

# Creating the Human Moment for Clients in Crisis Situations

by Jon Gallo, J.D.

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Next year will mark my 40th year practicing law as an estate planner. Even though I'm nowhere near getting ready to retire—I'm having too much fun combining the practice of law with the consulting service my wife Eileen and I have created—this does seem an appropriate time to pause and reflect upon some of the most important lessons I've learned about estate planning. Interestingly, they are about people rather than taxes.

A great deal of what we do as estate planners—and this often applies to financial planners as well—involves working with clients in situations that involve elements of crisis, loss, and grief. Consider such common situations as...

- Your client is getting a divorce.
- Your client is developing Alzheimer's or has been diagnosed with a terminal illness.
- Your client's relative (spouse, parent, or child) is developing Alzheimer's or has been diagnosed with a mental illness or has a substance abuse problem.
- Your client's relative (spouse, parent, or child) is terminally ill or has died.

How you respond on a person-to-person level in these situations can have a lasting and sometimes negative impact not only on your continued relationship with your client but also on how the client processes your professional advice. Michael Jones, a CPA in Northern California, tells the story of a friend and fellow financial professional whose father had passed away a week earlier. The friend said that the family had met for hours with the estate planning attorney who had prepared their father's revocable trust. The meeting was a total blur; in fact, the only thing he remembered was that the attorney had never said "I'm sorry."

## Advice from Elwood P. Dowd

The importance of empathy in the estate planning context has been discussed for years. In 1985, Professor Thomas L. Shaffer, former dean of the Notre Dame Law School, wrote an article for the University of Miami Estate Planning Institute titled "On Being Pleasant: Ethics in Estate Planning." Shaffer took as his subject Elwood P. Dowd, the protagonist and close friend of the title character in Mary Chase's 1953 Pulitzer Prize-winning play, [\*Harvey\*](#). Harvey, of course, is a seven-foot-tall, invisible rabbit, who can only be seen by Elwood. In the third act, Elwood's sister, Veta, attempts to have Elwood involuntarily committed to Dr. Chumley's sanitarium, Chumley's Rest. When Elwood fails to be outraged, Dr. Chumley asks in surprise, "Haven't you any righteous indignation?" Elwood replies—and this is the crux of this column, so pay attention—"Dr. Chumley, my mother used to say to me, 'In this world, Elwood, you must be 'oh, so smart' or 'oh, so pleasant.' For years I was smart. I recommend pleasant. You may quote me."

When we work with a client in the midst of a crisis, many of us assume that technical competence requires us to be emotionally detached. When I attended law school in the late 1960s, doctors, lawyers and many other professionals were taught to avoid emotional entanglements with clients. "After all," we were taught, "you can't give good advice if you're drawn into the client's/patient's emotional maelstrom." But in the four decades that have passed, there has come a gradual realization that an empathic relationship with the client is actually the cornerstone of a lasting professional relationship. To paraphrase Elwood P. Dowd, for years I was smart when it came to estate planning. Experience has taught me that it is equally important to be pleasant. You may quote me.

Edward M. Hallowell, an instructor in psychiatry at Harvard Medical School and a prolific author, wrote an article titled "The Human Moment at Work," which appeared in the January–February 1999 issue of the *Harvard Business Review*. Most of Hallowell's patients were senior business executives who—to the outside world—were pictures of success, but who were actually increasingly lonely, isolated, or confused at work. Modern business was moving toward the use of memos, e-mails, voice mails, and conference calls and away from face-to-face meetings.

Human beings are remarkably resilient. They can deal with almost anything as long as they do not become too isolated. People need what Hallowell described as the "human moment," which is nothing more than face-to-face meetings in which the parties are both intellectually and emotionally present. In other words, being pleasant is important, but it isn't enough. It needs to occur in the context of face-to-face meetings with clients in which we are not only intellectually present as advisors but also emotionally present as fellow human beings.

## Creating Human Moments

Here are a few suggestions on how to create human moments when working with clients in crisis situations.

When working with a client who is going through a divorce, say you're sorry and avoid making disparaging comments about the other spouse. When you tell your client that he or she is better off without the other person, you are implicitly asking why your client wasted so much time being in the relationship. *Listen*. Your client probably needs to vent. When venting, your client may not want or need answers, just someone to listen.

When working with a client who is going through a serious illness, or whose family member is seriously ill, don't try to minimize the situation or use humor to cover your own unease. Avoid well-intentioned comments along the line of "I don't know how you are able to do everything." Your client probably doesn't have any other choice and your comment may come across as "I'm sure glad I'm not in your shoes."

Death of a family member gives rise to more complex situations. Ever since Elisabeth Kubler-Ross wrote her groundbreaking books, [On Death and Dying](#) and [On Grief and Grieving](#), there seems to be an expectation that, after a loss, we will systematically progress through the well-known stages of denial, anger, bargaining, depression, and acceptance. In fact, everyone has a unique way of coping with grief. All of us do not go through the stages in the same order or at the same speed. Reactions may include a wide and confusing range of emotions such as shock, numbness, anger, pain, yearning, guilt, and disbelief. Feelings of loneliness, depression, and despair often occur. *Senior Sense*, a publication of the University of Georgia, observes that it may help to think of grief as clusters of reactions with various phases rather than as an isolated emotion that occurs at one point in time. Grief does not proceed in an orderly fashion any more than life itself does (Vol. XIII, No. 3).

Anyone who has experienced the death of a family member has experienced how grief affects the decision-making process. I recall that when my father died, I promptly went into "attorney mode" and began the process of assembling all of the documentation necessary to file the federal estate tax return. The documents sat in a neglected pile on a corner of my desk for six months. Finally, I picked them up between my thumb and forefinger and presented them to one of my partners in the Trusts and Estates Department with the request that she please prepare the return. I couldn't even fill out the first page!

## Intellect and Emotion

This brings us to a conundrum of estate planning. The critical details must be accompanied by equally important empathy.

Post-mortem estate planning has always fascinated me. My first published article, which appeared in 1968, examined the various income and estate tax elections that were available in the administration of decedent's estates. In the 1980s, I had the opportunity to chair the Post-Mortem Estate Planning Committee of the State Bar of California. Just think of all of the elections that are part of a typical estate plan:

- Should a QTIP election be made?
- To what trusts should a generation-skipping exemption be allocated?
- And if a QTIP election was made, should a reverse QTIP election be made for purposes of allocating generation-skipping exemption to all or part of the QTIP trust?
- And don't forget about disclaimers. Should the surviving spouse disclaim an interest in the marital trust or credit trust so that part of the estate will pass to children?
- Should the children disclaim to that part of the estate will pass to grandchildren?
- What assets should be allocated to the credit trust and the exempt marital trust?

And whom do we expect to engage in (or at least understand) the analytics that are a necessary prelude to deciding whether to make those elections? Why, usually, someone who is likely dealing with at least some feelings of shock, numbness, anger, pain, yearning, guilt, disbelief, loneliness, depression, or despair. So, when working with clients who have experienced the death of a loved one and the resulting grief, we need to be both intellectually and emotionally present.

The need for repetition should be viewed as normal by both the planner and the client. I attempt to normalize this fact in my first meeting with the family by telling them that I doubt they will remember much of what we discussed. I go on to say that I will confirm our discussion in writing and that they will probably want to meet with me again in a few weeks to review what needs to be done. I explain that there will be a number of tax elections that will have to be considered in the course of administration and that I will help them understand the pros and cons of each alternative. And both the first words out of my mouth when I meet the clients in the office lobby, and the last words out of my mouth when the meeting ends, are to express my condolences. The clients probably won't remember much about the meeting, but they, and I, will have experienced a human moment.