RISK MANAGEMENT
INSIGHTS

by W. Brian Ahern, RPLU

Risky Business:
Practicing Outside of Your Area of Expertise

Providing clients with legal services in areas in which you typically don't practice is risky. Recent economic forces, or perhaps the unreasonable expectations of clients, can lead an attorney to stray into areas of the law in which he or she has little or no experience.

Dabbling outside your practice area is particularly troublesome in terms of loss prevention. Nearly 59 percent of all losses occur outside a lawyer's or law firm's primary area of practice. However, the risks extend beyond an unsatisfied client or a potential malpractice claim. You may be violating ethical standards and be putting your law license at risk.

When confronted with an engagement that requires legal knowledge, skill and thoroughness beyond your expertise, there are several options: refuse the case, refer the case, associate with experience counsel, or become competent in the specific area(s) of law required.

If you decide to take a case outside of your area, there are a few issues to consider:

- Simply disclosing your lack of expertise does not limit your liability if the client agrees to retain you, even after you have acknowledged a lack of knowledge. Malpractice claims typically originate based upon the end result of a case.
- A disclosure of lack of expertise, followed by any mishandling of the case, may actually enhance a malpractice claim against you.
- If you have disclosed your lack of expertise and the client still insists on your handling the matter, you should be cautious of the client's motives. Ask yourself, "Why would a client retain self-confessed inexperienced counsel?" Most likely this is due to the client's loyalty to you based upon your exceptional results in the past. An offer by you to work alongside experienced counsel may be the best remedy and will provide you the opportunity to develop new skills. If a potential client is insistent upon you taking a matter in which you have no experience, the best advice is to refer the case elsewhere.
- If you decide to accept new business outside of you/your firm's area of expertise, and you wish to avoid unfortunate consequences, you should associate with experienced counsel at the outset. Waiting until pivotal points in the matter to bring in co-counsel may increase your risk of a legitimate malpractice claim.

In summary, Daniel White of San Diego based White Oliver Amundson & Gallagher, an experienced litigator who represents attorneys in professional liability matters, offers the following advice. "Remember that when you accept a matter outside your area of expertise, you will be held to the standard of practice of a specialist in that area. Should the client insist on you taking it on, insist that they associate a specialist. If that is not acceptable, the assignment should be refused and the client referred out."

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