



Estate Planning: Being an Attorney AND “Counselor”

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Estate planning attorneys advise clients with different needs every day. Some clients are concerned about taxes, avoiding probate, asset management for minors or many simply want to make sure that Great-Grandma’s quilt gets to the right person upon their passing. No matter what the need, we advise our clients about the best plan that fits within their means. I have recently realized that being a legal advisor without being a true “counselor” is doing a disservice to my clients. Call it an epiphany or the proverbial light bulb going on over my head, but a recent personal experience has made me realize how much more I could offer my clients and in turn how much better an attorney I could be.

We in the practice have all seen a grantor who through his/her estate planning documents attempts to assert control from the afterlife. Sometimes control is a great idea, like determining how much money an heir receives at certain intervals because such heir has historically not been good with money. Sometimes control is not such a great idea, like posthumously controlling people and their emotions.

In many cases, there is no love lost in blended families – to which I can personally attest. Until recently, I advised clients on the legalities of what they wanted to do with their money, specific gifts, the family company, or stocks, with or without restrictions or conditions. Now, I counsel clients on their proposed ideas and walk them through the realistic consequences of their choices. I seem to be asking clients

the question “why?” more than I ever did in the past to try to get an understanding of the basis for their choices. While this takes a little longer, and at times I feel like I should replace my office chairs with couches for my clients to recline upon, I find many clients have really not thought through the real life ramifications of their estate plans. Specifically, will the plan work in the real world and, ultimately, what results may occur?

Sometimes I hear “what do I care what my (family member) feels about what I decide – I’ll be dead.” I used to smile at that statement. Not anymore. I now tell my clients that if they care at all today what a person thinks of them shouldn’t they care what they will be thinking of them when they are gone? Do they want their family recalling funny stories and happy memories on a sunny day in a backyard over drinks or thinking instead “how could he/she have done this?” . . . “What was he/she thinking?” Or – much worse. Choices in an estate plan can destroy good memories. Don’t think it can happen? I can tell you from personal experience that it can. I was recently in that backyard with family and trust me, difficult family situations with poorly advised estate plans result in tears, anger, business problems, and sadly the loss of that person again.

People say that it is only about money when heirs complain about the outcome of an estate plan. In many cases, money is the root of an heir’s displeasure. We in the practice see it all the time. However, on the flip side, I now

see that many times it is less about inheritance and more about the feelings of hurt and disillusionment that causes complaint. Personally, I can state that true strife amongst a family, blended or otherwise, comes from someone trying to assert a level of control over your feelings and emotions after they are gone.

There are some clients that have their plan firmly settled and that is okay. I simply prepare their legal documents and wish them, and their families, the best. My personal experience has been tough and sad. However, I am trying to look at it as a learning experience. Maybe next summer I can share a drink with my siblings on a beautiful Michigan summer day and recall good things about our family member. I truly hope so. I think he would be sad to hear our thoughts, to see the total and complete breakdown of the extended family he had so hoped to have maintained contact after his death. His overall plan has been a complete failure in so many ways.

They say what does not kill you only makes you stronger. In my case, it has made me a better attorney. What I have learned is to listen to my clients so as to hear more than they are telling me and then provide them with the best legal plan to effectuate their desires while taking the time to counsel. I hope that my experience helps my clients and their families to avoid similar results and that my story can help others in the practice as well. ■