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Effective Screening and Onboarding of New Appellate Clients

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I. Introduction

Many attorneys and their firms are laser focused upon bringing in new clients and retaining new clients as continuing clients. That makes perfect sense. Clients, and the potential revenue streams that they bring to our appellate practices are the lifeblood of paying firm or office overhead, and earning profit with which we take care of our financial needs and wants, and those of our loved ones. However, bringing in just one “wrong” client can wreak havoc and devastation on a law practice or even cause the dissolution of a law firm. It has happened many times in the past to many different lawyers and firms.

What is a “wrong” client? It is one who is single-mindedly determined to benefit from engaging your services whether you obtain a favorable appellate result or not. If you obtain a favorable result for the client, that is a win for the client. If you do not obtain a favorable result for the client, the “wrong” client may attempt to turn the loss into a win through a combination of one or more grievances against you, allegations of legal malpractice, fraud, breaches of fiduciary duty, possibly criminal acts or omissions, and the like. Even if none of the foregoing is successful, in today’s digital era of specialized online legal publications, social media, and the like, news of serious and damaging allegations can make their way around a local or even national legal community with lightning speed. Even one allegation of improper conduct can cause potential loss of future, or even existing client representations. Compounding the problem is that the internet is forever. Once negative allegations against a lawyer or law firm are published in digital format, they are available until the end of time. And what’s worse, the “wrong” client knows this as part of his, her, or its strategy.

Effective onboarding of new appellate clients means a lot more than simply determining whether the retainer check will clear and whether the case and client pass a conflicts check. It requires the use of every bit as much forethought, skill, judgment, finesse, and experience as actually representing that appellate client in the first place.

This paper is designed to provide insights into “best practices” to help appellate attorneys and firms to carefully and thoughtfully vet their prospective appellate clients. It will not prevent your firm from being entangled with a “wrong” client. But it will limit the chances that will happen, and if it does, the damage that can result.

II. The New Client Interview. Your First and Best Opportunity to Avoid the “Wrong” Client.

People regularly bemoan e-mail communications because they lack tone of voice, body language, and eye contact. Each of these three things is integral to a fuller understanding of the words that appear on the digital page. The absence of them creates room for doubt and misunderstanding with respect to the message or messages being conveyed by the actual words used in the e-mail.

The same is all true of onboarding of new appellate clients. There is no doubt that as appellate lawyers, we are all very busy. However, using “busy” as an excuse or rationalization for turfing new client interviews to an administrative assistant, a legal assistant, a summer associate, a less experienced associate attorney, or worse, to a client solely filling out an online new client questionnaire, means that we lose the ability to observe that potential new client and form our own judgments. While verbal information (whether written or spoken) is useful, our physical observations of a new client could provide valuable non-verbal cues that provide a gut feeling that “something just isn’t right.” It could be a last best chance for us or our law firm (or both) to avoid a severely damaging entanglement with a prospective client who is willing to sacrifice honesty to accomplish “winning” (in whatever form that takes) to honesty.

The following onboarding checklist is by way of example only. There may be additional issues that you or your firm will want to include based upon the particular nature of your practice, your acceptable fee structure, the types of clients you represent, and the types of representations you and your firm are willing (and not willing) to undertake. It is a hybrid of a new client screening checklist published by the State Bar of Michigan, Swiss Re Corporate Solutions, and additions and modifications to the foregoing by me based upon specific issues that impact Texas attorneys. Not all of the suggested matters will be applicable to every potential new appellate client. However, this checklist is a good starting point for your firm to create its own checklist based upon your particular type of appellate practice.

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