

How to Efficiently Get the Story from the Client in Estate and Trust Litigation

Legal Alert
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While every litigator is faced with the best way to obtain the necessary background information from a client in estate and trust disputes, emotions, and sometimes the family history, both of which are part and parcel of estate and trust disputes, can (and do) get in the way of ‘cutting to the chase.’

Rather than spent hours acting as a pseudo, and poorly trained therapist, consider the following alternatives:

A Narrative. Ask the client to prepare a written account. Explain that because lawyers charge by the hour, and most people can read 250 words a minute (and some at twice that speed), they will save money by writing a narrative, rather than sitting down and telling the whole story in-person.

That narrative can then be sent back to the client, highlighting what is important to the case and interlineated with the important evidentiary questions “who else knows about this fact?” and “is there anything in writing about this fact?” Because state law can restrict who can testify, and the substance of that testimony (colloquially known as application of the Dead Man’s statute), who knows about a fact can be crucial.

Interrupting Their Story. No one likes to be interrupted; however, what may seem important to the client may not be the core of the issue, conversely that which seems trivial to the client may, in fact, be heart of the matter. In an emotional, stressful arena such as estate litigation, it helps to begin with the following qualification:

- You will always know more about what happened, how it affects you, and how wrong it was then I as a lawyer will ever know;

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- However, as a lawyer, I know that certain very particular details are important;
- I want you to tell me the whole story, but please understand that I'm likely to interrupt to obtain clarification and additional information where I need it (such as a date, or what particular words your mother used, or who else heard that conversation); and
- If you feel that there is additional information that I need to know, please offer that up.

Get it all. Clients rarely understand that discovery means EVERYTHING – every email, every letter, text, and Christmas card. Clients have a natural tendency to bring just the documents or emails they think are important (and they might be right). More worrisome, as individuals, trust and estate clients rarely know or understand how to preserve evidence, particularly electronic evidence. But the opposing side is going to ask for it all, so it is important to explain that to the client at the onset and put them to work compiling everything. In addition, consider hiring an outside ediscovery vendor to do an initial pull down of email, texts and other ediscovery. That avoids inadvertent deletions and provides you, as the lawyer, with some protection in the event of a discovery battle.