



LEADING PROVIDER OF TOOLS & INTELLIGENCE TO THE ESTATE PLANNING COMMUNITY

VOLUME 4 NO. 3

Top Ten Reasons to attend the 2010 Planning for the Generations Symposium in Chicago

By: Heinz Brisske, J.D. (Illinois Forum Leader)



The Illinois Forum has the privilege of welcoming all WealthCounsel members to the 2010 Planning for

the Generations, scheduled for August 11 through 13. I know that most of you may not need my top ten reasons to attend this year's event, but for those of you who haven't registered yet, keep on reading; this article just might change your mind.

But first, a word about state forums. WealthCounsel prides itself on its WealthDocx document drafting system, on its educational offerings, and on its collegiality. All three are abundantly evident in the state forums. With the as-

sistance of WealthCounsel, estate planners from a state or region organize collegial forums that set their own agendas, have their own listserv, and collaborate to design estate planning documents and discuss state-specific issues.

Every state forum can boast some of the country's greatest minds in various subspecialties within the general field of estate planning. If your state or region has a local forum, I strongly suggest that you participate and support that forum. If it does not, consider forming one. The forum brings the benefits of WealthCounsel membership home to the local level, and personalizes that benefit.

(Continued on p. 8, "Top Ten")

Issue Highlights

The Practice of Elder Law Now and in Years to Come	2
How to use Seminars and Speaking Engagements in Your Marketing Plan	2
Are You Fully Prepared to Enter the Golden Age of Estate Planning?	3
Upcoming Events	3
Add "SPICE" to your Elder Law Practice	4
Practical Planning and Drafting of Wyoming LLCs & DAPTs	4
Pitfalls to Avoid When Planning for Clients Who Are Veterans	5
Begin with the End in Mind	5
2010 Planning for the Generations Symposium	6
Planning for Physicians Events	7
Are You Tripping Over Dollars to Make Pennies in Your Elder Law Practice?	9
Economic Substance Doctrine: Consequences of Codification	10
Connect With Local Colleagues Via State Forums	11
How to Make Your Website Work for You	11
Planning for Physicians Webcast ...	12

How to Attract Physician Clients and What To Do When You Get Them



By: Mark Monasky, MD, J.D., FACS, FCLM and James J. Flick, J.D. Presenters at August Symposium

Many professionals target doctors as the ideal client because of their high incomes, which they maintain even during tough economic times. Doctors pay their bills. Doctors are subject to liability concerns that dwarf those of every other profession, making them the logical and perfect candidates for strategies designed to protect their assets. Yet estate planners and financial professionals have difficulty obtaining and retaining physicians as clients. Understanding the psychology of doctors

is crucial to retaining them as clients. What makes a doctor tick?

Medical Schools teach doctors from day one in medical school to trust and believe what their patients say. The old maxim is "if you listen to your patient, she will tell you her diagnosis." Yet this ideal candidate as a client, who is trusting, believes everything you say, makes a high income, and pays her bills is nearly impossible to retain as a client.

(Continued on p. 6, "Physician Clients")

The Practice of Elder Law Now and in Years to Come

By: Vincent Russo, J.D., LL.M., CELA, Presenter at August Symposium



This year's national symposium, "Planning for the Generations," hosted by ElderCounsel, WealthCounsel and The Advisors Forum is definitely something to be excited about! And for the elder law and special needs planning professional, there are numerous learning opportunities that will benefit you both now and in the future.

Having practiced in the area of estate planning, elder law and special needs planning for over 30 years, I have experienced substantial changes in the law covering these areas. We are certainly in a unique situation today

with the budget crisis present on the state and federal level. We as attorneys feel it and our clients and their families certainly feel it. How will your practice adapt? How will your marketing efforts change? Will you take on additional practice areas because one or more areas are no longer profitable for you?

The above questions are common to many of us and are a focal point of this year's Symposium. Whether you are looking for substantive information on estate planning, elder law, special needs planning or veterans benefits, or if you are looking for marketing and practice-building tips, this year's Symposium has it!

ElderCounsel is hosting an advanced course on Tuesday, August 10th, in the morning called, "Soaring to New Heights in Elder Law." Rather than single lectures, the majority of this course will be spent in roundtable discussions led by experienced practitioners where no idea or question will be left unexplored! We will have five different sessions going at once, covering Medicaid planning strategies, special needs trusts, veterans benefits and more! We will close the session with a recap of some of the best tips and ideas that came out of the roundtable discussions, as well as a look at some common trends we see in these areas.

(Continued on p. 10, "Elder Law Now")



How to use Seminars and Speaking Engagements in Your Marketing Plan

By: Mark Powers & Shawn McNalis, Atticus, Inc.



One of the most powerful ways to position yourself as an expert, and increase the number of clients interested in your services, is to conduct seminars, lead workshops and speak in front of targeted groups. As part of a word-of-mouth marketing plan, public speaking can expose you to greater numbers of people, showcase your expertise and accelerate your success.

It is important to target the proper audience for your speech, presentation or seminar. Many attorneys, for example, market their seminars directly to prospective clients. But the direct approach may not suit you or be appropriate for your practice area. Your target audience may be attorneys with whom you desire to build credibility because of their ability to send business. Or, for that matter, non-attorney referral sources for their

ability to send business. No matter who your target audience is, take time to find the right fit from the beginning as all of your plans -- including what content you will teach and how you will enroll your audience -- hinge on this important factor.

Once you've determined your target audience, determine their issues and concerns. Your seminar will compete for attention with many distractions in their busy lives. Why would they take time out of their busy schedules to attend your seminar? Instead of relying on your own opinion, survey a representative mix of your target market (potential or existing clients, referral sources or other attorneys) for hot topics and issues that currently interest them. Once the topic is selected, create visual aids or a PowerPoint presentation to assist you in explaining it. Develop handouts

that participants can take home with them and include your contact information in a prominent location. Give yourself three hours of prep time for every hour on stage if you are presenting a topic familiar to you. Allow much more time if you are tackling a complex or unfamiliar topic.

To determine how to deliver your seminar, consider the four most common types of presentations. The *self-sponsored approach*, where you, the attorney, would sponsor and be the sole leader of the seminar. The *partnering approach*, where you co-lead the seminar with one or two other presenters, is another option. The other presenters might be partners in your firm, attorneys from other firms or referral sources. This approach gives you the ability not only to market the seminar to your client database, but to the co-leaders' databases as well. Also consider the *third-party sponsor approach* where the sponsor promotes your seminar or adds you as a speaker to an existing program or conference.

(The rest of this article is available online at www.wealthcounsel.com/newsletter/july2010.html)



Are You Fully Prepared to Enter the Golden Age of Estate Planning?

By: *Matt McClintock, J.D. and Jonathan Mintz, J.D.*
Co-Executive Directors of WealthCounsel



January is coming, and it may bring a new golden age of estate planning. As of the writing of this column in late June 2010, we still have no Congressional action on the federal estate tax. As you know, under the sunset provisions of the 2001 Tax Act, if Congress does not intervene before then, on January 1, 2011 the federal estate tax will return with a \$1 million exemption and a maximum 55% rate. We believe that the further we get into 2010, the less likely we will see any Congressional activity on the estate tax. At the very least, we think that no meaningful legislation will be enacted before the November elections, and likely not until well into 2011.

This is a critical mid-term election year. With many significant, high-profile issues, like the continuing wars overseas, struggling economic recovery, and dramatic environmental concerns in the Gulf of Mexico, neither political party appears to be particularly concerned about the politically charged, complex issues of the estate tax. To the extent Congress makes an issue of estate tax legislation, we believe that both Republicans and Democrats will use the estate tax to score political points against their opponents and try to capitalize on the uncertainty caused by the estate tax, blaming the other party in the process.

What does this mean for you and your clients? While the uncertainty arguably gives clients the continuing excuse to wait until the “dust settles” and we have

certainty with regard to the estate tax, the truth is we will *never* have certainty in this area. Since the 1976 Tax Relief Act we have had nearly 20 law changes impacting the estate tax rates and exemptions. In all likelihood we will continue to see changes in the coming years.

In the short term we think that there is a strong likelihood that the exemption will remain low. This means that significantly more clients will be impacted under the current federal estate tax law beginning in 2011.

We believe that January will bring in a new wave of estate planning opportunities for well-prepared attorneys. Although the federal estate tax may help motivate clients, we encourage you to aggressively counsel your clients and advise your referral sources on other significant reasons to review and revise their estate plans, such as:

- Disability and retirement planning;
- Special needs planning;
- Divorce protection;
- Spendthrift protection;
- Creditor protection; and
- Second marriage protection.

We will continue to monitor movement in federal estate tax legislation and will keep you informed. But now is the time to equip your practice for a busy year ahead, and get in front of your clients to proactively review and update their estate plans.

Upcoming Events

July 8, 12:00 - 1:00 p.m. ET
 Webinar
 “WealthDocx™ 7 Orientation Training Series 1”

Brookfield, WI
July 13
 “Marketing and Building an Estate Planning Practice”

Schaumburg, IL
July 14
 “Marketing and Building an Estate Planning Practice”

July 14, 1:00 - 2:00 p.m. ET
 Teleconference
 “Planning for Physicians”

July 14, 1:00 - 2:00 p.m. ET
 Teleconference
 Current Tax Planning to Avoid the Future Health Care 3.8% “Surtax”



Vienna, VA
July 22-23
 Comprehensive Planning with Revocable Living Trusts

Chicago, IL
August 9
 Estate Planning 102: Conveying Advanced Planning Concepts to Your Clients

August 10
 Estate Planning 103: Introduction to Charitable Planning

August 10 8:30 a.m. - 12:00 p.m.
 Soaring to New Heights in Elder Law and Special Needs Planning (Symposium Precursor)



August 10, 1:00 - 5:00 p.m.
 Build Your Brand- Developing a Comprehensive Marketing Strategy (Symposium Precursor)

August 11-13
 2010 Planning for the Generations

Visit www.wealthcounsel.com for complete calendar of events.

Add “SPICE” to your Elder Law Practice

By: Rick Law, J.D.

Presenter at August Symposium

“Simplicity is the ultimate sophistication.” – Leonardo Da Vinci.

“A confused mind says ‘no!’”

– Rick Law



There was no escape. I was standing before 100 estate planning attorneys from my own hometown bar association. I had not stood before a

tougher audience since I was 19 and had to explain to my parents that I had totaled their car. My audience that day sat grimly quiet with arms crossed, waiting for me to prove that I was worthy of their time and attention. The CLE topic of the day was “Elder Law Essentials,” a presentation designed to demonstrate the distinctive value of the elder law practice as distinguished from traditional-tax-motivated estate planning. An interpersonal minefield surrounded me. One misstep and this audience could “blow up” and be offended. On the other hand, success was worth the risk.

A successful presentation would accomplish three goals:

1. The audience would decide to like me and to trust me;
2. The audience would learn to recognize a ‘good facts’ referral/target client; and
3. The audience would be motivated by the value of our solutions to refer prospects.

To accomplish these three goals, I needed to speak the language of my audience and to persuade them to follow me to a new way of thinking.

(Continued on p. 9, “SPICE”)



Practical Planning and Drafting of Wyoming LLCs & DAPTs

By: Cecil Smith, J.D. & Carol Gonnella, J.D.

Presenters at August Symposium



The state of Wyoming has done it again! In 1977, Wyoming was the **first state** to enact an LLC statute. Now all states have them. Effective July 1, 2010, Wyoming has become the **first state** to give creditor protection to Single Member LLCs. This new Wyoming law gives protection to single member LLCs in a way that no other state law presently provides.

In the new provisions of the Wyoming statute regarding creditor rights (W.S. 17-15-503), the Wyoming legislature nailed down the definition of “exclusive remedy” by amending the statute to reiterate that the Charging Order is the exclusive remedy, and for the first time for any state, **to make this remedy applicable to a sole member LLC**. The statute now states:

“[The Charging Order] is the exclusive remedy by which a person seeking to enforce a judgment against a judgment debtor, including any judgment debtor who may be the sole member, dissociated member or transferee, may, in the capacity of the judgment creditor, satisfy the judgment from the judgment debtor’s transferable interest or from the assets of the limited liability company.”

In addition, these new statutory provisions further nail down the lid on the casket of creditor rights by defining specifically the limits the judge has in ordering the Charging Order. The statute affirmatively directs that the judgment creditor has no other rights, legal or equitable, other than the Charging Order, by stating:

“Other remedies, including foreclosure on the judgment

debtor’s limited liability interest and a court order for directions, accounts and inquiries that the judgment debtor might have made are not available to the judgment creditor attempting to satisfy a judgment out of the judgment debtor’s interest in the limited liability company and may not be ordered by the court.” (emphasis added)

Asset protection is the new currency of estate planning attorneys ... meaning it will be a profit center for us. With the amount exempt from estate taxes uncertain, fewer and fewer clients are concerned about estate taxes. However, all of our clients are concerned about protecting what they have from lawsuits, divorce proceedings, creditors and predators. And, if your clients tell you they are not concerned about asset protection planning, you, as their attorney, should be concerned for them. At least, it is something that must be addressed in your conferences with them.

We introduce asset protection issues to our clients by helping them identify the assets they own that are already protected by some state or federal law, such as IRAs (in some states), life insurance and annuities (in some states). We then identify the assets that are not protected and are thus subject to seizure. We then ask our clients if they could survive comfortably with the assets that are already protected. Most of our clients shake their heads “NO”. That opens the door for us to make our presentation about the Wyoming LLC.

If our clients like the LLC as an asset protection strategy (and most do), we point out that a weakness of any LLC is that if a creditor obtains a Charging Order (The rest of this article is available online at www.wealthcounsel.com/newsletter/july2010.html)



Pitfalls to Avoid When Planning for Clients Who Are Veterans

By: James Swain, J.D. and Valerie Peterson, J.D.
Presenters at August Symposium



Helping clients obtain benefits through the Veterans Administration (“VA”) is a rapidly growing area. Estate planning and elder law attorneys alike are adding this to their repertoire of services to offer clients. It is easy to understand why: We are helping veterans who fought for our country to obtain much deserved benefits, of which many of them are currently unaware.

Veterans and their surviving spouses may be eligible for monthly cash payments as a result of a veteran’s wartime service (referred to as “pension”) or because the veteran suffered a permanent debilitating injury as the result of their service (referred to as “compensation”). Increased pension allowances (commonly referred to as “aid and attendance” or “housebound”) are available when a veteran or surviving spouse requires ongoing medical care to assist with activities of daily living.

Helping veterans or surviving spouses qualify for pension with an allowance for aid and attendance is a very rewarding practice area for attorneys. This benefit provides a significant monthly cash payment to a veteran or surviving spouse. However, there are income and asset restrictions that require similar analysis and planning as if the client was trying to qualify for Medicaid. Since Medicaid and VA Pension are two very different programs, each requires a great deal of technical knowledge and training. Any attorney who wants to assist a client in obtaining any benefit through the VA Pension must first become accredited.

There are a number of pitfalls for the unsuspecting attorney who enters the area of VA Benefits. Failing to understand the distinction between compensation

and pension is one example. A veteran who is eligible for compensation could receive a higher monthly payment than a pension claim, depending on the disability rating of the veteran. If the attorney advising the veteran is not aware of the available monthly payment for compensation and only discusses pension, the result is the veteran has now had his or her assets and income reduced needlessly and could receive a smaller monthly payment than if a claim for compensation had been made.

A second example is failing to provide proper documentation when submitting a pension claim. If a claim is submitted and necessary paperwork or information is missing, it will either delay the claim for many months or result in the client missing out on several month’s payments totaling thousands of dollars.

Perhaps the most damaging pitfall has nothing to do with planning in this area, but rather deals with a lack of knowledge on the part of the attorney. The following is a situation that unfortunately happens more often than it should. A son and his mother visit an attorney regarding his father (and her husband) who is a World War II Veteran. The father is currently at home with a caregiver that comes in eight hours every day. The expense is getting to be too much. The son and his mother were told to consult an attorney to see if anything could be done before the couple runs out of money completely.

Medicaid in this particular state does not pay for in-home care or assisted living care so the attorney informs them that the only way to get any type of financial help is to move the husband into a nursing home and qualify him for Medicaid.

(Continued on p. 8, “Planning for Veterans”)

Begin with the End in Mind: Asset Tracking as a Key Element to Any Estate Planning Maintenance/Updating Program

By: Vincent Bonazzoli, J.D.
Presenter at August Symposium



One of the crucial questions attorneys ask when considering a client maintenance program is “What services should be included?”

Many firms have delayed, suspended or terminated implementing an updating program because they are unsure of the services they should provide. There is no roadmap or “industry standard” regarding how to keep estate plans up-to-date and very few firms in the country have actually gone beyond the periodic “CYA” letter (i.e. “call your attorney”) to implement a “systems” driven updating program. One of the most important services a firm can provide in any updating program is to actually update or track the assets that will be passed on death. Most discussions surrounding maintenance programs focus on “updating documents” and asset tracking is given little, if any, attention. This article will discuss “asset tracking” as the critical service to be provided in any estate planning updating program.

In previous articles, I suggested that, from the client’s perspective, the clients hire estate planning attorneys to take care of their family **at the time of death**. One of the primary ways to “take care of a family” is to ensure that assets transfer consistent with the client’s wishes at the time of death. This means that at the time of death the attorney and family must know:

(The rest of this article is available online at www.wealthcounsel.com/newsletter/july2010.html)

Symposium Keynote Speakers

Orion Samuelson



Now in his 50th year as Agribusiness Director of WGN Radio Chicago where he does 16 reports daily.

Robert S. Keebler, CPA, MST, AEP



A partner with Baker Tilly Virchow Krause, LLP and a 2007 recipient of the prestigious Accredited Estate Planners (Distinguished) award from the National Association of Estate Planners & Councils.

Lewis W. Dymond, Jr., J.D.



A WealthCounsel Principal and president and founder of Dymond Consulting, Inc. located in Frisco, CO, a WealthDocx™ consulting, auditing, and customized drafting solution for wealth planning professionals.

Thomas J. Ray, Jr., J.D.



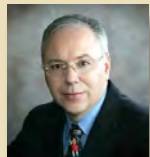
A WealthCounsel Principal and primary draftsman of WealthDocx™ charitable components.

Louis Pierro, J.D.



An ElderCounsel Principal and founder and principal of Pierro Law Group, LLC.

Vincent Russo, J.D., LL.M., CELA



An ElderCounsel Principal and Managing Shareholder of Vincent J. Russo & Associates, P.C.,

Long Island's Signature Elder Law, Special Needs and Estate Planning Law Firm.



THE NATION'S PREMIER SYMPOSIUM FOR ESTATE, ELDER LAW, AND FINANCIAL PROFESSIONALS

August 11-13, 2008 • Chicago, IL

Chicago! It's your kind of town. It's your source for CLE. It's the place to be!



The 2010 *Planning for the Generations Symposium* features a seasoned faculty of estate planning practitioners and an exciting curriculum of quality CLE courses that are relevant to your practice. Join hundreds of attorneys and other wealth planning professionals throughout the country to gain practical knowledge and to network with colleagues.

Attendees include estate planning attorneys, elder law practitioners, financial planning professionals, CPAs and others. Earn up to 22 hours of CLE in three tracks that will include Essential, Advanced and Elder Law sessions.

Register before July 20 to take advantage of the \$100 early bird discount by going to www.planning4generations.com

- Experience a rich, instructional environment with high levels of interactivity for maximum retention
- Expand your knowledge with relevant concepts and strategies that can be applied in your practice.
- Attract a broader base of clients by learning more advanced planning techniques.
- Master your drafting skills and produce more sophisticated estate plans.
- Exchange ideas and best practices with your peers.
- Gain the competence and confidence you need to command a higher fee schedule.

(Continued from p. 1, "Physician Clients")

Why is this so? There are indeed specific strategies that estate planning attorneys can employ to retain doctors as clients. First, understand the physician culture. Get to know their hot button issues and use them to your advantage. One such example is liability insurance.

When mentioning malpractice insurance as one of the first barriers to asset protection, tell the doctor that a system that allows lawsuits against the majority of doctors multiple times in their career is unfair. A well-trained physician is no different from a competent estate planning attorney who provides quality services to its clients. Employed physicians, who represent the majority of physicians, are very suspect of the priorities of insurance companies and hospitals when defending

claims. After all, the hospital pays the premium and the insurer pays the settlement or judgment. Does the insurer or hospital really care about the physician and do what is best for them? Doctors perceive the insurer first to do what is in their best interest, then what is in the best interest of the one paying the premiums (the hospital), and lastly the best interest of the doctor. Many doctors perceive their own attorneys are more loyal to the insurance companies and hospitals that pay their bills and retain them for future services. Physicians feel their reputation takes second place to the insurer's desire to save money and the hospital's goal to avoid negative publicity. Doctors perceive a report in the National Practitioner Data Bank, which occurs after all settlements and judgments, as akin to a criminal record or a death sentence.

(Continued on p. 7, "Physician Clients")

(Continued from p. 6, "Physician Clients")

Without commenting on the merits of the above statements, it is crucial the estate planning attorney understands how doctors perceive issues in order to build credibility. Doctors have a very negative impression of attorneys and lump estate planning attorneys into this category. It would take perhaps five minutes for the estate planning attorney to convey the above impressions when discussing malpractice insurance with doctors, and the goodwill it provides to their relationship with the doctor is priceless. It is irrelevant that the attorney cannot do anything about the doctor's plight, or even that the attorney does not agree with the doctor's impressions. Understanding how doctors feel and think on critical issues sends the message that the attorney understands the physician culture and builds instant trust. It is a basic human need to feel understood and to show you care.

The issue of tort reform is another hot button issue. Every doctor has heard of California's MICRA (Medical Injury Compensation Reform Act) and Texas' constitutional amendment capping punitive damages. Show the doctor you are knowledgeable about such reforms and the favorable impact they have had.

There are a myriad of other issues that you can use to your advantage to not only obtain physician clients, but to have physician clients brag you up and down in the surgical lounge or locker room. It is amazing how much good and equally bad information is disseminated in such forums. Even more amazing, is that doctors tend to believe what their colleagues tell them about the latest fire-safe investment and yes, about that great estate planning attorney in town who actually understands doctors and "feels their pain." Doctors, particularly surgeons, are a close-knit group, and are banding together more tightly than ever with the specter of national health care passage without any meaningful hope of tort reform. You will never be able to solicit clients in the surgical lounge, but

wouldn't it be fantastic if your physician clients do it for you?

The demand for insight and knowledge on this topic is so strong that we will be joining WealthCounsel Principal Carl R. Waldman for a one-hour webcast presentation July 14, from 1:00-2:00 ET. This event is open to all estate planning attorneys who may register at www.wealthcounsel.com/webcast4.aspx. This one-hour webcast will provide a preview of what we will cover in our breakout session in Chicago at the **Planning for the Generations Symposium** on August 13. We hope you will clear your calendar for both events. Together we will cover nuances in this niche area not covered elsewhere. Space does not permit a full listing of additional hot button issues. You will learn what to say, and more importantly, what not to say to doctor clients. You will learn how to make your physician client your best advocate. You will also learn specific advanced strategies to employ to protect business and personal assets from lawsuits, creditors, and other predators. We're looking forward to seeing you soon!

About the Authors

Mark Monasky, MD, J.D., FACS, FCLM is a board certified neurosurgeon and practicing attorney in estate planning and asset protection at Bormann, Myerchin, Monasky & Espeseth, LLP in Bismarck, ND. Mark graduated from Columbia University College of Physicians & Surgeons, trained at Mayo Clinic, and attended the University of ND School of Law.

James J. Flick is an attorney, chartered life underwriter, chartered financial consultant and former certified public accountant with the Law Office of James J. Flick, P.L., a law practice concentrating in the areas of estate planning and asset protection planning, compensation planning, and tax and business planning for physicians, business owners, professionals and high net worth individuals. Prior to opening his law practice in 1993, he worked as a certified public accountant for 12 years. For eight of these years, Mr. Flick worked as a tax expert with Big Six international accounting firms.



Learn the secrets to obtaining and retaining physician clients. Don't miss these two exciting events with Dr. Mark Monasky and Attorney James Flick!

Free Live Webcast on Planning for Physicians

Moderated by WealthCounsel
Principal Carl R. Waldman
Wed., July 14, 2010
1:00 - 2:00 p.m. ET
Register now at
www.wealthcounsel.com/webcast4.aspx

Live Breakout Session on Planning for Physicians

2010 Planning for the
Generations Symposium
Chicago, IL
Fri., Aug. 13, 2010
10:20 a.m. - 12:00 p.m.
Register now at
www.planning4generations.com

Dr. Monasky's valuable insight into the physician culture coupled with James Flick's vast experience in the estate planning and asset protection fields with physician clients make these events "must attend" learning opportunities. Mark and James will focus on teaching strategies which address the issues that are most important to practicing physicians.

(Continued from p. 5, "Planning for Veterans")

The son and his mother are distraught as they had hoped to keep the father at home or at least in assisted living.

In this scenario, a huge opportunity was missed. With proper planning, the veteran could have received up to \$1,949 each month to help pay for the in-home care. Unfortunately, the attorney was not aware of the pension benefit available through the VA.

Even if you do not intend to practice in this area, these pitfalls can seriously impact your law practice.

To learn more about pitfalls to be aware of and how to avoid them, be sure to attend our live breakout session Thursday, August 12th in Chicago, "Pitfalls to Avoid When Planning for Clients Who

Are Veterans?"

About the Authors

James (Jim) B. Swain has a law degree and a Masters of Business Administration Degree (MBA) from Memphis State University (now University of Memphis), and a BA in Human Resource Management from Pepperdine University. He is an accredited Attorney with the Veterans Administration. Jim has a unique background with extensive knowledge and experience in Wealth Transfer and Estate Planning, Business Planning, Charitable Giving Planning, Executive Compensation Plans, developing and administering Qualified and Nonqualified Benefit Plans, and advising about Veterans Benefits. He is a co-developer of the ElderCounsel Advanced VA Pension Planning Course. He is a member of WealthCounsel, ElderCounsel, NAELA and is the Founder and CEO of the Academy of VA Pension Planners and Swain Law Firm. For questions about The Academy of VA Pension Planners, you can reach Jim at 1-888-928-2779 or jim@avapp.org.

Valerie Peterson joined ElderCounsel in January, 2008. Prior to joining ElderCounsel, Valerie was a practicing elder law attorney in Ft. Lauderdale and Miami and the owner of Peterson Law Office, P.A. Valerie was a litigator for several years after law school, but decided to focus her practice on elder law after she experienced firsthand the challenges of caring for an elderly loved one. Valerie is a frequent speaker both locally and nationwide on topics pertaining to Elder Law, Special Needs Planning and Veterans Aid and Attendance benefits. Valerie is also responsible for the education curriculum at ElderCounsel, a company that provides numerous live educational events and webinars each year for both new and experienced attorneys. Valerie attended Washburn University School of Law in Topeka, Kansas where she received the Order of Barristers award for excellence in courtroom advocacy. For questions about ElderCounsel, you can reach Valerie at 888-789-9908 x81, or via email at valerie.peterson@eldercounsel.com.

(Continued from p. 1, "Top Ten")

So, why come to Chicago in the middle of August? There are countless reasons, but I'll give you my top ten:

Number 10: Chicago is the city of broad shoulders, the windy city, and the city that works. Need I say more?

Number 9: This is 2010, people! No estate taxes, carry-over basis, a new health care law, and no income limits for Roth conversions. And next year, everything changes. You need to be there!

Number 8: Chicago has honest politicians, world-class baseball teams, and weather in August that is the envy of the world. Okay, so maybe that's a stretch, but hey, we have Wrigley Field (and even more exciting, Wrigleyville)!

Number 7: Vinnie Bonazzoli, who will teach you how to set up a successful client maintenance program, and how to increase your profits; who out there doesn't want to increase the bottom line?

Number 6: Chicago can boast the world champion Chicago Blackhawks, the Wil-

lis (Sears) Tower with a glass balcony, and a beautiful lakefront!

Number 5: Steve Riley. Never heard of him? After this program, you'll never forget him.

Number 4: Three tracks; something for everyone. Not just substantive, book-learning stuff, but good, practical nuts and bolts information that you can take back to your office and use. To make money. Isn't that what it's all about?

Number 3: If you practice in the area of Elder Law, or want to, take a look at the line-up of speakers: ElderCounsel principals; ElderCounsel Executive Director; and some of the best and brightest Elder Law practitioners in the country. Be there!

Number 2: Complimentary

lunches. How can you beat that?

Number 1: You simply can't afford to miss it!

About the Author:

Heinz J. Brisske received his law degree from Duke University School of Law in 1974. He earned a certificate of completion of prescribed specialization courses in Estate and Personal Financial Planning from John Marshall Law School in Chicago in 1995, and an LL.M degree in Taxation from the same institution in 1997. Mr. Brisske co-founded the law firm of Huck & Brisske, LLC of Wheaton, Illinois, with Kevin Huck in 1998.





Are You Tripping Over Dollars to Make Pennies in Your Elder Law Practice?

By: Steven Riley, J.D. and Valerie Peterson, J.D.
Presenters at August Symposium



Perhaps you've had a good year, but not a great year. You may have experienced one or more of the following: Gross revenue is up, but net profits are down. You have had more clients hire you this year, but your overall revenue is down. You've had more initial consultations, but fewer clients have hired you. You are out meeting referral sources, but getting very few referrals.

Many of us experience one or more of these challenges in our elder law practice. The good news is there are ways to overcome these challenges by making some small adjustments to our way of thinking, and in some instances, our internal procedures.

If you are not generating the revenue you want or expect, it could be the result of something as simple as your procedure for meeting with a new prospective client. What type of expectations are you setting prior to meeting the client for the first time? For example, are you setting the expectation that the prospective client's problem will be solved as a result of meeting with you? As elder law attorneys our natural inclination is to help people and help them quickly. But by offering an immediate solution (sometimes before even being hired) you are severely decreasing the value of your services and the fee the client would be willing to pay you to solve their problem. Or, worse yet, you've given the prospective client the ability to solve their own problem (or at least think they can).

Quoting a fee presents its own set of challenges. In many instances, the hurdle is an internal one – the attorney is not comfortable with the price she wants to charge. As a result, the client isn't either and won't pay it. It is very

tempting to look at what other attorneys in the area are charging and base our fees accordingly. Some of us will come up with a price list that includes a fee for every document. While there is no right or wrong way to set fees, it is important to understand what the client is experiencing when the issue of fees is discussed. Even the term you use for "fee" is important.

A lack of referrals can be the result of many things, some of which you have control over and some you do not. The referral source may not fully understand what you do or how to refer clients to you. The referral source may not have connected with you. Or, you may be meeting with the wrong type of referral source – this person does not come into contact with the type of clients you are looking for.

Seeking out proper referral sources is very similar to creating the right marketing message. You must first figure out the type of referrals you want before you can seek out potential referral sources. For example, if you do not want to handle Medicaid crisis planning cases, then nursing home administrators are not persons you should seek out as a possible referral source. If you do want to handle crisis planning cases and are seeking referral sources to refer clients who need immediate help, then independent living facilities will not offer much of a return on your time and marketing dollars.

Once you have identified proper potential referral sources, what are your goals when you meet with them? What type of follow up do you have both immediately after the meeting and ongoing?

(The rest of this article is available online at www.wealthcounsel.com/newsletter/july2010.html)

(Continued from p. 4, "SPICE")

At the end of that CLE presentation, even the wizened dean of the Estate Planning Committee gave me a smile. Victory on home court!

Persuasion is a skill that can be learned and then must be honed. Researcher/author Kevin Dutton says that the key persuasive factors can be summarized by the acronym "SPICE." He states that human beings are persuaded by those who artfully communicate with:

- Simplicity;
- Perceived self-interest of listener;
- Incongruity (humor);
- Confidence; and
- Empathy.¹

Unfortunately, by the time we graduate from law school, most of our presentation skills have lost their "SPICE." Moot court, law review, and classroom competition grind our communication style into a tasteless recipe with the flavor of hardtack. Excellent legal writing too often focuses on technical analytics/citations and a redundant "belt and suspenders" style.

To be more successful, we need to add the SPICE back into our professional communication recipe book. Prospective clients and only a few referral sources have the training to evaluate our legal technical prowess, so they evaluate us according to their own rules of perception. We had better have SPICE or they will choose someone else—or worse, download their 'lawyer' from the internet.

(The rest of this article is available online at www.wealthcounsel.com/newsletter/july2010.html)

¹ *Scientific American Mind*, March/April 2010, "The Power to Persuade" by Kevin Dutton.

(Continued from p. 2, "Elder Law Now")

Following an afternoon session on August 10th that is focused exclusively on marketing and practice building, the Symposium kicks into full swing on August 11th. Some important topics that will be addressed during the general session Wednesday morning include health care reform and how it affects our clients and practices; whether Medicaid planning strategies will come under attack as states struggle to balance their budgets; and emerging practice niches in elder law and special needs planning and opportunities that exist to expand into those areas.

The rest of the week is filled with breakout sessions that follow an elder law planning track including Medicaid planning strategies, trusts used in elder law and special needs planning, planning for persons with special needs, elder abuse, Veterans' pension with aid and attendance, and important tips on how to communicate with clients and build a more profitable elder law practice. This is an event you won't want to miss!

ElderCounsel looks forward to welcoming you to Chicago August 10th – 13th!

About the Author:

Mr. Russo is the Managing Shareholder of Vincent J. Russo & Associates, P.C., Long Island's Signature Elder Law, Special Needs and Estate Planning Law Firm. Vincent is a co-founder of the National Academy of Elder Law Attorneys (NAELA) and the Academy of Special Needs Planners. As a national advocate for people with disabilities, seniors and their families, Mr. Russo has appeared on the NBC's Today Show, WNBC News, CBS Sunday Morning, CNN, New York Times Forum, CNBC, the FOX News Network, CSPAN II, as well as numerous other local radio and television programs.



Economic Substance Doctrine: Consequences of Codification

By: Bruce Givner, J.D. and Owen Kaye, J.D.



Long History. The Economic Substance Doctrine ("ESD") is a composite of the 'business purpose,' 'substance over form,' and 'sham transaction' doctrine." Congress has tried several times to "codify" or "clarify" it. The IRS has opposed codification. However, the revenue estimates have been too good for Congress to pass up. It became law on March 30, 2010, as part of the Health Care and Education Reconciliation Act, signed into law on March 30, 2010.

ESD Defined. Congress defined the ESD by reference to the case law: "The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose."

New Code §7701(o) adopts the conjunctive or "two-prong" test: a transaction shall be treated as having economic substance only if:

- (A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and
- (B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

Profit Potential. A taxpayer who wishes to use a transaction's profit potential to satisfy either of the two prongs of the ESD test must establish that the present value of the reasonably expected pre-tax profit is "substantial" in comparison to the present value of the expected net tax benefit, in each case resulting from the transaction (were it to be respected). But what minimum return will be

needed to get a transaction over the ESD hurdle?

Strict Liability. New paragraph (6) of §6662(b) provides that the 20% accuracy-related penalty applies to an underpayment related to the "disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of §7701(o)) or failing to meet the requirements of any similar rule of law." The phrase "any similar rule of law" appears to greatly expand the penalty's scope, so that the IRS will assert it when attacking transactions due to the assignment of income, sham transaction, step-transaction, substance over form and business purpose doctrines.

Failure To Disclose. The Act adds a new subsection 6662(i) which increases the gross valuation misstatement penalty to 40% for a "nondisclosed noneconomic substance transaction." It defines a "NNEST" as "any portion of a transaction described in subsection (b) (6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return."

Removal Of Reasonableness Exceptions. The "reasonableness" of a taxpayer's action is often the basis for avoiding various penalties. However, the Act eliminates "reasonableness" as an excuse when a taxpayer engages in a transaction that lacks economic substance.

When is ESD to be Invoked. New §7701(o)(5)(C) provides that the determination of when the ESD is relevant shall be made as if the new section had not been enacted.

(The rest of this article is available online at www.wealthcounsel.com/newsletter/july2010.html)

Connect With Local Colleagues Via State Forums

By: Jenny Ellingson, State Forum Liaison

Dear Colleagues-



Thank you to all the state forum leaders who work to make the WealthCounsel State Forum program such a success. With your leadership, our forums are beginning to make a difference in members' practices. Whether attending to learn about a new area of the law, developing marketing strategies or simply connecting with other estate planning attorneys throughout the state, our members are raving about their experience.

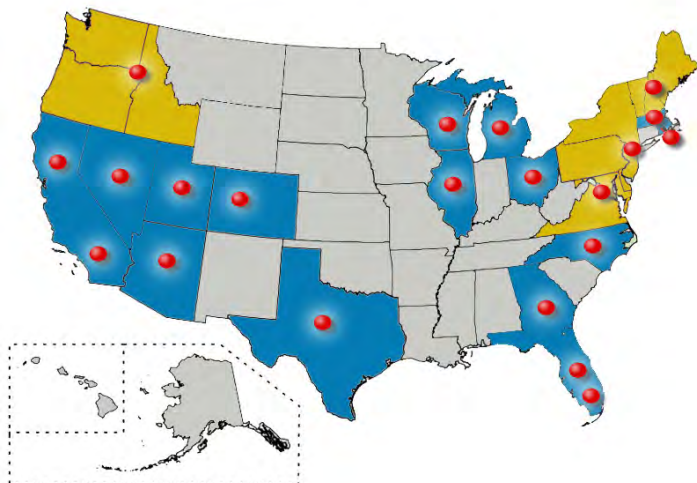
Because of this growth, I am excited to announce that the new state forum website, www.WealthCounselForums.com is now an integral part of the WealthCounsel membership experience. One of the reasons I enjoy working with WealthCounsel is its absolute commitment to increasing the quality of its membership benefits. Over the past several months, WealthCounsel has invested in developing day long live, local state forum events that focus not only on state specific drafting issues, but also provides national level speakers. Recent meetings over the past several months have featured the following speakers in their agenda:

- Michigan Forum, Jeff Matsen – Planning for Physicians
- Central Florida Forum, Paul Bernstein – Marketing through Buy-Sell Agreement & Legal Audits
- Southern California Forum, Joseph Welch – Estate Planning with CPA's
- Northern New England Forum, Lew Dymond –Drafting Legal Documents
- NYC Metro Forum, Peter Parenti – FLP Planning
- Georgia Forum, Blair Janis – WealthDocx Tips and Tricks

State forums also provide a way to get involved and help shape your state specific documents and future forum events. In addition to a State Forum President, all state forums have a Documents Committee which provides input into future WealthDocx releases and an Education Committee to create upcoming forum meeting agendas. To locate an upcoming state forum event in your area, please visit our website, www.WealthCounselForums.com. While on the forum website, please access the calendar to see a listing of upcoming events and visit your state forum page to view updated information about events and announcements. Forum events are a tremendous way to connect

with colleagues, understand legal issues unique to your state, develop marketing ideas, and receive national level training. If you are on the forum website and you don't see a forum listed in your state, please contact me directly at jenny.ellingson@wealthcounsel.com and I will help you start one.

Jenny Ellingson
State Forum Liaison



How to Make Your Website Work for You

By: Vickie Schumacher Hancock



Now that you have your website up and running, you may realize that just having a website doesn't necessarily bring clients to you. Here are some

things you can easily do that will make your website work for you and provide maximum benefit to you, your business and your clients.

1. When you schedule a meeting with a new prospect or existing client, tell them to visit your website before the meeting. Phrase it in a positive way: "Before you come on Tuesday, please visit my website. I have free information there so you won't have to pay me to learn about the basics. Then when you come in, we can spend more time on your personal situation." This does two things. First, it will save you time and money since you won't have to start from scratch with every new client. Second, your client will receive value from you at no cost. In most cases, this will elevate the client's opinion of you and enhance the possibility of their doing business with you.

2. Set up a computer with internet access in your waiting area or conference room and have your website active on it. Make a "V" card that says something like "Free Online Education" and place it near the computer. You can also use your site as a quick reference or visual aid during the client meeting.

3. After meeting with a client, encourage them to visit your website again to review any topics you have covered.

(The rest of this article is available online at www.wealthcounsel.com/newsletter/july2010.html)



THE WEALTHCOUNSEL QUARTERLY

CALL FOR ARTICLES - October 2010

The WealthCounsel Quarterly is published January, April, July and October. It is a communication tool through which WealthCounsel members can share legal expertise with their colleagues while enhancing their professional exposure within the estate planning community. Members are invited to contribute a legal/technical article or a column on practice-building strategies for the October 2010 issue. Article length should be less than 750 words.

Publishing deadlines for the October 2010 issue of *The WealthCounsel Quarterly*:

- 08-02-10: Please submit topic idea to reserve space in the layout
- 09-06-10: Article Manuscripts Due

To reserve space for your article in the October 2010 issue, send an e-mail to Marlene.Frith@wealthcounsel.com.

WealthCounsel, LLC
 P.O. Box 44403
 Madison, WI 53744-4403
www.wealthcounsel.com
 888.659.4069

PRESORTED
 FIRST CLASS
 US POSTAGE
 PAID
 MADISON, WI
 PERMIT #2783

HURRY! August Symposium early bird special pricing ends July 20th!

WEALTHCOUNSEL THOUGHT LEADER SERIES



Planning for Physicians
How to Attract Physician Clients and What to Do When You Get Them

Clear your calendar for two valuable learning opportunities.

This webcast is a sneak preview of the live workshop on Aug. 13 at the 2010 Planning for the Generations Symposium in Chicago. We recommend you attend both the webcast and the live instruction in Chicago. The combination of these two learning modalities will empower you to discover all of the nuances in a niche practice area that other education providers simply do not have the expertise to address. Invest in your practice and expand your client base.

Take Away:

- Secrets to obtaining and retaining physician clients
- What not to do with physician clients
- Selecting the proper practice entity
- Strategies to protect the assets of the practice entity
- Personal asset protection planning for physicians

CLE/CPE/CFP credits available. Check registration page for details.

REGISTER NOW! www.WealthCounsel.com/webcast4.aspx



A FREE LIVE WEBCAST
 Exclusively for Estate Planning Attorneys
 Wed., July 14, 2010 • 1:00 - 2:00 p.m. ET

Moderator

Carl R. Waldman, JD
 Founder & Principal, WealthCounsel, LLC
 Founder & Principal, The Advisors Forum, LLC
 Principal, Carl R. Waldman, A Law Corporation
 Westlake Village, CA



Panelists

James J. Flick, JD
 Law Offices of James J. Flick, P.L.
 Florida Bar Certified Specialist in Wills, Trusts & Estates Law
 Orlando, FL



Mark Monasky, MD, JD, FACS, FCLM
 Bormann, Myerchin, Monasky & Espeseth, LLP
 Fellow American College of Surgeons, Fellow American College Legal Medicine, Board Certified Neurosurgeon, Attorney specializing in Asset Protection for physicians and dentists.
 Bismarck, N.D.



Questions? Call us at 1-888-659-4069, ext. 819.