

THE MENTOR

The Newsletter of the Senior Lawyers Section

Winter 2006



Family Finance for the Retiring Baby Boomer Lawyer

Part III: Finding a Financial Planner

By Leon C. LaBrecque

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In the previous two articles in this series, we discussed the elements of creating a financial retirement plan, including some of the aspects of psychological adjustments and the notion of “Critical Capitol.” Now you have decided to go out into the world and find a financial planner to help you meet your financial goals. This article addresses an overview of the types of these professionals out in the world.

What financial planning is and what it isn't

Financial planning is a process by which you are able to accomplish your financial goals. This process includes setting your goals, reviewing your current situation, creating a plan, moni-

toring the plan, and reviewing the results. Financial plans can be complex and detailed or very simple; some of the best plans I have created have been on a 3” x 5” card. For example, I created a plan for a lottery winner who was taking a 20-year payout. I said (a) save about 18.7 % of each payment and (b) invest it in a balanced portfolio in your trust. The total plan was two sentences, yet because the person followed it (they taped it into their binder as a reminder), it worked. At the end of the 20-year payout period, they had enough invested to replace the lotto winnings forever.

A financial plan needs to accomplish certain elements to be effective: these include an

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Comments from the Chair

A Final Comment

On behalf of the Senior Lawyers Section and its council, I am pleased to express our gratitude to Jon Kingsepp for his dynamic leadership as chairperson of the Section for two years. Let us complete the programs that Jon began, and let us embark upon other programs that bring attention to the needs of the senior lawyer.

This issue of *the Mentor* includes the last in a series of articles by Leon LaBrique that have received considerable comment. We plan a series on the impact of health care on the baby boomer lawyer as they reduce the practice and transition to retirement. We are planning articles dealing with the restrictions on an emeritus lawyer, which may have profound impact upon the decision to elevate to that status. We are on the cusp of articles and issues involving the senior lawyer who may face health problems that necessitate a decision to retire, but in actuality the implementation of such a decision is unwise, impossible or just not recognized.

The section continues to embark upon its project of a Young Lawyers disk that will contain educational information and resources that are or can be invaluable to the young attorney. We have much on our plate for the upcoming year.

A principal goal for this year is to increase the membership in the Section. We have gradually achieved that goal, but the Section can do more to bring its programs and initiatives to our members. We represent only a small number of senior lawyers in the State Bar of Michigan. We hope to influence many of those still practicing to join our ranks. If for any reason you believe that we have not involved the Section in matters of interest to you, please let me know. ✨

Rollin Allen, St. Clair

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evaluation of the cash flows, asset allocation, investment vehicles, estate planning, and risk management. A financial plan is like a map or a blueprint: it tells what the end result should look like and shows the path that will get you to the end result.

Financial planning is not a product. However, there is an entire branch of the financial services industry trying to sell you some magical product that will accomplish your “financial goals.” Of course, to accomplish your financial goals, you absolutely need certain tools, some of which are financial products. Certainly, financial planning requires investments, possibly insurance, estate planning documents, deeds, etc. These are but the tools of financial planning and not the end result; it’s similar to owning a car and yet not accomplishing a trip with it. You need a car, and probably a map, to make the trip. Likewise, you need a plan and the tools to make the plan work to have a successful financial future.

Who is out there to help?

Finding someone to help you with financial planning is easy; finding the right person is not. There are hundreds, if not thousands, of people utilizing some

form of designation relating to financial planning or financial services: bankers, brokers, registered reps, financial advisors, financial planners, accountants, etc. The array of titles and designations is daunting. Additionally, unlike the bar, there is no baseline to determine a person’s competence. You must start with the understanding that virtually anyone can call himself a financial advisor. Investment advisors are regulated by the SEC and the state. Registered reps are regulated by the NASD. But in general, you need to do some background work (due diligence) to find out who is competent to handle your money and what is motivating him or her. Here is a list of questions I believe you should ask to determine competence.

How is the advisor paid?

The biggest schism in the industry is the fee v. commission advisor. The difference between the two sounds simple: fee advisors get paid a fee, and commission advisors get paid a commission. However, as in most things, it is not that simple. Fee advisors can fall into two categories: fee-only and fee-based. Fee-only advisors work exclusively for a fee, which may be hourly or asset based. Hourly is obvious and

similar to a lawyer’s hourly fee; you pay a rate per hour for the time a person works on your file. Asset based creates a fee that is based on the amount of assets the advisor manages for the clients and is usually a charge that is a percentage of those assets, e.g., 0.5% to 1.5% of assets.

On the other hand, fee-based is an advisor who charges a fee (often a flat fee) for a financial plan, and then he recommends products to implement the plan that he may then collect a commission on when purchased. Commission-based means simply that the person gets paid to place a product into your hands; e.g., a brokerage commission which is charged to your account every time you buy and sell stocks through this broker. The products can possess a variety of forms of commissions, but nonetheless, the person is paid to sell a specific product or often a specific family of products. The trend in the industry is migration away from the commission-based system and more toward the fee system. Know how you’re paying your advisor: to tell — or to sell.

Credentials?

After we discern the compensation arrangement, we can

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start figuring out if our advisor knows what in the heck he or she is doing. Again, the trend in the industry is toward the certification of advisor with some broad-based financial skills at a base level of competency. The general standards for financial planners are the Certified Financial Planner™ designation (CCFP™), the Chartered Financial Consultant (CChPC), or the Certified Public Accountant/Personal Financial Specialist (CPA/PFS) designations. These three designations (albeit self-regulating) require the designee to pass an examination with a broad array of financial planning topics. From there, it's appropriate to find out educational background of the practitioner: undergraduate degree, graduate education, or other certifications. How long has the practitioner been in business? Any complaints with governing authorities?

Business Practices

Is this a sole advisor or a team? Who will be handling your file? Is the firm comprehensive (e.g., full financial planning), or do they only have a specialty? What about tax returns, estate planning, insurance recommendations? Who takes care of things if the primary advisor is out? What is the prospective outcome:

is it a written plan, a managed account? How much time will this process take? What is the prospective fee? How will the fee be paid?

Philosophy

What's the advisor's philosophy about money? Is it consistent with yours? Is the advisor conservative or aggressive? How does he invest his own money?¹ Is the advisor a stock picker? Market timer? Asset allocator? What's his position on taxes?

What to Expect

Let's assume you've now found a planner who fits your needs and philosophy. Now let's get into what you should expect. If you're creating a comprehensive plan, the advisor is going to want to look deep into your financial matters. Most advisors start with the scope of the engagement: are you creating a comprehensive plan from a spending side or from a savings side?² Will this plan include estate planning? Tax planning? Thus, the first step of the process is to agree on the scope of the plan.

The next step involves setting your financial goals: what do you want, specifically? Are you trying to achieve a regular retirement income flow at some

point? What is your prediction on inflation, and will we include it in this plan? Will you need to cover your medical expenses in retirement? Do you have children or grandchildren for whom you want to provide funds for education? Where are you currently saving, and will we have access to this savings vehicle in the future? What are the prospects of inheritances, large inflows/outflows, or business sales?

After you've established goals, the advisor will usually want a complete listing of all investment (some advisors also want no-investment) assets, plus debts. This comprehensive listing of where you are will give the starting point of the plan.

Next, expect the advisor to lay out a plan indicating how much you should save (or spend), probably have a review of your tax return, and discuss a comprehensive strategy for investing your assets. Depending on the type of advisor, the asset mix may be something you have to do yourself or something the advisor does for you. At this point, most advisors have some timeline for accomplishing the goals.

All plans need a review process, fine-tuning and rebalancing. Some advisors set a schedule for annual review; others have you

book the time. It is necessary to review the plan on a regular basis, at least annually.

How Much?

Fees for comprehensive financial planning vary almost as greatly as attorneys' fees. Figure a great financial advisor makes about what a great lawyer makes, so the hourly rate is nearly commensurate (\$250-400 an hour for the big dogs). Percentage of asset advisors charge usually varies anywhere from 1 -5% to 0.5%, with a drop in fees for assets above certain levels. Some advisors charge a flat fee for a financial plan, like \$1,000 or \$1,200.

More Help

For more help in finding a financial advisor, there are a couple of good sources. First, ask your CPA for a referral. CPAs tend to see a lot of financial planning outcomes, both good and bad. Your CPA may have a person in mind who fits you and your needs. Two good online referral sources are the Financial Planning Association (FPA) and the National Association of Personal Financial Advisors (NAPFA). The FPA's Planner Search at <http://www.fpanet.org/plannersearch/plannersearch.cfm> will locate a CFPTM practitioner in your area. The site lists credentials, background, and fee structure. NAPFA's site at

<http://www.fpnet.org/plannersearch/plannersearch.cfm> is similar in that it will screen members (who are all fee-only comprehensive planners) in your area. I suggest you interview two or three planners before you make the leap. It still amazes me how many successful lawyers can run a business, adopt effective business plans, and then let it all fall apart when it come to their own personal affairs (the cobbler's kids need new shoes?). Don't plan to fail by failing to plan! ✱

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financial planning, estate planning, business and tax planning for individual and business clients. Leon's extensive experience includes work with Arthur Andersen, Plante Moran, LLP, and the University of Detroit. He is a former Department Chair of Finance at Walsh College.

Endnotes

- ¹ I like this one a lot: to me an advisor should eat his own cooking, and invest his money how they invest your money.
- ² A spending side plan takes your expenses and breaks them apart, so that you're looking at how much you spend on each specific category and sticking to the spending plan, similar to a conventional business budget. A savings-oriented plan starts with a designated amount of savings and works from that savings cash flow.

Call For Action

Call For Action is a nationwide organization of volunteers dedicated to helping average people with problems with merchants, bureaucracies, and other vexing situations. In Detroit this program is administered and funded by WXYZ TV7. The program is more than 25 years old and has received numerous awards for quality, dedication, and the value of its contributions.

The Call For Action offices, located in the studios of WXYZ TV7 in Southfield, are turned over to a volunteer panel of lawyers on Thursdays, who take calls from the public on a wide range of legal topics. The goal is to give general advice on the caller's problem. You do not take cases from the callers; you do not give them your name. You just give them advice on how the legal system works, or doesn't work. Your commitment is just 2 hours every 4-8 weeks and includes a free lunch!

To volunteer or for more information call WXYZ Channel 7 at (248) 827-1108.

A Dilemma for the Emeritus Attorney

I would hazard a guess that many of you are not aware that once you achieve Emeritus status you are no longer allowed to collect a referral fee. If you do so, you subject yourself to a grievance for practicing law without a license.

This dilemma first came to the attention of the Section in the middle of 2005 when the council became aware of an informal opinion by a member of the staff of the State Bar of Michigan pronouncing that the acceptance of a referral fee was engaging in the practice of law and violated the restrictions of the Emeritus status given to a member of the State Bar of Michigan.

The rationale was predicated on a decision of the Michigan Court of Appeals in *Morris & Doherty v Lockwood* 259 Mich App 38, 672 NW2d 884 (2003). The court concluded that an inactive attorney was no longer a lawyer and thus could not

receive a referral fee because to allow such a fee to be paid would violate the Michigan Rule of Professional Conduct prohibition against sharing legal fees with one not permitted to practice law. Inactive attorneys are not permitted to practice law. Emeritus lawyers cannot practice law. (Rule 3f) Of course, the dilemma is that an emeritus attorney can practice law since they act as mediators and can continue to provide service on a *pro bono* basis under the supervision of an attorney licensed to practice who can supervise the work of the attorney. At this point the commonsense approach appears to be nonsensical because of the court decision and language of the present rules. (MRPC 5.4(a)

So, what do we do? Well, if you have a good referral practice and are still licensed to practice in the state of Michigan, do not change your status with the State Bar of Michigan. Of course, that creates other potential problem

of the continued practice of law by the aging attorney. Another alternative is to become proactive and attempt to have the MRPC rule changed to allow an emeritus attorney the right to collect a referral fee under certain constraints; i.e., not practicing law or giving any advice in the case, which is the subject of the referral. One can argue that “inactive” as being a “nonlawyer” is not the same as the status of the emeritus lawyer. Practically, it is better to clarify the rule to make the exception unambiguous with some restrictions.

If you believe that this is a problem, I suggest you express your views to either the chair or any member of the Section council. If the incentive is to have the rule changed, the council will embark upon that effort. However, with all of the work on the agenda, the Council wants to devote its efforts to those projects the members believe worthwhile. ✱

Senior Lawyers Section Mission

The Senior Lawyers Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, the website, public service programs, and publication of a newsletter. Membership in the Section is open to all members of the State Bar of Michigan. Statements made on behalf of the Section do not necessarily reflect the views of the State Bar of Michigan.

Suddenly I Cannot Practice Law

By Jon H. Kingsepp

How many times have you given thought to the question, "What am I to do if suddenly I suffer a catastrophic illness or debilitating circumstance that impacts my ability to practice law? Who will help me out? How will my clients be handled? If my clients find out about my situation, will they leave me? Can I really continue to serve my client as I have in the past? Are all of my files in such order to be transitioned to another attorney? Do my files have enough information that if something were to happen to me, another attorney could step in and continue where I left off?"

If you have asked yourself those questions, answered them or acted upon them, then you are in very good shape. If, however, you have only asked the questions, then you may be in for trouble. As we get older, we procrastinate on the topic of the transition of our files. If we have never been organized, then if something should happen, how will the client's interests be protected or preserved? Let me borrow from a wonderful article authored by Catherine M. O'Connell and published by ICLE entitled "Sudden Death or Disability: Is your Practice- And Your Family- Ready for the Worst?"

Obviously, how well prepared you are for that sudden change in your life is dependent upon your circumstances. Are you with a large firm? Are there lawyers who can step in and assist your client? Are you a sole practitioner? That is only the first category of questions. Others are: Have you prepared your clients and your files for a transition, and if so, are you satisfied that their interests are protected? Can you depend upon an income stream from any transition? What are the issues in a transition, and are they resolved?

What you have to be constantly aware of is the continuing impact of the Rules of Professional Conduct whether or not you are in good health. If a catastrophic event were to occur, there may be some consideration given to the circumstances, but that only goes so far and certainly does not cover the disgruntled client, who, while sympathetic, becomes more concerned about the progress of his matter than perhaps your health circumstances. As long as you are licensed in this state to practice law, you owe the client the duty of competence, diligence, and communication. (MRPC 1.1,1.3,1.4.) If you are suddenly taken by adverse circumstances that hamper your ability to fulfill those responsi-

bilities, then are you not bordering on incompetence to practice law? I should think that those provisions of the MRPC would be compelling enough to have you think about how those responsibilities will be fulfilled in the event of a major illness. Thus, in spite of your present health circumstance, have you prepared for the potential of a circumstance that suddenly causes you to depart from the active practice of law?

You have a client base built over the years from your hard work, your experience, and your marketing. That has value. That value can change to absolutely nothing if you do not adequately plan for a transition at some time in your practice. That value component exists whether you are in a large, medium, small firm or even if you are a sole practitioner. Thus, how do you turn that asset into value? By adequate estate planning, or should I say, "professional estate planning."

Let me use myself as an example. Although I had the advantage of being in a medium-sized law firm, my clients were just that: my clients. Having over the years developed a professional relationship with them, they relied on my judgment,

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and trusted my opinion. Under those circumstances that can be good and bad. Knowing that I would be hospitalized in the year 2005 or off work for nearly eight weeks, I had to transition my clients. This was important for their comfort level and most certainly for mine. That transition went well, and the clients were well served and appreciated the transition that I had effectuated. As the result of that pre-planning, my clients determined to leave when I transitioned to a smaller practice. It is that planning of which I am speaking, but more in the context of sudden

and unexpected events occurring in your life. In other words, knowing you could be out of commission for a while, you automatically transition your clients for that temporary period of absence. If you do so then, why would you not to the same thing in the event of a catastrophe occurring to your health?

What I am attempting to suggest is that you begin to focus on the possibility that the older you get, the more likely there might be a circumstance when you suddenly have to stop practicing law either temporarily or permanently. If you do nothing

to prepare for that event, then you have significantly depreciated the value of your practice. If you have to transfer clients under circumstances never preplanned, then the return on your initial investment is much less than if you had planned for that transition. We are trained to analyze, pre-plan, anticipate, and not react. So if we do so for our clients, why do we not do so for our families and ourselves?

In future articles, we will endeavor to suggest some ways in which to initiate your advanced “professional estate planning.”✱

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