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THE BRIEF
of konowitz & greenberg

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Helping our clients navigate difficult waters...

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The Reluctant Estate Plan Client

The greatest challenge I face in my estate planning practice is motivating clients to follow through with an estate plan. I have seen firsthand the financial and emotional toll on families when the proper planning is not done. Yet as much as I try to educate clients and potential clients about how proper estate planning can help them and their families, and protect the assets they have worked hard to accumulate, the fact of the matter remains that many clients continually make excuses to put decision making about an estate plan on the back burner. Or, once they commit to making an estate plan, they put those plans on hold while they struggle to name guardians for their children, trustees of their trust, beneficiaries of their estate, or choose people they trust to make health care and financial decisions in the event they become incapacitated.

We all fall prey to procrastination when it comes to making difficult decisions in our lives. No one really enjoys considering the fact that they might become incapacitated one day or that they will eventually die. But a reluctance to consider these events does not make them any less likely to impact our lives. At *Konowitz & Greenberg,* we appreciate that making an estate plan can involve some of the most important decisions we make in our lives. Regardless of the size of the estate, we strive to make the process a positive and educational experience for our clients. We sit down with our clients and help them through each step of the process; not only with their decision making, but also to ensure they understand the documents they are signing.

Estate planning is an opportunity to seize control of your own destiny. Planning your affairs now gives you the peace of mind that not only will your children be protected and provided for, your wealth will pass on to your intended beneficiaries without unnecessary delay. Having your affairs in order will also benefit your family by relieving them of burdensome decisions and administrative tasks during a very difficult time. There is no need to procrastinate any further. Give us a call!

At Konowitz and Greenberg, we believe in a proactive and preventative approach to the law. We take pride in working collaboratively as a TEAM and with an extensive network of trusted advisors to provide comprehensive, yet cost-effective, creative solutions for our individual and business clients with the legal issues they face in the following areas: corporate transactions, advising small and medium private entities; all matters relating to divorce, post divorce, alimony, support, and custody issues; adoption, contested and complex adoptions, consult to agencies on complex adoption matters; estate planning, estate and trust administration; business, civil and personal injury litigation and appeals; and real estate transactions. **Responsiveness to our clients is our priority.**

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Which Lawyers Can Be Trusted?

The longer I practice, the clearer it becomes to me that there are, in effect, two types of lawyers: ones you can trust and ones who do not know how to be trusted. In other words, can the lawyer achieve a trust-based relationship wherein he or she provides strategic advice that effectively and beneficially influences the decisions a client must make?

Trust is at the heart of every good relationship. For a lawyer, it is the central ingredient that ties them to their clients and proves they provide advice worthy of payment. But as law firms continue to merge and grow into national, regional and global-sized businesses with hundreds—if not thousands—of lawyers, it seems the traditional role of the lawyer as a trusted advisor has been eroded.

Moreover, with the advent of technology, the proliferation of legal outsource providers and cheaper alternatives to traditional legal service offerings emerging, discovering a trusted advisor is more difficult, yet important, than ever. We are all subject to being replaced by a database if data is all there is, but you cannot outsource relationships. We are infinitely far from replacing the nuances that come from discussing a difficult matter with a trusted advisor.

If lawyers are building trust-based relationships with clients, what are they doing to achieve such a respected position in the eyes of their clients? If they are not, what are they doing to prevent those relationships from developing? Becoming a trusted advisor starts with understanding that a professional's place in the world cannot be guaranteed by their expertise alone. Many attorneys operate from the mistaken belief that the scarce resource they offer their clients is expertise. In fact, the scarce resource is the relationship and expertise is best thought of as a necessary, but not a sufficient, condition.

The following distinguishing characteristics are those that reside in an attorney who is truly a trusted advisor:

- Provides more value than is asked for. If price is the true differentiator, then the client is not looking for a trusted advisor but rather a technician.
- Does not simply tell the client what they want to hear, but the good, the bad and the ugly of a situation.
- Gives advice to avoid the worst-case situation; but can also help a client understand not only what could happen but what is likely to happen.
- Puts himself or herself in the client's shoes by taking the time to understand the client's business, culture, constraints and realities.
- Acts as a business partner with well thought out advice grounded in deep expertise and best practices, and is able to put on a business hat. Too many lawyers are more concerned about their firm's best interest than in determining what is truly in the client's best interest.
- Provides quick responses to requests and explains things clearly; overcoming the adage that attorneys and strategy do not mix.
- Demonstrates a greater desire in helping than in making money by treating a valued client as a high priority.

If you would like to discuss this article, please contact me, and we can have a cup of coffee together.

Konowitz & Greenberg is a proud supporter
of The Lily Konowitz Foundation for Women's Safety.

WWW.LILYKONOWITZFOUNDATION.ORG

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Did you know…?
A Satisfied Client is Our Best Referral Source

In an interesting turn of events, I discovered that some of our clients don't realize that we value, above all other sources, their referrals of family and friends to our office. Most of our new clients come to us as referrals from our existing clients. However, recently I learned that when clients are discussing legal issues with friends and/or family, they don't feel that making a referral to their attorney is appropriate. We, on the other hand, see such referrals as the greatest compliment our clients can give us. Of course, it goes without saying that any of our clients' legal matters are held in the strictest confidence and would never be discussed with anyone. If you are satisfied with the legal services K&G has provided, we welcome your referrals!

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Giving a Voice to Those Often Silent

Last November was National Adoption Awareness Month, and Saturday, November 19th was National Adoption Day. Judges in at least six courthouses across Massachusetts cleared their dockets on November 18th to finalize the adoption of children and teens in state foster care.

While adoption is a wonderful thing, there is a voice in the adoption process that is too often silent. In Massachusetts and throughout the country, they are often referred to as the "unknown," the "unnamed," or the "of parts unknown" fathers. Many unwed fathers are never given the chance to decide whether to parent their child or participate in the adoption planning. Why is this so?

Many states, including Massachusetts, have no process of notifying the father, or expectant father, of a child's birth or potential adoption other than the mother's identification. Yet Massachusetts law states that for an unwed father to preserve his parental rights, he must take action *prior* to the termination of the mother's rights. Thus, the statute presupposes the mother has identified the father and that the father is aware of the mother's pregnancy and adoption plan. Simply put, the father must rely upon the mother to have his voice heard.

A solution to this problem is called a putative father registry. There are putative father registries in at least 34 states. Massachusetts is one of few states that does not have one. A putative father registry is a confidential database, where unwed fathers file notice of intent to claim paternity within a prescribed time. A state's putative father registry protects the right of an unwed father to receive notice of any proceedings involving paternity, termination of rights, or a pending or planned adoption of a child he may have fathered, and allows him to come forward and assert his parental rights and preserve the opportunity to parent his child.

A putative father registry also relieves the mother of having to identify the father, should she not want to for whatever reason. For example, she will not have to disclose to anyone that she does not know who the father was, or that she is in fear of her safety or that of the expected child. Moreover, with an active and well thought out putative father registry, the mother will not be in a position to circumvent the father's parental rights, intentionally or not.

Having the father involved from the beginning has many advantages for the child as well. Gone will be the fear of adoptive parents that a father may show up later and disrupt an adoption; the placement will be a permanent one. In situations where the father chooses to participate in the adoption process, more reliable medical history and notable information will be available. The need to answer the child's questions with words such as, "I don't know who your father was"; "I do not know what he looked like"; or "I do not know whether he knows you were born" will be diminished greatly.

The putative father registry does not demand that a potential father identify himself, it simply levels the playing field so an unwed father may choose to be a proud father and take an active role in making decisions for the health, welfare and best interests of his child.

All of the participants who can and want to contribute to placing children in safe, loving homes deserve a voice in the process. If you agree with this article, please share it with your State Representative. We can make a change for the better.

News from Karen

Karen Greenberg spoke at a session sponsored by the Divorce Center on child related matters including child support and custody. Attendees were individuals either contemplating or in the midst of a divorce.

Recently, and prior to its enactment, Karen Greenberg successfully argued the concepts of rehabilitative alimony, reimbursement alimony and transitional alimony part of the Act Reforming Alimony in the Commonwealth, and how each concept could be properly applied to a long term marriage, where the stay at home spouse had at least 20 more years before retirement age and possessed professional and marketable skills, which upon recertification would give her the opportunity to become economically self-sufficient.

The economic climate has made it extremely difficult for payors to meet alimony obligations. Karen Greenberg was successful in substantially reducing a payor's obligation, a highly skilled professional, who had lost his job and continued to diligently search for new employment.

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Caution: Review Contracts Carefully Before Signing

Often, when handed a contract to sign, we do not take the time to review it carefully, and possibly even discuss it with an attorney. Sometimes, the contract pertains to an emotional matter, or a matter that the individual thinks is trivial. Yet this simple step could prevent a great deal of heartache, headache and expense in the future. One should always proceed with caution before putting pen to paper.

Recently, I was working with a client who was faced with the difficult task of placing her parent into a full-time nursing home facility. She signed a lease on her parent's behalf and signed her own name as a personal guarantor, making her responsible for the payments due on the lease should her parent be unable to cover these expenses. Now some time has passed, and the client is concerned that perhaps she should not have signed the contract.

Sometimes it is possible to void a contract after it is signed. In some circumstances, for example, a person may be able to argue that they were pressured to sign by the other party, and that such pressure amounted to duress. The elements of economic duress are: "(1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternative; and (3) that said circumstances were the result of coercive acts of the opposite party." The circumstances causing the duress must have been caused by the opposite party; the mere taking advantage of financial difficulty is not duress, unless the party taking advantage contributed to or caused that financial difficulty. In short, duress, like most other defenses to a signed contract, is difficult to prove.

It is always easier to avoid unfavorable terms in a contract by reviewing and understanding them before you sign, than it is to try to avoid the contract's effects later. So, when handed a contract, put down your pen. Take a deep breath and take the time to read it. If you do not understand something in it, consider discussing it with your attorney. If you do not have an attorney already, feel free to contact the attorneys at *Konowitz & Greenberg*. We will be happy to review your contract, and to make sure that your interests are protected.

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Insurance Agent May Be Liable for Oral Misrepresentation of Insurance Coverage

The Massachusetts Supreme Judicial Court recently issued a decision in the matter of *Passatempo v. McMeninimen* affirming the potential liability of an insurance agent and insurance company for oral misrepresentations made by the agent. In that case, the plaintiff alleged, and the trial court found, that the insurance agent had misstated the benefits provided by a life insurance policy; assuring the plaintiff that the policy provided a $500,000 death benefit when, in fact, it provided only $200,000.

Despite the existence of policy statements setting forth the correct coverage amount, the Supreme Judicial Court affirmed the trial court's finding that the plaintiff had relied on the oral misrepresentation. Further, it found that it was not unreasonable as a matter of law for the plaintiff to have done so. Based on these misrepresentations, the Court affirmed a judgment against the agent for misrepresentation and for violations of Chapter 93A, the Massachusetts Consumer Protection Act, including an award of punitive damages and attorney's fees, and reinstated Chapter 93A claims against the insurer.

The decision is of obvious importance to insurance agencies and insurance companies, who must use the utmost care to fully and accurately describe the programs and policies they sell. However, the Court's rationale is equally applicable to a wide category of business-to-consumer transactions. Banks, lenders and mortgage brokers, for example, may be liable for misrepresenting loan terms, such as prepayment penalties, no matter what the signed documents say. A contractor bidding on a project who orally promises to do certain work could be liable to a homeowner for failing to do that work even if the written contract and specifications they eventually sign do not include it. In short, businesses of all types must use the utmost care to ensure that their words and deeds match.