

## REFERRING A CASE

By Timothy R. Titolo, Attorney

1. An experienced traveler, you purchase a train ticket from Fairbanks, Alaska to Anchorage. In terms of taking trains and purchasing tickets, you have both “been there” and “done that.” As you board the train for the multi hour ride which includes a meal you discover that you and your travel companion are sitting on a bench made for one hunched over a narrow table and across from another traveler and her companion. Cramped quarters were not what you were expecting.

About quarter way into the journey, you learn that the track diverts since repairs are underway due to a train that crashed last week. You were not told of this when you purchased the ticket. Now the journey will proceed to another stop where you will switch from train to bus for the remainder of the trip. The trip will now take an additional 8 hours.

Most of us, lawyers that we are, would likely seek some remuneration for the inconvenience of not being told a significant detail about the benefit we were getting by purchasing the train ticket. (Some would ask even if they liked traveling by bus in scenic Alaska anyway!) You surely did not get what you bargained for.

2. You buy a used last year model car from a dealer. It looks good. You test drive it on the highway from one exit to another. It drives well. You have been driving for 30 years and decide to purchase the car.

A week later, you take the family to Utah and get out on the highway cruising at 60 mph. After driving 40 minutes, the car loses power steering when it stalls. You maneuver to the side of the road safely but very concerned. You turn the key, start it up again, and slowly accelerate to 55 mph. After 30 minutes, the car stalls again. By now, you are concerned for your family’s safety and getting your money back from the dealer and returning the car. The buyer did not get what he bargained for.

3. An attorney refers a case to you because:

- a. She recognizes the area is outside her experience and wants the client to have the best representation possible,
- b. He is in over his head and acknowledges he needs help.
- c. He can not finance an expensive trial,

The attorney refers the case when:

- a. She initially consults with the client and immediately recognizes another attorney with experience in that area better serves the client.
- b. She waits until the 2 year statute will run and wants someone else to file,

c. The trial is a month away.

Each of these scenarios represents a variety of ways a case can be “referred.” The problems of the matter, especially when another lawyer handles it for 2 or more years, stay hidden in the file’s details. No one can know those details after a telephone conversation. So, as in the ticket purchaser and the car buyer not getting what they “bargained” for, so too are attorneys who accept case referrals blindly.

When a lawyer asks me to evaluate a case, I always advise them if I can do it. If there is time to review the file, I ask them to deliver it to me. I request an initial meeting with the client. If I can help the client and take over the case, I enter into an initial fee agreement with the referring attorney. “Initial” because once I take over representation, details not given to me previously may start to unravel.

Once while ironing out the referral details I discovered the client had filed bankruptcy and the referring attorney had not applied as special counsel. Effectively there had been no representation of the trustee for over a year! Another time, with a trial pending, the opposing lawyer advised of the referring lawyer’s “verbal” stipulations to bifurcate liability and damages where the plaintiff’s craniotomy photos would have been excluded from the liability portion of the case! (A decision I would never make)

The best time to refer a case that is outside an attorney’s area of expertise or interest (outside of the money interest) is as close to the beginning as possible. It is best for the client. And the client’s interest is primary. It is not wise to hold a case until the statute of limitations or until the trial since much evidence can be permanently tainted or lost. Witnesses are harder to find, experts may be harder to get involved, and so on.

If revising the referral fee agreement will get the client the absolute best result and representation then that takes precedence. The “traditions” of old need updating as much as going to the local country doctor for heart surgery no longer cuts it.

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