

No Sex Please, We're Lawyers

The state Legislature may direct the State Bar to ban lawyers from having sex with clients

SACRAMENTO—The sexual involvement of lawyers with their clients has long been regarded in the profession as a subject best left to polite discussions of ethics and “appropriate” professional demeanor. Lately, it has also become the subject of state legislation and proposed new rules of professional conduct.

“Something should be done,” says Gene Erbin, counsel to the state Assembly Judiciary Subcommittee on the Administration of Justice and a key participant in legislative negotiations for such a measure. “The State Bar has produced an ethics opinion, which concludes that in some instances sexual relationships are unprofessional. Why

shouldn't they be subject to discipline?”

The concern in Sacramento about lawyers' sexual behavior marks a new stage in the Legislature's oversight of lawyer discipline. The Legislature is moving from the general—revamping the entire discipline system—to the particular. The matter of sex with clients is becoming a major issue that will likely result in new ethics rules.

Erbin has been working with aides to Assemblywoman Lucille Roybal-Allard (D-Los Angeles), chair of a select committee on sexual assaults, to amend her bill, AB 415. They want to make it more acceptable to a legal community wary of harsh statutory language in an area best

described as nebulous.

“This is a very complex issue that is probably not suitable to rigid, statutory law,” Erbin says. So far, the amendments direct the State Bar to adopt a rule of professional conduct governing lawyers' sexual relations with clients. As of mid-May, the bar had not taken a formal position on the bill but was working with Erbin and Roybal-Allard's aides on acceptable statutory language.

At the same time, a group of Orange County attorneys led by Robert Unetic, a member of the bar's Family Law Section, has proposed a resolution, which will be presented to the bar's Conference of Delegates when it meets in San Diego in September. Unetic and others want to add sections to the state Business and Professions Code barring sexual relations by lawyers representing clients in dissolutions.

“I really want to get the issue talked about and explored,” Unetic says. “I don't have a particular ax to grind. I would just like to see it dealt with, because it's an area that could be very abusive.”

Unetic's interest in the subject was piqued by the experience of an acquaintance who was sexually harassed by her divorce lawyer. “She was constantly being hit on by her attorney,” he explains. “He told her eventually she was going to go to bed with him. When I told her [the lawyer's conduct] was inappropriate, she became defensive. People say, ‘Well, get another lawyer,’ but her finances were very restricted.”

There is no state provision or rule of professional conduct in California governing sexual relations between lawyers and clients. Unetic's resolution is based on Business and Professions Code §726, which limits sexual relations between therapists and clients.

The Unetic resolution would define as unprofessional conduct “the commission of any act of sexual intercourse, abuse, misconduct or relations by the attorney of record involving a dissolution of marriage . . . with his or her client before final termination of marriage.” Such a determination of unprofessional conduct would be grounds for disciplinary action.

In a supporting analysis of the resolution, Unetic and other proponents argue that “the combination of vulnerability and the likelihood that this may be the client's first contact with the legal profession” places the lawyer “in a position of unique power and influence.”

The Roybal-Allard bill would direct the State Bar to adopt a rule of professional conduct governing sexual relations between attorneys and their clients “in



“I really want to get the issue [of attorney-client sex] talked about,” says Robert C. Unetic, a member of the State Bar's Family Law Section.

MAX RAMIREZ

cases involving, but not limited to, probate matters and domestic relations, including dissolution proceedings, child custody cases, and settlement proceedings."

The proposed legislation would direct the State Bar to submit a proposed rule to the state Supreme Court for approval by July 1, 1990. Intentional violation of the rule would constitute a cause for suspension or disbarment.

Roybal-Allard decided to sponsor the legislation after discussing the subject with lawyers concerned about allegations involving palimony attorney Marvin Mitchelson, who was accused of sexually assaulting two women clients. The allegations were exhaustively investigated by several law enforcement agencies, but no charges were filed since there was insufficient evidence that a crime was committed. Nonetheless, the two women did receive financial restitution from the Victims of Crime fund operated by the state Board of Control.

So far, the State Bar has been cautious in its approach to the sex-with-clients issue. In a widely publicized opinion by the bar's Standing Committee on Professional Responsibility and Conduct (Formal Opinion No. 1987-92), the committee pointed out that although there were perils involved in a lawyer-client sexual relationship, a ban on such a relationship may be overbroad and unnecessary.

Roderick Leonard, a Los Angeles County deputy district attorney who chairs the committee, says the committee does not take positions on legislation.

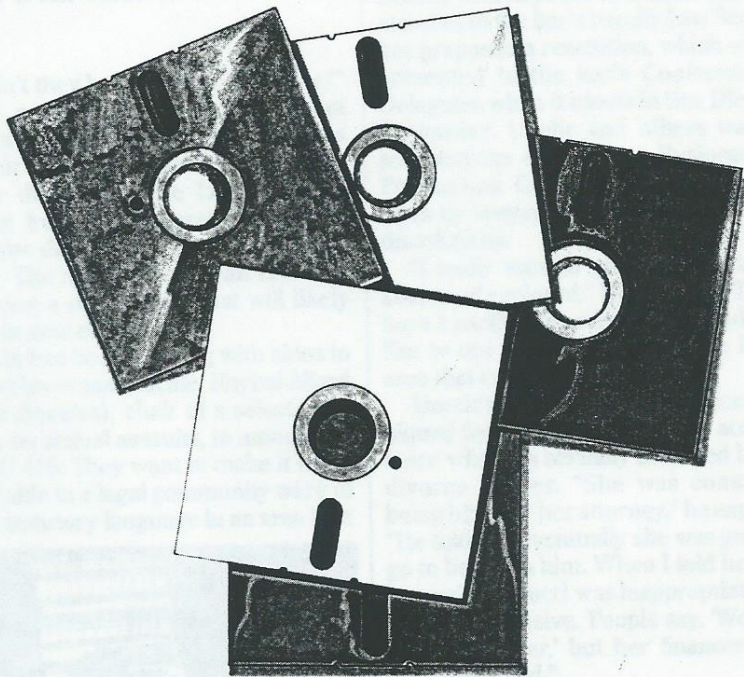
"The opinion did not absolutely prohibit sex with a client, but [cited] pitfalls where sex with a client would be unwise," Leonard says. "I think you can draw a distinction between a psychoanalyst and a lawyer. The distinctions begin to blur in certain domestic relations or possibly criminal matters. But you can't come to an absolute."

Erbin says he is "convinced there are some instances [when] having consensual sex with a client is unethical." An example would be certain child custody cases, he says, "where the question of parental fitness is raised and the claims are being made that the parent is sexually promiscuous."

Unetic says his resolution has generated more controversy than he expected. "I'm surprised, quite frankly," he says. "I'm getting a real mixed response, some negative flak, personal indignation and outrage. They say it portrays lawyers in a bad light."

—SIGRID BATHEN

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