

By Adam Sheppard

Practice Guidelines

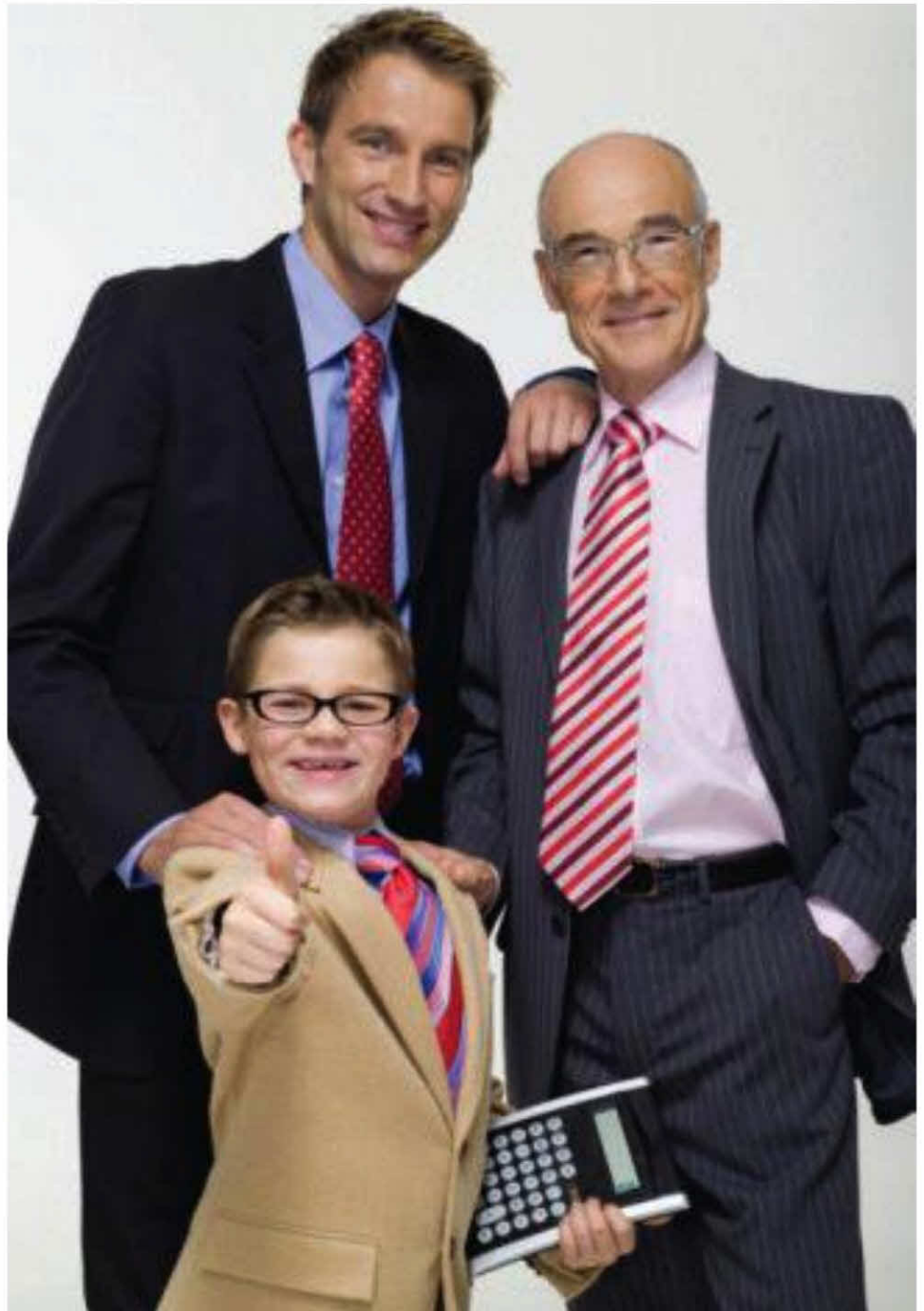
Working in A Family-Run Law Practice

CHICAGO IS HOME TO SEVERAL family-run practices. Second generation lawyers often join a parent's practice. Siblings and spouses have also been known to team up. In preparation for this article and a recent lecture at the CBA, I submitted a survey to several lawyers who work with family members regarding the pros and cons of working in a family-run law practice. The results of the survey revealed that family-run law practices can be successful and rewarding but they present their own set of unique challenges. This article identifies some of those challenges and offers guidelines for combating them.

Remain Objective

It is difficult to remain objective about people we care about such as our kids, parents, or siblings. Parents have a natural inclination to view their children's abilities and work product in a favorable manner. Conversely, some children view their parents' actions with rose-colored glasses. But running a law practice requires lawyers to make intelligent decisions based on dispassionate and reasonable analyses. Here are a few tips to help maintain objectivity in a family-run law practice:

Develop objective criteria to assess the performance of firm members. Objective evaluations are based on factors that can be quantified or results that can be clearly measured. Examples of objective measurements include the number of hours that an employee worked in a particular period or the number of new clients that a lawyer



secured. Some factors, such as a lawyer's performance in the courtroom or the quality of written work, are subjective evaluations and cannot be quantified. The important thing to remember is that promotions or pay raises for family members should be strictly based on merit.

Turn to outsiders for their opinions. If you and your family member disagree on a matter, elicit the opinion of a colleague outside of your firm whom you can trust to give you a painfully honest assessment of the situation.

Avoid Perception of Nepotism. In family-run law practices that also employ non-family members, maintaining objectivity is crucial to avoiding a perception of nepotism. Nepotism is not illegal but it can smack of unfairness and hurt morale in the workplace. See *Bickerstaff v. Nordstrom, Inc.* 48 F.Supp.2d 790, 800 (N.D. Ill. 1999) ("nepotism, while disreputable, is not illegal."). Some larger firms have anti-nepotism policies. In Illinois, such policies are generally enforceable and do not constitute illegal discrimination. See e.g., *Boaden v. Department of Law Enforcement*, 171 Ill.2d 230 (1996).

Separate Work from Home

The dinner table and the conference room should not be interchangeable. For family members who practice law together, family gatherings provide another opportunity to have buzz-sessions about clients, cases, or causes. This can be unhealthy for the family dynamic. Intense business discussions can easily morph into arguments at home. Allowing work issues to dominate the dinner table is also unfair to other family members who are not involved with the firm. To help keep business talk from trickling into the home, firm owners should designate specific meeting times and places, such as offices or conference rooms, to conduct case-management conferences or other brainstorm sessions.

The division of responsibilities should also occur in the office or via email. Mentioning to a family member over a Sunday dinner that you need him to cover a case

next week or that a case requires a particular motion runs the risk that the family member will not remember the task or treat it unduly casually. Reinforce such a request in an email or in a meeting back at the office.

It is also important to try to keep family issues outside of the office. Family bickering not only affects your work but it can distract others in the office. The manner in which you speak to a family member at work should always remain professional. Speaking to your family member in a professional manner will engender an atmosphere of professionalism in the rest of the office.

Be Open to Change

One distinct advantage that young lawyers have when working for a parent is that they have unprecedented access to the leader of the firm. Young lawyers may have creative ideas on how to improve the firm, particularly when it comes to instituting new technologies. For example, a young lawyer may believe that the firm would benefit from an updated legal research program or an on-line marketing campaign. Young lawyers who work for a family member should take initiative when it comes to suggesting new business ideas. But just because you are related to the boss, does not excuse you from presenting your proposals in a professional manner. Any proposals should be set forth in writing and include a summary of the costs involved.

Family members also appear to accord each other greater autonomy when it comes to growing the firm in different ways. For example, the senior partner may give his daughter, a junior partner, the authority to take on a case that the firm would not otherwise handle, do pro bono work, or actively involve the firm in professional organizations. Young lawyers who work for a family member should take full advantage of these career building opportunities.

Conclusion

Family members who practice together can find themselves struggling to maintain

continued on page 47

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Protecting Those Who Protect Us continued from page 38

the duty owed by landowners to firemen. In *Lazenby v. Mark's Construction, Inc.*, 923 N.E.2d 735, 745 (Ill. 2010), although the Court's holding related to the statute's lack of retroactive application, it also noted that section 9f imposes a duty of reasonable care on landowners and occupiers to firefighters who are injured due to the lack of maintenance of the premises in the course of responding to fires, and stated that "*the parties agree that the duty did not exist prior to enactment of the statute.*" 923 N.E.2d at 745 (emphasis added).

The question becomes whether, under the statutory version of the fireman's rule, landowners may be held liable for injuries to firefighters if the negligent conduct that causes the fire itself is negligent maintenance of the premises, as evidence by a violation of the relevant fire safety codes, regulations, or ordinances. If section 9f of the Act merely codifies existing law, no such recovery is permitted. See e.g., *Washington*, 66 Ill.2d at 108-09. If, however, a literal interpretation of section 9f is given, such as the one acknowledged by the Illinois Supreme Court in *Lazenby*, firemen who are injured or killed responding to fires caused by the negligent maintenance of the premises should be able to pursue a claim against the landowner, regardless of whether the negligent conduct caused the fire itself.

Application to Non-Firefighters

The common law fireman's rule applies not just to firefighters responding to fires, but to all public officers responding to emergencies. The rule is triggered in any context involving the duty of a landowner to a public officer in an emergency situation. See, e.g., *Jackson v. Urban Investment Property Serv.*, 362 Ill. App. 3d 88 (1st Dist. 2005) (police officer injured by piece of falling scaffolding); *Randich*, 346 Ill. App. 3d 414 (2d Dist. 2003) (EMT injured in a gas explosion); *Zimmerman*, 302 Ill. App. 3d 308 (volunteer firefighter responding to emergency call of persons trapped inside grain bin).

As with firefighters under the common law rule, public officers may not recover

from landowners or occupiers "whose negligence caused the emergency that required their presence when their injuries were caused by the emergency." *Jackson*, 362 Ill. App. 3d at 90, citing *Knight v. Schneider Nat'l Carriers, Inc.*, 350 F. Supp. 2d 775, 780 (N.D. Ill. 2004).

On its face, Section 9f of the Fire Investigation Act *only* applies to firemen. Therefore, the common law iteration of the fireman's rule still applies to all non-firemen public officers. See *Jackson*, 362 Ill. App. 3d at 91 ("the amendment does not affect the binding precedent concerning application of the fire fighter's rule to police officers").

Conclusion

The men and women who serve as firefighters and emergency responders voluntarily assume a great degree of risk on a daily basis. Illinois courts have noted that because most fires are caused by negligence, to hold a landowner liable to all injured firefighters would impose an unreasonable burden.

But as early as 1960, Illinois courts have recognized that landowners owe firefighters a duty of reasonable care to maintain their property in a safe condition. When firefighters or other emergency responders are seriously injured or killed because the landowner failed to exercise reasonable care, the "fireman's rule" must not stand in the way of accessing the civil justice system. ■

Matthew A. Passen is a personal injury lawyer with Passen Law Group. He is Co-Editor in Chief of the YLS Journal and a member of the CBA Record Editorial Board.

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Working in a Family-Run Law Practice continued from page 35

familial harmony while dealing with the pressures of an active law practice. Maintaining objectivity, segregating work from home, and being open to change are guidelines that will help the family business and the family relationship flourish. ■

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