

THE LAWYERS WEEKLY

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Get it in writing for law a la carte

It is important to define the scope of work in the retainer agreement

GEOFF KIRBYSON

When is a law firm like a steak house?

When the menu is a la carte, of course.

Limited-scope representation, or the unbundling of legal services, is following the trend in other industries, whether it's hospital-ity or financial services, where consumers can pick and choose what they'd like to pay for.

But just like getting your steak with the baked potato and without the salad when you wanted it the other way around, problems can arise in the legal profession if there are communication breakdowns.

A conversation between a client and a lawyer could mean two very different things to both sides in terms of representation so it's imperative that lawyers literally spell out what they will and won't do.

The most critical component when unbundling services, according to Andrew Feldstein, Toronto-based founder of Feldstein Family Law Group, is defining the scope of work to be done

in the retainer agreement.

"We have a checklist with a list of all the services we provide. Don't want us to go to court? Don't tick that box off," he says.

Unbundling in a litigation matter, for example, could mean the lawyer might draft the pleading while the client files it and represents themselves in court.

If you've done some work for a client and believe that you've completed your duties but the client doesn't feel the same way, trouble can arise if it's not spelled out in writing. For example, if your name is on a document or two which leads the court to believe you're the solicitor of record, you could very well find yourself representing that client until the case is resolved.

"And you probably won't get paid because the client can't afford to pay you," Feldstein says.

A retainer agreement is a living document, however, and needs to be updated if both or either party decides the scope of the services should change.

"It's a matter of constantly being clear as to your role," he says.

Word of mouth, Page 3



Looking ahead

Incoming Canadian Bar Association president Janet Fuhrer says her theme for the year will be 'lawyers helping lawyers to help people.' She also wants to continue work on the CBA Legal Futures initiative. Our special section on this year's CBA conference begins on page 12. ROY GROGAN FOR THE LAWYERS WEEKLY

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Better lawyers CBA head goal

Janet Fuhrer wants more mentors, practice tools

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News

Word of mouth: Smaller files can mean more referrals

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Kris Dangerfield, CEO of the Law Society of Manitoba, agrees.

"If a lawyer is going to take on part of a client's matter, they're required to let the client know the scope of the service they'll be providing and what are the outer limits. They are required to confirm that in writing so there are no surprises for anybody," she says. "The real key from a lawyer's perspective is to make sure they don't act in a way that the client believes they're going to provide full service to them when they're only being retained to provide a limited service."

Dan Pinnington, Toronto-based vice-president of claims prevention and stakeholder relations for the Lawyers Professional Indemnity Company, says as the malpractice carrier for Ontario, he has some concerns about limited-scope referrals.

"In a world when lawyers agree to do a whole matter for a client and there is confusion over what was said or agreed to be done, there's at least an equal if not greater risk of confusion over what the lawyer agreed to do or not to do in a limited-scope situation," he says. "We've seen malpractice claims in the U.S. in those scenarios."

Just because the individual work may not be as lucrative as taking a client from start to finish in a matter, lawyers need to be careful they don't confuse a limited-scope retainer with lower quality service.

"You still have to properly advise the client on all of the issues," he says.

Pinnington believes family law is the most suitable for unbundling because there are discreet parts of a matter that can be easily broken out, such as an application for custody or a divorce.

There's also room for providing limited assistance to clients on litigation matters, Dangerfield says, but lawyers may prefer to see housing deals through to the end because it can be tricky for clients to prepare transfer of land documents and receive trust money from the other side of the transaction.

Perhaps the biggest benefit to the client from limited-scope representation is the improved access to justice as clients can order from a menu of legal services and lower their overall costs. Research has shown the reason many people represent themselves in court is the high cost of hiring a lawyer.

Lawyers and the entire legal system will benefit in an indirect way, too, as having less self-

representation in courtrooms across the country should help reduce the glut of cases.

"Lawyers are there to help people navigate legal issues and the legal world. Legal services are too pricey for many to afford. If (unbundling) is set up so somebody can get a bit of help on something and deal with an issue they're struggling with, that's a good thing," Pinnington says.

Feldstein believes there's room for limited-scope referral work to grow because only a handful of clients know that such options are available. Instead, he says they're under the impression that only the full, comprehensive service is offered by lawyers.

He doesn't see unbundled work as a headache of any kind and says he's just as happy to get

three \$5,000 files compared to one \$15,000 file.

"If you resolve the \$5,000 files, (those clients) will probably be happier and generate more referrals for you than clients with larger files," he says.

Pinnington says he sat on a panel recently where a lawyer said he felt he was more likely to get paid on five \$2,000 matters than one \$10,000 matter.



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