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Catholic Issues in Estate Planning

Religious issues are almost always overlooked during the estate planning process. This is unfortunate, because they are important for many clients, especially when facing a crisis such as a terminal illness or the impending loss of a loved one. To gain insight into some of the Catholic considerations affecting estate planning, I spoke with the Most Rev. Theodore E. McCarrick, Roman Catholic archbishop of Newark, soon to be archbishop in Washington, D.C.

Q. Living wills raise a host of religious issues. What are some of the issues attorneys should understand when planning with Catholic clients?

A. We believe it is a good thing to have a living will. It puts you in control of decision-making when you cannot be in physical control, so that you can



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plan what the Lord is calling you to do. It is also of great help to the family, which is always torn at such difficult times.

Unfortunately, many Catholics assume that the church will mandate that they be kept alive no matter what. As a result, many don't sign living wills in accordance with Catholic religious principles. But this is an unfortunate misunderstanding. If attorneys could better inform clients that this is not the case, more Catholics could secure living wills that are not only consistent with their personal wishes, but are consistent with our religious heritage as well.

The church does not mandate that a person be kept alive no matter what. We believe that a person can decide to avoid overly invasive and experimental procedures, but not ordinary means of care. "Ordinary means" could include, for example, feeding someone and ensuring that he or she has air to breathe. The church believes that a patient must continue to receive ordinary care, otherwise you effectively act to cause the patient's death. The extraordinary means go beyond this and seek to reverse a process that already

is under way. Extraordinary means can be refused, but not ordinary means.

Every attorney should have on hand the directives from the Catholic Church to discuss with their clients. To obtain a copy, call the New Jersey Catholic Conference office at (609) 599-2110.

Q. What about nutrition and hydration provisions in a living will?

A. Following Catholic religious doctrine, there should be a presumption in favor of nutrition and hydration, even medically assisted nutrition and hydration, so long as the benefits to the patient outweigh the burdens involved. Generally, nutrition and hydration will be considered ordinary means and should not be withheld. To withhold nutrition or hydration could be equivalent to starving a person to death. Attorneys must exercise care with using standard living will forms because many will authorize withholding nutrition and hydration contrary to the wishes of many Catholic clients.

Q. What about pain relief?

A. Where the objective is strictly to relieve pain, sufficient levels of medication to alleviate that pain may be given. If the objective is to actively hasten the onset of death, however, it is inappropriate in the view of the church to authorize such an action. God is the Lord and Master of Life, we are not. The church believes that we are always safe in His hands because He loves us more than we love ourselves. Therefore, to actively hasten death would be a violation of these fundamental beliefs.

Q. What about pregnancy?

A. Catholic women should consider Catholic religious issues concerning pregnancy in their living wills. If there is a sufficiently serious physical condition in a pregnant mother for which treatment cannot be safely postponed, treatment whose sole purpose is the cure of this condition in the mother may be permitted, even if this may result in the unintended death of the unborn child. But no direct action may be taken that would likely cause the death of the unborn child. You cannot choose the life of the mother over the life of the unborn child. All life is sacred and is in God's hands. This is important to address, since it can differ

from what many might assume if uninformed.

Q. What about last rites?

A. The last rites are an important source of grace and strength for those facing death. They include the sacraments of the anointing of the sick, confession, and reception of communion. The assumption is that any Catholic would want last rites. However, given the diversity of today's society, attorneys should encourage Catholic clients to avoid any confusion and specify in their living wills that they wish to have last rites.

Q. Should Catholics include in their living wills a provision for a funeral?

A. It's unfortunate that some Catholics have dispensed with a religious service and use a funeral chapel's service instead. The funeral Mass at the parish church is very important not only for the deceased, whom we believe gains from the prayers of the congregation and the grace of the sacramental action. It is also a tremendous consolation for the family and friends. When the bereaved pray together, they can experience their own grace-filled strength and the support of others who pray with them. This is so important for the solace of the survivors. For us, the Mass in church is an appropriate way to say farewell to a loved one. Attorneys should encourage Catholic clients to request such a service in their living will. Even if the client is indifferent, it should still be addressed for the benefit of the survivors.

Q. What about cremation?

A. Cremation is allowed, although not necessarily preferred. Many of our cemeteries can accommodate cremations, and guidelines for a Catholic cremation are available for attorneys and funeral directors.

Q. What about charitable giving and estate planning for Catholics?

A. A religious person near the end of life starts to look more toward spiritual matters. He or she often has the idea to do something good for the church, a parish or some other worthy cause. It's important for estate planners to facilitate giving clients the opportunity to accomplish these goals. Such gifts provide benefit to the donor and society. Testamentary

gifts are essential for church functions to continue. Many of these bequests are from people who grew up in a particular parish, were schooled there, but have moved away. Often near their last days, people reminisce about this parish where they grew up, and find comfort in making bequests.

It is always recommended that people use some of their wealth to help not only the present but also the future. When Jesus looked at the widow's mite, He recommended giving not only of our surplus, but of our substance (principal) as well. The call to charity in the New Testament is a loud and vigorous call. You cannot understand Christianity without understanding charity. St. Paul, while traveling, heard of the needs of the church in Jerusalem and said, "God loves a cheerful giver."

Ideally, people should think about charitable giving while in good health and not wait for testamentary gifts. Attorneys who help and encourage clients to structure charitable gifts to help the poor are themselves practicing a graced activity. In the Archdiocese of Newark, staff in our Development Office, who can be reached by calling (973) 497-4125, are always available to assist estate planners in this regard.

Q. Are there any doctrines or guidelines concerning inheritance and how it should be handled?

A. General guidelines of charity and justice always should be considered. But specifically, how they would apply will vary based on the circumstances of the family. Obviously, to the extent they can help guide clients to make their estate plans charitable, just and fair among heirs, and consistent with the many Catholic doctrines discussed in this article, attorneys will be providing a wonderful service to their clients and their clients' families. ■

Martin Shenkman, an attorney in Teaneck and New York City, is a frequent ICLE lecturer and the author of *The Complete Book of Trusts and Estate Planning After the 1997 Tax Act*. Anyone with expertise in a religion whose customs have not yet been explored in this column is invited to contact Mr. Shenkman at shenkman@att.net to discuss a future article.

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