

# Proactive client

## Stop legal malpractice before it happens with these tips

The most important step you can take to avoid legal malpractice is to pick the right lawyer to represent you — one who is qualified to do whatever you are hiring a lawyer to do.

But that's only the first step. Once you have retained a lawyer, it is important to make sure that he or she understands what you want him or her to do for you.

"Many malpractice cases involve situations where the client says, 'I told my lawyer to do X,' and the lawyer says, 'No you didn't.' So, do not assume that the lawyer will automatically know everything you want done," says Timothy J. Miller, general counsel at Novack and Macey LLP.

"If it is important to you that some particular thing be done in some particular way, make sure your lawyer knows it. Ideally, there should be a written record of exactly what you have asked the lawyer to do. That will help avoid misunderstandings about what is expected."

*Smart Business* spoke with Miller about avoiding malpractice.

### How does someone find a qualified lawyer?

There are many ways to identify qualified lawyers. If you have a lawyer who has done a good job representing you in the past, he or she may be able to recommend somebody to represent you in a case outside his or her area of expertise.

There also is a lot of information about lawyers available on the Internet. Your social media contacts may be able to help, and so might your friends and colleagues. But, don't just grab the first name that comes your way. Investigate and interview more than one lawyer before making a decision.

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**EVENT:** Attorneys, hear Timothy J. Miller speak on ethics in outsourcing at this year's PLI seminar Sept. 29-30. Register at [http://bit.ly/nm\\_PLI](http://bit.ly/nm_PLI).

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### What else can help someone avoid malpractice?

Year after year, lawyer disciplinary agencies report that the No. 1 complaint clients have about lawyers is that lawyers fail to communicate as the client expected. So, when you are picking a lawyer, you should be clear from the outset what are your communication expectations. Then, during the relationship, the lawyer should respond promptly to your emails and phone calls. If your lawyer doesn't respond to your calls, you need to do something about the problem, and ultimately, you may need to find a new lawyer.

Communication is not a one-way street. For example, you should pay attention to the copies of court filings and communications your lawyer sends to you and let the lawyer know if you see something you have questions about. You also should respond promptly and honestly to your lawyer's calls and emails. If you don't return your lawyer's calls or aren't truthful with your lawyer, you are opening the door to problems. In addition, you and your lawyer should communicate clearly about fees. That way you won't be surprised about the size of your bill.

### What if a client is unhappy with the lawyer?

If you are unhappy, you need to make sure the lawyer knows it. For example, if

you are unhappy because draft documents do not address a specific issue, your lawyer needs to know that you are unhappy and why.

Lawyers are not mind readers, and if you don't tell them that something is wrong, they probably will not figure it out on their own. If nothing else, discussing your unhappiness will give the lawyer a chance to explain his or her reasoning and give you the opportunity to agree or disagree.

### What if a client thinks the lawyer has committed malpractice?

Lawyers are humans. Thus, they are not perfect and occasionally do make mistakes. But, you need to keep in mind that just because something went wrong, your lawyer did not necessarily commit legal malpractice. Cases are lost and deals go wrong even when the lawyer performed well. In addition, sometimes a lawyer makes a mistake, but the mistake is not really what caused the case to be lost or the deal to go bad.

If you believe that your lawyer made a mistake and that the mistake damaged you, consult with a lawyer who understands legal malpractice. Just as you should have done when picking the first lawyer, make sure you pick the right lawyer to advise you on this issue. ●