

# ***Those Who Mistrust***

***By Carlton A. Weiss***

The title of this paper is a little tricky. We'll just clarify at the outset that those who mistrust— miss trusts. Those who mistrust are those who make a serious mistake. What I will be discussing is the mistake of missing the point about Express Trusts and the advantages of using Express Trusts wisely.

To illustrate I will tell you about a peculiar case I worked on in 2002 with an attorney who contacted me on a recommendation from the attorney who I actually assisted in some litigation against one of that attorney's former clients. The case was interesting because it was one of those situations I had come to appreciate: someone puts all the protections in place before the problems start, instead of scrambling to try to fix a problem at a time when they should've had the protections in place already.

The new gentleman was a divorce attorney. He had a good friend client who had recently gone through a really ugly divorce. The client was about to tie the knot again but wanted to avoid being legally robbed by his soon-to-be wife just in case the marriage didn't work. The client was learning about invisible contracts with the divorce attorney, who was all over any credible information he could get his hands on. So, when I finally agreed to assist him he was like a kid in a toy store.

The objectives the attorney presented to me were pretty cut-and-dry—

- The client wanted to be able to walk away from any divorce case without losing a single dime in a divorce settlement, but without having to spoil the romance with a prenuptial agreement;
- He wanted to be able to prevent being thrown out onto the street if his wife decided to invoke the State as a surrogate husband, like what his ex-wife had done to nearly cost him his business; and
- He wanted to be in his child's life regardless of what his wife did in the event they had children at a later point in the marriage.

Basically, what he wanted was to render the State powerless as a third-party overseer in his marriage contract. I gave the attorney several options, some of which were too intense for the client, such as expatriating from the United States 14th Amendment jurisdiction and repatriating to the original American Republic as provided for in applicable positive law within the United States Code.<sup>1</sup> The client didn't want to do this because he felt he didn't know enough to understand all that would be involved.

So, I recommended another option. The attorney I had originally worked with agreed to ditch his BAR membership for one quick moment in order to settle several Express Trusts under the Common Law in his private capacity as a man. He would appoint the divorce attorney's client as sole trustee. The client would then appoint the divorce attorney as attorney in fact to transfer the client's homes, cars, investments, loose assets and business into the trusts, separating everything according to value and risk.

Everybody was ecstatic, especially the divorce attorney because he got to take full credit since I wasn't advising him so as to avoid practicing law without a license and there was a non-disclosure agreement between us that prevented either of us from naming names. The client did it and the plan came into fruition. He got married a little while later and everything was peaceful.

In mid 2004 I got an email from the divorce attorney. Apparently, the client was now getting a divorce and the whole separation was even more bitter than what was described to me about his first divorce. The difference was there were no assets at risk. When I spoke to the attorney his mood was easy like Sunday morning. He had studied the materials I gave him, the case law I had forwarded to him and he was more or less congratulating himself with me on the phone.

He said that the wife had gone to court and gotten a run-of-the-mill temporary restraining order against the client, but when the police showed up to boot him out of the house, he had his trustee authorization documents, a certified copy of a recorded quit claim deed to the house, bills of sale for the cars, and an original certificate of trust all showing the house was trust-owned and he was the sole trustee. He explained to the police officers that she was his wife but their stay at the house was not residential in nature. She was there only when he needed to use the house to administer trust affairs.

It made me proud as he was telling me this because it showed me that there are attorneys out there capable of following the bouncing ball and understanding the common law venue in such a way as to advise a client the same way I would have. Apparently, he told his wife on many many occasions that the trusts owned everything, and he just controlled it. She didn't respect him so she dismissed it along with pretty much everything else he said.

The police were powerless to act on the restraining order except to escort her off the premises at the request of the trustee. The client requested she be removed on the grounds that, as trustee, he had a duty to protect the

property, and she was trying to get the State to impair his obligation to protect that property by using the police to enforce a restraining order at his (not her) place of obligation, so to speak. In other words, it was clearly an abuse of legal process. They agreed. She was furious and was determined to win the next round.

Round 2 came about when she had her attorney file for divorce. Her attorney contacted the divorce attorney who was still attorney in fact, and he then contacted me and asked me to sit in silently on the conversation. I didn't even have to explain to him that it might be best to limit the scope of the conversation so as not to act beyond the limited power of attorney. (In other words, he was only appointed attorney in fact, not attorney of record for the divorce case. He understood that the divorce suit did not effect the trusts, and the assets owned by it, so there was no need for him to step in to that extent at this point.)

Now, for all related intents and purposes, the client was broke. Even his trustee compensation wasn't attachable because it was not subject to employment statutes. Not to mention, even if it was the product of an employment contract, the compensation was still owing and the trust couldn't be compelled to pay it so as to assist the wife in collecting any divorce settlement. His trustee compensation was a separate contract whose obligation is protected under Article 1, Section 10 of the Constitution for the United States of America.

The conversation was one of the shortest negotiations I ever witnessed. There was literally nothing to discuss. The client didn't own anything and he had told his wife regularly, which she admitted, so much so that his confidence about the protection became a source of her contempt for him. He had access to things, but it was only by virtue of his duties as trustee and that was the underlying fact of the whole divorce case. She lost round 2 as well.

The third round came when it was time for him to be served with the papers. The divorce attorney was still not yet hired as the trustee's personal attorney of record. Her divorce attorney pulled out all the tricks to locate the client and have him served. However, the client had no residence. He didn't own a home. No vehicles were registered in his name. He didn't operate a business in the State. He was still a 14th Amendment citizen— but a ghost indeed.

The service attempts dragged on past the statute of limitations for service of process and her attorney ended up having to re-file the complaint after 120 days. During that time, the client was doing a bit of ducking and dodging to

avoid being served, but it was more or less a game to him at this point. He had nothing to lose but nothing to gain by waiving service of process. He had won round 3 already, and was now just toying with her to prove a point.

Eventually he did get served and he hired his good old divorce attorney to handle the case. The case was rather open and shut, not just because of the trusts but because her attorney apparently had absolutely no idea what the heck he was dealing with— I halfway wondered if the client's divorce attorney sympathized with her attorney. Ultimately, she was granted the divorce, but he was not ordered to pay alimony. The court was convinced that she was given due notice that he had no money or assets well in advance of any irreconcilable differences arising between the spouses.

What's more, the Express Trusts were never even brought up beyond the evidence of ownership of the homes, cars, investments, loose assets and business, and this was evidence presented by the client's divorce attorney in his own defense since the trusts were not parties to the case. Even his trustee compensation was not attachable or garnishable because there was no legal or lawful basis upon which to exercise jurisdiction over the trusts' contract with him since he was legally unemployed. She may have won by decision, but he won by knock out.

The lesson to be learned is that the trusts offer protection that is much more real than most give them credit for. People miss the point about trusts by mistaking the weak implementation of Express Trusts under the Common Law for something inherently wrong with the trusts themselves. They fall for the idea that non-statutory trusts are worthless in legal battles.

Instead of trusting the power demonstrated in contracts, they trust the mis- and disinformation out there that says courts can do whatever they want to non-statutory trusts because they are non-statutory trusts. They never take into consideration that without a specific **minimum contact** to base jurisdiction on, courts have no power available to do whatever they want.

For example, though an Express Trust under the Common Law may own property in a statutory jurisdiction, there is still much that needs to be overcome contractually to get a court case on. The trust is still superior because it isn't stuck in the statutory jurisdiction like a corporation, LLC or statutory trust; one simple transfer of ownership or removal from an incorporated township and its right back in the Republic. And even though a court case is filed, it doesn't mean you're automatically defeated. Serving a trustee can easily become more expensive than the actual value of the case itself.

And even then, what do you gain in the end when the trustee has nothing to give? **It just goes to show you that equitable title is mostly disadvantageous because ownership is not as powerful as control...**