

Beware the dangers



of acting for family and friends

At one time or another, every practising lawyer has been approached by a friend or family member for legal advice. For most, the natural inclination is to help. However, acting for friends and family is risky business: You should think twice before doing so.

Due to the closeness of the relationship, the help offered by lawyers acting for family or friends tends to be informal, or is at a level that is less formal than it would be for a regular client. This lack of formality can result in the cutting of corners, or a failure to obtain consents or written instructions. Misunderstandings as to the scope and nature of the services to be provided are more likely due to the informal handling of the matter. Lastly, standard procedures may not be followed, including completing a conflicts check, opening a file, signing a retainer agreement, sending correspondence, etc. All these standard procedures occur for good reason, and should occur on every matter that you handle, regardless of your relationship to a client.

For several reasons family and friends can be the most difficult and awkward of clients:

- They can be extremely demanding clients. They can (and will) ask you questions 24 hours a day.
- It is more difficult to give them honest, objective, independent and professional

advice. No matter how hard you and they try, your personal relationship will cloud your judgment, and their ability to listen to the advice that you are giving.

- They can be the most unreasonable of clients. An inability to properly listen to and accept the advice you are giving makes for unreasonable expectations.
- Family members and fees don't mix. The discussion of fees is more difficult with family members, and often you will find yourself doing the work on a *pro bono* basis, or at a reduced hourly rate.
- If the matter doesn't go as expected, the consequences for the relationship can be disastrous. A malpractice claim is often the result, notwithstanding the family or personal relationship. The inevitable hurt feelings may affect your relationship with that person, and with other family members.
- Similarly, changes in family relationships or circumstances – such as separation or divorce – can also colour how family members view your earlier legal advice or services.

Be aware that dabbling is also dangerous. In our claims files we often see lawyers getting in trouble when they try to handle a matter that is outside their normal area of practice. This frequently occurs when lawyers are trying to help a family member or friend. In all cases you should avoid

acting on a matter that is outside of your area or areas of expertise, and this is especially true in the case of matters for family or friends. Don't be a dabbler!

You should also keep in mind the related entity or business enterprise exclusion under your LAWPRO policy. It can have the effect of limiting coverage in cases where you, your spouse or others related to your firm have an interest in the claimant. See the LAWPRO policy for more details.

What do you do when a family member or friend approaches you for help on a legal matter? Politely and firmly explain to them that it would be better to have someone else in the firm or an even an outside lawyer handle the matter for them. Explain that by doing this they can better ensure that the lawyer acting on their behalf has the right expertise and is able to offer independent and objective advice. Using outside counsel ensures that errors do not affect personal relationships, things are more likely to be documented, family members are more likely to be more realistic in their expectations, and the acting lawyer can more easily give the client the advice they would prefer not to hear (e.g. "you don't have a case").

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