

AVOIDING CLAIMS FOR LEGAL MALPRACTICE: SETTING REALISTIC EXPECTATIONS

by David Lefkowitz

Preparing quality documents, meeting deadlines and understanding the law are obvious ways to avoid malpractice claims. In certain areas of law, however, it is inevitable that a client will be disappointed from time-to-time. This is particularly true in cases in which there is a trial: one party is going to lose. In addition, legal matters such as divorce and criminal cases are rife with emotion and disappointment, sometimes misdirected at the attorney. It is important that the client understand the difference between losing and substandard representation. This potential for confusion on the part of the client should be addressed from the beginning of an attorney-client relationship through its conclusion.

One important way for an attorney to avoid having a disappointed client (and thus one who might pursue a legal malpractice claim) is to set realistic expectations. Many clients will have some expectations upon entering the attorney-client relationship. However, most clients form their expectations regarding the outcome of a legal matter based on conversations with their lawyer. An attorney should avoid the temptation to set unreasonably high expectations during the initial interview process (when the lawyer knows that the prospective client may be

choosing between several attorneys). Of course, you should never give the client the idea that you are guaranteeing a successful result.

An attorney who has had no experience with legal malpractice might be surprised to learn that many clients who call the State Bar for a consultation with regard to a prospective legal malpractice claim think that their attorney was “paid off” by the opposing attorney or party. Why would a client feel like he has been “sold out?” This feeling is often caused by the failure of the attorney to meet the expectations he has helped set. If you tell your client (or prospective client) that his claim is worth \$100,000, and it ultimately settles for \$5,000, you have some explaining to do. However, if you keep the client informed as to the status of the matter you are handling, and you promptly let the client know of any important developments, you can continue to manage the expectations of your client throughout the representation. By doing so, the chances of surprise and bitter disappointment are reduced.

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