

SPECIAL REPORT

“The Death of the “Family Lawyer” in Estate Planning”

by Francis Burton Doyle, Esq., *WealthPLAN*



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I first experienced the phenomenon of the Family Lawyer while growing up in an Irish neighborhood in San Francisco. His name was James Joseph Sullivan and my mother and my father and all my mother’s relatives who were native San Franciscans used him for all of their legal matters including the making of all of their wills and settling of all of the estates resulting from the deaths of the various family members. He represented everyone and none of our family members were bothered by the fact that his representation of all of the family members put him in a conflict of interest. Likewise the family members knew he would take the family’s secrets and confidences to the grave. In those time secrets and confidences were the shadows of the family treasures and jewels and viewed communally. Individual secrets would be taken to the grave by the parish priest through the seal of confession.

An often-overlooked issue in the area of conflicts between family members is in the area of disclosure. California Business and Professions Code provides, “ A lawyer shall keep his client’s confidences inviolate.” Notwithstanding this protection, in the case of a “joint representation” such as the representation of a married couple or the representation of a parent and child, the information imparted by one client to the lawyer is not privileged from disclosure to the other client. In these cases of joint representation, there exists no protection from disclosure of information made by one client to the lawyer relative to the other client. Because of the substantial consequences of such a lack of protection from disclosure, one of the most significant elements of any waiver of conflict in the instance of joint representation is the client’s written acknowledgment that information disclosed to the lawyer cannot be withheld from the other party to the joint representation.

In mourning the death of the Family Lawyer you search for the reasons. Families today are different. This is true. Divorce is prevalent so the representation of today’s family is

very likely to involve prior marriages and children from different marriages. Everyone in my Irish neighborhood was Catholic and a person's relationship to the Parish Church meant something and being divorced was at the very least a stigma. So the conflict of interest issues presented by multiple marriages and children of different marriages were a rarity rather than being commonplace as they are today. Prior marriages present more complex separate property and community property issues, which need to be ferreted out. The husband has brought a business into the marriage, which was his separate property after his first divorce. And his wife received the house from her first divorce. The conflict of interest in characterizing this property is both inherent and quite apparent.

J. Joseph Sullivan could cavalierly say if there was a conflict of interest between the couple there would be a divorce and then I wouldn't have a conflict of interest problem because I don't do divorces. California Rule of Professional Conduct Section 3-310 simply states, "A lawyer shall not represent parties having a adverse interests." The interesting interpretation here is that "adverse" has been interpreted to include "potentially adverse". As consequence of this rule in order to represent a couple in the context of a joint representation it is absolutely necessary to obtain a written conflict waiver. The conflict waiver should disclose the potential areas of dispute like the separate property vs. community property characterization of the couple's property and whether to treat all of the children from both marriages equally and determining which of the children are going to be the executor or trustee.

It should be noted that the conflict rules apply equally to the representation of parents and their children. These conflicts arise when doing family partnerships, LLCs and corporations. It is crucial for the lawyer to obtain conflict waivers and always keep in mind, which one of the family members is really the client.

With the death of the Family Estate Planning lawyer it is critical to obtain written waivers of conflicts of interest in joint representation situations. Those waivers should include a written warning that the attorney client privilege will not prevent one party of the joint representation from maintaining confidences.

[Questions? Comments? Please contact us by telephone or e-mail...](#)

About the Author...

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- Professor; *Lincoln Law School of San Jose*, Wills & Trusts and Real Property
- President, *Santa Clara County Estate Planning Council*
- Chair, Planning Committee, Annual *Jerry A. Kasner Estate Planning Symposium*, *Santa Clara University, School of Law*
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A Note from Frank Doyle:

I have been working in this area of law for over thirty years.... I am a member of the *State Bar of California* and certified by the *Cal Bar* as a legal specialist in Taxation Law and Probate, Estate Planning and Trust Administration. I am also an educator and I enjoy teaching and sharing the stories of the challenging legal conundrums that I have solved in my practice over the years. I remember it well; I walked in the door and told my wife, "I quit my job today". She looked at me (holding our 6-week old son) and said, "What are we going to do?" It was at that point that I decided to break out on my own and start my estate planning practice. I hit the road and began to set up the alliances, a network of associates and the expertise to build a thriving international estate planning practice.

Over the years, I have continued to teach law school and present *MCLE* courses nationwide. I was frustrated with the fact that I have never found the information that would allow an attorney to capture the basics of developing and expanding a thriving estate planning practice, so I have created them for you now. I am the founder of *WealthPLAN* and bring over 30 years of experience in tax, estate planning, litigation, probate and trust administration. I have taken all of my experiences and legal expertise to create the *Advanced Legal Training Institute*, foundation course entitled, *Integrated Estate Planning Seminar Series (I-IV)*. This set of 17-AudioCDs include over 30 hours of legal information that will give you a jump start to get yourself into this lucrative and growing legal niche. I have taken the best ideas from all of my presentations, case studies and professional experience to provide you with a step-by-step program to support our aging population. I am now working with some of the children and grandchildren of my original clients. The *Advanced Legal Training Institute* tapes and workbooks offer checklists, templates, forms and articles to provide an in-depth educational experience for attorneys and other estate planning professionals. P.S. My 6-week old son, John, is now grown and a practicing attorney himself.

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