

Beyond Competence: The Ethics of Implementation

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The estate planning recommendations have been accepted. The Wills and trusts have been drafted. The life insurance has been placed. The fees and commissions have been paid (not necessarily earned). Another successful estate plan has been completed, and the client has been served. Right? Wrong!

I will describe four real cases that I have been involved with in the last six months. In the first case, the client called me to review his existing estate plan and life insurance. I found inconsistent ownership and beneficiary designations, no *Crummey* notices, and premiums being paid by the insured/grantor directly to the life insurance company. In the second case, an attorney asked my opinion regarding an existing estate plan, buy/sell and split dollar agreements, and existing life insurance for a new client. Surprisingly, again there were trustee inconsistencies and buy/sell and split dollar issues. In the third case, a new client wanted to add additional second-to-die life insurance to his existing Irrevocable Life Insurance Trust. I know the client. He pays attention to detail. I's are dotted, T's are crossed. Gifts are being made to the ILIT, and the trustee is paying the premiums. This sale is an easy one. I called the attorney, a very competent professional, to find out the exact name of the trust, the date and the I.D. number. There was no existing second-to-die ILIT. Instead, two individual ILIT's had been drafted and already existing individual policies were to have been transferred. However, that wasn't done; and now there is a second-to-die policy in an ILIT that was drafted for an individual, single life policy. In the fourth case, there is a CPA acting as trustee for an ILIT that has a split dollar agreement with a closely-held

corporation on the life of the majority shareholder. The CPA/trustee is responsible for sending out *Crummey* notices and is doing so — except that the amounts are wrong. The notices reflect the whole premium being paid, not the P.S. 38 rates which are considerably lower. In all of the above cases, there were competent professionals involved.

How do competent, reputable, good professionals find themselves in these circumstances? Whose fault is it that these things happen? Who is liable — the attorney, accountant, life insurance agent, or some other advisor? I'm not talking about legal liability. I'm talking about moral, professional, and ethical liability. I've, actually, had professional advisors tell me that the client is responsible or that the trustee (e.g. a brother-in-law) is liable. Excuse me? Is that why the client hired us?

Clients are paying for solutions to their problems. Clients are paying for results. There are many creative estate planning professionals practicing today. Great planning is done. However, the implementation of these plans often leaves a lot to be desired.

The devil is in the details. I know that creative planning is much more fun than the actual drafting of the documents, arranging for notaries, witnesses, etc. I know that checking ownership and beneficiary designations and making sure that *Crummey* letters are sent is not nearly as exciting as designing and underwriting the life insurance solution. However, it is the attention to detail that makes it all work. It is where the rubber meets the road, where it all comes together.

It is in the inglorious, plodding work of implementation that we serve our client

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and demonstrate our care and concern. It is in the mistake-free implementation of our recommendations that we keep the promises we made to the client in the initial meeting — when we were “selling” our-selves and our services. We are talking about promises being fulfilled by performance, by our doing for the client what we said we were going to do. That is integrity and professionalism — the ethics of implementation.

What is the answer? It is a change of attitude, a paradigm shift. It is moving away from the notion that responsibility for and commitment to the client can be divided, i.e. if there are four advisors working for the client, then each is 25 percent responsible. No, that's not good enough. Each of us is 100 percent responsible for our client and the proper implementation of the plan. None of the advisors should sleep at night until it is clear that all of the I's have been dotted and all of the T's have been crossed.

When flawless implementation has been achieved, that is when the client has been served and we, the advisors, “prove” our care and concern. It is we, the professional advisors, acting at our ethical best! ♦