Swan Song

By Bruce A. Campbell

Unadulterated hokum. The mystical belief that, at the final moment, swans hold forth with a beautiful lyric to mark the occasion is pure myth. What comes out of the front of a swan – from birth to demise – is as un-ethereal as the stuff emitted from its hind part. Don’t take my word. The poohbah of the birder set, Roger Tory Peterson, in his “Field Guide to Birds” describes the “song of a swan [aka ‘Cygnus Olor’]” as “honking, grunting and hissing on occasion.” That’s a pretty low standard of melodiousness to follow as I issue my “sort of” parting paean to the CBA. I’ll try to meet it.

After 50 years (28 at the CBA) of bouncing around what Tennyson called “the brawling courts and dusty purlieus [haunts] of the law,” I am, on Halloween (appropriately) going to repurpose myself. Without a smidgen of a hint of an idea of what the bloody hell I will morph into, I will walk the plank into the Sea of Nebulousness, honking, grunting but, I hope, not hissing.

During those five decades, my esteem for the local legal community has risen on a steep incline with no downturns. The collegiality, the resolute support of a spritely and engaged bar association and the exemplary level of intelligent discourse on the whole between counsels, I think, make practicing law in central Ohio exceptionally agreeable.

Ethics work necessarily involves looking into claims of misconduct that, if substantiated, may be an embarrassment to the profession and/or hurtful to clients; however, the small proportion of lawyers who slip out of compliance with the precepts of the profession are few and deliberate miscreants are rare. The overwhelming plurality of practitioners scrupulously toe the ideals of the profession, naysayers to the contrary.

My great and dumb luck to have been able to nag Alex Lagusch and his then-board into hiring me as Bar Counsel still astonishes me. The job came to fit me better than a cork in a bottle of vintage unblended scotch (me being the cork, the CBA the scotch). It gave me a vantage point to see the fascinating ways and categories of law practice going on simultaneously to unkink and sort out the affairs of the commonweal.

The job, which never was a “job” in the tedious sense, gave me the chance to mingle with the crème de la crème of lawyerdom. The board and the committees with which I had liaison – especially the Ethics Committee – always were peopled by those steady types who see the higher ground and nudge us all in that direction. I was also able to engage with an assortment of magnanimous, engaged people who, although not burdened by a J.D., served on the Ethics Committee as the conscience of the community.

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then Doogie can serve as the trustee of that trust, receive income generated by the trust, access principal as he sees fit for health, education, maintenance and support and redirect the trust assets to whomever he likes upon his death. Even with this extensive control, the trust assets cannot be reached by Doogie’s creditors and will not be subject to estate tax at his death.

These asset protection and tax planning features could be of considerable value. With respect to the asset protection, Doogie has been performing surgeries since his teenage years, and his risk of being targeted in litigation is acutely high. If a creditor obtains a judgment against Doogie, the trust assets are protected. Doogie can even use them to pay his own bills. With respect to the tax planning, nobody can reasonably predict what might happen to the estate tax exemption in 20, 30, even 40 or more years. But if we assume Doogie’s own assets will cause him to reach the estate tax exemption, and the estate tax rate is 40 percent, then the $2,000,000, if received outright, would have been subject to an $800,000 tax. By placing it into the trust, his inheritance, along with its appreciation, will avoid tax altogether.

Fees
The greatly exaggerated and tremendously pejorative misconception about trusts is that they are expensive. For the vast majority of my clients, a trust adds $300 to $400 to the overall cost of the estate plan, which almost always falls below $1,200, and generally falls below $1,000. In instances where the trust is more complicated, either due to financial factors or family factors, the cost can be higher. But in those instances, the trust planning is particularly important and the added fee is easily justified.

Conclusion
Trusts were a mystery to me before I became a lawyer, and I think they remain a mystery to many non-attorneys and attorneys who do not practice estate planning. But they are an extremely useful tool. If you do not practice in estate planning, you may want to keep the usefulness of trusts in mind the next time you have a discussion with a friend or client about estate planning.

1. Doogie was 16-years-old when the show first aired in 1989, so he would be 42-years-old today.
2. When term life insurance policies are taken into consideration, which they absolutely should be for purposes of this discussion, there are a surprisingly high number of clients who need to plan as though their children might be millionaires.
3. For those familiar with charging orders, this flow of assets out of the trust works much better, as far as the beneficiary is concerned, than the flow of assets out of an LLC when a creditor has attached a charging order.