

## THE FILE YOU ARE THINKING ABOUT RIGHT NOW

*You may want to think about working at less than 100 percent of your capacity so that you will be able to take on better-quality cases when they present themselves.*

*What to do about that file languishing on your desk*

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**By Daniel C. Crane ©2010**

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Every lawyer has a file that he lies awake thinking about at 3 a.m. It's the one sitting on the corner of your desk or on the windowsill, or buried on the floor of your office. You may not have looked at it for awhile, but you certainly have thought about it and pray your client doesn't call for a progress report anytime soon.

(If you currently don't have one of those files, you have at one time.)

How did you acquire this nightmare and how do you avoid future ones? Chances are you got caught in one or more of the following traps:

- **You did not stick with what you know.**

You may know a lot about criminal law, domestic relations or other fields, but if you have never done any intellectual property or immigration work, it is probably not a good idea to take the case. It will take too much time for you to learn at the client's expense, and you still may not get it right. The amount of time it is taking you to get up to speed is one of the reasons the file is in that corner.

If you want to learn about the area, associate with a lawyer who knows it well already, or, with the client's permission, refer the matter to an attorney with expertise in

the field. Just make sure to arrange for the more knowledgeable lawyer to let you do enough to learn something about the new area along the way.

- **You thought you could do what other lawyers could not.**

When the prospective client complains to you about the two preceding lawyers who did not understand him or his case, you should know that you are likely next when the client is unhappy with you. This is especially likely if you know the previous lawyers to have a reputation for good service. How are you going to do better when others failed? How are you ever going to meet the client's expectations?

- **You did not get enough information before you accepted the case.**

You accepted a matter from a new client without doing any preliminary investigation or conducting an adequate client intake interview. After you filed your appearance, you obtained information that was readily available and would have prompted you to decline the case or require a much different fee arrangement.

You should refrain from agreeing to represent any client until you have conducted an adequate intake interview, preferably in your office, and have done some preliminary investigation of the accuracy of what the client is telling you about the status of the matter. This should always include a conflicts check.

- **You were too busy to handle the case.**

The client's matter appeared to be an attractive opportunity for you and it would have been if you were not too busy already. Instead of declining and letting the prospective client find other counsel who could give the matter the attention it warranted, you took the case. It is now languishing on the corner of your desk. You go into the office intending to do something about it, but something else always comes up.

It may seem counter-intuitive, but you are better off graciously declining a new case, explaining to the prospective client that you are too busy, and suggesting the names of some other lawyers who might be appropriate. The prospect often will come back to you with a more attractive matter within a few months because he respects you for your candor and may be impressed by your limited availability.

You also may want to think about working at less than 100 percent of your capacity so that you will be able to take on better-quality cases when they present themselves, not to mention preserving your sanity.

- **You took the case because you needed the work or thought it would produce other business.**

When you take a case you otherwise would have declined but for the fact that you need the money, or you agree to discount your fee too much, the file frequently finds its way to the corner or the windowsill, or worse. You got the money you needed at the moment, but you also got an albatross. In the long run, the matter involves more work than you thought, and you resent the time you must put in to meet your commitment.

The same goes for cases you take on with the hope of generating more business. When the business fails to materialize, you are less than happy about the case that did not produce it.

If you need money and have access to credit, you are better off declining the case and taking a loan. It will make for better service for all your clients as well as peace of mind for you.

- **You did not have a fee agreement with the client that fairly compensated you.**

This is another variation on the theme that you are more likely to get work done on matters for which you are fairly compensated. This requires an agreement with the client on a fair fee. It starts with discussing fees at the first meeting with the client and providing an accurate estimate of how much work likely will be involved to achieve a good result.

That may include providing realistic estimates or a budget for milestones as the representation progresses. It also will likely involve a retainer to collect fees and costs when earned as well as provisions for replenishing it.

If the client is unwilling to accept a fair fee arrangement at the outset of the representation, you both will be better off not creating one. You need to communicate to the client that your services have a value and that the client needs to be prepared to compensate you appropriately for them. If the client does not see the value in your services or thinks the cost of your services is too much, it is better not to undertake the representation.

- **You delayed in communicating to the client problems with the case.**

After the representation begins, if you learn that the evidence does not support the facts as your client presented them, or the law is unfavorable to your client's position, you need to communicate that to the client promptly. That will keep your client's expectations realistic and allow you to obtain the best possible result under the circumstances.

Be prompt and candid in disclosing any negative developments in the course of the representation. Delay is not going to make matters any better. The client will justifiably wonder why you did not tell him sooner, and you will spend time

unnecessarily thinking about the file on the corner of your desk when it could have been disposed of sooner.

If you can avoid the above traps, you will improve client and case selection as well as communication. You will also be less concerned about that file that has been keeping you awake at night or that you are thinking about right now.

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