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ESTATE PLANNING • ESTATE SETTLEMENT
ESTATE LITIGATION • ASSET PROTECTION

November & December 2015

Financial Advisor Current Events Update

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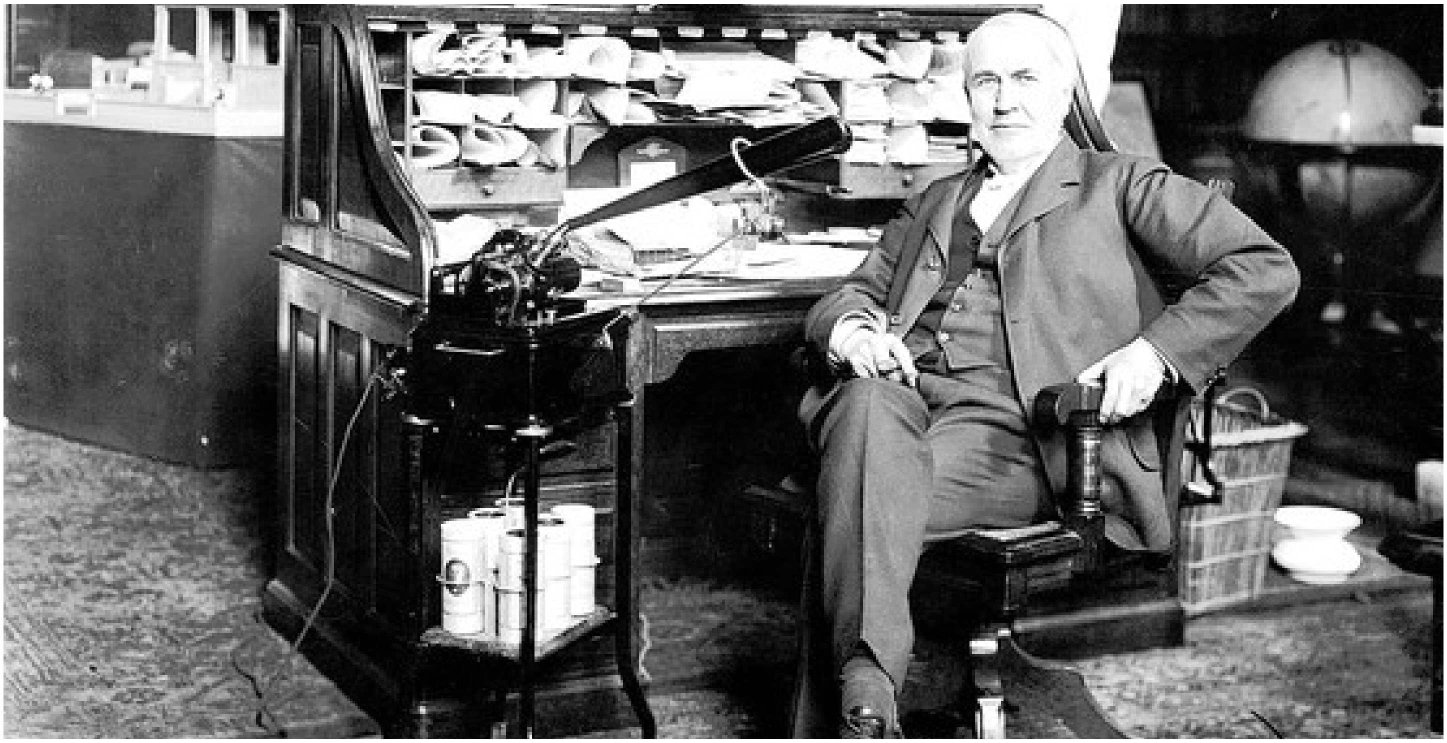
Reflection of the Month

One day Thomas Edison came home and gave a paper to his mother. He told her, "My teacher gave this paper to me and told me to only give it to my mother."

His mother's eyes were tearful as she read the letter out loud to her child: Your son is a genius. This school is too small for him and doesn't have enough good teachers for training him. Please teach him yourself.

After many, many years, after Edison's mother died and he was now one of the greatest inventors of the century, one day he was looking through old family things. Suddenly he saw a folded paper in the corner of a drawer in a desk. He took it and opened it up. On the paper was written: Your son is addled [mentally ill]. We won't let him come to school any more.

Edison cried for hours and then he wrote in his diary: "Thomas Alva Edison was an addled child that, by a hero mother, became the genius of the century."



ON THE LIGHTER SIDE

As I have grown older, I've learned that pleasing everyone is impossible.

But pissing everyone off is a piece of cake.

IRS Announces Estate & Gift Tax Exclusions for 2016

THE IRS HAS RELEASED THE ANNUAL INFLATION ADJUSTMENTS AND TAX RATE SCHEDULES THAT WILL APPLY IN 2016. INCLUDED ARE THE NEW GIFT AND ESTATE TAX EXCLUSION AMOUNTS FOR 2016. THE NEW INFLATION ADJUSTED NUMBERS ARE AVAILABLE IN REVENUE PROCEDURE 2015-53. THEY APPLY GENERALLY TO TRANSACTIONS OR EVENTS OCCURRING IN CALENDAR YEAR 2016

ESTATE & GIFT TAX EXCLUSIONS 2016

- $5.45 million – Federal Estate Tax Basic Exclusion Amount
- $5.45 million – Lifetime Gift Tax Exclusion
- $14,000 – Annual Gift Tax Exclusion

2016 STANDARD DEDUCTION AMOUNTS

$6,300 - Standard deduction for single taxpayers

$12,600 - Standard deduction for married couples

$9,300 - Standard deduction for heads of households

$1,250 - Additional standard deduction for the aged or blind. (This additional standard deduction amount is increased to $1,550 if the individual is also unmarried and not a surviving spouse.)

The new estate and lifetime gift tax exclusion amounts are an increase of $20,000 from 2015. Because a husband and wife each get their own exemption, a married couple can give away $10,900,000 million tax-free in 2016 (provided they have not previously used up any of their exclusions.)

The top tax rate on amounts above the exemption limit is 40%. The high exemption amounts have pretty much done away with estate tax as an estate planning consideration for most people.

Income Tax Brackets for 2016

The top federal income tax rate of 39.6 percent will affect singles whose income exceeds $415,050 and married couples filing jointly with incomes over $466,950 in 2016. The other marginal rates are described in the Revenue Procedure.

Long-Term Care Insurance Deduction Limits for 2016

The IRS also released the long term care insurance premium deduction limitations for 2016:

Attained Age	Premium Limit
40 or less	$390
More than 40 but not more than 50	$730
More than 50 but not more than 60	$1,460
More than 60 but not more than 70	$3,900
More than 70	$4,870

Capacity & Estate Planning

At the turn of the 20th century, the average life expectancy was a mere 49 years, and dementia was a rare phenomenon. Today's average life expectancy exceeds 77 years.

If you have clients or family members who are reaching that age where you are not sure that they are going to be able to make decisions on their own, it might be well to look at their estate plan and see if there are changes that need to be made. Once they go down that path of dementia, it is really difficult to make those changes.

A court has to appoint a guardian and there are many other hoops to jump through before they pass away, in order to establish or change trust documents. You don't want to go down that road if you don't have to.

One of the points of having a solid foundational estate plan is so you don't have to pay excessive legal fees and go through those hassles.

When a client initially meets with an attorney, the attorney must determine whether or not the client has the requisite mental capacity necessary to reasonably articulate his or her wishes concerning their legal affairs.

In general, the requirements of testamentary capacity are fairly simple. The testator must meet only this minimal test at the moment the estate-planning documents are executed.

The attorney's duty to confirm a client's testamentary capacity exists in every estate-planning matter, and confirmation is usually determined while conversing with the client.

Attorney Aaron Kimsey established The Andersen Firm's Capacity Worksheet (attached) , used to identify key observations regarding capacity. This worksheet relates to cognitive, emotional and behavioral observances. These noninvasive questions can provide probative evidence and also increase credibility to the attorney's testimony should there be a subsequent litigation contesting the client's capacity.

COGNITIVE, EMOTIONAL & BEHAVIORAL OBSERVANCES

COMMENTS: If you find this applies to your clients or family members, please contact our office at **866.230.2206** to organize a time that works for you and your clients to discuss establishing a trust or amending their current estate planning documents.

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Client Name: ______________________ **Date of Interview:** ______________________

Attorney: ______________________ **Place of Interview:** ______________________

A. OBSERVATIONAL SIGNS

+ Cognitive Functioning	Examples
Short-term Memory Problems	Repeats questions frequently Forgets what is discussed within 15-30 min. Cannot remember events of past few days
Language/Communication Problems	Difficulty finding words frequently Vague language Trouble staying on topic Disorganized Bizarre statements or reasoning
Comprehension Problems	Difficulty repeating simple concepts Repeated questioning
Lack of Mental Flexibility	Difficulty comparing alternatives Difficulty adjusting to changes
Calculation/Financial Management Problems	Addition or subtraction that previously would have been easy for the client Bill paying difficulty
Disorientation	Trouble navigating office Gets lost coming to office Confused about day/time/year/season
+ Emotional Functioning	**Examples**
Emotional Distress	Anxious Tearful/distressed Excited/pressured/manic
Emotional Lability	Moves quickly between laughter and tears Feelings inconsistent with topic

+ Behavioral Functioning	Examples
Delusions	Feels others out "to get" him/her, spying or organized against him/her Fearful, feels unsafe
Hallucinations	Appears to hear or talk to things not there Appears to see things not there Misperceives things
Poor Grooming/Hygiene	Unusually unclean/unkempt in appearance Inappropriately dressed

Other Observations/Notes of Functional Behavior

Other Observations/Notes on Potential Undue Influence

Mitigating/Qualifying Factors Affecting Observations	Ways to Address/Accommodate
Stress, Grief, Depression, Recent Events affecting stability of client	Ask about recent events, losses Allow some time Refer to a mental health professional
Medical Factors	Ask about nutrition, medications, hydration Refer to a physician
Time of Day Variability	Ask if certain times of the day are best Try mid-morning appointment
Hearing and Vision Loss	Assess ability to read/repeat simple information Adjust seating, lighting Use visual and hearing aids Refer for hearing and vision evaluation
Educational/Cultural /Ethnic Barriers	Be aware of race and ethnicity, education, long-held values and traditions

B. RELEVANT LEGAL ELEMENTS

General Legal Elements of Capacity for Common Tasks	Notes on Client's Understanding/ Appreciation/Functioning Under Elements
Testamentary Capacity - Ability to appreciate the following elements in relation to each other: 1. Understand the nature of the act of making a will. 2. Has general understanding of the nature and extent of his/her property. 3. Has general recognition of those persons who are the natural objects of his/her bounty. 4. Has/understands a distribution scheme.	
Contractual Capacity The ability to understand the nature and effect of the particular agreement and the business being transacted.	
Donative Capacity An intelligent perception and understanding of the dispositions made of property and the persons and objects one desires shall be the recipients of one's bounty.	
Other Legal Tasks Being Evaluated & Capacity Elements:	

C. TASK-SPECIFIC FACTORS IN PRELIMINARY EVALUATION OF CAPACITY

The more serious the concerns about the following factors...	The higher the function needed in the following abilities ...
Is decision consistent with client's known long-term values or commitments? Is the decision objectively fair? Will anyone be hurt by the decision? Is the decision irreversible?	Can client articulate reasoning leading to this decision? Is client's decision consistent over time? Are primary values client articulates consistent over time? Can client appreciate consequences of his/her decision?

D. PRELIMINARY CONCLUSIONS ABOUT CLIENT CAPACITY - After evaluating A, 6, and C above:

☐ Intact- No or very minimal evidence of diminished capacity	*Action:* Proceed with representation and transaction
☐ Mild Problems- Some evidence of diminished capacity	*Action* : (1) Proceed with representation/transaction, or (2) Consider medical referral if medical oversight lacking, or (3) Consider consultation with mental health professional, or (4) Consider referral for formal clinical assessment to substantiate conclusion, with client consent
☐ More than Mild Problems -Substantial evidence of diminished capacity	*Action:* (1) Proceed with representation/transaction with great caution, or (2) Medical referral if medical oversight Jacking, or (3) Consultation with mental health professional, or (4) Refer for formal clinical assessment, with client consent
☐ Severe Problems- Client lacks capacity to proceed with representation and transaction	*Action:* (1) Referral to mental health professional to confirm conclusion (2) Do not proceed with case; or withdraw, after careful consider-ation of how to protect client's interests (3) If an existing client, consider protective action consistent with MRPC 1.14(b)

CASE NOTES: Summarize key observations, application of relevant legal criteria for capacity, conclusions, and actions to be taken:

HOW TO KEEP THE KIDS

AN ASTONISHING 98% OF PEOPLE WHO INHERIT MONEY YANK IT FROM THEIR PARENTS' FINANCIAL ADVISORS. WHY ADVISORS, AND THE FAMILIES, SHOULD FIND A BETTER WAY.

Most financial advisors hope to build strong, trusting relationships with their clients over many years. Yet most fail to address the single most important thing to their clients: family.

According to Sallie Krawcheck, president of Global Wealth and Investment Management for Bank of America, half of all wealthy individuals in the U.S. would welcome having their families brought into the wealth-management discussion, but their advisors never suggest it. It's a huge missed opportunity to build bridges to the next generation, she says. "You have to ask," she says. "If you don't ask you're never going to know if they want them involved or not."

This inattention can have serious consequences for financial advisors. A mere 2% of children keep the money they've inherited with their parents' financial advisor, according to a PriceWaterhouseCoopers Global Private Banking/Wealth Management survey. Similarly, only 45% of wives keep their assets with the same financial advisor after the husband dies. The reason for this high attrition is simple: The advisor has no relationship with the client's family. "If your first introduction to the kids is: 'I'm sorry for your loss, my name is Phil,' that doesn't work," Krawcheck says.

It's not just the advisor who pays the price. Excluding spouses and children from important financial discussions also hurts the family in the long run, says Diane Doolin, senior vice president and senior investment management consultant at Morgan Stanley Smith Barney and co-founder of the Institute for Preparing Heirs. In 70% of the cases when wealth is transferred from one generation to the next, she says, big problems develop: Either the estates lose assets or the family loses cohesion or both. "We do an excellent job preparing assets for heirs, but as an industry we don't prepare heirs for the assets."

As the extent of this problem gains attention, more and more financial advisors are taking a hard look at what they can do. Doolin says a remedy is urgently needed, given the enormous transfer of wealth now under way: Some 20,000 estates worth more than $20 million each are transferred each year, and as baby boomers get older, trillions of dollars more will be transferred over the next decades.

To some extent, the tendency to converse only with the client is understandable, Krawcheck says. Many financial advisors are most comfortable talking about investment strategies. Dealing with the family opens up a whole range of wealth-management topics—estate planning, long-term care, trusts and philanthropy, to name a few—where an advisor may not have all the necessary skills. Advisors also worry that by spending time with multiple members of one family, they will have less time for other clients.

Yes, there can be some good reasons why a financial advisor might not want to keep a client's family members as clients. First of all, says Meg Green, CEO of Meg Green & Associates in Miami, personalities have to mesh. Just because an advisor and client have a good rapport doesn't necessarily mean that same rapport is possible with the son or daughter.

Also, after the division of the estate, heirs might not have enough investable assets to warrant continuing a relationship. And even when the heirs do receive sizable estates, distance is a factor. An heir might live too far away to make building a relationship feasible. "Our best value is meeting in the office where we work on building a team relationship," Green says.

...CONTINUED

Caveats aside, it's usually in the best long-term interests of the advisor and the family members to build relationships. Done well, a multigenerational approach can educate the heirs, give peace of mind to parents and efficiently transfer assets to the next generation.

The first step for advisors, as Krawcheck sees it, is simply to ask clients about their families. If a client does not want to include the family, the discussion ends there. If, however, the answer is yes, advisors will want to have a team with a range of wealth-management expertise—not just investment expertise. The team should also have some younger members, to help make the next generation feel at ease.

Green says advisors should tell prospective clients up front that they offer multigenerational services and do little things like including adult children on the newsletter mailing list. By talking with clients about their families and learning about their hopes and concerns, advisors can be proactive about crafting estate-planning solutions. One way Green likes to prove her firm's commitment to a client's family is to offer to draw up financial plans for the children as "a gift" regardless of whether the children have significant assets. "If you help them with these issues, it almost guarantees you're in the picture later on," she says.

Technology can also help forge these relationships. Krawcheck cites Merrill Edge, a low-cost, online service that can work well for serving the children of wealthy families. Doolin of Morgan Stanley Smith Barney adds: "Until three years ago I didn't know who the kids were of my best clients. But we built a database so we could learn about the children, talk to clients about their children, and invite children to events." For instance, the kids might get an invitation to Client University, which offers a lineup of seminars geared specifically to younger family members.

Patti Brennan, president of West Chester, Pa.-based Key Financial, offers each client a personal Website with a dashboard of all accounts across multiple financial institutions. "With the parent's permission, kids can have access to the database and see what I've done, and I'm willing to do it for them," she says. "Once you've got their data, once you've set up the dashboard, once you're sending them a quarterly report, and once you've done a financial plan, once you've done all that, you've got a client for life." Sure beats watching them walk out the door.

*Article from Barrons

WHAT ADVISORS SHOULD KNOW ABOUT 80% OF AMERICAN FAMILIES

Working with more diverse modern families isn't like advising Ward and June Cleaver

Although such family structures may seem “alien,” Marston added, “advisors can't flinch when they hear these things. These modern families have become the new norm, and they may have long tentacles, which will impact future business.”

Advisors will need to learn to map out a family's structure so they can clearly understand the decision-making implications. Good communication skills and an understanding of basic psychology will be more helpful than ever for dealing with the greater complexity of these relationships. You’ll need to be prepared for “heirs who don't know how to manage money, clients who don't want to do any proactive decision making for the money they’ll leave behind, new clients who want less interaction and who don't want to delegate decision making [to you], a more competitive marketplace due to robo-advisors and hot competition for anyone under 50 years old who has investable assets,” Marston summed up.

Deep Listening

For some advisors, expanded understanding of client needs can be a radical change. “The financial advisors I’m working with have somewhat of an old model [that assumes that] presenting the facts and figures should be good enough,” said Ted Klontz, founder of the Financial Psychology Institute in Nashville and a psychologist who specializes in behavioral change. “But the younger generation is looking for relationships. Financial advisors who are focusing on what that means and how to do it are ahead of the game.”

The difficulty with many nontraditional clients, Klontz said, is that “they really don't know what they want. They say some words, trying to convey an image of what they want,” but they haven't reflected enough to be clear about it. As a result, the plan they end up with may not address their inner dreams, hopes and desires.

“I always say that if the client is not following the plan, it's not really their plan,” Klontz said. “Once you get a clear picture of what you want, nothing will stop you. If it's not a clear picture, anything will stop you.”

To develop plans that clients will embrace, you may need to delve deeper to figure out what they are really saying. “Advisors need to do deep listening to serve their clients well,” Klontz suggested. “I call it exquisite listening.” He explained that this doesn't simply mean being quiet when the client talks. You need to really listen, not be thinking about how you’re going to respond.

Does this mean taking a lot more time with clients? “Not necessarily,” said Klontz, who conducts listening workshops for professionals. “Many of my clients I see only once, but I listen deeply to what they want and need. Anybody can do it with practice.”

Staying Mentally and Professionally Flexible

The most important thing advisors should know about nontraditional clients is not to make assumptions, noted Carolyn McClanahan, who is president of Life Planning Partners in Jacksonville, Florida. “Listen and learn about the family structure and interaction before you suggest any action,” she counseled. “The No. 1 rule is not to stick your foot in your mouth.”

For example, if a client starts talking about her newly graduated son, don't ask if he has a girlfriend. He may be gay. “Ask whether he has a significant other,” McClanahan suggested. “By your language, you show your openness about alternative family styles.”

Sensitivity and resilience are key in dealing with multiple generations. You may already be providing some services along these lines. “We do very basic work with children and grandchildren as part of our client agreement," McClanahan said. "Let's say there's a daughter who just graduated from college and needs to make decisions about her 401(k). We'll advise her free of charge. Spending a few hours like this is a great way to develop a connection." If parents later need assistance as they age, you'll feel more comfortable communicating with the children. The kids will feel more comfortable with you, too.

Working with nontraditional families may also require flexibility in how and when you meet with clients. McClanahan ticked off some examples: "Using a lot of video conferencing; being ready to meet in off hours and across different time zones; being willing to embrace things such as social media; and having online portals where clients can have easy access to their information."

Three Key Issues for Families Today

Our interviews suggested that advisors may need to help families of all kinds with three particularly thorny issues: old age dementia, childlessness and boomerang children.

Dementia. "Clients' diminished capacity is, to me, the biggest thing that advisors have to prepare for," said Kol Birke, a financial behavior specialist who is senior vice president at Commonwealth Financial Network in Boston. "The best thing to do is to have clients sign a document that enables you to speak to several people in their network of support—often their kids."

"Dementia is a huge problem," the Financial Psychology Institute's Klontz concurred. "Working it into the plan early enough is a real challenge." You don't want to wait until symptoms actually appear.

"My experience is that many planners don't want to think about dementia in their own situation," Klontz pointed out. "Since they don't have a plan for themselves, they tend to minimize it with their clients." The solution: Factor a potential transfer of decision making into your own life plan. "If I've dealt with it myself," Klontz said, "I'll be much more comfortable helping my client deal with it."

Childlessness. According to the latest National Vital Statistics Report (NVSR) from the Centers for Disease Control and Prevention, the U.S. annual birth rate has been stuck around 6.25 per 100 women since 1970, about a third of what it was during the baby boom. The general fertility rate sank to a record low in 2013, according to the January 2015 NVSR.

On the plus side for advisors, childless two-income families can make great clients. As Allianz's Carroll noted, they tend to have more discretionary income, and they still have retirement and estate planning needs.

The downside is that these couples won't have kids to lean on in later years. "We [advisors] are going to be more involved with planning for long-term care as our clients age," Life Planning Partners' McClanahan commented. "If they don't have children to provide care, the advisor will be the go-to person to consult."

Her firm takes special care to help clients negotiate family issues that come with aging. For example, she said, "We encourage them to take tests to determine if they should still be driving. We help them with the logistics and the financing of long-term care, with hiring in-home nursing, with placement in facilities."

Boomerang kids. "Fundamentally, more than even the shift in the family structure, there's been a shift in parental expectations and responsibilities," Commonwealth's Birke observed. "Fifty years ago, parents would have said, 'Go get a job—you're out of here.' Today, they expect to be able to pay for exorbitant room and board at any college, and even to accept the kid back into the home afterward, at the expense of their retirement savings. This is coming at the same time that companies are eliminating pensions."

According to a 2014 survey by American Consumer Credit Counseling, one out of three U.S. households provides financial assistance to adult children. That can take a huge toll on the retirement portfolios of generous parents. Birke suggested that financial advisors need to feel comfortable giving clients such life advice as "It's okay to say no to your kids" or "It's okay to tell them, 'We can only afford the state school.'" He added the reminder that parents can borrow for college, but not for retirement.

“My notion is that the truly deprived child is one who's never had to struggle,” Birke said. “So being tough on the kids, making them pay rent while they’re living in your house or even booting them out, is in reality often a gift in the longer term. I think financial advisors should be communicating this message to help parents safeguard their own financial futures, and to set an example of what their kids should prioritize when they become parents themselves.”

Providing the Right Resources

Is it necessary to have someone on staff with the same background as a target cohort, such as lesbian, gay, bisexual and transgender (LGBT) families? “It can be helpful,” Klontz acknowledged, “but you can't have one of everything.”

It's more important, several of our interviewees said, to understand the needs of your clients and have a sincere interest in them. “If you’re intrigued by a particular group of people and think you can help them, it's fine to specialize in them,” Carroll said. “You don't have to be from the same cohort.”

“The most important thing is to ensure that your clients feel safe being themselves in your office,” Birke emphasized. “You don't have to be LGBT to do that for LGBT clients.”

With particularly complex client needs, it may make sense for a team of advisors, or an advisor and a therapist, to work with the family. Life Planning Partners founder McClanahan said that at her firm, “We have four people who work with our clients. When we face issues outside our expertise, we have a financial therapist who works with us. We also get involved with estate planning by attending meetings with clients and their estate planners. That way, nothing gets lost in translation.”

Advisors may also find it beneficial to offer access to broader resources such as adoption specialists, gerontologists and child psychologists. “That's a 12 on a 10-scale,” agreed Klontz. “My model in my head is that if they’ve got a problem anywhere, we become their answer person. We have [resources] we’ve vetted. If they’re buying a car, we know the best places to go. If a client wants a female financial planner who went from poor to wealthier, I find that person for them.”

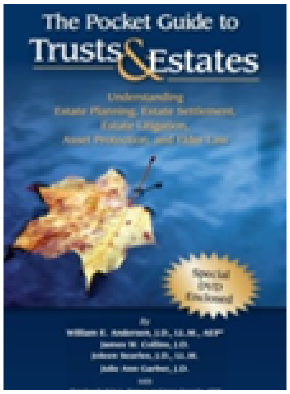
Birke suggested that this level of service can pay off in higher rates of retention and referrals. “The more your clients trust that they can come to you with anything, the more loyal they will be,” he said. “So it's very helpful to have these extended networks of support. I’d add therapists and eldercare specialists to the list.”

Locating respected specialists may not be as difficult as you expect. “NAPFA and FPA are great organizations to reach out to on matters outside your expertise,” McClanahan noted. An emergency room and primary care physician for 13 years before switching to financial planning, she drew an analogy with medical practitioners. “If you’re in family medicine, you know how to take care of 90% of what you see. You know what you know and what's critical, and you know what you don't know, so you can get help,” she said. “To me, financial planners should be family doctors of the finance profession.”

Success in Modern Family Planning

Advisors focused on the future need to embrace the diversity of their new job description. “It will help keep your practice intact as investment management becomes commoditized, which is happening now,” McClanahan urged.

Not everyone will want to change their approach in order to cultivate nontraditional families, and that's okay. “It depends on whether you have a practice or a business,” she said. “If you have a practice where you’re taking care of people and you want to die with your boots on, then it's not a big deal, but if you have a business with a succession plan, you will need to diversify your client base.”



The Pocket Guide to Trusts and Estates

Bill Andersen, Joleen Searles and Jim Collins with Erin Turner and Jerry Saresky have released their collaborative book ***The Pocket Guide to Trusts & Estates: Understanding Estate Planning, Estate Settlement, Estate Litigation, Asset Protection and Elder Law***. If you would like a complimentary copy, call Angela Hooper at 866.230.2206. Books can be purchased on Amazon.com as well.

The Andersen Firm Areas of Practice

Estate Planning

- At The Andersen Firm we have planned for a vast array of estates ranging in size from a few hundred thousand dollars to a hundred million dollars and up, all the while realizing each specific case is different and requires specialized attention.

Estate Settlement

- The process of settling an estate can be difficult and emotionally painful for the family and loved ones of the deceased. It is our goal at The Andersen Firm to ensure that the process be handled with compassion, expedience, professionalism, and expertise, while protecting the rights of all parties involved. If the circumstances surrounding a client's estate require probate, our attorneys offer extensive experience in handling the processes and legalities involved.

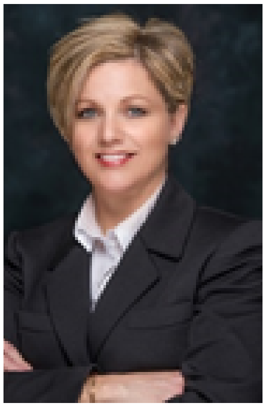
Estate Litigation

- Our lawyers are not only skilled at handling cases involving estate and trust disputes, they draw on a thorough knowledge base of the specific procedures surrounding these issues. The Andersen Firm can efficiently take each case through to completion realizing that full blown litigation often can be avoided if we work diligently to come to resolution.

- Attorneys at The Andersen Firm represent beneficiaries, trustees and personal representatives in various jurisdictions dealing with estate litigation and probate litigation matters. A Will contest challenges the admission of a Will to probate or seeks to revoke the probate of a Will that is already pending before the probate court. A similar type of estate litigation can take place contesting the terms of a trust. The most common causes of action in both Will contests and estate litigation can be found at www.TheAndersenFirm.com or call us at 866.230.2206.

Asset Protection

- For some, putting an Asset Protection Plan in place is advisable in order to attempt to remove the economic incentive to be sued and also to try and increase the ability to force an early settlement in the event a suit is filed.



COMMENTS: If you have questions about The Andersen Firm's practice areas, need assistance with continuing education, client seminars, or have a question or suggestion about our website, **Angela Hooper** is our **Director of Professional Alliances** and is available to assist you. Angela welcomes your calls and may be reached at 866.230.2206 or by email at AHooper@TheAndersenFirm.com.