GPSolo Podcasts – Brown Bag Series

Estate Planning and the Successful Practice
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Molly Hesse: Hello. And thank you for listening to this podcast sponsored by the ABA Solo Small Firm and General Practice Division, or GPSolo. This program, Estate Planning and (inaudible) Practice features GPSolo member Kenneth Vercammen; our moderator is GPSolo Programs Board chair, Rich Williamson. Thank you both for presenting with GPSolo.

I'll now turn things over to Rich.

Rich Williamson: Hi. Thank you for having us, and thank you for calling in. My name is Rich Williamson. I've got with me Kenneth Vercammen. Ken is an Edison, New Jersey trial attorney. He's published approximately 125 articles in national and New Jersey publications on criminal, traffic, DUI, probate, estate planning and litigation topics.

He often lectures trial lawyers at the American Bar Association and also for his state and local Bar Association, and I think you'll really enjoy his presentation today. With that, Ken, I'll turn it over to you.

Kenneth Vercammen: Thank you very much, Rich. So (I'm asked) to talk about what we call estate planning and the successful practice. And for most people, it's about making clients happy and making money, and often as attorneys, we're asked to give talks to groups, but the general public often asks as well, why do I need a will? I'm not sick. I'm married.

Well, if someone does not have a will, well, the state wherever you live has already written one for you, and the assets go to wherever the state says receives them, or to the government itself if there's no close relatives. So most
people should have a will done by an attorney, and – plus sometimes remembering if they want to give any money to a college, a high school, a charity.

But it's important to explain to the potential clients, friends, everyone you know that asks you that question. Well, number one, if you don't have a will, (inaudible) then sometimes people who don't care about you and ignore you get assets, and sometimes it's common where there could be like a – three, four kids and one is not involved at all, but then there's no will, they're entitled to an equal amount, and they don't deserve it.

There's also, in every state, if there's no will, additional expenses that have to be incurred, and additional work. So someone has to qualify as an administrator, so they have to get bonds, they have to go to court – additional court costs, additional legal fees. If there's minor children, a judge, who's a stranger, determines who gets custody of children. So sometimes a greedy brother or crazy mother-in-law could ask a court for custody.

Even the people that have – they (don't have a lot) of assets, but minor children I'll say, who don't (you want) to get your kids, because that person could apply to the court and say, oh, I want them.

And you also, by not having these kind of assets and planning, you've got to tell the client you're not being able to think about ways to reduce estate tax, inheritance tax, or any other kind of tax. And the procedure makes it become much more complicated, but the most important thing is there's always fights and arguments when someone does not have this – someone wants to be in charge, no, I want to be in charge.

So for – you want to explain to clients about the doing of planning, and you ask the clients, OK, who is not the best choice to raise your kids or safeguard your kids’ money for college? Do you want your children, your grandchildren to get the money when they turn 18?

Remember, 18 year olds do not invest money wisely. They blow the money and go to parties. So in the days of the internet, attorneys should have some
type of interview (form) and if anyone e-mails me I've got – our interview forms on our website that they can use.

But we e-mail them the interview form and also a will appointment letter. Now New Jersey itself did away with the estate tax, so we don't ask a lot of questions regarding assets because they – for many people they have direct beneficiaries already on many of the assets, but that's an important question to ask because a will cannot change who someone has as a direct beneficiary.

Let's say if someone has someone (joined) on a bank account, that person gets a direct. We do recommend people bring in a copy of the deed so we can make sure it is properly recorded. And we have also – when we e-mail out our will questionnaire nowadays, we say listen, please type up your responses and e-mail back.

This way the people take the time to do it, and also we can cut and paste the document in to our – or their information right in to our documents, so we are not retyping people's names all the time. And it's been a great system because nowadays if someone says someone's name was spelled wrong, I go, well you spelled it wrong when you sent it to us.

So, one of the questions that you want to ask in your questionnaire, well obviously name, address, cell phone numbers, it's also important to know who referred the person – this way we can – or you can send a thank you for referral letter or e-mail to whoever was the referral source.

Let's see – now, let's say everyone gets calls all the time who does this kind of work, I need to get power of attorney over mom, dad or Uncle Joe, I (go) well, you can't get power of attorney over anyone, they have to affirmatively do it. Now in the questionnaire you want to have a line – we recommend a power of attorney, we recommend a living will and we'll address the living will.

(For example) the Terri Schiavo case, Karen Ann Quinlan case – but asking that question in writing is important because we've had people that – family members say, we can't find mom or dad's power of attorney, and I'd pull up a file and I see, oh they didn't want to pay to have one – we recommended it, but this way you have it in writing.
Now RPC 1.7 talks about conflicts of interest, now, what's the conflict of interest? Well the only person who should be in the room when the attorney is meeting with someone is the potential client. Maybe some people are elderly, they have trouble walking – we have – the family member can bring them in to the room, but then we go hey, you go and sit outside.

(Let's say), they're sitting outside, I told – that's for your benefit, because you don't want to go reasons for someone to challenge the will. So on your questionnaire you want to ask who is executor one, who is executor two? And you want to put right in the form, we do not recommend joint executors. (Let's say) that causes conflicts and additional work for the estate.

There is a reason why there is only one governor at a time, and then the deputy governor – only one president and a vice president. There's never a co, because if there's a dispute the only person that can decide that dispute is a judge. And even if they – even if they were twins and living together, you don't want to have joint executors because you're giving – that means that two people have to sign every check, two people have to do everything. And most family members, they trust their kids.

Now, I mention – and this is something important. There are many assets that pass not by the will but by title. So for example, if a house is owned husband and wife, goes to the survivor. Bank accounts, payable upon death goes to whomever. Other assets pass by contract. IRA, 401(k), life insurance annuity, certain pension plans, whoever the person (sets down).

So you want to recommend your clients listen – say listen, get a – go to the company, get a print out of who is beneficiary one, who is beneficiary two because – and you want to have the people keep that with their will file because never assume. I was married for 10, 15 years and it turned out one of my life insurance policies was still payable to my dad and not my wife.

So although I don't have a detailed questionnaire anymore on assets for people that have less than a few million dollars, it's still important to know, OK, if you own any real estate let's say and if there's real estate, where is your real estate located because if someone owns real estate in two different states, then
each state where someone has real estate or assets, there has to be a – the probate process has to be done called ancillary probate.

And now, New Jersey itself is a probate easy state, so when people ask us about having trust, I go why do you want to spend $3,000, $4,000? A $500 will handle most your things. However, if someone has assets in New York, California, Florida, those are probate difficult states. So in those states, wills are important, but doing a trust is also better so you don't have to go through the whole process.

Now, in your questionnaire you want – you want to ask the main question. OK, who's getting the stuff? Beneficiary one and then beneficiary two, beneficiary three. And every document should have more or less and explanation. OK, if that person passes, who gets their share? If both of them pass, who gets the share?

Let's say in the typical American family where there's – someone's married, everything's typically going – and first marriage, of course – everything's going to spouse then to children then to grandchildren. If there's no grandchildren – no children for that person, it goes to surviving kids. But we more and more we have to factor in where it's the second marriage situation, and it's common where the second marriage people come in and they fill out your questionnaire.

And they'll say, OK, everything's going to me new wife, but then after the second person passes, it gets divided equally amongst the two families. That is – that is horrible planning. That's not planning at all. And people ask why. He goes, well because after you die your new spouse could do a new will and their new spouse will get everything.

So everything should be spelled out and clear. Your questionnaire should also ask about specific bequests of money or property. So and it has to be typically in the four corners of the will. So even if it's like Mother's Day or someone's birthday and mom is videotaped saying, hey, I want all my jewelry to go to my granddaughter, not only does the executor not have to follow what was videotaped, typically the executor is not allowed to follow. The executor has
to follow what is on in the will, and if it doesn't say that granddaughter's going to get stuff, then she doesn't get it.

Now, the mom would say, well, all my kids will agree. No, they won't because after you pass there's issues. Some people leave money to charity, specific amounts to family members, let's see, and that should be in the document. Plus if it's an entity, there should always be an explanation if that entity ceases to exists because sometimes charities close down or merge, so it should – you want them as easy as possible to be specific.

Now, we also have what I sometimes call as the reverse specific bequest. That is I make no bequest to X person and we don't give him a dollar. We don't give a reason. Just nothing to them. We don't want – we don't put down a reason because we don't want to have anything where someone has the ability to challenge it.

And at a recent seminar, old lady asked like do I have to treat all my kids equally? He goes, no. You do what you want. She goes why? He goes, well, one of my – one of my sons we don't hear from much, so you ask well on Christmas do you get a card or call? No. On your birthday, did you get a card or a call? No. On Mother's Day, did you get a card or a call? No. So the question's well why should that person get anything at all because they have not been involved with your life. Now, if there's minor children, you want to have not a standalone trust but a trust within the will where no one – number one, no one under 18 should get any money. You know, they can – an amount could be 21 or more. So when people have minor children, it's a good idea to say 22, 25, and 30, but the executor can give as much money as they deem appropriate to pay for expenses, to pay for college, to pay for grad school, to pay for private high school.

On the other hand, their money's being protected because if the kid says, you know what? College isn't for me and I want to take a balloon trip across Europe with eight of my friends and I need $100,000, the executor can say no.
Now also sometimes we set up trusts within the will for the – they call it the difficult kid or the problem kid. Some – and again, sometimes they're not kids. They're 30, 40, 50-years old, but they have – they have substance abuse problems, alcohol problems, financial problems. So instead of giving them the money outright, a trust is set up within the will.

People that have children with special needs are typically smart and they don't want their special needs kids to get assets, so they'll set up a special needs trust, but it's important to explain to the people that have troubled kids. He goes, hey listen. If this kids gets – someone's an alcoholic, if they get – an alcoholic get's $100, they'll buy $100 worth of booze. They get $1,000, they'll spend it on booze and give it away. More so you typically will do a spend through trust that way the money's protected from creditors, it's protected from taxes, and it's protected from evildoers that try to influence people because people are influenced by others.

Your questionnaire should ask, OK, who's going to be trustee number one to hold the money? Who's going to be trustee number two if that person can't get it? And think in the distance. OK, is that person going to be around in 10, 20 years? If someone's 80-years old, that's not a good person to be the trustee.

And well, it's the same thing. Can they do the job? Our rule of job for executors, trustees, and guardians are can they drive – first of all, can they drive to the courthouse and walk up four steps? If someone's 80-years old and can't walk up steps or drive, they may not be the right person.

Now guardian's the person that becomes the guardian of any minor kids, and you want to ask the clients, OK – and it's very difficult for people to decide it. They say, oh, it's so difficult. I can't decide. He goes, OK, let me ask you a question. OK. Who don't you want? Where we're talking private in the room, OK, if something happened to you today, who would you want to watch your kids for the next week? (inaudible) I guess my – I guess my mom.

OK, that's the person. They'll say, well, that person's getting a little older. He goes, yes, but that's the person now, and you can't predict if something's going to happen to you next week or a year from now or 20 years from now.
So you get – you get the questionnaire, you meet with the people, you answer their questions. And (each) – the different sections of your questionnaire, shall we say, what questions do you have – what questions do you have this way, you're getting to what the client wants.

Now, the other important thing is, when you meet with a client, you want to give them something in writing right when you're there saying, OK, this is what the fee is going to be, or I need – I need some money up front. So, our office in New Jersey, we have a will bill, and I looked at – we have – there's different kinds of wills that we do in our office and I'll tell them based up on the type of will what the cost is going to be.

So, one type of will is where it's parents with minor children and trust for the children. Or it could be like a parents (without) minor children going to the kids. Sometimes parents no spouse going to the kids, sometimes like we have wills where we're not leaving the money outright to the spouse, but we're putting the money into a trust that will benefit a spouse. We do that if a state has high or a very low estate tax amount. Some – we often do that for second marriage situations, so that spouse isn't getting the money outright, but it's held by a trust or person to make sure the person's bills are paid.

But the good thing with a trust for the spouse within the will, it is protected from Medicaid if that person has to go into nursing home, and then you need to develop the catch-all will like a – if it doesn't fit, so we just all it unmarried and we have to cut and paste from other documents.

So, you give them the will bill and you want to get paid up front. If you don't get paid then – up front, then the – sometimes there's no incentive for them to come back. So, you don't start doing the work until you have gotten money. That's the important thing.

And you're will bill typically will say, OK, this is what we're going to charge for each will, times two. If we're going to do a power of attorney, this is what we're going to charge times two.
A living will, this is what we charge times two, and then you want to put, please make checks payable to X or provide a credit card. And you give it to them, and he goes, OK, please go to the front desk and pay now.

And they say, can we pay on the day of the signing, the answer is typically no. I'll say, you pay when you go to a restaurant, you pay when you pick up – when you're ordering a car. So, you want the people to be able to pay you now and then you open up a file.

Now, we are in an electronic age, but it is better to send everyone, once you do the documents, hard copies of every document, not by e-mail. The reason why is because, A, it costs a little bit more, but when you mail out documents the people are more likely to read them thoroughly.

Well, we found when we were e-mailing documents they were waiting till about five minutes before the will signing and they're looking at their iPhone in our reception area and then saying, oh, I just noticed that there is a – I – someone's name is spelled incorrectly.

So, you want to mail out hard copies. Now, if there's changes, then we will e-mail the changes to the people and then we will say to them, print this out and then bring it to the – bring it to the signing. But, as I said, you're not getting – you're not getting paid, then there's not – there's no reason to continue – to continue working.

Now, you also want to develop a will draft letter to give people more instructions when you're mailing things out. So, for example, your will draft letter should say, hey, let's see, if there's any changes to what you previously gave us, we're going to charge you something.

Our office charges $75 for each additional change, because – and we put that in our will original questionnaire. And we also make sure that we, again, advise the clients in writing prior to the signing that the will can't change assets that have direct beneficiaries, the bank accounts, 401(k), et cetera. And we also want to make sure that ...

Rich Williamson: Ken, do you ...
Kenneth Vercammen: ... go ahead.

Rich Williamson: ... on the – I'm sorry to interrupt, but just a question. So, I guess on those, that transfer on death beneficiary designations, do you reference them in the will at all, once you know what's been told to the respective financial institution, or do you then (inaudible) reference?

Kenneth Vercammen: Nowadays, I – unless someone is getting specifically, Rich, we don't put any assets in the will at all. And the clients goes, why not? He goes, tell me what you're going to own on your day. On your last day and the answer's, I don't know.

And I also say, I – we don't want to put down who's getting what because you can make changes to that. And so, you could have well one – you could have a child or someone as a beneficiary on an account and then there's a falling out, and he goes, you have a right to change that.

Rich Williamson: That makes sense.

Kenneth Vercammen: OK, now sometimes people can – everyone's always going to get a call, OK, when can – when can you – sometimes the kids – well mom can't come in, she's at whatever facility. Well, listen you want to help people out, let's say, but you want to have like a form and there's a short certification that (Tom Bagely) of New Jersey like lets people use, doctor signs assured certification.

I am Dr. X, the patient is this, their date of birth, I'm not related to this person and I feel that they are competent to sign, and they can check – the doctor can check off. Will, check off power of attorney, check living will, check off trust, check off deed, and this way the attorney is – doesn't have figure out, is the person competent or not.

But here's something also important, before you go out to visit someone, because the signing is usually you meet with them before you decide if you're going to do, because you don't want to do anything to jeopardize your
licensing, jeopardize your career, but I want a note from a doctor and I want a – I want to talk to them first over the phone.

And because I remember it, when I was a young lawyer 30 years ago, fellow calls up and he say, oh, my dad wants a new will and he wants to sign the house over to me. And you open up your own office, you're happy to get any kind of work. So, and I remember this.

It was the first nice day of spring and I drive to the house and the son was waiting in front because he doesn't live with his father, and he brings me into the living room and the dad's watching TV, and the son goes, dad, this is an attorney and he's going to explain to you why you should sign the house over to me.

And the old man looks up and he goes, who? And the son has to talk louder because the TVs on and dad can't – Dad, this is an attorney and he's going to explain why you should sign the house over to me. And the old man looks up and he goes, I'm not going to sign the house over to you, you'll sell it and kick me out.

And that's when I realized the son had never told the old man he was bringing me over and didn't tell me that he wanted me to be part of the – of the shenanigans. So, that is why we all – I want to – (inaudible) we prefer the fill it out in their own hands in case there's an issue and also if there is any – I might want to talk to them over the phone ahead of time so that, hey, if there's an issue, I have – I have all these things within – in our file. And the most important thing for people doing this, if it smells, don't do it. Don't do it.

Now, more and more we see people, let's use the word cheaping out – cheaping out. And they go, oh, I can – I can get a cheap – a cheap form online, I don't need to hire an attorney to do – to do anything and you want to explain to people, listen, let's say cheap things ain't good and good things ain't cheap, that's what Zig Ziglar said.

But the whole idea is that the best fudge shop in Atlantic City, New Jersey, doesn't have a sign that says, cheap fudge. Their sign says, we have the best fudge. And the downside of these people – these people cheaping out using
cheap forms online, the country surrogate often will reject it because it was not signed right, let's say it wasn't properly signed, there wasn't enough witnesses.

So now only an original will can be made to probate but you want to explain to people, listen, when you have an attorney do the documents in addition to having the attorney probably do it right, you have two or three independent witnesses to say listen, there was no one else in the room, it was done perfectly.

Now a lady called our office, she's involved with some kind of litigation and she says – it turns out she says she's the executor but there's a complaint to have her removed and throw out the will. I ask the question, OK, who did the will? Who typed up the will? Well, my uncle was competent. No, no lady. Who typed up the will, an attorney or who? She goes, I did. Well, that's what makes it bad to start with because you typed it yourself. So also, forget about the fact that these companies online say valid in every state. A lot of times they don't put stuff in that's needed. So many states require a bond unless the will says the word, "no bond required." Many states have set up where someone is what's called a funeral agent to have authorization to run the funeral. Well, these cheap forms online don't talk about funeral agents and one size. It's foolish to try to do your own electrical work or your own plumbing work. Older attorneys remember when they were younger changing their own oil but no one would do that now.

On the day of the signing, I would say – oh and by the way it's a good idea to call all the clients ahead of time. I like to call my hands free iPhone while I'm driving because when I'm in the car I got all the time in the world. This way I can say, did you have any – did you read it yes or no? Yes. OK.

Do you have any questions because while I'm driving I got hours of travel time because I say listen, when you're coming to sign you're not going to be signing in front of the attorney, you're going to be signing in front of the notary and like some of the staff people because a lot of times I'm in court; I don't need to be there.
The only thing the attorney has to do is only the attorney can give legal advice and only the attorney can go to court and you like to be there at the signing but there's so many things that – other things you can do to make money. On the day of signing it's important to ask the people, OK, let's see the staff has a question. Did you read it?

Does it contain what you want? Do you have I.D. to prove who you are and we just scribble down they showed a driver license, library card, whatever, and no one should be in the room, none of the family members should be in the room. We do let family members be in the room when they sign the living will and we'll get into the living will toward the end of the presentation. The different states have different inheritance taxes, different estate taxes but for federal for the year 2020, it's 11.58 million.

So that's almost $1.6 million – I mean $11.6 million not so many people are wondering into your office doing – have that kind of stuff. You hope they are but when they have that kind of stuff then sometimes it's important to bring in an attorney that has a tax background because if you do it and just do a basic will and there's a big tax then sometimes you're looking at angry beneficiaries and a possible malpractice type matter.

Now I mentioned only the original will can be made to probate. It's – we give the people – the original to take home and then while people are now sitting in our office. I used to have one of our staff people do a (inaudible) letter but if I'm the one doing the will signing, doing the post-will letter on my computer, that takes me two minutes while I'm talking to someone. Cutting and pasting their address and then I can physically hand it to them. Hey read this, this gives you some instructions for the future and then while I'm sitting with them, I'll email it to them. That way it's both emailed and handed to someone.

Now what's important about a post-will letter. I'd say well, the post-will letter number one, you're thanking the client for coming in. You're giving them some instructions. Number one, it should say only the original can be admitted to probate. You should make sure that it is accessible to executor one and executor two. Sometimes you say if you want to give copies to all your children that's up to them but the letter should say we don't discuss this with
any family members as long as you are around or it the person that you have put on your power of attorney to be able to discuss things.

You want to remind them in your post-will letter that every five years take out your documents and look to see are there any changes. Can the executor still do the job? Is it still the people you want? For example, in the power of attorney, we recommend that someone sign a new one every five years because a lot of banks and institutions give people a hard time and it's also common where one of the people's addresses change and the bank may say or Wells Fargo, whatever, Merrill Lynch, well there's a different address so how do we know it's the same person?

Now on the marketing end, let's say the post-will letter also says, listen we welcome additional business for and other things your law office may do. We even put and we accept referrals for personal injury, car accidents, fall downs, we haven't done those cases in a decade but we want to make sure the people come to us first and that way you can refer the case out. And you also ask for like if someone will write a nice review on Google or write a review on Facebook or (Ava) or those other things which is good on the emailing portion.

So that's the big part about the wills. The wills take care of assets if someone passes away. I'd say well, what if someone becomes disabled? That's why you want to recommend that people have a durable power of attorney.

I'd say explain to the clients that power of attorney is either effective right away or only upon disability and also remind them don't use cheap forms online because it might not have state-specific things but if the power of attorney doesn't have gift-giving powers then gift-giving is not permitted and sometimes you want to have gift-giving powers to do estate planning if someone has to go into a nursing home and all of a sudden you want to transfer assets out.

Now explain to the clients that power of attorney is either effective right away, or only upon disability. And also remind them don't use cheap forms online because it may not have state specific things.
But if the power of attorney doesn't have gift giving powers, then gift giving is not permitted. Sometimes you want to have gift giving powers to do estate planning, if someone has to go in to a nursing home and all of a sudden you want to transfer assets out.

Let see now, the power of attorney is effective either right away or only upon disability, so it's effective right away, it stays effective – that's durable power of attorney. If it's effective only upon disability that is a springing power of attorney – it means it springs in to effect only if someone becomes disabled.

So theoretically someone will say to you, well I don't understand this legal mumbo jumbo of springing and durable, a person will say I'm a carpenter, explain to me in carpenters terms – OK, that's easy.

If it's effective right away the person (can steal) all your money right away, if it's effective only upon disability they have to get a note – a certification of a doctor saying you're disabled before they (steal) your money.

So the question then is to the client, do you trust your son or your daughter who you picked? And they'll usually say I trust them – I trust them with the world. OK, then make it effective right away.

An important point people should remember, and you explain to your clients – let's say nothing lasts forever and there's more and more people separating in divorces. If someone separates they should go out and get new documents done because if power of attorney was signed by one of the two spouses then legally it – just because someone separated it's still in effect and that person can go in and basically clean out accounts, even if it was in the other person's name.

So if people are separated, divorced – good idea to move documents and have letters sent to the institute – prior institutions. The – any of the power of attorney that was signed on May 1, 2015 is null and void, new power of attorney was signed. This person is no longer on the account for the power of attorney and nothing should be honored.
Now most states have clauses that say if someone gets divorced the spouse is no longer in the will, even if there was no will – but people should just get new documents. Part of moving on is getting stuff done – getting stuff done right.

People make plans – big, big plans on going on vacation for four days, or for Easter, for like Memorial Day but they don't do enough planning for the most important thing which is their family, kids, et cetera.

We've never had anyone after doing the documents say, oh I wish I didn't do that. Everyone's like, wow I'm glad I finally came in and did that – I've been putting this off for so many years.

I had a buddy of mine from high school, (Oakie), and whenever I used to run in to (Oakie), (Oakie) would say, oh yes, (Annie) and I got to come in and do the will – we've got to come and do the will.

Well this guy worked for Morgan Stanley in the World Trade Center. Let's see, the day after 9/11 my office gets a call and there's a message. It's (Oakie), I think I should come and get that will done. I go, and I call him up and go, hey I'm glad you made it out of there, yes you should get the will done – I'll see you Thursday.

And then (Oakie) goes, well I'm kind of busy. I go, busy doing what, terrorists blow up your building, you have nowhere to go. I go, so I'll see you Thursday, stop putting this stuff off. And you do a – and part of it, if you want a client, get them in – people need encouragement.

Another one of my Elk (brethren) whenever I ran in to this guy, oh yes, (I know I've got to come and do the will) – this goes on for three years, once a month. Finally I said listen, I go, I'm not talking to you ever again until you come in and do your document because this has been the – the monthly thing. Yes, I should do it – I should do it. OK, good, let's get it done.

Now oftentimes your phone rings and people will say, (inaudible) and you want the phone to ring because you're making money, but a lot of times people ask how much? Well, you don't want to waste your time on someone
who wants a $75 will, so my office will say it really depends upon how much work, but they'll just usually say listen the minimum cost is, $400 but oftentimes it's more depending upon how much work.

Well, if someone doesn't want to pay $400 let's not waste your time having them come in. Let's say people calling always have questions, well that's what we do as attorneys, we answer questions, we solve problems – but they've got to come in and do it.

We don't do – I don't talk to – we don't talk to (inaudible) as an attorney, I don't talk to people over the phone. Let's say if they want a free consult we (inaudible), we charge $200 for the consult. But we use – they pay – that money will go towards, for the will. We want to get rid of tire kickers.

However for attorneys it is a good idea if you start before the interview, it's a good idea – you've e-mailed the will questioner, we try to e-mail you twice because sometimes people claim that they didn't get it but it's really in their spam filter.

(I maybe) call people up while I'm driving around, say hey listen, we sent you the will questionnaire please fill it out, if you can type it out and e-mail back to the office. If they have a simple question while I'm driving, listen, I'll try to answer that. But you want to make people comfortable and have them refer other people.

Now referrals also, (a lot of) your clients coming in are seniors – do not make the seniors wait. They are on military time. If their appointment is for 11:00 and it's 11:01, they think that they're already waiting a minute too long before they're sitting in your office so try to bring them in. It's a good idea to create little brochures.

You can do that on your computer and that way the seniors like stuff to read. They're from the reading generation, you get the morning newspaper. It's important – it's better not to do the document than to do the document and be involved with a will contest where it smells and in New Jersey an attorney – they got suspended.
You know it smelled, they did it. So beware of conflicts of interest. Beware of undue influence, duress. My office does not do Medicaid. We have it in our will questionnaire. We have it in our letter. So down the road if someone says oh you should have done Medicaid planning, he goes we made it clear. We do not do work on that kind of work.

I'll also – I'm not sure if I made it clear in the presentation but we schedule the appointment while the people are sitting right in front of us. I say, OK, take out your schedule just like the dentist. You never leave the dentist office without scheduling the next appointment and we try to make it for three or four weeks in the future.

We also do some legal plan work but with the legal plan people, because they're not paying for it. We usually say listen, your appointment is four weeks from today. We're going to mail you the document. If you can't come in that day, no problem, you can sign on the weekend in front of two witnesses or a notary but that is our – that is our policy.

So some people want to think about stuff. OK, listen, I'd say it's not a good idea. That's why we said ahead of time they should fill out their forms but someone wants to think about it, my office will try to follow up and then send – finally send a letter saying listen, you did not – we recommend you get a will done. You didn't come in so we're not keeping any of your paperwork in the office.

I mentioned people that can't come in. You know you want to be nice but talking to people ahead of time. Sometimes you find out stuff that you wouldn't do. You get a call from (Johnny). (Johnny) says oh mom wants to sign the house over to me.

OK, but she can't come in because she is sick, you know with illness. OK, no problem, they get a note from a doctor, but you will want to talk to mom because you're talking and you ask mom how you doing? Well, she goes, my health isn't that good. Then you ask mom what do you want to do? Well, I want to turn the house over to (Johnnie). Well, a lot of attorneys not thinking OK good I just made a quick fee on doing a deed and
all the other documents. But you want to ask the next question. OK, Mrs. B, how many kids you got?

Mrs. B says I got three kids. Well you understand if you sign the house over to (Johnnie) the other kids really don't get anything because your biggest asset is your house. Is that really what you want? Mrs. B says, typically, oh no I want all my children treated equally. Well, that's what I thought Mrs. B. Let's, you should not sign the house over to (Johnnie). You can put the house into a trust. Putting the house into a trust is better than signing the house over to three kids because if one of the kids dies their wife gets that house. It's better for them to spend that money putting into a trust.

Last thing that I want to talk briefly on the living willing issue is. Laws change and we have the HIPAA Law coming a couple years ago. The Health Information Privacy Protection Act where doctors could not discuss anything with anyone, no disclosure of medical information, medical records. So we update our Powers of Attorney to add any HIPAA Authorization. And plus as a business person it's a selling point.

That why should I have this, well this way if something happens you could talk to doctors. We, it's a good idea to do a Powers of Attorney for people that have kids that turn 18 and go off to college. Once they're 18 the parents have no access and a lot of times when you want to have access to the kids stuff when they're 18, 19 because 18, 19 year olds do dumb stuff. Don't ever, they could be the smartest kid in their school but when it comes to money they get influenced.

OK. Now the last document, as attorneys we want to talk about preparing is the living will Advance Directive. Because modern medicine has made it so that people can be kept alive pass where they'll ever regain consciousness. So everyone remembers that Karen Ann Quinlan case. The first case in 2005 or so that Terri Schiavo case. The Terri Schiavo case is where the lady's in the hospital, she's like, doctors say she's brain dead but she had no living will and her husband has to go to court and file a petition asking that life support be removed.
And then was challenged by Terri Schiavo's parents saying there's always hope. The lord's going to save her. We were talking to her in the hospital and we saw her eyes moved. And we know that she can hear us and the doctor said no, no, no that's involuntary twitches that happen all the time. But they went all the way to the Supreme Court and the Supreme Court basically said go back for more fact finding.

So, a living will is important. Because it's not the document for the person's in the hospital. It's really the document to take the stress off the family member. Because you don't want, the family member doesn't want to have to be the person where the doctor says OK should today be the day? Meaning should we remove life support today. Because you feel bad, you know what the right decision is for someone who is 92 years old but you hate to be the one to say OK let's stop the life support right now. You feel bad.

So, now, in the Living, most living wills have sections, varies from state to state, but many states the first section fluids and nutritions to be provided or withheld. And I tell people listen 80 percent of the people usually say nowadays if there's no hope withheld then this section dealing with artificial machines and 99 percent of people say, hey if there's no hope for someone then let's stop it let's not keep going further, further, further, further, further, further. And your living will probably should have a clause saying organ donation yes, organ donation no. And we always try to recommend that people have organ donations

Again, the original will goes to the client, original Power of Attorney to the client, original everything goes to the client. A photocopy can be (admitted) to Probate. A photocopy of a Power of Attorney and living will is usually acceptable. Rich, how much more time do we have, by the way?

Rich Williamson: Just a couple minutes if you, I've got a couple questions for you. But if you want to wrap up that would be perfect.

Kenneth Vercammen: Yes. So, now, let me have two minutes on the making money portion of this. You're end of case questionnaire, I mean you post well questionnaire
says we're available for other things. That way they'll, you want to be the go to person and you can refer it out.

We sometimes send out a client questionnaire asking people how they, if they were happy or not. In our practice if someone refers something to us, I, we send an old fashion fax to the Attorney rather than email so that it gets, it's a paper, it gets first to the staff person with our name. And then to the attorney. Sometimes though with different matters I'll take a pen and write down did not come it or didn't want to spend money on quality service.

However, if we refer out to someone else, we have either a fax or an email that says OK we refer this person, I prefer to fax only because I can have my staff people do it quickly. But I learned something from (Jay Fulmberg), the legendary law practice management speaker. (Inaudible) a fax, you fax it out the name of the person and sometimes you can attach notes if the person wants to call and then it says please contact us back, let us know if anything happened.

After a week if we don't get a response we stamp it second request, fax it out. If after two faxes we don't get a response I take a Sharpie and I write on that referral out to other attorney I guess you're too busy to accept new cases. I won't refer anything to you further.

Because, hey, if they're blowing you off as the attorney, they're probably blowing off the client and that makes you look bad. If someone doesn't, one of you clients doesn't have a will you want to develop letters to send to them reminding them to get the will. And we deal in email newsletter twice a month. So we do seminars for senior centers, libraries and a lot of times it's remind, remind, remind, remind people. We don't spend a lot of money, we gave up on the expensive website profiles because hey Facebook is free, Google is free, YouTube is free, why am I spending money on these expensive (ones).

And I'd say we have two different websites, one is called Central Jersey Elder Law. Because our original website was NJLaws.com, which we bought in 1995. But, then someone said well that's a general website you should have
something specific on what you do. So we created Central Jersey Elder Law and then a second one NewJerseyWillsProbate.com. And remember dot com is the Cadillac. You don't want to info or those other one.

And with that, Rich, what questions you got?

Rich Williamson: Sure. Just a couple. Now, Ken, you mentioned that you may want to get a doctor's note or doctor's evaluation when someone can't come in. Are there any other circumstances where maybe the attorney wants to get some sort of a medical evaluation of someone before they do anything, whether it's a will or a living will or a power of attorney?

Kenneth Vercammen: Well, (let's see). Some it's when they can't – if someone – there was another attorney, (I guess), that this little lady goes sometimes they ask a lot of questions on making sure you're OK. But he goes – the lady goes, you're 90 years old. You drove here by yourself and you walked up two flights of steps to get to me, (you're competent).

So I mean don't do anything to jeopardize your career. If – and we also – we ask the question when someone – and when someone comes in, did you read it. If the answer is no, then as we say like depending upon their age or their condition there are many times we've said that we're not signing it today, we're coming back another day.

(Let's say), little lady was brought in by the mom and – I mean by the daughter and she said no. And then (like they say) OK, we're going to – we're rescheduling this for in a week. And the daughter then, two minutes. Oh, she misunderstood. She did it read it.

(He goes) – and we said, no, no. We know what we heard. She said to us she didn't read it and I'm not going to sign it. If I have to refund someone's money that – that's fine. But it's better not to do it than be caught up in something.

And again, I'm not going to judge competency. That's the doctor's job. If the doctor is not willing to prepare to (sign) – to just check off a box, put their name and sign saying someone's competent, I'm not making that call. See, I'm not – I'm not a doctor. Let's ...
Rich Williamson: Absolutely.

Kenneth Vercammen: Let it – and sometimes someone will say well, can you – can you recommend someone. He goes what, recommend one of my friends so they can get in trouble. No.

(Inaudible) someone who says they're going to lie to the judge and their DWI. Well, you're not going to lie if I'm there. Well, can you recommend someone. What, one of my friends to be disbarred. No that's OK.

Rich Williamson: OK.

Kenneth Vercammen: Other question.

Rich Williamson: Sure. How about any – I guess for somebody starting out whether as a new practice area or a new attorney, and of course there's plenty of COE or – and everyone's got COE requirements but is there any, I guess, particular training or education or any particular kind of CEO type courses that you think are more or less helpful for someone just starting out over here?

Kenneth Vercammen: (Inaudible). Our – you only get to talk about it at the end but our session has a book with forms, wills, and a state administration. So for less than I think 70 bucks, you can have most of the forms you would need.

But I want – there are – there are YouTube programs and usually you want to like filter it by more than 20 minutes and then you can filter it within the past two years. But you know different law offices or institutions have – have online CLE. That is – that is free.

And when – if I get into my office early in the morning while I'm doing my busy work, I'm putting in like – I'm – listen to YouTube videos on preparation of documents, YouTube videos on trust because I don't do a lot of trust work.

But it's – it is – there's free stuff on YouTube. You just want to have the ones that are more than 20 minutes – 20 minutes long so it's not just – the ones that are shorter are usually just an infomercial on hire us.
Rich Williamson: Got it. No that's helpful. OK. Well, I think we are – we're just about out of time. Ken, really thank you so much for the great insight and advice to folks looking to get more involved in state planning and administration.

As Ken mentioned, for those of you listening at home or at your office, please be sure to check out Ken's book, "Wills and Estate Administration." It's available for purchase through the GPSolo website.

And of course we do have new podcasts released every month. Just be sure to check them all out on the ABA GPSolo website. So with that, thank – again, thank you to our presenter, Ken Vercammen. And thank you all for listening in.

Kenneth Vercammen: Thank you.