

Estate Planning Practice v. Litigation Practice

Years ago, I did nearly all civil litigation, but my practice has evolved into more of an estate planning/probate practice, and I really enjoy it much better.

I notice my stress level has significantly dropped, and I make nearly the same money with fewer hours.

Has anybody else done anything similar, and do you miss civil litigation all that much? The excitement of courtroom "warfare" has lost the allure it had 20 years ago, and a big part of it is the loss of congeniality amongst the trial bar.

Agree? Disagree?

We did what you have done. However, we stayed in the probate litigation arena to satisfy that litigation urge.

Robert "Robby" W. Hughes, Jr., Georgia

I have not made the transition yet, but I am working on it - for a variety of reasons. I do notice on days when I am mostly doing EP there is much less stress. But I do sometimes love walking into court and kicking butt.

But the long-term plan is to retire to Monterey and just do EP there. So, I am working on a transition. (Although, realistically, "retirement" is still working and it is 12 or so years away.)

Jonathan Stein, California

I am moving away from some litigation to a no litigation end goal. O have a few old cases that I can't seem to get rid of.

I agree that the thrill of the court is something I miss. On the other hand, I think the stress (plus all the idiotic litigators that i had to deal with) is not worth the rush of the court room time.

Nick Bowers, New York

I couldn't agree more.

I actually started in criminal litigation and moved to civil litigation, which I immediately found to be less civil. But it got less and less congenial as time wore on. I honestly thought that probate would be relatively reasonable, but I find more and more people coming into the area are downright hostile - often even more so than their clients appear to be at times!

So, I am doing fewer and fewer adversarial matters and more and more transactional estate/probate/real property/business matters and I am, indeed, far less stressed.

I find that nastiness tends to be contagious and even I get drawn into being far less pleasant than I truly want to be.

I also tend to play Taylor Swift's song about Mean People very loudly as soon as I get off the phone with other litigators.

Oh, and now I have a guy who I met with at his insistence on the phone and in person for more than four hours, threatening to ruin me if I don't give him money for not taking his case since I am evidently "not a litigator" since I declined to take his case. I wrote a letter to a trustee requesting an accounting and tried to find a missing relative unsuccessfully, and charged the guy a total of \$150. He wants not only that money back, but more for wasting his time. Sigh. And if I don't comply, he will leave negative reviews and nasty messages all over the internet.

Most days it goes better though.

Vicki Levy Eskin, Florida

Agree 100%. I used to love kicking butt in court, but now prefer the lower stress levels of transactional work.

Amy A. Breyer, California

I practice in the area of elder law assisting senior citizens with basic estate planning and probate issues. The majority of client representation is transactional work. However, ten to twenty percent of my practice involves courtroom appearances as defense counsel for seniors who are victims of predatory lending practices, abusive debt collection actions, and landlord-tenant disputes.

I find this area of the law highly satisfying. The office work is low stress, but you still get to represent elderly clients (who are terrified of going to court) in civil litigation matters.

Any attorney looking to change their practice model should consider elder law (after all the population is aging since the Baby Boomers hit retirement age; and clients are plentiful).

Robert Stroud, Alabama

Years ago, I did nearly all civil litigation, but my practice has evolved into more of an estate planning/probate practice, and I really enjoy it much better ... Has anybody else done anything similar, and do you miss civil litigation all that much?

Yes to #1 - but it took 12 years to move to the type of practice I had aspired to. No, not at all to #2.

I didn't set out to be a litigator. Having grown up in a family that had no involvement with the law other than when buying or selling real property or making a will, I went to law school with the hope and intent of becoming a property & probate guy. But when I graduated in 1975, the US was in the midst of the "Ford Recession". Buffalo, NY was hit especially hard, and jobs were scarce for newly admitted attorneys. Established law firms were laying off attorneys with 1-3 years' experience. I relocated to Central NY and took a position with a small general practice firm with a heavy concentration in insurance defense litigation. It wasn't what I wanted to do, and while I developed some proficiency at it, I never really liked or enjoyed it. In fact, over time, I developed an intense dislike of insurance companies - something that lasts to this

day. But, for the first 12 years I was in practice, it was a paycheck. In my "spare time" I quietly started building a transactional practice in real estate (primarily residential), wills & estate planning, and probate & estate administration. Finally, after 12 years, I looked at the numbers, said it was IQ (I Quit) Time and went solo.

Over the next 30 years, my real estate practice evolved from mostly representing buyers to almost exclusively representing sellers - and I formed an abstract & title company to supplement my largely flat fee practice by handling the associated abstract & title work as well. My will file grew, as many of my real estate clients sought estate planning assistance, and they in turn, referred their parents or their adult children my way. And, eventually, as the clients for whom I had done wills began to die, I began handling more probate & estate administration matters. Over the last 10-12 years, my practice consisted almost exclusively of probate & estate administration, my real estate transactions being those incidental to my estate planning and probate practice.

One of the last matters I handled prior to my retirement was the estate of a very nice woman of my parents' generation (Tom Brokaw referred to them as "the greatest generation"), for whom I had handled various transactional matters over the years. It was not a large estate, but it was personally very rewarding. She had designated her daughter and son - both of whom were and are good people and had also been clients of mine for a number of years - as the executors of her will. And, per her will, her homestead was transferred to the son's daughter and her husband, who I represented as well. I had represented three generations of members of this fine family over my 42 years of practice. And, as I reviewed my closed file index in the process of closing my office, I realized that I had represented three generations of several fine solid families over the years. I am grateful to and for those loyal families that enabled me to practice law in a small town in a manner that both they and I felt comfortable with, and, while I didn't get wealthy practicing law, we were always able to put food on the table, clothes on our backs and a roof over our heads, put four boys through college and fund an IRA that made it possible to retire.

The road from the practice that I started my career in to the one that I aspired to and eventually built seemed long and sometimes hard, and it took some twists and turns along the way, but looking back on it all, I realized that I have been blessed.

Rod Klafehn, New York

Heh, there is truly nothing new under the sun.

I'm in my early 30's, I've been practicing law for about 5 years now. Much like (almost exactly like, actually) Rod I set out with the intention of running a transactional practice, but when I got out into actual reality I was confronted with a massive glut of underemployed and unemployed lawyers.

I wasn't completely blindsided about this as I knew all about employment issues in the legal market before enrolling in law school, and I always intended to hang my own shingle instead of working for a firm so I figured I would be somewhat insulated, but it very quickly became apparent to me I wouldn't be able to survive doing nothing but estate planning/probate and other transactional work.

Through some hard work and some luck (mostly luck, I was in the right place at the right time), I was able to carve out a little contract litigation niche for myself and I've been able to survive. The litigation is indeed about 20 times more stressful than the transactional stuff, but I'm still young enough to weather it. I will say at least with the litigation I definitely feel like I earned my fee a lot more, heh. I hope I'm able to pull off what some of the posters in this thread did and move into almost entirely transactional work in the next 15-20 years, but for now I'm happy to be a paper mercenary.

In any event, it's very interesting to see that apparently my path isn't all that uncommon.

Bryce Davis, Florida

That's a great mini-bio, Rod, thanks for sharing!

Bobby Lott, Alabama

My practice has evolved over the past forty some years and has settled into the areas of estate planning and administration. There is some litigation in the guardianship and will contest arenas to keep my appetite for trial work quenched.

When I was in law school the criminal law professor said he practice criminal law because the trial were what trials were all about. He said civil trials were an exercise is exchanging piles of paper and learning all of the testimony in discovery and then it was a contest to see who presented the case best. With all of the developments in civil practice, his words become more and more prophetic.

John Miles, Georgia

I have done Estate Planning for many years, prior to that I represented many cities in court. at times I have taken litigation in probate court Conservatorships and Trust disputes. Estate Planning is not easy, especially if you are doing higher end planning. Transactional work can be a tough way to make money, right now I'm super busy due to a tax proposition passing, but when money is tight people put off estate planning. You will be competing with paralegals and legal zoom.

Martha Jo Patterson, California

I agree. After COVID-19 cause my firm to eliminate my position in July, there were no openings at firms in the cities outside Seattle (not wanting to work in Seattle for the foreseeable future).

Estate Planning was something I looked at about 2 years ago and had begun training for it, so when I got let go, I chose to start my own practice in that area.

I would have liked to stay in litigation but with COVID-19. my age, and court closures it didn't seem like the best plan going forward.

I'm happier making my own schedule and I'm trusting the income will follow.

AnnMichelle G Hart, Washington
