

Retainer going nowhere? Don't let it drift!

What steps should you take to ensure your potential new client provides complete instructions? What if the proposed work is complicated by the involvement of an intermediary purporting to have the client's authority, such as a spouse, child, relative, friend or another advisor? It is risky to just let the matter drift without proactively managing the retainer.

Whenever there is an intermediary involved you should always check the veracity of their instructions. You need to make it clear you can't take instructions from them or agree to act without first speaking to the potential client. In some cases, you might even need to put this in writing to the intermediary and the potential client, outlining the conditions by which your retainer will start.

The claim that follows is a good example of what happens when you don't do this.

A man agreed to assist a friend by finding a suitable practitioner to act in the friend's proposed family provision claim against the estate of his recently deceased mother. The friend, acting as an intermediary, approached the practitioner, who said he would need to review relevant material and meet with the claimant to determine whether he could assist.

After reviewing documents provided by the intermediary, the practitioner told the intermediary the claimant's prospects were good but his claim was likely to be strongly contested by the estate's major beneficiary. The practitioner suggested the claimant meet at his offices to provide further instructions. This never happened.

A few weeks later, the intermediary asked the practitioner to write to a real estate agent about certain matters concerning the deceased's properties. This task, not related to the family provision claim, was delegated to and performed by an employee, who also prepared a draft engagement letter, which was never sent. The practitioner received no further instructions from the intermediary or the claimant so he assumed the matter was not progressing and did not communicate further with the intermediary. No file was opened.

Two months later, the claimant engaged another firm, probate was subsequently granted to the executors and the family provision claim settled. The claimant then sued the first practitioner, alleging the practitioner was retained to act and delayed moving the matter forward, resulting in lost interest. The claimant also sued the intermediary, who in turn alleged the practitioner conducted himself on the basis he was retained to act for the claimant, or alternatively, the intermediary. The claimant and the intermediary argued the draft engagement letter was evidence the practitioner conducted himself as if he was acting on behalf of the claimant.