

# Trusts & Estates

The newsletter of the Illinois State Bar Association's Section on Trusts & Estates

## ISBA Trusts & Estates Section Offers Valuable Q&A Series for Attorneys New to T&E

BY MELISSA A. GRISONI

**SINCE NOVEMBER 2024**, the Illinois State Bar Association (ISBA) Trusts & Estates Section's Subcommittee on Lawyers Who Are New to Estate Planning has successfully hosted a monthly Zoom meeting, "**T&E Q&A: The Basics and Beyond.**" These sessions are held on the third Thursday of each month.

Designed as an informal forum, the Q&A meetings provide an invaluable opportunity for attorneys new to the practice of estate planning to pose questions to experienced colleagues. ISBA members can submit questions in advance or via the chat function during the live meeting, with a panel of three to four seasoned practitioners offering their insights. The subcommittee has received overwhelmingly positive feedback and intends to continue these popular sessions, with a brief recess planned for the summer months.

The monthly Q&A session held on Thursday, April 17, 2025, marked the first meeting to focus on a specific topic: **client capacity and the recent Illinois case of *Carey v. Hartz***. This subject was chosen due to the panelists' extensive experience in this critical area.

The session was expertly moderated by Ashley Bechtold, Partner at Mahoney, Silverman & Cross, LLC, and a dedicated member of both the ISBA Trusts & Estates Section Council and the Lawyers Who Are New to Estate Planning Subcommittee.

The distinguished panel of experts included:

- Kerry Peck, Managing Partner, Peck Ritchey, LLC; co-author of *Alzheimer's and the Law* and *Don't Let Dementia Steal Everything*.
- Chad Richter, Shareholder, Mathis, Marifian & Richter, Ltd.
- Linda Strohschein, Owner and Principal Attorney, Strohschein Law Group.

Key highlights and practical takeaways from the April 17th meeting included:

- **Powers of Attorney:** The panelists emphasized the importance of considering and including additional powers in Powers of Attorney, such as the explicit authority to apply for Medicaid (particularly for non-statutory forms) and the authority to make gifts for long-term care needs.

- ***Carey v. Hartz*:** In discussing the recent case, the panel's consensus underscored the prudent practice of obtaining a physician's letter when client capacity is uncertain.
- **Emerging Threats:** Attorneys were cautioned about the increasing prevalence of romance scams and the potential impact on estate planning.
- **Defining Capacity:** The discussion addressed the legal definition of capacity, with panelists directing attendees to relevant statutory provisions.
- **Interplay of Capacity and Undue Influence:** The session explored the often-complex relationship and potential overlap between testamentary capacity and undue influence.
- **Client Meetings:** A strong recommendation was made to meet with clients individually, without the presence of potentially interested parties such as adult children or caregivers, to mitigate concerns of undue influence.
- **Documentation Best Practices:** Panelists advised meticulous notetaking in situations where capacity may be questioned, including a clear record of who was present during client meetings.
- **Witness Presence:** The importance of having witnesses present during discussions to determine client capacity was highlighted. Panelists advised against having witnesses come in only at the end to sign.
- **Presumptively Void Transfers:** Addressing a recent listserv discussion, the panel discussed how to navigate situations involving a client's desire to make a gift to a caregiver. While acknowledging the client's wishes, they strongly advised obtaining a physician's assessment of capacity and cautioned that the drafting attorney should anticipate potential future litigation as a defendant or witness.
- **Final Practical Tips:**
  - Avoid making rushed, last-minute changes to estate planning documents at the signing meeting.
  - When asking an adult child or other participant to leave the meeting, consider providing a copy of the ABA brochure "Why am I in the waiting room?" and solicit feedback from front office staff on their interactions.

- Video recording of estate planning document executions is generally discouraged, as it can often lead to future complications.
- When there is any doubt regarding a client's capacity, obtaining a comprehensive physician's report is the recommended best practice.

Interested attorneys can register for May's meeting at: <https://www.isba.org/events/2025/05/trustsestatessectionsubcommitteeonlawyerswhoarenew>

Invitations to register are also routinely distributed via the ISBA Trusts & Estates listserv and are included in the ISBA Trusts & Estates monthly newsletter.

Even the most experienced members of the Trusts & Estates Section consistently find valuable insights and practical guidance in these Q&A sessions. We encourage all interested practitioners to join us next month. And if you are an experienced Trusts & Estates attorney who would like to be a panelist, please contact our Lawyers Who Are New to Estate Planning Subcommittee Co-Chairs Amina Saeed ([asaeed@huckbouma.com](mailto:asaeed@huckbouma.com)) and Mary Vanek ([mvanek@matlinlawgroup.com](mailto:mvanek@matlinlawgroup.com)). ■

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