UNDUE INFLUENCE IN WISCONSIN PART 2: ELEMENTS OF CLASSIC UNDUE INFLUENCE

This is the second in a series of three articles on undue influence in Wisconsin.

In Wisconsin, the four elements of classic undue influence cases are susceptibility, opportunity, disposition and a coveted result. In addition to classic undue influence in Wisconsin, there is a second method of challenging a will or gift made during lifetime, a so-called *inter vivos* conveyance, which will be discussed in the third and final article in this series.

Susceptibility

The first element of classic undue influence is a finding that the person charged with exercising undue influence unduly influenced a susceptible testator or grantor.

The Wisconsin Supreme Court, in numerous cases, has stated that the key factors regarding the issue of a testator or grantor's susceptibility to undue influence are:

- Age
- Personality
- Physical and mental health
- Ability to handle business affairs[1]

Opinions about the general state of mind of the testator or grantor from third parties with whom he or she may have had contact are given much credence by the court.

For example, the court will consider whether or not a person is considered to be strong-willed, independent, self-reliant, dominant, stubborn, dependent, capable of making decisions, and taking care of ordinary day-to-day management of their affairs.

Age, in and of itself, is of little significance unless it is coupled with a deteriorating physical or mental condition.[2]

If consideration of the factors set forth above demonstrates that the testator or grantor was unusually receptive to the suggestions of others and consistently deferred to others on matters of utmost personal importance, then the element is established.[3]

Opportunity to Influence

This element requires a showing that the person charged with exercising such influence on the susceptible person had the opportunity to procure the improver favor.

As a general rule, this is the easiest of the four elements to prove. To justify a finding of the opportunity to influence, the court must find repeated close contact with the testator.[4] Close personal relationships whether because of familial ties, living conditions, working conditions, or other social conditions have been found sufficient.

However, opportunity to influence does not mean mere physical propinquity or personal contact. It requires that interviews or personal transactions between the parties exist and that they were followed by the accomplishment of a desired end.[5] It is not necessary, nor is it often the case, that opportunities to influence are accomplished in secret or that they culminate in one particular act that represents the attempt to unduly influence. However, the opportunities to influence must exist at or about the time the will or conveyance is effected.[6]

Disposition to Influence

The third element requires proof of more than a desire on the part of the person charged with undue influence to obtain a share of the estate. It necessitates a showing of a willingness to do something wrong or unfair to obtain a share. It requires proof of grasping or overreaching affirmative steps on the part of the person charged.[7]

Evidence must be submitted of conduct designed to take an unfair advantage. Proof of this element requires evidence of the personality traits of the person charged with committing the act of undue influence.

For example, evidence shows a willingness to take advantage of the kindness and generosity of the testator or grantor. Alternatively, evidence shows that the influencer misled or kept a secret from natural beneficiaries.[8] The court has specifically indicated that there is nothing wrong with aiding and comforting a failing testator and that such activity should be encouraged.[9]

Coveted Result

The last element required in order to present a case of classic undue influence is the showing of a result caused by, or the effect of, such undue influence. Two compounds of this element exist.

First, the result must be an “unnatural,” raising “a red flag of warning.”[10] The essential question is whether the person was favored to be excluded from the natural or expected recipients of the testator’s bounty. However, more than a result favorable to the alleged person is required.

The second component is whether the result obtained was caused by or was the effect of

undue influence. What is under scrutiny is that a particular recipient benefits for no apparent reason and that the disposition is, in fact, unnatural and, therefore, the bequest or conveyance is unjust[11]

The mere provision in a will that benefits the influencer does not, by that fact alone, prove the element. Evidence may make what appears unnatural natural given the circumstances of the individual case. The mere fact that the testator makes bequests to his close friends rather than to relatives does not necessarily render the disposition unnatural. Whether a will or conveyance is unnatural or not must be determined from a consideration of all the surrounding circumstances.[12]

---

[1] *Dejmal*, 95 Wis. 2d at 156.
[2] *Id.* at 159.
[3] *Id*. at 157.
[4] *In Matter of Estate of Becker*, 76 Wis. 2d 336, 348, 251 N.W.2d 431 (1977).
[5] *Ward vs. Ward*, 62 Wis. 2d 543, 554, 215 N.W.2d 3 (1974).
[6] *Elvers*, 48 Wis. 2d at 21.
[7] *Estate of Brehmer*, 41 Wis. 2d 349, 356, 164 N.W.2d 318 (1969).
[8] *In Matter of Estate of Vorel*, 105 Wis. 2d 112, 312 N.W.2d 850 (1981).
[9] *Estate of McGonigal*, 46 Wis. 2d 205, 214, 174 N.W.2d 256 (1970).
[10] *Estate of Culver*, 22 Wis. 2d 665, 673, 126 N.W.2d 536 (1964).
[11] *Will of Cooper*, 28 Wis. 2d 391, 399, 137 N.W.2d 93 (1965).
[12] *Becker*, 76 Wis. 2d at 349.

FIRM OBTAINS BIG WIN FOR CLIENT

From 1997 to 2009 Sujata Sachdeva embezzled over $36 million from her employer, Koss Corporation, in one of the Top 10 Largest Embezzlements in U.S. history. The embezzlement was reported all over the world, including on the cover of *The National Enquirer*.

Ms. Sachdeva was criminally convicted of embezzlement and is currently serving a prison term. In an attempt to recoup its loses, Koss sued its auditor, credit card company, and banks. Its auditor, Grant Thornton, settled the claim for $8.5 million, and its credit card company American Express, settled the claim for $3 million. Those lawsuits were filed in Illinois and Arizona, respectively.

Koss also sued its local bank, Park Bank, in Milwaukee, arguing that Park Bank acted in bad faith under the Uniform Fiduciaries Act by failing to discover and report the embezzlement. In the lawsuit, Koss sought damages of $43,749,400 from Park Bank. After five years of litigation, on March 11, 2016, the trial court dismissed the case in a 24–page written decision,

finding that “Park Bank did not act in bad faith.” The court held that, under the Uniform Fiduciaries Act, bad faith “requires a showing of some indicia of dishonest conduct or a showing of facts and circumstances so cogent and obvious that to remain passive would amount to a deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a defect in the transaction,” and “there must be some factual basis—whether an allegation of monetary self-interest or compelling evidence of wrongdoing—to suggest the bank acted intentionally to avoid knowledge of the fiduciary’s wrongdoing.” Here, the court held, “Koss has not provided any evidence that Park Bank intentionally ignored Sachdeva’s embezzlement,” and it “declines to require banks to act as detectives, whether they be Sherlock Holmes, Columbo, or Andy Sipowicz.”

Dean Laing of our firm was Park Bank’s lead attorney. Also working on the case were Greg Lyons and Joe Newbold.

EMPLOYMENT LAWSCENE ALERT: HOW WISCONSIN’S KNIFE LAW REFORM IMPACTS EMPLOYERS

On February 7, 2016, 2015 Assembly Bill 142 became law, amending the Wisconsin Statutes related to how knives are, among other things, regulated by concealed carry permits. The law no longer requires an individual to have a concealed carry permit in order to lawfully carry a concealed knife, including a switchblade or automatic knife. There is, however, an exception where the individual is not allowed to possess a firearm under state law (i.e., a felon), then that individual is also not allowed to carry a concealed knife that is a “dangerous weapon.” Local ordinances are not permitted to impose stricter laws than the state law, other than in buildings or parts of a building that are owned, operated, or controlled by a political subdivision of the state.

Although the State of Wisconsin will no longer require that knives, including switchblades, be subject to conceal carry permits, employers still have a duty to make sure that their workplaces are safe for their employees, customers, and visitors. If appropriate, employers should review their handbooks and policies to see if they have a Weapon-Free Policy that prohibits employees from carrying weapons, including knives, inside company buildings and other areas where the employer conducts business.

UNDUE INFLUENCE IN WISCONSIN PART 1: INHERITANCE DISPUTES AND CLAIMS OF UNDUE INFLUENCE

This is the first of a series of three articles on undue influence in Wisconsin.

Unscrupulous people sometimes use undue influence to change wills and obtain gifts from the elderly, sick, or weak. Increasingly, the public has come to realize this is a form of elder abuse.

Undue influence cases involve predominantly factual determinations and require a lawyer to engage in extensive pretrial fact development and investigation. Since appellate courts have shown great deference to the findings of the trial court in these cases, the importance of adequate trial preparation and courtroom experience cannot be overstated.

Elements of a Successful Case

By its very nature, proof of the necessary elements will rest almost entirely on **circumstantial evidence**, or evidence that relies on an inference to connect it to a conclusion, like a fingerprint at the scene of a crime. Even with adequate preparation, it is difficult to predict with any success the outcome of undue influence cases. Why is this? The outcome is based on disputes in the inferences drawn from facts, not the facts themselves.

Success will depend in large measure upon the **skill and labor of your trial attorney**.

Undue Influence in Wisconsin

Wisconsin has long recognized the doctrine of undue influence, or influence that "commands or compels the exercise of volition on the part of the person subject to such influence so that the result is the accomplishment of the will or purpose of the one using influence rather than, in fact, the will or purpose of the donor."[1] In other words, in Wisconsin a person can be prosecuted if he or she compels a person to act other than by his or her own freewill or without adequate attention to the consequences.

The doctrine of undue influence has been utilized to challenge wills as well as to void *inter vivos* conveyances, or a transfer that was made during a person's lifetime as opposed to one made after his or her death. The same legal principles and theories apply to both situations.[2]

Two distinct methods of proof exist to establish undue influence in Wisconsin. The first, often referred to as **classic undue influence,** is composed of four elements:

1. **Susceptibility** – A person who is susceptible of being duly influenced by the person charged with exercising undue influence.
2. **Opportunity** – The opportunity of the person charged to exercise such influence on the susceptible person to procure the improper favor.
3. **Disposition** – A disposition on the part of the party charged, to influence unduly such susceptible person for the purpose of procuring an improper favor either for himself or another.
4. **Coveted Result** – A result caused by, or the effect of, such undue influence.[3]

The second method of challenging a will or voiding an *inter vivos* conveyance requires establishment of a confidential or fiduciary relationship between the testator or grantor and the favored beneficiary or grantee. It also requires proof of suspicious circumstances surrounding the execution of the will or conveyance.[4]

Proving Undue Influence in Wisconsin

The elements of either method must be proved "by clear, satisfactory and convincing evidence."[5] This high civil burden of proof must usually be met with **circumstantial evidence**. Undue influence exercised in secret, undercover, and with little opportunity for the presence of disinterested parties usually rests "wholly upon circumstantial evidence,"[6] which, the Supreme Court has noted, "is as convincing as direct testimony."[7]

Lower Standard of Proof

Although the burden is on the objector to prove each of the necessary elements, a lower standard of proof applies because of the secrecy that usually accompanies such affairs. When three of the four elements are established by the necessary clear, satisfactory and convincing evidence, only "slight additional evidence" need be presented as to the fourth element."[8] This lower standard of proof has been variously described as requiring only "slight additional evidence"[9] or "very little evidence."[10]

Application of this lesser quantum of proof has generally not caused problems because the finder of fact in the vast majority of reported cases is the trial court. A jury trial is not available as a matter of right in will contests. Suits relating to *inter vivos* transfers, on the other hand, need not be venued in the probate court, and trial by jury is available.[11]

The manner in which a jury is to be instructed with respect to the lower standard of proof is not the subject of a reported case. Whether a jury should be instructed in the black letter case law language ("slight additional evidence" or "very little evidence") or should be instructed with the usual civil burden of proof (preponderance of the evidence) is an unresolved issue.

However, instructions to the jury in such a case must indicate that the jury need find only

three of the four elements by clear, satisfactory and convincing evidence. The lesser quantum of proof is all that is needed for the fourth element, whichever element that may be in the mind of the trier of fact.

Scope of Appellate Review in Wisconsin

The law governing the scope of appellate review is also well established in Wisconsin. Undue influence must be proved by **clear, satisfactory and convincing evidence**. Findings by the trial court will not be upset on appeal unless they are against the great weight and clear preponderance of the evidence presented at trial.[12]

The appellate court will examine the trial court record not for facts to support a finding the trial court did not make or could have made, but for facts to support the finding the trial court *did* make.

As a result, the practitioner must make every effort to present a successful case at the trial court level. A review of undue influence cases decided by the Wisconsin Supreme Court between 1945 and 1968 encompassing 54 decisions revealed that only four trial court decisions were reversed.[13]

---

[1] *Kuehn vs. Kuehn,* 11 Wis. 2d 15, 24, 104 N.W.2d 138 (1960).
[2] *Estate of Fillar*, 10 Wis. 2d 141, 102 N.W.2d 210 (1960).
[3] *Will of Freitag*, 9 Wis. 2d 315, 317, 101 N.W.2d 108 (1960).
[4] *Will of Faulks*, 246 Wis. 319, 360, 17 N.W.2d 423 (1945).
[5] *In Matter of Estate of Dejmal*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980).
[6] *Will of Ehlke*, 244 Wis. 115, 121, 11 N.W.2d 497 (1943).
[7] *Estate of Elvers*, 48 Wis. 2d 17, 20, 179 N.W.2d 881 (1970).
[8] *Freitag*, 9 Wis. 2d at 318.
[9] *Id.*
[10] *In Re Stanley's Will*, 226 Wis. 354, 360, 276 N.W. 353 (1937).
[11] *Casper vs. McDowell*, 58 Wis. 2d 82, 205 N.W.2d 753 (1973).
[12] *Dejmal*, 95 Wis. 2d at 154.
[13] *Undue Influence – Judicial Implementation of Social Policy*, 1968 Wis. L. Rev. 569.

TAX AND WEALTH ADVISOR ALERT: BUILDING A GREAT PLAN…STEP THREE: BRIDGING THE GAP

The last two posts to this blog have focused on how to build a great plan. First, you need to create a compelling vision; one that describes, in detail, where you are going and why. Then, you need to define where you currently are with empathetic honesty. The third step, and the

focus of this post, is bridging the gap between the two. In other words, how do you get from where you are to where you want to go?

The first step to building a strong plan is to do the math. For example, if we are building a financial plan, and for my client to achieve his vision he needs $1,000,000 at age 65, and he is currently 45 and with a savings of $200,000, the math tells us we need to obtain an additional $800,000 over the next 20 years. If we are building a succession plan under which the company needs to fill three key vacancies to meet its five year vision, the math tells us we need to find three more bodies with the required skill sets. If we are building an estate plan and the client's vision is to leave her $20,000,000 illiquid assets (maybe a closely held business) to her children, the math tells us we need about $4,000,000 in cash to pay the estate tax when she dies to successfully achieve that vision.

The problem I see in a lot of plans and with some of the planners I work with is that this is where the plan ends: with the math. For example, the plan might be "you need $800,000 in the next twenty years, so based on an x% rate of return, you need to save $_____ every year." My response to those plans are twofold: the immature teenager living inside me wants to say "duh.," and my more thoughtful response is, if that is all planning is, simply replace the planner with a computer: it can do the math faster and better.

The math is critical. It is where we need to start. But the math is only the surface. Great planners never stay on the surface; they get deep. So, the next step in a great plan is to go one layer down and analyze why we are where we are and what needs to change to get where we want to go. For example, go back to our succession plan that requires hiring three key people over the next five years. Digging one layer deeper from the math, we might want to know why those people are not already part of the organization. There could be any number of answers to that question. Maybe three people will be leaving the organization over the next five years. Perhaps the company's growth strategy requires new talent. Maybe the company burns and churns its talent. Or, let's take our financial plan. It is critical to know we need to save a certain amount of money every year, but it is just as important to know why our client has $200,000 saved right now. Is our client on track or off track?

All of this leads up to the critical issue we have to help our client work through in creating the plan: change. A great quote by Albert Einstein tells us that insanity is doing the same thing over and over again and expecting different results. The problem with change is that science has proved that human beings are neurologically wired to resist change. Our brains are actually screaming at us to continue to do things in the same comfortable old way we always have. We have to override that voice in our heads to build a successful change plan. It requires choice and discipline.

When working with clients, if the plan requires a change in behavior– and it almost always does– I always start with the tried and true consulting change tool: a start, stop and continue

analysis.

I ask, if I want to achieve my vision:

What do I need to start doing that I am not currently doing?
Examples:

- I need to save more.
- I need to create a budget and stick to it diligently.
- I need to have savings removed from my paycheck.
- I need to implement a mentorship program in my company.
- Our company needs to train people for their next job as they are doing their current one.
- I need to invest less money back in my business and invest those funds in life insurance to pay the estate tax.
- I need to delegate more decision making responsibility to future leadership.

What do I need to stop doing?
Examples:

- I need to stop impulse shopping.
- I need to stop going to the mall for entertainment.
- I need to stop going to Starbucks every day.
- I need to stop requiring my people to work so many hours at their job so they have time in their day to focus on professional development.
- I need to stop investing every dollar my business makes back in my business and growing the value of an illiquid asset without first building up my liquid assets (even if the reinvestment is getting a better rate of return).
- I need to stop doing all of the duties of my business and delegate responsibility to others so they can grow.

What do I need to continue doing?
Examples:

- I am saving enough every month to meet my retirement goals. I need to continue doing so.
- We are doing a great job in attracting talented people. We need to keep recruiting the way we have.

This stop, start, and continue analysis– combined with a compelling vision and an empathetically honest assessment of the current state of things– should result in a strong execution plan. We will know how we have to change in order to get where we want to go. We will have a handle on the new behaviors we need to develop and the old habits we need to break. But will we actually change? That question is the focus of my next blog article.

TAX AND WEALTH ADVISOR ALERT: BUILDING A GREAT PLAN…STEP TWO: EMPATHETIC HONESTY

My last blog post talked about the critical role vision plays in building an effective plan. Today's post focuses on the other end of the planning spectrum: if vision is where the plan is going, the plan must start with an objective, intelligent analysis of where we are. This part of the planning process is described in many ways, commonly as, "self-discovery" or "facing the facts." I describe it as "empathetic honesty."

No plan is built on a foundation of self-deceit.I do a fair amount of executive coaching, and I tell all of my clients that my role is two-fold: root out self-deceit and solve problems. Self-deceit is the insidious cancer that destroys all plans it touches. How many financial plans fail because an embarrassed client does not provide all of the critical financial facts and bad habits to the CFP? How many estate plans fail because parents are too ashamed to discuss the personal failings and weaknesses of their adult children? How many succession plans fail because the owner is unwilling to admit to the planner that the wrong talent is on the bus? How many strategic plans fail because the executives cannot face organizational missteps, mistakes, and weaknesses?

If self-deceit is the fatal flaw that brings down a plan, truth is the iron spine of a great plan. So it is critical that the planner helps the client understand the need to put ego aside, report all of the facts — good and bad — and start building for the future in the honesty of the here and now. For the plan to succeed, that honesty needs to be empathetic. I use the term "empathetic" mainly as an antonym to brutal. How many people do you know that pride themselves on being the messengers of "brutal honesty"? In my world, a lot of them (of course, it should be noted I work with lawyers). My take has always been that if you show me a room full of people that pride themselves on delivering brutal honesty, I will show you a room full of arrogant bullies. But, more important to this post, if the planner's gig is brutal honesty, for most clients, the plan will suffer from the shaded truth at best, or creative facts at worst. Simply put, no one wants to be brutalized.

Instead, a plan thrives when the planner is focused on empathetic honesty.Remember, empathy is not sympathy. It is not a fact gathering pity party where the planner offers platitudes, excuses, and assurances of false hope. Instead, empathy is focused on understanding. In other words, great planners focus on not just gathering the facts but understanding why those are the facts. So the financial planner does not tell the client who has saved woefully little for retirement that (1) he or she has no chance to retire with

anything other than a macaroni and cheese subsistence (brutal honesty), or that (2) everything will be alright (no honesty) but instead takes the time to understand why the person is in that situation, be it poor spending habits or bad luck. Either way, the planner can then build the best plan for the client to avoid a repeat of the choices that led to the current state. Or, if the client's current leadership team is not up to par, the succession planner does not (1) ask the client "why do you hire idiots?" (brutal honesty), or (2) tell the client that the team will get better (no honesty), but instead focuses on why these people were hired and how they were developed so that the succession plan can fix the client's talent acquisition process, talent development process or both.

Empathetic honesty is the foundation of a great plan: a focus of where the client is, how they got there, and what the client needs to start, stop, and continue doing to achieve the vision.

WHETHER WEBSITE PRESENCE EXPOSES PUBLISHER TO LAWSUITS IN WISCONSIN ANALYZED IN RECENT CASE

Most people would probably assume that simply maintaining a website would not expose the creator to being sued wherever the website can be viewed. Courts in this country have generally agreed, and have ruled that the mere act of operating a website that can be read within a certain state does not, by itself, give the courts of that state jurisdiction over the entity running the website.

In a recent opinion, the Wisconsin Court of Appeals affirmed this principle. In *Salfinger v. Fairfax Media Limited*, the court concluded that the mere fact that an Australian company published an article on a website, which could be accessed in Wisconsin, did not give the court jurisdiction over that company. This was true even though the plaintiff's claim was for defamation based on the content in that article. Rather, to be consistent with the Due Process Clause of the United States Constitution, there must have been some purposeful conduct within Wisconsin by the company that would make facing suit in Wisconsin foreseeable.

Even more importantly, the court also considered whether the targeted advertising on the website changed the result. Like many companies, Fairfax Media Limited used online advertising programs, such as through Google or Double Click, that placed advertisements on

its website targeted to the reader based on his or her geographic location—for example, placing ads for a Wisconsin business on its website next to the article if the reader was located in Wisconsin. Ultimately, the court concluded that this still was not enough Wisconsin-related conduct to give the court jurisdiction over the publisher and expose it to being sued in Wisconsin.

The Court did note that the question of jurisdiction depends on the facts in each particular case, so it is unclear whether even one change in the circumstances, such as a company mentioning Wisconsin in a website article, could change the result and open the company to lawsuits in Wisconsin. These questions will ultimately have to be resolved in future cases.

FEDERAL JUDGE RULES IN FAVOR OF E-RATE PROGRAM WHISTLEBLOWER

On January 20, a Wisconsin federal judge ruled in favor of a private telecommunications auditor, Todd Heath, who filed a lawsuit claiming that Wisconsin Bell defrauded the federal E-Rate program by overcharging schools and libraries. The lawsuit was brought under the False Claims Act (FCA), a federal law encouraging whistleblowers to come forward when they discover "false claims" or fraud committed on the federal government.

The E-Rate program was established by the Telecommunications Act of 1996 to provide schools and libraries with subsidies needed to upgrade their telecommunications equipment and improve access to the Internet and related services. Here's how Propublica described why the E-Rate program matters: "E-Rate was set up… at the dawn of the Internet era to avert a digital divide between rich and poor students by subsidizing telecommunications services to schools and libraries… [The program] requires providers to set rates for schools and libraries at the lowest prices offered to comparable customers… [to] help schools in less-wealthy areas provide their students with access to the Web."

E-Rate is funded by "Universal Service" charges, which federal law authorizes Wisconsin Bell and other telecommunications companies to include on business and consumer telephone bills nationwide. The funds collected are administered by the Universal Services Administrative Company (USAC) under the direction of the FCC.

Wisconsin Bell argued that the E-Rate Program did not involve any "federal funds" and, therefore, Wisconsin Bell could not be liable under the FCA for the overcharges being alleged. United States District Court Judge Lynn Adelman rejected these arguments, pointing out that the E-Rate program was established by the federal government and that E-Rate funding

would not exist if not for the government's actions. He also rejected Wisconsin Bell's argument that it had no liability under the FCA because USAC was not acting as a government "agent" when administering E-Rate. He noted: "It seems difficult to dispute that USAC was acting on the FCC's behalf and subject to its control while administering the subsidy fund."

Wisconsin Bell asked to appeal Judge Adelman's decision to the Seventh Circuit Court Appeals immediately, which would have put the trial court case on hold indefinitely, but Judge Adelman rejected this request in his January 20 court order, meaning that the lawsuit can continue toward trial.

The law firm of O'Neil Cannon Hollman DeJong and Laing SC represents the whistleblower in this case. If you believe you have information that an individual or company is defrauding the federal government, contact Doug Dehler at OCHD&L for a confidential consultation about your rights and options at (414) 276-5000.

TAX AND WEALTH ADVISOR ALERT: BUILDING A GREAT PLAN: IT ALL STARTS WITH VISION

Building any successful plan, whether a strategic plan, estate plan, or succession plan, requires capturing a specific vision. The question is, "what exactly is vision?" It is not some weird, new age concept that finds its way into the movie *Office Space*. While the term "goal" is a good analogue, "goal" is not quite right—because it lacks the emotional heft of vision. In my world, vision is a present tense narrative of a future state that focuses on the author's **why** and **how** he or she feels having achieved those results. Let's break that down:

- The vision is a description of future state. The reason for that, in the planning context, is obvious and straightforward—it is where we want to go. Stated another way, it is the very reason for the plan.
- The vision is written in the present rather than future tense. The power of present tense is that the vision becomes commitment rather than aspiration. To show how this works, read the following two visions and ask yourself which one is more compelling:
    1. "By December 31, 2019, the Company's annual revenue will be $10,000,000."
    2. "It is December 31, 2019, and the Company is celebrating a year with $10,000,000 of revenue."

Sure, some words are added like "celebrating," but that is the point. The present tense narrative of the future state picks you up and places you in the winner's circle, allowing you to describe the emotions of the victory. It is reflecting on how victory feels, that makes the

sacrifice of preparing for the game worth it. It is why world class athletes “play the game in their minds” over and over again before they get on the field.

Visualizing the victory is the essence of a compelling vision. It focuses on the **why**. If you think about **what** you do every day, there is usually nothing that gets the blood pumping. If you think about **how** you do what you do, it is like reading the owner’s manual for your car; boring. But, if you focus on **why** you are doing it, that is where the motivational power lies.

- For example, if the vision is “The company will have $10,000,000 of revenue,” that is the **what**; no juice. If it is “We will be at $10,000,000 of revenue by growing our sales force by 10 people and increasing our customer base by 20% per year,” that is the **how**; a little more specific, but no more exciting. But, if the vision is “We will be at $10,000,000 of revenue, which will allow us to be the predominant consulting company in Southeastern Wisconsin, and we will have owners and employees who get the first call when a client needs a problem solved,” now that sounds like a great place to be. You can literally feel how much you would want to work there. That is the **why**. THAT IS VISION.

But vision is not limited to businesses or owners. Vision is critical in all types of planning. For example, a great retirement plan starts with a compelling vision; a vision so clear and concise I can smell the grass on the golf course and can see the blue ocean off the Tuscan coast. Or, a phenomenal estate plan begins with visualizing the happiness the great grandchildren will derive upon their graduation from Harvard. I know I have assisted my clients with an awesome succession plan when they tear up discussing the impact their business is having generations later; when they begin to clearly see the impact their plan will have on countless families, not just theirs.

And why is vision critical? We will dig into that in the next few blog posts, but it comes down to this: planning is fun, execution is hard. But a plan with no execution is just a daydream. Execution is hard work, sacrifice, preparation, perspiration. Without a compelling vision, without knowing what we are fighting for, the sacrifice and hard work known as “execution” never gets done.

Why do we have a retirement savings crisis in this country? Why do only 30% of Americans have an estate plan? Why do so many closely held businesses fail to survive their founders? No one sat down and thought about, cared about, and documented the amazing future that was the inevitable result of that sacrifice. No one created a compelling vision.

THE NOMINATIONS ARE IN FOR THE LEADERSHIP DEVELOPMENT SUMMIT

Our very own Trevor Lippman was 1 of 24 attorneys selected by the State Bar of Wisconsin's Leadership Development Committee to participate in this year's Leadership Development Summit. This nomination follows up on Trevor's recent three-year appointment by the State Bar President, Mr. Ralph Cagle, to serve on the Continuing Legal Education Committee of the State Bar of Wisconsin.

Trevor was selected to participate in the Leadership Development Summit because his nominator felt that he has demonstrated a commitment to civic-mindedness, has shown a capacity to lead, and possesses the personality and leadership skills that make others want to follow his direction. These are attributes the State Bar of Wisconsin seeks in developing the next generation of its leaders.

The Summit will be held on Friday, April 1, 2016, at the Monona Terrace in Madison for the purpose of developing and encouraging the next generation of leaders both for the State Bar and in the legal profession. The Summit brings participants together with key State Bar leaders for direct interaction and discussion on leadership in the State Bar and legal community today.