



Alta Pro Insurance Services

**Four “Ds” of Client Relations:
*Dabbling, Documentation, Difficult Clients, Don’t Do It!***

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Presenter

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1. The Dangers of Dabbling

All lawyers have their comfort zones. Dabbling in an unfamiliar area increases the odds of a mistake, which can lead to a malpractice claim or bar grievance. The ethics rules permit you to take on a novel matter as long as you take appropriate steps to become competent.

ETHICS ALERT: ABA Model Rules of Professional Conduct 1.1, Competence. *A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

Dabbling Can Spell Disaster

Lawyers must have a baseline of competence before accepting a case. Some have practice niches that serve a specific clientele. Others become certified as specialists. Even those with general practices have expertise in some areas, but not others.

Know your limits. Problems arise when you stray from your sweet spot and dabble.

1. **Be candid and transparent.** Stay in your comfort zone practice areas.
2. **Associate co-counsel.** You don’t necessarily have to decline the case or refer the client elsewhere. You can bring in an experienced attorney or consultant to help. A retired lawyer may be perfect. Make sure the client agrees to the arrangement, including how case responsibilities and fees will be divided. Get their consent in writing. Follow relevant ethics rules.
3. **Add an experienced lawyer to your firm.** If you’ve been thinking about expanding your practice into this area, recruit a lawyer who can bring expertise from day one.
4. **Don’t accept a case to accommodate a friend or relative.** You’re doing nobody a favor by stepping into uncharted territory.

5. **Don't let your inexperience hurt your client.** Opposing counsel will know your reputation and background. They may try to leverage your lack of experience in settling or resolving the matter. It's one thing to handle a slip and fall with minimal injuries; it's another thing to litigate a complicated products liability or wrongful death case.
6. **Withdraw if necessary.** If you find yourself in over your head, withdrawing from representation might be required. Don't do anything to prejudice the client. Get court permission when required.

The Bottom Line: Avoid malpractice minefields by sticking to what you know and are good at.

2. Documenting Your Work

A well-documented case file provides a clear picture of the work you've done for a client. This can be invaluable in defending a bar grievance or malpractice claim. But documentation does more than just protect you. It expedites the case, facilitates teamwork and saves time and money.

ETHICS ALERT: ABA Model Rule of Professional Conduct 1.4, Communication. *A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information.*

Put it in Writing

There is a good reason airline pilots maintain flight checklists. It keeps them on track and minimizes the risk that routine tasks will be overlooked. And if something does go wrong, it provides a contemporaneous record of what happened and why.

Attorneys who make documentation a priority have safer practices and happier clients.

1. **More than CYA.** Documentation can help rebut an allegation that you made a mistake or did substandard work – but it does much more than that. A good paper trail lets team members open the file and quickly get up to speed. It eases transitions to successor counsel. It aids in insurance audits and internal reviews. And it frees you from having to rely on your memory alone.
2. **Start early.** Begin building your file at the initial interview. The first documents should be a completed intake form and a signed engagement letter. You should also document the scope of the representation, the client's instructions and the desired outcome, if these aren't covered in the letter. Confirm that you've screened for conflicts of interest.
3. **Prepare status reports.** Document your progress. Write file notes explaining setbacks and unexpected obstacles. If your scope of representation changes, prepare a new engagement agreement or append a memo – signed by the client – to the existing agreement.
4. **Keep an Activity Log.** Do this even in cases where you don't bill by the hour. A detailed log shows what you did for your client and how long it took. This could help support a fee request or defend a complaint.

5. **Document your settlement authority and other instructions.** Clients who sue for malpractice often allege they weren't consulted, didn't give authority or were coerced into a decision. Avoid these scenarios by sending confirmatory letters and documenting your file.
6. **Go paperless.** If you use digital documentation, make sure all documents are accessible and printable. Maintain hard copies of documents that have legal significance.
7. **Send the client a letter documenting the outcome.** Explain how and when the resolution was reached and what it means for the client. Include copies of orders and dispositive documents. Follow-up as needed.
8. **Use discretion.** Don't use your file to vent or make inappropriate statements. Assume the client, successor counsel, or a jury will read it someday.

The Bottom Line: A documented file will benefit you, your firm and your client.

3. Dealing with Difficult Clients

The best way to deal with a difficult client is by not taking their case in the first place. Although new business is the lifeblood of your practice, it's important to know what clients to accept. Making the right choice will improve your bottom line and peace of mind. Making the wrong choice could lead to a malpractice claim or ethics complaint.

ETHICS ALERT: ABA Model Rule of Professional Conduct 1.2, Scope of Authority and Allocation of Authority Between Client and Lawyer. *A lawyer shall abide by a client's decisions concerning the objectives of representation and ... shall consult with the client as to the means by which they are to be pursued.*

Finding the Right Fit

You can't be all things to all clients. Not every prospect is a good match for your practice. Know your strengths and play to them. Know your weaknesses and minimize them.

1. **The best time to say no is before they become a client.** It's not easy to turn down work. But you will be doing yourself – and your malpractice carrier – a favor by screening prospects before taking them on as clients.
2. **Screen all prospects.** The initial interview should cover the client's background, the facts of the case, and the parties and witnesses involved. Gathering this information is necessary to evaluate the matter and check for conflicts of interest. The interview should also explore the client's objectives. Are they realistic? Can you ethically meet them?
3. **Recognize the warning signs of difficult clients.** Here are some red flags: they were previously represented by other lawyers who didn't work out. Their expectations are unreasonable. Their objectives are offensive. They can't pay you. They are angry and out for revenge. They think their case is a slam dunk. They don't listen to you. The thought of having to work with them for the next year gives you a sinking feeling. They say, "It's not about the money," or they say, "It's all about the money." They complain about your fee right off the bat. They are a month late paying their first bill.

4. **Use intake forms and checklists.** This will ensure that important questions are not overlooked and vital information isn't lost.
5. **Communicate clearly, promptly and consistently.** This will prevent misunderstandings from ballooning into major problems. Know when and how to tell clients hard truths. They may not want to hear it, but you have a duty to tell them anyway.
6. **Be a counselor.** It's easy to reflexively say yes to a client's wishes and instructions – especially if they're a paying client with a good case. But your job is to give independent, professional counsel, not to be an enabler.
7. **Show empathy.** Clients come to you on the worst days of their lives. Show up for them. Practice active listening. Try to see things from their perspective.
8. **Bring in experts.** Some clients need more than just legal advice. They might need mental health counseling, medical treatment, or rehabilitation. Trying to get them the help they need will make your job easier.
9. **Put the client's interests first.** Create a client-centered law practice.
10. **Use engagement, nonengagement and disengagement letters.** These letters clarify what you have agreed to do (or not do), confirm the key aspects of representation like fees, billing and scope of engagement, and explain the circumstances under which you can withdraw from representation.
11. **Avoid fee disputes.** Your professional liability policy may not cover fee disputes. If you have a falling out with your client over money, you will have to deal with it on your own.

The Bottom Line: Selecting the right clients and practicing good client care will eliminate many problems.

4. Don't Do It!

Some clients and case matters are not right for your practice. Some actions a client (or someone else) might want you to take in a case are unwise, unethical or even illegal. Some words are better left unspoken, some deeds left undone.

The key point: "Don't do it!"

ETHICS ALERT: ABA Model Rule of Professional Conduct 8.4, Misconduct. *It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice; (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to*

accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

Here are a few other important “Don’ts:”

- Don’t be a jerk or bully.
- Don’t do something that doesn’t feel right inside.
- Don’t click on suspicious email messages and links.
- Don’t talk about legal matters outside the office.
- Don’t compromise client data.
- Don’t practice in a silo.
- Don’t neglect wellness and self-care.
- Don’t go without professional liability coverage.
- **What “don’ts” would you add to the list?**

The Bottom Line: Saying yes may be gratifying, but sometimes saying no is more important.

ABOUT JAMES BELL

James is an Indiana lawyer who practices in the areas of criminal defense and attorney discipline defense. He also defends judges in ethics inquiries, attorneys in civil cases and provides ethics advice to attorneys. Mr. Bell was the 2018 President of the Indianapolis Bar Association (“IndyBar”) and has served as Chair of the Indiana State Bar Association’s Legal Ethics Committee. He is a former state court major felony and federal public defender. He taught professional responsibility as an adjunct professor at the Indiana University Robert H. McKinney School of Law and he is a regular contributor to “The Indiana Lawyer” and “Res Gestae” where he writes about attorney ethics.

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