

Do you know it all? When it's unwise to advise

By Kerrie Lalich



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There can be an expectation as a legal practitioner that you are able to handle every legal problem that arises, even if the problem is outside your usual area of practice. However, dabbling in unfamiliar waters without the appropriate knowledge and experience can be unfair to the client and increase the risk for the practitioner.

Creeping scope

Taking on work outside your area of practice is not always a conscious decision. Often the situation arises from a complication to an existing matter or a piece of work flowing from another transaction.

However, a simple drafting exercise or conveyancing matter can turn into a far more complex set of circumstances. Far from being risk free, practitioners who lack experience and knowledge in the area are unable to accurately gauge if the matter is straight forward or requires additional expertise.

In *Laurens & Laurens* [2017] FCCA 109, a practitioner acting in a family law matter for the wife also acted on the sale of a property on behalf of both parties. The proceeds of the sale, held in trust, were distributed by the practitioner to the wife without the consent of the husband, in an amount not provided for in the final orders. The Court stated that the practitioner's conduct '[s]hows lack of understanding as to the effect of interim and final orders, and of the obligation of a lawyer acting as a trustee ... It shows a level of competency in this case that falls short of what is expected of reasonably experienced practitioners' (at [59]).

Subsequently, a personal costs order was made against the practitioner.

Tip: When in unfamiliar waters, take the time to determine the depth of your involvement and your experience before proceeding.

Family and friends

Often, a practitioner will take on a matter for a family member or friend that is outside of their usual practice area as a favour. You can feel obliged to help out.

Handling a legal matter for a family member or friend may seem like the right thing to do but it can have very real consequences without adequate knowledge and experience.

Snapshot

- Dabbling in unfamiliar practice areas can be unfair to the client and increase risk for the practitioner.
- Practitioners who are inexperienced in a particular area may lack the understanding and knowledge to accurately gauge if the matter is straight forward or requires expertise.
- Don't be tempted to 'value-add' to an existing client to maintain the relationship.

In *Zakka v Elias* [2013] NSWCA 119, a practitioner took on a complex matter for a family member. The matter was outside the practitioner's usual area of practice, however she felt pressured by the request. This led to a professional negligence claim.

Tip: Rather than taking on the matter, refer your friend or family member to someone else with expertise in the area.

Accommodating existing clients

Taking on a 'one-off' matter as an accommodation to existing clients can be tempting.

You may take on a matter that you would otherwise not consider, to save the client money or because you have acted for the client in the past.

In a Lawcover claim, a specialised commercial practitioner took on the drafting of a will for a long-standing commercial client. The client was about to take an overseas trip and needed a will drafted quickly.

Although outside his area of expertise (the practitioner had not drafted a will since his College of Law days 25 years before), he saw no problem with accommodating this request.

The will contained numerous errors including the distribution of one property twice, to two different beneficiaries.

Not surprisingly, the estate brought a claim against the practitioner for the costs of the rectification of the will.

Don't be tempted to value-add to an existing client to maintain the relationship.

Tip: Relinquish the work of existing clients either to someone else within the firm who has knowledge and experience in the area or to a practitioner in another firm.

In general, accepting instructions in an unfamiliar area of practice increases risk. It can lead to errors, disappointed clients and consequential claims.

Be aware of your own limitations and assess the risk of taking on matters that may be outside your regular practice.

It is not necessarily what you know; it's what you don't know that can lead to problems. **LSJ**