

## WHEN TO SAY GOODBYE

Practitioners should act decisively on non-performing clients.

### TIPS

- Set out your expectations of the client at the outset.
- Your retainer should specify when you will cease to act.
- Terminate the retainer if your client will not provide instructions or follow advice.
- Bill regularly and consider terminating the retainer if accounts are not paid on time.

Practitioners need to proactively manage clients who do not appreciate the value of their services. This includes knowing when to act decisively by not accepting a retainer or terminating a retainer within r13.1 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.

Clients who do not value your services heighten your risks and are more likely to complain. You end up devoting a disproportionate amount of time managing them, leaving you less time to attend to other clients. All up, difficult clients can cost you money.

### Deciding whether to act

Explain how your services will benefit the client and question them to check they understand this value.

It is also important to have a documented policy stipulating the types of clients and work the firm will and will not accept. Many firms have policies not to act for new, walk-in clients on matters such as advising on security documents and signing solicitor's certificates. These situations often present limited opportunity to assess the client, especially where they are seen by an inexperienced lawyer.

Practitioners who have a claim often comment that even in the first interview they sensed the client would be difficult and wished they had trusted their gut instinct not to accept the retainer.

### Importance of your retainer

Your retainer is critical because it records what you are to do and the basis on which you have agreed to act. You need to communicate what you need the client to do, such as:

- provide identification and evidence of authority
- inform you of changes in contact details and circumstances
- cooperate and treat you and your staff courteously
- provide instructions within a reasonable time
- pay accounts within the time specified.

You should be clear at the outset that you may cease to act in the matter if:

- a conflict arises where you cannot act in the client's best interests
- the client does not provide you with instructions when required
- the client does not accept your advice and exposes you to potential risks you are not willing to accept



- the client asks you to act in a way that would be unethical or illegal
- the client does not pay your accounts within the time specified.

### When to terminate the retainer

Under r7.1 you are required to provide clear and timely advice to assist a client to understand relevant legal issues and make informed choices about action to be taken. This means giving your client the legal options, consequences and possibly a recommendation, but they must ultimately decide. Where a client will not provide you with appropriate instructions or take your advice, consider whether you should terminate the retainer. When practitioners continue to act in those situations, the client often seeks to blame them later for the consequences of the client's decisions or inaction.

To manage client expectations, send accounts regularly rather than just at the end of the matter. Keep clients informed about how costs are accumulating, what work is being done and the cause of any delay. Obtain money for disbursements well before trial. If you have difficulty getting a client to pay your accounts on time, it can be an indication the client does not value your services and you should stop acting. If you cease acting in a litigation matter, do so well before trial and remove your firm promptly from the court record.

Be alert to potential conflicts of interest throughout a matter. This includes knowing when you are susceptible to an allegation you are conducting the matter in your interests rather than your client's interests because your earlier handling of the matter could be open to criticism. Seek assistance from the LIV, LPLC, a barrister or colleague if you are unsure whether to continue to act. ■

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