



National Conference on Philanthropic Planning

.....

October 14-17, 2009
National Harbor, Maryland

Conference Presentation Paper

©Partnership for Philanthropic Planning 2009. All rights reserved.

Let's Make A Deal: An Estate Dispute Mediation Lab
Reynolds T. Cafferata

Mediation Exercise

The goal of this exercise is to allow the participants to conduct mediation with as close to “real world” circumstances as possible. Each mediation will be conducted by 5 people. There will be a team of 2 for each of the 2 parties. The 5th individual will act as the mediator.

Each team starts with \$50,000. Each team can add to its funds the amount agreed to from the estate described below by the parties. If at the end of the time allowed for the mediation, the parties have not reached a settlement, the instructor will make a judicial determination of the case. The estate will be awarded based on the instructor's determination, but the amounts held by the parties will be reduced by attorney's fees of \$50,000 for each of the parties and an additional \$50,000 from the estate to be distributed for the cost of continued administration during the litigation. If a case is settled, these additional fees will not be deducted and will count towards the amounts each team holds. Reasonable minds could differ as to the outcome of this case, so to the extent that parties have not reached settlement, not all of the judicial determinations will be the same. The goal in the exercise is to obtain the most money either through the mediation or through a judicial determination. Prizes will be awarded to the team from each side of the case that obtains the greatest total dollars. If there is a tie, the winner will be determined by drawing cards. All of the mediators who successfully guide their parties to a settlement will be entered into a drawing for a prize.

A case will not be considered to be settled unless there is a written settlement agreement that clearly states the amount to be received from the estate by each party that is signed by all of the participants in the mediation including the mediator.

Bob remained single all his life. He never had any children. In 1995, Bob met with an attorney about his estate planning. At Bob's request, the estate planning attorney prepared a living trust for Bob. During Bob's lifetime, he is entitled to all of the income of the trust, can withdraw the principal of the trust at any time, and has the power to revoke and amend the trust. On Bob's death the assets of the trust are to be distributed to Good Charity. Bob validly executed the trust and properly transferred all of the assets to the trust. In 2000, Bob suffered from a stroke. The stroke primarily affected Bob physically. He needed a walker and was no longer able to drive. Bob had a niece, Jane, who had recently moved into the area to attend college. Bob previously had seen Jane once a year when visiting his brother. Jane was finding that the cost of school and housing was a challenge. Jane agreed to move into Bob's house. Under the arrangement, she was able to live there free of rent. Bob also would pay for all of the groceries. Jane agreed to do the grocery shopping and give Bob a ride periodically when he could not make arrangements with the elder transport van. In 2004, Bob was having trouble signing his name and his vision was becoming worse. So that Jane could help with his financial matters, Bob made her co-trustee of his living trust with him. On January 5, 2009, Bob signed a document titled Amendment to Living Trust, and the text of the document stated “I want my estate to go to Jane who has cared for me so well all these years.” The document was signed by Bob and dated. According to Jane, Bob asked her to type up the document which she did. She read it to him and he signed it. Bob died of a heart attack on January 20, 2009. The trust assets are worth \$500,000.

The charity team represents Good Charity.

The Jane team represents Jane.

Mediators may work with the teams together or may ask the teams to separate.

Reynolds T. Cafferata
Rodriguez, Horii, Choi & Cafferata LLP
777 South Figueroa St., #2150
Los Angeles, California 90017
v 213-892-7704
f 213-892-7777

reynolds@rhclaw.com
www.rhclaw.com

