



COMMITTEE REPORT: NEW PRACTITIONERS

By **Avi Z. Kestenbaum** & **Joy Spence**

A Tale of **Two** Generations

How a Millennial and a Gen Xer view their law practice

New estate-planning attorneys may see the practice differently from those who've been out a while. Here are the perspectives of one recently admitted attorney (Joy Spence) and one seasoned partner (Avi Z. Kestenbaum) as they discuss certain issues in their practice.

Frustrations

What are the most difficult or frustrating aspects of your work?

Joy: My greatest challenge has been presenting matters to clients in a way that's clear and understandable. Prior to practicing, attorneys spend years effectively honing in on the art of thinking and speaking "legalese" in law school (and for some that extends through an LL.M.). Frequently, in the first few years of practice, a young attorney's primary daily interactions are with her peers and colleagues. Being immersed in the world of tax and estate planning, we think and talk in technical terms that can be difficult to translate. If you speak to a client with CRUTs, CRATs, GST, skip persons and any other similar acronym, number or abbreviation that dominates our dialogue, the client will most likely be MIA, and your pitch will be DOA.

My favorite professor and mentor told me, "You haven't truly mastered a concept or transaction until you can successfully explain it to your grandmother." The point being, the learning we undertake as attorneys

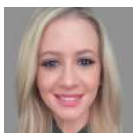
doesn't stop at understanding a transaction and the underlying law, it extends to knowing how to teach the same to someone who doesn't come from a legal background. It's a skill that I'm still developing, and I look forward to the day when my grandmother is fully versed on estate-planning matters.

The most frustrating aspect of my work is the "billable hour." Adjusting to a metric of value that's based on quantity over quality is often difficult for new practitioners. This is especially true in a generation known for valuing efficiency, technology, flexibility and quality of life. I recall reading about a survey taken by Millennials who, when asked to make a word association for "billable hours," commonly used the terms "soul-crushing" or "soul-destroying." My response isn't quite as extreme, but I've felt conflicted in wanting my own metric of value to bear a connection to the quality of product I'm creating.

I've gathered advice on some practices that help young practitioners adapt these Millennial values into the billable hour model. I've found that it's helpful to use proficiency in technology to reduce time spent on administrative tasks and focus on allocating time to higher margin activities. This reduces the non-billable "work" hours in a day and accommodates the need for technology and efficiency. Another method is organizing the order of work in a day by the amount of mental focus that's required. For example, I don't knock out the more simple tasks first thing but rather preserve those items for when I need a mental break. This assists in endurance when being laser-focused on a task that can cause you to tire faster. Finally, we live in a time when we can, and we do, work virtually—from home, from our phones, regardless of where we are. While sometimes it's easy to view this as a curse (that is, making it easier to work on weekends, vacation, etc.), I like to view it as a blessing by not limiting my work to

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traditional office hours and not expanding it into my free time. Rather, I use the good old fashioned dichotomy of work (billing hours) and play (for example, relaxation, spending time with friends and watching Netflix). If I have time that isn't allocated to play (for example, waiting in line or riding the subway), I can use my phone to respond to an email, mark-up a document, research a question, etc. I've found that those non-play times do in fact add up and contribute to a more efficient and less grueling work week.

Avi: The most difficult aspects of my work are dealing with billing issues and unappreciative clients. Let's start with billing. As many of us are aware, there's a problem with the billing system in law firms because if we try to bill on a flat fee basis, it's often impossible to be fair both to ourselves and our clients because there's no way of knowing at the outset exactly where the planning and documents will take us. So much depends on the clients' wishes, twists and turns that occur with complex assets and family feelings and how introspective the clients want to be. Often, there are also unforeseen circumstances with particular assets and family members and changes of mind and heart along the way.

While conceptually, billing on an hourly basis makes more sense to me than flat fees because there's an appropriate value placed on time, often clients don't understand how much thought and care goes into our technical work, and sometimes they don't trust that the time listed on the bill is fair or accurate. Even if the clients trust me (with whom they have the direct relationship), they don't necessarily trust others who may be assisting on their matters and with whom they don't have the same relationship or know personally. Hourly billing comes down to a trust factor, but some clients by nature aren't trusting, and some attorneys might not be as scrupulous as they should be. I don't have the solution here on the billing dilemma, and the vast majority of my clients and I have a trusting relationship where we work out the billing issues, but we've all dealt with clients who complain about every single bill regardless of the facts and circumstances, which is frustrating and upsetting.

This dovetails into a second frustrating aspect of my work, which is clients who don't appreciate the heart and effort put into their planning. While no doubt attorneys

are typically compensated very well for their time, and perhaps clients feel that because of the high fees they're paying, they have the right to be pushy or abrupt, this could feel very hurtful to the planner. Over the course of my career, I've said to more than one abrasive client that while I appreciate the work, thankfully I'm very busy and would rather not work on their matters if they don't appreciate the time, effort and care that goes into their planning and documents. As an attorney who cares very much for his clients and getting the work done right, admittedly I'm sensitive when my clients show a lack of appreciation when I could be working for grateful clients

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or spending more time with my family. Fortunately, the vast majority of my clients are very appreciative, and that's a fundamental reason I enjoy my job and role so much.

Rewards

What's the most rewarding part of your work?

Joy: On a day-to-day basis, it's generally gratifying to expand my understanding of the field, sharpen my skill set and leave my mark on the work that I'm producing. Whenever I find myself feeling less than enthused about a given matter, I try to view it as a product that's uniquely my own. Like an artist's signature on a painting, there's a sense of meaning and fulfillment in creating something that you feel proud to put your name on.



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Recently at a conference, an attorney told me I should work in elder law (as he did), so I could do something that's actually rewarding. I understood his point, that in various concentrations of estate planning we may not be involved in traditional notions of legal justice, namely, helping the unfortunate. Most people would agree that our time (and perhaps what we create with our time) is our most valuable commodity. Regardless of whether you "work to live" or "live to work," I think that to be fulfilled in what you're doing, you need to feel and see the value in how you spend your time. In any area of estate planning, we get the opportunity to help a client preserve and dispose of assets she's spent her most valu-

Showing our human side, personality and even a little vulnerability allows our clients to trust us more.

able commodity creating. That is, I get to spend my most precious commodity protecting the product of a client's most precious commodity. So, even in cases in which I may not always be helping someone who fits the traditional definition of "unfortunate," I can feel the reward in the value of what I do.

Also, I've always loved puzzles and challenges. Tax law and estate planning are challenging, and I enjoy being able to solve complex problems for my clients. Figuring out how to apply the nuances of the Tax Code to answer complicated questions is challenging, which makes it uniquely rewarding. I'm fortunate to be in an industry that's continuously changing and evolving and always forcing me to learn and find creative solutions.

Avi: The most rewarding part of my work is when I feel like I've made a significant difference in the lives of my clients and their families. The reason that many estate-planning attorneys enter this field of law is because we like and care about people. We're fortunate to touch the most personal, important and sensitive parts of our clients' lives. Also, very bright, accom-

plished and good people are trusting our advice and opinion on the items that are most near and dear to them—their descendants and assets. When I'm able to help make peace among family members or assist a client in resolving his dilemma on how to deal with a business, a particular asset or a difficult situation with his family member, this gives my own life meaning and purpose and makes my job more of a higher calling, as opposed to earning a paycheck. Helping fine, hard-working and charitable people save significant tax dollars and protect assets for their next generations also feels good and worthwhile. We're indeed fortunate that we can make a real difference in the lives of so many, and we should be careful not to forget this on frustrating days when we're faced with pressure and aggravation.

Future of Practice

Where do you see the future of the practice?

Joy: I see the practice changing to accommodate some of the values of younger attorneys today, such as efficiency, accessibility and flexibility through technology and new resources. In addition, I believe (as commonly seen in other industries) that there's a trend to place a stronger emphasis on practices that encourage greater mental and physical well-being. I think we'll depart from current practices that many young attorneys (and young clients) view as archaic, such as the billable hour model and rigid office hours. Young attorneys appear to be experiencing burnout at rather alarming rates, and I have several peers who've left the practice of law entirely as a result. As law firms realize that they're losing talented young associates, I imagine that there will be a shift towards the newer organizational models that focus on firm culture and individual well-being (think Google, perhaps without the nap pods).

With so many advances in technology, the practice of law is evolving to keep up. Innovations like LegalZoom make some basic legal work available to the masses. LegalZoom and similar products are certainly not an adequate substitute for a trained attorney, but I see many people turn to them as a cost-saving measure. I don't believe that these changes will seriously alter the complex/high-net-worth (HNW) tax and estate practice in the near future, but I see an immediate application for smaller scale matters like simple estate-planning



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documents. This poses a unique set of challenges for young attorneys as we move into a time in history when information is more widely available than it's ever been. As a result, it may be increasingly important for young attorneys to work harder and network to show that their value lies in their training and experience and isn't generally available in a single one-size-fits-all model.

Avi: I see the future of the practice going in two primary directions. The first is the elder law and Medicaid fields, where more and more attorneys will be helping the elderly with their legal needs, as opposed to being focused on the wealthy and tax planning. Tangentially, I also see estate litigation as becoming a larger and more lucrative field as Baby Boomers, a generation that's accumulated substantial assets, will pass away, and there will be more family fights and disputes.

Many who remain in the field will continue planning for HNW individuals, which involves both tax planning, as well as the increased interplay with other areas of the law such as international, corporate, charitable, real estate and business planning, and advice in ancillary areas in which their affluent clients need help as their "legal consigliere." The middle of the road planner who was focused on tax planning for folks that had some assets, but estates under \$10 million, will see his practice shift in one primary direction or another, or he may enter into a different field such as financial and insurance planning.

I also think geography makes a significant difference because those practitioners in states with more concentrated wealth such as California, Connecticut, Florida, New Jersey, New York and Texas are in a much better position to see their HNW practices continue to flourish.

It's also possible that there will be a lack of estate-planning attorneys in the near future who have sophistication to deal with these HNW clients because fewer attorneys are entering this field due to the higher estate tax exemptions and possibility for future estate tax repeal. In fact, the large firms, which typically train bright associates, have been eliminating or decreasing the sizes of their estate-planning departments. Not surprising, at estate-planning conferences across the country, the age demographics is skewed towards older practitioners, and I think this trend is likely to continue.

Optimism

Why did you go into the field, and do you have the same optimism as when you started?

Joy: I was fortunate to have a wonderful tax and estate-planning teacher in law school. Taking his classes, I really enjoyed learning about the intricacies of the Tax Code and how they could be applied to real-world problems. His classes propelled me to begin working at an estate-planning firm as a clerk while I was in law school. I thoroughly enjoyed that experience and putting my knowledge into action. While there, I realized how much I liked tax and estate planning and knew I wanted to specialize in this area of the law. I then chose to pursue an LL.M. in estate planning so I could continue learning how I could be most effective in the field.

We spend the majority of each day working, so I really wanted to make sure that I would feel fulfilled with my work and choose an area of the law that I found interesting and engaging. I'm so fortunate to have found an area that provides opportunities to be intellectually stimulated and space to be creative. In my firm, I've had the opportunity to develop meaningful relationships with my colleagues and clients and continue learning and growing.

Avi: The reasons I went into this field are similar to my prior responses in that I get to help virtuous people and make a real difference in their lives, but I didn't necessarily know this when I started. It was divine providence or good luck depending on how you look at it that I got my start in the field and found a home.

I have the same optimism as when I started my career because most clients with whom I deal are nice and appreciative, and I'm also fortunate to be part of an excellent team at my firm. Who we work with, both in terms of collaborating with caring people and teaming with others who are bright, makes a significant difference in our lives. Looking back, there was one point in the early part of my career that I almost left this area of practice and maybe the practice of law all together due to some disenchantment with people with whom I worked, and that would have been a terrible and irreparable mistake. I think many of us need to keep in mind that trusts and estates is a wonderful area of law, and we shouldn't let certain problem clients interfere with the fantastic and important role that we get to play.



Career Advice

What are two pieces of career advice that you wish you would have known when you started your career and that you would now give to an attorney starting her career?

Joy: My number one piece of advice is to focus on time management. There are two types of time management that I've learned to value. First, setting and meeting deadlines. It sounds simple, however, when I started my career, I set a lot of unrealistic deadlines out of a natural desire to accommodate the client or advising attorney's schedule, coupled with a general lack of understanding of how much time was both needed and available. This resulted in higher stress levels and a lower quality work product. As a general rule, I've learned that you're better off under-promising and over-delivering. The second type of time management is being efficient in your work day. Namely, reducing the time spent on non-billable items and structuring your matters based on difficulty level to sustain efficiency throughout the day.

My second piece of advice is to ask for help from senior attorneys in your firm. Yes, my advice is to get advice. There are three guarantees in life, and they all relate to estate planning: (1) death, (2) taxes, and (3) attorneys love to talk about their wealth of knowledge. Jokes aside, I find that more experienced attorneys are happy to help. I have a go-to in my own firm, as well as a go-to professor who continues to teach me. It saves a lot of time to have a mentor or colleague who can answer a question, point you in the right direction or merely serve as a sounding board to test an idea. Simply having a dialogue about a transaction or idea can be incredibly helpful for identifying pitfalls and improving the final product.

Avi: The first piece of advice that I would give a newly practicing attorney is to never forget that the practice of law is neither an academic exercise nor purely a business. In the first 10 years of my career, my mindset was that practicing law was an academic exercise of becoming as knowledgeable as possible, and I didn't understand the human and practical side of the law. Later, as my practice and client base was growing and flourishing, I started understanding the practical and business side. Now, after 20 years of practicing, I think that I better understand that both these integral parts of being an estate-planning lawyer, understanding

the law really well and the human and business side, which includes knowing how to listen and communicate with clients, being a good partner in a law firm and handling administrative items such as billing, are vital because having or participating in a law practice, after all, is still a business.

The second piece of advice is to "just get it done." My experience is that new attorneys may lack confidence because there's so much to learn, and it takes many years to become proficient. Additionally, supervising attorneys may not always be patient with less experienced ones, and that may diminish confidence instead of boosting it. I often tell new associates that they're just as smart as I am and just as smart as anyone else, and no one owns the magic potion here. They need to think for themselves, of course under the guidance of a senior attorney, but common sense trumps all, and they should never forget to use common sense. No person has a monopoly on common sense, and in my opinion, common sense is ironically uncommon. Joe Katz, my friend, mentor and the former head of my firm's Trusts and Estates department, taught this concept to me, and this really opened up my mind to being confident and in the spirit of Nike, to "just do it." To be clear, this isn't advice to tackle things that we aren't capable of handling, but the point is to not walk around being afraid; have confidence; and use common sense.

I've also observed that the experienced attorneys with the largest practices are the ones who are confident enough with themselves to be open with their clients and show personality and act human, instead of being a lawyer robot or an actor always telling clients what they want to hear. Showing our human side, personality and even a little vulnerability allows our clients to trust us more.

Our Firm's Breakdown


We asked the attorneys in our firm to answer some of these questions to see if their answers differed according to how long they've been practicing. The survey results appear in "What Our Lawyers Said," p. 74. Some highlights from the survey:

Those practicing 20 years or less share Joy's aversion to billable hours while those out over 20 years are more frustrated with difficult clients. This latter group seems to have the most positive attitude with the practice of law and making a positive difference in their clients'



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lives. As pointed out in the article, the more experienced attorneys typically have deeper and closer relationships with their clients than the more junior attorneys,

who may not have as much client contact. And, all the groups across the board are interested in learning, practicing and mastering the subject matter. 

What Our Lawyers Said

Different generations have different perspectives

Survey to Meltzer, Lippe, Goldstein & Breitstone, LLP Attorneys

	0-9 years	10-20 years	Over 20 years	Total
1. You have been practicing:	12	11	24	
2. The most frustrating part of being an attorney is:				
a. Your own billing	7	5	2	14
b. Difficult clients	3	2	13	18
c. Dealing with co-workers or supervisors	0	0	1	1
d. The underlying subject matter	1	0	1	2
e. Dealing with clients on bills	1	4	7	12
3. The most rewarding part of being an attorney is:				
a. Compensation	0	0	1	1
b. Positive impact on clients' lives	1	5	11	17
c. Learning, practicing and mastering the subject matter	11	6	10	27
d. Firm culture	0	0	0	0
e. Work relationships with co-workers	0	0	2	2
4. You chose the practice of law because:				
a. It was an accident; one thing lead to another	2	2	6	10
b. Inspired by traditional notions of justice	2	1	5	8
c. An interest in the field of law or specific area of law	7	7	12	26
d. Family expectations (your mom was an attorney, and her dad was an attorney...)	1	0	0	1
e. None of the above	0	1	1	2
5. Your general feelings about practicing law are:				
a. Positive	10	8	18	36
b. Neutral	2	3	4	9
c. Negative	0	0	2	2
6. If you had to do it all again, you would be:				
a. An attorney	9	8	19	36
b. Working in another profession	3	3	5	11

— Avi Z. Kestenbaum & Joy Spence