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Taylor v. Bell:
Court of Appeals Emphasizes Importance of Defining
Scope of Representation

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Defining the scope of a representation has long been a key risk management tool for law firms to incorporate into engagement letters with their clients. Defining the scope allows a firm to outline the specific work that it will—and will not—be responsible for in an era when many clients have more than one firm assisting them with disparate legal needs. RPC 1.2(c) permits limitations of this kind as long as they are reasonable under the circumstances and the client involved consents.

Division I of the Court of Appeals recently provided a telling example of the importance of defining the scope of a representation. *Taylor v. Bell*, ___ Wn. App. ___, 340 P.3d 951 (2014), involved a stock repurchase plan between the founder of a privately held corporation and the company. The company’s law firm had also represented the founder on personal matters. The founder, therefore, hired a separate firm to represent him in the repurchase deal while the company’s counsel continued to represent the corporation. In their engagement agreement with the founder, the new firm wrote that it would represent the founder “in the matter of the sale of his stock in [the company].”

The transaction was later set aside for failure to meet a statutory requirement for the company under the law of the controlling jurisdiction. Legal finger-pointing followed and the founder sued the law firm that had come in to handle the transaction for him. The founder's law firm argued that the company's law firm was responsible for that facet of the overall transaction. The Court of Appeals, however, found that the engagement agreement with the founder was so general that it did not exclude responsibility for the particular statutory problem involved. Therefore, the Court of Appeals reversed summary judgment and remanded the case for trial.

Taylor highlights that in today's hyper-specialized world it is often not enough to define the scope of a firm's representation generally. Rather, if a firm is being hired to undertake very specific work, it can be critical from a risk management perspective to make that limited scope plain in the engagement agreement involved.

ABOUT THE AUTHOR

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Committee on Professional Ethics and its predecessor, the Rules of Professional Conduct Committee, is a member of the Idaho State Bar Professionalism & Ethics Section and is a co-editor of the OSB's Ethical Oregon Lawyer and the WSBA's Legal Ethics Deskbook. Mark also writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's Multnomah Lawyer, the quarterly Ethics & the Law column for the WSBA NWLawyer (formerly Bar News) and is a regular contributor on risk management to the OSB Bar Bulletin, the Idaho State Bar Advocate and the Alaska Bar Rag. Mark has also taught legal ethics as an adjunct for the University of Oregon School of Law's Portland campus. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.