

▼ **Parenting Time**

Family law attorneys who prepare parenting time orders for their clients, whether as part of the Judgment and Decree or elsewhere, must attend carefully to the “Remedies” provisions of the parenting time statute, M.S.

§518.175, subd. 6. Paragraph (a) provides, “The court may provide for one or more of the following remedies for denial of or interference with court-ordered parenting time as provided under this subdivision. All parenting time orders must include notice of the provisions of this subdivision.” (emphasis added). The statute then lists remedies such as compensatory parenting time; a civil penalty of up to \$500; the posting of a bond; an award of reasonable attorney’s fees and costs; or any remedy that the court finds to be in the best interest of the children involved.

It behooves attorneys to include notice of all the provisions of subd. 6(b) *et seq.* in their proposed parenting time orders. Otherwise, if one parent were to deny or interfere with “court-ordered parenting time” it might

be successfully argued that a remedy is not available.

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the plea, and the “manifest injustice” standard must be established by preponderance of the evidence. Minn. Stat. §559.04, Subd. 3.

Under these standards, it is easier for a defendant to withdraw a plea before sentencing as the focus, at that time, is on the prosecution’s “reliance” on the disposition. After sentencing, the standard is higher because the focus is on the defendant’s state of mind when entering the plea.

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▲ **Means Test Exclusion**

Clients in financial distress who recently served in the National Guard or the Reserves may benefit from the National Guard and Reservists Debt Relief Act of 2008 which took effect on December 19, 2008. The act amends §707(b)(2)(D) of the Bankruptcy Code to temporarily exclude certain military personnel from scrutiny under the “means test.” The means test applies to above-median-income debtors, as defined in §§707(b)(6) and (7). A debtor who fails the means test is subject to a rebuttable presumption that their Chapter 7 filing is abusive.

The exception provided by the act does not exempt the debtor from scrutiny altogether. Chapter 7 filings remain subject to §707(b)(3) of the Bankruptcy Code, which permits the bankruptcy court to make a finding of abuse on grounds other than failure to satisfy the requirements of the means test. The exception will likely assist only military personnel with relatively high incomes who might otherwise be forced into Chapter 13.

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▲ **Disclaimers & Tax Liens**

One technique that is often utilized in estate planning, for both tax and nontax reasons, is a “disclaimer”: a “written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary.” M.S.

§525.532. But can a beneficiary under a decedent’s will defeat a federal tax lien by disclaiming inherited

property? The answer to that question, after split rulings in a number of different federal circuits, was a resounding no. The United States Supreme Court, in *Drye v. United States*, 528 U.S. 49 (1999), determined that the beneficiary’s right to disclaim constituted a “right to property” under IRC Section 6321, which invalidated the disclaimer under state law.

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▼ **Guilty Pleas**

The high profile proceeding involving the effort by former Idaho Senator Larry Craig to set aside his guilty plea to a disorderly conduct charge arising out of a well-known incident in a men’s restroom at the Twin Cities airport is now over. See *State v. Craig*, 2008 WL 5136170 (Minn. App. 2008) (unpublished). But before the court of appeals upheld his conviction, the case attracted substantial attention and sowed some confusion regarding withdrawal of guilty

prior to sentencing, withdrawal is governed by Rule 15.05, Subd. 2 of the Minnesota Rules of Criminal Procedure. It provides that a guilty plea may be withdrawn, at the discretion of the court, if it is “fair and just to do so,” which requires giving consideration to the reasons advanced by the defendant and “any prejudice [that withdrawal] ... would cause the prosecution” due to reliance upon the plea.

But a different standard applies, as in the *Craig* case, for plea withdrawals after sentencing. In those instances, under Rule 15.05, Subd. 1, a plea withdrawal is required because it is “necessary to correct a manifest injustice.” This is defined as a plea that is not accurate, voluntary, or intelligently made. *Perkins v. State*, 559 N.W.2d 678 (Minn. 1997) In such a proceeding, the burden of proof is on the individual seeking to withdraw



pleas in state court proceedings. The standards stem from the Minnesota Rules of Criminal Procedure and case law.

After a plea is entered, but