

BAR BRIEFS

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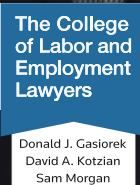


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Meet the New Executive Director Madeleine Miller

By Dana Freers, President of the Macomb Bar Association

*Meet the New Executive Director of the Macomb County Bar Association: **Madeleine Miller!***

Please tell us a little about yourself ?

I live in Saint Clair Shores with my husband and our 10 ½ month old son, William. We have a cottage up north where we love to spend summer weekends.

I'm the youngest of four girls, whose names all start with M. My sisters and I are best friends. I love getting creative, organizing, and putting together fun projects.

What made you want to work with the MCBA?

I think it's an awesome organization that builds a sense of community with all legal professionals and members. It's so important in a field that is constantly changing to have support and services to help be the best you can be in your career.

What are you most excited about in your new position?

I'm excited to meet everyone and to make the association accessible and appealing to all current and future members!

What are you most nervous about?

Initiation. I know there will be a lot to learn and get in order but I'm confident that once I get a routine going, the rest will fall into place.

What do you like to do in your free time?

I like to spend time with my family, go on walks, and do crafts.

I especially love to find skill building classes to do with my sisters. We've done stained glass art, pottery, and floral arranging, to name a few.

Anything else you'd like our membership to know?

I'm super excited to get started, meet you all, and put my spin on this amazing organization! I'm always open for ideas and suggestions and ready to assist in making everyone proud to be a part of the Macomb County Bar Association!



Madeleine Miller, MCBA Executive Director

Reach out to Executive Director Madeleine Miller at (586) 468-2940.



Prosecutor Lucido, Assistant Prosecutors Sworn In, Vow Commitment to Justice in Macomb County

By Dawn Fraylick, Communications Director,
Macomb County Prosecutor's Office

Macomb County Prosecutor Peter J. Lucido and 91 assistant prosecuting attorneys took their oaths of office Thursday morning, marking the start of a new four-year term.

Mount Clemens, MI - Macomb County Prosecutor Peter J. Lucido and 91 assistant prosecuting attorneys took their oaths of office Thursday morning, marking the start of a new four-year term. The ceremony, held at the Macomb County Administration Building, was presided over by Macomb County Circuit Court Chief Judge James Biernat, Jr., Circuit Court Judge Joseph Toia, and Clinton Township District Court Judge Sebastian Lucido.

Prosecutor Lucido, re-elected in November 2024, used the occasion to reaffirm his office's mission to deliver justice with integrity and fairness. Addressing the room, Lucido emphasized the importance of teamwork, accountability, and public service, calling his staff the "backbone" of the prosecutor's office.

"Today is more than just the beginning of another term," Lucido said. "It is a recommitment to the ideals that make our community strong and our justice system fair." He reflected on his own humble beginnings in Macomb County, growing up as one of eight children in St. Clair Shores and learning the values

of hard work and resilience while working on his father's produce truck.

Lucido praised the achievements of his team during his previous term, citing improved warrant processing efficiency, advancements in digital case management, record-breaking grant acquisitions, fair enforcement and collection of child support, and reforms to hiring practices. He highlighted his office's focus on accountability, victim services, and

modernized operations as key pillars of success.

The swearing-in ceremony was a powerful moment, particularly for the assistant prosecuting attorneys. As each took the oath of office, Lucido encouraged them to see their work as more than a job, but as a solemn commitment to serve the community. "Remember the faces behind

the files," he said. "The victims seeking justice, the families yearning for closure, and the community relying on your expertise and integrity."

Assistant prosecutors, investigators, and clerical staff alike were acknowledged for their contributions. Lucido called on the entire team to embrace the challenges ahead with determination and a shared vision of progress.



Macomb County Prosecutor Peter J. Lucido swearing in, January 2, 2025

As the ceremony concluded, Lucido reaffirmed the office's commitment to being a pillar of fairness and hope in Macomb County. "Let us show up every day, doing the hard work, and believing in the good we can accomplish for a safer, fairer, and brighter Macomb."

The Macomb County Prosecutor's Office processes thousands of cases annually, striving to protect residents, enforce accountability, and ensure fairness.

Lucido concluded the ceremony with a poignant reminder of the fleeting nature of their time in public service. Quoting Walt Whitman, he said, "That the powerful play goes on, and you may contribute a verse." He urged his team to embrace their role with purpose and resolve, asking the assistant prosecutors to stand with him, publicly, before God



and the people of Macomb County. "As the powerful play of life goes on," Lucido declared, "let us contribute a verse."

Then all of the assistant prosecutors in one voice contributed their verse as the oath was administered by Judge Toia, "I do solemnly swear, that I will support the Constitution of the United States, that I will support the Constitution of this state, and that I will faithfully discharge the duties of the position of assistant prosecuting attorney, for the County of Macomb, State of Michigan, according to the best of my ability, so help me God."

It was Lucido's call to action for the talented team of the Macomb County Prosecutor's office to leave a lasting legacy of justice, integrity, and service to the community they are sworn to protect.

The full text of Lucido's speech may be found at: <https://www.macombgov.org/departments/prosecutors-office/macomb-county-prosecutor-pet-er-j-lucido-swearing-speech-jan-2-2025>.

Contact Dawn Fraylick at the Macomb County Prosecutor's Office: Dawn.Fraylick@macombgov.org





Honorable Anthony R. Servitto, 16th Judicial Circuit Court Judge

By the Honorable Julie Gatti

It has long been a Macomb County Bar Association tradition that someone interview each new Macomb County judge elected or appointed to the bench and write a *Bar Briefs* article to introduce him or her to the membership. I asked Dana Freers if I could be that someone to welcome one of our newest judges, Hon. Anthony R. Servitto, to the bench in this way. I asked because the new judge was previously the Macomb County assistant prosecuting attorney assigned to what I affectionately call Courtroom G for most of the time I've presided here.

During that time, Tony tried his fair share of cases. His hard work, courtroom skill and preparation were apparent to any observer. His rapport with witnesses was easy. Juries would remark afterward on Tony's relatability. What often impressed me was the ability Tony has to think on his feet. He was confident in his knowledge of the law and the facts of the case at hand. So, I am thrilled that the voters of Macomb County saw fit to elect Tony judge and I know our community will be well-served with him on the bench.

Three days into his term, I had the opportunity to ask Judge Anthony Servitto some questions. We initially tried to schedule our Friday morning interview. What I've realized is my definition of "Friday morning" and my new colleague's definition of "Friday morning" differ by

three to four hours. So, despite the fact that Judge Servitto wanted to talk to me at 6:30am, which is simply not allowed, we managed to connect for the conversation that follows.

Q: What surprised you about – or share something significant about – your judicial election campaign.

A: I was struck by all of the relationships and the contacts I made in our community. A network I didn't even really fully realize I had expanded exponentially.

I would also say that during the campaign I was forced out of my comfort zone. I had to become comfortable speaking in rooms full of strangers.

Q: What inspired you to pursue a career in the judiciary and what impact did your family have on your career?

A: My mom (Michigan Court of Appeals Judge Deborah A. Servitto, Ret.) was the first Servitto to run for elected office. In 1986, she became the first female judge of the 37th District Court in Warren, having run against a man with a well-known last name. Absolutely incredible accomplishment. The stories she told me shaped

my approach to a career in the law. The compassion she showed on the bench is still talked about today.

What better inspiration can you have? Then there's my father (Judge Edward A. Servitto, Ret.), one of the most



16th Judicial Circuit Court Judge Anthony R. Servitto

admired circuit court judges, revered for his legal mind and humility. My brother (Hon. Michael E. Servitto) may have something to do with it, too (he said jokingly!).

Q: How did your interactions with your mother/father/brother influence your approach to your judicial duties?

A: They shaped me as a lawyer and as a person. My mom loved to give back to the community. My brother and I took that to heart. Combined with my Dad's humility, living by his example, and heeding his words, "You ain't better than nobody and ain't nobody better than you." That's how I'll approach the bench.

Q: How did your experiences as a practitioner and a prosecutor prepare you for your role as a judge?

A: As a practitioner and a prosecutor, making high pressure courtroom decisions, thinking on my feet, and being in the

courtroom as often as I have allowed me to see the impact on all parties in the justice system. In trying to understand social and economic factors that shape people and their actions, I will do my best to see all sides of any matters that come before me.

Q: What excites you about serving in the Civil/Criminal Division? What do you anticipate will be the most challenging aspect?

A: Both areas of practice excite me but I am more excited and challenged by the civil docket – to dive into these cases I wasn't privy to being in criminal court for so long. I've often watched civil cases handled while I was in court, I've spoken with family and attorneys about the civil realm.

It will be humbling at first, but I look forward to gaining experience and learning in judicial conferences, from my research, and from seasoned lawyers.

Q: How has the justice system evolved since you started your career, and what changes do you think are necessary for its improvement?

A: Technology. I think one of the biggest changes has been reliance on video and Zoom hearings. More specifically, I think there is a need for some changes to the court-reporting process. We need to be enhancing ways to solidify the record when it comes to reliance on videoed proceedings. A proper record is paramount to ensuring accuracy and justice.

Q: As you prepare to take over Judge Ed's docket, what will you be doing the same and what do you plan to change?

A: Ed still liked his phone very much! I will be shifting to the use of Zoom technology for conferences. Otherwise, I really want to get my feet wet first. As I gain experience, if there are changes that I think could improve scheduling or management of the docket, I am open to making those changes.

Q: Who are the staff members assigned to your courtroom?

A: I am fortunate to have my judicial assistant, Michelle Zafferani, and the assigned judicial court clerk, Kelly Marley. For now, courtroom deputies will be rotating through until a permanent assignment is made.

Q: What is something interesting you do off the bench?

A: I'm a huge sports card, sports memorabilia, and comic book collector. I've been collecting and buying since middle school. I'm almost as passionate about it as I am about the law!

Q: Is there anything else you would like lawyers to know?

A: I want the legal community to know that I am excited to serve them. I will have an open mind. I promise to be kind and courteous. I just ask that they offer me the same.

Q: Please introduce your family.

A: I am married to my beautiful wife of four years, Megan Servitto, and am lucky enough to have a wonderful stepdaughter, Autumn Koval. Megan is a hard-working manager at a local establishment and Autumn is a soon-to-be professional women's hockey player.

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Ensuring Your Cryptocurrency Avoids Probate: The Role of Beneficiary Designations and Trust Agreements

By Patrick M. Simasko, Partner at Simasko Law



As cryptocurrency becomes an increasingly common part of personal wealth, it also introduces unique challenges to estate planning. Traditional estate planning tools, like wills and trusts, must adapt to the decentralized and secure nature of digital assets. Without proper planning, cryptocurrency can be locked in probate for months, which goes against the many of the reasons that people purchased the cryptocurrencies in the first place, privacy and lack of government involvement. The currencies can even be lost entirely if access credentials are mishandled. In this article, we'll explore how to ensure your cryptocurrency avoids probate through the use of beneficiary designations and trust agreements.

Why Probate Is a Concern for Cryptocurrency

Probate is the legal process of validating a deceased person's will and distributing their assets, an often slow-moving and potentially costly process. However, cryptocurrency's unique characteristics amplify the risks of delay and loss:

1. **Decentralization:** Cryptocurrencies like Bitcoin (BTC) and Ethereum (ETH) operate on blockchain technology, with no centralized institution to intervene if access credentials are lost.
2. **Private Keys:** Ownership of cryptocurrency is tied to private keys. Without these, your beneficiaries cannot access the assets.
3. **Volatility:** Cryptocurrency values can fluctuate rapidly, meaning delays in probate could result in significant financial loss.

To avoid these risks, proactive estate planning is essential.

Beneficiary Designations for Cryptocurrency

One of the simplest ways to bypass probate is through beneficiary designations. Let's examine how these work with different platforms and wallets.

Platforms with Beneficiary Options

If the cryptocurrency exchange allows their users to designate beneficiaries. This process is similar to naming a beneficiary for a bank account or retirement plan. Here's how to set it up:

1. **Log into Your Account:** Navigate to the account settings or security tab.

2. **Locate Beneficiary Designations:** Some platforms may call this a "Transfer on Death" (TOD) form.
3. **Complete the Designation:** Provide the beneficiary's full legal name, date of birth, and contact information.
4. **Verify and Store Records:** Keep a record of the designation, as your executor may need it.

Using Trusts to Hold Cryptocurrency

However, some cryptocurrency exchanges, such as Coinbase, do not support or offer naming a beneficiary for an individual account which means, if the one dies, the account would have to be probated just like any other asset.

If this is the case, the user should consider opening the account in the name of a Trust Agreement. Like any other asset, a Trust can be an effective tool for estate planning with cryptocurrency. By placing your digital assets into a trust, you can ensure they are managed and transferred according to your wishes without going through probate.

Revocable Living Trusts

A revocable living trust allows you to retain control of your cryptocurrency during your lifetime while specifying how it should be distributed upon your death. To fund a trust with cryptocurrency:

1. **Create the Trust:** Work with an estate planning attorney to draft a trust document that explicitly includes provisions for digital assets.
2. **Transfer Ownership:** Move your cryptocurrency to a wallet owned by the trust. This may involve creating a new wallet under the trust's name or transferring funds to an existing one.
3. **Designate a Trustee:** Choose someone knowledgeable about cryptocurrency to serve as trustee. Provide them with access credentials and clear instructions for managing the assets.

Trustee Responsibilities

The trustee must understand how to access and manage the cryptocurrency. This includes:

- Safeguarding private keys and recovery phrases.
- Navigating the specific wallets or exchanges holding the assets.
- Adhering to the trust's terms for distribution

Wallets and Decentralized Solutions

Unlike centralized exchanges, private wallets such as Ledger, Trezor, and MetaMask typically do not offer built-in beneficiary designation features. To address this, consider the following steps:

1. **Securely Store Private Keys:** Use a hardware wallet or encrypted file to store your private keys.
2. **Document Access Instructions:** In your estate plan, include detailed instructions on how to access the wallet. This might involve sharing passwords, recovery phrases, or locations of physical devices.
3. **Consider a Custodial Solution:** Some custodial services specialize in managing digital assets and may allow for simplified beneficiary transfers.

Workarounds When Beneficiary Options Are Unavailable

If your preferred platform or wallet does not offer beneficiary designations, integrate cryptocurrency into your broader estate plan. For example, you can:

- Include instructions for accessing your cryptocurrency in a will.
- Use a trust agreement to ensure seamless transfer.

Understanding Digital Wallets

So now we need to answer the question of “What the hell is a Digital Wallet”? Digital wallets are essential tools for managing cryptocurrency. They store the private keys required to access, send, and receive digital assets. Here’s a breakdown of the main types of wallets and how they function:

Types of Digital Wallets

1. **Hot Wallets:**
 - Connected to the internet and easily accessible.
 - Examples: MetaMask, Trust Wallet, Coinbase Wallet.
 - Ideal for frequent transactions but more vulnerable to hacking.
2. **Cold Wallets:**
 - Offline storage solutions, offering maximum security.
 - Examples: Ledger Nano X, Trezor Model T.
 - Best for long-term storage of significant assets.
3. **Paper Wallets:**
 - Physical printouts of private and public keys.
 - Highly secure if stored properly but easy to misplace or damage.
4. **Custodial Wallets:**
 - Managed by a third party, such as an exchange.
 - Examples: Binance, Kraken, Gemini.
 - Convenient but less control over private keys.

How Wallets Are Used to Manage Cryptocurrency

Digital wallets function as the gateway to your cryptocurrency holdings. Here’s how they work:

1. **Storage:**
 - Wallets store the private keys that prove ownership of cryptocurrency. Without these keys, access to funds is impossible.

2. Transactions:

- Users can send and receive cryptocurrency by providing wallet addresses (unique identifiers for each wallet).
- Transactions are authenticated using private keys.

3. Security:

- Wallets often include security features such as PIN codes, biometric authentication, and two-factor authentication (2FA).
- Cold wallets provide an extra layer of protection by keeping keys offline.

4. Backup and Recovery:

- Most wallets offer recovery phrases—a series of words that can restore access if the wallet is lost or damaged.

For estate planning purposes, choosing the right type of wallet and ensuring secure storage of keys and recovery phrases is crucial. Clearly documenting wallet types and access instructions in your estate plan can prevent assets from becoming inaccessible.

I would suggest that these wallets should be treated like other items of valuable personal property such as a coin collection or art collections with detailed instructions on how to access, manage and distribute after you pass away.

Practical Tips for Estate Plans Involving Cryptocurrency

1. **Secure Storage of Keys and Credentials:** Use a hardware wallet or encrypted digital storage for private keys. Ensure your executor or trustee knows how to access these safely.
2. **Maintain an Updated Inventory:** Document your cryptocurrency holdings, including wallet addresses, types of currency, and approximate values. Regularly update this inventory to reflect changes.
3. **Provide Instructions in Estate Documents:** While it’s essential to maintain security, your estate documents should include enough information for your executor or trustee to locate and access your cryptocurrency.
4. **Plan for Less Popular Cryptocurrencies:** If you hold altcoins or tokens not supported by mainstream platforms, document these assets clearly to ensure they are not overlooked.

Conclusion

Cryptocurrency offers exciting opportunities for wealth building but requires careful planning to integrate into your estate plan. By leveraging beneficiary designations where available, funding trusts with digital assets, and maintaining secure records, you can ensure that your cryptocurrency avoids probate and reaches your intended beneficiaries seamlessly.

For guidance tailored to your unique situation, consult with an estate planning attorney experienced in digital assets. Taking these steps now can save your loved ones significant stress and ensure your legacy is protected in the digital age.

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What Happens to a Frozen Embryo in Divorce?

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



As couples wait until later in life to get married and ultimately have children, the use of In Vitro Fertilization (IVF) is becoming more common than in years past. A question arises about what happens to these embryos after the parties decide that they no longer wish to remain married.

State and Federal law in this area is evolving. Currently, under Michigan, law embryos are considered to be personal property. While there is no definitive answer regarding how human embryos are treated in the case of a divorce, some guidance can be found in divorce matter heard out of the 16th Circuit Court in Macomb County: *Markiewicz v Markiewicz*, 2019-0326-DM.

A brief synopsis of the facts of this case is as follows: David and Sarah Markiewicz married in 2009 and had four children during the marriage. This couple, like many, faced fertility issues, and their first child was conceived through IVF technology using wife's sister's egg and David's genetic material. As is common in IVF, the parties had multiple embryos available to implant in the event the initial implantation of the embryos did not result in a viable fetus.

It is standard practice when a couple undergoes IVF treatment that the parties sign a contract as it pertains to the Cryopreservation, Storage and Disposition of these embryos. Many of these contracts address what happens

in the event of a divorce. In this particular case, the contract left the disposition of the embryos to a court of competent jurisdiction.

The parties had filed for divorce in 2019 in front of the 16th Circuit Trial Court. While all other issues in their marriage were resolved, the matter of disposition of the leftover embryos that the parties created during their

marriage proceeded to a hearing. The husband argued that he no longer wanted additional children with his genetic material. The wife argued that the embryos were marital property and should be awarded to her. There are three ways that the court could analyze this issue, which are more fully explained below:

1. The Contemporaneous Mutual Consent Approach

Under this approach, the embryos must remain in storage until the parties agree on their disposition. In the event that the parties cannot agree, the embryos shall remain in cryogenic storage forever. This approach is generally viewed as untenable. *In Re Marrie of Rooks* 429 O3d 579 (Colo, 2018), the rationale is simply that if the parties cannot agree to the embryo's disposition at the time of divorce, it is unreasonable to believe that the parties will ever be able to reach an agreement. The embryos would remain in storage in perpetuity.

While there is no definitive answer regarding how human embryos are treated in the case of a divorce, some guidance can be found in divorce matter heard out of the 16th Circuit Court in Macomb County.

2. The Contractual Approach

Under this approach, it recognizes that the parties sign a contract that specifically pertains to the disposition of those embryos. This is the approach that the majority of jurisdictions utilize if there is an agreement as to how the embryos are disposed of in the event of a divorce proceeding.

3. Balance of the Parties Competing Interests.

Ultimately, if the IVF contract does not address the disposition of embryos, the court looks at how they will balance the parties' competing interests. This approach, used *Jocelyn P v Joshua P*, 250 Md App 435, focuses on factors including (1) The reason that the parties underwent IVF treatment (2) The parties' positions as it pertains to disposition of the embryo (3) Whether the party seeking to create another child would have any reasonable likelihood of having another child if the embryos were disposed of (4) What are the implications of imposing an unwanted parenthood on the party seeking to destroy that embryo?

The trial court rejected the mutual consent approach due to the inherent impracticality of maintaining the status quo until a time would come that the parties would reach some sort of agreement after their divorce. Since the parties' IVF contract did not address disposition of the embryos, the court could not utilize the contractual approach. Instead, the Trial Court utilized a balancing approach. The trial court ruled that the embryos were marital property and initially awarded the embryos to the husband.

The wife appealed the lower court's decision on a variety of arguments. One on them being that the court violated her Michigan Constitutional rights under *Const 1963 art 1 Sec 28*, which guarantees the right to reproductive freedom. The court ultimately rejected this argument.

The court took into consideration the framework that the Trial Court undertook in its initial ruling. The Appellate Court looked to the approach that other states took when deciding how to deal with frozen embryos pursuant to a divorce action.

The matter was remanded for the court to consider the factors in the *Jocelyn* case. The Court ultimately held an additional evidentiary hearing on these limited issues after initially awarding the embryo to Mr. Markiewicz. When considering its ruling, the Court heard testimony limited to the parties themselves.

Mr. Markiewicz testified that he no longer wanted to be a father and wanted to destroy the embryo. Notably, Mr. Markiewicz testified about the impact of imposing an unwanted parenthood on him. He testified that he would be

compelled to having a parental role if he fathered a biological child against his will.

The court also heard testimony from Ms. Markiewicz that this embryo was her last chance to be a parent one more time. The trial court ultimately awarded the embryo to Mr. Markiewicz again on remand to the Trial Court after further hearing consistent with the directives of the Court of Appeals.

The trial court ultimately came to the same decision and awarded the embryo to Mr. Markiewicz after further proceeding. While the area of reproductive rights is evolving this case does give some limited guidance in the event that the parties IVF contract is silent or ambiguous as to disposition.

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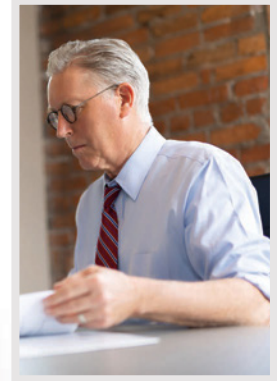
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