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**FAMILY FEUDS**  
**DETECTING AND DEFUSING POTENTIAL ESTATE LITIGATION  
DURING ESTATE PLANNING AND POST MORTEM**

**ABA 21<sup>st</sup> Annual Spring Symposia 2010  
Philadelphia, Pennsylvania**

May 6-7, 2010

**ARTICLES**

This is a “green program handout”. Kindly provide your name and email address to Paul Fisher who will provide you with an electronic version of this list for quick access to the articles. This series will appear in two installments of *Probate & Property*, a publication of the Real Property, Trust and Estate Law Section of the American Bar Association. The first installment will appear in the May/June 2010 issue.

**Estate Conflict Managment**

Chapter one in this series, “Conflict Management in Family Inheritance Wars” (May 2008). In a contested matter emotions can run incredibly high. Families leave the probate/estates litigation process exhausted and embittered. Managing estate conflict - both existing and potential conflicts - presents the possibility to deliver much more financial and emotional value to clients, provide higher client satisfaction, and higher personal satisfaction and more client referrals to the practitioner. Click [http://www.fishermediation.com/library\\_family\\_inheritance\\_wars.php](http://www.fishermediation.com/library_family_inheritance_wars.php).

Chapter two, “There Has To Be A Better Way: The Value of Managing Estates Conflicts” (July 2008). The financial cost per party in estate litigation can be from \$10,000 to \$125,000 and at times astonishingly higher. Estate planning and litigation attorneys describe the emotional and financial devastation to the parties involved. Click [http://www.fishermediation.com/library\\_there\\_has\\_to\\_be.php](http://www.fishermediation.com/library_there_has_to_be.php).

Chapter three, “Is There More To Life Than Death, Taxes and Post Mortem Financial and

Emotional Grief?” (August 2008). Testator’s benefits of addressing potential conflicts during the estate planning process. Estate planner’s possible ethical responsibilities to the testator regarding potential conflicts that may arise after the client’s death. Click [http://www.fishermediation.com/library\\_death\\_taxes.php](http://www.fishermediation.com/library_death_taxes.php).

Chapter four, “Benefits of Addressing Conflicts During the Estate Planning Process” (September 2008). To heirs, trustees and attorneys, and the benefits when there is a family business or divorce and remarriage. Click [http://www.fishermediation.com/library\\_estatePlanning.php](http://www.fishermediation.com/library_estatePlanning.php).

Chapter five: “Disadvantages of Addressing Conflicts During the Estate Planning Process”, (November 2008), What are the possible consequences if during the estate planning process a testator attempts to address conflicts that could arise after his death but does not succeed in finding a solution? How do unsuccessful attempts to address these potential conflicts impact the testator? [http://www.fishermediation.com/library\\_potentialConflicts.php](http://www.fishermediation.com/library_potentialConflicts.php).

Chapter six: “The Golden Window of Opportunity: When to Successfully Address Estates Conflicts” (January 2009), There are great potential benefits for all the usual estate litigation players who address conflicts issues during the estate planning process. And there are also considerable risks and life disrupting consequences if these conflicts are not resolved at that time. The alternative to ignoring these conflicts during the estate planning process or letting them drift toward estate litigation is to address the conflicts post mortem before litigation begins. There is a golden window of opportunity during which familial disaster might be averted. [http://www.fishermediation.com/library\\_goldenwindow.php](http://www.fishermediation.com/library_goldenwindow.php)

Chapter seven: “Benefits and Disadvantages of Addressing Trusts and Estates Conflicts at Different Times on the Estate Planning Continuum” (April 2009) This chapter compares the benefits and disadvantages of addressing conflicts during the estate planning process, post mortem or leaving conflicts to the current default approach of estates litigation from the vantage point of the testator, heirs, disinherited/contesting parties, trustees and the attorneys and other estate planning professionals who represent them. [http://www.fishermediation.com/library\\_benefits\\_and\\_disadvantages.php](http://www.fishermediation.com/library_benefits_and_disadvantages.php)

Chapter eight: “Legal and Ethical Requirements of a Meeting of Interested Parties During The Estate Planning Process and Post Mortem” (May 2009). Attorneys attending Estate Conflict Management workshops around California have at times very divergent opinions on how to avoid, conclude or at a minimum manage conflict that arises after the death of the testator. To have a productive meeting that concludes in an enforceable written settlement agreement requires certain legal and ethical criteria be met. There are differences of opinion on approaches, techniques and ethical requirements. There are even differences of opinion on the standard of care and best practices because this dynamic area of practice is emerging and evolving.

Chapter 9: “Mediums to Invoke a Peaceful Means to Your Estate Planning Client's End” (June 2009) Messages from the Other Side: Ways your estate planning can possess disgruntled relatives and friends to turn over a new leaf so your testator client doesn't turn over in his grave.

Alternative tools estate planners might consider building into estate planning documents in order to avert or reduce conflicts post mortem.

Chapter 10: “Take-Aways: Parting Words to Keep Conflict Apart from Those Parting Ways” (September, 2009) This final installment in the 10 chapter Estate Conflict Management serial provides the Take-Aways from the series. Perhaps incorporating additional tools into the testator's estate planning documents, or holding a meeting in the appropriate circumstances will help to relieve conflict. Managing estate conflicts at an earlier point in time provides a non-traditional, non-litigious, and potentially golden opportunity to resolve conflict both timely and efficiently. [http://www.fishermediation.com/library\\_takeaways.php](http://www.fishermediation.com/library_takeaways.php)

For additional articles on mediation confidentiality, enforceability of settlement agreements reached during mediation and other practice tools, visit <http://www.fishermediation.com/library.php>

## PAUL R. FISHER

### Mediator – Private Dispute Resolution – Early Case Management

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#### **ADR and Judicial Referee Experience**

Mediator, Arbitrator, Referee and Special Master on complex multi-party probate/estates, conservatorship and estate planning conflicts; real estate, business, construction defect disputes. Mediated and settled many hundreds of cases since 1986 and heard hundreds of cases in binding arbitrations since 1978. Nationally published author, and frequent speaker. Selected as a 2007, 2008 and 2009 Southern California Super Lawyer in the area of dispute resolution.

- Distinguished Panel of Neutrals, CPR International Institute For Conflict Prevention & Resolution
- Mediator, Los Angeles Superior Court- Probate Panel
- Co-Chair ABA Emotional and Psychological Issues in Estate Planning Committee
  - International Academy of Mediators, Fellow, presenter at Spring '06 conference at Harvard.

#### **Probate Disputes and Estate Conflict Management**

Disputes among competing claimants; IE. Step-children v. surviving step-parent, various competing step-relationships, sibling v. sibling v. surviving parent, pretermitted children and spouses, assorted competing named devisees and unnamed claimants in permutations and combinations, trustees, and institutional devisees. Intent and competency, fraud and undue influence. Competing testamentary, non-testamentary and informal instruments; revocation. Interpretation and construction disputes. Guardianship and conservatorship. Estate Conflict Management: working with estate planning, estates and probate counsel to manage estates conflicts in facilitated discussions with all competing parties that manages or resolves conflicts during the estate planning process or early post-mortem.

#### **Highly Emotionally Driven Disputes**

It is not uncommon for disputes to have an emotional component. However, some disputes can be driven by highly intense emotion, which, if not appropriately addressed, can lead to impasse. Examples include: employment, probate, intra-family, family owned business, individual's claims against insurance carriers, loss of significant assets or net worth (loss of home, assets in securities disputes, a complete business), by and against churches, fraud, unfair competition, emotional distress and malicious prosecution.

#### **Real Estate and Business Disputes**

Business and real estate buy-sell agreements; failure to disclose known material defects; brokers commissions. Specific performance, rescission. Toxic waste, underground storage tanks, product lines, remediation damages, complex multi-party insurance coverage. Earthquake related claims, insurance coverage, subrogation, bad faith, fraud. Complex commercial landlord-tenant disputes. Indemnity, apportionment, abandonment, novation, punitive damages. Disputes by and among common interest developments. Title, adjoining land owners, easements, adverse possession.

#### **Awards/Honors - visit [www.fishermediation.com/award.php](http://www.fishermediation.com/award.php)**

Los Angeles County Board of Supervisors Award for Case of the Year, 2002. Recognized as a Southern California *Super Lawyer* in the area of mediation in 2007, 2008, 2009 and 2010.

**Paul R. Fisher**  
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**Publications** - *A selection of articles are viewable at [www.fishermediation.com/library.php](http://www.fishermediation.com/library.php)*

- “Estate Conflict Management”, a ten article series (May 2008 through September 2009)
- “Cal Ap Defines What Conversations Between Attorneys Are, and Are Not, Protected by Mediation Confidentiality”, (July, 2007)
- “Are Magic Words Necessary to Make Enforceable a Memorandum, Term Sheet or Letter of Intent Signed at a Mediation?”, (January, 2007)
- “Award of Attorney Fees Affirmed Where Mediation Requested After Suit Filed”, (November, 2006)
- “Tools For Negotiators: ‘Beyond Reason - Using Emotions as You Negotiate’”. Book Review. (July, 2006)
- “MSJ Granted to Enforce Settlement Agreement Entered at Conclusion of Mediation, Where the Agreement Was Not Signed Personally by all Parties” (January, 2006)
- “Late Summer ‘05 Intellectual Entertainment: Mediation Confidentiality, Ethics and Public Policy”, (Summer, 2005)
- “When Is A Memorandum of Understanding Enforceable? Not Enforceable?” (June, 2005)
- “Cal.Ap. Bars Attorney Fees To Prevailing Party Who Refuses To First Mediate”, (March, 2005)
- “Early Case Management”, ADREdge, June 2004.
- “Preparation Emphasizes What Clients Don’t Want to Hear”, Alternatives, CPR (Center for Public Resources) Institute for Dispute Resolution, April 2002.
- “How Attorneys In Mediation Face The Conflict Of Keeping The Client Happy Versus The Need To Discuss The Hard Issues -- Or, How to Succeed in Mediation Without Losing Your Client”, ADR Edge, November 2001.
- “Avoiding Impasse in Mediation - A Critical Checklist for Mediation Counsel,” Alternatives, CPR (Center for Public Resources) Institute for Dispute Resolution, May 2001.
- “Changes in Mediation Confidentiality,” ADR Edge, June 2000.

**Faculty**

Adjunct professor of law, Pepperdine University School of Law, Strauss Institute for Dispute Resolution. International Academy of Mediators, presenter at Spring ‘06 conference at Harvard. Guest lecturer at Loyola Law School. He has served as faculty in innumerable ADR programs before Bar Associations, law firms, Annual Arbitration/Mediation Day Conferences, and the American Arbitration Association. Courses have included basics to cutting edge dispute resolution techniques and variations on traditional mediation; basic arbitrator training to arbitration of large and complex multi party disputes. Assisted in planning and development of the Los Angeles Superior Court ADR Judicial Education Program in 1997.

**Professional Affiliations**

Licensed to practice law before the Supreme Court of the United States and the Supreme Court of California, U.S. District Court, Central District of California.

ABA Committee on Emotional and Psychological Issues in Estate Planning; co-chair

California State Bar, Trusts & Estates Section, member

International Academy of Mediators, Fellow

Los Angeles County Bar Association, trusts & estates, real property, construction, litigation sections.

**Education**

CPR International Institute For Conflict Prevention & Resolution, conferences

International Academy of Mediators, semi-annual conferences; Spring ‘06 presenter at Harvard conference.

Pepperdine University School of Law, Strauss Institute for Dispute Resolution, Masters Forum, 2000, 2002, 2003 (session leader); and numerous courses.

Mediating Health Care Disputes, CDR Associates, Boulder, Colorado, 1996.

Dispute Review Board Training Program, American Arbitration Association, San Diego, California, 1995.

Mediation Training, American Arbitration Association, 1986.

Arbitration Training, American Arbitration Association, 1978.

**Paul R. Fisher**  
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Juris Doctor, University of San Diego, School of Law, 1969.  
Bachelor of Arts, California State University, Northridge, 1966.

**Attorney References** - *visit* [www.fishermediation.com](http://www.fishermediation.com).