



# Legal Perspectives

from Abrahams Kaslow & Cassman LLP

## Penny-Wise, Pound-Foolish

by: James A. Tews, Part 1

Once in awhile we all opt to save a bit of money on an item, which results in having to spend much more money later to remedy what we could have prevented by paying more up front. As an example, a person may open a store credit card account in order to save 10% on a purchase, but then pay off the balance slowly, incurring interest (and possibly late fees). The following case illustrates why it may be beneficial to pay a relatively modest sum to have your estate plan professionally prepared.

“Beth” retained our firm to help her administer the estate of her mother’s cousin, Jim, who died in 2008. Jim was a quiet gentleman who lived a frugal lifestyle, but Jim had slowly acquired stocks, bonds, real estate, and cash worth over \$3,000,000 at his death. Jim did not have a wife or any children. His surviving family members consisted of his elderly cousin, Mary, and her two adult children, Beth and Anne.

As Jim lay in a bed at a local hospital in early 2008, he asked a staff member to dictate an amendment to his previous Will (legally known as a “codicil”). The staff member summoned her husband after hand writing the codicil. Jim then signed the codicil, the staff member notarized Jim’s signature, and the staff member’s husband served as a witness. Jim’s codicil generally read as follows:

### *Last Will and Testament*

*Today I Jim wish to make the following Revisions to my last will and testament:*

*I appoint Beth as the executer and personal representative of my estate. Such action is to be at the same time as my expiration. Liquid assets of the estate may be gifted as follows: one half of the liquid assets should be divided*

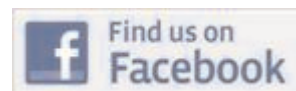
*by four equally so that [Charity 1], [Charity 2], [Charity 3], and [Charity 4] should receive equal parts of that half. The other half of the liquid assets shall be divided equally among: Mary, Beth, and Anne.*

*Any Real or Personal Property that is encountered may be disposed of at the sole discretion of Beth.*

Among Jim’s personal belongings, Beth found a document dated May, 2002, which appeared to be Jim’s original handwritten Will. Under this Will, Jim left all of his estate to Mary.

One of the most important issues concerning Jim’s codicil was whether it was valid under Nebraska law. If Jim’s codicil was not valid, then Mary likely would have inherited Jim’s entire estate under his original Will. There were two ways in which Jim’s codicil could have been considered valid under state law. First, an individual may hand write his or her Will, which is known as a “holographic Will” (the requirements to create a valid holographic Will are not discussed in this article). In this case, Jim did not hand write the codicil; rather, the staff member prepared it. Since Jim’s codicil likely was not a valid holographic Will, it could only have been valid if it was, according to state law, “signed by at least two individuals each of whom witnessed either the signing or the testator’s acknowledgement of the signature or of the will.” Recall that the staff member’s husband served as a witness to Jim’s signing of the codicil and the staff member notarized it. There were no other witnesses. For purposes of creating a valid Will, can a notary be considered a “witness”? Literally, the answer was worth several million dollars.

Turn to page 2 for part two of this article.



[www.facebook.com/akclaw](http://www.facebook.com/akclaw)

Frederick S. Cassman  
Of Counsel

Howard J. Kaslow

Frank F. Pospishil  
(1942-2009)

John W. Herdzina

Harvey B. Cooper

Randall C. Hanson

R. Craig Fry

Timothy M. Kenny

Eric H. Lindquist

Thomas J. Malicki

Aaron D. Weiner

Jeffrey J. Blumel

Nicholas T. Dafney

James A. Tews

Robert M. Schartz

Nicole Seckman Jilek

Jennifer L. Rattner

Nathaniel J. Warnock

Laura K. Woods

Ryan M. Kunhart

Milton R. Abrahams  
1905-2000

Ben E. Kaslow  
1907-1993

## Penny-Wise, Pound-Foolish, Part 2

by James A. Tews

Welcome to Part 2 of this article. As you may recall, Jim requested a hospital staff member to dictate a codicil to Jim's Will. Unfortunately, there were issues about whether the codicil was valid and, if valid, how it should have been interpreted.

The first issue with Jim's codicil, which the last article discussed, was whether it was valid under state law. Another problem was that Jim used vague terms in his codicil to classify his assets. What assets did Jim intend to include when he referred to "liquid assets"? Did this phrase include only cash and money in his bank accounts? Did it include assets that could have been converted into cash within a short time, such as stocks and bonds? The four charities and Jim's family argued about the meaning of this phrase because it was a basis for determining how much each party would receive under Jim's codicil.

Another contentious issue was determining Jim's intent when he directed Beth to dispose of the "real or personal property" in her discretion. Did Jim intend

that Beth could simply give all this property to herself? If Beth gave this property to others, would it be considered a gift for purposes of federal gift tax laws? Also, what property did Jim intend to include when he used the description, "real or personal property"? Some thought that "personal property" included only tangible items like furniture and appliances, while others thought this phrase included more than those items. Again, the beneficiaries under the codicil had motives for promoting different interpretations.

There were several other notable issues concerning Jim's codicil and the overall circumstances. First, Jim referred to "liquid assets" and "real and personal property" (these terms are not defined under Nebraska's laws related to Wills and probate). By using these terms, did Jim dispose of all of his assets? If not, the assets not disposed of likely would have gone to Mary under Jim's original Will. Second, because Jim's estate was worth more than \$3,000,000, it was necessary to file a federal estate tax return, which was due within nine months of his death.

Keeping in mind that bequests to charities are deductible for federal estate tax purposes, it becomes easy to understand that the federal estate tax owed in this case depended on how much of Jim's assets passed to the charities named in his codicil. What was not so easy was getting the beneficiaries to agree on what Jim actually intended the charities to receive under his codicil.

The beneficiaries spent thousands of dollars in legal fees arguing about the validity of Jim's codicil and his intentions (and they easily could have spent much more). They finally agreed to settle their disputes before a trial, rather than continue to incur legal fees and leave their fate to a judge.

Consider having an estate planning attorney professionally prepare your estate plan so that your testamentary intentions are clear and disputes among beneficiaries can be avoided.

Call 402-392-1250 to speak to one of our estate planning attorneys to assist you in preparing or updating your estate plans.

## An Evening of Self Defense and Networking

Our women's networking group, Engage, held a self defense workshop for some of our clients followed by a little networking at Granite City.

We would like to thank Master Thomas Todd Sr. of Midwest Tae Kwon Do & Sport Karate LLC, and his instructors for teaching us the basics in self defense. We also enjoyed visiting with everyone at Granite City for appetizers after the class.

If you would like to be invited to our women's networking events, please email [dwatson@akclaw.com](mailto:dwatson@akclaw.com). We host two or three events each year and we would love to have you join us!



Master Todd with the ladies of AK&C: Nicole Seckman Jilek, Katie Kotlik, Jen Rattner and Laura Woods.



Our self defense class with our instructor Master Thomas Todd Sr.



Laura Skinner practices some boxing techniques with Laura Woods.

# Employment Law

## Handling Reasonable Accommodation Issues Under the ADA

by: *Harvey B. Cooper and Ryan M. Kunhart*

A key non-discrimination requirement under the Americans with Disabilities Act is the employer's duty to provide a reasonable accommodation for employees and applicants with a disability. Reasonable accommodation issues usually differ depending on the employee and job in question. This can make it tough for employers to determine what reasonable accommodations it must make available to employees and applicants with a disability. Here are some practice pointers to consider when faced with a reasonable accommodation issue:

1. Don't make reasonable accommodation decisions on the fly. You have the right to request documentation before making a reasonable accommodation decision.
2. You, not the employee, determine what job functions are "essential". Although you

do not have to provide essential functions in the job description, including them will strengthen your argument that the functions are essential.

3. Regular attendance is an essential function of all jobs, and the employee must be able to get his/her work done regardless of the disability. It is common for employers to overlook this point when determining the essential functions of a job. Make sure regular attendance is included as a basic requirement in all of your job descriptions.
4. Reasonable accommodation issues should be made on a case-by-case basis. When making such decisions, you should take into account an employee's job, specific medical condition, and the employee's limitations and abilities.
5. You do not have to choose the reasonable accommodation that is most

desired by the employee. But remember, once an employee requests a reasonable accommodation, you must engage in an interactive process to determine how to reasonably accommodate the employee.

6. In most cases, you do not have to engage in the interactive process until an employee or applicant makes a reasonable accommodation request. Generally, the employee must request an accommodation unless the disability is obvious. But when making a request, the employee does not have to mention the "ADA" or "a reasonable accommodation." The request can be in plain English.

If you have questions about the reasonable accommodation process, please contact one of our employment attorneys at 402-392-1250.

## NLRB Issues Final Rule Requiring Employers to Post NLRB Notice

Beginning **January 31, 2012**, union and non-union employers subject to the NLRB's jurisdiction must post a notice advising employees of their rights under the NLRA. The NLRB has very broad jurisdiction covering private employers if their interstate commerce exceeds a minimum level based on their classification as a retailer, non-retailer or other special category.

The notice must be 11 x 17 inches and should be posted in all locations where employee notices, rules, and policies are usually posted. The NLRB might treat any failure to post as an unfair labor practice.

The NLRB has made the notice available in foreign languages, which are required at workplaces where at least 20 percent of employees are not

English-proficient. For a free copy of the poster visit: <http://www.nlr.gov/poster>.

If you have any questions about the posting requirement, please contact one of our employment attorneys, Harvey B. Cooper or Ryan M. Kunhart at 402-392-1250.

## Join us for a **FREE** Seminar on Social Media in the Workplace

On January 17 and 19, 2012, Harvey Cooper and Ryan Kunhart will be hosting a free breakfast seminar on the "Do's and Don'ts of Social Media in the workplace". Facebook, Twitter, and other social media sites are creating challenging legal issues for employers.

This seminar will focus on:

1. *Employees' rights under the National Labor Relations Act (NLRA), which applies to union and non-union employees.* In certain situations, the NLRA allows employees to criticize employers about working conditions, pay, and other benefits. We will discuss these rights in relation to the use of social media.
2. *Tips on drafting an effective social media policy.* Many social media policies are overbroad and may

violate the NLRA. We will provide guidance on drafting a policy that fits your business needs and corporate culture.

3. *The risks and benefits of monitoring an employee's activity on social networking sites.*
4. *The use of social media to vet prospective employees.* We will discuss precautions employers must take when accessing background information for applicants due to the possibility of uncovering personal information such as age, race, disability and other protected categories.

To register for the seminar, please call Debbie Watson at 402-392-1250 or email her at [dwatson@akclaw.com](mailto:dwatson@akclaw.com). More information about the seminar is on the back of the newsletter.

8712 West Dodge Road, Suite 300  
Omaha, Nebraska 68114

This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about various legal developments and to provide news about our firm. This newsletter is not intended to provide legal advice on specific matters but rather to provide insight into legal topics and issues of current interest. Please consult with legal counsel before taking action on matters covered in this newsletter. If you would like further information or would like to be added to our mailing list, please contact Debbie Watson at 402-392-1250 or via email at [dwatson@akclaw.com](mailto:dwatson@akclaw.com).

The Nebraska Rules of Professional Conduct for attorneys require the following statement on newsletters of law firms:  
**This is an advertisement.**

## The Do's and Don'ts of Social Media in the Workplace



In today's social media world, it is imperative that employers understand the do's and don'ts of regulating social media use by their employees. In this seminar you will learn:

- Employees' rights under the National Labor Relations Act, which applies to union and non-union employees.
- Tips on drafting an effective social media policy.
- The risks and benefits of monitoring an employee's activity on social networking sites.
- The use of social media to vet prospective employees.



This seminar is offered on  
the following dates:

Tuesday, January 17 or  
Thursday, January 19  
7:30 - 8:30 a.m.

To Register:

Call 392-1250 or email  
[dwatson@akclaw.com](mailto:dwatson@akclaw.com)

Presented by:  
Harvey B. Cooper  
Ryan M. Kunhart



Both sessions will be held at our office located at  
8712 West Dodge Road, Suite 300.  
Continental Breakfast will be served.