The Economics of Estate Planning – How Does the [Lawyer on the] Planning Team Get Paid?

Presentation to the Estate Planning Council of Greater Miami
by Paul M. Stokes on March 20, 2014

1. Cast out of Big Law Paradise at a tender age.

   (a) My personal experience, but

   (b) The phenomenon of Big Law firms casting out their trusts and estates lawyers is not an uncommon one. See the article in the New York Times of February 5, 2013, entitled *Debevoise & Plimton Drops Trusts and Estates Practice.* See Exhibit 1, attached.[1]

2. The purpose of this paper:

   (a) To describe the challenges that the lawyer on "the estate planning team" faces in serving the best interests of the client so

      (i) That the non-lawyer professional on the team may understand those challenges more thoroughly and better contribute to a successful outcome for the client, and

      (ii) That other estate planning lawyers may be better informed of those challenges and perhaps better prepared to deal with them.

   (b) To suggest ways to deal with these challenges.

3. The Rules of Professional Conduct of the Florida Bar provide the ethical foundation of a Florida lawyer's estate planning practice, just as they do for all Florida lawyers, regardless of their specialty. I will refer to several of these rules during this talk as they pertain to estate planning. However, I would like to discuss two of them at the threshold. (For convenience purposes, however, I will refer to the ABA's Model Rules of Professional Conduct ["MRPC"]. Florida adopted those rules as its own on January 1, 1987.)

   (a) The MRPC, in its Client-Lawyer relationship section, includes a rule that pertains to "Communication," Rule 1.4.

      (i) Rule 1.4 states as follows:

[1] Also read Juan C. Antúnez' post *Big firm trusts & estates practice groups* on his FLORIDA PROBATE & TRUST LITIGATION BLOG. http://www.flprobatelitigation.com/2007/07/articles/trust-and-estates-litigation-in-the-news/big-firm-trusts-estates-practice-groups/

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(ii) In pertinent part, the ACTEC Commentaries on the Model Rules of Professional Conduct – The American College of Trust and Estate Counsel (Fourth Edition, 2006)[2] on Rule 4.1 state on page 56 as follows:

The nature and extent of the content of communications by the lawyer to the client will be affected by numerous factors, including the age, competence and experience of the client, the amount involved[,] the complexity of the matter, cost controls and other relevant considerations. The lawyer may exercise informed discretion in communicating with the client. It is generally neither necessary nor appropriate for the lawyer to provide the client with every bit of information regarding the representation.

* * *

Effective personal communication is necessary in order to ensure that any estate planning documents that are prepared by a lawyer are consistent with the client's intentions.

(b) The MRPC also has a rule entitled "Terminology," Rule 1.0.

(i) Subparagraph (e) of that Rule defines "Informed Consent" as follows:

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available opportunities to the proposed course of conduct.

[2] A copy of the Commentaries is available on the ACTEC website at www.actec.org/public/commentariespublic.asp.

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(ii) The ACTEC Commentary on Rule 1.0 states in pertinent part as follows:

The lawyer must make reasonable efforts to ensure that the client possesses information as to the law and the facts reasonably adequate to make an informed decision.

4. The dilemma.

(a) A lawyer's estate planning practice demands that the client give *informed* consent and make *informed* decisions not to one or two obvious issues with which the client is already reasonably familiar, but to a significant range of issues from the fairly obvious to the profoundly obscure, many of which are completely unknown to the client until the lawyer describes them.

(b) An ethical dilemma arises from the fee commitments that lawyers believe themselves driven to make in order to obtain an estate planning client engagement. That is, lawyers feel compelled to accept fees that are often inadequate to compensate for the time and effort that the lawyer must devote to the engagement in order to comply with the ethical standards that the Rules of Discipline impose on the lawyer.

(c) This can have several kinds of results:

(i) One is what Patrick Lannon describes as a "race to the bottom in terms of quality and content of an estate plan," that is, the transformation of the lawyer into someone whose contribution is "no more than selling forms, at the low end, with no room for real investigation of the client's circumstances and custom drafting." This is ethically unacceptable and subjects the lawyer to risks that will kill a career: the risk of a bad reputation, the risk of malpractice claims, and even the risk of losing one's license to practice law.

(ii) Another is inadequate compensation. This occurs where the lawyer who chooses to be ethical must devote time to an engagement for which he will not be adequately compensated. The inadequacy can result from policies of the firm in which the lawyer may practice. It can result from the lawyer's own heedlessness about the compensation side of the engagement. Or it can result from an inappropriate desire to collect clients, born of insecurity or uncertainty about the future.

(d) What is to be done about that dilemma? How is the estate planning lawyer to be reasonably paid for good work?

5. The infinite variety of clients aggravates the dilemma, because the client is such an active participant in the estate planning process, unlike the case where the matter turns on witnesses, judges, and opposing counsel. The problem is that there is no "standard client" and so there can be no standard time within which to do the work.

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6. In considering the question of the kinds of clients who will often require an increase in what we may consider to be a "reasonable" amount of time, I would suggest that we are involved with three variables:

(a) *The "competence" of the client*. By this I do not mean clients who are "incapacitated" but who are, for one reason or another, unable to give complete and focused attention to the estate planning process. This sort of problem can arise out of particular circumstances that are temporary, the educational background of the client or his mental gifts, and the client's general attitude toward estate planning. For example,

(i) The first time estate planning client who is essentially ignorant of the process.

(ii) The client who has done estate planning before, comes in for an "update," and does not understand why the process often needs to be virtually done over again.

(iii) The client who expresses no interest in his estate tax exposure, because he is not going to be around to pay the taxes anyway, although his beneficiaries will certainly be interested.

(iv) The client who has been pushed by a third party to do the estate planning, but is himself essentially not committed to the process.

(v) The client who is in a hurry.

(vi) The client who is not in a hurry.

(vii) The client who is aged or aging (see the discussion below about the *Gunster v. McAdam* case).

(viii) The client who is in the midst of a crisis, such as a divorce.

(ix) The careless client. For example, the client who does not follow instructions about providing information about his assets or his intentions, but waits until the signing conference to raise important questions or make important disclosures that the lawyer had not anticipated, thus derailing the conference.

(x) The client who cannot or will not make up his mind about an important issue.

(b) *The family situation of the client.* For example,

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(i) The married client who has had prior marriages, and has children of those prior marriages.

(ii) The client with special needs persons in his family.

(iii) The client who is in the midst of a divorce.

(c) *Finally, the client who has a number of different and unusual assets and related tax or management concerns*.

7. Nevertheless, there are posts in the media that describe fixed fee ranges. For example, according to an article in the Personal Finance section of the Miami Herald, published on August 23, 2013, "An estate plan that includes a will, trust, power of attorney and living will cost $1500-$3000, the experts said. The price could rise to about $5000 with the addition of specialized trust." The experts identified in the article are attorneys, Bruce Stone and Barry Nelson, and Debra Gauthier, a trust officer and certified financial planner at Wells Fargo Private Bank. I know and respect all three of these people. The Herald article did not attribute the particular quote to any of them. But, really, how are lawyers to earn a reasonable fee within such ranges?

8. I suggest that part of the solution is to appreciate fully what prospective clients are looking for when they come to a lawyer for estate planning. They are looking for the sorts of documents that lawyers produce. They want the documents to be appropriately drafted, of course. They want them to reflect their intentions. But the documents are the culmination of the effort that clients make when they come to the lawyer to do their estate planning. This accounts for the fact that when lay people discuss pricing for estate planning work, they discuss it in terms of the documents they are buying from the lawyer.

(a) It once annoyed me when I received a call asking me how much I charged "to do a will?" As pleasantly as I could, I would answer that what I do is to assist people with their estate planning. I would graciously (that is, patronizingly) concede that in the context of the estate planning work, I would draft an appropriate will and other estate planning documents. But that sort of question, "what do I charge to do a will," indicates that prospective clients are looking for a sort of product, something tangible, something that they can sign, hold in their hand, and then say, "There, I got this work done. I feel so much better."

(b) My father was in the life insurance business. He was a Chartered Life Underwriter ("CLU") when that was about the only professional designation for life insurance agents around. He was a Million Dollar Round Table producer, and served for years on the board of this council and at least one term as its president. To help sell a life insurance policy, he would very often get the life insurance company to issue a policy on the life of the prospect, before the sale was closed. The policy would be in the amount of coverage that my father thought the prospect needed. My father would then meet with the prospect and let him hold the policy document in his hands, as my dad went over it. Inevitably, Dad would

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make the sale. Of course, the insurance coverage was not effective until my dad had the check for the first premium in his hand, but it was somehow easier for the prospect to complete the transaction, once the prospect had something tangible to hold.

(c) My suggestion, then, is play to that idea: That estate planning lawyers sell documents, appropriate documents, that get their clients where they want to be.

9. In connection with that suggestion, I would propose that estate planning lawyers think in terms of their selling two kinds or categories of estate planning documents, Major Estate Planning Documents and Related Estate Planning Documents. Talking about the documents I would produce, I would use these two categories as the framework of my discussion with the client.

(a) The Major Estate Planning Documents consist of the documents that people readily associate with estate planning.

(i) These documents are the Last Will and Testament, a Revocable Trust perhaps, and a set of documents that I refer to as "Disability Documents." Disability Documents include the Durable Power of Attorney, Designation of Health Care Surrogate, and Living Will.

(ii) People who dare to give fee estimates for a lawyer's estate planning services, estimates given in a relative vacuum of client information, are usually referring to this category of documents.

(iii) Of course, a billable hour engagement is the gold-standard for lawyers, but most clients want a fee estimate. A fee estimate, as every lawyer knows, immediately hardens in the client's mind into a fixed-fee commitment within a nano-second after the client hears it. So lawyers might as well be prepared to make fee commitments. The Major Estate Planning Document category deals with documents that a lawyer could assign a reasonable, fixed fee, once the lawyer has enough information on the prospective client, his commitment, his intentions, and his particular family and asset situation. Major Estate Planning Documents are such that a lawyer has a fighting chance to set a reasonable fixed fee.

(iv) Having said all of that, I must confess that I often fail to achieve hourly rate Nirvana with my fixed fees, even if I know the client very well. In a recent matter, we had about 20 lawyer hours and 3 paralegal hours in creating an amended and restated trust agreement for which we had committed to a $5,000 fee. That came out to be a blended rate of about $250 per hour, about 70% of what our standard hourly rates would have produced. This is the sort of thing that gets lawyers cast out of Big Law paradise.

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(b) Related Estate Planning Documents, on the other hand, are those that people do not readily associate with estate planning.

(i) Here are some examples of Related Estate Planning Documents:

(1) The beneficiary designations, both primary and alternate, of life insurance, qualified plans, certain types of brokerage and bank accounts, deferred compensation arrangements, and any other written arrangement, specification, or agreement that the client has made or into which the client has entered that directs where the wealth represented by the subject asset or property interest is to go at the client's death, *very often regardless of what the client may have directed in any Major Estate Planning Document.*

(2) Written asset ownership arrangements which show that the client owns an asset concurrently with one or more other people so that the asset passes, at the client's death, to the concurrent owner or owners if any survives the client, *regardless of what the client may have directed in any Major Estate Planning Document*. One example of such an asset is a customer's agreement with a stock broker that creates an account that the client and another person own together as joint tenants with right of survivorship. Another example is a real estate deed delivered by the grantor to the client and another as grantees and that describes the client and that other person as joint tenants with right of survivorship or in a way that, under the law of the state in which the real estate is located, results in the client's property interest moving at death to the surviving owner or owners.

(3) Trust Agreements, whether revocable or irrevocable, which pertain to a trust estate to which the client has assigned, transferred, or gifted assets – or that some other person has transferred assets for the client's benefit - and in respect to which the client has retained or otherwise possess the power to direct the distribution at the client's death of part or all of the trust estate.

(ii) I once described the matter of dealing with a client's particular assets as "asset planning." I now discuss that part of the estate plan as helping the client understand the significance of the appropriate Related Estate Planning documents that control given assets and signing those documents. In doing so, I shift the focus from the abstract, e.g., "Title to this asset needs to be changed from joint name to the name of the trustee," to the particular, that is, to the question of identifying the particular document to be secured for the client's signature, assigning responsibility to the one who is to secure it for the client, see that the client completes

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and signs it satisfactorily, and do whatever further processing is required of that document to make the change that needs to be made.

(1) If this responsibility is to remain with the lawyer, then at least the lawyer is in a much better position to offer fixed fees on a Related Estate Planning Document-by-Related Estate Planning Document basis, if the lawyer cannot achieve hourly-rate Nirvana.

(2) However, as to certain Related Estate Planning Documents, the lawyer is not necessarily the professional who should be doing the work. If we are dealing with life insurance contracts, then it is the insurance agent who should be assigned by the client to the task, if investment management or custodial accounts, then the trust officer, if brokerage accounts, then the financial advisor, if real estate titles, then the real estate lawyer, and if we are dealing with assets with which the accountant is involved, then the accountant, and so on.

(3) In respect to the Related Estate Planning Documents, the client is to remain engaged, if that is what the client wants, or the client does not have to remain engaged. At one extreme, the client can walk out of the office with a set of assignments and responsibilities, not to be seen by the estate planning lawyer until the next estate planning update, and, at the other extreme, the lawyer and his staff can deal with the accountant, the insurance agent, the trust officer, the broker, the real estate lawyer, and so on, to produce the appropriate Related Estate Planning Document for the client's signature, or the lawyer and the client can agree upon something in-between, where the lawyer acts as a sort of quarterback for all or some number of the documents.

10. There is risk in laying off the Related Estate Planning Documents to other professionals or the client. In this connection, one might ask the question whether it is an ethical estate planning engagement for the lawyer to do only the Major Estate Planning Documents and simply to warn the client about the client's need to deal with the Related Estate Planning Documents?

(a) *Gunster, Yoakley, Stewart, PA v. McAdam*, 965 So. 2d 182 (Fla DCA 4th Dist. 2007) is a case well known among estate planning lawyers, or more accurately, notorious among estate planning lawyers. In that case, the 4th DCA affirmed a verdict of $1,043,430 against the Gunster firm and the estate planning lawyer, Daniel Hanley. The issues on appeal included the question of whether the lawyer

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and the client could effectively agree that it would be the client's responsibility not the lawyer's to fund the trust.[3]

(i) Gunster argued that there was evidence that the estate planning lawyer and the client had agreed that it was the client's responsibility for transferring assets to his Trust. The lawyer, Daniel Hanley, had given his client a document entitled *Summary of Operations for Revocable Trust of Charles V. McAdam, Jr*. which advised the client that he was responsible for transferring assets to his trust. According to Gunster's brief on appeal "both the Plaintiff's expert and the Court agreed that Gunster did nothing wrong, initially, by drafting the Trust and advising McAdam that it was up to him to fund the Trust if he chose to do so." In other words, responsibility for the Related Estate Planning Documents was clearly on the client.

(ii) A copy of Gunster's *Summary of Operations for Revocable Trust of Charles V. McAdam, Jr.* taken from Gunster's Appendix to Initial Brief of Appellants, is attached as Exhibit 2. Let us briefly consider that document together. (It is excellent and one of the best examples of an asset memo that I have seen.)

(1) The document clearly states that the advantages of a revocable trust depend on the extent to which the trust is funded with the client's assets.

(2) The document assigns responsibility. It states that "You [the client] are responsible for transferring assets to your Trust. . . . We will not be acting to transfer assets to the Trust unless specifically engaged by you to do so."

(3) The document lists various kinds of assets and describes what must be done with them to transfer them to the trust. In many cases, the document identifies the professional who could assist the client with the transfer of a particular kind of asset.

(iii) Here is what the Plaintiff's answer brief, at page 1, said about the matter, however:

Hanley drafted Decedent's 1998 Will and Revocable Trust, but failed to inquire and ensure that the trust, into which Decedent's assets were to be transferred so as to avoid probate

[3] A copy of the briefs and related appendices and of the DCA's opinion may be accessed via a post on the FLORIDA PROBATE & TRUST LITIGATION BLOG entitled *4th DCA: "Crowdsourcing" appellate briefs in million dollar malpractice verdict against Gunster*, which my partner, Juan C. Antúnez, authored.
Go to http://www.flprobatelitigation.com/2007/10/articles/ethics/4th-dca-crowdsourcing-appellate-briefs-in-million-dollar-malpractice-verdict-against-gunster/

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administration, was funded. Although Hanley had many opportunities over the next five years to ensure that the trust was funded, he did nothing. Hanley's file reflected that he was aware that Decedent had not transferred his stock brokerage account into the trust's name, as planned, yet Hanley did nothing. He knew that if Decedent's assets had to be probated upon his death, instead of passing through the trust, that would generate unnecessary but large fees for itself and the corporate fiduciary, J.P. Morgan Trust N. A. ("JPM") one of Gunster's most important clients.

(iv) In its opinion, the District Court of Appeal held that "[t]he trial court did not err in submitting to the jury the question of whether Gunster Yoakley had a duty to fund a revocable trust during decedent's lifetime as there was sufficient evidence that Gunster Yoakley implicitly agreed to do so."

(b) Compare, however, MRPC 1.2, the Rule entitled *Scope of Representation and Allocation of Authority between Client and Lawyer*. Paragraph (c) of that Rule states that

A lawyer may limit the scope of the representation ***if the limitation is reasonable under the circumstances and the client gives informed consent*** [Florida adds, "in writing"). [Bold mine.]

(i) In my view, if the client situation is at the extreme end of the Related Estate Planning Documents continuum, that is, the client states that he will handle all of those documents himself, then it is crucial that the lawyer do something more than simply hand the client a form memorandum that discusses the importance of coordinating the title or beneficiary designation of his assets so that they fall in line with the estate plan expressed in the Major Estate Planning Documents. Furthermore, the Florida version of the Rule requires the client to sign "a writing," which does not appear to be present in the Gunster case.

(ii) I had such an extreme situation in a recently completed estate planning case.

(1) For purposes of this discussion, I will refer to my client as Jane Austen. Ms. Austen is in her mid-fifties, has never been married, and has no descendants. She is a retired astronaut, was involved in successful start-ups related to the space industry after retirement, and now sits on the boards of several Fortune 500 companies. She is very bright and reads everything. Her wealth has heavy exposure to the estate tax, even with the present exemption. She has residential real estate not only in Florida, but also in two other states.

(2) As Exhibit 3, I have attached a copy of the letter that I sent her after the signing conference. It covers many of the topics that

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Daniel Hanley's "Summary of Operations" document covers, and in some cases not as well. Yet I hope it will shield me from criticism if Ms. Austen should pass away without seeing to it that the Related Estate Planning Documents line up with her estate plan. Why would I think that I will have better luck than Mr. Hanley?

(3) What I believe may distinguish Mr. Hanley's client from Mrs. Austen is my client's age and status in life. Mr. Hanley's client, "a wealthy resident of Palm Beach," was "about to turn 75 years old," according to the Plaintiff's Reply brief, when "he decided to update his estate plan." Ms. Austen is 20 years younger, hardly ever home, and is very active in business activities across the country. I have reason to believe that she will follow through on her commitments. Furthermore, despite what I say in my letter, I will be contacting her about those Related Estate Planning Documents.[4]

11. What can be done to reduce the time cost to the lawyer but deliver quality estate documents, both Major and Related, to the client?

12. *Technology*.

(i) Most estate planning lawyers already use document assembly software that is sophisticated and very helpful. The software we use is called Lawgic, and it was developed by lawyers at Holland & Knight. We spent a lot of money to acquire that program and we continue to spend money to keep it up. Furthermore, we spent a lot of "unbillable" time learning the program and continue to spend "unbillable" time on the program keeping abreast of its changes. The software will create a document that, in most cases, give us a draft that is about 70% complete. The initial creation time will require at least 30 minutes of work at the computer. The 30% that remains to be done could take one hour to three hours and maybe more. In the course of creating that final 30% for Ms. Austin we exchanged drafts via email before we completed the document. Furthermore, I had an experienced paralegal read the draft versions as we progressed. So three of us were involved with the drafting. In my experience, the use of sophisticated estate planning software to produce major estate planning documents does not necessarily make the process of producing the document faster, instead, it makes the end-product better. It raises the bar in terms of quality. It increases the competence level of what we do.

[4] In fairness to Mr. Hanley, there apparently was testimony in the trial record that his client had some sort of psychological block about moving assets into his trust because he related that to getting ready to die. The jury obviously did not credit that testimony.

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(ii) I am exploring the use of software to assemble information about a client's assets. I have not yet found anything satisfactory and may have to develop software of my own. If anyone knows of such software or is interested in developing such software, I would like to hear from them.

(b) *Use Associates*. Unlike litigators, estate planning lawyers find it difficult to leverage their work into associates. It is important to develop associates that have estate planning proficiency, but this is not an easy solution to the dilemma. Associates require close supervision, a lot of training, and a good deal of seasoning.

(c) *Use paralegals.* Here is where important efficiencies are available, both on the Major Estate Planning Document side and the Related Estate Planning Document side. A bright, committed paralegal is gold, and I refuse to identify the one with whom I am blessed at my office.

(d) *Qualify, qualify, qualify prospective clients* and work hard on the terms of the engagement. Always, be prepared to let a prospect go and be very careful with fee estimates.

(e) *Use the non-lawyer members of the estate planning team for all they are worth*. On the Major Estate Planning Documents side, I love it when a competent, experienced, non-lawyer professional reads my drafts. Furthermore, as already discussed, the use of the other team members can be crucial on the Related Estate Planning Document side.

(f) *Diversify one's estate planning practice* into a trusts and estates practice, so that the shortfalls in the fees you earn on the estate planning side are hedged by other parts of the estate planning practice. See the Chart entitled "Diversification in the Trust and Estate Practice" that I attach as Exhibit 4.

(g) *Think about the matter of fees for Estate Planning in the context of the "reasonable fee" as described in MRPC 1.5(a)*, whether or not you have achieved a gold-standard fee agreement, mechanically produced by the application of one's hourly rate to the billable time on the file. Rule 1.5(a) provides as follows:

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

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(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

13. Cast out of Big Law Paradise. Happy Endings

(a) *Debevoise & Plimpton's Trusts and Estates Group Finds New Home.* Article in the New York Times of March 19, 2013, a copy of which is attached as Exhibit 5.

(b) Paul Stokes gets to speak to the Estate Planning Council of Greater Miami on March 20, 2014.

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EXHIBIT 1

The New York Times

February 5, 2013, 9:03 pm

Debevoise & Plimpton Drops Trusts and Estates Practice

By PETER LATTMAN

Last month, the nation's leading trusts and estates lawyers convened at a Florida resort to discuss the latest in estate planning.

Between lectures and workshops, some of the lawyers exchanged whispers about an unsettling piece of gossip: Debevoise & Plimpton, the prominent white-shoe law firm, was eliminating its trusts and estates practice.

Debevoise's decision surprised members of the trusts and estates bar. If an institution as prestigious and financially sound as Debevoise was abandoning its practice, were they vulnerable too?

The news also raised eyebrows across the legal industry because it seemed to run counter to Debevoise's reputation for a strong partnership culture. At a time when many large law firms have discarded the traditional partnership model and embraced a more bottom-line approach, Debevoise has been seen as retaining an old-school ethos — a genteel law firm known for its camaraderie and decency.

"It saddens me to see a great law firm terminate its estates department," said William D. Zabel, a partner at Schulte Roth & Zabel and one of the country's leading trusts and estates lawyers. "Although I don't know the reasons for this decision, it would seem to be a byproduct of the economics of our society, making the law into more of a business than a profession. That

saddens me even more."

In a statement, Michael W. Blair, Debevoise's presiding partner, confirmed that it was jettisoning trusts and estates, and that the group's eight lawyers — including Jonathan J. Rikoon, the partner in charge of the practice — were trying to find another home.

"Debevoise supports the group in this process and will work to ensure that in this transition the needs of the firm's clients continue to be served," he said.

New York-based Debevoise is the latest big corporate law firm to discontinue the practice. In 2011, Weil, Gotshal & Manges, a 1,200-lawyer firm, got out of trusts and estates, deciding it did not fit the firm's business model. Another firm, Gibson Dunn & Crutcher, with 1,100 lawyers, ended its trusts and estates practice about a decade ago.

Corporate law firms once viewed trusts and estates as a small yet important practice that discreetly advised wealthy families. But drafting wills and trusts, and the legal matters that flow from that, is less lucrative than the primary revenue drivers at big law firms: multibillion-dollar corporate transactions and high-stakes litigation.

And there are problems with trusts and estates within a big law firm model. The practice, to use the law firm management parlance, is not as leverageable as other areas. Corporate and litigation partners generate big fees by assigning armies of junior lawyers to megamergers and complex lawsuits. By comparison, trusts and estates work requires far less manpower, which mean far less profit.

Another issue in sustaining these departments is that individual clients bristle at billable rates that now reach more than $1,000 an hour. While big corporations grudgingly pay those rates, wealthy families often resist them.

As a result of these dynamics, firms' trusts and estates practices have remained small and, in many cases, decreased. At the same time, firms have

aggressively built up their corporate and litigation practices across the globe. They have also embraced hot, moneymaking practice areas like patent law and white-collar criminal defense.

There are some counterexamples to this trend, however. In 2011, seven trusts and estates lawyers from Weil, led by Carlyn S. McCaffrey, moved to McDermott Will & Emery, a firm with about 65 trusts and estates lawyers, one of the larger such practices. Another firm committed to trusts and estates is Katten, which has more than 50 lawyers in the group.

Joshua S. Rubenstein, the head of Katten's trusts and estates practice, said that his business went well beyond comforting bereaved spouses and children. A successful practice, he said, includes assignments like advising families in the sale of closely held companies, overseeing trust-related litigation or even assisting in the purchase of a yacht or private jet.

"If done right, a full-service, high-end trusts and estates practice can generate a lot of work for other areas of the firm," Mr. Rubenstein said.

As large firms have de-emphasized their trusts and estates practices, boutiques have sprouted up. Sanford J. Schlesinger, a former partner at the New York corporate firm Kaye Scholer, left in 2004 along with several colleagues to set up an 11-lawyer shop, Schlesinger Gannon & Lazetera.

Mr. Schlesinger lamented the demise of the practice at big firms, and said he thought they were missing a business opportunity.

"Families are going to pass more wealth in the next 10 years than in the history of humankind, and someone is going to have to shepherd that wealth transfer," he said. "These firms are making a shortsighted, profit-driven decision without a view of the long-term big picture."

Debevoise, started in 1931 by two young patrician lawyers, Eli Whitney Debevoise and William E. Stevenson, does not see it that way. Three decades ago, the firm's trusts and estates practice had six partners, including Barbara

Paul Robinson, now retired and a former president of the New York City Bar Association, and Theodore A. Kurz, the former head of the department. Today, there is only one, Mr. Rikoon, 57, who declined to comment for this article.

The firm formed a committee to study its trusts and estates practice, which has advised families like the Lauders (cosmetics) and the Dolans (cable television), according to people with direct knowledge of the group. After concluding that the practice did not have enough business to expand, the committee recommended closing it down. The firm will continue to employ Mr. Rikoon and the seven other lawyers while they interview elsewhere, these people said.

One factor contributing to Debevoise's move to discontinue the group, people say, is its unusual lock-step compensation system, which pays partners in a narrow range strictly according to seniority. That means that Mr. Rikoon is paid on par with a star deal maker from the same law school year, while bringing in less business. This created some discord in the partnership ranks. Debevoise's profits per partner are $2.1 million, according to The American Lawyer magazine.

Debevoise, with 650 lawyers, recently made headlines away from trusts and estates. The firm advised a special committee of Dell's board on the $24 billion leveraged buyout of the computer company. And President Obama nominated the Debevoise partner Mary Jo White to run the Securities and Exchange Commission.

Stephen J. Friedman, a onetime Debevoise partner who is now president of Pace University, said that he was unaware of the facts involved in his former firm's decision to close the trusts and estates practice, but noted that organizations are often faced with business realities that require painful choices.

"It's sometimes necessary to make a decision that's in the best interest of the firm but can hurt individual partners and associates," he said. "That's not a happy experience, but it's sometimes the right thing to do."

A version of this article appears in print on 02/06/2013, on page B1 of the NewYork edition with the headline: Big Firms Back Away From Trusts And Estates.

Jeannie Mandelker

Memphis, TN 13 February 2013

The news that Debevoise & Plimpton is dismantling its Trusts and Estates ("T&E") practice because such work is less profitable than other practice areas is not a surprise. This move by a number of large firms is good news for smaller firms that possess considerable legal talent, yet are usually much more cost-effective.
A case in point: Kurzman Eisenberg Corbin & Lever, LLP, a 30-lawyer firm located in White Plains, whose large trusts and estates practice of 10 attorneys is growing exponentially (one senior associate was elevated to partner last year and three additional associates have been hired in the last 15 months). Its T&E clients are also hiring the firm to provide other legal services in such areas as real estate , corporate, litigation, health care and art law. Most of the partners and associates at KECL trained and practiced at large firms before moving their practices up to White Plains. Clients are following without hesitation.

Kurzman Eisenberg is a harbinger of what the future holds in store for Trusts and Estates practices, and for that matter all practices where clients are unwilling to pay exhorbitant fees.

- Flag
-

Edmund Dantes

Stratford, CT 7 February 2013

Even at $1,000 per hour it's not going to be possible to justify a $2.1 million partnership share. T&E work needs to be seen as a critical networking opportunity, not a profit center. You don't need to network? Then drop the speciality.

Sandi

Brooklyn 7 February 2013

I disagree with the article's implication that Kaye Scholer is among the large firms that "have de-emphasized their trusts and estate practices."

Yes, Sanford Schlesinger used to work at Kaye Scholer, but in the decade since he left, Kaye Scholer has significantly strenthened its Tax & Private Clients Department, including, most recently, bringing on noted trusts and estates partner David Hirsberg to support its West Palm Beach clients. With attorneys ranked in Chambers USA and in U.S. News and World Report/Best Lawyers' annual Best Law Firms issue, Kaye Scholer's Private Clients team is and will continue to be one of the nation's top wealth management advisors.

S.Sonnenfeld
Kaye Scholer LLP

Linn Baxter

Los Angeles 7 February 2013

The key is profits per partner. This is about bragging rights. Sending clients elsewhere for anything isn't too smart. But then neither is paying $1,000/hour for any legal service. No one is worth that.

JR

NYC 6 February 2013

So D&P is now an almost full service law firm? Guess its much easier and lucrative to sell boilerplate docs at $1000/hr than do estate planning.

- Reply
- 2Recommend

Robert Chira

New York, NY 6 February 2013

Seems like a foolish decision to have wealthy clients go elsewhere for their needs. Even if trusts and estate practice loses money, the wealthy ciients have influence and potential for other business. Firms should not rely only on big mergers and deals, nor big lawsuits; a mix makes more sense even if providing it is not a big profit center.

EXHIBIT 2

SUMMARY OF OPERATIONS FOR
REVOCABLE TRUST OF CHARLES V. McADAM, JR.

I. Purposes of Trust. The "Revocable Living Trust" that has been prepared for you offers multiple benefits, both during your lifetime and after your death.

A. Lifetime Benefits. Your Trust has been designed to attain the following benefits during your lifetime:

1. Incapacity Protection. The Trust provides rules for the orderly management of assets transferred to the Trust in the event you become incapacitated or are declared legally incompetent.

2. Asset Management. The Trust provides a management structure for your assets in the event you desire to turn management of your assets over to another while you are alive.

B. Post-Death Benefits. Your Trust has been designed to attain the following advantages after your death:

1. Probate Avoidance. The Trust creates a legal transfer of your estate assets upon your death without probate, provided the assets were transferred to the Trust before death.

2. Disposition of Property. The Trust provides a plan for the disposition of your property upon death.

II. Funding of Trust. The estate planning process does not end at the moment you sign your Trust, Last Will and Testament and related estate planning documents. Proper funding of your Trust is essential. Your Trust will attain the maximum benefits only if your assets are transferred to the Trust.

A. Importance of Funding. Only assets actually transferred to your Trust will be within the control of the Trustee if you become legally incapacitated or are declared legally incompetent. Likewise, only assets actually transferred to the Trust will avoid the need for probate at your death. Assets held jointly with another, with right of survivorship, would by-pass both probate and the division of assets set up by your Trust. Special attention should be paid to jointly-held assets so no beneficiary receives more or less than you intended.

B. Responsibility for Funding. You are responsible for transferring assets to your Trust. Our legal work extended to advising on your estate plan, preparing the legal documents and having those documents signed. If you desire assistance in transferring assets to your Trust, please discuss

such additional work with us. We will not be acting to transfer assets to the Trust unless specifically engaged by you to do so.

C. Funding Suggestions. Some suggestions regarding how you may transfer certain assets to your Trust are as follows:

1. Listed Stocks, Bonds and Securities. Your financial consultant/broker may have all listed stocks, bonds and securities transferred to the Trust very efficiently and quickly. He or she is usually very proficient and knowledgeable in assisting in this very important step. Should your financial consultant/broker have any questions, we are available to assist.

2. Closely Held Stocks. Stock you own in a non-listed, closely held company must be transferred on the books of that company. Provided there are no restrictions on transfer to a Revocable Living Trust (essentially your "alter ego"), this is possible by letter and endorsement of your stock certificates for issuance to the Trust.

3. Florida Real Estate. This Firm can, if requested, prepare a deed conveying real estate located in Florida to the Trust. If you wish to convey your principal residence or "homestead" to your Trust, care must be taken to insure that the homestead exemption from real estate taxes is preserved. A transfer from you to your Trust technically represents a change in ownership. As a result, your homestead exemption may not be automatically renewed by the County where your homestead is located. To ensure that this tax benefit is preserved, you must reapply for the homestead tax exemption. Your new application must be made before March 1 of the year following the year during which you transferred your homestead to your Trust. In other words, if you transferred your homestead to your Trust during 1997, you would need to reapply between before March 1, 1998. You should consult us before transferring homestead property to your Trust to ensure that the property will pass upon your death as permitted by Florida law.

4. Real Estate Outside Florida. Each state has its own laws and customs for transferring real estate and dealing with Trusts. We generally recommend that you consult a competent attorney in the state where the real estate is located regarding how to best transfer the real estate to the Trust. That attorney will need to see a copy of the Trust. If a recorded deed in that other state is a problem, an unrecorded deed may be considered. We are happy to discuss any problems with your out-of-Florida attorney by telephone.

5. Tangible Personal Property. Furniture, jewelry, silver, china, collectibles (antiques, stamps, coins, etc.) personal items,

art and other tangible items of personal property may be transferred by an assignment of ownership, such as a "Bill of Sale" from you to your Trust with the price set at $10.00. Items of tangible personal property that have recorded legal title (cars, boats, mobile homes, etc.) can be transferred by signing that title over to the Trust and sending it to the proper authority, such as the Department of Motor Vehicles. You should consider, however, whether ownership by the Trust would cause any inconvenience to you with respect to such assets.

6. Bank Accounts and Related Items. These items of intangible personal property must be changed by notifying the financial institution involved and following their established rules. Often this means either establishing a new account and transferring the funds, or merely changing the names on an existing account. Many financial institutions will not treat the change of a name on a Certificate of Deposit as a premature redemption with the resulting interest penalties. However, get their assurances before you incur this cost.

7. Notes Receivable. If someone owes money to you, the obligation can be transferred either by endorsement or assignment of the promissory note. As each situation may have different facts and circumstances, the transfer should be discussed with us or another attorney before acting. Mortgages you might own should be transferred to the Trust by a recordable assignment to avoid any possible future problems.

8. Individual Retirement Accounts (IRAs). Individual Retirement Accounts (IRAs) and similar contractual arrangements should not themselves be transferred to your Trust. Rather, under certain circumstances you may name your Trust as the "beneficiary" of these accounts. Under current Internal Revenue Service interpretations, changing the name of the owner of your IRA would be equivalent to taking a fully taxable distribution; this does not apply to your changing your designated beneficiary to your Trust. We suggest that you consult us or your financial advisor before naming your Trust as beneficiary so that the possible tax consequences of doing so may be taken into account.

9. Life Insurance Policies and Annuities. Life insurance policies and annuity contracts owned by you should be EVALUATED for transfer of ownership to your Trust, and change of your beneficiary designation to your Trust. Because of a number of variations in insurance and annuity policies, we suggest that you consult us or your financial advisor before naming your Trust as beneficiary or owner to avoid problems. Life Insurance may also be gifted out of

your estate into an irrevocable trust for the benefit of your spouse and/or children. This would enable the proceeds of such policy to escape estate taxation at your death. Please advise us as to the existence of life insurance policies in order that we may assist you in considering this effective estate planning tool if we have not already done so.

D. Special Funding Considerations. The foregoing discussion covers the majority of assets but is only a quick summary. Other issues may relate to how to transfer a particular asset, or the cost to you of that transfer. These issues might include:

1. Lender Approval. Approval by the mortgage lender on a parcel of real estate to be transferred.

2. Prior Agreements. An agreement you entered with another limiting your right to transfer that asset.

3. Penalties. Penalties for premature withdrawal.

4. Consents. The requirement that a joint owner or partner agrees to the transfer.

5. Homestead Tax Exemption. As noted above, you will be required to re-apply for your Florida Homestead Property Tax Exemption in the year after the transfer. You must make application in the year after deeding your home to your Trust. You should also be aware that, under the present state of the law, the three percent cap on real estate appraisals for ad valorem tax purposes and the homestead exemption for ad valorem taxes on the property will continue to apply so long as you have a full calendar year's interest remaining in the residence.

III. Federal Income Tax Requirements. While you are a Trustee under your Trust, your personal federal income tax situation and return filing requirements will not be substantially altered by the Revocable Trust you are establishing.

A. While You are Trustee. So long as you remain a Trustee under the Revocable Trust, no separate income tax return is required for the Trust. When someone requests the identifying number for the Trust, use your own social security number. All transactions occurring in the Trust name are to be reported on your federal income tax return, Form 1040, just as if the Trust did not exist. This is because your Trust is a "Settlor Trust" for federal income tax purposes. Failure to include a transaction will subject you to interest and penalty charges. If you pay substantial

intangible personal property tax, you may want to inquire of us as to methods for reducing such taxes.

B. When You are No Longer Trustee. If you no longer serve as Trustee or if you were to die, then the Trust, or some part of it, will be required to have a separate federal identification number and file a separate federal income tax return annually on Form 1041. Should any question arise about your obligation to file a tax return, we should be contacted immediately.

C. Florida Intangibles Tax Return. Again, the assets in your Revocable Trust belong to you as the Settlor. You should continue to report these assets on your Florida intangible personal property tax return as if the Trust did not exist. Failure of any individual resident of Florida to file an intangible personal property tax return could result in penalties and interest charges. If you pay substantial intangible personal property tax, you may want to inquire of us as to methods for reducing such taxes.

IV. Operation of Trust.

A. Trustee Succession. You are the initial Trustee. When acting as Trustee, you should use the name of the Trust and sign your name as Trustee. For example, you may sign as follows: Charles V. McAdam, Jr., Trustee of THE CHARLES V. McADAM, JR. REVOCABLE TRUST AGREEMENT dated _____, 1998". You will continue to serve until the earlier of:

1. You resign.

2. You become legally incapacitated (see Trust).

3. You die.

B. During Your Lifetime. While you are alive, you are the only beneficiary of the Trust. You own the Trust. You can deal with the Trust property in essentially the same manner as you could before you established the Trust (buying and selling securities, real estate and so forth). You may change the Trust provisions while you are alive by an amendment to the Trust.

C. Upon Death. Upon your death, the following occurs:

1. Assets. All assets remaining in the Trust are assembled by the Successor Trustee.

2. Distribution. The Trust is divided, as provided under the Trust terms you established, among the beneficiaries named by you.

V. Issues Effecting Trust Operations.

A. Liability Insurance. Your Trust should be the legal title holder of virtually all of your assets as described earlier. Where property transferred to the Trust is the subject of a liability insurance policy, such as your home, you must be certain that the ownership of the property is appropriately noted on the liability insurance policy. This should be brought to the attention of your liability insurance agent and company by you. Depending upon your insurance company's requirements, you, your spouse, and your Trust should all be named as either "insured" or as "additional insured" persons under the policy.

VI. Future Modifications.

A. General Rule. Changes to your Will or Trust are actions of legal effect that must meet the formalities of witnessing and signing. Should you desire a change, an amendment to the Trust or a Codicil to your Will must be properly prepared. Handwritten changes are not considered valid in Florida.

B. Exception. The only exception to the above is the list of Tangible Personal Property gifts. A specific form was or will be supplied to you with your Last Will and Testament for this purpose. That form is titled "Memorandum of Tangible Personal Property". It may only be used for tangible personal property.

1. Items That Are Not Tangible Personal Property. The following are not tangible personal property: cash; stocks; bonds; real estate; or checks.

2. Items That Are Tangible Personal Property. The following are tangible personal property: automobiles; jewelry; furniture; art works; stamp, coin or other collections; silverware; china or dinnerware; books; clothing; and personal items (photographs, family memorabilia, etc.).

THE FOREGOING IS A GENERAL OUTLINE. THE ACTUAL DISTRIBUTIONS, RULES AND OPERATION OF THE TRUST MUST FOLLOW THE TRUST ITSELF.

This document was prepared by:
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EXHIBIT 3

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February 20, 2014

Personal and Confidential

Ms. Jane Austen
533 Dove Street
Coral Rock, FL 33219

Re: Estate Planning

Dear Jane:

It was a pleasure to see you at our offices on February 14, 2014, when you signed the Jane Austen Trust, as Amended and Restated, and we discussed other aspects of your estate planning. Thank you for giving me a check for the fee upon which we agreed for our services to date, services that include this letter.

Your Major Estate Planning Documents

With the trust amendment that you signed on Friday and the disability documents that you signed on January 30, 2014, the following are your current Major Estate Planning Documents:

1. Last Will and Testament of Jane Austen dated October 9, 2001.

2. Jane Austen Trust of October 9, 2001, as amended and restated on February 14, 2014.

3. Jane Austen Durable Power of Attorney dated January 30, 2014, naming Mary Beth Austen and Charles Darcy as attorneys-in-fact.

4. Jane Austen Living Will dated January 30, 2014, naming Mary Beth Austen and Charles Darcy as surrogates.

5. Jane Austen Designation of Health Care Surrogate, dated January 30, 2014, naming Mary Beth Austen and Charles Darcy as surrogates.

We sent you digital copies of these documents via email. In addition, we enclose three sets of these documents, each set bound in a booklet. The booklets are entitled *Major Estate Planning Documents for Jane Austen as of February 14, 2014*.

You asked us to retain your originals in safekeeping for the present time and we will do so. If at any time that you would like to have the originals back, you need only let us know and we will arrange to have them delivered to you. Some commentators have suggested that our holding a client's original documents gives rise to a duty upon us to notify the client of a change in the estate planning world that the client should know about. We do not charge for safekeeping. In exchange for that service, you agree that we have no such duty. (Please see my discussion about "active" versus "dormant" representation below.")

Major and Related Estate Planning Documents

I use the phrase "Major Estate Planning Documents" as a term of art. In the conversations that we have about your estate planning, the phrase means your Last Will and Testament, the Amended and Restated Trust Agreement, along with each amendment that may apply later, if any, and the Disability Documents.

There are, however, other kinds of documents that have estate planning implications, as you know. I try to be very careful to distinguish Major Estate Planning Documents from these other estate planning documents. For lack of a better phrase, I call the other documents Related Estate Planning Documents, and there are many types of those documents. Sometimes the importance of a Related Estate Planning Document is greater than any Major Estate Planning Document. Here are some examples of Related Estate Planning Documents:

1. The beneficiary designations, both primary and alternate, of life insurance, qualified plans, certain types of brokerage and bank accounts, deferred compensation arrangements, and any other written arrangement, specification, or agreement that you have made or into which you have entered that directs that the wealth represented by the subject asset or property interest be made directly to or for the person or entity that is to have it at your death, regardless of what you may have directed in any Major Estate Planning Document.

2. Written asset ownership arrangements which show that you own an asset concurrently with one or more other people and under which the wealth you own that is represented by that asset passes, at your death, to the concurrent owner or owners if any survives you. One example of such an asset is a customer's agreement with a stock broker that creates an account that you and another person own together as joint tenants with right of survivorship. Another example is a real estate deed delivered by the grantor to you and another as grantees and that describes you and that other person as joint tenants with right of survivorship or in a way that, under the law of the state in which the real estate is located, results in your property interest moving at death to the surviving owner or owners.

3. Trust Agreements, whether revocable or irrevocable, which pertain to a trust estate to which you have assigned, transferred, or gifted assets – or that some other person has transferred assets for your benefit - and in respect to which you have retained or otherwise possess the power to direct the distribution at your death of part or all of the trust estate.

During our work together, you have identified a number of assets that are controlled by Related Estate Planning Documents, but I have not seen copies of those documents. You have dealt with those documents in a way that you believe is consistent with the plan reflected in your Last Will and Testament and your Trust. Nevertheless, before closing our current engagement, I offer to extend that engagement to review those Related Estate Planning Documents. My paralegal assistant, Nancy Jones, would assist me on such a project.

Moving Assets from "Outside" Your Trust to "Inside" Your Trust

This topic is closely related to the discussion above about Major and Related Estate Planning Documents. In fact, it is mostly redundant.

We have discussed the advantages of having one's assets in one's revocable trust rather than in one's own name in the event of one's death or disability. There are some kinds of assets the ownership of which you cannot transfer "into" your trust, that is, from your name alone to your name as trustee of your trust. I refer to them as "Non-Transferrable Assets." As to the assets that you can transfer to your trust, your "Transferrable Assets," you desire to move all of them into your trust, except for your Miami residence.

You have advised me that you have signed the pertinent Related Estate Planning Documents that would move the title of your Transferrable Assets into your trust. I have not seen them, but would be glad to review them if you would send me copies.

What about the "Non-Transferrable Assets?" You can usually sign a Related Estate Planning Document – a beneficiary designation – that effectively designates the "then acting trustee" of your trust to receive the wealth in question in the event of your death. This avoids the wealth represented by the subject asset from passing through probate. You are taking care of those kinds of documents. However, I would be glad to review all such documents.

The Durable Power of Attorney and Your Assets

You signed a very robust Durable Power Of Attorney. Among other things, this power gives your attorneys-in-fact the right to deal with assets that are not "inside" your trust. If you should become disabled and there are Transferable Assets still outside your trust at the time, then your attorneys-in-fact can transfer them into your trust, unless guardianship proceedings intervene to take away that power. Similarly, if the beneficiary designation or similar Related Estate Planning Document that pertains to a Non-Transferable asset is not consistent with your estate plan, then your attorneys-in-fact may use that power in the event of your disability to make them consistent.

Death, however, extinguishes the power of the Durable Power Of Attorney. It is too late after you die to move Transferrable Assets into your trust except through probate proceedings. It is also too late to deal with Non-Transferrable assets using the power.

It is far better to get all of your estate planning documents in order now, both Major and Related, and not to rely on the Durable Power of Attorney.

Creditor-Protection and Estate Tax Exposure Matters

In my letter to you of January 28, 2014, I discuss both "creditor-protection strategies" and the estate tax exposure issue. You are a going to discuss those issues with friends and acquaintances of yours that are in the same position as you are, and may get back to me if you learn something interesting that you think I might be able to help you with.

We did not go further into those subjects at our meeting on Friday.

As of the Date of this Letter Our Engagement Becomes "Dormant"

In the professional world that I inhabit, the status of my representation of you is very important. The Rules of Professional Conduct of the Florida Bar that pertain to that status are quite rigid, however. Either my representation of you is pending or it has been "terminated." That rigidity works well for litigation attorneys and attorneys who deal with transactions, but the idea of our *terminating* our professional relationship, as we have finished our work together *for now*, is not appropriate. In applying the "termination or not" rules, some estate planning lawyers speak of an "active" representation status or a "dormant" status, unless the client and the lawyer have decided never to work together again, in which case we have a "termination." In the case of "termination" you would become my "former client," and there are ethics rules that apply to relationships between the lawyer and that lawyer's *former* clients.

I do not consider you a former client. I consider you a client. However, I also consider our engagement or representation status no longer to be "active" but now to be "dormant," even though you have asked me to retain the originals of your Major Estate Planning Documents. Here is what the American College of Trust and Estate Counsel states in its *Commentaries on the Model Rules of Professional Conduct* (Fourth Edition 2006) at page 57 concerning active and dormant representation:

> The execution of estate planning documents and the completion of related matters, such as changes in beneficiary designations and the transfer of assets to the trustee of a trust, normally ends the period during which the estate planning lawyer actively represents an estate planning client.[1] At that time, unless the representation is terminated by the lawyer or client, the representation becomes

[1] As indicated above, "the completion of related matters, etc." is not part of our engagement, unless you let me know that you want to extend the engagement to those matters. In that case, our engagement would move from "dormant" back to "active."

> dormant, awaiting activation by the client. At the client's request, the lawyer may retain the original documents executed by the client. See ACTEC commentary on MRCP 1.7 (Conflict of Interest: Current Clients). Although the lawyer remains bound to the client by some obligations, including the duty of confidentiality, the lawyer's responsibilities are diminished by the completion of the active phase of the representation. As a service the lawyer may communicate periodically with the client regarding the desirability of reviewing his or her estate planning documents. Similarly, the lawyer may send the client an individual letter or a form letter, pamphlet or brochure regarding changes in the law that might affect the client. In the absence of an agreement to the contrary, a lawyer is not obligated to send a reminder to a client whose representation is dormant or to advise the client of the effect that changes in the law with a client's circumstances might have on the client's legal affairs.

So you need to let me know if there are changes in your family status and asset situation that might call for a change in the Major Estate Planning Documents or if something in the media or otherwise indicates to you that your estate planning interests are possibly affected, such as a change in the law. We sometimes send out announcements or bulletins to our clients, but you should not depend on that.

I try to contact my clients if three years go by without our being in contact but please do not depend on me in this respect. Nevertheless, I will diary the matter for three years from now.

<u>The Enclosed Statement</u>

Thanks for paying the fee. I have enclosed our statement that shows your payment.

As I indicated at the head of this letter, it was great seeing you again. All the best on the new board position that you are considering.

Sincerely,

Paul M. Stokes

Enclosures
PS/kh

EXHIBIT 4

Diversification in the Trust and Estate Practice

Subspecialty	Realization Rate	Difficulty	Risk	Client Development Opportunity
Estate Planning	Low to Medium	Medium to High	High	High
Estate Administration	High	Medium	Medium	Low to Medium
Estate Litigation	Medium to Sometimes Very High	Medium	Medium	Medium
Family Office and Fiduciary Services	Medium to High	Medium	Medium	Medium

EXHIBIT 5

The New York Times

March 19, 2013, 12:12 pm

Debevoise & Plimpton's Trusts and Estates Group Finds a New Home

By PETER LATTMAN

In December, the trusts and estates lawyers at Debevoise & Plimpton received shocking news. The law firm's leadership said it had decided to eliminate its trusts and estates practice, and instructed the group's lawyers to look for a new home.

It did not take too long for them to find one. On Monday, Loeb & Loeb, a firm with one of the country's leading trusts and estates practices, announced that it had hired the seven-lawyer team, which is led by a Debevoise partner, Jonathan J. Rikoon.

Related Links

- News release
- Debevoise & Plimpton Drops Trusts and Estates Practice (Feb. 5, 2013)

Mr. Rikoon's forced departure from Debevoise highlights a growing trend at a number of the nation's largest firms. As big corporate law firms have become increasingly focused on profit, they have built up lucrative areas like commercial litigation and mergers and acquisitions, and jettisoned less profitable groups. At many firms, trusts and estates work – once thought to be core to a full-service law firm – has become a drag on profitability. Individual clients also bristle at paying billable rates that now exceed more than $1,000 an hour.

Debevoise was the latest large firm to discontinue its trusts and estates practice. Others that have gotten out of the business of drafting wills and trusts are Weil, Gotshal & Manges; Paul Hastings; and WilmerHale.

"I'm very grateful to Debevoise and it has been a great place to work," said Mr. Rikoon, 57, who joined the firm in 1995. "But large firms have been de-emphasizing trusts and estates for many years, and Debevoise had evolved to the point where it didn't make sense for them to support the practice anymore."

In Loeb & Loeb, Mr. Rikoon and his team have landed at a firm that views trusts and estates as an important area. Other corporate law firms have also embraced the work, including Schulte Roth & Zabel; Katten Muchin Rosenman; and McDermott Will & Emery. These firms view the advising of wealthy families as a business opportunity that has synergies with other areas, like advising on the sale of family businesses or handling estate-related litigation.

Joining Mr. Rikoon as a Loeb & Loeb partner is Cristine M. Sapers, of counsel at Debevoise. They will be bringing along their entire team, which includes a senior counsel and four junior lawyers.

Two retired Debevoise trusts and estates partners, Theodore A. Kurz and Barbara Paul Robinson, will remain at Debevoise. Though they will not bring in new matters, they will continue to serve in a fiduciary role for their legacy clients.

Mr. Rikoon said he expected many of his clients to follow him to Loeb & Loeb, which he will join on April 15 – already a rather important day in the life of a trusts and estate lawyer.

"We could have started on the Ides of March, but that was too soon, and it could have been April 1st, but everyone would have thought that was a joke," Mr. Rikoon said. "It also could have been May 1st, but that's international workers' solidarity day and that didn't seem appropriate. So we settled on tax

day, which was easy to remember."

In the meantime, Mr. Rikoon continues his work on behalf of Debevoise clients. On Monday, he said he was preparing a memo for a client on estate planning for carried interest, or profit made by private equity and hedge fund managers. He was also drafting a prenuptial agreement for a client.

Mr. Rikoon will also know his way around 345 Park Avenue, the building that houses Loeb & Loeb's New York office. Before joining Debevoise, Mr. Rikoon worked as a young lawyer at Paul, Weiss, Rifkind, Wharton & Garrison, which at the time was located at 345 Park. After Paul Weiss, he worked briefly at Mudge Rose Guthrie Alexander & Ferdon, but left for Debevoise only 10 months later when Mudge Rose dissolved.

"I have no hard feelings toward Debevoise, which handled this situation as well as can be expected," Mr. Rikoon said. "But it has certainly been disruptive, and will hopefully be the last career change I'll ever have."
