

FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

SEPTEMBER 2021

In This Issue:

President's Message 3

9-15-22 Event Flyer - Webinar 4

10-14-21 Event Flyer - Webinar 5

11-10-21 Event Flyer - In-Person 6

Newsletter Article "It's All About the Words

On Paper: No Substitute for Pinpoint Precision

When Drafting Estate Planning Documents" 7-9

Joel S. Luber, Esquire / Edited by James Knaus

Did You Know? / 2021 Sponsors 10

upComing EventS

9-15-21 Virtual Webinar, 11:00 am ET / Ric Edelman

"Understanding Blockchain and Digital Assets" / CFP CE credits are available for this webinar

Presented in partnership with the Advanced Planning Educational Group, Inc., Producers Choice and RightCapital

[REGISTER HERE](https://us06web.zoom.us/webinar/register/9716299495590/WN__0-Muho-SrSQN3P2Zaxfow)

10-14-21 Virtual Webinar, 11:00 am ET / Robert A. Dye, Ph.D., Comerica

"Economic Outlook and Forecast Presentation"

[REGISTER HERE](https://us02web.zoom.us/webinar/register/WN_9W4BMyjKSxCddGfeHYgXrA)

11-10-21 In-Person Event, 5:30 pm ET Cocktails Outside- 6:30 pm Dinner Annual Meeting - 6:45 pm to 8:00pm Presentation and Q&A

Panelists: Margaret G. Lodise, Stacy E. Singer and Akane R. Suzuki

"Touching the Third Rail: Diversity, Culture and Ethics in Estate Planning"

[Detroit Golf Club](https://www.detroitgolfclub.org/), 17911 Hamilton Road, Detroit, MI 48203

[REGISTER HERE](https://www.metrodetroitfepc.org/events/register/21168)

FEPCMD 2021 Officers

**President**

Sally A. Vaughn, CTFA

Fifth Third Bank

 (313) 230-9075

sally.vaughn@53.com

**Vice President**

Jeffrey R. Hoenle, CFP®, CRPC®, AEP®

Platinum Wealth Management Group, Inc.

38600 Van Dyke, Suite 230

Sterling Heights, MI 48312

(586) 258-3830

jhoenle@mypwmg.com

**Secretary/Treasurer**

Bruce M. Stone

Wells Fargo Private Bank

34100 Woodward Avenue, Suite 300

Birmingham, MI 48009

(248) 723-3173

bruce.m.stone@wellsfargo.com

**Immediate Past President**

Craig A. Mathiesen, CPA, MST, CTFA

Rehmann

 (248) 579-1100

craig.mathiesen@rehmann.com

fEPCMD 2021 board of directors

Margaret P. Amsden, CPA, MST

Clayton & McKervey, PC

 (248) 208-9115

mamsden@claytonmckervey.com

Glenn Barnes, CLU

PLUS Financial Network

2155 Butterfield, Suite 102

Troy, MI 48084

(248) 603-3562

gbarnes@pfnins.com

Angie Choukourian, CTFA

Huntington Private Bank

 (248) 430-1262

angie.choukourian@huntington.com

Rebecca M. Herr, CTFA, CFP®

The Northern Trust Company

 (248) 593-9219

rh19@ntrs.com

Gregory C. Hamilton, JD

Hamilton & Associates, PLLC

 (248) 642-6150

Andrew J. McCulloch, JD

Giroux Trial Attorneys

 (248) 531-8665

 amcculloch@greatmiattorneys.com

Jim Smallegan,

CPA, CLTC, RICP®, CASL, CLU, ChFC

Northwestern Mutual

 (248) 244-6080

james.smallegan@nm.com

Kris Wolfe, CAE, Administrator

Association Expertise, LLC

(313) 530-9223

fepcmd@associationoffice.org

newsletter Editor

James Malcolm Knaus, CFP®, MSM, AEP®, CLU®, ChFC®, RICP®

Global Wealth Advisors LLC

(248) 457-4555

Jimknaus@gwallc.com

ghamiltonesq@aol.com

**PRESIDENT'S MESSAGE**

It is fitting that my last communication with the Membership as President is being done semi-remotely though this Newsletter. It has been an honor to serve as President of the Financial and Estate Planning Council of Metro Detroit, even if it has been almost two years of entirely virtual activities. I am very proud of both how the Council has adapted as an organization and how the members have responded and embraced the changes.

While the unique circumstances of the past year resulted in fewer in-person activities, we continue to be very strong financially due to the decrease in expenses associated with the pause of in-person activities and of course as a result of the excellent stewardship of the Council in prior years. One of the greatest accomplishments of this past year was being able to offer all our virtual programming to the membership through their annual dues without any additional charges.

This year was much more than just a placeholder year in the journey to return to our “regular” schedule of activities. We continued throughout the year to have strong sponsorship, an engaged membership, and thoughtful leadership through the committee chairs, board of directors, executive team and administrative staff. The FEPCMD continues to be one of the best estate planning councils under the National Association of Estate Planners & Councils umbrella. We continue to attract the best national speakers and to share information important to our professions on a timely basis. We provide meaningful opportunities for our membership to get engaged through committees not only to strengthen the Council but also each member’s professional networks. To the extent you are not doing so, I encourage you to volunteer on a committee and take an active role in its endeavors.

Personally, my time over the past 10 years as a board member and then executive committee member has been the most rewarding of my career and will no doubt continue to hold that distinction going forward. I am forever thankful for the professional and personal connections I have made during my time in a leadership position with the Council.

And, without stealing all the thunder of my successor, Jeff Hoenle, whom I know will do a great job as President again, we are poised to have a very strong 2022 Council year, with the return of excellent in-person programming, the continuation of virtual programming for emergent issues through our roundtables, and new and continuing membership initiatives, like the bring-a-guest to an event.

I look forward to my role as immediate past president next year as I rejoin the general membership. I look forward to seeing everyone in person and holding conversations where I do not have to remember to first take myself off mute. And finally, I look forward to seeing the continuing evolution of the Council and the great ideas of the future leaders selected from the exceptional membership. I wish everyone a safe and enjoyable Fall, and look forward to seeing everyone at our annual meeting in November.

Sally Vaughn, CTFA

President

**THE FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT**

**Presents**

# Wednesday, September 15, 2021

**AGENDA:**

 **11:00 am presentation – 11:50 am Q&A**

**COMPLIMENTARY WEBINAR**

[**REGISTER HERE**](https://us06web.zoom.us/webinar/register/9716299495590/WN__0-Muho-SrSQN3P2Zaxfow)

**Ric Edelman**

**“Understanding Blockchain and Digital Assets”**



**PRESENTATION OUTCOMES:**

Is Bitcoin a fad or a revolution that will transform commerce on a a planetary scale? This complimentary webinar will provide you with needed and timely information regarding this new technology so you can decide whether – and how – to engage with clients. This vital session will remove the mystery about blockchain and digital assets – helping you learn the implications for advisors, clients and firms.

**Ric Edelman, legendary financial advisor, 3 times ranked the #1 Independent Financial Advisor in the nation by Barron’s and founder of the largest independent RIA firm in the country. TALKERS magazine named Ric one of the top 100 radio talk show hosts in the country, and he has produced award-winning specials for PBS. He’s also the #1 *New York Times* bestselling author of 10 books on personal finance.**

**The FEPCMD is pleased to present this webinar in partnership with the Advanced Planning Educational Group, Inc., Producers Choice and RightCapital.**

**Thank You To Our 2021Sponsors**

[**BDO**](http://www.bdo.com/)[**Jaffe**](https://www.jaffelaw.com/)[**Berry Moorman**](http://www.berrymoorman.com/)[**Kercheval Financial Group of Wells Fargo Advisors**](https://home.wellsfargoadvisors.com/kercheval)

[**Butzel Long**](https://www.butzel.com/)[**Lifetime Financial Growth of Michigan**](https://www.lifetimefinancialgrowth.com/)

[**Clayton & McKervey, PC**](http://www.claytonmckervey.com/)[**Maddin Hauser**](http://www.maddinhauser.com/)

[**Comerica**](https://www.comerica.com/)[**Merrill Lynch**](https://www.ml.com/)[**Community Foundation for SE Michigan**](http://cfsem.org/)[**Miller Canfield**](https://www.millercanfield.com/offices-Detroit.html)

[**Couzens Lansky**](http://www.couzens.com/)[**Northern Trust**](https://www.northerntrust.com/united-states/what-we-do/wealth-management)

[**Dawda Mann**](https://dawdamann.com/)[**Northwestern Mutual**](https://www.northwesternmutual.com/office/mi/troy/20692002/)

[**Dickinson Wright, PLLC**](http://www.dickinson-wright.com/our-firm/locations/detroit-office-united-states-of-america)[**Plante Moran Wealth Management**](https://www.plantemoran.com/get-to-know/offices/southfield)

[**Dykema**](http://www.dykema.com/offices-bloomfield-hills-michigan.html)[**Plunkett Cooney**](https://www.plunkettcooney.com/)

[**Giarmarco, Mullins & Horton, PC**](http://gmhlaw.com/)[**Rehmann**](http://www.rehmann.com/)

[**Gordon Advisors**](http://www.gordoncpa.com/)[**Rochester University**](https://www.rochester.edu/)

[**Greenleaf Trust**](http://www.greenleaftrust.com/)[**Schechter Wealth**](https://www.schechterwealth.com/)

[**Hertz Schram, PC**](http://www.hertzschram.com/) [**Varnum**](http://www.varnumlaw.com/)

[**Hindman Auctioneers**](https://www.hindmanauctions.com)[**Warner**](https://www.wnj.com/)

[**Huntington Private Bank**](https://www.huntington.com/Personal/Private-Client-Group)[**Wells Fargo Private Bank**](https://www.wellsfargo.com/the-private-bank)

[**Jackson National**](https://www.jackson.com/index.xhtml)[**Williams Williams Ratner & Plunkett, P.C.**](http://www.wwrplaw.com/)

**THE FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT**

**Presents**

# Thursday, October 14, 2021

**AGENDA:**

 **11:00 am presentation – 11:50 am Q&A**

**COMPLIMENTARY WEBINAR**

[**REGISTER HERE**](https://us02web.zoom.us/webinar/register/WN_9W4BMyjKSxCddGfeHYgXrA)

**Please join us for an Economic outlook and forecast presentation from Comerica Bank Senior Vice President and Chief Economist**

 **Robert A. Dye, Ph.D,**



**PRESENTATION OUTCOMES:**

* **What does normalization in the labor market look like?**
* **The persistence of inflation and its impact on monetary policy.**
* **Productivity and potential in the pre-post-Covid economy.**

**Robert A. Dye Ph.D.** is Senior Vice President and Chief Economist at Comerica Bank. He leads the Comerica Economics Department, which provides research and analysis vital to Comerica and its customers, as well as business leaders and policy makers throughout the country. Dye provides commentary and research on the U.S. economy and the economies of California, Texas, Arizona, Florida and Michigan – Comerica’s primary markets. His regular publications include the monthly U.S. Economic Update, the Comerica Economic Weekly, daily economic alerts and monthly state-level Economic Activity Indexes. He joined Comerica in July 2011.

Dye is a former director of the National Association of Business Economics and is a member of the Economic Advisory Committee of the American Bankers Association. He is past president of the Economic Club of Pittsburgh. A graduate of Marietta College, Dye earned a BS degree in Petroleum Engineering. He holds a master's degree in Natural Resources from Ball State University and a doctorate in Energy Management and Policy from University of Pennsylvania. Dye is frequently quoted in national, regional and local media. You can follow him on Twitter **@Comerica\_Econ**.

**Thank You To Our 2021Sponsors**

[**BDO**](http://www.bdo.com/)[**Jaffe**](https://www.jaffelaw.com/)[**Berry Moorman**](http://www.berrymoorman.com/)[**Kercheval Financial Group of Wells Fargo Advisors**](https://home.wellsfargoadvisors.com/kercheval)

[**Butzel Long**](https://www.butzel.com/)[**Lifetime Financial Growth of Michigan**](https://www.lifetimefinancialgrowth.com/)

[**Clayton & McKervey, PC**](http://www.claytonmckervey.com/)[**Maddin Hauser**](http://www.maddinhauser.com/)

[**Comerica Wealth Management**](https://www.comerica.com/)[**Merrill Lynch**](https://www.ml.com/)[**Community Foundation for SE Michigan**](http://cfsem.org/)[**Miller Canfield**](https://www.millercanfield.com/offices-Detroit.html)

[**Couzens Lansky**](http://www.couzens.com/)[**Northern Trust**](https://www.northerntrust.com/united-states/what-we-do/wealth-management)

[**Dawda Mann**](https://dawdamann.com/)[**Northwestern Mutual**](https://www.northwesternmutual.com/office/mi/troy/20692002/)

[**Dickinson Wright, PLLC**](http://www.dickinson-wright.com/our-firm/locations/detroit-office-united-states-of-america)[**Plante Moran Wealth Management**](https://www.plantemoran.com/get-to-know/offices/southfield)

[**Dykema**](http://www.dykema.com/offices-bloomfield-hills-michigan.html)[**Plunkett Cooney**](https://www.plunkettcooney.com/)

[**Giarmarco, Mullins & Horton, PC**](http://gmhlaw.com/)[**Rehmann**](http://www.rehmann.com/)

[**Gordon Advisors**](http://www.gordoncpa.com/)[**Rochester University**](https://www.rochester.edu/)

[**Greenleaf Trust**](http://www.greenleaftrust.com/)[**Schechter Wealth**](https://www.schechterwealth.com/)

[**Hindman Auctioneers**](https://www.hindmanauctions.com)[**Varnum**](http://www.varnumlaw.com/)

[**Huntington Private Bank**](https://www.huntington.com/Personal/Private-Client-Group)[**Warner**](https://www.wnj.com/)

[**Jackson National**](https://www.jackson.com/index.xhtml)[**Wells Fargo Private Bank**](https://www.wellsfargo.com/the-private-bank)

[**Williams Williams Ratner & Plunkett, P.C.**](http://www.wwrplaw.com/)

HOLE

**THE FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT**

**Presents**

# Wednesday, November 10, 2021

**Detroit Golf Club, 17911 Hamilton Road, Detroit, MI 48203**

**Margaret G. Lodise, Stacy E. Singer, Akane R. Suzuki**

**“Touching the Third Rail: Diversity, Culture and Ethics in Estate Planning”**

**And the Detroit Council Annual Meeting**

[**ONLINE REGISTRATION**](https://www.metrodetroitfepc.org/events/register/21168)

** ** 

 **Margaret G. Lodise Stacy E. Singer Akane R. Suzuki**

 ***Sacks, Glazier, Northern Trust Perkins Coie, LLP***

 ***Franklin & Lodise LLP***

**Please visit the FEPCMD Website For Complete Biographical Information**

1. Various religious belief systems have different approaches to estate planning issues that can affect how individuals with those belief systems look at the estate planning process.  Understanding how Christianity, Judaism and Islam view estate planning can help an estate planner to be better prepared for those discussions.
2. Cultural issues can also have a significant impact on estate planning.  As an example, many Asian cultures have distinct views on the role of children, transparency and other issues that can affect the estate planning process.
3. Religious and cultural issues implicate a variety of ethical rules, including competence, diligence, confidentiality and conflicts of interest.

**AGENDA: 5:30 p.m. Complimentary Cocktails – Entertainment Provided by Terry Altman, FEPCMD Past President 6:30 p.m. Annual Meeting and Dinner / 6:45 Presentation**

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

***Log onto our website by October 29, 2021* *RESERVATIONS RECEIVED AFTER OCTOBER 29 WILL COST $85.00 PER PERSON.***

**OR PLEASE MAIL YOUR RESERVATION AND CHECK BY 10-29-21 TO:** **COST: $70.00 PER PERSON THROUGH 10-29-21**

**FEPCMD** ● **33006 W. Seven Mile Road, #237** ● **Livonia, MI 48152**

**Phone: (313) 530-9223** ● **Fax: (248) 479-0350**

### *MEMBER NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ GUEST NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**TOTAL ENCLOSED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SPECIAL MEAL REQUESTS:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

It’s All About the Words on Paper: No Substitute for Pinpoint Precision When Drafting Estate Planning Documents

*Joel S. Luber, Esquire*

Real Life Facts. Michael died, leaving two children, Nicole and Seth. Michael’s Will was admitted for probate, naming Milius as personal representative. Milius is Seth’s mother, but not Nicole’s mother. Nicole is the older of the two children. Michael’s Will includes these two provisions:

“The references in this Will to my ‘son’ refer to my son, Seth…[middle and last name included]. The references in this Will to my ‘children’ and/or my ‘issue’ shall include my son, Seth … and all children of mine born or adopted after the execution hereof.”

“I give the residue of my estate to my issue, per stirpes.”

Question: Is Nicole entitled to one-half of her father’s residuary estate? [Answer at end of article.]

As you might expect from the title of this article, these facts resulted in a court having to divine Michael’s intention, as testator, and produce an answer for the surviving members of his family. This is all one needs to see to appreciate how critical it is to employ clear and precise language when drafting estate planning documents. Query further if the scrivener is accountable, and to whom, when his or her document becomes the topic of litigation. But that is a topic for a different article.

**Basic Rules of Construction (Without Citations).**

The cardinal rule concerning a decedent’s will is the requirement that the intention of the testator shall be given effect unless the maker of the will attempts to accomplish a purpose or to make a disposition contrary to some rule of law or public policy.

To arrive at a testator’s intention expressed in a will, a court must examine the decedent’s will in its entirety, consider and liberally interpret every provision in the will, employ the generally accepted literal and grammatical meaning of words used in the will, and assume that the maker of the will understood words stated in the will. When language in a will is clear and unambiguous, construction of a will is unnecessary and impermissible.

Ambiguity exists in an instrument, including a will, when a word, phrase, or provision in the instrument has, or is susceptible of having, at least two reasonable interpretations or meanings. Parol evidence is inadmissible to determine the intent of a testator as expressed in his or her will, unless there is a latent ambiguity when the language appears to be clear but outside evidence would show that there may be more than one interpretation.

In contrast, a patent ambiguity is one which exists on the face of an instrument. A patent ambiguity must be removed by interpretation according to legal principles, and the intention of the testator must be found in the will. [Hint to the answer of the Question posited above: Court found a patent ambiguity.]

**Basic Rule of Drafting Estate Planning Documents.**

Never let your document make you famous.

**Definitions.** For anyone who has ever picked up an agreement in a commercial transaction, you know that either in the first Section, or in an Index, there are a plethora of defined terms soaking up multiple pages. [Last one I picked up there were 12 pages of defined terms.] I include in every will and trust agreement I write an article titled “Construction Provisions,” which includes about 18 definitions, and a number of sub-definitions. It is highly recommended that anyone drafting a will or trust agreement do the same. I do this not only to eliminate (or at least minimize as best I can) questions of interpretation, but for three other reasons: (i) to write estate planning documents in English; (ii) to avoid being grouped with lawyers accused of preferring to use eight words when one will do; and (iii) to avoid falling prey to the “foolish [in]consistency [and] the hobgoblin of little minds.”

A common example where one word can take the place of eight: “pay to or apply for the benefit of.” What do these words mean? How about “distribute?” I include the word “distribute” in my construction provisions to mean just that. Pray tell what happens if a “little mind” picks up the phrase “pay to” in one provision in a will and the phrase “pay to or apply for the benefit of” in another. Did the testator really mean two different things, or did the scrivener do that unintentionally? Another example of one English word taking the place of three legal words – “give, devise and bequeath.” I use the term “leave.”

**More Examples.**

**Spouse.** With 40% divorce rates in this country for first time marriages (and higher for subsequent marriages), the failure to clearly define “spouse” in any document is a recipe for disaster (and malpractice). My documents use close to a full page to define the terms “spouse,” “wife,” “husband,” “widow,” and “widower,” and when two individuals shall be regarded as married. Of course, that is not to say that there can't be some uncomfortable conversations when representing both spouses when either or both do not see their full name spelled out in the other’s document. But what happens when a trust provides for distributions to a child and his or her spouse, and that child later divorces and remarries?

That was the exact issue in the case *Ochse v. Ochse*, decided by a Texas Appellate Court in 2020. Grantor created a trust that authorized the trustee to make distributions to a primary beneficiary, the primary beneficiary’s descendants, and the primary beneficiary’s spouse. Primary beneficiary divorced his first wife and remarried. The former wife sought a declaration that the terms “primary beneficiary’s spouse” and “son’s spouse” in the trust agreement solely referred to her because she was the spouse at the time the trust was executed. The current spouse intervened and sought a declaration that the terms “primary beneficiary’s spouse” and “son’s spouse” applied to her from the date of her marriage to present. The appellate court construed the language of the trust and concluded that it was the grantor’s unambiguous intent to identify her son’s then “spouse” as a beneficiary to benefit from the trust at the time the trust was executed and declined to redraft the trust to reach a presumed intent to benefit a potential replacement “spouse.” Really? If it was so unambiguous, then why did the question end up in court?

Of course the answer and the analysis by the court is not important. The lesson here is this was a dispute that should have never made it into court. For what it’s worth, if my definition of spouse, which follows, was included in the Ochse Trust Agreement, it would have gone the other way:

“The term ‘wife’ means a female who is married to a designated male at the date any distribution is required or authorized to be made to her pursuant to the exercise of any power, right, or discretion granted in this Will, or at any other date when it becomes material to determine her relationship to that male.”

And what also is not important here is my definition. The real lesson is: Ask the question. Did the scrivener of the Osche Trust ask his client the question about what happens if his son divorces.

**Issue.**  This one simple word, like spouse, is another disaster waiting to happen. It’s almost a trap for the unwary (and no scrivener ever wants to be accused of being unwary). Interestingly enough, in the facts of the case first described above, there was no definition of “issue” in Michael’s Will. The Court had to rely on the default definition in its probate code. My definition starts with this:

“The term ‘issue’ of a designated individual includes each child, grandchild, and more remote legitimate descendant of that individual, taken collectively. That term also means any child, grandchild, or more remote legitimate descendant of that individual, whenever the facts and context require.”

This definition then leads to further definitions of after-borns and adoptions and legitimate descendants. In today’s world, with frozen embryos, artificial insemination, intra-family adoptions, extra-family adoptions, posthumous adoptions, and adults adopting adults, I am not willing to have my clients rely on some default definition in the Pennsylvania Probate, Estate and Fiduciaries Code (“PEF Code”). But, again, I always ask the questions surrounding these possibilities, and again sometimes it is uncomfortable. Quick aside: Still holding the top spot among famous athletes with multiple children with multiple women is former NBA great and Hall of Famer Calvin Murphy – 14 children with 9 women. I wonder if he has a definition of “issue” in his Will?

**Personal Property.**  Disposing of tangible personal property seems to be the most forgotten part of the average client’s estate. Yet it has been my experience that it is the single greatest source of conflict among surviving family members. I have witnessed court battles over this one issue. Robin Williams did an excellent job of planning his estate, but the front page of the Arts section of the February 3, 2015 New York Times reported that his widow and his three children from his two prior marriages were in conflict over the issue of how his *“cherished belongings that include his clothing, collections and personal photographs”* should be distributed.

Not only is the definition of “personal property” critical, but the division of same more so. There is a general reluctance to include specific items in the Will itself, primarily due to the consequence of needing to procure appraisals after death, which generally leads to greater exposure to estate taxes. The alternative is usually a separate memorandum referred to in the will. But those create uncertainties in terms of enforcement, which is not guaranteed, or the inability to locate the memorandum after date of death and/or destruction or alteration of same by the person who finds it first. There are drafting issues even with the separate memorandum, including clear descriptions and alternative taker if the named beneficiary fails to survive. And, for sure, you never want to allow valuable pieces to fall into the residuary estate, exposing them to sale if there are insufficient other assets to pay expenses of administration and taxes, or to income tax in the hands of the residuary beneficiaries to the extent the estate had distributable net income.

**Include***.* I will end with this word, because it became a point of analysis in the case first described above, and in the Osche case, and as was used in Robin Williams’ Will in describing his personal property. When the word “include” is used in any document, without definition, and then followed by any list of objects or persons thereafter, the question of interpretation becomes whether it is intended to be inclusive or exclusive. For example, if used to define children, and a child is not named specifically but others are, is the intention of the testator to include or exclude that omitted named child? Such was the issue in the unnamed case described above. To avoid that question of interpretation, the recommendation is to define the term. My definition makes clear it is to be inclusive, which is as follows (also deriving the benefit of one word replacing eight every time the word is actually used in the document):

“The term ‘includes’ means ‘includes without limitation, and by way of illustration. The term ‘including’ shall be similarly interpreted.”

The collateral drafting lesson becomes then, if your client really is intending to exclude any person who could possibly be considered a natural object of the testator’s bounty, include that exclusion specifically in the document and name the person being excluded. [Be careful before adding reasons for the exclusion so as to avoid testamentary libel.]

**Conclusion.** Clear and precise drafting of estate documents is the lodestar for anyone who accepts an engagement to prepare documents. Be punctilious to the nth degree. Like “the knock” on the door in the recent award-winning film, *Nomadland*, that is the visceral and existential threat to the van dwellers depicted therein, no lawyer wants to receive “the call” the person on the other end of the line asks the question: “What does [fill in the blank] mean in the will you drafted?” Because you know as soon as you hang up that call, your next call is to your insurance carrier. I will avoid the overly dramatic admonition to draft like your life depends on it. But I would humbly suggest that one’s professional career may very well be at stake every time you, as scrivener, put pen to paper.

**Answer:** In the case described above, Nicole was awarded one-half of the residuary estate. The court reasoned that the definitions of “children” and/or “issue” that stated they “shall include my son, Seth …” do not clearly disinherit Nicole. The county court examined definitions of “include”, and the appellate court relied on a contract case in which it was presented with the question of whether the word “include,” on its own, was expansive or restrictive, and ruled that the generally understood meaning of the word “include” is that it is expansive. There was also a “wipe out” provision in the will that said, “to my heirs at law,” under which Nicole would have inherited if Seth and his children did not survive his father. The court reasoned if the testator was really intending to disinherit Nicole, here was his second opportunity to do so, but he did not.

*Joel S. Luber, Esquire, is chair of the Estates & Trusts Group at Reger Rizzo Darnall LLP. Joel concentrates his practice in sophisticated estate planning for high-net-worth individuals, asset protection planning, estate administration, Orphans’ Court practice, and general corporate and income tax planning.*

**FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT**

**2019 AND 2020**



**Did You Know?**

****

**Prior Event Recordings Are Available For Members Only - Please Log In, Go To "About", and Click "Links"**

**AVAILABLE RECORDINGS**

**“What to Advise Our Clients to do Now!”**

**Presented by Martin M. Shenkman, Esq. on June 1, 2021**

**“The 6 D’s of Appraisals”**

**Presented by Tim Luke, CAI, BAS, MPPA, ISA-AM on August 10, 2021**

**Thank You To Our FEPCMD 2021 Sponsors**

[**BDO**](http://www.bdo.com/)[**Jaffe**](https://www.jaffelaw.com/)[**Berry Moorman**](http://www.berrymoorman.com/)[**Kercheval Financial Group of Wells Fargo Advisors**](https://home.wellsfargoadvisors.com/kercheval)

[**Butzel Long**](https://www.butzel.com/)[**Lifetime Financial Growth of Michigan**](https://www.lifetimefinancialgrowth.com/)

[**Clayton & McKervey, PC**](http://www.claytonmckervey.com/)[**Maddin Hauser**](http://www.maddinhauser.com/)

[**Comerica**](https://www.comerica.com/)[**Merrill Lynch**](https://www.ml.com/)[**Community Foundation for SE Michigan**](http://cfsem.org/)[**Miller Canfield**](https://www.millercanfield.com/offices-Detroit.html)

[**Couzens Lansky**](http://www.couzens.com/)[**Northern Trust**](https://www.northerntrust.com/united-states/what-we-do/wealth-management)

[**Dawda Mann**](https://dawdamann.com/)[**Northwestern Mutual**](https://www.northwesternmutual.com/office/mi/troy/20692002/)

[**Dickinson Wright, PLLC**](http://www.dickinson-wright.com/our-firm/locations/detroit-office-united-states-of-america)[**Plante Moran Wealth Management**](https://www.plantemoran.com/get-to-know/offices/southfield)

[**Dykema**](http://www.dykema.com/offices-bloomfield-hills-michigan.html)[**Plunkett Cooney**](https://www.plunkettcooney.com/)

[**Giarmarco, Mullins & Horton, PC**](http://gmhlaw.com/)[**Rehmann**](http://www.rehmann.com/)

[**Gordon Advisors**](http://www.gordoncpa.com/)[**Rochester University**](https://www.rochester.edu/)

[**Greenleaf Trust**](http://www.greenleaftrust.com/)[**Schechter Wealth**](https://www.schechterwealth.com/)

[**Hertz Schram, PC**](http://www.hertzschram.com/) [**Varnum**](http://www.varnumlaw.com/)

[**Hindman Auctioneers**](https://www.hindmanauctions.com)[**Warner**](https://www.wnj.com/)

[**Huntington Private Bank**](https://www.huntington.com/Personal/Private-Client-Group)[**Wells Fargo Private Bank**](https://www.wellsfargo.com/the-private-bank)

[**Jackson National**](https://www.jackson.com/index.xhtml)[**Williams Williams Ratner & Plunkett, P.C.**](http://www.wwrplaw.com/)

**The Financial and Estate Planning Council of Metropolitan Detroit is an award winning, affiliated Council of the NAEPC**

