



GUEST ESSAYS

Clients from HELL: The Virtues of Client Selection

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"You know, I had a bad feeling about this guy from the start." This is the frequent lament of design professionals reporting a new claim. They describe a slow period in their business, or a particularly high profile project blinding them to their new client's tail, pitchfork and the smell of burning sulfur. No contract can protect an A/e from an unscrupulous client, but there are tell tale signs of a "client from hell" in the making. Learning to watch for those signs and having the courage to turn work away can be a powerful loss prevention tool.

Instinct and Gut Feelings

It is unrealistic for your lawyer or insurer to advise you to turn away work whenever you suspect a challenge. There will be projects of sufficient exposure and clients of sufficient stature that you will take the work anyway. You are especially vulnerable during lulls or slow periods in your practice. You should acknowledge that "gut feeling," however, so that you may take additional precautions with high maintenance clients. The first meetings and the contract preparation may be enough to distinguish between "high maintenance" clients and those of the satanic variety.

High Maintenance Clients

Some design practices depend on "high maintenance" clients. Committees, boards and other organizations can create moving targets in the design process, or inconsistent decisions (beer budgets with champagne taste). Religious organizations and condominiums are particularly prone to such challenges. For these clients or practices, properly documenting an agreement and scope of services is critical.

It is also advisable to avoid misunderstandings by preparing minutes of meetings and confirming significant decisions by letter. You do not need to offend your client with such letters. The "self congratulatory" letter can serve the same purpose. Write the client that you are pleased to enclose the Design Development set and that you are eagerly moving forward with Construction Documents.

Finally, make certain that your fee is appropriate for the level of risk or handholding required. High maintenance clients require more of your time, expose you to more risk and justify an appropriately calculated fee.

Managing Expectations

Unreasonable or unrealistic expectations are a primary source of claims. Use the contract preparation period to educate your clients about what you do for a living. Explain the process and timing of their project's design. If the client has unrealistic expectations and is unable to rationally discuss the process, you may be better off without the work.

Discuss funding and budgets as well. How is the project being financed? Is the budget realistic? Payment of your fees is a true barometer of your relationship. Is the client willing to make a deposit before you start work? If not, how will you be paid? You should resist the temptation to give the work away, hoping to get the project.

The Tell-Tale Signs

There are some signals so loud and powerful that they reveal the presence of a true "client from hell." Satan may indeed be upon you. Here are some of those tell-tale signs:

- On the rebound - Has the client been to see other design professionals before winding up in your office? Clients who walk away from other relationships will be willing to do the same to you. If you are looking at an incomplete set of plans or sketches, ask where they came from and the circumstances arising before arriving in your office. If the client is evasive or tells you not to worry about it, you should worry about it. Also remember your exposure for copyright infringement if you pick up where the former architect left off.
- The "Do-It-Yourself-er" - Does the client intend to do some of the work itself? A client/general contractor is a problem waiting to happen. The same is true of the client who only wants a set of plans with which to obtain a permit. "No need for construction-phase services," they tell you.
- The "Gladly Pay You Tuesday For A Hamburger Today" Client - The character Wimpy in the Popeye cartoon was a happy fellow, always asking you to advance him a hamburger. Wimpy would be a lousy client for design professionals. The importance of prompt payment for your work cannot be over-emphasized. Clients who ask you to defer billing, or to wait until funding is in place, do not appropriately value your services. Unless the client wants to make you a partner in the project with all of the attendant profits, you should not be assuming all of the project's risks.
- The "Handshake" Client - Clients who decline to document your scope of services are also likely to generate misunderstandings. If you properly educate your potential client about the design process, the refusal to commit the deal to writing is a bad sign.

Watch for the signs, smell the sulfur and be especially cognizant of high risk "slow" periods in your practice. Your instinct will tell you when to take the work and when to run away from clients from hell.

About the Author: Eric L. Singer is with Wildman, Harrold, Allen & Dixon, Lisle, Illinois. His practice concentrates in construction law and in the representation of design professionals in all aspects of construction claims and dispute resolution.



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