



When Lawyers Go into Business With Clients

by Jodi L. Wyman

It is always a good thing when lawyers and their clients get along well. Long-term friendships are often created. While there is nothing wrong with going golfing or out for dinner, sometimes lawyers consider entering into business with their clients. This can be beneficial for both the lawyer and the client – for example maybe the client has a new business idea, and the lawyer has money to invest in it. These situations however can also create major problems.

The lawyers Code of Conduct talks about when there may be a conflict of interest between a lawyer and a client. The Code specifically says that a lawyer is not to enter into a business transaction with a client unless three tests are met. First, the transaction must be fair and reasonable, and explained fully to the client in writing. Second, the lawyer must advise the client to get independent legal advice from another law firm. Third, the client has to consent in writing to the transaction.

Even when those steps are taken, there are still some times when a lawyer is not to be involved in a

transaction at all. For example, if the client might still expect that the lawyer is looking out for their best interests, the lawyer should not be involved. It has to be very clear that the lawyer is an investor, or vendor, or business partner, and no longer the legal advocate.

These rules apply not only to a lawyer entering into business with a client, but they also apply to any law firm associates or family members of the lawyer as well.

The purpose of the rule is pretty obvious. People who go into business with their lawyer may have a difficult time understanding how their lawyer's role has changed. The responsibilities of a lawyer are very different from their responsibilities as a shareholder, purchaser, vendor or creditor. Clients may not realize that there is a change in roles, let alone how it could affect them.

The difficulty for lawyers is when they try to wear different hats. The Code states that if the duty they have as a lawyer conflicts with their own personal interests, they have to stop acting for the client. This is not just for

financial matters. When a lawyer is a volunteer on a non-profit Board of Directors, they cannot also give legal advice to the organization. Lawyers too can sometimes misunderstand the change in their roles.

Lawyers are also advised to avoid ever loaning money to, or borrowing money from, a client. Again, this applies also to the lawyer's family or legal associates. If a lawyer decides to loan or borrow money, the client must at least receive independent legal advice to ensure they understand the situation.

When there is a long-term professional relationship between a lawyer and client, the client sometimes wants to give a gift in their Will to the lawyer. There is however a rule that the lawyer shall not then prepare the Will, or any such document. The client has to go to a different law firm. Again, it is best for everyone if the lawyer does not try to wear too many hats.