

Insurance Issues

Risk Management

About to act for family and friends? (Resist – it's just too risky.)

"My daughter the lawyer.

— mother as she proudly presents you to an old family friend who just needs "a little legal advice"

"We've been friends since high school."

— an old buddy sizes you up as the secret weapon against his ex's "unreasonable" demands

"Every family needs a lawyer."

— dad laments over your cousin's failing business venture (and recalls your uncle's contribution to your education)

"That's what friends are for."

— one of your inner circle thinks she can swing the condo timeshare deal "if only you'd look after the paperwork"

"You're a lawyer, aren't you?"

— almost anyone you know, at almost any family gathering



Sound familiar? Words like these reflect sentiments that can trigger a call to duty, tapping into your genuine desire to help those who have helped you. Coupled with a request for legal services, you can find yourself acting for friends and family against your better judgement.

The risks

In acting for family or friends, lawyers face a number of unique factors that increase the risk of making a mistake or facing an insurance claim. The next time you're tempted, remind yourself of the following consequences, one or more of which may result from your particular situation:

• **Clouded judgement.** Because of

your emotional engagement with your client, you lack objectivity. You operate on a set of assumptions based on your own personal experience and perspective as a friend or family member, rather than the result of an objective assessment of facts presented. If these assumptions are wrong, you risk misjudging certain aspects of the retainer.

• **More casual service.** Not all i's are dotted and t's are crossed because the client is not paying or is getting a "deal."

• **Acting outside your areas of expertise.** Lay family members and friends have an expectation that, as you're "the lawyer," you should know how to handle every legal problem that arises, even if the matter is outside your usual areas of practice.

• **Conflicts.** You find yourself in a personal conflict or in a conflict between family members. Remember that the rules of professional conduct may prevent you from acting in circumstances where you have a personal interest in a matter or where your relationship with someone who has an interest might affect your professional judgement: see Chapter 7, Rules 1 and 2 of the *Professional Conduct Handbook*.

• **More pressure.** You feel real or self-imposed pressure to help your client achieve his or her goal so as not to risk losing the friendship or the regard of family. Acting for a family member may create even more pressure, as that

family member's ultimate success (or failure) in the matter may have a direct or indirect impact on you for years to come. This increased pressure may also cause you to take unduly harsh or unreasonable positions with another party, or engage in unethical conduct for the sake of the relationship.

• **Unmanageable client expectations.** A lawyer needs to recognize and manage a client's expectations about what the legal process can accomplish and at what cost, and what the lawyer will and will not provide as part of the retainer. Effective management of these expectations is critical to ensuring client satisfaction and avoiding a claim. Throw a personal relationship into the mix and this already challenging task can become almost impossible. Suddenly your dear mother or best friend becomes your most dreaded client—making unreasonable demands and expecting you to perform miracles for little (or no) fee.

• **Unhappy firm.** The situation can create a problem with your firm if the matter develops into something more challenging and time-consuming than you first thought, taking your attention away from work the firm wants you to do.

• **No insurance.** If you lose insurance coverage for errors because of the familial relationship, your client will be deprived of compensation for any loss he or she may suffer for errors you make (see below).

Loss of insurance if acting for family

You will have no insurance coverage under the Law Society's professional liability insurance policy for claims arising from

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If you have ideas on how to improve the Issues to make it more useful, please contact Susan Forbes, QC, Director of Insurance, Lawyers Insurance Fund.

legal services provided to family members in their personal capacity.

If you are acting on a business matter for a family member, recognize that insurance coverage may be lost if a certain level of family interest or control in the organization is exceeded.

For a more detailed explanation of the circumstances in which coverage will be lost, please see "Summary of Exclusion 6 of the Policy" found in the Insurance section of the Law Society's website (www.lawsociety.bc.ca) under "Coverage Enquiries & Rulings."

Managing the risks

If you must act for family or friends, make every effort to transform the relationship from a personal to a business one. Regardless of whether you charge a fee, provide your family and friends with exactly the same level of professional service that you would any other arms-length client. Meet with them in your office. Communicate clearly to manage their expectations about both the process and the likely outcome, updating your reports

and advice as things change. Use all the risk management techniques you currently incorporate into your standard practice (conflict checks, retainer agreements, notes to file, etc.).

However, the best risk management advice to avoid claims by family or friends is simple: don't act. Heed the following comments of Madam Justice Southin in a recent decision dismissing an appeal of a finding of negligence against a lawyer:

For solicitors, this case should be a cautionary tale: it is unwise to act for a friend, especially a friend who apparently thinks an aspect of friendship is the rendering of legal services without fee. If this had been an arms-length solicitor/client relationship, the appellant might well not have fallen into the errors ascribed to her by the learned trial judge. She is, in truth, the victim of her own generosity.

Instead, refer your friend or family member to another trusted lawyer. Protect yourself, while helping ensure that those you care about most are well-served on legal matters.

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