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A Paralegal's Summer Check-Up



by Art Taylor

Well, as usual, time is flying right by and it is time for summer. With summer we often tend to take an assessment of items around the house and perform the drudgery of cleaning out the garage or the attic.

While you are making your cleaning lists of what to keep and what to toss out, you might want to consider making a list of important documents that you and your family members should have.

Here at the firm, most of my work centers around our guardianship practice. It is often the case that we meet people who need to ask the court to grant them authority to act on behalf of a parent or another loved one. As you might imagine, it is expensive, time-consuming, and yes, somewhat intimidating to initiate a court proceeding. However, in many instances a guardianship proceeding can be avoided with some fairly simple, inexpensive planning.

Other than a properly constructed Last Will and Testament, the most important document most folks should have in their legal "tool box" is a Power of Attorney. A Power of Attorney allows you to designate a person or persons to act in your name in the event that you are unable to do so. Among other things, a person acting under a Power of Attorney on your behalf can conduct most basic financial transactions (including investments and retirement plans, if you so choose) as well as dealing with real estate issues and public and private benefit agencies (e.g., pension administrators, veterans administration, etc.). Another attractive feature of a Power of Attorney is that you can pick and choose the responsibilities and authorities with which you wish to empower the person(s) you designate

to act on your behalf. Obviously, it is critical that you are comfortable with the judgment and discretion of anyone you might seek to appoint to act on your behalf, and in that vein you need to understand that Powers of Attorney can be constructed as "durable" or "non-durable." A Power of Attorneys' durability refers to whether the person(s) you designate will continue to have authority to act for you in the event that you become mentally incapacitated. The litmus test in this regard should be: "do I trust this person to speak for me when I am unable to do so?"

Although for obvious reasons we tend to obsess on safeguarding our money and property. Health issues impact our lives and create legal quandaries for our loved ones. Like a Power of Attorney, a Health Care Proxy allows you to empower another to make decisions regarding your health care when you are unable to provide informed consent. Fortunately, like a Power of Attorney, a Health Care Proxy allows you to take care of your healthcare decisions if you become incapacitated. Similar to the Health Care Proxy, a Living Will is a formal declaration to health care providers as to what your wishes are in the event you are incapacitated. Of course, as your views on healthcare and mortality change over time, your Health Care Proxy and Living Will can be updated to reflect changing views and circumstances.

These documents are a few of the essential directives we should all possess. Regardless of your age and current life situation, each of these documents is vital to protecting your financial and personal peace of mind. Best of all, it is quick and easy to prepare and execute the documents. As you know, life comes at you fast and it's impossible to control all the variables. A good first step is to cover the things we hold most dear.

Take good care of yourself and each other. Hope to see you soon.

New Faces at Littman Krooks

Please join us in welcoming our new team members to the firm.

Joelle M. Burton joins our firm as a litigation attorney. Her practice focuses on trusts & estates litigation, contested guardianships and Medicaid issues. She is also well-versed in all areas of litigation.

Dina B. Cohen joins our firm as an attorney. Her practice focuses on Medicaid, trusts & estates, guardianships and special education law. She is admitted in New Jersey and New York.

Susan F. Israel joins our firm as a estate planning attorney. Her practice focuses on estate planning, estate administration and probate.

Whitney Leandra joins our firm as Executive Assistant to Bernard A. Krooks.

John Phillips joins our firm as a paralegal for Elynn S. Kravitz.

David Whoie joins our firm as receptionist for the White Plains office.

We welcome **Terry Devens** and **Melissa Hayn** to our new office in Dutchess county. Terry is a certified paralegal and Melissa is studying for her paralegal certification. Terry and Melissa are also both handling community relations in our Dutchess County office.

Planning for THE FUTURE

LITTMAN KROOKS
LLP

SUMMER
2008



Important issues facing our elder population and families of adults and children with special needs, brought to you by the law firm of Littman Krooks LLP.

A Message from BERNARD A. KROOKS



Dear Friends:

We often think of summer as a time to “catch up.” We often catch up with friends, family, and colleagues. In this issue of Planning for the Future, we catch up with many of our attorneys and staff, who have been busy with many community outreach projects. We have new team members to announce and new contributors to our newsletter. This issue includes an article on “Safe Trusts” by Dina Cohen, a recent addition to our attorney team at Littman Krooks LLP. Since summer is a special time for family, it is appropriate to consider how best to protect family interests when planning ahead. Dina writes about ways that families can protect their estates from potential misuse by unintended recipients. Safe Trusts are a very effective, innovative way to do so. Art Taylor, a senior paralegal at our firm, provides you with some tips on the importance of advance directives. Art has been instrumental in preparing court filings and assisting clients through the guardianship process. He has a tremendous amount of experience and acts as a liaison between the courts and our attorneys. He makes sure that the process goes smoothly. Art also is an Iraqi War Veteran who recently came back from his tour of duty to resume his role at the firm. We are thankful for his support of our country and for his guidance in the area of guardianship.

We also had a very busy spring and early summer in the area of Special Education advocacy. As many of you know, this is the time when parents are attending Committee on Special Education meetings (“CSE”) and developing Individualized Education Programs (“IEP’s) for their children with their local school districts. We would like to take this time to introduce you to members of our “Special Education Law” team. Andrew Cuddy is Of Counsel to Littman Krooks LLP, along with Linda Geraci. Andy assists with many Special Education matters here at Littman Krooks LLP. Andy recently wrote a book titled “Special Education Advocacy-A Guide to Due Process and other Effective Advocacy Tools.” This is a great resource for parents who advocate for their children’s educational needs. Andy is a zealous advocate who works with other attorneys at Littman Krooks LLP to ensure that our clients’ children obtain a free appropriate public education. Andy also served our country in the Gulf War and what better time to honor him than July when we celebrate our freedom as a country and thank those like Art and Andy who have given so much to our country and continue to give through the work they do.

We hope that, as always, you enjoy the articles included in this issue and the news about what our staff and attorneys have been doing since our last issue. We would love to hear from you and urge you to forward any questions you may have regarding the information in this newsletter or topics you would like to see addressed in the future.

We appreciate our relationship with you and wish you a relaxing and safe summer.

Sincerely,

Bernard A. Krooks

ON AIR TUNE IN! NEW SEASON BEGINS FALL 2008

Listen to “Bernie the Attorney” on WFAS 1230AM from 6:05 to 6:35 pm on Thursday evenings. Bernie interviews professionals and advocates who specialize in the areas of special needs planning and elder law.

COMMUNITY OUTREACH

Adrienne J. Arkontaky and **Elizabeth Valentin** participated in Read Across America for Dr. Seuss Day on March 12, 2008. They read books to students of Montessori 11 in Yonkers. This day is designated to promote literacy for all ages. The program was chaired by our staff member, **Nicole M. Garcia**.

“**Team Littman Krooks**” participated in the Laurel Run to benefit the Dutchess ARC which raised funds for the organization’s efforts in assisting people with disabilities in Dutchess county. **Melissa Hayn** coordinated the firm’s efforts in all offices. Thanks to **Amy O’Hara** (and family), **Whitney Leandra** (and family), **Terry Devens** (and family) for their participation.

Dina Cohen, **David Whoie** and **Adrienne Arkontaky** delivered breakfast to participants of “Miracle League” Opening Day Ceremonies. Miracle League is a baseball league devoted to children and adults with disabilities.

Littman Krooks continues to support the efforts of NorthEast Westchester Special Recreation, the John A. Coleman School, Family Ties and several other organizations dedicated to serving individuals with disabilities.

Andrew K. Cuddy—A Special Education Attorney Profile

I first met Andrew (“Andy”) Cuddy when Bernard A. Krooks had the good fortune of hearing him speak at a New York State Bar Association (“NYSBA”) event several years ago. Andy was invited to speak at an Elder Law section meeting on the Special Education Protections. Although Andy says he is unsure whether the venue was proper for his presentation, as I have said in other columns, I believe any practitioner who practices in the area of

elder law and special needs planning will come across a client who needs special education advocacy. I think the presentation gave many attorneys the opportunity to explore an area of the law that presents very challenging issues and is, in many cases, very misunderstood.

After the presentation and hearing Mr. Krooks give Andy rave reviews for both his presentation and scope of knowledge, I decided to call Andy and ask if he would be willing to meet with me to discuss the topic of special education law and how Littman Krooks could better assist clients in their quest to obtain appropriate special education services for their children.

We met over dinner which he paid for (even though I invited him). Andy was incredibly giving and shared his knowledge of special education law and his experience in obtaining proper services for children with disabilities. We spoke at length about the many challenges facing parents today when they are advocating for special education services. When I asked him why he was willing to take so much time to speak with other attorneys on the topic of special education law (after our dinner in Westchester, he drove 5 hours to Auburn New York where he resides), he said that he wanted more attorneys to commit to representing parents in special education issues and it is definitely an area of the law that is underserved. He also wanted to be sure that those attorneys who practiced in this area were well-trained because if they were not, the results could be devastating.

On any given day, you can find Andy driving from one end of New York State to the other, Buffalo to Long Island and any point in between. He spends his days, advocating for the educational rights of children with disabilities, in many cases initiating due process hearings to obtain proper educational programs for children who have not been properly served by their school districts. He has initiated over 200 hearings in his career and focuses his practice on education law almost exclusively, only representing parents and children.

He has done so since the year 2000, when he represented a client in a criminal matter and recognized



that many of the criminal clients he served had learning disabilities that were not addressed properly early on, perhaps leading to their problems functioning in society. As Andy began to take on cases that involved special education issues, he recognized that parents and guardians of children with disabilities were unaware of their rights and how to effectively advocate for their children. Many were unaware of the laws that protect a child’s right to a free appropriate public education (“FAPE”).

I have had the privilege of working with Andy on many cases since he is “of counsel” to Littman Krooks LLP. I have seen him interview and examine witnesses including parents and school personnel. I have also seen him argue his case with opposing counsel. He is a very tough adversary who plays “hard ball” when needed but he treats everyone with respect, keeping an even tone in the most difficult and challenging situations. He is extremely comprehensive with his examinations but yet, he is able to present questions in a tone that allows a witness to understand and respond without any misconceptions of what is being asked. Recently, we worked on a case in New York City where the client, a single mother of a child with autism was concerned with the educational program in place for her son. The mom broke down in tears after being questioned about the issues of the case. Andy was compassionate and extremely kind, assuring the mother that she was an incredible advocate for her child and calming her so that she could finish her testimony. (by the way—we won the case—in no doubt due to Andy’s involvement). However, make no mistake; Andy is a very tough opponent. He will settle for nothing less than what he believes is a proper program for the child. There is no middle ground on that issue. We have been in the depths of settlement discussions when it becomes apparent that a school district is not acting in good faith and I have seen that easy-going Western New York demeanor leave very abruptly. Those resounding words “we are going forward with the hearing” and the tough look on his face reassure all involved that he has no hesitation in litigating the issues and allowing a Hearing Officer to decide the case.

Andy continues to argue for better programs for children on the autism spectrum and fairness at the State Review level in deciding cases that have been appealed from a Hearing Officer’s decision. Andy recently exposed potential corruption at the Office of State Review and he recently exposed a case where a New York City student with autism had been home for four years because the school district was unable to secure an appropriate placement. Andy also wrote a book titled “The Special Education Battlefield—A Guide to the Due Process Hearing and Other Tools of Effective Advocacy” to help parents and advocates in their fight

to provide better special education services to students. A self-proclaimed workaholic (which I agree with), he continues to work on projects that will assist families secure special education services for children and recognize the legal protections that will assist families in their efforts.

Andy graduated from the College of the Holy Cross in Worcester, Massachusetts in 1987 with a degree in philosophy. A Naval ROTC scholarship paid for his education. He spent four years in the Marine Corps serving in the Gulf War and Somalia, then went on to law school. When asked what he is most proud of, he indicated that serving his country was his proudest moment. He was commissioned into the U.S. Marine Corps out of the Naval R.O.T.C. program at Holy Cross. He was fortunate to be able to see the Western Pacific while deployed with a Marine Expeditionary Unit. After returning from that deployment, the First Gulf War broke out and he had the opportunity to participate in the liberation of Kuwait. He was in Kuwait City on the day it was liberated. After leaving active duty he remained in the Reserves, and had the good fortune to take a group of Marine Reservists to Somalia during that crisis. We are once again thankful for his service to our country.

After law school he first worked managing an office of an investigative agency, supervising investigators of insurance fraud. He left the private investigation business at the end of 1998 and began a criminal defense practice.

As you can see, Andy is a fighter in every sense of the word. The children and parents of New York State are fortunate to have such a zealous advocate and we are fortunate at Littman Krooks to have him as counsel. Together we continue to try to reach out to parents and advocates to provide information on how to better obtain proper educational services.

In addition to his advocacy work, Andy has been invited to speak to the Special Needs Alliance* (a group of nationwide special needs planning attorneys) in October 2008 on the importance of special education law and how attorneys can better serve their clients in that area. Andy will also be speaking with Bernard A. Krooks on the importance of comprehensive planning for families of children with special needs.

I asked Andy recently what he wanted to be remembered for. His answer, of course, was that he zealously represented his clients and that perhaps he made it easier for a family to obtain services that would make a difference in a child’s life. I have no doubt that his work is making that difference.

In his free time, he enjoys spending time with family and his dog, golf, and travel. Andy may be contacted at acuddy@littmankrooks.com.

By Adrienne J. Arkontaky

*For more information on the Special Needs Alliance please visit www.specialneedsalliance.com

CONGRATULATIONS & BEST WISHES

Congratulations to **Valarie** and **Wayne Chessler** & big brother **Logan** on the arrival of the newest member of the Chessler family, **Nicole Grace**. Everyone is doing great.

Congratulations to **Ellyn S. Kravitz** on her certification as an elder law attorney. Ellyn and Bernard A. Krooks are 2 of only 33 certified elder law attorneys ("CELA") in New York State .

Congratulations to **Adrienne Arkontaky** on her appointment to the Board of Trustees of the John A. Coleman School. The John A. Coleman School serves children with disabilities throughout Westchester, Putnam and New York City.



If Your World is Like the Real World, Then Join the "Safe Trust" World



by Dina Cohen

In your world, you have worked long and hard for every penny you have made, and the only people you care about sharing your money with are the ones you love and trust. In the real world, people experience unforeseen hardships and set-backs which can turn their world upside down. In the "Safe Trust" world, if you happen to stumble upon these hardships and set-backs, there may be a safety net to catch your fall.

Imagine this: your daughter-in-law decides two years after your death to divorce your son and run away with as much of his money as she can. Included in her request for half of the marital property, is half of what your son inherited from your estate when you passed away. This could include your house, your life insurance policies, and any other assets you owned at your death and left to your son. At that moment, you are likely rolling over in your grave. Perhaps the only thing worse than your son becoming financially unstable, is that this situation could potentially have been avoided had you set up a Safe Trust for the benefit of your son.

Or, imagine this: instead of a divorce, your son's construction company goes out of business, and creditors are filing left and right to get reimbursed for the money they loaned your son's business throughout the years. Even if your son has to pay every last penny he owns to get these creditors off his back, wouldn't it make you feel better to know that the assets your son inherited after you passed away are all safely locked up in a trust for your son's benefit?

A common misconception is that by adding the words "per stirpes" to your Wills you are protecting your child's inheritance from anyone outside of your family

line. However, this is not the case. If your son is still living when you die, that money could eventually be passed on to your son's surviving spouse when your son dies, and could then be used for former daughter-in-law's second wedding. This is probably not where you imagined your money going.

The scenarios presented above are only a few examples of how your family inheritances can wind up in the pockets of people you never would have imagined. Families would much rather have their wealth provide not only for their children, but for many generations to come. The good news is that by creating a Safe Trust for your child to hold their inheritance after you die, the only ones who will benefit from this money are your children and grandchildren.

Here's how a Safe Trust can benefit you: a Safe Trust is designed to hold the assets you transfer to your children at your death, through your will or otherwise, into a trust for your children. Without transferring direct ownership to your children immediately upon your death, your children and grandchildren can receive distributions from the trust assets during their lifetimes. Essentially, you have both avoided probate, and prevented anyone else from capturing your assets. Ultimately, trust funds can be used for your children, and their families, to provide for whatever needs they have.

In addition to divorce and creditor protection, there may also be tax benefits to setting up a Safe Trust. So long as the assets remain in the trust, the value of the trust assets is measured at the amount they were worth when the trust was first created. If the value of the trust assets appreciate while they are in trust, this appreciation may be exempt from estate taxes.

So, what are you waiting for? Find out how a Safe Trust can benefit you and your family. Contact us at Littman Krooks to learn more.

SEEN & HEARD

Bernard A. Krooks appeared on Good Morning America Now to talk about tax strategies for individuals with disabilities.

Bernard A. Krooks recently spoke at the New York State Bar Association's annual meeting. His topic was Elder Law Legislative Update.

Adrienne Arkontaky served on a guardianship panel for the Westchester ARC Family Resource Day and continues to speak throughout Dutchess, Putnam and Westchester counties on issues facing families of children with special needs.

Ellyn S. Kravitz recently spoke at the Alzheimer's Association in New York City on legal and financial planning.

Bernard A. Krooks co-authored an article titled Asset Protection Planning: Medicaid and Deficit Reduction Act of 2005 for the CPA Journal.

Elizabeth Valentin recently spoke on Estate and Medicaid planning at the Bay Eden Senior Center.

Amy C. O'Hara recently spoke on Estate Planning for the Younger Couple at the Shrub Oak Library.

Nicole M. Garcia & Margaret Vogt recently participated in the Transition from High School to College Fair in Yonkers. The program was sponsored by Westchester Disabled on the Move, Inc.

Adrienne J. Arkontaky, Susan F. Israel, Nicole M. Garcia & Margaret Vogt recently participated in the Mt. Pleasant Elementary PTA Special Needs Resource Fair in Thornwood.