

The New England Fellows Institute of the American College of Trust and Estate Counsel
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BUILDING & SUSTAINING A SUCCESSFUL TRUSTS & ESTATES PRACTICE

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STARTING OUT: THE BASICS



- Learn what it means to practice law (e.g., billable hour requirements, recording hours timely, working efficiently, meeting deadlines, good practice management skills)
- Consider how best to continue your education
- Seek out mentors in the trusts and estates practice in your firm and outside your firm
- Learn your firm culture
- Participate in firm activities; make sure they know you
- Become known as someone who comes through “in the clutch” for colleagues (not just for senior attorneys)
- Hitch your wagon to good and ethical people

GROWING INTO THE BREADTH & DEPTH OF THE TRUSTS & ESTATES PRACTICE - OVERVIEW



- Practice is *relationship* based, not transactional – even with many transactions
- Focuses on all aspects of a client’s life – build the family picture
- Cradle to grave and beyond; intergenerational relationships
- Deals with difficult emotional issues (e.g., physical and mental illness, death, substance abuse, family disputes, divorce, blended families, etc.)
- Need to be a generalist who can issue spot in many areas (e.g., real estate, corporate, tax, family law, etc.), and an expert in those areas integral to the trusts and estates practice
- Technical knowledge is essential, but excellent interpersonal skills critical
- Significant problem solving begins with *careful listening*

GROWING INTO THE BREADTH & DEPTH OF THE TRUSTS & ESTATES PRACTICE – ACTEC’S ROLE



- Substantive Specialties - Which ones appeal to you? Do you want to focus on a few?
- 19 ACTEC Substantive Committees:
 - **Artificial Intelligence Task Force:** examines the impact Artificial Intelligence is expected to have on the T&E practice
 - **Asset Protection:** addresses all procedural and substantive aspects of asset protection planning, both before and after a liability event occurs
 - **Business Planning:** considers planning approaches and techniques under present law with emphasis on income and transfer tax considerations faced by taxpayers whose major assets are interests in operating businesses.
 - **Charitable Planning and Exempt Organizations:** considers all aspects of charitable planning and charitable giving.
 - **Digital Property:** considers estate planning approaches and techniques for digital property.
 - **Elder Law:** reviews and discusses a variety of issues planners and their clients must address as they age.

UNDERSTANDING THE BREADTH & DEPTH OF THE TRUSTS & ESTATES PRACTICE – ACTEC’S ROLE



- 19 ACTEC Substantive Committees (cont.):
 - **Employee Benefits:** focuses on the issues that can arise in estate planning and in post-death administration when IRAs, retirement plans, or other employee benefits (such as deferred compensation, stock options, etc.) are involved.
 - **Estate and Gift Tax:** monitors tax developments in the transfer tax area and has been active in responding to Treasury and congressional proposals and the filing of amicus briefs in appropriate cases dealing with significant tax, or T&E issues.
 - **Family Law Task Force:** focuses on the many ways that family law/domestic relations intersect with T&E law.
 - **FATF Task Force:** formed in 2004 to join forces with the American Bar Association (ABA) and other professional groups in cooperating with the inter-governmental Financial Action Task Force (FATF) that sets international standards to prevent money laundering and terrorist financing
 - **Fiduciary Income Tax:** focuses on the latest developments, advanced planning techniques, and basic concepts relating to fiduciary income taxes.
 - **Fiduciary Litigation:** focuses on will and trust contests; guardianship disputes; fiduciary responsibility issues; compensation; modification and reformation of wills and trusts; creditor litigation; evidentiary issues in estate, trust and guardianship litigation; choice of law; fiduciary liability; issues relating to malpractice and ethics; tax litigation and controversies; and electronic discovery.

UNDERSTANDING THE BREADTH & DEPTH OF THE TRUSTS & ESTATES PRACTICE – ACTEC’S ROLE



- 19 ACTEC Substantive Committees (cont.):
 - **International Estate Planning:** focuses on the issues that face individuals who have (or plan to have) multinational assets, multinational families and/or cross border issues.
 - **Legal Education:** focuses on trust and estate courses offered in law schools, strategies for incorporating skills training into courses, ideas for mentoring new lawyers in estate planning, the role of adjunct professors, and T&E related scholarship, case law, statutory law, and current developments
 - **Practice:** strives to assist Fellows with their law practices and lives, both qualitatively and quantitatively.
 - **Professional Responsibility:** encourages timely and collegial discussions and arranges presentations addressing current ethical and professional responsibility issues faced by trust and estate lawyers.
 - **State Laws:** focuses on estate planning and administration topics governed by state law. Special attention is given to the development and implementation of uniform laws relating to trusts and estates.
 - **Tax Policy Study:** studies the tax laws concerning gifts, bequests, generation-skipping transfers, and income taxation of trusts and estates and identifies problems and issues in the laws that should be addressed by legislation or regulation.
 - **Technology in the Practice:** addresses the many ways Fellows can use technology to make their practices more efficient and enjoyable, including reviews and demonstrations of hardware, software, “Apps,” and processes

EVALUATE AND IMPROVE YOUR OWN T&E PRACTICE

- Be prepared to make suggestions or offer alternative ideas; share relevant articles; manage information
- Do top quality work (proofread and test the numbers)
- Learn Excel!
- Develop your own style
- Learn to exercise judgment and be open minded
- Be aware of your own biases
- Know everything about the client and the client's family
- Be interested and interesting
- Engage with other advisors; a team approach is the best



NETWORK & MAKE YOURSELF KNOWN



- Network Opportunities Abound!
 - Join, participate, volunteer
 - Committees and projects can raise your profile
 - Look for a good fit and become a star
 - Effectively manage the time away from your practice and learning your craft
 - Many organizations are hungry for your participation and enthusiasm
- The American Bar Association Section of Real Property Trust and Estate Law (RPTE)
 - Find a substantive committee to join
 - Try to attend RPTE meetings and participate

NETWORK & MAKE YOURSELF KNOWN (cont.)



- The National Association of Estate Planning Council (NAEPC) in your area.
 - Includes a diverse group of professionals who can be assets to your practice,
as well as referral sources
 - Other Attorneys
 - Accountants
 - Financial Planners
 - Insurance Professionals
 - Trust Officers
 - Non-Profit Development Professionals

NETWORK & MAKE YOURSELF KNOWN (cont.)

- State and Local Bar Associations
 - Trusts & Estates Section
 - Tax Section
 - Elder Law Section
- The National Association of Elder Law Attorneys (NAELA)
 - Consider if you have an interest in this area of practice
- Society of Trust and Estate Practitioners (STEP)
 - Global organization for practitioners dealing with family inheritance and estate planning; international focus



NETWORK & MAKE YOURSELF KNOWN (cont.)



- Study Groups
 - Create/join a small intimate group of T&E professionals at your experience level
 - Create/join a small intimate group of cross-professionals, i.e., accountants, estate planners and insurance professionals
 - Meet regularly for breakfast or lunch
 - Share your experiences, seek advice, learn from the experiences of others
 - Grow together!
- Sponsored Events
 - Selectively accept invitations to attend events sponsored by banks, trust companies, financial institutions and other professional organizations
 - Events that include spouses and/or children are good ways to balance family time and to enable your spouse to also make connections

BUILDING BLOCKS

3+ YEARS, NETWORKING BEGINS



- With at least 3 years of experience you can be an important contributor
- Volunteer to work on and possibly chair subcommittees that:
 - Propose and draft legislation important to the T&E Practice
 - Help the organization find speakers; arrange events; moderate panels
 - Promote the purpose of the organization you joined
- Teach! Accept speaking invitations from professional organizations, planned giving organizations, schools, religious and other public charities, community groups, etc.
- Write outlines and articles, and collaborate with other speakers
- Share credit and sing others' praises liberally (when deserved)

BUILDING BLOCKS

3+ YEARS, NETWORKING BEGINS (CONT.)



- If you are interested in eventually becoming a Fellow of the American College of Trust and Estate Counsel (ACTEC), work to fulfill the requirements of excellence to qualify for nomination
- ACTEC looks for excellent T&E attorneys who have made a “substantial contribution” to the T&E practice, and:
 - At least 10 years of practice
 - Teaching, including seminars and presentations (especially audiences of attorneys & law students)
 - Sophisticated, scholarly publications
 - Bar Service, especially in leadership roles
 - Promoting legislative initiatives

BUILDING BLOCKS

3+ YEARS, NETWORKING BEGINS (CONT.)



- ACTEC Fellows now include Fiduciary Counsel, who are attorneys working for fiduciary services companies (banks and trust companies)
 - Must meet all the requirements for a Fellow in private practice
 - Must provide T&E counsel comparable in breadth, tone and independence to that provided by a Fellow in Private practice
 - Must provide such counsel directly to clients of the fiduciary services company or to others in the fiduciary services company, considering and developing advice directly to clients
 - Most significantly, must have a statewide or regional, if not national, reputation
- ACTEC Fellows are *nominated* so get to know as many ACTEC Fellows as possible

BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE

- Easier to keep a client than find a new one
- Best referral source is a satisfied client
- Other good referral sources are other professionals who know your work or with whom you have interacted in a meaningful way
 - Always send a thank you for a referral
 - Be a team player
 - If the client is a shared client, keep the referral source and any other involved professionals informed and included
- Build a data base of referral sources



BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE (CONT.)



- Cross-referrals within your firm will help you build your practice
- Educate the other attorneys in your firm about your practice
- Become an integral part of the relationship so that the client and the partner both think of you as part of the succession plan
- Originate more business for your firm
- “Cross-sell” your firm’s other services, i.e., real estate, corporate work, litigation
- Consider your personal “marketing plan”

BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE (CONT.)



- For example, if your client has an interest in a family business and your firm works with family businesses, be certain your client knows that your firm:
 - Creates entities
 - Drafts entity purchase and restriction agreements
 - Works on succession planning with non-qualified deferred compensation plans, recapitalizes business into voting and non-voting interests and structures wealth transfers
 - Can represent your client in the sale of the business or the acquisition of additional businesses
 - Can meet with your clients and their accountants on an annual basis to review tax and business planning and make sure formalities required to maintain the entity are being met

BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE (CONT.)



- If you have a boutique firm, create good outside referral sources in other areas of the law
 - Outside attorneys want you to come back for more
 - You can “match” the client and the outside attorney possibly even better than keeping the work “in house”
 - “Virtual law firm”
- Even at a full service firm, create good outside referral sources
- Nurture relationships with your peers and referral sources
 - Share articles and other items of interest
 - Have a personal relationship when possible

BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE (CONT.)



- Stay in touch with clients
 - Newsletters and firm announcements are always helpful, especially for law changes
 - Pick up the phone; nothing replaces personal interaction
 - Send birthday wishes
 - Check in regularly
 - Always respond to client communications
- Be prominent on your firm's website and be certain that your talks, presentations, publications and other professional activities are listed

BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE (CONT.)

- Develop good practice management skills
 - Return phone calls
 - Respond to emails
 - Set realistic deadlines and expectations
 - Calendar and tickler system
 - Fess up to clients when running behind (don't hide)
 - Get your hands dirty – don't be a prima donna
 - Treat others with respect and courtesy
 - Communicate expectations
- Maintain a presence on Social Media within appropriate ethics parameters
 - Have a LinkedIn page and update it regularly
 - Contribute to your firm's blog (or start one!)



BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE (CONT.)



- Have your staff be part of the action, part of the team
 - The more your staff knows the more engaged they will be
 - You will have a better team for your clients – and your staff will feel more invested
- Working with your assistant
 - Maintain your calendar
 - Communicate with your clients to keep them informed about the progress of your work when you are too busy to contact them (if you agree)
 - Coordinate with other attorneys and professionals on scheduling meetings
 - Track deadlines and tickler
 - Work together on billing
 - Have your assistant proofread everything you send out (which keeps him/her informed)

BUILDING BLOCKS

5+ YEARS – EXPAND YOUR PRACTICE (CONT.)

- Working with paralegals
 - Again, make them part of the team
 - Set up regular meetings to review workload and status
 - Different uses of paralegals
 - Drafting
 - Estate / Trust administration
 - Other
- As your practice grows, look for an associate/colleague like yourself and . . .
 - **PAY IT FORWARD**



BUILDING BLOCKS

7+ YEARS – LAWYER AS FIDUCIARY

- Educating clients about options in selecting a fiduciary
 - Required tasks of a trustee
 - Responsible for asset management and administration
 - Implementing trust terms and balancing needs of beneficiaries
 - Tax compliance and tax planning
 - Desirable skills of a trustee
 - Options and pros and cons of each
 - Family members and friends
 - Corporate fiduciaries
 - Lawyers and other individuals serving as professional trustees
 - Historical precedent in law firm trust departments in Massachusetts and Pennsylvania
 - **No option is the right fit for every situation.**



BUILDING BLOCKS

7+ YEARS – LAWYER AS FIDUCIARY

- Considerations
 - Potential self-interest cannot interfere with professional independent judgment
 - Business relationship with client
 - Competence to serve as fiduciary
 - Staffing to support function
 - Professional liability policy
 - Ethical considerations
 - Independent legal advice and conflicts of interest
 - Model Rules allow a lawyer to seek appointment as fiduciary, but alternatives should be explained and explored and encourage to consult with other advisors
 - ACTEC Commentaries permit lawyers to serve as fiduciaries for adequately informed clients, if no conflict of interest and not product of improper solicitation.



BUILDING BLOCKS

7+ YEARS – LAWYER AS FIDUCIARY



- Considerations
 - Importance of powers to remove and replace fiduciaries
 - Clients, children, family members, how executed
 - Limitation on “related or subordinate individuals” under IRC Sec. 672(c)
 - Conflicts issues related to representation of interested parties
 - Dual representation as fiduciary and lawyer
 - Fiduciary Fees
 - Fee schedule – services provided and other services contracted
 - Hourly
 - ACTEC Sample engagement letters
 - Delegation of Fiduciary Duties

CLIENT CONFIDENTIALITY



- Protecting client confidential information is CRUCIAL (and required)
- Avoid talking about client matters in public places, or carelessly
- Password protect mobile devices and laptops
- Use personal email addresses only unless knowingly authorized by the client
- Encryption of all communications or just certain sensitive communications?
- ABA Model Rules on lawyers' obligations after an electronic data breach or cyberattack
- Most cyber security breaches are caused by human error – be aware and be prepared
- Plentiful resources (ABA, ILTA, state bar associations)

ACTEC.org Resources

- Publications, Videos & Podcasts
- Sample Engagement Letters
- ACTEC Commentaries on Model Rules of Professional Conduct
- Legislative & Regulatory Comments by ACTEC; Capital Letters
- What it Means to be a Trustee
- Guide for Fellows Serving as Trustees
- Guide for Agents Acting Under Durable Power of Attorney
- ACTEC Law Journal
- ACTEC Foundation

THANK YOU!