the attorney-client relationship and perhaps their own matter. If that doesn't work, and they continue to make your practice or life miserable, it's time to consider firing them.

Lying clients

Clients who outright lie to you or only disclose certain facts while withholding pertinent information can impede your ability to competently or diligently represent them. It's exhausting to confront those clients, and if you don't, a sense of unease tugs at you. The most frustrating part is that you may not know the client has been lying to you until pivotal moments like in a deposition, at a dispositive hearing, or at trial. It's important to recognize red flags that clients may not be telling the truth. Look for inconsistencies in what they tell you, lack of details or vagueness when asked about factual events, and even anger or hostility when pressed for information. Keeping clients whom you know are liars is a high risk for you and your practice.

Involuntary "pro bono" clients

When clients stop paying their bills or pay only a portion of their bill — sometimes late — and you still provide them with legal services, you've made those clients your involuntary "pro bono" clients. These clients also tend to question every charge in your billing statement and make a big issue out of it

to try to get you to discount the charge or write it off completely. The reasons for nonpayment are myriad. Some clients just don't have the money. Others don't want to pay if they feel their matter is not going well or won't be resolved in their favor. A few may feel they are entitled to free services. Whatever the situation, be intentional about who you want to help and at what rate. If you're representing a client with the expectation of being paid, explain your billing procedures to them and enforce the rules for nonpayment in your fee agreement.

While nonpayment by a client is not a malpractice risk per se, a deteriorating attorney-client relationship can become an issue later on. These clients start to form the expectation that you will continue to work for them whether or not they pay you. They can resort to anger, a plea for pity, or a sob story to manipulate you into doing legal work for them, and then retaliate when you try to collect on your fees. If a client still owes you money and you've given that person plenty of chances to pay, there is little to no reason for you to continue representing them for free.

Clients whose cases missed initial screening for red flags

Even when clients are honest, nice, and pay on time, lawyers might overlook or ignore certain red flags about the case at the screening or intake level. It could be that the case falls outside the type of cases the lawyer normally accepts. Or the lawyer disregards their lack of requisite skill and knowledge to take on the case. Or the lawyer underestimates or dismisses the time and resources necessary to be thorough and prepared for the case. Or the issues in the case have grown more complex over time, and the lawyer is just at a loss and now in over their head.

It's hard to concede that another lawyer may be more suitable than you to help the client. But keeping a case that is inappropriate for you will only expose you to both malpractice and ethical issues if you cannot competently or diligently represent the client.

How and when to fire clients

Before firing a client, review [Oregon Rule of Professional Conduct \(ORPC\) 1.16\(b\)](#), which specifies the permissible grounds for withdrawal. Specifically, a lawyer may withdraw from the representation if:

1. Withdrawal can be accomplished without material adverse effect on the interests of the client. ORPC 1.16(b)(1).
2. The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent. ORPC 1.16(b)(2).
3. The client has used the lawyer's services to perpetrate a crime or fraud. ORPC 1.16(b)(3).
4. The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement. ORPC 1.16(b)(4).
5. The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. ORPC 1.16(b)(5)
6. The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. ORPC 1.16(b)(6)
7. Other good cause for withdrawal exists. ORPC 1.16(b)(7).

Most of these grounds will allow you to withdraw from representing the types of clients described above. Follow the steps in ORPC 1.16(c) and (d) to withdraw properly. You're required to: (1) obtain the court's permission to withdraw, if necessary; (2) give reasonable notice to the client; (3) allow them time to hire another lawyer; (4) surrender papers and property to which the client is entitled; (5) refund any advance payment of fee or expense that has not been earned or incurred; and (6) take other steps to the extent reasonably practicable to protect the client's interest.

The timing of termination is crucial to your ability to withdraw. If you wait until a week before a hearing or trial to fire a client, it's going to be hard to successfully argue that your withdrawal won't harm the client when they only have a few days to find another lawyer.

If you're going to fire a client, do it sooner rather than later — ideally, declining a problem client at the outset. Heed the bad feelings in your gut about taking on that client or the uneasiness you feel when interacting with them. Give the client a chance to prove you wrong by sitting down with them and explaining your concern. If nothing changes, then take swift action. Don't linger. Postponing the decision will only make it more difficult to withdraw as you approach deadlines, major events, and milestones in the case. Timely termination will protect not only the client's interest but also your own in the long run.

Practice tip: document, document, document

Your termination of the client should not happen in a vacuum. You need to document your communication and interactions that establish a basis for the firing. Documentation will help protect you if the client files an ethics complaint or malpractice claim against you as a result of the termination. Documentation can be as simple as writing a memo to the file or adding a note to the case in your practice management software program. You can memorialize a conversation or event in writing and promptly send it to the client. You can also document by taking contemporaneous notes during an interaction or conversation with the client.

If your client is unresponsive, write down the dates and times you tried to reach them, and make a note of any voicemails you left or text messages you

sent. In addition to documenting your conversations (phone calls, meetings, etc.) with clients, specifically document the client's instructions and your advice by following up with a letter or an email to the client.

More tips on how to properly document your file are available [here](#).