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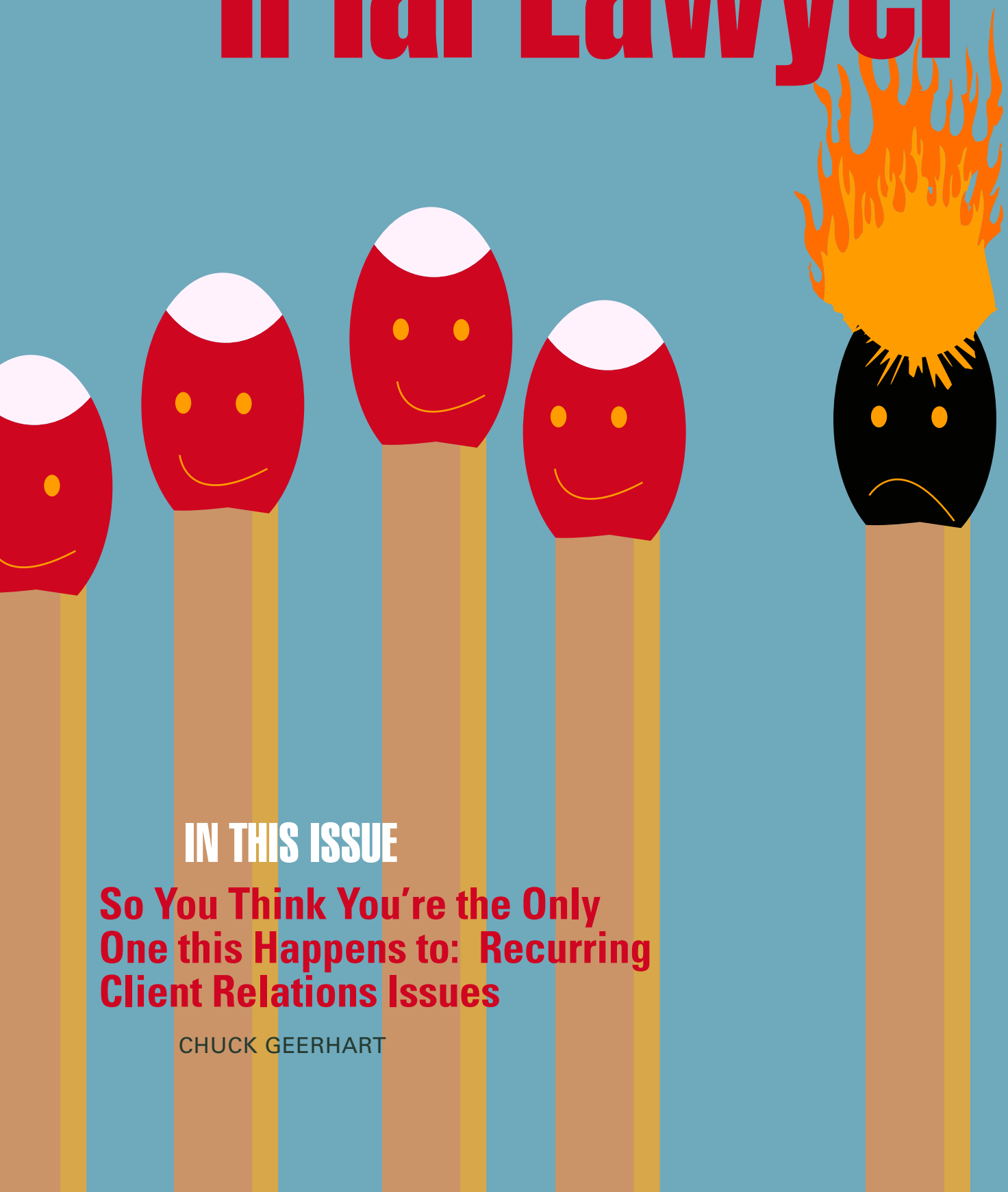
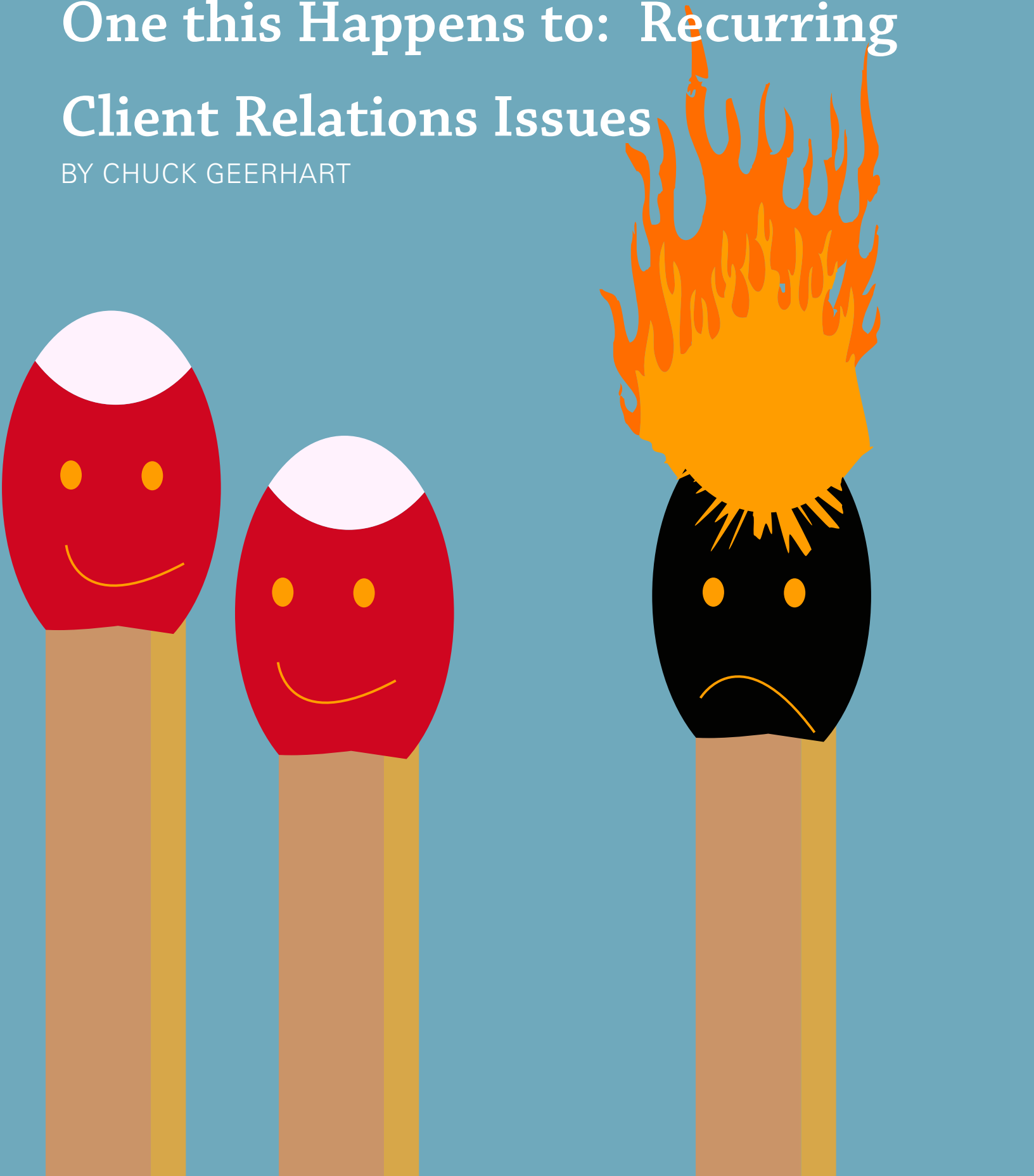


IN THIS ISSUE

FEATURE

So You Think You're the Only One this Happens to: Recurring Client Relations Issues

BY CHUCK GEERHART



Many plaintiff-side lawyers would agree that 10% of the clients provide 90% of the problems (or "issues") in our practices. This is not to say that all the rest are complication-free. Even the most cooperative clients have at least two main concerns: stress of litigation and what will be the likely outcome in trial or settlement.

We did an unscientific internet survey on the SFTLA List-Serv and asked our compatriots for their top client issues, and how they resolve them. Here are the types of clients who cause the most concern:

1. The Client With Unrealistic Expectations

Prospective jurors hear about the McDonald's hot-coffee case and think it's an example of the lawsuit lottery run amuck. Our clients hear about it and think they're entitled to huge damages.

Many clients want to know what their case is worth. At their first meeting with you. The conventional wisdom is that it is a very bad idea at the initial meeting to provide anything more than a ballpark range of case value. Whatever number you provide will live with you for the rest of the case.

"I have regretted every time I told the client what I thought the case was worth," says one List-server.

One SFTLA member writes, "I try to avoid clients' unrealistic expectations from the start by engaging them in the case. I have turned away good cases because the client (1) doesn't understand the process regardless of how many times the process is explained; (2) attempted to negotiate my fee to 25%; or (3) wanted to retire on their PI cases."

Another member opines, "One thing I explain is that the legal system is never exactly right and the client can never get enough to compensate them and it will never be just and fair. But we need to try to do the best with what we have amid the tort 'reform' climate and get the most we can. I then ask some colleagues for estimates of case value and share them with the client and tell them that these are people who do this on a daily basis, who are unbiased and are giving their opinions on what would happen if we went to trial."

How many of you have been involved in settlement negotiations where a certain settlement amount is being bandied about, say $60,000? This sounds right and fair, until the client says, "That's all mine, right? I mean, that doesn't include your fees, does it?" Lesson: you have to be very clear with the client about the monetary accounting in a settlement amount. Another problem area is the initial demand. I have found that I have to repeat to the client, like a mantra, "This is only a starting point. Your case is not worth this much. We will be negotiating downward from here."

One member adheres to Bob Bianco's method: "At a mediation, Bob Bianco told me before he signs up a client, he starts with 'diminished expectations' about the value of the case. If the case settles for what it's worth, he gave a fair appraisal. If it settles for more, he looks like a hero. Seems like it can work for the unrealistic expectations of clients. Also, good marketing."

Another member says, "I ask client at the intake to tell me his expectation and what it is based on. If I think we can be on same page, among other things, I show jury verdicts from worst to good (not best). I show how better facts get less money then our case. Puts it in perspective for most and sets a more realistic expectation."

Bottom line: clients should recognize that one reason they are paying us is for our knowledge of case and settlement value. The client who insists s/he knows more about what a jury will do is ignoring our depth of experience. If necessary, we have to educate the client about our training and background early on in the case so the trust factor will be there when settlement discussions occur.

2. The Client Who Needs Hand Holding

Some clients are content to let us do our jobs. The occasional phone call from attorney to client will suffice. On the other hand, some clients want to be overly involved the case, for various reasons (see Mental Health section below). The client calls frequently, or wants repeated in-person meetings. While frequent contact is expected in a larger case, client demands for attention can be a real problem if the case is a $25,000 fender bender.

One SFTLA member writes, "Some of my clients are relentless. If they spent as much time in any other endeavor as they did harassing me, they would be millionaires. One thing I do is when I get on the phone with them, I tell them what is going on, which is usually enough to get anyone to back off... i.e.

'Hi Jim, I only have a minute because I have two people in the lobby, a conference call with a judge starting in two minutes and I have trial tomorrow, so real quick, what's up?' They usually say it can wait."

One effective variant of the above advice is to explain to the pestering client that the attorney is working hard for many clients. Trials come first. The client would want the attorney to be completely available and dedicated when the client's case comes up for trial, right? So the client has to understand that, especially in the early stages of a case, the client has to trust that the attorney is doing what needs to be done to move the case along.

Those with staff have a bit of an advantage: "Usually our staff here can advise anxious clients about the status of their case. Along with that, I try to talk with them every so often."

Here's another view: "I always have an associate on the case who helps with the hand holding. Most clients just need someone to talk to who is familiar with the facts of their case. At attorney meetings, we talk about all cases so everyone is somewhat versed if the client calls. Clients need to feel like they are your only case. I (or another associate) always return phone calls that day or next day even just to talk for a few minutes." Note that failure to return client phone calls is a frequent cause of attorney discipline by the State Bar.

3. The Client Who Says, "Let's roll the dice and go to trial," even when this is a very bad (and costly) idea

Has anyone ever had a case of a known, limited value heading toward trial and the client's attitude is, "If they won't pay 3X the value, I'm going to trial"? This can place the attorney in a very difficult position, particularly if the trial date is set and looming just a few months (or weeks) away.

One member handles this contractually: "I have a provision in my contract that if the client rejects a reasonable offer, in my opinion, then costs are the client's responsibility from there on out. I have only used this maybe twice in 15 years, and put it in after a client attempted to hijack me into a trial."

Here's what another SFTLA member does: "I do a breakdown of what they are looking at in numbers. So, the current offer is $20,000. Based on the retainer, after costs, you will get $9,500. If we go to trial, you are hoping to get $50,000. Then I explain, when I take out my 45%, even at $50,000, and pay for experts, exhibits, blowups and all the other stuff, you are looking at only $6,000 more because of the costs. Then they kind of take a step back."

Opines another member, "Sometimes I outline in writing a cost analysis and ask for client to pay costs at that time. Usually changes their mind when it is their money. Other times I reiterate the client's responsibility for defense costs should we lose, plus our costs and ability of defense to garnish their wages or attach their property if we lose. This usually changes their mind."

4. The Client With Mental Health Issues

In psychotherapy, transference occurs when the patient begins to identify strongly with the therapist as someone other than a professional doing his/her job. The same phenomenon can happen between attorney and client. This can happen in two main instances: (1) when you have signed up a client with mental health issues and/or (2) the client's injuries are large and the stakes are extremely high in a disputed liability case. The client calls frequently, or wants repeated in-person meetings. The client vacillates between wanting to resolve the case and having confidence in the attorney, to insisting that trial is the only way to go, and questioning the attorney's competence and motives. In essence, the client has transformed the attorney into a player in the dispute. The client may treat us as having a lot more power than we really do to help resolve the case. The client may treat us as part of the problem, rather than part of the solution.

Most clients just need someone to talk to who is familiar with the facts of their case.

When clients start holding the attorney personally responsible for matters the attorney cannot control (e.g., the facts of the case), this is a real red flag signaling trouble if the case must be tried, and the attorney should begin considering whether a motion to withdraw is in order.

On the subject of clients taking medication, one attorney has been there himself: "This one is easier for me because I have been there. I talk about what medications they are taking for depression. I have always taken it myself in the past, and start there. What is your dose? ... Tell themmy side-effects, what helped... They really like that. It kind of makes them feel better that I have been there."

Some attorneys believe in getting to know the client's therapist: "I speak to the therapist early on in case (if they have one) to get a handle on what makes them tick. Sometimes it helps deal with the client more effectively. And, lots of hand holding."

I also received a major input from one of our members, Janis Eggleston, who writes:

I have an employment law practice and represent employees who have been terminated, discriminated and retaliated against, and harassed. Given these claims, emotional damages are frequently the highest measure of damages. Accordingly, a client's mental health (or lack thereof) is the most prominent (and potentially volatile) issue in any case.

I encourage all clients to seek treatment for any emotional distress that they are experiencing. We usually discuss the merits and benefits of medication and ongoing therapeutic treatment and also the impact and stress they can expect to encounter throughout the litigation.

Sometimes employees come to my office after having stopped their medication (without doctor's approval). In these instances, I usually encourage the client to get back on their medication and also encourage them to speak with their doctor so that the doctor can evaluate the reasons they chose to go off medication to determine if there is another more suitable medication for them. We generally discuss the inevitable withdrawal symptoms that will occur and how those will impact the client's mood, the client's ability to process information and participate in the litigation.

There have been instances when the client's untreated and unacknowledged mental issues contributed to the employee's problems at work and possibly caused the termination. For example, the client/employee develops erratic attendance patterns; self-medicates with drugs or alcohol and develops alcohol or drug related problems; the employee exhibits hostile, threatening, abusive behaviors in the workplace; or has become highly argumentative, oppositional, etc. Some clients lose their ability to reality test because of their various untreated mental issues. In these instances, I encourage clients to have a psychological evaluation to determine the underlying problem, our ability to claim emotional distress damages, and the scope of emotional damages we can claim, if any. Sometimes, after an evaluation and consultation with the psych evaluator, I determine that litigation will not be the most appropriate resolution to their employment disputes, and generally decline continued representation and encourage them to seek alternative representation.

Throughout the years, I have found that clients who take (or need to take) anti-psychotic medications are the most difficult to work with because of their behaviors, their sometimes tenuous grasp on reality, their inability to stay on task, or to draw upon the necessary cognitive functions to be a plaintiff. I generally decide not to represent these clients because I am unwilling to accept the risk(s) inherent with these clients. I appreciate that this may be an unpopular stance, given the requirements of the ADA and FEHA.

5. The Client Who Can't Handle the Stress of Litigation

SFTLA member Jon Gertler weighed in thoughtfully on the stress of litigation issue:

One of the most commonly occurring client relations issues in personal injury practice is the wife or husband of a seriously injured individual who 1) has a derivative claim for the loss of care, comfort, support, society and companionship; and 2) may be very unhappy in the circumstance of a dramatically changed and extraordinarily difficult life after the accident. The person dealing with severe economic uncertainty, the lack of another parent in a household with children, many accident-related obligations involving transportation to medical appointments, assisting the injured, dealing with insurance, dealing with the lawsuit, etc etc etc, is also dealing with a change of his/her entire vision of the future, and a depressed, angry, frightened, and sometimes organically changed or post-traumatic psychology in their partner. It is actually unthinkably hard. I counsel them with friendship, with an open discussion about the ordeal through which they are going, with an exploration of how to enlarge or deepen the support they are getting, with advice about seeking professional support, and any wisdom I can find for them, including where they are receptive such things as meditation, yoga, exercise, religion, travel. When, on occasion, things have broken down, I've reminded them of their waiver of conflict, and of their right to get separate counsel.

To close this section, there is another issue we all face: do you make a claim for psychological injury in what is mainly a personal injury case. I tend to discourage all but the most seriously injured clients from doing this. Making a psych claim subjects them to another medical (pscyh) exam, which is not a pleasant experience for the client. If the client is not receiving real psychological care, the damages are going to be general, and subject to attack by the defense.

Conclusion

One the great joys of doing what we do is that we get to represent real people – not faceless corporations. Ah, but precisely because they are real people, our clients bring a wide range of personalities, problems, and neuroses with them into our attorney-client relationship. We can either choose (1) to consider handling difficult clients as part of what we do, and engage them constructively, or (2) we can try to ignore the issues until they grow so large they start to impact the case, and perhaps our own mental health. The choice is yours.

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