

Popular Threads on Solosez

Polite Ways to Decline Bad Cases/Clients

I've had several PCs now who have approached me about bankruptcy, but when I inquire into their assets and income, I find that they have done funky things or would like to and want my advice on it. I declined one of these cases with a CYA letter in which I warned the PC not to transfer property to her daughter or take money she was not legally entitled to and use it to buy a house prior to filing BK this fall (as she said she would do), and she sent me an angry letter back saying she wasn't a criminal and how dare I say such things, etc. etc.

I saw another PC for an initial consultation months ago, in which he told me he and other members of his family transferred assets into and out of each others' names to avoid creditors. He also works under the table and doesn't report his income, and so on. I told him he couldn't pull such stunts and expect to declare BK. Now he's calling me again about BK, though I feel I'd been clear in the first place. Who knows what he's done with his stuff in these past few months and whether he'll tell me the truth about it. I refuse to touch his case, but I feel bad about not calling him back.

Then there's the guy who called me yesterday about representing him on his pro per bankruptcy case for no fee just for the "learning experience." Or maybe he could do an in-kind exchange of services in which he does marketing for me and sends me referrals? Right-o.

I would like a way to brush off these people and cover myself without being rude or calling them fraudsters to their faces. Advice appreciated.

I believe it is dangerous to render any advice to potential clients: you are potentially incurring liability to someone who will not pay you for that advice. If you decide not to represent the PC, decline in writing. California cases have in some circumstances found liability to non-clients where the non-client believed or had reason to believe the attorney was representing them. As someone who does a fair amount of attorney professional negligence cases, I believe that this is an absolute necessity if you have been contacted and you have the PC's address.

Furthermore, many malpractice applications require you to state whether you send "declination letters" when you decline representation: the reason being that it increases the carrier's risks (and your premium) if you don't.

I believe that a declination letter should be polite and expressly and unequivocally state at minimum (i) that you are not representing them; (ii) that if they believe that they have a case they should consult with other counsel (if they are a potential plaintiff); and (iii) they should not rely on anything that you said to them informally. I don't express any opinion on the PC's case; quite the contrary, I state that the client should not infer any opinion on my part regarding the merits of the client's case from the declination.

Michael A. Lotman, California

I prefer to simply say that we are unable to take on their matter at this time, and then include all appropriate Cover-Your-A** statements regarding return of all documents, no professional responsibility for case, notice that there are time limitations and they should find an attorney willing to take their case on mutually agreeable terms. Then say you would welcome the opportunity to work with them on a different matter in the future. Sorry this was such a short answer, I can't believe I'm still at work.

Chris Vaughn-Martel, Massachusetts

I like your approach, but some suggest that SOL should be included in a declination letter. How about an evaluation letter while deciding whether to take the case? Suggestions about what to do if near the SOL? I had a hot potato case dropped on me once.

Craig McLaughlin

I NEVER include a SOL date in a non-engagement or Dear John letter. What if the client gave you the wrong date? What if the matter is governed by a different SOL date? You are asking for trouble by giving a specific date.

Robert M. Louque, Jr.. Louisiana

Agreed. We just say something along the lines of, "Please be aware that statutes of limitation apply to all cases, and delay may prevent you from bringing action later. Therefore, if you are interested in pursuing a case, you should consult with another lawyer immediately."

David M. Nieporent, New York

I would send them a letter, declining to take their case. Don't give the reasons you cited but instead attribute it to a business decision for the firm. Maybe refer them to the state bar referral service and wish them the best of luck. Polite, yet firm, without making any thinly veiled accusations that they're one step away from the clink.

If you want an example "thanks but no thanks" letter, let me know.

Gina Madsen, Nevada

Your malpractice carrier will absolutely tell you not to include the SOL because it is legal advice, and if you get it wrong, boom -- there's the in-the-flesh evidence of malpractice that you can't refute. A hot potato case is difficult -- I literally would pick up the phone and call my carrier and ask. Why not? We pay them tons of money.

Here is what we put in our declination letters:

"Thus, my firm has not provided legal advice to you, I am not serving as your attorney in this matter, and no attorney client relationship has been formed.

This firm is not expressing an opinion as to the merits of your matter. You should be aware that failure to proceed promptly in this legal matter may result in adverse consequences. Therefore, I strongly recommend that you promptly contact an attorney to review your legal situation."

I mean, there's more to the letter than that -- but this is the meat of it. There is no confusing that I do not represent them. It is a bit terse, but, well, I am not representing them anyways, so whatever. We usually temper the letter with referrals back to the Bar Association, or referrals to other people if I have them available, or if someone is truly interesting to me, then I am very, very nice in the letter and say, don't forget,

you can come back to me for other matters -- here is what I handle. But in the meantime, there is this "non-representation" letter that they get.

Michelle J. Rozovics, Illinois

I disagree with Michelle and Robert. I think it is malpractice NOT to warn a non-rep about the SOL. I don't give an exact date, but my non-rep letters include a general statement of the law, without legalese, that a person has X years from the date of X event to either settle his case or file a lawsuit. And I also include the warning that if he tries to file a lawsuit after X years, the case will be dismissed and he will never recover his damages.

In some situations, SOL warnings are especially critical because there is a short notice deadline or a shorter than usual SOL, e.g., workers' comp cases or tort claims act cases. I will even provide a notice form with instructions (mail it to the mayor, at this address, by certified mail, TODAY) so when the non-rep does decide to file suit the day before the SOL, his claim won't be tossed for missing the notice deadline.

When I don't know the SOL, I put that in my non-rep letter: I do not practice in this area of the law so I suggest you immediately call and schedule an appointment with (3 atty's names) so that you do not miss any critical deadlines.

I see fewer chances for a malpractice claim where the non-client is aware of the SOL and fails to act, then where the SOL info is withheld for fear of giving legal advice to a non-client.

Lynn Barnhill, New Mexico

I think you should warn them about SOL, but I do not think you should say your case is beyond the SOL on x date or within y dates of your accident. You should just say "Every case is governed by the statute of limitations. After a certain period of time you will lose the right to pursue your case forever. You should consult with another attorney immediately to protect your rights."

Robert M. Louque, Jr.