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Estate Planning for Blended Families

John R. McNair

Author Contact Information:

John R. McNair
McNair Dallas Law
Dallas, Texas

jmcnair@mcnair-dallaslaw.com
469-200-8371

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Estate Planning for Blended Families

“All happy families are alike; each unhappy family is unhappy in its own way.”

Leo Tolstoy – opening line of Anna Karenina.

One of the ways estate planning continues to be fascinating, no matter how long you practice law, is that you never know who'll show up as a client. Will it be the standard nuclear family with two parents and children from that marriage, or, as is often the case, will it be a second marriage with his kids, her kids and maybe even their kids. And you, as the planner, have no way of knowing the underlying dynamics of that family. Are they the Brady Bunch? Everyone gets along and there are no hidden agendas. Or, are they the Kardashians, with enough dysfunction to keep you up at night wondering if you can ever get this done to everyone's satisfaction?

This paper will be a survey of the issues associated with estate planning for a blended family and various planning techniques for that purpose. The underlying assumption is a second marriage with adult children from prior marriages for one or both spouses. The goal, in any such an engagement, is to try and reduce the chances for discord and litigation. This goal is often difficult because the spouses are not always entirely clear about their own goals. Undoubtedly, there is a desire to provide for the spouse, but also the children. They want to find a way to do that without tension and possible disputes. But that isn't always easy. That is what we need to consider.

ETHICAL ISSUES

One of the first steps in taking on a blended family is to determine who you represent. If only one of the spouses contacts you, that's easy enough. If that one spouse makes clear that they want you to do the estate planning for them alone, there are no issues. But what if both spouses approach you? Can you represent both of them, given the complexities of the blended family? Don't they have potential conflicts

of interest? Aren't there disclosure issues? Can these problems be waived by the couple to allow for joint-representation? As the planner, your first task is to resolve these issues.

Joint Representation

CONFLICTS OF INTEREST

Rule 1.06(b) of the Texas Disciplinary Rules of Professional Conduct provides that “a lawyer shall not represent a person if the representation of that person involves a substantially related matter in which that person’s interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer’s firm.” In addition, “a lawyer shall not represent a person if the representation of that person reasonably appears to be or becomes adversely limited by the lawyer’s or law firm’s responsibilities to another client”

Is it possible the couple have conflicting interests because of conflicting goals? Yes, they want to provide for each other. But they may also want to provide specifically for their own children. The provisions for those children may be in direct conflict with the provisions for the other spouse or the children of the other spouse. It is clear that in many of these blended family cases there is a potential for conflicting interests.

WAIVER OF CONFLICTS

Rule 1.06(c) goes on to provide a possible solution for the attorney. It states that “a lawyer may represent a client in the circumstances described in “b) if the lawyer reasonably believes the representation of each client will not be materially affected” and “each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.”

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