



By **Avi Z. Kestenbaum**

Know Your Clients Better

It takes extra time and effort

What a year 2020 has been! Without detailing all the madness, what strikes me most is how the health and well-being of individuals on one end of the world deeply affect individuals on the other end of the world at a more serious and rapid pace than we ever could have imagined. All human beings are more closely connected and deeply fragile than we previously realized. Additionally, living in the United States, I've never felt so close to my "neighbors" across the country because social, political and medical events bind us all together, no matter how different we are from each other. So, what does this have to do with estate planning?

Once is Not Enough

When we meet with our clients regarding their estate planning, we're assisting them with their most treasured assets—their descendants and possessions. How ironic it is that we, as estate attorneys, are often supposed to draft documents that may impact generations to come after meeting with our clients once, maybe twice or three times. The reason for this phenomenon is that many clients don't want to spend the time or money to meet with their estate attorneys numerous times, and therefore, our documents often reflect our knowledge of our clients based on a few meetings and other information that we've gathered. This isn't always the case. There are some clients who take the time, effort and money to thoroughly explain their

thoughts, goals, fears and complications of their investments and family businesses, as well as their children's and grandchildren's unique personalities. But, in my experience, this is often the exception to the rule. Therefore, in many situations, our planning and documents contain our best efforts in fulfilling our clients' wishes and objectives but can't be as detailed and precise as they would be with more client meetings, analyses and discussions. Of course, there are changes and updates to the documents and planning along the way, but unless we're meeting with our clients regularly, and before or after a familial or business change occurs, the estate-planning documents may not properly reflect our clients' long term wishes and objectives.

Most prominent psychologists or experienced business advisors would likely suggest that it would take more than one or two meetings and conversations of more than three or four hours in total to provide comprehensive and precise advice to one of their patients or clients. Yet, estate planners try to figure this out much more quickly due to the system and the process. Also, when dealing with end-of-the-year tax and trust planning like this year, the process is even more harried and rushed to completion due to fears of new tax legislation being enacted in 2021.

I don't have a good solution because many clients don't want to pay for the extra time and efforts by their planners to offer more precise structuring and documents. Furthermore, even if that additional time was taken, many estate-planning attorneys may not have the psychological and business backgrounds to be advising in certain areas in which our clients need the most help, yet, they're the scriveners of the documents that affect those areas and decisions. Therefore, it seems to me that estate planning is a very imperfect science or art.



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Other Issues

More affluent clients who don't mind spending the money for us to get to know them better may have other issues that prevent us from completing more accurate and better planning and documents. Frequently, they're too busy or preoccupied to spend the time on their estate planning. Or, they may feel there are no issues they can't handle on their own, or they will live forever, so they delay their estate planning. Also, some may feel there are no easy answers, especially in a family business setting or with a blended family, and they find estate planning to exacerbate aggravations. They throw their hands up in the air and surrender on spending the time and energy on the solutions.

More Advisors?

At least one recommendation, which often occurs in practice, is to involve other and sometimes pre-existing advisors who may have more personal knowledge and experience with the clients and their families. These other advisors can lend their experience and expertise to the process and point out when a provision or point doesn't make sense or requires further discussion and analysis. These professionals may include an accountant, insurance agent and financial advisor and, in some situations, a key employee of the family business. But be wary, too many chefs in

the kitchen, especially if each feels they're Julia Child, could cause delays to the process and aggravation to the client. More advisors will also increase fees, which is one of the reasons the system is imperfect to begin with, because many clients may not want to pay these fees.

Haste Makes Waste

In the financial world there are strict "Know Your Client" requirements. In the estate-planning arena, we're doing our best to get to know and understand our clients' unique situations, most often in a very short amount of time. Perhaps we can all try to strongly impress on our clients that their planning and documents will more accurately reflect their wishes, save more taxes and better protect their assets if the proper amount of time, effort and energy is spent on this important job. In a world that feels far more fragile, sensitive and connected than last year, maybe we owe it to our clients and ourselves to stress the need to spend the additional care and money to have more accurate planning and documents and for estate planners not to rush unless it's an emergency. As my successful and wise 95-year-old great uncle is fond of saying, "Haste makes waste!" Perhaps this is a good time for all of us to start listening to him. 

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