

Walter Kane Series

# NEW JERSEY ESTATE PLANNING MANUAL

*Theory, Practice and Forms*

VOLUME I

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Formerly known as Walter Kane's  
New Jersey Will and Trust Manual  
(The Blue Books)

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## FOREWORD

For more than 45 years, the New Jersey Institute for Continuing Legal Education (ICLE) has been serving the professional development needs of the New Jersey bench and bar. Our seminars, publications, audio/videotapes, online offerings, and other educational materials are specifically designed to facilitate the practice of law and to enable judges and lawyers to more effectively exercise their responsibilities.

The Institute's success in developing an extremely comprehensive and affordable collection of multi-media educational resources would not be possible without the efforts of the judges, lawyers, and other professionals who voluntarily participate in our programs and publications. The Institute is grateful for the opportunity to serve as the conduit through which they share their knowledge, skills, and expertise with their fellow professionals. Thanks to them, the institute is recognized as one of the leading organizations of its kind in North America.

*New Jersey Estate Planning Manual: Theory, Practice & Forms* is part of a series of manuals designed to help practitioners successfully navigate the complex and sometimes troubled waters of estate planning. This book, originally titled *New Jersey Will and Trust Forms Manual*, was developed by the late Walter S. Kane, Esq., who recognized the need for a series of comprehensive guidebooks in this area. This new edition, written and revised by Glenn A. Henkel, Esq., with contributions by Steven K. Mignogna, Esq., and Gerard G. Brew, Esq., incorporates changes to the probate and tax codes that have taken place over the last seven years. ICLE greatly appreciates their monumental efforts and perseverance in this sometimes daunting task.

This book would also not be possible without a dedicated publishing staff. It is, therefore, fitting to acknowledge the efforts of Michael Weisberg, Esq., ICLE's Director of Publications, who assured that this book was published promptly, accurately, and efficiently. Donna Chamberlain, the Publications Administrator, and Dudley Engram, also of ICLE's staff, assure that orders are processed quickly and courteously.

Your total satisfaction with the Institute and the educational services we provide is very important to us. So that we may continue to provide the very best in educational materials, ICLE welcomes any comments or suggestions you may have about this book.

Lawrence M. Maron, Esq.

Executive Director,  
New Jersey Institute for Continuing Legal Education

**Dedicated to Molly, Arthur and Charlotte**

## PREFACE

When the late Walter Kane first approached me about assisting with his well known and well respected series, he said “It doesn’t take *brain* power; it takes *a--* power,” meaning that writing a book was more of an exercise in perseverance than intellect. Having written many lecture outlines and articles, I expected the project to be a challenge — both mentally and due to the time commitment. However, I never envisioned that it would be as difficult as it turned out to be. Writing a book of this nature (while continuing to hold down the day job of a practicing attorney running a law practice) takes not only large quantities of time and lots of perseverance, but also a considerable amount of “brain work.” Writing this book has provided me with a new-found respect for the work of my predecessor, Walter Kane. The terrific job that he did over the years with this series deserves admiration and praise.

It is because of the difficulties of writing and compiling this book that I must first thank *you* — the reader. Thank you for your patience. I have written this book to the best of my ability, but there may (and probably will!) be details and corrections needed in the next edition. Writing a book of this type is ever more difficult because this area of the law is always changing. Not only are there changes in state statutes and cases, but the federal arena is replete with a constant barrage of I.R.S. notices, cases, regulations, and, unfortunately, statutory changes. The last five years have seen an unprecedented rise in confusion on estate planning centered on the possible “repeal” of the estate tax and, thus, rumors of compromise are persistently swirling. Nevertheless, I hope that the vast majority of the book content is correct. (If not, please let me know!)

I am sure that I will find that there are passages that are too verbose, too succinct, and just plain confusing. Please remember that this manual is intended to be an entry level book and thus, does not cover every nuance. At first, I had planned to revise every form and try to make them the best and most “up-to-date” ever. However, I realized that I, like most practitioners, had not revamped forms after the 2001 Tax Act but merely updated existing forms to accommodate changing needs. I decided that the best course of attack (since most readers are familiar with Walter’s existing forms) was to modify them rather than start from scratch.

There are many more people who deserve credit, thanks, and praise for efforts on the project. First, thanks to my assistant, Kathy Schew, for her patience and perseverance on the *many* edits, re-edits, and re-re-edits. Next, thanks to Georgia Woodruff, my ICLE editor. Thanks also Mary Jean Preston, our paralegal, who helped put together the forms and alternate provisions. And thanks for legal assistance from Julie Assis for her help on early drafts.

A more significant note of thanks must be made to my law partners at Kulzer and DiPadova. Obviously, a book of this nature is not a “for profit” venture — I think it will result in a rate of return of about 2 cents and hour! Even minimum wage would have been better. Thus, I need to thank my firm for permitting me to entertain this project and other academic pursuits.

I need to thank Jack Bernetich and Mike Kulzer, who were my early career mentors in estate planning. Not only did they teach me about the technical side of the law, but they also taught me far greater lessons on the practical side of dealing with clients. A client takes a lifetime to acquire their estate; therefore, an advisor must not treat any question or concern raised by the client with anything other than utmost respect. I really believe that the “practice” part of “practicing law” is the experience learned through years of dealing with the hopes, dreams, and aspirations that clients have for their assets and the effect it will (or will not) have on their loved ones. The hard part is that *all* clients have had life experiences, perceptions, and misperceptions about lawyers and the law that will factor into the work of the estate planner.

I'd like to thank my partners Art DiPadova, Jim Evans, and Bob Williams for teaching the means of thinking like a lawyer. You need to find the right practical solution, the right legal solution, and the right factual solution to the client's problem. Never trust anything you read secondhand. Read the case or statute yourself and think about drawing your own conclusion. Even then, think through the client's needs, goals, and objectives and make sure that you are making the correct recommendation for that particular situation.

Most importantly, I love the opportunity to thank my wife and best friend, Molly, and my son and stepdaughter, Arthur and Charlotte. Words cannot express my thanks for the support and motivation they always give me. Naturally, I must thank my parents for their support and for making me who I am today.

Finally, thank you to my editors and contributing authors, Steven Migogna and Gerard Brew. I hope and trust our efforts on the *Kane* series will be long and fruitful! Nevertheless, *all* errors and mistakes are mine and solely *mine*. Again, this book is intended as an introduction to estate planning and is not expected to, and cannot, answer all questions pertaining to New Jersey estate planning.

Glenn A. Henkel  
Haddonfield, New Jersey  
February, 2007

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**GLENN A. HENKEL, J.D., LL.M., C.P.A., A.E.P.**, is a shareholder with the firm Kulzer & DiPadova, PA in Haddonfield, New Jersey. His particular areas of expertise include complex estate planning, tax-exempt organizations and probate and trust law. He received his BS in accounting from Rider University, where he graduated with high honors. He earned his J.D. degree at Rutgers University School of Law, where he graduated with honors and was awarded the Prentice Hall Award for outstanding performance in the area of taxation. He earned his LL.M. in Taxation at New York University.

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In both 2005 and 2006, Mr. Henkel was distinguished as one of the 100 Top Super Lawyers in New Jersey and was named to the "Best Lawyers in America" for 2007. Additionally, he received the Founders Award for the Estate and Financial Planning Council of Southern New Jersey in 2005 and was designated as an Accredited Estate Planner by the National Association of Estate Planning Councils in 2006.

In addition to being an attorney, Mr. Henkel is a Certified Public Accountant and a member of the New Jersey Society of Certified Public Accountants and the American Institute of Certified Public Accountants. During 2001-2002, Mr. Henkel served as President of the Southwest Jersey Chapter of the NJSCPA.

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Admitted to practice in New Jersey and New York, Mr. Brew is a member of the American and New York State Bar Associations. He is a member of the Real Property and Probate Section of the American Bar Association and Chair of the Section's Estate and Trust Litigation and Controversy Committee. Elected a Fellow of the American College of Trust and Estate Counsel, Mr. Brew has lectured for NJICLE, the New Jersey Bankers Association, the New Jersey Savings League and the American Bar Association.

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Mr. Mignogna has lectured and published locally and nationally. He has lectured and published for the New Jersey Institute for Continuing Legal Education, the Heckerling Institute, and the American Law Institute and American Bar Association. He is the author of *ESTATE AND TRUST LITIGATION (NJICLE 2006)*.

He is admitted to the bars of the state and federal courts of New Jersey and Pennsylvania. He is also admitted to practice before the Third Circuit Court of Appeals and the United States Supreme Court.

Mr. Mignogna is active in a wide array of professional associations. He is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of their Fiduciary Litigation Committee. Aside from his lecturing, he has served on various committees of local and national bar associations. He is Co-Chair of the Publications Subcommittee for the Real Estate and Probate Litigation Committee, in the American Bar Association's Litigation Section. He is also Vice Chair of the Estate and Trust Litigation and Controversy Committee, in the ABA's Real Property, Probate and Trust Law Section.

Mr. Mignogna has been an attorney since 1989 and has been with Archer & Greiner since 1988, when he joined the firm as a law clerk. He earned his law degree from Rutgers University School of Law. He obtained his Bachelor's Degree in English from St. Joseph's University in Philadelphia in 1986. He received a wide array of awards and recognitions upon completion of both college and law school, graduating from college at the top of his class and from law school with high honors.



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