



Ethics in Estate Planning

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November 2018

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Who Is the Client?



Joint Estate Plan

- Ann and Bill approach you to prepare a joint estate plan
- *Who are your clients?*



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Joint Estate Plan

- Ann and Bill approach you to prepare a joint estate plan
- Estate plan includes creating LLC
- *Who are your clients?*



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Deceased Client

- Ann asks you to prepare an estate plan
- Ann dies
- *Who is your client?*



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Deceased Client

- Ann asks you to prepare an estate plan
- Ann dies
- Chris is named personal representative
- *Who is your client?*



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Deceased Client

- Ann asks you to prepare an estate plan
- Ann dies
- *Who is your client?*



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Deceased Client

- Ann asks you to prepare an estate plan
- All Ann's assets are placed in a trust
- Ann is trustee but dies
- Chris becomes successor trustee
- *Who is your client?*



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Client Capacity



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Client With Diminished Capacity

- Ann approaches you to prepare estate plan
- You become concerned Ann has diminished capacity
- *What should you do?*



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Confidentiality and Privilege



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Joint Estate Plan - Privilege

- Ann and Bill approach you to prepare a joint estate plan
- *What is confidential? What is privileged?*



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Joint Estate Plan – Dishonest Clients

- Ann and Bill approach you to prepare a joint estate plan
- Ann and Bill tell you to omit Chris from plan
- Later Chris asks you whether Chris is really beneficiary as Ann and Bill have said
- *What do you tell Chris?*
- *Does it matter if Chris has Ann and Bill's promise in writing?*



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“Helper” at Meeting

- Ann approaches you to prepare Estate Plan
- Ann wants Chris (a relative or friend) present at the meeting
- *How does Chris's presence impact confidentiality? Privilege?*



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Request for Information

- Ann has you prepare estate plan
- Later Dawn requests information from you about Ann's estate plan
- *What information can you provide to Dawn?*
- *Does it matter if Ann is dead or incapacitated?*
- *Does it matter if Chris is a lawyer, representative, or beneficiary?*



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Request for Information (Part 2)

- Ann has you prepare prepare estate plan
- Later Dawn requests information about Ann's estate plan
- *What information can you provide to Dawn?*
- *Does it matter if you believe Ann was not competent when the estate plan was prepared?*



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Request for Information (Part 3)

- Ann has you prepare prepare estate plan
- Later the Department of Health & Senior Services requests information about Ann's estate plan and health
- *What information can you provide to DHS?*
- *Does it matter if you believe Ann was not competent when the estate plan was prepared?*



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Subpoena for Information

- Ann has you prepare prepare estate plan
- Later you receive a subpoena seeking information about Ann's estate plan
- *What do you do?*
- *Does it matter if Ann is alive or dead?*
- *Does it matter what type of subpoena it is?*



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“Hacked” Information

- Ann has you prepare prepare estate plan
- Later you learn someone has without authorization accessed your computer system and gained access to Ann’s account
- *What do you do?*



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Paying for an Estate Plan



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Estate Planning Fee

- Ann asks you to prepare estate plan
- You charge Ann:
 - \$250 per hour
 - \$1200 flat fee
 - 1% of assets in plan
- *Which types of fee are allowed?*



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Estate Planning – Fixed Fee

- Ann asks you to prepare estate plan
- You charge Ann a \$1200 fixed fee
- *Where do you put the money?*
- *If Ann discharges you prior to completion of the plan and asks for a refund, what do you do?*



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Exception to Trust Account Rule

A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except that an advanced flat fee which does not exceed **\$2,000 is exempted from this requirement** and may be deposited into another account.

Rule 4-1.15(c) (effective January 1, 2019)



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Trustee Misconduct



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Trustee Misconduct

- You are advising Trustee in administration of Ann's trust
- You believe Trustee has engaged in misconduct
- *Whom can you tell about Trustee's misconduct?*
- *What should you do?*



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Thank You



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