

SO YOU WANT TO START AN ESTATE PLANNING PRACTICE

A. Obtaining Clients

1. Referral Sources

a) Sources who deal with other peoples money, but don't practice law

- CPA's and accountants
- Life insurance agents
- Financial planners (CFU's)

b) Existing and former clients

- letters re your new practice
- create or purchase client oriented brochures on financial and estate planning that can be sent to existing and prospective clients (and referral sources)
- send copies of articles found in periodicals/newspapers that are of interest
- Christmas cards (annual reminder that you care and are still in business)

c) Other attorneys

- keep in mind that most other attorneys do not practice in the area of estate planning and need someone they can refer business to n(and vice-versa)

d) Friends and family

- great source of business, even if it is only to get experience in preparing estate planning documents and future referrals

2. Proactive Sources

a) Teaching/lecturing

- market your practice to those individuals who have access to, and influence on, potential clients, i.e., not necessarily other attorneys
- all organizations look for speakers and are more than happy to have an attorney explain issues concerning estate planning

b) Sponsor/co-sponsor seminars

- put on programs to the public at large
- many organizations put on seminars and are looking for speakers

c) Join and become active in local organizations (i.e., Lions Club, Kiwanis Club, etc.) particularly ones that have attorneys as members

d) Create a firm brochure that you can hand out to potential clients rather than a business card

e) Write articles (many smaller newspapers and magazines offer space for writers who want to write about a specific topic) or client/referral newsletters

f) Advertising

- telephone book
- newspapers
- radio/TV (expensive)

g) Create a web page

- encourage clients/referral sources to use it because of the information that you can provide on the site such as links to other sites, articles, periodicals, legal forms, etc.

h) Read the following documents

B. Meeting With Clients

1. Where to meet

- your office (make up of meeting space important due to need to be informal)
- client's home - if they insist (they may feel more comfortable in their own home or have difficulty getting to your office)
- the point is to make sure that the clients are comfortable so they feel they can openly discuss important and sensitive family matters with you

2. Who to meet with

- both husband and wife if representing both
- only the client(s), not others due to attorney-client privilege, need for clients to be open with you, and need to avoid appearance or actual undue

influence (have others wait outside the meeting room)

3. What information to obtain and why

- client information sheet: needed to provide you with basic information concerning the client's family, assets and liabilities
- obtain before the meeting so that you can determine what "hat" you need to wear at the meeting
- so that you can spend time discussing your client's particular needs without spending time obtaining information from them
- so the client can spend time outside the meeting obtaining the correct information without wasting meeting time
- my information sheet gets names, addresses, SSN, phone numbers, marital information, citizenship (do they need a QDT ?), names of children and birthdates, deceased children, grandchildren, helps me determine if the clients are going to inherit additional assets (do I need to do more expansive estate planning?), retirement information (effects type of estate planning needed), powers of appointment (Section 2041 issues?), whether the clients expect to receive gifts, whether they have (or need) buy-sell agreements with their partners, whether their property is community property or separate property (are transmutations needed ?), whether there is a marital agreement, who the clients want to act as their executors, trustees, guardians, powers of attorney, etc.

- have clients provide copies of existing wills, trusts, deeds, tax returns, buy-sell agreements, marital agreements, etc. (prior to meeting would be helpful to alleviate the need to waste meeting time and to allow for questions you may have)
- Asset and liability information are needed to determine size of estate (is it a taxable estate, is it too large or complicated for you to handle, what kind of assets are you dealing with, will transfers of assets be easy or complicated or require the assistance of another attorney out of state or with expertise in handling special assets such as intellectual property or airplanes, are the assets liquid enough to pay estate taxes and debts, or do they need more liquidity?)
- keep in mind that the purposes of meeting with clients:
 - gather information to determine what the clients need
 - to educate clients about the various types of estate planning vehicles that are available
 - to determine the tax implications of the estate plan (including income, estate, gift and property tax consequences)
 - to determine what you will charge the clients and the time it will take you to prepare the documents needed
 - to determine the client's objectives (avoid taxes and probate process), desires (is the client concerned about transferring particular assets to

children when they are old enough to appreciate the gifts, do the clients have charitable inclinations, are there pets involved), needs (are there special beneficiaries that will require a special needs trust, unusual family situation that has to be considered), requirements (are there special assets that are going to require special attention, are there creditor issues that require asset protection planning)

- retirement planning

- support for a surviving spouse (enough assets, liquidity, etc)

- support for surviving children (enough assets, who will care for the children financially, physically, when should they receive their bequests, under what conditions, etc)

- other beneficiaries such as friends, relatives, charities, etc

- business interests and disposing of same - is there a buy-sell agreement, is it funded, if there are no partners who will take over the business (potential purchasers)

- disability issues

THE POINT: you cannot begin to assess a client's estate planning needs until you have all of their information and know what it is they want, require and need

C. Do an Analysis/Develop a Plan

Once you have obtained the information you need and have determined the objectives of your clients, then you need to analyze their situation and develop an estate

plan accordingly. Since the purpose of this seminar is not to teach you how to develop an estate plan, I will assume you know how to do this and will only add a couple of comments here.

1. Communicate your analysis with your clients

- what ever estate planning you determine that your clients require, you need to communicate your analysis with your clients and get them to agree to allow you to prepare the suggested plan

2. Engagement letter

- once you propose a plan of action, prepare an engagement letter detailing exactly what you will and will not be doing, what you will be charging for your services, and when the payment will be due
- fees: flat fee or hourly
- charge a retainer or get it all up front
- conflict of interest letter for couples: resolve conflicts before there is a problem

3. Internal checklist

- internal check list of things you will do and use it as a guide to make sure that you have completed what you have agreed to complete

4. Drafting docs

- letter to client to review and comment re same
- office review ?

5. Final meeting with clients

- execute documents
- will need a notary
- original, copies

D. Miscellaneous Issues

1. Determining testamentary capacity of your clients

- if you have a concern, be careful to CYA yourself, may need to have the client evaluated

2. Malpractice insurance

3. Reference Materials

Books:

- Evans, *How to Build and Manage and Estate Planning Practice* (Law Practice and Management Section and Section of Real Property, Probate and Trust Law, American Bar Association)
- CEB *Estate Planning for the General Practitioner*
- CEB, *California Decedent Estate Practice*
- CEB, *California Trust and Probate Litigation*
- CEB, *California Trust Administration*
- Hartog, *California Wills & Trusts* (Lexis/Nexis)
- Hartog, *California Trust Practice* (Lexis/Nexis)
- Blaylock, *California Probate Practice* (Lexis/Nexis)

- Spero, *Asset Protection and Form Book* (WG&L)
- Zaritsky, *Tax Planning for Family Wealth Transfers* (WG&L)
- Esperti, *Irrevocable Trusts*
- Henkel, *Estate Planning and Wealth Preservation* (attorney's edition) (WG&L)
- Choate, *Life and Death Planning for Retirement Benefits*

Periodicals:

- CEB, *Estate Planning & California Probate Reporter*
- *California Trust and Estates Quarterly* (State Bar of California, Estate Planning, Trust and Probate Law Section)
- *Estate Planning* (WG&L)

Articles:

- Leimberg, *Useful Suggestions for Building and Estate Planning Practice*, Estate Planning, November 1998 (WG&L)
- Soskin, *The Client Interview: A Crucial Tool in Estate Planning*, Estate Planning, June 2004 (WG&L)
- Blinder & Marshall, *When Does Influence Become Undue?*, CEB, Estate Planning & California Probate Reporter, Vol. 4, No. 2, Summer 1998

Web sites:

- gift-estate.com - for links to hundreds of web sites concerning resources for estate planning publications and software

- lexisnexis.com - for access to their estate planning books and software, particularly the California Wills & Trust Drafting System, Forms and Text
- bna.com - for access to their estate and gift tax return software programs
- courtinfo.ca.gov - for access to the California Judicial Council forms
- ceb.com - for access to their estate planning, probate and trust books and software
- brentmark.com - for access to their estate, financial, and retirement software products and services, including Brentmark Asset Transfer System and Estate Planning Tools

4. Continuing Education

- continuing education: you will need a thorough knowledge of applicable will, trust, property, corporation, partnership, federal and state law regarding individual, corporate, partnership, income taxes, estate, gift taxes, and local property taxes.
- take as many CLE courses as possible to keep up on this ever changing area of law
- join as many organizations that you can handle such as local bar organizations (Alameda County, for example, has several subsections within the Estate and Trust Section) and attend their meetings which are usually free or very inexpensive
- Attend LLM Taxation program

OVERVIEW

1. Be prepared when you meet with your estate planning clients
 - that means have all of the information that you need to discuss the matter with your client, as well as to begin your analysis, and that includes existing documents
2. Use forms to obtain information and as a reminder as to what you intend to do
3. Spend time educating your clients not only on the relevant areas of law, but as to the available alternatives of how to handle their estate plan
4. Keep yourself educated. Read as much as you can, attend as many professional programs as you can afford to, and be active in your local bar association. Start your own study group.
5. Allow yourself enough time to do the work you agree to do, charge a fair fee for your services, and make sure that you do not overdue it and take time for yourself and family, because in the end, isn't this why we are doing this in the first place? We want a slower pace in our practice, spend less time at the office, and make a decent living to take care of our families.