

SALES AND SERVICE

A Good Lawyer Must Excel At Both Skills

Column: David Lefkowitz

How does a lawyer invite a client to sue him? One effective way is by dramatically changing his attitude during the course of the representation. Let's be honest; lots of service providers are fantastic when it comes to sales, and not-quite-so-fantastic when it comes to service. There is a constant need to bring in new clients and new revenues. This is true of lawyers, accountants, roofers and all others who are responsible for developing new business and the related revenues. However, the great sales pitch can occasionally digress into the not-so-great performance of the work. For lawyers, the penalty for poor work can be severe: lost business, a malpractice lawsuit, and/or an ethics complaint. For clients, poor work can result in disappointment, despair or significant financial loss.

It may seem paradoxical, but many lawsuits against lawyers do not arise from legal errors. In other words, most lawyers know the law. For instance, they know the deadline they must meet in order to satisfy the requirements of the court, and they know how to check the title of a piece of real estate. Most claims against lawyers actually arise from the failure to keep track of the deadlines, or the lawyer's failure to properly complete a task he knows perfectly well how to perform. But beyond the failure to perform the work properly, there is, in my view, an even more prevalent reason

why clients consider suing their lawyer: poor customer service.

There are three basic categories to customer service for lawyers: Impressions, Expectations and Communication. These are separate and apart from the technical expertise that each lawyer should possess and exercise. A good lawyer will excel at each of these service-related skills.

IMPRESSIONS created by an attorney are extremely important. Legal malpractice actions are not filed for every error or every negligent act. Developing a rapport with a client may not prevent malpractice, but it can assist in preventing malpractice claims. A lawyer must behave like he actually gives a hoot about the client's interests, not just his money. If a client values the attorney-client relationship, and feels like the lawyer does as well, it might outweigh the perceived value of a malpractice claim.

A lawyer should always avoid the impression that he is being neglectful. Georgia ethical rules require that an attorney keep a client reasonably informed about a matter. This is a minimum threshold, and in emotional cases, such as those involving divorce or injury issues, additional communication is helpful. An attorney should provide the client with the impression that the legal matter is being given the attention that it requires. A client should feel that the attorney possesses (and exhibits) a certain urgency regarding the legal matter and, if the representation calls for it, a reasonable level of empathy for the client. Ensuring

that the client knows that the attorney feels the case is important is best handled through quality communication.

COMMUNICATION between an attorney and a client can take many forms, including effective billing (in which the work performed is itemized), phone calls to the client, letters and emails to the client, and sending copies of pleadings and other important papers to the client. It is not possible to overstate the importance of effective communication between a client and his lawyer. Clients' phone calls should be returned promptly. If the primary attorney handling the file cannot return the call, then another attorney at the firm, a legal assistant or a legal secretary should return the call. When clients feel that they are being treated as unimportant, it is inevitable that they will feel that their case is not being handled zealously. A less than favorable conclusion to the case may be blamed on this perceived lack of attention.

EXPECTATIONS are easily met if they are set by the lawyer and are reasonable. 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 ini-

tial interview process, when the lawyer is in “sales mode” because he knows that the prospective client may be choosing between several attorneys.

Preparing quality documents, meeting deadlines and understanding the law are obvious ways for a lawyer 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 negligent representation. If an attorney does not address this potential for confusion from the beginning of an attorney-client relationship through its conclusion, then the attorney is putting himself in jeopardy.

A client also shares some responsibility when it comes to expectations. If your lawyer says that you have an eighty percent chance of winning, you cannot simply assume you will win. You should realize that with an eighty percent chance of success, comes a twenty percent chance of losing. Clients should also be aware that a lawyer is never allowed to guarantee a successful result. If you hear a lawyer do that, the next thing you should hear are alarm bells.

I receive lots of calls from people who are calling to consult regarding a potential legal malpractice claim. I am constantly surprised that many clients think their attorney was “paid off” by the opposing attorney or party. This virtually never happens. 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 to set. If an attorney tells a client (or prospective client) that his claim is worth \$100,000, and it ultimately settles for \$5,000, the attorney has some explaining to do. However, if the attorney keeps the client informed as to the status of the matter he is handling, and he promptly lets the client know of any important developments, he can continue to manage the expectations of the client throughout the representation. By doing so, the chances of surprise and bitter disappointment are reduced, and so are the odds that a malpractice claim will be filed. □



David Lefkowitz is the founder of The Lefkowitz Firm, LLC, which has offices in Atlanta and Athens. The Lefkowitz Firm, LLC, represents individuals and corporations in their claims for legal malpractice (legal negligence) and similar claims such as breach of fiduciary duty, trustee misconduct, executor misconduct, and ethical misconduct by attorneys and other fiduciaries. The firm also represents attorneys with regard to law firm management issues, including conflicts and bar discipline matters. Mr. Lefkowitz frequently is an invited speaker at continuing legal education seminars on the topics of legal malpractice, ethics and professionalism. For more information, visit the firm's website at LefkowitzFirm.com.

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