**ETHICS refresher! Professionalism and representation in family law cases in a post-COVID era**

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**INTRODUCTION –WHAT LED TO THIS PRESENTATION?**

1. **Changes to the practice of family law in Colorado**
   1. Remote working
   2. Caseload volume
   3. Overburdened courts
   4. New lack of professionalism
   5. More family law attorneys
   6. Increase in cost of attorney fees
2. **Changes to the dynamic of family law cases in Colorado**
   1. Economic stress- impact of inflation
      1. Real estate market
      2. Valuation variations
      3. Taxes
      4. Inflation
      5. Market changes-impact on retirement
   2. Increased domestic violence
   3. “People are angry at the economy and angry at their spouses, and they’re acting out”
      1. WSJ article dated November 9, 2022

**FAMILY LAW PROFESSIONALS CAN HELP! PROFESSIONALISM TIPS IN GENERAL**

1. Between Counsel
2. Advocacy without disrespect
3. Addressing unprofessionalism
4. Its not personal; don’t make it personal

**RULES OF PROFESSIONAL CONDUCT**

1. **RULE 1.1 Competence**

*A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

What are you doing to ensure that you are providing competent representation?

“New” complexities post-COVID

* 1. Capital Gains
  2. Market volatility and its impact on settlement
  3. Advisements on risk

1. **RULE 1.3 Diligence**

*A lawyer shall act with reasonable diligence and promptness in representing a client.*

Comment 2: A lawyer’s work load must be controlled so that each matter can be handled competently.

Comment 3: Perhaps no professional shortcoming is more widely resented than procrastination.

1. **RULE 1.4 Communication** 
   * + 1. *A lawyer shall:*
          1. *Promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by these rules;*
          2. *Reasonably consult with the client about the means by which the client’s objectives are to be accomplished;*
          3. *Keep the client reasonably informed about the status of the matter;*
          4. *Promptly comply with reasonable requests for information; and*
          5. *Consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law;*
       2. *A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make an informed decisions regarding the representation.*

Lack of communication is the number one reason we see people switching counsel;

Best practice tips for communicating with family law clients.

1. **Rule 1.16 Declining or Terminating Representation** 
   1. Mandatory Withdrawal
   2. Discharge
   3. Optional Withdrawal

Considerations to make when undertaking representation.

Considerations to make when terminating representation.

1. **Rule 2.1 Advisor**

*In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to a client’s situation. In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.*

Family law attorneys as “counselors” at law

1. **Meritorious Claims and Contentions**

*A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law….*

1. **Fairness to Opposing Party and Counsel** 
   1. Fair competition
      1. Destruction or alteration of evidence
      2. Witnesses
      3. Failure to disclose

**RULE 16.2!!**

1. **Rule 4.3 Dealing with Unrepresented Person**

*In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in this matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such person are to have a reasonably possibility of being in conflict with the interests of the client.*

**CONCLUSION**- What we do is hard! Let’s not make it harder than it has to be.