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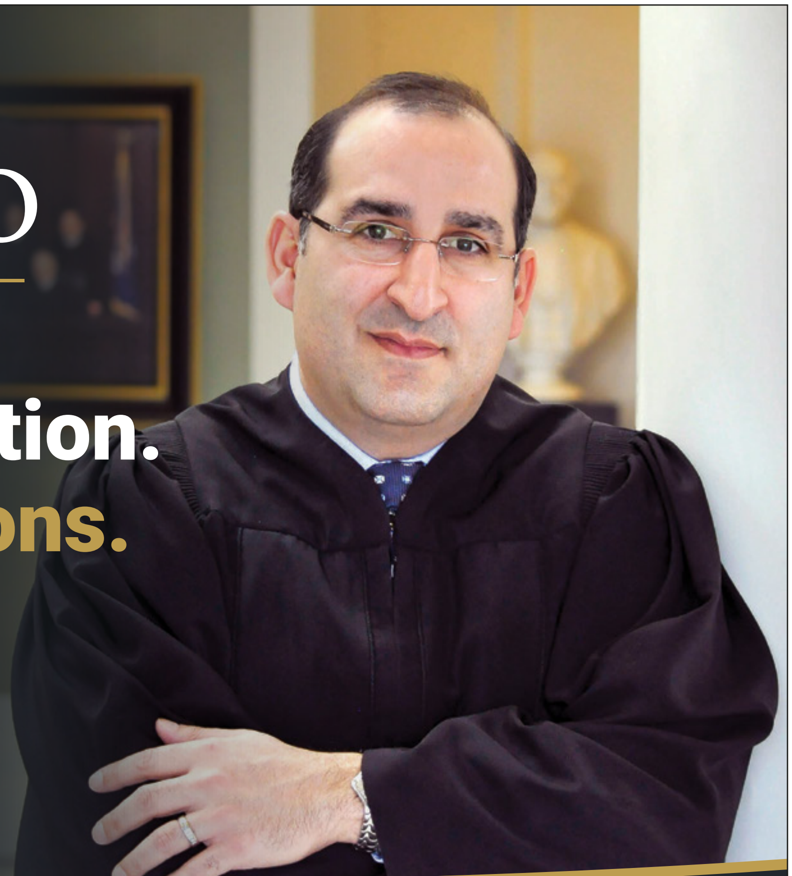

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Lawyers and Stress Management

By Dana Freers, President of the Macomb Bar Association

Did you know that being a lawyer is considered one of the most stressful jobs?

I began my year talking about mental health and the importance of taking care of ourselves, so it seems appropriate to delve into the area of stress management and mental health once more. In case you couldn't tell, this is an area that I think is so important for us and one I'm glad has been gaining more attention.

Did you know that according to the U.S. Bureau of Labor Statistics, being a lawyer is considered one of the most stressful jobs? Over half of lawyers report feeling chronic stress and experiencing burnout at some point in their careers. I think we've all probably experienced some type of burnout at some point and there's no question that we all have to deal with stress. But that's the key – how to best deal with it.

Whitney Lemelin chairs our Professional Health and Wellness committee and he had a guest speaker come in and run through easy meditation and breathing exercises. Something as simple as taking a minute to stop and breathe really can be beneficial:

- Let your breath flow as deep down into your belly as is comfortable, without forcing it.
- Try breathing in through your nose and out through your mouth.
- Breathe in gently and regularly. Some people find it helpful to count steadily from 1 to 5. You may not be able to reach 5 at first.
- Then let it flow out gently, counting from 1 to 5 again, if you find this helpful.
- Keep doing this for at least 5 minutes.

Simple right? You really will feel better! Another tip that's difficult for most of us to do is to just take a break. What I mean by that is set some boundaries for yourself on answering calls and emails. I know this is hard and I'm guilty of this too. When that phone dings, we feel compelled to respond right away. But as we all know, it's usually not necessary. Allow yourself to only engage in work during work hours.

Finally, aside from the basics like eating healthy, exercising and getting adequate sleep (all super easy, right? It's all work in progress!), find someone you can just talk to. Oftentimes when I'm having a particularly stressful day, I'll call one of my girlfriends and see if they can go to lunch. It's a nice way to take my mind off the stress and do something else.

I suppose my underlying theme here is it's important to just take a break, whatever that looks like for you. Whether that's breathing, turning your phone off, going out with friends or just having a conversation, my hope is that this serves as a reminder to take care of yourselves.

Legal Implications of Moving Across the State of Michigan

By Timothy P. Flynn and
Frank L. Briguglio, Clarkston Legal

You got a "once in a lifetime" job offer and now you want to move yourself and your children from Detroit to Traverse City. You share a child in common with your ex and you have shared parenting time pursuant to Family Court Order. What are the legal implications of such a move in family court?

Prior to 2001 if a person who maintained physical custody of minor children wished to move to the other side of the State of Michigan all that was required was that person notify the Friend of the Court of that move by changing their address. This is no longer the case.

That was changed when the state of Michigan adopted the factors laid out in *D'Onofrio v D'Onofrio,* 365 A2d 27, 30, *aff'd*, 265 A2d 716 (NJ Super 1976). The Michigan Court of Appeals has laid out the 4-step process that a fact finder must undertake relative a determination of whether a proposed change of domicile is in a child's best interests.[1] Making such a move now requires court action in the absence of an agreement.

The *D'Onofrio* test was codified by the Michigan State Legislature in 2001, a change of domicile for a minor child requires approval of the family court pursuant to the express provision of MCR 3.211 (C)(1). The finder of fact, in this case, the court considers the five factors set forth in MCL 722.31(4) when resolving a domicile motion:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

(e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

The statute requires the fact finder to assess the above factors keeping the children as the primary focus. When the parties have joint legal standing the court must also consider, when deciding this domicile motion, whether the proposed change of domicile will alter the established custodial environment.[1] When a change of domicile changes the established custodial environment the petitioner has the burden of demonstrating to the finder of fact that the proposed change is in the children's best interests by a preponderance of the evidence.[3]

One of the seminal cases on this issue is *Rains v Rains,* 301 Mich App 313, 325, 836 NW2d 709 (2013)., In *Rains,* the Court of Appeals held:

> A trial court must determine whether the moving party has established by a preponderance of the evidence that the factors enumerated in MCL 722.31(4), the so-called D'Onofrio factors, support a motion for a change of domicile. Second, if the factors support a change in domicile, then the trial court must then determine whether an established custodial environment exists. Third, if an established custodial environment exists, the trial court must then determine whether the change of domicile would modify or alter that established custodial environment. Finally, if, and only if, the trial court finds that a change of domicile would modify or alter the child's established custodial environment must the trial court determine whether the change in domicile would be in the child's best interests by considering whether the best-interest factors in MCL 722.23 have been established by clear and convincing evidence.[4]

The best interests of the minor child are set forth in eleven statutory factors contained in MCL 722.23. From a change of domicile perspective, the Petitioner needs to make a showing based on the following offer of proof relative to those statutory factors.

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

Knowing how to properly navigate these factors is crucial to being successful in a change of domicile case.

[1] *See Walters v Walters, 112 Mich App 1, 12-13, 314 NW2d 778 (1981), adopting the 4-pronged "D'Onofrio test" set forth in D'Onofrio v D'Onofrio, 365 A2d 27, 30, aff'd, 265 A2d 716 (NJ Super 1976); when these factors were codified by statute in Michigan, the legislature added the "domestic violence" factor which is relevant in the case at bar.*

[2] *Sulaica v Rometty, 308 Mich App 568, 582, 886 NW2d 838 (2014), citing Brown v Loveman, 260 Mich 576, 598, n7; 680 NW2d 432 (2004); Gagnon v Glowacki, 295 Mich App 557, 570; 815 NW2d 141 (2012); and Rittershaus v Rittershaus, 273 Mich App 462, 470; 730 NW2d 262 (2007).*

[3] *Id., also see MCL 722.27(1).*

[4] *Rains v Rains, 301 Mich App 313, 325; 836 NW2d 709 (2013).*

"Must, Not Shall"

By Sherriee L. Detzler, SBM Commissioner—District D

In 2020, the Michigan Supreme Court adopted 12 Principles of Professionalism to serve as guidance to help attorneys and judges remain mindful of the foundational principles of personal conduct that have always been a bedrock of the legal profession. The 12 principles are at the heart of ongoing efforts to educate Michigan attorneys and judges about the importance of professionalism and civility.

As stated in Administrative Order No. 2020-23 – Professionalism Principles for Lawyers and Judges: In fulfilling our professional responsibilities, we as attorneys, officers of the court, and custodians of our legal system, must remain ever-mindful of our obligations of civility in pursuit of justice, the rule of law, and the fair and peaceable resolution of disputes and controversies. In this regard, we adhere to the following principles adopted by the State Bar of Michigan and authorized by the Michigan Supreme Court.

- **We show civility in our interactions** with people involved in the justice system by treating them with courtesy and respect.
- **We are cooperative with people** involved in the justice system within the bounds of our obligations to clients.
- **We do not engage in, or tolerate,** conduct that may be viewed as rude, threatening or obstructive toward people involved in the justice system.
- **We do not disparage or attack people** involved in the justice system, or employ gratuitously hostile or demeaning words in our written and oral legal communications and pleadings.
- **We do not act upon, or exhibit,** invidious bias toward people involved in the justice system and we seek reasonably to accommodate the needs of others, including lawyers, litigants, judges, jurors, court staff, and members of the public, who may require such accommodation.
- **We treat people involved in the justice system** fairly and respectfully notwithstanding their differing perspectives, viewpoints, or politics.
- **We act with honesty and integrity** in our relations with people involved in the justice system and fully honor promises and commitments.
- **We act in good faith to advance** only those positions in our legal arguments that are reasonable and just under the circumstances.
- **We accord professional courtesy,** wherever reasonably possible, to other members of our profession.
- **We act conscientiously and responsibly** in taking care of the financial interests of our clients and others involved in the justice system.
- **We recognize ours as a profession** with its own practices and traditions, many of which have taken root over the passing of many years, and seek to accord respect and regard to these practices and traditions.
- **We seek to exemplify the best of our profession** in our interactions with people who are not involved in the justice system.

Credit SBM Special Committee on Professionalism and Civility

Rethinking Beneficiary Designations:

Why the Trust Should Often Be the Beneficiary of Your Client's Retirement Plan

By: Patrick Simasko, Esq., Simasko Law, Mt. Clemens, Michigan
Elder Law Professor, Michigan State University College of Law

I. Introduction

Retirement accounts often represent a substantial portion of a client's estate, yet the beneficiary designation forms that control their distribution are too often treated as an afterthought. Estate planning attorneys are familiar with the routine: the client names their spouse as the primary beneficiary, and their children as contingent beneficiaries — focusing solely on the fact that they want their accounts to avoid probate.

But what happens when one of those children dies prematurely? In far too many cases, the grandchildren are unintentionally excluded, even when the intent was to provide for them. The boilerplate forms provided by financial institutions generally do not handle multigenerational planning well, and rarely accommodate the special considerations that arise in second marriages, special needs situations, or minor beneficiaries or those with serious drug or alcohol problems.

This article explores the growing need to name a trust — not individual children — as the contingent beneficiary of IRAs and 401(k)s. It will examine the pros and cons of this strategy, the tax and administrative implications, and practical guidance for ensuring a trust qualifies as a "designated beneficiary" under IRC § 401(a)(9). With the right drafting and foresight, trusts can provide both flexibility and control while avoiding the unintentional disinheritance of grandchildren.

II. The Hidden Problem With Naming Children as Primary Beneficiaries

It is common practice to name a spouse as the primary beneficiary of a retirement account and the children as contingent beneficiaries. The rationale is simple: defer taxes for the longest period and ensure the next generation receives an equal share. However, this planning often assumes that all children will survive the account holder—a dangerous assumption.

If a child dies before the account owner, many beneficiary forms default to a **per capita** distribution. This means that the deceased child's share is not passed down to their children (i.e., the account owner's grandchildren) but instead is divided equally among the surviving children. This runs contrary to most clients' wishes, who expect that a predeceased child's share would go to down their children **per stirpes**.

Here's a clear illustration:

Dad just passed away and now Mom just inherited his $1 Million Dollar IRA. She names her two children as equal primary beneficiaries assuming that if one of her children dies, their share will go down to their children. Tragically, her eldest son passes away before she does. When Mom eventually dies, her IRA is distributed entirely to her surviving child. Her two grandchildren—the children of her deceased son—receive nothing.

What happened? The financial institution's beneficiary form defaulted to a per capita distribution, and it either didn't provide space to name grandchildren as contingent beneficiaries or failed to include a proper per stirpes election. Mom, like many clients, assumed the form covered these scenarios and didn't scrutinize the instructions. She unintentionally disinherited her grandchildren.

Now the surviving child is left to decide whether to gift a portion to their nieces or nephews. If they do, complex tax issues arise: It would be the daughter that pays the income taxes on the IRA distribution, at the highest tax rate possible.

III. The Role of Trusts in Retirement Plan Beneficiary Designations

Naming a trust as the beneficiary (after the spouse) of a retirement account can address many of the problems described above. When a properly drafted trust is named, the client's wishes are preserved, even if the institution's form is limited.

To qualify as a "designated beneficiary" under IRC § 401(a)(9), the trust must be a valid see-through trust. This includes:

- The trust must be valid under state law.
- The trust must be irrevocable (or become irrevocable upon death).

- The trust beneficiaries must be identifiable from the trust document.
- A copy of the trust (or list of beneficiaries) must be provided to the plan administrator by October 31 of the year after the participant's death.

There are two types of see-through trusts:

- **Conduit Trusts**, where RMDs are passed directly to the individual beneficiary each year, preserving stretch options under SECURE Act exceptions.
- **Accumulation Trusts**, which allow RMDs to be retained in the trust, offering more protection to those beneficiaries that might have special needs or drug problems who cannot have any access to fund. The added protection comes with at a cost of accelerating tax liability.

Trusts can be customized to:

- Provide lifetime benefits to a child, with remainder to grandchildren.
- Protect assets from divorce, creditors, or lawsuits.
- Include special needs provisions without affecting public benefits.
- Manage distributions to minors or financially irresponsible heirs.

IV. Obstacles When Financial Institutions Deal With Trust Beneficiaries

Despite the clear advantages of naming a trust, practical complications remain. Some custodians resist paying benefits to a trust, citing that "a trust is not a person" and therefore cannot qualify under the beneficiary rules. This is often a misunderstanding of IRS regulations.

Other issues include:

- Delays in processing RMDs or lump sum payouts
- Institutional refusal to recognize the trust as a see-through entity without a court order or legal opinion
- Staff inexperience leading to improper implementation

To mitigate these risks, attorneys should:

- Coordinate with the institution before death
- Submit trust documentation well in advance
- Draft the trust to clearly satisfy the see-through rules
- Provide model language on the beneficiary designation form that matches the trust name and date precisely

V. Practical Drafting and Planning Tips

Some practical guidance for implementing a trust-based beneficiary designation:

- **Always name the spouse first when appropriate**. A spousal rollover offers the most favorable tax treatment. Second marriages may alter this recommendation.
- **Use the full legal name of the trust**, including the date, as the contingent beneficiary: "The Simasko Family Trust dated January 1, 2020."
- **Avoid generic language** like "my living trust" or "the trust I created."
- **Indicate per stirpes or per capita treatment** inside the trust, not on the designation form.
- **If using a conduit trust**, ensure the trust mandates distribution to the beneficiary immediately after receipt from the plan.
- **If using an accumulation trust**, plan for higher income tax exposure and structure the trust to qualify under post-SECURE Act rules or start converting to after tax accounts which provide much more flexibility.
- **Review and update** both the trust and beneficiary designations regularly, especially after births, deaths, or divorces.

VI. Conclusion: Risk vs Control

While naming individual children as retirement account beneficiaries is simple and tax-efficient, it carries risks that most clients do not fully appreciate. The premature death of a child, changing family dynamics, or a client's desire for long-term asset protection all point toward the benefits of trust planning.

Trusts allow attorneys to create a tailored, multi-generational plan that aligns with a client's real intent. They protect assets, ensure consistent treatment, and provide flexibility that forms alone cannot. However, success depends on precise drafting, careful coordination with custodians, and ongoing review.

In the end, a properly structured trust designation is not only a legal tool but a vehicle of control, continuity, and peace of mind.

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