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✉ [BERNADETTE.STARZEE@LIBN.COM](mailto:BERNADETTE.STARZEE@LIBN.COM)

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🐦 @BSTARZEE1



# Case sensitive

*Law firms must carefully weigh which clients are right for them*

By **BERNADETTE STARZEE**

A husband learns the sordid details of an affair that his wife is having. Unable to get past it, the furious husband seeks revenge in divorce court, making unreasonable demands regarding the division of assets or custody arrangements, leading to lengthy litigation that he can't afford.

Or a businessperson in a partnership dispute, feeling wronged, keeps fighting for an

elusive legal remedy that will erase his bank account but not the hurt he feels.

Cases like these are lose-lose for the attorney and the client, said attorney James Joseph, a co-presenter of the recent "Dean's Hour: Will You Take My Case? Choosing Clients Wisely" educational seminar at the Nassau County Bar Association. Joseph, managing partner of Garden City matrimonial law firm Joseph Law Group, cautioned attorneys to be selective about the cases they take.

"When you're not selective – when you take every case that comes through the door – you can get bogged down representing people whose problems can't be addressed in court and for whom there is no remedy available in court," he said. "The realities are that the courts are not capable of addressing the emotional pain of these individuals' real and perceived wrongs, which are better addressed in therapy. Clients who are too irrational to follow the advice of their lawyer and instead insist that their lawyer take actions

# Lawyers must tell clients upfront what the worst-case scenario would be

that won't ultimately obtain the results they seek will never be satisfied with the outcome. A lot of money will get wasted and the client may not be able to afford it."

And the law firm will find itself in a "quagmire that will make it very difficult to represent its other clients," Joseph said. "You will be stuck spending a lot of time on a case where you're not going to get paid or where you will have a client who is ultimately very dissatisfied."

Attorney Thomas Foley co-presented the seminar with Joseph.

"I think there are two potential problems with choosing the wrong case: One is the case itself and one is the client," said Foley, a personal injury attorney and partner at Foley Griffin in Garden City.

Regarding the latter, "we as attorneys must be careful we work with people who don't cause a drain on our resources," he said. "If a client is overly needy, doesn't take our advice or is combative, it can create problems for the firm."

Often the client doesn't show these traits in the beginning, but if they manifest themselves after the firm has been retained, the firm may need to remove itself from the case.

"You do it professionally," Foley said. "You tell the client, 'You hired me for a reason to do a particular job. It appears to me you're not following my directions. It's better if you hire someone else, since there's not much I can do for you if you're not listening to my advice.'"

Paul Millus, a member of Meyer, Suozzi, English & Klein in Garden City, makes assessments about which cases to take "every day," he said.

Millus, who focuses on business and employment-related litigation, has a "meeting of the minds" with potential clients upfront "to make sure they understand what they're getting themselves into, and to make sure I understand what I'm getting myself into."

After years of practice, Millus goes with his gut when determining if a case is a good fit.

"I know when a case has legs or merit and I know when it doesn't," he said.

And by asking the right questions, he is able to determine if the client will be able to afford his fees.

"I explain if I go to court, it's going to cost money; if I make a motion to compel discovery,

it's going to cost money," he said. "Once I explain the process, they may tell me they're not interested, because they see it will take too much time or too much money, and those are legitimate considerations. The worst thing is to find ourselves at an impasse during the case, where the client says, 'I didn't expect to be in this position.' That's not good for the client and it's not good for the attorney."

As Foley noted, choosing unprofitable cases will be harmful to the law firm's business. In his field of personal injury, attorneys typically take cases on a contingency basis, which means they only get paid if the victim is awarded funds.

"It's important for a law firm to have an internal process in which certain standards have to be met in order to take a case," he said. "We do an investigation, and if it's completely the client's fault or if his injuries don't meet the minimal threshold, we won't be able to take the case."

This must be explained upfront to the client in order to manage expectations, he added.

Some law firms are not profitable because "they get stuck with a lot of cases in which the clients' goals are not realistic and they can't afford to pay for the services," Joseph said. "The problem is endemic to law firms in general, but small and medium firms in particular. A good lawyer wants to be a hero and wants to save the day, but in many situations it's not possible. You can expend an exorbitant amount of time and mental and physical energy on these cases to the detriment of your other clients as well as the other attorneys and staff at the firm."

Often, a lawyer is so focused on practicing law and being a good attorney that he doesn't have time to focus on running his business and can end up with a case that can cause a lot of damage down the road, Joseph said.

When potential clients come in for a consultation, Joseph recommends that attorneys get a good handle on their finances.

"We let them know upfront what their worst-case scenario is," he said, cautioning attorneys against painting too optimistic a picture. "A divorce case can be resolved in \$10,000 or \$20,000, but depending on the facts and complexity of the case it can be significantly more expensive. Whatever our assessment of their worst case scenario may be, we discuss



**JAMES JOSEPH:** Some cases can drain a firm's resources and take away from other clients.

that with them before they retain us."

Clients pay a retainer, and then the firm bills the clients monthly. "The retainer has to be replenished and we stay ahead of the client with detailed monthly bills," he said. "Again, staying on top of the money instead of chasing money saves you time and resources to work more efficiently for all your clients."

"Another attorney once taught me, 'Choose your pro bono cases; don't let them choose you,'" said Joseph, whose firm accepts pro bono cases only through certain nonprofits and not directly from individuals.

Joseph estimates that he takes about half the cases that come to his firm.

In certain situations, a case that is not right for the Joseph Law Group may be a better fit for another attorney. "We have a handful of newer lawyers that we actively refer business to when appropriate," Joseph said.

But some cases are not right for the court system and not appropriate for any lawyer to take on. For these cases, "a lawyer would be doing a disservice to the system and to the client," he said.

■ [BERNADETTE.STARZEE@LIBN.COM](mailto:BERNADETTE.STARZEE@LIBN.COM)

