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1. New Year's Resolution - Put your Estate Planning in order

You need a Will, Power of Attorney and Living Will/ Advance Directive.

Our state has passed a "Living Will" law, often called a "Death with Dignity" law, which allows a person to direct that heroic measures not be taken to prolong life in these unhappy situations. Modern medicine and machinery can keep a person alive for long periods of time. Unfortunately, a person is often kept alive in great pain or under circumstances that render him or her unconscious as to everything around them, while causing pain and anguish to the family.

This "Living Will" is not a substitute for a regular Will, which affects property rights. The "Living Will" is an independent document to be signed in addition to your regular Will.

Please let us know if you want a Will, Power of Attorney and Living Will/ Advance Directive prepared.

I would like to thank my clients and friends for another good year. This year was a great year for referrals. So many of you were kind enough to tell others about our services and recommend us. Since 1985, I have helped individuals and businesses with legal matters. With changing laws, it is important that your estate planning documents are updated to reflect your most valuable investments. As you know, all business must grow, and one of the safest ways to grow is to get referrals from satisfied clients. Thank you for referring friends and family. May the new year bring happiness and good health to you and those you love.

2. 2015 update Wills and Estate Planning- Free Seminar

Wednesday Jan 14

12:15-1:00 PM and again 5:15pm-6pm

Law Office of Kenneth Vercammen, 2053 Woodbridge Ave, Edison, NJ 08817

Invited: Clients, Friends, Accountants, Business Owners, HR staff, Financial Planners, Insurance Agents, Nursing Home Staff, Hospital and Nursing Home Social Workers, Office on Aging Personnel, Senior Club Presidents, and Medicaid Workers,

COST: Free if you pre-register by email. Complimentary materials provided at 12:00 sharp. We previously held this seminar for the Metuchen and Edison Adult schools. This program is limited to 15 people. Please bring a canned food donation, which will be given to the St. James Food Bank located on Woodbridge Avenue in Edison, NJ. Please email us if you plan on attending or if you would like us to email the materials.

SPEAKER: Kenneth Vercammen, Esq.

(Author- Answers to Questions About Probate)

The new NJ Probate Law made a number of substantial changes in Probate and the administration of estates and trusts in New Jersey.

Main Topics:

1. The New Probate Law and preparation of Wills
2. 2014 changes in Federal Estate and Gift Tax exemption
3. NJ Inheritance tax \$675,000
4. Power of Attorney
5. Living Will
6. Administering the Estate/ Probate/Surrogate
7. Question and Answer

COMPLIMENTARY MATERIAL: Brochures on Wills, "Answers to Questions about Probate" and Administration of an Estate, Power of Attorney, Living Wills, Real Estate Sales for Seniors, and Trusts.

Co-Sponsor: Middlesex County Estate Planning Council

To attend or for Information: Mike McDonald 732-572-0500

or email VercammenLaw@Njlaws.com

Can't attend? We can email you materials

Send email to VercammenLaw@Njlaws.com

4. Domestic Violence Defense

by Kenneth A. Vercammen, Esq.

New Jersey domestic violence laws are very strict. A spouse or girlfriend could call the police and if there are any signs of physical injuries the police must arrest the man. Even without independent witnesses and no physical injuries, police may arrest the man. The police are required to give the victim information about their rights and to help them. Among other things, police must write up a report. For example, O.J. Simpson would not have gotten away with abuse in New Jersey. Police are automatically required to arrest an abuser if they see any evidence of abuse or assault.

Even during the evening, your town Municipal Court or Superior Court can issue a Restraining Order, which is a legally enforceable document. The Temporary Restraining Order (TRO) will prohibit the defendant/abuser from any contact with the victim or entering the residence.

Unlike a criminal case where a person is provided with lengthy due process rights, and if guilty receives probation and a monetary fine, a domestic violence hearing allows judges to issue far-reaching orders. A domestic violence hearing is usually held within only ten (10) days after the filing of an ex parte complaint and temporary restraining order. After a hearing, NJSA 2C:25-29 (b) allows the Chancery Division, Family Part Judge to grant substantial relief to the complainant.

Our Supreme Court has already found that the ten-day provision comports with the requirements of due process, but can be delayed.

In H.E.S. v. J.C.S., [175 N.J. 309](#), 323 (2003), the Court held:

"the ten-day provision does not preclude a continuance where fundamental fairness dictates allowing a defendant additional time.

Indeed, to the extent that compliance with the ten-day provision precludes meaningful notice and an opportunity to defend, the provision must yield to due process requirements." [Internal quotations and citations omitted.]

Discovery not mandatory in Domestic Violence family cases

Domestic violence actions are "summary actions," a fact that inherently precludes the right to discovery. See, e.g., H.E.S., supra, 175 N.J. at 323. However, the Appellate Division in Crespo v. Crespo, 408 N.J. Super. 25 (App. Div. 2009) noted that one trial court has determined that, in accordance with Rule 5:5-1(d), a defendant may seek leave to obtain discovery in such a matter upon a showing of good cause. Depos v. Depos, [307 N.J. Super. 396](#), 400 (Ch. Div. 1997). The Appellate Court agreed with the opinion of Judge Dilts in Depos that in compelling circumstances, where a party's ability to adequately present evidence during a domestic violence action may be significantly impaired, a trial judge may, in the exercise of sound discretion, permit limited discovery in order to prevent an injustice. Judges are not required to be oblivious to a party's claim for discovery in compelling circumstances even though the court rules do not expressly authorize relief. See, e.g., Kellam v. Feliciano, [376 N.J. Super. 580](#), 587 (App. Div. 2005).

The Crespo court held "Here, the record reveals that at no time did defendant seek leave to conduct any discovery proceedings." Therefore, it is important for defense counsel to demand discovery.

In Pepe v. Pepe, 258 N.J. Super. 157 (Chan. Div. 1992) held that the confidentiality provision of record keeping under the Domestic Violence act applies to the records kept on file with the Clerk of the Superior Court.

Despite the substantial financial burden and life restrictions (often referred to as penalties), the burden of proof in a DOMESTIC VIOLENCE hearing is only "by a preponderance of evidence" and not "beyond a reasonable doubt."

Too often lawyers throw up their hands when a client presents a complaint involving domestic violence and related criminal charges.

While defense of the complaint may become an involved process requiring commitment and persistence, there are a number of viable defenses and arguments that can achieve a successful result. Rather than simply suggest that a client plead guilty and avoid trial, an attorney should accept the challenge and apply his best legal talents to protect the client's rights.

We require a great deal of cooperation from our clients in an effort to help keep their costs reasonable. We require our clients to prepare diagrams and provide us with the names, addresses, and telephone numbers of witnesses.

Sometimes a family friend can act as a go between for the parties and convince the complaint to dismiss the charges. A DOMESTIC VIOLENCE complainant can be withdrawn. However, if a criminal complaint is signed by the police, only the prosecutor can make a motion to dismiss.

1. The In-Office Interview at the Law Office

We advise potential clients to bring in a copy of the complaint, all their papers in connection with their case, and any documents they received from the Police or a court. Often we will instruct them to write a confidential narrative for themselves if it is a case that is fact-specific or involves a great deal of detail, to help them remember the facts.

Prior to the client coming into the office we e-mail them the Confidential New Client Interview Sheet. We obtain background information such as their name, address, the offenses charged, date of the person's arrest, other witnesses, what they told the police, their occupation and information regarding prior criminal arrests and immigration status. Our interview sheet also asks if there is anything else important, such as a medical condition that affects their case. This form will also let us know whether or not the client will follow instructions and cooperate with us. If they refuse to provide information we may have a problem client.

After reviewing the complaint and the interview sheet at the in-office consultation I ask a series of questions of the client. We request the client wait until the end of the interview before explaining their side of the story. We also ask them if there is anything else of importance in connection with the case that we should know. The client may have

pending serious criminal charges in another state or county. I often open up our statute book and show the clients the specific language of the offense they are charged with and explain to them the maximum penalties that could be imposed. By understanding the charges they are facing, my clients are more likely to realize the seriousness of the offense and pay our retainer.

2. Retaining the Attorney

Rule 1:11-2 of the Rules of Professional Conduct indicates that a retainer letter or written statement of fees is required for new clients. I also provide all my clients with written information explaining how to appear in court, our website pages to the offenses charged, and information regarding substance abuse treatment, if applicable.

Once we receive our retainer (are paid), we begin work right away. Usually while the client is still in the office, we prepare a discovery letter on the computer to the prosecutor/district attorney and court and hand a copy to the client. We occasionally call the court to advise them that we will be handling the case and to inquire who handles discovery. We check the State Lawyers Diary to determine who are the judges and prosecutor/district attorneys for the county or town. It is important to know who may be the judge and the prosecutor.

3. Post Interview Work When a Criminal Charge is Filed in Connection with the Family Domestic Violence Complaint.

Motions to Dismiss should be made in writing such as statute of limitations or lack of jurisdiction. In the case involving essential witnesses, we occasionally write to the witnesses and ask them to call us so that we can find out what really happened. If possible I have our law clerks call the witness after we send the initial letter. The attorney cannot testify if the witness provides an inconsistent statement but our law clerks can testify. I sometimes speak to friendly witnesses myself later to make a decision to determine whether or not the witnesses are credible.

If we discover a favorable reported decision, we make a copy for the judge, prosecutor, and client. Never assume the part time prosecutor or judge is familiar with all the laws. We can prepare a Subpoena ad Testificandum for witnesses to testify and Subpoena Duces Tecum for witnesses to bring documents. It is better to be over-

prepared than under-prepared.

4. Discovery In Criminal Charges

Often we do not receive all of the discovery that we request. We send a letter to the prosecutor requesting additional discovery and request that the discovery be provided within 10 days. If we do not receive the discovery within 10 days then we prepare a Motion to Compel Discovery.

Upon receiving discovery, we forward a photocopy of all discovery to our client. We then discuss with the client whether or not they have a reasonable prospect of winning.

I recommend that my clients provide me with a list of between 10 to 15 reasons why they should not go to jail and why court should impose the minimum probation term. This provides us with information for mitigation of penalties and also provides information to be considered by the judge in sentencing.

5. Preparing for Court

When we receive the hearing notice we send a follow up reminder to the client to be on time, bring all papers and call 24 hours ahead to confirm the case is still on the calendar. The client should be prepared and look neat. The Grateful Dead and Budweiser T-Shirts should be replaced with something that looks presentable. They should have their pregnant wives sitting next to them.

Preparation is the key to winning cases or convincing the prosecutor of exceptional defenses. Upon arrival at court, we will attempt to ascertain if the police officer is available. Sometimes the police officer is on vacation, retired, or suspended. This may assist your ability to work out a satisfactory arrangement.

There is no prohibition against speaking with State's witnesses in a non-threatening way. Outside of the courtroom, I usually call out the name of the non-law enforcement State's witnesses to determine what their version of the facts is. If we have an excellent trial issue but believe the judge is going to rule against us, we bring an appeal notice and file it with the Court on the Record. I keep in my car blank forms for Order to Compel Discovery, Order Mark Try or Dismiss, Order to be Relieved, and an Appeal Notice.

6. Plea to a Lesser Offense in Criminal Charge

If the client is going to enter a guilty plea to an offense, it is important they understand what the offense is and put a factual basis on the record. The Judge will be angry if a person is pleading guilty to a computer theft offense and the judge asked them what they took and the person insists they did not do anything wrong. The judge will send you back to your seat and must refuse to take the guilty plea unless an adequate factual basis is put on the record.

Having previously obtained from my clients their favorable background details in writing, I usually put on the record reasons why the judge should give them the minimum penalties.

Letters of reference and character reference letters are helpful in cases where the judge has wide discretion in his sentencing. After the client pleads guilty, it is a good idea to also ask the client on the record if he has any questions of myself or of the court.

7. Conclusion

Whether or not we have a trial or there is a plea to reduce the charge, I wish to walk out knowing I did the best I could for the client. Even if I lose, I want to have been such an articulate advocate that the client walks out saying my attorney is great but the judge is wrong. We try to be innovative and prepare new arguments. Additional case law and certain legal defenses are updated on website: www.NJLaws.com.