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August 04, 2016

Who Is Your Intended?—Defining the Engagement of an Attorney Employed by a Family Office

Family offices continue to multiply and the industry professionals who provide services to them have grown. The typical single-family office has president, a chief operations officer, a chief investment officer and a chief financial officer. In many cases, the office may employ one or more lawyers on staff. Those lawyers may serve the needs of a number of persons and entities advised by the family office, including:

- the family office as a legal organization;
- members of the family in their personal capacity, as shareholders of an operating company from which wealth was created, or as beneficiaries of a trust;
- members of the family acting as trustees of trusts;
- investment entities created by the family, *i.e.*, passive and active investment vehicles such as LLCs and partnerships and private or public foundations; and
- members of the family acting as trustees or directors for the boards of those investment entities.

The evolving best practice is to treat each of the above five situations as a different "client" for purposes of evaluating potential conflicts of interests, maintaining confidentiality and other ethical issues. This is the first of two blog posts intended to help attorneys employed by a family manage their relationships with their family office clients.

Representing "the Family"

Last year, the Attorneys' Liability Assurance Society Ltd. developed a training program analyzing ethical dilemmas posed while representing members of a family and their closely held companies. (A public link to this material is not available.) The program illustrated the difficulty of trying to represent a family when differences emerge among individual family members. It urged attorneys to be mindful of whom they represent and whom they do not, and emphasized the need to ensure that everyone understands those relationships. As difficult as representing a family-owned company might be, an attorney should theoretically be able to separate the business interests of the company from the purely personal interests of family members. In contrast, the purpose of a family office is to serve the family's interests, which makes it even more difficult to keep track of whose interest the attorney represents.

Potential Sources of Family Office Conflicts

Frequently, the patriarch and matriarch of the single-family office, as well as their children, have different financial interests, different investment objectives, different philosophies of life, and a variety of different medical, educational, and support needs. It is possible to foresee sincerely held differences of opinion based on different personal circumstances and different desires, and not just different views regarding the best use of the family's resources. This may create conflicts of interest when, for example:

- Different members of the family have different views on how the family office, as an entity, should be run, perhaps involving greater or lesser representation on the board of directors for different generations of the family;
- One member of the family is willing to serve as trustee of trusts that exist for the benefit of a different generations of family members, and the trustee and one or more of those beneficiaries disagree on how the trustee should exercise his discretion over the trust; or

- Some members of the family are willing to serve on the board of directors of a family investment vehicle or the family foundation, and members of the family disagree on whether the members of the family acting in a fiduciary capacity are making decisions that are consistent with their fiduciary duties.

A lawyer employed by the family office may be asked to give legal advice in each of these situations or a combination of the situations simultaneously. A lawyer who provides such advice without considering who he or she represents, and making sure that the family members understand the scope of the representation, can find him or herself in an ethical quagmire with the mere passage of time. The next post will consider how to avoid such a quagmire.

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