

DEVELOPING THE PRACTICE ITSELF: CHALLENGES AND SOLUTIONS

By Pauline Yeung



The practice of elder law is practically non-existent in the Chinese community. The typical law firms advertised practice real estate, immigration, civil/criminal litigation, business incorporation, and contract law. Only a handful of Chinese attorneys practice wills and estates.

The lack of Chinese lawyers in the wills and estates or disability-related fields should not be surprising. It is a taboo to speak about death and life-threatening illnesses in the Chinese culture. Logically, lawyers in the Chinese community assume that specializing in a field revolving around these issues would be setting themselves up for failure. So why I am specializing in elder law and attempting to expand the practice in the Chinese community knowing that the chances of success would be slim?

When Judith D. Grimaldi, a partner of our firm, Freedman Fish & Grimaldi LLP, first offered me the opportunity to speak before a Chinese audience at a senior center, I was excited, yet a bit hesitant to accept her offer. This task had a tremendous potential to fail because of the sensitivity of the Chinese elderly audience towards the topics of death and long-term illness. Another difficulty associated with this task was the translation of legal terms into Chinese. Terms like elder law, health care proxy, living will, pre-paid funeral plans, and supplemental needs trust cannot be found in typical English to Chinese dictionaries. My preparation included hours of reviewing Chinese newspapers, researching on the Internet, and consulting my parents to help me translate the material from English to Chinese.

The presentation turned out to be quite a success. The topics covered sparked tremendous interest from the audience. Judie and I were amazed by the attentiveness and enthusiasm of the audience. There was a constant stream of questions throughout and the two hours allotted was not enough to cover all the material. This experience made me realize that the Chinese community is more receptive to the field of elder law than expected and that the wealth of information that we provided to the elderly

population was considered a gift which was not rejected but valued. With the support of the firm, I gained confidence to expand my practice within the Chinese community.

Cultural Education to Facilitate the Elder Law Practice

As an American-born Chinese, my exposure to both the Chinese and American cultures was substantial. I learned that the differences between the Chinese and American cultures are so significant that they cannot be reconciled. To provide culturally competent services to the Chinese elders, it is important for the elder law attorney to be aware of cross-cultural and diversity issues. This article is written from my personal experience as an elder law attorney practicing in a Chinese setting and will focus on the important concepts of the Chinese culture that will be useful for those who have Chinese clients. I would caution the elder law attorneys to avoid developing stereotypes based on the material but rather to just be sensitive to the cultural differences.

Confucianism – Family as Source of Support

The teachings of Confucianism, which was established over 2000 years ago, are deeply rooted in the Chinese society. As a child, I was taught in Chinese school that each person has a special role in the hierarchy of social relationships. They are sovereign and subject, father and son, husband and wife, elder and younger brother, and friend and friend. The elder is considered a person of honor. They are deemed wise and educated and so the young must defer to the elder. The husband is the head of the family and thus, the wife must defer to the husband.

Confucius emphasized the need to achieve social harmony. He believed that in every relationship there exists a “collective responsibility” that includes duty, loyalty, honor, filial piety, respect for age and seniority, and sincerity. Individual rights or “I” is a foreign concept to the Chinese. The family is the center and comes before the individual.

“Filial piety” is the core to family harmony. The Chinese elders are placed at the highest social level in the family and are well-respected. The family, especially the oldest son, is expected to dedicate their lives to support the elder’s care and well-being. Due to the “collective” nature embedded in their culture, Chinese families are reluctant to seek outside assistance and prefer to remain private about family troubles. Often times, if the elder becomes ill, the family will by all means work together to provide care themselves and would quit their jobs rather than hire a home attendant or place the elder in an institution for long-term care. It is not until there is no way for the family to provide care for the elder that outside assistance would finally be sought.

Today, some traditional Chinese families continue to strictly adhere to “filial piety” concept where the son is highly valued. This is because the son can carry on the family name. The daughter on the other hand is considered an “outsider” after marriage. During the planning process, many of our clients have made estate plans that devise the entire estate to the sons and nothing for the daughters despite the care that the daughters provided to the family. It might seem odd to the Western eyes that sons have special treatment over daughters, but these are old Chinese traditions that have been practiced for centuries. The newer generations are not as traditional and tend to treat the daughter on a closer level, if not equal, with the son.

Face (Mianzi)

I was raised in a community where all my relationships revolved around “face” on a daily basis. Face is an abstract concept that cannot be easily defined in simple terms. It may take years for a non-Chinese to understand the true meaning of face. It is important to keep in mind that the Chinese takes face very seriously and are extremely sensitive to this issue. Personal or business relationships can break apart because of face and may never be reconciled even after many years.

Generally, face is a measure of one’s public dignity and reputation. Education, wealth, knowledge, and success play a big role in determining face. As can be expected, doctors and lawyers will have more face than a secretary or a physical laborer. Having attained higher levels of education and receiving higher salaries, doctors and lawyers are considered successful people, who automatically earn higher social standing and more respect. As a result, Chinese clients will generally defer to the attorney’s advice without questioning his or her intelligence. This show of respect is also known as preserving humbleness.

The intangible part of face can include any actions that cause insult or humility. For example, if another person openly disagrees with your statements, you will lose face as a result. You can also lose face if you create an outburst in public or commit a morally wrong action. Face can also be given as well by complimenting someone, preserving humbleness and enhancing another’s reputation. Very often in my consultations, the elderly clients will nod their head and maintain silence rather than dispute my statements. These actions do not necessarily signal their understanding but rather were committed to give face.

In dealing with the Chinese clients, criticisms must be carefully crafted. Even a subtle comment of disapproval that may not be considered offensive by Western standards can cause unnecessary awkwardness. Fortunately, attorneys in the elder law field develop expertise in dealing with all types of delicate issues and are familiar with the handling of sensitive issues.

Because of face, Chinese clients may sometimes refuse to accept Medicaid planning. We have come across clients who chose to pay privately to the nursing home for years rather than accept government benefits. When funds were finally exhausted, they were forced to use credit cards to pay for the nursing home. The debts accumulated to the point that tax liens were placed on their home. The family ended up having no choice but to apply for government benefits. All their life-long savings were depleted because they did not want to lose face. The Chinese perceive the receipt of government benefits as an embarrassment and the last thing that they want is for their families or friends to gossip about it.

Disability planning is difficult in our practice within the Chinese community as well. Families may not acknowledge or realize that a family member has either physical or mental disability as he or she brings shame upon the family. The family would prefer to remain silent, keep things private, and carry out their daily lives as if the disability did not exist.

The situations mentioned above are frequent in the Chinese community. My hope is to continue to educate and build a solid connection (“guanxi”) with the community so that these unfortunate circumstances are prevented. The use of the intermediary “guanxi” is discussed below.

Connection (Guanxi)

The specialized nature of the elder law practice makes referral sources valuable. Generally, our practice relies on former clients as primary referrals, while hospitals, social workers, and community organizations are secondary to them.

In the Chinese community, there is more to a referral than its Western version. If you promise legal service to the elderly client and deliver exceptional results, the elderly client will likely become your “guanxi”. “Guanxi” means the client will become your referral source and will personally vouch for you. When this source refers you to his or her peers, it is customary for him or her to stand wholeheartedly behind you and praise your work. Referring back to the concept of Confucian loyalty in relationships, he or she has, in effect, become your advertising agent. You won’t need to market yourself to your source’s peers because the source will already have established your credentials and given you his or her seal of approval. When you build up your “guanxi”, you will extend connections into the community with a reputation that is worthy of trust, respect and competence.

Since potential Chinese clients often like to rely on word of mouth when choosing a lawyer, it is important for you to build your “guanxi”. It is equally important to keep a permanent relationship with your Chinese clients to maintain your “guanxi”. They often invite you to dim sum and introduce you to their families and friends.

The Office

Initial Telephone Call – “OK”

When making the telephone call to the law office to initiate contact, elderly clients generally prefer the warmth of a human voice to the impersonal nature of an automated message. This applies even more so for Chinese clientele. The personal feeling provided by a receptionist gives assurance to the Chinese elderly client that the service will be friendly. Many times, if the initial call were transferred directly to voicemail, the call would likely be dropped. In the more traditional Chinese families, many homes do not have answering machines and so the idea of leaving a message on a machine is foreign to them. The elderly client would rather attempt several calls until they reach a person.

Our office's receptionist is instructed to put calls to voicemail unless necessary. However, during the beginning stages of expanding the Chinese clientele, we often encounter one dilemma, which is the language barrier. Our office consists of eight non-Chinese speaking staff (except for one Chinese law intern). When a Chinese client hears an English voice on the phone, he or she could get intimidated and drop the phone call. In order to avoid this situation, our staff is trained to use the word “OK” to give a pretense of understanding before quickly transferring the call to me. Fortunately, most elderly Chinese understand the word “OK” and get the reassurance that the person on the other end can assist them. The client is then placed on hold with music playing in the background. So far, this method has worked very well with our elderly Chinese clientele. Voicemail is only used as a last resort.

Unfortunately, there are instances when I am not available to answer phone calls. This is why during the initial introduction I encourage the use of voicemail to facilitate future communication. Our office voicemail system is set up in both English and Chinese for their convenience. The use of voicemail has proven to be a very effective method to maintain subsequent contacts during busy periods.

Communication with the younger Chinese generation is a totally different situation. Our office rarely experienced communication difficulties because the younger generation speak proficient English and most have email access.

Legal Fees

Generally, legal fees in the elder law practice are a major concern for the clientele. A major factor as to whether the client decides to retain the services of an elder law attorney is often determined by the price. Unequivocally, legal fees are one of the first issues to be discussed at the outset prior to meeting with the Chinese client. While the Western client usually accepts the firm's established fees, Chinese clients will try to negotiate the amount. Bargaining for the lowest fee is common in the Chinese

community. For example, many of my clients will attempt to lower the fee with statements such as:

“My friend had a trust done for \$ x amount at another law firm, why I am being charged a lot more?”

“You don’t need to collect so much from me. I will refer my friends to you so you’ll get their future business.”

“We are from the same hometown, can’t you lower the fee for a fellow Chinese?”

In these instances, it is crucial to explain to the elderly client and his or her family members that the price paid for the expertise of a specialized elder law firm will always exceed the price for the service of a general practice firm. Furthermore, the client should be reminded that each case has its unique scenario and the price charged for one law case cannot be compared with that for another case.

Based on my experience with Chinese clients, I have learned that legal fees should be charged based on a package of services rather than individually for each item. For example, instead of establishing a fee of \$ x for drafting a trust, \$ y for drafting a will, and \$ z for preparing advanced directives, the fee should be for the all three services combined without the need of individual distinction. By not giving them individual prices, you prevent the clients from attempting to negotiate price reductions for each service. Chinese clients like to know the bottom line quote.

When supplying quotes, I do not use the term “initial consultation fee” but rather the term “estate planning session fee.” This is a delicate subject because Chinese clients believe in being charged only for services provided and delivery of paperwork. They consider consultations to be part of the sales pitch.

Follow-up telephone calls should not be attempted with potential Chinese clients because they do not respond well to a pressured sales pitch. When the elderly client or the client’s family members are in fact ready to retain my services, they will call to schedule the appointment.

Before the elderly client is ready to commit to any planning, he or she typically calls several times with additional questions. Thus, the typical timeframe from the initial call to the scheduling of an appointment is two months. In essence, the time and effort spent with the client and his or her families in these initial phone calls forge a relationship of trust that can culminate with the scheduling of an initial consultation.

The Meeting – Enhancing the Trust Relationship

The meeting is a collaborative effort of the family. The children voluntarily attend and contribute to the planning process. Although the children may offer their opinions, it is the elderly client who will ultimately make the decision.

The meeting often begins with a handshake with the elderly client. After he or she is seated, it is wise to offer the elderly client tea or water. Since the Chinese culture is not comfortable with physical affection, it is not advised to make physical contact with the elderly Chinese client.

It is important to have the elderly client feel as comfortable as possible. After all, I am a stranger whom the elderly client is about to reveal all his or her personal information to. The conversation will generally begin by sharing each other's background information and finding commonalities between us. Typical questions asked by my Chinese clients include:

“Where are you and your family from and how long have they been in the United States?”

“Where do you live now?”

“Do you have any brothers and sisters?”

“Are you married?”

Undoubtedly, these questions are personal in nature and the elder law attorney may not know whether it is appropriate to discuss his or her personal life with the client. For questions that are inappropriate, I smile and deflect the issue. This automatically cues the elderly client or his or her family member that an answer would not be available. The elder law attorney should not appear visibly surprised by these questions; otherwise it may cause unnecessary embarrassment to the elderly client. If the elderly client loses face, the trust relationship could dissolve.

The Chinese appreciate reciprocity and enjoy being asked questions in return. Ice breakers help the attorney and client gain familiarity with each other and allow the two parties to develop a closer bond. We as elder law attorneys are experienced in asking personal questions to our clients. Typical questions include:

“How many children do you have and what do they do?”

“Do you have any grandchildren and how old are they?”

“What did you do before you retired?”

“When did you get married?”

The entire planning process with the elderly client and their family typically requires 2 ½ to 3 hours to complete. The bulk of the time is spent explaining how to achieve their planning goals and making sure that they understand the new concepts. Given that the Chinese are very careful people and do not like risk, they tend to ask many questions about the details of the planning. Do not be surprised if they conjure up endless “what if” scenarios for discussion. Chinese clients do not feel comfortable executing the planning unless they feel that they fully comprehend the material and are able to verify the benefits of the planning. Once the elderly client entrusts me with the work, he or she will consider me as almost part of the family and retain full confidence in my work.

Printed Materials in Chinese

The Chinese community in New York City is diverse. Many Chinese have immigrated from Taiwan, Hong Kong (formerly a British colony which became part of China in 1997), and various parts of China. Although the Chinese follow the basic customs and traditions of Confucianism, their spoken language is not simple. The Chinese language has many dialects, each of which can be quite different. Understanding one dialect does not guarantee understanding another. Mandarin is the official dialect of the Chinese language, but a sizeable number of Chinese speak Cantonese and other dialects in New York City.

Fortunately, the universal form of communication for the Chinese is the written language and the Chinese characters are the same regardless of dialect. When I conduct seminars in the community, I distribute written material to reinforce some of the issues presented and more importantly to allow the Chinese elders who do not understand my Cantonese dialect to read the information discussed. Sometimes, for sensitive issues, I prefer to distribute written material instead of presenting them in detail. Chinese clients like to review written material, which gives them time to absorb the issues and formulate questions. Once the elders are familiar with these issues, they will openly discuss them with me.

For example, this past February, I was invited to speak at a senior housing complex. This speech’s timing coincided with the celebration of the Chinese New Year during which only good health, wealth, and fortune can be mentioned. The Chinese believe that bringing up topics of bad luck at this time will actually cause the events of bad luck to happen. The organizer was unfamiliar with the Chinese culture and requested that I speak on topics relating to wills, trusts, and advanced directives. She believed that it was a perfect opportunity to give this talk because there would be a full house of elders attending the New Year celebration activities. The organizer had good intentions but was unaware of the Chinese culture. The timing was absolutely

inappropriate and such a talk would have offended many seniors. Facing this dilemma, I had to change my presentation style to avoid all issues relating to disabilities, long-term illnesses, and death. The presentation had to be tactfully delivered with the focus on protecting oneself to minimize long-term care and disability issues. I could only briefly mention that the power of attorney and health care proxy serve to preserve future control, and that a living will serves as a backup document for the health care proxy. As such, the written documents that day proved extremely useful. They allowed me to dodge the taboo subjects during my presentation. After the presentation, I just reminded the elders to review the documents for a better understanding.

The elder law material I distribute is very valuable to the Chinese community as the information is unique and difficult to find. The elders rarely throw out the written material and keep the material handy around the house so that they can review it when needed. We had one case where the Chinese elder and his family who had inquired with our firm kept the initial material sent them and finally responded after three years.

As the Chinese clientele expanded, business cards were also printed in two languages, one side English and the other Chinese. Since elder law practice is such a specialized area that many Chinese are not familiar with, I also listed the types of services that we offer such as elder law, long-term care, Medicaid, disability issues, advanced directives, and wills and trusts.

Conclusion

Developing an elder law practice in the Chinese community requires awareness of and sensitivity to its cultural customs. Cultural competency must be attained not just by the attorney but by other staff members of the firm as well since they could often interact with the clients. This will provide comfort to the elderly client and eventual trust relationship that will be everlasting.