

Protecting Children A Perspective on Divorce Practice

By Ruth Richardson Watson

I've been a divorce lawyer for more than 20 years, and I have heard many horror stories of divorce lawyer burnout, difficult clients, and heart-wrenching cases. While many of the stories are probably true, I have maintained longevity in my practice because I love that I make a real difference in the lives of my clients and I have developed a practice philosophy. My motto is simple—always put

the child's needs first. This can be a challenge at times, but it is the only practice philosophy that enables me to be proud of my work and to look myself in the mirror every morning.

When a client first walks into my office I assure her that I will be her advocate. I will fight tooth and nail over cars, homes, 401(k)s, the business, furniture, photo albums, or whatever else they want to obtain from the

divorce. However, I will not allow my client to split and divide her greatest asset, her children.

Whether acting on behalf of a parent client or as a child's representative, I suggest evaluating the child's best interest by first talking to

- the child. Obtain a sense of who the child is and befriend her by learning what she likes to eat, her favorite sports, her best friends, her teachers' names, her favorite subject, her nightmares, and similar personal information.
- the parents. Talk to each parent individually and try to get a sense of their interaction and relationship with the child. Determine how well each parent knows the child.
- third parties. When possible, talk to friends and family members who have observed the child and parent together.

- experts. Talk to teachers, doctors, therapists, or anyone with any expertise in the child's well-being.

As a court-appointed child representative, I am very dogged in my approach to discovering the best interest of the child because I do not owe any allegiance to the parents. But as a lawyer representing one of the parents, I am occasionally confronted with a situation where the parent and I do not agree on what is in the best interest of the child. In those difficult situations I suggest the following:

Choose your battles.

Don't be concerned over whether mom wants to send Susan to Harvard over Yale, or whether dad wants little Brian to go to football camp in the summer versus studying intensive French. Be concerned about whether mom is withholding dad's weekend visits with Susan because dad was late on the child support payment or whether mom pulled Brian out of football camp simply to spite dad.

Remind them that the child's needs come first.

Reason with the parents.

Talk your clients through their behavior and explain that what they are doing is detrimental to the child and to their case. Tell mom that if she wants custody of the child she has to demonstrate to the court that she will cooperate in maintaining the child's relationship with dad. Withholding visits because of late child support payments (which the court does not view as cause to withhold visits) will only weaken her credibility.

Suggest mediation.

The magic of mediation is that the parties feel empowered about setting the terms and conditions of their relationship with their children.

File a motion to withdraw.

If your client is truly harming the child and refuses to modify her behavior, consider filing a motion to withdraw as the lawyer. While I typically do not have to go to this extreme, it's against my principles to participate in the injury of a child

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Waiver of Potential Conflict: A Conversation with Your Client

By Matthew C. Stone

Conflict—one of the few words that can make lawyers on both sides of the “v.” wince. Recognizing and handling a potential conflict can be a daunting task. But when approached with care, a forthright conversation with your client may result in a waiver of the potential conflict with greater ease than you might anticipate. When handled properly, a potential conflict may prove to be little more

than another hurdle on the path through litigation, and may present a worthwhile opportunity to earn even greater respect from your client.

Step 1: Promptly Identify the Potential Conflict

The first step to obtaining informed consent to a potential conflict is to identify the potential conflict in a timely manner. In the middle of discovery or,

even worse, as an impending trial looms is not the time to contact your client regarding a potential conflict. The majority of the time, your client will genuinely appreciate being advised of a potential conflict at the earliest possible stage of the litigation. In fact, prompt disclosure and discussion regarding the potential conflict may even help you earn favor with your client and factor into his decision with regard to the conflict.

Step 2: Discuss the Potential Conflict with Your Client

The second step is the most important—an honest and detailed discussion with your client. What is a conflict in general? What specific aspects of the representation in this case pose a threat? What impact will waiver of the potential conflict have on the representation? You must provide a detailed response to each of these questions and be prepared to discuss the issue

at length with your client. Depending on the frequency of your contact with the client, it may be necessary to summarize your representation in the existing matter as well. Then, regardless of the nature and extent of the relationship with your client, you must provide a detailed explanation of the representation that you or your partner hope to undertake that poses the potential conflict. It is important that your client understand all aspects of both representations.

Regardless of when during the litigation this conversation takes

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Martindale Ratings Just What Do They Mean?

By Hope M. Caldwell

Many lawyers throughout the country use Martindale-Hubbell's Web site (www.martindale.com) as a source for gathering information about their colleagues. Whether it is to look for an old law school friend or to research the law firm where you are interviewing, Martindale provides relevant biographical and contact information about numerous lawyers and law firms.



The information Martindale provides includes addresses, links to firm Web sites, a lawyer's educational background, and, often, a lawyer's Peer Review Rating—AV, BV, or CV. As a young lawyer, it is difficult to determine whether these ratings are important to more senior lawyers and whether these ratings are a goal to strive for.

"I don't think it makes a whole lot of difference, and I don't tend to think that lawyers

pay that much attention to the ratings," says William W. Horton, of counsel to Haskell Slaughter in Birmingham, Alabama. "The only time I've ever personally used it in business development is when an RFP [request for proposal] or someone else asks for it, which is fairly rare in my experience."

According to the LexisNexis Martindale-Hubbell Web site, the ratings indicate the general ethical standards and legal ability of the lawyer. A lawyer must first receive a General Ethical Standards Rating of "V" prior to receiving a Legal Ability Rating.

The ethical rating "denotes adherence to professional standards of conduct and ethics, reliability, diligence, and other criteria relevant to the discharge of professional responsibilities."

The A, B, C rating (or Legal Ability Rating) indicates the lawyer's legal ability and expertise in their area of practice. Each letter indicates the number of years the lawyer has been practicing—C is for 3 to 4 years and B is for 5 to 9 years. "A" is the highest level of professional excellence whereby the lawyer has been admitted to practice for 10 years or more. In addition, a law firm will be rated by the highest rated active partner.

After a lawyer has been practicing for more than 5 years, Martindale will initiate the Peer Review Ratings process, but a partner, marketing director, or colleague can also request initi-

ation of the process. A lawyer is not required to have a paid listing in the Martindale Directory in order to be rated.

Martindale's field representatives make the initial, confidential inquiry to lawyers in the same practice area as the lawyer who is under review. The field representatives interview more people than those named as references by the lawyer under review and they attempt to gather a broad range of opinions about the lawyer.

Young associates, thus, have another reason to remember the adage of "don't burn bridges" when dealing with opposing counsel and former employers, since it may have an effect on their ratings.

Thomas Sullivan, the managing partner at Berry Moorman in Detroit, says, "When I am using Martindale to find out of town attorneys, I do pay attention to the ratings." Sullivan, who has been practicing for more than 35 years, encourages his associates to work toward obtaining an AV rating. "It is not the only thing I look at, and the fact that an attorney has no rating would not necessarily stop me from referring to that attorney, but I do give the rating some importance."

While lawyers may disagree about the importance of the rating process, it is sound advice that a young lawyer should be safe rather than sorry. Be professional at all times, because one day you might be rated.

Hope M. Caldwell is an assistant city solicitor for the city of Philadelphia. TYL board members Latanishia Watters and Colin Darke contributed to this article.

READY RESOURCES

- *My Parents Are Getting Divorced: A Handbook By and For Kids, Family Advocate* magazine. Summer 2006. PC #51311002901.
- *How to Build and Manage a Family Law Practice* (Book and CD-ROM). 2006. PC #5130140.

Section of Family Law members receive a discounted price. To order, and for more related titles, visit www.ababooks.org.

Ruth Richardson Watson practices family law in Oak Park and Chicago, Illinois. She can be contacted at ruthwatsonpc@aol.com.

FOR MORE INFO

The ABA Section of Family Law has numerous resources for parents and children involved in divorce, and other general resources on family and marital law, including client handbooks. Visit www.abanet.org/family.

Protecting Children

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because of the deliberate acts of a parent.

If you seek longevity in your divorce practice, or any area of practice, develop your practice philosophy and stick with it. You will be respected by your clients, your colleagues, the court, and in the case of divorce, the children.

Be a Rainmaker Write, Speak, and Build

By Cordell M. Parvin

Young lawyers frequently ask, how can I become a rainmaker?

It's a natural question. Rainmakers control their destinies, are in high demand by their clients and firms, and have an asset most lawyers covet—clients and a book of business. So how do you get started?

In my case, I decided I wanted to become the preeminent transportation construction lawyer in the United States. Then I developed a plan to achieve my goal using both a top-down approach and a bottom-up approach. In the top-down approach I wrote down all the actions I wanted to take. For example, my business plan included workshops for clients, presentations at four construction association conventions, writing a monthly magazine column, and visits to 20 construction contractor clients.

In my bottom-up approach I decided how much time I would devote to client development and estimated the time each action item would take. I planned my client development activities each week and completed an activity, no matter how small, each day.

I built my profile as a transportation construction lawyer by writing and speaking—proven methods most rainmakers use to build a profile, make rain, and become the "go to" lawyers in their field. Whenever I find something contractors need to know, I write an article. In my writing and speaking I identify a problem and offer a solution. My hope is that readers will see me as the person to handle the solution.

I purposely make my presentations different from most lawyers'. Many lawyers think, write, and speak linearly. They present PowerPoint slides with a long list of bullet points, and some even read the slides! I avoid bullet points when possible, include



multimedia, and engage the audience by asking questions and getting them involved.

Client development is also about building relationships. First, focus on your contacts. Many lawyers do "random" lunches. Consider creating a spreadsheet that lists and rates your contacts. Focus on the most important contacts, strive to upgrade your level of contact with them, and know as much about them as possible. Remember, clients typically narrow their choice of lawyers based on reputation, and they hire based on how well we connect with them.

If you want to become a rainmaker, plan your time wisely, develop your profile and reputation by writing and speaking, and build relationships by focusing on your most important contacts.

Cordell M. Parvin is a lawyer and career coach in Dallas. His coaching Web site is www.cordellparvin.com.

READY RESOURCES

- *How to Capture and Keep Clients*. 2005. PC #5150403. General Practice, Solo & Small Firm Division.
- *Lawyer's Guide to Marketing Your Practice, Second Edition*. 2004. PC #5110500. Law Practice Management Section.
- *Raindance: Rainmaking Skills for Women Lawyers* (DVD package). 2003. PC # V03RRTD. ABA CLE, Section of Litigation.

Division and Section members receive a discounted price. To order online, visit www.ababooks.org.

Choose Law A Profession for All

By Georgene Louis

Recently I saw one of the most beautiful sunsets as I walked along the path my ancestors once walked. I was away from my residence, but I was delighted to be home—the place where I grew up. At home I am a unique person: one of the few lawyers from my tribe. To count the number of lawyers here, you wouldn't use all the fingers on one hand.

Lawyers are not rare everywhere, especially in cities and for families in which law has been the chosen profession for generations. In other places and other families lawyers are uncommon, much like my home and my family. This rarity is one reason why the ABA Young Lawyers Division developed "Choose Law: A Profession for All" as a special project to encourage students, especially students of color, to consider a legal career and start taking steps early, like staying out of trouble while they are in high school, to pursue this career.

Pursuing a legal career is difficult—law school is challenging, expensive, and requires immense dedication. Many young adults may not believe they can be a lawyer because they grew up in a small town or in an impoverished family. The Choose Law Project

will help students realize that these challenges can be overcome and should not prevent them from choosing a legal career.

The Choose Law Project seeks to inform young adults that by being lawyers, they join a highly respected profession, have countless career opportunities, work in challenging environments, and are representatives of equality and prosperity. Through project materials that include a video and written guide, young lawyers of color describe their reasons for becoming lawyers, obstacles they encountered, and successes, and encourage students to CHOOSE LAW.

The Young Lawyers Division believes that it is essential that lawyers be of every race, ethnicity, and gender to provide a legal environment representative of all.

Georgene Louis is a member of the Pueblo of Acoma, a federally recognized Indian tribe in New Mexico. She is an associate at Chestnut Law Offices, an Albuquerque law firm that practices general civil law with an emphasis on Indian Affairs and Water Resources.

FOR MORE INFO

The Choose Law video will be shown at the 2006 YLD fall conference in Baltimore and is also available online at www.abanet.org/yld/chooselaw/home.shtml.

Conflict Waivers

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place, you must ensure that when you hang up the phone or walk away from the table, you have honestly answered your client's questions about the potential conflict and that your client fully understands the nature of the conflict and the implications of a waiver. It is imperative that your client gives informed consent and not just reluctantly agrees to your proposed representation.

Step 3: Obtain Your Client's Consent in Writing

This final step may seem like an afterthought, but it is

essential. Whether required by law, local rule, or just common sense, written confirmation of the client's consent to the representation is critical both in the present for peace of mind and in the future should the issue resurface. But the most explicit written consent will not suffice if that consent is not the product of a truly informed decision by the client. Any intimidation or efforts to compel your client's waiver during this methodical process will not only harm the relationship between you and your client, it also may result in consent that is not truly informed and there-

fore falls short of a truly knowing waiver. Besides, most of your efforts to compel or intimidate are best saved for opposing counsel.

Matthew C. Stone is an attorney in the Philadelphia office of Marshall, Dennehey, Warner, Coleman & Goggin, where his practice is devoted entirely to litigation.

READY RESOURCES

- *Common Conflicts of Interest in Transactional Law Settings* (Audio CD Package). 2006. PC #CET06CCTC.
- *Strategies for Avoiding Conflict of Interest* (Audio CD Package). 2006. PC #CEJ06SACC. ABA Center for CLE, Center

for Professional Responsibility, and Government and Public Sector Lawyers Division.

- *Tangled Loyalties: Conflict of Interest in Legal Practice*. 2002. PC #1620047. American Bar Foundation. ABA members receive a discounted price. Order online at www.ababooks.org.

A Modest Proposal Submitting a Joint Discovery Plan in Federal Court

By Matthew D. Barrett

Under Rule 26(f) of the Federal Rules of Civil Procedure, counsel for all parties in a federal lawsuit are required to consult with each other and submit a joint discovery plan to the court. Rule 26(f) also states that after their consultation (outside the presence of the court) the parties must submit the plan to the court within 14 days. Many jurisdictions issue an order setting a specific date for the filing of the plan, which is usually shortly before the Rule 16 status conference.

A jurisdiction's local rules often impose additional requirements and joint discovery forms are usually provided on the district court's Web site. Rule 26(f) provides an extensive list of matters to be addressed in the plan, including:

- Subject matter on what discovery may be needed
- Discovery cut-off
- Maximum number of interrogatories, requests for admission and depositions
- Deadlines for experts
- Special deadlines for supplementing discovery
- The deadline for tendering initial disclosures

The section concerning the subject matter of discovery is of significant importance and should include the following:

- Factual elements of each claim and defense
- Factual elements of each damage claim, including punitive damages
- Any facts bearing on the parties' witnesses' credibility
- Any other matters relating to the circumstances of the case

Because district courts often adopt the joint discovery plan verbatim at the Rule 16

status conference, and the plan will control throughout the course of the litigation, counsel should consider the long-term goals of the anticipated discovery. Discuss possible discovery disputes with opposing counsel during the consultation to reach stipulations before filing the plan with the court. Future discovery disputes can be avoided and the parties will save valuable time, attorney fees, and other costs by avoiding protracted litigation. Establishing early stipulations and resolving potential discovery obstacles promotes more efficient case management.

Counsel should inject creativity when crafting the plan and consider the plan a unique opportunity to tailor the traditional methods of discovery to the specific facts of the case. The following are just a few examples of how counsel can use some imagination and creativity to craft the plan in her client's favor:

- Determine exactly what discovery is required from the opposing party. Always leave sufficient time for future discovery developments, such as discovery from possible unknown parties. If opposing counsel needs additional time for discovery and you do not, advocate for an early cutoff, which provides a strategic advantage for your client.
- Consider which party has most of the information related to the issues when determining how many depositions should be taken. If your opponent possesses most of the information she needs, consider increasing the number of depositions to enhance your opportunities to flush everything out.

On the other hand, if there are many unfavorable witnesses (e.g., a large number of employee witnesses from a defendant corporation), then it is more advantageous to advocate fewer depositions—perhaps a number well below the maximum number provided by the local rules.

- Distinguish between “nonexpert discovery” and “expert discovery” and set different cut-off dates for each. This distinction limits follow-up discovery of regular witnesses/parties after your opponent's expert is deposed if your opponent has a stronger case.

Finally, it is important to recognize that Rule 26(f), by its terms, gives the district court discretion to exempt particular cases from complying with the requirements of Rule 26(f), providing that the parties shall have the discovery conference

“[e]xcept . . . when otherwise ordered.” In *Solorzano v. Shell Chemical Co.*, 2001 WL 564154 (5th Cir. 2001), the court exercised such discretion, after having discussed the issue with the parties at the hearing, when it determined that the filing of a discovery plan would not be helpful. *Id.* at *3. Instead of the discovery plan, the court ordered the parties to hold a telephone discovery conference. *Id.*

Take the time to develop a workable joint discovery plan with opposing counsel. Consideration of your case's pertinent facts and legal issues will help define the parameters of the plan and lead to a more meaningful discovery, possible mediation, and a greater likelihood of success later at trial.

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Take Advantage of Your YLD Membership

By Jay E. Ray

Are you taking full advantage of your membership in the ABA Young Lawyers Division? If the answer is no—possibly because you are required to bill an impossible number of hours or simply do not have the energy—please reconsider and plan to participate in YLD activities and programs in 2006–2007.

If you want to serve your community, develop business, improve your legal skills, become a better leader, gain new ideas for your local young lawyers organization, meet new friends, or just get away and have some fun, the YLD, with its 135,000 members throughout all fifty states, several territories, and numerous countries, is uniquely situated to help you reach your goals.

This year the YLD will emphasize the benefits for our newest members—those newly licensed to 3 years in practice. Through *101 Practice Series* programming at our conferences and via our Web site, the Division will provide practical and substantive resources for you. Contact Sunil Harjani at sunilharjani@abanet.org to learn more about or assist with the *101 Practice Series*.

Visit the YLD's Web site at www.abayld.org to experience the opportunities above, join a substantive committee, or plan to attend one of our outstanding conferences. YLD conferences in 2006–2007 will be held in Baltimore in October, Miami in February, Montréal in May, and San Francisco in August.

There is no better time to get involved, so don't delay. We welcome you to your ABA Young Lawyers Division and invite you to participate in its activities and programs.

Jay E. Ray is chair of the Young Lawyers Division for the 2006–2007 bar year.