

MINNESOTA LAWYER



How To: It's not your grandfather's will any more

By: Nancy Crotti April 10, 2015 0

Attorney Anne L. Bjerken sometimes refers to herself as a janitor.

"I clean up messes," explained the shareholder at Gray Plant Mooty in Minneapolis.

Adam D. Cox sometimes compares his professional life to following a horse with a shovel. The law school graduate and MBA holder recently left a position as a private client advisor with Trust Point, Inc. to become a senior vice

president at Marquette Asset Management, both in Minneapolis.

They're both joking, of course, but have had their share of messy estates to sort out, and decided to share their wisdom in a CLE last December. (They plan to present "Here Lies Murphy: A Case Study Examining All That Can Go Wrong in Estate Planning and How You Can Avoid It Happening to Your Clients!" again in June at the Minnesota CLE Probate and Trust Law Section Conference.)

Bjerken and Cox used a very complicated estate as an example for their workshop. The deceased had had five wives, lots of stepchildren, and vague directives in his will about how to divvy up his assets.

That situation led Bjerken to emphasize the first way an estate can become a mess – with a poorly drafted will. For example, "Murphy" decreed he wanted his wife to use his cabin. Problem was, he had three cabins and didn't specify which one he wanted her to use.

It can get much more complicated than that and even petty, according to Cox. He has seen family members who have descended on the home of the deceased fight over a Weed Wacker and bed sheets, and even label their siblings' wedding photos with their own names.

Things can get so complicated that Cox believes that the era of an attorney drafting the occasional will is over.

"It's not an area where you can just dabble and just say, 'I'll dust off my old will form and call it a day,'" he said. "The tax consequences and the family strife that can occur when someone passes away are so large."

Family members must make important decisions in the midst of their loss, sadness and grief, "and of course, we live in Minnesota and we don't talk about this," he added.

That's why Bjerken strongly suggested that probate and trust attorneys work on the soft skills of getting clients to open up about family situations that might affect the distribution of assets, (especially if Mom really did like Dickie best). Even if that's uncomfortable or will cost them more money up front, confiding in an attorney can save them money and headaches in the long run, she said.

Estate planners and administrators should help manage families' expectations, these experts said. That especially includes family caregivers, who may expect a bigger slice of the estate for their efforts. Minnesota law considers caring for a relative gratuitous unless there is a written compensation agreement, Bjerken said.

Family members also have a responsibility to prepare their relatives in general for what is coming, Bjerken added. This is especially important in families that haven't communicated well in the past.

"You don't have to tell your kids how much money you have, but you can tell them what you're doing with your money and why you're doing it, before you pass away," Cox suggested.

In addition to handling traditional estate planning and administration, lawyers must be prepared to litigate the exit from a business whether or not the co-owner is a family member of the deceased. Bjerken strongly recommended having an outside party study the business and assign it a value before attempting to sell.

"You can't just unilaterally decide what you think it's worth," she added. "(For) any estate or any plan that involves a closely held business, whether it's held with family members or with other people, it's really critical to have things like a buy-sell agreement and a process to value it."

"Murphy's" case is still going on, although Cox is no longer working on it. He had advice for new attorneys practicing estate law: Find a mentor.

"You need to know what you don't know," he said, "You need to ask for help.... You need to have more than just one set of eyes on your documents."

Help is as close as the Probate and Trust Law section of the Minnesota State Bar Association. Cox recommended contacting an experienced section member from another firm.

"If you ask for help and you're a good person and you're trying to learn, you're going to get so much advice you are going to have it coming out of your ears," he said. "We have study groups, with attorneys from large law firms, and we are all in this together. The resources are there, especially for estate-planning attorneys, if they're willing to ask for it."

"Murphy's" estate totaled just under \$10 million, but Bjerken said she had worked on less-complex estates valued at more than \$100 million.