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Recent Developments: Interspousal Tort Immunity

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In *Boblitz v. Boblitz,* 296 Md. 242, 462 A.2d 506 (1983), the Court of Appeals of Maryland abrogated the doctrine of interspousal tort immunity. This doctrine prohibited a person from suing his or her spouse in any tort action.

In *Boblitz,* the wife brought a tort action against her husband for injuries she sustained in a motor vehicle accident. She alleged negligence against her husband in his operation of the motor vehicle. The husband filed a motion for summary judgment, relying on a Maryland case, *Hudson v. Hudson,* 226 Md. 521, 174 A.2d 339 (1961), in which the interspousal tort immunity rule was upheld. The trial court granted summary judgment relying on *Hudson,* as cited in *Lusby v. Lusby,* 283 Md. 334, 345, 390 A.2d 77, 82 (1978), finding that the interspousal tort immunity rule was still good law in Maryland. However, in *Boblitz* the court of appeals abrogated the interspousal immunity rule as to cases sounding in negligence.

The court's opinion begins by tracing the history of the doctrine of interspousal immunity. This doctrine was created by judicial decisions and was based on the archaic concept that by marriage, "the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband. . . ." 296 Md. at 244, 462 A.2d at 507 *citing* Blackstone. As the court of appeals pointed out, the doctrine would more aptly be called "a rule in derogation of married women."

In 1898, the Maryland legislature enacted the "Married Women's Act" (codified as MD. ANN. CODE, art. 45 § 5), which was the first recognition of women's rights separate from those of their husbands. This act gave married women the right to contract for themselves, to contract with their husbands, and to sue or be sued in their own name. Unfortunately, the Act did not specifically give women the right to sue their husbands for actions in tort. In 1910, the Supreme Court of the United States in *Thompson v. Thompson,* 218 U.S. 611 (1910) found that the District of Columbia's Married Women's Act, an act similar to Maryland's, was not intended to give a right of action in tort to a wife against her husband. Subsequent litigation in many jurisdictions concerning the continuing viability of the interspousal tort immunity rule was heavily influenced by the *Thompson* decision.

At the time of the *Boblitz* decision, thirty-five states had abrogated the interspousal tort immunity doctrine either fully or partially. Two states imposed the doctrine by statute.

In its decision, the Court of Appeals of Maryland examined some of the reasons asserted for retaining the interspousal tort immunity rule: the unity of husband and wife will be preserved; interspousal tort actions will destroy the harmony of the marital relationship; retention of the doctrine will prevent collusive and fraudulent claims; retention of the doctrine will guard against an increase in trivial claims; divorce and criminal courts furnish adequate redress; and change is solely within the purview of the legislature.

The court held that these reasons do not withstand careful scrutiny. The court further stated that the rule was unsound in the circumstances of modern life. While the court did not explicitly state the basis for its holding, it was in accord with the majority of states.

Citing decisions from other jurisdictions in which the interspousal tort immunity rule was abrogated, the court proceeded point by point to dispel the arguments for retaining the doctrine. As to the argument that it would destroy the unity of husband and wife: "[t]he doctrine . . . cannot be supported by an antiquated and narrow 'unity' doctrine that perpetuates the fiction of female disability if not inferiority. . . ." *Fernandez v. Romo,* 646 P.2d 878, 881 (Ark. 1982). In response to the argument that it would disrupt family harmony: "[i]t is difficult to perceive how any law barring access to the courts for personal injuries will promote harmony. . . ." *Coffindaffer v. Coffindaffer,* 244 S.E. 2d 338 (W.Va. 1978). As to prevention of collusive and fraudulent claims: "It would be a sad commentary on the law if we were to admit that the judicial processes are so ineffective that we must deny relief to a person otherwise entitled simply because in some future case a litigant may be guilty of fraud or collusion. Once that concept was accepted, then all causes of actions should be abolished. Our legal system is not that ineffectual." *Klein v. Klein,* 58 Cal.2d 692, 376 P.2d 70, 73 (1962). In response to adequate redress being

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States Bankruptcy Court for the District of Maryland, Baltimore Division, the judge sets an ideal fee for particular types of bankruptcy, and issues a Show Cause order as to why the fee should not be diminished if the amount listed in the petition exceeds the limit the judge has set. The court does not disclose the actual amount of the maximum fees allowable. While this non-disclosure protects some bankruptcy estates from overreaching by the debtor's attorney, it also deprives attorneys of guidelines to determine fair and equitable fees. In fact, this practice promotes litigation by failing to provide scrupulous attorneys with assistance in setting fees and by chastizing them after the fees are set. With the immense number of bankruptcy cases filed each year, there is little chance that each case will be examined to determine if the fees charged are reasonable. If there is no objection to the amount, the court allows the compensation if it does not exceed its limit.

While attorneys have the ethical obligation to charge a reasonable fee,[30] without standards to guide them the task is difficult. There appear to be three standards applied when dealing with attorneys' fees in bankruptcy: the Code of Professional Responsibility, the Bankruptcy Code, and caselaw (such as *First Colonial*). While these standards appear to overlap, it is unclear how they are intended to interact, when they are intended to apply, and which takes precedence. If the court determines that a fee is excessive, should a complaint be filed with the Ethics Committee? If a fee is found to be excessive, is it *per se* unethical? These questions and more need to be answered.

Conclusion

In order to protect unwary clients and to prevent subsequent litigation, the local bar associations should examine attorneys' fees and develop recommendations as to what fees are reasonable. The present standards in DR 2–106 are ambiguous: "[a] fee is clearly *excessive* when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee."[31] (emphasis added.) Without guidelines, the attorney may, even without so intending, charge a fee that is later considered to be excessive. The reluctance on the part of the bar associations to establish guidelines is an overreaction to the prohibition against fixing clearly improper minimum fees.[32]

In the absence of sufficient guidelines, however, attorneys should take it upon themselves to ascertain reasonable rates in the community and attempt to keep them to a minimum. Although the Code no longer requires economy in fees, the bankruptcy bar should consider it their ethical obligation under DR 2–106 to charge lower-than-normal fees to clients who contract for their services because of financial problems. Rather than remaining silent, creditors should also become more involved by objecting to fees which appear excessive. In many liquidation cases, the amount received by the debtor's attorney for bankruptcy matters may equal half of the amount owed to creditors. These fees, however, do not trigger the court's alarm by exceeding the amount set for liquidation cases. Heightened awareness of the ethical obligation should benefit both the petitioner and the creditor in many bankruptcy cases.

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Footnotes

[1] MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2–106 (A) (1979). *See also* EC 2–18 (1979).
[2] *Cf.* ABA Comm. on Professional Ethics, Formal Op. 323 (1970).
[3] *Fee Schedules on the Way Out*, 59 A.B.A.J. 1435 (1973).
[4] MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2–106 (B) (1979).
[5] 487 F.2d 161 (3d Cir. 1973); 540 F.2d 102 (3d Cir. 1976) (after remand).
[6] *Id.* at 161, 167.
[7] *Id.*
[8] *Furtado v. Bishop*, 635 F.2d 915, 916 (1st Cir. 1980); *Seigal v. Merrick*, 691 F.2d 161, 164 (2d Cir. 1980); *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760 (7th Cir. 1982); *Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 140 (8th Cir. 1982); *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980).
[9] 488 F.2d 714 (5th Cir. 1974).
[10] *Id.* at 717–19.
[11] *Lindy Brothers Builders, Inc. v. American Radiator and Sanitary Corp.*, 487 F.2d 161, (3d Cir. 1973). *See also* Report of the Proceedings of the Judicial Conference of the United States, March 30–31, 1967 at 34 (as cited in Notes of Advisory Committee on Rules, 11 U.S.C. Rule 219, Appendix at 1318 (1976).
[12] 488 F.2d at 717.
[13] 11 U.S.C. §§ 1–1200 (1976).
[14] 11 U.S.C. § 102 (1978); Bankruptcy Rule 219.
[15] 544 F.2d 1298 (5th Cir. 1977), *cert. den.* 431 U.S. 904 (1977).
[16] *Id.* at 1299.
[17] *Id.*
[18] *First Colonial*, 544 F.2d at 1299; 11 U.S.C. §§ 102, 104 (Supp. V 1981); Bankruptcy Rule 219 (1977).
[19] *Id.*, 544 F.2d at 1300.
[20] 11 U.S.C. § 330 (Supp. V 1981).
[21] *Id.*
[22] *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 330 (1977) reprinted in U.S. Code Cong. & Ad. News 5787, 6286 (1978). *In Re Casco Bay Lines, Inc.* 25 Bankr. 747, 754 (1982).
[23] The only changes in subsections (a) and (b) are stylistic.
[24] S. Rep. No. 989, 95th Cong., 2d Sess. 39 (1978); U.S. Code Cong. & Ad. News 5825.
[25] *In re Peninsula Roofing and Sheet Metal, Inc.*, 9 Bankr. 257 (1981).
[26] *In re Winters and Co., Inc.*, 26 Bankr. 720 (1982).
[27] *In re Pacific Far East Line, Inc.*, 644 F.2d 1290 (9th Cir. 1981).
[28] 11 U.S.C. § 547(6) (Supp. V 1981).
[29] *See* n. 24 *supra*.
[30] MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2–106, EC 2–18.
[31] MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2–106 (B). *Cf.* ABA Formal Op. 27 (1970).
[32] *Cf.* ABA Formal Op. 171 (1970).

Recent Developments

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available in divorce and criminal courts: "The criminal law may vindicate society's interest in punishing a wrongdoer but it cannot compensate an injured spouse for her or his suffering and damages. Divorce or separation provide escape from tortious abuse but can hardly be equated with a civil right to redress and compensation for personal injuries." *Merenoff v. Merenoff,* 76 N.J. 535, 388 A.2d 951, 962 (1978).

Justice Couch, joined by Justice Rodowsky, dissented in *Boblitz,* based on his belief that such a change would be best made by the legislature. The majority held that in the present case there existed no legislative barrier to the abrogation of the doctrine, since it was a common law rule brought about by judicial decisions. The court further stated that the doctrine of *stare decisis* should not be construed as a prohibition against changing a rule of law that has become unsound in the circumstances of modern life.

While the decision in *Boblitz* may be viewed as a giant step forward in Maryland tort law, there are circumstances in which the interspousal immunity rule may still apply. The court stated that certain conduct that would be tortious between strangers would not be tortious between spouses due to the mutual concessions implied in the marital relationship. The doctrine of intra-family tort immunity was untouched by the *Boblitz* decision. The court also limited its holding to cases sounding in negligence and did not address cases which involved intentional torts.