



44th Annual Probate Practice Seminar



OCTOBER 3, 2025



Trumbull County Probate Court
Judge James A. Fredericka



Robins Theatre
160 East Market Street
Warren, Ohio 44481



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AGENDA

7:30 a.m. - 8:00 a.m. Check-in

8:00 a.m. - 9:00 a.m.

Magistrate John T. Shorts
Magistrate Christopher J. Schiavone
Magistrate Emily Clark Weston
Trumbull County Probate Court
Probate Court Updates

9:00 a.m. - 10:00 a.m.

Attorney Alan S. Loewensohn, Principal
McKool Smith
Recollections from the Jo Hopper v. JPMorgan Record Setting Verdict

10:00 a.m. - 10:15 a.m. Break

10:15 a.m. - 11:15 a.m.

Joseph M. Ferraro, Director, Family Wealth
Western Reserve Trust Company
Practical Estate Planning Drafting and Design:
Effective Strategies to Save Taxes, Preserve Assets, Protect Beneficiaries,
and Harmonize Relationships

11:15 a.m. - 11:45 a.m. Lunch Break

11:45 a.m. - 12:45 p.m.

Hon. David A. Hejmanowski
Delaware County Probate/Juvenile Division
The Ethics of AI for Lawyers

12:45 p.m. - 1:45 p.m.

Merisa Bowers
Ohio Bar Liability Insurance Company
Essential Law Firm Management Tips for Solo and Small Firm Attorneys

1:45 p.m. - 2:00 p.m. Refreshment Break

2:00 p.m. - 3:00 p.m.

Hon. Robert N. Rusu, Jr.
Mahoning County Probate Court
Hon. Robert W. Berger
Portage County Probate/Juvenile Division (Retired)
Hon. Adam W. Wilgus
Tuscarawas County Probate/Juvenile Division
Current Topics in Probate

3:00 p.m. - 3:15 p.m.

Hon. James A. Fredericka
Trumbull County Probate Court
Case Law Update

PROBATE COURT UPDATES

PANEL DISCUSSION

John T. Shorts, Magistrate

Christopher J. Schiavone, Magistrate

Emily Clark Weston, Magistrate

Trumbull County Probate Court

MAGISTRATE JOHN T. SHORTS
Trumbull County Probate Court

Education:

J.D., University of Pittsburgh, School of Law, 1999

Work History:

Trumbull County Probate Court - Staff Attorney since 1999

Magistrate - Probate Court, 2003 to present

Duties:

Guardianships

Trusts

Veterans Assistance Program

Senior Court Assistance Program

MAGISTRATE CHRISTOPHER J. SCHIAVONE
Trumbull County Probate Court

Education:

J.D. - Ohio Northern University, Claude W. Pettit School of Law, 2000

Work History:

Associate Attorney - Friedman & Rummell Co., LPA, April 2001 to
December 2012

Partner - Friedman & Rummell Co., LPA, January 2013 - February, 2015

Magistrate - Trumbull County Probate Court, February 2015 to present

Duties:

Estates without Litigation

Estates with Litigation

Land Sales

MAGISTRATE EMILY CLARK WESTON
Trumbull County Probate Court

Education:

Kent State University (B.A., 2007, Justice Studies, Cum Laude); University of Akron (J.D. Fall 2011)

Work History:

Magistrate, Trumbull County Probate Court, 2016-Present

Staff Attorney, Trumbull County Probate Court, 2014-2016

Private Practice, 2012-2014

Organizations:

Trumbull County Bar Association, Ohio State Bar Association, Ohio Association of Magistrates, and National College of Probate Judges

Community Service:

Guardian Angels of Trumbull County

Duties:

Contested Actions

Mediation

Adoptions

Releases from Administration

Mental Illness Commitments

Minor Settlements

Adult Protective Service Actions

GUARDIANSHIP TIMELINES

- Application for appointment of guardian
 - 3 to 4 weeks
 - Investigation
 - Service
 - Appointments (GAL, Attorney, Independent Evaluation)
 - Attorney schedule, Court schedule

Less Restrictive Alternatives

- We look at these
 - DPOA, Representative Payee for Social Security
 - if application filed strictly for mental illness may be more appropriate for mental health system
 - direct clients to the access clinics
 - contact mental health board for resources on services
 - civil commitment process
 - pink slip by police or doctor

Applications

- Person Only
 - non-residents are eligible
 - still must find them suitable
 - over the border cases
 - California
- Estate Only
 - must be an Ohio resident
 - must be suitable
 - must address bond, minimum bond preferred

Guardianships

Orientation and Training

- It is the applicant's responsibility to schedule to meet with the Court Investigator
- PRIOR to the hearing
 - must meet investigator
 - complete the training
 - review materials
 - complete background check

Guardianship Timelines

Expedited Hearing

- Application for appointment of guardian
 - Good cause shown
 - Notify Magistrate of the need for an expedited hearing within 7-14 days
 - Cannot be set sooner than 7 days from when the proposed ward is served personally with notice by Court Investigator

Emergency Guardianships

Rule 66.1.3

- Filed in person
- Applicant must be present
- Current Statement of Expert Evaluation and Emergency Supplement

Emergency Guardianships

- Emergency exists
- Reasonable certainty
- Immediate action required
- To prevent significant injury

Emergency Guardianships

- Surgery required
- Placement issue required to prevent harm
- Protective order for bank accounts
- proposed ward in hospital, non-responsive, no family
- Generally, placement from one facility to another is not an emergency
- Doctors reluctant to act

Guardianships

Rule 66.3 and 66.7

- Statement of Expert Evaluation to be filed annually
 - Medical and psychological reports are confidential and there shall be no access to these reports without prior order of the court
 - Must be completed by a Licensed Physician or Licensed Clinical Psychologist
 - No Nurse Practitioners
 - can be faxed directly from Doctor/Hospital, not from attorney
- Guardian's Report to be filed annually
- Guardian's Annual Plan
- If needed, request additional time by motion do not wait for citation hearing
- Forms available on our website or upon request

Guardianships

- Social Security Representative Payee
- Do not instruct clients to take Guardianship paperwork to banks
- default to guardianship account which is not correct, no court order needed for Social Security funds

Guardianships

- Generally, not necessary to have doctor testify or the Court Investigator
- the reports they file are intended to avoid their appearance at the hearing
- can file a competing statement of expert evaluation
- most disputes are as to who should be the guardian
- can request mediation



Probate Practice Seminar Questions

ORC § 2109.21 – Residence qualifications of fiduciary

- A) An administrator, special administrator, administrator de bonis non, or administrator with the will annexed shall be a resident of this state and shall be removed on proof that the administrator is no longer a resident of this state.
- (B)(1)(a) To qualify for appointment as executor or trustee, an executor or a trustee named in a will or nominated in accordance with any power of nomination conferred in a will, may be a resident of this state or, as provided in this division, a nonresident of this state. To qualify for appointment, a nonresident executor or trustee named in, or nominated pursuant to, a will shall be one of the following:
 - (i) An individual who is related to the testator by consanguinity or affinity;
 - (ii) A private trust company or family trust company organized under the laws of any state;
 - (iii) A person who resides in a state that has statutes or rules that authorize the appointment of a nonresident person who is not related to the testator by consanguinity or affinity, as an executor or trustee when named in, or nominated pursuant to, a will.
- (b) No executor or trustee under division (B)(1)(a) of this section shall be refused appointment or removed solely because the executor or trustee is not a resident of this state.
- (c) The court may require that a nonresident executor or trustee named in, or nominated pursuant to, a will assure that all of the assets of the decedent that are in the county at the time of the death of the decedent will remain in the county until distribution or until the court determines that the assets may be removed from the county.
- (d) The court may require a nonresident private trust company or family trust company appointed under division (B)(1)(a)(ii) of this section to appoint a resident agent to accept service of process, notices, and other documents.

ORC § 2109.21 – Residence qualifications of fiduciary (Continued)

- (2)(a) In accordance with this division and section 2129.08 of the Revised Code, the court shall appoint as an ancillary administrator a person who is named in the will of a nonresident decedent, or who is nominated in accordance with any power of nomination conferred in the will of a nonresident decedent, as a general executor of the decedent's estate or as executor of the portion of the decedent's estate located in this state, whether or not the person so named or nominated is a resident of this state.
- To qualify for appointment as an ancillary administrator, a person who is not a resident of this state and who is named or nominated as described in this division, shall be one of the following:
 - (i) An individual who is related to the testator by consanguinity or affinity;
 - (ii) A private trust company or family trust company organized under the laws of any state;
 - (iii) A person who resides in a state that has statutes or rules that authorize the appointment of a nonresident of that state who is not related to the testator by consanguinity or affinity, as an ancillary administrator when the nonresident is named in a will or nominated in accordance with any power of nomination conferred in a will.
- (b) If a person who is not a resident of this state and who is named or nominated as described in division (B)(2)(a) of this section so qualifies for appointment as an ancillary administrator and if the provisions of section 2129.08 of the Revised Code are satisfied, the court shall not refuse to appoint the person, and shall not remove the person, as ancillary administrator solely because the person is not a resident of this state.
- (c) The court may require that an ancillary administrator who is not a resident of this state and who is named or nominated as described in division (B)(2)(a) of this section, assure that all of the assets of the decedent that are in the county at the time of the death of the decedent will remain in the county until distribution or until the court determines that the assets may be removed from the county.
- (d) The court may require a nonresident private trust company or family trust company appointed under division (B)(2)(a)(ii) of this section to appoint a resident agent to accept service of process, notices, and other documents.

ORC § 2113.06 – To whom letters of administration shall be granted

- (A) Administration of the estate of an intestate shall be granted to persons mentioned in this division, in the following order:
 - (1) To the surviving spouse of the deceased, if resident of the state;
 - (2) To one of the next of kin of the deceased, resident of the state.
- (B) If the persons entitled to administer the estate under division (A) of this section fail to take or renounce administration voluntarily, the matter shall be set for hearing and notice given to the persons.
- (C) If there are no persons entitled to administration, if they are for any reason unsuitable for the discharge of the trust, or if without sufficient cause they neglect to apply within a reasonable time for the administration of the estate, their right to priority shall be lost, and the court shall commit the administration to some suitable person who is a resident of the state, or to the attorney general or the attorney general's designee, if the department of medicaid is seeking to recover the costs of medicaid services from the deceased pursuant to section 5162.21 or 5162.211 of the Revised Code. The person granted administration may be a creditor of the estate.
- (D) This section applies to the appointment of an administrator de bonis non.

- 
- **Question:** What is the importance of filing Form 2.4 (Certificate of Service of Notice of Probate of Will)?

ORC § 2107.19 - Notice of admission of will to probate

- (A)(1) Subject to divisions (A)(2) and (B) of this section, when a will has been admitted to probate, the fiduciary for the estate or another person specified in division (A)(4) of this section shall, within two weeks of the admission of the will to probate, give a notice as described in this division and in the manner provided by Civil Rule 73(E) to the surviving spouse of the testator, to all persons who would be entitled to inherit from the testator under Chapter 2105. of the Revised Code if the testator had died intestate, and to all legatees and devisees named in the will. The notice shall mention the probate of the will and, if a particular person being given the notice is a legatee or devisee named in the will, shall state that the person is named in the will as beneficiary. A copy of the will admitted to probate is not required to be given with the notice.
- (2) A person entitled to be given the notice described in division (A)(1) of this section may waive that right by filing a written waiver of the right to receive the notice in the probate court. The person may file the waiver of the right to receive the notice at any time prior to or after the will has been admitted to probate.
- (3) The fact that the notice described in division (A)(1) of this section has been given, subject to division (B) of this section, to all persons described in division (A)(1) of this section who have not waived their right to receive the notice, and, if applicable, the fact that certain persons described in that division have waived their right to receive the notice in accordance with division (A)(2) of this section, shall be evidenced by a certificate that shall be filed in the probate court in accordance with division (A)(4) of this section.

Notice of Probate of Will (Continued)

- (4) The notice of the admission of the will to probate required by division (A)(1) of this section and the certificate of giving notice or waiver of notice required by division (A)(3) of this section shall be given or filed by the fiduciary for the estate or by the applicant for the admission of the will to probate, the applicant for a release from administration, any other interested person, or the attorney for the fiduciary or for any of the preceding persons. The certificate of giving notice shall be filed not later than two months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two months after the admission of the will to probate, unless the court grants an extension of that time. Failure to file the certificate in a timely manner shall subject the fiduciary or applicant to the citation and penalty provisions of section 2109.31 of the Revised Code.
- (B) The fiduciary or another person specified in division (A)(4) of this section is not required to give a notice pursuant to division (A)(1) of this section to persons who have been notified of the application for probate of the will or of a contest as to jurisdiction or to persons whose names or places of residence are unknown and cannot with reasonable diligence be ascertained, and a person authorized by division (A)(4) of this section to give notice shall file in the probate court a certificate to that effect.

Publication (Civ.R. 73(E)(6))

- By publication once each week for three consecutive weeks in some newspaper of general circulation in the county when the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained; provided that before publication may be utilized, the person giving notice shall file an affidavit which states that the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained;

**PROBATE COURT OF TRUMBULL COUNTY, OHIO
JAMES A. FREDERICKA, JUDGE**

ESTATE OF _____, DECEASED

CASE NO. _____

**WAIVER OF NOTICE OF PROBATE OF WILL
[R.C. 2107.19(A)(2)]**

The undersigned, being persons entitled to notice of the probate of this will, waive such notice. After a certificate is filed evidencing these waivers and any notices given, any action to contest the validity of this will must be filed no more than three months after the filing of the certificate for estates of decedents who die on or after January 1, 2002 and no more than four months after the filing of the certificate for estates of decedents who die before January 1, 2002.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROBATE COURT OF TRUMBULL COUNTY, OHIO
JAMES A. FREDERICKA, JUDGE

ESTATE OF _____, DECEASED
CASE NO. _____

NOTICE OF PROBATE OF WILL
[R.C. 2107.19]

To: _____

You are hereby notified that the decedent died on _____, _____, that the decedent's will was admitted to probate by this Court located at _____, Ohio, on _____, _____. This notice is given to all persons who would be entitled to inherit from the decedent had the decedent died intestate and to all legatees and devisees named in this will who do not waive notice. You are receiving this notice as : [check all of the following that apply]

- ☐ The Surviving Spouse.
- ☐ A person who would be entitled to inherit from the decedent had the decedent died intestate.
- ☐ A legatee or devisee named in the will.

After a certificate is filed evidencing any notices given, any action to contest the validity of this will must be filed no more than three months after the filing of the certificate for estates of decedents who die on or after January 1, 2002 and no more than four months after the filing of the certificate for estates of decedents who die before January 1, 2002.

Date

Typed or printed Name

Address

Phone Number (include area code)

- _____
☐ Fiduciary
☐ Applicant for the admission of this will to probate
☐ Applicant for a release from administration
☐ Other interested person
☐ Attorney for any of the above

Attorney Registration No. _____

PROBATE COURT OF TRUMBULL COUNTY, OHIO

JAMES A. FREDERICKA, JUDGE

ESTATE OF _____, DECEASED

CASE NO. _____

CERTIFICATE OF SERVICE OF NOTICE OF PROBATE OF WILL

[R.C. 2107.19(A) (3)]

The undersigned states that all persons entitled to notice:

[Check all applicable boxes]

Have waived notice of the admission of this will to probate. The waivers are filed herein.

Have received notice of the admission of this will to probate.

Have been notified of the hearing on the probate of this will or a contest as to jurisdiction.

Evidence of notification is filed herein.

Have not been notified because their names or places of residence are unknown and cannot with Reasonable diligence be ascertained.

Fiduciary

Applicant for the admission of this will to probate

Applicant for a release from administration

Other interested person

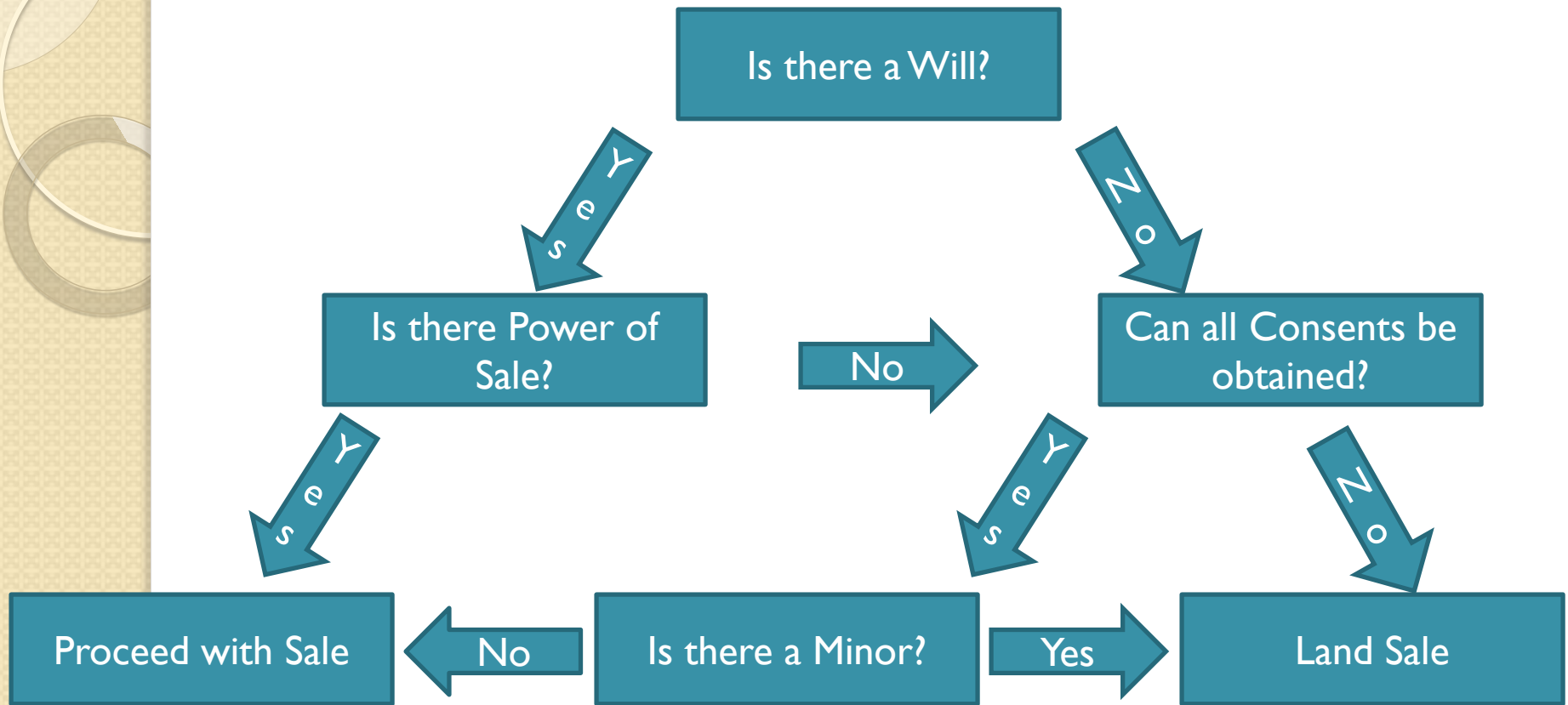
Attorney for any of the above

Attorney Registration No. _____

Effects of Improper Notice

- Will Contest Period Never Runs!

- 
- **Question:** Can you provide some guidance on the sale of real property?



Sale of Real Property

- Court does not issue Judgment Entries regarding veracity of Assignments or permitting sale (unless in Land Sale proceeding)
- Upon completion of sale, file Settlement Statement/Closing Disclosure

ORC § 2127 - Land Sales

- ORC § 2127.01 - All proceedings for the sale of lands by executors, administrators, and guardians shall be in accordance with section 2127.01 to 2127.43, inclusive, of the Revised Code, except where the executor has testamentary power of sale, and in that case the executor may proceed under such sections or under the will.

When is a Land Sale Necessary?

- No Power of Sale in Will
- Owner under Guardianship
- Minor Parties

Consent Sale

- SPF 11.0 – Consent to Sell Real Estate
- If all necessary parties consent, Land Sale not required
- If all consent, property may be sold at no less than 80% of appraised value
- **If any party is a minor, Consent Sale cannot take place and Land Sale is required**

Decedent Estate Complaint

- Basis for Sale (ORC § § 2127.02-2127.04)
 - Pay Debts
 - Pay Legacies
 - Other Circumstances
- Necessary Parties (ORC § 2127.12)
 - Surviving Spouse
 - All Persons Entitled to Inherit
 - Mortgage and Lienholders
 - All Persons Holding Title
 - All Other Interested Parties
 - **County Treasurer**

ORC § 2127.12 - Necessary parties in sale by executor or administrator

- In an action by an executor or administrator to obtain authority to sell real property, the following persons shall be made parties defendant:
 - (A) The surviving spouse;
 - (B) The heirs, devisees, or persons entitled to the next estate of inheritance from the decedent in the real property and having an interest in it, but their spouses need not be made parties defendant;

ORC § 2127.12 - Necessary parties in sale by executor or administrator

- (C) All mortgagees and other lienholders whose claims affect the real property or any part of it;
- (D) If the interest subject to sale is equitable, all persons holding legal title to the interest or any part of it, and those who are entitled to the purchase money for it, other than creditors;
- (E) If a fraudulent transfer is sought to be set aside, all persons holding or claiming under the transfer;
- (F) All other persons having an interest in the real property.

Guardianship Complaint

- Basis for Sale (ORC § 2127.05)
- Necessary Parties (ORC § 2127.13)
 - Ward
 - Ward's Spouse
 - Ward's Next of Kin Residing in Ohio
 - All lienholders
 - All Other Interested Parties
 - **County Treasurer**

ORC § 2127.13 - Necessary parties in sale by guardian

- In an action by a guardian to obtain authority to sell the real property of the guardian's ward the following persons shall be made parties defendant:
 - (A) The ward;
 - (B) The spouse of the ward;
 - (C) All persons entitled to the next estate of inheritance from the ward in the real property who are known to reside in Ohio, but their spouses need not be made parties defendant;

ORC § 2127.13 - Necessary parties in sale by guardian

- (D) All lienholders whose claims affect the real property or any part of the property;
- (E) If the interest subject to the sale is equitable, all persons holding legal title to the real property or any part of the property;
- (F) All other persons having an interest in the real property, other than creditors.

Procedure/Practice Tips

- Preliminary Judicial Report (PJR)
 - Obtain before filing Complaint to determine if additional necessary parties
- File Land Sale Prior to Foreclosure
- Allege Why Property Needs Sold

Order and Confirmation of Sale

- Order for Public or Private Sale
- Upon Sale, Court Confirms Sale
- Authorizes Deed and Orders Distribution of Sale Proceeds and Release of Liens
- Entry Confirming Include Gross Amount of Sales Proceeds, Copy of Proposed Settlement Statement, and All Proposed Disbursements

ORC § 2127.011 - Disposition of real property

- (A) In addition to the other methods provided by law or in the will and unless expressly prohibited by the will, an executor or administrator may sell at public or private sale, grant options to sell, exchange, re-exchange, or otherwise dispose of any parcel of real property belonging to the estate at any time at prices and upon terms that are consistent with this section and may execute and deliver deeds and other instruments of conveyance if all of the following conditions are met:
- (I) The surviving spouse, all of the legatees and devisees in the case of testacy, and all of the heirs in the case of intestacy, give written consent to a power of sale for a particular parcel of real property or to a power of sale for all the real property belonging to the estate. Each consent to a power of sale provided for in this section shall be filed in the probate court.

ORC § 2127.011 - Disposition of real property

- (2) Any sale under a power of sale authorized pursuant to this section shall be made at a price of at least eighty per cent of the appraised value, as set forth in an approved inventory.
- (3) No power of sale provided for in this section is effective if the surviving spouse or any legatee, devisee, or heir is a minor. **No person may give the consent of the minor that is required by this section.**
- (B) A surviving spouse who is the executor or administrator may sell real property to self pursuant to this section.

ORC § 2127.04 - Action for authority to sell real property

- (A) With the consent of all persons entitled to share in an estate upon distribution, the executor, administrator, or administrator with the will annexed may, and upon the request of these persons shall, commence an action in the probate court for authority to sell any part or all of the decedent's real property, even though the real property is not required to be sold to pay debts or legacies. A guardian may make a request under this division, or give consent, on behalf of the guardian's ward.
- (B) An executor, administrator, or administrator with the will annexed may commence an action in the probate court, on the executor or administrator's own motion, to sell any part or all of the decedent's real property, even though the real property is not required to be sold to pay debts or legacies. The court shall not issue an order of sale in the action unless one of the categories specified in divisions (B)(1)(a), (b), and (c), (B)(2)(a), (b), and (c), and (B)(3) of this section applies:

ORC § 2127.04 - Action for authority to sell real property

- (1)(a) At least fifty per cent of all the persons interested in the real property proposed to be sold have consented to the sale.
- (b) Prior to the issuance of the order, no written objection is filed with the court by any person or persons who hold aggregate interests in the interest of the decedent in the real property proposed to be sold, that total in excess of twenty-five per cent.
- (c) The court determines that the sale is in the best interest of the decedent's estate.
- (2)(a) No person's interest in the interest of the decedent in the real property proposed to be sold exceeds ten per cent.
- (b) Prior to the issuance of the order, no written objection is filed with the court by any person or persons who hold aggregate interests in the interest of the decedent in the real property proposed to be sold, that total in excess of twenty-five per cent.
- (c) The court determines that the sale is in the best interest of the decedent's estate.

ORC § 2127.04 - Action for authority to sell real property

- (3) The real property proposed to be sold escheats to the state under division (K) of section 2105.06 of the Revised Code.
- (C) Notwithstanding any provision of the Revised Code, an executor, administrator, or administrator with the will annexed shall commence an action in the probate court to sell any part or all of the decedent's real property if any person who is entitled to inherit all or part of the real property cannot be found after a due and diligent search. The court shall not issue an order of sale in the action unless the sale is in the best interest of the person who cannot be found and in the best interest of the decedent's estate.
- If a sale is ordered under this division, the costs of its administration shall be taken from the proceeds of the sale.
- (D) A surviving spouse who is an executor or administrator of the decedent spouse's estate is not disqualified, by reason of being executor or administrator, as a person to whom a parcel of real property may be sold pursuant to this section.

ORC § 2127 - Land Sales

- 2127.10 – Action to sell real property
 - An action to obtain authority to sell real property shall be commenced by the executor, administrator, or guardian by filing a complaint with the probate court.

ORC § 2127 - Land Sales

- The complaint shall contain a description of the real property proposed to be sold and its value, as near as can be ascertained, a statement of the nature of the interest of the decedent or ward in the real property, a recital of all mortgages and liens upon and adverse interests in the real property, the facts showing the reason or necessity for the sale, and any additional facts necessary to constitute the cause of action under the section of the Revised Code on which the action is predicated.

Claims Against Estate

- **Question:** Please explain the statute on Claims Against Estate.

ORC § 2117.06 - Presentation and allowance of creditor's claims - pending action against decedent

- (A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall present their claims in one of the following manners:
 - (1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:
 - (a) To the executor or administrator, or to an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent, in a writing;
 - (b) To the probate court in a writing that includes the probate court case number of the decedent's estate;

ORC § 2117.06 - Presentation and allowance of creditor's claims - pending action against decedent

- (c) In a writing that is actually received by the executor or administrator, or by an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent, within the appropriate time specified in division (B) of this section and without regard to whom the writing is addressed. For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section.

- 
- **Question:** Can you provide some guidance when there is a low value bequest but the debts of the Estate exceed the value of said bequest?

- 
- **Question:** What are some tips for dealing with missing heirs and preserving said missing heirs' inheritance?

Missing Heirs (ORC § 2113.64)

- If a sum of money to be distributed to heirs, next of kin, or legatees, or owing from an estate to a creditor of the estate, remains unclaimed prior to the filing of a final account, the court may order it turned into the county treasury as provided in section 2113.65 of the Revised Code, or may order the executor or administrator to invest it as the court directs for a period not to exceed two years, to accumulate for the benefit of the persons entitled to the sum of money. Such investment shall be made in the name of the probate judge of the court for the time being and shall be subject to the order of the judge and the judge's successors in office.

Missing Heirs (ORC § 2113.65)

- The person investing unclaimed money under section 2113.64 of the Revised Code shall file in the probate court a memorandum thereof, with the original certificates or evidences of title representing such investment, which shall be allowed as a sufficient voucher for such payment under the order or decree. If the amount is unclaimed at the end of the period of such investment, it shall be turned into the county treasury and credited to the general fund, without liability for interest thereon. The receipt of the county treasurer taken for it and filed is a sufficient voucher.

Disclaimer

- What is the effect of a Disclaimer?
 - Irrevocable
 - Disclaimant is treated as having predeceased
 - If Disclaimant has children, they will step up
- Unintended Consequences
 - Minor Beneficiaries
 - Disabled Beneficiaries
 - Incompetent Beneficiaries
 - Jeopardization of Benefits

Assignment

- Assigns an individual's interest to another

Best Practices

- Case Numbers
- Certificate of Transfer – Obtain Pre-Approval from Tax Map
- Attorney & Fiduciary Fees – File Prior to Filing of Final Account; Settlement Statement
- Bond – If waived pending filing of Inventory, must be addressed again
- Certificate of Termination – Applicable **only** when fiduciary is sole heir

Minor Heir

- If Minor is receiving \$25,000.00 or more, Guardianship of Minor is required
- If less, funds may be placed into a restricted account in Minor's name
- File Application to Pay or Deliver

Deceased Next of Kin

- **Question:** What are the Notice and other procedures when a next of kin dies after death of Decedent?

Deceased Next of Kin (Continued)

- Deceased Next of Kin Entitled to Notice
- Will an Estate be opened for Deceased Next of Kin?
 - Yes – Next of Kin's Estate Receives Notice
 - No – Sometimes, Motion to Bypass for Notice Purposes is Acceptable
- Will Deceased Next of Kin Inherit?
 - Yes – Estate for Next of Kin Necessary
 - No – Estate for Next of Kin Not Necessary - Notice may be Bypassed

Form 13.9

- Copy of Final Account must be provided to all interested parties and must be signed by counsel and fiduciary

Form 8.3 - Summary of General Rights of Surviving Spouse

- Must be sent by Court via Certified Mail
- May be waived via execution and filing of Form 8.6 – Waiver of Service to Surviving Spouse of the Citation to Elect with initial pleadings

**PROBATE COURT OF TRUMBULL COUNTY, OHIO
JAMES A. FREDERICKA, JUDGE**

ESTATE OF _____
DECEASED

CASE NO. _____

**WAIVER OF SERVICE TO SURVIVING SPOUSE OF THE
CITATION TO ELECT**

[R.C. 2106.01(A)]

The undersigned, surviving spouse of the above named decedent, being eighteen years of age or older and not under disability, waives the service of the citation required by section 2106.01(A) of the Revised Code.

I acknowledge receipt of Standard Probate Form 8.3, Summary of General Rights of Surviving Spouse.

I understand that most of my rights must be exercised within five months from the date of the initial appointment of the administrator or executor. If I do not timely elect to exercise any specific right, it will be conclusively presumed I have elected not to exercise that right and the right will be forfeited.

Date

Signature of Surviving Spouse

Typed or printed name of surviving spouse

Attorney for Fiduciary

Typed or Printed Name

Address

Telephone Number (including area code)

Attorney Registration No

- **Question:** After the Final Account is filed, when may distributions be made?

PROBATE COURT OF TRUMBULL COUNTY, OHIO
JAMES A. FREDERICKA, JUDGE

ESTATE OF _____, DECEASED

CASE NO. _____

FIDUCIARY'S ACCOUNT

[R.C. 2109.30, 2109.301 and 2109.32]

The fiduciary offers the account given below and on the attached itemized statement of receipts and disbursements. The fiduciary states that the account is correct and asks that it be approved and settled.

[Check one of the following]

- ☐ This is a partial account. A statement of the assets remaining in the fiduciary's hands is attached.
- ☐ This is a final account. A statement of the assets remaining in the fiduciary's hands for distribution to the beneficiaries is attached.
- ☐ This is a distributive account and the fiduciary asks to be discharged upon its approval and settlement.
- ☐ This is a final and distributive account and the fiduciary asks to be discharged upon its approval and settlement.

[Complete if this is a partial account, or if one or more accounts have previously been filed in the estate] The period of this account is from _____ to _____

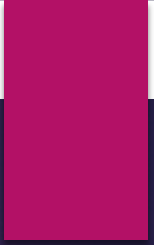
[Complete if applicable] Accounts previously filed in the estate, the accounting periods, and the fiduciary and attorney fees paid for each period, are as follows:

Date Filed	Accounting Period	Fiduciary Fees Paid	Attorney Fees Paid
		\$	\$

Note:

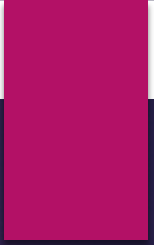
2117.06(K) states: "The distributee may be liable to the estate up to the value of the distribution and may be required to return all or any part of the value of the distribution if a valid claim is subsequently made against the estate within the time permitted under this section.

2109.32(C) states: "The rights of any person with a pecuniary interest in the estate are not barred by approval of an account pursuant to division (A) and (B) of this section. These rights may be barred following a hearing on the account pursuant to section 2109.33 of the Revised Code.



Selected Civil Actions in Probate Court

MAGISTRATE EMILY CLARK WESTON



Concealment of Assets 2109.50, et seq.

Concealment of Assets—Statutory Language

- ▶ Filed regarding estates, testamentary trusts, and guardianships
- ▶ Filed by a “person interested in” the estate, testamentary trust, or guardianship
- ▶ Against any person suspected of having concealed, embezzled, or conveyed away or of being in possession of any moneys, personal property, or choses in action of the estate, testamentary trust, or guardianship
- ▶ Court issues a citation or other judicial order to compel the person to appear before the court to be examined
- ▶ The citation “shall be served and returned by the officer to whom it is delivered. The officer to whom it is delivered shall be liable for negligence in its service or return in a similar manner as sheriffs are liable for negligence in not serving or returning a *capias* issued upon an indictment.”
- ▶ The probate court shall promptly hear and determine the matter

Concealment of Assets—Statutory Language Continued

- ▶ The probate court shall swear witnesses and cause the examination of every witness, including questions and answers, to be reduced to writing, signed by the witness and filed in the probate court.
- ▶ If a person compelled to appear for examination refuses to answer interrogatories propounded, the probate court shall commit the person to the county jail, and the person shall remain in close custody until the person submits to the court's order
- ▶ Determination is made, by verdict of jury if either party requires, whether the party is guilty
- ▶ If the person is found guilty, the court shall assess the amount of damages to be recovered or order the return of the specific thing.
- ▶ If the person is found guilty, judgment in favor of the fiduciary. If the person is the fiduciary or there is no fiduciary in the state, judgment in favor of the state.

Concealment of Assets—Statutory Language Continued

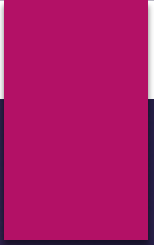
- ▶ Judgment for the amount of the moneys or value of the personal property or choses in action concealed, embezzled, conveyed away, or held in possession, together with ten per cent penalty and all costs of the proceedings or complaint
- ▶ If the person against whom judgment is rendered is the fiduciary, the fiduciary shall be removed and a new fiduciary appointed.
- ▶ The fiduciary in whose favor a judgment has been rendered by the probate court shall deliver to the clerk of the court of common pleas a certificate of judgment in accordance with R.C. 2329.04.
- ▶ If judgment is rendered in the name of the state, the prosecuting attorney shall cause the certificate of judgment under R.C. 2329.04 to be filed in the clerk's office and proceed to execution and shall pay the money to the county treasurer for the use of the estate, testamentary trust or guardianship, reserving the compensation to the prosecuting attorney that the probate court allows.

Concealment of Assets

- ▶ Concealment actions are classified as “an inquisitional discovery proceeding.” *Pirock v. Crain*, 11th Dist., 2020-Ohio-869, ¶ 64; citing *In re Estate of Fife*, 164 Ohio St. 449 (1956). Because it is a discovery proceeding, it does proceed in the same fashion as an ordinary civil action where there is a complaint and an answer. *Id.*
 - ▶ A concealment action “notifies the probate court of alleged misconduct, upon which the court must investigate the charge and make a finding of guilt or innocence based on the evidence presented.” *Id.*
- ▶ Concealment actions are not an action between private parties—the accused is one party and the court the other. *Art v. Erwin*, 10th Dist., 2009-Ohio-4306, ¶ 36. As they are quasi-criminal actions, they cannot be settled by the parties and must be resolved by the trial court with a finding of guilt and a calculation of damages. See, *Minshal v. Estate of Minnshall*, 6th Dist., 2024-Ohio-3428.
- ▶ The accused and any other witnesses are considered witnesses of the court, even though the examination of those witnesses may be delegated to and actually conducted by counsel. *Lucarelli v. Sait*, 11th Dist., 2022-Ohio-4279, ¶ 13, citing *In re Estate of Fife*, 164 Ohio St. 449, 454 (1956).

Concealment of Assets

- ▶ Mere possession of an estate asset does not constitute concealment. *In re Estate of Schoeneman*, 5th Dist., 2011-Ohio-5243, ¶ 22; *Longworth v. Childers*, 2d Dist., 2008-Ohio-4927, ¶ 19.
- ▶ Burden of Proof: Preponderance of the Evidence.
- ▶ Transcripts are mandatory
 - ▶ The provision requiring the probate court to reduce the testimony to writing is mandatory. *Lucarell v. Sait*, 11th Dist., 2022-Ohio-4279, ¶ 8, citing *Kovach v. Bustardo*, 11th Dist., 1994 WL 45282. “It is the responsibility of the court to have the examination transcribed, with costs being assigned to the appropriate party.” *Id.*, quoting *In re Estate of Meyer*, 63 Ohio App.3d 454, 457 (12th Dist, 1989) fn 1.



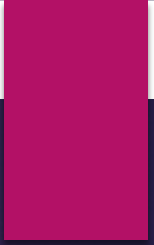
Determination of Heirship, R.C. Chapter 2123

Determination of Heirship—Statutory Language

- ▶ Filed when property passes either by the laws intestate succession or to a beneficiary in a will not named in such will
- ▶ A verified complaint shall be filed in the county where the estate is being administered
- ▶ Necessary Parties: surviving spouse, legatees, devisees, heirs and distributees of the decedent, including those whose names are unknown
- ▶ The same proceedings, pleadings, and rule days as in civil actions in the court of common pleas apply
- ▶ All parties defendant who are known to be residents of the state and whose places of residence are known shall be served with summons
- ▶ Nonresident defendants and defendants whose names or places of residence are unknown shall be served by publication

Determination of Heirship—Statutory Language

- ▶ The probate court may hear proof by commission or by witnesses in open court
- ▶ Probate court will find and adjudge who are or were the heirs or next of kin of the decedent and entitled by the laws of this state to inherit the estate of the deceased, or the devisees or legatees
- ▶ Any fiduciary may make a final distribution of an estate from a determination made by the probate court and shall be discharged, together with the surety, from liability arising from such determined interest.



Will & Trust Validity Actions—Chapter 5817

Action by Testator

- ▶ A testator may file a complaint with the probate court to determine before the testator's death that the testator's will is valid subject only to subsequent revocation or modification of the will.
- ▶ The right to file is personal and may not be filed by the testator's guardian or agent under the testator's power of attorney
- ▶ If there is a related trust, the complaint shall seek to determine the validity of both the will and the related trust
- ▶ A complaint for determination of the validity of a testator's will shall be accompanied by an express written waiver of the testator's physician-patient privilege

Action by Settlor

- ▶ Settlor may file a complaint with the probate court to determine before the settlor's death that the settlor's trust is valid and enforceable under its terms, subject only to a subsequent revocation and modification of the trust
- ▶ Personal to the settlor—cannot be filed by the settlor's guardian or agent under the settlor's power of attorney
- ▶ Complaint shall be accompanied by an express written waiver of the settlor's physician-patient privilege

Venue

- ▶ The probate court of the county where the testator is domiciled or the settlor resides or is domiciled
- ▶ If the testator is not domiciled in Ohio, the probate court of any county in the state where any real property or personal property of the testator is located. If there is no such property, in any county of the state.
- ▶ If the settlor does not reside or is not domiciled in the state, the probate court of the county in which the trust's principal place of administration is located

Defendants

▶ Testator Complaints

- ▶ Complaint shall include as defendants the testator's spouse, children, heirs who would take if the testator died intestate, beneficiaries under the will and any beneficiary under the testator's most recent prior will
- ▶ May also include any person that the testator believes may have a pecuniary interest in the determination of the validity of the will

▶ Settlor Complaints

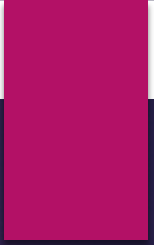
- ▶ Complaint shall name as defendants the settlor's spouse, children, the settlor's heirs who would take property if the testator died intestate, the trustee under the trust, the beneficiary under the trust, and if the trust amends, restates, or replaces a prior trust, any beneficiary under the most recent prior trust
- ▶ May also include any person that the settlor believes may have a pecuniary interest in the determination of the validity of the settlor's trust

Burden of Proof

- ▶ A party to the proceeding has the ultimate burden of persuasion as to the matters for which the party has the initial burden of proof.
- ▶ Testator or Settlor has the burden of establishing prima facie proof of the execution of the will or trust.
- ▶ A person opposing has the burden of establishing one or more of the following:
 - ▶ Lack of testamentary intent or intent to create a trust
 - ▶ Lack of testamentary capacity or legal capacity to establish trust
 - ▶ Undue influence, restraint, duress
 - ▶ Fraud or mistake
 - ▶ Revocation of the will or trust

Effect of Declaration

- ▶ Unless the will or trust is modified or revoked, no person may contest the validity of a will or trust that is declared valid in a proceeding
- ▶ Binding upon all defendants who were named or represented and properly served.
- ▶ If a person is one who should have been named a party defendant in the action in which the will was declared valid and if the person was not named a defendant and properly served, that person, after the testator's death, may contest the validity of a will declared valid.
- ▶ If a person is one who should have been named a party in the action in which a trust was declared valid and if the person was not named a defendant and properly served in that action, that person may contest the validity of a trust declared valid.



Will Contest Actions

Filing a Will Contest

▶ When Can It be Filed-

- ▶ Not more than three months after the filing of the Certificate of Service of Notice of Probate of Will (except persons under legal disability who have disability removed)

▶ Where filed

- ▶ The probate court in which the will or codicil was admitted to probate

▶ Necessary Parties—R.C. 2107.73

- ▶ Any person designated in a will to receive a testamentary disposition of real or personal property
- ▶ Heirs who would take property had the decedent died intestate
- ▶ The executor or administrator with will annexed
- ▶ When charitable trusts are involved, the Ohio Attorney General
- ▶ Other interested parties

Savings Statute

The savings statute does not apply to will contest actions!

See, R.C. 2305.19(C)

Effect of Admission of Will to Probate

- ▶ The order of probate is prima facie evidence of the attestation, execution and validity of the will or codicil. R.C. 2107.74
- ▶ This creates a rebuttable presumption of the validity of the will and its execution. *Krischbaum v. Dillon* (1991), 58 Ohio St. 3d 58, 64.

Undue Influence

▶ Elements

- ▶ Susceptible party
- ▶ Another's opportunity to exert influence
- ▶ The fact of improper influence exerted
- ▶ The result showing the effect of such undue influence
 - ▶ West v. Henry, 173 Ohio St. 498, 501 (1962)

- ▶ General influence, however strong, is not undue unless brought to bear directly on the act of making the will.
Id.

Testamentary Capacity

- ▶ A person who is 18 years of age or older, of sound mind and memory, and not under restraint may make a will. R.C. 2107.02
- ▶ A testator has testamentary capacity when they:
 - ▶ Understand the nature of the business in which the testator is engaged
 - ▶ Comprehend generally the nature and extent of the testator's property
 - ▶ Hold in the testator's mind the names and identities of those who have natural claims upon the testator's bounty
 - ▶ Appreciate the testator's relation to the members of the testator's family
 - ▶ *Niemes v. Niemes* (1917), 97 Ohio St. 145.

Trust Actions

Termination or Modification of Noncharitable Irrevocable Trust--R.C.

5804.11

- ▶ Upon petition, if the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust.
- ▶ A noncharitable irrevocable trust may be terminated upon the consent of all of the beneficiaries if the court concludes that the continuance of the trust is not necessary to achieve any material purpose of the trust.
- ▶ If not all of the beneficiaries consent to a proposed modification or termination, the court may approve if the court finds that:
 - ▶ If all of the beneficiaries had consented the trust could be modified or terminated and
 - ▶ The interests of a beneficiary who does not consent will be adequately protected

Who May Commence

- ▶ A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under R.C. 5804.11 to 5804.16.
- ▶ The settlor may commence a proceeding to approve or disapprove a proposed modification or termination under 5804.11 or a proceeding to modify a charitable trust under 5804.13.

Change of Circumstances—5804.12

- ▶ The court may modify the administrative or dispositive terms of a trust or terminate the trust if because of circumstances not anticipated by the settlor modification or termination will further the purposes of the trust.
- ▶ The court should to the extent practical make the modification in accordance with settlor's probable intention.
- ▶ The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impractical or impair the trust's administration

Where Charitable Purpose is Frustrated—R.C. 5804.13

- ▶ If a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, all of the following apply:
 - ▶ The trust does not fail in whole or party.
 - ▶ The trust property does not revert to the settlor or the settlor's successors in interest.
 - ▶ The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes
- ▶ The Attorney General is a necessary party.

Reformation to Conform to Settlor's Intention—R.C. 5804.15

- The court may reform the terms of a trust, even if they are unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of law or fact, whether in expression or inducement.

Modification for Taxes—R.C. 5804.16

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

Evidentiary Burden

- ▶ The trial court must rely upon clear and convincing evidence before a reformation of a trust can occur. *Meehan v. Meehan*, 8th Dist., 2023-Ohio-2772, ¶ 19.
 - ▶ In determining the settlor's original intent, the court may consider evidence relevant to the settlor's intention even when it contradicts the apparent plain meaning of the text. *Id.*

**RECOLLECTIONS FROM THE
JO HOPPER V. JP MORGAN RECORD
SETTING VERDICT**

**Attorney Alan S. Loewinsohn
Principal McKool Smith Law Firm**

Alan Loewinsohn's Biography

Alan Loewinsohn, an accomplished trial lawyer, adeptly represents both plaintiffs and defendants in complex commercial disputes, including probates, real estate, partnerships, fiduciary breaches, and more. His expertise extends to wrongful death, product liability, and catastrophic injury cases. Renowned in the legal sphere, Alan earns accolades for his courtroom prowess and client advocacy. Recently, he secured a historic \$2 billion verdict in a Texas probate court, marking it among the largest in American legal history. Alan's exceptional performance consistently earns him recognition, including his top ranking in the 2023 Chambers USA for Texas Litigation: Trial Lawyers. He stands out among his peers in Dallas, honored as one of ten lawyers to achieve this distinction. Furthermore, Alan's inclusion in the National Trial Lawyers Top 100 Civil Plaintiff Trial Lawyers underscores his national acclaim and the esteem in which he is held within the legal community.

Jo N. Hopper, *et al.*

v.

JPMorgan Chase Bank, N.A., *et al.*

Max Hopper



Max Hopper was a titan of early corporate information technology, a genius who led the development of American Airlines' AAdvantage program and its SABRE reservation system.

Jo was 62 when the man she'd been married to for 28 years died. She has spent much of the ensuing eight years locked in a legal battle over \$19 million in assets she and Max jointly owned. Her opponent: Manhattan-based JPMorgan Chase, the largest bank in the country, with \$2.6 trillion in assets under management. Jo and her stepchildren hired the bank to administer Max's estate in 2010, after Max died without a will, leaving his assets in financial limbo. But soon after JPMorgan had collected its \$230,000 fee for the estate administration, something went horribly wrong between the bank and the beneficiaries. Lawsuits ensued. Jo sued the bank. The bank sued Jo. Jo sued her stepchildren. The stepchildren sued Jo. The stepchildren sued the bank. And so on.

In September of last year, a jury finally heard the case. It ruled in favor of the family with a historic and headline-grabbing \$8 billion award against JPMorgan. That was the largest punitive award ever in Texas. The jury's ruling was so abnormally large that attorneys representing the plaintiffs weren't even sure how to calculate it—the initial guess of \$4 billion eventually gave way to the higher \$8 billion estimate.

Jo has claimed in her court filings to be a widow wronged by the bank, but she is no frail, little old lady. In 2007, she was diagnosed with stage-4 lymphoma and given six months to live. She has been in steady at 5 feet 4 inches. On the day we meet, she's wearing a flowing white top and black pants. Silver bracelets adorn her wrists. Her gray hair is pulled back tightly into a bun. Her attorney, Alan Loewensohn, is here sitting beside her. But Jo leads the conversation.

As she weaves this narrative of endless court fights, Jo hands over pages of documents. There's a pamphlet produced by JPMorgan called "The Well-Prepared Family" that explains how to choose an executor. She has highlighted the part that says an executor "is legally responsible for preserving the value of the estate until it is distributed" and another in the best interest of the estate's beneficiaries.

Next comes a printout of a job listing at JPMorgan in Dallas. They're hiring someone in asset management to oversee trusts and estates. "I'm really," says the Nashville native, née Jo McChesden, professor at Ohio State University called "The Stepmother's Role in a Blended Family." Jo has highlighted a paragraph noting that "there have been more than 900 stories written about evil or wicked stepmothers." Cinderella and Snow White are just two among them.

The family feud between Jo Hopper and her stepchildren—61-year-old Oklahoma City physician Stephen Hopper and Laura Hopper Wassmer, the 56-year-old mother of Prairie Village, Kansas—is a big part of this story. But Jo's version is different from the bank's. The bank has based its legal defense on the toxic relationship between Jo and

Max's children. It claims the family would have had no complaints about its services had it not been for three heirs, in turn, allege the bank botched the estate—committing fraud and possibly a felony in the process, as well as driving a wedge between stepmother and stepchildren.

Fraud. Felony. How did a jury come to believe that a bank that has been part of the bedrock of the American financial system since 1871 might have done such things to a widow and her stepchildren? And what made that jury so angry—so concerned that what happened to the Hoppers could happen to any of us—that it insisted on making an unprecedented statement with its verdict? To be sure, Jo Hopper's story is a good one. But good enough to deserve \$8 billion?

JPMORGAN WOULD NEVER HAVE BEEN hired to manage Max Hopper's estate if Jo had her way. She would have done it herself.

All four wills that Max drafted before his death, but never signed, said Jo should serve that role. She'd handled the family finances for decades, and, like her husband, she'd worked as an executive at American Airlines, once managing a staff of five systems analysts, a personal assistant, and a multimillion-dollar budget.

Plus, the law, Jo figured, was easy to understand. When someone dies "intestate," as a lack of a will is called, Texas law stipulates that the decedent's share of the community property—anything Max and Jo owned jointly—will go half to the surviving spouse and half to the decedent's children. Any property owned outside of the marriage should go two-thirds to the children and one-third to the surviving spouse. "So all we had to do," Jo says, "was go through the assets, divide everything by two, and then divide again by two. Then we're out of here."

Stephen and Laura didn't see it that way. In March 2010, two months after Max died, the Hoppers met at the \$2 million, 8,000-square-foot Preston Forest home on Robledo Drive that Jo and Max had bought in 1997. The children, as Jo calls them, even though they were both adults when she married Max, insisted on hiring JPMorgan as an independent administrator in part because they wanted someone impartial to handle any disputes that might arise. "That's what the children wanted," Jo says. "They wanted assurances. So I agreed."

Days later, the family settled on JPMorgan for the job. The bank was charged with doing what Jo had proposed to do: find all the assets, add them up, divide by two, and divide by two again. But the Hoppers found the process to be too slow. They say the bank didn't act quickly enough in executing stock options Max owned. They allege taxes were improperly filed. And they say the bank was tardy in responding to other requests to make financial transactions. All of that cost the children and Jo tens of thousands or possibly hundreds of thousands of dollars in lost income, attorneys for both parties have claimed.

SPREAD HIS WINGS. Max and Jo had lifetime passes to claim available seats on American flights, but his son thought Jo might be using his Max's AAdvantage miles.

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AMY WINEHOUSE



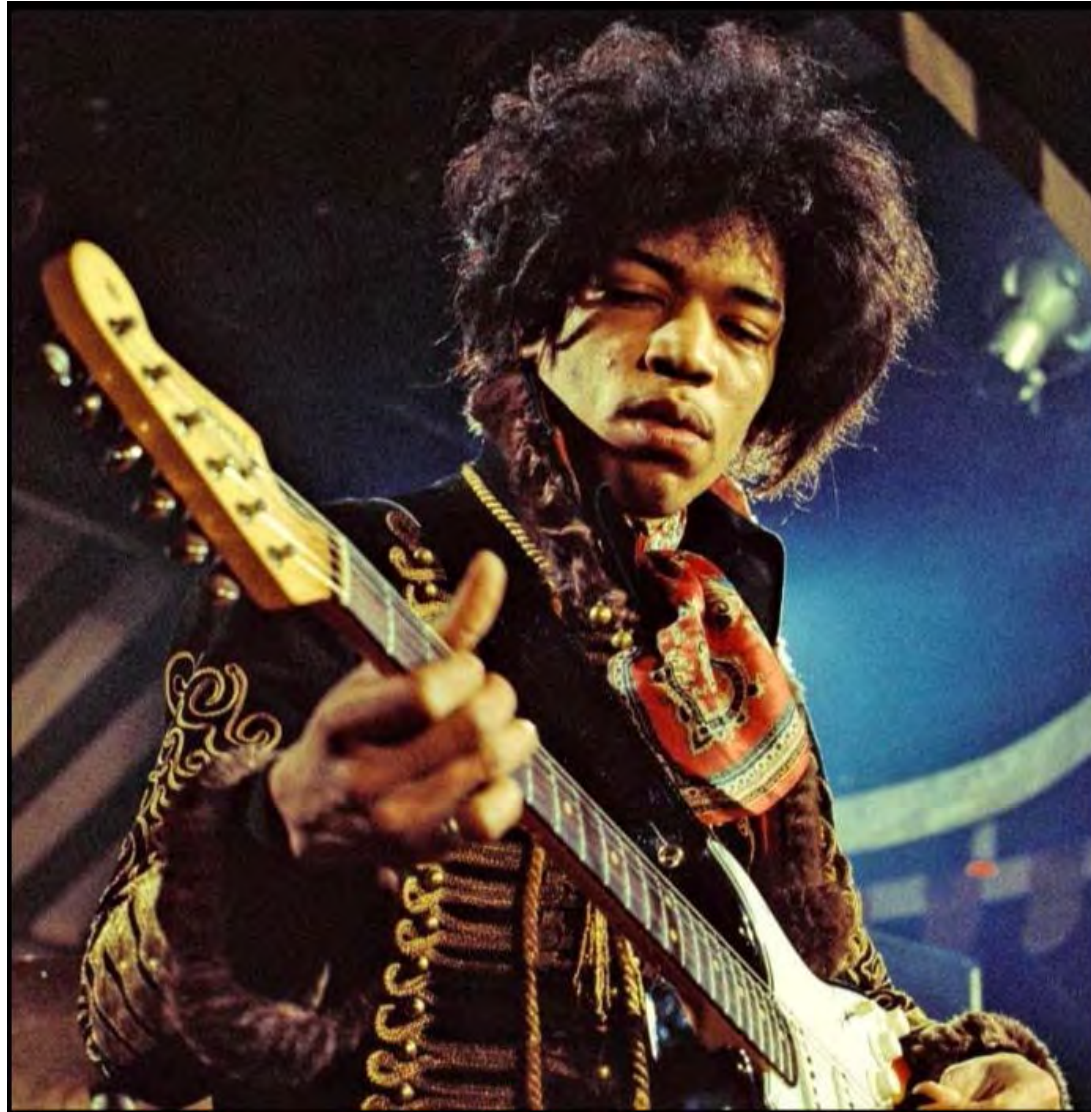
BOB MARLEY



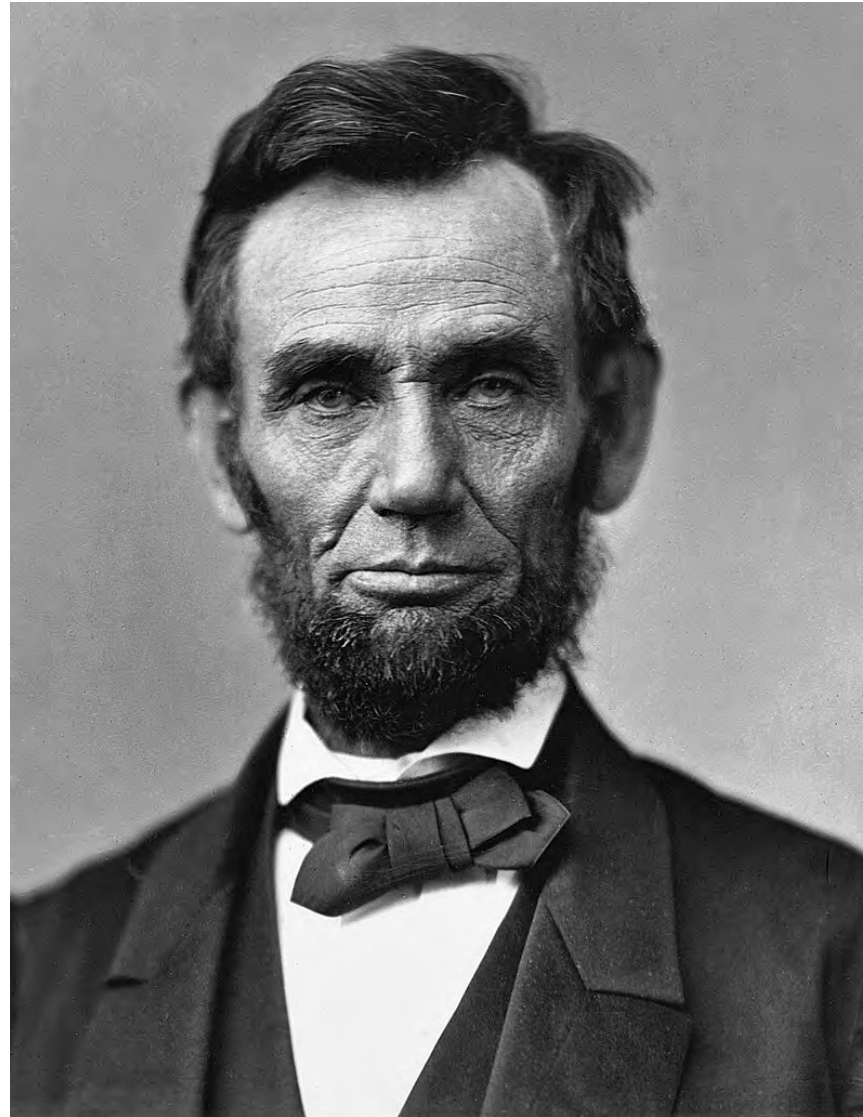
PRINCE



JIMI HENDRIX



ABRAHAM LINCOLN



KURT COBAIN



PABLO PICASSO



HOWARD HUGHES



ARETHA FRANKLIN



Max and Jo



Stephen Hopper



Laura Wassmer



Putter Collection



Kal Grant



Susan Novak



Todd Baird



Susan Novak

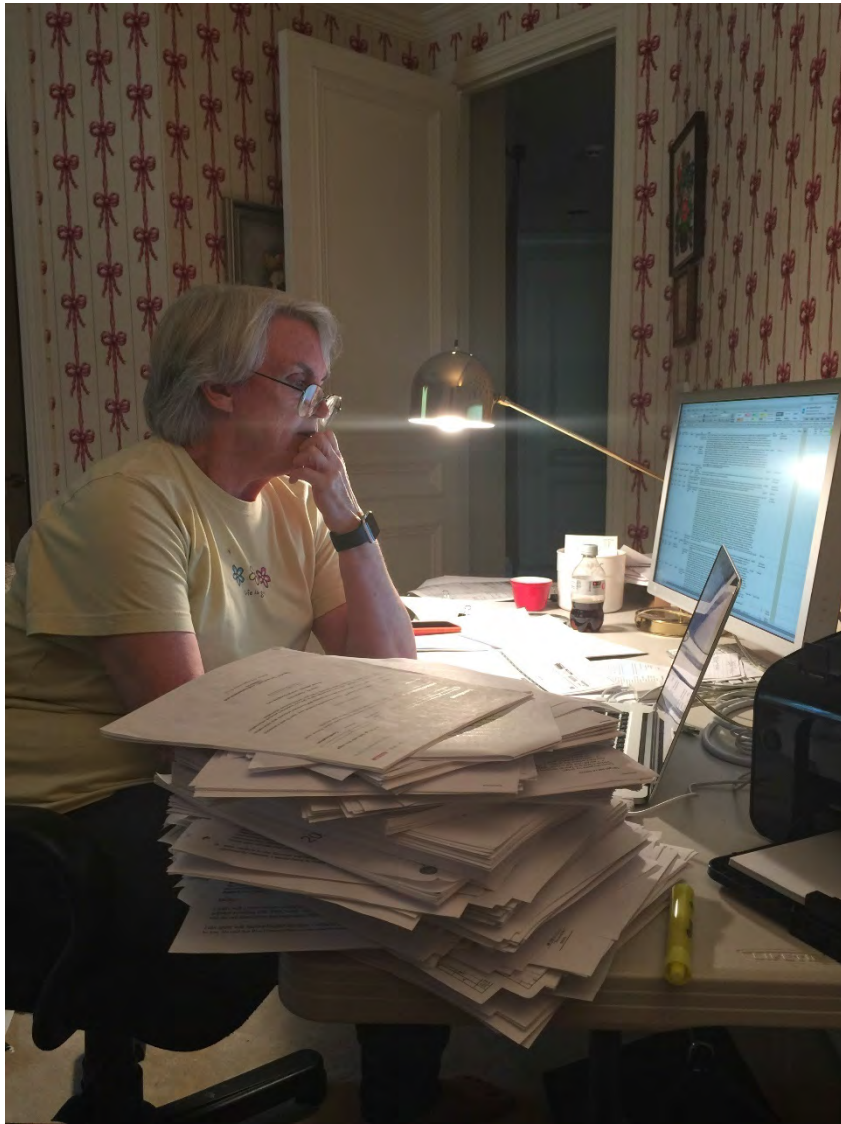


JUST REMEMBER! I FIGHT LIKE A GIRL!



Jo Hopper









Question No. 4

What sum of money, if any, if paid now in cash, should be assessed against JPMorgan and awarded to Jo Hopper as exemplary damages, if any, for the conduct found in response to Question No. 3?

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong;
2. The character of the conduct involved;
3. The degree of culpability of JPMorgan;
4. The situation and sensibilities of the parties concerned;
5. The extent to which such conduct offends a public sense of justice and propriety; and
6. The net worth of JPMorgan.

Answer in dollars and cents, if any.

Answer: \$ 2,000,000,000.00

Jack and Jo



**PRACTICAL ESTATE PLANNING
DRAFTING AND DESIGN:
EFFECTIVE STRATEGIES TO SAVE
TAXES, PRESERVE ASSETS,
PROTECT BENEFICIARIES, AND
HARMONIZE RELATIONSHIPS**

**Joseph M. Ferraro,
Director Family Wealth
Western Reserve Trust Company**

Joseph M. Ferraro, Esq.
Director, Family Wealth & Fiduciary Counsel
Western Reserve Trust Company (Cleveland, Ohio)

Biography

Joe Ferraro has an extensive background as a trust and estate lawyer, with a practice focused on estate planning, trust and estate administration, asset protection, charitable giving, and estate, gift, and income taxation.

In his role as Director of Western Reserve Trust Company's Family Wealth team, he coordinates legal, tax, and financial matters for high-net-worth and UHNW individuals and family groups. He frequently collaborates with clients' attorneys, accountants, and investment advisors to develop and implement sophisticated wealth and estate planning strategies. He also assists WRTC's Trust Administration team by providing guidance on trust and estate laws, tax matters, and assessing business and fiduciary risk. During his career, Joe has been a regular speaker and author on these topics and an active member of his local bar associations. Joe previously worked as an attorney at Tucker Ellis LLP in Cleveland, Ohio in the Estates, Trusts & Probate practice group.

Education

- Miami University (Bachelor of Science, Accountancy & Business Legal Studies, 2010)
- The Ohio State University Moritz College of Law (Juris Doctor, 2013)

Bar Admissions

- Ohio (2013)
- Florida (2015)

Professional Organizations

- Ohio State Bar Association – Estate Planning, Trust and Probate Law Section
 - o Section Council (2024 – present)
 - o Law School Outreach Committee, Member
 - o Uniform Directed Trust Act Committee, Member
 - o Spousal Property Rights Committee, Member
 - o Bar Examination Committee, Member
- Cleveland Metropolitan Bar Association - Estate Planning, Probate and Trust Law Section, Member
- Estate Planning Council of Cleveland, Member
- Florida Bar – Real Property, Probate and Trust Law Section, Member
- Case Western Reserve University - Estate Planning Advisory Council

Recent Speaking Engagements

- *Estate Planning for Young Lawyers*, Ohio State Bar Association (OSBA) Young Lawyers Section Meeting (January 2025)
- *Current Trends in Estate Planning and Trusts*, 43rd Annual Probate Practice Seminar, Trumbull County Bar Association (October 2024)
- *Beyond the Casebook: Presenting to Law Students About Careers in Estate Planning*, The American College of Trust and Estate Counsel (ACTEC) Summer Meeting, Legal Education Committee Meeting, Washington, D.C. (June 2023)
- *Estate Planning: The Who, What, Why, and How*, Case Western Reserve University School of Law, Wills & Trusts Class (Fall Semester 2019 - 2024)

- *Estate Planning and Charitable Giving*, Planned Giving Breakfast, Cleveland Metroparks and Cleveland Zoological Society (March 2019)
- *Ohio Law Update*, 44th Annual Estate Planning Institute, Cleveland Metropolitan Bar Association (October 2017)

Recent Publications

- *Straight A's – Accurate, Adequate, and Aesthetically Appealing Gift Tax Returns*, Cleveland Metropolitan Bar Journal (June 2024)
- *Creating Flexible Dynasty Trusts for an Uncertain Future*, Cleveland Metropolitan Bar Journal (June 2022)
- *The Postnuptial Agreement Renaissance—Can Ohio Emerge From The Dark Ages?*, Probate Law Journal of Ohio, Volume 29, Issue 6 (July/August 2019)
- *Tips on Maximizing Benefits of a Donor-Advised Fund*, Crain's Cleveland Business (October 2019)
- *SLATs Offer Opportunity to Save on Estate Taxes*, Crain's Cleveland Business (November 2018)
- *Changes to Custodial Accounts for Minors: Keeping the Champagne on Ice*, Crain's Cleveland Business (November 2017)



**Trumbull County Bar Association
44th Annual Probate Practice Seminar
October 3, 2025**

**Practical Estate Planning Drafting and Design: Effective Strategies to Save Taxes,
Preserve Assets, Protect Beneficiaries, and Harmonize Relationships**

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I. Introduction

- a. A trust document is essentially a rulebook that governs the trustee and administration of trust property. Each one is unique. Not only do the parties change from trust to trust, but the provisions vary depending on the settlor's circumstances and goals. This is true for both the substantive terms of the trust document and the so-called "boilerplate" provisions and is often the product of the style and drafting philosophy of the attorney.
- b. With modern trusts lasting for several decades (and potentially several generations), it is important that trust documents be drafted in a manner that provides flexibility to adapt in the face of change or unanticipated circumstances. Flexibility allows a trust to adjust to save taxes, preserve assets, protect beneficiaries, and harmonize relationships among family and fiduciaries. However, too much flexibility risks upending the intent of the settlor, so great care must be taken to ensure that the settlor's intentions and the purpose of the trust are preserved.
- c. Sometimes, a trust document creates challenges for the trustee and beneficiaries, or even hinders the furtherance of the settlor's intentions and goals. This may be due to ambiguous or erroneous language, a lack of guidance or instruction, the omission of essential or key provisions, or the lack of flexible mechanisms to adjust to change. In some situations, governing laws provide additional guidance or tools for the trustee to efficiently and effectively administer the trust, but this is not always the case.
- d. This outline is intended to highlight some key trust provisions that can be included in a trust document so that the trust can adapt over time and reduce conflicts, enhance efficiency, and ensure the settlor's intent is served for years to come.¹

II. Trustee Removal and Appointment

- a. Selecting the initial and successor trustees is one of the most important and difficult decisions a settlor has in creating a trust. The individuals or institutions selected to serve may seem perfect at first, but do not always withstand the test of time. Individuals move away, develop bad habits, age, become ill, lose capacity, die, or simply prove to be a poor fit for the role.

¹ These materials are provided for educational and informational purposes only. The sample language included herein is illustrative in nature and may not be appropriate for all situations and should not be relied upon. Practitioners consulting this outline should make an independent determination as to the appropriateness of using any of such language, and the author does not represent or warrant that such language will achieve the practitioner's intended objective.

Institutions change as well, and not always for the better. A trustee who is inattentive, unresponsive, unfamiliar with fiduciary investment practices, or unsure of his or her responsibilities can delay distributions, complicate tax reporting, erode the value of trust assets, and lose the trust of the beneficiaries.

- b. Rigid trustee provisions can create serious problems in administration. Without flexible provisions allowing for the removal and replacement of trustees, beneficiaries and co-trustees may be stuck in an arrangement that is no longer appropriate or workable. In some cases, beneficiaries are left with no practical way to address the issue without resorting to costly and time-consuming court intervention to have a trustee replaced. To avoid having a trustee “locked” into place, trust documents should include mechanisms for trustee removal and appointment that do not require judicial involvement.
- c. When designed properly, flexible provisions can help safeguard the settlor’s intent by ensuring that the trust remains well-managed over time. This is especially true for trustee succession provisions, which ensure a trust can remain resilient, efficient, and aligned with the settlor’s long-term goals.
- d. **Considerations**
 - i. *Customize a process for the removal and appointment of trustees* – As opposed to limiting the trustee succession to a fixed list of individuals or entities, consider providing a process to designate additional or successor trustees. Common approaches include granting removal and appointment authority to the beneficiaries, a trusted family member, or an independent third party. These powers are sometimes granted to a certain powerholder, such as a “Trust Advisor” or “Trust Protector.” Similarly, provisions allowing for the streamlined appointment of successor trustees ensure that there is no disruption in administration when a vacancy occurs.
 - ii. *Allow a trustee to delegate powers* – Consider allowing trustees to divide and delegate certain powers (e.g., administrative and investment powers). For example, an individual trustee could be provided with the power to appoint a professional co-trustee (such as a qualified professional, bank, or trust company) and delegate administrative and/or investment responsibilities to the co-trustee. This can alleviate some of the administrative burden and ensure an individual trustee is satisfying legal requirements such as providing reports to beneficiaries, filing tax returns, and investing trust property in an appropriate manner.

❖ **Sample Language (Trustee Removal and Replacement)**

“An individual trustee may appoint his or her successor. Individuals, while serving as trustee, may also appoint additional trustees and may remove any institutional trustee. [Powerholder #1] may, from time to time, remove any trustee and also appoint successor or additional trustees or stipulate an order of succession of trustees or a mechanism or procedure for the selection or designation of successor or additional trustees. If [Powerholder #1] is unavailable to act, such powers may be exercised by the first person or persons indicated below and available to act:

1. [Successor Powerholder #2];
2. [Successor Powerholder #3].”

❖ **Sample Language (Delegation)**

“When there are three (3) or more trustees authorized to act in any particular, the agreement of a majority of the trustees shall be required, and when there are two (2) trustees authorized to act in any particular, the agreement of both trustees shall be required; provided, however, that a trustee may by a written instrument delegate any of its fiduciary powers to a co-trustee unless such co-trustee is expressly prohibited by this instrument from exercising such powers. Each trustee shall be liable only for its own acts or the acts of its co-trustee to which it consents.”

III. Distribution Standards

- a. One of the most important roles of the trustee is to make distribution decisions for the beneficiaries. The terms of the trust document will govern the trustee on when, how, and for what purposes distributions are made, including the factors to consider when exercising such discretion.
- b. *Distribution standards* – Distribution standards can be categorized into two types: (1) “ascertainable standards” (e.g., health, education, maintenance, and support) and (2) non-ascertainable standards (e.g., welfare, best interests, happiness, or “any reason whatsoever”).
 - i. *Ascertainable standards* – Typically, this includes distributions limited to a beneficiary’s “health, education, maintenance, or support,” often referred to as “HEMS.”² Theoretically, distributions needed to provide for a beneficiary’s health, education, maintenance, or support could be reasonably determined by a third party, thus a beneficiary could enforce his or her rights to distributions and to provide an adequate level of support.³
 1. *Health* – Includes distributions for the health-related needs of a beneficiary, including routine items such as physicals and medication, and less frequent needs such as surgeries, specialty care, hospitalizations, and emergency medical care. This also includes payments for medical, dental, vision, and long-term care insurance. Should a settlor intend for the trust to cover more extraordinary needs, such as elective surgeries, wellness expenditures, in-home nursing care, or non-traditional health care, then the terms of the trust should expressly provide for these expenditures.
 2. *Education* – Includes tuition, books, fees, room and board, travel to and from school, and reasonable living expenses while enrolled in school. This includes primary school, secondary school, college and graduate school, and trade or technical school.
 3. *Maintenance and Support* – The most general of the “HEMS” standards, maintenance and support are often interpreted synonymously. They typically provide for distributions necessary to maintain the beneficiary’s accustomed standard of living, which includes distributions for food, clothing, housing, transportation, basic medical expenses, taxes, and insurance. It may also include distributions for reasonable and appropriate travel and charitable or family giving (but not for extraordinary gifts).
 - ii. *Non-ascertainable standards* – This includes any standards that provide more general guidance to the trustee beyond the familiar, more well-defined HEMS standards, such as distributions for a beneficiary’s “best interests,” “comfort,” “welfare,” or “happiness.” This would also include a wholly discretionary trust where the trustee has absolute

² The Uniform Trust Code (“UTC”) § 103 defines “ascertainable standard” as a “standard relating to an individual’s health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code (“IRC”).

³ Restatement (Third) of Trusts § 50, comments.

discretion to decide when and how much to distribute to the beneficiaries. When distributions are not limited to HEMS, it is more difficult for a beneficiary to compel a distribution from the trust, and the trustee is provided more deference in its distribution decisions.

c. **Considerations**

- i. *Limit distributions to an ascertainable standard if the beneficiary serves as trustee* – If the beneficiary of the trust is also serving as the trustee, limiting distributions to an ascertainable standard will help to protect trust assets from certain third party creditor claims⁴ and avoid inclusion of the trust assets in the beneficiary’s taxable estate.⁵ If the intent is for the trust property to avoid being included in the beneficiary’s taxable estate or subject to creditor claims, care must be taken to limit distribution standards to HEMS.⁶
- ii. *Use of non-ascertainable standard if an independent trustee is serving* – Using a discretionary standard broader than HEMS (i.e., a non-ascertainable standard) could provide greater flexibility and a higher level of asset protection. However, to avoid adverse transfer tax and creditor access consequences, only an independent trustee⁷ should hold non-ascertainable distribution standards. If the settlor prefers the trustee to have more flexibility to make distributions for purposes beyond HEMS (i.e., for unique opportunities, lifestyle enhancement, or other unforeseen circumstances), then consider permitting distributions for a beneficiary’s “best interests” or creating a wholly discretionary trust by allowing the trustee to make distributions in its sole and absolute discretion.

Further, if the trustee has the power to make distributions of principal and is not limited to an ascertainable standard, then the trustee will have very broad authority to distribute the property of the trust to a new trust that modifies the beneficial terms for a beneficiary through a trust decanting under ORC §5808.18.

- iii. *Toggling the distribution standards based on who is serving as trustee* – For additional flexibility, consider providing different distribution standards depending on whether the trustee serving is “independent.” Therefore, a beneficiary serving as trustee will benefit from asset protection and avoid estate inclusion (as distributions would be limited to HEMS), but an independent trustee serving (either as a sole or co-trustee) will have broader authority to make distributions if appropriate (for example, as a wholly discretionary trust)—including broad decanting authority under Ohio law. If at some time in the future, it is appropriate to increase the level of protection over trust property, make a distribution for a unique circumstance (such as tax planning), or performing a trust decanting to modify trust terms, then a beneficiary serving as trustee can resign, allowing an independent trustee to serve and exercise broader discretion to distribute property.
- iv. *Providing more guidance to the trustee* – Often times, the distribution standards included in a trust document are overlooked. A drafting attorney may include HEMS distribution standards in most documents for the reasons outlined above, but may not spend much time identifying and memorializing the settlor’s intent for the types of distributions that the trust

⁴ UTC §§ 504, 505.

⁵ A trustee with the power to distribute trust property to his or herself possesses a general power of appointment, and property subject to such power of appointment is included in the decedent’s estate for federal estate tax purposes, unless the discretionary power is limited by an ascertainable standard related to his or her health, education, maintenance, or support. *IRC §§ 2041(b)(1)(A)*.

⁶ If this is not done in a trust document, Ohio Revised Code (“ORC”) § 5808.14 provides a savings provision, stating that “[a] person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard.”

⁷ Generally, an independent trustee would be defined as a trustee who is not a beneficiary or a “related or subordinate party” within the meaning of IRC § 672(c) with respect to any beneficiary of the applicable trust.

should provide. This additional guidance can be valuable for the trustee and beneficiaries and ensure that the settlor's true intentions are preserved. This could be done within the terms of the trust document, or sometimes (albeit less binding and merely instructive) as a "side-letter" from the settlor addressed to the trustee or beneficiaries.

❖ **Sample Language (Independent Trustee with Broad Distribution Authority)**

"The trustee may distribute to or for the benefit of the Primary Beneficiary [defined in the trust document] as much of the net income and principal as the trustee considers appropriate for the Primary Beneficiary's health, education, maintenance, and support. An Independent Trustee [defined in the trust document] may, in addition to the aforementioned discretionary distributions, distribute to the Primary Beneficiary as much of the principal as the Independent Trustee deems appropriate for any purpose."

IV. Powers of Appointment

- a. A testamentary power of appointment is a simple way to provide a beneficiary with the flexibility and control to determine the ultimate disposition of trust property upon the beneficiary's death.⁸ The class of permissible appointees can be narrow (e.g., limited to descendants), broad (e.g., any person or entity), or anywhere in between. The strategic use of powers of appointment can also help minimize income and transfer taxes.
- b. A power of appointment adds flexibility to a multi-generational estate plan by providing a trust beneficiary (who holds the power) with the ability to "re-direct" the disposition of property in a manner that differs from the default trust provisions. This could be driven by changed family or financial circumstances, to address family needs, or to meet philanthropic or tax planning goals.
- c. Powers of appointment can be broken into two types: (1) general powers of appointment and (2) limited (or "special") powers of appointment. The tax and legal consequences of each type differ significantly.
 - i. *General power of appointment* – A general power of appointment exists if the powerholder (in most instances, the beneficiary) can appoint property to themselves, their creditors, their estate, or the creditors of their estate.⁹ This broad level of control is effectively treated as ownership, and property subject to a general power of appointment is included in the powerholder's gross estate for federal estate tax purposes at death.
 - ii. *Limited (special) power of appointment* – A limited power of appointment is any power of appointment that is not a general power of appointment. To illustrate, the broadest limited power of appointment would allow a beneficiary to appoint property to any person or entity other than themselves, their creditors, their estate, or the creditors of their estate. Property subject to a limited power of appointment is generally not included in the beneficiary's taxable estate.
- d. The decision to use a general vs. a limited power of appointment is often driven by the desired tax treatment of the trust property. For example:
 - i. If the trust beneficiary (and holder of the power of appointment) will have a large, taxable estate in excess of the estate tax exemption amount (which is set at \$13,990,000 in 2025

⁸ For purposes of this outline, any reference to a power of appointment will assume the power of appointment is "testamentary" as opposed to a lifetime power of appointment.

⁹ IRC § 2041(b)(1); Treas. Reg. § 20.2041-1(c).

and will increase to \$15,000,000 in 2026), then avoiding estate inclusion and using a limited power of appointment may be the most tax efficient result.

- ii. If the powerholder will not have a taxable estate for federal estate tax purposes, they may be able to absorb the value of the trust property in their gross estate and benefit from a basis adjustment at death, which can reduce capital gains taxes for future beneficiaries. A general power of appointment should be considered in these circumstances.

e. **Considerations**

- i. *Beneficiary's surviving spouse as a permissible appointee* – Settlers often struggle to determine the appropriate scope of permissible appointees, especially when it comes to allowing a beneficiary to leave assets to a spouse upon death. A flexible compromise is to allow a beneficiary to appoint all or a portion of the trust property to a surviving spouse, but only in further trust. Also, the power can limit distributions to a spouse to “income only” or an annual “unitrust amount.”
- ii. *Broadening the class of permissible appointees* – If a power of appointment provides for limited permissible appointees (for example, “descendants” of the powerholder), but the powerholder does not have any living descendants at the time the powerholder desires to exercise the power, consider broadening the class of permissible appointees in such scenario, in the trust document, so that the appointed trust property is able to continue as part of the powerholder's estate plan (as opposed to potentially reverting to the original donor's trust).
- iii. *Provide a general power of appointment for tax planning* – For flexible tax planning, permit an independent party, acting in a non-fiduciary capacity, to grant a general power of appointment to a beneficiary to include certain trust property in the beneficiary's taxable estate if doing so does not trigger additional transfer taxes. This allows property to benefit from a step-up in basis at the beneficiary's death. Also, a “contingent” or “formula” general power of appointment can be used for the same purpose.

❖ **Sample Language (Limiting an Interest Appointed for the Benefit of a Spouse)**

“Upon his or her death, the Primary Beneficiary [defined in the trust document] may appoint, by specific reference to this power in such person's Will, part or all of the assets of this trust among my descendants or the Primary Beneficiary's surviving spouse (but in all instances excluding such Primary Beneficiary, such Primary Beneficiary's estate, such Primary Beneficiary's creditors, and the creditors of such Primary Beneficiary's estate), in such proportions and in such manner, outright or in trust or otherwise, as the Primary Beneficiary determines; provided, however, any appointment exercised in favor of the Primary Beneficiary's spouse must be in a further trust that limits such spouse's interest to no more than the net income from the trust for such spouse's lifetime. References to the Primary Beneficiary's spouse include only the person who survived the Primary Beneficiary as such person's widow or widower.”

❖ **Sample Language (Independent Party with Power to Grant a “GPA”)**

“For tax planning purposes, the Trust Protector [defined in the trust document], acting in a non-fiduciary capacity, may, from time to time, grant the Primary Beneficiary [defined in the trust document] the power to appoint, at his or her death, any portion (including all or none) of, or any particular asset or assets in, his or her trust(s) hereunder to or for creditors of his or her estate, the result of which will be to include in the primary beneficiary's estate the property over which this general power of appointment was granted. To be effective, such power shall

be set forth in a writing signed and dated by the Trust Protector and delivered to the Primary Beneficiary before his or her death; a copy of the same shall be placed in the trust's records. The grant of this power to the primary beneficiary shall be revocable and modifiable by the Trust Protector until the Primary Beneficiary's death."

❖ **Sample Language (Conditional "GPA" for Income Tax Basis Adjustment)**

"Upon the death of the Primary Beneficiary [defined in the trust document], the trustee shall distribute the remaining trust property held for the benefit of such deceased Primary Beneficiary to or among any one or more of my descendants (other than such Primary Beneficiary, his or her estate, his or her creditors, or the creditors of his or her estate) as the Primary Beneficiary may direct in such person's Will; provided, however, that I grant to the Primary Beneficiary a testamentary general power of appointment over a portion of the remaining trust property (described below as "GPA Property") and the trustee shall distribute such GPA Property to any one or more of the creditors of the Primary Beneficiary's estate and any one or more of my descendants (other than such Primary Beneficiary, his or her estate, or his or her creditors) as the Primary Beneficiary may direct ("Testamentary GPA"). GPA Property shall not include cash or cash-equivalent accounts, property that constitutes income in respect of a decedent under IRC § 1014(c), or any property with a cost basis for federal income tax purposes that is greater than or equal to the fair market value of such property at the time of the Primary Beneficiary's death. Further, notwithstanding the foregoing, the Testamentary GPA shall be exercisable only over the maximum portion of the remaining trust property which, when included in the Primary Beneficiary's taxable estate for federal estate tax purposes, will neither increase the Primary Beneficiary's federal estate tax liability nor exceed the Primary Beneficiary's available remaining generation-skipping transfer tax exemption amount. The specific assets of the remaining trust property subject to the Testamentary GPA shall be selected in order, beginning with the asset with the largest difference between cost basis immediately prior to the Primary Beneficiary's death and fair market value at the time of the Primary Beneficiary's death, and using successively those assets with the next largest difference between cost basis immediately prior to the Primary Beneficiary's death and fair market value at the time of the Primary Beneficiary's death."

V. Change of Situs/Governing Law

- a. Permitting a trustee to change trust situs and governing law adds flexibility for a trustee. It allows the trustee to respond to shifting tax landscapes, legal developments, and family circumstances while preserving assets and reducing risk. When combined with thoughtful trustee selection and clear guidance in the trust document, this power can greatly enhance the trust's long-term effectiveness.
- b. ORC § 5801.07 provides that a trustee may transfer the trust's principal place of administration to another state or jurisdiction, with a requirement that the trustee provide the current beneficiaries with notice of the transfer to a new jurisdiction.
- c. Upon transferring the trust's principal place of administration, the law of the new jurisdiction will generally apply to govern the administration of the trust, which includes matters such as: (a) the management of the trust and duties owed by the trustee to the beneficiaries (including notice requirements); (b) rights of creditors; and (c) the ability to modify, terminate, or decant a trust.¹⁰ Further, moving a non-grantor trust to a new jurisdiction can also have tax implications by avoiding state income taxes on the trust's accumulated ordinary income and capital gains.

¹⁰ Moving the principal place of administration will not generally change the governing law for purposes of the creation and validity of the trust or the construction of the terms of the trust. These are typically determined at the time of the creation of the trust.

- d. Even though state law (and the UTC) provide a trustee with the power to transfer the trust's principal place of administration, there is still a benefit of expressly including this provision in the trust document to clarify that this is within the scope of the settlor's intent. It can also clarify that the governing law for purposes of trust administration can also be changed from the original jurisdiction.
- e. The UTC and ORC provide that a trustee is under a continuing duty to administer the trust at a place appropriate to its purposes and its administration.¹¹ This provision potentially imposes an obligation on the trustee to constantly monitor the laws of all jurisdictions and determine if the trust would be better served somewhere else—which is obviously quite an onerous responsibility.¹² Accordingly, it is suggested that any trust language authorizing a trustee to change situs and governing law expressly waive any duty to monitor the appropriateness of the settlor's initial place of administration.

❖ **Sample Language (Change Situs and Governing Law)**

“The trustee shall have the power, in the trustee's sole discretion and without prior approval of any court, to transfer the situs (including, without limitation, the place of administration and location of trust assets) of any trust created hereunder, and to change the governing law applicable to the administration of any such trust, to any jurisdiction (within or outside the United States) that the Trustee deems reasonably appropriate. The trustee may take any actions necessary or appropriate to effectuate such transfer, including, but not limited to, moving trust assets, changing custodians, appointing a co-trustee or successor trustee in the new jurisdiction, and filing or recording any required documents. In exercising this power, the trustee shall act in a fiduciary capacity and consider the interests of the beneficiaries, including but not limited to tax considerations, creditor protection, administrative efficiency, and applicable trust law provisions. Notwithstanding the foregoing, Ohio shall continue to be one of the appropriate places of administration.”

VI. Small Trust Termination

- a. Permitting a trustee to terminate a small trust without court involvement promotes efficiency and can be highly beneficial for all parties to a trust. Trust administration involves ongoing costs, including trustee compensation, tax return preparation, and potentially legal fees. When the value of the trust property reaches a point when the costs of administration exceed the value of the assets, continuing the trust administration may become uneconomical. In some scenarios, terminating the trust and distributing the remaining assets to the beneficiaries is in the best interests of everyone involved. However, in other scenarios, such as when a beneficiary has a poor track-record of financial management or substance abuse issues, a termination and outright distribution may not be appropriate.
- b. ORC § 5804.14 (“Termination or modification where costs exceed value”) states that “after notice to the qualified beneficiaries, the trustee of an inter vivos trust consisting of trust property having a total value of less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.”¹³

¹¹ UTC § 108(b); ORC § 5801.07(B).

¹² The Ohio State Bar Association Estate Planning, Trust, and Probate Law Section Council and Council of Delegates have approved an amendment to ORC § 5801.07(B) to clarify that “if there is more than one place reasonably appropriate for the administration of a trust, the trustee may administer the trust at any of such places” and that “the original place of administration selected by the settlor will continue to be one of the appropriate places of administration.” As of the time of this presentation, such amendment has yet to be introduced in the Ohio General Assembly.

¹³ This power does not apply to a charitable trust.

- c. Upon exercising this power under ORC § 5804.14, the trustee must distribute the trust assets “in accordance with any provision *specified in the terms of the trust for the premature termination of the trust*” (emphasis added), and if there is no such provision in the terms of the trust, the trustee shall distribute the trust property “among the beneficiaries of the trust in accordance with their respective beneficial interests and in a manner that the trustee determines to be equitable,” taking into consideration (1) any agreement among the beneficiaries with respect to their beneficial interests; (2) the actuarial values of the separate beneficial interests; and (3) any expression of preference of the beneficiaries that is contained in the terms of the trust.
- d. If a trust document is silent regarding “small trust termination,” and a trustee must rely on ORC § 5804.14, there are two potential drawbacks:
 - i. A trustee would not be able to use the statute to terminate a trust that exceeds \$100,000—which may be appropriate in some situations. Further, the \$100,000 threshold could be problematic if the remaining trust property is difficult to value. A trustee may face a dilemma as to whether to have property appraised, which would incur additional costs to the detriment of the beneficiaries.
 - ii. Upon exercising discretion to terminate a small trust, the statute requires distribution in accordance with the terms of the trust, or if the trust is silent, in a manner that is equitable. Without guidance in the trust document regarding distributions upon a “premature termination,” a trustee may be placed in a difficult position to determine the “actuarial values” of the interests of both current and remainder beneficiaries.
- e. **Consideration** – If a settlor is comfortable with the concept of “small trust termination,” it may be better to have a custom provision included in the trust document so that the trustee does not need to rely on a statutory small trust termination. Such a provision could provide greater discretion to the trustee to determine when the continuation of the trust is “uneconomic” and include clearer distribution guidance upon the exercise of the power.

❖ **Sample Language (Small Trust Termination)**

“A trustee serving hereunder may terminate the trust if, in its sole judgment, existing economic or tax conditions are such that the continuance of a trust of that size is generally undesirable and termination of the trust is in the best interest of the primary beneficiary thereof; provided, however, that no person serving as trustee shall be empowered by this paragraph to terminate a trust for such person’s own primary benefit, and the decision to terminate such a trust shall be made, if at all, only in the sole judgment of the trustee in office (if any) other than such person. Upon such termination, the property held in such trust shall be distributed to the primary beneficiary. The trustee shall not be liable to any person for terminating or failing to terminate the trust in accordance with this paragraph.”

VII. Power to Make Non-Pro Rata Distributions

- a. Although a detailed discussion of trust funding formulas is beyond the scope of this outline, for flexibility purposes and tax efficiency, it is often helpful to include a provision in the trust document that permits a trustee to make “non-pro rata” distributions and allocations of property.
- b. At some point in time (typically upon the death of a person or beneficiary), the property of a trust must be distributed among multiple beneficiaries and/or allocated to further trusts. Depending on the circumstances and terms of the document, the allocation among trusts may

be among (a) a marital and credit shelter trust; (b) on-going separate trusts for beneficiaries; and/or (c) trusts with different GST tax inclusion ratios (e.g., a fully exempt and fully non-exempt trusts). The manner of funding such shares and valuing the assets to be allocated is determined by the language of the trust document. Generally, most funding provisions will fall into two main categories: (i) pecuniary bequests and (ii) fractional formulas.

- i. *Pecuniary bequests* – A pecuniary bequest must be satisfied with a specific dollar amount (either stated as a set dollar amount or a formula resulting in a set dollar amount), for example:

- “\$100,000 shall be allocated and distributed to each of my then living children.”
- “The smallest pecuniary amount that, if allowed as a federal estate tax marital deduction, would result in the least possible federal estate tax being payable by reason of my death, shall be allocated to the Marital Trust.”

When a pecuniary bequest is used, the beneficiary or sub-trust is effectively guaranteed to receive assets with a value, as of the date of distribution, equal to the amount of the stated bequest. However, if an asset is distributed in-kind in satisfaction of the pecuniary bequest, capital gains may be recognized (i.e., the asset is treated as if it was sold in order to satisfy the pecuniary amount). Typically, the assets used to satisfy a pecuniary bequest are valued as of the date of distribution.

- ii. *Fractional formulas* – A fractional formula bequest effectively provides that each beneficiary or sub-trust is to receive a fraction of the residue (or assets available for distribution), and in theory, each beneficiary is entitled to an undivided interest in each asset. For example:

- “All of the rest, residue, and remainder of the trust property shall be allocated to per stirpes to my then living issue.”
- “I give to the trustee of the Marital Trust a fractional share of my residuary estate of which (a) the numerator is the smallest amount that, if allowed as a federal estate tax marital deduction, would result in the least possible federal estate tax being payable by reason of my death, and (b) the denominator is the value of my residuary estate as finally determined for federal estate tax purposes.”

With use of fractional funding, all of the taxes, claims, debts, expenses, appreciation and depreciation are shared proportionally among the fractional share beneficiaries. This also means that assets do not need to be revalued at funding (as each fractional beneficiary is entitled to a fractional portion of each asset, so the values are not necessarily relevant). From an income tax standpoint, no capital gains are recognized if assets are distributed in kind, so long as the assets are allocated pro rata among the beneficiaries. Any non-pro rata distributions or allocations may trigger capital gains at the time of funding.

- c. **Consideration** – *Allow a trustee to make non-pro rata distributions* – With fractional funding formulas, each beneficiary or share is entitled to an undivided interest in each asset. However, it may be impractical or even undesirable to fractionalize each asset that is distributed. Therefore, for efficient and flexible administration, it may be desirable to allow the trustee to make “non-pro rata,” in-kind distributions to beneficiaries—sometimes referred to as “pick-and-choose” funding powers. However, as mentioned above, there are certain scenarios where the distribution of an asset “in kind” in a non-pro rata manner will potentially be treated as a “sale” and trigger capital gains, even if satisfying a fractional funding formula. To avoid this

negative tax treatment, the trust document should include “pick and choose” language, giving the trustee the discretion to allocate different assets and disproportionate shares in specific assets to the beneficiaries. Note that unless a fraction of each asset is allocated to each share, it will be necessary to revalue each asset that is not being fractionalized to ensure that the allocation is fair.

❖ **Sample Language (Non-Pro Rata Distributions—i.e., “Pick and Choose”)**

“The trustee, in its sole and uncontrolled discretion, may make any division or distribution of the trust in kind or in money or partly in kind and partly in money, and allot specific securities or other property or an undivided interest therein to any share or trust in the course of any such division or distribution, all at then current values, without requirement that such division, distribution or allotment be pro rata as to each asset subject thereto, and without any requirement that the tax basis of all property available for division or distribution be allocated pro rata among the various shares or trusts.”

THE ETHICS OF AI FOR LAWYERS

**Hon. David A. Hejmanowski
Delaware County Common Pleas Court
Probate/Juvenile Division**

David A. Hejmanowski's Biography

David A. Hejmanowski has served as the Judge of the Probate/Juvenile Division of the Delaware County Court of Common Pleas since February of 2015 and was previously a Magistrate at that Court from January of 2003 to February of 2015 and Juvenile Court Administrator from 2008-15. Prior to this, he served as an assistant prosecuting attorney for Delaware County. He graduated as a Public Service Fellow from the Ohio State University Moritz College of Law in 1999 where he also received the Joseph M. Harter Memorial Award for Trial Advocacy. He received his B.S. in political science from Hiram College in 1996. Currently the Chairman of the board of the Supreme Court's Judicial College, he is also a past chair of the Supreme Court's Advisory Committee on Language Services, a past chair of the Ohio State Bar Association Juvenile Justice Committee and current chair of the Ohio State Bar Association's Content Advisory Committee. From 2008 to 2011 he served a three year term on the Ohio State Bar Association Board of Governors. During 2023 he served as President of the Ohio State Bar Foundation and he is currently President of the Delaware County Bar Foundation. In 2020 he began a ten-year term as an officer of the Ohio Judicial Conference. He is a member of the Governor's Council on Juvenile Justice. From 2019-2022 he served on the Federal Advisory Committee on Juvenile Justice, which advises Congress and the White House on juvenile justice policy matters. He is a member of the Boards of the National Council of Juvenile and Family Court Judges and Chair of the Advisory Committee of the National Center for Juvenile Justice. He has served as a consultant to the Department of Justice on issues relating to the education of judges nationally on juvenile justice issues. He is currently chairing the Supreme Court of Ohio's Task Force on Juvenile Diversion. He is a frequent presenter for the Ohio Judicial College and the Ohio State Bar Association. Locally, he has served as President of the Delaware County Historical Society, the Central Ohio Symphony, and the Strand Cultural Arts Society, and on the boards of the Andrews House and the Arena Fair Theater Company.

AI Ethics Pitfalls for Judges and Magistrates



**DAVID HEJMANOWSKI, JUDGE
DELAWARE COUNTY PROBATE/JUVENILE
COURT**

Rule 1.2 Confidence in the Judiciary



- A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

NCSC AI Guidance (8/2024)



Public Trust and Confidence

Public trust and confidence in the courts is integral to the credibility of the judicial branch. Courts and judicial officers are responsible to ensure that the use of GenAI and other AI tools does not erode the public's trust and confidence in courts due to errors or biases.

Court Rules: Courts should review their rules to determine whether they are sufficient to address expectations of lawyers and litigants concerning the responsible use of GenAI in court filings and proceedings or whether changes may be appropriate to clarify those expectations.

Ethical Guidelines: Education on the applicability of current ethical guidelines is vital to ensure that GenAI is used ethically by lawyers, litigants, and the courts. Courts should review their rules and comments to the rules to determine if they should be updated to clarify their applicability to new technological tools.

Education: Courts must ensure that judicial officer and court staff are educated on the benefits and risks of AI. Courts will need to be aware of how GenAI is used to create content that looks real, sometimes referred to as deepfakes, which will increasingly impact discovery and evidentiary issues in legal proceedings.

Competence to Preside



TECH · A.I.

An athletic director used AI to fake a high school principal's racist tirade, and police say state laws need to catch up

BY BEN FINLEY AND THE ASSOCIATED PRESS

April 25, 2024 at 8:13 PM EDT



Baltimore County Police Chief Robert McCullough

KIM HAIRSTON/THE BALTIMORE SUN VIA AP

Competence to Preside



UNION COUNTY

Students at N.J. high school used AI to make fake porn of classmates

Updated: Nov. 02, 2023, 1:37 p.m. | Published: Nov. 02, 2023, 1:37 p.m.

Beverly Hills middle school expels 5 students after deepfake nude photos incident

The eighth graders were accused of using generative AI to create fake images of 16 classmates.

Florida middle-schoolers charged with making deepfake nudes of classmates

NCSC Guidance



Deepfakes and the Courts

The issue of deepfakes can arise in any court proceeding in which a party presents evidence in the form of an image, video, or audio. Fabricated evidence could be submitted as authentic evidence or authentic evidence could be challenged as fabricated evidence. When a party alleges that digital evidence has been fabricated, expert testimony may be needed to authenticate the challenged evidence. This could result in a battle between the experts that could increase litigation costs for all parties and consequently could widen the access to justice gap.⁶

Deepfakes present a special concern because of the considerable impact that visual evidence has on fact finders. According to studies referenced in a recent law journal article, as compared to jurors who hear just oral testimony, “jurors who hear oral testimony along with video testimony are 650% more likely to retain the information.”⁷ Once jurors have seen video evidence, it is very hard for the impact to be undone, even with admonishments from the court. Another study, published in 2021 by the Center for Humans and Machines at the Max Planck Institute for Human Development and the University of Amsterdam School of Economics, demonstrates the difficulty of identifying deepfakes. The study found that the participants could not reliably detect deepfakes, that people are biased towards identifying deepfakes as authentic (not vice versa), and that people overestimate their own abilities to detect deepfakes even after being instructed on how to detect deepfakes.⁸ Moreover, as the general population becomes more aware of the existence of deepfakes and the difficulty of detecting them, it is possible that jurors will become increasingly skeptical of all digital evidence that is challenged.⁹

NCSC Guidance



Ethics

Competence in Technology is an Ethical Requirement

Judicial officers and lawyers have a basic duty to be competent in technology relevant to their profession.

Model Code of Judicial Conduct (MCJC) 2.5 imposes a duty of competence on judicial officers in performing judicial and administrative duties, which could include an obligation to keep current with technology and to know the benefits and risks associated with all types of technology relevant to service as a judicial officer. Model Rules of Professional Conduct (MRPC) 1.1 states that lawyers must provide competent representation to their clients which includes technical competence.

Judicial officers and lawyers should:

- Have a basic understanding of AI, including GenAI, and its capabilities. This includes knowledge of the terms of use and how data will be used by the AI tool, as well as general familiarity with machine learning algorithms, natural language processing, and other AI techniques relevant to legal tasks.
- Analyze the risks associated with using AI for research and drafting, such as bias or hallucinations.
- Determine which areas of practice or processes can be improved with AI.
- Determine where AI may not be appropriate for use in the legal profession or the judicial system.
- Learn how to optimize prompts to get better results when using GenAI models.
- Identify which issues may require new policies or rules for AI use in the court system.

State Bar of Michigan



JI-155

October 27, 2023

SYLLABUS

Judicial officers must maintain competence with advancing technology, including but not limited to artificial intelligence.

References: MCJC 2(B), (C), MCJC 3(A)(1), (B)(1), [RI-381](#), [Mata v Avianca, Inc.](#), 1:22-cv-01461 (S.D.N.Y.), July 7, 2023.

TEXT

Judicial officers, like lawyers, have an ethical obligation to maintain competence with and further educate themselves on advancing technology, including but not limited to artificial intelligence (AI). Rule 1.1 of the Michigan Rules of Professional Conduct (MRPC) provides that “[a] lawyer shall provide competent representation to a client.” The comment to MRPC 1.1 expressly references technological competence.^[1] This need for competence applies to judicial officers as well. Specifically, Canon 3(A)(1) of the Michigan Code of Judicial Conduct provides that “[a] judge should be faithful to the law and maintain professional competence in it.” As the use of technology increases, so does the requirement to maintain competence in what is available, how it is used, and whether the use of the technology in question would affect a judicial decision.

West Virginia Adv. Op. 2023-22



So, what does the use of AI mean for judges? Judges have a duty to remain competent in technology, including AI. The duty is ongoing. A judge may use AI for research purposes. Judges must realize though that no AI program is perfect. Older models that rely on keywords to conduct a search only produce results that include the keyword itself. It does not consider concepts or context. Such searches may also fail to produce some relevant results. Keyword searches, while proper and useful, can result in false positives (irrelevant documents flagged because they can contain a search term) or false negatives “relevant documents not flagged since they do not contain a search term. Newer models which rely on concepts instead of words fall into two categories, general use AI and specific use AI. General use AI may produce inaccurate or offensive information. Specific use AI is much better. It reads and understands domain-specific content and usually has verifiable responses. It also tends to be private and secure while general use AI is not. However, specific use AI may have downsides if used for other than its intended purpose.

Competence to Preside



ST. MARY'S
UNIVERSITY

St. Mary's Journal on Legal Malpractice & Ethics

Volume 10 | Number 2

Article 1

7-2020

Should Judges Have a Duty of Tech Competence?

John G. Browning

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Competence to Preside



“agreed to never seek judicial office again.”⁶¹ The reason? According to a complaint filed with the New York State Commission on Judicial Conduct, Judge Scolton “did not use his court email account for more than three years[,] . . . had not activated or used a computer provided to him by a grant from the Office of Court Administration[,] . . . [and] had failed to install certain court-related software on the computer,” rendering the Harmony Town Court unable to receive electronically-filed traffic citations.⁶² In a news release from the Commission, it noted that Judge Scolton had “failed to make timely reports and deposits of court funds to the State Comptroller,” and to give notice to the Department of Motor Vehicles regarding deficient drivers.⁶³ The release went on to note that “public confidence” required local justices like Scolton “to account scrupulously for, and timely remit, all fines” owed to make “prompt and accurate reports of dispositions, so that a judge in a later case, for example, may properly adjudicate and fine a repeat traffic offender.”⁶⁴ Judge Scolton had been using paper forms of his own design to notify the Department of Motor Vehicles about dispositions—even though the department did not accept the paper forms he had been filing since 1991.⁶⁵

Byrd v. Woodland Springs (Texas, 2024)



C. Inadequate briefing

In the remainder of his second issue, Byrd merely mentions “Article 51 of the Texas Property Code” and provides no argument. *Cf.*  Tex. R. App. P. 38.1(i). Likewise, in his fourth issue, he contends that the trial court erred by “not requiring [the HOA] to file Arcadia Decision,” but he does not explain this alleged error.¹²

¹² In the statement-of-the-case section of his brief, Byrd clarified, without citation, that *Arcadia* is an opinion from the United States Supreme Court. *Cf.*  Tex. R. App. P. 38.1(d) (stating that the brief must state concisely the nature of the case, the course of proceedings, and the trial court's disposition). Neither party has provided us with guidance to identify the *Arcadia* opinion to which Byrd referred, and we have been unable to identify it. *Cf.* Tex. R. App. 38.1(k)(2) (stating that a brief's appendix may contain optional content such as “copies or excerpts of relevant court opinions”). Further, in his index of authorities, Byrd cites the “Texas Property Code Section 42-USC 51, 52, 209” and the “Texas Civil Properties and Rental Codes.” We cannot tell from Byrd's brief if he used ChatGPT or another artificial intelligence (AI) source to attempt to develop his legal citations. See David T. Laton, *A Cautionary Tale of AI As A Research Tool for Lawyers*, *Prac. Law.* 42, 43 (2024) (“ChatGPT currently lacks the ability to produce reliable and accurate results when given a legal query.”).

Rule 2.3 Bias, Prejudice and Harassment



- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

Connecticut Judicial Branch



6.2 Terminology Related to Bias and Fairness

- **Algorithmic discrimination** – Occurs when automated systems contribute to unjustified different treatment or impacts disfavoring people based on their race, gender, age, religion, disability, or sexual orientation.
- **Bias** – In the context of fairness, bias is an unwanted characteristic that places one group at a systematic advantage and another group at a systematic disadvantage in comparison to another group.
- **Bias mitigation process** – A process for reducing unwanted bias in training data, models, or decisions. This process should be developed and informed by a diverse group of stakeholders with lived experience.
- **Fairness** – the process of correcting and eliminating algorithmic bias (of race and ethnicity, gender, sexual orientation, disability, and class) from machine learning models.
- **Human Rights** – The human rights to privacy and data protection, equality and non-discrimination are key to the governance of AI, as are human rights' protection of autonomy and of economic, social, and cultural rights in ensuring that AI will benefit everyone.
- **Individual Rights** – Under data protection law individuals have a number of rights relating to their personal data. Within AI, these rights apply wherever personal data is used at any of the various points in the development and deployment lifecycle of an AI system.
- **Protected Classes** – Groups of people who are legally protected from being harmed or harassed by laws, practices, and policies that discriminate against them due to a shared characteristic (e.g., race, gender, age, religion, disability, or sexual orientation).

New Jersey Supreme Court



2. **Integrity:** The AI technologies currently in use, as well as those yet to be implemented, will be rigorously assessed to ensure that they meet the highest standards of ethical considerations and are as free from bias as possible. All AI technologies will be continuously monitored, assessed, and refined as necessary in order to identify and remedy potential sources and effects of bias, to the extent possible. The Judiciary will take appropriate steps to ensure the safety and security of AI technologies. The Judiciary will provide appropriate public information as to its development and use of AI and will engage in ongoing oversight to ensure that AI technologies are Transparent, Explainable, Accurate, Reliable, and Secure.

Rule 2.7 Responsibility to Decide



- A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

West Virginia Adv. Op. 2023-22



A judge should **NEVER** use AI to reach a conclusion on the outcome of a case. This is because of perceived biases that may be built into the program. Judges should think of AI as a law clerk, who is often responsible for doing a judge's research. Importantly, the law clerk never decides the case. The judge alone is responsible for determining the outcome of all proceedings. At the end of the day if the judge somehow violates the Code of Judicial Conduct in reaching a conclusion on the case, he/she cannot say, "the law clerk made me do it" nor can he/she say, "AI made me do it." The responsibility for the finished product rests solely with the judge. Therefore, just as a judge would do with a law clerk's work, he/she must check the final draft of any written decision to make sure it contains the most current case law and is error free.

The gray area revolves around the use of drafting AI to prepare an opinion or order. It is one thing to use a product like Microsoft Word that corrects spelling, punctuation, grammar, maintains a built-in thesaurus and provides an editor's score for the finished document. Those products are perfectly acceptable. However, the use of an AI product to actually draft the findings, conclusions and ultimate decision should be met with extreme caution. The drafting product may have built in biases

South Dakota Supreme Court



Enter any personal identifiers or sensitive information into a generative AI account.

AI uses progressive learning algorithms built on user-provided

data and online resources to generate responses. Therefore, any data entered might be integrated into the AI system and accessed by others. Given the sensitivity of the data handled by the UJS, it is crucial to avoid entering any personal identifiable information such as names, Social Security numbers, date of birth, and addresses into the AI system. If it's not suitable for public viewing, it should not be entered into an AI system.

Use AI to make decisions. Generative AI should not be used to make decisions or provide recommendations. AI systems cannot consider subtle nuances a human must take into consideration, nor is it free from discrimination and bias. While useful for data-driven insights and automating routine tasks, AI should not replace human judgment in areas requiring nuanced understanding and ethical considerations.

Rule 2.7 Responsibility to Decide



write me a judgment entry denying a motion to continue on the grounds that the motion is not well-taken



IN THE [COURT NAME] OF [JURISDICTION]

[CASE NAME]

Case No. [XXXX]

JUDGMENT ENTRY DENYING MOTION TO CONTINUE

This matter came before the Court on [date], upon the Defendant's Motion to Continue the trial date, filed on [motion filing date]. The Court, having reviewed the motion, the opposing party's response, and the relevant case law, hereby makes the following findings:

1. **Background:** The Defendant seeks to continue the trial scheduled for [original trial date], asserting [briefly summarize reasons for the motion, e.g., scheduling conflicts, need for additional preparation time, etc.].
2. **Legal Standard:** A motion to continue should be granted only upon a showing of good cause. The Court has the discretion to determine whether the grounds presented justify a delay in proceedings.
3. **Analysis:** After careful consideration, the Court finds that the reasons cited in the motion do not constitute good cause for a continuance. [Explain why the reasons are insufficient, e.g., lack of diligence, minimal impact on the defense, etc.]. Additionally, granting the motion would disrupt the judicial process and unduly delay the proceedings.
4. **Conclusion:** Based on the above findings, the Court concludes that the motion is not well-taken.

THEREFORE, IT IS HEREBY ORDERED that the Defendant's Motion to Continue is DENIED.

SO ORDERED.

Rule 2.7 Responsibility to Decide



write me a judgment entry finding that a parent's consent is not necessary in an Ohio adoption because the parent did not pay support

Judgment Entry

IN THE COURT OF COMMON PLEAS
[COUNTY NAME] COUNTY, OHIO
PROBATE DIVISION

Case No. [Case Number]

IN RE: ADOPTION OF [CHILD'S NAME]
[ADOPTIVE PARENT(S) NAME(S)]

JUDGMENT ENTRY

This matter came before the Court on [Date] for a hearing on the petition for adoption filed by [Adoptive Parent(s) Name(s)]. The Court, having reviewed the petition, evidence presented, and relevant statutes, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The biological parent, [Biological Parent's Name], has not made any child support payments for a period of [duration of non-payment].
2. The last support payment made by the biological parent was on [Date of last payment].
3. The biological parent was properly served with notice of these proceedings and failed to respond or appear in court.
4. The adoption petitioners have demonstrated that they have provided a stable and loving home for the child, [Child's Name], since [Date child came into their care].
5. The Court finds that the biological parent has willfully failed to provide support for the child, thereby constituting grounds for termination of parental rights under Ohio Revised Code § 3107.07(A).

CONCLUSIONS OF LAW

1. Pursuant to Ohio Revised Code § 3107.07(A), consent to adoption is not required from a biological parent who has failed to provide support for the child for a period of one year.
2. The lack of support payments constitutes grounds for determining that the biological parent's consent is not necessary for the adoption of [Child's Name].

ORDER

Based on the foregoing findings and conclusions, the Court hereby finds that the consent of [Biological Parent's Name] is not required for the adoption of [Child's Name].

The Court further grants the petition for adoption and orders that the final adoption hearing be scheduled for [Date of final hearing].

It is so ordered.

Date: [Date]

Judge [Judge's Name]

[Judge's Title]

[Court Name]

[Signature of Judge]

Please replace placeholders like [COUNTY NAME], [Case Number], [Adoptive Parent(s) Name(s)], etc., with the appropriate details for your case.



NCSC Guidance



Confidentiality

Any information entered into an open GenAI platform, including through a basic prompt, could become visible to the company operating the platform and other users. Court personnel should be educated to not enter confidential, sensitive or privileged information in a chatbot or GenAI system that uses an open training model. Open systems use the information entered to train the database and will retain the information in the system unless the terms of use for the system explicitly specify that it does not retain the information. If using a chatbot, disable the chat history if possible. Judicial officers and law clerks must avoid inputting confidential or non-public information, including draft decisions and opinions, when using tools that use open models.

Rule 2.12 Supervisory Duties



- (A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.
- (B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Rule 2.15 Responding to Misconduct



- (A) A judge having knowledge that another judge has committed a violation of this Code that raises a question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.
- (B) A judge having knowledge that a lawyer has committed a violation of the Ohio Rules of Professional Conduct that raises a question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

NCSC Guidance



The following are indications that GenAI may have been used to create a document:

- References to cases that do not sound familiar, cannot be found through traditional legal research, or have unfamiliar citation formats.
- At first read, AI text may sound impressive and well written, but there are often structural issues. AI content tends to be overly formulaic and lacks natural transitions between topics. Once you strike out all the words that are meaningless filler, there may not be a lot of substance left. AI is also not mindful of grammar rules or basic punctuation although that is improving.
- AI is designed to recognize patterns and replicate them as accurately as possible so look for repetitive patterns in the writing. Perhaps the most obvious sign of AI-generated content is the use of repeated words, phrases, or the same sentence structure used regularly in different paragraphs within the same document.
- Often AI generated content is written in the general sense, glossing over facts and figures and may be lacking details, unnatural phrasing, lack of natural transitions between topics, or errors that a human is less likely to make. It often uses alliteration to articulate an appealing word arrangement.
- The absence of relevant very recent on-point case citations may indicate the use of AI generated content. OpenAI models are trained on massive data sets that are not continually updated so if recent relevant cases are not cited, it may be due to the AI being trained on an earlier dataset.
- Humans use idioms and slang frequently. AI often uses these phrases and words incorrectly. If you spot an idiom that feels a bit off and seems forced into the text it is likely a sign it was created with GenAI.

Rule 4.3 Campaign Communications



- During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements on radio or television or in a newspaper or periodical, electronic communications, a public speech, press release, or otherwise, shall not knowingly or with reckless disregard do any of the following:
- (A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent, either knowing the information to be false or with a reckless disregard of whether or not it was false;

Advising Clients – NCSC Guidance



Considerations in Developing a Policy

When developing an AI use policy, consider including:

- the policy's purpose and scope: to whom it applies, to what technologies it applies, how it can be used, such as requiring the use of secure and encrypted networks when accessing or transmitting data through AI tools, and requirements about the use of court data for training AI tools;
- acceptable uses of AI that are responsible and ethical and comply with all applicable laws, regulations, and policies (See [Kentucky's](#) and [Utah's](#) policies);
- prohibited uses of AI that would jeopardize the court's network or potentially disclose confidential information;
- staff should not access, collect, use, or disclose personal or sensitive information beyond what is necessary for authorized business purposes;
- what data protection laws, regulations, or policies apply to the use of personally identifiable information and the data privacy and security measures that should be implemented or that employees should follow to protect the court's data;
- how to ensure that AI-generated content is not biased and does not reflect discrimination based upon race, ethnicity, gender, age, or other protected classes;
- when to update and patch AI tools to protect against vulnerabilities and security risks, if not already covered in another security policy;
- mechanisms to monitor whether the policy is being followed, and plans for what to do if the policy is violated (security and HR).

Advising Clients – NCSC Guidance



Possible Uses of AI in the Courts

Potentially Useful Tasks

- AI tools are capable of summarizing large amounts of text. As with any summary, care needs to be taken to ensure the summary is accurate.
- AI tools can organize a large amount of information as directed.
- AI tools can find specific information in a large volume of data.
- AI tools can do an acceptable job of creating a first draft of something – a contract, a speech or remarks on a specified topic, job interview questions, position descriptions, performance evaluations, or policy provisions. However, it is essential to review, check, and refine the output and not treat it as a final product. Be aware that different prompts, even with only slightly different wording, will produce different results, so try several prompts to get closer to your desired result.
- AI tools can be used in writing presentations, e.g., to provide suggestions for topics to cover.
- Administrative tasks like composing emails and memoranda can be performed by AI.
- Generating images for presentations. Images often contain hallucinations or inaccuracies so make sure to closely review to make sure there aren't oddities included. Multiple prompts may be needed to get the desired outcome.

Hypothetical 1



- Judge Harper presides over a civil case involving a complex contract dispute between two companies. The case involves an enormous amount of technical and financial data, making it difficult to sift through the evidence. To assist with the decision-making process, Judge Harper decides to rely heavily on an AI system that analyzes legal precedents, interprets contract clauses, and provides a recommended judgment based on the data input. As the trial progresses, Judge Harper receives the AI's recommended judgment, which strongly favors one party. Rather than reviewing all the evidence or writing her own opinion, Judge Harper adopts the AI's recommendation in full, issues the judgment, and closes the case without significant independent analysis or personal deliberation.

Hypothetical 1



Question:

- Has Judge Harper violated Rule 2.7 (Responsibility to Decide) of the Code of Judicial Conduct by relying on the AI's recommendation to make her final decision?

Hypothetical 2



- Judge Taylor is presiding over a high-profile criminal case where the defendant is facing sentencing for multiple non-violent offenses. In an attempt to make an informed decision, Judge Taylor uses a cutting-edge AI sentencing tool that predicts the likelihood of recidivism (the tendency of the defendant to reoffend) based on data from thousands of similar cases. The AI tool suggests a much longer sentence than what the prosecution or defense recommends. The tool uses proprietary algorithms, which neither the judge nor the legal teams fully understand, and the underlying data is not available for review. Judge Taylor, without further questioning the tool's recommendation or considering other evidence, sentences the defendant based primarily on the AI's suggestion, despite the defense presenting mitigating factors such as the defendant's personal circumstances, lack of prior criminal history, and clear signs of rehabilitation.

Hypothetical 2



Question:

- **What potential violations of ethical standards has Judge Taylor committed in this scenario?**

Hypothetical 3



- Judge Davis is overseeing a complicated patent infringement lawsuit between two tech companies. To help manage the complexity of the case, Judge Davis begins using a sophisticated AI system designed to assist with legal research, analyze arguments, and suggest relevant case law. During the trial, the AI system automatically pulls in additional data about one of the parties, including financial information that was not introduced as evidence by either party. The AI system generates a report that highlights potential weaknesses in that party's case based on this extraneous data. Judge Davis reviews the AI's report privately, without notifying the attorneys for either party, and it influences his thinking as he prepares for the next phase of the trial.

Hypothetical 3



Question:

- **Did Judge Davis violate Rule 2.9 (Ex Parte Communications) of the Code of Judicial Conduct by reviewing the AI's report, which included data not introduced by the parties?**

Hypothetical 4



- Judge Carson is known for being a tech-savvy judge and has recently integrated an AI tool into his courtroom to assist with legal research, evidence review, and even sentencing recommendations in criminal cases. The AI tool was developed by a private technology company, which heavily promotes the product to the legal community and often markets its use in Judge Carson's courtroom as a key feature of its promotional materials. During a high-profile trial, the media begins to report that Judge Carson is "outsourcing justice" to AI, implying that he relies too much on technology and questions whether the decisions in his courtroom are truly independent. The public becomes concerned that Judge Carson may not be fully exercising his own judgment and that the integrity of his decisions is compromised by the influence of the technology company that developed the AI system.

Hypothetical 4



Question:

- **Has Judge Carson potentially violated Rule 1.2 (Promoting Public Confidence in the Independence and Integrity of the Judiciary) of the Code of Judicial Conduct by heavily relying on AI and allowing the technology company to promote the use of its product in his courtroom?**

Hypothetical 5



- In a civil lawsuit involving a large corporation and a small business, Judge Thompson uses an AI system to analyze complex financial data presented by both parties. The AI, which is known for its speed but has occasionally been criticized for favoring large entities, recommends a judgment in favor of the corporation. Judge Thompson, pressed for time, adopts the AI's recommendation without further review.

Hypothetical 5



Question:

- **Did Judge Thompson act fairly and impartially in using the AI's recommendation as the basis for her judgment?**

Hypothetical 6



- Judge Laura Franklin is an experienced judge in a busy state trial court, presiding primarily over civil and criminal cases. Recently, the court adopted a new AI-based tool called "Evidentia" to help judges and legal staff manage and review large volumes of case materials. Evidentia is designed to analyze evidence, summarize documents, and flag potentially relevant information based on its algorithms. The tool has been marketed as a way to help judges work more efficiently, particularly in complex cases involving extensive digital evidence. Judge Franklin has limited experience with technology, though she has participated in basic training sessions on Evidentia offered by the court. Despite this, she feels uncomfortable using the tool and doesn't fully understand how it works or how it reaches its conclusions. She prefers to rely on her traditional legal research methods and the assistance of her clerks for document review.

Hypothetical 6



- Judge Franklin is assigned to a case involving a business dispute between two technology companies. The case involves thousands of pages of technical documentation, emails, and digital records. Both parties have submitted extensive evidence, including metadata and digital communications that are central to the dispute. Due to the volume of evidence, Judge Franklin's clerk suggests using Evidentia to help identify key documents and flag important evidence for review. However, when it comes time to make a ruling, Judge Franklin uses her traditional methods, manually reviewing the evidence and consulting her clerk for assistance. However, she misses several important documents flagged by Evidentia, which the defense later brings up during an appeal, arguing that Judge Franklin's failure to properly utilize the AI tool resulted in an incomplete review of the evidence.

Hypothetical 6



Question:

- **Under Rule 2.5 of the Code of Judicial Conduct, what should Judge Franklin have done to fulfill her duty of competence?**

Questions?



Contact Info:



**DAVID HEJMANOWSKI, JUDGE
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PROBATE/JUVENILE COURT**

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Ohio Board of Professional Conduct

THE ETHICS OF AI FOR LAWYERS

Originally Prepared by
D. Allan Asbury, Senior Counsel

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ARTIFICIAL INTELLIGENCE

"Lawyers working with AI will replace lawyers who don't work with AI."

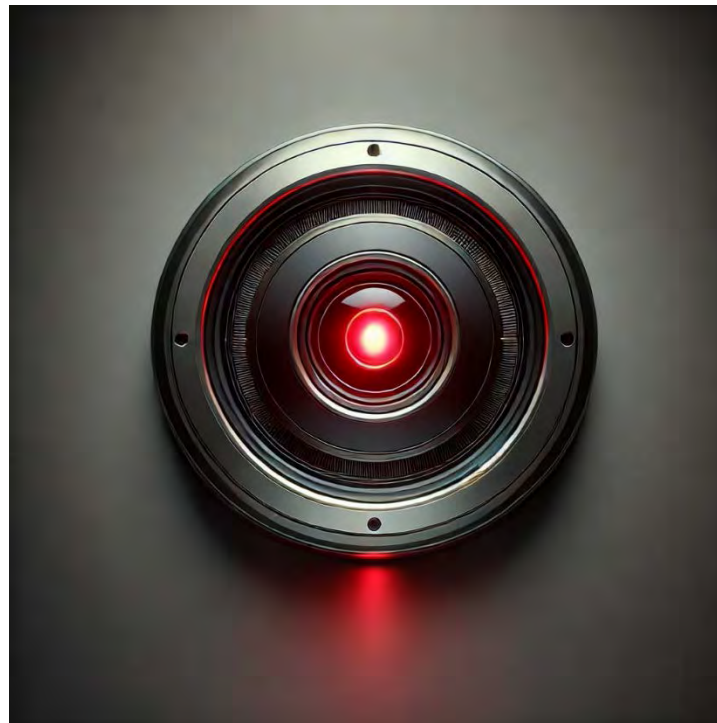
**Erik Brynjolfsson, Director
Stanford Digital Economy Lab**





Ohio Board of Professional Conduct

WHAT IS ARTIFICIAL INTELLIGENCE?-



ARTIFICIAL INTELLIGENCE

- Artificial Intelligence (AI) is the simulation of human intelligence in machines, enabling them to perform tasks that typically require human cognitive functions such as: **learning, reasoning, problem-solving, and decision-making.**
- AI systems are designed to analyze data, recognize patterns, and make predictions or **decisions based on that data.**



ARTIFICIAL INTELLIGENCE

- Traditional AI - Netflix recommendations, suggested Facebook friends, spellcheck, grammar check, Google maps, Siri, Alexa, etc.
- Generative AI - is a type of artificial intelligence (AI) that can create new content based on user prompts or large datasets. This content can be in the form of text, images, videos, audio, computer code, or other media.



ARTIFICIAL INTELLIGENCE

- Large Language Models (LLMs) are deep learning models that use a transformer architecture to process and generate human-like text.
- The transformer architecture is made up of neural networks that work together to learn the meaning of text by analyzing relationships between words and phrases.



Text Training Data

Web Data



Books



Images
converted to text



Structural Data



Training

Large
Language Model

Adaption

Adaptations

Question
Answering

Sentient
Analysis

Information
Summarization

Planning

Language
Translation

ARTIFICIAL INTELLIGENCE

➤ **Some Key Features of LLMs:**

- Self attention mechanisms – allows the model to consider the entire context of a sentence to generate predictions.
- Self-learning- can learn basic grammar, languages, context of language, nuance, and language patterns.



ARTIFICIAL INTELLIGENCE

Limitations of Generative AI Include:

- It can be difficult to determine the source of content generated by AI.
- It can be difficult to ascertain the bias of sources.
- Hallucinations



ARTIFICIAL INTELLIGENCE

So, What's Next?:

- Open AI – “Strawberry” – Now
- Artificial General Intelligence (AGI) – 2029+



THE LEGAL PROFESSION & AI

- AI is “[t]oo powerful not to use.” - NCSC - *Fundamentals of AI in the U.S. Court System* (8/28/24)
- Bar Exam Passage by ChatGPT-4 in the 90th percentile (2023).
- 44 % of all legal tasks performed by lawyers can be automated by AI. – Goldman Sachs – March, 2023
- 10% -21% of Law Firms using AI in some aspect of the practice of law.



THE LEGAL PROFESSION & AI

- Using AI is lawyer “key skill” – now being taught in most law schools.
- Job performance may be measured by how well an employee is delegating tasks to AI.
- In five years, every lawyer will have or need an “AI assistant”.



ARTIFICIAL INTELLIGENCE

“AI allows lawyers to provide better, faster, and more efficient legal services to companies and organizations. The end result is that lawyers using AI are better counselors for their clients.”

ABA, Report on House of Delegates Resolution No.
112 (Aug. 12–13, 2019)





Ohio Board of Professional Conduct

ETHICAL FRAMEWORK FOR LAWYERS

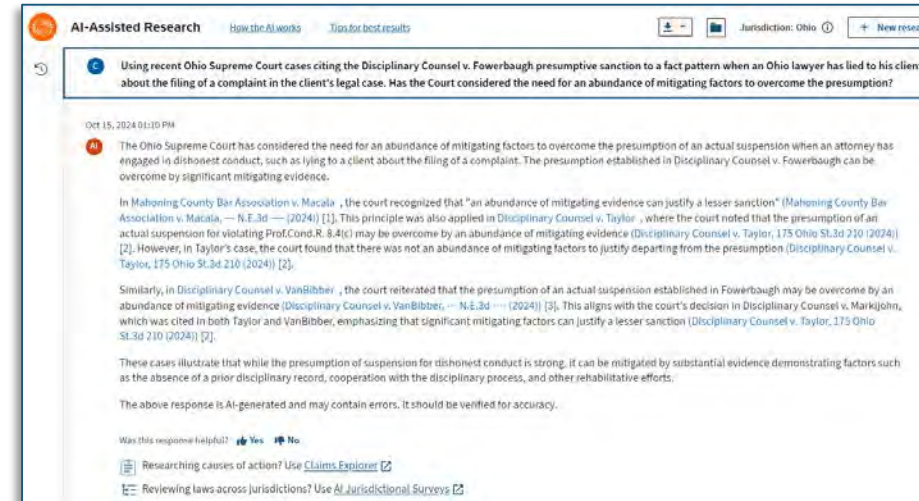


AI TOOLS

➤ Westlaw and Lexis AI →

➤ CoCounsel

➤ AI.Law



➤ Chat-GPT →

➤ Claude AI

➤ Gemini

➤ Bard



AI EXAMPLE – LEGAL RESEARCH

Prompt to Open AI – ChatGPT 4.0: “Apply the *Fowerbaugh* presumptive sanction to a fact pattern when an Ohio lawyer has lied to his client about the filing of a complaint in the client's legal case.”



The *Fowerbaugh* presumptive sanction, established in *Disciplinary Counsel v. Fowerbaugh* (1995), holds that when a lawyer engages in dishonesty, fraud, deceit, or misrepresentation, the presumptive sanction is an actual suspension from the practice of law, not just a stayed suspension. The rationale is that such conduct fundamentally undermines the integrity of the legal profession.

Application to Fact Pattern: Lawyer Lied About Filing a Complaint

Fact Pattern:

An Ohio attorney lied to a client about filing a complaint in the client's legal case. The attorney repeatedly assured the client that the case was progressing when, in fact, no complaint had been filed, and the statute of limitations eventually expired, leaving the client without legal recourse.

Applying the *Fowerbaugh* Presumptive Sanction:

1. Dishonesty and Misrepresentation:

- The lawyer's conduct involves clear dishonesty and misrepresentation by lying to the client about the status of the case and the filing of the complaint. According to the *Fowerbaugh* standard, this type of conduct warrants an actual suspension from the practice of law.

2. Presumptive Sanction: Actual Suspension:

- Based on the *Fowerbaugh* decision, the presumptive sanction for the lawyer's misconduct would be an actual suspension from the practice of law, meaning that the lawyer would be prohibited from practicing law for a specified period without the suspension being stayed.

3. Duration of Suspension:

- The duration of the suspension would depend on the presence of any aggravating or mitigating factors. For instance, if the lawyer had a prior disciplinary record, the suspension might be longer. Conversely, if the lawyer demonstrated significant remorse, made efforts to rectify the harm caused, or had no prior record, the suspension could be shorter, though still actual rather than stayed.

4. Additional Factors:

- The Ohio Supreme Court would also consider the harm caused to the client, the lawyer's attempts (if any) to remedy the situation, and whether the lawyer cooperated with the disciplinary process. However, regardless of these factors, the *Fowerbaugh* standard emphasizes that an actual suspension is necessary to uphold the integrity of the legal profession.

Conclusion:

Given the facts that the attorney lied to the client about the filing of the complaint, thereby causing significant harm to the client's legal interests, the *Fowerbaugh* presumptive sanction would likely result in an actual suspension from the practice of law. The specific length of the suspension would depend on the presence of any aggravating or mitigating circumstances, but the suspension would not be stayed under this standard.



AI EXAMPLE – LEGAL RESEARCH

Second Prompt: “Based on the most recent cases decided by the Supreme Court of Ohio, what sanction should be imposed for the lawyer's misconduct?”



AI EXAMPLE – LEGAL RESEARCH

Likely Sanction:

Given the established presumptive sanction under *Fowerbaugh* for dishonest conduct, and recent disciplinary trends, the lawyer who lied to the client about filing a complaint is likely to face an actual suspension. The duration of the suspension might vary, but it is likely to be at least six months, with the possibility of a partially stayed suspension if mitigating factors are present. However, a fully stayed suspension or a mere reprimand would be unlikely unless there are very strong mitigating circumstances.



AI EXAMPLE – LEGAL RESEARCH

Prompt to Westlaw AI: Using recent Ohio Supreme Court cases citing the Disciplinary Counsel v. Fowerbaugh presumptive sanction to a fact pattern when an Ohio lawyer has lied to his client about the filing of a complaint in the client's legal case. Has the Court considered the need for an abundance of mitigating factors to overcome the presumption?



AI EXAMPLE – LEGAL RESEARCH

Westlaw AI

In *Mahoning County Bar Association v. Macala* , the court explicitly recognized that "an abundance of mitigating evidence can justify a lesser sanction"

In *Disciplinary Counsel v. Taylor* , the court reiterated that the presumption of suspension for violations involving dishonesty can be overcome by an abundance of mitigating evidence. However, in Taylor's case, the court found that there was not an abundance of



AI EXAMPLE – LEGAL RESEARCH

Westlaw AI (cont.)

mitigating factors and thus imposed a suspension. The dissent in Taylor emphasized that the majority's determination of the presence of mitigating evidence was incorrect, underscoring the importance of substantial mitigating factors to overcome the presumption.



COMPETENCE

- **Prof.Cond.R. I.1**
 - Competence requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
 - Must keep abreast of the risks and benefits associated with relevant technology. Cmt.[8].
 - Ensuring AI tools are accurate, reliable, and do not compromise the quality of the representation.



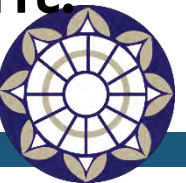
COMPETENCE

- Must ensure that work product generated by AI is coherent, defensible, and consistent, reflecting sound legal knowledge.
- A misunderstanding of AI technology can lead to problematic reliance on generative AI results.



SCENARIO

Attorney Jennifer, a solo practitioner, takes on a complex criminal defense case involving cutting-edge forensic technology. She uses a new AI tool designed to analyze forensic evidence, but she does not understand how the tool operates or its potential limitations. Relying solely on the AI analysis, Jennifer advises her client to accept a plea deal without consulting a forensic expert or fully understanding the science behind the evidence. Later, it's discovered that the AI tool misinterpreted the evidence, and if properly analyzed, the evidence could have exonerated the client.



- A).** Jennifer violated her duty of confidentiality by using the AI tool to disclose sensitive client information without her client's consent.
- B).** Jennifer violated her duty to investigate potential biases in the AI tool, as AI systems can sometimes reflect racial or gender biases in legal outcomes.
- C).** Jennifer violated her duty of competence by not fully understanding the limitations of the AI tool and relying on it without further review, leading to incorrect advice.
- D).** Jennifer should have relied on expert testimony rather than AI to analyze forensic evidence, as expert witnesses are more trusted in court.



INDEPENDENT PROFESSIONAL JUDGMENT

Prof. Cond. 2.1

- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.
- Independent professional judgment refers to a lawyer's ability to make decisions and provide advice based on their legal knowledge and ethical obligations, without undue influence.



INDEPENDENT PROFESSIONAL JUDGMENT

Prof. Cond. 2.1 (cont.)

- Lawyers should not delegate their independent professional judgment to AI. – California Advisory Opinion (2020).



INDEPENDENT PROFESSIONAL JUDGMENT

Prof.Cond.R. 2.1 in the context of AI

- A lawyer should not rely solely on AI for legal research or decision-making that may undermine their independent professional judgment.
- Lawyers should approach AI as a tool that supports, not replaces, their independent judgment.
- Critically assess results and work product generated by AI.
- Be able to explain how AI was used to form the basis for advice or a recommendation to clients.



SCENARIO

Attorney Ben represents a client in a high-stakes litigation matter. He uses an AI-powered settlement analysis tool that recommends a settlement figure significantly lower than what Ben thinks is appropriate. Without discussing the tool's recommendation with the client or considering the specific facts of the case, Ben pushes his client to accept the AI-recommended settlement offer.



A). Ben relied too heavily on the AI's recommendation without exercising his own independent professional judgment.

B). Ben violated his duty of competence by failing to consult a senior attorney before relying on the AI tool for the settlement recommendation.

C). Ben violated his duty to negotiate vigorously on behalf of his client by not pursuing additional settlement offers.

D). Ben failed to ensure the AI tool was designed in compliance with local court rules governing AI use.



CONFIDENTIALITY

- **Prof.Cond.R. 1.6**
- Duty to maintain all information related to the representation of a client confidential.
- Rule 1.6 encompasses the rule of confidentiality, the attorney-client privilege, and attorney work product.



CONFIDENTIALITY

- **Confidentiality In the Context of AI**
 - Do not disclose client related information to an open AI tool like Chat-GPT.
 - Do not disclose information that could lead to the discovery of the client.
 - Only use AI tools that do not share information or use prompts to learn, i.e., Westlaw and Lexis AI tools.
 - Review vendor specifications for contracted tools.



SCENARIO

Attorney Megan is working on a sensitive merger and acquisition deal. She uses a third-party AI contract review platform to analyze hundreds of documents, but she neglects to check whether the platform encrypts the data or has strong confidentiality protections. The platform suffers a data breach, and confidential deal terms are leaked to the public.



- A.)** Megan violated her duty to provide competent representation by using an AI tool that was not built for handling complex legal transactions.
- B).** Megan breached her duty of confidentiality by not confirming the AI platform's security and confidentiality measures before uploading sensitive client information.
- C).** Megan did not ensure that the external AI tool complied with the law firm's security protocols.
- D).** Megan should have insured the merger documents to protect against potential breaches, which would have mitigated financial liability for the firm.



CLIENT COMMUNICATION

- **Prof.Cond.R. 1.4**
 - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.
 - Duty to inform clients of the lawyer's use of AI, include the risks and benefits? Or impliedly authorized?
 - Review any client instructions regarding the use of AI.



SCENARIO

Attorney Tom uses an AI tool to predict the likelihood of success in a medical malpractice case. The AI predicts a low chance of winning, so Tom advises his client to settle without explaining that the AI's prediction was based solely on historical data and may not fully apply to their unique circumstances. The client, unaware of the AI's limitations, agrees to the settlement.



A). Tom violated his duty of communication by not discussing the AI tool's limitations or consulting the client before recommending the settlement.

B). Tom should have conducted a mock trial to assess the potential outcome more effectively, rather than relying solely on AI predictions.

C). Tom failed to analyze the AI tool's predictions in comparison to similar malpractice cases.

D). Tom should have referred the case to a specialist in medical malpractice instead of using an AI tool for case prediction.



NONLAWYER ASSISTANTS

- **Prof.Cond.R. 5.3**
- Responsibility for the conduct of nonlawyers employed or contracted by the law firm.
- AI tools are treated under the rule as “nonlawyer assistance.”



NONLAWYER ASSISTANTS

- **Prof.Cond.R. 5.3 (cont.)**
- Must ensure the AI tool complies with ethical obligations of the lawyer.
- A supervisory lawyer should ensure that the use of AI by firm employees adheres to the lawyers' ethical obligations, e.g. training, etc.



NONLAWYER ASSISTANTS

- **Prof.Cond.R. 5.3 (cont.)**
- Considerations to determine if a vendor's services are compatible with the lawyer's professional responsibility:
 - Experience, reputation, stability
 - TOS describes security measures
 - Information retrieval and destruction



SCENARIO

A law firm employs a sophisticated AI tool to manage e-discovery in large cases. The firm's managing partner, Kate, assumes the AI tool can automatically identify privileged information and doesn't provide human oversight. The AI inadvertently discloses privileged documents to opposing counsel, leading to a major setback in the litigation.



- A).** Kate should have personally trained all staff on AI ethics and security protocols before integrating the tool into the firm's workflow.
- B).** Kate should have implemented an additional manual review process for all documents flagged by the AI tool as potentially relevant, to avoid mistakes.
- C).** Kate should have ensured that the AI tool's vendor had adequate protocols to flag privileged documents and supervised the tool's use.
- D).** Kate should have hired a cybersecurity expert to audit the firm's AI tools annually.



FEEES

- **Prof.Cond.R. 1.5**
 - Consider the reasonableness of the fee using Rule 1.5(a) factors.
 - Lawyer may only charge a client for the actual costs incurred on the client's behalf.
 - Cannot duplicate charges or inflate the lawyer's billable hours.
 - AI is more efficient - client may question why lawyer did not use AI to reduce costs.



SCENARIO

Attorney Sam decides to use an AI tool to draft a standard employment contract for a client. The AI tool finishes the contract in minutes, but Sam charges his client for 10 hours of work because he normally would have spent that much time drafting the contract by hand. When the client later discovers how quickly the contract was generated, they feel misled and overcharged.



A). Sam violated his duty by charging the client for work not actually performed, as the AI tool completed the task in minutes rather than hours.

B). Sam violated his duty by not disclosing that AI was used in drafting the contract.

C). Sam violated his duty by using an AI tool instead of manually drafting the contract, reducing the quality of the legal work.

D). Sam violated his duty by not offering the client a discounted rate for future contracts since AI would expedite those as well.



ADVERTISING

- **Prof.Cond.R. 7.1**
- A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services.
 - Truthful statements that are misleading are prohibited. Cmt.[2].
 - Misleading if it will lead a reasonable person to the conclusion for which there is no factual foundation. Cmt.[2].



ADVERTISING

- **Prof.Cond.R. 7.1 (cont.)**
- Lawyers may generally advertise their use of generative AI but cannot claim their generative AI is superior to those used by other lawyers or law firms.'



ADVERTISING

- **Other Advertising Considerations**
- AI chatbots for advertising and client intake purposes.
- Inform prospective clients that they are communicating with an AI program and not with a lawyer or law firm employee.



SCENARIO

A small law firm advertises that it uses “cutting-edge AI” to guarantee faster resolution of cases compared to other firms. However, the firm’s use of AI has not measurably reduced the time it takes to resolve cases, and in some instances, the cases are prolonged due to AI errors. A prospective client hires the firm based on the misleading promise of faster results and is later disappointed when the case drags on.



A). The firm violated the rule by making a false or misleading statement in their advertisement, as they cannot verify their claim of being the “fastest and most accurate.”

B). The firm failed to properly document the AI tool’s efficiency, resulting in an unsupported claim.

C). The firm should have explicitly stated which AI platform they were using.

D). The firm should have run focus groups to test the effectiveness of AI before making bold marketing claims about speed and accuracy.



CANDOR TO THE TRIBUNAL

- **Prof.Cond.R. 3.3**
- A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer



CANDOR TO THE TRIBUNAL

- **Candor in the Context of AI**
 - Lawyers have an ethical duty to ensure that legal authorities and propositions of law that are presented to a court are accurate.
 - Citing non-existent judicial opinions, false quotes and fake citations in filings with a court may implicate Rule 3.3.
 - See *also* Rule 3.1 – meritorious claims



SCENARIO

Attorney Emily files a motion citing a legal case found through an AI research tool. She later learns that the case is not from a valid legal database but was incorrectly pulled from an AI-generated legal summary. Despite knowing this, she fails to correct the error in her filing, assuming the court won't notice.



A). Emily violated her duty of candor to the tribunal by failing to correct the false case citation once she became aware of the issue.

B). Emily should have hired a law clerk to double-check the AI tool's research, reducing the chances of such errors.

C). Emily should have included a disclaimer in her motion indicating that the research was partially conducted by AI, to inform the court of possible discrepancies.

D). Emily violated her duty by not conducting thorough manual research before filing the motion.



CANDOR TO THE TRIBUNAL

➤ **Best Practices**

- Review AI output from both commercial and free resources.
- Verify sources, citations, and quotes.
- If relying on law clerks or associates, review all filings for accuracy.
- Use reliable sources- Westlaw, Lexis, Decisis, etc.



CITATION AND QUOTE FABRICATION USING AI

➤ **Potential Rule Violations**

- Lawyer Competence – RPC 1.1
- Meritorious Claims – RPC 3.1
- Candor to tribunal – RPC 3.3
- Conduct prejudicial to the administration of justice – RPC 8.4(d)
- Rule 11 concerns



CITATION AND QUOTE FABRICATION

➤ **Disciplinary cases and sanctioned lawyers**

- *People v. Crabill* (Colorado, 2023)
- *In re Neusom* (M.D. FL, 2024)
- *Mata v. Avianca, Inc.* (S.D. N.Y, 2024)
- *Park v. Kim* (United States 2d. Cir., 2024)
- *Smith v. Farwell* (Mass., 2024)





Ohio Board of Professional Conduct

QUESTIONS





Ohio Board of Professional Conduct

ETHICS ASSISTANCE

- Allan Asbury: allan.asbury@bpc.ohio.gov
- Website: www.bpc.ohio.gov
- Telephone: 614-387-9370



**ESSENTIAL LAW FIRM
MANAGEMENT TIPS FOR SOLO AND
SMALL FIRM ATTORNEYS**

**Merisa Bowers, Council President-Member at Large
Ohio Bar Liability Insurance Company**

Presenter Bio:

MERISA K. BOWERS joined the Ohio Bar Liability Insurance Company (OBLIC) in 2023 after nearly 14 years in private practice. As Loss Prevention & Outreach Counsel, Merisa supports fellow attorneys through proactive policy development, risk management, and best practice guidance.

Raised in Canton, Ohio, she earned her law degree cum laude from Case Western Reserve University School of Law and her Bachelor of Arts in Political Science with Departmental Honors from the University of Cincinnati. She has received recognition from the National LGBT Bar Association as a Top 40 Under 40 Attorney in 2016 and regular SuperLawyers Rising Star designations. Merisa is an active member of the Ohio State Bar Association, local and affinity bars, and a 2024 Ohio State Bar Foundation Fellow.

Merisa proudly serves as City Council President in Gahanna. She has led the City to enact laws to stabilize housing, curb youth tobacco addiction, and to offer clean energy to residents and small businesses that reduces carbon emissions and lowers costs. She and her husband Curtis enjoy spending time outdoors and cheering on the Cleveland Guardians with their son, Everett.



Trumbull County
44th Annual Probate
Practice Seminar

October 3, 2025

1

Disclaimer

This educational presentation includes loss prevention techniques designed to minimize the likelihood of incurring a claim for legal malpractice and attorney professional conduct guidance to reduce the occurrence of violations of the Rules of Professional Conduct.

The material presented does not establish, report, or create the standard of care for attorneys.

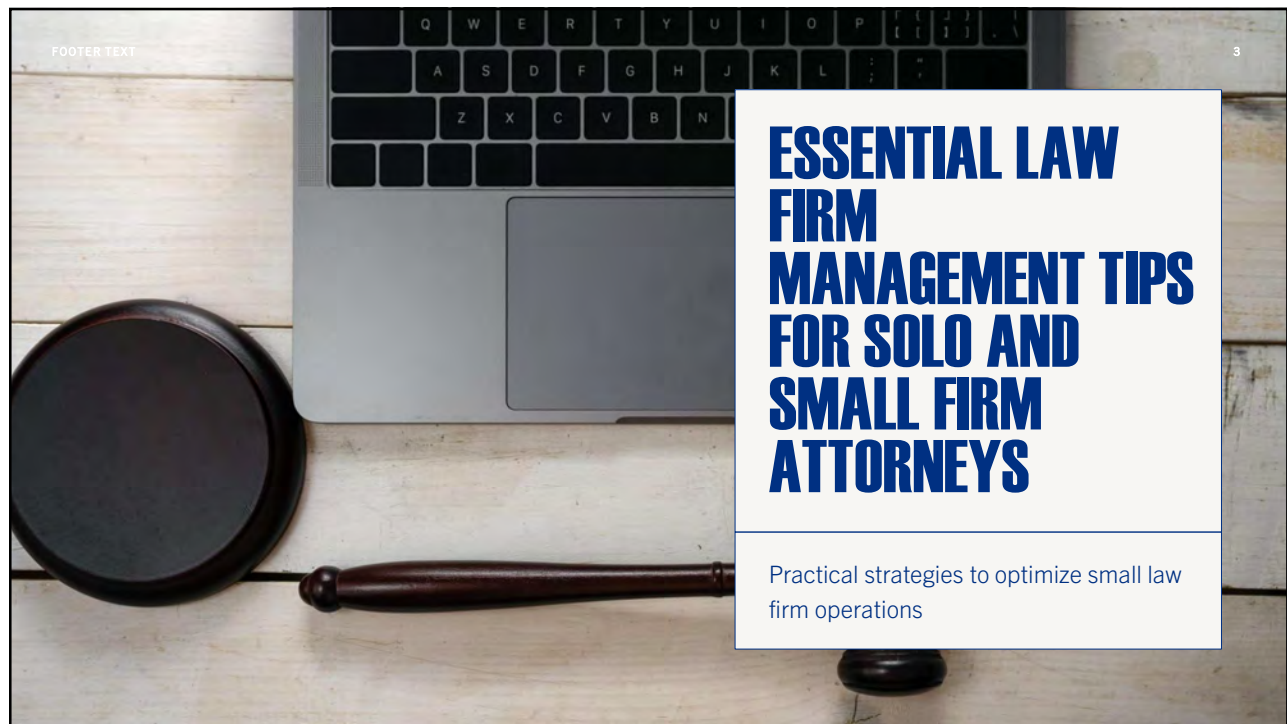
The material is not a complete analysis of the topic and should not be construed as providing legal or ethics advice.

Attendees should conduct their own appropriate legal research.

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4

ESSENTIAL LAW FIRM MANAGEMENT TIPS

SESSION OVERVIEW



10/03/2025

5

Key Topics Covered

1. Identifying and Avoiding Conflicts
2. File Management = Risk Management
3. Succession Planning

5

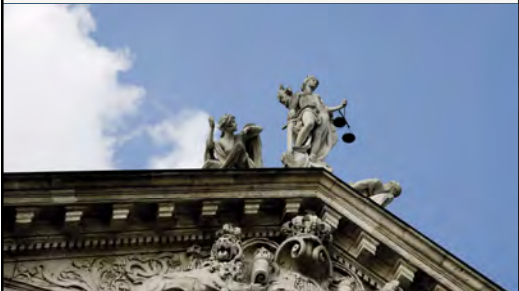
FOOTER TEXT

9/23/2025

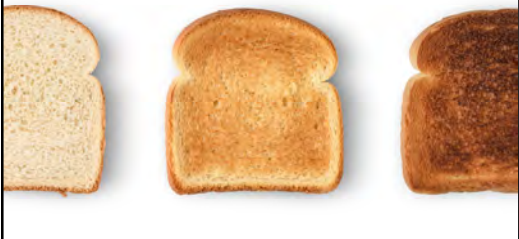
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ATTORNEY CONDUCT OVERVIEW

6

	10/3/2025 7
ETHICAL FOUNDATIONS AND PRACTICE MANAGEMENT 	Proactive Practice Management Structured office procedures help attorneys manage practices efficiently while ensuring ethical compliance. Maintaining Client Confidentiality Protecting client information is essential for ethical legal practice and maintaining trust. Ethical Compliance and Responsibility Attorneys must follow Rules of Professional Conduct and manage risks like conflicts of interest and succession planning.

7

	10/3/2025 8
LEGAL MALPRACTICE RISK MANAGEMENT 	Elements of the Tort of Legal Malpractice To establish a cause of action for legal malpractice, a plaintiff must show "the existence of an attorney-client relationship giving rise to a duty, a breach of that duty, and damages proximately caused by that breach." <i>New Destiny Treatment Ctr., Inc. v. Wheeler</i>, 129 Ohio St.3d 39, 2011-Ohio-2266, 950 N.E.2d 157, ¶ 25. "Reasonably Prudent" Standard of Care Duty – Breach of Duty – Proximate Cause – Damages Proactive Prevention (1) Recognize when the duty exists (2) Establish procedures to guard against breaches of duty

8



9



10

KEY RULES FOR CONFLICT MANAGEMENT

Conflicts with Current Clients

Rule 1.7 focuses on conflicts involving current clients, requiring informed consent and independent professional judgment.

Duties to Former Clients

Rule 1.9 restricts representing new clients in matters related to previous cases involving former clients.

Protection of Prospective Client Info

Rule 1.18 ensures confidentiality of information shared during initial consultations with prospective clients.

10/03/2025 11	
CONFLICT OF INTEREST: CURRENT CLIENTS R. 1.7 	(a) (1) <i>DIRECT ADVERSITY</i> (see Cmt [11]: XE or deposing your own client) (2) <i>SUBSTANTIAL RISK of MATERIAL LIMITATION</i> due to - lawyer's responsibilities to another client - lawyer's responsibilities to a former client or 3rd person - lawyer's own personal interests (see Cmt [16]: material limitations in transactional representation) (b) Cannot accept the representation if there's a conflict UNLESS (1) lawyer able to provide competent and diligent rep to each affected client AND (2) each affected client gives informed consent in writing AND (3) representation is not precluded by (c). (c) Even with consent, the attorney <u>cannot</u> represent if: (1) the representation is prohibited by law; <u>OR</u> (2) the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding.

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	CONFLICT OF INTEREST: CURRENT CLIENTS Comment [2] A lawyer MUST: 1. Clearly identify the client or clients; 2. Determine whether a conflict of interest exists; 3. Decide whether the representation is barred by either criteria of division (c); 4. Evaluate under division (b)(1) whether the lawyer can competently and diligently represent all clients affected by the conflict of interest; 5. If rep is otherwise permissible, consult with clients affected by the conflict and obtain the informed consent of each of them, confirmed in writing.	

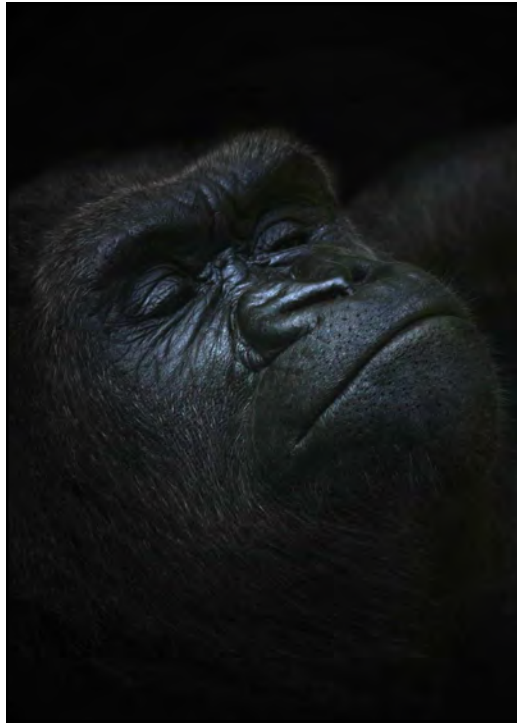
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CONFLICT OF INTEREST: FORMER CLIENTS R. 1.9	"same or substantially related matter" (a) DIRECT ADVERSITY (attorney) – conflict may be waived by former client (b) DIRECT ADVERSITY (firm) – if no screening, a conflict exists that may be waived (c) Lawyers have ongoing duty to protect information and may not: (1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; (2) reveal information relating to the representation except as these rules would permit or require with respect to a client

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	CONFLICT OF INTEREST: FORMER CLIENTS Define "same or substantially related matter" Comment [2] <u>matter</u> depends on specific facts, degree of involvement Comment [3] – "<u>substantially related</u>" depends on the subject matter and can extend to situations where not the same but relies on sensitive information (e.g. represent businessperson and learn sensitive financial info, can't then rep spouse against former client)	

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10/03/2025

15

A NOTE ON “DORMANT” CLIENTS

ACTEC Commentary Example

- Lawyer (L) prepared and completed an estate plan for Client (C). At C’s request, L retained the original documents executed by C. L performed no other legal work for C in the following two years but has no reason to believe that C has engaged other estate planning counsel.

L’s representation of C is dormant.

- **L may, but is not obligated to,** communicate with C regarding changes in the law.
- If L communicates with C about changes in the law, but is not asked by C to perform any legal services, L’s representation remains dormant.
- **C is properly characterized as a client and not a former client for purposes of MRPCs 1.7.**

15



10/03/2025

16

DORMANT BECOMES FORMER WHEN:

1. If the relationship is terminated.
2. Such a period of time passes that a “reasonable client” would not believe there to be an attorney-client relationship.
3. Lawyer is informed that client has new counsel for trust and estate matters.

****If the client becomes INCOMPETENT before the lawyer has ended representation, the lawyer may be limited in withdrawing.**

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IVANCIC V. ENOS & DAVIES, 2012-OHIO-3639 (11th Dist. 2012)

{¶5} Apparently unaware that Mr. Davies had become the single largest creditor of the estate of her late father, Ms. Enos hired Mr. Davies as attorney for the estate. No conflict of interest waiver was offered or executed between Ms. Enos and Mr. Davies.

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IVANCIC V. ENOS & DAVIES, 2012-OHIO-3639 (11th Dist. 2012)

Three distinct breaches of duty to Administrator-Client:

1. Failure to properly investigate adoption of other daughter and list her as beneficiary;
2. Undertaking representation despite *Substantial and Direct* conflict of interests with the estate/beneficiaries AND failing to disclose those interests; AND
3. Failure to properly present claim against the estate.



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HYPOTHETICAL SCENARIOS

Scenario 1: Representing Spouses in Estate Planning?

John and Jane are married and want you to do their estate plans.

Can you represent them both?

What precautions should you take?

Scenario 2: Representing Jane against John in Divorce/Dissolution?

Is there a conflict?

Can John give informed consent to your representation of Jane?

Is it worth it?

Scenario 3: Former Client Ted is debtor to Abdul's Estate where you represent Executor Aliah

Is there a conflict?

What duties exist to Ted?

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OHIO BOARD OF PROFESSIONAL CONDUCT OPINION 2019-1

(BUT SEE ABA 516)

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1. There is a [waivable, but likely ill-advised] conflict if you are representing two adverse parties at the same time in separate matters.
2. You cannot drop a client like a hot potato to represent a more lucrative client.
3. There is a [waivable] conflict if you represent a client who was adverse to a former client if the current matter is "substantially related" to the prior matter.
E.g. Worker's Comp employer/employee vs. Employer engaging in debt collection
4. It is appropriate for an attorney, in declining representation, to suggest other attorneys in good faith.

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Duties owed to Prospective Clients

Ohio RPC 1.18

- (a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

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Duties owed to Prospective Clients

Ohio RPC 1.18

- (c) A lawyer subject to division (b) **shall not represent** a client with interests materially adverse to those of a prospective client in the same or a substantially related matter *if* the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in division (d).
- If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in division (d).

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Duties owed to Prospective Clients

Ohio RPC 1.18

- (d) When the lawyer has received disqualifying information as defined in division (c), representation is permissible if **either** of the following applies:
- (1) both the affected client and the prospective client have given **informed consent, confirmed in writing**;
 - (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client, and **both** of the following apply:
 - (i) **the disqualified lawyer is timely screened** from any participation in the matter and is apportioned no part of the fee therefrom;
 - (ii) **written notice** is promptly given to the prospective client.

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ABA FORMAL OPINIONS ON CONFLICT AVOIDANCE

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ABA Formal Opinion 492

What is “Significantly Harmful?” (1.18(c))

- Must be **prejudicial, strategic, sensitive, or expose vulnerability**
- Does not need to be used against the person—just needs to be disclosed
- Think: Settlement positions, liability admissions, or legal strategy

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ABA FORMAL OPINIONS ON CONFLICT AVOIDANCE

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ABA Formal Opinion 510: What does 1.18(d) mean?
How to prevent disqualification of your firm due to a consultation with a prospective client.

1. What's "disqualifying information?"

Any fact that would be **significantly harmful** to the prospective client if used against them

- "I have credit cards/bank accounts my spouse doesn't know about"
- "There's an appraisal that's significantly different than sale"
- "I painted over the water damage"
- "I'd accept back pay and an apology"
- "I don't remember if the light was green"
- "My prior lawyer suggests we depose the manager first"

2. What are "reasonable measures?"

- Warn/caution the prospective client
- Follow a script to obtain only necessary information to assess whether to accept representation
- Perform an initial conflict check with info obtained at time of scheduling

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IDENTIFYING CONFLICTS



Standardize your Intake Process

- Initial conflict screen before consults
- If in a firm, or of counsel relationship, implement a system



Seek ethics guidance or legal advice.



Be clear at the outset who the client(s) is(are) and are NOT.

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IDENTIFYING CONFLICTS: TRUST ESTATE PROBATE



Meet with prospective clients separately
Be wary of representing two or more parties on the same matter
What alternatives exist to representing more than one?



"the lawyer should describe the role that the lawyer for such a fiduciary plays in the administration of the estate or trust"

including the possibility that the lawyer for the fiduciary may owe duties to the beneficiaries of the estate or trust.



The lawyer should be alert to the multiplicity of relationships and challenging ethical issues that may arise, particularly when the client has a personal interest AND a fiduciary role

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KEY CONCEPTS

A. Review Elements of Legal Malpractice

- Duty, Breach of Duty, Proximate Cause, Damages

B. Duty Formation and the "Reasonable Client" Standard

- The client's reasonable belief that a relationship exists is central to both malpractice claims and ethical obligations.

C. Duty to Prospective Clients

- Even brief communications with prospective clients are protected.

D. Risk Management Through Screening and Informed Consent

- Written documentation and proper screening are essential tools for avoiding imputed conflicts within a law firm.

E. Integration of Business Judgment and Professional Ethics

- Balancing the need to make business decisions (accepting or declining a case) with the adherence to ethical standards.
- Obligations to ensure use of technology comports with ethical standards

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FILE MANAGEMENT & SUCCESSION PLANNING

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INTRODUCTION TO FILE MANAGEMENT

Importance of File Management

Proper file management ensures client files are complete, accessible, and secure during attorney transitions.

Client Interest Protection

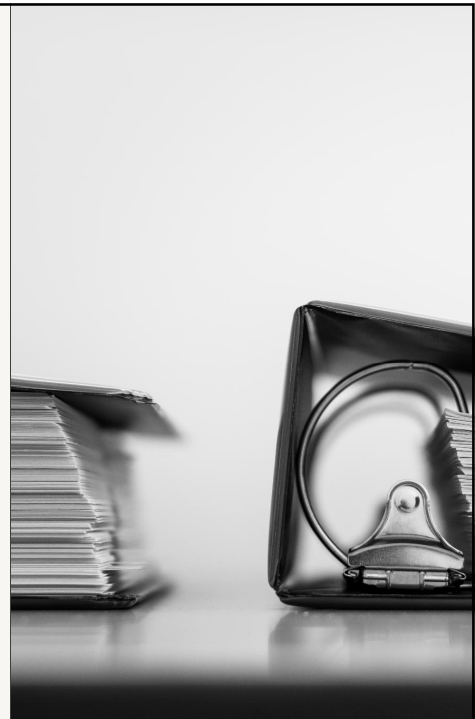
Effective file handling protects client interests and guarantees continuity of legal representation.

Ethical Compliance

Attorneys must comply with ethical rules regarding safekeeping property and file termination practices.

Retention and Disposal Policies

Clear policies for file retention and disposal maintain professional standards during firm transitions.



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KEY RULES FOR FILE MANAGEMENT

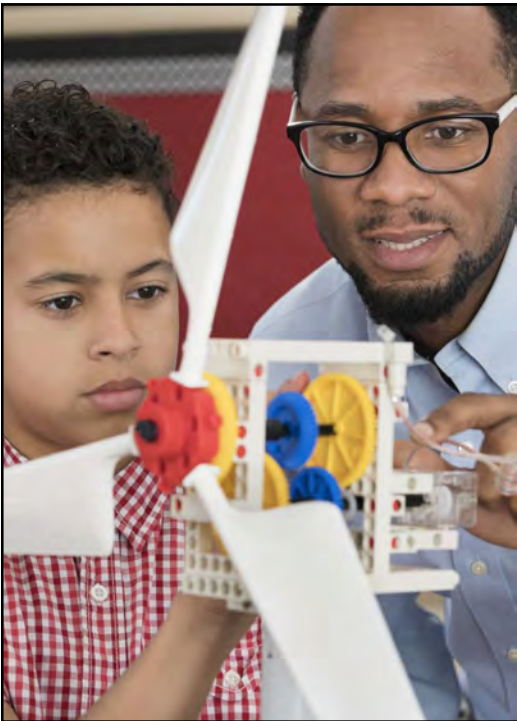
Maintaining Confidentiality
Rule 1.6 requires attorneys to hold in confidence information related to client matters.

Safekeeping Client Property
Rule 1.15 mandates attorneys to safeguard client documents and funds with accurate record-keeping.

Ethical File Transfer
Rule 1.16 requires careful file transfer when ending representation to prevent client prejudice.

Extension to Assistants and Third-Party Vendors
R. 5.3 obligates managerial attorneys to make reasonable efforts to ensure compliance with rules.

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INTRODUCTION TO SUCCESSION PLANNING

Ensuring Continuity
Succession planning guarantees uninterrupted legal representation and protects client interests during transitions.

Planning for Transitions
Attorneys must designate successors to manage the practice during retirement, incapacity, or death.

Ethical and Operational Considerations
Effective succession involves addressing legal, financial, and operational factors proactively and ethically.

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KEY REFERENCES FOR SUCCESSION PLANNING

Rule 1.3 Diligence

Comment [5]

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner **prepare a plan, in conformity with applicable rules, that designates another competent lawyer** to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

Gov Bar Rule V, Section 26

Disciplinary counsel may appoint attorney(s) to inventory files and take action to protect interests of the clients.

Gov Bar Rule VI Sec. 4, 5 (Eff. January 1, 2025)

(4) Each attorney engaged in the private practice of law shall provide the following information when registering pursuant to Section 2 of this rule:

- (a) Whether the attorney has professional liability insurance on the date of registration;
- (b) **Whether the attorney has a plan to manage the attorney's work or caseload in the event the attorney becomes temporarily or permanently unable to do so.**

(5) The attorney shall notify the Office of Attorney Services within thirty days of any change in the attorney's registration information.

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OBPC ON TRANSITION MANAGEMENT





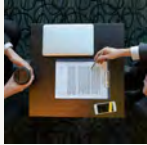
Opinion 2019-6
Client papers and property (file associated with a matter) must be returned to a client promptly upon request; but there is no ORPC defined time period to retain the file. When delivering a file to a client, it must be provided in the same manner it was delivered, or an other accessible format if maintained digitally.

Client File Retention Guide (2016)
Proper management of file transfers and securing client property is crucial to protect client interests during transitions.

Succession Planning Guide (2017)
Developing detailed transition plans including successor designation ensures a smooth and ethical changeover.

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COMPREHENSIVE SUCCESSION PLANNING AS RISK MANAGEMENT



In Re K.B. (2025)

Attorney had severe mental health crisis and was involuntarily hospitalized for over two months; other attorneys picked up her files and “there did not appear to be any lasting harm to her clients.”

Law license suspended while disciplinary matter pending; K.B. continued to hold herself out as an attorney. For single violation of R 5.5, K.B. publicly reprimanded.



Disc. Counsel v. K.H. (2025)

Began neglecting client matters; did not respond to letter of inquiry; did not participate in disciplinary process. Indefinite suspension.



***Loveman v. Hamilton*, 66 Ohio St.2d 183 (Ohio 1981)**

Syllabus by the Court: **An action for legal malpractice survives the death of the charged attorney** for the reasons that legal malpractice (1) is a cause of action that survives at common law and (2) constitutes an injury to the client's property interests. (R.C. 2305.21 construed and applied.)

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CONCLUSION

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SUMMARY AND KEY TAKEAWAYS

Proactive Conflict Avoidance

Implementing proactive procedures helps avoid conflicts and maintains ethical law firm operations.

Responsible Client File Management

Managing client files carefully during transitions ensures continuity and protects client interests.

Succession Planning Importance

Planning for succession secures firm stability and prepares for future challenges.

Ethical Decision-Making Guidance

Familiarity with rules and formal opinions guides attorneys in making ethical decisions.



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OBLIC Loss Prevention Services



Regular Practice Management, Ethics, and Best Practice Content



Loss Prevention & Ethics Hotline



Model Templates and Cyber Toolbox Training Content



Printed ORPC Rule Books



Speaking Engagements at Specialty & County Bar Assns.

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CURRENT TOPICS IN PROBATE PANEL DISCUSSION

**Hon. Adam W. Wilgus
Tuscarawas County Common Pleas Court
Probate/Juvenile Division**

**Hon. Robert N. Rusu Jr.
Mahoning County Common Pleas Court
Probate Division**

**Hon. Robert W. Berger, Retired
Portage County Common Pleas Court
Juvenile Division**

Adam W. Wilgus Biography

Adam W. Wilgus is the Judge of the Tuscarawas County Juvenile and Probate Court. He graduated from Kent State University with a B.B.A. in Finance and Cleveland State University School of Law. Judge Wilgus was appointed as a Magistrate in the Tuscarawas County Juvenile and Probate Court in 2016 and elected Judge in 2020.

Prior to his legal career, Judge Wilgus served seven years in the military and received an honorable discharge at the rank of E-6 Staff Sgt.

Judge Wilgus is a member of the Ohio State Bar Association, member of the New Philadelphia Rotary, Tuscarawas County Mock Trial Coordinator and member of the New Philadelphia Veterans of Foreign Wars. He currently serves on the New Philadelphia VFW Honor Guard. He previously served on the Board of the Tuscarawas County Public Defender's Office, Board of Big Brothers and Big Sisters of East Central Ohio and former officer for the Tuscarawas County Bar Association.

Judge Wilgus is an active member of the Ohio Judicial Conference and National College of Probate Judges.

He is married to Krista Wilgus and they have one son, Charlie and one daughter, Sophie.

*Biography
Of
Judge Robert N. Rusu Jr.
Mahoning County Common Pleas Court,
Probate Division*

Judge Robert N. Rusu, Jr. is the 20th Probate Judge of Mahoning County. Judge Rusu brought more than 27 years of Probate experience to the bench. Prior to becoming the judge, he practiced exclusively in the area of Probate Administrations, Guardianships, Estate Planning, Medicaid, and issues regarding aging.

Judge Rusu is very active in his community. Judge Rusu has served on the “Alzheimer’s Assistance and Referral Network”, the “Mahoning Valley Campfire Council” and past president of the “Mahoning County Bar Association” and has been awarded the “2018 Practitioner of the Year Award” by the *Ohio Association of Gerontology & Education* and the “Valley Legacy Outstanding Senior Advocate Award” for 2018. In addition, Judge Rusu is also active as an executive officer with the *Ohio Association of Probate Judges*, a member of the *Ohio Judicial College, Probate Law, and Procedure Committee*, and is the liaison for the *Ohio Association of Probate Judges* to the *Ohio State Bar Association – Estate Planning, Trust, and Probate Law Section Council*.

ROBERT W. (BOB) BERGER

Resides in Ravenna, Ohio, Wife Patty Berger and son Colin K. Berger

1968 – Graduate of Theodore Roosevelt High School

1972 – Graduate of KSU (BS in Education)

1972-1974 – U.S. Army

1977 - Graduate of University of Baltimore Law School

Am Jur Awards (Family Law And Trial Advocacy)

1978-1980 - Solo Practice

1980-2007 - Giulitto & Dickinson, Giulitto & Berger

2007-2015 - Magistrate Portage County Court of Common Pleas (General Div)

Judge Laurie Pittman

2015–2021 (Retired) Judge Portage County Probate & Juvenile Courts

Pro Bono Attorney of the Year 1992

President of Portage County Bar Association 2007-2008

Norman Sandvoss Humanitarian Award 2010

DEFINITIONS [R.C. 3107.01]

1. "Adoption" means to create the legal relationship of parent and child between the petitioner and the adopted person, as if the adopted person were a legitimate blood descendent of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, and which do not expressly exclude an adopted person from their operation.
2. "Best interest" means the factors a court uses to determine the best interest of a child as set forth in section 3107.161 of the Revised Code.
3. "Date of placement" means the date on which a child is living with the child's prospective adoptive parent and becomes eligible for adoption, pursuant to statutory authority, judgment decree or court order, or as otherwise authorized by law.
4. "Kinship caregiver" has the same meaning as in section 5101.85 of the Revised Code.
5. "Legal custodian" has the same meaning as in section 5103.16 of the Revised Code.
6. "Legal custody" has the same meaning as in section 2151.011 of the Revised Code.
7. "Parent" means a legally recognized natural or adoptive parent of a child.
8. "Party" means a petitioner, adoptee, or any other person or agency that is part of an adoption proceeding and whose consent to the adoption is necessary but has not been obtained.
9. "Permanent custody" has the same meaning as in section 2151.011 of the Ohio Revised Code.
10. "Placement" means the act by a public children services agency, a private child placing agency, or a parent who is utilizing an agency or attorney that is intended to arrange for the care or custody of a child in accordance with Chapter 5103. Of the Revised Code.
11. "Planned Permanent Living Arrangement" has the same meaning as in section 2151.011 of the Revised Code.

EXEMPTIONS [R.C. 3107.011(A)]

1. A stepparent, grandparent, adult sibling, legal custodian, and guardian are exempt from the requirement to utilize an agency or attorney to arrange an adoption.
2. A grandparent, adult sibling, legal custodian, and guardian includes that individual's spouse when a joint adoption is pending.

SIX-MONTH REQUIREMENT [R.C. 3107.02(A)]

1. A final decree shall not be issued and an interlocutory order of adoption does not become final until the person to be adopted has lived in the adoptive home for a least six months after placement by an agency, or for at least six months after the department of job and family services or the court has been informed of the placement, or in the case of adoption by stepparent, until at least six months after the filing of the petition, or until the child has lived in the home for at least six months.

2. In the case of a foster caregiver adopting a foster child, a person adopting a child to whom the person is related, a kinship caregiver, a legal custodian or a guardian adopting a child, the court shall apply the amount of time the child has lived in the home toward the six-month waiting period.

ADULT ADOPTION [R.C. 3107.02(B)]

Permits adult adoption of a person with a developmental disability, as defined in R.C. 5123.01

LIVING EXPENSE [R.C. 3107.055(C)(9)]

Increases from \$3,000 to \$6,000 the maximum amount that an adoption petitioner may disburse to the birth mother for living expenses incurred during pregnancy through the sixtieth day after the date the minor is born.

ACCOUNTINGS [R.C. 3107.055]

1. Allows *good cause exception* to final account being filed not less than 10 days prior to final decree of adoption or finalizing an interlocutory order. [R.C. 3107.055(D)]
2. Account not required for grandparent, adult sibling, legal custodian, and guardian (in addition to stepparent). [R.C. 3107.055(F)]

CONSENT [R.C. 3107.07]

Consent not required if:

1. There is clear and convincing evidence that the parent has failed without justifiable cause to *have* more than de minimis contact with the minor or to provide *meaningful and regular* maintenance and support of the minor for a period of one year *preceding the adoption filing*.
2. A putative father when either of the following applies:
 - A. Fails to register with the Ohio putative father registry
 - B. The court finds, after proper service and notice of hearing, that any of the following are the case:
 - i. The putative father is not the father of the minor
 - ii. The putative father has failed without justifiable cause to have more than de minimis contact with the minor or to provide *meaningful and regular* maintenance and support for the minor or
 - iii. The putative father has willfully failed to *meaningfully and regularly care for and support* the minor's mother during her pregnancy and up to the time of surrender of the minor or the minor's placement in the home of the petitioner or petitioners, whichever occurs first.
3. A parent who has entered into a *properly executed* voluntary permanent custody surrender.
4. A parent whose parental rights have been terminated by order of a juvenile court or *any court of competent jurisdiction*.
5. Any agency having permanent custody of the person to be adopted whose reasons for withholding consent are found by the court to be unreasonable.
6. A parent who has been convicted of or pleaded guilty to a criminal offense that resulted in (A) the death of the

minor's other parent, legal custodian, guardian, or primary care provider or (B) a term of incarceration of that parent that is expected to extend beyond the minor's age of majority.

NOTICE [R.C. 3107.11]

1. Notice of the filing of the adoption petition must be given *at least 30 days* before the hearing date.
2. Changes the objection period:
 - A. If the child is under the age of 1, written objections must be filed within 14 days from the date of service. *appear at Hrg.*
 - B. If child is 1 or older, written objections must be filed within 28 days from date of service and for good cause shown, the time may be extended. *appear at Hrg.*
3. Includes the right to an attorney.
4. The Court shall consider a written request of an attorney or a notice of appearance by an attorney as grounds for an extension to file a written objection.

VACATE ADOPTION [R.C. 3107.16]

1. Adoption decree cannot be vacated by the court upon motion after the expiration of six months after decree is issued, for any reason, except:
2. Upon motion by any person, the court may reconsider and vacate an adoption if there is clear and convincing evidence the child was a victim of trafficking. A conviction is not required to reconsider the adoption

BEST INTEREST [R.C. 3107.161]

1. The petitioner has the burden of proving the best interest of the child by a preponderance of the evidence.
2. When a court makes a determination in a contested adoption concerning the best interest of a child, the court shall not consider the age of the petitioner, if the petitioner is authorized to adopt under the law

PERSONS ADMITTED TO HEARING [R.C. 3107.17(A)]

Adds "any other persons the court deems appropriate" to the list of those who may be admitted to attend a hearing.

FOREIGN ADOPTION [R.C. 3107.18]

1. A final judgment of adoption granted by a judicial, administrative, or executive body of a jurisdiction or country other than the United States shall have the same force and effect as that given to a judgment of adoption entered by a court of competent jurisdiction of this state if both of the following apply:
 - A. Either adopting parent is a resident of this state;
 - B. The validity of the foreign adoption has been verified by the granting of an IR-3, IH-3, or a successor immigrant visa.
2. Notwithstanding any other provision of law to the contrary, an adoptive parent shall not be required to petition a court in this state for adoption of the child, and the foreign adoption shall be considered final under the laws of this state.

3. Either adoptive parent, a guardian, or a guardian ad litem may petition the court of the county in which the person resides to register a foreign adoption in this state.
 - A. The court may change the name of the child
 - B. If a physician recommends, the court may order a revised birth date
 - C. If the petition is granted, the court shall order the department of health to issue a foreign birth record.

SURRENDER CHILD [R.C. 5103.15(B)(1)]

The following may, subject to juvenile court approval, enter into an agreement with a public children services agency or private child placing agency surrendering the child into the permanent custody of the agency:

1. The parents, guardian, or other persons having custody of the child;
2. The parents of a child who is in the temporary custody of a public children services agency or private child placing agency.

CSEA NOTICE [R.C. 3107.20]

Upon the issuance of a final decree of adoption, the court shall notify the child support enforcement agency administering a child support order.



HB 5 ADOPTION LAW UPDATE

Judge Adam W. Wilgus
Tuscarawas County
Probate Court

SUBSTITUTE HB 5

				
Effective Date: March 2025	Signed by Governor December 19, 2024	Passed Unanimously by the House: June 27, 2023	OAPJ Modernization Committee Began Work on Adoption Statute: November 2019	Last Major Update to Adoption Statute: 2001

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OHIO ADOPTIONS - BY THE NUMBERS (2024) TERMINATIONS

Trumbull
65

Ashtabula
26

Geauga
15

Portage
77

Mahoning
65

Tuscarawas
50

Total Ohio Adoption
Terminations:
3,822

EXCEPTIONS TO ADOPTION ARRANGEMENT R.C.(3107.011)

Exceptions to Agency/Attorney Requirement

- Stepparent
- Grandparent
- Adult Sibling
- Legal Custodian
- Guardian
- Spouse (included when adopting jointly)



EXPANSION OF SIX-MONTH REQUIREMENT FOR ADOPTION (R.C. 3107.02)

Overview of Six-Month Requirement

- Final Adoption decree cannot be issued until the child has lived in the adoptive home for at least 6 months after placement.
- In the case of stepparent adoption, until at least 6 months after the filing of the petition or until the child has lived in the home for at least 6 months.

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EXPANSION OF SIX-MONTH REQUIREMENT FOR ADOPTION (R.C. 3107.02)

Expansion of Credit for Time in the Home

The time a child has lived with a foster caregiver, relative, kinship caregiver, legal custodian, or guardian prior to the adoption petition is credited towards the 6-month requirement.

Applicability

Applies to foster caregivers, relatives, kinship caregivers, legal custodians, and guardians adopting the child.

Definition of Adult

Includes individuals with developmental disabilities as defined in section 5123.01

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WHO MAY BE ADOPTED/ADULT ADOPTION

R.C. 3107.02(B) – Adult includes developmental disability as defined in section 5123.01

INCREASE IN LIVING EXPENSE ALLOWANCE FOR BIRTH MOTHER (R.C. 3107.055(C)(9))

Key Change

- Living expense allowance for birth mother increased from \$3,000 to \$6,000



GOOD CAUSE EXCEPTION FOR FINAL ACCOUNT FILING (R.C. 3107.055(D))

Key Provision

- Good cause exception allowed if the final account is filed less than 10 days before the hearing.

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EXCEPTIONS TO ACCOUNTING REQUIREMENT (R.C. 3107.055(F))

No accounting required for:

- Grandparents
- Adult siblings
- Legal custodians
- Guardians
- Stepparents (already exempt)

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CHANGES TO CONSENT REQUIREMENTS FOR ADOPTION (R.C. 3107.06)

Key Changes:

Consent Requirement

- Changed from mother/father to “parents” for consent to adoption.

Meaningful and Regular Maintenance & Support

- Introduces the requirement for “meaningful and regular” maintenance and support of the child

Period of One Year Preceding Petition

- Applies to the one-year period immediately preceding the filing of the adoption petition

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CHANGES TO CONSENT REQUIREMENTS FOR ADOPTION (R.C. 3107.07 & 3107.08)

Key Changes:

1. Consent Not Required

- R.C. 3107.07(C): A parent who has entered into a properly executed voluntary permanent custody surrender agreement.
- R.C. 3107.07(D): A Parent whose parental rights have been terminated by court order.
- R.C. 3107.07(G): An agency with permanent custody who is found holding consent unreasonably.
- R.C. 3107.07(I): A Juvenile court, agency, or notified person that fails to comply with requirements of R.C. 3107.11(B).

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CHANGES TO CONSENT REQUIREMENTS FOR ADOPTION (R.C. 3107.07 & 3107.08)

Key Changes:

2. New Provision (R.C. 3107.07(J))

- A parent convicted of or pleading guilty to a criminal offense resulting in:
 1. Death of the minor's other parent, legal custodian, guardian, or primary care provider.
 2. Incarceration expected to extend beyond the minor's age of majority.

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CHANGES TO CONSENT REQUIREMENTS FOR ADOPTION (R.C. 3107.07 & 3107.08)

Key Changes:

3. Consent of Person to be Adopted (R.C. 3107.08)

- Consent must be given in the presence of the court

4. Exceptions for Sibling or Grandparent (R.C.3107.082)

- Siblings or grandparents are exempt from the requirement to provide written materials prior to consenting to adoption.

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ACCEPTING PARENT'S CONSENT R.C. 3107.081

- Parent shall sign the consent form **AND** appear personally before the Court
- Exceptions: child less than 6 months old, step-parent, parent resides out of the State of Ohio

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NOTICE R.C. 3107.11

Notice Requirement

- Notice of petition and hearing details must be given at least 30 days before the hearing.

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OBJECTING TO PETITION

Objection – Minor under 1 Year

- Written objection with 14 days of service.
- Appear at the hearing.

Objection – Minor 1 year or Older

- Written objection within 28 days of service, unless good cause for extension.
- Appear at the hearing.

Request for Counsel

The Court shall consider a written request of an attorney or a notice of appearance by an attorney as grounds for an extension to file a written objection.

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RIGHT TO COUNSEL

New language to appear on Hearing Notice sent to
Natural Parent(s).

COURT DISMISSAL OF PETITION & CERTIFICATION TO JUVENILE COURT R.C. 3107.14



Grounds for Dismissal of Petition:

1. Requirements for decree under division (C) not met. (6 months living in home)
2. Court vacates an interlocutory order of adoption.
3. Minor was placed in petitioner's home in violation of the law.



Certification to Juvenile Court:

Court may certify the case to the juvenile court of the county where the minor is residing for further action and disposition.

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VACATING ADOPTION DECREE UPON EVIDENCE OF TRAFFICKING

Motion to Reconsider Adoption Decree:

- Court may reconsider an vacate adoption if there is clear and convincing evidence the child was a victim of trafficking.

Trafficking Evidence:

- Evidence must show trafficking as defined under section 2905.32.
- Conviction is not required for reconsideration.

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BEST INTEREST DETERMINATION IN CONTESTED ADOPTION R.C. 3107.161



Best interest of the Child:

In a contested adoption, the court must determine the best interest of the child.



Age of the Petitioner Not Considered:

The age of the petitioner will not be considered if the petitioner is authorized to adopt under section 3107.03 of the Revised Code.

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BURDEN OF PROOF

The petitioner has the burden of proving the best interest of the child by a preponderance of the evidence.

PERSONS ADMITTED TO HEARING & ADOPTION RECORDS

Persons Admitted to Hearing (3107.17(A)):

- The court may admit any other persons it deems appropriate to the adoption hearing.

Adoption Records (3107.17(C)):

- Adoption records (petition, interlocutory order, final decree, etc.) may be kept either in a book or electronically.
- These records must be separately indexed and become part of the court's official records.

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FOREIGN ADOPTIONS: RECOGNITION & REGISTRATION

Recognition of Foreign Adoptions (3107.18(B)(1)):

- A foreign adoption judgment has the same force and effect in Ohio as an adoption decree by a state court if:
 - At least one adoption parent is a resident of Ohio.
 - The foreign adoption is verified through an IR-3, IH-3, or successor immigrant visa.

Full Adoption in Ohio not required:

- An adoptive parent shall not be required to file adoption petition, if above requirements are met.
- The foreign adoption is considered final.

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FOREIGN ADOPTIONS: RECOGNITION & REGISTRATION

Registration of Foreign Adoption (3107.18(C)):

- Adoptive parent or guardian can petition to register a foreign adoption in Ohio.
- Court may order a change of name or revised birth certificate if recommended.

25

NOTICE TO CHILD SUPPORT ENFORCEMENT AGENCY

Notification of Final Adoption Decree (3107.20):

- The Court must notify the child support enforcement agency.

Termination of Support Order:

- Upon receipt of the notice, the agency shall terminate any existing child support order for the child, as per section 3119.89 of the ORC.

26

SURRENDER OF CHILD TO PERMANENT CUSTODY

Surrender Agreement (5103.15(B)(1)):

- Subject to juvenile court approval, a parent, guardian or other custodians can enter an agreement to surrender the child to permanent custody of a public children services agency or private child placing agency.

Exception for Adult Siblings (5103.15(E)(1)):

- This section does not apply to adoption by:
Stepparents Grandparents Adult Siblings
Legal Custodians Guardians

27

THANK YOU

Judge Adam W. Wilgus
wilgus@co.tuscarawas.oh.us
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MAHONING COUNTY PROBATE COURT JUDGE ROBERT N. RUSU, JR.

FAMILY ALLOWANCE (R.C. 2106.13)

- A. What it says: The Probate Court is required to distribution that allowance for support as follows”
1. If decedent leaves only a surviving spouse and no minor children, 100% to the surviving spouse;
 2. If decedent leaves a surviving spouse and minor children who are the children of the surviving spouse, 100% to the surviving spouse;
 3. If the decedent leaves a surviving spouse and minor children, not all of whom are the children of the surviving spouse, then the court must fix the “equitable shares” for the surviving spouse of the minors. In making the allocation, the Probate Court must determine the respective needs of the surviving spouse and minors.

Important to Note

- A. The \$40,000.00 is a specific set dollar amount and the surviving spouse and minors get this in property (real or personal) or money regardless of the size of the estate.
- B. The money or property “set off” as the allowance is considered estate assets.
- C. Even if the surviving spouse dies after the decedent but before the family allowance is paid, the surviving spouse still receives the family allowance.
 1. SPF 7.2 must be filled within five (5) months of the appointment of the Fiduciary.
- D. If the surviving spouse elects two (2) or more automobiles pursuant to R.C. 2106.18, their family allowance is reduced by the value of the auto having the lowest value.
- E. Effective August 29, 200, R.C. 2106.13(f) states the value the surviving spouse elected on the Affidavit they sign with the Clerk’s office when they transferred the vehicle will be used as the established value for reduction purposes.
- F. HB246 effective March 26, 2006 allows the surviving spouse to select a motorcycle as one (1) of the two (2) vehicles they can elect.
- G. The allowance for support is a debt for which the Court can order real estate sold.
- H. No family allowance is allocated to a non-resident decedent who owned property in Ohio pursuant HB346 (1990).
- I. An illegitimate child whose paternity was established during the lifetime of the father is entitled to the family allowance. In Re Estate of Holley, 44 Ohio Misc 78
- J. A surviving spouse and Guardian with Court approval may waive the family allowance.

1. The Supreme Court has held that if the family allowance is waived it must “clearly appear” that the spouse had both knowledge of the right to receive the family allowance and an intention to forego it, which can be expressed or implied before waiver occurs.
- K. Allowance for support is preferred over unpaid income taxes, and over assets in the hands of the Trustee in bankruptcy; but not over judgement lien creditors. *Dillman v. Warner*, 54 Ohio App 170 (1935)

PROBATE COURT OF _____ COUNTY, OHIO

ESTATE OF _____, DECEASED

CASE NO. _____

APPLICATION FOR FAMILY ALLOWANCE

[R.C. 2106.13]

The fiduciary states that there is ☐ a surviving spouse and no minor children of the decedent who are not the children of the surviving spouse; ☐ no surviving spouse and one minor child of the decedent; that the surviving spouse or minor child is entitled to receive in money or property the sum of ☐ \$25,000, if decedent died prior to March 18, 1999 or ☐ \$40,000, if the decedent died on or after March 18, 1999, as an allowance for support, and the fiduciary hereby moves the Court to allow the surviving spouse or minor child the following items:

Description	Appraised Value
☐ _____ Lowest-valued vehicle if multiple vehicles were selected pursuant to R.C. 2106.18	_____
_____	_____
_____	_____
_____	_____
_____	_____

DO NOT USE THIS FORM IF THERE ARE MINOR CHILDREN OF THE DECEDENT WHO ARE NOT THE CHILDREN OF THE SURVIVING SPOUSE, OR IF THERE IS NO SURVIVING SPOUSE AND MORE THAN ONE MINOR CHILD. USE FORM 7.2

FIDUCIARY

ENTRY

The Court finds that there is ☐ a surviving spouse and no minor children of the decedent who are not the children of the surviving spouse; ☐ no surviving spouse and one minor child of the decedent; who is entitled to receive ☐ \$25,000 or ☐ \$40,000 in money or property as an allowance for support.

Therefore it is ORDERED that the property requested in the foregoing application be transferred to the person described in said application.

The Court further orders that the fiduciary, if not the surviving spouse, serve a copy of this Entry upon all interested persons within seven (7) days.

PROBATE JUDGE

PROBATE COURT OF _____ COUNTY, OHIO

ESTATE OF _____, DECEASED

CASE NO. _____

APPLICATION FOR APPORTIONMENT OF FAMILY ALLOWANCE

[R.C. 2106.13(B)(3) and (4)]

The fiduciary states that there is [] a surviving spouse and minor children of the decedent who are not the children of the surviving spouse; [] no surviving spouse and more than one minor child; and the fiduciary requests the Court for an Order to apportion the family allowance. The fiduciary states that the names of the surviving spouse and minor children are as follows:

SPOUSE

NAME	ADDRESS

MINOR CHILDREN

1.

Minor	Address	Date of Birth
(Parent)(Custodian)	Address	
2.

Minor	Address	Date of Birth
(Parent)(Custodian)	Address	
3.

Minor	Address	Date of Birth
(Parent)(Custodian)	Address	
4.

Minor	Address	Date of Birth
(Parent)(Custodian)	Address	
5.

Minor	Address	Date of Birth
(Parent)(Custodian)		

FIDUCIARY

ENTRY SETTING HEARING AND ORDERING NOTICE

The Court finds that there is [] a surviving spouse and minor children of the decedent who are not the children of the surviving spouse; [] no surviving spouse and more than one minor child; and assigns this application for hearing on _____, 20____, at _____ o'clock _____.m. and orders that the fiduciary give seven (7) days notice of this hearing by certified mail to all interested parties.

PROBATE JUDGE

ENTRY ON APPORTIONMENT

[R.C. 2106.13(B)(3) and (4)]

The Court finds that there is [] a surviving spouse and minor children of the decedent who are not the children of the surviving spouse; [] no surviving spouse and more than one minor child; and orders that the family allowance be apportioned as follows:

☐ _____
Surviving spouse - second automobile selected Property or Amount
pursuant to R.C. 2106.18

☐ _____
Surviving spouse Property or Amount

Distributee Property or Amount

Distributee Property or Amount

Distributee Property or Amount

Distributee Property or Amount

Distributee Property or Amount

The Court further orders that the fiduciary serve a copy of this Entry upon all interested persons within seven (7) days.

PROBATE JUDGE

WHINING ABOUT THE CONCEALMENT STATUTE

The current statute is:

R.C. 2109.50 to R.C. 2109.57

Proceeding when assets concealed or embezzled

My talk is to influence probate practitioners and to energize you to support a proposed draft for a new RC. 2109.50 to R.C. 2109.56 by the Ohio Association of Probate Judges (OAPJ).

Included in the appendix is the current R.C. 2109.50 to R.C. 2109.57 and a draft by the OAPJ Committee for R.C. 2109.50 to R.C. 2109.56.

This topic deserves way more than 20 minutes, so I will hit the highlights and let you review the statute and proposed changes.

RC. 2109.50 and R.C. 2109.52 authorize special quasi-criminal proceedings for the discovery of concealed or embezzled assets of an estate.

WHO CAN FILE A CONCEALMENT COMPLAINT?

- Any person interested in the estate, testamentary trust, guardianship, or a creditor of a person interested in the same or the Probate Court can file the action.

WHO IS THE COMPLAINT AGAINST?

- Against any person **suspected** of having **concealed, embezzled, or conveyed away**, or of being or **having been in possession of any monies, personal property, or choses in action** of the estate, testamentary trust, or guardianship.

WHAT IS THE PROBATE COURT'S RESPONSIBILITY?

1. Court by citation or judicial order orders the suspected person to appear and be examined, under oath, the allegations in the Complaint.
2. Officer whom process is delivered shall be liable for negligence in service or return (similar to *capias* for indictment). Provision for advanced cost for travel expenses outside county to be paid by the complainant. Bond approved by Probate Judge.
3. The Probate Court shall **promptly** hear and determine the matter.

4. Examinations, including **questions** and **answers**, shall be **reduced to writing**, **signed** by the party examined, and **filed** in the Probate Court
5. If either party **requests**, the Court shall swear witnesses offered by either party, **questions** and **answers** will be reduced to writing and signed by the witnesses and filed in the Probate Court.
6. If person compelled to be examined refuses to answer interrogatories propounded, Probate Court shall commit person to county jail where he shall stay until he submits to the Court's Order. RC. 2109.51.
7. **R.C. 2109.52**

The **Probate Court** or **jury** shall determine whether the person accused is **guilty** of having **conceal embezzled, conveyed away**, or been in **possession of monies, personal property**, or **choses in action**.

8. If guilty, the **Probate Court** shall assess: amount of damages or order return of specific thing concealed or embezzled or may be restored in kind.

9. Court may issue citation or other judicial order requiring any person who claims any interest in the assets to appear before the Court. Court may hear and determine questions relating to title of asset.

10. Judgment is in name of fiduciary. If fiduciary is guilty or no fiduciary, judgment in name of State.

11. Court shall grant judgment:

- a) for monies or value of personal property or choses in action, concealed, embezzled, conveyed away, or held in possession;
- b) 10% penalty;
- c) all costs;
- d) except judgment shall be reduced to extent value of anything specifically restored or returned in kind.

12. R.C. 2109.53

If guilty and the person is a fiduciary, he shall be removed as fiduciary. A new fiduciary shall be appointed. Guilty fiduciary shall not receive fiduciary compensation and shall be charged for amount of judgment. Guilty fiduciary's property shall be liable for satisfaction of judgment.

13. R.C. 2109.54

On demand, Court delivers to Common Pleas (general) clerk for execution on judgment.

14. R.C. 2109.55

Judgment in favor of the State, prosecuting attorney shall cause the certificate of judgment to Common Pleas Court.

15. R.C. 2109.56

All gifts, grants, or conveyances of real property, rents, or personal property and bonds, judgments or executions made or obtained **to avoid the purpose of the proceedings** or in contemplation of any examination or complaint **shall be void.**

16. R.C. 2109.57

Appointment of trustee funds or unknown non- resident.

DRAFT OF JANUARY 15, 2025 PROPOSED R.C. 2109.50 TO R.C. 2109.56

1. RC. 2109.50 contains definitions:
 - A. Purpose
 - B. Shall not involve any matter under R.C. 2101.24(B)(1)(c)
 - C. Assets mean money or personal property titled to or otherwise owned by
 1. decedent at time of death or
 2. testamentary trust or
 3. ward which are alleged to belong to a guardianship
 - D. Complaint eliminated term choses in action
 - E. Defines concealed assets
 - F. Defines conveyed assets
 - G. Defines embezzled assets
 - H. Person means: individual, corporation, business trust, estate, partnership, association, or other legal or commercial entity
 - I. Defines parties

R.C. 2109.51 Proceedings When Assets Concealed or Embezzled

1. Action initiated by a **fiduciary, interested person, creditor, or Probate Court**.
2. Against any person suspected of having concealed, embezzled, conveyed away, or being **improperly** in possession of any monies, or personal property of the estate, testamentary trust, or guardianship as defined.
3. Service of person on **defendant** and notice of hearing by personal service of the Sheriff or any person designated to make personal service. See Civ.R. 4. 1(B).
4. If personal service is unsuccessful, then clerk can be instructed to serve by certified mail. See Civ.R. 4. 1(A).
5. If service cannot be obtained within 90 days of filing, the charge shall be dismissed without prejudice.

Upon determining successful service, the Probate Court shall do the following:

- A. Conduct a pre-hearing conference with the parties
- B. Assign the matter for hearing and/or at the Court's discretion:
 - 1. allow time for reasonable discovery
 - 2. **issue interim orders** as is reasonable and necessary to **protect the interest** of the estate, including issuing **restraining orders** under Civ.R 65, **with or without bond**
 - 3. grant continuances and set further hearing dates
 - 4. issue all judgments and decrees as it relates to property or assets at issue, pending final determination and
 - 5. if Complaint is against the **fiduciary**, the **Court may remove** the fiduciary and appoint **a successor fiduciary** pending outcome of the proceedings.
- C. Conduct a summary hearing, accepting testimony and other evidence at Court's **discretion** and **render judgment**.

R.C. 2109.52 Penalties for disobeying judicial orders

If person properly served is ordered to appear and **fails to appear** or refuses to answer questions, Court **may** commit person to jail and/or impose a daily fine until the person submits.

R.C. 2109.53 Judgment on Complaint

After considering the evidence at trial or R.C. 2109.51(C) [summary proceeding], Court or jury shall determine by a preponderance of evidence (greater weight) whether person embezzled, concealed, conveyed away, or is improperly in possession of estate, testamentary trust, or guardianship assets. Judgment shall be rendered in favor of the person or in favor of the fiduciary or successor fiduciary.

- (A) The Probate Court shall then have the authority and discretion to:
 - (1) determine the value of the assets;
 - (2) declare title as between the parties;
 - (3) require any person who claims any interest in said assets to appear before the court;
 - (4) Assess the amount of damages to be recovered;
 - (5) order the return of the monies or the specific asset;
 - (6) order restoration in kind;
 - (7) Impose a 10% penalty on the amount of monies and the value of the assets;
 - (8) Assess all costs of the Complaint and proceedings which may include attorney fees.
- (B) The Court shall reduce the judgment to the extent of the value of any monies or assets returned in kind or restored.

R.C. 2109.54 Judgment against fiduciary removal

(Remains basically the same)

R.C. 2109.55 Certificate of Judgment

Court delivers certificate of judgment to Common Pleas Court

R.C. 2109.56 Conveyance

Same language as current statute

FOR MORE INFO CONTACT

JUDGE LAURA J GALLAGHER

CUYAHOGA COUNTY PROBATE COURT

216-443-8785

JUDGE RICHARD CAREY

CLARK COUNTY PROBATE COURT

937-521-1847

JUDGE ROBERT N RUSU Jr

330-545-3337

330-KIL-DEER

CASE LAW UPDATE

**Hon. James A. Fredericka
Trumbull County Common Pleas Court
Probate Division**



JUDGE JAMES A. FREDERICKA
Trumbull County Probate Court
161 High Street, NW, 1st Floor
Warren, Ohio 44481
Telephone: (330) 675-2520
Facsimile: (330) 675-2524

James A. Fredericka, life-long resident of Trumbull County, Ohio; admitted to the Ohio State Bar, 1978; also admitted to practice before U.S. Court of Appeals, Sixth Circuit; U.S. District Court, Northern District of Ohio.

Education: University of Notre Dame (B.A., 1975, Economics, graduated Summa Cum Laude - with highest honors. Case Western Reserve University (J.D., 1978); Honor Fraternities: Phi Beta Kappa; Omicron Delta Epsilon (Economics). John F. Kennedy High School, Warren, Ohio (1971).

Personal: Married to Lou Ann Malone Fredericka, 46 years; Children - Gina Marie (Graduate, St. Mary's College 2013, Graduate, Kent State University, B.S.N. 2016, Nurse); Michael James (Graduate, University of Notre Dame 2015, University of Akron, School of Law, J.D. 2018, Attorney at Law).

Work History: Trumbull County Probate Court Judge, February 9, 2015 to present; Private Practice 37 years, primarily with Ambrosy and Fredericka; Richards, Ambrosy and Fredericka; Trumbull County Assistant Prosecuting Attorney, 1978-1984.

Honors: Martindale-Hubbell Peer Review Rating - AV Preeminent, highest rating for professional ethics and legal ability. American Registry – America's Most Honored Lawyers, Top 1%. 2016 Public Official of the Year Award by NASW Ohio Chapter-Region IV.

Teaching Experience: University of Notre Dame - Non-Regular Teaching Staff; Guest Speaker – National College of Probate Judges, Ohio Association of Probate Judges, Trumbull County Probate Practice Seminars, Trumbull County Bar Association Seminars.

Organizations: Trumbull County Bar Association (President, 1998-99); Member: Probate Law and Procedure Committee of the Ohio Judicial Conference, Ohio Association of Probate Judges, and the National College of Probate Judges.

Community Service & Organizations: Trumbull County Probate Court Veterans Assistance Program, Trumbull County Senior Court Assistance Program, and Guardian Angels of Trumbull County. Past Chairman, Warren Civil Service Commission. Former Board Member: American Red Cross Trumbull County Chapter, Catholic Community Services, Inc., of Trumbull County, Notre Dame Schools, Saint John Paul II Parish Board and Finance Council.

LUOMA V. BAYUS

Case No. 2025-T-0005

- Concealment Actions
 - Special Proceeding
 - R.C. 2109.50
- Purpose
 - Retrieve assets that belong to the Estate

- Inter Vivos Gifts
 - intention to transfer ownership
 - delivery
 - relinquish control
 - acceptance

- Manifest Weight of the Evidence
 - Court lost it's way and created a miscarriage of justice

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY**

JILL LUOMA, EXECUTOR
FOR THE ESTATE OF
PATRICIA A. BAYUS
a.k.a. PATRICIA D. BAYUS,

Plaintiff-Appellee,

- VS -

DAVEY BAYUS,

Defendant-Appellant.

CASE NO. 2025-T-0005

Civil Appeal from the
Court of Common Pleas,
Probate Division

Trial Court No. 2024 CVA 0028

OPINION AND JUDGMENT ENTRY

Decided: August 4, 2025

Judgment: Affirmed

Jill Luoma, pro se, c/o Rafidi Jackson LTD., 154 Youngstown-Hubbard Road, Suite D, Hubbard, OH 44425 (Plaintiff-Appellee).

Brendan J. Keating, Guarnieri & Secrest, PLL, 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Defendant-Appellant).

SCOTT LYNCH, J.

{¶1} Defendant-appellant, Davey (David) Bayus, appeals the final judgment of the Trumbull County Probate Court in favor of Jill Luoma, executrix of the estate of Patricia A. Bayus aka Patricia D. Bayus, in a concealment action. For the following reasons, we affirm the judgment of the court below.

Substantive and Procedural History

{¶2} On July 9, 2024, Luoma filed a concealment/embezzlement complaint against Bayus, alleging that Bayus was in possession of certain firearms belonging to the

estate of Patricia Bayus.

{¶3} The matter was tried on December 16, 2024. The parties agree on the following testimony: Patricia Bayus was married to John Bayus (David Bayus' uncle) and was the mother of Jill Luoma. John Bayus was a firearm enthusiast with a collection of guns which were kept in a room in his basement built for that purpose. The basement flooded periodically. When flooding occurred, the firearms were moved upstairs. Patricia inherited the firearms upon John's death in 2019. On October 21, 2021, Bayus removed the firearms including the racks on which they were kept from Patricia's residence. Patricia died on March 20, 2023. According to her last will and testament:

I [Patricia Bayus] direct that all guns and rifles I own at the time of my death including, without limitation, my 38 special pistol, 45 automatic pistol, Marlin Model 92 lever action rifle, 357 Dan Wessen [sic] pistol and 30-30 Winchester carbine rifle, and all other guns and loading equipment be given, devised and bequeathed to my grandson, **Ryan Maki** [Jill Luoma's son].

{¶4} Jill Luoma testified in support of the complaint that she lived with Patricia for about ten years prior to her passing and is the executrix of her will. In October 2021, Patricia asked Bayus to take the firearms and hold them for her in case the basement flooded again.¹ Bayus told Patricia that Maki could take the firearms whenever he wanted. In December 2021, Luoma recalled that Patricia called Bayus and asked him to return the firearms. Bayus replied that she had given them to him but Patricia denied this and wanted them returned. On March 7, 2023, Luoma texted Bayus that Patricia wanted to know when he was going to return the firearms. Bayus did not respond.

{¶5} Ryan Maki testified that it was Patricia's wish that he inherit the firearms.

1. Decedent's statements were admitted pursuant to Evid.R. 804(B)(5) providing a hearsay exception for statements of deceased persons.

He thought it odd that Bayus would remove the firearms from Patricia's house since they would normally just be moved upstairs in the event of flooding. Maki contacted Bayus after he removed the firearms and asked him why he took them. Bayus responded that the basement was in bad shape and that they would be safer with him.

{¶6} Gregory Morrow, the sales floor manager at Stocker's Gun Shop in Champion, Ohio, conducted an appraisal of 33 firearms in Bayus' possession and claimed as property of the decedent's estate. He determined the value of the firearms to be \$6,235.

{¶7} David Bayus testified that it was Patricia's as well as John's intent that he receive the firearms and Patricia told him that the firearms were his. He claimed Patricia asked for the firearms to be returned because she was pressured ("bugged") to do so by Luoma and Maki.

{¶8} On January 3, 2025, the probate court issued its judgment in favor of Luoma. The court determined that Bayus had concealed, embezzled, conveyed away or was in possession of the 33 firearms appraised by Morrow and that he failed to meet his burden of proving the gift of those firearms by clear and convincing evidence. The court ordered Bayus to return the firearms to Luoma in her capacity as fiduciary of the estate or pay the amount of \$6,235.

{¶9} Bayus appeals and raises the following assignment of error:

The trial court's judgment entry finding in favor of plaintiff-appellee and finding that the defendant-appellant failed to meet his burden of proving a gift by clear and convincing evidence is against the manifest weight of the evidence.

Applicable Law: Concealment Actions

{¶10} "Upon complaint made to the probate court of the county having jurisdiction

of the administration of an estate, ... by a person interested in the estate, ... against any person suspected of having concealed, embezzled, or conveyed away or of being or having been in the possession of any ... personal property, ... the court shall by citation or other judicial order compel the person or persons suspected to appear before it to be examined, on oath, touching the matter of the complaint.” R.C. 2109.50. “[A] R.C. 2109.50 proceeding for the discovery of concealed or embezzled assets of an estate is a special proceeding of a summary, inquisitorial character whose purpose is to facilitate the administration of estates by summarily retrieving assets that rightfully belong there.” *Goldberg v. Maloney*, 2006-Ohio-5485, ¶ 23.

Applicable Law: Inter Vivos Gifts

{¶11} “[A]lthough property that passed by inter vivos gift or transaction is not property of the estate retrievable by an executor under R.C. 2109.50, the probate court can determine that the inter vivos gift or transaction was invalid, in which case the property is an asset of the estate retrievable by R.C. 2109.50.” (Citation omitted.) *Id.* at ¶ 34. “The essential elements of an inter vivos gift are (1) an intention on the part of the donor to transfer the title and right of possession to the donee, (2) delivery by the donor to the donee, (3) relinquishment of ownership, dominion, and control over the gift by the donor, and (4) acceptance by the donee.” *Williams v. Ormsby*, 2012-Ohio-690, ¶ 20.

{¶12} “[T]o prove a gift *inter vivos* clear and convincing evidence is required,” defined as “that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.” *In re Fife’s Estate*, 164 Ohio St. 449, 456 (1956), citing *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

Applicable Law: Manifest Weight of the Evidence

{¶13} “[A] court of appeals has the authority to reverse a judgment as being against the weight of the evidence.” *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 7. “The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [factfinder] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.” *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony.” (Citation omitted.) *Id.* Nonetheless, “[i]n weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” *Eastley* at ¶ 21.

Bayus’ Argument on Appeal

{¶14} Bayus acknowledges that the determinative issue on appeal is the decedent’s intent in relinquishing possession of the firearms to him, i.e., whether she intended to irrevocably transfer ownership of the firearms to him. He further acknowledges that evidence exists supporting each party’s position (the parties gave conflicting testimony regarding the decedent’s intentions). Nevertheless, he maintains the following points conclusively establish the decedent’s donative intent: (1) None of the firearms specifically identified in the will are in his possession and the will is silent with respect to those in his possession. (2) The firearms had never been removed from the decedent’s home for safe keeping and, in October 2021, there was no immediate threat

of flooding. (3) Bayus was given the mounted racks for storing the firearms as well as the firearms themselves. (4) If the decedent had intended for Maki to inherit the firearms she could have given them to him for safe keeping. (5) Bayus' close relationship with the decedent dates back ten years and included her husband (his uncle) who acquired the firearms. (6) No action was instituted to have the firearms returned from the time the decedent relinquished possession until her death (one year, four months, and twenty-seven days as calculated by Bayus).

The Probate Court's Judgment is not Against the Weight of the Evidence

{¶15} Bayus' arguments all have a certain degree of validity. Nonetheless, other circumstances exist supporting the conclusion that the decedent did not intend to gift the firearms. The will does not only bequeath the identified firearms to Maki but "all guns and rifles I own at the time of my death ... without limitation." Bayus is not a beneficiary under the will. This provision would have little meaning if the firearms had been gifted to Bayus. The decedent requested the return of the firearms within months of Bayus taking possession of them and requested their return again within months of her death.

{¶16} In sum, the evidentiary record does not permit a conclusive determination of the decedent's intent one way or the other unless one party's testimony is wholly discredited (and it is acknowledged that the decedent may have told each party what they wanted to hear). The circumstances relied upon by Bayus are not sufficient to wholly discredit Luoma's and Maki's direct testimony as to the decedent's intentions regarding the firearms. Given the facts of this case, the probate court's judgment did not create such a miscarriage of justice that it must be reversed.

{¶17} The sole assignment of error is without merit.

{¶18} For the foregoing reasons, the judgment of the Trumbull County Probate Court is affirmed. Costs to be taxed against the appellant.

ROBERT J. PATTON, P.J.,

MATT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the Opinion of this court, the assignment of error is without merit. The order of this court is that the judgment of the Trumbull County Court of Common Pleas, Probate Division, is affirmed.

Costs to be taxed against appellant.

JUDGE SCOTT LYNCH

PRESIDING JUDGE ROBERT J. PATTON,
concur

JUDGE MATT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.

OHIO ASSOCIATION OF MAGISTRATES

PROBATE CASE LAW UPDATE

July 1, 2024 – June 30, 2025

By

Magistrate Derek Cek

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ADOPTIONS

TOPIC: De Minimus Contact/Justifiable Cause
TITLE: In Re Adoption of L.K.P., 2024-Ohio-2551
COURT: 2nd Appellate District
COUNTY: Greene
DATE: July 3, 2024

Mother and Father were married in 2010 and had L.K.P. together. Mother and Father separated and Mother began residing with Stepfather. L.K.P. lived with Stepfather since 2016. Mother and Father divorced. Divorce decree granted custody to Mother with standard order parenting time for Father. Father was also ordered to pay child support. Stepfather petitioned to adopt alleging Father's consent is not necessary. Father objected. Probate court denied the petition. Stepfather appealed. Held: Father had two in person contacts and multiple phone calls in the year preceding adoption and therefore had more than de minimis contact. Father did not pay any support in the year preceding the adoption petition, however, Father had a number of medical diagnoses that made him unable to work, unable to support himself, and unable to support his daughter. Affirmed.

TOPIC: Failure to Object/Consent
TITLE: In re A.W.C., 2024-Ohio-2762
COURT: 9th Appellate District
COUNTY: Wayne
DATE: July 22, 2024

Legal custodians petitioned to adopt child. Parents were served with notice of adoption. Neither parent objected within 14 days after proof of notice. Mother sought leave to plead after time for objections was over. Mother did not challenge the constitutionality of any provisions of the adoption statute. Petitioners moved to find parents' consent unnecessary based on their failure to object. Mother was granted an extension of time to respond but did not respond to motion. Probate court found neither parent's consent was necessary. Mother appealed. Held: Mother's argument that R.C. 3107.07(K) and 3107.11(B) are unconstitutional was not raised to the probate court and the Court of Appeals declined to address it in the first instance. Statute provides no authority to extend the time to object even if a probate court believes that there is good cause. Probate court did not err by not conducting a hearing on consent. Affirmed.

TOPIC: Justifiable Cause/No Contact Order
TITLE: In Re Adoption of A.G.M., 2024-Ohio-2853
COURT: 12thAppellate District
COUNTY: Butler
DATE: July 29, 2024

Parents were unmarried. Maternal grandmother was granted legal custody of minor. Father filed a motion to establish paternity and visitation in Juvenile Court. Paternal Grandmother filed a motion for grandparent visitation. Father withdrew his motion for visitation; paternity was established; and both grandmothers agreed to a visitation order. Paternal grandmother's visitation order provided that Father was not to be present during visits and would have no contact with the minor during her visits. Father would have to motion the Court first for visitation. Father did not seek any type of visitation nor pay any support. Maternal grandmother petitioned to adopt the minor. Probate court found Father's consent required as justifiable cause existed for the failure to have contact with the child and to support the child. Grandmother appealed. Held: No contact order that existed prevented Paternal grandmother from allowing Father to have contact during her visits. That order did not prevent Father from having contact with the minor on his own or seeking to establish visitation. Father had some income although no child support was ordered. Father had the ability to support minor in some manner, but nothing shows Father had a willingness to do so or took any meaningful steps in that regard. Reversed.

TOPIC: Service of Notice
TITLE: In Re Adoption of K.M.B., 2024-Ohio-3093
COURT: 12thAppellate District
COUNTY: Clinton
DATE: August 14, 2024

Stepmother filed a petition to adopt minor and probate court set the matter for hearing. Mother was served at an address by certified mail signed by her aunt. Mother belatedly moved for leave to file an objection to the petition arguing that she did not live at that address. Stepmother filed a motion to dismiss. Probate court granted the motion and found Mother's consent unnecessary without a hearing. Mother appealed. Held: A party that follows the Rules of Civil Procedure governing service of process is entitled to a presumption of proper service unless the other party rebuts the presumption with sufficient evidence of nonservice. Presumption can be rebutted by demonstrating a procedural flaw in the service: use of the wrong address, receipt by someone who is not a proper person, or untimely mailing or receipt. Probate court should have held a hearing so that evidence could be presented by both parties on the issue of service. Unlike other cases considered, this is not a situation where a parent admits receiving proper notice but blames the failure to respond on vague difficulties. Reversed.

TOPIC: Continuances/Justifiable Cause/Ineffective Assistance of Counsel
TITLE: In Re Adoption of A.J.W., 2024-Ohio-3124
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: August 16, 2024

Grandparents petitioned to adopt minor. Mother was deceased. Probate court found Father's consent unnecessary and Father appealed. On remand, a further hearing was held. Father attempted to disqualify the probate judge and filed petitions for habeas corpus. Those actions were unsuccessful and the hearing on consent proceeded. Probate court found Father's consent unnecessary. Father appealed. Held: Probate court did not err in denying a continuance due to Father's dilatory efforts in seeking counsel, providing no additional information as to how long a continuance was needed, and Father did not identify what evidence he would have introduced had he been granted a continuance. Probate Court did not err in finding that Father had not had more than de minimis contact with the minor as Father had had only one video phone call and several attempted calls to the grandparents. Indigent parents are entitled to effective assistance of appointed counsel in adoption proceedings. However, Father failed to show any ineffective assistance of counsel here. Affirmed.

TOPIC: Justifiable Cause
TITLE: In Re Adoption of A.R.L.P., 2024-Ohio-3318
COURT: 5th Appellate District
COUNTY: Knox
DATE: August 28, 2024

Aunt and Uncle who had legal custody of children petitioned to adopt children. Father was granted supervised visitation by the juvenile court with two of the children and no contact with a third child except in a therapeutic setting. Father had not had significant contact with the children in years and last saw them at their mother's funeral. Probate court denied petition. Custodians appealed. Held: Father's consent is required. Evidence was undisputed Father failed to communicate in any manner with the children since the Juvenile Court Case concluded in August 2020. Competent and credible evidence existed to support the trial court's determination Father had justifiable cause for his failure to contact the children. The evidence presented at the hearing established Appellants, particularly Aunt, actively prevented Father from having even minimal contact with the Children. Aunt blocked Father on social media. She did not notify Father of Appellants' changes of address in 2021, and again in 2022. Father's lack of contact with one of the children due to the no contact order was justified. Probate Court also did not err in declining to address best interest factors as Father's consent was required. Affirmed.

TOPIC: Best Interests/Weighing of Statutory Factors
TITLE: In Re Adoption of Z.B., 2024-Ohio-4644
COURT: 10th Appellate District
COUNTY: Franklin
DATE: September 24, 2024

Paternal great-great uncle and aunt petitioned to adopt great-great nephew. Hearing on parents' consent held. Father died prior to hearing on consent. Petitioners shared custody of minor with another family member. Magistrate found consent not necessary but it was not in child's best interests to be adopted. Petitioners objected and Trial Court overruled objections. Petitioners appealed. Held: Trial Court may examine factors following the filing of an adoption petition to determine child's best interests. Trial Court did not weigh factors in favor of granting petition and was overly focused on bond between Mother and child. Reversed. Dissent: Record indicates the magistrate and probate court considered the requisite statutory factors. Further, the magistrate found the birth mother met her burden of producing some material evidence that the loss of her presence in the minor's life may be detrimental to the minor following their establishment of a new bond.

TOPIC: Consent/Justifiable Cause
TITLE: In Re Adoption of Z.R.B., 2024-Ohio-4922
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: October 11, 2024

Stepparent petitioned to adopt Mother's child. Father objected to adoption. Probate court decided Father's consent was not necessary. Father appealed. Held: No dispute that Father had not visited with child since she was a newborn. There is also no dispute that Father had failed to provide any form of support for the child during her life. Father put forward a justifiable cause argument blaming Mother for lack of contact but Father did not claim he wanted visitation nor was prevented from having contact. Father's filing of a paternity action is not relevant as Father filed his action after the adoption petition was filed. Probate court was correct in finding no justifiable cause. Affirmed.

TOPIC: Consent/Justifiable Cause
TITLE: In Re Adoption of R.L.A. 2024-Ohio-5218
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: October 31, 2024

Prospective adoptive father filed petition for adoption of child, alleging that biological father's consent was not required. Child had lived almost all of his life with prospective adoptive father other than a short period of time in infancy. Testimony from petitioner was that Father had not seen the child in years. Father testified he would have attempted to see the child if he knew how to contact the petitioner. Following hearing, a magistrate issued decision recommending that

adoption proceed without Father's consent. Father filed objections. Probate Court overruled Father's objections, adopted magistrate's decision, and ordered that adoption proceed without biological father's consent. Father appealed. Held: Father failed to meet his burden to show facially justifiable cause for not supporting child. Finding that Father unjustifiably failed to have contact with child was supported by clear and convincing evidence and not against the manifest weight of the evidence. Alleged closure of prospective adoptive father's house during pandemic did not amount to substantial interference with Father's contact with child. Probate court's finding that the Father failed to support his child within the year prior to the filing of the adoption petition was supported by clear and convincing evidence and was not against the manifest weight of the evidence. Affirmed.

TOPIC: Consent/Justifiable Cause/Support
TITLE: In Re Adoption of A.D.B., 2024-Ohio-5228
COURT: 5th Appellate District
COUNTY: Tuscarawas
DATE: October 31, 2024

Stepfather petitioned to adopt Mother's child. Father did not consent. Trial Court denied petition. Stepfather and Mother appealed. Held: Probate court found that no support order existed and Father did not provide any support during relevant time period. Record amply supports finding that Mother refused to accept any support from Father and blocked his calls. Court found clear and convincing evidence to establish that father's failure to provide maintenance or support for the child was justifiable. Affirmed.

TOPIC: Best Interests/Parental Relationship
TITLE: In Re D.W.D.-H., 2024-Ohio-5593
COURT: 2nd Appellate District
COUNTY: Clark
DATE: November 22, 2024

One year and one day after Mother and Stepfather married, Stepfather petitioned to adopt stepchild. Probate Court held hearing on Father's consent and found justifiable cause. Stepfather appealed and Court of Appeals reversed finding Father's consent not necessary. On remand, Probate Court held best interest hearing. Probate Court denied petition finding adoption was not in the child's best interests. Stepfather appealed. Held: The trial court's primary consideration must be the best interest of the child. A court's failure to base its decision on a consideration of the best interest of the child involved constitutes an abuse of discretion. A best interest determination must focus on the child, not the parent. Concentrating on whether the biological father sought visitation or custody in no way focuses on the best interest of the child. An adoption does not contravene the best interests of the child simply because an even stronger set of family bonds might be desirable. Neither a biological relationship nor a positive familial relationship can be controlling in itself when determining the best interest of a child. A child's present best interest is not tied to one parent's desire to forge a relationship in the future in the absence of a present relationship. The proper focus of the decision was the best interest of the

child, and not whether Father had pursued a relationship with the child. In abandoning the best interest of the child and instead focusing its ultimate decision on Father's desire to have a future relationship with the child despite his past actions, the trial court abused its discretion. Reversed and adoption ordered.

TOPIC: Consent/Best Interests
TITLE: In Re Adoption of A.E.C., 2024-Ohio-5559
COURT: 3rd Appellate District
COUNTY: Wyandot
DATE: November 25, 2024

Guardians petitioned to adopt minor child with Mother's consent. Father objected. At hearing, Father testified that he had made no efforts to see his daughter during the relevant time period, sent no letters, and made no calls. Father was incarcerated during most of the child's life. Probate court found Father's consent unnecessary. A hearing on child's best interests was held and Probate Court granted adoption. Father appealed. Held: The record lacks evidence of significant interference or significant discouragement by Petitioners as to communication between Father and his daughter. Thus, the trial court's finding that there was not justifiable cause for Father's lack of contact with A.E.C. during the year in question was not against the manifest weight of the evidence. The record fully supports the probate court's finding that adoption of A.E.C. was in the child's best interest. Affirmed.

TOPIC: Consent/Support
TITLE: In Re Adoption of E.W., 2024-Ohio-5633
COURT: 12th Appellate District
COUNTY: Butler
DATE: December 2, 2024

Mother was charged with child endangering. Children removed and placed in foster care. Mother was sentenced to 18 months in prison and ordered to have no contact with the children. Mother violated parole by having contact with the children and was sentenced to jail time. Foster parents petitioned to adopt. Father did not respond to petition; Mother contested it. Probate Court found Mother's consent not necessary. Mother appealed. Held: The parties stipulated to the admission of a payment summary prepared by the Butler County Child Support Enforcement Agency. The document shows that in the year preceding the adoption petition, December 28, 2021, through December 28, 2022, Mother only met her monthly obligation during the months of March and December 2022. She made only partial payments in February, May and June. During the months of January, April, July, August, September, October, and November, Mother made no payments at all. In total, Mother paid \$610.32 toward her yearly support obligation of \$2,006.88, which amounts to approximately 30 percent of her obligation. Mother did not comply with the terms of the child support order and therefore failed to support the children as required by law or judicial decree. Trial Court did not err in finding no justifiable cause for Mother's failure to support the children. Affirmed.

TOPIC: Consent/Support
TITLE: In Re Adoption of B.P.V., 2024-Ohio-6083
COURT: 5th Appellate District
COUNTY: Morgan
DATE: December 27, 2024

Stepfather filed a petition for the adoption of Jane Doe, the minor child of Stepfather's wife, Mother. Mother and Stepfather have been married since 2020 and Jane Doe is in Mother's permanent custody. The adoption petition asserted Father's consent to the adoption is not necessary. Father objected and a hearing on consent was held. Probate Court found Father's consent not necessary. Father appealed. Held: Father does not dispute that he failed to provide for the maintenance and support of Jane Doe, and that he failed to have de minimis contact with her. The trial court's factual conclusion is supported by clear and convincing evidence. Father argues, though, that the failure to provide for her maintenance and support was justified because Mother agreed not to seek support from him, and this mutual understanding justifies his failure to provide maintenance and support and requires his consent to Jane Doe's adoption. Father's argument is premised solely upon his agreement with Mother when their relationship ended; he never attempted to provide maintenance or support; he sought no court order relieving him of the duty of maintenance and support; and the evidence established only that he was imprisoned for 18 months and intermittently in rehab for an admitted cocaine habit. Father had no idea whether Jane Doe was adequately provided for or not; beyond his agreement with Mother, he did not inquire into Jane Doe's circumstances or make any effort to establish his own inability to provide for her. The trial court's determination that Father did not have justifiable cause for his failure to provide Jane Doe with any maintenance and support for the one year prior to Stepfather's petition for adoption was not against the manifest weight of the evidence. Affirmed.

TOPIC: Consent/Best Interests
TITLE: In Re S.C., 2025-Ohio-83
COURT: 6th Appellate District
COUNTY: Huron
DATE: January 10, 2025

Maternal Grandmother and her husband briefly shared parenting of minor following Mother's death. Thereafter, Grandparents were granted sole legal custody and Father granted supervised visitation. Grandparents petitioned to adopt. After hearing on consent, Probate Court found Father's consent not necessary. Probate court found it to be in child's best interests to be adopted. Father appealed. Held: Father had no contact with the minor in over a year which is not disputed. Father presented no justifiable cause for failing to have contact. The record reflects that Father has been regularly incarcerated throughout these proceedings on criminal offenses, including offenses against the minor. The record is devoid of evidence, other than unilateral, unsupported conclusions, in opposition to the determination that the minor's placement with Grandparents is the least detrimental available alternative and is in the best interest of the minor. Affirmed.

TOPIC: De Minimis Contact/Objections
TITLE: In re Adoption of G.A.J.-K., 2025-Ohio-1276
COURT: 2nd Appellate District
COUNTY: Miami
DATE: April 11, 2025

Legal custodian petitioned to adopt child. Birth father opposed. At a hearing before a Magistrate, Father's consent was found unnecessary. Child had never lived with his parents since birth. Father was incarcerated and would not be released till years after the adoption. Father had one phone call with child during the relevant period but had multiple calls with his mother. Father made no other attempts at contact. Father's consent was found unnecessary. Father did not object to the decision. Probate Court granted adoption. Father sought leave belatedly to object which was denied. Father appealed. Held: Father failed to file a transcript and therefore factual findings are not reviewable from the hearing on appeal. Father made no efforts to obtain the contact information for the minor and did not establish justifiable cause. A trial court lacks authority to consider untimely objections to a magistrate's decision if it has already entered a final judgment. Father's challenge to the denial of his motion for leave to file objections is not permissible as his remedy was to appeal the judgment adopting the magistrate's decision. Affirmed.

TOPIC: Consent/Service by Publication
TITLE: In re Adoption of J.P.B., 2025-Ohio-1352
COURT: 9th Appellate District
COUNTY: Summit
DATE: April 16, 2025

Children were placed in the joint legal custody of Petitioner and children's paternal grandfather after an abuse neglect dependency case was filed in juvenile court. Parents were served by publication in one case and Mother only in second case as no putative father had registered. A hearing on consent was held by a magistrate who found parents' consent not required. Probate Court adopted the decision. Best interests hearing was held and a final decree of adoption was issued. Mother appealed. Mother requested a limited remand to address her motion to vacate. Probate Court denied the motion. Mother appealed again. Held: Civ.R. 73(E) governs notice in adoption proceedings. Other than notice by ordinary mail after certified or express mail was refused or unclaimed, there is no hierarchy in the methods of service in the rule. Mother complied with requirements for service by publication. Probate Court did not err in denying Mother's motion to vacate. Mother's claim of Petitioner's lack of standing could have been raised to the Probate Court and is waived on appeal. Affirmed.

TOPIC: Jurisdiction/Waiver/Best Interests
TITLE: In re Adoption of J.D.P., 2025-Ohio-1565
COURT: 5th Appellate District
COUNTY: Richland
DATE: April 30, 2025

Parents and Paternal Grandmother appeal adoptions. Juvenile Court granted Maternal Grandparents legal custody of 3 of 4 children. Maternal Grandparents petitioned to adopt all four children. Mother did not file an objection within 14 days after proof of service and her consent was deemed unnecessary. Father appeared at the consent hearing and opposed. Probate Court granted adoption finding Father had failed without justifiable cause to provide for the maintenance and support of the minor for a period of at least one year immediately preceding the filing of the adoption petition. Father appealed but his appeal was dismissed. Paternal Grandmother moved to intervene which was denied. A best interest hearing was held. Parties agreed at the hearing to the adoptions with a gentleman's agreement that involved visitation by Paternal Grandmother. Parents and Paternal Grandmother appealed. Held: Probate Court did not err in accepting the gentleman's agreement between the parties. Parents had an opportunity to question the agreement or oppose the adoption at the hearing and did not do so. Mother waived any challenge to the probate court's personal jurisdiction over her by appearing at the best interest hearing and not objecting then. Mother waived any argument that her consent was necessary by agreeing to the adoptions. Similarly, Father waived any challenge and is barred by res judicata regarding the issue of his consent. Probate court properly exercised jurisdiction because proceedings in juvenile court did not involve parentage. Affirmed.

TOPIC: Best Interests
TITLE: In re Adoption of B.M.H.M, 2025-Ohio-1677
COURT: 2nd Appellate District
COUNTY: Darke
DATE: May 9, 2025

Maternal Grandmother and her husband became legal custodians of minor after Mother overdosed in front of child. The couple petitioned to adopt the child. Father consented. A hearing on consent was held and Mother's consent was found to be unnecessary as no maintenance or support was provided. No objections were filed and probate court adopted the decision. Mother did not appeal this decision. A best interest hearing was held. Magistrate issued a decision finding it in the best interest of the minor to be adopted. Mother objected. Probate court found the adoption in the best interest of the minor but did not overrule Mother's objections. Mother appealed. Appeal was dismissed for lack of a final appealable order. Probate court issued an amended entry overruling Mother's objections. Mother appealed. Held: At the time of the best interest hearing, minor was 10 years old and had been living with Petitioners for 8 years. The record clearly establishes that the continued placement with Petitioners was the least detrimental

alternative available. Minor wanted to be adopted because she wanted stability in Petitioner's home as revealed in an in camera interview. Overwhelming evidence of the record, when considered within the context of the factors set forth in R.C. 3107.161(B), establishes that Mother was not close to being ready to care for the minor, and there was no guarantee that she ever would be. Mother consistently focused on her own needs and desires rather than on the best interest of the minor. Trial court did not abuse its discretion by granting petition. Affirmed.

TOPIC: **Consent/Failure to Object**
TITLE: **In re Adoption of V.C., 2025-Ohio-1887**
COURT: **3rd Appellate District**
COUNTY: **Hancock**
DATE: **May 27, 2025**

Stepmother petitioned to adopt minor child. Father consented. Mother was incarcerated and did not consent but did not object within the 14 day period after proof of service of notice of the filing of the petition. Mother filed a motion seeking leave of court to object to the adoption beyond the 14-day time limit. The Probate Court held a hearing on the petition and denied the motion and found Mother's consent was not necessary. Mother appealed. Held: Mother failed to file a transcript and so the lower court's findings are presumed to be correct. Notwithstanding, Mother failed to object within the 14 day period and does not challenge that fact. Affirmed.

TOPIC: **Right to Counsel/Waiver**
TITLE: **In re Adoption of A.K.H., 2025-Ohio-1922**
COURT: **5th Appellate District**
COUNTY: **Coshocton**
DATE: **May 27, 2025**

Mother is the biological parent of A.K.H. and S.R.H (the "Children"). The Children were placed in the physical custody of B.H. and R.H. (the "Petitioners") in April 2021, and the Petitioners were granted legal custody of the Children in September 2021. The children have lived with the Petitioners since the physical-custody placement in April 2021. Mother last visited the Children in June 2021, when A.K.H. was two years old and S.R.H. was one year old. Petitioners filed to adopt the Children and a hearing was held. The day before that hearing was scheduled to take place, Mother — alleging that she had not received proper notice of the hearing — requested that the hearing be continued and asked for the appointment of an attorney to represent her. Probate Court denied the request for a continuance and did not address the request for counsel. Mother appealed. Held: Parents are entitled to court appointed counsel in adoption proceedings. Parents may waive their right to counsel explicitly or implicitly. Waiver of counsel can be inferred "where 'the total circumstances of the individual case, including the background, experience and

conduct of the parent' indicate that the parent has waived the right to counsel. The totality of the circumstances surrounding the adoption hearing do not indicate that mother waived her right to counsel. Reversed.

TOPIC: Maintenance and Support/Child Support Payments/Tax Seizure
TITLE: In re Adoption of S.N.W., 2025-Ohio-1994
COURT: 9th Appellate District
COUNTY: Summit
DATE: June 4, 2025

Juvenile court granted legal custody to Custodian and her husband but did not order child support. Mother was later ordered to pay child support by an administrative support order. Legal custodian petitioned to adopt minor children. Fathers did not contest the petition. Mother objected and a hearing was held before a magistrate. At the hearing, Custodian and Mother disputed the amount of monetary support that Mother had provided directly to Custodian or the children, but both agreed it was a minimal amount. Custodian testified that Mother gave her a total of five dollars during the lookback period; Mother testified that she had directly given each child monetary gifts in excess of \$20.00 during that period, but she could not remember the exact amount. Pertaining to the relevant one-year lookback period of October 5, 2021, through October 5, 2022, CSEA documents demonstrated that only one payment was made to each child's account on September 20, 2022. One child's account received a payment of \$503.23 and the other child's account received \$508.95. The magistrate decided that Mother's consent to the adoption of these two children was not required. The decision reasoned that the seized income tax refunds were involuntary payments and, therefore, could not be considered as payments of child support for purposes of R.C. 3107.07(A). Mother filed objections to the magistrate's decision, which the trial court overruled. The trial court agreed that Mother's seized income tax refunds applied to the children's CSEA accounts could not be considered as a payment of support under R.C. 3107.07(A) because they were not voluntary payments. Further, the trial court emphasized that the payments were explicitly applied to Mother's child support arrearages, rather than her current support obligations. Mother appealed. Held: There is no language in R.C. 3107.07(A) to support the trial court's conclusion that Mother must have paid child support voluntarily to preserve her parental right to consent to the adoption of her children. The statute merely refers to the provision of maintenance and support as required by law or judicial decree, not the voluntariness or source of those payments. There are many common means of paying and collecting child support that do not represent a "voluntary" payment of child support by the parent. Perhaps the most common method of child support collection and payment is through wage withholding, which happens through an administrative process in the payroll office of the parent's employer. Similar to payment through a seized income tax refund, child support paid through wage withholding does not involve a volitional act by the parent. The probate court erred by refusing to consider the seized income tax refund payments in its determination of whether

those payments were sufficient. Reversed. Dissent would find Mother failed to provide support according to judicial decree as an arrearage existed at the end of the lookback period.

TOPIC: Reopening Adoption/Notice/Due Process
TITLE: Ladd v. Strong, 2025-Ohio-2020
COURT: 5th Appellate District
COUNTY: Perry
DATE: June 5, 2025

Father and Mother were married but obtained a dissolution. Mother remarried and Stepfather adopted the minor. Father filed a “Petition Seeking an Official Hearing for Good Cause Shown Out-Side the Petitioner’s Control to Re-Open Case” in which he argued that the trial court should re-open the adoption matter because, while the prison mail system received the certified mail notice of the December 4, 2023 hearing on October 30, 2023, the appellant did not personally receive the notice until December 4, 2023. Father argued that he had filed a grievance within the prison system on December 8, 2023, which proceeded through the prison grievance process. Father submits that a letter was sent to the trial court on or about December 8, 2023; however, the only copy of said letter contained in the record is the copy attached to his May 20, 2024, Petition. Father’s Petition did not address his failure to provide de minimis support for D.L.S., nor did he address whether the adoption was in D.L.S.’s best interest. Probate court denied Father’s request. Father appealed. Held: Father did not file his petition until five months after he received the actual notice. Father did not offer any information in his petition challenging the adoption petition but acknowledged he was not seeking a review of whether the final decree was correct. Father’s due process rights were not violated nor his right of access to the courts. Affirmed.

TOPIC: De Minimis Contact/Justifiable Cause
TITLE: In re Adoption of H.M.M., 2025-Ohio-2403
COURT: 7th Appellate District
COUNTY: Columbiana
DATE: June 27, 2025

Mother and Father were married but divorced. Parties were granted shared parenting. Mother was ordered to pay child support. Several years later, the separation agreement was dissolved and Father named the sole custodian. Father married Stepparent who filed a petition for adoption a number of years later. The petition alleged that Mother’s consent to the adoption was not needed because she had failed without justifiable cause to maintain more than de minimis contact with the child for a period of at least one year immediately preceding the filing of the petition. Mother opposed the petition and admitted that she failed to provide more than de minimis contact, but alleged that her failure was due to the actions of Father, and was therefore justified. After a

hearing, the Probate Court found Mother's consent not necessary. Mother appealed. Held: The record supports by clear and convincing evidence that Mother failed, without justifiable cause, to maintain more than de minimis contact with the child in the year prior to Stepparent's filing of the petition for adoption, and that Father and his family did not substantially interfere with Mother's right to contact her child. There is evidence that Mother was provided with Father's address change and phone number in 2017 and that it was Mother who frequently changed her address and phone number without notifying Father, the court, or the CSEA of her current contact information. There was neither significant interference nor significant discouragement of Mother's communication with the child. Affirmed.

CONSTITUTIONAL LAW

TOPIC: Constitutional Law/Open Courts
TITLE: State ex Rel. Cincinnati Enquirer v. Bloom, 2024-Ohio-5029
COURT: Supreme Court of Ohio
COUNTY:
DATE: October 22, 2024

Juvenile delinquency trial was held over 13 year old J.L. Juvenile was alleged to have shot victim as he was lying on the ground. Juvenile was found not delinquent and the record of the case was sealed. Several months later, the Cincinnati Enquirer requested the transcript of J.L.'s trial. Judge denied the request. Enquirer filed for writs of mandamus and prohibition challenging the constitutionality of R.C. 2151.356. Held: Article 1, Section 16 of the Ohio Constitution means what it says that all courts shall be open to the public. There is no presumption that juvenile courts are closed to the public. Prior precedent linking the interpretation of the open courts provision to the U.S. Constitution First Amendment jurisprudence was wrong. The U.S. Supreme Court's decision provides a floor but the Ohio Constitution provides stronger protections. A juvenile delinquency proceeding cannot be closed to the public without an individualized determination balancing the interests at stake. Court proceedings may be closed only when there is an overriding competing interest, and that any restriction should be narrowly tailored to serve the competing interest without unduly burdening the public's right of access. Under the open courts provision, R.C. 2151.356 may not be constitutionally applied without such an individualized determination. Writs granted.

TOPIC: Birth Correction/Adversity/Appellate Jurisdiction
TITLE: In Re Application for Correction of Birth Record of Adelaide, 2024-Ohio-5393
COURT: Supreme Court of Ohio
COUNTY:
DATE: November 19, 2024

Birth correction appeal from 2nd District Court of Appeals with judgment left undisturbed due to lack of concurrence among justices. Justice Deters, DeWine and Chief Justice Kennedy would hold that there is a lack of adversity. The judicial power under the constitution vests in the courts power to decide cases which includes an adversity requirement. Judicial power extends only to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect. No opposing interest to Adelaide's application exists. Ohio Constitution and statutes do not eliminate adversity requirement. Probate courts have administrative functions such as granting marriage licenses and appointing park district commissioners. These functions are not appealable. Justice Brunner would hold that the Court is not bound by federal courts adversity jurisprudence and the Ohio Constitution provides jurisdiction to hear the appeal. U.S. Supreme Court has explained that adversarial presentation is a prudential concern, one that may actually demand the court's attention rather than dismissal of an action. Key issue to appellate jurisdiction is finality not adversity. Justice Brunner would find there to be no temporal restriction in the birth correction statute. Justices Donnelly and Stewart would find the statutes do not permit a birth correction but the General Assembly should address the gap in the law. Justice Fischer would order supplemental briefing on the issue of adversity as it was first raised at oral argument. Ohio Constitution, Article IV, Section 4(B) limits the jurisdiction of the courts of common pleas and divisions thereof to justiciable matters as provided by law. The General Assembly has provided for probate court jurisdiction here. The State has an interest in maintaining a system of birth records. He would find adversity met if the issue was not supplementally briefed and would also find that the statute does not allow for a sex marker birth correction. Judgment left undisturbed.

TOPIC: First Amendment/Public Employees
TITLE: Gaines v. Cross, 771 F.Supp.3d 982 (2025)
COURT: U.S. District. Court, S.D. of Ohio
COUNTY:
DATE: March 18, 2025

Denise Cross served as administrative judge for Montgomery County Domestic Relations Division. In 2011, she appointed Gaines to serve as magistrate. Gaines ran for a vacant judge position within the court. Gaines distributed campaign literature that compared her work to her primary opponent. Gaines lost the primary race and when she returned to work was terminated by Judge Cross, who found the campaign literature placed the court in a negative light. Gaines filed suit under 42 U.S.C. § 1983 for violations of her rights under First and Fourteenth

Amendments of the United States Constitution. She brought her claim against the Montgomery County Court of Common Pleas and Judge Cross in her official and individual capacities. Gaines alleges that terminating her from her position as magistrate because of her speech in support of her candidacy violated her right to free speech. Defendants moved to dismiss. Held: Ohio law provides that absent express statutory authority, a court can neither sue nor be sued. Motion is granted as to the Montgomery County Court of Common Pleas. The Eleventh Amendment bars all suits, whether for injunctive, declaratory, or monetary relief, against the state and its departments. Because lawsuits against State officials in their official capacities are effectively lawsuits against the State itself, sovereign immunity also bars suits for damages against State officials in their official capacities. State officials may, however, be sued in their official capacity for prospective injunctive or declaratory relief and in their personal capacity for damages. The Sixth Circuit has held that an Ohio Court of Common Pleas is an arm of the State of Ohio and entitled to sovereign immunity. Gaines's claim against Judge Cross in her official capacity for monetary damages is barred by the Eleventh Amendment. Defendants' Motion is granted on these grounds. The Eleventh Amendment does not bar Ms. Gaines's claim against Judge Cross in her official capacity for prospective injunctive relief. To prevail on a claim under § 1983, Gaines must prove that (1) she was denied a right secured by the Constitution; and (2) the deprivation was permitted by one acting under color of state law. A First Amendment retaliation claim under § 1983 requires Gaines to show (1) that her speech was constitutionally protected, (2) she was subject to "adverse action or was deprived of some benefit," and (3) the protected speech was a "substantial" or "motivating factor" for the adverse action. Gaines must establish that (1) she was speaking as a private citizen, (2) on a matter of public concern, and (3) her interest in commenting on the matter outweighed the State's interest as an employer. While dismissals based on an individual's political affiliation are generally unconstitutional, the Supreme Court employs a different test if the public employee is in a policymaking or confidential position. *Rose v. Stephens*, 291 F.3d 917, 923 (6th Cir. 2002) ("Rose presumption"). Public employees who hold confidential or policymaking positions may be terminated for their political affiliation, or their actual speech, without violating the First Amendment. For the Rose presumption to apply, the plaintiff must (1) have held a policymaking position and (2) have spoken "on a matter related to political or policy views. To determine whether a job constitutes a policymaking position, the ultimate inquiry is not whether a position may be appropriately labelled as involving "policymaking," but "whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved. Gaines held a policy making position as a magistrate. Gaines campaign literature disparaging a co-worker and criticizing how responsibilities were delegated shows political differences with Judge Cross and undermined her confidential position. Because Gaines cannot show her rights were violated in her termination, her 1983 claim fails. Claims against Judge Cross dismissed.

TOPIC: Civil Procedure/Party Presentation
TITLE: Snyder v. Old World Classics, L.L.C., Slip Opinion No. 2025-Ohio-1875
COURT: Supreme Court of Ohio
COUNTY:
DATE: May 28, 2025

The Snyders entered into a home construction contract with Old World Classics, L.L.C. The agreement contained a dispute-resolution clause requiring the parties to resolve any disputes through binding arbitration. A dispute arose among the parties, and the Snyders filed a civil action alleging fraud and breach of contract, among other claims, in the Medina County Court of Common Pleas. Old World filed a motion to stay the litigation and compel arbitration in accordance with the dispute-resolution clause in the agreement. The trial court granted Old World's motion without holding an oral hearing. The Snyders appealed that decision to the Ninth District Court of Appeals. The appellate court did not address the merits of the Snyders' argument but instead held that the trial court had erred procedurally by failing to hold an oral hearing on the motion. Old World appealed. Held: The Court held that "Under the principle of party presentation, 'we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.'" Neither party requested a hearing before the trial court on the motion to stay and compel arbitration and that neither party raised before the Ninth District as an assignment of error on appeal the issue of the trial court's failure to hold an oral hearing on the motion. The Ninth District therefore violated the party-presentation principle when it reversed the trial court's order compelling arbitration on the grounds that the trial court did not hold an oral hearing on the motion. Decision of the court of appeals vacated and remanded to consider the assignment of error.

DISQUALIFICATION/DISCIPLINE

TOPIC: Judge Disqualification
TITLE: In Re Disqualification of Park, 2024-Ohio-3184
COURT: Ohio Supreme Court
COUNTY:
DATE: July 2, 2024

Former estate attorney Golub filed an affidavit of disqualification against Judge Dixie Park alleging improper ex parte communications and that the judge made a false statement. Held: Only parties to proceedings or their counsel may file affidavits of disqualification. Golub was under a citation order and order to return fees to the fiduciary; therefore, Golub had standing to file affidavit. Clerk of Supreme Court incorrectly rejected Golub's first affidavit of disqualification by rejecting it on the basis that the jurat certificate did not indicate that the affidavit was subscribed before a notary public. Golub could not comply with filing deadline and his affidavit is timely. Although Golub's fees may have been discussed at a hearing at which he

was not present, Golub was not a party to the case at that time. Judge had no obligation to notify him of the hearing. Further, record does not sustain a finding that the Judge made a false statement. Affidavit denied.

TOPIC: Judge Disqualification
TITLE: In Re Disqualification of Hejmanowski and Chamberlin, 2024-Ohio-4477
COURT: Ohio Supreme Court
COUNTY:
DATE: August 2, 2024

Judge Hejmanowski appointed Attorney Adriann McGee as the guardian of the estate of Pond's mother, Mary Ann Pond. On September 6, 2022, Judge Hejmanowski recused from the guardianship case, and Judge Chamberlain was assigned to that matter. McGee, in her capacity as the guardian of the estate for Mary Ann Pond, filed the underlying civil probate case against Pond in his capacity as trustee of the Robert J. Pond Trust. Pond filed an affidavit of disqualification. Held: Affidavit as to Judge Chamberlin is dismissed as no evidence exists that judge was assigned to the underlying case. Under the plain and unambiguous language of R.C. 2101.39, the chief justice's authority to consider the disqualification of judges extends only to those matters in which a proceeding is pending before the judge. Pond alleges two bases for disqualification—that Judge Hejmanowski has a conflict of interest because he previously recused from a related case involving the same parties and that the judge is biased and prejudiced against him. A conflict of interest means a real or seeming incompatibility between one's private interests and one's public or fiduciary duties. Ohio has never adopted a statute or rule that requires the disqualification of a judge who has previously recused from a case. Jud.Cond.R. 2.11 dictates when a judge must recuse, and it does not prohibit a judge who recuses from a case from returning to preside over the case once the conflict of interest abates. This decision therefore adopts the majority rule and concludes that a judge who has recused from a case may resume hearing it once the cause for the recusal has ceased to exist. In this case, Judge Hejmanowski recused because he believed there was a potential conflict of interest when there was a motion seeking the disqualification of his magistrate, whom the judge was employing and supervising. Once Judge Chamberlain denied that motion, the potential conflict of interest abated, and his prior recusal from that case does not prevent him from presiding over the underlying case. Affidavit denied as to Judge Hejmanowski.

TOPIC: Judge Discipline/Social Media
TITLE: Ohio State Bar Assn. v. Winkler, 2024-Ohio-3141
COURT: Ohio Supreme Court
COUNTY:
DATE: August 21, 2024

Relator, Ohio State Bar Association, charged Judge Winkler with professional misconduct for permitting court staff to make inaccurate comments to the press about a pending guardianship case and for then posting similar comments to the court's Facebook page himself. A reporter with the news outlet Richland Source contacted the probate court regarding a ward's case. Winkler stipulated that he had authorized the assistant court administrator, Scott Weikel, who was under Winkler's supervision and control, to address public inquiries on behalf of the court. Weikel spoke to the reporter and informed her that the Ward "was removed from her home because it was a squalid, unsafe living environment" and Rob, Ward's son, "was not properly caring for her." Winkler has stipulated that the statements he and Weikel made about the Ward being removed from her home due to poor living conditions were incorrect, misleading, and unsupported by the record in the guardianship case. Winkler admitted that several other items in his responses to Ward's son on Facebook were inaccurate, including his claims that a neighbor had called senior services about the Ward, that the Ward was the victim of elder abuse, and that the court had been required to intercede to take care of her because Rob had failed to do so. Winkler further stipulated that there was no evidence to suggest that a lack of care by Rob or any other family member had necessitated the Ward's guardianship. Held: Judge's conduct in making statements on social media that incorrectly asserted that party to guardianship litigation in judge's courtroom had neglected and abused ward, and allowing his court administrator to make similar misstatements to a reporter, violated the judicial conduct rules. Public reprimand was the appropriate sanction for judge's misconduct.

TOPIC: Attorney Discipline
TITLE: Mahoning County Bar Association v. Macala, 2024-Ohio-3158
COURT: Ohio Supreme Court
COUNTY:
DATE: August 22, 2024

Mahoning County Bar Association charged Macala with professional misconduct related to his representation of the fiduciary of two related probate estates. Among other things, relator alleged that Macala had signed waivers of partial accounts on behalf of the fiduciary and beneficiaries without authorization and then filed the documents with the probate court. Three days before a May hearing date to appear and show cause, Macala filed waivers of partial accounts for both estates that were purportedly signed by the fiduciary. In addition, the waiver in one estate was purportedly signed by the four beneficiaries of that estate. Macala had signed the names the fiduciary and the beneficiaries without their knowledge or consent, though none of the signatures were notarized. The fiduciary discovered the forgeries and terminated Macala's representation. The fiduciary thereafter filed a grievance. Following stipulations of fact, misconduct, and aggravating and mitigating factors and hearing, the Board of Professional Conduct issued report and recommendation that attorney be publicly reprimanded for his misconduct. Mahoning County Bar Association objected to Board's recommended sanction arguing a public reprimand is the incorrect sanction. Held: A conditionally stayed six-month suspension was appropriate sanction for attorney's violations of rules requiring him to keep client reasonably informed and prohibiting him from knowingly making false statement to tribunal and from engaging in dishonest conduct.

TOPIC: Attorney Discipline
TITLE: Disciplinary Counsel v. Tregre, 2024-Ohio-3173
COURT: Ohio Supreme Court
COUNTY:
DATE: August 23, 2024

Disciplinary proceedings were brought against attorney. Tregre failed to fully investigate wrongful death claim, file a complaint, or communicate with the client on the merits of the claim. He also failed to timely file an inventory and account in the underlying estate. Tregre also neglected client matters and failed to respond to client communications. Following stipulations of fact, misconduct, and aggravating and mitigating factors, and hearing, the Board of Professional Conduct issued report and recommendation that Tregre be suspended for two years, with conditions. Held: Two-year suspension was appropriate sanction for attorney's violations of rules requiring reasonable diligence, returning unearned fees, disclosure of material facts in disciplinary proceedings, and prohibiting conduct prejudicial to administration of justice.

TOPIC: Attorney Discipline
TITLE: Disciplinary Counsel v. Port, 2024-Ohio-5566
COURT: Ohio Supreme Court
COUNTY:
DATE: November 27, 2024

Relator, disciplinary counsel, filed a complaint charging Attorney with professional misconduct arising from his allegedly misappropriating client funds, falsifying bank records, making false statements to a tribunal, representing a client when he had an impermissible conflict of interest, charging excessive fees, and failing to provide competent representation. The matter was referred to a board commissioner for disposition. The commissioner found by clear and convincing evidence that Attorney was in default for failing to answer the complaint and that he had committed professional misconduct. The board adopted the commissioner's findings of fact, conclusions of law, and recommended sanction—that he be permanently disbarred from the practice of law in Ohio and that he be ordered to pay restitution within 90 days of the final disciplinary order in this matter. Attorney did not file objections or any other response. Held: Attorney violated rules of professional conduct that required him to hold the property of clients in an interest-bearing client trust account, prohibited a lawyer from engaging in conduct involving dishonesty, prohibited a lawyer from engaging in conduct that was prejudicial to the administration of justice, and prohibited a lawyer from engaging in conduct that adversely reflected on his or her fitness to practice law. Attorney's act of fabricating bank records to conceal his misappropriation of estate funds when estate administrator was sufficiently egregious to warrant a finding that his misconduct adversely reflected on his fitness to practice law. Permanent disbarment and order to make restitution were warranted.

ESTATES

Concealment

TOPIC: Concealment/Settlement Agreements
TITLE: Minshall v. Estate of Minshall, 2024-Ohio-3428
COURT: 6th Appellate District
COUNTY: Erie
DATE: September 6, 2024

Two of decedent's sons brought concealment action against decedent's other son, who had acted as executor of estate, alleging he concealed estate assets when he filed his inventory of the estate. The Trial Court found executor guilty of concealment, denied executor's motion to enforce settlement agreement between executor and sons, and entered judgment in favor of estate for money and property concealed, as well as estate's costs, third-party administrator's fees, and son's attorney fees. Executor appealed. Held: The nature of concealment actions require probate courts to adjudicate the accused's conduct in a quasi-criminal proceeding. The interested parties that first allege wrongdoing are not elevated to the status of a party to the action that can settle the claims with the accused. Sons were not authorized to settle concealment claims with executor as a matter of law, and thus settlement agreement could not be enforced by trial court. Judgment against executor in the full amount of concealed assets was warranted. Pursuant to R.C. 2109.52, the trial court was obligated to enter judgment against son plus a 10% penalty and costs. Son, as fiduciary, was not entitled to any reduction in the amount of the judgment rendered against him pursuant to R.C. 2109.52 based on the alleged recovery of those assets by the estate through their placement in decedent's trust. Statement by executor that he did not want a hearing did not constitute a waiver of his right to a hearing on attorney fees. Trial court was obligated to conduct a hearing on fees and abused its discretion by failing to do so. Affirmed in part, reversed in part, and remanded.

TOPIC: Concealment/Summary Judgment
TITLE: In re Estate of Beatley v. Fisher, 2024-Ohio-5109
COURT: 10th Appellate District
COUNTY: Franklin
DATE: October 24, 2024

Heir of intestate decedent's estate brought action for concealment of estate assets against owner of limited liability company (LLC), who was also domestic partner of decedent, asserting that estate should have interest in out-of-state property conveyed during decedent's life. The Probate Court rejected heir's motion to set status conference, overruled heir's objections to magistrate's decision granting owner, as sole owner of LLC that owned property, summary judgment, and adopted magistrate's decision in full. Heir appealed. Held: Summary judgment was generally

permissible to resolve concealment action. Heir could not challenge use of summary judgment procedure he acquiesced to after he received adverse outcome. Probate Court did not abuse its discretion by considering LLC operating agreement in ruling on motion for summary judgment. Deed's incorrect listing of LLC as limited partnership rather than an LLC did not create genuine issue of material fact which precluded summary judgment. Affirmed.

TOPIC: **Concealment/Plain Error**
TITLE: **Roefer v. Riley, 2025-Ohio-272**
COURT: **8th Appellate District**
COUNTY: **Cuyahoga**
DATE: **January 30, 2025**

Roefer filed a complaint against Riley alleging that Riley concealed their mother's estate assets, and Riley filed a counterclaim for concealment of estate assets. Following a decision by magistrate that both daughters concealed estate assets, the Trial Court dismissed Roefer's objection to the magistrate's decision as untimely, overruled her objection to the magistrate's decision on the merits, and adopted the magistrate's decision. Roefer appealed. Held: The Ohio Supreme Court stated that the three-day mail rule does not extend the time for filing objections to a magistrate's decision under Civ.R. 53. Time for Roefer to file objections to magistrate's decision was not extended, and her objection was untimely. Court of Appeals was limited to consideration of partial transcript of evidence presented to magistrate in review of trial court's decision. Evidence was insufficient to support finding that vehicle was transferred to Roefer. Trial Court erred in finding the incorrect model and Roefer was prejudiced by the error in including vehicle value among her concealed assets. Remand was warranted. Affirmed in part, reversed in part, and remanded.

TOPIC: **Concealment/Setoff/Bank Deposits**
TITLE: **Thevenin v. Day-Air Credit Union, Inc., 2025-Ohio-1488**
COURT: **2nd Appellate District**
COUNTY: **Montgomery**
DATE: **April 25, 2025**

Marlin Thevenin had two credit card accounts with Day Air, which were governed by a Truth-In-Lending Disclosure Statement. The statement included a provision that, as a condition for the issuance of the credit card, Marlin granted Day Air "a consensual security interest in all individual and joint accounts" he had with Day Air "now and in the future to secure repayment of credit extended under this agreement." Lawrence Thevenin was appointed as guardian of Marlin's person and his estate. Lawrence opened a checking account with Day Air in the name of the guardianship. That checking account was subject to Day Air's Membership and Account Agreement, which provided Day Air a security interest in "all shares and dividends and all deposits and interest" in the account and future accounts "for all obligations you may have now or in the future, except obligations secured by your principal residence." The agreement further granted Day Air the right of setoff and a statutory lien. The credit card debt was paid monthly

from the guardianship account. Marlin died on March 9, 2023. Approximately two weeks later, Day Air received notice of his passing and placed a secured hold on the payoff balances for the credit cards. Lawrence was appointed as administrator of Marlin's estate and opened a checking account at Day-Air with identical provisions as the guardianship account. Between July 5, 2023 and August 28, 2023, Day Air withdrew via automatic payments a total of \$864 from the estate's checking account. It also placed a hold in the amount of \$9,688.77 on the account. Day Air filed a claim against the estate for an unknown amount. A claim for \$9,751.19 was filed six days later. Lawrence, as administrator of the estate, rejected both claims. Lawrence filed a complaint against Day Air for concealing, embezzling, or conveying away assets of the estate. The Trial Court found Day Air guilty of concealing, embezzling, conveying away, or wrongfully possessing assets of the estate. Day Air appealed. Held: Bank setoff is an extrajudicial self-help remedy based on general principles of equity. It allows a bank to apply general deposits of a depositor against a depositor's matured debt. Although Article 9 of the Uniform Commercial Code (UCC) does not generally apply to the right of setoff, it has provisions related to deposit accounts (R.C. 1309.340) and account debtors (R.C. 1309.404). R.C. 1309.109(D)(10). It provides that, with a limited exception, a bank may exercise its right of setoff against a secured party with a security interest in the deposit account. R.C. 1309.340(A). The UCC thus gives banks higher priority over other secured creditors in a deposit account. Moreover, the UCC makes clear that "a bank may hold both a right of set-off against, and an Article 9 security interest in, the same deposit account. "[T]hree conditions must be satisfied before a bank may set off a customer's deposits against the customer's indebtedness to the bank: (1) the existence of mutuality of obligation, (2) the debtor's ownership of the funds used for setoff, and (3) the ripeness of the existing indebtedness for collection at the time of the setoff. Court of Appeals found that mutuality necessarily terminates upon the death of the debtor-account holder. When an account holder with a debt (such as Marlin) dies, the financial institution's right to setoff should be determined by considering the circumstances at and immediately before death. If the right to setoff existed at the time of death, the death of the account holder/debtor does not alter the right to setoff. However, the right is not unlimited: setoff is permissible against an estate account only if the funds were moved from the decedent's account with that creditor-bank directly to an estate account with the same creditor-bank and only to the amount of the fund balance at the time of death. Day Air had the right to employ its right to setoff to the extent that Marlin's debt was due and to freeze his account up to the amount of his credit card debt to protect its security interest. Because the money from the guardianship account was deposited into an estate account with Day Air, Day Air's right to setoff followed. Day Air obtained a perfected security interest in the funds. That interest remained when funds were transferred into a guardianship account and to the estate account to the extent that guardianship funds were transferred into the estate account. Although courts are divided on the effect of insolvency on the right to setoff against an estate, the majority view is that a bank may setoff a deceased customer's general deposits against the customer's unmatured debt if the estate is insolvent. The trial court erred in concluding that Day Air wrongfully exercised setoff against the estate account at Day Air and, consequently, in finding the credit union guilty under R.C. 2109.50. Reversed.

General Estate Cases

TOPIC: Substitution of Party/Standing
TITLE: Hadley v. Valkenburgh, 2024-Ohio-2990
COURT: 4th Appellate District
COUNTY: Athens
DATE: July 30, 2024

Hadley was sole heir and administrator of his father's estate. After obtaining title to his father's real estate, Hadley sold some real estate to his father's long term girlfriend Van Valkenburgh and her mother. Hadley filed a complaint against the Van Valkenburghs, attorney and law firm alleging concealment, theft, conversion, fraud, unjust enrichment, legal malpractice and fraudulent transfer. The Van Valkenburghs filed a motion to dismiss. Other defendants filed a motion for judgment on the pleadings. Hadley later filed a notice of substitution of party plaintiff in which he stated that a substitute administrator, Bryant, had been appointed. Probate Court granted motion to dismiss and motion for judgment on the pleadings. Bryant appealed. Held: Only aggrieved parties have standing to appeal. An "aggrieved party" is a party with an interest in the subject matter of the litigation that is immediate and pecuniary, and not a remote consequence of the judgment. Bryant filed a notice of appeal from probate court's judgment that dismissed complaint Hadley filed in his individual capacity and in capacity as administrator. Probate court did not substitute Bryant as a plaintiff below and therefore she was not a party to the proceedings. As such, no party appealed the probate court's judgment within 30 days. Bryant lacks standing to appeal judgment. Appeal dismissed.

TOPIC: Exhaustion of Remedies/Ripeness
TITLE: Vondrasek v. Heiss, 2024-Ohio-3061
COURT: 11th Appellate District
COUNTY: Geauga
DATE: August 12, 2024

Son, Frederick, filed complaint against his siblings Michael and Lisa for intentional interference with his expectancy of inheritance ("IIIEI"). Michael counterclaimed and cross claimed against Lisa. Lisa moved for judgment on the pleadings and to dismiss Frederick and Michael's claims for IIIEI. Trial Court granted Lisa's motion and dismissed Frederick's complaint and Michael's cross claim for IIIEI. Frederick appealed. Held: Claims for IIIEI are not ripe if there is adequate relief available to the plaintiff through probate procedures, such as a will contest. Courts must look to whether the probate court can provide adequate relief in the form of actual damages which would be recovered in the tort action; punitive damages awards are not considered a valid expectation in this context. The circumstances surrounding the tortious conduct must be what effectively precludes adequate relief in the probate court. At least in some circumstances involving non-probate assets, a plaintiff will not have to exhaust probate court remedies before

bringing a claim for intentional interference with expectancy of inheritance. Probate court has jurisdiction to address fraudulent or improper inter vivos transfers through a will contest or declaratory judgment action. The complaint alleged fraud, coercion, and undue influence by siblings caused decedent to execute transfer on death designation, changed the beneficiaries, and transfer of real and personal property. Michael has not exhausted his remedies and his claim is not ripe. Affirmed.

TOPIC: Final Appealable Orders/Timeliness
TITLE: In re Estate of Boggs, 2024-Ohio-3321
COURT: 5th Appellate District
COUNTY: Richland
DATE: August 28, 2024

Minor child died in car accident leaving her mother, father, and minor brother as next of kin. Parents were appointed co administrators. Suit was filed and a settlement reached. Probate court held hearings on distribution of net proceeds among next of kin and attorney's fees. Father appealed. Held: Father failed to timely appeal judgment entry ordering distribution. Wrongful death actions are special proceedings under R.C. 2505.02(A)(2). Father's appeal affected a substantial right and because he did not appeal within the time set by App.R.4 his appeal is untimely. Appeal dismissed.

TOPIC: Service by Publication/Default Judgment
TITLE: Reid v. Williams, 2024-Ohio-3332
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: August 30, 2024

Administrator filed an action to determine heirship. Service by publication was completed on unknown heirs. Administrator moved for default judgment. Probate court denied motion. Probate court stated "it is the policy of this Court that default judgment will not be granted against an unidentified party. If this policy remains unreviewed by the Second District Court of Appeals, it will remain the policy of the Court." Administrator appealed. Appeal was dismissed for lack of a final appealable order. Administrator moved for renewed default judgment. Administrator submitted additional evidence and Probate court made heirship determination. Administrator appealed again. Held: R.C. 2703.24 authorizes service by publication on a decedent's unknown heirs. Such unknown heirs are parties. When the unknown heirs failed to file an answer to the complaint within the time provided by the Rules of Civil Procedure, a default judgment was proper under Civ.R. 55. The trial court's failure to grant a default judgment based on its internal policy was an abuse of discretion. Reversed as to judgment on the unknown heirs; affirmed otherwise.

TOPIC: **Subject Matter Jurisdiction**
TITLE: **Francati v. Fuentes, 2024-Ohio-5095**
COURT: **8th Appellate District**
COUNTY: **Cuyahoga**
DATE: **October 24, 2024**

Homeowners in the Bay View Park subdivision in Bay Village, Ohio, filed complaint for declaratory judgment against current and former members of Board or Directors and Executive Members of Bay View Park Association (“Directors”). Homeowners asserted that a trust was created by a series of deeds and other documents spanning decades including an easement. Directors moved to dismiss complaint for lack of subject matter jurisdiction. Probate court granted motion. Homeowners appealed. Held: Deeds granted an easement, but that an easement is not a trust. Trust may be created within a deed, but Ohio Supreme Court has held that in order to engraft a trust upon an absolute deed, the declaration of such trust must be contemporaneous with the deed, and the evidence relied upon must be clear, certain and conclusive and must establish the existence of the trust beyond a reasonable doubt. If a person purports to transfer an interest not in existence to another in trust, no trust arises even when the interest comes into existence in the absence of a manifestation of intention at that time. Documents do not manifest an intention to create a trust; there is no mention of a trust, beneficiaries, or trust property. Allegations in the amended complaint concern a dispute by members of a homeowners association and its board and members. Such disputes are not detailed within a probate court's jurisdiction. Affirmed.

TOPIC: **Estate Assets/Dower/Separation Agreement**
TITLE: **Pettitt v. Schaffner, 2024-Ohio-5180**
COURT: **10th Appellate District**
COUNTY: **Franklin**
DATE: **October 29, 2024**

Husband and Wife were married for years but then separated. Both entered into an agreement in which Husband transferred any interest in one home to Wife and Wife agreed to transfer any interest in Husband’s Columbus home to him. Husband resided with significant other Jean. Wife executed quit claim deed transferring her interest in Columbus home to Husband. Husband signed transfer on death affidavit for the Columbus home to Jean. Thereafter, Husband died and Wife became administrator of his estate. Wife filed declaratory judgment complaint in Probate Court seeking determination that transfer on death affidavit was void because she had not released her dower interests. Jean filed counterclaim seeking to quiet title. Probate Court granted summary judgment to Jean. Estate appealed. Held: When a married person purchases real property in Ohio, the non-titleholder spouse is entitled to a one-third dower interest in that real property unless that interest is relinquished or barred. R.C. 5302.22(D)(3) is clear and

unambiguous and requires a property owner's spouse to sign and state they are subordinating their dower rights in a transfer on death designation affidavit. Given that the parties were still married, the transfer on death designation affidavit does not meet the requirements of the statute. Legal separation bars a party from any dower right. Neither of the parties argue that Husband and Wife were divorced or had their marriage dissolved. There is also no evidence in the record that Husband and Wife sought a legal separation, and there is no judgment from a domestic relations court granting them a legal separation. While the Probate Court found that the agreement served as a separation agreement, R.C. 3105.10(E) conditions the termination of dower rights upon a judgment of legal separation. Wife's dower rights were not extinguished and the transfer on death designation affidavit purporting to transfer the property to Jean upon Donald's death was void. Reversed.

TOPIC: Lost Will/Will Contest
TITLE: Rogers .v Rogers, 2024-Ohio-5951
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: December 20, 2024

Estate was opened and proceeded intestate. Curtis, brother of decedent, advised estate counsel that decedent had sent him a scanned copy of a will. Curtis filed to probate a lost will. After hearing, probate court admitted will. Daughter, Brandy, appealed, and appeal was dismissed for lack of a final appealable order. Brandy filed a will contest. After trial, court dismissed complaint and maintained will that was admitted. Brandy appealed. Held: Second page of will was missing and contents were unknown. Trial court relied on metadata and raised the issue on its own. Court noted that suggesting a legal claim not mentioned at trial by a party's own attorney comes perilously close to prodding a witness to elicit partisan testimony. Specifically, if an issue has not even been raised at trial, there can be no material truth or fact to be developed on the point. No party had mentioned metadata or any theories about metadata; thus, there was no material truth or fact to be developed on that point. Probate court did not admit the screenshot into evidence; therefore, it is impossible to review the evidence on which the court appears to have relied. More importantly, no evidence was submitted about what metadata is and how it works. No foundation for the probate court's conclusion, based on the metadata, that the will was only two pages when it was scanned. Using a scanner and creating a "PDF" does not mean the scanned material is the actual or total document that existed before the scan. Brandy established by preponderance of evidence proffered will was invalid on basis that it was not signed at end by testator and that the will was invalid on basis that its contents were unknown. Rules of evidence governing authentication of evidence and admissibility of duplicate writings did not apply to permit admission of will. Statute permitting admission of will that was not executed in compliance with statutory requirements for will execution did not apply to permit admission of will. Reversed and remanded.

TOPIC: Will Contest/Service of Summons/Necessary Parties
TITLE: Alexander v. Alexander, 2025-Ohio-41
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: January 9, 2025

Charles filed a complaint in probate court contesting the validity of the will in the estate of Amos Alexander (“Amos”) who had recently died. In Charles's complaint, he alleged that on May 26, 2022, Gewaunn submitted a will to the probate court that Charles believed to be forged. Gewaunn answered and asserted defenses of failure to join a necessary party and failure to state a cause of action upon which relief can be granted among other defenses. Charles filed a motion for leave to amend his complaint and a motion to vacate an order. Charles filed a second motion to vacate. Probate Court denied motion finding motion to vacate must be filed in estate case. Charles filed an amended complaint. Gewaunn filed a motion to dismiss. In Gewaunn's motion, he moved for the court to dismiss the matter alleging that Charles failed to commence the action, pursuant to Civ.R. 3(A), to perfect service on Gewaunn and Perrymond, a beneficiary, within one year of filing. Charles moved to amend his complaint again which Gewaunn opposed. Probate court denied motion to amend and granted motion to dismiss. Charles appealed. Held: The record reflects that service was not perfected on Gewaunn within one year after Charles filed the amended complaint. Charles failed to join Gewaunn personally as an heir. Instead, Charles incorrectly joined and named Gewaunn as the executor of Amos's estate. R.C. 2101.73 provides who must be made parties to a will contest. R.C. 2101.73 is a personal statute, and all of each class named therein must be made parties to such action. An actual party to such action can be made only by one of the methods of lawful service of summons upon those parties. Charles's failure to comply with Civ.R. 3(A) and R.C. 2101.73 as it relates to Gewaunn, demonstrates that Charles failed to perfect service of process. Perrymond is either Amos's heir, as he declared in his will, or an interested party, simply because he names her in the will. R.C. 2107.73(B) and (E). Perrymond is at the very least an interested party to these proceedings, and Charles was required under R.C. 2107.73 and Civ.R. 3(A) to perfect service upon Perrymond. Charles admittedly did not have Perrymond served. Dismissal pursuant to a motion filed under Civ.R. 12(B)(5) is appropriate when a plaintiff fails to perfect service within the one-year period set forth in Civ.R. 3(A). In a will contest action, the failure to serve one of the necessary parties constitutes a failure to commence the action within the prescribed time limits and thus, because of the failure, a trial court lacks jurisdiction to proceed with the case. Affirmed.

TOPIC: Estate Administration/Testamentary Trust
TITLE: In Re Estate of Davis v. Davis, 2025-Ohio-148
COURT: 10th Appellate District
COUNTY: Franklin
DATE: January 21, 2025

Husband awarded family allowance. Daughter filed a motion to set aside Husband's election but motion was dismissed and not appealed. Thereafter, Husband died and allowance was not paid so Husband was a creditor of the estate. Daughter, who was appointed successor executor after Husband died, applied for certificate of transfer of real property asserting that property was held in testamentary trust for the benefit of herself and sister. Application was denied and not appealed. Daughter then filed representation of insolvency, asserting estate had no assets or liabilities. A magistrate denied representation of insolvency and ordered daughter to file a land sale action to sell real property or risk removal as executor. Probate Court denied Daughter's motion to set aside magistrate's order, ordered Daughter to initiate land sale proceeding within 45 days, and scheduled hearing for possible removal of daughter as executor if she did not comply. Daughter appealed. Held: Sole question on appeal is a question of law as to whether a testamentary trust is self-executing, created separate from and prior to any other devises in a will, and created separate from and prior to the payment of any debts of the estate. One cannot avoid payment of debts by just placing assets in a testamentary trust. Testamentary trust was not self-executing, and thus absent probate court's appointment of trustee, trust had not come into being. Since the testamentary trust has not yet come into being, the home still belongs to Decedent's estate and is collectible by the estate's creditors. Even if husband had filed application for appointment as trustee, resulting testamentary trust would still have been an estate beneficiary, and thus probate court permissibly ordered daughter to initiate land sale proceeding, as other assets in estate were insufficient to pay estate's debts. Affirmed.

TOPIC: Settlement Agreements/Probate Court Approval
TITLE: Smith v. PGN OP Echo, L.L.C., 2025-Ohio-185
COURT: 10th Appellate District
COUNTY: Franklin
DATE: January 23, 2025

Estate representative brought wrongful death suit. Later, successor Executor appointed. Defendants filed a motion to enforce settlement agreement based on an email exchange wherein estate counsel accepted a proposed settlement subject to probate court approval. After a hearing, magistrate granted motion to enforce. Trial court overruled objections. Executor appealed. Held: Trial Court did not abuse its discretion in overruling Executor's objection to magistrate's determination that estate and assisted living facility entered into a valid settlement agreement. Transcript of the magistrate's proceedings was not filed with the trial court. Lack of probate court approval of settlement agreement does not preclude enforcement of settlement agreement.

Parties may enter in to a binding contract even if probate court approval is condition subsequent to having an enforceable settlement agreement. Affirmed.

TOPIC: Accounts/Exceptions
TITLE: Estate of Andolsek, 2025-Ohio-511
COURT: 11th Appellate District
COUNTY: Lake
DATE: February 18, 2025

Estate was opened on March 17, 2014, with Yolanda Andolsek serving as executrix. On February 25, 2015, Meraglio was appointed administrator and succeeded Andolsek in the administration of the estate. Meraglio filed the Sixth Partial Account. Andolsek filed an Objection to the account on the ground that the Sixth Partial Account failed to explain, in detail, “everything that has been done with estate assets.” The probate court overruled the Objection as follows: “Ms. Andolsek filed the same documents regarding last year’s account, which were addressed in this Court’s Judgment Entry of June 14, 2023. Again, while the current Objections appear to be timely filed and Ms. Andolsek alleges that she furnished a copy to the Administrator, the Objections are not specifically applicable to the current account filed. Rather, they are the same complaints she has previously raised, which have been resolved to the Court’s satisfaction. As such, the Objections are not well-taken.” Andolsek appealed. Held: As noted by the court, her objections were “not specifically applicable to the current account filed.” In fact, they were “the same” objections (the wording is virtually identical) raised a year earlier in response to the Fifth Partial Account. Inasmuch as Andolsek’s objections were not specific to the account under consideration, no abuse of discretion in the court’s overruling of those objections. Transcript of account hearing was not provided so the Court cannot analyze whether the account was lawfully administered or the manner in which the hearing was held. Affirmed.

TOPIC: Attorney’s Fees
TITLE: Estate of Louis Sherman, et al., 2025-Ohio-666
COURT: 5th Appellate District
COUNTY: Stark
DATE: February 19, 2025

Previous attorney, Golub, for estates was ordered to return attorney fees that were taken without court approval at a citation hearing. Probate court learned of this from a status conference hearing with estate’s current attorney. At the citation hearing, Attorney Golub agreed to return the fees. Attorney Golub appealed. Held: Attorney Golub was given opportunity to respond at citation hearing. No error in lack of record for the status conference hearing. No error in probate court refusing to dismiss for lack of subject matter jurisdiction. Affirmed.

TOPIC: Lost Wills/Failure to File Transcript
TITLE: In re Estate of Joseph, 2025-Ohio-858
COURT: 1st Appellate District
COUNTY: Hamilton
DATE: March 14, 2025

Bill filed a pro se application to relieve the estate from administration. Bill indicated that Ms. Joseph had died without a will and with less than \$35,000 in assets. On a separate form, he identified \$5,400 held in a Fifth Third Bank account. Shortly thereafter, Bill filed an application for authority to administer the estate, which consisted of real property. Bill omitted a living child from the list of Ms. Joseph's surviving children. Bill, Bobby, and Tony signed the waiver of notice form. The Probate Court appointed Bill administrator. In January 2024, Bill applied to probate a "lost, spoliated or destroyed will. The Probate Court denied the admission of the will. Bill appealed. Held: Bill failed to file a transcript or make a legal argument as to how the probate court erred. Probate Court cited irregularities in the purported lost will and testimony. Without a transcript, there is no way to assess the witness' credibility. Affirmed.

TOPIC: Exceptions/Will Construction
TITLE: In re Estate of Carter, 2025-Ohio-1073
COURT: 10th Appellate District
COUNTY: Franklin
DATE: March 27, 2025

Decedent died and his will was admitted to probate. Wife appointed as executor. Will bequeathed to Daughter a motor vehicle of her choosing other than one specifically bequeathed and one Wife was using. Final account filed and Wife failed to notify daughter of hearing. Daughter filed exceptions. Daughter argued that the probate court should transfer the 1970 Chevrolet truck to her under the terms of the will. After hearing, magistrate sustained the exceptions. Wife objected and Probate Court overruled objections. Wife appealed. Held: In drafting his will, the decedent excluded from Daughter's choice of motor vehicle the one motor vehicle belonging to him at the time of my death used by my wife. Relying on dictionary definitions, Court of Appeals found the phrase "the one used by my wife" refers to the one motor vehicle the decedent owned at the time of his death that Wife utilized or employed, especially habitually. A will speaks from the time of execution as to its meaning and from the death of testator as to its effect and operation. The probate court found the one motor vehicle used by my wife was the 2017 GMC Sierra. Appellate court agreed. At the time of the decedent's death, the one motor vehicle Wife regularly used was the 2017 GMC Sierra, regardless of whether she was a driver or passenger. Affirmed.

TOPIC: Appellate Rule 16
TITLE: In re Estate of Taylor, 2025-Ohio-1084
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: March 28, 2025

Brother of decedent filed a motion for relief from judgment based on fraud; seeking an order from the probate court vacating the judgment approving and settling the final account, allowing discovery, and staying the case. The probate court denied the motion, reasoning that Brother's failure to properly commence a will contest had previously been adjudicated, and his request to set aside the will due to fraud had already been addressed and rejected in the prior proceedings. Brother appealed. Held: Brother's brief contains no recognizable assignments of error, no citations to the record, and no discernable arguments. His filing fails to satisfy the requirements set forth in App.R. 16(A). Appeal dismissed.

TOPIC: Attorney Fees
TITLE: In re Estate of Francis, 2025-Ohio-1215
COURT: 3rd Appellate District
COUNTY: Hancock
DATE: April 4, 2025

Attorney for the estate appeals probate court judgment denying a portion of the requested attorney fees for administration of the estate. Attorney argues on appeal that the trial court erred by not considering the amount of non-probate work conducted on behalf of the beneficiaries when awarding attorney fees from the probate estate. A final and distributive account was filed that indicated that the estate had paid attorney fees in the amount of \$20,101.00. Attorney filed an application for extraordinary attorney fees. This application indicated that the extraordinary fees were justified "due to unforeseen complications necessary to administer the estate, particularly: (i) managing discord amongst the next of kin in an intestate proceeding; and (ii) navigating the numerous forms, benefits, and issues relating to a police officer killed in the line of duty (none of which were considered probate assets)." An attorney for the son of the decedent filed exceptions to the final account alleging that the attorney fees were too high, and claiming that the attorney fee should be no more than \$2,642.50. Probate court entered judgment finding that the appropriate attorney fees for the probate estate should be \$4,770.00. This included the amount of fees earned for work on the probate estate (\$2,693.50) plus one-half of the fees earned for work done on both non-probate and probate assets ($1/2$ of \$4,154.00 = \$2,077.00). Attorney appealed. Held: Local Rule provided that nonprobate assets will not be considered in the calculation of attorney fees for estates with dates of death after January 1, 2013. Ordering fees to be paid from estate for nonprobate work would cause son to be disinherited as he is not the child of the surviving spouse. Probate Court does not abuse its discretion by requiring attorney fees earned from work on non-probate assets to be paid by the party/parties receiving those assets rather than from the probate estate. Affirmed.

TOPIC: Will Construction/Latent Ambiguity
TITLE: In re Estate of Devine v. Monroe Soc. For the Prevention of Cruelty to Animals, 2025-Ohio-1523
COURT: 6th Appellate District
COUNTY: Lucas
DATE: April 29, 2025

Decedent's will left her residual estate to the chapter of the Society for Prevention to (sic) Cruelty to Animals which is located closest to my place of residence at the time of her death. Executor filed a declaratory judgment action against a number of organizations to have a determination made as to who is the correct beneficiary. Ohio Attorney General moved to intervene which was granted. The Trial Court found that will was ambiguous, and after examining extrinsic evidence, it construed the provision in favor of the Toledo Humane Society. Monroe SPCA appealed. Held: Monroe SPCA was aggrieved by the trial court judgment, and it has standing to appeal that judgment. Latent ambiguity exists in the will. It was appropriate for the Probate Court to consider extrinsic evidence not for the purpose of showing Devine's intention, but to assist the court to better interpret that intention from the language used in the will. The will recognizes that multiple entities use the name "Society for the Prevention of Cruelty to Animals," and instructs that the "chapter" that is "located closest to my residence at the time of my death" should receive the bequest. Reversed and remanded to interpret decedent's intention from language used in will.

Dissent: Concur that a latent ambiguity exists and dissents that the phrase "Society for the Prevention of Cruelty to Animals" also does not present a latent ambiguity. Would remand with instructions to consider extrinsic evidence of testator's intent at the time she made the will.

TOPIC: Witness Credibility/Arbitration
TITLE: Metzger v. Strongsville Care Group, L.L.C., 2025-Ohio-1732
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: May 15, 2025

Plaintiffs – Administratrix (Karen) and family members filed suit against memory care facility, Cardinal Court, and others alleging negligence, wrongful death. Plaintiffs alleged they attempted to negotiate with the defendants prior to filing suit but to no avail. Defendants answered alleging an arbitration agreement but did not attach it. They thereafter amended their answer attaching the agreement. Defendants moved to stay proceedings and compel mediation and arbitration. The Trial Court held an evidentiary hearing on the motion and heard witness testimony. Cardinal called one witness who testified as to the document execution. Plaintiffs called Karen and daughter who testified that Karen did not recall ever signing the document electronically that included the arbitration provision. Prior to a decision being issued, the trial judge was replaced by another judge. Plaintiffs then voluntarily dismissed their survivorship claims. Defendants moved for reconsideration. A third judge was then assigned to the case. The successor judge granted the motion in part, finding that the "proper procedure for a plaintiff to dismiss fewer than all claims against a single defendant is to amend the complaint pursuant to Civ.R. 15 (A)." The

court granted plaintiffs 30 days to amend their complaint. Plaintiffs did not file an amended complaint, and after the 30 day-window passed, defendants renewed their motion to stay the proceedings and compel arbitration on July 22, 2024. Ten days later, and before plaintiffs could file a timely response, the court granted the motion. Plaintiffs appeal that order. Held: A successor judge may not make a determination on an issue previously heard by another judge when the credibility of witnesses is at issue in the proceeding. In this case, the credibility of witnesses and the execution of the arbitration is the key issue. Trial Court errerd in granting defendants' motion. Reversed and remanded for rehearing.

TOPIC: **Joint & Survivor Accounts/Donative Intent/Hearsay**
TITLE: **In re Estate of Boggs v. Todd, 2025-Ohio-1947**
COURT: **2nd Appellate District**
COUNTY: **Miami**
DATE: **May 30, 2025**

Sowry, as executor, filed a complaint against her sister Todd for declaratory judgment regarding Todd's alleged conversion of financial accounts of the parties' mother. The parties reached an agreement to settle the litigation which was memorialized in an agreement. Todd filed a motion to enforce a settlement agreement. The magistrate sustained the motion. Sowry filed objections to the magistrate's decision. The trial court overruled the objections and granted Todd's motion to enforce the settlement agreement. Sowry filed a notice of appeal. Court of Appelas reversed finding there was no consideration for the agreement. Todd appealed but the Ohio Supreme Court declined to accept jurisdiction. On remand, after further proceedings, the parties filed for summary judgment. The magistrate denied Sowry's motion for summary judgment and granted Todd's motion for summary judgment. Sowry filed objections to the magistrate's decision. The trial court overruled Sowry's objections, denied Sowry's motion for summary judgment, and granted Todd's motion for summary judgment. Sowry appealed. Held: The trial court did not err in granting summary judgment to Todd on Sowry's complaint. Todd met her summary judgment burden by putting forth evidence that the decedent had transferred money from her and Sowry's joint accounts to new joint accounts that belonged to the decedent and Todd. Sowry did not allege any wrongdoing, fraud, undue influence, or lack of mental capacity that led the decedent to make these voluntary transfers. Here, there was no evidence, let alone clear and convincing evidence, that it was inequitable for Todd to keep the money she withdrew from the joint bank accounts with her mother. An otherwise-competent affidavit is not invalid for the sole reason that it is executed by a party and submitted to aver facts" relating to a summary judgment motion. The trial court did not abuse its discretion by considering Todd's testimony. A declarant's statement of donative intent, at the time of delivery of the property to the donee, is a statement indicative of a then existing state of mind or intent and is admissible pursuant to Evid. R. 803(3). Ohio courts no longer consider evidence concerning the present donative intent of the decedent because the opening of the joint and survivorship account is conclusive evidence of the decedent's intent to transfer a survivorship interest in the balance of the account's assets at his

death. The trial court did not abuse its discretion in considering Hughes's testimony regarding the decedent's donative intent. Affirmed.

TOPIC: **Requests for Admission/Undue Influence/Summary Judgment**
TITLE: **Bunts v. Pilla, 2025-Ohio-2046**
COURT: **11th Appellate District**
COUNTY: **Lake**
DATE: **June 9, 2025**

Appellants, Laura Bunts, James Paul Ritter, and Victoria Bradley re the children of James P. Ritter and Bernice Ritter. Appellants' First Amended Complaint alleged that Appellees, Mary Lee Pilla and Dorothea Kingsbury, while representing Mr. Ritter, had exerted undue influence over him to cause him to leave Appellants only a \$1.00 inheritance. The matter was set for jury trial and the parties engaged in motion practice and discovery. Appellees served requests for admission ("RFA"'s) on December 1, 2023. Appellants failed to respond timely. Kingsbury filed a Notice of Plaintiff's Admissions on January 3, 2024, informing the court that the RFAs were deemed admitted. Pilla's counsel agreed to a three-week extension of time, but Appellants failed to respond. Three days after that deadline, Pilla's counsel sent an email notification, advising that if responses were not provided, the RFAs would be deemed admitted. Appellants' counsel responded, saying he would provide the responses that day but ultimately failed to do so. Pilla then filed a Notice of Admissions on January 22, 2024. After motions to compel were filed, Appellants sought leave to deny the admissions. The Trial Court denied this. The Trial Court determined that Appellees did not exert undue influence resulting in a disposition which the testator would not otherwise have made because Mr. Ritter had recently been deemed competent to manage his own affairs when he made the decision to leave Appellants only \$1.00 each. All subsequent amendments that either Kingsbury or Pilla drafted simply reaffirmed the decision that Mr. Ritter had made shortly after the Probate Court made that determination. Further, Appellants had no contact with Mr. Ritter in the two years before his death and therefore had no evidence to support a conclusion that he was a susceptible person during the time that he made any of the amendments to his testamentary documents. The Trial Court granted the unopposed motions for summary judgment. Appellants appealed. Held: Under compelling circumstances, a court may allow untimely replies to avoid the admissions. If a party seeking to withdraw admissions sets forth "compelling circumstances" for doing so, the trial court must then make two determinations: first, "the trial court must next determine whether the withdrawal of the admissions will aid in presenting the merits of the case." Second, if the trial court so determines, the burden shifts to the party who obtained the admissions to establish that prejudice in maintaining the action will result. The trial court did not abuse its discretion by concluding that Appellants had failed to present compelling circumstances justifying their failure to respond to the RFAs. There is no genuine issue of material fact to support the conclusion that Appellees exerted undue influence over Mr. Ritter, and Appellees were entitled to judgment as a matter of law. Summary judgment was proper. Affirmed.

FEDERAL JURISDICTION

TOPIC: Federal Jurisdiction/Arbitration/State Court Probate Jurisdiction
TITLE: Johnson v. Johnson, 2024 WL 4729468 – on appeal currently
COURT: U.S. District Court, E.D. Michigan
COUNTY:
DATE: November 8, 2024

Amos C. Johnson, M.D. and the Johnson Family Trust (“Dr. Johnson,” collectively) commenced this action against Rita Johnson, individually and in her capacity as personal representative of her mother's estate. Dr. Johnson and Rita Johnson are siblings. Their parents, Amos G. Johnson and Marjorie Johnson, created the Johnson Family Trust in May 2000 as a revocable trust. They intended the Trust to receive “all their assets” and “to be named beneficiary” of all their current and future property interests. The Trust names Dr. Johnson as the first successor trustee in the event of his parents’ death. The Trust names Rita Johnson as the second successor trustee in the event of Dr. Johnson's death. Both Dr. Johnson and Rita Johnson are the Trust's primary beneficiaries. The trust document contains an arbitration clause. Amos G. Johnson died on June 8, 2007. Marjorie Johnson died on May 21, 2020. Dr. Johnson alleges that his mother's will contains a “pour over” clause directing that all her estate assets be transferred to the Trust upon her death. Rita Johnson contests this interpretation. On May 11, 2021, she commenced a proceeding to probate her mother's estate in Wayne County, Michigan Probate Court. The probate court formally appointed her as the Estate's personal representative on August 27, 2021. Dr. Johnson contested whether the assets designated in the Estate's inventory actually belong to the Trust. He moved to compel arbitration of the dispute pursuant to the trust document's arbitration clause. The state probate court denied the motion. Dr. Johnson filed this lawsuit in response, invoking both federal question and diversity jurisdiction. The complaint seeks to (1) compel the Estate to arbitration under the Federal Arbitration Act, and (2) stay the state probate court case pending the arbitration's resolution. District Court raised issue of subject matter jurisdiction.

Held: Both the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit have held that the FAA does not provide federal courts with an independent basis for subject matter jurisdiction. Dr. Johnson raises the parties’ diverse citizenship as an alternative basis for federal subject-matter jurisdiction. In his view, diversity jurisdiction is appropriate because Rita Johnson is a California citizen while he is a citizen of Michigan. Their ongoing dispute in state probate court, though, undercuts this position. The Supreme Court has long recognized a “probate exception” to “otherwise proper federal jurisdiction.” *Marshall v. Marshall*, 547 U.S. 293, 308, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006) (collecting cases). The exception deprives federal courts of subject-matter jurisdiction when they are asked to “to probate a will or administer an estate,” “interfere with the probate proceedings,” “assume general jurisdiction of the probate,” or assume “control of the property in the custody of the state court.” The Sixth Circuit Court of Appeals interprets these categories narrowly. It limits the probate

exception to three scenarios: (1) where the plaintiff seeks to probate a will; (2) where the plaintiff seeks to annul a will; or (3) where the plaintiff seeks to reach a res within the state probate court's custody. The probate exception does not divest a federal court of subject-matter jurisdiction unless a probate court is already exercising in rem jurisdiction over the property at the time that the plaintiff files her complaint in federal court. The only pertinent question is whether Dr. Johnson's request falls within the probate exception's third contingency, i.e., where the plaintiff seeks to reach the res over which the state probate court has custody. Federal courts must first ascertain whether the asserted claims are in personam or in rem actions. The property within the court's custody or control is the res. Property falls within in the probate court's custody once a court-appointed personal representative or administrator takes possession of the property on behalf of the decedent's estate. Here, (1) the state probate court appointed Rita Johnson as the Estate's personal representative on August 27, 2021, (2) she took title to the Estate's property upon her appointment, (3) the probate court assumed custody of the Estate's property at this same juncture, (4) the Estate's property is now the res, and (5) Dr. Johnson disputes the Estate's claim of title to the assets forming part of that res. Awarding relief sought would interfere with the state probate court's custody over the disputed assets as it would place them at the disposal of the arbitral body charged with adjudicating the dispute. Since the Court cannot accomplish this result without encroaching upon the state probate court's custody over the res, the probate exception to federal diversity jurisdiction bars further consideration of this case. Prior exclusive jurisdiction doctrine bars jurisdiction as well. Complaint dismissed.

TOPIC: Sovereign Immunity/Judicial Immunity
TITLE: Clinton v. Michigan, 2024 WL 5146523 as adopted in
Clinton v. Michigan, 2024 WL 5135837
COURT: U.S. District Court, W.D. Michigan
COUNTY:
DATE: November 22, 2024

Melvin Lamont Clinton filed his complaint pursuant to 42 U.S.C. § 1983 against the following Defendants: (1) the State of Michigan; (2) the 7th District Court, Van Buren County, Michigan; (3) Judge Arthur Clarke III, who is a judge of that court; and (4) South Haven Police Officer Mike Knizewski. Clinton alleges that he was arrested on September 8, 2024, by Officer Knizewski, and charged with assault with a dangerous weapon and domestic violence. The next day he was arraigned. On September 12, 2024, Judge Clarke III set a \$3,000.00 bond, which Clinton posted that day. On October 2, 2024, the charges were dismissed. Clinton claims that his Fourth and Fourteenth Amendment rights were violated by his alleged false arrest. Clinton also asserts malicious prosecution and abuse of process claims. Held: The states and their departments are immune under the Eleventh Amendment from suit in the federal courts, unless the state has waived immunity or Congress has expressly abrogated Eleventh Amendment immunity by statute. Congress has not expressly abrogated Eleventh Amendment immunity by statute, and the State of Michigan has not consented to civil rights suits in federal court. Generally, a judge is absolutely immune from a suit for monetary damages. Absolute judicial immunity may be overcome in only two instances. First, a judge is not immune from liability for

non-judicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in complete absence of all jurisdiction. Plaintiff's allegations clearly fail to implicate either of the exceptions to judicial immunity. There is no doubt that arraigning a defendant and setting bond were judicial acts and that Judge Clarke III was acting within his jurisdiction in doing so. Accordingly, it is recommended that the Court determine that Judge Clarke III is absolutely immune from liability. Decision recommends that the Court dismiss the complaint against (1) the State of Michigan; (2) the 7th District Court, Van Buren County, Michigan; (3) Judge Arthur Clarke III. At this stage of the proceeding, it is recommended that the complaint proceed against South Haven Police Officer Knizewski. No objections filed. Adopted by the District Court.

TOPIC: Rooker Feldman Doctrine
TITLE: Kennedy v. Stark County Probate Court, 2025 WL 359294
COURT: U.S. District Court, N.D. Ohio
COUNTY:
DATE: January 31, 2025

Greg Kennedy challenges a decision of the Stark County, Ohio Probate Court imposing a guardianship on his mother. Kennedy seeks various forms of relief, including a writ of habeas corpus and an order to obtain certain evidence. Held: The Court's subject matter jurisdiction is limited by the Rooker-Feldman doctrine, which provides that federal district courts generally lack jurisdiction to review and determine the validity of state court judgments, even in the face of allegations that the state court's action was unconstitutional. Rooker-Feldman prevents a party from taking an appeal of an unfavorable state-court decision to a lower federal court. Federal courts routinely dismiss challenges to state-court guardianship decisions for lack of subject matter jurisdiction. The recourse available to plaintiff in response to adverse state-court decisions was to pursue timely appeals in the state court of appeals, thereafter seek leave to appeal to the state supreme court, and if necessary apply for a writ of certiorari to the United States Supreme Court. Complaint dismissed.

TOPIC: Probate Exception
TITLE: In Re Williams, 2025 WL 454925
COURT: U.S. Court of Appeals, Sixth Circuit
COUNTY:
DATE: February 7, 2025

Edward Williams filed a Chapter 7 petition for bankruptcy. Williams did not list his home as property that he had an ownership interest in, claiming that the property was owned by his three adult children. The Trustee filed an adversary action against the children, seeking a judgment that

the home was part of the bankruptcy estate given that it had passed to Williams by intestate succession on the death of his spouse, who had been the sole owner of the property. The Trustee obtained a default judgment. Defendant-children moved for relief from judgment. Defendants asserted that before their mother died, she had transferred the property to them by an unrecorded quitclaim deed. The bankruptcy court denied the defendants' motions, determining that their deed was fake and that the bankruptcy estate was the sole owner of the property. The bankruptcy court rejected the defendants' argument that the court lacked subject-matter jurisdiction under the probate exception. The defendants appealed to the district court, which reversed, holding that the probate exception applied. Trustee appealed. Held: The probate exception to federal jurisdiction reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. It is narrowly limited to three circumstances: (1) if the plaintiff seeks to probate a will (2) if the plaintiff seeks to annul a will; and (3) if the plaintiff seeks to reach the res - the property over which the state court had custody. Because the Trustee's adversary proceeding involved none of the three situations in which the probate exception to federal jurisdiction applies, the bankruptcy court correctly rejected that argument. Vacated and remanded.

TOPIC: **Abstention/Concurrent Jurisdiction over Federal Claims**
TITLE: **Craighead v. Nessel, 2025 WL 815932**
COURT: **U.S. District Court, E.D. of Michigan**
COUNTY:
DATE: **March 14, 2025**

Defendants, the Attorney General and Assistant Attorney General of Michigan (jointly "the AG"), enforce the state's requirements for charitable trusts. Prior to this federal suit, the AG investigated Plaintiff Safe Place Transition Center Inc. ("Safe Place") for its alleged failure to meet the state's reporting requirements for charitable trusts. Mark Craighead ("Craighead") is Safe Place's president, treasurer, secretary, and registered agent. The AG filed a petition in Wayne County Probate Court alleging that 1) Craighead and Safe Place failed to provide information and documents required by law; 2) Craighead used Safe Place as a straw man to purchase and hold real estate for a friend; 3) Safe Place has failed to maintain its tax-exempt status; and 4) its officers and directors have breached their fiduciary duties of care and loyalty. The suit requested an accounting and to hold Craighead personally liable and to disregard the corporate entity if an accounting was not provided. Craighead sought removal to federal court and raised his federal claims there, but the court remanded the case for lack of subject matter jurisdiction. Craighead then filed a parallel complaint in federal court. However, because Plaintiffs' complaint and Defendants' motion to dismiss involve issues raised in the pending state probate petition, the Magistrate Judge found that this is a typical case warranting federal abstention under *Younger v. Harris*, 401 U.S. 37 (1971). Craighead objects. Held: Craighead filed this action while there was a state-initiated proceeding pending in state probate court, the state of Michigan has an important

interest in the supervision of charitable trusts, and Craighead has adequate opportunities to raise his federal claims in the state proceedings. Abstention applies regardless of whether the corporation is a non profit entity. Plaintiffs have not shown that the probate court lacks jurisdiction over Safe Place's affairs as a charitable trust. State courts have concurrent jurisdiction to address Plaintiff's federal claims. Abstention applies in certain civil enforcement proceedings including actions for the benefit of people of the state. Plaintiffs have not shown that abstention should not apply. Decision adopted and case closed.

TOPIC: Statutes of Limitation/Equitable Tolling
TITLE: Alkuda v. McDonald Hopkins Co., LPA, 2025 WL 843403
COURT: U.S. District Court, N.D. Ohio
COUNTY:
DATE: March 18, 2025

Sarah Alkuda filed a complaint against McDonald Hopkins alleging the mishandling of family trusts by McDonald Hopkins, resulting in a multi-million-dollar trust being unaccounted for, the disinheritance of Alkuda and her son and significant family discord. Following her father's death in January 2016, Plaintiff requested trust records from McDonald Hopkins to verify that all assets were accounted for and allocated in accordance with the estate plan. In 2019, Alkuda filed a complaint for an accounting with the Cuyahoga County Probate Court, naming both McDonald Hopkins and her mother, "the Trustee of all relevant trusts," as defendants. During the final pretrial conference, Alkuda settled with her mother and withdrew her claims against McDonald Hopkins. Alkuda intended to refile her claims against McDonald Hopkins as permitted by Ohio's savings statute. Alkuda filed a diversity complaint against McDonald Hopkins. McDonald Hopkins filed a motion to dismiss. Held: No private right exists for civil obstruction of justice claims and the claim is dismissed. For fraud, conversion, negligence, and breach of fiduciary duty, the statute of limitations is four years. For breach of contract, the statute of limitations is six years. For breach of fiduciary duty against a trustee, the statute of limitations starts at: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; (3) the termination of the trust; or (4) the time at which the beneficiary knew or should have known of the breach of trust. Alkuda commenced the action over eight years after her claims for fraud, negligence, conversion, and breach of contract accrued, and over five years after the latest date her breach of fiduciary duty claim accrued. Therefore, her claims are barred by the applicable statutes of limitations. Alkuda missed the savings statute deadline by eight days and her claims are time barred. Alkuda has not set forth any extraordinary circumstances that equitable tolling should apply. Complaint dismissed.

TOPIC: Capacity to Sute/In Forma Pauperis
TITLE: Menaldi, Executor of the Estate of Menaldi v. Norfolk Southern Railroad Company, 2025 WL 987737
COURT: U.S. District Court, N.D. of Ohio
COUNTY:
DATE: April 2, 2025

Arthur Menaldi filed this action pro se as the Executor of the Estate of his brother Thomas Menaldi against Norfolk Southern Railroad. In the complaint, Menaldi alleges his brother Thomas Menaldi visited East Palestine in early February 2023, shortly after the Norfolk Southern train derailment in that area. Menaldi claims his brother developed an infection within days of his visit. He believes his illness was linked to exposure to toxic chemicals released into the air from the derailment. He does not assert any legal claims, nor does he specify the relief he is seeking. He simply asks the Court to conduct a formal investigation into the cause of Thomas Menaldi's death. Held: It is not clear from filings whether Menaldi was formally appointed as executor. Notwithstanding, pro se litigants may not file cases on behalf of an estate unless the litigant is the sole beneficiary and there are no creditors. Menaldi is not an attorney and cannot represent the estate. Further, estates may not proceed in forma pauperis because they are not "persons" as defined by statute. Complaint dismissed.

GUARDIANSHIP

TOPIC: Non-Guardianship Accounts/Removal of Custodian/Failure to Object
TITLE: In re Guardianship of Dwyer, 2024-Ohio-2544
COURT: 1st Appellate District
COUNTY: Hamilton
DATE: July 3, 2024

Sister, Maureen, was appointed guardian of her brother after parents' death and also was added to Ward's stable account and savings account. Maureen was also trustee of her parent's trust. Siblings filed a complaint to remove Maureen as trustee and thereafter a motion to remove her as Ward's guardian. A resolution was reached in December 2019. Siblings filed second motion to remove Maureen as guardian in May 2020. Siblings moved to change Ward's representative payee from Maureen to sister Mary Anne and to order Maureen to pay Ward's monthly expenses. A magistrate ordered payment of monthly expenses but held the motion regarding removal as representative payee in abeyance. In September 2020, siblings filed a third motion to show cause. Parties reached a second settlement agreement in December 2021. In March 2022, siblings filed a motion to remove Maureen as guardian. A magistrate granted the motion to remove Maureen as guardian and to remove her as representative payee of Ward's Social Security. Maureen did not object to this decision which probate court adopted. Siblings moved to remove Maureen as custodian of Ward's bank accounts and stable accounts. Magistrate granted request and Maureen objected. Probate court denied Maureen's objection. Siblings sought

attorney's fees under the second settlement agreement. Magistrate granted the motion for attorney's fees. Maureen objected to the decision but probate court denied the objection. Maureen appealed decision removing her from Ward's financial accounts and ordering her to pay attorney's fees. Held: Maureen's objection to removal as trustee of Ward's special needs trust is dismissed as probate court did not remove her from this role. Maureen's challenge to her removal as a community fund designated advocate is overruled as she did not object to the magistrate's decision removing her nor appeal the judgment entry in a timely manner. Probate court did not abuse its discretion in removing Maureen from Ward's bank accounts given its findings with regard to her violations of second settlement agreement and that she did not act in Ward's best interests. Maureen's challenge to attorney's fees is overruled as she paid the fees in full and did not seek a stay of the order while appealing. Affirmed in part and dismissed in part.

TOPIC: Third Party Restrictions/Due Process/Notice
TITLE: In re Guardianship of Dickerhoof, 2024-Ohio-2628
COURT: 5th Appellate District
COUNTY: Stark
DATE: July 10, 2024

Guardian filed a motion for a no contact order with third party, Joey Rick, alleging that he provided Ward drugs and Ward was not taking her medication while living with him. Probate court granted motion. Rick was not served with motion prior to hearing but was served with a copy of the entry granting the no contact order. A show cause motion was filed against Rick who moved to dismiss based on the ground that he was never served with the no contact motion. Probate court denied the motion. Evidence showed that Rick repeatedly violated the no contact order. Probate Court found him in contempt, fined him, ordered payment of attorney's fees, and imposed suspended jail time based on a purge condition. Rick appealed. Held: Prior to placing restrictions on appellants' rights to see or contact a ward, a trial court was required to afford a person due process rights. Probate court's role as superior guardian does not override a third party's right to due process. In this case, Rick received the no contact order and did not appeal the order, file a 60(B) motion or move to vacate it based on a lack of notice. Personal jurisdiction defects are waivable and Rick waived his right to challenge the order by not challenging it at the earliest time. Finding of contempt was proper. Affirmed.

TOPIC: Denial of Application/Medical Evaluation
TITLE: In Re. T.E., 2024-Ohio-3410
COURT: 1st Appellate District
COUNTY: Hamilton
DATE: September 6, 2024

Grandmother filed application to be appointed as guardian of her granddaughter, T.E. She alleged T.E. was on autism spectrum and was on an IEP. Probate court issued entry appointing physician to examine T.E. Grandmother filed a motion to have her niece be ordered to return T.E. At a hearing on the motion, T.E. testified that she did not want to live with Grandmother because she did not feel anything was wrong with herself. Niece testified that the family did not believe that T.E. needed a guardian and T.E. was staying with her. After a hearing on the motion, the magistrate denied the motion to have T.E. seen by a doctor and the guardianship application. Grandmother objected and the probate court overruled objection. Grandmother appealed. Held: Grandmother failed to meet her burden to show T.E. was incompetent. Record contains no evidence that T.E. was mentally impaired or incapable of taking care of herself. Given that T.E. was able to articulate her wishes and future plans, there was insufficient basis to order a medical evaluation of her. Affirmed.

TOPIC: Sureties/Bond
TITLE: In Re Guardianship of Claflin, 2024-Ohio-5199
COURT: 5th Appellate District
COUNTY: Ashland
DATE: October 29, 2024

Guardian of minor was appointed and bonded in estate through Western Surety. Guardian made expenditures without court approval. Guardian was ordered to file an accounting but never did. Probate Court ultimately found Guardian liable for expenditures. Emancipated minor filed motion to close guardianship. Probate court issued an order noting that it would consider releasing assets and granting judgment against Guardian and Western Surety. No indication order was sent to surety company in the record. After further hearings, Probate Court ultimately closed guardianship, granted judgment against Guardian and Surety. Western Surety appealed. Held: Due process requires a reasonable opportunity to be heard after reasonable notice of a hearing where an entity's rights are at issue. Western Surety was not joined in the action nor was it noticed of any hearings or proceedings. The first time there is evidence in the record that Western Surety was sent anything during the fourteen-plus years the case was pending was when the clerk sent Western Surety the probate court's final judgment entry. Western Surety was not afforded a reasonable opportunity to be heard after a reasonable notice of such hearing. Probate Court erred in rendering judgment against Western Surety on the bond when an action was never filed

against Western Surety on the bond and it did not have notice of any hearings or proceedings. Judgment vacated and remanded.

TOPIC: Standing/Real Party in Interest
TITLE: Paul v. Kingsbury, 2024-Ohio-5819; 2024-Ohio-6184
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: December 12, 2024

Robert Paul, next of kin of Janis Paul, who is his sister and a ward filed a complaint against Dorothea Kingsbury based on financial misconduct over the Janis L. Paul Special Needs Trust and in her role as guardian over Janis. Kingsbury was charged and convicted in Cuyahoga County. Complaint alleged breach of fiduciary duty, commingling assets, misappropriating funds, and concealing criminal acts from the probate court. A few weeks later, Kingsbury was removed as trustee and guardian. Five years later, Robert filed a motion to amend the complaint and substitute the new trustee and guardian as plaintiff. Trial court denied the motion and granted a motion to dismiss. Robert appealed. Held: Robert's attempt to invoke the probate court's jurisdiction by asserting claims on behalf of Janis was improper. Janis was a ward of the probate court, and only her appointed guardian or other fiduciary, such as the trustee, had authority to act on her behalf. Generally interested persons must first avail themselves of the probate court's authority to oversee and remove the appointed representatives who are allegedly causing harm to the ward or beneficiary and seek a new guardian or other fiduciary for the purposes of establishing standing to commence any legal actions on behalf of the ward. Robert could not establish a personal stake in the outcome of the proceeding. Standing is nevertheless necessary to invoke the jurisdiction of the court. Because standing is required to invoke the court's jurisdiction, it must be determined as of the filing of the complaint. A litigant cannot, pursuant to Civ.R. 17(A), cure the lack of standing after commencement of the action by obtaining an interest in the subject of the litigation after the filing of the complaint and substituting itself as the real party in interest. Affirmed.

TOPIC: Motion for Reconsideration
TITLE: In re Guardianship of Burson, 2025-Ohio-898
COURT: 5th Appellate District
COUNTY: Fairfield
DATE: March 17, 2025

Elizabeth Burson has been in a guardianship since 2012. Elizabeth's mother, Regina Burson, and her father, Appellant Edwin Burson, were co-guardians of Elizabeth. The Fairfield County Board of Developmental Disabilities ("FCBDD") and a therapist at Columbus Springs East, filed incident reports with the trial court, stating Elizabeth's house manager reported that Appellant, Edwin Burson, was taking Elizabeth's food stamps for himself and was verbally abusive to Elizabeth. The therapist also reported that Appellant was verbally aggressive towards her and

other staff, making threats of physical harm, including following staff members to their homes. Upon receipt of the incident reports, the Trial Court held a hearing and appointed the Fairfield County Guardianship Services Board (GSB) as interim guardian of the person of Elizabeth until April 19, 2021. After a hearing, the Trial Court removed Appellant and Regina as co-guardians and appointed GSB as Elizabeth's guardian. The Trial Court issued orders regarding contact and visitation between the Appellant and Elizabeth. After multiple hearings and orders, the Trial Court issued a judgment allowing Appellant to have expanded visits but no phone contact with Elizabeth. Appellant filed a motion for reconsideration. Trial Court denied that. Appellant appealed. Held: Motions for reconsideration are nullities and not appealable. Appellant should have appealed the Trial Court's final judgment entry. Appeal dismissed.

TOPIC: **Objections to Magistrate's Decision/Hearsay**
TITLE: **In re Guardianship of A.K., 2025-Ohio-917**
COURT: **10th Appellate District**
COUNTY: **Franklin**
DATE: **March 18, 2025**

Since 2019, the Franklin County Guardianship Service Board ("GSB" or "guardian") has been guardian of the person for A.K., appellant's adult daughter. A.K. had been found to need guardianship based on mental impairment as a result of moderate developmental disabilities as well as diagnoses of autism spectrum disorder, intellectual impairment, and Fragile X syndrome. Hearing was held in which magistrate decided that A.K. continue to follow an organic, gluten-free, vegan diet, and that the GSB be authorized to determine further details of A.K.'s diet without resort to court order. Mother objected. Probate Court overruled and denied a motion to remove the guardian. GSB filed a motion to modify the diet for a trip for the Ward. Mother filed a motion for contempt and to remove the guardian and appoint her as successor guardian. Mother filed complaints against the guardian. Magistrate granted GSB's motion and denied Mother's motions. Mother objected. Probate Court overruled the objections. Mother appealed. Held: Hearsay rules are clearly inapplicable to guardianship proceedings. Magistrate properly considered reports. Witness did not testify as an expert. The witness testimony was about information rationally based on the perception of the witness, and helpful to the determination of fact in issue. Based on prior decisions of magistrate, it was not arbitrary, unreasonable, or unconscionable in this case for the trial court to adopt the magistrate's decision denying appellant's motion to hold the GSB in contempt regarding the dietary guidance. No ambiguity that the trial court ruled on each of Appellant's objections. Affirmed.

TOPIC: Guardian Removal
TITLE: In re Guardianship of K.A.H., 2025-Ohio-1668
COURT: 10th Appellate District
COUNTY: Franklin
DATE: May 8, 2025

Mother applied for guardianship of adult son who suffered from schizophrenia. Guardianship was granted. A local mental health provider Southeast, Inc. terminated services for the Ward. Thereafter, Southeast and an employee of the ADAMH Board filed complaints against the guardian for failing to obtain alternative mental health treatment providers for the ward. After a hearing, a magistrate recommended removal of the guardian. Guardian objected but did not file a transcript of the hearing. Probate court overruled objections. Guardian appealed. Held: Guardian's failure to obtain subsequent mental health provider for the ward after termination of services by Southeast warranted removal. Whether Southeast properly terminated services is not at issue but rather the fact that the guardian had the ability to link the ward with another healthcare provider to ensure his continued treatment and access to necessary medication, but she did not is the key issue. No abuse of discretion in removing guardian. Affirmed.

MENTAL ILLNESS

TOPIC: Mental Illness
TITLE: In re D.G., 2024-Ohio-4759
COURT: 10th Appellate District
COUNTY: Franklin
DATE: September 30, 2024

Doctor submitted an affidavit of mental illness alleging D.G. was involuntarily hospitalized with history of schizophrenia with the order of detention expiring on December 7, 2023. Application was filed alleging history of psychosis and failure to take medications; delusions, and threats to neighbors. Magistrate ordered D.G. to be detained. An application for involuntary psychiatric treatment was filed on December 11, 2023. At the hearing, Dr. William Bates testified that D.G. suffered from mental illness and diagnosed him with schizophrenia. According to Dr. Bates, D.G. has previously had an episode of psychiatric decompensation, was diagnosed with schizophrenia, and was treated for a period of time with Abilify. D.G. then discontinued the medication and became increasingly problematic at his apartment complex. There were reported complaints that D.G. was making too much noise and had conflicts with his neighbors. D.G. would scream and talk to himself on his patio at all hours of the day. Dr. Bates stated that there was a probate court order, and D.G. was taken to OSU. According to Dr. Bates, while D.G. is not problematic behaviorally at the hospital, he is refusing to take his medication. Dr. Bates testified that D.G.'s disturbance of thought is substantial and grossly impairs his judgment, behavior, and

ability to recognize reality. According to Dr. Bates, D.G. was not participating in outpatient therapy so he believes D.G. needs inpatient psychiatric treatment. Dr. Chan is a board-certified psychiatrist licensed to practice medicine in Ohio. Dr. Chan is D.G.'s treating psychiatrist at OSU and authored the affidavit that is before the court. Dr. Chan's differential diagnosis of D.G. is schizophrenia or schizophrenic spectrum disorder. Since his admission, D.G.'s behavior has been superficial but calm though D.G. has refused his medications. D.G. acknowledged that he was first hospitalized and diagnosed with schizophrenia in 2021. D.G. admitted that after his first diagnosis, he stopped taking his medication before being hospitalized again in July 2023. D.G. acknowledged that he again stopped his medications several weeks after he was discharged from the hospital. D.G. conceded that three hospitals with three different psychiatric professions have all diagnosed him with mental illness. The magistrate found that D.G. is a person with mental illness and was subject to hospitalization under R.C. 5122.01(B)(4). The magistrate ordered that D.G. be committed for involuntary hospitalization at OSU for a period not to exceed 90 days. D.G. filed objections, which the trial court overruled on December 26, 2023. D.G. Appealed.

Held: Ohio law provides a three-part test to determine when a court should order an involuntary commitment. The probate court must find, by clear and convincing evidence, that: (1) the individual suffers from a substantial disorder of thought, mood, perception, orientation, or memory, (2) the disorder grossly impairs the individual's judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, and (3) the individual is subject to court order for one of the reasons set forth in R.C. 5122.01(B). The Supreme Court of Ohio has set forth a totality of circumstances test to determine whether a person is subject to hospitalization under R.C. 5122.01(B)(1) through (4). A court must consider the person's present mental state based on both his current or recent behavior as well as his prior dangerous propensities. An affidavit submitted pursuant to R.C. 5122.11 must be based on actual knowledge or reliable information whichever is determined to be proper by the court. Because the statute does not mandate that a R.C. 5122.11 affidavit be based on actual knowledge, the legislature contemplated that it can be based on hearsay evidence as long as the court finds that evidence constitutes reliable information. There was competent, credible evidence in the record to support the probate court's determination that there was clear and convincing evidence that D.G. is mentally ill and subject to court order under R.C. 5122.01(B)(4). Affirmed.

TOPIC: Mental Illness
TITLE: In re T.M., 2025-Ohio-439
COURT: 7th Appellate District
COUNTY: Mahoning
DATE: February 4, 2025

An affidavit was filed by a representative of the Mahoning County Mental Health and Recovery Board ("MCMHRB") alleging that Appellant was mentally ill and subject to court-ordered hospitalization. The Probate Court found by clear and convincing evidence that Appellant was a mentally ill person subject to court order. On April 5, 2024, she was ordered by the probate court

to be committed to the Mahoning County Mental Health and Recovery Board for 90 days, with placement at St. Elizabeth Hospital. Appellant did not appeal this final order, nor was any question raised on her behalf about whether there was probable cause to support the commitment proceedings. Appellant later filed a motion seeking an independent expert evaluation. Appellant, however, refused to cooperate with the appointed expert. On June 14, 2024, the court undertook a de novo hearing to reconsider the initial commitment order. Dr. Muhammad Momen testified that Appellant's mental state had worsened from the initial commitment. She was being seen every day by medical personnel. Appellant was more agitated, more angry, and more uncooperative than when she first began treatment, and had stopped participating in therapy groups or any other activity. She had begun having olfactory hallucinations, believing she was smelling a skunk or poisonous gas. She was also responding to auditory and visual hallucinations. She was observed talking to herself. She believed there were people all around her, sent by her husband, trying to hurt her. She did not want to speak with her doctor, but constantly reported imaginary symptoms for non-existent illnesses. Another hearing took place on June 28, 2024, on a motion for forced medication. Dr. Muhammad Momen again testified. He reported that Appellant's condition had continued to deteriorate since the previous hearing. He testified about other, new, symptoms that had arisen since the previous hearing on June 14. Appellant was now making incomprehensible rambling statements. She would only give disjointed answers to questions. She believed her daughter was being abused or neglected by her husband. Dr. Momen testified that Appellant continued to have olfactory, auditory, and visual hallucinations. Dr. Momen testified that on June 25, 2024 Appellant threatened to hurt him. She also threatened to hurt her husband, her attorney, and the assistant prosecutor. Dr. Momen described Appellant as paranoid, psychotic, and "very significantly mentally ill. He concluded that Appellant needed more observation, a structured environment, and continued treatment before she could return to independent living. He also concluded that she presented the possibility of harm to herself and others, and had the potential to commit murder-suicide. Probate court found once again that Appellant was mentally ill and subject to court order. The Probate Court transferred Appellant to a long-term care facility, Heartland Behavioral Healthcare. The court held that treatment was medically necessary and in Appellant's best interest. T.M. appealed. Held: Appellant had a prior opportunity to challenge the adequacy of the affidavit supporting involuntary commitment, but failed to do so. The initial commitment order of April 5, 2024 was a final, appealable order. Appellant waived issue of adequacy of probable cause in the affidavit. Appellant was under the constant care of her doctor and other hospital staff, who had a great deal of personal interaction with her. She made death threats against numerous people, including her own doctor. She suffered from three different types of delusions, and the delusions were substantial. Appellant had barricaded herself in a room with firearms. Appellant believed everyone was conspiring against her. She refused to cooperate with her doctor, with the hospital staff, and with the expert assigned to perform an independent review of her condition. Dr. Momen was unequivocal in his conclusion that Appellant was paranoid, psychotic, and very significantly mentally ill. Evidence in this case overwhelmingly supports the trial court's determination that Appellant was mentally ill and subject to court order. Affirmed.

TRUSTS

TOPIC: Breach of Fiduciary Duty/Trustee Powers
TITLE: Morris v. Mathers, 2024-Ohio-2774
COURT: 5th Appellate District
COUNTY: Guernsey
DATE: July 22, 2024

Husband and Wife created a revocable living trust. Wife died and Husband gifted trust property to his son, Bo, and named him as successor trustee. After Husband died, sibling, Morris, brought action against trust and Bo as trustee, alleging that Bo breached his fiduciary duty and seeking a declaratory judgment regarding rights under trust. Trial Court issued judgment entry stating that trustee was not entitled to reimbursement for improvements to trust's farms, denying trustee's request for trustee's fees, dividing equally mineral interest for one farm between beneficiaries, and finding that Morris failed to show that trustee breached his fiduciary duties. Trustee appealed, and beneficiary cross-appealed. Held: Trustee was authorized to advance or lend funds to trust for repair and improvements to trust's four properties, and thus trustee was entitled to deduct those funds from sale price of trust's farm that was sold to trustee when sale proceeds were distributed to other beneficiaries. Terms of the trust gave Bo broad authority over the management of the trust, including the power to repair the real property, the power to improve and repair trust property, to loan or advance his own funds to the trust for any trust purpose, and to borrow money. Nothing in the trust language or statutory requirements that require Bo to obtain written consent or to have an agreement in writing before exercising these powers. Trustee was not entitled to deduct funds spent or lent for repairs and improvements prior to establishment of trust from sale price of trust's farm. Trust did not give trustee complete discretion to determine fair market value of farm, and trial court had authority to select an appraisal other than trustee's appraisal. Trust did not provide trustee with discretion to determine whether mineral rights were included in fair market value of farm, and thus trial court had authority to determine whether fair market value included value of mineral rights. Affirmed in part, reversed in part, and remanded.

TOPIC: Breach of Fiduciary Duty/Accounting
TITLE: Gudenas v. Gudenas, 2024-Ohio-3009
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: August 8, 2024

Estate was reopened in July 2019 when decedent's son, Al, discovered another account with Ameriprise Financial. This reopening became contentious when other son, Ed, filed objections to Al's partial accounting, noting that Al failed to disclose assets including real estate located in Lithuania, a vehicle, gold coins, and investment growth within a Merrill Lynch account. Ed sought appointment as the trustee, claiming that Al had breached his fiduciary duties in failing to distribute Trust assets. Ed filed a separate complaint in probate court. The complaint sought relief

for breach of fiduciary duty, accounting, and removal of Al as trustee of the Trust. After trial concluded, the court denied Ed's request to remove Al as trustee and denied his claims for breach of fiduciary duty, accounting, surcharge, and other relief. The trial court concluded that Ed had not proven any damages resulting from these alleged claims. The trial court found in favor of Al on his counterclaims for unjust enrichment. Ed appealed. Held: The trial court did not err in accepting Al's calculations that were generated based on testimony received from Ed during the trial in considering the tolling of the statute of limitations on the unjust-enrichment claims. The trial court did not err in finding that Ed had been unjustly enriched in the amount of \$129,840.99 and the court's calculation arriving at this number is supported by competent, credible evidence in the record. Affirmed.

TOPIC: Trustee Removal/Notice
TITLE: Pollock v. Mullins, 2024-Ohio-3423
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: September 6, 2024

Mullins was married to Roger Glass. Glass executed various estate planning documents including a will and trust. The will left the residuary estate to Mullins. Glass' latest amendment to his Revocable Living Trust provided for payment of taxes on closely held corporate stock which Glass created a separate trust to hold. Upon Glass' death, Mullins became Trustee of the Revocable Living Trust. Glass' nieces were beneficiaries of the Revocable Living Trust. The separate stock trust provided that Glass' sister would become trustee upon his death. Following Glass' death, Mullins determined that the stock did not pass into either trust but into the estate and became Mullins' property exclusively. Sister and nieces filed suit and a motion to remove Mullins as trustee. Probate court granted motion. Mullins appealed. Held: Mullins due process rights were not violated by the probate court's consideration of issues raised by sister and nieces during the hearing that were not in their motion to remove Mullins. These matters were raised in the complaint and therefore Mullins was on notice that these matters could be at issue. Affirmed.

TOPIC: Trustee Removal/Breach of Duty
TITLE: Curtis v. Edsell, 2024-Ohio-3420
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: September 6, 2024

Grandchildren filed declaratory judgment action against settlor's Son and successor trustee of trust seeking several declarations, including that Son had no right to sell residential property in which he held life estate, and that successor trustee must be a national bank or trust company. Son asserted counterclaims, including a claim for declaration that he was authorized to dispose of residential property without grandchildren's consent. The Trial Court determined Son could not sell more than life estate in property, that grandchildren were vested beneficiaries of trust,

declined to remove successor trustee, and declined to order successor trustee to gather and liquidate financial assets. Son appealed. Held: The trial court found that the meaning of the trust could be determined from the language of the trust itself, without resorting to extrinsic. Trial court did not improperly consider extrinsic evidence to interpret what it found to be an unambiguous document. There is no indication that the court's interpretation of the trust language was based on evidence outside the four corners of the document. Trust granted Son power to sell property in fee simple without consulting Grandchildren or successor trustee. Grandchildren were not beneficiaries of trust; and by operation of anti-lapse statute, Grandchildren were substituted for daughter as beneficiaries of her contingent remainder interest in residential property. Affirmed in part and reversed in part.

TOPIC: Trust Intervention/Final Appealable Order
TITLE: In re Miles, 2024-Ohio-5129
COURT: 5th Appellate District
COUNTY: Licking
DATE: October 24, 2024

Brigadier General Perry L. Miles created a charitable trust in his will leaving undeveloped land for the purpose of religious, educational and recreational good and benefit to the residents of Johnstown Village, Liberty Township and surrounding community. Will provided that : “The management and control of said trust shall be vested in my said trustee, or his successor, together with the individual person that holds the position of President of The Johnstown Bank, the President of The Johnstown Federal Savings and Loan Association, the Mayor of the Village of Johnstown, Licking County, Ohio, and the President of the Township Trustees of Liberty Township, Licking County, Ohio, which shall be designated and known as the Longwell and Miles Memorial Estate Body.” Trustee applied to terminate the Trust and distribute the assets to the Licking Park District and to the Licking County Foundation. City of Johnstown and Johnstown-Monroe School District filed a motion to intervene along with Greater Johnstown Parks District (Johnstown Contingent). Johnstown Contingent filed a complaint for declaratory judgment. Ohio Attorney General moved to intervene, filed a response, and moved to dismiss the Johnstown Contingent’s complaint for declaratory judgment. Trial Court granted the motion of the Ohio Attorney General to intervene, denied Johnstown Contingent’s motion to intervene. Trial Court also dismissed Johnstown Contingent's complaint for declaratory judgment. Johnstown Contingent appealed. Held: Denial of a motion to intervene, when the purpose for which intervention was sought may be litigated in another action, does not affect a substantial right under R.C. 2505.02(B)(1) which determines the action and prevents the judgment, and therefore is not a final, appealable order. Appellants sought to intervene to ensure the modification sought on behalf of the Trust, which would result in its termination and final distribution of assets, complied with the terms of the Trust and the intention of General Miles. This purpose could be litigated in another action, and in fact, Appellants filed a declaratory judgment seeking the same result. Judgment of the trial court denying Appellants’ motion to intervene is not a final, appealable order under R.C. 2505.02(B)(1), and this Court does not have jurisdiction over the appeal. Appeal dismissed.

TOPIC: Trust Interpretation/Accounting/Standing
TITLE: Collins v. Flannery, 2024-Ohio-5822
COURT: 10th Appellate District
COUNTY: Franklin
DATE: December 12, 2024

Children of settlor filed action in probate court for an accounting of trust, an accounting of Trustee's income and assets exclusive of trust, an injunction against Trustee from taking any more assets from the trust, and removal of the Trustee. Trustee was the surviving spouse of the settlor. Competing motions for summary judgment filed. Magistrate found children had standing to request an accounting and entitled to their request. Children were not entitled to an accounting of Trustee's individual assets. Magistrate denied request to remove trustee and for injunctive relief. Objections were filed and Probate Court overruled objections. Trustee appealed. Held: At a minimum, common-law standing requires the litigant to demonstrate that he or she has suffered (1) an injury (2) that is fairly traceable to the defendant's allegedly unlawful conduct and (3) is likely to be redressed by the requested relief. Under Ohio law, standing may also be conferred by statute. Children were beneficiaries as defined by Trust Code. A beneficiary is defined as "a person that has a present or future beneficial interest in a trust, whether vested or contingent." Beneficiaries have a right to request removal of a trustee. Probate court did not err in finding children have standing to request an accounting or removal of trustee. No error in determination that each beneficiary having a residual or remainder interest in the surviving spouse's trust which pours over into other trusts are beneficiaries and therefore statutorily entitled to at least annual reports. Affirmed.

TOPIC: Undue Influence/Burden of Proof/Attorney's Fees
TITLE: Daddario v. Rose, 2024-Ohio-5882
COURT: 5th Appellate District
COUNTY: Stark
DATE: December 16, 2024

Remainder beneficiaries brought suit against sibling remainder beneficiary, Marybeth, for constructive trust, unjust enrichment, conversion, accounting, breach of fiduciary duty, and removal of trustee. Marybeth was removed as trustee and a successor attorney appointed. Trial Court found five of several transfers were not inter vivos gifts by settlor to Marybeth. Trial Court found for remainder beneficiaries on fraud and conversion claims and granted declaratory judgment to successor trustee; and granted prejudgment interest and attorney's fees. Marybeth appealed. Court of Appeals held that Trial Court applied wrong standard in determining conveyance of inter vivos gifts and remanded the case for further proceedings. On remand, Trial Court found Marybeth had not met burden of rebutting the presumption of undue influence and found evidence was sufficient to rebut family gift presumption by clear and convincing evidence for five of the transfers. Trial court entered judgment for remainder beneficiaries on breach of fiduciary duty and conversion claims. Trial Court recused itself and a visiting judge was assigned

who heard the issue of attorney's fees and punitive damages. Visiting judge then awarded attorney's fees to successor trustee and to remainder beneficiaries and denied request for punitive damages. Marybeth appealed. Held: Trial court correctly applied the standards imposed by Court of Appeals on remand. Trial court's findings of fact and conclusions of law are not against the manifest weight of the evidence. Where a confidential or fiduciary relationship exists between a donor and donee, the transfer is looked upon with some suspicion that undue influence may have been brought to bear on the donor by the donee. In such cases, a presumption of undue influence arises and the burden of going forward with evidence shifts to the donee to show his conduct was free of undue influence or fraud, and the donor acted voluntarily and with a full understanding of his act and its consequences. Donee may rebut the presumption of undue influence by a preponderance of the evidence. Trial Court did not err in awarding attorney's fees. Trial Court did not err in allowing attorney to testify as a non-expert. Affirmed.

TOPIC: Punitive Damages
TITLE: Daddario v. Rose, 2024-Ohio-5883
COURT: 5th Appellate District
COUNTY: Stark
DATE: December 16, 2024

Remainder beneficiaries brought suit against sibling remainder beneficiary, Marybeth, for constructive trust, unjust enrichment, conversion, accounting, breach of fiduciary duty, and removal of trustee. Marybeth was removed as trustee and a successor attorney appointed. Trial Court found five of several transfers were not inter vivos gifts by settlor to Marybeth. Trial Court found for remainder beneficiaries on fraud and conversion claims and granted declaratory judgment to successor trustee; and granted prejudgment interest and attorney's fees. Marybeth appealed. Court of Appeals held that Trial Court applied wrong standard in determining conveyance of inter vivos gifts and remanded the case for further proceedings. On remand, Trial Court found Marybeth had not met burden of rebutting the presumption of undue influence and found evidence was sufficient to rebut family gift presumption by clear and convincing evidence for five of the transfers. Trial court entered judgment for remainder beneficiaries on breach of fiduciary duty and conversion claims. Trial Court recused itself and a visiting judge was assigned who heard the issue of attorney's fees and punitive damages. Visiting judge then awarded attorney's fees to successor trustee and to remainder beneficiaries and denied request for punitive damages. Remainder beneficiaries appealed. Held: A finding of actual malice must be made before punitive damages can be awarded. Actual malice, necessary for an award of punitive damages, is (1) that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, or (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm. An award of punitive damages is not automatic when a trial court finds a fiduciary committed fraud and/or conversion. Evidence does not demonstrate that Marybeth willfully destroyed or disposed of any property she was ordered to return to the trusts and the estate. Trial Court did not abuse its discretion in denying punitive damages. Affirmed.

TOPIC: Third Party Beneficiaries/Attorney Fees
TITLE: Todd v. Epling, 2025-Ohio-399
COURT: 10th Appellate District
COUNTY: Franklin
DATE: February 6, 2025

Kathryn Todd and William M. Todd married on May 24, 2008. Two years and four months later, in September of 2011, they decided to part ways and entered into a separation agreement. Under the agreement, they agreed that “the marital residence” at 2417 Brentwood Rd., Bexley, Ohio (the “Brentwood property”) would be awarded to Mr. Todd, who would “retain all right, title, use and ownership ... free and clear of any claims” by Ms. Todd. Parties agreed that Mr. Todd would pay \$30,000.00 as property settlement in exchange for a quit claim deed. Separation agreement also contained a provision for payment of attorney’s fees if either party defaults on any term and it becomes necessary to institute legal proceedings. Mr. Todd did not pay the entire \$30,000.00 by the deadline. He died on June 4, 2017 but had only paid \$20,000.00. Parties had not divorced at the time of his death. Mr. Todd executed a will leaving his estate to bank as trustee of his trust. Following Husband’s death, Ms. Todd filed a complaint to have the separation agreement set aside. After a trial on the complaint and counterclaims, the magistrate’s final findings were that Ms. Todd, the Trustee, and Mr. Epling in his capacity as the estate’s administrator had “signed a mediation agreement which required 2417 Brentwood be sold and the assets be escrowed with the distribution to be determined at a later date” on April 4, 2019, and that the Brentwood property had subsequently been sold. The magistrate concluded that “the terms of the Separation Agreement were fair, reasonable, and just,” and that no evidence supported Ms. Todd’s assertion that she had “involuntarily” signed the agreement under duress. Magistrate found the agreement to be a valid and enforceable contract and recommended the complaint be denied. Ms. Todd objected and probate court overruled her objections subject to a correction reported payment amounts. After further hearing, Magistrate awarded fees to Administrator but denied fees to Trustee. Trustee filed objections but Probate Court overruled them. Trustee appealed. Held: The Supreme Court of Ohio adopted the following definition of a third-party beneficiary from the Restatement of the Law 2d, Contracts, Section 302 at 439-40 (1981):(1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either: (a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance. (2) An incidental beneficiary is a beneficiary who is not an intended beneficiary. The “test used to determine whether a third party is an intended or incidental beneficiary” is the “intent to benefit” test, adopted from *Norfolk & W. Co. v. United States*, 641 F.2d 1201 (6th Cir. 1980). Hill at 40, 521 N.E.2d 780. Under this test, if a promisee “intends that a third party should benefit from the contract, then that third party is an ‘intended beneficiary’ who has enforceable rights under the contract.” Conversely, “[i]f the promisee has no intent to benefit a third party, then any third-party beneficiary to the contract is merely an ‘incidental beneficiary’, who has no enforceable

rights under the contract.” Provision could not be clearer as to the parties’ intent to not only be bound by the separation agreement even if they did not divorce, but to extend that obligation as well to the listed third parties. Mr. Todd had a chose in action to sue for bringing a breach of contract action against Ms. Todd. Choses in action pass to a holder’s executor. Chose in action could pass to the Trustee by will. To merit award of “expenses, including attorney fees, the non-prevailing party must be found to be in default of the separation agreement, and the agreement itself must have been enforced. The only counterclaim on which the probate court found in favor of the Trustee was the declaratory judgment claim, but all that accomplished was a declaration that the separation agreement was valid. The disputes that might have served as the basis for a finding of default occurred in the court of common pleas, where the parties litigated their dispute over the Brentwood property during the foreclosure action, but that action was resolved by mediation. The probate court did not ultimately err when it denied the Trustee’s application attorney fees under this provision. Although a finding of bad faith would entitle a prevailing party to attorney’s fees, evidence supports the magistrate’s reasoning. Affirmed.

TOPIC: Charitable Trust/Standing/Capacity
TITLE: Kromer v. Arthritis Found., Inc., 2025-Ohio-661
COURT: 10th Appellate District
COUNTY: Franklin
DATE: February 27, 2025

Kromer filed a declaratory judgment action against the attorney general, the Arthritis Foundation, and the Central Ohio Chapter Arthritis Foundation, Inc. (“Ohio Chapter”). The Arthritis Foundation is a national charitable organization, of which the Ohio Chapter was a local chapter. The Ohio Chapter was a charitable trust under R.C. 109.23. Kromer is a former director of the Ohio Chapter and a retired, inactive attorney. Kromer brought suit to compel certain assets to be used by the Arthritis Foundation for limited central Ohio counties listed in the Ohio Chapter’s bylaws. Complaint requested annual accountings also. Attorney General and Arthritis Foundation moved to dismiss the case. Trial Court granted the motion. Kromer appealed. Held: Trial Court correctly dismissed the complaint but for the wrong reasons. Kromer does not lack standing to bring the complaint. He lacks the capacity to bring the complaint as only the Attorney General can bring an action to obtain the relief Kromer was seeking. Trial Court did not err by dismissing complaint as no amendment is possible that can cure Kromer’s lack of capacity. Kromer would have engaged in the unauthorized practice of law if he had asserted a claim on behalf of the trustee as he is not an active attorney. Affirmed.

TOPIC: Trust Interpretation
TITLE: Massie v. Stamp, 2025-Ohio-1133
COURT: 9th Appellate District
COUNTY: Wayne
DATE: March 31, 2025

Roy and Barbara created The Roy C. Massie and Barbara E. Massie Joint Revocable Trust. The Trust named Roy and Barbara as co-trustees and as primary beneficiaries of the Trust. The Trust named Roy's four children and Barbara's three children as contingent beneficiaries. The Trust named Rick Massie (Roy's son) and John Stamp (Barbara's son) as successor co-trustees. Shortly after Roy died, Barbara amended the Trust. Barbara removed Roy's children as contingent beneficiaries of the Trust and replaced Rick Massie with William Stamp (Barbara's son) as successor co-trustee. Barbara died thereafter. Roy's children filed a declaratory judgment complaint. Parties filed summary judgment. Trial Court granted summary judgment to Roy's children. Barbara's children appealed. Held: Plain language of the Trust unambiguously made Barbara the sole trustee upon Roy's death. Plain language of trust shows that establishment of a credit shelter trust is permissive but not mandatory by words used. The trial court erred in granting summary judgment to Roy's children by finding the Trust required creation of a credit shelter trust upon the first grantor's death. Reversed.

TOPIC: Default Judgment/Motion to Strike
TITLE: In re Testamentary Trust of Jones, 2025-Ohio-1678
COURT: 2nd Appellate District
COUNTY: Montgomery
DATE: May 9, 2025

Benny Jones executed a will that had been drafted by Parisi. The will established three testamentary trusts. Jones named Parisi as trustee of each trust. Parisi was the trusts' attorney until 2013, when her law license was registered as inactive. Parisi filed the 25th partial account which was approved for one of the trusts. Parisi filed an "amended motion for trustee fees," seeking ordinary and extraordinary trustee fees in the amount of \$6,282.50 (35.9 hours x \$175/hour). She indicated that she would be willing to accept \$5,385 (35.9 hours x \$150/hour) if the motion were resolved without a hearing and testimony. Parisi claimed that her equal protection rights were violated, because corporate trustees were able to receive a larger trustee fee than individual trustees for similarly-sized trusts under the Montgomery County Probate Court Trustee Fee Appendix. Hearing was set on the motion. Approximately two weeks before the hearing date, Parisi sought the appointment of a special process server. A week later, Parisi filed a motion for documents or, alternatively, a continuance. She explained that she had tried to obtain copies of trustee fee appendices, but starting in 2023, those appendices were not imaged on the probate court's online dockets, and she was unable to view them when she went to the clerk's office. Parisi indicated that she had been unable to subpoena any witnesses, however, because her request for a special process server had not yet been ruled upon. At the hearing, Parisi requested a continuance to allow her to bring in bank trustees to provide evidence related

to the disparity between what banks and individual trustees could charge for the same work for the same types of trusts. Trial Court denied request and the motion to appoint a special process server. Trial Court denied request for extraordinary fees. Parisi appealed. Held: The Trial Court found that Parisi's proposed fact witnesses were not relevant to how trustee fees should be awarded in this case and, further, were not necessary because they could not testify as experts. Because Parisi needed to establish that corporate trustees were similarly situated to individual trustees, the trial court reasonably concluded that an expert witness was required and that the individual trustees, who would testify about their specific unrelated trusts, would not satisfy this evidentiary burden. No abuse of discretion in this conclusion. No error in denying motion for special process server to secure the attendance of such witnesses and no error in implicitly overruling Parisi's constitutional argument. Trial court did not abuse its discretion in overruling Parisi's request for extraordinary fees. Trustee failed to establish that work lied beyond the ordinary scope of a trustee's duties. Affirmed.

TOPIC: 60(B) Motion/Meritorious Claim/Testamentary Capacity
TITLE: In re Trust of Hawkins v. Schwyn, 2025-Ohio-2034
COURT: 6th Appellate District
COUNTY: Lucas
DATE: June 6, 2025

Robert Hawkins created a trust identifying his longtime romantic partner Kathleen Hankins and his business associate Dennis Schwyn as beneficiaries. Hawkins amended the trust once and thereafter while he was in hospice care, Kathleen arrived with a marriage license and a justice of the peace in an attempt to marry him. He refused and thereafter amended his trust again to remove Kathleen as a beneficiary. Hawkins died. Kathleen filed a complaint in probate court to set aside the amendments to the trust. the parties reached a settlement to resolve appellant's claims. Pursuant to the settlement agreement, Kathleen would receive \$50,000, a vehicle, three horses with supplies related to their care, and all personal property contained in a Quonset hut located on Trust property. Kathleen was also given a four-month period to remain on the property without paying rent. The agreement was read into the record and reduced to writing and a consent judgment was entered. Kathleen filed a 60(B) motion. Trial court held a hearing on the matter. Trial court denied the motion. Kathleen appealed. Held: Kathleen offered no evidence, let alone clear and convincing evidence, to support her claim that Hawkins was not competent to make either amendment to the Trust. The trial court's decision was not unreasonable, arbitrary, or unconscionable. Kathleen presented no evidence that would rebut recordings of Hawkins and his reason for changing the trust. Trial Court did not abuse its discretion when it found Kathleen did not have a meritorious claim to present. Affirmed.

TOPIC: Final Appealable Orders/Receivers/Civ.R. 41
TITLE: Steuer Revocable Trust v. Strauss, 2025-Ohio-2111
COURT: 11th Appellate District
COUNTY: Lake
DATE: June 16, 2025

Steuer Revocable Trust filed a complaint against The Mark I. Strauss Children’s Trust II (“Strauss Children’s Trust”) and Attorney Mark I. Strauss (collectively, “the Strauss Defendants”). Steuer Revocable Trust alleged that it and Strauss Children’s Trust each have a fifty-percent membership interest in Fairport Real Estate, LLC, an Ohio limited liability company, and that Mark Strauss and David Steuer are the current managers. Steuer Revocable Trust raised claims against the Strauss Defendants for breach of Fairport Real Estate’s operating agreement, breach of fiduciary duty, and an action for accounting. Steuer Revocable Trust raised claims against the Strauss Defendants for breach of Fairport Real Estate’s operating agreement, breach of fiduciary duty, and an action for accounting. Mark E. Dottore was appointed as the court-appointed receiver in the case. The Steuer Revocable Trust, Mark I. Strauss Children’s Trust II (“Strauss Children’s Trust”) and Attorney Mark I. Strauss (collectively, “the Strauss Defendants”) filed a joint stipulation of dismissal. Dottore moved to strike the filing citing Civ.R. 66, which provides that “[a]n action wherein a receiver has been appointed shall not be dismissed except by order of the court.” The Trial Court construed the stipulation of dismissal as a joint motion for dismissal under Civ.R. 41(A)(2). The Trial Court dismissed the complaint and counterclaim. The Strauss Defendants appealed. Held: Appeal of appointment of receiver is untimely as it was not within 30 days of the date of appointment of the receiver. No error in dismissing case as receivership termination would not occur until after the case was dismissed. Affirmed.

MISCELLANEOUS

TOPIC: Saving Statute
TITLE: McCullough v. Bennett, 2024-Ohio-2783
COURT: Ohio Supreme Court
COUNTY:
DATE: July 24, 2024

McCullough and Bennett were in a car accident. McCullough sued Bennett on January 15, 2018. The case was dismissed without prejudice by the trial court on February 28, 2018, after service was returned unclaimed. McCullough refiled his lawsuit on June 27, 2018. He was successful in obtaining service by publication. After Bennett failed to answer, the court instructed McCullough to file a motion for default judgment or otherwise respond within 14 days. When McCullough failed to do so, the court dismissed his second complaint without prejudice for failure to prosecute on November 27, 2018. The two-year statute of limitations for McCullough’s claim expired on April 27, 2019. But relying on the saving statute, McCullough refiled his lawsuit on September 12, 2019. Bennett moved to dismiss the third complaint, arguing that it was time-barred because the statute of limitations had expired. The Trial Court dismissed the case. The

Court of Appeals reversed concluding the saving statute applied. Bennett appealed. Held: Under the plain terms of the saving statute, McCullough's claim is not time-barred. There is no one use restriction on the saving statute and prior case law dealt with a previous version of the statute. Concurrence in judgment only notes that one use restriction was consistent with history of the statute prior to amendment and disagrees with majority's characterization of statute. Affirmed.

TOPIC: **Prohibition/Nonjudicial Respondents**

TITLE: **Golub v. Park, 2024-Ohio-4559**

COURT: **5th Appellate District**

COUNTY: **Stark**

DATE: **September 17, 2024**

Judge Park issued Citations to Appear to Attorney Golub and the fiduciary/beneficiary, William Sharrard, Jr., in four estates pending before the Stark County Probate Court. Attorney Golub filed Motions to Rescind Citation to Appear and for Continuance Pending Determination of Motion arguing lack of subject-matter jurisdiction, lack of due process and a conflict with a religious holiday. The probate court denied Attorney Golub's motion to rescind and granted a continuance rescheduling the citation hearing to May 13, 2024. Thereafter, Attorney Golub filed a prohibition action specifically stating, the "complaint is to prohibit the Honorable Dixie Park of the Stark County Probate Court from ordering Relator Gerald Golub to appear at a hearing regarding the Estates of Louis Shurman, Irene Shurman, Gerald Shurman, and Darlene Shurman." Court of Appeals did not address Attorney Golub's prohibition complaint before the hearing conducted by Judge Park on May 13, 2024. On May 15, 2024, Judge Park issued a Judgment Entry in the four estates referenced above. She found that no accounting had been filed in any of the four estates and that Attorney Golub took fees, from the estates, without approval from the probate court or the filing of a final account. Attorney Golub agreed, at the citation hearing, to return the attorney fees in the amount of \$43,560. Judge Park moved to dismiss the complaint for writ of prohibition. Held: The fact that the May 13, 2024 probate court citation hearing occurred before Court of Appeals ruling on Attorney Golub's prohibition complaint renders that portion of the complaint moot. Stark County Probate Court has jurisdiction to preside over the administration of estates and the payment of attorney fees in estates. Because Judge Park did not lack jurisdiction to conduct the citation hearing on May 13, 2024, Attorney Golub has an adequate remedy at law by way of an appeal. Complaint for Prohibition is fatally defective and dismissed as to nonjudicial respondents. Summary judgment granted as to Judge Park; writ dismissed as to others.

TOPIC: Prohibition
TITLE: State ex rel. Smith v. Mackey, 2024-Ohio-4643
COURT: 10th Appellate District
COUNTY: Franklin
DATE: September 24, 2024

Case stems from an estate administration matter commenced under a Franklin County Probate case concerning the estate of Charles Minter. In opposing the application of Mr. Minter's son, David Minter, to be appointed special administrator of an intestate estate, Relator, Melissa Smith (also known as "Melissa Smith" and "Mudd"), filed, pro se, a petition requesting she be appointed executor instead. Attached to her application was the purported will of Charles Minter. Following a hearing on the validity of the alleged will, respondent, Jeffrey D. Mackey, Judge, Franklin County Probate Court, ruled to disallow its admission in the probate matter because it was not formalized in the manner required by R.C. 2107.18 and 2107.03. Ms. Smith now seeks a writ of prohibition. Respondent subsequently moved to dismiss Ms. Smith's complaint for a writ of prohibition under Civ.R. 12(B)(6) for failure to state a claim upon which relief could be granted. Matter was referred to a magistrate who issued a decision. The magistrate determined that Ms. Smith's complaint failed to state a cause of action in prohibition and, accordingly, has recommended that we grant respondent's motion to dismiss and dismiss the complaint. Ms. Smith now broadly objects to the magistrate's decision. Held: Ms. Smith's objection lacks specificity and fails to state with particularity the grounds for objection. Ms. Smith did not commence a timely direct appeal from the judgment she seeks the writ based on. Magistrate properly determined the facts and controlling law. Objections overruled and motion to dismiss granted.

TOPIC: Objections/Attorney's Fees/Accounting
TITLE: Guthrie v. Guthrie, 2024-Ohio-5581
COURT: 1st Appellate District
COUNTY: Hamilton
DATE: November 27, 2024

"This case involves a relationship between a mother and daughter that soured when the mother suspected that her daughter misappropriated funds while acting as her power of attorney. That suspicion prompted the mother to revoke her previously-executed power of attorney in favor of her daughter and reassign the financial powers to her half-sister. Convinced that her mother was mentally incompetent to take this step, the daughter initiated a guardianship action. But the court refused her request to appoint herself as her mother's guardian. Unsatisfied with the first adverse judgment, the daughter commenced a civil action, requesting that the probate court set aside her mother's revocation and reassignment of the power of attorney. After sifting through various procedural twists and turns, and considering dueling motions for summary judgment in this case, the probate court ultimately ruled in the mother's favor and held that the daughter owed her mother more than \$36,000 for misappropriating her assets." Daughter appealed. Held: Deficiencies in daughter's appellate brief served as independent basis to overrule her assignments of error. Probate court did not err by requesting that daughter provide accounting of mother's

funds. Daughter fails to point to any evidence in the record (or pertinent legal authorities) that would suggest that the trial court went astray. Affirmed.

TOPIC: Birth Correction
TITLE: In Re B.C.A., 2024-Ohio-5761
COURT: Supreme Court of Ohio
COUNTY:
DATE: December 10, 2024

Birth correction appeal from 11th District Court of Appeals dismissed as having been improvidently accepted. Concurring and dissenting opinion addressing discrepancy with *In re Application for Correction of Birth Record of Adelaide*. Dissenting opinion by Justices Deter and DeWine wish the case to proceed to allow supplemental briefing on the issues not addressed in *Adelaide*. Concurring opinions find an about change of position in dissenting position in this case versus *Adelaide*'s case.

TOPIC: Attorney's Fees
TITLE: Golub v. Sharrard, 2024-Ohio-6037
COURT: 5th Appellate District
COUNTY: Stark
DATE: December 24, 2024

Gerald Golub represented William Sharrard, Jr., and his wife Tiffany in the Stark County Court of Common Pleas, Probate Division. The Sharrards were named beneficiaries of the estate of Louis Shurman, which included the estates of three family members who had predeceased him. William Sharrard was named executor of the estate and named administrator in the three other estates. Attorney Golub did not have a separate written engagement and fee agreement with his clients for legal services. Instead, he invoiced the Sharrards for services using a percentage fee structure based on the assets and inventory included in the estate. Attorney Golub filed a civil action in the Probate Court for tort claims seeking money damages for his work on the four estates. He sought damages in the amount of \$323,324.76 based on a bill sent to the Sharrards on July, 13, 2023, for his fees and for treble damages for "assets not revealed or listed." The complaint also asked for punitive damages, removal of William Sharrard, Jr., as fiduciary, that the four estates be consolidated, and that the case be moved to the general division of the Stark County Court of Common Pleas. The Probate Court determined that Attorney Golub had not filed a claim pursuant to R.C. 2109.59 to enforce payment of the fees. It stated that although the counts were styled as "claims" against the estate, they were causes of action for tort claims. It concluded that the probate court did not have jurisdiction to decide tort claims and dismissed the complaint for lack of jurisdiction. Attorney Golub did not appeal that order. Thereafter, Attorney Golub filed a Complaint in the Stark County Court of Common Pleas, General Division, against the Sharrards, their new counsel and her law firm. Defendants filed a motion to dismiss. Attorney Golub filed a motion for default judgment based on an argument the motions to dismiss

were not compliant with the court's local rules and not been served properly. Trial court denied the motion for default judgment and granted the motion to dismiss. Golub appealed. Held: The trial court has discretion when presented with the issue of whether to dismiss a case for a minor, technical, correctable, inadvertent violation of a local rule.. The trial court has discretion to consider such things as whether the mistake was made in good faith and not as part of a continuing course of conduct for purpose of delay, if either the opposing party or the court is prejudiced by the error, if the dismissal is a sanction that is disproportionate to the nature of the mistake, if the client will be unfairly punished for the fault of his counsel, and whether dismissal frustrates the prevailing policy of deciding cases on the merits. There are no facts alleged that omitting the list of authorities was made in bad faith or for the purpose of delay. Common pleas court jurisdiction is limited by the jurisdiction granted to the probate court. R.C. 2124(A)(1)(c) confers exclusive jurisdiction on the probate court "to direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates." This includes the right to set aside any attorney fee agreements that the fiduciaries or beneficiaries may have entered into. There was nothing in the Complaint indicating that Attorney Golub performed any legal services outside of the estates. There is no written document with specific terms signed by the Sharrards. Even if there had been a written contingency fee agreement, R.C. 2113.36 provides that the probate court has discretion to determine necessary and reasonable attorney fees. Probate courts are not bound by a prior agreement of the parties and may alter and reduce a contingent fee agreement when necessary. A discharged attorney can no longer recover attorney fees pursuant to the contingency agreement. Trial Court properly denied the motion for default judgment and granted the motions to dismiss. Affirmed.

TOPIC: Statutes of limitations/Fraud
TITLE: Figgie v. Figgie, 2025-Ohio-451
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: February 13, 2025

Plaintiffs filed a declaratory judgment action alleging fraud, civil conspiracy, or unjust enrichment. Plaintiffs claim that they were defrauded when shares of CRC stock held in the 1983 Trust settled by their father, Harry E. Figgie, III, were redeemed by CRC in a securities transaction that occurred more than 20 years ago, in 2001 between CRC and, Wilmington Trust, the then-trustee of the 1983 Trust, of which the plaintiffs were beneficiaries. CRC claims that the plaintiffs, as trust beneficiaries, were not parties to the Transaction at issue, CRC was not a fiduciary, had no duty to disclose, and made no misrepresentation of material fact and that plaintiffs' fraud claim is time barred by the statute of limitations. Trial Court granted summary judgment in favor of CRC and dismissed plaintiff's amended complaint. Plaintiffs appealed. Held: Plaintiffs had knowledge of the CRC stock redemption that, if using ordinary care and thoughtfulness, would alert a reasonable person to investigate the possibility that fraud may have occurred. Thus, Plaintiffs could have discovered, in the exercise of reasonable diligence, any alleged fraud by CRC thereby barring their claim for fraud in their complaint due to the statute of limitations. Plaintiffs' fraud claim is also time barred by the five-year statute of limitations for

the sale of securities under R.C. 1707.43(B). Because plaintiffs' civil-conspiracy claim and unjust enrichment claim are based upon their fraud claim, and their fraud claim is time barred, their civil-conspiracy claim and unjust enrichment claim fail. Affirmed.

TOPIC: Summary Judgment/Objections
TITLE: Bromer v. Wyman, 2025-Ohio-823
COURT: 9th Appellate District
COUNTY: Summit
DATE: March 12, 2025

Son brought action against his late sister's husband, other family members, and bank that controlled mother's accounts, seeking declarations regarding ownership and possession of residential property and personal property from parents' estate, and alleging conversion, unjust enrichment, and other claims. The Trial Court denied son's motion for an extension of time to file objections to magistrate's decision, and subsequently adopted magistrate's decision granting summary judgment for bank. Son, trust, and mother's estate appealed. Held: The Trial Court did not undertake a proper review of the issues raised by the Plaintiffs in their objections. Specifically, the Trial Court failed to address whether bank had presented evidence establishing that joint account contained a right of survivorship or, in the alternative, whether the survivorship interest in the account was triggered as a matter of law. Furthermore, the Trial Court did not address the Plaintiffs' core assertion, which was that the magistrate erroneously placed the burden on the non-moving party during the summary judgment proceedings. Trial Court did not have a reasonable basis for denying an extension to file objections to magistrate's decision, given the varied nature and complexity of the issues addressed in the magistrate's decision. Reversed. Concurrence would affirm summary judgment as it was correct decision on the wrong basis.

TOPIC: Attorney's Fees
TITLE: Lower v. Lower, 2025-Ohio-1111
COURT: 5th Appellate District
COUNTY: Fairfield
DATE: March 28, 2025

Michael Lower filed a Complaint for Declaratory Judgment against appellee Donald L. Lower, both individually and in his capacity as Executor of the Estate of their mother Nancy G. Lower, and appellee Colin R. Beach, Esq. seeking a declaration that the mortgage on the real property that was part of the estate was improperly managed, and therefore should be declared invalid and set aside and the debt extinguished. Beach filed a motion to dismiss for failure to state a claim upon which relief can be granted. Trial Court granted the motion. Michael amended his complaint alleging fraud, tortious interference with contract, and civil conspiracy. Both defendants moved to dismiss and Beach moved for sanctions for frivolous conduct. Trial Court granted the motion and found the conduct frivolous. Trial Court reserved judgment on the amount of attorney's fees pending a hearing. Michael appealed. Case was remanded to the Trial

court to rule on the attorney's fees issue. Trial Court awarded attorney's fees against Michael. Court of Appeals affirmed the dismissal on appeal. Michael filed a motion for reconsideration seeking 60(B) relief and motion for stay of execution. Trial Court denied the motions. Michael appealed. Held: The law of the case doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both trial and reviewing levels. Arguments herein with regard to the merits of the dismissal are precluded by the law of the case doctrine. Appellant did not contest the amount of fees which he could have raised at trial. Affirmed.

TOPIC: **Subject Matter Jurisdiction/Quiet Title**
TITLE: **Lynch v. FIG OH18 L.L.C., 2025-Ohio-1553**
COURT: **8th Appellate District**
COUNTY: **Cuyahoga**
DATE: **May 1, 2025**

Lynch resided at her residence for over 40 years. The property is title in her late father's name, who died more than 20 years ago. FIG OH18 L.L.C. filed a foreclosure complaint for unpaid taxes. Foreclosure was granted and upheld on appeal. Lynch then filed a complaint to quiet title and for adverse possession in the general division against FIG and others. Lynch asserted that she was the only owner of the property by virtue of her father's unprobated will. After motions were filed, the Trial Court sua sponte dismissed the complaint for lack of subject matter jurisdiction. Lynch appealed. Held: General division of the court of common pleas has broad subject matter jurisdiction unless it is explicitly removed by statute. The common pleas court, general division, has no authority to establish a right to title in a property based on an unprobated will. An unprobated will is of no effect and provides no basis for suit in any court. Trial court erred in dismissing complaint as to adverse possession count which is clearly within its jurisdiction and not affected by the will. Reversed in part.

TOPIC: **Final Appealable Order/Dismissals Without Prejudice**
TITLE: **Mould v. Burwell, 2025-Ohio-1622**
COURT: **5th Appellate District**
COUNTY: **Richland**
DATE: **May 6, 2025**

Alexander Jose Rios was booked into the Richland County Jail. He demanded his release and was standing atop a concrete privacy wall within his cell. For safety reasons, officers were instructed to place him in a restraint chair. When Mr. Rios exited the cell, he proceeded to run around the booking area. Officers used physical force and tasers to restrain him. Following this incident, Mr. Rios was taken to the hospital where he never regained consciousness and died seven days later. Dr. Burwell, the Richland County Coroner, issued a Comprehensive Report of Death Investigation and a Supplemental Medical Certification on November 27, 2019, and listed in both documents the manner of death as accident and the cause of death as excited delirium. Rios' Mother filed a wrongful death suit against Richland County and its employees. A settlement was reached and a release of all claims was filed by the estate. Mr. Rios's stepfather,

filed a complaint for declaratory judgment and request for evidentiary hearing. The complaint set forth one count: “Correction of Coroner's Erroneous Determination - RC. § 313.19.” The prayer for relief asked the trial court to direct Dr. Burwell “to change both the manner and cause of death of Alexander Jose Rios to Homicide, and Positional Asphyxia as a result from restraint of another.” Dr. Burwell moved for summary judgment. The Trial Court dismissed the action finding the action is not the appropriate method to challenge the determination of the coroner. Mould appealed. Held: A dismissal without prejudice is not a final appealable order unless a party cannot refile the complaint within the applicable statute of limitations or under the savings statute. Trial Court dismissed the action without prejudice and the statute of limitations has not expired. Because the action can be refiled, the dismissal is not a final appealable order, and Court of Appeals lacks jurisdiction. Appeal dismissed.

TOPIC: Statute of limitations; saving statute; R.C. 2305.19
TITLE: Pincus v. Pincus, 2025-Ohio-1826
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: May 22, 2025

Brothers David Pincus (now deceased) (“David”) and Steven were owners and business partners of the Bakery — a family-owned-and-operated bakery that was started by David and Steven’s parents in 1968. The Bakery permanently closed in 2016. Prior to his death, David was married to Arlene. Steven is married to Helene. Arlene, as the next best friend and legal representative for David, who at the time was in ill health, filed a lawsuit against Steven and the Bakery alleging that Steven had mismanaged the business and was wrongly taking a disproportionate share of the business income for himself. That case concluded in October 2016, when Steven and the Bakery agreed to a consent judgment of \$500,000 in favor of David. When the \$500,000 judgment remained unpaid, Arlene hired legal counsel to assist in collecting. During this process, counsel allegedly discovered a series of fraudulent transfers of Bakery income and assets made by Steven to Helene in 2014 and 2015. In 2017, Arlene, on behalf of David, filed a complaint against Steven, Helene, and the Bakery alleging three counts of fraudulent transfer under R.C. 1336.04(A)(1), 1336.04(A)(2), and 1336.05(A), respectively, one count of civil conspiracy, and one count of malicious prosecution. Steven and the Bakery answered the complaint and filed a counterclaim for frivolous conduct under R.C. 2323.51. Arlene voluntarily dismissed the complaint pursuant to Civ.R. 41(A) in September 2018. However, the counterclaim remained pending. On January 16, 2019, Arlene filed a second complaint against Steven, Helene, and the Bakery asserting the same causes of action. Steven, Helene, and the Bakery moved for summary judgment as to all claims pending against them. The court granted the motion for summary judgment as to Arlene’s malicious-prosecution claim, but denied summary judgment as to the fraudulent-transfer and civil-conspiracy claims. On the day of trial, Steven, Helene, and the Bakery filed a motion to dismiss the action on the ground that David had died in July 2021 and no estate had been opened for him. In light of this fact, the parties — following discussions between themselves, their attorneys, and the court — agreed to dismiss the action without prejudice. Arlene opened an estate for David. On July 20, 2023, as executor of the estate, Arlene

filed a third complaint against Steven, Helene, and the Bakery. The third complaint asserted the same claims of fraudulent transfer and civil conspiracy as the first two complaints. The defendants answered the complaint, citing the statute of limitations as an affirmative defense. Steven, Helene, and the Bakery filed a Civ.R. 12(C) motion for judgment on the pleadings. In it they argued that Arlene's claims for fraudulent transfer and civil conspiracy were based on alleged fraudulent transfers that occurred between August 2014 and April 2015. The defendants argued that since the statutes of limitations for fraudulent transfer and for civil conspiracy were four years from the date of transfer pursuant to R.C. 1336.09, Arlene's third complaint, which had been filed outside this four-year time frame, was time-barred by the statute of limitations. The trial court granted defendants' motion for judgment on the pleadings and dismissed the case. The court determined that plaintiff's claims were time-bared by R.C. 1336.09 because the third complaint was filed more than four years after the alleged fraudulent transfers occurred. Moreover, Ohio's saving statute did not apply to avoid the statute of limitations because there was a "one use" restriction on its use. Arlene appealed. Held: There is no one use rule on the savings statute as explained by the Ohio Supreme Court in *Wilson v. Durrani*. In this case, some of Arlene's claims are preserved by her third complaint but some are not as the statute of limitations had expired when she filed her second complaint for some of the claims. The saving statute, R.C. 2305.19, does not save claims that are refiled a second time after the expiration of the statute of limitations. Affirmed in part and reversed in part.

TOPIC: Default Judgment/Motion to Strike
TITLE: Sherman v. Eichenlaub, 2025-Ohio-1880
COURT: 12th Appellate District
COUNTY: Madison
DATE: May 27, 2025

Appellees – family members filed complaint to set aside transfer on death deed from decedent to Appellant-Laverne. Decedent had executed a transfer on death affidavit while alive to Laverne. Parties attempted to negotiate a resolution and agreed to sell the property and hold funds in escrow. After failed personal service attempts, Laverne was served by certified mail with the complaint. Appellees served discovery requests. Laverne did not answer. Appellees moved for default judgment. Laverne answered the complaint and the discovery requests belatedly without leave. Appellees filed a motion to strike the answer. Probate court granted the motion to strike; denied a motion to strike Appellee's admissions and deemed them admitted; granted the default judgment finding the affidavit invalid; and ordered the sale proceeds from the home released to Appellees. Laverne appealed. Held: Quoting the Ohio Supreme Court, Court held that "A defendant's right to force a plaintiff to prove his or her claim depends upon the defendant's compliance with the Civil Rules and the timely filing of an answer to the complaint." Appellees were entitled to move for default judgment. Laverne filed an answer late and without asking for leave or demonstrating excusable neglect. Communications by Laverne's attorney pre filing of complaint are irrelevant. Laverne's dilatory conduct, belated filings, and failure to establish excusable neglect demonstrate a conscious disregard for the Ohio Rules of Civil Procedure. No

abuse of discretion in granting motion for default judgment. Laverne has provided no justification for her delayed response to the request for admissions and no proper reason why the probate court should not have deemed the matters admitted. No abuse of discretion by denying motion to strike. Affirmed.

TOPIC: **Prohibition/Jurisdictional Priority Rule**
TITLE: **Jacobs v. Cuyahoga Cty. Court of Common Pleas, 2025-Ohio-2076**
COURT: **8th Appellate District**
COUNTY: **Cuyahoga**
DATE: **June 6, 2025**

Crystal Jacobs was the adult daughter of Jacobs and died on May 12, 2022. Jacobs contracted with Calhoun for funeral and cremation services. Jacobs avers that she contracted explicitly to witness the cremation and provided Calhoun with a list of family and friends who also wanted to witness the cremation. She further avers that Calhoun, through its agents, assured her that they would be notified of the cremation date and time. However, the cremation occurred without any of the specified witnesses. Jacobs commenced a case for breach of contract and negligence in not informing the family and friends of the date and time of the cremation. The case was assigned to the respondent judge. A pretrial was held. Jacobs alleges that during this pretrial the respondent judge called her “stupid” as well as Jacob’s doctors and counselors “stupid.” Jacobs continues that the respondent judge humiliated her for three hours. Calhoun moved for summary judgment which was granted. Jacobs filed a writ of prohibition against the respondent judge in the Supreme Court of Ohio. Jacobs filed for a writ of prohibition in the Court of Appeals filing a nearly identical complaint seeking the same relief. Calhoun moved to intervene and file an answer and a motion to dismiss. The Court of Appeals granted the motion to intervene and accepted the motion to dismiss for consideration. The respondent judge moved to dismiss. Held: Under the jurisdictional-priority rule, the court lacks jurisdiction to adjudicate this prohibition action. This rule provides that “as between [state] courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all tribunals, to adjudicate upon the whole issue and to settle the rights of the parties.” The “institution of proper proceedings” is filing the lawsuit and obtaining service. The prohibition cause of action is the same in both cases, and the institution of proper proceedings happened first in the Supreme Court of Ohio. Accordingly, the Court of Appeals does not have jurisdiction to proceed. Motions to dismiss granted.

TOPIC: Disclaimers/Res Judicata/Foreclosure
TITLE: Point E. Condominium Owners' Assn. v. Bilfield, 2025-Ohio-2142
COURT: 8th Appellate District
COUNTY: Cuyahoga
DATE: June 18, 2025

Lillian purchased a condo from Point East Condominium Association (the “HOA”). Lillian quit claimed a life estate to herself and the remainder interest to the Bryan S. Bilfield (“Bryan”), Murray Bilfield (“Murray”), Lillian Bilfield (“Lillian”), and Sharon S. Campbell formerly Sharon S. Bram (“Sharon”) (collectively the “Bilfields”). Lillian executed a reverse mortgage. Murray notified the HOA that Lillian moved to an assisted living facility due to failing health and was unable to pay further condominium fee assessments. As a Medicaid-supported patient, the nursing home retained the majority of Lillian’s social security income. Murray informed the HOA that a deed in lieu of foreclosure was in process with the Reverse Mortgage provider and requested that based on Lillian’s 23 years of ownership, timely payment of dues, and failing health, the HOA refrain from pursuing collection actions against her. Bryan recorded an irrevocable disclaimer under R.C. 5815.36 with the Cuyahoga County Recorder. Thereafter Sharon and Murray also recorded disclaimers. The HOA then recorded liens for unpaid assessments. The HOA filed a foreclosure. Lillian passed away and the HOA amended its complaint. A hearing was held and a magistrate’s decision entered granting a foreclosure which the trial court adopted. The sale was confirmed and HUD received the proceeds minus court costs. Before the foreclosure hearing, the HOA filed a declaratory judgment complaint against the Billfields only. The HOA challenged the validity of the disclaimers and attempted to collect damages from the Billfields arguing that the they had encumbered the property and therefore the disclaimers were void. After motions for summary judgment were filed, the Trial Court found the disclaimers were void as the Billfields encumbered the property by a reverse mortgage. The Trial Court found the HOA was barred from seeking unpaid assessments from the Billfields. The parties appealed. Held: The Trial Court’s foreclosure judgment serves as res judicata. Disclaimers cannot be challenged in the second action as the foreclosure order addressed the disclaimers and was res judicata. The trial court’s judgment of res judicata is affirmed, and plaintiff appellant/cross-appellee HOA’s first assignment of error is overruled. The first cross-assignment of error of defendants-appellees/cross-appellants, the Bilfields, is sustained and the trial court’s judgment that the disclaimers are invalid and the Declaration is binding on the Bilfields is reversed as it is barred by the doctrine of res judicata. Dissent would affirm the Trial Court’s finding on the disclaimers but would find the HOA was still barred from pursuing separate money judgment against the Billfields.