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Friday, April 13, 2007

Volume 6, Issue 15

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FROM THE APRIL *ABA JOURNAL*
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Many solos are happy to offer colleagues some advice—for free

By Margaret Graham Tebo

Marc Stern has been practicing bankruptcy law in Seattle for more than 20 years, so he fields his share of calls from other lawyers needing advice on a case.

Stern is generally happy to help, though he can, by his own admission, be blunt when he thinks another attorney is in over his head. But when a colleague needs help thinking through a thorny issue or a quick answer to a succinct question, Stern will patiently talk the other lawyer through the problem until they figure out a solution.

Stern says he has never worried about whether he may be incurring malpractice liability from his willingness to help out other lawyers.

"It's his case. He's the one who is responsible. There's no privity between his client and me. He has an ethical responsibility to do his own research, so I don't feel at all vulnerable," says Stern.

Many solos and small-practice attorneys have time to spare to chat with other lawyers. And many see their advice as informal, outside of a client relationship—with either the other lawyer or the other lawyer's client.

COMFORT LEVELS VARY

Most state rules say lawyers are responsible for gathering their own information. Since there is no clear ethical line about lawyers advising colleagues, solos' opinions run the gamut on how to dispense advice.

Some, like Stern, are comfortable giving out advice with little fear of the risk.

"In the grand scheme of life, there are lots of things worth worrying about. This just doesn't seem like one of them. Any lawyer who would blame another lawyer's advice for his own malpractice is just compounding his problem," Stern says.

Others, like Ron Lowy, a criminal defense attorney in Miami, sometimes worry when called by other lawyers for advice. "I am often asked to give advice to another lawyer who has not conducted as complete a client interview as I would have performed. I am often left wondering whether some missing information would drastically alter the outcome and impact of my advice," says Lowy.

Lowy says he frequently tells colleagues that they should not rely on his advice unless she is allowed to conduct a thorough interview with the client.

He says he hopes such admonitions will keep other lawyers from pointing the finger at him if their case goes south.

"Of course I prefer that they refer the client, and I invite them to join us for the interview. I then charge the client a normal consultation fee. I am, however, loath to charge a fellow lawyer for my guidance or input," says Lowy.

But Ardsley, N.Y., solo Lisa Solomon, who writes appellate briefs for other lawyers, says a clear understanding about the scope and nature of the representation is vital so that she is not held liable for the other lawyer's errors or a cranky, dissatisfied client.

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"The contract attorney is not responsible for choosing the clients and the cases. The client may be difficult, or the case may be a dog," Solomon says.

But Solomon does from time to time take calls from other attorneys about appeals they plan to handle themselves.

Indeed, many attorneys treat calls from other lawyers as more of a courtesy consultation, says Stern. "I don't answer questions from just anybody, but if

I know them or somebody I know sends them to me, I'll talk to them," he says. And, he adds, he would never think of charging a fellow lawyer for his help. He views his advice as a service to fellow bar members or as a marketing tool, but not as a money generator.

"No way I'd ever charge another lawyer."

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