



NAEPC
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The Collaborative Approach

One of the hallmarks of the Section of Real Property, Trust and Estate Law is the collaborative approach its members bring to the work they do. This collaboration takes several forms: between practice specialties within a Division, across both Divisions, and between and among “outside” professional organizations of lawyers and nonlawyers who share the Section’s goals of professional excellence, inclusion, and superior continuing education.

In two companion articles, *Probate & Property* readers are given an inside look at how NAEPC, the National Association of Estate Planners and Councils, runs its organization and works cooperatively with the Section while maintaining a very different membership and meeting model. To this end, two active RPTE members were asked by Section leadership to share their experiences. Jason Havens illustrates his points using his own NAEPC experiences and successes. The Section’s approach is illuminated by David Dietrich, who also draws from his personal experience as a small-firm practitioner in what he calls a “flyover state.” David reviews changes in the trusts and estates practice over the last decade and explains how the Section, together with its partners such as NAEPC, have helped practitioners navigate these changes successfully. He demonstrates how practitioners who are located far from big city hubs can take advantage of all the Section has to offer.

Whether Section members start with RPTE and through their membership learn the value of cooperating with other organizations, or come to the Section after being active in other organizations, the conclusion is the same: whether one practices in a large firm/large city or small firm/small city, being active in both the Section and an allied outside professional organization can bring the best features of a national and a local affiliation. ■

Building Your Practice and Developing Your Skills Locally and Nationally

Your NAEPC-Affiliated Estate Planning Council and Our Section

By Jason E. Havens

The now ubiquitous phrase “all politics is local” might be adapted to proclaim that “all estate and tax planning is local.” To be sure, the ABA and specifically our RPTE Section provide opportunities to interact with and work alongside attorneys across the country, learn via superb educational programming, and participate in and hopefully

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lead substantive or other committees. Through local estate planning councils, such as those affiliated with NAEPC, however, you can meet and work with other trust and estate attorneys whom you will likely see more often in your practice. If you are a younger or transitioning practitioner, those other local attorneys will probably evaluate you for purposes of your Martindale-Hubbell rating and also might serve as references for your board certification application. While you might see some of

them at a state or local bar association meeting, your local council meeting affords a venue focused on estate planning where you can see and discuss relevant issues with other local practitioners.

NAEPC-affiliated estate planning councils reflect the NAEPC core belief in the team concept of estate planning. Consequently, you also can meet other local estate planning professionals, including CPAs, financial advisors, life insurance professionals, and trust officers whom you

RPTE's In-Person and Virtual Offerings Enhance “Flyover State” Lawyer's Trusts and Estates Transition and Career

By David J. Dietrich

As a small firm lawyer from Montana, the in-person and virtual offerings of the RPTE Section of the ABA have greatly enhanced my trusts and estates law career since I became active 15 years ago. RPTE currently consists of nearly 22,000 domestic and international lawyers, paralegals, real estate and financial service professionals, and legal educators; it is command central for our two disciplines in estate

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planning and real estate law in the entire 400,000 lawyer ABA. My focus in this article is on the Trust and Estate Division of the Section.

Over these 15 years, RPTE has provided me with multiple options to expand and deepen my skills, increase my professional contacts, and discover the manifold diversity and opportunities generally offered by the ABA. At my first Spring Section Meeting in San Antonio in 1998, by the pool at the resort, Section Chair-to-be Lou Mezzullo encouraged my active involvement with his inclusive personality and significant status as a widely published

author; this inspired me to return. Today, although much of RPTE's continuing legal education offerings can now be enjoyed from a computer screen, never requiring travel from one's hometown, the personal interaction with professionals like Lou from various corners of the United States unlocks RPTE's real potential. Combined with local marketing and development of an affiliated council of NAEPC, lawyers in most U.S. locations can take advantage of both local and national offerings by RPTE and NAEPC.

My hometown of Billings, Montana, has a local trade area population

generally will not see regularly at RPTE meetings and programs. Most regular council meetings also feature speakers, including those whom you would see at a RPTE program, and some councils host symposia that provide a half or full day of programming. In my experience, leadership opportunities abound within your local estate planning council and at the NAEPC level as well.

My own background provides examples of these activities in context. I joined the Estate Planning Council of Lee County (Florida) Inc. as a new associate attorney. That council still has more than 50 members. Our family then relocated to the Florida Panhandle, where I joined the Estate Planning Council of Northwest Florida, Inc. While its membership also numbers more than 50, the Pensacola-based council was at that time the only one between Perdido Key and Tallahassee (200+ miles). I became involved and ultimately served as a board member.

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Several Pensacola council members and I attended the Mobile council's excellent annual symposium. Mobile's daylong 35th Gulf Coast Estate Planning Conference this year will not be the same as the University of Miami's weeklong 49th Heckerling Institute on Estate Planning, but both routinely include some of the same speakers. Symposia such as these often offer continuing education credit as well.

Sometimes the storms of Cape Verde—and life—create not only challenges but also opportunities. When Hurricane Ivan ravaged the northern Florida Gulf Coast in September 2004, it narrowed the Interstate 10 bridge crossing Escambia Bay to one lane. The two or three of us who regularly attended the monthly Pensacola-based council meetings were forced to endure a two- to three-hour drive each way to attend! By that time, the Destin area had grown to the point that it could support a second Panhandle council.

In fall 2004, two CPAs of a leading regional accounting firm, a life insurance professional, and I started a sister council called the Estate Planning Council of the Emerald Coast, Inc. We created a Florida nonprofit corporation. Because of the Sunshine State's superb electronic infrastructure, you can view this or nearly any other council's articles of incorporation and annual reports via our Department of State's Sunbiz web

of 165,000 and a regional service area of 500,000, extending 450 miles into eastern Montana, northern Wyoming, and the now bustling Dakotas. My father's family settled in Montana in the late 19th century and accumulated a sizeable sheep ranch near the Canadian border, but estate disputes arose and the family ranch was sold in the 1950s. My father, John M. Dietrich, an accomplished agricultural estate planner, coached me on the importance of avoiding such problems. In the summer of 1993, at his urging, I attended renowned Prof. Jeffrey Pennell's "Estate Planning in Depth Program" in Madison, Wisconsin, as I considered a transition from a real estate litigation and transaction practice. As luck would have it, Billings also had the Yellowstone Valley Estate Planning Council, a local planning group, that provided vital, in-person gatherings with professionals including trust officers, financial planners, life agents, accountants, and estate planning attorneys, which facilitated my career transition by providing

networking and support in this complex area. In 1997 I was appointed as vice-chair of the Estate Planning and Administration Committee of RPTE. An outsider from the Big Sky, I began to experience firsthand the extensive offerings of the RPTE Section.

From 1997 to the present, I have served RPTE as the group chair of the Business Planning Group, as co-chair of the Property Preservation Task Force (which was instrumental in the creation of the Uniform Partition of Heirs Property Act, now enacted by four states after its development by the Uniform Law Commission (formerly NCUSL)), as the Secretary of the Section for four years, and currently as the Trust and Estate Division vice-chair.

Observing the changes in estate planning in the last 15 years has been fascinating. In addition to tracking technical tax and drafting changes in this area, I have observed systemic changes in the practice of estate planning because of increased federal transfer tax exemption amounts

(from \$675,000 to over \$5 million) and the aging of the baby boomers. This has redefined "middle class" estate planning because federal transfer tax exemptions now exempt over 98% of American families from federal estate or gift taxation. I have witnessed state and federal income tax considerations surpass estate tax ones for many clients. As baby boomers age, I have seen an increased emphasis on and respect for asset protection planning, elder law, and Medicaid planning as a specialty area of estate planning. With the U.S. Supreme Court decision in *Windsor*, there is heightened focus on same gender estate planning. Perhaps because of the rise in autism and other developmental disabilities in the last 15 years, RPTE has increased its emphasis on the use of special needs trusts for disabled individuals to protect their interests, including their governmental benefits. I have observed the emerging dangers of do-it-yourself estate planning and fiercer competition between and among allied professionals such as accountants, financial

site. Simply search by entity name (<http://search.sunbiz.org/Inquiry/CorporationSearch/ByName>), using the phrase “Estate Planning Council.”

Alternatively, a local council could use a trust-based council model (generally less flexible and higher fiduciary duties) or function as an unincorporated association. The latter is potentially the least desirable among the three primary options because of uncertainties over liability exposure and the lack of familiarity of third parties with an unincorporated association. A detailed discussion of those issues is beyond the scope of this article. See generally Terri Lynn Helge, *Choice of Entity Considerations for Charitable Organizations*, Tex. Tax Law (Spring 2012); Darren B. Moore, *Setting Up Your 501(c)(3) Organization*, Representing Non-Profit Organizations ch. 12 (State Bar of Texas July 16, 2004) (under “III. Choosing the Vehicle”) (www.bwwlaw.com/downloads/dbm/12_moore.pdf). In general, creating a more formal legal

structure is a practical idea in terms of opening a bank account, handling membership fees, and paying vendors for items such as food service or meeting space.

I should note for those of you who practice in the charitable and non-profit law area that NAEPC does not have a group exemption from the IRS because of NAEPC’s desire to promote flexibility for its affiliated estate planning councils. (To qualify for a group exemption, the “central organization” must, among other things, exercise general supervision and control over its subordinates. See IRS Publication 4573 (www.irs.gov/pub/irs-pdf/p4573.pdf.) Therefore, you fundamentally need to determine whether your council will function as a publicly supported educational charity (IRC § 501(c)(3)) or a business league (IRC § 501(c)(6)), which is how our council is classified. You would specify this on the employer identification number IRS Form SS-4 (also available on-line) and on either IRS

Form 1023 or 1024, respectively.

If you are interested in reviewing resources provided for those contemplating a new council, or information for existing estate planning councils, please visit the “Referral Lists and Documents for Local Councils” segment of the NAEPC web site at www.naepc.org/affiliated-councils/referrals. You might also want to review the NAEPC Council Formation Guide at www.naepc.org/unaffiliated-councils/formation-guide. The history of NAEPC and its affiliated estate planning councils is fascinating, dating to the early 1930s with the creation of the Boston Estate Planning Council. You do not strictly need to follow that venerable council’s relatively sophisticated structure, though, which is detailed in its “Member Involvement Handbook,” at www.naifanet.com/240000/20092010becmipbooklet.pdf, or any other council for that matter.

To illustrate how flexibly you can structure (or change) your own local

planners, trust officers, and life insurance agents in the practice of estate planning. I have noticed state jurisdictions (other than Montana!) such as Delaware, Wyoming, South Dakota, and Alaska (and about 14 other states) emerge as “jurisdictional worm holes” for high net worth planning enabled by modified state trust codes, relaxed state income tax regimes, and the elimination or dilution of the rule against perpetuities, enticing ultra-high net worth individuals to those jurisdictions. Also during this time, conservation easements have become the largest noncash charitable donation under the U.S. Tax Code and have resulted in more U.S. Tax Court cases than cases under the entire federal transfer tax regime.

Luckily, RPTE also has changed with the times; its leadership meets monthly via executive conference calls and in-person four times a year in planning, sub-council, and council meetings, resulting in continuing assessment of RPTE’s strategies and offerings. This has resulted in the emergence of the use of document

assembly programs, electronic continuing legal education programs, webinars, smartphone applications, and the ubiquitous feed of new and important tax and nontax developments, delivered to the computer screen, smartphone, Facebook, LinkedIn, Twitter, and through the RPTE web site. As vice-chair of its Trust and Estate Division, this spring and summer I appointed over 30 chairs and vice-chairs of its substantive groups and their committees for the 2014–15 bar year, which constitute the engine or central processing unit of the Trust and Estate Division of RPTE. Our colleagues in the Real Property Division of RPTE have similar chairs and vice-chairs. All of these groups and their committees are easily viewable on the Section’s web site at www.americanbar.org/rpte.

These groups and their committees encompass the most frequently encountered substantive areas of estate planning. They meet in-person at RPTE’s showcase event, its Spring Symposia, in early May of each year

and at its Fall Leadership retreat in early November. The groups and their committees often conduct conference calls on a monthly basis and frequently share information on new developments in their topic areas, enabling active members to keep current. This benefit alone justifies the RPTE Section’s \$70 per year membership cost. Groups and committees are encouraged to promote their members to become active in

- group conference calls,
- electronic continuing legal education programs (eCLE),
- in-person committee projects at the Spring Section Meeting,
- comments to Treasury on Proposed Regulations,
- the development of uniform laws for the Uniform Law Commission (formerly NCCUSL), and
- writing for the *eReport*, the Section’s on-line publication, *Probate & Property*, RPTE’s magazine, and *RPTE Law Journal*, RPTE’s scholarly law review.

The benefits of involvement in your council are not purely local.

council, our local council intentionally allows planned giving officers to become members because the Florida Panhandle no longer has an active planned giving council. Our council also alternates its meetings. During our “odd” monthly meetings, we host a formal dinner meeting that features an educational topic presented by a local or sometimes a national speaker (which my RPTE leadership

and list of contacts have often helped to secure). During “even” monthly meetings, we congregate at a restaurant to socialize and informally share experiences and ideas. According to NAEPC leadership, many estate planning councils follow this pattern and offer a mix of educational, social, and volunteer programming, which often serves to engage a wide cross-section of their respective memberships.

The benefits of involvement in your council are not purely local. For example, NAEPC hosted its 51st Annual Conference (www.naepc.org/conference) in San Antonio, Texas, from November 5 through 7, 2014. The 2014 annual conference featured numerous well-known speakers—and RPTE leaders—such as Jonathan G. Blattmachr, AEP® (Distinguished), S. Stacy Eastland, AEP® (Distinguished), and Prof. Jeffrey N. Pennell.

In addition, for trust and estate attorneys (presumably the vast majority of you reading this article),

NAEPC offers “the only ABA-accredited program for certification of an attorney as an Estate Planning Law Specialist (EPLS)” through its subsidiary, the Estate Law Specialist Board, Inc. The certification requirements are outlined in the EPLS segment of the NAEPC web site at www.naepc.org/designations/estate-law/introduction. An additional benefit of successfully becoming certified through the EPLS program is that you may simultaneously obtain the Accredited Estate Planner (AEP®) designation. You must only pay the additional AEP® dues and agree to comply with the ongoing requirements of the designation.

Last but not least, as an estate planning council member you can make and expand your local professional contacts. Your local council is probably the best and most efficient way to meet the leading estate planning professionals in your area. You also can help your colleagues by

These activities create the top quality professional enrichment that our members value. Opportunities for advancement in the groups and their committees are often ripe for the picking for ambitious and enterprising volunteers. Effective participation can result in recognition of one’s expertise in substantive legal areas, publications, and client referrals.

RPTE’s Trust and Estate Groups are (1) Business Planning; (2) Income and Transfer Tax Planning; (3) Charitable Planning and Organizations; (4) Elder Law, Disability Planning and Bio-Ethics; (5) Non-Tax Estate Planning Considerations; (6) Employee Benefit Plans and Other Compensation Arrangements; and (7) Litigation, Ethics and Malpractice. (Please view their detailed committee offerings on the web site, as this is a cursory overview.) In addition, RPTE has added The Professors’ Corner/Legal Education and Uniform Laws Committee, which spans both the Trust and Estate and Real Property Divisions of the Section.

RPTE has also increased its focus

on diversity and inclusion. The Section promotes diverse speakers at the Spring Section Meeting, collaborates with diverse bar organizations, and this year created teaching videos on topic areas important to diverse communities in the estate planning and real estate areas. In addition, the Section has developed an extremely successful Fellows program for young lawyers; many group and committee members and leaders are former Fellows. This Section also continues in its liaison initiatives to the Synergy Summit, a unique organization whose delegates come from the leadership of the major legal, accounting, and financial service organizations in the country to study, educate, opine, and collaborate on appropriate issues of mutual interest, the ABA’s International Law Section, and industry-specific groups such as the Uniform Law Commission, the American College of Trust and Estate Counsel (ACTEC), the American College of Real Estate Lawyers, the United States Treasury, the IRS, and

occasionally the U.S. Congress and the U.S. Tax Court. The ABA’s RPTE Section is the biggest, most inclusive tent for estate planning and related topics and provides an open-ended opportunity for any small firm or large firm lawyer to get involved.

RPTE sponsors the “Skills Training for Estate Planners” program as well, held for one week each year in mid-July in the financial district of New York, with the generous support of New York Law School. The program assists young lawyers or lawyers in transition who wish to expand and widen their knowledge on practical estate planning skills in a relaxed and thorough learning environment. The program has been phenomenally successful and demonstrates RPTE’s ongoing commitment to promoting the practical aspects of estate planning on a national level.

Although not technically aligned, RPTE shares many leadership and membership positions with the ACTEC and the faculty of one of the premier continuing legal education

providing your own insights when they have questions. You might even want to speak on a current development or a topic on which you have extensive experience, or maybe even volunteer for a leadership role on one of your committees or as an officer of your council.

Our RPTE Section and NAEPC already cooperate through the Synergy Summit (www.naepc.org/about/synergy-summit), “a unique organization whose delegates come from the leadership of the major legal, accounting, and financial service organizations in the country to study, educate, opine, and collaborate on appropriate issues of mutual interest.” Our mutual RPTE and NAEPC members often take leadership roles in both organizations, both at the national and the local levels. You should consider doing the same and taking advantage of one or more of the opportunities highlighted above, which should benefit the professional

programs in estate planning, the University of Miami’s Heckerling Institute on Estate Planning.

Finally, the publication opportunities available in the eCLE, live CLE, the bi-monthly *eReport* and *Probate & Property* magazine, or the tri-annual *RPTE Law Journal* can also lead to book publishing opportunities. From an article on the conservation easement Treasury Regulations in 1998 in *Probate & Property* to a more detailed presentation at Heckerling in 2003 on the topic, I developed materials and co-authored (with my nephew) an ABA-published book in 2011, *Conservation Easements: Tax and Real Estate Planning for Landowners and Advisors*.

As a small firm lawyer in a “fly-over” western state, I have reaped the benefits of the ABA’s RPTE Section. The ABA has given me numerous opportunities to meet aspiring and ambitious lawyers across the United States from large and small firms alike who have provided prolific written materials, generous volunteer service, and superior technical expertise

community at large, your local community, and your own firm and clients.

I obviously have. Indeed, these formative RPTE and NAEPC/local council experiences have led me to join Holland & Knight’s Private Wealth Services Group, several of whose attorneys I know through my RPTE leadership activities, as of August 2014. Some of you might recall that Private Wealth Services Group leader Edward F. (“Ed”) Koren Jr., AEP® (Distinguished), served as Chair of our RPTE Section during the 2004–05 bar year.

Perhaps this article will inspire you to become more involved in RPTE and your local council. Please contact any of us in leadership roles within RPTE, the leaders of your local NAEPC-affiliated estate planning council, or NAEPC if you have questions or would like suggestions. You never know what doors might open as a result! ■

that has greatly supplemented and enhanced my professional development. As I reflect on the personal relationships developed, professional enhancement, and the opportunity to see the United States while under a tour of duty with the ABA, I could not have picked a better professional organization. Although I could have benefitted solely from RPTE’s virtual offerings from my computer screen, leaving Montana to meet colleagues in RPTE has been invaluable and well worth the time and effort. My rise to the vice-chair position has been on the shoulders of giants like Lou Mezzullo, and unto them I am indeed grateful. Using RPTE’s offerings with a NAEPC-affiliated council can go a long way to fusing vibrant *national* and *local* development and networking. It will very likely result in significant professional enhancement for you as well. ■

Tap into a Wealth of Industry Information



In addition to receiving your free bi-monthly issue of *Probate & Property*, be sure to take advantage of the practice related tips and information in RPTE publications:

The eReport

A bi-monthly electronic newsletter filled with cutting-edge real property and trust and estate articles, along with RPTE Section news and information

Real Property, Trust and Estate Law Journal

A quarterly law review journal on substantive issues facing real property and trust and estate law practitioners, including cases and current legislation

Real Property and Estate Planning Books

Discounts on hundreds of books in the ABA Web Store written by prominent lawyers practicing in these fields



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