

RISK MANAGEMENT CORNER

Family Lawyers Have A Special Calling

by John J. Brandt

Whether your practice focuses on family law, or you only occasionally represent clients involved in the most difficult times of their lives involving their spouses and their children, yours is one of the most challenging positions in the practice of law.

What type of person makes a good family lawyer? First, the family lawyer should be self confident and in complete control of the attorney-client relationship. Not all prospective family-law clients should be represented—particularly if the client is determined to be “his/her own attorney.” Learn to say “no” if you are convinced that a prospective client and you will not make a good team. It is strongly recommended that you establish a written representation agreement that sets forth your fees, costs and other conditions with precision to avoid misunderstanding later. Be careful to obey Rule 1.5 *Fees* of the *Virginia Rules of Professional Conduct* (VRPC), particularly with respect to contingent fees, which are prohibited except in special circumstances.

At the outset of the representation, be careful to identify any possible conflict of interests that may disqualify you. The Virginia State Bar’s Legal Ethics Opinions offer guidance on potential conflicts. The VSB’s Web site—at <http://www.vsb.org/profguides/opinions.html>—provides links to sites that list the opinions, including excellent summaries of LEO’s dating back to 1980, organized by topic by attorney Thomas E. Spahn. Another helpful site—http://www.vsb.org/profguides/FAQ_leos/LegalEthicsFAQs.html—provides the article “Answering your Questions about Legal Ethics,” written by Anne P. Michie, assistant VSB ethics counsel. In opinions that affect family lawyers, the VSB has stated over the years that an

attorney who represented both spouses in drafting a property settlement agreement may not subsequently represent one spouse in a divorce action. Nor may that attorney’s officemate, who shares the attorney’s space and secretarial space, represent one of the parties. LEO 677 (4.2.85) An attorney who mediated a divorce cannot later represent one of the parties in a divorce proceeding, even if it is uncontested. LEO 544 (3.1.84) The conflict cannot be cured even with the other spouse’s consent. LEO 159 (2.24.02)

Do not accept a case that is beyond your competence. Refer cases to competent family lawyers if there is any question of your skill and experience. (Rule 1:1—VRPC) Be certain to advise your client of mediation as a possible means to solve their dispute. Not only will the lawyer comply with Rule 1.2, Comment [1], but mediation might be a reasonable, economical means to a speedier resolution.

Be careful also of the “wise” husband or wife who attempts to block his/her spouse from using the services of all of the competent family lawyers in a given community—particularly a small community. LEO 1794 (6.20.2004) presents a situation where a husband tried to stop his wife from obtaining a good lawyer by visiting every family lawyer in his community, “with no intent to hire them.” One of the attorneys visited by husband in his “scheme” was later retained by the wife. The LEO committee found no conflict problem for the wife’s attorney—even though he had consulted with the husband—because the husband had no legitimate purpose in the meeting, since he had already decided to retain another attorney. Therefore, there was no “reasonable expectation of confidentiality” and the committee found that the wife’s attor-

ney had no duty to maintain the confidentiality of information he received from the husband and he did not have to withdraw. Although not at issue in this case,

it is obviously improper for an attorney to direct a party to a scheme of “strategic elimination” of available attorneys in violation of Rule 3.4(j) and Rule 8.4(a)—VRPC.



When a family law representation is nearing an end, it would be wise for the attorney to consider placing in any final decree a clause relieving him of his representation to prevent future notices, etc., from automatically being sent to him. Although family law matters may go on forever, an attorney is entitled to end representation for a specific matter. If the client wishes to re-engage the attorney, that is all well and good. However, a termination of legal representation is as important to both lawyer and client as the commencement of the relationship. Once the legal task is over, there should be a “termination letter” sent to the client making it clear that the legal representation is over. Not only does this clarify the relationship between attorney and client, it also starts the running of the statute of limitations.

No specialty in the law in these complicated times is easy. However with continued dedication and competence, the relationship between family lawyer and client can be fruitful and beneficial for both of them and Virginia society as a whole.