

Technology Corner

By Joseph G. Hodges, Jr.

This issue's column is devoted exclusively to a discussion of Don Kelley's new book entitled *THE ELECTRONIC PRACTICE—A TRUSTS AND ESTATES DESKTOP*¹ that was first released by Penton Media, publishers of *Trusts & Estates* magazine in November, 2008.

Don is considered to be the guru of computer automation for trust and estates professionals. He began his legal technology carrier in the vineyards of the ABA Law Practice Management Section many years ago. Don then moved on to the ABA Real Property, Trust and Estate Law Section and the American College of Trusts & Estates Counsel, where, as a Fellow of the College, he eventually chaired its Technology in the Practice Committee. While Don was doing all of this, he was also co-authoring books about estate planning for farmers and ranchers and family business organizations, and developing his own software products. At the same time, Don has been authoring estate planning software reviews for various publications. In fact, it was the authoring of these reviews that in large part gave Don the impetus for eventually authoring *THE ELECTRONIC PRACTICE*.

Don best describes the purposes of his new book as follows: "Get the most out of your computer and its access to the Internet with the powerful tools in this book. Expand your choices of software and your ability to evaluate it and it will direct you to time saving and practice enhancing internet resources." This is quite a full agenda, but the book carries it off with a success that makes it a must-have resource for every practicing Trusts and Estates professional. Even more experienced "techies" amongst us will find a number or practical tips and "I didn't know that" items that we can apply to our T and E practices. What makes this possible more than anything is that the book comes with a CD which, when installed, makes the entire text of the book and all of its resources instantly avail-



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able on your computer. This links you to Web sites with specialized resources that will be of great value to you as a trusts and estates practitioner.² Thus, the CD alone is well worth the \$95 price for the book.

While there is not enough room here to repeat the entire table of contents, a quick look at the part and chapter headings would be useful. The book is broken down into seven separate parts. Those consist of (1) Electronic Resources—Background, (2) Electronic Facilities for the Trusts and Estates Practice, (3) Client Communication—Client and Group Presentations, (4) Drafting and Document Assembly, (5) Tax Return Preparation and Valuation Resources, (6) Trusts and Estates Resources on the Web, and (7) Trusts and Estates Legal Research on the Web.

Within these seven parts are 30 chapters that are chock full of useful information that quite frankly cannot be found anywhere else in one single collection like this, so you might say this book is now the Bible of electronic practice for trusts and estates lawyers. There is even information in it for MAC users written by Brenda Kelley (no relation to Don) of Santa Fe, New Mexico. The 30 chapters consist of the following: Under Part 1, (1) Basics of Computer Operations for Tand E Practitioners, (2) Tricks and Traps—Computer Operation for Non-Techies, (3) Technical Resources on Law Office, (4) Web-Based Services, (5) The Limits of Technology—The “Black Box” Effect, (6) The Mac Alternative, and (7) The Internet as Part of Your Desktop; under Part 2, (8) Software Selection and Lists and Reviews of Trusts and Estates Software, (9) Client Data Gathering and Organization and Case Management Systems, (10) Comprehensive and Basic Estate Planning Programs, (11) Standalone Handtool Programs and Spreadsheets, (12) State Estate and Inheritance Tax Calculations, (13) Life Insurance Calculations, Planning and Resources, (14) Charitable Giving Software and Calculation Tables—Commercial and Free Web-Based, (15) Business Entity Planning Software and Resources, (16) Pension, Retirement and Financial Planning and Collectibles, and (17) Programs and Web-Based Calculators Providing Miscellaneous Calculations; under Part 3, (18) Presentation of Client Reports, Flow Charts and Aids to Decision Making, (19) Adobe Acrobat and PDF File Creation and Application, and (20) PowerPoint Opportunities for Communication; under Part 4, (21) Will and Trust Drafting Programs Review and Evaluation; under Part 5 (22) Valuation of Securities and Other Property, (23) Estate and Gift Tax Return Preparation and Utilities, and (24) Fiduciary Accounting and Income Tax Return Preparation; under Part 6 (25) Legal Forms Available on the Web, (26) Planned Giving Resources on the Web, (27)

Organization and Operation of the Family Office, and (28) Primary Sources for Federal and State Tax Material and Federal Agencies; and under Part 7 (29) Resources for Tax, Trusts and Estates Research, and (30) Using Generic Search Engines for Tax and Other T and E Research.

Looking through the various parts and chapters above, I can easily see some things that should be of interest to all of us, like getting on a wireless network (Chap. 2), calculations involving AFRs (Chap. 5), the Internet as part of your desktop (Chap. 7), lists and reviews of T and E software (Chap. 8), estate planning software programs (Chap. 10), charitable gift calculations and presentations (Chap. 14), resources for business entity planning (Chap. 15), pension and IRA planning software (Chap. 16), presentations to our clients (Chap. 18), document drafting and assembly (Chap. 21), Internet resources for asset valuations (Chap. 22), legal forms available on the Web (Chap. 25), planned giving resources on the Web (Chap. 26), and primary sources on the Web for federal and state tax materials and federal agencies (Chap. 28).

Jason Havens, who in recent years has written most of the technology reports for the ABA-PTL Reports on the Heckerling Estate Planning Institute, recently reviewed Don's new book. In it, he extolls the virtues of Don's beginning chapters, where he covers numerous tricks and traps of functioning with a Windows-based or MAC-based computer as well as his suggestions for browsing the Internet more effectively, such as by using tabbed browsing. Other applications Jason highlights are desktop search or indexing applications, remote access software (which he uses extensively), and collaboration software (which, if used properly, can be worth its weight in gold). Jason points out that Chapter 3 of the book outlines a variety of law office technology resources, most of which are available for free on line. Some hard copy resources are also included that are available at *Amazon.com*, often in a used book edition that is less expensive. Of particular interest to Jason is Don's concentration on e-mail issues towards the end of this chapter, and the various ways files can be made available without having to send them as insecure attachments.

The programs that are highlighted in Chapter 4 dealing with Web-Based services include EstateWorks, Connect2A, FASTER, Crescendo GiftLegacy, *CharitablePlanning.com* and Basecamp. Don's Evaluation Matrix for such software stresses a concern many of us have about them: whether the client data that is stored on their servers will remain secure. This is probably one of the main reasons many of us have shied away from using such services so far. Many of you are probably

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Money and Meaning

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But if “everything is easier” without the planning, what can be done to keep it on course? In brief, you need to keep talking and keep at it. I believe that there are a few basic steps that families can take to enhance the likelihood that wealth creators will engage in the planning necessary to realize their dream of perpetuating family wealth. To this end, families should:

- Articulate a vision of the benefits planning will bring.
- Openly communicate in a safe environment about the challenges and concerns that arise in the course of planning, including concerns about life after transition and family dynamics.
- Intimately engage others in the process, to help keep the need for planning top of mind.

Elder Care

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Understanding and Managing the Triggers

Our role as planners is to be a calming force that takes as much emotion and apprehension as possible out of the process. Understanding what triggers the “Age of Apprehension” will allow us to put a good plan in place.

The challenge must be met on two fronts. The first is focusing on a strategy that helps the client to maintain control over the process. The second is to reverse the strategy of estate planning from one of saving to one of thoughtful spending. Clients may have

to be convinced that in order to stay in control, they will have to use some of their resources (typically financial assets) to manage the challenges presented by life’s events and transitions. Will they need to invest in safety accommodations for their home or hire in-home help? Is it time to self-insure against long-term care costs? Is it no longer realistic to provide the care at home that the client needs? Is an assisted living or skilled care environment called for?

I counsel my clients that life-changing events are a lot like those rainy days that they have been preparing for by setting money aside their entire adult lives! Because they have planned well, they have the ability to stay in control of their options and minimize the apprehension associated with these events. This approach can be successful in helping them to meet life’s challenges on their own terms.

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wondering what the “Black Box” effect is that is mentioned in Chapter 5, under the limits of technology. Don describes this in his book as the situation when much of the tax and value calculations necessary for the resolution of practice issues requires the generation of tables and sequences of calculations that are not apparent when viewing the software interface. As a partial solution to this, Don refers the readers to Chapter 11 where several standalone hand tools that allow you to follow and understand the accuracy of the underlying calculations are discussed.

When it comes to MACs (Chapter 6), Jason’s comments are particu-

larly helpful because he is a MAC user himself, and he wrote his review using a MAC. He says that the MAC’s operating system is truly stable, and that Don’s book points out the excellent performance of the available hardware and software for MAC users. Jason lauds the fact that he can seamlessly exchange Microsoft Office files between the 2003 version for Windows and the 2004 version for the MAC. Admittedly there are exceptions to this, such as calculation and illustration programs, drafting systems, and case management systems, which he gets around by using a virtual instance of Windows XP Pro running on Parallels.

One of the most useful parts of the book is Appendix 8A, at the end of Chapter 8. This is a matrix to use in selecting software for the T and E practice. It consists of a series of questions the user should ask when evaluating particular software for possible purchase. One of these is compatibility with the user’s equipment. This issue has become a very important now that Microsoft wants to phase out Windows XP, and Vista in favor of an even newer version of its operating system.

Jason points out that Chapters 10 through 16 are devoted to estate planning calculation and illustration programs that enumerate most of the applications available to estate planning professionals today. This is a collection well worth the reading, so that programs to be evaluated further can be identified and run through the software selection matrix that is mentioned immediately above.

If you have lasted this long through this review, you are now at Chapters 18 through 20, which cover client communications. We all know how important the phrase is “a picture is worth a

thousand words,” and how true this is in our field of trusts and estates. A review of these three chapters will not only put you on top of what the best programs are for doing this, but also give you a new higher level of expertise and comfort with Adobe Acrobat.

Chapters 21 through 30 are described by Jason as a “technological potpourri for trusts and estates lawyers,” and he is right on, as these chapters focus on specific technology applications for the trusts and estates professional. He and Don were both kind enough to include in their materials a citation to the trusts and estates software matrix that Roger Shumaker, Craig Dryer and I put together for our Special Session on Technology at the 2008 University of Miami Heckerling Institute. This matrix can be found at www.abanet.org/rpte/meetings_cle/heckerling/2008/exhibitc.pdf. It is an excellent listing of all the then available software products, along with the name, Web site, and 1-800 telephone number of the manufacturer to make it easier to track down each product of interest.

As if all of this were not enough, Don concludes his book with two final chapters (29 and 30) that cover all the legal research tools that are available on the Web and elsewhere that deal with trust and estate issues. You might be surprised by the number of tools that are actually available for this.

In conclusion, I think it is fair to say that THE ELECTRONIC PRACTICE is truly a very valuable resource every trusts and estates practitioner should have, especially given the way it is going to be updated by online vs. our having to periodically purchase a new edition of the book. It offers one of the broadest and most comprehensive reviews of this entire area ever printed. There

is something of use to each one of us that we either did not know anything about, or that brings our personal knowledge in this area up to a new higher level. For these reasons alone, I commend this book to each of you.

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How to Dispose of Mobile Phones

www.abanet.org/tech/ltrc/fy-idocs/mobiledisposal.html

Dual Monitors Can Make Your Life Easier

http://jimcalloway.typepad.com/lawpracticetips/2006/07/dual_monitors_m.html

Lawyer Marketing With Twitter

www.stemlegal.com/strategyblog/2008/lawyer-marketing-with-twitter

Metadata and How to Control It—Metadatarisk.org

www.metadarisk.org/news/news_overview.htm

ENDNOTES

¹ Donald H. Kelley, *The Electronic Practice—A Trust & Estates Desktop* (2008)

² Updates are available for download at <http://trustsandestates.com/kelley/index.html>.

You Created a Trust— So Now What?

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ing a charitable contribution to a charitable beneficiary, paying a beneficiary’s medical expenses, and the like.

The assets owned within the IEP are not the client’s personal assets; therefore, the client should avoid using the structure as his or her own “back pocketbook.” Sufficient assets should be retained outside of the IEP so that normal

day-to-day living expenses and reasonably anticipated obligations can be satisfied out of the client’s earnings and retained assets. As a general rule, unprotected funds should be exhausted before a client requests a distribution from the trust or partnership. If after reviewing the client’s other sources of income, however, distributions will be regularly required for the client’s living expenses, such as for a retiree, the trustees may authorize periodic (for example, quarterly) distributions for this purpose.

Proper documentation, however, usually in the form of a trust, partnership, or joint trust and partnership resolution, should be prepared for IEP distributions. For example, as suggested above, if partnership funds are to be distributed to the general partner/client, a joint partnership/trust resolution would document that the transaction will be treated as a one percent distribution to the client and a 99 percent distribution to the trust, followed by a distribution from the trust to the client as a beneficiary of the trust. Similarly, if the partnership will make a direct tax payment to the Internal Revenue Service on behalf of the client for income earned at the partnership level, a similar resolution should be prepared. If such transactions are not properly documented, a creditor could argue that the IEP should be disregarded, since it is being administered as nothing more than the client’s “back pocketbook.”

With respect to the payment of taxes, if it is anticipated that the client will ever be unable to pay income taxes as they become due, then to protect against the possibility that the client might transfer assets to the trust and