

Hot topics at K&G as we head into summer



Welcome Back...Really?

Karen K. Greenberg

Many of us are at the age when our children have grown, physically and in years, and yet, there is still something about their judgment that continues to make us wince. For whatever reason, blame it on the economy; blame it on changing values; blame it on...what difference does it make? Many of our children, by exhibiting what they think is “adult behavior,” land back home to the safety net of mom and/or dad, or other family members, with suitcase in hand, duffle bag, or backpack, maybe a guitar slung over one shoulder, or unfinished manuscript, with a baby on one hip. Or, standing in your threshold, perhaps pregnant, with or without the expectant father, or the expectant father with expectant mother or not. And sometimes, one or both of the partners are haunted with abuse issues that take a nasty hold. The manifestation of abuse takes refuge with: abuse of drugs, alcohol, physical, emotional, psychological, and/or sexual.

What’s a parent to do? The calm and accepting approach is to let this play out. Unfortunately, as parents, we are instinctive enablers. Enabling detracts from the main focus and concern which must be directed to our children and the children born to our children.

If the parent(s) agree, for the time being, that it is in the child’s best interests that they not parent the child, and you, as the grandparents are ready, willing and able, consider filing a Petition for Guardianship of a Minor, where the parents assent to the petition. The parents should understand that having guardianship of the child is not permanent and their parental rights will not be terminated. The Guardianship Petition may always be dismissed, if the guardian and parents of the child agree. Or by Order of the Court.

If there is no agreement, the standard for Guardianship of a Minor is that the parent(s) are unavailable or not fit to exercise their parental rights. In either circumstance, reasons must be given to support the unavailability or unfitness statement. If an extreme emergency exists, file the Petition for Guardianship of a Minor, accompanied by an Ex Parte Motion for Temporary Guardianship. The Ex Parte Motion may be allowed without notice to the parent(s), because an emergency exists and time is of the essence. This will buy some time (at best ten days) to set a plan into motion to address what is truly in the best interest of the child.

Oftentimes, when a child is born with drugs in his or her system, the Department of Children and Families (“DCF”) will appear, looking for a suitable home for the child. Grandparents, come forward! Or siblings, or aunts, uncles or cousins. What must be conveyed to the children who gave birth to the babies, is that nothing is permanent, but it is expected that they will learn, tackle issues and once solid progress is made, seek to regain custody of their child (ren).

If steps are not taken to assuage the situation, it will only put the child (ren), your child and grandchild (ren) more at risk. Here’s to all of the children in our world!! Everyone needs and deserves the best care and love on all counts for an equal playing field in this life.

If you or someone you know is in the midst of this nightmare (and it is a *nightmare*, when two irresponsible people allow a human being to come in to this world, caused by their inability to think beyond their own needs) please call or email me. I know my **K&G TEAM** can help.

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K&G – Walking you through all of life’s seasons.



One of the brands of K&G is: “No detail is too small!”

Steven S. Konowitz

Recently two very different situations crossed my desk: an executive offered a new stock option scheme; and a manufacturer concerned about the lack of contractual relationships with their distributor/sales representatives.

Both situations emphasize the need and importance of properly drafted contracts and a “total review” of their interaction with other arrangements; with the executive, what impact would the stock plan have on the executive’s employment agreement and other contracts? With the manufacturer, what types of control do they have over pricing, and, of course, performance?

As it relates to the executive, *K&G* needs to review the employment contracts and bonus plans, to have a clear understanding of the expectations of each party and how would the existing agreements be affected by the stock plan. What happens in the event of a termination? How is this stock plan impacted by termination; is there any difference between who terminates: the company or the employee?

As it relates to the manufacturer, besides the following elements: Obligations and Responsibilities – what each party needs to do under the contract; Performance – how well each party will perform; Payment Terms – detailing how payments will be made; Liabilities – how liability and responsibilities will be handled once there is a problem; Breach of Contract – what will happen if either side fails to fulfill their obligations; there should be provisions for how house accounts are to be handled; does the representative get paid for

servicing accounts in their territory; and/or are they obligated to service them; how much latitude does the representative have in the final price of the product? All too many times, I am asked to make the contract simple: I do not want to have too much ‘legalese’. There is a difference between keeping it simple and making certain it is fair to all parties. Disputes cannot always be avoided, but their likelihood and the prospect of an uncertain or negative outcome increases to the extent that proper care has not been taken at the beginning of the relationship. I have written several times: “go to the end of the movie first and read the credits!” Care must be taken about how the end of the relationship is handled.

It is in the interests of both contracting parties to maximize contractual clarity and certainty. The issue of one party seeking to take contractual advantage of the other – failure to identify and attempt to avoid unfair contractual provisions – is simply poor business practice. Due diligence at the time of formation of the contract can avoid much time and expense if there are subsequent contract disputes.

Lastly, an often-overlooked concept is to agree on confidentiality and non-disclosure provisions protecting sensitive information, as well as non-disparagement. As part of the agreement, the parties should be legally bound to hold in secrecy the information shared among them, and the party that violates this confidentiality would be held liable. Equally important is, after the relationship ends, for whatever reason, to agree not to disparage the other.

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The Lesson from Picasso Does Not Paint A Pretty Picture

Karen M. Newburg

Pablo Picasso is credited with saying, “Only put off until tomorrow what you are willing to die having left undone.” Ironically, Picasso died intestate, meaning he had no Will. When he died in 1973 at age 91, he left a large tax bill owed to France and, among his other heirs, a child born out-of-wedlock who had to fight to be legally recognized as an heir. Ultimately, it took years and a reported 19 lawyers to settle his estate.

If you, like many of us, are distracted with paying off student loan debt and your mortgage, you may not realize that you do have assets that will need to be dealt with if you become incapacitated or when you die. There are countless blog posts and newsletter articles advising people to make an estate plan. However, a 2017 survey by caring.com found that over half of Americans have no estate plan in place. An estate plan becomes even more important if you have children, as an estate plan may include not only asset distribution instructions but also guardianship and support plans for your children. Despite this, *over 70%* of those with children under the age of 18 have no estate plan. If you die without naming a guardian for your minor children, a judge will ultimately make that decision instead. The judge may not choose the person you would have selected.

Additionally, minor children cannot directly receive assets from, for example, a life insurance policy where they are named as a beneficiary (nor would you want them to!). Therefore, you should also appoint a guardian of their property. Even if your children are legally adults, they may be too young to responsibly manage the amount of money they would inherit, even if it is a relatively small amount. A million dollars is a modest amount for a life insurance policy. However, most of us would agree that giving an 18 or even 21-year-old a million dollars with no restrictions is

a mistake. Creating a trust for the benefit of your children will allow someone with more experience to help invest and manage those funds. An estate plan is also particularly important if you are in a partnership that is not recognized as a legal marriage. If you or your partner is in an accident or has a health care crisis, you want to ensure that you have the right to be involved in his or her care.

Even those who do create an estate plan often spend a lot of time thinking about their final wishes, such as who should receive their assets when they die, but do not think enough about who is going to carry out those wishes. Be mindful of family dynamics when choosing people to act as your representatives. Be sure to consider potential conflicts of interest. It may go without saying, but choose people you trust. Do not assume your wishes will be followed without being clear and explicit in your plan AND discussing your wishes with the people you appoint to carry them out.

As Picasso’s heirs discovered, legal fights over assets can get nasty. It is unfortunately common that family members spend all of the money they inherit on a legal fight and destroy relationships with other loved ones in the process. When family businesses are involved or assets are divided amongst a blended family, things can become even more complicated. An estate plan that has been carefully considered ahead of time can avoid heartache for your loved ones during a time of grief. It is admittedly not fun to think about the end of your life, especially if you are young and healthy. However, estate planning is not really about you. It is about those closest to you, who will be left to sort through the mess that occurs when a loved one dies without an adequate plan in place. The lesson here is to do as Picasso said, not as Picasso did.

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The Good Lawyer

Cynthia H. Post

Unless you are an attorney, you probably have not come across the phrase “good lawyering.”

What exactly does it mean? What is a “good” lawyer? Is it a lawyer who always wins? A lawyer who charges lower fees than others? A lawyer with an intimidating reputation? The correct answer, I would submit, is none of the above.

This term of art suggests certain professional characteristics which are not necessarily quantifiable. Good lawyers aren’t just tightly aligned with their clients; they are consistently mapping out new, and better, routes for reaching the desired outcome. Beyond any specific skill (e.g., reasoning, writing) or subject matter (e.g., contracts, domestic), good lawyers are masterful problem-solvers. No matter what transpires, clients benefit by virtue of counsel’s solid judgment, systematic thinking, and flexible mindset.

It may be surprising to hear that it’s somewhat common for clients to come to our office aware that they have a legal problem but not knowing with certainty what outcome they seek. Clients may believe that they have been wronged but may require counsel as to what would be an acceptable and cost-efficient result and, naturally, an effective strategy for obtaining it. That’s when our experience, creativity and overall enthusiasm kicks into gear. In these situations, “good lawyering” calls for even more than just attorneys with book-smarts. We must then also serve as legal counselors, educating and guiding our clients, as well as anticipating potential future conundrums.

So, what *does* good lawyering entail?

Returning phone calls and emails promptly, treating all parties, attorneys and the court respectfully, and acting as our clients’ human “Siri” by reminding them of pending deadlines and appointments. It also

means advising our clients when the law is not in their favor, keeping up with continuing professional education and training, and cultivating a network of trusted professionals in other fields such as accounting, construction and medicine to bolster and perfect our work product. Good lawyering includes foreseeing important turning points in our clients’ cases so that preparation is more than simply adequate, and resources are appropriately allocated. As the saying goes, “everyone makes mistakes;” good lawyering skills must include devising acceptable solutions to the inevitable error.

There are many “good lawyers” in Massachusetts. “Good lawyering,” though, is a rarity – and a plum.

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at K&G

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to serve you better.