



# Family Matters

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## Introducing you to Ernie Woolf



Ernie is an Accredited Family Law Specialist who attained accreditation in 1990 but has practised in this area for over forty years.

Ernie was admitted to practice in 1967 after graduating with honours from the University of Melbourne. In the early years he mainly concentrated on litigation and developed an active practice in personal injuries and property damage matters. As a result he became one of Melbourne's leading lawyers in those areas.

Over a period of time Ernie developed a keen interest in human relations and in 1985 he became one of the first Victorian lawyers to complete a recognised mediation and conciliation course. In 1986 he completed a two year course to become a qualified counsellor.

As a logical consequence of his interest in these issues, Ernie developed a practice in family law and has developed a reputation as a caring, considerate and highly successful family law specialist.

Ernie complemented his family law practice with his experience in running personal development groups in Melbourne for thirty years with the Augustine Centre and the Foundation for Personal Growth. He has also conducted many personal development workshops in Melbourne and overseas.

Ernie reflected that he listens closely to his clients and then applies his legal knowledge to the facts and issues as told to him, all the time taking into account the emotional wellbeing of his client.



Berry Family Law

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### The Lawyer's 6th sense - When to fight, when to settle

In a speech recently delivered to members of the legal profession, retired Family Court Justice Linda Dessau spoke openly about her experience as a Judge and why she believed costly litigation could have been avoided in many cases had different lawyers been retained by the parties.

Whilst she spoke approvingly of most family lawyers, Justice Dessau said some lawyers gave "misguided advice, often at the start of the case, like 'just nick off with the kids' or, 'just close all the bank accounts' and that set up unnecessarily bitter and protracted litigation".

Family law cases are often highly sensitive. Lawyers acting in this area have an obligation to employ a conciliatory rather than adversarial approach. If matters are not handled in this manner, issues more often become disputes, which later develop into drawn out legal battles that prove very costly for clients.

It is important to obtain sound advice early. Inaccurate initial advice can cause parties to believe unrealistic outcomes are achievable and only result in long-term emotional and financial loss. They may invest significant resources pursuing an application that has little prospect of success.

Justice Dessau also expressed concern for parties represented by lawyers who would not, or, more seriously, could not identify the relevant issues in disputes and ran "scatter-gun" cases. It is unwise to use the court's time wastefully by asking it to consider irrelevant material.

The court has the power to determine certain matters based on the relevant evidence available. Parties who elect to use the court as an opportunity to air irrelevant grievances with the other party (or any other person or entity for that matter) do so at their own risk.

Rule 12.2 of the Professional Conduct and Practice Rules 2005 requires a lawyer in Victoria to **"assist a client to understand the issues in the case and the client's possible rights and obligations."**

The same Practice Rules state that a lawyer **"must not act as the mere mouthpiece of the client."** A good lawyer will always give their client's case a reality check.

The balancing of these Rules requires a skilled lawyer.

In exercising judgment independently, a skilled lawyer will confine the hearing to the real issues in dispute and "present the client's case as quickly and as simply as may be consistent with its robust advancement".

Put simply, a lawyer with sufficient knowledge and experience in family law will know what matters. They will know when to fight and when to settle and in so doing minimise the family conflict and financial loss.

### Superannuation and Family Law

In December 2002 changes were made to the Family Law Act which permitted the Family Court to divide superannuation between separated spouses.

After the breakdown of a marriage or a de facto relationship, the Court may adjust the property of that relationship. Superannuation is a form of property. The Court may adjust superannuation by either:

- A **splitting order**; or
- A **flagging order**.

There are a number of advantages and disadvantages of splitting orders and flagging orders. These will rise and fall on the specific circumstances of your case. But overall, there are a few general factors to carefully consider.

#### Splitting orders

A splitting order directs a Superannuation Trustee to immediately split off a portion of your superannuation and give it to your estranged spouse's superannuation fund.

#### Flagging orders

A flagging order requires the Trustee of your superannuation fund to inform your estranged spouse when you become entitled to your superannuation. The flagging order prevents your superannuation being paid to you until a court order can be made to split any superannuation.

A flagging order will defer the payment of superannuation to your estranged spouse until you become entitled to your superannuation. Generally this arises on retirement. It might seem better to defer the payment. However there are traps.

First, superannuation funds grow strongly in the final years before retirement. You may end up paying more if you wait. Second, earlier entitlement to your superannuation may also arise if you become totally and permanently incapacitated (TPI). You might have wanted to defer the payment, TPI will bring the payment forward. An enhanced TPI benefit under some superannuation policies may result in a windfall to your estranged spouse.

It is important to carefully consider splitting and flagging and the possibility of TPI.

Superannuation and Family Law is complex. You must obtain competent legal and financial advice before reaching an agreement concerning your superannuation. The advice will assist you to decide whether to split, flag or propose an alternate outcome which allows you to keep your superannuation intact.

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