

PRACTICE TIPS

DABBLING: HOW MUCH EXPERIENCE IS ENOUGH?

by Sally Field, Esq.

As lawyers, we all know what dabbling is: accepting a matter in an area in which you typically do not practice or practice only occasionally. The dangers of dabbling are obvious and as the economy for law firms worsens, the temptation to dabble increases.

The ABA's most recent Profile of Legal Malpractice Claims (2008) notes that 46 percent of all reported claims are the result of substantive law errors. Dabbling is likely a driver of a number of those malpractice claims. Beyond the risk of legal malpractice, there are ethical considerations. The Model Rules of Professional Conduct provide in Rule 1.1:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Ethical Consideration 6-3 of the Model Code of Professional Conduct provides that a lawyer can provide competent representation in a novel area of practice by undertaking the needed study and investigation. If you take on a matter in a novel area for you, you may have an additional burden to meet to show you had competence.

It's important to ask yourself some tough questions when considering taking on a matter possibly outside your areas of expertise:

- ◆ Have I handled matters like this one before? Was the experience gained sufficient to become competent?
- ◆ If not within my areas of expertise, can I become qualified through study and investigation?
- ◆ How will I know when I am competent?
- ◆ Am I willing to take on this study and investigation knowing that I may not be able to bill the client for the time?
- ◆ Can my staff and systems handle the work?
- ◆ Am I willing to continue to expand my knowledge and skill in this area of practice throughout the representation?

- ◆ Is the better option to refer the case to competent counsel or to associate in competent counsel and remain on the matter?

If you have determined that you are competent or can become competent and have met your obligations to your client as described above, as you move forward, keep these practice tips in mind:

- ◆ Memorialize and document work performed, communications, advice, consent, billing agreements and expectations, and the scope of the representation performed by you and any attorneys with whom you associate.
- ◆ Invest a little more time on staff supervision.
- ◆ If you have referred the case or associated with another lawyer, make sure who does what is clearly outlined in writing and understood by all. You do not want to be held liable for the malpractice of another attorney.
- ◆ Communicate often with your client, associated counsel and staff.
- ◆ Continue to seek the advice of experts.

Competence is the first disciplinary rule for a reason – it is necessary to do the job the client hired you to do. While lawyers can and do expand into new areas of practice, it is important to do so deliberately and with a willingness to learn what is necessary to provide quality legal services.



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