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## Change is Constant in Estate Planning: Reflections of an *ACTEC Law Journal* Editor

*Bridget J. Crawford\**

Change is the only constant in the life of a trusts and estates professional. The law changes; the needs of clients change; the methods for achieving certain results change; technology and modes of communication change. So, too, it can be said that change is the only constant running through more than forty years of our organization's flagship publication.

Prior to 1974, the American College of Probate Counsel had a regular Newsletter that was edited by Harold ("Deke") Boucher and others.<sup>1</sup> From 1974 to 1990, the American College of Probate Counsel's *Probate Notes* functioned in part as a newsletter and in part as a venue for short write-ups about changes to the law, advice to practitioners about how new instruments or techniques could be applied in practice, and columns about how to run a law practice. Many of the organization's members served as Editor or Assistant Editor of *Probate Notes* including J. Nicholas Shriver, Harold Boucher, Wesley L. Nutten, III, Malcolm A. Moore, Jackson M. Bruce, John A. Wallace, L. Henry Gissel, Jr., Rodney N. Houghton, Anthony P. Marshall, John J. Lombard, Regis W. Campfield, Gerald LeVan, Waller H. Horsley, Max Gutierrez, Jr., Jonathan Blattmachr, Jerold I. Horn, and Jerry J. McCoy. Some of these colleagues went on to hold other leadership positions in the organization and became (and still are) real intellectual leaders of our field.

When the name of our organization was changed to the "American College of Trust and Estate Counsel" in 1990, *Probate Notes* became *ACTEC Notes*, and remained so until 2001. In one issue, the editor encouraged the readership to think of *ACTEC Notes* as a place for "News,

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<sup>1</sup> Mr. Boucher later served as president of the American College of Probate Counsel and a member of the Board of Regents. See *Obituary of Harold I. "Deke" Boucher*, S.F. CHRON., June 14, 2009, <http://www.legacy.com/obituaries/sfgate/obituary.aspx?pid=128388915>; see also *Members Emeriti of the Board of Regents*, *ACTEC MEMBERSHIP ROSTER iv* (2017-2018).

Opinion, Techniques, and Excellence in Scholarship.”<sup>2</sup> *ACTEC Notes* was ably edited by Jerry J. McCoy, William C. Weinsheimer, Rob Durham, A. MacDonough Plant, Hugh Kendall, Charles Gibbs, William Scanlan, Jr., Lynn Wintress (the first female assistant editor, for the 1996-1997 term, then the editor for the 1997-1998 term), W. Bjarne Johnson, Robert M. Kunes, Joseph J. Hanna, Jr., and Steve A. Brand. As early as 1998, the editor of *ACTEC Notes* actively sought input from the membership about what the readers would like to see in the publication, how its depth or reach could be expanded and how *ACTEC Notes* should interact with the “burgeoning electronic publication efforts exemplified by the ACTEC Internet home page.”<sup>3</sup> By 2000, then-editor Joseph J. Hannah, Jr. predicted that “the format of *ACTEC Notes* as it currently exists is destined for extinction,” while also recognizing the publication’s mission to “provide a means to assist members of the College to share their knowledge and educate one another.”<sup>4</sup>

In 2001, *ACTEC Notes* was renamed the *ACTEC Journal*, in “recognition of the evolution of the nature of the publication from a one which emphasized news of value and interest to the Fellows of the College to a publication focusing on literate and scholarly articles of significance to the practices of the Fellows.”<sup>5</sup> The *ACTEC Journal* continued to publish meeting notices, added an occasional book review feature, and reprinted reports issued by the College’s various committees. From 2001 to 2010, the editors and associate or assistant editors of the *ACTEC Journal* included Steve A. Brand, Louis A. Mezzulo, Beverly Budin, W. Birch Douglass, III, Charles D. Fox, IV, Susan T. Bart, M. Read Moore, Marc A. Chorney, Christopher P. Cline, Charles A. Redd, Turney Berry, Stephen R. Akers, Edward M. Manigault, and Mickey R. Davis. In 2002, the editors clarified the procedures they would employ to “enhance the quality of articles appearing in the *Journal*” and articulated guidelines for article acceptance that emphasized a preference for articles that contained original analysis, discussion of practical approaches, a comparison of state laws in a discrete area of the law, or analysis of a particular subtopic within the laws of trusts and estates.<sup>6</sup>

Without any explicit explanation, in the Summer of 2010, the *ACTEC Journal* became the *ACTEC Law Journal*, which it remains today. The name change reflected the sense of the Communications Committee that the Internet provided a variety of means (mostly electronically through e-mail or listservs) for disseminating news and other practice-

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<sup>2</sup> Rob Durham, *Editor’s Note*, 18 ACTEC NOTES 6 (1992).

<sup>3</sup> W. Bjarne Johnson, *Editor’s Page*, 24 ACTEC NOTES 9-10 (1998).

<sup>4</sup> Joseph J. Hanna, *Mr. Editor’s Page: The Wit*, 26 ACTEC NOTES 9 (2000).

<sup>5</sup> Steve A. Brand, *Editor’s Page*, 27 ACTEC J. 4 (2001).

<sup>6</sup> Louis A. Mezzulo, *Editor’s Page*, 28 ACTEC J. 4 (2002).

oriented notes or information to Fellows. (Anyone who subscribes to the ACTEC-PRAC Practice List Service can attest to the regular and lively sharing of knowledge, experience, opinions and prognostications of ACTEC Fellows on a daily basis.) The Communications Committee decided to try to steer the *ACTEC Law Journal* in the direction of becoming the most attractive venue for the publication of the excellent trusts and estates scholarship – whether written by academics, practitioners or judges. The *ACTEC Law Journal's* editors to date have been Stephen R. Akers, Edward, M. Manigault, Mickey R. Davis, Susan N. Snyder, Kristine S. Knaplund (the first full-time academic to serve as Associate Editor then Editor), then me (also a full-time academic). Professor Mitchell M. Gans and Professor Jay A. Soled served as Academic Editor and Assistant Academic Editor, respectively, from 2010 to 2013. Professor Gans continues to act as Academic Editor today. Ashleigh Gough, a Special Professor of Law at Hofstra University, assists Professor Gans in supervising the student editors at Hofstra University's Maurice A. Dean School of Law. As Coordinating Editor and Manager of the *ACTEC Law Journal*, Ms. Gough also serves as the primary interface between and among the student editors, the *Journal's* contributors, and the publisher.

I provide this information – especially the list of former editors – partially out of intellectual habit. As trusts and estates professionals, by definition we concern ourselves with those who have come before and those who come after. Yet each individual editor stands on the shoulders of all of the editors who have come before. Some of the attorneys whose work I have admired for decades have been editors of our flagship publication or regular contributors to it. Being part of the tradition has been a tremendous honor and privilege.

It is worthwhile to track the changes in our organization's flagship along with the changes in the profession itself. Past issues of *Probate Notes*, *ACTEC Notes*, the *ACTEC Journal* and the *ACTEC Law Journal* are all available on the ACTEC website. I encourage anyone who is interested to browse some of the older issues and explore how writing styles, topics of concern and even the structure of ACTEC meetings have changed (or not) over the years. All of the contributions are voluntary by Fellows, who took time out of their otherwise busy work lives to write about topics that puzzled them, excited them, or troubled them. In reviewing over 40 years of past issues of our organization's flagship publication, I am struck by the remarkable quality and sophistication of many of the published articles.

After the Annual Meeting in March 2018, I will conclude my two-year term as editor of the *ACTEC Law Journal*. Professor Jeffrey A. Cooper, the Carmen Tortora Professor of Law and Associate Dean for

Research and Faculty Development at Quinnipiac University School of Law (another full-time academic), has been serving as Associate Editor for the last two years. In March 2018, he will become the editor for a two-year term. Professor Alyssa DiRusso, the Whelan W. and Rosalie T. Palmer Professor of Law at Samford University Cumberland School of Law, will become the new Associate Editor. The appointment of full-time academics as editors for the last several years reflects a commitment to continuing to raise the scholarly profile of the *ACTEC Law Journal*. At the same time, however, it is my belief that the premier publication of our organization must maintain relevance to and welcome submissions from all Fellows, including practitioners, judges, fiduciary counsel and international colleagues.

For more than forty years, each successive editor has made an explicit and concerted effort to improve or enhance the publication. In this sense, I am no different than any of the others. My priorities as editor have been to make sure that the *ACTEC Law Journal* publishes articles of ever-increasing quality, while simultaneously ensuring that the *Journal* remains a venue that is inclusive, appealing and useful to all ACTEC Fellows. Although the *ACTEC Law Journal* explicitly names and norms itself as a law review, as opposed to a newsletter or a venue for publication of CLE materials, it is important that our flagship publication continues to be a resource and target venue for all of our Fellows.

Given the reality that busy practitioners and judges simply do not have the same time in their day that academics have to write long law review articles that engage with prior scholarship, solve novel problems, and propose normative solutions and related policy concerns, during my time as editor, I have sought to create opportunities for all Fellows to submit shorter pieces to the *ACTEC Law Journal*.

The first issue I assembled as editor was Volume 42, Issue 1 (Spring 2016). This issue was devoted to the estate planning jurisprudence of the Supreme Court of the United States. That issue featured the work over 28 contributors – some senior ACTEC Fellows, some newer Fellows, and some possible future Fellows. Participants were chosen on a first-come, first-assigned basis after an open call went out by email to all ACTEC Fellows with a list of the intended cases for which commentary was sought. We solicited two introductory essays from distinguished experts Professor Thomas Gallanis and Jasper Cummings, Jr., Esq. of Alston & Bird LLP to provide a broader context for the issue. Contributors were a mix of practitioners and academics; men and women; junior and senior professionals; those who had been regular contributors to the *ACTEC Law Journal* and non-members co-authoring their first professional publication.

In order to attract top-notch scholarship, the *Journal* issued an exclusive call for papers for Volume 42, Issue 2, inviting authors to submit articles that, if accepted, they agreed in advance to publish with the *ACTEC Law Journal*. This is an increasingly common practice in the law review world, and we were pleased that our first article published as a result of such a call was Katherine Guzman's article on disclaimers.<sup>7</sup> In the same issue, we published commentary on Professor Guzman's article by Professor Cooper and two practitioners. Each commentator was invited to identify strengths and weaknesses of the article, connect it to broader issues, or point to related questions that remain unresolved. Professor Guzman had the opportunity to respond in writing in the same issue. All of this made for a lively intellectual exchange that encouraged precisely the type of conversation that we value as ACTEC Fellows: high-level intellectual engagement deeply rooted in the practice of trusts and estates. That issue also featured an excellent article by the student winner of the Mary Moers Wenig Student Writing Competition. Among many things, these student articles show us that the next generation of trust and estate professionals have much to offer and will be part of a vibrant future for our field.

Volume 42, Issue 3 features a timely article by Professor Gans and frequent ACTEC contributor Jonathan Blattmachr on the United States Tax Court's decision in *Estate of Powell v. Commissioner*.<sup>8</sup> This article went from inception to publication in just a few months. We were delighted to publish three other diverse articles – from William LaPiana, Carla Spivack, and Danaya Wright and Beth Sterner – that would have gone to other law reviews, but for our exclusive call for submissions. The *ACTEC Law Journal* is aware that there have been long delays in the past between the submission of articles and publication. Some editors had the unfortunate task of trying to catch up on years of late issues. I am pleased to report that the *Journal* is now produced in a more timely fashion and is entirely current in its publication schedule. We expect to publish three volumes during the 2017-2018 academic year.

By the time you receive this issue, the *ACTEC Law Journal* already will have published as Volume 43, Issue 1 the *festschrift* in honor of our friend and colleague Dennis Belcher. It features contributions from over 10 of Dennis's friends and colleagues, as well as some of his own previously unpublished work. Volume 43, Issue 2 includes two new featured articles, as well as commentaries on the articles by Gans and Blattmachr, LaPiana, Spivack and Wright and Sterner. Those commentaries are written by a mix of practitioners, judges and academics. All

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<sup>7</sup> Katherine R. Guzman, *Dependent Disclaimers*, 42 ACTEC L.J. 159 (2016).

<sup>8</sup> 148 T.C. No. 18, 2017 WL 2211398 (T.C. May 18, 2017).

article authors responded to the commentaries, continuing the dialogue begun in Volume 42, Issue 2.

If you might be interested in writing for the *ACTEC Law Journal* in the future, but you do not have a full article in mind, writing a commentary on a published piece can be an excellent way of sharing your knowledge and encouraging colleagues to think about related issues. Going forward, please feel free to contact Professor Cooper if you are willing to volunteer to write a commentary.

In the first eleven calendar months of 2017, the *ACTEC Law Journal* has received 58 unsolicited articles, nine of which were accepted (an approximately 15.5% acceptance rate). The authors of six of those articles accepted our offer (three of whom were obligated to do so under the terms of the exclusive call for papers). This academic year, we expect to publish at least 20 commentaries from practitioners, judges and academics, as well as author responses to those commentaries. We will, as usual, publish the article written by the winner of the Mary Moers Wenig Student Writing Competition in the last issue of the year. Our contributors are greater in number and more diverse than ever.

We continue to invite all ACTEC Fellows to submit any articles for consideration. We are especially interested in hearing from newer Fellows and those who have never written for the *Journal* before. We strive to make the *Journal* the “go to” resource for timely and substantial discussion, analysis and debate of the most important issues facing trust and estate professionals. Know that your voice is welcome as part of that conversation.

It has been my tremendous honor to serve as editor of the *ACTEC Law Journal*, and I wish much continued success to Professor Cooper, Professor DiRusso and all of those who will follow as editor.