

# HECKERLING REPORTS: 2010

## 2010 Heckerling Report

### Introduction, Part II

As we have done in January for the last thirteen years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting daily Reports to this list containing highlights of the proceedings of the 44th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 25-29, 2010 at the Orlando World Center Marriott Resort and Convention Center in Orlando, Florida, a new venue for the Institute starting in 2007. A complete listing of the proceedings and speakers will be published here later and is also available on the Institute's Web site at <http://www.law.miami.edu/heckerling>.

Our on-site local reporters who will be present in Orlando this year are Gene Zuspann Esq. of Zuspann & Zuspann in Denver, Colorado; Joanne Hindel Esq. of Fifth Third Bank in Cleveland, Ohio; Kimon Karas Esq. of McCarthy, Lebit, Crystal and Liffman Co. LPA in Cleveland, Ohio; Bruce Stone Esq. of Goldman, Felcoski & Stone PA in Coral Gables, Florida; Craig Dreyer Esq., Attorney At Law, in Stuart, Florida; Carol Sobczak (Hood) Esq. of The Law Offices of Carol A. Sobczak in St. Helena, California; Mike Stiff Esq. of Stiff & Associates LLC, in Denver, Colorado; Herb Braverman Esq., Attorney At Law, in Orange Village, Ohio; John Warnick Esq. of Family Wealth Transitions & Solutions in Denver, Colorado; and Paul Hood Jr. Esq. of L. Paul Hood Jr. (APLC) in Alexandria, LA. The editor again this year will be Joseph G. Hodges Jr. Esq, a solo practitioner in Denver, Colorado, who also is the Chief Moderator of the ABA-PTL List.

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In Introduction Part I we summarized the Scope of the Institute, introduced the Faculty for 2008, and listed the Institute's Director and the members of the Advisory Committee.

In this Introduction Part II we are listing the Substantive Program Schedule and Highlights so everyone will know what sessions will be presented next week and when and approximately when the various Reports on the same can be expected to appear on the ABA-PTL discussion list.

## 2010 HECKERLING SUBSTANTIVE PROGRAM SCHEDULE AND HIGHLIGHTS:

### Monday, January 25, 2010

7:00 - 9:00 Registration

### 9:00 - 10:30 PRE-CONFERENCE FUNDAMENTALS PROGRAM

10:45 - 12:15 **Getting Off to the Right Start: Choosing the Right Entity and the Right Agreements**  
Louis A. Mezzullo

This presentation will cover choosing the right entity and buy-sell agreements for the closely-held business and will include a discussion of both tax and non-tax issues. Sample forms will be provided and discussed.

2:00 - 2:10 **Introductory Remarks** - Tina Portuondo, Institute Director

2:10 - 3:30 **Recent Developments 2009**

3:45 - 5:15

Dennis I. Belcher, Carol A. Harrington and Jeffrey N. Pennell

6:00 - 7:00 **Complimentary Reception for Registrants**

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## **Tuesday, January 26, 2010**

9:00 - 9:50 **Thanks, But No Thanks - Disclaiming Assets, Interests, and Powers**

Ann B. Burns

Disclaimers are used today more than ever because they can provide flexibility for planning in uncertain times. However, using disclaimers can be complicated. This session will focus on the use of qualified disclaimers of assets, interests in trusts, and powers held as trustee and beneficiary, including the use of formula disclaimers.

9:50 - 10:40 **How to Do Your Roth IRA Conversion in 2010**

Christopher R. Hoyt

The year 2010 marks the first year that wealthy individuals can convert a conventional retirement account into a Roth IRA and can even defer the tax liability into 2011 and 2012. When does it make sense to do a conversion? When not? What are the mechanics? How are mistakes corrected?

10:55 - 11:45 **The Good, the Bad, and Avoiding the Ugly: Mending Wayward Wealth Transfer Strategies**

John F. Bergner

GRATs and installment sales often transfer wealth in a tax-efficient manner. Sometimes, they may not yield the expected results. Unsuccessful economic performance, changes in circumstances, or drafting errors - these events may require an "exit" strategy. This session discusses various exit strategies and planning for an exit strategy before problems arise.

11:45 - 12:35 **Escaping from the World of FLPs: Can You Get Out Without Paying a Boatload of Taxes?**

Richard B. Robinson

Whether the result of family dynamics, bad economics or changing tax laws, partners need to exit from and/or unwind family limited partnerships. Hidden problems are always lurking and the tax consequences are often surprising.

2:00 - 3:40 **Charting New Paths for Estate Planners Through the Changing Landscape of Tax Laws and Regulations**

Steve R. Akers, Ronald D. Aucutt and Carlyn S. McCaffrey

2009 was a very active year for legislative and regulatory developments. The panel will focus on practical planning strategies in light of the changes, and will address changes on the horizon. These developments may impact the overall approach to estate planning for many clients, and may impact a wide variety of strategies including GRATs, FLPs, and Graegin notes, among others.

3:55 - 4:45 **Planning for Life After Death: Laws of Succession vs. the New Biology**

Joshua S. Rubenstein

Most of us are accustomed to having relatively broad ability to control the disposition of our property following our deaths. It comes as a surprise how little ability we have to control the disposition of ourselves, and the uses to which we can be put, following our deaths. This session will examine the ability to control burial and the disposition of body parts, the posthumous use of our genetic material, inheritance by posthumously procreated individuals, and exhumation for the purpose of genetic testing.

**4:45 - 5:35 How to Succeed (Ethically) in Business Succession Planning**

Cynda C. Ottaway

Wind your way through the maze of ethical rules to determine what you should and should not be doing to help your clients develop an appropriate succession plan for their family business. Consider the multiple possibilities of "who is the client" and ways to structure the relationship. Review samples of engagement letters which can provide helpful protection for you and the client.

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**Wednesday, January 27, 2010**

**7:55 - 8:45 The Clock Struck Midnight: Now what Do We Do? Panel #1 of 2**

Moderator: Bruce Stone

Panelists: Dennis Belcher and Carlyn McCaffery

A discussion of the practical planning implications of repeal of the estate and GST taxes and return of carryover basis.

(This will be a two-part panel. The second panel will be held on Thursday morning, same time).

**9:00 - 9:50 Putting the Horse Before the Cart: Non-Tax Issues in Business Succession Planning**

Charles D. "Skip" Fox IV

Most closely-held businesses fail to survive even one generation because of a failure to consider the non-tax aspects of succession.

This session will examine the non-tax issues that the owners of a closely-held business must consider to ensure a successful transition in ownership.

**9:50 - 10:40 ESOPs - The Most Tax Efficient Ownership Transition Strategy**

Laurence A. Goldberg

For a business owner, estate planning begins with a strategy for monetizing the value of the business in a tax efficient manner. An ESOP can provide tax free liquidity for the owner, enhanced financing capability for the company and tax deferred growth to the employees. Non-tax benefits include rewarding loyal employees and preserving the legacy of the business. This session will include ESOP basics, as well as advanced concepts.

**10:55 - 12:35 Question and Answer Panel**

Dennis I. Belcher, Carol A. Harrington and Jeffrey N. Pennell

**2:00 - 3:30 FUNDAMENTALS PROGRAM**

(Runs concurrently with the Special Sessions)

**3:50 - 5:20 Keeping it all in the Family: Asset Protection Planning**

Gideon Rothschild

No longer is asset protection limited to offshore strategies. This presentation will examine the techniques and legal strategies utilized to obtain maximum wealth protection, including exemption planning, limited liability entities, third party trusts and self-settled trusts (domestic and offshore). The

discussion will include the income, estate and gift tax consequences of utilizing such strategies and an analysis of fraudulent transfer principles, ethical considerations, and case law developments.

Wednesday, January 27

### **Special Sessions I**

2:00 - 3:30

#### **I-A - Integrating the Estate Plan with Business Succession Planning**

Louis A. Mezzullo and Ann B. Burns

This session will use several fact patterns to illustrate how the business owner's estate plan should be coordinated with the succession plan for the business, highlighting both tax and non-tax issues.

#### **I-B - Family Limited Partnership Valuation and Audit Issues: Where are We Now and What Do We Do?**

John W. Porter, Milford B. Hatcher, Jr. and Lee C. Schwemer

This panel will take a practical approach to dealing with current issues involving the transfer of interests in family limited partnerships and other closely-held entities from the perspective of the estate planner, the litigator, and the IRS. Particular emphasis will be placed on dealing with issues involving Section 2036, Chapter 14, formula transfers, valuation, and any recently passed/proposed legislation regarding closely-held entities.

#### **I-C - For Better or Worse: What's Right About a Pre-Nuptial Agreement?**

Max Gutierrez, Jr., Robert S. Cohen, Amy E. Heller and Carlyn S. McCaffrey

This session will explore tax and state law issues that arise in structuring and negotiating pre-nuptial and post-nuptial agreements.

The panel will provide perspectives on pitfalls and opportunities from estate planning and matrimonial lawyers.

#### **I-D - Where No Ethics Have Gone Before - Doing Right in a Changing World**

John T. Rogers, Jr. and Cynda C. Ottaway

We are constantly bombarded (photon torpedoed?) these days by new technologies and new legal requirements. (Do your tweets include Circular 230 disclosures?) This session will attempt to provide some guidance for navigating through the new ethical minefields created by these developments.

#### **I-E - Using Taxes to Settle Trust and Estate Litigation**

Joshua S. Rubenstein and Charles Rubin

This session will examine both proceedings that can be brought for the purpose of reducing taxes, and the ability to use tax planning in contentious situations to create additional funds with which to settle substantive disputes.

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#### **I-F - Planning is No Picnic When the Forecast is Unclear**

Donna G. Barwick, M. Cary Leahey and Daniel H. Markstein, III

A current economic forecast by an expert economist followed by an examination of estate planning techniques, understanding that the forecast can be very right or very wrong.

### **Special Sessions II**

3:50 - 5:20

#### **II-A - What Estate Planners Need to Know About Operating a Closely-Held Business**

Richard B. Robinson, Andrea C. Chomakos and Steven B. Gorin

This session will focus on common and unexpected income tax and other consequences of operating a

closely-held business.

## **II-B - Family Limited Partnership Valuation and Audit Issues: Where are We Now and What Do We Do?**

(Repeat of Special Session I-B)

John W. Porter, Milford B. Hatcher, Jr. and Lee C. Schwemer

## **II-C - Current Issues in Charitable Planning**

Jerry J. McCoy and Christopher R. Hoyt

An interactive session including a review of legislative, administrative and judicial developments affecting charitable gift planning, with emphasis on practical implications, including charitable uses of retirement assets, and solutions for recent IRS rulings that denied charitable income tax deductions.

## **II-D - Counseling King Lear and other Lessons from an Elder Law Practice**

Douglas G. Chalgian

Understand why the practice of elder law is growing, and the legal issues that commonly arise in an aging and, at times, vulnerable population.

## **II-E - Bomb Proofing the Estate Plan: Version 2.0**

Bruce S. Ross and Bruce M. Stone

An estate planner and a trial lawyer discuss how to eliminate or minimize litigation by building the evidentiary record during the estate planning process, using forfeiture clauses, conditional gifts, arbitration, eliminating information disclosure, and other methods.

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## **II-F - Life Insurance and the Economic Downturn - Applying Universal Truths to Variable Circumstances, the Whole (Life) Story**

Lawrence Brody, Mary Ann Mancini, Charles L. Ratner and Randy L. Zipse

As the economy struggles clients increasingly look at insurance as a solution to their investment, business, charitable and estate and personal financial planning needs. This program will explain what types of insurance products are available, how they work, their advantages and disadvantages, and how, working with a client's insurance professional, to develop a methodology to help a client design and select an appropriate product.

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## **Thursday, January 28, 2009**

### **7:55 - 8:45 The Clock Struck Midnight: Now what Do We Do? Panel #2 of 2**

Moderator: Bruce Stone

Panelists: Steve Akers and Carol Harrington A discussion of the practical planning implications of repeal of the estate and GST taxes and return of carryover basis.

(This will be a two-part panel. The first panel will be held on Wednesday morning, same time).

### **7:45 - 8:45 Florida Insurance: Issues Relating to Unauthorized Entities**

(Attendance is required for insurance professionals seeking CE credits in Florida)

### **9:00 - 9:50 Frozen Brain: Estate Planning Strategies for QTIP Trust Assets**

M. Read Moore

The assets of a QTIP trust may be a substantial part of a client's taxable estate on his or her death. The provisions of the trust instrument and tax law, however, will often give you a headache when you try to

apply typical estate planning strategies for individually owned assets to QTIP trust assets. This presentation will address the special gift tax and estate tax rules that apply to QTIP trusts and discuss strategies to minimize wealth transfer taxes for QTIP trust assets.

**9:50 - 10:40 Still Crummey After all these Years**

Donald O. Jansen

Although judicially blessed since 1968, the IRS doesn't like Crummey powers. Designed for gift tax purposes, they may have adverse income, estate or GST tax consequences. Learn about their relationship with grantor trusts, the 5 and 5 exception, the GST transferor rules and the latest IRS obstacles and attacks.

**10:55 - 11:45 Looking for Law in all the Right (and Wrong) Places: Forum Shopping Opportunities, Unintended Consequences, and the Duties of the Estate Planner**

Jeffrey A. Schoenblum

Can the estate planner continue to resort solely to home state law for local clients or is there actually a duty to incorporate into the estate plan potentially more favorable laws from other jurisdictions? If the latter, how exactly do you accomplish this incorporation of other laws? What are some examples of specific benefits? Are there real risks? This session will address these questions and related ones.

**11:45 - 12:35 FATF & the Lawyer Guidance**

Duncan E. Osborne

The Financial Action Task Force is seeking to impose its will on the practice of law. This presentation will examine the practical impact of the FATF's efforts.

**2:00 - 3:30 FUNDAMENTALS PROGRAM**

(Runs concurrently with the Special Sessions)

**3:50 - 5:20 Your Life Preserver! The Retirement Benefits Drafting Immersion Workshop**

Natalie B. Choate

Stay afloat and learn: How to draft beneficiary designations and trusts-to-be-named as beneficiary, including pecuniary, fractional, and formula clauses, marital deduction, trust accounting, charitable bequests, disclaimers, conduit and other "see-through" trusts. When to use a separate trust for benefits. Includes forms, checklists, trust-testing questionnaire, and how to communicate with plan administrators.

**Special Sessions III**

2:00 - 3:30

**III-A - Planning for the Closely-Held Business - Exit Strategies During Life**

Charles D. "Skip" Fox IV, Thomas W. Abendroth and Laurence A. Goldberg

This session will focus on different tax techniques that can be used during life to implement a successful ownership transition plan for a closely-held business. Techniques to be discussed include gifts, freezes, buy-sell agreements, discounts, GRATs, sales to irrevocable trusts, redemptions, and ESOPs.

**III-B - Qualified Disclaimers - What Part of "No" Don't you Understand?**

Ann B. Burns, David A. Handler and Douglas L. Siegler

This panel will provide a deeper understanding of the issues surrounding the use of qualified disclaimers, including sample drafting language.

**III-C - Current International Developments**

Duncan E. Osborne, David Brownbill and Ellen K. Harrison

The panelists will discuss current international developments in estate and trust law. The focus will be primarily on tax issues and important case law developments in the United States and abroad.

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### **III-D - Estate Planning for QTIP Trust Assets**

M. Read Moore and Joy M. Miyasaki

This session will explore ways a client who has substantial assets in a QTIP trust can engage in effective estate planning for those assets without tripping over the complicated tax rules and trust related restrictions that apply.

### **III-E - Enhance GRATs, Grantor Trust Sales, and Family Loans with Financial Engineering**

Mark R. Parthemer

Upgrade wealth transfer techniques by integrating investment planning, and understand (1) why GRAT investments dictate the optimal number and term, (2) why it isn't about growth in GRATs, but capturing volatility, (3) when 9-year notes undermine a grantor trust sale, and (4) how to structure a bond portfolio family loan.

## **Special Sessions IV**

3:50 - 5:20

### **IV-A - Exit Strategies at Death for the Private Business Owner and How to Avoid the Forced Sale of a Private Business**

Dennis I. Belcher, Turney P. Berry and Mary Ann Mancini

The family of a private business owner often faces significant liquidity needs at the business owner's death. One alternative to meet these needs is a sale of the business but the owner's death can be the worst possible time for a sale. The panelists will use the case method to illustrate how to avoid a forced sale of a private business using effective financing of life insurance to meet cash needs, creative charitable planning techniques to reduce cash needs, and estate tax deferral techniques.

### **IV-B - Unwinding Bad Transactions**

John F. Bergner, Milford B. Hatcher, Jr. and Richard B. Robinson

The panel will explore in further detail the issues identified in the Tuesday presentation on exit strategies for GRATS and installment sales.

### **IV-C - Forum Shopping in Depth**

Jeffrey A. Schoenblum

A more detailed examination of the drafting opportunities and pitfalls associated with forum shopping so as to deliver the most to your client while satisfying your own professional responsibility.

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### **IV-D - Anatomy of a Crummey Power**

Donald O. Jansen

A sample Crummey hanging power will be dissected to determine the purpose of the various provisions - creation of the power, notification provisions, exercise rights, lapse of the power, hanging power, incapacitated power holder, power to change withdrawal rights, etc.

### **IV-E - What's a Planner to Do When Clients Bring Dysfunctional Families?**

Glen A. Yale and Michael D. Simon

Difficult client situations are this panel's focus. Planning and drafting for dealing with children on substances, in prison, or in toxic marriages; when parents do not like children or grandchildren for good reasons or bad.

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**Friday, January 29, 2010**

**9:00 - 9:50 Fiduciaries and Their Lawyers: Tempting Targets in Troubled Times**

Randall W. Roth

Inadequate documentation coupled with hindsight bias can make competent fiduciaries, and maybe their lawyers, look like sitting ducks. This presentation will focus on the areas of fiduciary responsibility in which most claims are made, and on effective ways to establish that fiduciaries and their lawyers met their respective standards of care.

**9:50 - 10:40 Financed Net Gifts: No-Hassle Asset Transfers**

David A. Handler

Our clients often say, "Can't I just give them the money?" and "When I'm gone, the estate taxes are the kids' problem." This session will demonstrate how applying that line of thinking for lifetime transfers can transfer more wealth, at a faster pace, and with less risk and complication.

**10:50 - 12:00 Applying What We've Learned: From A(bendroth) to Z(ipse) in 70 Minutes or Less**

Alan F. Rothschild, Jr.

The last few years have brought unprecedented volatility and uncertainty to our clients, the federal transfer tax system and our estate planning practices. This wrap-up session will take a quick tour through the week's best ideas for repairing broken plans, shepherding family businesses, counseling aging clients, planning post-mortem, and maintaining a professionally rewarding estate planning practice.

The End.....

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## **GENERAL INFORMATION ABOUT INSTITUTE:**

Inquiries/Registration:

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