DABBLE OR DEVELOP SAFELY

Why dabbling in an area of law outside your expertise is high risk and how you can develop into new areas responsibly.

There is an old saying "Jack of all trades, master of none". With increased specialisation in areas of law and the complexity of issues faced by clients, it is difficult for practitioners to practise across multiple areas of law.

Sometimes it is tempting to take on new matters in areas that you don't do regularly or that are outside your expertise but unless done responsibly it is risky and not good professional practice. Dabbling can lead to delays and additional costs for the client and potentially also result in a breach of ethical duties to deliver legal services competently and diligently,[1] as well as professional negligence claims.

Dabbling claim examples

While many practitioners don't actively seek to work in new areas of law it can be hard to say no to clients. LPLC sees claims where practitioners have done exceptional work for a client within their usual practice area but are then asked to do additional work which steps into another area outside their expertise and things go wrong. In some cases, the practitioner has not appreciated the complexity and nuances of the different area and thought it can't be that different from the area familiar to them.

Practitioners have been known to say that in these circumstances, they felt they could not say no to the client. This may be because they are a good client of the firm, they were reluctant to turn away new work, or the client was a personal acquaintance or relative and they felt pressured or obliged to help.

In one matter, a long-standing wealthy client who was soon to be married asked the firm to prepare a binding financial agreement. They did not have a family law practice, but the relevant partner reasoned it was not difficult or different to drawing a will and referred it to a practitioner in the wills and estates team. They drafted the agreement which was ultimately deemed invalid on the basis that no solicitors certificate as to independent legal advice had been obtained, which is a pre-condition to making a binding agreement under the *Family Law Act 1975*. There were also some significant drafting ambiguities. The husband and wife separated two years later. The husband made a professional negligence claim against the firm on the basis he was obliged to pay his ex-wife a greater sum than would have been the case had there been a valid, competently drafted agreement in place.

LPLC also sees claims where practitioners have acted for clients on matters which are at the periphery of their knowledge, and things go wrong because they don't know the law and issues in that niche part of what they might consider to be their area. In one example, a property developer retained a building and construction lawyer to terminate a building contract for the construction of a block of units. The practitioner served a notice of breach on the builder who responded to the notice and then also served a substantial payment claim on the developer to recover money owed for the building works. The practitioner took the view the payment claim was not valid and did not serve a payment schedule disputing the amount due within the 10-day time limit prescribed by the *Building and Construction Industry Security of Payment Act 2002* (Vic). Under the Act, a failure to serve the payment schedule meant the client became liable to pay the full amount claimed. The builder obtained summary judgment against the developer for that substantial amount, and a professional negligence claim was then made against the practitioner.

While the practitioner regularly acted in building disputes, they usually involved domestic building contracts between builders and homeowners which are not covered by the security of payment regime. He didn't appreciate that as the client was a developer in the business of building residences, and the contract was in the course or furtherance of that business, the security of payment regime applied.

Another common trap for practitioners is accepting instructions to act in a matter in their usual area of practice, but in a different jurisdiction with different procedures and time limits.

If you are asked to dabble by acting on a matter outside your knowledge or comfort zone, a safer and more appropriate strategy is to be direct with the client and tell them that you cannot assist but could help them find someone who can. If you work in a larger firm, this could mean identifying a subject matter expert within the firm, or if you work in a smaller firm, it will usually mean making an external referral.

How to responsibly develop expertise and experience in a new area of law

If you want to accept instructions from clients in a new area, don't do this on the run. Think about building expertise and experience in a measured way long before taking on the work. Here are six practical steps to get you started.

Plan your work and work your plan

Start by documenting a plan to get you where you want to be. Make sure the area of law will be compatible with the type of work you already do, and that it plays to your skills and strengths which you have no doubt spent years developing and honing.

Hit the books

It goes without saying that in any new area of work, you will need to learn and understand the substantive law and how it is applied. There are no short cuts for this.

Start by researching and investing in the key texts and commentary in the area and enrol in professional development courses to attain a base knowledge. There are several legal education service providers that offer a wide range of courses and seminars. Some universities and the College of Law provide a range of post graduate options across a range of specialist areas, ranging from longer courses to single subjects over a short period, without the need to enrol in a formal degree.

Build on this base knowledge and stay on top of new developments in the usual way by subscribing to legal alert services from online legal information providers, as well as articles, webinars or podcasts from specialists practising in the area.

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Get up to speed with practice and procedure

As well as understanding the substantive law, it is critical that you learn about the relevant processes and procedures required to do the work. For example, practising in litigation and dispute resolution requires knowledge of the various rules, forms, practice notes, notices and guides, and electronic filing systems of the various courts and tribunals.

It is also important to understand the relevant industry or sector the work area touches on. Subscribe to industry and sector alerts to provide you with the insights you need to stay ahead of the complex issues affecting your clients. This context can also help you understand the practical implications of any changes to the law.

Invest in resources

Invest in resources to do the new work well such as precedent forms, documents and correspondence. Use any software and technology specific to the practice area. Checklists are another critical tool to help you identify and address important issues and collate the information you need.

Obtain the right resources to support you to work efficiently and effectively and provide expert advice and client service.

Build support

Invest time in building peer networks. Not only do they provide professional development opportunities and a forum to discuss risk issues, they will also allow you to build your profile, reputation and potentially lead to work referrals.

Some practitioners may be in a position to enlist the help of an experienced mentor. If you can't find a generous colleague, consider paying someone to provide the required support such as an accredited specialist. Also consider employing an experienced practitioner to assist you in establishing the new area for you or your firm. They may also bring some clients or client contacts to get the new area of work up and running.

You might also consider a referral arrangement that supports you while you develop the expertise. A word of caution with these strategies – you need to know enough about the area of law to effectively supervise any employee or lawyer you outsource work to. You will still be accountable for their work.

Barristers can be a good source of additional support. However, be careful not to use them as your safety net in a matter where you have limited expertise. Without good knowledge and experience in the relevant area of law, it will be difficult to know when or what to instruct the barrister to do or advise on. Solicitors have independent duties to the court and to the client requiring them to bring independent judgment to counsel's advice and the matter in which they are retained. When things go wrong, you cannot avoid liability for a professional negligence claim on the basis you relied on counsel.

Expand in small steps

Expertise comes from active formal learning coupled with experience. If possible, build your expertise by starting with simple matters first and build up to more challenging files. Restricting your practice at the outset and growing it in increments will help you to not act beyond the scope of your expertise.

There are no short cuts to developing expertise and capability in a new area of law. Done safely and effectively, it takes time and deliberate planning. It is well worth the effort in the end if it avoids negligence claims and produces great outcomes for you and your clients. ■

This column is provided by the **Legal Practitioners' Liability Committee**.
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1. Rule 4.1.3 of the *Legal Profession Uniform Law Australian Solicitor Conduct Rules 2015*.