



When business deals go bad, clients inevitably want someone to blame. Unfortunately, it's often the lawyer – the one with the “deep pocket” in the form of a professional liability policy. While it's not possible to prevent a malpractice or ethics claim from ever being asserted, adhering to the following tips can at least minimize the risk.

**TIP #1: Maintain a Conflicts-of-Interest Database – and use it!**

Reliance on memory alone is not a reliable or advisable strategy for determining whether a conflict exists. Regular use and proper maintenance of a good conflicts-checking system is imperative to avoiding malpractice and ethics claims based on conflict allegations. The conflicts-of-interest database should be regularly updated and searched every time a new client comes in to the office. When new parties are brought in to a matter, the database should be checked again.

**TIP #2: Identify the Client and Memorialize the Scope of Representation**

Many malpractice claims stem from a lawyer's failure to clearly identify his or her client when handling a matter involving multiple parties, such as setting up a small business. Attorneys must be clear who they represent and adequately identify and memorialize the scope of that representation in writing, either in a letter or retainer agreement.

**TIP #3: Don't Represent Multiple Parties**

It's far too easy to say “yes” when a longtime client and his children walk in to a lawyer's office and ask the

lawyer to prepare documents to transfer the family business to the kids, or draft the paperwork necessary to effectuate a real estate transaction from the father to the son. But if the deal goes bad, or the parties have a falling out, they are bound to come back at the lawyer claiming a conflict of interest in representing all of the parties to the transaction. The best and safest course of action is to insist that each of the parties obtain separate counsel.

**TIP #4: Avoid Entering into Business Contracts with Clients**

Rule 1.8 of the Model Rules of Professional Conduct gives fair warning to attorneys that getting involved with clients in any capacity other than legal advisor is dangerous. That includes activities such as investing a client's business, accepting stock in lieu of fees or making loans to clients. If the transaction goes bad, rest assured the lawyer's involvement in the deal will be carefully scrutinized, and the lawyer may end up facing an ethics or malpractice claim by the client. Thus, lawyers who dare to enter into business deals with clients are advised to follow the letter of the rule carefully.

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