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LEGAL BRIEF

WOULDN'T IT BE GREAT IF YOU COULD dump those bad habits that cost you lots of money and adopt new habits that make you money? In business the 80/20 rule is seen as the goal, but the 20/80 rule is the bad old habit — you earn 20% of your income from clients that make up 80% of your work.

And wouldn't it be great if you could dump these old clients that are bad for your business and take on new clients that are perfect for you?

You can do this. All you need is discipline and a little knowledge on how to dump clients without having to worry about being sued.

"Dump" may sound harsh, but it happens regularly, especially with Australian Financial Services Licencees (AFSL) who practice a "come and go" relationship. It is the nature of their business — one day you are a client of a AFSL and the next you are a client of another, all because a representative has switched AFSL camps.

The big end of town dumps clients too; it is just that someone else does it for them. In fact, some of the come and go relationship AFSLs get business coaches who encourage the practice. Do these come and go relationship AFSLs carry risk as well? Of course they do — the post-Financial Services Reform (FSR) Act makes them. In fact, every representative that seeks to dump the 20/80 client exposes the AFSL to risk.

The risk is that the client's financial plan will fail, either in the short or the long term, because despite your promise to care for them, you, the representative, would rather see them on the dump heap, or you will have sold off those not-so-valuable clients. For the AFSL, the risk arises when you have a business where your representatives control who can and cannot deal with the business.

So how do you dump a client? In exactly the same way you dump a life partner — you initiate the divorce in a clear and defined way, taking care not to hurt their feelings too much.

The first step requires you to look at how you came together in the first place, what was attractive about you and what pick-up lines got the client close to you. Let us look at the contractual terms you have with your client and your relationship.

Contractual terms do not mean that you only re-read the words of your client engagement. Your financial services guide (FSG) and statements of advice (SOA) often also contain promises, as do your web site and any advertisements you have published in respect of your services. What you or your representative have said to your client is also part of the contract.

Rules of disengagement

Terminating a relationship with a client is not entirely different from a divorce — try not to hurt their feelings and keep in line with the law

The most common trick to look for is the promise that you will be together forever, or at least until you reach financial heaven. Have you or your representatives said this? If so, you must engage in careful disengagement practices. Inherent in such a promise is the collateral promise that you will update the client on new developments, thoughts or financial planning processes that arise from time to time. But because you cannot afford to do so and you have dumped them, if the clients suffer a loss between the time of your dump and the time of their next financial planning process, you may be liable.

This is why all come and go AFSLs need absolute rights to contact disengaging clients, not only to tell them they are no longer being serviced under the AFSL banner, but also the reason for this, especially if it is because the representative has been asked to leave. How would you feel if the reason that your adviser left his former relationship was because of his shoddy approach, and you only found out about this some time later, when that same shoddy practice has cost you money? Wouldn't you feel (financially) peeved that your initial loyalty to the earlier AFSL was rewarded with silence at the most critical time of when you could have made a choice, but had no knowledge with which to make it?

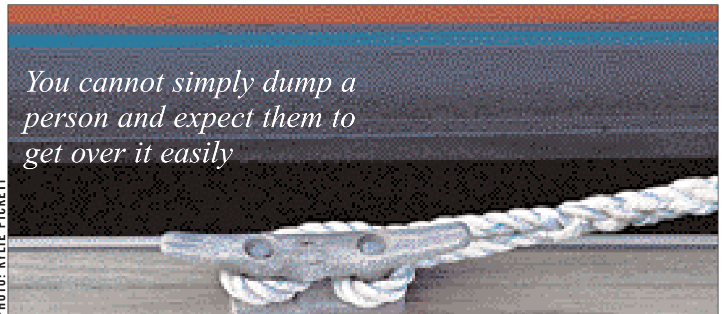
Before client disengagement practices are employed, you must also consider the position of the client. You have a duty to the client that is based on trust. You cannot simply dump a person and expect them to get over it easily; you cannot even simply follow any specific disengagement process that may be listed in your client terms of engagement. You must also consider the position of the client. Are the terms of disengagement reasonable to follow in the circumstances? You have a duty to ensure that clients are not harmed in or by the disengagement.

This is not as complicated as it may seem. Consider the following scenario: your contractual terms say that you can terminate your services with 14 days' notice. However, to do so may harm your client because of superannuation law changes that are imminent and you know they will adversely affect the client. To deal with this you need to assist your client in getting their affairs into order or ensure that someone (who is competent, which raises referral issues) does so. Depending on your client's needs, you may need to give them 60 days written notice instead of the 14 days contained in your agreement. This is so they can get the transfer of relevant information to a new adviser done in an orderly manner.

If you do not have a clearly communicated dumping (I mean disengagement) process, you should adopt one now. When designing the system, always keep in mind the "know your client rule" of Section 945A of the Corporations Act. In many respects, this is what started the financial planning process, so it makes sense that it is involved in the finish of it as well. Make sure you know your departing client.

When in doubt, adopt the simple adage of disclosing all that you can, no matter whether you are the AFSL or the representative. If you are a single product provider who provides only one off services at the time of sale, make clear that the client realises that there will be no further support at any time. The client cannot seek reimbursement for a loss after being dumped, since they should not have had any expectations in the first place.

However, if you are a full service financial services provider, your disengagement process should contain realistic disclaimers as part of the process. You can say something along the lines of: "We can no longer provide you with the services that you require, but we nevertheless urge you to continue to monitor your financial needs and future with the benefit of competent advice. Absence of careful continuing attention to your financial needs may adversely affect you achieving your future financial goals and impact on you and your family's lifestyle objectives. We will no longer provide you with support from …".



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Members of the FPA must also consider the Rules of Professional Conduct and Code of Ethics. It may not seem obvious, but when reading these, there is always the obverse to any rule. The integrity and fairness standard within the Code of Ethics is required in the financial planning process and in the dumping of the client.

So, out with old and in with the new. To do this, in short, make sure you first consider your relationship with your client and then consider what is fair to them. Always check the law and the industry standard. Once you have considered these issues, the process should be one that will not suffer scrutiny and you can look forward to the new clients. But obtaining the new clients raises another interesting topic — who does actually own the client? Asset