

Q&A

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Perspectives on risk drawn from our claims experience.

Question

Some of the lawyers in my firm ask whether they can represent friends and family members. My firm doesn't have a formal policy on this. What are the issues I need to be concerned about?

Answer

The legal representation of friends and family is fertile ground for malpractice claims against law firms of all sizes. Our experience shows that the reasons for such claims are many-fold. For example:

- X lawyers are often willing to do work in areas which they are not experts for family and friends in order to "help them out,"
- X basic risk management - engagement letters, conflict checks, conflict waivers, documentation of advice - is often lax or nonexistent with friends and family, and the legal work can become inappropriately casual,
- X lawyers are often reluctant to give the tough, but correct, advice to friends and family,
- X as a practical, evidentiary matter, it can be difficult to separate the law firm from such a representation even when the lawyer is intended to be acting independently of his firm, and
- X in casual, family representation there is often confusion over who the client really is (an individual, the family, the family business, the family trust, etc.).

Much of the risk in this area can be eliminated by remembering that there is no such thing as "casual" or "informal" legal work, or "helping someone out," even though they "aren't really a client." Generally speaking, if someone reasonably believes that you are giving them legal advice and acting as their lawyer, then you are, and the Rules of Professional Responsibility apply to whatever it is you are doing.



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