Don’t Get “Bit” by Issues Related to Cryptocurrency

Samantha Bley DeJean, Esq. and Juliana Yanez, Esq.

An examination of cryptocurrency and relevant discovery tools in dissolution of marriage cases.

Is a Presumption of 50/50 Parenting Time in Children’s Best Interests?

Paula E. Pitrak, Esq.

A discussion of whether the presumption of 50/50 parenting time schedules is truly in the best interests of children.

Primer on Pensions: Distribution (Part 3 of 4)

Paula E. Pitrak, Esq.

A family law practitioner examines the different ways to distribute pension values between the parties.

News and Announcements

Don’t Get “Bit” by Issues Related to Cryptocurrency

By: Samantha Bley DeJean and Juliana Yanez

Cryptocurrencies, such as Bitcoin, have become so mainstream that even your grandmother has likely heard of them given news reports about the soaring value of Bitcoin and the popularity of cryptocurrency references in television shows such as The Good Wife, The Simpsons, Jeopardy, House of Cards, Parks and Recreation, and HBO’s Silicon Valley.* As of this article there are over 1,200 types of cryptocurrency in existence. Cryptocurrency investing is particularly popular amongst tech entrepreneurs and investors. As with any new investment class comes the trickle down to how that asset will be dealt with in a divorce. This article attempts to give the family law practitioner a crash course on what cryptocurrency is and how to conduct discovery for cases involving cryptocurrency, particularly where cryptocurrency ownership is suspected but not disclosed.

Cryptocurrency is a digital asset used as an alternative to traditional fiat currency, which like dollars, can be used as a form of value exchange or held as a speculative investment. Cryptocurrency relies, as the name suggests, on cryptography to control its creation and management, rather than relying on central banking and government authorities.**

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While most people hold their traditional forms of currency at a bank (as opposed to under a mattress), the “under the mattress” type of ownership of cryptocurrency is what can make its discovery more difficult. Cryptocurrency is held in either a “hard” or “soft” wallet, also known as a “cold” versus a “hot” wallet. Cryptocurrency held with an exchange entity (such as Coinbase) is held in a soft wallet. These entities allow users to acquire, transfer or store cryptocurrency on their platform but in turn hold the “private key” that allows for the transfer of cryptocurrency. Because of this and the fact that the owner must access their holdings via the internet, many believe that there is a greater risk of loss via hacking or internal theft (hence the name “hot wallet”) causing many to only hold minimal amounts of cryptocurrency on their soft/hot wallet and maintaining the balance on a hard wallet to which only the owner has access. A hard/cold wallet is a wallet accessed via an external device, not connected to the internet, wherein the owner alone holds the private key. When the owner wants to transact the hard/cold wallet can be connected to a soft/hot wallet but only temporarily with the owner never relinquishing the private key to a third party.

When cryptocurrency is transacted, a public address is created, which allows for tracking the movement of the cryptocurrency through the Blockchain and which may lead to identifying whose bitcoin it is. Depending on the currency the initial letter/number identifier will be different. For any practitioner who has or foresees cryptocurrency being an issue with their clients, it is well advised to take a course on Blockchain technology, which is at the center of how and why cryptocurrency is tracked. Hiring experts in cryptocurrency may assist in educating you (and your judicial officer) and a forensic fraud examiner (specializing in digital and computer fraud transactions) is often needed.

Discovery can start with reviewing traditional bank accounts for wire transfers to exchange entities and banking intermediaries such as Dwolla. An ESI litigation hold letter should be issued to the opposing party and to their recent employers for all their electronic devices, including smartphones.

When drafting discovery demands, include a definition of cryptocurrency designed to include all types of cryptocurrency, not just Bitcoin and Etherum. Seek all public addresses and all writings relating to the acquisition or disposition of cryptocurrency. Entities, such as Coinbase, Xapo, Kraken, et cetera, can be subpoenaed for records.

Given the volatility of the dollar value of cryptocurrency, the easiest way to ensure each spouse receives market value is to divide it in kind, particularly since converting large amounts of cryptocurrency to US dollars is not as easy as selling stock. A growing number of businesses accept Bitcoin as payment (including Microsoft and Expedia).*** Selling cryptocurrency is not the only way to obtain value. Many charitable organizations also accept donations of bitcoins.

* https://en.bitcoin.it/wiki/Cryptocurrency
** https://en.bitcoin.it/wiki/Bitcoin_references_in_TV_Shows
*** https://99bitcoins.com/who-accepts-bitcoins-payment-companies-stores-take-bitcoins/

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Is a Presumption of 50/50 Parenting Time in the Children’s Best Interests?
By: Paula E. Pitrak

In recent years most states have abandoned the term “custody”, instead defining and distinguishing the allocation of the two primary parental responsibilities—decision-making authority (“legal custody”) and parenting time (“physical custody”). This shift reflects societal changes that emphasize the importance of both parents’ roles in the caretaking and rearing of their children. The “best interests” standard is used by almost every state to determine the allocation of parental responsibilities. This standard allows for much judicial discretion in making these case-by-case determinations, and these custody battles often cause much tumult and trauma for the children central to them.

In an effort to support both parents’ equal involvement, many states are moving towards the sharing of parental responsibilities. While shared decision-making has not caused much debate, shared parenting time has generated much discussion. Approximately thirty-five states have existing or pending legislation calling for a presumption of shared parenting time schedules. In Colorado Senate Bill 15-195 was successfully defeated, but House Bill 4113 in the Illinois General Assembly is still pending despite vocalized opposition from most family law practitioners.

In 1980, the New York Supreme Court asserted that alternating physical custody would generally “further the insecurity and resultant pain frequently experienced by the young victims of shattered families” and would be successful only as a voluntary alternative used by relatively stable, amicable parents behaving in mature civilized fashion.* It further established the principle that “joint custody is not appropriate where the parties are antagonistic toward each other and have demonstrated an inability to cooperate in matters concerning the child, even if the parties have agreed to the joint custody arrangement.**

Practitioners are keenly aware that it is a rare situation in which parents can cooperate under a 50/50 parenting time schedule, particularly if both parents have consistent, frequent parenting time. Often, parents argue during the parenting time transition, or the children feel neither parent’s house is their home because of the constant shuttle back and forth.

The presumption of an equitable, practical parenting time schedule enacted by many states is distinct from the presumption currently being proposed in Illinois, which presumes identical amounts of parenting time for both parents. The exact distribution of this equal parenting time remains unclear—indicating the parents are able to determine a specific parenting time schedule that is in their children’s best interests, whether that means one parent has the children for the majority of the school year, giving the other parent the majority of the summer vacation, or the children transition between houses every few days. Even if the parents are not amicable and maintain animosity towards each other, the harm to the child caused by an interparental conflict should always be outweighed by the benefit of continuing a parent-child relationship with both parents.***

Whether enacting the presumption of shared parenting time is truly in the best interests of children remains to be seen, and certainly will vary on a case-by-case basis. Practitioners must exercise creativity in drafting shared parenting time schedules, remembering that equal time can be accomplished without requiring numerous weekly transitions and that the focus is, and must remain, on crafting a schedule that is truly in the best interests of the children.

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While the court will still need to determine the specific value at the time of divorce, which may result in an inequitable distribution of other assets. A variation of the reserved jurisdiction method allows for a deferred distribution of the pension. In this case the court already has a determined formula to calculate each spouse’s portion of the pension at the time of its maturation. While the court will still need to determine the specific amount of each party’s award, it has already decided upon the method of calculation for when the pension matures—thereby decreases the extent to which the court maintains jurisdiction over the parties.

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Our next newsletter will focus on the essential, and often overlooked, components of Qualified Domestic Relations Orders.

**NEWS AND ANNOUNCEMENTS**

**2018 Section of Family Law Spring CLE Conference**  
By: Paula E. Pitrak, Esq.

This American Bar Association’s 2018 Section of Family Law Spring CLE Conference will be held from May 9, 2018 to May 12, 2018 in Nashville, Tennessee at the Omni Nashville Hotel, which is located at 150 3rd Ave. S., Nashville, TN 37201.

**YLD Spring Conference**  
By: Paula E. Pitrak, Esq.

This American Bar Association YLD Spring Conference will be held from May 10, 2018 to May 12, 2017 in Louisville, Kentucky—registration and hotel accommodations to come.

**2018 ABA Chicago Annual Meeting**  
By: Paula E. Pitrak, Esq.

This American Bar Association Chicago Annual Meeting will be held from August 2, 2018 to August 7, 2018 in Chicago, Illinois at the Hyatt Regency Chicago.