



# PROFESSOR LEX

BY HARVEY I. HAUER

**Dear Professor Lex:**

**I learned that you recently spoke about the effect of a party dating during a divorce case. I am sending you this email because my client wishes to begin dating and we just started his divorce case. What are your thoughts?**

**Practitioner**

Dear Practitioner:

Commencing to date while the divorce is pending does not pose a legal problem. It can, however, turn an otherwise "civil" divorce case into a high conflict divorce case. It is not uncommon that when one spouse learns that the other spouse is dating during the pendency of the case, that they will want to discover, among other things, when the relationship began, the identify of the third party and what value was given to the third party. Substantial discovery could ensue.

Should the client's question relate to having a sexual relationship with a third party after the case is filed, you should read *Knowles v Knowles*, 185 Mich App 497, 462 NW2d 777 (1990), wherein the court held, in part:

*... we do not think the evidence of defendant's "recent affair" was relevant since it took place after the breakdown of the marital relationship and after the plaintiff had filed her complaint for divorce...*

Relying on the court's ruling in *Knowles* as a basis for advising one's client that there will be no negative consequence for them to commence a sexual relationship while their case is pending, could be dangerous for the following reasons:

1. In *Morell v Morell*, an unpublished opinion per curiam of the Court of Appeals, issued May 29, 2003 (Docket No. 242815), the Curt held:

*We note Knowles is not binding precedent because it was issued before November 1, 1990, see MCR 7.215(l)(1)...*

Note, that although the facts in this case are different from those in *Knowles*, this case should have a chilling effect on those who want to rely on the *Knowles* opinion.

2. MCL 750.29 defines adultery as the sexual intercourse of 2 persons, either of whom is married to a third person. MCL 750.30 provides any person who shall commit adultery shall be guilty of a felony; and when the crime is committed between a married woman and man who is unmarried, the man shall be guilty of adultery. Do you really want to advise your client to commit a felony?

We are family law attorneys, not therapists. We can only give legal advice. Our legal advice should be that such a relationship cannot legally benefit the client and it could lead to negative consequences for them.

**Answer respectfully submitted by  
Harvey I. Hauer, Hauer & Snover.**

Please send questions for Professor Lex to [Hhauer@hauersnover.com](mailto:Hhauer@hauersnover.com). Include "Professor Lex" in the e-mail's subject line.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

