

Technical Question Request

I am honored that so many people such as you seek my advice on many technical matters. Unfortunately, due to the volume of e-mails and phone calls that are generated from my speaking engagements and publications, I was left in a bit of a dilemma. Almost always, the person asking the question did not realize it involved a few more sub-issues past the initial question to answer. Even after the discussion of these sub-issues, many times there are differences in opinion between experts. Examples of these types of questions may be found at Appendix II:

Due to the volume of e-mails and questions requesting my assistance, I was left in a dilemma. Worse yet, most of the time, even if I answered a simple question, most of the time the next e-mail I immediately received from the estate planning attorney began with the words “one more question.” Time spent answering these e-mail and phone questions began to exceed well over an hour a day and in many days over two hours. The result was I needed a method where I could inform others of the dilemma that I was in, and find a possible solution.

Here is what my options were:

1. One choice was not to return the phone calls or e-mails, which is the solution chosen by many other national speakers.
2. The second was to post the articles that I have written regarding many of the issues that people inquire about on my website.
3. The third was that I could advise those who sought my technical advice that I needed to charge for my time and keep control over my calendar by setting up appointments.

I chose to do a combination of two and three. Articles that I have published may be found at: www.internationalcounselor.com/Articles.htm. Unfortunately, I do not have the time to direct every person who calls or writes to the specific article that may answer or partially answer his or her question. Alas, when I use to take my time to do so, many times, I would receive a follow up e-mail asking about a fact pattern that was a variation on the example discussed in the article.

Regarding item 3. above, we have two methods that we work in a co-counsel relationship.

Method 1 – Specific Technical Question Inquiry:

One is for specific technical questions where it is estimated that our time will be less than an hour to possibly less than two hours. The second is for co-counsel arrangements. Regarding method one, my hourly rate for domestic estate planning technical issues is \$375. We have a minimum fee of \$200 for a consultation. We do not accept international, estate planning, and asset protection planning questions under the specific technical question format. Rather, we only co-counsel of these arrangements as described in method two below.

Method 2 – Co-Counsel Arrangements:

We frequently co-counsel on estate planning engagements for clients whose net worth is greater than \$10 million as well as offshore and domestic asset protection trusts when a client’s net worth is greater than \$1 million. We do not accept any co-counsel work on the hope and prayer that the client will employ both of us in a co-counsel arrangement where we have not received an engagement letter and retainer in advance. The same is true for any proposed “team approach” to engaging a client. If a client or an estate planner wishes for us to be part of his or her “team, similar to the auto repairman who charges to determine what is wrong with your car, we charge to review any client fact pattern to determine what our fee will be to be part of any proposed “team.” Finally, we do not accept general planning questions that are not a co-counsel engagement. For example of these types of questions, see Appendix II – General Planning Questions.

Taking the above into account, should you like to proceed and set up an appointment, we charge a minimum \$200 for a half an hour appointment. We take MasterCard, VISA, or Discover credit cards. Please complete the form below and either

- (1) **Fax it (do not e-mail it) to 303-200-8867.** Usually within a day of receipt, I will e-mail back the times that I am available or if you prefer to mail it -
- (2) **Please mail it to:** Merric Law Firm, LLC
PO Box 248
Keenesburg, CO 80643

Please list four times that you are available in the next couple of days to a week immediately below:

Due to the volume of questions and my own current workload, almost always it is a couple of days from receipt of your form, before I am able to schedule an appointment. In this respect, if you are meeting with the client tomorrow, and have sent me a request for an appointment today, I am sorry, but I doubt I will be able to respond to your request in time.

I wish I were a professor who received a monthly check and had all of the time in the world to research and answer questions without charge, unfortunately such is not the case. I hope you understand the dilemma that I am in, and how I need to allocate my firm’s resources to meet the needs of my client’s as well as those estate planners who ask for and wish to pay for my technical assistance.

Respectfully,

Mark Merric

**Credit Card Authorization
Appendix I**

Name as it appears on the credit card: _____

Circle one: Mastercard VISA Discover

Credit Card Number: _____

CVV2 Code on the Back (last three or four digits) _____

Expiration Date _____

Billing Address of the credit card:

Street or PO Box Address: _____

Address: _____

City: _____ State: _____ Zip: _____

By signing below, I agree for my credit card to be charged the minimum \$200 consultation fee. I also agree that after the consultation, any amount due in excess of the \$200 based on the applicable hourly rate above multiplied by the time spent by Merric Law Firm, LLC (on the phone and reviewing any facts given in advance) will be charged to my credit card.

Signature

Date

We previously set up appointments with estate planning attorneys, and then billed them after the call. Sorry to say, attorneys cancelled appointments much more frequently than clients did, and it was not cost beneficial for us to continue this procedure for consultations that typically provided \$200 to \$600 of billings. So we adopted the McDonald's philosophy that one should pay for his or her hamburger before we spent the time to prepare and deliver it.

Technical Information Questions

Appendix II

1. Can a settlor name his spouse as the sole trustee of an irrevocable trust without an estate inclusion issue?

Properly drafted and a fact pattern where the spouse does not have a support obligation to a child/beneficiary, the answer is yes. If there is a support obligation, savings clauses may possibly prevent the estate inclusion issue. Unfortunately, the full analysis of this question takes about two to three hours to present in a class. On the phone this time might be reduced to an hour and one-half. In this respect, it would be much more cost-beneficial for an estate planner to attend one of our seminars to answer this question. For further information on these seminars go to:

<http://www.internationalcounselor.com/seminars.htm>.

2. Can a settlor create an inter vivos irrevocable trust for the benefit of his spouse and children (i.e. a spousal access trust) without an estate inclusion issue regarding the spouse/beneficiary?

The general answer is probably. However, if the client is not advised or the planner does not draft around some large exceptions, guess who is liable? If the distribution language includes maintenance and support, the detailed answer and authorities are in conflict over what else is necessary in the distribution language. Further, some planners take the position that the Internal Revenue Service is no longer pursuing the issue. This issue will be covered in a future two part Leimberg LISI series. Hopefully, it will be published in another few months.

3. Does a domestic asset protection trust (“DAPT”) work?

There is not a single case or trial court case on this subject providing guidance one way or another. Experts are split in opinion. The subsidiary question – Does a domestic asset protection trust put a client in a better negotiating position with a creditor than not having one? Of course it does. How much better requires a detailed analysis. Would an offshore trust be a much better solution? Generally this will be the case, but there are cost/benefit issues to determine, which require an analysis of the client’s situation. The result is this becomes an hour or more phone call. The same is true regarding the question if a Utah resident (from a UTC state) should forum shop for the benefits of better asset protection legislation in another domestic asset protection state or offshore.

4. How do I design a five year Medicaid Trust so that it is a grantor trust for tax purposes?

Elder law is not our area we currently wish to work in, so I would initially advise that you seek help elsewhere. However, I realize I receive inquiries on this area due to the level of detail in my grantor trust outline. Unfortunately, each state’s laws are different and the rules are constantly changing within each state. Working through the nuances of the grantor trust rules as well as state laws is generally a two hour phone call.

General Planning Engagements

Appendix III

1. My client has a net worth of \$8 million is married with two kids. Do you have any ideas for estate planning?
2. My client has a possible current claim for approximately \$100,000 to \$500,000 against him. If I transfer his assets, are there any fraudulent conveyance issues?
3. Are there any simple solutions for planning around IRC Section 2036 partnership estate inclusion issues?

The first question asks us to create an estate plan for a client. As we noted above, for clients with a net worth of \$10 million and above, we would charge for such a plan, and typically without any co-counsel split, our fee would be from \$5,000 to \$7,500. It is generally not as cost feasible to the client for us to do this type of work on an \$8 million client. The second question depends on state law and typically would require about \$5,000 of research time to come up with not even a clear answer. The third fact pattern involves many cases as well as a review of the client's own fact pattern, and typically would require from \$3,000 to \$5,000 of our time. In general, if someone is looking for detailed information on questions such as 1. through 3., it would be much more cost feasible for them to attend one of our estate or asset protection planning seminars or possibly read an article that we may have written on point. For further information on these seminars, go to www.internationalcounselor.com/HotofthePress.htm.