newsletter

Oregon Estate Planning and Administration Section Newsletter
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Legislative Report

The Section's legislative subcommittee, with the help of many volunteers from the Section, has worked hard this past year on a number of issues. The Section will sponsor the following bills for the 2003 legislative session:

Uniform Principal and Income Act. This legislation updates Oregon's Principal and Income Act. For a detailed explanation of the changes and the need for the legislation, see David R. Allen, "Let's Finish The Job We Started in 1995: Why We Should Adopt the Revised Uniform Principal and Income Act," Or Est Plan & Admin Newsl (Apr. 2002).

Additional Trust Legislation. This legislation harmonizes several of the legal rules on wills and revocable trusts. The legislation will apply to revocable trusts rules comparable to those that apply to wills with respect to lapse, pretermitted children, ademption, advancement, and revocation on divorce.

Trust Claims Statute. An amendment to the trust claims statute enacted by the 2001 legislature will clarify that the procedure applies to revocable-trust grantors who died on or after January 1, 2002.

Durable Power of Attorney. The goal of a new durable power of attorney statute is to make durable powers more readily acceptable by third parties, and the statute would create a statutory form with extensive statutory provisions explaining the construction and interpretation of the form.

Revocation on Divorce. Legislation based on Uniform Probate Code § 2-804 will unify the law of probate and nonprobate transfers with respect to revocation on divorce. The new statute will, in the event of divorce, revoke any revocable designation of a spouse as a beneficiary under wills and will substitutes (including, for example, insurance and revocable trusts), any provision conferring a power of appointment on the spouse, and any nomination of the spouse as a fiduciary and will sever interests of the former spouses in property held as joint tenants.

Oregon Inheritance Tax. The Executive Committee reviewed a draft Oregon inheritance tax form, sent to the Section by the Oregon Department of Revenue. The committee will suggest that the form be changed to make clear on its face that estates with a value of under $1 million need not file an Oregon Inheritance Tax Return. This is the unofficial position of the Oregon Department of Revenue, but the Executive Committee believes that the department's position should be made official.

In This Issue

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Work will continue on the following legislative projects:

Uniform Marital Property Act/Elective Share. Other sections of the Oregon State Bar, including Elder Law, Family Law, Taxation, and Debtor-Creditor, have raised concerns about pursuing a proposal to have Oregon adopt the Uniform Marital Property Act. The proposal stemmed from the perceived injustice in the current elective share that may encourage divorce, because a divorcing spouse can do better financially than a spouse who remains married (until his or her spouse's death) in some cases. The Estate Planning Section found the marital property fix advantageous for tax reasons. In light of the opposition voiced by the other sections of the Bar, the Program Committee of the Oregon Law Commission voted not to proceed further with the Uniform Marital Property Act. Given that decision, the subcommittee will consider other possible changes to the elective share statute.

Uniform Trust Code. The Section will provide input to the Uniform Trust Code Study Committee. The Study Committee, chaired by Valerie Vollmar and Susan Gary, will review Oregon trust law, consider the newly promulgated Uniform Trust Code, and develop legislation for submission to the 2005 legislative session

Bernard F. Vail
Chair, Legislative Subcommittee

Questions, Comments or Suggestions About This Newsletter?

Contact: Susan N. Gary
1221 University of Oregon School of Law
Eugene, OR 97403-1221
(541) 346-3856
E-mail: sgary@law.uoregon.edu

Primer On The New Regime For Taxation of Split-Dollar: *Notice 2001-10 And Its Successor Notice 2002-8*

Note: This Article is being presented in two parts. In Part One, the author (a) provides the background for Notice 2002-8, including Notice 2001-10, (b) discusses the anticipated content of the Proposed Treasury Regulations regarding split-dollar agreements, (c) reviews the impact of republishing Table 2001, and (d) discusses the impact of Notice 2002-8 on other types of split-dollar financing.

Part Two of this Article will be published in the next issue of the Newsletter. In Part Two, the author will (a) discuss the regime that will apply to split-dollar agreements that will be entered into before the adoption of Final Treasury Regulations, (b) speculate regarding future developments in the area of split-dollar agreements, and (c) offer strategies for working with the new rules of Notice 2002-8.

Introduction

On January 3, 2002, the Internal Revenue Service (the "Service") broke almost a year's silence and issued Notice 2002-8, which is the second installment of new guidance regarding the taxation of split-dollar life insurance funding. The first of the Notices issued on this subject was Notice 2001-10. Both Notices address the tax treatment of all forms of split-dollar funding, including employer-employee, shareholder-corporation, and private. Notice 2002-8 specifically revoked Notice 2001-10 and established a framework that the Service states it will incorporate into comprehensive Treasury Regulations dealing with the taxation of split-dollar agreements. By choosing to give final guidance in the form of Treasury Regulations, the Service will give the new regime greater precedential value, and presumably more comprehensive treatment, than guidance provided by a Notice or Revenue Ruling. Although issues concerning equity split-dollar prompted Notice 2002-8 and the Proposed Treasury Regulations, Notice 2002-8 also considers, and the Proposed Treasury Regulations should also address, many issues shared by all forms of split-dollar agreements.

History: Notice 2001-10

With Notice 2001-10, the Service departed from the scheme for the taxation of split-dollar arrangements that had been in place since 1964. Although Notice 2001-10 stated there would be a continuation of tax treatment articulated in Rev Rul 64-328, 1964-2 CB 11 and successive rulings, taxpayers in equity split-dollar plans may, in addition to the annual term cost, have been required to report equity build-up, perhaps as it incrementally accrued, and certainly on the termination of the relationship with the employer. Additionally, Notice 2001-10 provided that the employer and employee could adopt a regime of interest-free loan treatment under § 7872 in which the tax benefit to the employee in each year would be measured by the forgone interest. That in turn would be determined by the type of debt instrument characterized in the relationship. Were that method adopted, no tax would be imposed on either the incremental build-up of equity or on the termination of the arrangement.

The Service acknowledged abuses particularly in the reverse split-dollar arrangement in which the employer rents the death benefit and annually pays the term cost associated with the death benefit. Perceived abuses had arisen because of the use of PS 58 rates, which overstated the actual term cost of the insurance. For tax years ending after December 31, 2001, Notice 2001-10 substituted Table 2001, which replaced the old PS 58 rates and engrafted the uniform premiums for group term rates issued under § 79.

The Service also imposed more stringent standards for reporting term costs after December 31, 2003 if the insurer's term rates were to be used. This requirement is also present in modified form in Notice 2002-8, which requires widespread marketing of term policies issued under those rates and significant sales of those term policies by the insurer. Thus if only isolated or hypothetical term policies were used to establish term rates, they would be rejected as inadequate measurements of benefits.

The most chilling aspect of Notice 2001-10 was its treatment of equity build-up. Although not stated with absolute clarity, it indicated that on termination of the split-dollar agreement the equity portion would be taxed as ordinary income to the employee, notwithstanding the regular reporting of the economic benefit measured by the term cost of the insurance during the relationship before termination. Notice 2001-10 also afforded new treatment for the economic benefit to be reported by the employee by acknowledging that the use of an interest-free loan characterization would remove or eliminate the recognition of any equity portion on termination of the split-dollar arrangement.

Notice 2002-8

The Service released Notice 2002-8 on January 3, 2002, which specifically revoked Notice 2001-10, gave interim guidance and stated that Treasury Regulations would be forthcoming to deal comprehensively with split-dollar financing.

Expected Content of Proposed Treasury Regulations

The Treasury Regulations are expected to address two regimes of split-dollar agreements: the endorsement method and the collateral method. Notice 2002-8 adopts the generally accepted definitions within the life insurance industry that the endorsement method refers to a policy that the employer owns and under which the employee is provided contractual benefits in the form of insurance coverage. Under the collateral split-dollar method, the employee owns the policy and the employer has a security interest in the cash value to secure its advancement of policy premiums. Notice 2002-8 allows the parties to select either method, and the Service should honor the selections.

If the employer owns the policy under an endorsement arrangement, the Treasury Regulations should provide that (a) no incremental build-up of cash value will be taxed as long as the ownership of the policy remains with the employer and (b) on the termination of the agreement when the policy is rolled out to the employee, the Service will tax the transfer of property (in the form of the equity portion that is received by the employee) under §§ 61 and 83.

Under the collateral split-dollar method, which accounts for the vast majority of split-dollar arrangements, the participants should be taxed exclusively under §§ 1271-1275, dealing with original issue discount, and § 7872, dealing with interest-free loans. This treatment should apply to all agreements entered into after the Final Treasury Regulations are issued.

Lastly, the Treasury Regulations should apply to all types of split-dollar arrangements, including private split-dollar or reverse split-dollar arrangements.

The Service had informally expressed concern that there was no economic difference between a collateral split-dollar arrangement in which the employee owns the policy and an endorsement arrangement in which the employer owns the policy. Notice 2001-10 implied that only formalistic, nonsubstantive differences distinguish the two types of ownership and that the differences between collateral split-dollar and endorsement arrangements should be ignored for purposes of income taxation. The Service also felt that since Rev Rul 64-328 treated the economic benefit identically, whether the arrangement was cast as either an endorsement or collateral split-dollar, it was consistent in its treatment now by ignoring the difference between the two types.

From this platform, the Service argued that § 83 applied equally to endorsement and collateral split-dollar arrangements and that it taxed the transfer of property, in the form of equity build-up, on termination of the split-dollar arrangement. The Service pursued this argument with vigor even though in the collateral split-dollar arrangement legal ownership rests with the employee.

The Service was also concerned that these two types of split-dollar agreements could be structured so that little economic differentiation existed. However, that concern ignored what would happen in the context of creditors of either the employer or employee seeking to obtain rights under the two arrangements. For example, in the case of an insolvent employer that had been displaced from management in a Chapter 11 bankruptcy proceeding, it is improbable in a collateral split-dollar arrangement that the employer would continue paying the premiums on the policy. However, an employee could be motivated to do so since he or she owned the policy and any excess equity in the policy would be owned by the employee and not be under the management of the employer's creditors' committee. The employer's creditors could not reach anything other than the employer's contractual right to repayment of the advanced premiums, which were secured by some portion of the cash value.

In an endorsement relationship, in which the employer owned the policy, an employee would be hesitant to continue the insurance coverage even though he or she had a contractual claim for the equity portion. That claim probably would be submitted along with other unsecured creditors of the employer, and it would be doubtful whether the employee would ever receive the portion of the cash value to which he or she was entitled. It would also be problematic when the employee would receive any or all of the equity to which the employee was entitled. These are real differences and not mere formalism between the two types of financing arrangements.

Interim Guidance

Notice 2002-8 revoked the term premium rates published pursuant to Rev Rul 55-747, 1955-2 CB 228, and republished Table 2001, which was adopted under Notice 2001-10, as the mandated term rates for valuing the cost of insurance provided in the split-dollar context. Agreements entered into before January 28, 2002 were able to use PS 58 rates and not Table 2001 rates to determine value of current life insurance protection.

Does this allow reverse split-dollar agreements currently in place to use PS 58 costs? Notice 2001-10 implicitly acknowledged the legitimacy of reverse split-dollar agreements but sought to correct perceived abuses with it by the adoption of new, lower-term costs. Some have commented that PS 58 rates are not a proper measure for reverse split-dollar agreements because Notice 2001-10 referred to insurance protection provided to the employee. In a reverse split-dollar agreement, the employee owns the policy and the employer pays term rates for all or a portion of the insurance protection. Thus, the argument proceeds, the amount paid by the employer is not for coverage on the employee and consequently PS 58 rates are not applicable to it. However, one could forcefully argue that PS 58 costs could be used in reverse split-dollar arrangements in place before January 28, 2002 since the total coverage was on the employee and that the employer had received only a contractual right to part of it.

Other Types of Split-Dollar Financing

Notice 2002-8 raises the expectancy that the Treasury Regulations will address all forms of split-dollar arrangements, including arrangements outside the employer-employee context. Private letter rulings in the past have acknowledged the use of private split-dollar (e.g., PLR 9636033(Mar. 12, 1996)). Notice 2001-10 specifically mentioned reverse split-dollar. The Service has yet to comment publicly on the more arcane concept of reverse private split-dollar arrangements.

A private split-dollar arrangement in its basic form traditionally employs a collateral assignment method with premiums to be financed by a family member and the ownership of the policy transferred to a life insurance trust. The primary attraction of such an arrangement is the reduction of the amount of the gift made to the trust from the annual total premium to the term cost. The Treasury Regulations may prescribe interest-free loan treatment for all collateral split-dollar arrangements, including this form of private split-dollar arrangement. Such a regime would not foreclose its usage since the forgone interest cost initially would be less than the total premium. The forgone interest should not be taxable to the borrower. However, the lateral application of § 7872 would result in the lender, as the party advancing the premiums, receiving a taxable interest payment. Presumably, the interest payment would be nondeductible personal interest (under § 163) to the borrower. This result is somewhat anomalous in a gift context. The Treasury Regulations should clarify this point. A side benefit of split-dollar arrangements should continue to be the retention of control, within the insured's (or insureds' in the case of a joint and survivorship policy) estate, of a substantial amount of the cash surrender value represented by the loan without the inclusion of the proceeds.

The Service allows reliance on Table 2001 until future guidance is provided, which one assumes would come in the form of tables accompanying the new split-dollar Treasury Regulations. Notice 2002-8 permits the parties to a collateral split-dollar agreement or to a split-dollar agreement entered into before the publication of future guidance to use the lower of Table 2001 or the insurer's published premium term rate. After December 31, 2003, the insurer's published premium rates may be used only if that rate is generally available and made known to the public and the insurer regularly sells policies on that basis; otherwise the parties must use Table 2001.

One should not rely too heavily on the use of PS 58 rates or insurer's term cost for grandfathered policies. The Service is free to change rates and impose them on grandfathered policies retroactively and on new policies prospectively.

Table 2001 has been criticized for applying group rates to individual policies when the rates for a given age should be higher. If the Service is persuaded by this argument and replaces Table 2001 with higher rates, the enthusiasm for reverse split-dollar arrangements would be rekindled. Since in the reverse split-dollar arrangements the endorsement method is used with the employee owning the policy and the employer renting the death benefit by paying annual term costs, an increase in term rates will increase the portion of premium paid by the employer.

J. Alan Jensen
Holland & Knight LLP
Portland, Oregon

Letter to the Editor

The comments provided are the views of the author and are not necessarily the views of the Section or the Newsletter Board.

To the Editor:

Thanks to the observant and thorough analysis provided in Jeffrey Cheyne's article, "Oregon Estate Tax Warning - ORS 118.010" in the April 2002 issue of the Newsletter, we are amply warned that the Oregon Department of Revenue (the "ODR") will apply certain provisions of the Internal Revenue Code predating EGTRRA in determining Oregon's inheritance tax. As I read the ODR "Policy Statement," the ODR intends to pick and choose federal statutory provisions dating back to 1997 in calculating and administering the Oregon inheritance tax for decedents dying in 2002 and later. The consequence appears to be that the applicable exclusion amount used by the ODR will be at variance with current federal estate tax law and, more importantly for large estates, the phaseout of the credit for state death taxes (IRC § 2011) will be ignored. If this state of the law is accurate and these principles continue to be applied, in the year 2005 the maximum federal estate tax rate will be 47%, the maximum Oregon rate will be 16%, and the total marginal rate for death taxes will be 63%.

So what should we, as advisors to our clients, tell our clients to do?

While I am no scholar when it comes to the Oregon Constitution, I believe I can read a statute that is plain on its face. ORS 118.010(2) says what it means and means what it says. While divining legislative actions has proven a poor avocation in the past, I think it likely that the 1997 legislature, if asked, believed that Oregon would impose no inheritance tax that would increase overall death taxes for Oregon citizens. I believe, therefore, that the legislature should correct the situation retroactively to 2002. Given the situation, I suggest that clients should give consideration to filing appropriate returns (perhaps both new forms and old forms), applying ORS 118.010 as it is written, and prepare for a resolution either by judicial decision or legislative action. While this approach risks the imposition of the 5 percent delinquency penalty, as well as Oregon's fairly stiff interest on deficiencies, the risks may be merited. Frankly, it is to be hoped that either the ODR or the legislature will mandate some mitigation of adverse results given the tenuous and ephemeral structure of the Oregon inheritance tax as apparently interpreted by the ODR.

Very truly yours,
Stephen O. Lane
Eugene, Oregon

The Duty of Confidentiality When Representing Co-Clients in Estate Planning

Introduction

Estate planning attorneys routinely represent multiple clients on the same or related matters. For example, an attorney might represent a husband and wife or an unmarried couple on an estate plan. Complex estate planning techniques may involve many generations and may require the wealth holder to give up significant control over assets. An engagement that begins with basic estate planning may increase in scope to include advising with regard to taxes or the family business and may grow to representation of multiple members of a family on multiple matters.

When an attorney represents multiple clients on the same or related matters, the potential exists that the attorney may discover information either from one client or from a third party that the client does not want the attorney to disclose to the co-client and that may be detrimental to the co-client. Disciplinary Rule 4-101 of the Oregon Code of Professional Responsibility governs whether an attorney may disclose this secret information to the other client. The choices the attorney has with regard to the secret or confidence depends on the attorney's agreement with the parties. This article addresses the attorney's choices in three common scenarios:

- There is no agreement or explicit discussion of confidentiality before the attorney's discovery of the secret.
- Co-clients have explicitly agreed that confidences be kept confidential.
- Co-clients have waived confidentiality in an engagement letter or subsequent agreement.

No Prior Agreement Regarding Confidentiality of Client Confidences

Oregon law does not require attorneys to discuss the duty of confidentiality with their clients before accepting a multiple-client engagement. While most estate planners prefer to have an explicit agreement regarding confidentiality, it is easy to envision how in some engagements, especially with long-term clients, the signing of the agreement might be overlooked.

In situations in which the sharing of confidences was not explicitly discussed and consented to at the outset, an attorney may not disclose confidences imparted by one client to another. DR 4-101(B) states the general rule that an attorney may not reveal or use a confidence or secret to the disadvantage of a client. Further, a confidence or secret may not be used for the advantage of a lawyer or third person unless the client consents after full disclosure. Five exceptions to the general rule allow an attorney to reveal or use secrets. Secrets may be revealed:

- With the consent of the client, after full disclosure;
- When permitted by the disciplinary rules, required by law, or the lawyer reasonably believes the confidence must be revealed to effectively represent the client;
- When the client intends to commit a crime and the lawyer reveals the information necessary to prevent the crime;
- If necessary for the lawyer to defend him- or herself against an allegation of wrongdoing; or
- In connection with the sale of a law practice.
  DR 4-101(C)(1)-(5) (2001).

Of the above listed exceptions, only two are potentially applicable to the situation in which an attorney learns a secret harmful to a co-client. The first option the attorney has is to ask for the client's consent to reveal the information to the other client. Second, if the confidence involves the commission of a crime against the other client, the attorney may reveal enough to prevent that crime. If the above exceptions do not apply, the attorney may not reveal the confidence and must withdraw from the representation of both clients.

No judicial decisions or ethical opinions in Oregon discuss this Oregon rule regarding the disclosure of a client's confidential information to a co-client. The professional ethics committees of Florida and New York have concluded that disclosure to a co-client is prohibited.

The Florida ethics opinion involved the joint representation of Husband and Wife, where Husband disclosed to the attorney that he had drafted a codicil to his will benefiting a woman with whom Husband had been having an extramarital affair. FSB Legal Ethics, Op No 95-4 (1997). The lawyer had not obtained consent to reveal secrets between Husband and Wife. The opinion held that the lawyer owed duties of confidentiality to both Husband and Wife, regardless of whether they were being represented jointly. It further held that the duty of confidentiality trumps the duty to communicate to a client information that is relevant to the representation. Thus the attorney was ethically precluded from disclosing the confidence to Wife without Husband's consent. In such a situation, the lawyer must withdraw from the representation and in so doing should inform Wife and Husband that a conflict of interest has arisen that precludes the lawyer's continuing representation in these matters. The lawyer may advise both Husband and Wife to retain separate counsel.

The Florida opinion specifically rejected the discretionary approach espoused by the *Restatement (Third) of the Law Governing Lawyers* and the *ACTEC Commentaries on the Model Rules of Professional Conduct*. This discretionary approach posits that the usual rule of lawyer-client confidentiality does not apply in a joint representation and that the lawyer should have the discretion to determine whether the lawyer should disclose the separate confidence to the noncommunicating client.

The New York ethics opinion dealt with a joint representation of partners in a partnership. The lawyer had not advised the partners regarding the status of confidential information between partners. One partner called the attorney and asked if he could tell the attorney something in confidence. He went on to disclose that he was actively breaching the partnership. The New York State Bar Association Committee on Professional Ethics concluded that the lawyer may not disclose the confidence to the co-client. This decision was based on the absence of prior consent by the clients to the sharing of confidential information and the fact that the client warned the attorney in advance of the communication that he intended the information to be confidential and the attorney did not protest.

A recent New Jersey Supreme Court opinion took the opposite view, permitting an attorney to reveal a confidence to a co-client. *A. v. B., 726 A2d 924 (NJ 1999)*. However, this opinion relies on the New Jersey State Bar Association ethics rule that is significantly more permissive than the Oregon rule and that therefore is instructive but not controlling. In this case, Husband and Wife engaged a law firm for joint estate planning. Husband and Wife signed an engagement letter that did not discuss the status of confidential information but did require the co-clients to consent to present and future conflicts of interest. During the course of that representation, the firm learned from a third party that Husband had a secret non-marital child who would benefit under the estate plan. (The firm had mistakenly agreed to represent the child's mother in a paternity action against Husband. When the firm discovered the conflict of interest, it terminated its representation of the mother.) The New Jersey Rules of Professional Conduct permit a lawyer to reveal confidential information to the extent the lawyer reasonably believes necessary "to rectify the consequences of a client's criminal, illegal or fraudulent act in furtherance of which the lawyer's services had been used." NJ RPC 1.6(c)(1). The court held that the attorney could disclose the secret because Husband's deliberate omission of the existence of his nonmarital child constituted a fraud on Wife. Furthermore, the court found the engagement letter persuasive in showing the spouses' intents to work together.

The New Jersey rule upon which this decision was based is significantly more broad than the Oregon rule. In Oregon, disclosures related to crimes are limited to preventing a crime, while the New Jersey rule allows disclosure to rectify any criminal, illegal, or fraudulent act. It would be difficult to justify disclosure under this fact situation under the Oregon rule.

Co-clients Explicitly Retain Duty of Confidentiality—The "Secrets" Approach

Under the "secrets" approach, an attorney and co-clients agree that the duty of confidentiality is not waived, so therefore confidences communicated to the attorney by one client will not be shared with the other client. This approach has been the subject of almost universal disfavor by the estate planning bar, but recently several good arguments have emerged for using this approach.

The "Secrets" approach may be preferable in situations in which Husband and Wife both have substantial separate property and children from a prior marriage, such that their estate plans will not be unified. *See* Jackson M. Bruce, Jr., "So What's New in Ethics for the Trusts and Estates Lawyer?—Recent Developments and Critical Trends," Panel at 36th Annual Phillip E. Heckerling Institute on Estate Planning (Jan. 9, 2002). The "secrets" approach encourages open and honest communication with the lawyer, allowing the lawyer to draft the best estate plan. The client will be less likely to hold back vital information that could make the plan ineffective. Finally, and most compelling from the author's point of view, if a spouse discloses a secret to you that could break up their marriage—do you want to be the one to tell the other spouse? *See* Jeffrey N. Pennell, *Ethics, Professionalism, and Malpractice: Issues in Estate Planning and Administration* (2000).

Because the duty of confidentiality is presumed except when it is specifically waived, the lawyer's options when a secret is revealed are the same. The lawyer may not disclose the secret to the other client. If the secret involves an actual conflict of interest, the lawyer must resign from the representation.

Co-clients Consent to Share Secrets—The "No Secrets" Approach

The vast majority of estate planners require co-clients to waive their right to confidentiality. Under this "no-secrets" approach, the co-clients consent to the sharing of all secrets and confidences between them. This approach relies on an exception to DR 4-101, which permits an attorney to reveal confidences and secrets of the client with the client's consent after full disclosure to the client.

The "no secrets" approach is arguably the easiest for an attorney to follow, but it is not foolproof. There are several issues an attorney should consider before making a disclosure of a client confidence. First, the attorney needs to consider the adequacy of the full disclosure. If the secret is of an unusual nature, the client may take the position that potential consequences of his or her waiver were not adequately disclosed. Second, the duration of the consent is an important issue, especially due to the ongoing, fluid nature of estate planning practice. A representation that begins with the drafting of wills may expand to include advising family businesses and giving income tax advice. The representation may continue over many years. Does the consent given at the beginning of the engagement still apply with regard to new matters undertaken years later? Finally, it has yet to be resolved whether the client can reestablish the duty of confidentiality by later asking that information be kept confidential. For example, the co-client in the New York ethics opinion asked the attorney if he could tell him something in private, and then made the disclosure before the attorney could object. The standard here is the reasonable expectation of the client, that is, whether the client could reasonably expect that his communication would remain confidential.

Despite the issues identified above, the cases cited imply in dicta that the existence of a "no secrets" letter would get substantial weight in determining the outcome of a case. Also, as with any representation, if an actual conflict of interest arises, the attorney must withdraw.

Conclusion

In the course of representing co-clients, attorneys who learn confidential or secret information that adversely impacts the other co-client should carefully consider the options before disclosing the secret. If the secret is of a nature that a conflict of interest emerges among the co-clients, the attorney's only option may be to withdraw and recommend that each co-client obtain separate counsel.

Laura L. Chartoff
Portland, Oregon

CALENDAR OF SEMINARS AND EVENTS

- July 29-August 2, 2002 (Sponsored by ALI-ABA) **Skills Training for Estate Planners (STEP)**, Emory University, Atlanta, GA. Telephone: (800) CLE-NEWS.
- August 1-3, 2002 (Sponsored by ALI-ABA) **Estate Planning for the Family Business Owner**, Loews Coronado Bay Resort, Cornado (San Diego), CA. Telephone: (800) CLE-NEWS.
- August 6, 2002 (Sponsored by PLI) **Basic Will Drafting**, PLI New York Center, New York, NY. Telephone: (800) 260-4PLI.
- August 21-23, 2002 (Sponsored by ALI-ABA) **Basic Estate and Gift Taxation and Planning**, Seaport Hotel, Boston, MA. Telephone: (800) CLE-NEWS.
- September 12-13, 2002 (Sponsored by ALI-ABA) **Sophisticated Estate Planning Techniques**, Westin Copley Place, Boston, MA. Telephone: (800) CLE-NEWS.
- September 17-18, 2002 (Sponsored by PLI) **14th Annual Elder Law Institute: Basic Elder Law**, PLI New York Center, New York, NY. Telephone: (800) 260-4PLI.
- September 19-21, 2002 (Sponsored by ALI-ABA) **Post-Mortem Planning and Estate Administration**, Swissôtel, Boston, MA. Telephone: (800) CLE-NEWS.
- September 23-24, 2002 (Sponsored by PLI) **33rd Annual Estate Planning Institute**, PLI New York Center, New York, NY. Telephone: (800) 260-4PLI.
- September 27-28, 2002 (Sponsored by the Oregon State Bar) **Tax Institute**, Governor Hotel, Portland, OR. Telephone: (503) 684-7413.
- October 3-4, 2002 (Sponsored by ALI-ABA) **International Trust and Estate Planning**, Boston, MA. Telephone: (800) CLE-NEWS.
- October 11, 2002 (Sponsored by the Oregon State Bar) **Elder Law**, Oregon Convention Center, Portland, OR. Telephone: (503) 684-7413.
- October 27-31, 2002 (Sponsored by Chaminade University Tax Foundation and Chaminade University of Honolulu) **The 39th Annual Hawaii Tax Institute**, Sheraton Moana Surfrider Hotel, Honolulu, HI. Telephone: (615) 880-4200.
- October 31-November 1, 2002 (Sponsored by PLI) **33rd Annual Estate Planning Institute**, PLI California Center, San Francisco, CA. Telephone: (800) 260-4PLI.
- November 7-9, 2002 (Sponsored by National Association of Estate Planners and Councils) **39th Annual Conference**, Wyndam Harbour Island Hotel, Tampa, Fl. Telephone: (610) 526-1462.
- November 14-15, 2002 (Sponsored by the WSBA) **The 47th Annual Estate Planning Seminar**, Washington State Convention and Trade Center, Seattle, WA. Telephone: (800) 945-WSBA.
- Friday, November 16, 2002 (Sponsored by The University of Southern California Law School) **Twenty-Seventh Annual Probate and Trust Conference**, Western Bonaventure Hotel, Los Angeles, CA. Telephone: (213) 740-2582.
- November 18-22, 2002 (Sponsored by ALI-ABA) **Planning Techniques for Large Estates**, San Francisco, CA. Telephone: (800) CLE-NEWS.
- November 20, 2002 (Sponsored PLI) **Understanding Estate, Gift & Fiduciary Income Tax Returns 2002: Post-EGTRRA Strategies for Maximum Advantage with the "706" "709" and "1041**," PLI New York Center, New York, NY. Telephone: (800) 260-4PLI.
- December 5, 2002 (Sponsored by Oregon State Bar) **Planning the Basic Estate**, Oregon Convention Center, Portland, OR. Telephone: (503) 684-7413.
- January 6 - 10, 2003 (Sponsored by University of Miami School of Law) **Thirty-Seventh Annual Philip E. Heckerling Institute on Estate Planning**, Fontainebleau Hilton Resort & Towers, Miami Beach, FL. Telephone: (305) 284-6276.
- January 24, 2003 (Sponsored by Estate Planning Council of Portland) **Annual Estate Planning Seminar**, Oregon Convention Center, Portland, OR. Telephone: (503) 244-4294.
- January 27-29, 2003 (Sponsored by The University of Southern California Law School) **Institute on Federal Taxation**, The Wilshire Grand Hotel, Los Angeles, CA. Telephone: (213) 740-2582.
- February 20-22, 2003 (Sponsored by ALI-ABA) **Advanced Estate Planning Techniques**, Maui, HI. Telephone: (800) CLE-NEWS.
- February 28, 2003 (Sponsored by Oregon Law Institute) **Estate & Distribution Planning for Retirement Benefits**, Oregon Convention Center, Portland, OR. Telephone: (503) 768-6580.

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