



Seven Habits of Highly Effective Estate Planners

By Alan F. Rothschild Jr.

Although the steady rise in wealth over the last two decades and the growing elder population has increased both the net worth and number of individuals in need of estate planning services, estate planning lawyers face many challenges today. These challenges include

- the increased performance of “traditional” estate planning services by nonlawyers,
- an ever changing legal environment, including the phased-in repeal of the federal estate tax,
- more cost-conscious consumers of legal services, and
- increased practice overhead, particularly in associate salaries and staff labor costs.

Even though the number and wealth of potential clients have expanded, the present challenges mandate a renewed focus on ways to provide

more efficient and client-focused estate planning services. This article discusses seven techniques that distinguish successful trust and estate practices in today’s business environment and poses self-audit questions to guide your efforts to incorporate these procedures into your practice.

1. Define Your Practice

Many people outside of the estate planning field view it as a rather narrow specialty. Everyone in the field knows otherwise. The range of prospective estate planning clients is increasingly broad—from the modest couple in need of Medicaid planning assistance to multi-millionaire business executives with complex stock options and qualified and nonqualified retirement plan assets. By defining the focus of your practice, you will become more expert and efficient in the delivery of the chosen services.

In doing so, your practice will become more personally and financially rewarding.

There are a number of ways to define the boundaries of a new estate planning practice or to narrow the focus of an existing one. The following questions can help determine what segment of the estate planning field is most appropriate for your practice:

- What do you and your law practice offer to prospective clients?
- Who is your legal and nonlegal competition for estate planning services?
- How can you distinguish your

Alan F. Rothschild Jr. practices law with Hatcher, Stubbs, Land, Hollis & Rothschild, in Columbus, Georgia, and serves as Assistant Secretary of the Section’s Probate and Trust Division.

- practice from this competition?
- Which areas of the estate planning field are most personally rewarding to you?
 - Which areas of the field are, or have the potential to be, the most financially rewarding?
 - What are the estate planning needs of the individuals that you (and your referral network) interact with in the community?
 - What do you perceive to be the growth areas in the field, particularly in your community?

2. Develop and Maintain an Active Referral and Client Network

The environment in which estate planners practice today is far different from 20, even 10, years ago. Local banks have merged into regional or national institutions. These financial institutions, and many clients have less loyalty to a single lawyer or single firm than in the past. There are less clear lines (and frequent competition) between estate planners and others, such as trust departments, financial planners, accountants, insurance agents, and investment advisors. Traditional referral sources may no longer be as reliable sources of new business. In addition, many of our communities have grown, and the “word of mouth” referral does not penetrate the market as effectively as it once did.

Through all this change, one constant remains—your existing client base. These clients are both the direct source of additional business and an indirect source for new business opportunities through referrals. Because present clients are so valuable to your practice, you must frequently reflect on the following questions:

- What are the most important actions you can take to keep existing clients?
- What are the primary reasons you lose clients?
- What have you done, or could you do, to address these losses?
- Are there some clients, or types of clients, you would be better

off without?

- How can you ethically encourage referrals from existing clients?

Because of the challenges in our profession over the last decade, marketing ourselves and our firms to increase the demand for, and the profitability of, our services has been a growing trend. Marketing to existing clients, referral sources, and prospective clients is an important component of a successful estate planning practice today. This marketing is only effective, however, if it attracts the work you desire to do and can professionally and profitably handle. When designing a practice marketing program, consider the following:

- What marketing techniques fit your community, client base, and personal style?
- What marketing will be effective in your practice environment?
- Does your marketing attract the “right” clients?
- How can you market without lessening the professional aspects of your practice?

3. Communicate Effectively with Clients

Communications with estate planning and administration clients generally fall into four categories: (1) terms of engagement, (2) information gathering, (3) project correspondence, and (4) ongoing contact.

Terms of Engagement

The efficient practice of law requires a written engagement letter. By defining the relationship and fee arrangements up front, you will greatly limit questions and misunderstandings later. The American College of Trust and Estate Counsel’s model letters of engagement are an excellent starting point for your own letters. Most estate planners also use a closing or disengagement letter to define the attorney’s role and responsibilities after the completion of the initial estate planning project.

Information Gathering

Estate planners must accurately and

efficiently gather client information. An estate planning worksheet, either mailed to the client before the initial conference or completed during the initial conference, streamlines this process. Not only will the form ensure the proper identification of assets, but it also will provide a means for gathering important personal information, such as the correct names for the client and his or her beneficiaries and contact information for other members of the estate planning team.

Project Correspondence

Regular communications with the client during an engagement will maintain a strong relationship and avoid unnecessary telephone calls seeking status updates. Keys to good communication include

- keeping promised deadlines for the delivery of documents,
- confirming important information with clients in writing,
- copying clients on letters, legal memos, and court filings related to their projects, and
- providing good summaries of draft documents and illustrations when delivering and discussing proposed plans.

Ongoing Contact

As discussed above, one of the most reliable sources of new estate planning business is your existing client base. Unfortunately, an estate planner’s practice is often too reactive to take full advantage of these built-in sources of additional business. A periodic newsletter or update on estate planning developments is a professional and time-efficient way to maintain and expand these relationships. Some questions to consider include the following:

- Do you send a new or prospective client sufficient information to ensure the best use of your time and your staff? Many planners include a profile of the types of work they perform, an introduction to estate planning, and an information gathering worksheet.

- Are third party resources, such as state bar materials, available to explain the estate planning, probate, or administration process? Many state bars have developed client-friendly guides that can effectively educate the client and provide for a more effective working relationship.
- Have you considered a lending library of estate planning and administration books and articles for clients to borrow?
- Can any of this information be delivered to clients more effectively over the Internet?

4. Use Effective Billing Strategies

Estate planners must develop billing systems and techniques that take into account the value of the services delivered to the client and the resources involved in delivering these services. For many estate planners, reliance on time as the primary measure of value is outdated and not reflective of practice realities. Often, time entries understate much of the work product used in an estate planning engagement because much work is not directly related to a particular client project (for example, time spent in researching and updating forms). Lawyers should consider the effort involved in all aspects of estate planning, whether billing by the hour is always appropriate, and what alternatives exist. Increasingly, estate planning professionals use project billing rather than the more traditional hourly rate system.

In addition to determining an appropriate method for calculating fees, the effective estate planner also has methods in place to bill regularly. The initial client conference or engagement letter should discuss upfront retainers and periodic billing procedures. Bills must clearly explain the services performed and value delivered, so that the client will understand (and pay) the bill. Lawyers must also monitor and follow up promptly on past due accounts. Questions to consider when reviewing your billing system:

- How do you bill for routine

estate planning documents, such as nontaxable wills or standard life insurance trusts?

- Does the traditional “by-the-hour” process accurately reflect the value delivered to the client?
- What alternatives exist to hourly billing?
- When is it appropriate to consider these alternatives?
- Does your engagement letter properly describe your actual billing method?
- How frequently do you bill?
- What systems do you have in place for monitoring past due accounts?

5. Anticipate and Address Ethical Issues

You must anticipate and address ethical issues in estate planning engagements before they arise. Otherwise, you could face the erosion of your professional integrity, lose clients, and be unable to bill for services already performed. Areas that frequently raise ethical concerns include

- client capacity,
- joint spousal engagements,
- multigenerational engagements,
- client identification in estate administration,
- continuation or termination of client relationships, and
- the lawyer’s competency to undertake the project.

Good ethics make good business. Anticipate and address ethical concerns before they become problems. Some questions regarding ethical issues in estate planning include the following:

- What policies and procedures has your firm adopted to identify and address possible ethical issues effectively?
- How can an engagement letter help?
- Should you close the relationship upon the completion of the estate planning project? If so, how? If not, what ongoing obligations do your state rules place on you because of this relationship?

6. Use Staff Effectively

Personnel costs constitute a significant expense in every professional services firm. The effective use of staff should be a major practice management focus. Frequently, it is not—practicing lawyers are either too busy responding to the immediate demands of their clients or are too close to their office systems to adequately identify and address their shortcomings.

Effective estate planners understand the benefits of hiring and using the right staff people. Increasingly, paraprofessional personnel make the greatest bottom line impact on a lawyer’s practice. Questions to ask when reviewing your staffing needs include the following:

- Is it more cost effective to hire a new law school graduate, experienced practitioner, or paraprofessional?
- Are staff properly trained?
- Is there effective delegation?
- Is every employee’s potential as a revenue source being used?
- What ethical issues arise when using nonlawyers?

7. Use Technology Properly

When properly used, the technology available today will allow an estate planner to

- create customized documents in less time and with fewer errors,
- spend less time looking for documents,
- conduct research more quickly and thoroughly,
- better monitor client contacts and calendars, and
- stay current on legal developments.

To take advantage of this technology, you must be willing to commit time to assess your practice environment and technology needs, identify the products that serve these needs, and commit adequate time and money to the implementation of the selected systems.

Document Assembly

The most concrete results of an estate planning practice are the documents

produced for a particular client. The estate planner must determine how to efficiently generate these documents, which sometimes vary only slightly between clients. The dominant method of producing documents today is to cut and paste existing documents using word processing software. The lawyer, secretary, or paralegal copies the original document and manually inserts the changes. This system is not cost effective or competitive. Estate planners must develop more efficient systems for the production of clients' documents. Document assembly software can solve this challenge. The development of a document assembly system that covers a majority of routine drafting needs is within the reach of most practices if you commit to the process of developing the necessary forms.

Document Management

In addition to drafting documents efficiently, you must also implement a system to manage this information. A top-notch document management and retrieval program is essential to modern estate planning practice. These programs allow you to organize your documents in an electronic structure similar to a traditional paper filing system. The best systems also allow full text searches of a document database. This allows you to easily locate documents, either by a client's name, by file number, or through a full text document search.

Research

The ability to search the Internal Revenue Code or state cases from your desktop is standard today. The traditional legal book publishers now offer an incredible array of case, Code, and subject-based CD-ROM and Internet prod-

ucts—either with or without hard copies of these publications. Networking, which allows multiple attorneys access to these tools from their desk, has dramatically altered the concept of the law library. Remote access makes these tools available anywhere, any time of day. On the other hand, it is almost as easy to have too much technology as too little. You should ensure that the technology you select fits your office and practice methods. If not, the technology will likely be underused, at best. At worst, technology will prove to be a time and financial drain, rather than a tool to increase efficiency and profitability.

Conclusion

By working to implement these seven practice techniques, your practice will become more efficient, more profitable, and more client-focused and personally rewarding. ■