

Ethical Issues in Family Representation: A Review

by

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In her new book, “Ethical Issues in Family Representation,” Barbara Glesner Fines provides a well-organized, thoughtful and accessible textbook. The book is perfect for the law student anticipating a family law career, the beginning family law or general practitioner, or anyone who would like to serve their family law clients at the highest ethical level.

In each of the nine chapters, Professor Glesner Fines lays out a specific issue, clearly states the learning objectives of that chapter, then provides practice exercises and questions for the reader/student to use to put into practice the concepts discussed. In the heart of each chapter, Professor Glesner Fines provides well-supported analysis of the issues which must be considered, the options available to the practitioner in dealing with the issues, and likely consequences of those options.

Los Angeles Superior Court Judge Dianna Gould-Saltman and her husband, Certified Family Law Specialist Richard Gould-Saltman, discuss some of the issues raised in the book and their perspectives on those issues.

DGS: I liked the way Professor Glesner Fines laid out the ethical issues in, essentially, linear fashion, starting with forming the attorney-client relationship, going into competency in the representation, working with other professionals (both within the attorney’s office and as adjuncts to the attorney’s work, such as retained professionals). I’m not sure that those of us who have practiced family law for decades really consider issues, such as the scope of representation, in a very conscious way. Often I see attorneys’ retainer agreements with a lot of boilerplate and a blank filled in for “scope of representation.” That concerns me when the scope is supposed to be limited but the attorney, pre-

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sumably trying to be helpful (or fearing a client complaint), goes well beyond the intended scope. What do you think?

RGS: Some of the areas on which Professor Glesner Fines touches are, (depending on your take) either “cutting edge” or “bleeding edge” ethics issues, and are the subject of ongoing controversy, sometimes rancorous even among experienced practitioners. While these “edges” may not yet permit clear pronouncement of firmly established rules, they present issues that would-be family lawyers may face relatively soon upon entering the market as practitioners. Although Glesner Fines addresses the issue of “limited scope retention,” she does not reach California’s expansion of the concept to include “limited scope court appearance” (“Noticed Limited Scope Representation,” CRC 3.35-3.37, J.C. Form #FL-950), which takes “unbundling” to a new and higher level.

DGS: Professor Glesner Fines openly addresses the issue of how different representing family clients is from other types of cases because often, even after the legal case is over, the relationship continues, and the attorney must take this into consideration at all times during the representation. She addresses this in her chapter on “competency,” which, in the broadest sense, it is. I’m concerned that technically competent and ethical attorneys might avoid this chapter believing the word “competency” is merely the opposite of “incompetent,” and they know their work is at least “competent.”

RGS: There’s a reason they call it “practice.” Glesner Fines also does new and even experienced practitioners a service by addressing indepth listening to, and communicating with, the client as a “core competences.” Family law practitioners uniquely must understand this skill-set as extending far beyond the minimal “keep the client informed” standard that bar discipline rules impose. I found her examples and guidance useful reminders, and I’ve been “practicing” for three decades.

DGS: A lot of family law ethics focuses on conflicts of interest based on prior representation or fiduciary duties, both of the attorney (to the client and tribunal) and of the client (to an estranged spouse). This book addresses conflict issues relevant to experienced family law attorneys, including issues of danger, ei-

ther to one's own client, the client's children, or to the attorney. While this is a great thing to learn about before one even begins to practice family law, it seemed a good reminder to experienced practitioners, who sometimes become complacent rather than vigilant about accurately assessing real danger in the course of the practice.

RGS: *Both in the "Danger" and "Representing Children" chapters, Professor Glesner Fines navigates some fairly tricky waters. Useful and informative discussions of ethical issues in representing victims of domestic violence, and representing children's interests in court, (and the courts' appropriate role in those contexts) are particularly susceptible to being "run aground." Glesner Fines addresses these issues cleanly, and both refers her readers to valuable additional materials, largely free of ideological agenda or slant, and presents sufficient material for serious further discussion in the context of a class or seminar.*

Also, Glesner Fines provides careful (and critically important) guidance in regard to the issues of clients' informed consent to "true collaborative process" agreements (i.e., those that require discharge of the collaborative attorneys).

DGS: Although the book was clearly written for someone starting out in family law, I think it would make a terrific addition to the seasoned family lawyer's library, and at a minimum, as mandatory reading for new associates as they come into the practice.

