

# Tap Dancing Through the Minefield of Client Selection

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All lawyers need to be concerned about client selection. Whether a firm has five attorneys or 500, no one wants to spend time and money working on a matter for a client who is difficult to deal with, may not pay, and is a potential malpractice threat. Small firms and sole practitioners must be especially vigilant because there's no place to hide your mistakes. An unpaid bill for 50 hours hits much harder when you're on your own and that bill represents a third of your work in a month. And we should never forget even the most difficult clients deserve the same zealous representation that we give our favorites.

No lawyer or firm will ever have a perfect track record on client intake, but over almost 25 years of working together, we've developed a few key principles that have let us keep our mistakes to a minimum.

First, **follow the hierarchy of reliability and screen new clients from less reliable sources more carefully.** Here's our list; your mileage may vary.

- Existing clients who hire you for new matters: very high reliability. Generally, we just open the file if the relationship has been a good one.
- Clients referred by lawyers you know well: solid reliability. These potential clients may need some vetting. Even solid lawyer referrals like this obligate you to vet the lawyer making the referral. Ask yourself: why is this lawyer referring the matter to me? Is it because I have a particular expertise and I know the referring party doesn't practice in that area? Or is the referring lawyer passing on one of his problems to you? It pays to be a tad cynical on intake.
- Clients referred by non-lawyers: medium reliability. Professionals like accountants and engineers usually make good referral sources. Laypeople can provide excellent referrals but sometimes pass along nightmares. People are good at different things. Some are excellent friends and just terrible clients. When a lay person you know passes along a potential client, vet the referring source. Test the problem being presented and see if the referring party can give you a clue about what the potential client is all about in relation to it.

- Clients who come in through cold calls: reliability is all over the place. Almost random in quality, this category is where your vigilance needs to be fully engaged. We have been fortunate over the years to land a few of these clients who have turned into solid, long-term clients. But you really need to be careful. Ask yourself: how did this person find me? Was it because of your exceptional marketing skills and they vetted you based on fit and finish? Or are you the fifth lawyer they have called because they come with baggage. Be vigilant.

Second, **make sure you understand what the client wants and that the client understands what the legal system can and cannot do.** Over the years, we've avoided many potential problems by focusing on our first two questions in initial intake meetings: "What do you want? Why are you hiring a lawyer?" Many people, including some sophisticated clients, know they are in a difficult situation but haven't given much thought to how they want to come out of it. Only when you know the answer to this crucial threshold question can you start analyzing how to get that desired result – or even whether the law can deliver it in the first place. As one of our favorite federal judges once told a client in a mediation he was presiding over: "we don't do justice in these halls; we make decisions based on what the law provides." Only when you know what the client wants can you begin the hard process of addressing unrealistic expectations.

Third, **be aware of the major red flags that warn a new client might be too difficult to take on.**

Here's our list of what to watch out for:

- You are replacing another lawyer, or even worse replacing a lawyer who replaced a lawyer. **This is the biggest red flag of all.** We are not saying that you should never accept a new client who is changing counsel. We are saying that these situations must be amply vetted because there is an immediate warning sign directly before you.
- The new client is contentious and argumentative; doesn't trust your judgment; wants to play lawyer and use you as the mouthpiece for his thoughts. We're ethically obligated to have the



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client make all decisions about matters of substance. But we need to insist that we provide our best professional judgment about what the client should do. When we get pushback on that from the start, it may be best to let the client find a more like-minded lawyer.

- The new client is **manipulative about the fee arrangement or the engagement letter**. If you can't get agreement on this in the first days of the relationship, chances for improvement are low. The classic example here is bringing in a check for an advanced payment or fee deposit that is less than previously

agreed on. Other examples include: "going dark" by not communicating about issues that need to be addressed in the initial stages of the representation (like fees and the terms of engagement); and failing to sign and return the engagement letter.

If you are like us and got into this business because you're passionate about solving problems, keep your business wits about you and use our reliability tests to ensure that the clients you represent are worthy of your time and skills. ■

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## Franchisor Considerations In Terminating an Established Master Franchisee

By Eugene Kim, Vail Resorts

**G**lobal expansion offers immense opportunities to franchisors of all types and maturities to grow and develop their systems. This is largely due to the structure of master franchising, whereby a franchisor can take limited resources and leverage local knowledge and expertise to rapidly enter and expand into new markets. The master franchise model gives a master franchisor the flexibility to delegate to the master franchisee the primary responsibility of the development of the region, sale and training of unit franchisees, and the ongoing management of the unit franchisees.

However, with the allure and relative ease of expansion through master franchising comes the risk of a failed relationship between the master franchisor and the master franchisee. The failure of this relationship can subsequently create liabilities for the entire system in the territory, including with unit franchisees, vendors and suppliers, and even the regulatory agencies in the territory.

This article provides a general overview of issues to consider regarding the termination of a master franchise relationship. It considers (a) best practices for proactively addressing

termination in drafting the master franchise agreement, (b) the impact of agency and relationship laws on potential terminations, and (c) the importance of licensing, registration, disclosure, tax, and currency repatriation considerations when assuming rights from a terminated master franchisee.

### Master Franchise Agreement Terms

The protections afforded to a master franchisor must be set out in the master franchise agreement. Although it may be uncomfortable to discuss the implications of termination at the nascent stages of a franchise relationship, it is imperative that the proper provisions be incorporated into the master franchise agreement to avoid confusion should the need to terminate the master franchise relationship arise. The following provisions should be considered when preparing the master franchise relationship.

### Default

Specific default provisions, coupled with clear cure periods, should be expressly set out in the master franchise agreement. The master franchisor should consider what violations, if any, warrant immediate termination of the master franchise relationship, and what other



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