

## ***5 Inexcusable Mistakes Personal Injury Lawyers Make***

Recently, Woodland Hills personal injury attorney Barry P. Goldberg took over a client's file which was languishing and mishandled by previous counsel. The client complained to her medical care provider that she was unable to effectively communicate with her lawyer and she could not explain why the medical care provider had not been paid on a relatively straight forward rear end accident case which was almost 18 months old. That medical care provider referred the client to personal injury attorney Barry P. Goldberg to find out what was going on with her case.

After meeting with the client, and eventually viewing the client's actual original file, it became clear that her former counsel committed at least 5 *Inexcusable Mistakes* that are easily avoidable and would have prevented the client from being upset and looking elsewhere for legal representation.

***Inexcusable Mistake Number One: The Lawyer never personally met with his client.***

It did not take long to discover the first inexcusable mistake. At the first meeting, it became clear that the client never met her lawyer and never even spoke to him! She was signed up by a so-called investigator and no personal relationship was ever established with the client. I always personally meet with my clients because there is simply no substitute for hearing about the client's case directly from the client. This initial meeting creates loyalty and, more importantly, sets out the guidelines and expectations for the client. The former lawyer's failure to actually meet his client led to more mistakes which alienated the client.

***Inexcusable Mistake Number Two: The former lawyer failed to take or promptly return the client's phone calls.***

The former lawyer and his law firm were guilty of the number one complaint about lawyers---they do not take or return phone calls. For most personal injury clients it is a daunting endeavor to call a law firm. My experience is that clients call lawyers when they have important unanswered questions or fears that have built up over a course of time. The very least a lawyer can do is have prompt and meaningful communications with his client. This former lawyer never---ever---spoke to the client over the phone even after numerous repeated phone calls by the client.

In our office, I try to personally take every phone call when it is made if at all possible. If not, I try to return it that same day and in no event later than 24 hours. This policy has several benefits. Not only does the client feel important, but it alleviates later misunderstandings. In fact, I believe that clients actually call less if the attorney immediately returns the phone call. As unanswered messages linger, the case and the client can become "problem files" just as it did in this case.

***Inexcusable Mistake Number Three: The former Law Office lied to the client and her medical care provider.***

I can't believe that I have to even address this issue! Never lie to a client or her representative. In the first meeting with the client and the initial discussion with the medical care provider, I learned that the former law firm staff stated that the medical specials and demand package had been served on the insurer and that the case was in the process, back and forth, of being negotiated for settlement. Receipt of the original file revealed that the former law firm staff had lied--- neither the medical specials nor the demand package had been served despite the insurer practically begging for same for months. Moreover, no settlement discussion had taken place.

It is best practice to tell the truth to the client even if it reflects a mistake or mis-calendaring of a matter. Lawyers may be surprised---clients are forgiving in

most instances if you admit fault and promptly remedy the problem. The truth not only builds trust and understanding with a client, but it usually prompts the desired action to take place in the near future. A client that is lied to will never hire that attorney again and will never refer another matter to him.

***Inexcusable Mistake Number Four: The Lawyer neither signed the Retainer Agreement nor gave the client a copy of the Agreement.***

Receipt of the original file revealed numerous law practice management deficiencies. The most obvious and glaring mistake is that the attorney never signed the Contingency Fee Contract and failed to provide a copy of the contract to the client in violation of Business & Professions Code section 6147. *The client is entitled to a copy of the Contingency Fee Contract signed by both the lawyer and client at the time the contract is entered into.* Such a contract if binding at all is at least voidable by the client.

The Contingency Fee Contract was deficient in other ways; including there was no statement that if there was no recovery, there would be no fee. In addition, the Contract completely failed to include the required statement that the amount of the contingency is not set by law, but negotiable. Ironically, the contract set forth in long hand the client's responsibility to communicate regularly with the lawyer.

It is our practice to provide the client with all documents him or her signs at the time that they are signed. Our Contingency Contract complies with the law. A look at the former lawyer's website demonstrates that he specializes in Bankruptcy Law---and also handles personal injury matters.

***Inexcusable Mistake Number Five: The former lawyer sent form correspondence without reading it or modifying it.***

Review of the entire original file revealed that one---and only one---letter was actually signed by the named lawyer. That was a letter to this office wherein that lawyer asserted an attorney fee lien and demanded that his lien be protected and his name be included on any settlement check. Unfortunately, the letter referenced a completely different case, client, matter and date of loss. No

mention of the correct client was ever made in the letter. This is a classic example of the failure of the lawyer to proofread his form letter and to even have a passing familiarity with this particular case and client. If letters like this are sent to insurance adjusters or opposing counsel, it will reflect poorly on the client's representation and could affect the outcome of the case.

By avoiding these simple Inexcusable Mistakes, a lawyer can avoid an upset client and avoid losing a reasonable fee.