

LEITMAN, &
SIEGAL, PAYNE
CAMPBELL, P.C.
ATTORNEYS AT LAW

TO: OUR CLIENTS AND FRIENDS
FROM: JACKSON M. PAYNE
DATE: DECEMBER 15, 2011
RE: FINANCIAL STRATEGIES FOR YOUR LIVES AND BUSINESSES

HAPPY HOLIDAYS

Our staff joins with me in wishing you the very best for the holiday season. We have so much to be thankful for and are truly blessed in having strong client and professional relationships. For those who have stood by us over the years, we simply, but most sincerely, say thank you. You are the greatest and we welcome the opportunity to serve you in the upcoming year and beyond.

IS AN EQUAL SPLIT FAIR?

Should you leave an equal share of your estate to each child? That is one of the toughest questions parents face when drawing up a will.

Families take into account many different factors when determining how to distribute their property. One child may be far more successful financially than another. One may have three children of his own, while another may have just one child. Or, you may have a close, loving relationship with one child and be estranged from another.

Many parents want to support children who need more financial help, while others want to repay children who have provided important support or caregiving. Some parents already may have helped one

child considerably more than another during his or her lifetime. And other parents are reluctant to reward a particularly difficult or problematic child.

If you choose to treat children differently (seeking fairness rather than equality), there are steps you can take to help protect your will against legal challenges. The best approach whenever possible is to be open about your estate plan while you are still alive, so every family member truly understands it. But if you don't want to have this difficult conversation while you are alive, you can write a letter elaborating the reasons and thought process behind your plan and making it clear that these decisions are yours alone.

In addition, you may consider adding a provision in your will explaining any disparity, especially if you choose to give unequal bequests purely because of your beneficiaries' financial or family situations.

Moreover, an alternative solution may be to split the bulk of your assets—say 75% to 80%—equally among your children, while leaving the remaining 20% to 25% of your assets in a trust for your children's emergency needs.

Finally, there also are a number of safeguards that you can include in your estate plan to help minimize future conflict, such as clauses stipulating that any future disputes be settled through mediation or arbitration. And your wills and trusts can include "no-contest" clauses that actually disinherit heirs who attempt to challenge the documents.

ALABAMA'S GRANDPARENT VISITATION STATUTE DECLARED UNCONSTITUTIONAL

The current version of the Grandparent Visitation Act (the "Act") was enacted in 2003. It was the seventh attempt by the Alabama Legislature to devise a statute which extended visitation to grandparents. Case law has consistently held that grandparents have no common law right to grandchildren and any claim must arise within the boundaries of the statute.

On June 10, 2011, the Alabama Supreme Court issued an order invalidating the Act on constitutional grounds. The Court had granted review to address the constitutionality issue which was earlier addressed by the Court of Civil Appeals. The Jefferson County trial court had initially awarded grandparent visitation over the objection of the natural parents of the children, citing the best interests of the children. The parents appealed, and the Court of Civil Appeals held, as other jurisdictions have, that "the only compelling interest justifying [grandparent-visitation] laws is the prevention of harm to the

child.” The Court of Civil Appeals reasoned that such a standard was provided for under the current statute and that the Act was therefore valid.

The Alabama Supreme Court rejected that reasoning, stating that a judicial imposition of harm standard violates a parent’s protection under the Fourteenth Amendment of the fundamental right to direct the upbringing of their children, including “to make decisions regarding a child’s care, control, education, health, religion and with whom the child will associate.”

Stating that “unless the parents are shown by clear and convincing evidence to be unfit, the state’s interest is not compelling. And, since the Act fails to limit its operation to those cases where there is a compelling state interest, the Act was declared unconstitutional in its entirety.

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