FAME, FAMILY FEUDS, LACK OF ESTATE PLANNING, AND ETHICAL MISCONDUCT IN THE ADMINISTRATION OF THE BILLION-DOLLAR LEGACY OF BOB MARLEY

by McKen Carrington[*] and Christopher Ogolla[**]

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I. INTRODUCTION

Family feuds about inheritance can be acrimonious and protracted. They are particularly complex and expensive when a large sum of money is involved. But while posthumous family feuds are common, fights over inheritance and "family dramas have haunted famous [people] well into [their] afterlife."[1] This is more so when the famous person dies intestate, for example, former Tennessee Titans quarterback Steve McNair,[2] guitarist Jimi Hendrix,[3] and musician Bob Marley,[4] to mention but a few. What is

* Professor, Thurgood Marshall School of Law, Texas Southern University, 3100 Cleburne Street, Houston, Texas.

** Instructor, Academic Support, Thurgood Marshall School of Law, Texas Southern University, 3100 Cleburne Street, Houston, Texas.

1. Sandy Cohen, *Family Feuds Follow Famous People After Death: Tales of Decapitation, Cremation, and Unpaid Funeral Bills Abound*, ELDER LAW, Feb. 2007, at 3, *available at* http://www.ctlawtribune.com/Supplements/Elder.pdf.

2. Andrew W. Mayoras, *Steve McNair Died Without a Will*, THE PROBATE LAWYER BLOG (July 16, 2009, 2:43 PM), http://www.probatelawyerblog.com/2009/07/steve-mcnair-died-without-a-will.html.

3. Steven A. Morelli, *The Lessons of Famously Bad Estate Planning*, INS. NEWS NET MAG., May 2010, at 15, *available at* http://digital.insurancenewsnetmagazine.com/publicatoin/?i=3675&pre=1&p=17.

more, these family feuds often involve personalities and property in multinational jurisdictions leading not only to pain and agony but also to protracted transnational family and probate litigation that spans across issues of blended families, inheritance laws, and rules of professional responsibility for the attorneys involved. Almost unequivocally, the overwhelming root cause of all these feuds is lack of estate planning.[5]

This paper uses the story of the estate of musician Bob Marley to illuminate the problems of family feuds, lack of estate planning, and the ethical misconduct of lawyers involved in estate planning.[6] It discusses Marley's family structure, arguing that his blended family relationships were a recipe for legal confusion after he passed away.[7] This paper notes that his wife, Rita, who was the custodial mother of the many Marley children, later ended up misappropriating funds from the estate and breaching her fiduciary duty.[8] This paper avers that the misappropriation and breach was partly due to the Jamaican intestacy system, which would have given Rita ten percent of Marley's estate outright and a life interest in another forty-five percent of it,[9] therefore, denying her a greater share of the estate.[10] This may in turn have contributed to her fraudulent activities with Marley's attorney, David Steinberg.[11] This paper then discusses the criminal conduct of Marley's attorney vis-a-vis unique challenges faced by estate planning attorneys.[12] It discusses the Model Rules of Professional Conduct (MRPC) violated by the attorney, but notes that the MRPC do not adequately address the unique set of problems faced by estate planning attorneys.[13] The paper calls for standards of professional responsibility among estate planning lawyers that are specific enough to allow them to assist clients with transferring property without potential ethical violations.[14] The paper concludes, noting that although his lack of estate

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4. *See id.*

5. Interestingly, empirical studies have shown that most Americans die intestate. *See* Mary Louise Fallows et al., *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 AM. B. FOUND. RES. J. 319, 356 n.127. The same is true in Britain. *See Most People Have Yet to Make a Will*, MIRROR, Oct. 24, 2009, http://www.mirror.co.uk/news/latest/2009/10/24/most-people-have-yet-to-make-a-will-115875-21769314/. According to one 2009 survey, "[m]ore than half of Britons have not made a will, meaning they have no say in who their assets will be passed on to when they die . . . . Around 57% of people currently do not have a will, rising to 65% among those who have children aged under 18 . . . ." *Id.*

6. *See infra* pp. 59–74.

7. *See infra* Part IV.

8. *See infra* Part V.

9. Intestates' Estates And Property Charges Act, 1937, Act No. 36/1976, c. 166, Part I § 4-1, a-c, (Jam.) [hereinafter IEPCA], *available at* http://www.moj.gov.jm/laws/statutes/The%20Intestates'%20Estates%20and%20Property%20Charges%20Act.pdf.

10. *See infra* Part V–VII.

11. *See infra* Part VIII.

12. *See infra* Part X.

13. *See infra* Part XI.

14. *See infra* Part X.

planning may have cost his heirs significant litigation costs, that Marley's legacy endures because his message was equal parts cultural, spiritual, commercial, and political.[15]

II. BACKGROUND

When Bob Marley died in Miami on May 11, 1981, he left no succession plan or will, leaving his wife, Rita, and eleven children by seven women as heirs.[16] Marley's deathbed request to his lawyer, David Steinberg, was to secure the rights to his songs for his family.[17] With an estate valued at $30 million[18] and no direction as to how to collect the intangible assets for the family, the "Babylon System" had to grapple with the distribution of Marley's wealth.[19] Marley placed the assets, primarily song publishing, recording, and licensing, in three separate offshore corporations: Bob Marley Music, Media Arts, and Tuff Gong.[20] It took decades of litigation to determine who could inherit Marley's empire of intellectual property, which is now valued at hundreds of millions of dollars.[21] Although Marley was a cancer patient for more than a year, his Rastafarian beliefs precluded him from believing in the reality of death.[22] Although Marley had done sophisticated business planning with his New York accountant, Marvin Zolt, and his Philadelphia lawyer, David Steinberg, he did not leave any directions as to the disposition of his estate

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15. *See infra* Part XI.

16. Bingham v. Zolt, 66 F.3d 553, 556 (2d Cir. 1995) [hereinafter *Bingham II*]. Although the opinion lists the date of death as March 11, 1981, most sources list the date of death as May 11, 1981. *Id.*; *e.g.*, *Bob Marley: Anniversary of legendary musician's death*, ABC2 (May 5, 2011), http://www.abc2news.com/dpp/entertainment/bob-marley%3A-anniversary-of-legendary-musician's-death.

17. TIMOTHY WHITE, CATCH A FIRE: THE LIFE OF BOB MARLEY 313 (Definitive ed. 2000).

18. *Id.* at 319.

19. "Babylon" is a term borrowed from the Bible but given unique meanings by the Rastafarian movement. *See* STEPHEN A. KING, REGGAE, RASTAFARI, AND THE RHETORIC OF SOCIAL CONTROL 10 (Craig Gill ed., Univ. Press of Miss. 2002). Junior Marvin, a member of the Wailers, described the "Babylon System" as follows:

> To my experience, the way Bob Marley and The Wailers were at that time [1977], they were more a spiritual type of band. They were more into the One Love facets of expressing themselves and it was not about Babylon system and Babylon style of making money. So I did not feel comfortable to approach him in a Babylon style fashion. When I say Babylon, I mean like western world, capitalism and stuff like that.

Barrett v. Universal-Island Records Ltd., [2006] EWHC (Ch) 1009, [84] (Eng.).

20. WHITE, *supra* note 17, at 319.

21. *See* Erik Heinrich, *Richest dead celebrity: Bob Marley: A deal with the music superstar's estate is set to generate more than $1 billion in worldwide annual sales by 2012*, CNN MONEY, (Nov. 20, 2009), http://money.cnn.com/2009/11/20/news/companies/bob_marley.fortune/.

22. Michelle Kaminsky, *Administering the Bob Marley Estate: Are the Marley's Waiting in Vain?*, LEGALZOOM (Oct. 2007), http://www.legalzoom.com/legal-headlines/celebrity-lawsuits/administrating-bob-marley-estate.

for his survivors.[23] The effects of Marley's intestacy and the obstacles facing his family after his death form the central thesis of this paper.

After Marley passed away, his family learned that the absence of a will meant they had no right to his name or likeness.[24] After several lawsuits, the family regained the rights to Marley's name and likeness; however, they could have avoided the lawsuits had Marley left a comprehensive estate plan that included the rights to his creative works.[25] This void led to acrimonious legal battles that lasted for over a decade.[26] In 1991, the Jamaican Supreme Court finally awarded Rita and Marley's children the rights to Marley's music.[27] To understand the legal battles that engulfed the Marley family, an examination of the Marley story is useful. As one commentator noted:

> It`s too easy and tidy to claim that the estate mess is the fault of rapacious litigators. It is a far more complicated affair, involving a class struggle and a clan struggle. "Family" here is an exceedingly fluid term: Settlement of the estate has been hopelessly delayed because of feuding, particularly among the women who bore Marley`s children. It hasn`t helped that Rita Marley, Bob's lawful widow, has admitted to signing backdated documents and forging Bob's signature, leading to a lawsuit charging that $14 million in assets were "fraudulently diverted" when she had control of the estate from 1981 to '86. Alliances shift constantly. Meanwhile, several backup musicians who played in Marley`s band, the Wailers, also are suing for a share of the estate.[28]

"A life so rich in incident and, thirty years after his death, so productive of myth,"[29] started in a small hamlet in rural Jamaica.[30] This is the Marley story.

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23. *See id. See also Bingham II*, 66 F.3d 553, 557 (2d Cir. 1995) (detailing the complexities of Marley's business planning).

24. *See* Kaminsky, *supra* note 22.

25. One of the cases the family won dealt with the tort of "post mortem appropriation of personality." Robert Marley Found. v. Dino Michelle Ltd., Supreme Court No CLR115 of 1992 (judgment 1994) (recognizing that the tort applied to Marley, the Jamaican Supreme Court issued a holding that Marley's goodwill was violated when his face was appropriated for commercial purposes). The Court also stated that Marley had an exclusive right, which survived his death, to use his name, likeness, or image because his image could be exploited for commercial purposes. *See* David Collins, *Age of The Living Dead: Personality Rights of Deceased Celebrities*, 39 ALBERTA L. REV. 914, 925 (2002).

26. *See* Kaminsky, *supra* note 22.

27. WHITE, *supra* note 17, at 394.

28. Richard Leiby, *Dread Reckoning When Reggae Legend Bob Marley Died In 1981, He Left 11 Children, $30 Million And A Tangled Legal Web That Has Kept His Heirs Chasing His Fortune For A Decade*, SUN SENTINEL, (Sept. 29, 1991), http://articles.sun-sentinel.com/1991-09-29/features/9102080702_1_bob-marley-marley-estate-cedella-marley-booker.

29. Joshua Jelly-Schapiro, *The Bob Marley Story*, THE NEW YORK REVIEW OF BOOKS (Apr. 9, 2009), http://www.nybooks.com/articles/archives/2009/apr/09/the-bob-marley-story-2/.

30. *See generally* Leiby, *supra* note 28.

III. THE MARLEY STORY

The story of Robert Nesta Marley, known professionally as Bob Marley, is well told elsewhere;[31] however, it is important to understand the origins of this cultural icon.[32] Although Marley was born in rural St. Ann's Parish, Jamaica, at age fourteen, he and his mother left for Trench Town—the ghetto of West Kingston.[33] It was in Trench Town that Marley found friends who nurtured his musical talents.[34] He met Jamaican pop veteran Joe Higgs, Bunny Livingston, Peter Tosh, Junior Braithwaite, and Beverly Kelso.[35] In 1962, the young Marley recorded his first song, a ska[36] tune called *Judge Not.*[37] One year later, Marley, Bunny, and Tosh formed the Wailers.[38] They enjoyed immediate success with a ska tune called *Simmer Down*.[39] By 1967, Marley had abandoned his ghetto credentials for his new Rastafarian religion, a decision that changed his song writing forever.[40] It was the late 1960's and the Wailers were now in their heyday with songs like *Soul Rebel* and *Small Axe*.[41] The group had transitioned from ska to reggae.[42]

> In 1972, Chris Blackwell—who had released "Judge Not" in England in 1963—signed the Wailers to Island Records and advanced them the money to record themselves in Jamaica. *Catch a Fire* was their first album marketed outside Jamaica, which featured several uncredited performances such as Muscles Shoals' guitarist Wayne Perkins playing lead on "*Concrete Jungle*" and "*Stir It Up*."[43]

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31. *See* WHITE, *supra* note 17. *See also* ROGER STEFFENS & LEROY JODIE PIERSON, BOB MARLEY AND THE WAILERS: THE DEFINITIVE DISCOGRAPHY (2005).

32. *See The Enduring Legend of Marley*, BBC NEWS, http://news.bbc.co.uk/2/hi/entertainment/4232823.stm (last updated Feb. 4, 2005) (noting that "Bob Marley has been a cultural icon since his premature death").

33. *See* Evan Serpick, *Bob Marley*, ROLLING STONE, http://www.rollingstone.com/music/artists/bob-marley/biography (last visited June 30, 2011).

34. *See id.*

35. *See id.*

36. *See* KEVIN O'BRIEN CHANG & WAYNE CHEN, REGGAE ROUTES, THE STORY OF JAMAICAN MUSIC, preface IX (David McLeod ed. 1998). Jamaican popular music since 1960 can be divided into four eras, each of which had a distinct beat: ska, rock steady, reggae, and dancehall. *See id.* Ska is dated from 1960 to mid-1966. *Id.*

37. Serpick, *supra* note 33.

38. *Id.*

39. *See* KING, *supra* note 19, at 17 (noting that "[i]n 1963, the Wailers' first hit single, "Simmer Down," actually called upon Jamaicans to . . . [cool down]").

40. *See* Jelly-Schapiro, *supra* note 29 ("Marley had also become drawn to Rastafari, the faith that he would make synonymous with reggae. His lyrics were increasingly influenced by the distinctive biblical and political language used by Rastafarians in Jamaica.").

41. *See id.*

42. *See id.* (inferring from the definitions of each music genre that the Wailers made the transition from one to the other).

43. *See* Serpick, *supra* note 33.

"The songs [told] a familiar story of black slaves, mainly West Africans brought to work Jamaica's fields of indigo and sugar cane, combining their own diverse cultures with those they found and making something new."[44]

Marley was more than a musician; he was a spiritual leader.[45] "In Jamaica, [his band] reached unprecedented levels of popularity and influence, and Marley's pronouncements on public issues were accorded the attention usually reserved for political or religious leaders."[46] He left an indelible mark on modern music and his influence still reverberates three decades after his death.[47] But like many other celebrities, his personal life, particularly his sexual matters, mars his remarkable legacy.[48] Though Marley fathered three children[49] with his wife "Rita in the early years of their marriage, he had by the mid-1970s moved through a series of other relationships that also produced children."[50] Therefore, this paper provides a brief account of Marley's family structure in order to help the reader understand the inheritance problems that resulted after his death.

IV. THE BOB MARLEY FAMILY STRUCTURE

In one of his most enduring songs, *One Love*,[51] Marley sang "*One Love, One Heart, Let's get together and feel all right*."[52] But this song may have had a far different meaning for him. Although he married Rita Anderson one year after the release of the song, he had children with seven other women and many other relationships over his twenty-five year marriage.[53]

"Together, Rita and Bob Marley had five children: Sharon, Cedella, Ziggy, Stephen and Stephanie."[54] Several other simultaneous relationships produced another six children.[55] Damien was born to Marley and Cindy

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44. Jelly-Schapiro, *supra* note 29.

45. *See id.* ("For Jamaica's proliferating Rastafaris, who already regarded Haile Selassie as divine, Marley had attained the status of prophet.").

46. Serpick, *supra* note 33.

47. *See id.* (summarizing Marley's successes before and after his death).

48. *See* Jelly-Schapiro, *supra* note 29 (citing the transition of Marley and his wife's relationship from monogamous to one of "social living" with numerous lovers and children for Marley).

49. Bob and Rita had three biological children, though Bob adopted Rita's two children as his own. *See* discussion *infra* Part IV.

50. Jelly-Schapiro, *supra* note 29.

51. Having survived a shooting two years earlier, the song became an anthem of national reconciliation. *See id.* Today, the anthem has a positive meaning; it is widely used as a term of harmony and joy. *See id.*

52. *Bob Marley Lyrics*, THIRDFIELD.COM, http://www.thirdfield.com/new/lyrics.html (last visited Oct. 16, 2011).

53. *See* Meredith Dixon, *Lovers and Children of the Natural Mystic: The Story of Bob Marley, Women and their Children*, http://debate.uvm.edu/dreadlibrary/dixon.html (last visited Oct. 16, 2011).

54. *See id.* These children collaborated in the musical group, The Melody Makers. *Id.*

55. *See id.*

Breakespeare, a Miss Universe.[56] Rohan was born to Marley and Janet Hunt.[57] Robbie was born to Marley and Pat Williams.[58] Karen was born to Marley and Janet Bowen in England.[59] Julian was born to Marley and Barbadian Lucy Ponder.[60] Ky-mani was born to Marley and Caribbean tennis champion, Anita Belnavis.[61] Makeda Jahnesta was born to Marley and Yvette Crichton.[62] For the most part, Rita Marley became the caretaker and "custodial mother" of Bob's non-marital children.[63] At first, the family got along well.[64] This was largely because Rita Marley accepted all of Bob's non-marital children as her own and raised many of them.[65] For the most part, they became internationally recognized and successful people by virtue of the Marley name.[66]

In Rita Marley's case, she gained wider recognition as an individual artist immediately upon Marley's death with songs like *One Draw* and *Harambe*.[67] The same held true for the other two members of the I-Threes—the Wailers back-up group—Judy Mowatt and Marcia Griffiths, as individual artists.[68] Bob's mother, Cedella Marley Booker, began a singing and writing career too.[69] The Melody Makers, a group consisting of Bob and Rita Marley's children, secured recording contracts with major studios like EMI, Virgin, Island, and Elektra.[70] In fact, the lead singer, Ziggy Marley, is better known as Bob Marley's son than as an artist in his own right.[71] Over the years, other Marley children—Julian, Damian, and Ky-Mani—would also follow their famous father into the music business.[72]

Since the family members have done financially well since the death of Marley, in comparison to when he was alive, why have there been family feuds and protracted litigation? The answer as to which family member was likely to gain a monetary advantage from Marley's death might be found in the Jamaican intestacy system.

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56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.* ("Rita had begun, not without pain, to evolve into her role as queen mother for the whole brood.").
64. *See id.*
65. *See id.* This type of arrangement was common in the Jamaican culture at the time. *Id.*
66. *See id.*
67. *See* WHITE, *supra* note 17, at 507.
68. *Id.* at 512–13.
69. *Id.*
70. *Id.*
71. *Id.* at 517.
72. *See id.* at 524–25.

V. THE JAMAICAN ESTATE ADMINISTRATION—NO LOVE LOST, IT IS WHAT ABOUT ME?

With a reported $30 million at stake,[73] Marley's heirs and former business partners were forced to divide an inheritance without a will, trust, or document locator. The old maxim that one does not really know a person until one shares an inheritance with him or her held true in this case.[74] Bob Marley could not have foreseen the immense war that occurred after his death. The result has been massive expenditures on legal fees, strained family relationships, and lawsuits both by and against the estate.[75] The survivors descended into what a Rastafarian would characterize as the "Babylon System."[76] The plethora of lawsuits in the United States, Jamaica, and all over the world attests to this fact.[77] This also created choice of law issues in the courts where these causes of action were brought.[78] To this end, the law in Jamaica was not favorable to Marley's intestate heirs.[79]

VI. JAMAICAN INTESTACY

Bob Marley died without a will.[80] In the last year of his life, Marley saw doctors in New York, Mexico, and Germany.[81] They all told him that he had terminal cancer and that the cancer had spread to his brain, lungs, and stomach.[82] Therefore, Marley knew at least a year in advance that he was likely to die.[83] He could have devised an estate plan, but he did not.[84]

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73. *See* Leiby, *supra* note 28.

74. *See, e.g.*, Kaminsky, *supra* note 22 (discussing the familial problems that arose after Marley's death).

75. *See* Leiby, *supra* note 28 (noting that frequent court intervention has lost the estate $4 million in legal fees). "The estate is administered by Jamaica`s largest bank, with the courts intervening when necessary—which is often. The heirs are furious that estate administrators and lawyers in Kingston, Miami and New York have reaped $4 million in fees while supposedly acting in the heirs' best interests." *Id.*

76. *See* KING, *supra* note 19 and accompanying text.

77. *See generally* Kaminsky, *supra* note 22 (discussing the legal complications with Marley's estate).

78. *See, e.g.*, Barrett v. Universal-Island Records Ltd., [2006] EWHC (Ch) 1009, [75]-[190] (Eng.) (choosing to apply New York law even though the causes of action in both Jamaica and New York had not proceeded to a trial on the merits).

79. *See* discussion *infra* Part VII.

80. *Bingham II*, 66 F.3d 553, 556 (2d Cir. 1995).

81. WHITE, *supra* note 17, at 310.

82. *See id.* at 310–13; *Great Lives, Benjamin Zephaniah on Marley*, BBC RADIO HISTORY (Apr. 25, 2003), http://www.bbc.co.uk/radio4/history/greatlives/zephaniah_marley.shtml (last visited Oct. 13, 2011).

83. *See generally* WHITE, *supra* note 17, at 4 (suggesting that Marley should have submitted to treatment rather than protect his "image").

84. MAUREEN SHERIDAN, THE STORIES BEHIND EVERY BOB MARLEY SONG 1962–1981: SOUL REBEL 129 (Mick Meikleham ed., 4th ed. 1999) (noting that "[b]y choice, and in keeping with the

Many people die intestate because of ignorance, fear of death, cultural beliefs, or even procrastination. For Marley, it was religious.[85] As one writer has noted,

> Marley left no will because he was a worshiper of Jah, a believer in the divinity of the late Emperor Haile Selassie of Ethiopia—a deity that even many Ethiopians find improbable. The Rastas, however, have traced Selassie`s lineage through the Old Testament to declare him the consecrated heir of King Solomon and the Queen of Sheba.[86]

But Marley was a man not likely to be in the category of the fearful or the ignorant. Judging by the amount of money he accumulated, Marley was a shrewd businessman who knew, or should have known, the power of devising a plan to get some of his future earnings to his next of kin and his mother Cedella Booker, to whom he was very close.[87] This raises an interesting question: How did Marley's mother fare in this situation? Referring to the acrimonious battle that was brewing after Bob Marley's death, his mother remarked, "[h]is body [Bob Marley's] wasn't even cold in his tomb before the scavengers began fighting over his worldly goods."[88] Under Jamaican law, Cedella was not entitled to any of Marley's fortune.[89] Marley's widow, Rita, on the other hand, did have rights of inheritance, albeit not adequate.[90] It is this inadequacy in the Jamaican intestacy system that will now be discussed.

VII. THE INADEQUACY OF JAMAICA'S INTESTACY LAW

The Jamaican Act of 1937 on succession to real and personal estate on intestacy provides that the "surviving spouse of the intestate shall take . . . the personal chattels absolutely; . . . ten thousand dollars or a sum equal to ten percent of the net value of the estate . . . , [and] interest at ten percent per annum."[91] Thus, in 1981, under Jamaican intestacy law, Rita was

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Rastafarian refusal to acknowledge death, Bob Marley died intestate. Several people, including lawyer Diane Jobson and doctor Pee Wee Herman, tried to persuade the dying Wailer to make a [w]ill while he was still in Bavaria at the Issels Clinic, but the more they tried to persuade him to do so, the more the stubborn singer resisted their attempts").

85. *Id.*

86. *See* Leiby, *supra* note 28.

87. *See Black Woman and Child*: *The Story of Cedella Booker and Bob Marley*, RAST-MAN-VIBRATION.COM., http://www.rasta-man-vibration.com/Cedella-Booker.html (last visited Oct. 13, 2011). There have been claims that the song *No Woman No Cry* sums up the love of a son for his mother. *Id.* (noting that "[a]lthough this song [*No Woman No Cry*] was evidently dedicated to none other than Cedella Booker, it is a universally fitting tribute to the love shared between a mother and her child and proves Marley was indeed a lover of all, especially women").

88. SHERIDAN, *supra* note 84, at 130.

89. Leiby, s*upra* note 28.

90. *Id.*

91. *See* IEPCA, *supra* note 9.

entitled to 10% of Bob's estate outright and held a life interest in another 45% of it.[92] Marley's eleven children were entitled to equal shares of the remaining 45% outright, plus a remainder interest in Rita's 45% life estate.[93] If Cedella Booker was not entitled to any of Marley's fortune under Jamaican law, it is evident that Rita also would have fared badly in the same scheme. There is one major problem with the Jamaican intestacy system—it tends to have an unfair and discriminatory impact because it treats a surviving spouse as a person who needs support rather than as a full partner for a lifetime. The law is patterned after the British inheritance system.[94] In the case of Bob and Rita Marley, they started with nothing and accumulated $30 million during the marriage.[95] It seems unjust to give Rita only a 10% plus a life estate. Compare this arrangement with the Spanish system that Texas and other parts of the western United States adopted.[96] Under these arrangements, each spouse owns one-half of the property acquired during the marriage, and the other half goes to children when one or more of the children are not the child of the surviving spouse.[97] Indeed,

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92. *Id.*

93. *Id.*

94. Administration of Estates Act, 1925, 15 Geo. 5, c. 23, §§ 1–52, (Eng. & Wales), *available at* http://www.legislation.gov.uk/ukpga/1925/23/pdfs/ukpga_19250023_en.pdf (in Britain, the Administration of Estates Act of 1925 largely governs the order of distribution for intestate estates). Before February 1, 2009,

> [I]f . . . [one was] married with children . . . [and] die[d] intestate[,] . . . [one's] spouse . . . [got] everything up to £125,000 together with the . . . [decedent's] personal possessions. The remainder . . . [was] split in half with 50% going to . . . [one's] children when they reach[ed] the age of 18 and the balance going into trust for the rest of . . . [one's] spouse's life. When the spouse dies this half reverts to the children. 2) If . . . [one was] married with no children but there [we]re other relatives, then the spouse receive[d] everything up to £200,000 and again . . . took [one's] personal possessions. The rest was divided with half going to the spouse and the balance going to . . . [one's] parents. If . . . [one's] parents [we]re dead then this half is divided amongst . . . [one's] brothers or sisters or their children.

Id. The rules regarding inheritance changed in February 2009. *See Inheriting Money and Dying Without A Will*, BBC NEWS, Sept. 23, 2005, http://news.bbc.co.uk/2/hi/business/3038966.stm.

> Previously, if you did not have children, £200,000 of your estate was awarded to your spouse should you die without a will. This figure has now been increased to £450,000. The remainder of an estate is then halved between your parents and your spouse. Should the parents be dead, it is divided between siblings and the spouse. If you do have children, £250,000 (previously £125,000) of your estate will be awarded to your spouse, before being divided between your children.

See Emma Wall, *The Dangers of Failing to Make a Will*, THE TELEGRAPH (May 5, 2009, 10:12 AM) http://www.telegraph.co.uk/finance/personalfinance/consumertips/5277201/The-dangers-of-failing-to-make-a-will.html.

95. Leiby, *supra* note 28.

96. *See* Jerry A. Kasner & Alvin J. Golden, *An Overview of Community Property Law*, ACTEC Annual Meeting (2009), http://www.ikardgolden.com/CM/GoldenArticles/CommProp.pdf ("There are eight states that have adopted the community property system based on Spanish-Mexican law, with an overlay of some rules from French law. These are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington . . . The basis of the community property system is the idea that marriage also creates what amounts to an economic partnership between the husband and wife, in which they share ownership of certain property.").

97. *See, e.g.*, TEX. PROB. CODE ANN. § 45 (West 2008) ("(a) On the intestate death of one of the

it is this inequity, among other reasons, that may have led to the myriad of fraudulent transfers in Marley's estate.[98] The main ones are discussed below.

VIII. COMPANIES AND SCHEMES

At the time of his death, Bob Marley created numerous companies in various countries.[99] The following is a list of companies as described by Justice Lewinson in *Barret v. Universal-Island Records*.[100]

The incorporation of Tuff-Gong Productions Ltd., a Delaware Company, occurred on June 2, 1975.[101] According to *Barrett*, "Bob Marley became one of the first directors of the company" and later became its president.[102] An agreement, dated January 1, 1975, between Tuff Gong Music and Rondor Music (London) Ltd., provided for Rondor Music (London) Ltd. to administer certain compositions in the United Kingdom.[103] The agreement also provided for Tuff Gong "to license to Rondor all compositions which became owned by Tuff Gong during the period of the agreement."[104] Bob Marley also owned and controlled Media Aides Ltd., a British Virgin Islands company.[105] According to the record, "[o]n May 27, 1976, Marley entered into an exclusive song writing agreement with a corporation owned by him called Bob Marley Music Ltd. . . . [upon] the expiry of the agreement with Cayman Music, on 11 October 1976."[106] On the same day,

> Bob Marley Music entered into an administration agreement with Almo Music Corporation. This agreement was extended a number of times and was in existence at the date of Bob Marley's death. Some of the subsequent agreements were in the name of Bob Marley Music Ltd. BV, a

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spouses to a marriage, the community property estate of the deceased spouse passes to the surviving spouse if: (1) no child or other descendant of the deceased spouse survives the deceased spouse; or (2) all surviving children and descendants of the deceased spouse are also children or descendants of the surviving spouse. (b) On the intestate death of one of the spouses to a marriage, if a child or other descendant of the deceased spouse survives the deceased spouse and the child or descendant is not a child or descendant of the surviving spouse, one-half of the community estate is retained by the surviving spouse and the other one-half passes to the children or descendants of the deceased spouse. The descendants shall inherit only such portion of said property to which they would be entitled under Section 43 [this section of the Probate Code sets forth the standard for determining whether a distribution will be per capita or per stirpes] of this code. In every case, the community estate passes charged with debts against it.").

98. *See infra* discussion Part IX.
99. Barrett v. Universal-Island Records Ltd., [2006] EWHC (Ch) 1009, [63] (Eng.).
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*
105. *Id.* at [64].
106. *Id.* at [65].

> Netherlands corporation, which was the successor in interest to Bob Marley Music Ltd.[107]

Besides the companies created by Marley while alive, there were several business entities, or schemes, created after his death:[108]

> For five years from the time of Marley's death in 1981 until 1986, defendants David Steinberg, Marley's attorney, and Marvin Zolt, Marley's accountant, with the aid of his [widow], Rita Marley, developed and implemented numerous schemes that allegedly diverted foreign music assets and royalty income from Marley's estate to themselves.[109]

The defendants contended "that their activities in creating new corporations and transferring funds from the estate to a chain of international companies were aimed at minimizing the estate's tax liabilities, leaving more to be distributed to Marley's beneficiaries."[110] The main schemes, as outlined by the Second Circuit Court of Appeals in *Bingham v. Zolt*, are as follows:

> [A.] Share Transfer Scheme. Before Bob Marley died he, individually, and his three wholly-owned British Virgin Islands companies (BVI Companies), received royalty payments and income from various recording and publishing contracts. The BVI Companies . . . would have become estate property upon his death, resulting in the estate's receipt of all of the royalty income due him. But defendants advised Rita Marley to forge her husband's signature on three documents transferring the ownership of the BVI Companies from Bob Marley to herself. The documents were pre-dated to 1978 to make it appear that Marley had made these transfers during his lifetime, thereby excluding them from estate property. Steinberg signed the documents as a witness.
>
> Ownership of the BVI Companies was then transferred to a Netherlands Antilles company known as Music Publishing Companies of Bob Marley, N.V. (the NV or Netherlands Antilles Company), whose sole shareholder was Rita Marley. Later the BVI Companies were liquidated, their royalty-producing assets transferred to the NV Company and then, in turn, to a wholly-owned Dutch subsidiary, Bob Marley Music B.V. . . . . The result was that various amounts of royalty and other income rightfully belonging to the BVI Companies-and indirectly to the estate-were funneled between bank accounts in the names of Steinberg, the NV Company, and the BV Company and subsequently transferred into Rita Marley's personal account or into special escrow accounts set up in Zolt's name.

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107. *Id.* at [66].
108. *See Bingham II*, 66 F.3d 553, 556–57 (2d Cir. 1995).
109. *Id.*
110. *Id.*

> [B.] The Almo Scheme. This scheme . . . [i]nvolved a signed agreement between Zolt, Steinberg, and Rita Marley not to report to the estate Bob Marley's personal share of royalty checks received from Almo Music, a music administration company for Bob Marley's song publishing activities. These royalty payments totaled about $1 million for the two years from the date of Marley's death until 1983.
>
> [C.] The Island Assignment Scheme. [In this scheme,] Rita Marley forged [Bob Marley's] signature on an assignment, . . . backdated [it] to August 13, 1980, and assigned Bob Marley's individual rights under contracts with Island Records to one of the BVI Companies, causing the royalties produced under those contracts to be transferred to the bank accounts of the NV Company and BV Company mentioned above, rather than to the estate.
>
> [D.] The Rondor Scheme. [In this scheme,] assets of Tuff-Gong Productions Ltd.[,] . . . a company individually owned by Bob Marley that would have been estate property, were assigned to one of the BVI Companies . . . then back dated [to] November 30, 1980 . . . [before] Bob Marley's death. It stated that the assets were transferred for the alleged consideration of $100,000, although the copyrights at issue generated millions in royalties from 1980 to 1985.[111]

Other than the fraudulent transfers, Rita Marley, Marvin Zolt, and David Steinberg also concealed assets from the estate's trustees, Mutual Security Bank and Trust Company, and George Desnoes—a Jamaican attorney.[112] For example,

> [a]t a meeting to examine the estate's assets and liabilities, Steinberg told Byles that a large portion of Bob Marley's assets had been transferred to others before his death. At a later meeting on January 4, 1982[,] where Byles, Rita Marley, Steinberg, and Zolt were present, Steinberg specifically indicated that the BVI Companies were not part of the estate because they had been transferred to Rita Marley before Bob Marley's death.[113]

At another meeting called by the bank's managing director to inquire about the ownership of BVI companies, both Zolt and Steinberg gave him copies of the forged share transfers "showing that Bob Marley transferred his shares in the companies to Rita Marley before his death. Steinberg and Zolt also represented to [the director] that the assets of Tuff-Gong Delaware barely exceeded that company's liabilities."[114] Additionally, "[i]n accounting to the estate over the next six years, defendants reported only minimal amounts of royalty proceeds, failing to remit to the estate millions

111. *Id.*
112. *Id.*
113. *Id.* at 557–58.
114. *Id.* at 558.

of dollars they had received and transferred to bank accounts of the NV Company, the BV Company, Rita Marley, Steinberg, and Zolt."[115] It is these schemes and concealment that gave rise to the many lawsuits that still engulf the estate today.[116]

IX. THE LAWSUITS

Without a will, the surviving spouse of a deceased person must seek "*Letters of Administration,"*[117] the legal document that confers fiduciary responsibility upon a named person or entity to collect, manage, and distribute the assets of the deceased person to the beneficiaries.[118] At the time of Marley's death, the court appointed Mutual Security Merchant Bank & Trust Co. Ltd, Rita Marley, and Jamaican lawyer George Desnoes as administrators of Marley's estate.[119] As part of the estate administration process, Rita and her collaborators produced documents purporting to show that, three years prior to his death, Bob Marley transferred 98% of the three corporations to her.[120] With the aid of Bob's Philadelphia lawyer and New York accountant, Rita tried to misappropriate Bob's publishing, recording, and licensing rights for herself.[121] Without this maneuver, Jamaica's intestacy laws entitled Rita to 10% outright and a life estate of 45% of Marley's estate.[122] The schemes "are said to have diverted more than $8,000,000 from the estate, of which over $ 1,000,000 was paid to the defendants."[123]

Meanwhile, Mutual Security and Desnoes sought ancillary administration of Marley's New York assets and hired J. Reid Bingham, a New York lawyer, as ancillary administrator.[124] Bingham brought suit in federal court against the perpetrators of the schemes.[125] There were numerous causes of action: "Racketeer Influenced and Corrupt Organizations Act (RICO), specifically 18 U.S.C. § 1962, . . . conversion, fraud, breach of fiduciary duty, negligence, and gross negligence for improperly diverting the estate's assets."[126] Besides Steinberg and Zolt

115. *Id.*
116. *See* Kaminsky, *supra* note 22.
117. *See, e.g.*, N. Y. SURR. CT. PROC. ACT § 1002 (McKinney 2006) on Letters of Administration.
118. *Id.*
119. *See* Bingham v. Zolt, 683 F. Supp. 965, 968 n.1 (S.D.N.Y. 1988) [hereinafter *Bingham I*] (On December 17, 1981, the Supreme Court of Judicature of Jamaica issued Letters of Administration of the Estate to Mutual Security Merchant Bank, George Desnoes, and Rita Marley. On February 27, 1987, the Surrogate's Court in New York County issued Ancillary Letters of Administration to Bingham.).
120. *See Bingham II*, 66 F.3d 553, 557 (2d Cir. 1995).
121. *See* Kaminsky, *supra* note 22.
122. *Bingham II*, 66 F.3d at 556.
123. *Bingham I*, 683 F. Supp. at 969.
124. *Bingham II*, 66 F.3d at 558.
125. *Id.*
126. *Id.*

individually, there were several other defendants including Zolt's accounting firm, Zolt & Loomis, and current and former law firms owned by Steinberg.[127] The defendants contended, inter alia, "that the statutes of limitations governing Bingham's state law claims ha[d] expired.[128] Bingham respond[ed] that . . . [u]nder New York law, 'a defendant may be estopped to plead the Statute of Limitations where plaintiff was induced by fraud, misrepresentation, or deception to refrain from filing a timely action.'"[129] The court agreed, noting that "the alleged enterprise had only one target—the Estate of Bob Marley—and one finite goal—the transfer of Marley's shares in the British Virgin Island Companies to Rita Marley."[130]

In 1993, after five years of litigation by high-powered New York law firms, the district court entered judgment and awarded "$2,861,409.79 in damages against defendants consisting of the trebled RICO award, common law damages and prejudgment interest upon the common law award, $3,029,428.46 in attorney's fees and disbursements, and $250,000 in punitive damages against Steinberg."[131]

The action of Don Taylor, Bob Marley's manager, who exposed the fraudulent diversions by Rita Marley, precipitated the New York lawsuit.[132] In a letter to the Administrator General of Jamaica, Taylor stated, "that Rita Marley's 1978 documents authorizing transfer of Bob's chief assets to her were *frauds*, and that she had actually signed them with attorney David Steinberg in 1981."[133] As co-administrator, Rita was a fiduciary with a duty to act in the best interest of all the beneficiaries of the estate, but, unfortunately, she acted for herself.[134] Thus, the Jamaican Supreme Court ordered her dismissal as a trustee.[135] Rita relinquished her position as an administrator in a written confession implicating Steinberg and Zolt.[136] Therefore, the estate had millions of dollars for the Marley children.[137]

In 1989, Aston Barrett and the other Wailers brought an action against Mutual Security as administrator of the Marley estate.[138] In that action, the plaintiffs claimed that during Bob Marley's life, they were "[p]artners with [him] in the business of recording, producing, retailing and performing certain musical and other works."[139] They also sought an order that the estate account to them for "their 50% share of the royalties or other income

127. *Bingham I*, 683 F. Supp. at 967–68.
128. *Id.* at 974.
129. *Id.* (citing *Simcuski v. Saeli*, 377 N.E.2d 713, 716 (N.Y. 1978)).
130. *Id.* at 970.
131. *Bingham II*, 66 F.3d at 559.
132. WHITE, *supra* note 17, at 351.
133. *Id.* at 351–52.
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.* at 352.
138. Barrett v. Universal-Island Records Ltd., [2006] EWHC (Ch) 1009, [113] (Eng.).
139. *Id.* at [114].

received by the defendant and due to [them] as a result of the said partnership."[140] Finally, they asked for "an injunction restraining the estate from disposing of any of the assets of the estate affected by the plaintiffs' claim."[141] The court granted the initial freezing order then later modified it to restrain the estate from disposing of 50% of the "proceeds of sale of record royalties claimed by plaintiffs."[142]

Also in 1989, the same plaintiffs from the action in Jamaica sued Island Logic Inc. and Island Inc. claiming that since Bob Marley's death, they had not received an accounting of "those royalties reportable by the estate as the succeeding managing partner of the partnership" from the defendant.[143] They contended:

> That the estate as managing partner stood as fiduciary to the other partners and in that capacity had an obligation to account which it had failed to comply with, and that Island Inc., with whom the estate had contracted had also failed to make available accounts pursuant to its various contracts with the partnership.[144]

The parties later reached a private settlement in 1994.[145]

In 2006, Aston Barrett, on behalf of himself and his deceased brother, sued Universal-Island Records, and the Marley family for unpaid royalties claiming more than £60 million British pounds.[146] Barrett contended that he and his brother, who were named in the 1974 agreement but did not sign it, were entitled to payment of royalties.[147] Additionally, Barrett claimed copyright in seven songs for himself and his brother's estate based on joint composition.[148] A high court judge in London threw out these claims noting first that the Barrett's were never a party to any of the agreements between Marley and the Island Record Company, and second, that an agreement in 1994, in which Barrett accepted money from the Marley estate as a settlement, compromised his lawsuit.[149]

In 2007, Verizon Company struck an agreement with Universal Music Group, a subsidiary of Vivendi, to become the exclusive provider of the

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140. *Id.*
141. *Id*. at [115].
142. *Id*. at [119].
143. *Id.* at [122].
144. *Id.*
145. *Id*. at [137].
146. *See* Alice O'Keeffe, *Wailers' bassist sues Marleys for '£60m royalties*', THE OBSERVER, at 17, (Mar. 11, 2006, 10:58 AM), http://www.guardian.co.uk/uk/2006/mar/12/arts.artsnews1.
147. *Barrett*, [2006] EWHC (Ch) 1009, at [32].
148. *Id.* at [34].
149. *Id.* at [161]. *See also*, *Aston "Family Man" Barrett Loses Case for Marley Royalty Share*, REGGAE VIBES, (May 16, 2006), http://www.reggae-vibes.com/news040706.htm.

ringtones from the Marley catalogue.[150] Universal owns the rights to the music.[151] Marley's family, however, objected to the deal, threatening to sue.[152] In this dispute, the family argued that if Verizon were "to provide the ring tones exclusively and use Mr. Marley's image to its marketing benefit," then this would amount to an endorsement and the family was therefore entitled "to set parameters on how Marley's image and name could be used."[153] Verizon, on the other hand, proposed the deal as a matter of simply licensing the music.[154] This promised to be yet another nasty legal fight that has become symptomatic in the Marley family. This is particularly poignant in light of the fact that while alive, Marley's life was not motivated by money.[155] Marley sang about the downtrodden, about uplifting the lives of the poor, and about peace, love, and unity.[156] It is, therefore, contrarian that money and profit should play such a significant role after Marley's death, as evidenced by the lawsuits and the schemes discussed here. The Second Circuit Court of Appeals captured this duplicity, when it stated:

> Bob Marley was the Jamaican singer-songwriter responsible for bringing the reggae sound to the world and, to his fans, still is reggae music. Even today, 15 years after his death from brain cancer, he continues to be the world's best-selling reggae artist. He used his music as a vehicle to spread global messages of peace, brotherhood, African unity, and international morality. For his contributions to ending political violence in Jamaica, he was awarded in 1978 the United Nations Medal of Peace. It is particularly revealing of the perversity of human nature that such a person's estate be

150. Andrew Adam Newman, *Marley Family's Vitriol Leads Verizon to Bite Back*, N.Y. TIMES (Sept. 14, 2007), http://www.andrewadamnewman.com/story/47_MarleyFamilysVitriolLeadsVerizon.html.

151. *See id.*

152. *See id.*

153. Andrew Adam Newman, *Family Challenges Verizon Wireless Deal to Sell Bob Marley Ring Tones*, N.Y. TIMES, (Aug. 31, 2007), http://www.nytimes.com/2007/08/31/business/31marley.html.

154. *See id.*

155. *Funeral Speech: An Excerpt from Bob Marley's Funeral*, THIRDFIELD.COM, http://www.thirdfield.com/new/funeral.html (last visited Oct. 16, 2011) (In Marley's funeral in May 1981, the Jamaican president made the following speech: "His message was a protest against injustice, a comfort for the opressed [sic]. He stood there, performed there, his message reached there and everywhere. Today's funeral service is an international right of a native son. He was born in a humble cottage nine miles from Alexandrea in the parish of St. Ann. He lived in the western section of Kingston as a boy where he joined in the struggle of the ghetto. He learned the message of survival in his boyhood days in Kingston's west end. But it was his raw talent, unswerving discipline and sheer persevrance [sic] that transported him from just another victim of the ghetto to the top ranking superstar in the entertainment industry of the third world.").

156. *See generally* Camille Nelson, *Carriers of Globalization: Loss of Home and Self within the African Diaspora*, 55 FLA. L. REV. 539, 549 (2003) ("The central message of his 1977 song *Exodus* was a vision of glorious end to the suffering of all 'Jah's' people.").

> plundered by the perfidy of his closest advisors. It is that duplicity that gave rise to the litigation before us on this appeal.[157]

What is more disturbing in the preceding discussion is not the number of lawsuits or the family feuds, but the role of attorney David Steinberg in helping Rita Marley set up the fraudulent schemes and how much money was looted from the estate.[158] "[E]state planning is one of the most important areas of the law because it deals with issues involving the entire estate of a client."[159] It is, however, fraught with conflicts of interest; for example, an attorney representing spouses, an attorney representing multiple family members in estate planning, a drafting attorney named as a beneficiary in the will, and a drafting attorney named as the fiduciary of the probate estate.[160] What Marley's attorney did was criminal. Of some importance to this discussion, however, are the ethical responsibilities of lawyers involved in estate planning. These challenges are compounded for the lawyer who attempts to engage in post-mortem estate planning. Indeed, David Steinberg had no good options as he attempted to create a post-mortem estate plan.

X. ETHICAL CONDUCT OF LAWYERS INVOLVED IN ESTATE PLANNING

Generally, lawyers "are subjected to scrutiny ad infinitum regarding their qualifications, character and reputation."[161] "Each state has adopted and codified ethical guidelines prescribing appropriate behavior for attorneys practicing within the jurisdiction. If an attorney fails to comply with the ethical guidelines, his conduct may subject him to review by the state bar in addition to liability incurred regarding civil claims."[162] Lawyers practicing estate planning and representing clients with property, whether moveable or immovable, both in the U.S. and in foreign countries, should observe the ethical standards for both geographic regions. These ethical conducts, both in the United States and in foreign jurisdictions, exhort lawyers to uphold the dignity of the legal profession.[163]

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157. *Bingham II*, 66 F.3d 553, 556 (2d. Cir. 1995).

158. *Bingham I*, 683 F. Supp. 965, 969 (S.D.N.Y. 1988).

159. Catherine Houston Richardson, *A "Rest in Peace" Guide of Estate Planning Ethics*, 28 J. LEGAL. PROF. 217, 217–18 (2003).

160. *Id.*

161. Ashley Hollan, *Music Lawyers Taking the Rap: The Musicalization of Legal Ethics*, 4 U. DEN. SPORTS & ENT. L.J. 196, 197 (2008).

162. *Id.* at 198.

163. *See accord* MODEL CODE OF PROF'L RESPONSIBILITY Canon 1 (1980), *available at* http://www.americanbar.org/content/dam/aba/migrated/cpr/mrpc/mcpr.authcheckdam.pdf (titled "A Lawyer Should Assist in Maintaining Integrity and Competence of the Legal Profession"); CHARTER OF THE CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION, CODE OF CONDUCT FOR EUROPEAN LAWYERS Principle (D) (2008) *available at* http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1306748215.pdf ("To be trusted by clients, third parties, the courts and the

Bob and Rita Marley's lawyer, David J. Steinberg, violated several Model Rules.[164] Section 1.2 of the Model Rules (followed by about 48 states) provides:

> A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, or meaning or application of the law.[165]

Section 8.4 states, "It is professional misconduct for a lawyer to: . . . (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, [or] (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."[166]

One of the most serious violations, especially in estate planning, is breach of a fiduciary duty.[167] In this case, the lawyer's duties can be analogized to that of a trustee. To that end, case law provides that "[t]he duty that a personal representative of a decedent's estate owes to those interested in the estate when that representative is acting in its representative capacity is the duty a trustee owes to its beneficiary."[168] Here, Rita and Bob Marley's lawyer, David Steinberg, was found liable in damages to the estate of Bob Marley for fraud, breach of fiduciary duty, and violations of civil RICO under 18 U.S.C. § 1962(b), (c), and (d) (1988).[169] Clearly, the lawyer engaged in criminal conduct that did not conform to the

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state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonor the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.").

164. *Bingham II*, 66 F.3d, 553, 557–61 (2d. Cir. 1995).

165. MODEL RULES OF PROF'L CONDUCT R. 1.2(d) (2009).

166. MODEL RULES OF PROF'L CONDUCT R. 8.4(b)–(c) (2009).

167. *See, e.g.*, Di Grazia v. Anderlini, 22 Cal. App. 4th 1337, 1341 (Cal. Ct. Ap. 1994) (finding that an attorney failed to perform his required duties as he did not keep a separate bank account, books, or records for the trust, though he had been a trustee for a number of years); Alpert v. Gerstner, 232 S.W.3d 117, 130–31 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (holding that a court appointed attorney was not entitled to immunity to the extent that she may have failed to exercise good faith or ordinary care in protecting the trust assets because in this capacity, the attorney was acting as a representative of the beneficiaries' interests and not as an agent of the court); Amended Complaint at 1–2, Schein v. Blattmachr, 2007 WL 3104828 (2007) (County Index No. 03-019093) *available at* http://online.wsj.com/public/resources/documents/schein.pdf (stating that an attorney breached his fiduciary duty by recommending a plan to avoid estate tax by purchasing life insurance pursuant to a method known as "a split dollar insurance arrangement" to plaintiff, one of the clients advised by defendant and his firm).

168. *In re* Estate of Van Praag, 684 N.E.2d 1080, 1083 (Ill. App. Ct. 4th Dist. 1997).

169. *Bingham II*, 66 F.3d at 558.

practice of law and, thus, was later disbarred.[170] It appears that in the Model Rules, illegal actions are a basis for disciplinary matters when lawyers help clients with "questionable business schemes."[171]

The Model Rules, however, do not adequately address the unique set of problems faced by estate planning attorneys.[172] It is a truism that estate planning attorneys face a number of significant ethical issues when undertaking representation of a client.[173] Typical matters handled by an estate planning attorney include establishing an arrangement for transfer of assets to another person or group of persons, reducing tax liability, protecting assets, and representing parties in the estate administration process.[174] There is a thin line between asset-protection planning "that is, planning designed to place assets beyond the reach of potential creditors,"[175] and truly fraudulent schemes, as was in the *Bingham II* case.[176] There is also a difference between legal and fraudulent asset-protection planning: "[o]n the one side is legal and ethical asset-protection planning that serves merely to protect against the possibility of creditors in the future. On the other side is planning that serves to defraud existing or probable future creditors."[177]

However, the legal boundary link between the two sides is not well defined: "No attorney ethics rule directly discusses asset-protection planning. Instead, ethics opinions issued by some state bar and local bar associations on asset-protection planning have looked to the prohibition against attorneys advising or otherwise assisting clients in transfers that may later be found to have been a fraudulent conveyance."[178] For example, in *In re Conduct of Hockett*, the Oregon Supreme Court held that "[a]ssisting clients to cheat creditors is 'dishonesty' under DR 1-102(A)(4). [The court] conclude[d] that the accused's act of assisting his clients in 'fraudulent' transfers . . . was done with the intent to cheat creditors of their lawful debts. Such conduct is 'conduct involving dishonesty,' a violation of

170. THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA, *David J. Steinberg*, http://www.padisciplinaryboard.org/pa_attorney_public.php?id=3309&attname=David+J.+Steinberg+&violations=1 (last visited June 12, 2011) (showing that David J. Steinberg was disbarred on consent on April 17, 1996).

171. *See* MODEL RULES OF PROF'L CONDUCT R. 8.4(b) (2009).

172. *See* Charles C. Bratton, *Maintaining An Ethical Practice*, http://www.cynthiasharp.com/cm/custom/Maintaining-An-Ethical.html (last visited June 18, 2011).

173. *See id.*

174. *See id.*

175. Gideon, Rothschild & Daniel S. Rubin, Asset-*Protection Planning Ethical? Legal? Obligatory? It's all of the above*, TRUSTS & ESTATES, Sept. 2003, at 42–43, http://mosessinger.com/articles/files/AssetProtectionPlanning-Ethical-Legal-Obligatory.pdf.

176. *See Bingham II*, 66 F.3d 553, 566 (2d. Cir. 1995).

177. Rothschild & Rubin, *supra* note 175, at 42.

178. *Id.* at 42–43.

DR 1-102(A) (4)."[179] In that case, the lawyer represented two men in the formation of a corporation and had an ongoing attorney-client relationship with them.[180] He also represented their spouses in divorce actions.[181] During the dissolution proceedings, the lawyer arranged for the transfers of certain properties from the businessmen to their spouses that effectively awarded the spouses all real and personal properties of their husbands, even though he was fully aware of the financial obligations of the businessmen to their creditors.[182] The court found that the lawyer violated the disciplinary rules against conduct involving dishonesty, fraud, deceit, or misrepresentation; conflict of interest; and assisting a client in conduct known to be illegal or fraudulent.[183] The court adopted the findings of the state bar, holding that "[i]t is well settled that some conveyances may not be used to avoid the lawful claims of creditors."[184]

In contrast to the holding of *In re Conduct of Hockett*, the court in *In re Stiller*, while discussing the same disciplinary rule, ruled differently.[185] In that case, the lawyer received a legal fee of $135,000 for the defense of a client in a federal drug case.[186] The client paid the legal fee in cash.[187] The attorney subsequently made a series of bank deposits, also in cash, in amounts of less than $10,000 each, thereby evading the statutory requirements imposed on banks to report large currency transactions.[188] The Board on Professional Responsibility concluded that the lawyer had acted dishonestly in violation of DR 1-102(A)(4), and recommended public censure for his dishonest conduct.[189] The lawyer claimed that his actions were honest because he was unaware that structuring bank deposits was a crime and because he did not have a duty to disclose to the government that he had received a sizable cash legal fee.[190] The court agreed with the lawyer and noted that his behavior may have fallen somewhat short of perfection, but the court still found that the behavior was honest without a duty to disclose.[191] These two cases illustrate the point that assisting clients

179. *In re* Conduct of Hockett, 734 P.2d 877, 881, 883 (Or. 1987) (stating that DR 1-102(A)(4) provided that "a lawyer shall not . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation").

180. *Id.* at 879.

181. *Id.* at 880.

182. *Id.*

183. *Id.* at 877–78.

184. *Id.* at 884.

185. *In re* Stiller, 725 A.2d 533, 539 (D.C. 1999).

186. *Id.* at 535.

187. *Id.*

188. *Id.* at 534.

189. *Id.*

190. *Id.*

191. *Id.* at 539.

in setting up business schemes that may eventually turn out to be fraudulent may or may not be inevitably nefarious.[192]

It is difficult to apply the MRPC to the transfer of property for an avowed asset-protection planning purpose absent fraud or conviction for a criminal purpose. This is largely because "[n]either the . . . [MRPC] nor the Comments to them provide sufficiently explicit guidance regarding the professional responsibilities of lawyers engaged in a trusts and estates practice."[193] Recognizing the need to fill this gap, the American College of Trust and Estate Counsel (ACTEC) developed commentaries on selected rules to provide some particularized guidance to ACTEC fellows and others regarding their professional responsibilities.[194] These commentaries are helpful in identifying various ways that trusts and estates lawyers can deal with common problems without having to expressly mandate or prohibit particular conduct.[195]

In sum, lawyers in estate planning need to know that guidelines provided through the model rules do not offer adequate guidance.[196] In particular, lawyers representing famous people such as Bob Marley are likely to be in the spotlight, both in public and with their respective state bars. Therefore, these lawyers are more likely to be sued for breach of fiduciary duty, fraud, negligent misrepresentation, legal malpractice, securities law violations, violation of RICO, and conspiracy to defraud,

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192. *See* Rothschild & Rubin, *supra* note 175, at 43 ("[I]n New York and by extension in other model-code jurisdictions, the absolute prohibition on an attorney counseling or assisting a client in perpetrating a fraud would not necessarily proscribe an attorney from counseling or assisting a client in transferring property that may later be determined to have been a fraudulent conveyance."). *Cf.* Miriam Rozen, *V&E Settles with Enron and Unsecured Creditors for $30 Million*, TEXAS LAWYER (May 2006), http://www.law.com/jsp/tx/PubArticleTX.jsp?id=900005454929&s1return=1 (finding that in that case, plaintiffs, "including the University of California Board of Regents, alleg[ed] . . . that certain Enron executives, directors, outside accountants, firms and banks violated federal securities laws and helped make false and misleading statements to investors about Enron's financial performance. Specifically, the plaintiffs alleg[ed that the lawfirm of Vinson & Elkins ("]V&E[")] helped negotiate and structure deals that falsified Enron's profits and losses, as well as participated in a cover-up of the wrongdoing"). V&E later settled for $30 million dollars. *See id.*; *see also* In re Enron Corp. v. Lay, No. H-01-3624, 2003 WL 22964294, *1 (S.D. Tex. Nov. 13, 2003). To the best of this author's knowledge, not a single lawyer at the V&E firm has faced professional misconduct charges by the State Bar of Texas.

193. *See* AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL (ACTEC), *Commentaries on the Model Rules of Professional Conduct, Fourth Edition 2006*, http://www.actec.org/public/Commentaries Public.asp.

194. *Id.*

195. *See, e.g.*, AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL (ACTEC), *Commentaries on the Model Rules of Professional Conduct*, 151 (4th ed. 2006), http://www.actec.org/Documents/misc/ ACTEC_Commentaries_4th_02_14_06.pdf ("A lawyer should not construe too narrowly the scope of the term 'criminal or fraudulent.' In the context of the lawyer-client communications privilege, a client's fraudulent conveyance of property may be a fraudulent act that must be disclosed by the lawyer to a court. Similarly, frustrating an order of the court may involve a fraud, justifying disclosure of confidential information. This rule is consistent with MRPC 1.2(d) (Scope of Representation and Allocation of Authority Between Client and Lawyer) . . . .").

196. Richardson, *supra* note 159, at 218.

among others.[197] It is incumbent upon such attorneys to observe the highest standards of ethics. Of course, this holds true for all estate planning attorneys, regardless of the size of the estate or the status of the client.

One can make the case that a tale as rich as Marley's never tires of telling.[198] The challenges to the distribution of his estate are likely far from over, and Marley's estate's legal battles will likely continue. It comes as no surprise, therefore, that his legacy is still growing in the religious, cultural, commercial, and political realms.[199]

XI. RITA AND BOB MARLEY'S LEGACY

Rita Marley has been involved in several lawsuits since her husband's death.[200] She has endured both praise and scorn in her lawsuits.[201] For example, in *Barrett v. Universal Island Records*, the judge found Rita to be a truthful and credible witness, in contrast to plaintiff, Aston Barrett, who was found unreliable as a witness.[202] Furthermore, the judge found Barrett's nephew, Errol Barrett, to have a "strong sense of grievance against Rita Marley."[203] When discussing the case Aston Barrett referred to the Marley family as bad people who did not belong in society.[204]

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197. *See, e.g.*, *Bingham II*, 66 F.3d 553, 556 (2d. Cir. 1995) (describing the causes of action against Marvin Zolt and David Steinberg); Second Amended Complaint, Hendrix v. Branton, No. C93-537Z (W.D. Wash. Mar. 31, 1994) (detailing the causes of action against attorney Leo Branton Jr.).

198. Baz Dreisinger, *Fighting for Survival*, N.Y. TIMES, July 4, 2010, at BR8, *available at* http://www.nytimes.com/2010/07/04/books/review/Dreisinger-t.html.

199. *See id.*

200. *See, e.g.*, Marley & Ors v. Mut. Sec. Merch. Bank & Trust Co., Ltd., [1995] CLC 261; *Bingham II*, 66 F.3d at 553; Barrett v. Universal-Island Records Ltd., [2006] EWHC (Ch) 1009, [84] (Eng.).

201. *See, e.g.*, *Barrett* [2006] EWHC (Ch) at [14].

202. *Id.* (stating that "[d]espite the attacks made on Mrs. Marley's veracity, I found her to be a truthful witness. She fairly withdrew some of the more disparaging remarks she made about the Barrett brothers in her witness statement. But she did so with very little resistance. Over the years she has, I accept, tried to do her best for both the Wailers and for the estate, even though at times, their respective interests have been in conflict"). The judge wrote,

> Aston Barrett dropped out of elementary school without having learned to read or write. He still has great difficulty in reading. He was not at all interested in the business side of the Wailers; and left dealing with contracts and lawyers to others. As a result he had the greatest difficulty in answering any questions about business dealings. He was plainly close to Bob Marley himself, whom he trusted implicitly. At this remove of time, his recollection of events was hazy; and I also consider that, as often happens, he has reconstructed events in his mind according to how he would like them to have been. In short, I did not find him a reliable witness of fact when it came to business dealings.

Id. at [8].

203. *Id.* at [10] (referring to Errol Barrett, Aston Barrett's nephew, the judge observed, "he has a strong sense of grievance against Rita Marley; and believes that she ill-treated him when he was younger. His evidence was contradicted by Andrew Williams, whose evidence I prefer; and also by that of Mrs. Marley. I found his complaints exaggerated").

204. *See* Ernest Jasmin, *Still Stirring it Up*, MORNING NEWS TRIB., (June 22, 2007), at F5. Barrett was being interviewed by a newspaper reporter about the case when he said, "'You did a bad t'ing [sic]

In *Bingham II*, however, Rita was accused of, among other things, "develop[ing] and implement[ing] numerous schemes [with others] that allegedly diverted foreign music assets and royalty income from Marley's estate to themselves."[205] Rita has also had personal conflicts.[206] For example, she and her mother in law, Cedella Booker, were bitter rivals; Cedella once asserted that "Rita's heart was black."[207] In 2005, Rita caused uproar in Jamaica when she stated her intention to exhume Marley's remains "and bury them in Ethiopia, an African country holy to Rastafarians."[208]

There is no doubt that these trials and tribulations are a result of Bob Marley's complex family situation and his failure to have an estate plan. For example, no one will ever know whether he wanted Rita to bury him in Jamaica or Ethiopia. Furthermore, Rita's lawsuits will always be suspect. Some people in Jamaica have complained, "[S]he has exploited her late husband's image and music for [her own] commercial gain."[209] This is particularly persuasive in light of the fact that she has spent millions of dollars in prosecuting and defending these lawsuits.[210] However, she has also made millions since her husband's death.[211] "Forbes [Money] Magazine estimated Marley's posthumous earnings at $9 million just between September 2002 and September 2003."[212] In 2002, the estate expected to collect $100 million per year in licensing fees alone.[213] "Bob Marley's influence in music continues to produce a huge stream of revenue for his estate, which now has businesses in several spheres such as fashion, recording and branding of products and services. . . ."[214] Speaking about this income, Rita once remarked, "I never stop being surprised when I see how much money Bob's music makes . . . sometimes I say 'wow,' when I see them [royalty statements]."[215]

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and you win? What kind of law?' He mused. 'Those people should be charged for music genocide . . . . They should not only be fined, but they should spend some time behind bars.'" *Id.*

205. *Bingham II*, 66 F.3d at 556–57.

206. Kaminsky, *supra* note 22.

207. *Id.*

208. *See Uproar Over Marley Exhumation Plan*, CBS NEWS (Feb. 18, 2009, 1:02 PM), http://www.cbsnews.com/stories/2005/01/12/entertainment/main666446.shtml.

209. *Id.*

210. *See* Kaminsky, *supra* note 22.

211. *See generally id.*

212. *Id.*

213. *Id.*

214. *Bob Marley Legacy and Influence in Music Continues to Produce a Huge Stream of Revenue for His Estate*, RASTA-MAN VIBRATION.COM (2005), http://www.rasta-man-vibration.com/bob-marley-legacy.html.

215. SHERIDAN, *supra* note 84, at 130.

Unlike other celebrities who died intestate, including comedian Chris Farley,[216] and musicians Marvin Gaye,[217] James Brown,[218] and Jimi Hendrix,[219] Bob Marley's legend continues.[220] Millions of people, both young and old, know his lyrics by heart. Furthermore, unlike the other celebrities, Marley gave the world a cultural phenomenon—the Rastafarian movement.[221] He was a cultural crusader for the world's oppressed. For example, his songs *Get up*, *Stand up*[222] and *Exodus*,[223] harped on the suffering of Jah's peoples.[224] "He used his music as a vehicle to spread global messages of peace, brotherhood, African unity, and international morality."[225] It is, therefore, safe to say that as long as there is poverty, war, disunity, and oppression in the world, Bob Marley's message will always resonate.

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216. *Famous Male Hollywood Stars*, CELEBRITY COLLECTABLES, http://www.celebritycollectables.com/cgi-bin/ezshopper/loadpage.cgi?file=male_3_stars.htm (last visited Oct. 16, 2011).

217. *Anna Nicole Smith Dies Without a Will: What Happens to Anna Nicole's Baby Daughter?*, ESTATE STREET PARTNERS, LLC (2007–2011), http://www.ultratrust.com/anna-nicole-smith-dies-without-will.html.

218. Martin M. Shenkman, *James Brown Estate: Lessons for All*, LAWEASY.COM (2004), http://www.laweasy.com/t/20070702143536/james-brown-estate--lessons-for-all (last visited Oct. 9, 2011).

219. *See* Morelli, *supra* note 3.

220. *See* Cohen, *supra* note 1.

221. *See Bob Marley the Devoted Rastafarian!*, RASTA-MAN-VIBRATION.COM (2005), http://www.rasta-man-vibration.com/rastafarian.html.

222. BOB MARLEY, *Get Up, Stand Up*, *on* LEGEND (Island Records 2002).

223. BOB MARLEY, *Exodus*, *on* LEGEND (Island Records 2002).

224. *See* Nelson, *supra* note 156 (concluding that, "the central message of his 1977 song *Exodus* was a vision of glorious end to the suffering of all 'Jah's' people").

225. *See Bingham II*, 66 F.3d 553, 556 (2d. Cir 1995).