SPRING 2026 ◊ ISSUE 54

# AttPro Ally

# It's Time for a Spring Cleaning!

## Tips to clean up your client intake process and contract drafting practices

IN THIS ISSUE:


- SLAM THE BRAKES! 6 Clients to Avoid . . . If You Recognize Them
- Upcoming CLE Webinar: *Claim Reframe: Best Practices to Avoid a Legal Malpractice Claim*
- Why You Should Care About Choice of Law, Jurisdiction, and Venue Provisions in Your Company's Contracts

# SLAM THE BRAKES!

## 6 Clients to Avoid . . . If You Recognize Them

*By: Irwin R. Kramer, Esq.*

**Q. After two other lawyers let her down, a sexual harassment victim approached me to fight for fair compensation. I haven't done these cases before, but she thinks the case is worth millions in light of the #MeToo movement. Should I take the case?**

**A. In a word we don't use often enough, no.**

When used correctly, this tiny word has the power to eliminate significant headaches, malpractice claims, and grievances. As much as we might like, we cannot say "yes" to every worthy cause or to all who seek our help. Not to be unsympathetic, but a client who was victimized at work, expects to recover millions, and criticized two other lawyers for failing to achieve this objective may raise red flags. Even in the #MeToo era, sexual harassment cases aren't all that easy to prove and, lacking experience with these cases, you may be the third lawyer to "let her down."

Your lack of experience in sexual harassment cases is a hurdle, but not an insurmountable one. "A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar."[1] If you are willing to put in the time to learn a new area of law, and won't be charging the client for necessary study, this may be one way to gain competence. "Competent representation can also be provided through the association of a lawyer of established competence in the field in question."

It's okay to leave your comfort zone if you have the time and the desire to gain sufficient competence. However, there are reasons to be uncomfortable over the prospect of representing this particular client in your very first case of this kind.

Deciding whether to take the case requires more than an evaluation of its merits. You must evaluate the client as a person before offering your services to her. To serve existing clients well, there are several types of clients we must

[1] MARPC 1.1 comment [2].

*Irwin R. Kramer publishes a popular legal ethics blog at attorneygrievances.com. As managing attorney of Kramer & Connolly, he has represented each of the clients discussed in this article—and now spends much of his time advising other lawyers, and the law students he teaches, to learn from his mistakes.*

try to avoid. While we can't always spot them in advance of retention, we must "just say no" when we recognize the following people:

**The Critic**
Those who have had bad experiences with other lawyers, or are quick to criticize their work, are more likely to complain about you in the future. While it's possible they've genuinely had poor experiences in the past, it's far more likely that the problem lies with them, not their previous lawyers. Even if you are convinced that her first two lawyers did a lousy job, bad experiences may taint a client's view of "all lawyers." If so, this client may be predisposed to find fault with your work as matters progress. If this client complains about two others, you may be next.

**The Vengeful**
You are an attorney, not an instrument of revenge. If you detect a desire to exact some form of retribution on the part of a prospective client, you could become her next target. Divorce lawyers must be especially weary of clients who not only want aggressive representation, but want it to hurt the other side. Though cases involving emotional trauma may produce these feelings, you must set important boundaries on the nature of your representation and objectives. Unless you have reason to believe that you can diffuse the client's anger, you should just say "no."

**The Dreamer**
Unless you can bring this person down to reality, her "slam dunk" multi-million dollar case isn't worth it. Avoid clients with unrealistic expectations on the results you can achieve, the cost of your services, the time and attention you can provide, or the speed of legal solutions. These clients often lack a clear understanding of the legal system's limitations, the risks inherent in litigation, or the realities of attorney-client relationships. Dreamers are easily disappointed when their unrealistic visions clash with legal reality, and they'll often blame you when things don't go as they imagined. They may also resist your advice, push for aggressive but counterproductive strategies, or grow resentful over fees as their "guaranteed win" drags on without results. If the client has already cycled through multiple lawyers, it's often a sign that no one could meet their impossible standards. During initial consultations, probe their expectations carefully. If they're unwilling to temper their fantasies, think twice before taking them on. A lawyer's role is to advocate effectively, not to indulge wishful thinking.

**The Shopper**
There may be a reason this person can't find the "right" lawyer. She may not be the "right" client. Some clients treat lawyers like fungible commodities. Placing price over quality, clients who relentlessly haggle over fees or compare your services to cheaper alternatives may undervalue your expertise, or expect premium service at a discount rate. These clients also tend to have unrealistic expectations about outcomes. Rather than build a trustworthy relationship, such clients are less likely to respect your advice, your boundaries, or your value. If a prospective client seems more interested in your fees than in your qualities as counsel, let her shop for the "right" lawyer somewhere else.

**The Cheater**
Those who cheat others may do the same to you. Whether through dishonesty, bad faith, or manipulation, these clients are often just as willing to cheat their own lawyers or place you in professional and legal jeopardy. They may also be inclined to dispute your fees, delay payment, or exploit ambiguities in your engagement agreement. Beyond the direct risks they pose to your practice, clients who seek to use the law as a weapon to achieve unjust or inequitable results can tarnish your professional reputation and undermine your credibility with courts and colleagues. Representing such clients may also create ethical dilemmas, as their goals can conflict with your duties of candor to the tribunal and fairness to opposing parties. If a prospective client's motivations or tactics feel morally questionable, they likely are. Even if you can achieve their objectives through legal means, do you really want to waste your talent on a cheater?

**The Evader**
One important exercise in assessing a potential client involves pointed questions designed to probe the potential weaknesses of her case. Does this person answer questions directly and provide consistent answers? Does the person get defensive when challenged on some details? Does the person remember things that she should remember, or hide behind a memory lapse as you probe her story? Is she candid in disclosing facts even when they may not present her in the best possible light? Those who resist questions about potentially adverse facts or conceal information make bad witnesses and even worse clients.

Just as lawyers come in all shapes, sizes and personalities, prospective clients do not fit into perfect categories. You must determine whether a particular client's personality, character, and case fit your own temperament.

Trust your instincts. It's far better to walk away from a problematic client at the outset than to find yourself entangled in their web later.

Nobody's perfect. But if you are rude to my staff, display anger or tell me that you need a "pit bull," you are not likely to become or to remain a client of mine. I prefer to work with people that I like, on cases that I like when I believe I can achieve worthy and realistic objectives.

Otherwise, I can just say "no."

# Why You Should Care About Choice of Law, Jurisdiction, and Venue Provisions in Your Company's Contracts

*By: Michael J. Hamblin, Esq.*

For many companies, especially larger ones or those that do significant business through the internet, their endeavors cross state lines, and their customers, vendors, or suppliers may be located thousands of miles away from their principal place of business. Just as each state has its own flag, motto, flower, or bird, every state has its own set of laws that governs commercial transactions and the full spectrum of other matters that businesses deal with every day. Similarly, each state has a court system that has spent decades or centuries issuing rulings that interpret and enforce those laws.

This means that a judge in Michigan may approach an issue or resolve a dispute based on an entirely different set of laws and jurisprudence than a judge in Florida, California, or Indiana would. When disputes involving commercial agreements between parties from different states devolve into litigation — whether those states are next door or on the other side of the continent — which jurisdiction's laws apply and where the case will proceed can have profound impacts on the matter's outcome. The location and the law may also dramatically change the calculus of litigation by affecting the disruption, expense, and risks of proceeding to trial.

That is why parties to commercial agreements usually include provisions that designate which state's laws will apply in the event of a dispute – choice of law – and where any lawsuit involving the agreement must be filed – choice of jurisdiction and venue.

Notwithstanding how much these provisions can change the course of a lawsuit, they are often relegated to the back pages or trailing paragraphs of a lengthy agreement, tucked among other provisions that a party may easily dismiss or gloss over as boilerplate. Here's why treating choice of law and choice of jurisdiction/venue provisions so cavalierly can be a grave and consequential mistake for business owners.

### Choice of Law

As noted, a choice of law provision sets forth which state's law will be applied to the interpretation and enforceability of the contract and to any disputes that arise from the agreement. Usually, but not always, the selected state will be where one of the parties maintains its principal place of business.

How much the choice of law between different states will matter in a given lawsuit or dispute depends on the nature of the issue and the divergence in the applicable law in both relevant states. But unless the law and the way the two states' courts have viewed and applied that law are the same or similar, the choice of law can provide one side with a distinct advantage, while it makes the road tougher for their opponent if a dispute devolves into litigation. Additionally, a party whose lawyers practice in the state selected will presumably be more familiar with the law than their counterparts, who will need to get themselves up to speed, costing their client more money to pay for their lawyers' learning curve.

### Choice of Jurisdiction and Venue

While a choice of law clause controls how a judge will decide the legal issues in a lawsuit, choice of jurisdiction and venue provisions determine where that lawsuit will proceed. While the concepts of jurisdiction and venue are closely related, they are distinct.

*Mike Hamblin is a shareholder at Maddin Hauser Roth & Heller, P.C., in Southfield, Michigan, where he represents clients in commercial and real estate litigation matters. When he's not practicing law, he's either on a ski hill or being managed by a small but highly effective team of cats.*

Jurisdiction means the power and authority of a court to hear and adjudicate a matter. Often, multiple states can have jurisdiction over a dispute, such as the home state of either party or the state where the actions or decisions at the heart of the lawsuit took place. Without a choice of jurisdiction provision in which the parties agree to submit to the exclusive jurisdiction of the chosen state, costly and lengthy battles can ensue in which each side seeks "home-field advantage," arguing that applicable legal principles favor their home turf over another jurisdiction.

Venue is more a matter of geography than authority. A choice of venue provision identifies the specific court where any litigation must occur. For example, a choice of jurisdiction provision can provide that Michigan has exclusive jurisdiction over the dispute, while the choice of venue clause can identify the Third Judicial Circuit of Michigan sitting in Wayne County as the specific location where the case will be heard.

The aforementioned "home-field advantage" manifests in several ways. This includes the "home team" having the ability to use their own attorneys who practice in a familiar courthouse with familiar rules (written and unwrittenand familiar judges whose individual proclivities they know well. Not only will those attorneys be comfortable in their own well-traversed backyard, but they won't have to pack their bags and bill their client for travel time and expenses. Nor will the local party have to fly witnesses or key employees to testify or appear in court, which costs even more money and causes even more disruption and lost productivity.

If a party needs to hire local counsel in a far-flung location, those lawyers won't know the client or matter and will need to spend time and client money to understand the facts, issues, and the client's objectives. Additionally, juries may be more inclined to support a local business in a dispute with one from far away, whether they do so consciously or otherwise. An out-of-town party will also bring a different, perhaps more amenable calculus to the possibility of settlement, knowing that if a matter goes to trial, they face the prospect of increased costs in attorney's fees, expenses, and lost productivity.

Given the potential significance that choice of law, jurisdiction, and venue clauses have on the parties to a commercial agreement, businesses should not treat them as mere boilerplate and ensure experienced counsel reviews and evaluates their implications before they sign on the dotted line.

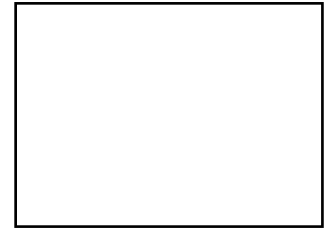
*Join us for a FREE CLE Webinar in June*

## Claim Reframe: *Best Practices to Avoid a Legal Malpractice Claim*

***June 24, 2026 • 1:00-2:00 EST***

Legal malpractice claims continue to rise meaning the cost to defend lawyers likewise increases. To help avoid a claim, it is critical you have the right client intake processes in place. Speakers, Irwin Kramer, J.D., Kramer & Connolly, and Kate Gould, J.D., AttPro Risk Management Consultant, will discuss best practices for implementing effective client interview and intake procedures within your firm. They will also explain how, once representation is accepted, engagement letters should be carefully tailored to clearly define and accurately reflect the scope of representation. In addition to these practical tips, our speakers will discuss the importance of having sufficient legal malpractice coverage, including the ethical implications of being underinsured. They will also examine the impact of nuclear verdicts, their causes, and how to avoid such a verdict in your cases. By understanding the importance of properly vetting clients to avoid "the problem client," you will be better equipped avoid to disputes and potential legal malpractice claims.

Check out our entire
**2026 webinar schedule** on
attorneyprotective.com/CLE-webinars.



5814 Reed Road
Fort Wayne, IN 46835-3568
Visit us at **attorney**protective.com or call (877) 728-8776.

**ERIN MCCARTNEY, ESQ., EDITOR**

Policies are written by either National Liability & Fire Insurance Company, AttPro RRG Reciprocal Risk Retention Group, or National Fire & Marine and administered by Attorney Protective. All coverage is subject to specific policy terms and conditions. 2023 Attorney Protective[SM]. ® All Rights Reserved. Information provided by AttPro Ally is not intended as legal advice. This publication provides best practices for use in connection with general circumstances, and ordinarily does not address specific situations. Specific situations should be discussed with legal counsel licensed in the appropriate jurisdiction. By publishing practice and risk prevention tips, Attorney Protective neither implies nor provides any guarantee that claims can be prevented by use of the suggested practices. Though the contents of AttPro Ally have been carefully researched, Attorney Protective makes no warranty as to its accuracy, applicability or timeliness. Anyone wishing to reproduce any part of the AttPro Ally content must request permission from Attorney Protective by calling 877-728-8776 or sending an email to erin.mccartney@attorneyprotective.com.

ATTORNEY PROTECTIVE OFFERS COVERAGE THAT'S RIGHT FOR TODAY'S TOUGH CHALLENGES WITH $25,000 OF CLAIMS EXPENSES PAID IN EVERY COVERED CLAIM BEFORE THE DEDUCTIBLE APPLIES.

# It's coverage designed for lawyers, by lawyers.

SCAN TO COMPLETE AN APP IN NO TIME

To apply, call Monica Roth at **214-220-7527** or email **cs@attorneyprotective.com** or go to **myappinasnap.com**.

Monica has over 20 years of expertise in the insurance industry. She is an avid animal lover and shelter volunteer who is passionate about cooking, fishing, spending time with her daughters and of course insurance!