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YOUR ETHICS EXCLUSIVE

CARR MALONEY'S QUARTERLY
LEGAL ETHICS NEWSLETTER

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CHAIR, VIRGINIA STATE BAR
STANDING COMMITTEE ON LEGAL
ETHICS, 2019- PRESENT

ELECTED MEMBER, VIRGINIA
STATE BAR COUNCIL, 2012-
PRESENT

FACULTY MEMBER, VIRGINIA
STATE BAR HARRY CARRICO
PROFESSIONALISM COURSE, 2012-
2015

MEMBER, VIRGINIA STATE BAR
LEGAL MALPRACTICE COMMITTEE,
2013- 2016

“The Ethical Pitfalls of Being the Inadvertent Lawyer”

By Dennis J. Quinn and Camellia Mokri

The past couple months have been different, to say the least. Maybe you’ve been working from home since the pandemic – or maybe you’re back in the office with a mask on but staying socially distant from your colleagues. Maybe you’re planning a traditional Thanksgiving with your whole family, or maybe you’re going to do it by Zoom. Even if your interactions with friends and neighbors have changed during the pandemic, you probably find that when someone knows you’re a lawyer they often ask for your opinion on what they think is a “simple legal question.” Whether it’s your neighbor asking about the fall she took at the supermarket, your aunt and uncle asking you to review their estate plan, or your brother-in-law asking how he should fire one of his employees, you may have become the family or neighborhood lawyer. While we all want to be helpful to our friends and family, especially during the holidays, we need to be mindful of the ethical implications and risks of inadvertently becoming someone’s lawyer.

While the best course of action is probably to avoid these situations, it can be hard to say no to a family member or friend. Even if you have no intention of providing any legal service to your neighbor, just listening to him describe his legal problem means you have probably established a confidential relationship under Rule of Professional Conduct 1.6. Notably, this relationship is formed when someone seeking legal advice shares secrets, or confidential information with you – not when money is exchanged, or an agreement is signed. Those secrets trigger your ethical obligations under Rule 1.6 on Confidentiality, as well as Rule 1.7 on Conflicts of Interests, Rule 1.8 on Duties to Current Clients and Rule 1.18 on Duties to Prospective Clients.

Rule 1.6 is particularly important when

“helping” with family members. In seeking your advice, they may share some private or even embarrassing information. Even if they share it with you in front of other family members, you still have an obligation to keep that confidential. Rule 1.6(a) requires a client to give informed consent before you may share any information you learned as a result of the representation in most situations. Absent that consent, you need to keep anything you learn confidential, even from other family members. Remember this includes your nosy cousin’s questions about that will you reviewed for your Aunt and Uncle.

Importantly, the duty of confidentiality exists for potential clients as well as actual clients. Remember that a non-client can be a prospective client if: 1) the non-client seeks legal advice, 2) the non-client reasonably relies on that advice as legal advice, and 3) you, as the attorney, do not attempt to dissuade the non-client from relying on the advice.

If you go beyond answering a “simple” question, you need to understand you are establishing an attorney-client relationship with the friend or neighbor and accepting the risks that go with it. In our practice we have seen lawyers who write a letter as a favor for a friend, and then get sued by that same friend for legal malpractice when things go wrong. If you do decide to help a friend or family member with a legal issue, remember to clearly communicate what you will do and what you won’t do on his or her behalf. Most state ethics rules permit attorneys to limit the scope of the engagement. Even if you provide your legal services for free, you should incorporate your agreement in writing. Model Rule 1.5(b) requires lawyers to communicate with the client, preferably in writing, the scope of the engagement early in the representation. This can be a formal letter or even an email

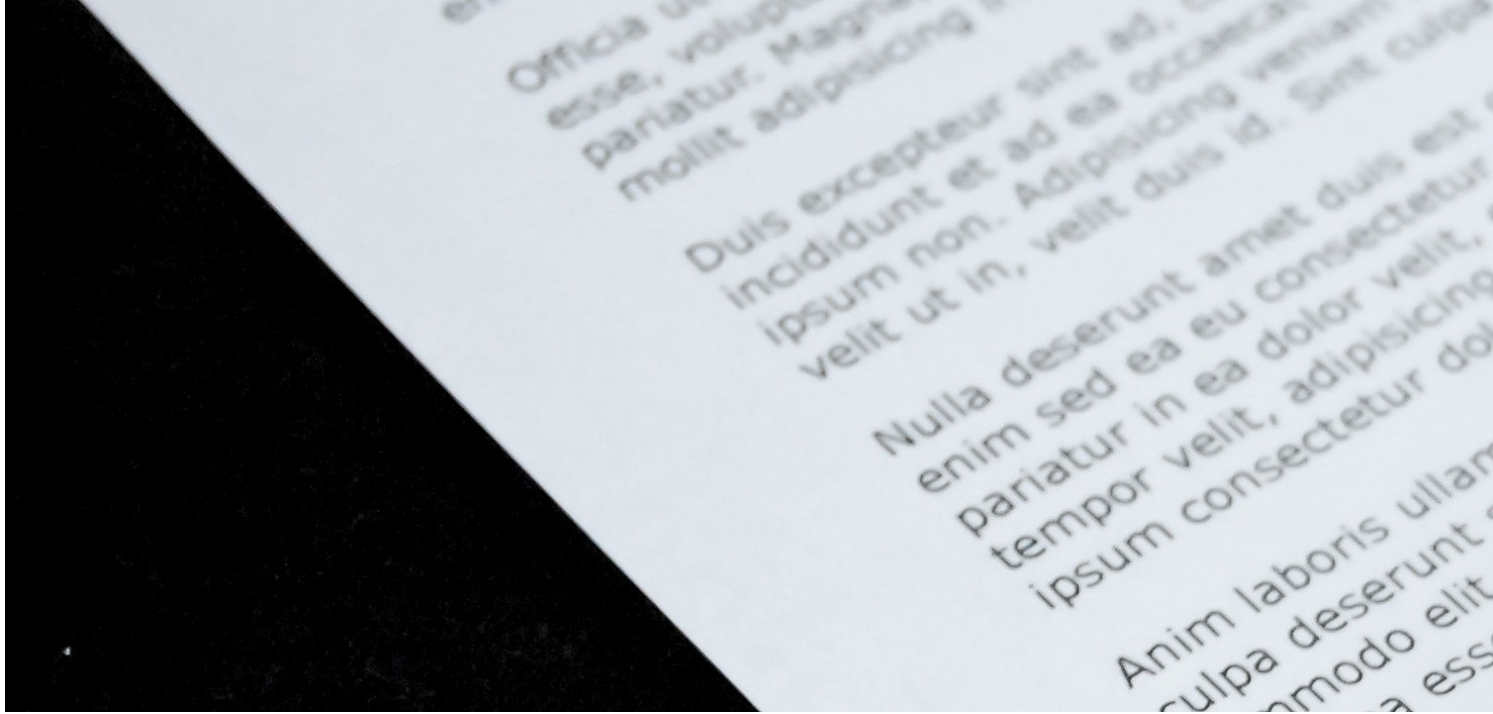


saying what services you will provide and what you will not provide.

Finally, don't dabble. Just because a family member asks for free legal advice in an unfamiliar area of the law does not mean you need to give it. Agreeing to take a "quick look" at the lease for your sister's new office may sound simple, but if you are not familiar with landlord-tenant or commercial real estate law, you're putting your sister, and yourself, in a risky situation. Model Rule 1.1 states that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." It's simple – if you're not competent in an area of the law, then do not get involved.

It can be difficult to say no to a family member or close friend that comes to you for help. Often when dealing with close family and friends, emotions are involved, and your own personal interests may be at stake. The key is to continue to exercise independent judgment. If it becomes clear that is no longer an option for you, step away and refer a colleague. The potential for a short-lived yet awkward exchange with your brother-in-law pales in comparison to the potential ethical consequences you will face if anything goes wrong.

For more information about the ethical issues discussed in this article, or for legal ethics counseling, contact Dennis Quinn at 202-310-5519 or [djquinn@carrmaloney.com](mailto:djq@carrmaloney.com).



Virginia State Bar's Standing Committee on Legal Ethics' 83rd Annual Report

“Legal Ethics in the Time of COVID-19”

(Committee report to the State Bar summarizing its work for the previous fiscal year)

In FY 2020, the Committee received two new LEO requests which are still pending before the Committee. The Committee met four times in Richmond; two scheduled meetings were canceled because of Covid-19 restrictions.

The Committee submitted one proposed rule amendment for review and approval by Council and the Supreme Court of Virginia:

- Rule 1.15 – Safekeeping Property; approved by SCV on January 9, effective March 15, 2020

The Committee issued two LEOs for review and approval by Council and the SCV:

- LEO 1890 – Communications with Represented Persons (Compendium Opinion); the opinion was approved by the SCV on January 9, but the order was then vacated on April 7, 2020; the opinion is still pending with the SCV
- LEO 1891 – Communication with Represented Government Officials; approved by SCV on January 9, 2020, effective immediately

Three matters that were submitted to the SCV during FY 19 were approved in FY 20:



- Rule 4.4(b) – Respect for Rights of Third Persons; approved by Council in June 2019; approved by SCV October 2, effective December 1, 2019
- Revisions to LEO 1750 – Advertising Compendium; approved by Council in June 2019; approved by SCV October 2, 2019, effective immediately
- Revisions to LEO 1872 – Virtual Law Office and Use of Executive Suites; approved by Council in June 2019; approved by SCV October 2, 2019, effective immediately

Rule 3.8, proposed Comment [5] was submitted to the SCV for approval in FY 19 and rejected by the SCV in FY 20.

The Committee also issued four rule changes and two LEOs for public comment:

- Rule 1.8 – Conflict of Interest: Prohibited Transactions
- Rule 1.10 – Imputed Disqualification: General Rule
- Rule 1.15 – Safekeeping Property
- Rule 3.3 – Candor toward the Tribunal
- LEO 1878 – Successor Lawyer’s Duties in Contingent Fee Matter
- LEO 1850 – Outsourcing (Revisions)

[Click to view “Legal Ethics in the Time of COVID-19” on VSB’s Website](#)

Committee members for this year: Dennis Quinn (chair), Denise Jackson (vice chair), Randy Cargill, Jeffery Mitchell, Jay Myerson, Michael Robinson, Shannon Taylor, Nathan Veldhuis, and Michael York. VSB staff liaisons are James McCauley, Emily Hedrick, and Seth Guggenheim.

Ethics hotline calls through June 30, 2020, totaled 6,687, for an average of 557 calls per month.



Events

Avoiding Malpractice and Bar Complaints 2020

Date: November 17, 2020, 1:00 PM– 3:15 PM

Credits: 2.0 Ethics Credit Hours

In recent years, more than 35,000 legal malpractice claims have been filed annually against attorneys with malpractice insurance. Many more complaints have been filed against those who were not insured. Our insightful panel will address daily practice and risk-prevention techniques to help reduce the possibility of a bar complaint and related malpractice claim from being filed. Experienced attorneys will find practical, new ideas to implement, while those newer to the practice of law will gain skills that will be useful throughout their legal careers. Among the topics our expert faculty will cover are:

- Choosing clients and cases to avoid conflicts
- Communicating effectively
- Handling client funds properly

They will provide examples and practical advice to help those who attend focus on problem areas that so often lead to complaints. They also will discuss the major differences between relevant ethics rules in the District of Columbia, Maryland, and Virginia.

Faculty: Julia L. Porter, D.C. Office of Disciplinary Counsel; Dennis J. Quinn, Carr Maloney PC.

[Click to register](#)