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Guard and Protect

Jeffrey M. Verdon Law Group has carved a niche representing a branch of estate and tax planning known as asset protection. The firm follows the rule that, 'it's not about what you do, it's about what you have.'

By Don J. DeBenedictis
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Jeffrey M. Verdon of The Jeffrey M. Verdon Law Group LLP

NEWPORT BEACH — One of Jeffrey M. Verdon's guiding principles sounds contrary to common wisdom. For Verdon's law firm and its clients, one important rule is "it's not about what you do, it's about what you have," he said.

Such upside down advice makes sense for Verdon because his firm specializes in the unusual branch of estate and tax planning known as asset protection. Many of his clients have largely done their doing and now are concerned about keeping what they have — keeping it especially for their heirs and away from potential greedy plaintiffs.

One example is Nicholas A. Cummings, a 90-year-old psychiatrist and psychologist who launched an early mental-health managed-care concern and now says he's worth north of $100 million.

For clients like him, Verdon and his colleagues have created, uncovered or developed devices such as the super-freeze or intentionally defective grantor trust, the foreign asset protection trust and what Verdon has named the HYCET trust, an acronym for the "Have Your Cake and Eat It Too" trust.

Back in the early 1990s, the firm set up the very first "super-freeze" trust for Cummings. It has that name because while the trust assets have grown over the years, their value for estate tax purposes is frozen at the $5 million used to seed the trust.

The money is also largely protected from any later creditors, such as lawsuit plaintiffs, Verdon said. That's because a creditor who puts a lien or "charging order" on the trust can only grab assets when the trust moves them out, yet in the meantime the creditor would be responsible for the income taxes on those assets.

"We've worked with Jeff ever since," Cummings said. "We've always been at the forefront of financial planning."

Protecting assets includes setting up trusts in states or nations whose laws make it difficult to violate those trusts. The Jeffrey M. Verdon Law Group LLP has established trusts for clients on the Isle of Man and, more recently, on the Cook Islands.

"People sometimes think going offshore is a crime," Verdon said. "You just have to tell [the IRS]" about it using the provided forms.

The goal of asset protection work, he said, is "to remove the economic incentive" for a new creditors of the client, such as litigation plaintiffs, to go after assets in a trust.

If that were to happen, Verdon's firm would simply explain the difficulties of collecting a large judgment to opposing counsel. "If we've done our job properly, the cases settle," he said.

Verdon said his clients haven't actually faced that problem yet, but he believes that's because he has been able to level the field against the big advantage that "plaintiff lawyers have with their contingency fee system."

He and others in the asset protection business do run into doubt and resistance. Verdon said he used to be criticized routinely by other lawyers for what they saw as helping clients set up fraudulent conveyances.

In response, he garnered an ethics opinion from the State Bar in the late 1980s declaring that as long as a funds transfer is legal, setting the transfer up would not be unethical.

When lawyers at large law firms told him about the assorted techniques they could use to get to his protected assets, he asked if they would try them if they were on a contingency fee. They said no, "so they were making my point for me."

"Even after 30 years, most of the tax bar has not embraced the wisdom of asset protection," he added.

In fact, attorneys at some large outfits have referred clients to his firm, including ones from Loeb & Loeb LLP. Greenberg Traurig LLP and the Florida-based Ackerman LLP, he said.

One lawyer who has sent business to the Verdon Law Group is litigator Daniel J. Callahan of Santa Ana's Callahan & Blaine. Last year, for instance, Callahan referred over a family of doctors he'd represented in a conservatorship battle.

"The ultimate goal is reduction of taxes and protection of assets from future creditors," Callahan said.

"He's very bright. He knows a lot of angles," he said about Verdon, who has been a friend for 25 years.

Verdon's firm also has worked with some larger firms on a contract basis, operating as a sort of "back office" providing asset protection and estate planning services behind the scenes.

It can be difficult for large firms especially to do asset protection work because of potential conflicts of interest, he said.

Verdon, 59, was inspired to get into the unusual practice area when he was a "tax nerd" doing estate planning at his small Orange County firm in the mid-1980s. A marketing consultant told him, "If you want to be No. 1 in your industry, start your own industry."

Because asset protection is a rare and initially suspect area, Verdon has adopted some out of the ordinary marketing techniques — some influenced by the time he spent selling life insurance before becoming a lawyer.

For instance, visitors to the firm's conference room are greeted by large place cards, individual small dishes of candy and nuts and a ready glass of water.

Like many lawyers, he lines up speaking engagements, both to potential clients and to other lawyers. He also has been a speaker on cruise ships. "It's a captive audience," he said.

Having noticed that wives often defer to their husbands during discussions of estate planning, he wrote a book and gives seminars called "Estate Planning for Women Only."

Recently, Verdon developed his "Have Your Cake and Eat it Too" trust, which can allow a client with permission of the trustee to take money back out of a trust in the event of an unusual financial situation — such as the market collapse a few years ago. The idea came from an IRS private letter ruling he came across.

Another idea came from the firm's special tax counsel, Jerome M. Hesch, a consultant and law professor in Florida. That maneuver has allowed psychiatrist Cummings to adjust his "frozen" trust so that the estate tax becomes due not when he and his wife die, but when their children die, according to the doctor.

Verdon "is a genius at finding rare people who have rare ideas that no one has ever thought of," Cummings said.

Besides Hesch, the firm has two full-time and one part-time associate, Verdon said.

He has one other rule for a successful practice. The firm only represents nice people, he said. "If they're not nice to me and they're not nice to my people, I'll send them to someone else."