

The State of the Estate Planning Practice

What issues and developments are attorneys encountering as we head into 2023?

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As the 2023 Heckerling Institute on Estate Planning begins, attendees seem happy to return to in-person events, with the chance to network and enjoy some meals together with their colleagues. It's also a good time to take stock of how their practices have evolved and what we can look forward to in the future. To that end, I sat down with two members of our editorial advisory board on the Modern Practice Committee: Avi Kestenbaum of Meltzer, Lippe, Goldstein & Breitstone LLP and Craig Hersch of the Sheppard Law Firm. Here are some of their insights:

Type of Clients

Avi has seen an increase in the affluent clients who come to his office to do planning. He thinks this increase could be due to COVID-19 making people aware of their own mortality or the anticipation of the sunset of the higher estate and gift tax exemption amounts. Clients have also sought help with business succession, income tax issues for themselves and their closely held businesses, and international issues. Many people need help today in these areas and there are not enough qualified advisors. Both Craig and Avi agree that there's a shortage of knowledgeable and experienced estate planning attorneys who can handle complex issues, so this may be another reason for the increase in clients.

Issues Addressed

But both Craig and Avi agree that estate planning isn't just for high-net-worth clients. There are many issues that clients with more modest incomes need to deal with. They note that they're seeing more clients who have at least one family member with mental

health issues that need to be addressed as part of the planning. There's also been an uptick in clients seeking advice on elder law and disability issues. And, they're seeing more clients who are living longer and are on their second or third marriages, who may have blended families. These clients need to have proper planning to avoid conflicts in the future among the different family members. For example, children from a first marriage may take issue with their parent's most recent spouse getting a windfall. Clients need to understand that they can't rely on promises from the current spouse to share equally with children from another marriage. They need to have their plans specified in writing to avoid future lawsuits.

Undue Influence

This is another big problem that occurs as clients age. Avi and Craig have both had to deal with undue influence situations in their practices. Some clients fall victim to individuals who are serial con artists. They approach clients who may be experiencing the beginnings of dementia and get those individuals to marry them or leave them large sums of money. Ethical rules may prevent attorneys from notifying the clients' children or other relatives when they suspect something is amiss. Also, Avi points out that, in some cases, it's the family members themselves who are trying to take advantage of an elderly client. They may be disgruntled by what they think is an unfair estate plan. Both Craig and Avi believe this will continue to be a problem.

Law Firm Issues

Many firms have had to raise their rates due to inflation and other factors. Both Avi and Craig note that it's getting harder to attract and keep good staff. They say that it's hard to compete with the large salaries paid by hedge funds and financial institutions. Also, there are fewer trained, qualified people in the field, and older attorneys and staff are retiring. As larger firms shrink or jettison their trusts and estates departments, there's less on-the-job training.