

CHOOSE YOUR LITIGATION CLIENTS CAREFULLY

Choosing the right client for you and your firm is never more important than in the litigation context.

Litigation is stressful, costly and often confusing for any client, so making sure you are cautious when choosing to act for a client in a litigation matter is good risk management. There are often telltale signs at the start that the client may not be the right client for you. The story that follows highlights some of those signs and what can happen if you ignore them.

The husband and wife clients in this story may sound familiar to you. They had had a dispute with their builder, apparently triggered by continual variations to the contract and being constantly on-site. The builder eventually issued a suspension notice and the clients sought legal advice.

The practitioner met with the clients twice and advised them on the legal implications of suspension orders and the risks of not paying outstanding amounts and terminating the contract. When he then issued a bill the clients immediately asked for a discount saying the amount was too much. To avoid an argument, he did give them a discount and continued to assist them. The clients refused to take his advice and said they would not “give in to [the builder’s] blackmail” and decided to terminate the building contract.

The builder issued proceedings in VCAT for payment of outstanding bills and the clients claimed damages for breach of contract. It eventuated that the clients wanted to do much of the work themselves to minimise costs. The husband agreed to organise his documents for discovery and deal with the building experts. After an unsuccessful mediation with the builder the clients decided they could not afford the solicitor anymore and terminated the law firm’s retainer. After six months the clients re-engaged the law firm to continue with proceedings and the trial was held four months later.

The clients lost at trial and were ordered to pay the builder \$94,000 plus costs. They made complaints to the Victorian Legal Services Commissioner about the law firm and barrister. They alleged:

- the advice to terminate the contract was wrong
- discovery was inadequately performed
- witnesses were not called, including their current builder
- the crucial expert witness was not notified in a timely manner and was overseas at the time of the hearing resulting in an adjournment that cost the clients money
- tribunal books were not properly prepared
- no or inadequate advice was given about the merits of the case or the cost consequences of rejecting offers.

The clients said they would do things in order to save legal costs and then failed to complete them. The husband client said he would do his own witness statement and had been given direction as to what it should contain, then later complained that he was being pressured to write his own witness statement. He had suggested calling evidence from his current builder and cabinet maker but failed to provide summaries of what evidence they could give. Objectively, neither person was a necessary witness.

The clients refused to pay the builder anything. The evidence on the file however, suggested that the practitioner and the barrister were not forceful enough in explaining to the clients the merits of the case and the cost consequences of not accepting the offers that were made.

All indications are that these clients were cost-conscious and motivated by principle and moral outrage. This was very clear in the first two meetings the practitioner had with them. At that point the practitioner should have considered whether these were really the right clients for him and his firm.

There may be times when the early signs indicate that a client may have motivations and character traits that severely affect their ability to take advice. If you get that sense you should not act for them. Not every client is a good client for you or your firm. They, and you, will be better off working with someone who suits their personality and who they are more likely to listen to.

Choosing the right client is essential risk management, particularly in litigation where you need cooperation from clients to meet deadlines and clients need to listen to and have confidence in your advice at crucial stages along the way. ■

This column is provided by the **Legal Practitioners’ Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.

TIPS

- Use the LPLC’s engagement decision tool (<https://tinyurl.com/rcvps9>).
- Consider if each client is the right fit for you and your firm.
- Will the client listen to you?
- Will the client do what they say they will do?

