Avoiding Client Complaints; Navigating the Shoals

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Representing the securities industry for many years from all sides-public customers; firms; financial planners; registered persons-there are certain individuals and firms that have a lower than average amount of client complaints that progress to either arbitration or court. Those firms and professionals that tend to avoid or minimize serious customer complaints share certain practices. These are some of the practices they follow that keeps them out of trouble.

• **Documentation.** No one likes to do it. It doesn't make money but it is your lifeline when a problem develops. Lack of accurate, adequate documentation of a customer's accounts and transactions is the single biggest factor in losing arbitrations and trials.

• **What do you document?** First and foremost, who is the client? Beyond the bare bones standard new account form with a choice, at most, of four account objectives which are typically contradictory, a two paragraph memo; email to yourself or handwritten notes on what you know about this client. What did the client say was his or her main objectives? What are they seeking? How old are they? Most claims that go through to hearings occur, on average, 4 years after the fact. Memories dim. Lack of documentation is always used against the professional who is charged with a fiduciary's responsibilities.

• **What else?** Look at your client relationship from the outside in, not the inside out. If a customer complaint is to be judged by an outside panel of arbitrators or jury, it is how they view your action that counts. Look at your client relationship. Has the client decided to change his or her pattern of investing? Has there been a change of circumstances? Most importantly, is the client not following your advice? Without some notations-electronic day timer notes or any off the shelf contact software that documents or recites the fact, it becomes your word against an unhappy customer.

• **Maintain your documentation.** Documentation, which is not maintained or backed up regularly, becomes worthless if it is not preserved. Whatever system you use, make sure you have backups that are maintained for at least 6 years in some electronic format. CD's work for now. As technology changes keep up to date.

• **Early Intervention.** Be proactive in dealing with customer complaints or disputes. Get a manager involved early and insist that the issue be dealt with-not necessarily resolved but dealt with- as early as possible. Be open to some form of mediation. At the NASD, for example, over 90% of cases participating in the voluntary mediation program get settled. And usually for a lot less than the risk of an award and the legal fees and costs it will cost to lose the case. The single biggest factor that drives clients to attorneys is lack of responsiveness on the part of the professional. Complaints never should be ignored or put on the back burner.

- **Never forget the 80/20 rule.** The bottom 20% of your clients will create 80% of your headaches. Guaranteed. It's hard enough to obtain clients and difficult to turn down business but reevaluating your clientele based on fees; repeat business; volume of business and other objective standards makes it easier to deal with what typically is an emotional issue. There are time limitations to how many clients you can reasonably service and still maintain professional and ethical standards. It is more productive in the long run to wean out the less profitable clients to focus more of your attention and energy on doing what you like to do and doing it for people you like. The problems rarely occur with the clients you enjoy working for.

- **Be careful whom you hire.** Nothing can destroy your practice more than a bad hire. You are responsible for anyone acting under your direction, whether they are an employee or independent contractor. If the person has the *appearance* of working under your supervision, you are responsible. It is the doctrine of *respondeat superior.* The supervisor is responsible for the acts of the supervised. The biggest firms have been put out of business by a handful of rogue employees. A single bond trader, Joe Jett, put Kidder Peabody out of business. A 26-year-old trader put Barings Bank out of business after 200 years. E.F. Hutton went under when a few brokers began kiting checks and taking cash deposits. Employees can be your biggest asset or your biggest liability. Hire and supervise wisely.

- **Use attorneys who reflect who you are.** If you objective is to minimize customer complaints and resolve problems before they become big ones, use counsel who reflect your attitude. Consider not only the senior partner you know but any other junior attorneys who actually work on your matters. The attitude of those you hire to represent you reflects on you and your firm. Spend some time getting to know all the attorneys representing you to ensure your attitude is being reflected to your clients. Again, look at your practice from the outside in.

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