



# HAVE OUR CHANGING ECONOMIC TIMES IMPACTED THE PROFESSIONALISM WITHIN THE PRACTICE OF FAMILY LAW?

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Our recent economic downturn combined with certain court decisions and Legislation has resulted in the elimination of several areas of practice for lawyers and has yielded unintended results. The first and most prevalent is a proliferation of attorneys who have taken on cases in areas of law in which they have never previously practiced. Unfortunately, this development has led to unintended results.

One such result is that many family law attorneys now find themselves dealing with attorneys who may be unfamiliar with substantive family law, local court practices and procedures. Another is that it has caused attorneys who operate with a specific “mind set” which they may have employed in their prior specialty, to continue to use “that way of practicing” to “get things done.” Lawyers who have been accustomed to confrontation and “Bulldog” techniques may find that the practice of family law is a unique area, which requires more skill in having patience, techniques in negotiations, and the art of dealing with highly emotional clients. Their abrasive actions serve no positive purpose in family law matters.

Another unintended result in this new economic environment is the different treatment lawyers give to each other when cases are either “high conflict” or “hotly” contested. Lawyers sometimes get caught up in the emotions of their clients or the perception that their fee is somehow contingent on the amount of time they can bill out. One example of this behavior arises when an attorney calls and quotes their client as if whatever their client tells them is gospel and accuses my client of the bad behavior and wants me to get him/her to stop. I try never to quote a client (especially in child custody cases) to another lawyer, unless I have direct knowledge of the allegation being made. I know there are three sides to every story and we are each getting one of them. Somewhere in the middle is usually the real story, but lawyers must work together to try to find that “truth” in order to help their clients and the family.

Another example of this occurred when I designed a unique way to structure a settlement, using both tax benefits and deferred compensation to resolve a difficult financial matter. I scheduled a meeting with the other attorney and explained the entire idea. He claimed that he understood it and

thought it was a great concept, but said that it was too early in the case to resolve the financial issues, as he had not billed out his retainer yet. He said we would need to take some discovery, depositions and wait a few months before we could enter into the agreement that I presented that afternoon, but that I was assured that was how the case would be settled once he had billed out his retainer.

In some cases, disrespect for brother/sister counsel has been an unfortunate result of our changing economic circumstances. Filing motions and serving the other attorney’s office at 4:45 PM before a long holiday weekend, knowing the other attorney will either have to work through a holiday weekend to respond or not be in town to file a response has happened more in the last five years than in the first twenty-five years of my practice, based on conversations I have had with many family law practitioners. Also, signing a motion praecipe, saying a lawyer made contact with an adverse attorney to try to resolve a motion, when they never did attempt to do so, has been complained about more now than ever before. *Litigating, with the excuse of winning at any cost, becomes the goal; it also could become the downfall for our profession.*

In 2001 the Oakland County Bar Association had a special Domestic Relations Task Force, which I was asked to be part of in order to develop an *Attorney Code of Conduct*. This Code applies to not only family law attorneys, but also to attorneys who practice in every field of law.<sup>1</sup> In view of the times we are living through, I believe it bears repeating.

## Attorney Code of Conduct

1. Never knowingly deceive another lawyer or the court and do not file frivolous motions or other proceedings.
2. Honor promises and commitments made to another lawyer.
3. Make all reasonable efforts to schedule matters with opposing counsel by agreement. Communicate with opposing counsel in an effort to avoid litigation and to resolve existing litigation.

4. Only seek sanctions against opposing counsel where required for the protection of the client. Do not make unfounded accusations of unethical conduct about opposing counsel or intentionally embarrass another lawyer.
5. Agree to reasonable extensions of time in litigation if the extensions will not materially adversely affect the client or unduly delay court process.
6. Exchange all exhibits before the day of any court hearing if it is reasonably possible to do so. Where it is not possible, the exchange should take place as early as possible on the day of the hearing
7. Respond promptly to communications, either written or by telephone, from opposing counsel.
8. Do not use unmeritorious, deceptive or unreasonable delaying tactics and always ATTEMPT TO BE PUNCTUAL FOR ANY SCHEDULED MOTION OR HEARING. If it appears that being on time for a scheduled matter will not be possible, make every reasonable effort, as early as possible, to notify opposing counsel and the court.
9. Do not send motions or other papers at a time or in a manner, which will unfairly limit the other party's opportunity to respond or will unfairly prejudice their ability to represent their client's position.
10. Advise the client of this code of conduct and the expectation that every attorney is required to follow it.

It may be time for Courts around our state to post this Attorney Code of Conduct and when they hear of attorneys who violate this Code, Judges should do whatever they can to enforce the concept and practice of this Code, if not in word, than at least in spirit, when faced with its violation.

Family Law is unique. Therefore, the practice of family law should be unique. Attorneys who choose to practice in the area of family law must learn to deal with a wide range of emotions experienced by their clients. They must work to benefit a family and not add to its destruction. When children are involved, the family law attorney must help clients recognize that even though they may be divorcing and may no longer be marriage partners, they will still be parent partners. They will be the parents to the same children and the grandparents of the same grandchildren. They are and will be connected to each other for the rest of their lives. How they handle the divorce and separation process, the respect or disrespect that they show to each other, will most probably govern their interpersonal relationship for years to come. A conscientious family law attorney has a duty to help a client through this process and to minimize its destruction in order to calm the emotional

behavior of the client. This task must be balanced with the attorney's ethical obligations associated with advocating and working for a client pursuant to the Michigan Rules of Professional Responsibility.

Always remember, if a lawyer decides to handle a business, personal injury, contract, real estate or property case, what they do is very important and has the ability to affect and impact their client and their clients' business and financial affairs. But if an attorney decides to handle a family law case, especially when children are involved, what they do not only affects their client and their clients' finances, but also has the capacity to affect and impact generations. How we behave as attorneys on behalf of our clients helps "set the tone" for our clients who rely on their attorney to guide them through difficult times. They are looking at the knotholes of the trees... we must help them see the whole forest.

### About the Author

*Richard S. Victor is the founding partner of Victor & Victor, PLLC, Bloomfield Hills, Michigan (www.victorandvictor-law.com). He is a Diplomat of the American College of Family Trial Lawyers and has served as President of the American Academy of Matrimonial Lawyers, Michigan chapter and was Co-Chairperson for Continuing Legal Education for the Academy from 1994 to 2010. He was elected to the National Board of Governors of the AAML in 2004 and was the National Chair for CLE for the AAML from 2003 until 2007. He is the recipient of the National Academy's highest honor, the National Fellow of the Year Award. He is a former Chairperson of the Family Law Section of the State Bar of Michigan and served as CLE Chair from 1985-1995 and was the recipient of the Lifetime Achievement Award. Throughout his career he has consistently been named to Best Lawyers in America and Michigan Super Lawyers and was featured on the cover of Super Lawyers Magazine in 2008. He is the National Founder and Executive Director of the national non-profit Grandparents Rights Organization and Co-Founder of the State and National SMILE program. He is an author and served as the general editor for West Publications for Michigan Family Law and Practice, and is the co-author of the nationally awarded children's book You and Me Make Three, dealing with the topic of children and parents going through divorce. In 2000, he was named the National Alumni of the Year by Michigan State University College of Law and in 2004, the State Bar of Michigan presented him with The Champion of Justice Award.*

### Endnote

- 1 The Michigan Rules of Professional Conduct are worth reviewing from time to time. These rules apply to all attorneys who practice law in the State of Michigan. See MRPC 1.1 *et seq.*