Defensive Case Management for Estate and Elder Law Attorneys

2016 Estate Planning, Guardianship and Elder law Conference
Moody Gardens Galveston, Texas
August 11-12, 2016

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I. Introduction

Estate Planning, Guardianship and Elder Law are very unique practices of law. These areas require specialized knowledge in specific state and federal statutory law as well as knowledge of case law that can date back years (or hundreds of years!). Knowledge of statutory and case law is required in many other areas of law. That alone is not what makes these areas unique. What sets these areas apart from other areas of law is the clientele who we serve. This clientele more often than not has a very unique characteristic that most other lawyers do not have to consider when they go about their practice. The unique characteristic that differentiates clients in these areas is that often our clients are suffering from diminished capacity. Our clients may be suffering from cognitive impairment as a result of trauma, disease, mental illness, or age related dementia.

Dealing with clients who have cognitive impairment presents unique challenges to this practice that do not exist in many other areas of law. Planning your day-to-day activities and your interactions with clients suffering from cognitive impairment is as important in this area of law as knowledge of the law. There are many articles and treatises dealing with and determining if a client has the requisite capacity to make decisions for themselves such that they are competent to hire counsel. This article does not delve into that topic. For purposes of this paper, it is presumed that the client has the competency-at least at the beginning of the matter-to hire an attorney. In many elder law cases it is possible that the capacity of the client will deteriorate rapidly once you undertake representation.

Faced with reality that almost all of the clients who you will represent are suffering from cognitive impairment, it is incumbent upon you to plan in advance to deal with this reality. And to design practice management systems that will cope with these characteristics and increase the probability for successful representation of these clients. Having a practice management system in place will contribute to the success of the representation of the client. It is also important to a law practice to have this protective measure, in the event that the client's impairments prevent the successful conclusion of the matter, or worse, to protect a lawyer from a malpractice claim.

Creating and implementing a practice management system that would accomplish the goal set forth above may sound like a very complicated and expensive undertaking. It does not have to be expensive nor complicated. The basis of such a system has one overriding premise: a written record should be made of any conversation interaction with a client or anyone else involved in the case. This is the secret to a successful system that will increase the effectiveness of your representation, make your life easier, make your staffs' life easier, and protect against any future malpractice claim.

The goal of this paper is to provide some practical tools for implementing such a system. Although the tools may be very simple in nature, these tools were developed over some 30 years of practice in this area and experience with handling thousands of cases.

II. Tools

The tools necessary to create and utilize a good practice management system already exist in most offices: computers with word processing capabilities and internet access. For the system to work properly, the attorney who meets with the client must use a computer during the initial client meeting. Although many attorneys do not possess extensive typing skills, such ability is not needed with proper preparation and planning. Later in this paper we provide examples of templates where information can be captured during the client's initial interview. Use of templates with preprinted information will decrease the need for typing skills. In many cases the only typing skill necessary will be the ability to delete choices to certain questions. Such a template can be very effective not only in capturing information that is necessary to handle the case but it can also keep the client interview centered on the necessary tasks that must be accomplished in an initial client interview. In our office, we call our information template “the log". Another tool that is a tremendous aid to keeping a written record of everything dealing with the client’s matter is the cheapest and simplest part of the entire system. This tool is Google Docs. Google Docs is a free program that is available over the internet. The only cost to use Google Docs as described here for practice management is the purchase of a high quality microphone. In Google Docs, you have the ability to use voice typing. This program allows you to dictate to your computer and have your words typed as rapidly as you can speak with an extremely high accuracy rate. The ability to dictate your impressions, plans and tasks that need to be performed and have the information converted to text immediately allows for expansive and detailed descriptions of the work that needs to be done in any particular case. Many times, I dictate a description of the work we are going to do for the client *while the client is in my office* as a summary of our meeting for the client’s benefit. This ability to transcribe speech into text can transform the work patterns of attorneys who have limited typing skills. It will increase the effectiveness of even those with great typing skills as the speed is only limited by how fast you can talk.

The time required to make entries into a client file can be dramatically reduced by utilizing another computer program. The program is called Breevy. Unlike Google Docs this program is not free. The purchase price is it very reasonable though, and is well worth the cost. Breevy allows you to set-up short-cuts for any repetitive computer task. It can allow for you to insert phrases or entire pages of text with a simple shortcut. Because many of the entries in the log will start with similar phrases such as “phone conference with" or "office conference with” and so on, using Breevy you can type these phrases in and then with keystrokes such as “PCW” Breevy will type the entire phrase “phone conference with”.