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Going the Distance: How Increased Client Contact Can Benefit Clients and Their Attorneys

*Ashleigh Gough**

I. INTRODUCTION

For elder law attorneys, the value of “going the distance” for clients cannot be overstated. Many elderly clients face mobility problems and some are generally overwhelmed by the seemingly-herculean task of estate planning, especially widows whose husbands have “done all that” for them until they died. The willingness to meet with clients where they are – literally, at times – can help solidify the attorney-client relationship.¹

Especially in a practice focused on elder law, making house calls has almost come to be a bare-minimum requirement. Some states have even gone so far as to say that it is *necessary* for elder law practitioners to meet clients outside of their offices, and to be “prepared to set time aside to meet with clients where they are.”² Fortunately, taking extra steps to ensure someone is addressing the clients’ particular needs and accompanying them along the journey of implementing their estate planning with their banks, insurance companies and other financial institutions can benefit clients and attorneys.

This “high-touch” practice of law can provide a valuable marketing opportunity for attorneys. Clients’ families, financial and tax professionals, and sometimes even clients’ neighbors (who can serve as disinterested witnesses at an in-home document execution) will all have a chance to see the attorney “in action” without signing a retainer. While travel time and quite a bit of hand-holding are not directly beneficial to an attorney’s bottom line, the indirect benefits afforded by a small additional investment in the attorney-client relationship can often provide a much greater return to the attorney in the long run.

* Special Professor of Law, Maurice A. Deane School of Law at Hofstra University. The unfortunate impact of COVID-19 on the practice of law, especially Elder Law, will likely make some of these suggestions impractical or unwise at present. It is the author’s hope that a return to this approach of practice will be safe and advisable again in the near future.

¹ See Hope Viner Samborn, *Switching to House Calls: Leaving the Office Behind Is Perfect for Some Solos*, A.B.A. J., May 2006, at 28, 28.

² 1A JAY E. GRENIG & NATHAN A FISHBACH, WISC. PRAC., METHODS OF PRAC. § 30:25 (5th ed. 2019).

II. A UNIQUE DEMOGRAPHIC

Elderly clients have unique needs which can create unique challenges for their attorneys. In addition to having substantive legal skills and knowledge about wills, powers of attorney, estate planning, guardianship and administration, retirement village contracts and disputes, nursing home care, pension entitlements, reverse mortgages, elder abuse, and age discrimination, elder law practitioners must also bring knowledge of the elderly that allows them and their staff to ignore myths about aging and the competence of the elderly.³

Because “seniors place particular value on connection with others, including peers, family and friends,”⁴ it is crucial to build rapport with older clients and to acknowledge that there may be other voices at the planning table than just the client’s. “When representing the elderly . . . lawyers must establish a protocol that will put the clients at ease while avoiding potential ethics dilemmas that could arise through dealings with family members and friends.”⁵ While upholding ethical standards is never negotiable, many clients who choose to involve family members or friends in their planning discussions do so because they acknowledge that these third parties will eventually be playing vital roles in the estate plans being created.

However, some elderly clients do not have trustworthy family members or friends to assist them. The population of “elder orphans” — elderly people residing in the community who are isolated either socially or physically and who lack family members or other designated surrogates to assist them⁶ — is growing.⁷ It is especially important to acknowledge that these clients may come to the planning table more fearful or apprehensive than others. Taking extra steps to make these clients comfortable may give an attorney the opportunity to serve an elderly client who would otherwise not be able to consult with a lawyer

³ Milton W. Zwicker, *Building an Elder Law Practice*, GPSOLO, Mar. 2004, at 22, 22.

⁴ Peter Margulies, *Access, Connection and Voice: A Contextual Approach to Representing Senior Citizens of Questionable Capacity*, 62 *FORDHAM L. REV.* 1073, 1078 (1994) (citing Linda F. Smith, *Representing the Elderly Client and Addressing the Question of Competence*, 14 *J. CONTEMP. L.* 61, 72 (1988)).

⁵ Debra Baker, *A Good Deskside Manner*, A.B.A. J., Aug. 1999, at 62, 62.

⁶ Maria T. Carney et al., *Elder Orphans Hiding in Plain Sight: A Growing Vulnerable Population*, *CURRENT GERONTOLOGY & GERIATRICS RES.* § 1 (Oct. 23, 2016), <https://www.hindawi.com/journals/cggr/2016/4723250/> [<https://perma.cc/SW6D-JZ6L>].

⁷ Mary F. Radford, *What if Granny Wants to Gamble? Balancing Autonomy and Vulnerability in the Golden Years*, 45 *ACTEC L. J.* 221, 237-38 (2020).

to prepare an estate plan.⁸ This clearly benefits the client, but it can also benefit society at large,⁹ and even benefit the attorney as well.

III. HOUSE CALLS BENEFIT CLIENTS

Whether or not a client is absolutely homebound, there are reasons beyond necessity that make house calls a good fit for clients and their attorneys. House calls can afford clients comfort, convenience, and reduce complication¹⁰ in the estate planning process. Personal rapport goes a long way, especially with elderly clients; often, clients are more comfortable opening up to an attorney about their families and their planning concerns when they sense that the attorney's empathy is genuine and not simply a matter of professionalism.¹¹ "Clients are much more relaxed and more able to talk about their assets while sitting at the kitchen table."¹² This, in turn, leads to more meaningful progress during the meeting. Moreover, the camaraderie that is more easily developed in a house call – with prominently displayed pictures of grandchildren whose interests are being planned for in the very meeting taking place – can give an elderly client piece of mind while considering some issues that can potentially be very daunting.¹³

Practically speaking, allowing a client to remain at home can help remove impediments to otherwise arranging a meeting: reduced mobility, fear of driving (or inability to do so safely anymore), or poor hearing in an office setting with background noise distractions may present challenges to elderly clients.¹⁴ Since clients are more likely to have easy access to their important documents in their own homes, the planning

⁸ Making house calls can also help preserve a client's autonomy. See Margulies, *supra* note 4, at 1074.

⁹ "[A] readier, cheaper, and more widespread access to legal guidance should give rise to a more just society . . ." RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 231 (2008).

¹⁰ David Dorion, *5 Reasons Lawyers Should Make House Calls*, *LAWCROSSING* 2, <https://www.lawcrossing.com/employers/article/pdf/900050159.pdf> (last visited Nov. 6, 2020).

¹¹ See Jerome Ira Solkoff, *Minding Your Elders: Make Your Office More Inviting for Older Clients by Accommodating Both Personal and Legal Needs*, *A.B.A. J.*, Apr. 1999, at 70. Cf. Jill Schachner Chanen, *Home is Where the Lawyer Is: Solos can Utilize House Calls as a Way to Reach, Service and Impress Clients*, *A.B.A. J.*, Mar. 2003, at 58, 58-59. Other attorneys feel that conducting office visits helps to create an atmosphere of professionalism that is not possible in the relaxed atmosphere of a client's home.

¹² Samborn, *supra* note 1, at 28 (quoting Washington, D.C. solo practitioner Robert Mittendorff).

¹³ Once a good rapport has been developed, future contact can happen over the phone as well. "Sometimes clients . . . do not have an actual legal problem; they just need a little hand-holding and a reassuring chat." Solkoff, *supra* note 11, at 70.

¹⁴ 24 CATHERINE ANNE SEAL, *COLORADO ELDER LAW* § 1:5 (2008).

process may even be completed more quickly; there's no need to go home and search for copies of their insurance policies, bank statements, or beneficiary designations after coming to an in-office meeting.¹⁵ Scheduling in-home meetings can also better accommodate clients' medication schedules (to optimize their mental acuity) and make the meeting more productive.¹⁶

Another benefit to meeting clients in their homes is that doing so allows the attorney a clearer view into the client's true lifestyle. "Seeing a senior citizen in the environment in which she lives provides indispensable information about how the citizen copes — information that may be distorted through the lens of more artificial interactions in the law office."¹⁷ Meeting clients at home can help the attorney ascertain the client's level of competence and ability to continue living at home in a more concrete way than a brief in-office meeting.

IV. CLIENT CONTACT AS A MARKETING TOOL

A. House Calls Benefit Attorneys, Too

A practical benefit of not maintaining a physical office, or only maintaining a minimal physical office, is significantly reduced overhead.¹⁸ For this and other reasons, some practitioners have shifted their business models exclusively to house calls or other out-of-office meeting locations.¹⁹ In addition to lowering operating costs, meeting clients in their homes, or merely offering that option to them, can also lead to a significant increase in business for attorneys.²⁰

An attorney making a house call is seen as "more conscious of the clients' needs than their own needs. To that end, a client will feel more appreciated for bringing their legal needs to [that] law firm."²¹ When family members see how much care and attention an attorney is giving their elderly relative, they have a proven example of the service they too would receive if they were to choose to work with the same attorney.²² Executing documents in clients' homes often requires the presence of witnesses to the documents' execution. Since it is not always possible

¹⁵ Samborn, *supra* note 1, at 28.

¹⁶ Zwicker, *supra* note 3, at 22.

¹⁷ Margulies, *supra* note 4, at 1092.

¹⁸ Samborn, *supra* note 1, at 28.

¹⁹ *E.g., id.*

²⁰ Chanen, *supra* note 11, at 58-59.

²¹ Dorion, *supra* note 10, at 2.

²² See generally Ronald D. Aucutt, *Creed or Code: The Calling of the Counselor in Advising Families*, 36 ACTEC L.J. 669, 673 (2011) ("But the counselor who helps foster, feed, fortify, and fulfill the family by encouraging and facilitating constructive dialogue — that counselor adds something that is precious.").

for an attorney to show up with witnesses as well, clients may call in their neighbors or friends to serve as their witnesses. One house call may lead to others as the witnesses see for themselves how they would be treated if they were to retain the attorney.

In order to adequately service clients and accommodate the extra time required for traveling, limiting the radius for house calls to a limited geographic region may make this model more tenable.²³ On arrival at a house call, an attorney should inform clients how much time can be spent with them that day, especially if another out-of-office meeting is scheduled.²⁴ Even when time is tight, an attorney can remain empathetic without indulging clients who stray from the matters at hand; redirecting meetings by asking clients specific questions can help keep everyone's attention on the goals of the meeting.²⁵ There are ways to stay on task while not keeping track of every moment of client contact, and doing so often builds a relationship that pays dividends in the form of referrals.²⁶

B. Signing Documents Is Not the End of the Road

Technology can bring an attorney's office into a client's living room (or sometimes their rooms in a long-term care facility or a hospital), but getting documents drafted and signed marks the beginning of the estate planning journey for many clients rather than serving as a capstone to the estate planning process. Continuing to maintain close client contact after their documents are signed, even going as far as to conduct conference calls or arranging to accompany clients to meetings with their financial institutions when possible, can increase an attorney's exposure to the client's network while simultaneously ensuring that the maximum benefit of a client's planning is realized through proper implementation.

When financial and tax professionals are clearly updated as a mutual client's needs change because of a new estate plan, they see that the law firm will take good care of their other clients if they were to refer business to the attorney. Furthermore, working with clients to help them inform their financial planning and tax professionals how the changes to their estate plans may impact future investments and tax filings can help make the often-overwhelming process of estate planning much more manageable for everyone involved. This continued involvement may seem like a lot of wasted time if it is not billed (and the cost of hourly billing for these types of services would likely price an attorney

²³ See Chanen, *supra* note 11, at 59.

²⁴ *E.g.*, Zwicker, *supra* note 3, at 23.

²⁵ *Id.*

²⁶ Solkoff, *supra* note 11, at 70.

out of the market), but it is actually an investment in a new network of potential clients and referral sources.²⁷

V. CONCLUSION

Through house calls and increased client contact after documents are executed, clients and elder law attorneys alike can benefit. Clients will feel comfortable knowing that their needs and concerns have been addressed by their attorney, and attorneys will be able to develop meaningful relationships with their clients and their clients' networks. In the long run, the time lost to traveling or assisting clients after their documents are signed can be more valuable than the fee assessed for in-office legal services. Resulting client referrals will continue to extend an attorney's network far beyond the four walls of any office. This high-touch approach may not necessarily be the best fit for everyone, but it can provide a uniquely valuable marketing opportunity for elder law attorneys.

²⁷ However, the value of these additional services can and should be built into the fees charged for the work being done. *See, e.g.,* Aucutt, *supra* note 22, at 677.