

Sophisticated Clients Still Need Explanations

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Attorneys' clients come in as many varieties as people do – from any origin or background. They also come from any occupation.

Sometimes a client's occupation will not have any impact on the attorney's communication with the client, such as when an attorney represents a teacher in a divorce (i.e., the attorney would not communicate substantially differently with the teacher than with a client in a different occupation). At other times, the client's occupation may have a significant impact, such as in a medical malpractice action when an attorney represents a doctor who can assist the attorney with understanding the medical issues in the case.

Attorneys have to keep in mind, however, that no matter how sophisticated the client is, they cannot simply rely on the client's expertise. Attorneys owe every client the duty to exercise independent legal judgment concerning the matter at hand. Failure to do so may result in an attorney needing his or her own attorney – in a legal malpractice case.

A Case in Point

Recently in New Jersey, a sophisticated client's allegedly unmet expectations led to a lawsuit against his attorney in *Cottone v. Fox Rothschild, LLP*. The plaintiff (client) sued his attorney for failing to ensure a contract "accurately reflected the deal [plaintiff] believed he had made." The main question in the litigation was whether the attorney owed the plaintiff a duty to explain unambiguous terms in a written contract even though the plaintiff was a sophisticated business person who negotiated the terms of the agreement himself.

The trial court found in the attorney's favor on a motion for summary judgment, ruling the attorney did not owe a duty to explain the terms in question. The appellate court then reversed, holding the attorney owed his client a duty of care and that questions of fact existed regarding whether the attorney appropriately complied with the standard of care. The appellate court remanded the case to the trial court for a jury trial.

At trial, the jury may ultimately agree the attorney handled himself appropriately. Nevertheless, the attorney possibly could have avoided the lawsuit by ensuring he explained all of the contract's terms to his client, despite the client's sophistication. Though such caution may seem like overkill, attorneys must ensure their client is protected in litigation or in contract negotiations. Attorneys cannot simply assume a client understands a legal situation, even when the client is quite sophisticated in an area that relates to the attorney's representation. More communication with a client generally beats less communication.

By Tyler Thompson

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