

How Lawyers Can Assist Their Clients with Respect to Organ Donation*

A major cause of the shortage of organs is that regardless of a decedent's wishes, virtually no surgeon will take organs or tissue without permission from the family. Regrettably, family members often withhold authorization because they are unaware the decedent wished to donate organs and tissues, thereby frustrating organ donors' wishes.

In fact, a national study conducted by Gallup indicates that when family members know of their loved one's wishes, 94% will honor the request. But, when family members do not know, only 54% will donate the relative's organs. Indeed, of all the causes for organs being unavailable from people who wanted to be donors, 37% are lost due to the family's refusal to consent. Those lost organs (from people who wanted to be organ donors!) could save many lives.

Attorneys are uniquely positioned to help by asking clients during estate planning and Will intake sessions if they want to be organ donors and if they have told their family. (Whether someone decides to be or not to be an organ donor is a personal decision that is respected; the purpose here is to ensure that people who want to make anatomical gifts do not have their wishes thwarted.) Sharing the decision to be an organ donor also has the effect of sparing surviving family members from the difficulty of having to make a burdensome, personal decision at an emotional time.

The American Bar Association supports more client education about organ donation issues:

RESOLVED, That the American Bar Association urges all attorneys to raise with their clients, when appropriate, the topic of organ and tissue donations and to provide donation forms to those clients who indicate an interest in making a donation.

Summary of Action of the House of Delegates, American Bar Association 1992 Mid-Year Meeting, Dallas, Texas, p. 30 (February 3-4, 1992). (Full text of the Resolutions and additional organ donor information is printed in the ABA pamphlet: "A Legacy for Life" (free on the ABA website; \$12/720 pamphlets in print).

As a lawyer, you can help by asking your clients the following questions during Will intake interviews:

1. Do you wish to be an organ and tissue donor?
Self Yes ____ No ____
Spouse Yes ____ No ____

2. If yes, have you signed an organ donor card or indicated on your driver's license your intent to be an organ and tissue donor?
Self Yes ____ No ____
Spouse Yes ____ No ____

3. Have you told your family about your intention to be an organ and tissue donor?
Self Yes ____ No ____
Spouse Yes ____ No ____

* ©2002 Peter C. Wolk. Mr. Wolk graduated cum laude from American University Law School, holds a Masters Degree from Harvard University, and is a Phi Beta Kappa graduate of Trinity College (CT). He is working on a lawyer education outreach project for the U.S. Division of Transplantation. This article is adapted from articles published in the D.C. Bar, Texas Bar, and Elder Law newsletters.