# INITIAL INTERVIEW

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| 2. Plan for the **initial interview**. See Special Instruction 2—Ethics and Attorney's Fees. Immediately before that interview, gather all the following from your files and have available: | | | | | |
| a. D's original will and all codicil(s) or file copies if originals are not available | | | | | |
| b. Memoranda for disposition of personal effects | | | | | |
| c. All open and closed files for D's matters handled by your office, including spouse's will file | | | | | |
| d. Texas Probate System | | | | | |
| 3. Do the following at initial interview:<br>a. Review Probate Information List (Form 1) and items brought by client, discuss all items with client, obtain as much information as possible regarding D and D's assets, and obtain originals or copies of each of the following: | | | | | |
| (1) D's death certificate (one certified copy for each policy of insurance on D's life, plus one additional certified copy for the file). Confirm all information on it, particularly the exact dates of death and birth. | | | | | |
| (2) D's obituary notice and any newspaper articles if D's death was due to other than natural causes | | | | | |
| (3) D's military discharge papers and other documents relating to military or veterans (VA) benefits being received by D or D's spouse or payable because of D's death | | | | | |
| (4) Financial statements and tax returns of closely held businesses and partnerships for five years immediately before D's death and other items relating to value of and dividends and income from them | | | | | |
| (5) Most recent financial statements for D and D's spouse | | | | | |
| (6) Income tax returns (federal, state, and city) for last three years for D and D's spouse | | | | | |
| (7) Declaration of estimated tax for D and D's spouse for year before and year of D's death | | | | | |
| (8) All gift tax returns ever filed by D or D's spouse | | | | | |
| (9) All trusts (especially living trusts) created by or for the benefit of D or D's spouse and current inventory of each trust | | | | | |

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| (10) Wills, inheritance tax returns, estate tax returns, and audit adjustments for estates of persons from whom D inherited property within ten years before D's death | | | | | |
| (11) All casualty insurance policies on which any personal property is separately scheduled (listed) and valued | | | | | |
| (12) Documents relating to Social Security benefits being received by or payable to D or D's spouse or because of D's death | | | | | |
| (13) Documents relating to veterans benefits being received by or payable to D or D's spouse or because of D's death | | | | | |
| (14) Documents relating to railroad retirement benefits being received by or payable to D or D's spouse or because of D's death | | | | | |
| (15) Will and codicil(s) of surviving spouse | | | | | |
| (16) Other agreements to which D or D's spouse was a party, such as— | | | | | |
| (a) Marital, premarital, partition, and survivorship agreements between D and D's present spouse | | | | | |
| (b) Agreements incident to divorce, other settlement agreements, divorce decrees, and other agreements relating to D's prior marriages | | | | | |
| (c) Partnership agreements | | | | | |
| (d) Buy-sell agreements | | | | | |
| (e) Employment agreements | | | | | |
| (f) Stock purchase (buy-sell) agreements | | | | | |
| (g) Stock option agreements | | | | | |
| (h) Pensions, including information regarding survivorship rights | | | | | |
| (i) Profit-sharing plans | | | | | |
| (j) Annuities | | | | | |
| (k) Franchises | | | | | |
| (l) Patents | | | | | |
| (m) Copyrights | | | | | |
| (n) Leases (apartment, office, mineral, and other) | | | | | |
| (o) Oil and gas division orders | | | | | |
| (p) Notes receivable | | | | | |

| Item | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| (q) Notes payable | | | | | |
| (r) Guaranty agreements | | | | | |
| (s) Powers of attorney for D and D's spouse | | | | | |
| (t) Safekeeping and agency accounts | | | | | |
| (u) Policies insuring life of D or D's spouse | | | | | |
| b. Determine the identity, address, Social Security number, marital status, citizenship, and relationship to D, of D's spouse and all of D's heirs, legatees, other beneficiaries who are not heirs, and all others who are necessary or proper parties to the probate proceedings. | | | | | |
| c. Determine if there may be any alleged illegitimate children and whether they or any other person had been adopted into or out of D's family. | | | | | |
| d. Determine if D left a memorandum concerning the disposition of personal property and take appropriate action. | | | | | |
| e. Review D's **income tax returns for last three years** to look for dividends, interest, annuities, rents, royalties, and other investment income from sources you cannot account for (see Special Instruction 3—Income Tax Returns Can Lead You to Assets and Liabilities). | | | | | |
| f. If D's original will and codicil(s) are not produced, determine if there is a **safe deposit box** and, if so, see Special Instruction 4—Safe Deposit Boxes and follow procedure set forth in Item 6 of this Checkplan. | | | | | |
| g. Review D's **will and codicil(s)**. See Special Instruction 36—Execution of Wills and Special Instruction 38—Reading the Will. | | | | | |
| (1) Read will and codicil(s) and explain plan of disposition of D's estate. *Note:* The unlimited marital deduction may not be available if D's will was executed before September 13, 1981, or if D's surviving spouse is not a U.S. citizen (see Special Instruction 42—The Marital Deduction). | | | | | |
| (a) Determine if there is a gift to an attorney who prepared or supervised the preparation of the will and/or codicil (or to the attorney's heir or employee) in which the gift is contained. | | | | | |
| (b) If so, and D's will was executed on or after September 1, 1997, review Estates Code, Section 254.003, to determine if gift is void. | | | | | |

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| (c) Determine identity and address for all legatees and devisees. | | | | | |
| (d) Obtain Beneficiary's Waiver of Notice (Form 100) from devisees and legatees who are at the meeting. | | | | | |
| (e) Prepare and enter information on Worksheet 9. | | | | | |
| (f) If independent administration is contemplated, obtain Waiver of Right to Receive Inventory and Appraisement (Form 122) from devisees and legatees who are at the meeting. | | | | | |
| (g) Obtain IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), from all heirs, devisees, legatees, and beneficiaries who are at the meeting. | | | | | |
| (2) Determine capacity and authority of person proposing to retain you. If will names multiple fiduciaries, reach understanding as to your ability to continue to represent one or more of them in the event of a dispute among them. | | | | | |
| (a) Check your records to determine possible **conflicts of interest**. | | | | | |
| (b) Identify your client in case a conflict of interest exists or could arise in the future. *Note:* This System assumes that you will not represent multiple clients but that you will represent one executor or administrator and that there will be no conflicts of interest. In other situations, your engagement agreement must be modified accordingly. | | | | | |
| (c) If an unresolved conflict of interest exists, decline representation, return all items, and confirm in writing that you do not and will not have any responsibility for this estate. | | | | | |
| (3) Determine if D made any **specific bequests**. If so, consider timing of satisfaction of those bequests and take appropriate action including supervision of any selection process. Note that income from specifically devised or bequeathed property is to be distributed with that property. | | | | | |
| (4) Determine whether circumstances exist under which the terms of the will should be modified or reformed in accordance with Estates Code, Sections 255.451 through 255.455, and, if so, take appropriate action. Further coverage is beyond the scope of this System. | | | | | |
| (5) Determine if D directed **perpetual cemetery care**. If so, make appropriate payment. | | | | | |

 

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| (6) Determine if inheritance and estate **taxes** are **payable** out of the residue of D’s estate or if they are apportioned (see Special Instruction 71—Apportionment of Taxes). | | | | | |
| (7) Determine if D provided for any **charitable gifts**. If so, consider timing of satisfaction of those gifts and take appropriate action. | | | | | |
| (8) Determine if D possessed a **general power of appointment** and whether it was exercised. | | | | | |
| (9) Determine if D’s death caused D to be treated as a “deemed transferor” for purposes of the **generation-skipping transfer tax**.<br>*Note: Any* coverage of this tax is beyond the scope of this System. | | | | | |
| (10) Determine if there are any libelous statements in D’s will. | | | | | |
| (11) Determine if D attempted to make a gift of a copyright to someone other than D’s surviving spouse and children. | | | | | |
| (12) If any beneficiary predeceased D, determine whether the gift(s) lapsed or passed to someone else. | | | | | |
| (13) Determine if D’s will and codicil(s) disposed of all of D’s property and, if not, consider filing Application to Declare Heirship (Form 77) at same time as filing application to probate will and also follow Item 209 of this Checkplan. | | | | | |
| (14) Determine if a marriage of D was dissolved by divorce, annulment, or declaration that the marriage was void and, if so, whether fiduciary appointments, gifts, or beneficiary designations were revoked by operation of law. See Special Instruction 49—Marital Property Rights. | | | | | |
| (15) Determine if a child was born to or adopted by D after the date of the will or codicil(s) and, if so, whether portions thereof were revoked or modified by operation of law. | | | | | |
| (16) Determine if any nominated executor or trustee should do any one or more of the following: | | | | | |
| (a) Decline to serve | | | | | |
| (b) Renounce the appointment | | | | | |
| (c) Waive fees in whole or in part | | | | | |
| (d) Renounce or disclaim one or more powers | | | | | |

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| (17) If D's will grants authority to designate an administrator, determine whether designation should be made. If so, see Special Instruction 95—Authority to Designate Administrator and follow the procedure at Item 46 of this Checkplan. | | | | | |
| (18) Determine if there is a necessity for a proceeding to construe D's will. | | | | | |
| (19) If D was a "personality," review Property Code, Chapter 26, to determine rights to the use of D's name, voice, signature, photograph, or likeness if these rights were not provided for by D's will or during D's lifetime. | | | | | |
| (20) Advise client, all proposed personal representatives, heirs, and beneficiaries of personal liability for distributing assets before satisfying all debts and taxes due to United States. | | | | | |
| (21) Refer to Special Instruction 25—Disclaimers and caution family members, heirs, and beneficiaries about accepting any property or its benefits if that property is being considered for disclaimer. | | | | | |
| (22) Prepare a summary and analysis of D's will. | | | | | |
| h. Determine if there is any likelihood of a will contest. | | | | | |
| i. If D did not have a will, explain Texas laws concerning inheritance rights (see Special Instruction 58—Who Inherits When There Is No Will). | | | | | |
| j. Determine D's ownership in each asset, whether separate or community, and the rights of D to manage the asset during D's life (see Special Instruction 72—Spousal Liability). | | | | | |
| k. Determine nature and extent of rights of reimbursement between D's community and separate estates and whether any of D's separate property assets had been converted from community property (see Special Instruction 49—Marital Property Rights and Special Instruction 76—Reimbursement).<br>*Note:* The existence of such claims may create conflicts of interest both for the lawyer and for a surviving spouse who is serving as D's executor or administrator. Failure to assert a claim may result in taxable gifts to the surviving spouse or to heirs and devisees. A claim for reimbursement against D would be a debt of D's estate. A claim for reimbursement by D would be an asset of D's estate. | | | | | |
| l. Determine if D's surviving spouse and children have any homestead or other rights with respect to the assets (see Special Instruction 49—Marital Property Rights). | | | | | |

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| m. Determine immediate needs of family. If there is an urgent and immediate need for the appointment of a temporary administrator, determine identity, qualification, and priority rights to appointment of proposed temporary administrator (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor, Special Instruction 57—Temporary Dependent Administration (TDA), and Item 14 of this Checkplan) and take appropriate action. | | | | | |
| n. Determine if there is perishable property that must be disposed of immediately. If so, review procedures for temporary administration (see Special Instruction 57—Temporary Dependent Administration (TDA)) and, if required, see Item 14 of this Checkplan and take appropriate action. | | | | | |
| o. Determine if there was a contract for the purchase or sale of any real estate pending on date of D's death and, if so, take appropriate action. | | | | | |
| p. Discuss function of probate and give a rough outline of what client should expect. | | | | | |
| q. Inquire about whether any member of the family desires psychotherapeutic consultation and, if so, make proper referral. | | | | | |
| r. Inquire about circumstances surrounding D's death to determine if there may be a cause of action against one or more persons and whether to pursue the claims. | | | | | |
| s. If D died accidently while on a common carrier using a ticket purchased with a credit card, determine if travel accident insurance was provided by the credit card company or is otherwise available. | | | | | |
| t. Determine the extent of contribution to any joint accounts or other property held jointly by D and other joint tenants. | | | | | |
| u. Determine if D and D's spouse entered into a **survivorship agreement** as to one or more accounts or other assets. If so, do the following:<br>(1) Refer to Estates Code, Chapter 112, to determine if the agreement complies with applicable law. | | | | | |
| (2) Take appropriate action to assist in transferring title to all of D's interest to D's spouse.<br>*Note:* If an asset was community property subject to D's sole or joint management, control, and disposition during marriage, it continues to be subject to D's liabilities without regard to the right of survivorship of D's spouse. | | | | | |
| v. Determine if any real estate owned by D was subject to a transfer on death deed. | | | | | |

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| w. Advise donees of tax problems that might arise out of their disposition of assets given to them by D within three years before D's death. | | | | | |
| x. If D received appreciated property by gift within one year before D's death, do the following:<br>(1) Determine if donor or donor's spouse will receive that property under D's will or by inheritance from D. | | | | | |
| (2) Advise donor or donor's spouse of the fact that the income tax basis of that property will not be "stepped up" to date-of-death valuation. | | | | | |
| y. Request information from the principal heirs and beneficiaries about their personal income tax brackets. | | | | | |
| z. Give client a list of additional documents and information that will be required. This can be done by properly marking client's copy of the Probate Information List (Form 1), making a copy for your file, and returning the original to client. | | | | | |
| aa. Discuss services and fees. | | | | | |
| (1) See Special Instruction 2—Ethics and Attorney's Fees. | | | | | |
| (2) Describe the services to be performed by your office. | | | | | |
| (3) Emphasize the need for your office (and not the funeral home or insurance agent) to collect life insurance benefits. | | | | | |
| (4) Introduce client and family to your staff member(s) who will be assisting you in this estate, write down name of staff member(s) for your client, and enter the name(s) as Item 5.04 of MIL (Master Information List). | | | | | |
| (5) Reach an agreement to represent your client, how your fee will be determined, and when and by whom it will be paid, and complete Item 25.02 of MIL. | | | | | |
| (6) Obtain a retainer roughly equal to the value of the work to be performed before the first billing. | | | | | |
| (7) Obtain a deposit for costs and expenses. | | | | | |
| (8) Deposit those funds into your ***trust*** account (see Special Instruction 6—Handling Funds Received from Client). | | | | | |
| (9) If you are **not retained**, prepare and send Letter 129 to confirm nonengagement. | | | | | |
| ab. Prepare **Authorization** (Form 2) on attorney's letterhead or plain paper and have a named executor, surviving spouse, major heir, or beneficiary sign copies (ten is a good starting point) and place in file folder entitled "Authorizations." | | | | | |

| | NA | L | S | DATE | INITIALS |
|---|---|---|---|---|---|
| ac. Prepare **Receipt for Documents** (Form 3) for all original documents you retain and explain their use. | | | | | |
| ad. If not already done:<br>(1) Prepare Beneficiary's Waiver of Notice (Form 100) for each devisee or legatee who is present at this initial meeting, have the waivers signed, and place them in file folder entitled "Notice to Beneficiaries." | | | | | |
| (2) Prepare Worksheet 9 and place in file folder entitled "Notice to Beneficiaries." | | | | | |
| (3) Obtain IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), from all heirs, devisees, legatees, and beneficiaries who are at the meeting. | | | | | |