

Wills, Trusts & Estates

Importance of integrity when providing trust and estate advice

By **Margaret O'Sullivan**

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(August 11, 2021, 8:30 AM EDT) -- It is now the height of summer, and a good time to take a breath and reflect a bit before the hurly burly of the fall descends upon us. And so, I turn to the topic of the importance of integrity in providing trust and estate advice.

What do we mean when we say that a professional estate adviser has "integrity"? I would like to think it means someone who is an ethics leader, has the complete trust and respect of clients and colleagues, who sets the tone of conduct and standards for his or her peers; and who does not compromise principle due to a firmly entrenched ethical framework.

To describe a professional adviser in today's competitive, commercially oriented culture as having integrity may be seen by some as a bit "old-fashioned" or "old school." Certainly, integrity is a trait we all respect and aspire to have others attribute to each of us, but it seems to be a trait less revered today than in the past in defining professional success. Perhaps this is because to act with integrity in particular situations can be a constraint on commercial success, therefore not a "sexy" trait for those

who wish to pursue commercial success above all else.

Yet integrity is important in defining a professional adviser, and in my view, is integral to advising on trust and estate matters, even more important than in many other advisory areas for the reasons set out below.

As trust and estate advisers, we are often entrusted with sensitive and confidential financial and family information that often no one else in the world knows, other than our clients and ourselves. We are the keepers of many secrets and must guard what we know with vigilance and with the greatest discretion.

We are often intimately involved in the dynamics of a large family group, representing multiple family members in complex issues of intergenerational wealth transfer, a process which poses difficult issues in first defining to whom we owe duties, and in managing interlocking and sometimes conflicting interests.

We are advisers to clients who at the outset of our relationship may be hale and hearty, but with advanced age and illness often become diminished in their capacity, and as a result vulnerable, both financially and emotionally. We often then assume the role of a "protector" of sorts, including protecting our client against overreaching family members and others who might take advantage of them, which tests our loyalty and faithfulness and imposes a high moral obligation on us as our client's trusted adviser and advocate.

We play a challenging role in planning and administering wealth transfers between spouses, whether married, common law or same sex, where we must creatively deal with a host of issues, for example, where there is a great disparity in inherited wealth between two spouses, or second or subsequent marriages where we must ensure our clients make reasonable provision for financial obligations arising from prior marriages or other relationships. In these situations, we often bring our own value constructs as well as society's in establishing wealth transfer plans which reflect today's attitudes, including what is considered a fair distribution between spouses, children and others in many

different scenarios and circumstances.

We are involved in advising clients on how to minimize their exposure to taxation and to other claims, including those that may be made by creditors or family members. As a result, we often walk a tightrope between striving to act in the best interests of our client and protecting his or her individual interests, while acting within the law in carrying out what is considered legitimate, proper estate planning.

We practise in an area in which there is significant legislative change and complexity and which has become increasingly specialized to meet the needs of our clients, whose affairs have also become more complicated. The pandemic has only increased the rate of change and the amount of complexity and the need to "stay on top." To practise with integrity, we must be fair to our clients, and exercise a high level of competence to serve our clients well, or they will be underserved or ill-served.

As a final observation, trust and estate advisers and all those who offer estate planning advice bear a heavy burden and ethical responsibility in their role as the primary architects of wealth transfer. The exercise of their skills will often affect several generations to come and long after they are gone. The ability, ideas, values and competence they bring to the task will have significant future impact and repercussions. The will we draw today or the trust we establish tomorrow will often critically affect both the financial and non-financial well-being of many people for a very long time.

Integrity is important, perhaps key, to being a trust and estate adviser, in particular because of the long-term impact of what we do. Because trust and estate advisers play an important societal role in acting as the key agents of intergenerational wealth transfer, the role of integrity transcends its importance to the reputation of either the individual adviser or their profession, but goes to the very heart of the matter: society's interest in ensuring its professional advisers are fair, honest, and conflict-free and that they act beyond reproach and always in the client's best interest and the general public interest — in short, that they act with integrity.

As we move forward in future, given demographic change, an increasingly ageing population, and an unprecedented transfer of wealth to the next generation, a light needs to be shone on the need for integrity in providing trust and estate advice — for good, objective, independent advice to best serve our clients, their families and generations to come.

And on a lighter note, I hope all of our readers enjoy the rest of summer! Here is an exceptional rendition of "Summertime," from George Gershwin's Porgy and Bess sung by the incomparable Ella Fitzgerald and recorded in Berlin in 1968.

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