

**The World Has Changed -
Are You Prepared to Successfully
Resolve Modern Family Ethics Issues?**

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Importance of Cultural Competence

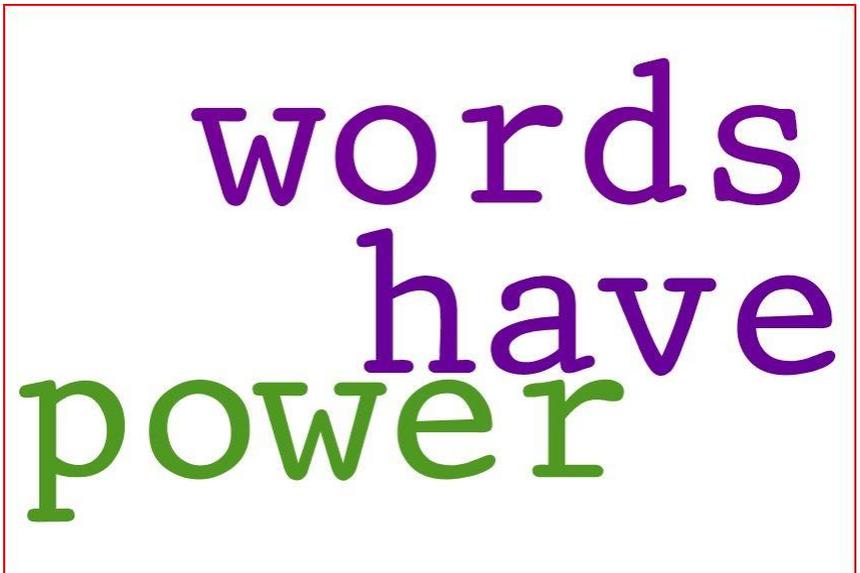
- First rule of ABA Model Rules of Professional Conduct provides that “A lawyer shall provide competent representation to a client.”
- Competent representation requires that a lawyer must maintain their legal knowledge and skill
- The Supreme Court reviews between 100-150 cases each year, and so accepted policy regarding culture is constantly changing
- To be the more complete resources that our clients need, we must, as their trusted estate planners, be more thoughtful about the issues that may face them within our ever-changing society

Culture Is A Tributary

- An important aspect to being a competent estate planner is cultural awareness and respect
- Over the course of our careers we will meet thousands of prospective clients, so it is inevitable that we will encounter cultures that vary drastically from our own
- Culture is embodied in “the way of life of a particular people”, and though this might not always be visible, we must make it our job to identify the culture of each of our clients
- *Cultural competence* means that practitioners have the skill set to effectively communicate beyond their own culture, which is something that encourages open communication and makes for more effective attorney-client relationships

Cultural Sensitivity Regarding Adoption

- As current adoption statistics place the average amount per year at about 110,000 adoptions, you are likely to encounter at *least* one family with adoptive children in your career
- It is important to be aware of and to avoid hurtful terminology like “adoptive parent” and to not make assumptions about how a family came together
- An “adopted child” is just a “child” and there is no need to use the qualifiers biological or adopted



words
have
power

Adoption Issues For Same Gender Spouses

- As of March 31, 2016, when Mississippi's ban on same-sex couples adopting was struck down, same-sex couples can jointly adopt in all 50 states
- Some states permit *state-licensed* child welfare agencies to refuse to place children with LGBTQ+ people or same-sex couples if it conflicts with religious beliefs
- There is also the issue of international adoption: some countries that allow adoptions by Americans do not allow same-sex couples to adopt
- Check local equality organizations and the Human Rights Campaign for lists of agencies and countries that welcome adoption by same gender spouses

Surrogacy Issues

- The two types of surrogacy are traditional, in which the surrogate's eggs are used, and gestational, in which all genetic material used originates from the intended parents or donors
- Surrogacy is an alternative to adoption and is an industry that grew by 1000% internationally between 2006 - 2010
- Every state has its own laws and statutes regarding surrogacy, with some states prohibiting it all together
- With a wide variety among states, couples using surrogacy should be sure to formalize their parentage



Check Your Boilerplate

Standard boilerplate may not adequately address how adopted descendants are to be treated



Safer to define in the documents than to rely on changing statutes



If a couple does not go through re-adoption, most boilerplate does not include the child as a descendant of the non-biological parent



Consider modifying old boilerplate to provide the trustee discretion to determine that a non-biological, non-adoptive child may be treated as a person's descendant

Modern Era Polygamy



- Polyamory is defined as “the state or practice of having more than one open romantic relationship at a time”
- The death of a person involved in a polyamorous relationship, even in a case where the decedent is testate, could create problems for all parties involved if “soft issues” are not considered along with legal and tax issues

Ethics Issues and Polyamory

- Especially where a second relationship is secret, attorneys are at risk of being accused of being complicit in a fraud
 - Consider expanding the engagement letter with the client to include an express direction to maintain confidentiality
 - Specify that you will not meet with anyone other than the client regarding their documents
- General techniques to reduce risk:
 - Ask the client to provide family information in writing
 - Include a clause in wills and trusts to identify the spouse and children by name and relationship to the client
 - Advise client client in writing to confirm and update beneficiary designations consistent with the plan

Consideration of Bias

- MRPC 8.4 provides that it is professional misconduct for an attorney to “engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law”



Learn the ABCs of LGBTQ+

- In place of the phrase “sexual preference”, which suggests that a person’s sexual orientation is a choice, use the phrase “sexual orientation”
- In place of the derogative word “homosexual”, use “gay” or “lesbian” or the other applicable orientation descriptor
- It isn’t necessary to identify a person’s lifestyle as a “gay lifestyle” or a “transgender lifestyle”, just as it isn’t necessary to identify a person’s lifestyle as a “straight lifestyle”
- No need to use modifiers such as “same-sex” or “gay” couple

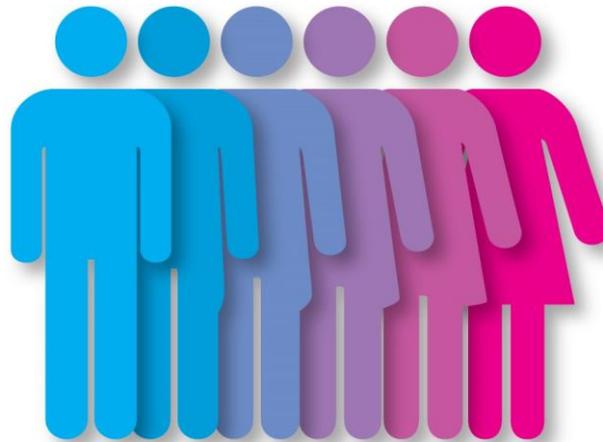


Rethinking “Health” In Trust Drafting

- Adoption, surrogacy and gender confirmation surgery are all very expensive, but may not be considered “health” under standard boilerplate
- A definition that would allow the trustee to make distributions for family planning and gender confirmation might look like this:
 - *The terms “health” and “medical care” of a beneficiary shall be construed liberally by the trustee to provide any mental or physical care that the trustee shall determine to be in the interests of the beneficiary’s well-being. Such terms specifically shall include distributions for all expenses related to a) gender confirmation surgery and related procedures; and b) family planning, such as fertility treatments, adoption and surrogacy.*

Contemplate Gender Fluidity

Specify that gender references in the document are not intended to be binding on the meaning of the document.



For example: Any reference to an individual named in this document shall continue to be a reference to that person even if such person has a reassignment of gender or a change of name. Gender references and legal names are used in this instrument for ease of identification, and a person shall not be deemed deceased or to be a different person due to a change of name or gender.

Use Modern Gender Identifiers

- Clients sometimes want to leave specific gifts to a person or class defined by gender
- If a gift relates to gender identity, then specifying the timing for determination of gender can help to avoid unnecessary ambiguities and trust controversies
- For a gift where the qualifier is simply the gender assigned at birth, the provision might read:
 - *To my oldest living child assigned a female at birth.*
- For a gift where the qualifier is that the gender assigned at birth remains unchanged, the provision might read:
 - *To my oldest living cisgender daughter.*

Be Competent About Gender and Names

- For transgender individuals who are planning to or have already begun to transition, a name change may be important so that the person's outward appearance and identification documents match
 - Documentation that does not match the person's outward appearance could place a client at risk
- Being knowledgeable about the processes involved can help keep our clients safe
 - National Center for Transgender Equality
<https://transequality.org/>

Bostock v. Clayton County, Georgia



- Supreme Court case decided June 15, 2020
- Consolidates cases where employer allegedly fired long-time employees for being homosexual or transgender
- Each employee sued, alleging sex discrimination under Title VII of the Civil Rights Act of 1964
- The opinion of the court, delivered by Justice Gorsuch, holds that Title VII applies because the sex of an individual must be taken into consideration in order to discriminate against an individual's sexual orientation or gender identity

Can I Practice Marijuana?

- MRPC 8.4 says it is professional misconduct for an attorney to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects”
- The United States Department of Justice advised in October 2009 that it doesn’t intend to prosecute those who are in compliance with state medical marijuana laws
- There appears to be room for attorneys to advise clients about state law issues related to the marijuana business, as long as they remind the client it is a federal crime and could be subject to prosecution



Quarantine = Constant Togetherness



Quarantine and mental health slides courtesy of Arden O'Connor and O'Connor Professional Group

A Burgeoning Mental Health Crisis: COVID-19

A global study by Qualtrics and SAP conducted during the COVID-19 pandemic found:

- 75% of people say they feel more socially isolated
- 67% report higher stress
- 57% are feeling greater anxiety
- 53% feel more emotionally exhausted, according to a study.
- **40% of employees *want* their managers to ask about their mental health**



Source: <https://hbr.org/2020/05/how-ceos-can-support-employee-mental-health-in-a-crisis>

An Inability to Unplug

- **‘No-Vacation Nation’** In 2019, a record 768 million vacation days in the US went unused.
- **Longer Working Days.** Since March, data shows employees in the US are working an average of 3 additional hours each day.
- **Always Available** Many believe that constant availability (including nights, weekends, vacations) improves perception of their performance and commitment.



Recognizing Signs of a Problem

- Changes in demeanor or appearance
- Changes in performance at work
- Absence from or disruptive presence at business meetings
- Overreaction to challenges; lack of coping skills
- Confusion or disorientation
- Medical problems
- Isolation & disconnection - lack of a social network
- Overspending
- Legal issues

We May Not Be Encountering Rational People

The cumulative negative impact of constant exposure to trauma impacts our Sympathetic Nervous System (SNS) negatively

- Over-activates our Flight, Fight, Freeze response
- Causes us to make irrational decisions rather than wise and sensible ones
- Don't expect rational behavior in an irrationally stressful time



Tips For Maintaining Morale

- Begin regularly scheduled meetings with team or individual check-ins
- Small gifts
- Ask for feedback from employees
- Remind employees about HR wellness offerings
- Encourage employees to stay active and connected with their community of peers
- Avoid Zoom fatigue – let employees know it's ok to not always join with video
- Monitor vacation usage to ensure that employees are taking time off

Evidence-Based Practices to Reduce Burnout

- Staying connected with family/friends/community
- Managing challenging emotions with acceptance
- Utilizing company supports and time off
- Engaging in pleasurable activities and switching your work brains off
- Avoiding unhelpful coping strategies like substance use, rumination/constant worrying, high-risk behaviors
- Pursuing positive lifestyle behaviors such as physical activity and eating healthy
- Practicing sleep hygiene
- Meditating



“Knowledge is knowing that a tomato is a fruit. Wisdom is not putting it in a fruit salad.”

-Miles Kingston





Lauren J. Wolven

Lauren Wolven is a partner in the Trusts & Estates Group of Levenfeld Pearlstein, LLC. She concentrates her practice on estate planning, wealth protection, estate and trust administration, tax and succession planning for privately held businesses, and trust and estate litigation. She also represents individuals and financial institutions in estate and trust administration and controversy matters.

Lauren is a Fellow of the American College of Trust and Estate Counsel (ACTEC), where she also is also the State Chair for Illinois. ACTEC membership is based on professional reputation, expertise in the fields of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching, and bar activities.

A frequent lecturer and author on a variety of estate planning and trust administration topics, Lauren also has been published in the ACTEC Journal and Estate Planning, among others. Her speaking engagements have included presentations for the nation's largest estate planning seminar, the Heckerling Institute on Estate Planning. Lauren is on the Advisory Committee for Heckerling and on the Advisory Board for *Estate Planning*. Lauren is also an adjunct professor for the University of Miami Law School.

Lauren is past president and served on the Board of Directors of the Chicago Estate Planning Council. She is a past Board Member of the Illinois Institute for Continuing Legal Education and served several terms on the Executive Committee of the Chicago Bar Association Trust Law Committee. Lauren has been named by Super Lawyers as one of the Top 100 Attorneys in Illinois and as one of the Top 50 Women in Illinois; was chosen by Law Bulletin Publishing Company as one of its "40 Under 40"; and has been listed by both Chambers and Best Lawyers.

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