

ROADMAP TO DEVELOPING AN ESTATE PLANNING PRACTICE

BENJAMIN G. CARTER

Winstead PC

1201 Elm Street, 5400 Renaissance Tower

Dallas, Texas 75270

(214) 745-5671 direct

bcarter@winstead.com

AMANDA M. GYESZLY

Fizer, Beck, Webster, Bentley & Scroggins, P.C.

1330 Post Oak Boulevard, Suite 2900

Houston, Texas 77056

713.840.7710

agyeszly@fizerbeck.com

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BENJAMIN G. CARTER
Winstead PC
1201 Elm Street, 5400 Renaissance Tower
Dallas, Texas 75270
(214) 745-5671 direct
bcarter@winstead.com

EDUCATION:

Washington University – J.D. (May 1999)

Emory University – Atlanta, Georgia B.A. Political Science (May 1996), *magna cum laude*

PROFESSIONAL ACTIVITIES:

Board Certified in Estate Planning and Probate Law by Texas Board of Legal Specialization

Texas Rising Star, *Texas Monthly*, 2010

Dallas Bar Association

Estate Planning Council of Dallas

American Bar Association, Sections of Taxation and Real Property, Trust and Estate

SPEAKING AND PUBLICATIONS:

Recent Developments in Estate Planning, Joint Meeting of ABA Taxation Section and ABA Real, Property, Trust and Estate Law, Estate and Gift Taxes Committee, Toronto, Canada (co-presenter) (September 24, 2010)

Recent Developments in Estate Planning, Meeting of ABA Taxation Section, Estate and Gift Taxes Committee, Washington, D.C. (co-presenter) (May 7, 2010)

Recent Developments in Estate Planning, Meeting of ABA Taxation Section, Estate and Gift Taxes Committee, San Antonio, Texas (co-presenter) (January 1, 2010)

Recent Developments in Estate Planning, Joint Meeting of ABA Taxation Section and ABA Real, Property, Trust and Estate Law, Estate and Gift Taxes Committee, Chicago, Illinois (co-presenter) (September 25, 2009)

Recent Developments in Estate Planning at Meeting of ABA Taxation Section, Estate and Gift Taxes Committee, Washington, D.C. (co-presenter) (May 8, 2009)

Recent Developments in Estate Planning, Meeting of ABA Taxation Section, Estate and Gift Taxes Committee, New Orleans, Louisiana (co-presenter) (January 9, 2009)

Recent Developments in Estate Planning, Joint Meeting of ABA Taxation Section and ABA Real Property, Trust and Estate Law, Estate and Gift Taxes Committee of ABA Taxation Section, San Francisco, California (co-presenter) (September 12, 2008)

Recent Developments, Meeting of ABA Taxation Section, Estate and Gift Taxes Committee, Washington, D.C. (co-presenter) (May 9, 2008)

Recent Developments, Meeting of ABA Taxation Section, Estate and Gift Taxes Committee, Lake Las Vegas, NV (co-presenter) (January 18, 2008)

Recent Developments, Joint Meeting of ABA Taxation Section and ABA Real Property, Trust and Estate Law, Estate and Gift Taxes Committee of ABA Taxation Section, Vancouver, Canada (co-presenter) (September 28, 2007)

Testimony before Department of the Treasury Regarding Proposed Regulations Under Internal Revenue Code Section 2053, Washington D.C. (August 6, 2007)

Written Comments to Proposed Regulations Under Internal Revenue Code Section 2053, submitted to the Department of the Treasury by the American Bar Association Taxation Section (July 24, 2007)

The Inheritance Trust: Multi-Generational Planning from the Bottom Up, Advanced Estate Planning and Probate Course, San Antonio, Texas (June 6, 2007)

Recent Developments, Meeting of ABA Taxation Section, Estate and Gift Taxes Committee, Washington, D.C. (co-presenter) (May 11, 2007)

Missouri Uniform Trust Code: One Year Later, Missouri Bar Association Annual Estate and Trust Institute (October 1, 2005)

An Overview of the Missouri Uniform Trust Code, Bar Association of Metropolitan St. Louis CLE seminar (co-presenter) (September 1, 2004)

Personal Asset Protection and Estate Planning, Forum for St. Louis physicians (May 1, 2004)

The Benefits of Combining Family Trusts with Limited Partnership or Limited Liability Companies, Co-authored with Steven B. Gorin, E-Dirt (2001, Vol. II, Issue 3)

Relief for Beneficiaries Suing for Breach of Fiduciary Duty: Payment of Accounting Costs Before Trial, 76 WASH. U. L.Q. 1411 (Winter 1998)

AMANDA M. GYESZLY

Fizer, Beck, Webster, Bentley & Scroggins, P.C.
1330 Post Oak Boulevard, Suite 2900
Houston, Texas 77056
713.840.7710
(fax) 713.963.8469
agyeszly@fizerbeck.com

EDUCATION:

The University of Texas School of Law, Austin, Texas

J.D., *with Honors*, 2004; Dean's Achievement Award for Excellence in Estate Planning, 2004

The University of Texas, Austin, Texas

B.S., *with Honors*, 2001

PROFESSIONAL EXPERIENCE:

Fizer, Beck, Webster, Bentley & Scroggins, P.C., Houston, Texas

Shareholder, 2010 –; Associate Attorney, 2004-2009

PROFESSIONAL ACTIVITIES AND CREDENTIALS:

Board Certified in Estate Planning and Probate Law, Texas Board of Legal Specialization

Texas Rising Star, Law & Politics Magazine and Texas Monthly, 2010

Committee Member: Estate and Gift Tax Committee, Tax Section of the State Bar of Texas

Member: College of the State Bar of Texas, State Bar of Texas (Real Estate, Probate and Trust Law Section), Houston Bar Association (Real Estate, Probate and Trust Law Section), Houston Estate and Financial Forum, and American Bar Association (Real Property, Trust and Estate Law Section)

PRESENTATIONS AND PUBLICATIONS:

Co-Author and Co-Presenter, *Roadmap to Developing an Estate Planning Practice*, State Bar of Texas 21st Annual Estate Planning and Probate Drafting Course 2010

Presenter, *Fundamentals of Estate Planning*, Association of Small Foundations 2010 National Conference

Author and Presenter, *Twilight Planning: Using Advanced Techniques to Plan for Incapacity*, South Texas College of Law Wills and Probate Institute 2010

Author and Presenter, *I Think I Love You, So What Am I So Afraid Of? Contractual Wills and Other Options*, Austin Bar Association, Estate Planning and Probate Law Section Seminar 2009

Author, *Contractual Wills and Other Options for Equal Distribution*, Real Estate, Probate and Trust Law Reporter, Volume 47, No. 2, 2009

Author and Presenter, *I Think I Love You, So What Am I So Afraid Of? Contractual Wills and Other Options*, State Bar of Texas Advanced Drafting: Probate and Estate Planning Course 2008

Presenter and Co-Author, *Corporate Issues Facing an Estate*, South Texas College of Law Wills and Probate Institute 2008

Panelist, *How to Get a Will Probated*, and *How to Administer an Estate*, State Bar of Texas Webcasts 2008

Presenter, *The Estate Administration Client Interview*, *Estate Administration A to Z* and *Trusts and Insurance*, and **Panelist**, State Bar of Texas Nuts and Bolts of Estate Planning and Probate Course 2008

Presenter, *Overview of Estate Planning and the Estate, Gift and GST Taxes*, Houston Chapter of the Texas Society of CPAs (Bay Area Satellite Group), 2008

Author, *Fiduciary Duties and Liabilities and Tax Issues Associated with Revocable Trusts*, and **Panelist**, *Annuities and/or Client Created Living Trust Litigation*, State Bar of Texas Advanced Elder Law Course 2007

Author and Presenter, *Fiduciaries' Duties and Liabilities, Including Executors, Trustees, Guardians, Agents, Etc.*, University of Houston Law Foundation: Wills, Probate and Elder Law Institute 2006

Co-Author, *Don't Leave Your Family Guessing (or Worse – Fighting) About What You Want: the Need for Wills and Powers of Attorney*, The Houston Lawyer, May/June 2006

COMMUNITY ACTIVITIES:

Board Member, Houston Alumnae of Kappa Alpha Theta

Member: The Junior League of Houston, Inc.; Urban Harvest

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ROADMAP TO DEVELOPING AN ESTATE PLANNING PRACTICE

I. INTRODUCTION.

Getting started in the practice of any specialized area of the law can be difficult, and the area of Estate Planning and Probate Law is no exception. The purpose of this article is to provide an overview of resources available to the estate planning practitioner, along with practical suggestions for developing an estate planning practice. These resources and ideas will be helpful to practitioners new to the estate planning and probate practice, along with practitioners having significant experience.

II. HARD RESOURCES

a. Legal Research Options and Suggestions.

Any lawyer with an estate planning and probate practice utilizes various legal research sources. Here are some frequently used resources that we have found helpful in our practices:

- i. **BNA.** The BNA Portfolios series offers detailed "hornbook" type analysis on income, gift, estate and generation-skipping tax (GST) matters. They provide an excellent starting point for any tax-based research question. The portfolios come in either paper form (with inserts for updates) or online. The online version is very user friendly for those familiar with the paper portfolios. The easiest way to use the portfolios is by beginning in the topical index.
- ii. **CCH / RIA Checkpoint.** These are the two competing tax-specific on-line research services. Any practitioner with a tax-focused practice should subscribe to one of these services. Both services provide easy access to tax cases and annotations to both the Internal Revenue Code and Treasury Regulations. Depending on the level of your subscription, you may also have access to various treatises on tax and estate planning topics. Both also offer a form of email updates, which can be incredibly helpful in knowing of changes in the law as they occur.
- iii. **State of Texas statutes.** Easy access to the Texas Statutes is available at <http://www.statutes.legis.state.tx.us>. This website allows a user to browse the statutes by each particular state Code or

by searching the statutes with key words.

- iv. **Westlaw/Lexis.** Any lawyer that graduated from law school within the last fifteen years understands the resources that Westlaw and Lexis provide. Depending on your firm's policies and arrangement with Westlaw or Lexis, the cost of using these services may be passed onto your clients. In that case, it is particularly important to understand how your search activities will be billed. You can call either provider to obtain free assistance in structuring the most effective and cost-efficient search on your topic.
 - v. **IRS website.** – The IRS website at <http://www.irs.gov> offers a treasure trove of forms and information. All current IRS forms, instructions and publications are available from the website.
- b. Other Research Options.** In addition to the traditional legal research websites listed above, certain websites can be helpful for finding other information needed in the estate planning and probate practice. Here are some tips for finding information you will find yourself needing:
- i. **Seminar Materials.** Texasbarcle.com has a word searchable database of all state bar sponsored CLE materials, which can also be reviewed by the seminar at which the topic was presented. The outline search can be found at http://www.texasbarcle.com/CLE/OLSe_arch.asp. This can be an incredibly helpful tool if you are researching a topic outside of your practice area, as well as researching within the Estate Planning and Probate materials. The cost of one year access to the database is \$295, and one year free access is included with the annual dues for members of the College of the State Bar. Articles are also available for individual purchase.
 - ii. **Seminar Materials and Reporter Articles.** The Real Estate, Probate and Trust Law section of the State Bar of Texas also has an online database of CLE articles, which are generally limited to the seminars on Real Estate, Probate and Trust Law. In addition, the

- REPTL reporter can be a great resource for keeping current on changes in the law. The Reporter provides an overview of changes to the caselaw and statutes in particular practice areas, and then includes one or two lengthy articles relevant to the practice areas. Membership in the REPTL section is \$30 annually, and can be renewed when State Bar dues are paid. The REPTL website is available at <http://www.reptl.org/>.
- iii. **County of Residence.** Since the county of a Decedent's domicile is very important in the estate administration process, it is imperative to be able to quickly and correctly verify the county of residence. There are two good websites to confirm county of domicile if you know the person's address. The first is your applicable appraisal district website. However, some appraisal district websites can be difficult to use with multipart street names. The next option is the Postal Service website. Starting at www.usps.gov, click on "find a zip code" on the top left, enter the address and hit submit. When you get to the page showing the address and zip code, there is a link on the right called "mailing industry information" – click on this link and the county will pop up in a new box.
 - iv. **Age Calculators for GST Purposes.** Sorting out whether an unrelated person is 37.5 or more years younger than your client/decedent can be rather tedious. Fortunately, there is a website that will allow you to fill in a person's date of birth, and the date on which you would like to know their age. The website will display the age in years and months. You can then compare this person's exact age to your other person to see if that person is a skip person. And you can print a copy for your file! <http://www-users.med.cornell.edu/~spon/picu/calc/agecalc.htm>
 - v. **Copies of Real Property Records.** Some clients have difficulty finding copies of deeds to their real property, which we need to accurately describe the property on the Probate Inventory and on the distribution deeds. Courthouse direct is a fee based website that allows you to search various counties' real property records, and in many cases access and download a copy of the deed you are looking for online. <http://www.courthousedirect.com/>
 - vi. **Status of Probate Matters and Forms.** The county clerk websites can be incredibly helpful in sorting out the status of your probate matter, and many include basic forms for probate matters.
 - vii. **Home Values – Sometimes.** The county appraisal district can be helpful in sorting out what real property the decedent owned in the county. Sometimes the appraisal district values are accurate appraisals of market value for the Probate Inventory, but proceed with caution and discuss the true accuracy of the value with your client before listing the appraisal district value.
 - viii. **Charity Names and Location.** In drafting Wills, an incorrect charity name can be a costly ambiguity, as can an assumed charity's tax exempt status being incorrect (e.g. it has not qualified as a charity with the IRS). Fortunately, the IRS has placed publication 78 online in a searchable format. See <http://www.irs.gov/app/pub-78/>. Guidestar is a great website to find more information on charities. <http://www2.guidestar.org/>.
 - ix. **Status of Texas Entity.** Need to confirm that your Foundation/LLC/Limited Partnership or other entity is in good standing? The Secretary of State's website is excellent for checking status on entities. It is a fee based system. <https://direct.sos.state.tx.us/acct/acct-login.asp>.
 - x. **AFR – Current and Historical.** The IRS maintains an online index of AFRs going back to the year 2000. <http://www.irs.gov/app/picklist/list/federalRates.html>. This is also a place to find the new AFRs a week to ten days before the next month.
 - xi. **Texas Law Updates.** Professor Gerry Beyer of Texas Tech University School of Law maintains a wonderful website with updated Texas case summaries and updates on Texas Legislation (www.professorbeyer.com). He also has many good articles on his website, from homestead law, multiple party accounts, estate planning for lottery winners, and if you need any information or a form on trusts for pets, start here. Similarly,

- Glenn Karish maintains the Texas probate website (www.texasprobate.com). This website has current and historical legislative updates (which can be really helpful in determining when the statute changed), good articles, and great forms (currently including: 128A forms, 867 and 142 trust forms, and quite a few probate forms).
- xii. **Google Books.** Sometimes the authors find the most obscure information on Google Books. It is always worth a try! <http://books.google.com>. This website will search the books and show you the results in the complete text of the book.
 - xiii. **Leimberg Information Services, Inc.** This website includes really great articles and newsletters. <http://www.leimbergservices.com/>. Access to this website is free with membership in the Houston Estate and Financial Forum, and may be also available through other organizations in the state.
 - xiv. **Google Scholar.** About a year ago, Google came out with Google Scholar, <http://scholar.google.com/>, which is a free internet case law research system. It lacks the headnote system of Westlaw and the case history features, but it is worth a try first due to the cost difference. It allows a specific search (such as contains one or more words, date published) and you can specify the state courts you would like to search. http://scholar.google.com/advanced_scholar_search?hl=en&as_sdt=1000000000000.
- c. **Great Books.** There are a few books worth keeping on your desk in the Authors' opinion, even with almost everything being available online.
 - i. **Natalie Choate Books.** Natalie Choate is the author of Life and Death Planning for Retirement Benefits, which is a comprehensive guide to all things IRA and 401k. We have not found a substitute for this book, and think it is an invaluable resource. She also wrote The QPRT Manual, another great book and very useful if you do any QPRT planning. For more information, see <http://www.ataxplan.com/>.
 - ii. **Johanson's Annotated Probate Code.** Truly a must have, updated each year with complete annotations and a user-friendly index. If you do not get a new one each year, make sure and get one every other to get the legislative updates. <http://west.thomson.com/productdetail/160553/14691814/productdetail.aspx>.
 - iii. **Federal Estate & Gift Taxes: Code & Regulations Including Related Income Tax Provisions.** Sometimes it is handy to have all of the applicable code provisions in one place, and to see the code arranged by section number (rather than as you search online). CCH publishes a code book with the applicable code and regs. <http://onlinestore.cch.com/default.asp?SessionID=14373449&ProductID=7239&WBID={8A112CB3-B8CE-4B20-9564-92EB194CD70A}>
 - d. **Seminars to Attend.** Finding an on level seminar with good course materials can be a worthwhile investment of both time and money. Below is a summary of seminars that the authors have found to be of good quality and worth the time and cost of attendance. Also outlined with each entry is some guidance as to the level of experience (in the authors' opinions) best suited for each seminar, the credit hours usually associated with the seminar and the cost.
 - i. **State Bar Seminars.** The State Bar of Texas conducts a number of high quality seminars in the Estate Planning and Probate Law area. Fortunately, the Bar seminars often rotate locations, so the live seminar will likely be held in or near the larger cities in Texas every few years. The State Bar seminars are accompanied by exceptional written materials, with Texas specific analysis of the matters discussed therein. For general information about the upcoming seminars, see <http://www.texasbarcle.com/CLE/HOME.ASP>.
 1. **Basic Estate Planning and Probate Seminars.** The following two seminars are conducted annually, and are ideal for a practitioner new to this practice area, or the experienced practitioner looking to brush up on the basics.

- (a) **Building Blocks of Estate Planning and Probate.** The Building Blocks course is an all day webcast providing an overview of Basic Estate Planning, Elder Law Planning, Ethics, Probate Procedures and Alternatives and Estate Administration Issues. The written materials accompanying this course are excellent, and are helpful even to the experienced practitioner in reviewing and researching unusual probate issues. The speakers are experienced practitioners, and due to the webcast structure, no travel is required. For 2011, the course is 6.75 hours of MCLE credit, 3.75 of which is ethics. The course fee is \$225.00, with a \$25 reduction for members of the Real Estate, Probate and Trust Section of the State Bar, members of the College of the State Bar, Attorneys licensed for less than 2 years (and a few others – limit of one \$25 reduction). For more information on the 2011 course scheduled for January 14, 2011 from 9:00 am to 4:45 pm, see <http://www.texasbarcle.com/materials/Programs/2278/Brochure.pdf>.
- (b) **Estate Planning and Probate 101 (Formerly Nuts and Bolts of Estate Planning and Probate).** This course is generally offered on the afternoon or morning of the Tuesday immediately preceding the Wednesday – Friday Advanced Estate Planning and Probate Course. It is live in the location where Advanced Estate Planning and Probate will be held, and but is no longer replayed in the locations where the Advanced Estate Planning and Probate course is replayed by video. It is a four part discussion – the Client Interview/Engagement, the Estate Planning Process, the Probate Process and Guardianships. The format is a panel discussion, with the panelists presenting on specific topics then discussion among the panel members. For 2010, the course was 4.75 MCLE credit hours, 1 hour of which is ethics credit. The 2010 course fee was \$145 (for the live course), and \$130 for the online course, which is currently free for a student, staff member or faculty member of a Texas ABA-Accredited law school, or a person awaiting notification of whether he or she passed the Texas bar exam.
2. **Advanced Estate Planning and Probate Seminars.** In addition to the basic courses listed above, the State Bar holds three annual advanced Estate Planning and Probate Seminars. The Advanced Estate Planning and Probate and the Estate Planning and Probate Drafting Course rotate locations, and the live course is generally followed by one or two video replays in other cities. The specific topics are also subsequently available for online purchase and viewing on the TexasBarCLE website. (<http://www.texasbarcle.com/CLE/HOME.ASP>). The Advanced Strategies course does not rotate locations and is not recorded for replay. Specifics of the courses are as follows:
- (a) **Advanced Estate Planning and Probate Course.** This course is generally held in June of each year in the live location (current schedule: 2010 – San Antonio, 2011 – Fort Worth, 2012 – San Antonio, 2013 – Houston). The topics cover virtually all areas of the estate planning and probate practice area, with breakout sessions for tax practitioners and litigation practitioners. In legislative

years, a legislative update is included. The course is well suited for practitioners with some experience (perhaps over a year) to those with extensive experience. It is generally 19.75 MCLE hours, 2.5 of which was ethics for 2010. It is a three day seminar (Wednesday – Friday), with an early adjournment on Friday afternoon. This course is particularly helpful in the year in which a person plans to take the Board Certification Exam, and the preceding years' materials are helpful for studying for the board exam as well. The fee for attending the live course for 2010 was \$745 (\$50 reduction for early registration), and the fee for the video replay locations was \$645 (again with a \$50 reduction for early registration). Both live and video replay courses are generally eligible for an additional \$25 reduction for members of the Real Estate, Probate and Trust law section of the state bar, members of the State Bar College, or persons licensed less than 2 years.

- (b) **Estate Planning and Probate Drafting Course.** This two day course is generally held at the end of October (live) and replayed in December in another location. The speakers cover a range of estate planning and probate topics, with a specific emphasis on drafting. The materials include outstanding forms for incorporating the techniques and ideas discussed into the everyday practice. The course is well suited for practitioners with some experience (perhaps over a year) to those with extensive experience. It is generally 7.25 MCLE hours, .25 of which was ethics in 2010. It is a two day seminar (Thursday –

Friday), with an early adjournment on Friday afternoon. The fee for attending the live course in 2010 was \$645 (\$50 reduction for early registration), and the fee for the video replay locations was \$545 (again with a \$50 reduction for early registration). Both live and video replay courses are generally eligible for an additional \$25 reduction for members of the Real Estate, Probate and Trust law section of the state bar, members of the State Bar College, or persons licensed less than 2 years.

- (c) **Advanced Estate Planning Strategies Course.** This course is the most advanced of the State Bar's advanced courses, and is held each April in Santa Fe, New Mexico. The topics are generally sophisticated estate planning techniques, with a panel discussion format and excellent written materials. For 2010, the course qualified for 13 hours of MCLE credit, 1.5 of which was ethics. The cost of attendance for the 2011 course had not been published as of the date of publication of this article. This course is not recorded for rebroadcast.

3. **Webcasts.** In addition to the seminars discussed above, the State Bar has a great number of webcasts available. Some cover general topics (advertising rules, general ethics) and some are specific to estate planning and probate (How to Probate a Will, Estate Planning Strategies for Same Sex and Unmarried Couples, and many more). Some webcasts are broadcast live at certain times, and many are available for viewing at any time. Due to the shorter time (generally 1-3 hours) and the ability to watch from your home/office at your convenience,

the financial and time cost of these webcasts is hard to beat.

- ii. **Annual Course on Estate Planning (The Center for American and International Law)**, sometimes referred to among practitioners as the “Short Course”. This three day course is held each April in Plano, Texas, and features Professor Stanley Johanson. It is an intensive three day course focused on tax issues in the estate planning area, including marital deduction and life insurance planning, retirement/IRA planning, estate tax issues, the GST tax, and post mortem planning to name a few. There are generally four or fewer speakers, with longer, concentrated presentations highly focused on tax planning and techniques. The materials are detailed and incredibly helpful in the day to day tax practice. This is an excellent course for newer attorneys (1-2 years of experience) to get a broad overview (or reminder from law school) of the tax laws involved in the practice, as well as a good refresher for the experienced practitioner. It is worth considering for attorneys who intend to sit for the Board Certification Exam needing and need more exposure to tax topics. For 2010, the course qualified for 19.75 hours of MCLE credit, 1 hour of which was ethics, and the cost of attendance was \$995 (or \$1045 for late registration). For more information, see <http://www.cailaw.org/index.html>.
- iii. **Heckerling Institute on Estate Planning**. This seminar is held by the University of Miami in Orlando, Florida each January. It is the largest estate planning seminar in the country, generally with around a couple thousand attendees. The topics are almost exclusively tax driven, subject to a couple of exceptions each year. The speakers are among the most distinguished speakers in this area and the materials are exceptional. In the authors’ opinion, this is a good seminar for young attorneys with at least 3 to 4 years of tax intensive experience, up through experienced practitioners. The course includes multiple breakout sessions so that the attendees can choose topics most relevant to their practice. It is four and a half days, Monday through

Friday morning seminar. The cost of attendance is \$950. The accreditation hours vary by state, and the approved MCLE hours for 2011 for Texas has not yet been posted. For more information, see

<http://www.law.miami.edu/heckerling/>.

- iv. **ALI-ABA (American Law Institute-American Bar Association)**. ALI-ABA hosts several estate planning seminars each year, including many webcasts and conference calls. These are generally all of very good quality, and two of the seminars which have received the best reviews from practitioners are discussed below.

1. **Estate Planning in Depth**. This course is typically held in June of each year at the University of Wisconsin Law School in Madison, Wisconsin. The course includes intensive, interactive classroom experience and comprehensive study materials. The Monday – Friday sessions are designed for lawyers with “more than basic experience in estate planning”, and the course features an optional Sunday afternoon session on wealth transfer taxation principles. The topics are largely tax driven. The Sunday afternoon session cost is included in the cost of the seminar. The cost of attendance is \$1399.

2. **Planning Techniques for Large Estates**. This course is held twice annually – April (New York) and November (San Francisco). The live course is limited to 60 registrants, and it is possible to attend by webcast. This is a truly excellent course, with the following description by ALI-ABA: “*The topics selected represent the most difficult challenges in the planning of large estates. The discussions are conducted on a transactional basis, with emphasis on changing factual patterns rather than on bare principles of law or statutory provisions. Registrants should come prepared to enter into active discussion with their peers and with the discussion leaders.*” As such, this course is best suited in the authors’ opinion to attorneys

with several years of estate tax experience. It is a five day course with over 33 hours of instruction. State by state approved MCLE hours vary. Cost of attendance for 2010 is \$1,799 for the live course, \$1,399 for the webcast.

- v. **Local Seminars.** With both the time and expense involved with travelling for a seminar, a local seminar can be very appealing. Fortunately, in the authors' experience, most local bar associations and local law schools put on high quality CLEs, with excellent speakers and a wide range of topics. The following are some local CLE opportunities, arranged by city, of which the authors are aware. In addition to the following, many local professional organizations will host lunch hour CLE type events; see Section 3(a)(iii) below for a discussion of some of these organizations.

1. Dallas

- (a) Dallas Bar Association Probate, Trusts and Estates Section Meetings. The Probate, Trusts and Estates Section of the Dallas Bar has monthly meetings on the fourth Tuesday of every month at noon at the Belo Mansion where a speaker gives a presentation lasting approximately one hour. CLE is available for these presentations. For more information, see <http://www.dallasbar.com/members/Sections-Information.asp?ID=11>.
- (b) Dallas Estate Planning Council. The Dallas Estate Planning Council offers regular (usually monthly) CLE presentations from October through May on a variety of estate planning and probate topics by expert practitioners from across the country. In addition to the CLE benefits, attendance at the Estate Planning Council meetings allows estate planning lawyers

that are new to the practice to mingle with CPAs, insurance advisors, financial planners, trust officers and other lawyers. The cost of an annual membership is currently \$75. For more information, see <http://www.dallasepc.org/>

2. Houston

- (a) Houston Bar Association Probate, Trusts and Estates Section Meetings. The Probate, Trusts and Estates Section of the Houston Bar has monthly meetings (usually last Tuesday of the month at 5:00 pm) where a speaker gives a presentation lasting approximately one hour. CLE hours are approved by the state, and the topics vary from Judges' Panel, Tax topics and Probate Topics. There is also a happy hour after the meetings. Meetings are free for members of the Probate, Trusts and Estates Section of the Houston Bar Association. For more information, see <http://www.hbaprobate.org/index.htm>.
- (b) Houston Bar Association Probate, Trusts and Estates Section Annual Institute. The section also puts on an annual institute spread over two Fridays. The "basic" seminar lasts one Friday afternoon, with the "advanced" seminar held the following Friday afternoon. For 2011, these are to be held February 19 and 26, 2011.
- (c) South Texas College of Law Annual Guardian ad Litem Certification Course and Wills and Probate Institute. South Texas hosts this seminar each September, with the Guardian ad Litem course held on a Wednesday, and the Wills and Probate institute held on Thursday and Friday. The topics covered in the Wills and

Probate Institute range from tax techniques to dependent administration matters, and this can be a great course for the new practitioner or the experienced practitioner looking to brush up on probate and estate planning topics. For 2010, the cost of attendance was \$445 (or \$535 to attend both the Wills institute and the Guardian ad Litem course). For more information, see <http://www.stcl.edu/cle/cle.html>.

3. Austin

- (a) The Austin Bar Association has a very active Estate Planning section, with monthly meetings and an annual all day seminar. For more information, see http://www.travisbar.com/sections/estate_planning.
 - (b) For those living in Austin, many of the University of Texas School of Law CLE courses are local. For more information, see http://www.utcle.org/practice_area.php?pa=35.
- e. American Bar Association.** Estate planning lawyers frequently join one of two sections of the American Bar Association: (1) Section of Taxation or (2) Section of Real Property, Trust & Estate Law. Each section is further divided into committees or groups. The Section of Taxation includes an Estate and Gift Taxes Committee, and the Section of Real Property, Trust & Estate Law offers seven different groups and 26 committees that have relevance to an estate planner. The Sections hold regular meetings at which members can attend CLE programs and interact with practitioners from across the country. For lawyers who are relatively new to the estate planning and probate practice, involvement with one of the ABA Sections provides opportunities to learn more about the practice and even get involved in speaking and leadership with the ABA. For more information, see <http://www.abanet.org/tax/> (for Section of Taxation) and <http://www.abanet.org/rpte/home.html> (for Section of Real Property, Trust & Estate Law).
- f. LLM.** Some estate planning lawyers obtain an LLM degree. An LLM is a masters of law degree beyond the traditional J.D. and is typically a one-year graduate program. In the estate planning arena, those pursuing an LLM usually receive their LLM in taxation. *U.S. News and World Report* ranks LLM programs in taxation. The 2010 list can be found at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/tax-law>.
 - g. ACTEC.** The American College of Trust and Estate Counsel ("ACTEC") is an organization of lawyers who specialize in estate planning, probate or estate litigation. Membership in ACTEC is recognized by many practitioners as among the highest distinctions available to an estate planning attorney. ACTEC members can attend regular meetings at which nationally-recognized experts conducted CLE presentations. Additionally, members also can access various publications through the ACTEC website and participate in a list serv on estate planning matters. There is a minimum years of practice requirement before one can be considered for membership. The emails are incredibly helpful and informative, so if you work with an ACTEC fellow, consider asking him or her to set his list serv emails to automatically forward to your inbox as well.
 - h. Forms.** If you are joining an established estate planning practice, your colleagues likely will have their own forms for a variety of estate planning documents. However, existing forms should be scrutinized and updated on a regular basis to enhance the quality of the documents and to reflect changes in the law. Listed below are some resources that provide sample forms of estate planning and probate documents:
 - i. West's Texas Forms, Estate Planning (3d Ed. 2004, Supplement 2010)** – This book contains sample wills and revocable trusts for individuals with and without tax planning.
 - ii. Dallas County Probate Practice Manual** – This resource provides a host of sample pleadings for use in the Dallas County Probate Courts in both

- decedent's estates and guardianship estates. The manual is available in both hard copy and electronic format. It can be ordered through the Dallas Bar Association at <http://www.dallasbar.com/members/Sections-Information.asp?ID=11>.
- iii. **Estate Planning and Probate Drafting Course** – The materials from this course frequently include sample forms from experienced practitioners. Materials from courses in prior year can be purchased on <http://www.texasbarcle.com/CLE/>. The TexasBarCLE website also includes some free publications that periodically contain sample forms. See <http://www.texasbarcle.com/CLE/OLFree.asp>.
- iv. **RIA Checkpoint Treatises** – RIA Checkpoint offers access to several excellent treatises with sample forms for estate planners. These include:
1. Peter Spero, *Asset Protection: LEGAL PLANNING, STRATEGIES AND FORMS*;
 2. Robert A. Esperti, Renno L. Peterson, and Robert S. Keebler, *IRREVOCABLE TRUSTS: ANALYSIS WITH FORMS*;
 3. Howard M. Zaritsky, Farhad Aghami, and Mary Ann Mancini, *STRUCTURING BUY-SELL AGREEMENTS: ANALYSIS WITH FORMS*;
 4. Howard M. Zaritsky and Ronald D. Aucutt, *STRUCTURING ESTATE FREEZES: ANALYSIS WITH FORMS*;
 5. Howard M. Zaritsky, *TAX PLANNING FOR FAMILY WEALTH TRANSFERS: ANALYSIS WITH FORMS*; and
 6. Howard M. Zaritsky and Stephan R. Leimberg, *Tax Planning With LIFE INSURANCE: ANALYSIS WITH FORMS*.
- i. **Ad litem certification.** Courts frequently appoint ad litem in trust and estate matters. These include attorney ad litem and guardian ad litem. While the roles of these types of ad litem differ in important respects, both allow attorneys to appear in the probate courts (which can improve the attorney's skills and visibility among the Bar) and to be paid for their services.
- i. A guardian ad litem represents the best interests of an allegedly incapacitated person during a guardianship proceeding. A guardian ad litem's role is not to act as an advocate for the allegedly incapacitated person, but rather to make decisions that are in such person's best interest. Any attorney who wishes to serve as a guardian ad litem must be certified by the State Bar, which requires the completion of a state-approved guardianship course. For more information, see http://www.texasbar.com/AM/PrinterTemplate.cfm?Section=Guardianship_Ad_Litem#function.
 - ii. An attorney ad litem represents a minor, an allegedly incapacitated person, or unborn or unascertained individuals. Unlike a guardian ad litem, an attorney ad litem must act as an advocate for the person(s) whom he or she is representing. An attorney ad litem must be certified by the State Bar in order to serve in that capacity in a guardianship proceeding. However, certification is not required to serve as an attorney ad litem in other probate matters.
- j. **BarBri Books** – Many law school graduates enroll in a BarBri course to help them prepare for the State Bar examination. The study books from these courses can serve as an excellent starting point for research on range of legal issues, from intestate succession to community property. If you have discarded your BarBri books (or your books have become horrendously out of date), check with recent law school graduates at your firm. Additionally, previous years books can be purchased from online and retail book resale shops.

III. SOFT RESOURCES / ROADMAP

- a. **Groups to Join.** Part of establishing a career in this practice area is to get involved in professional groups in your community. The following are some ideas for looking for organizations to join.
- i. **Study group.** In most cities, there are small groups of practitioners who meet routinely (perhaps monthly) to discuss topics and issues common to the practice, or to bounce questions and

ideas off of each other. In addition to this being a helpful meeting forum to learn more about the practice, it also creates a network of people to email when a question comes up, or to refer potential clients to if a conflict exists for you. In addition to the foregoing benefits, it can also be reassuring to discuss the challenges of the practice with other people who are in the same boat! If there is not a study group set up in your city for practitioners of your relative experience level, start your own. You would be surprised how many people are interested in the joining.

- ii. **College of the State Bar.** The College is intended to recognize lawyers who maintain and enhance their professional skills and the quality of their service to the public by significant voluntary participation in legal education. If you qualify for membership, it is a great organization to join and as noted above, included with the membership fee is annual access to the Texas Bar CLE online library. In order to join, one must (1) complete 80 hours of continuing legal education (CLE) over a period of three or fewer calendar years; or (2) complete 45 hours of CLE in the prior or current calendar year. To maintain membership, a person must maintain 30 hours of CLE per year. For more information, see <http://www.texasbarcollege.com/index.html>. Writing your first paper and giving your first speech will probably get you the initial qualification hours.
- iii. **Local Associations.** Your town probably has a professional group that meets regularly for a speaker and networking. In Houston, we have the Houston Estate and Financial Forum, which meets monthly for luncheons and quality presentations. It is a large group of attorneys, trust officers, CPAs, insurance agents, financial planners and appraisers. <http://www.houstonheff.org/>. As mentioned earlier, Dallas offers the Dallas Estate Planning Council. <http://www.dallasepc.org/>. If you do not know what organizations exist in your town, start asking around. There will probably be a few good organizations to consider joining, which will allow you to get to know other practitioners, financial advisors and insurance agents.

b. Find a Mentor.

- i. **In Office.** Ideally, a new attorney can have multiple people to learn from, and it is a good idea to have one person you can go to with questions. Regardless of the size of your office and practice group, see if there is a more experienced attorney who is willing to take a little extra time and help you with question, both technical and practical. If you are not able to find a slightly more experienced attorney to help you, it may be that the most experienced attorneys are also willing to help. Regardless of who ends up mentoring you, be sure to do your homework and ask thoughtful, educated questions and thank the other person for their continued help.
- ii. **Out of Office.** It is also possible to find a mentor outside of your office. Check with your law school and see if it has a mentor directory. For example, UT has a directory of alumni who are willing to serve as mentors for less experienced attorneys. See <http://www.utexas.edu/law/career/resources/mentor.html> for more information. Additionally, the Houston Bar Association has a similar program. Check with your local bar and see if they have a mentor program in place.

c. Get to Know the Community.

- i. **Get to Know Other Attorneys.** Because our practice generally does not involve participation with other attorneys, it can be hard to get to know them. Make an effort to meet other estate planning and probate attorneys at seminars, probate court, etc. You may find a study group or a mentor, and at a minimum, you will recognize some friendly faces down the road.
- ii. **Get to Know Other Professionals.** While the structure of our practice can be insular and not facilitate working with other estate planning attorneys, we have quite a bit of interaction with other professionals such as CPAs, insurance agents and financial planners. Get to know these people and build relationships with them. It is always more enjoyable to work with people you know, and it is nice to be able to reach

out to them when you have a question in their particular area of expertise.

iii. **Get to Know Judges and Their Staff.**

Always be cordial and polite to the court staff and the clerk's office, and definitely try to get to know your local judges and staff attorneys. These are the people with the best knowledge of policies and procedures who you will need to contact when questions come up. Those calls are always easier and more pleasant if you already have a good working relationship.

d. **Start Speaking.** As terrifying and time consuming as it may be, start speaking. Tell others in your office that you are interested, and they will most likely pass speeches they are too busy to take on to you. Preparing articles is a great learning opportunity, and speaking is a way to get your name out there among other practitioners. Speaking on panels is another way to get to know other attorneys who specialize in this area.

e. **Take the Board Certification Exam.** Becoming Board Certified is a great way to demonstrate your skills and competency in the practice area, and can be reassuring and impressive to clients and referral sources. In the authors' opinion, taking the exam is a very worthwhile endeavor. The Texas Board of Legal Specialization offers the Estate Planning and Probate Law specialization exam once per year. To qualify, you have to meet the years of practice requirement and the percentage of practice spent in Estate Planning and Probate. You must submit ten references from attorneys outside of your firm who are familiar with you and your practice, one of which must be a judge. (This partially explains the earlier focus on meeting other attorneys noted above). If you qualify to sit for the exam, you have to pass the two part exam to become Board Certified. For more information on qualifying for and preparing for the exam, see <http://www.tbls.org/Cert/AttyGetStarted.aspx> and "So You Want to Take the Specialization Exam" by Russell W. Hall, 2007 Estate Planning and Probate Course.

IV. GENERAL SUGGESTIONS

The tips discussed below may seem self-evident. Nevertheless, we have found that they provide good practical guidance on how to succeed in becoming an effective estate planning and probate lawyer.

a. **Learn the law.** As a new lawyer, your primary goal must be to absorb as much knowledge about the law in this practice area as possible. This may seem like stating the obvious, but your future in this practice area depends on it.

b. **Organization.**

i. Keep research and form files. Every article you come across that you like (even if you do not read it then), catalogue it in a folder and file it away so you have some good starting points when you come across a project.

ii. In addition, it is good to keep running files of go-bys of documents and deals you have done in the past to go to and recreate when you get similar projects.

c. **Communication.** Learn to communicate in this field using nontechnical terms.

i. Think like a lay person when communicating with clients – make sure and explain the practical.

ii. Utilize charts to explain estate planning structures and structures. Clients tend to be visual learners when it comes to understanding their estate plans.

iii. Remember to communicate the problem you are solving; clients may not know that, for example, leaving their entire estates to each other causes the loss of one exemption. It is easier to understand and appreciate the legal solution if the underlying problem is well understood.

d. **Time-Keeping.** Keep track of your time on a daily basis. Otherwise, you are potentially hurting yourself (by underreporting your time or a matter) or, even worse, hurting your client (by overstating the actual amount of time you spent on a matter).

e. **Drafting.** Do not rely on legal assistants when you are learning. As a new practitioner, the best way to understand how estate planning documents operate is to be responsible for the initial drafting. Always triple check name spellings. Then give them one last check before you turn the documents in.

f. **Ownership.** Take ownership of projects, ask questions but know the options and have an idea of the answer.

- g. New Mindset.** While clients value technical expertise, they ultimately want lawyers who can offer solutions to problems. As a result, for new law school graduates, this often requires a new approach: changing from an "abstract law school analysis" approach to a real-world "finding solutions" approach.
- h. Client Meetings.** Attend as many client meetings as possible, even if you cannot bill for the time. This allows you to observe experienced practitioners interacting with clients and pick up tips on what to do or what not to do!