

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



Kristin Ruth is a long-time family law attorney and former 10th District Court Wake County Judge. She represents clients in all aspects of family law, including divorce, child custody, child support, and equitable property distribution. She brings more than 23 years of courtroom and mediation experience to her practice. She is an avid writer and frequent guest speaker at national and international events on issues covering child support and ethics.

Attorney-to-Attorney | What I learned from the Untimely Death of a Client

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There are few things in life that a family law attorney has not heard or seen between clients and their significant others when it comes to secrets kept behind closed doors. As a trusted advisor, we work to safeguard and protect our clients' best interests. For most attorneys, when a family law dispute has been resolved, we close and archive the file, and then we move onto the next case, with its new set of issues and circumstances. It wasn't until the recent, unexpected passing of a client that I wondered whether our goal should also include our clients' well-being in death.

My heart shouted a resounding "yes" to that question as I sat in the church pew with other mourners, listening to the sound of the choir singing "Amazing Grace" and reading a poem in the funeral bulletin by Joey Beighley titled, "*Remember Me.*" As I shared my Kleenex pack with a stranger sitting next to me, I cried. There is no question we must prepare our family law clients for changes in life and sadly, even in death.

As family lawyers, we may not know all there is to know about Wills and Trusts, but we should do all we can to advise our clients to seek the additional legal counseling they need to ensure they will be well-informed and their family protected in the event of their death, unexpected or otherwise.

Below I have outlined a few suggestions to consider when meeting and advising your client to help ensure they are prepared for significant changes in life and in death:

1. **Initial consultation:** ask if there is a will and/or trust currently in place. Inquire when the will/trust was executed and request the names of beneficiaries. Determine if they have a living will or durable power of attorney or if they've named a guardian or trustee (if they have children). This is powerful information to bring to your client's attention, even if they do not retain your services. I have found that most clients are not necessarily thinking about such issues during an initial client-attorney consultation involving divorce or separation.
2. **When Retained:** if they do retain your services in the family law case, follow up with them regarding the information discussed during the initial consultation. Be prepared to provide them with the name of an estate planning attorney if requested. Again, it is

- important for the global resolution of the case to properly consult with your client on preparing for the unexpected;
3. Insurance Policies: if your client has insurance policies, the client will need to locate them, define if they are whole life or term life policies, outline the payment schedule, determine the cash value of the whole life policy, and identify the names of any beneficiaries;
 4. Equitable Distribution: the cash value of an insurance policy may be a significant issue in the distribution of property and/or maintaining the policy if classified as a marital asset; and
 5. Separation Agreement: in drafting a separation agreement, I include a clause titled "Advisement" with subparagraphs that acknowledge the client has been advised to 1). consider drafting a revised Last Will and Testament; 2). conduct a review of all properties, assets and benefits that involve survivorship and 3). to seek the advice of a tax professional.

Obviously, we cannot force our clients to update their wills or trusts documents, or change the names of beneficiaries, but we can draft appropriate documents reflecting their desires and facilitate follow-up conversations that point to the importance of a having a well thought-out estate plan.

The unexpected death of a client has had a profound effect on me- in more ways than one. With the closing of this file, there will be no resolution other than the memory of a client I will keep with me forever. As I write this article, my client's funeral bulletin lays before me, and while I am thankful for the discussions and conversations we shared, I long for one more opportunity with my dearly departed friend to say, "thank you," and that I will always "*Remember You.*"

***For more information on Wills, Trusts, and Estates, contact Brett Thompson at Smith Debnam Narron Drake Saintsing & Meyers, LLP (919) 250-2155

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