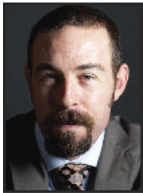




Help! I need somebody

Avoid the slippery slope. Keep your ego out of the equation, and call someone who has the expertise you don't!



Cooper

BY MILES B. COOPER

A few weeks ago I heard a noise from the bathroom. Our toilet kept running, ever so slightly, after getting flushed. I've addressed home plumbing problems before. I will readily acknowledge, though, I'm far better with a lap-top than a pipe wrench. But I'm also a big, dumb male. This means I think I can do anything I put my mind to, and in many cases this may be true. But in areas that require manual dexterity, my confidence exceeds my capacity. The next day, I put my mind to stopping the toilet from running. I pulled the lid off, poked around and did a few Google searches.

"I can fix this, no problem," I thought.

Thus began a slippery slope. A tweak here, a new gasket there and... hmm... it seemed a little worse. Four hours later, with two trips to the hardware store and water cascading from between the tank and the bowl every time I flushed, there were problems. Wet up to my elbows and angry, I was reminded of a frequent point I make to folks at legal aid clinics that ironically now apply to me.

"You can represent yourself with a how-to book just like I can do my own plumbing," I say, "I just might get crap all over in the process."

I twisted the valve by the toilet off, swallowed my pride and called our plumber.

The duty to refer or associate

My plumbing situation is a good illustration of why one should refer or associate on cases outside one's expertise. Colleagues at my former firm established liability for failing to refer in *Nichols v. Keller* (1993) 15 Cal.App.4th 1672. A good read. The short version? A workers' compensation lawyer failed to refer a client who had a potential third-party case. The worker missed his civil suit statute of limitations. The court determined the lawyer was liable for legal malpractice as a result. Rules Prof. Conduct, rule 3-110 also provides guidance. My paraphrase: If you don't know how to do it or can't do it well, associate with or give it to someone who can.

So what does that mean to you? Don't let your ego impede the success of your case. A frequent example we see: someone calls us a few months before trial. The lawyer does not try many cases and has done the best he can. Or he's run short on cash

and scrimped on experts. The lawyer now recognizes he needs help, but much like my plumbing efforts, the problem is sometimes beyond salvage. The lawyer and his client are out of luck.

Contact experts - Early and often

I recognize my limitations. A key motion in limine ruling goes poorly? I don't wait for the verdict. Appellate counsel is called for input on how to protect the record. A verdict goes well for us with an uninsured defendant. Collections counsel is consulted. We all have our strengths. But our strengths, given the intensity of our practice, tend to be relatively narrow in the big scheme of things. Need input on trial strategies, technology or personal injury work? I'm your guy. Move too far beyond that — class actions, bankruptcies, intellectual property, what have you — I'll give you a number to call. I know my skills and also where I need help.

It is easy to understand, given our passion for helping clients and the innate desire to be self-sufficient, how people find themselves in what I call the plumbing situation. That slippery slope where one thinks, "If I can just get this one piece," only to find the whole mess has moved well out of grasp.

The stark reality though is a return to *Nichols v. Keller*. You fail to refer — and I include consulting with outside legal experts when an issue outside your practice area comes up — and you may find yourself making a call to your malpractice carrier. A call no one ever wants to make. And a call that can be avoided if you keep your ego out of the equation and bring in expertise early on.

The value of an expert

Our plumber arrived a few hours later. He noted the valiant effort. And a major oversight. He tried not to appear smug. Tried. Not too hard.

"It's a good thing you didn't mess with that," he said, pointing to a part. "That would have meant a new tank — very expensive."

That indeed was the part that I was thinking of tackling when I realized I was rapidly descending the slippery slope. But fortunately not beyond salvage. Ten minutes and \$100 later, he fixed the problem. Bringing him in at the beginning would have cost less and saved me time. But my recognition that I was on a slippery slope — late though it may have been — meant I did not need to get an additional contractor in for extensive water damage. The lesson learned? Bring in an expert. Your success rate



will rise and frustration will drop in equal proportions.

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claims. In addition to preparing his own cases, he associates on cases as trial counsel and consults on trial matters. He has served as lead counsel, co-counsel, second seat and schlepper over his legal career. Cooper's focuses beyond litigation include trial presentation technology

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