GOT CLIENTS?

by Sue Talia

For those of you family lawyers who have all the good clients you want, they all love you and pay like clockwork, and who have NO accounts receivable, stop reading. This article is not for you. For the rest of you who are dunning clients for unpaid fees or worse, waiting for the house to sell or some relative to come up with the money to pay you, read on.

A revolution is quietly taking place in the manner in which family lawyers offer legal services to clients. Done properly, it has the support of the State Bar, the courts, and has the potential to tap a vast supply of potential clients. It is called limited scope representation.

Anyone who has spent any time in family law courts in recent years knows of the vast number of self-represented litigants who are clogging the court system. Some who have thought about it believe this only applies to poor people, whose needs are met by legal aid. [Forget for a moment that few counties have legal aid resources which are more than a drop in the bucket of the overwhelming need; that is a topic for another article.] Up and down the state, thousands of middle class litigants are finding themselves priced out of full service representation. They have houses and pensions which require protection, need legal assistance in obtaining that protection, but can’t afford traditional full service representation. These people can afford to pay for some legal services, but can’t afford to pay for the entire show. At the same time, more and more lawyers are competing for a shrinking population of litigants who can afford do it the traditional way. The result is
skyrocketing receivables, and far too many lawyers who take a case knowing at the outset that they will never be paid in full for their work. That just stinks.

The lawyers are caught in a bind: they can’t lower the standard of care, or abandon the client, so they are forced to do work for which they know they will never get paid. They don’t want to risk discipline or liability, so they end up working for free. This places a financial burden on the lawyer, and they end up resenting the fact that they aren’t getting paid.

Here’s an alternative: provide legal services yourself for the more complicated issues and tasks, and coach the client to do the simpler parts him/herself. This is the classic win/win. The client is happier because he knows exactly what he is playing for, and isn’t being billed for services which (he perceives) are unnecessary or which he can do himself. The lawyer is happier because she is doing the more interesting parts of the case (the reason she went to law school in the first place), and isn’t stuck doing work for which she isn’t getting paid. Limited scope representation is, by definition pay as you go. There are never any accounts receivable. An additional benefit is that, after the client has tried to do some of it himself, he may have a greater appreciation that it isn’t as easy as it looks, and there is something you know that he doesn’t. Many of these people come back and ask (and of course, pay) for additional services.

The State Bar and the Judicial Council have made it much easier to do limited scope safely. The State Bar issued a report on Limited Scope Representation in October 2001, which firmly endorsed the practice. The Access to Justice Commission has approved a set of family law limited scope Risk Management Materials and posted them for free on the State Bar website. These materials contain forms, fee agreements,
checklists, and other tools designed to help the practitioner offer these services efficiently, safely and profitably. The Judicial Council made it even easier by approving ghostwriting and issuing forms designed to identify and memorialize limited scope arrangements in the court file.

There are many, many permutations of limited scope, from simple advice and counsel, acting as a consulting attorney, to assistance with pleadings, research and investigation, to actually appearing as attorney of record for part of the case.

If you are interested in learning how this might apply to you, and how you might add limited scope to your practice, a program will be offered on May 12, 2005 at 1:30 p.m. at the Contra Costa County Bar offices at 704 Main Street, Martinez by M. Sue Talia, nationally recognized expert on the subject. Find out how you can increase your pool of paying clients, reduce your accounts receivable, and expand the menu of services you offer, all while managing the risk. Sue will alert you to the special issues presented by limited scope, while giving you the tools to do it safely and profitably. For details, contact Christine Morrissey at the Contra Costa County Bar Association (925-370-4528).