

Tip of the Month

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LACBA

LOS ANGELES COUNTY BAR ASSOCIATION

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Do Not Give Advice When Declining to Represent a Prospective Client

When declining to take on a prospective client's legal matter, some lawyers want to provide at least some assistance to the individual. Some lawyers might want to provide an opinion about the client's legal matter. Either of these impulses should be resisted and no advice of any kind should be given to the rejected prospective client. In *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980), a lawyer turned down a wrongful death case after a 45 minute consultation and commented to the prospective client that the case was not worth pursuing. The lawyer did not mention the statute of limitations or suggest that the prospective client consult with another attorney if he wanted to pursue the case further. Relying on the lawyer's opinion that the case was not worth pursuing, the rejected client took no action until after the statute of limitations had passed. Represented by another attorney, the individual sued the first attorney for malpractice based on his advice that the case was not worth pursuing. The jury agreed that the case was worth pursuing, that the lawyer's advice was erroneous, and that the client would have recovered in that case amounts totaling about \$649,500, which was the amount of damages in the legal malpractice case. When turning down the representation of a prospective client, do not give in to the impulse to provide any legal advice or opinion to the rejected prospective client. Say nothing more than that the matter will become time barred by the statute of limitations and that the prospective client should immediately consult with another attorney if the client wants to pursue the case further.

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