HOT TRENDS IN PROBATE LITIGATION: 2021

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I. JURISDICTIONAL AND PROCEDURAL ISSUES

***Krivulka v. Lerner,* 2:20-CV-09724, 2021 WL 3260851 (D.N.J. July 30, 2021).**

The plaintiff was the widow and co-executor of the estate of her husband. She claimed that defendants failed to disclose conflicts of interest during the administration of the estate. She filed in federal court based on diversity of jurisdiction. The defendants moved to dismiss the action, claiming that the decedent was domiciled in New Jersey at his death and therefore there was no diversity of jurisdiction.

The court determined that the decedent moved to New Jersey in 2000. He had a New Jersey driver's license, had bank accounts in New Jersey, and worked in New Jersey. The defendants met with the decedent between 2009 and 2016 and created a will and codicil which listed him as a resident of New Jersey. The decedent discussed potentially relocating to Arizona but wrote to the defendants late in 2016 and confirmed he was not planning to change his domicile. However, the majority of his last year of life was spent in Arizona, and he passed away in Arizona in February 2018. He also had other connections in Arizona.

In the end, the court found that while decedent maintained an objective physical presence in both New Jersey and Arizona, he intended New Jersey to constitute his domicile. There was no subject matter jurisdiction and no diversity of citizenship.

***Estate of Partee v. Jones,* No. A-0765-19T1, 2020 WL 6688913 (N.J. Super. App. Div. Nov. 13, 2020).**

Twin sisters Dianne and Dionne owned as tenants in common the Philadelphia home in which they grew up. On January 19, 2017, Dianne transferred her interest to Dionne, but this deed was not notarized until May 11, 2017.

On June 19, 2017, Dionne deeded the property to her daughter, Loree.

Dianne died in 2017. The estate filed a six-count complaint against Loree and Dionne, as well as the notary who completed the attestation and affixed her seal on the deeds. The notary never answered and default judgment was entered against her. She did not appeal.

During a two-day bench trial, the court heard from multiple witnesses regarding whether Dianne wanted to sell or gift her interest in the property to Loree.

The Chancery Division found that Dianne did not intend to give her interest in the house to Loree. The judge entered judgment in favor of the estate and against Loree in the amount of $100,000, representing the fair market value of Dianne's share of the property.

The trial court also applied an equitable remedy, finding that the deeds transferring Dianne's share of the real estate to Dianne and then to Loree would be voided if Loree did not pay the $100,000 to the estate.

The trial court noted that, under Pennsylvania law, a deed is void if not filed within 90 days. The court also observed that if the notary had misdated her stamp and deliberately misrepresented otherwise to the Pennsylvania Recorder of Deeds, such actions would be construed as a fraud upon the state.

In the end, the court held that the deed from Dionne to Loree was invalid under Pennsylvania law.

On appeal, the court found that the factual findings of the trial court were supported by adequate, substantial, and credible evidence. The Appellate Division also noted that, in contrast to the deference given to a trial court's factual findings, legal determinations of a lower court are reviewed *de novo*.

The Appellate Division cited considerable authority regarding the broad latitude of the Chancery Division in fixing an equitable remedy. At the same time, the Appellate Division found that a New Jersey court had no jurisdiction to void a deed to Pennsylvania property.

The Appellate Division distinguished the lack of jurisdiction regarding an out-of-state property and the *in personam* jurisdiction the court has over litigants:

> We believe the crux of this case, however, is not whether the deed was valid, nor whether a New Jersey court has the authority to void that deed. Nor does the outcome hinge on a finding that Loree or Dionne used wrongful tactics to trick Dianne into seeding her interest in the homestead. We believe the critical finding is that Dianne did not intend to give away her share of the house for no value. That conclusion is supported by adequate, substantial and credible evidence. In those circumstances, applying equitable principles, the probate court acted appropriately and within the wide latitude of its discretion to order Loree to compensate the estate for one-half the fair market value of the house.

Id. at *4.

***Mac Naughton v. Power Law Firm*, A-3711-19, 2021 WL 2964324 (N.J. Super. App. Div. July 15, 2021).**

This case addresses the importance of naming additional parties pursuant to *Rule* 4:5-1(b)(2) in initial pleadings.

Plaintiff W. James Mac Naughton ("Jim") appealed a May 27, 2020 Order granting summary judgment to defendant Power Law Firm, LLP, Jinhee Bae, and Meghan Maier. Jim was a co-trustee with his uncles of a Trust established by his parents. In 2012, a dispute arose between the co-trustees concerning the use of a Trust asset – a vacation home in Cape Cod. The co-trustees consulted with the defendant law firm for legal advice regarding the management of the Trust asset. Several years later, in March 2017, a second dispute arose as to Jim's use of Trust funds. The other co-trustees – Jim's uncles – consulted with defendants again for legal advice concerning the dispute. In an attempt to resolve the matter, defendants communicated with Jim, and even drafted an agreement, to attempt to resolve the dispute. The matter did not resolve amicably, and thus the co-trustees eventually decided to pursue litigation against Jim. They were referred by defendants to another law firm for purposes of litigation against Jim.

In May 2018, the co-trustees (represented by the new law firm) filed an amended verified complaint against Jim, and the litigation was settled over a year later. In November 2019, Jim filed a complaint against defendants – the law firm that had advised the co-trustees – alleging

legal malpractice, breach of fiduciary duty, and breach of fiduciary duty to a former client. The defendant law firm filed an answer and simultaneously moved for summary judgment. The trial court granted defendant's motion and dismissed Jim's complaint, finding that Jim's failure to appraise the court of defendants in his initial pleadings ran afoul of the entire controversy doctrine and *Rule* 4:5-1.

The Appellate Division affirmed, finding that the entire controversy doctrine reflects a long-held preference that related claims and matters arising among related parties be adjudicated together rather than in separate, successive, fragmented, or piecemeal litigation. Further, the court found that pursuant to *Rule* 4:5-1(b)(2) a party is required to certify in his or her initial pleadings the names of any non-party who should be joined in the action or who is subject to joinder because of potential liability to any party on the basis of the same transactional facts.

In the instant matter, Jim was aware as early as 2017 of the potential claims he had against defendants, and his failure to assert the claim, or at least advise the court of any non-party who should be joined in the action was inexcusable as it was apparently a deliberate strategy to obtain depositions and discovery to utilize in a subsequent action. The court also agreed that defendants were substantially prejudiced by the inexcusable failure. Defendants were deprived of the opportunity to participate in the extensive discovery process in the underlying action and to permit Jim to duplicate that process would be unfair to the defendants.

II. DISPUTES AS TO PRE-DEATH CONDUCT AND ASSETS PASSING OUTSIDE A WILL

***Estate of Sandor v. Lugowe,* No. BER-C-54-21, 2021 WL 3162993 (N.J. Super. Ch. Div., Bergen Cty. July 12, 2021).**

The decedent died on January 20, 2018, and the court appointed an administrator pendente lite of the estate (the "Administrator"). The Administrator filed an action to set aside inter vivos gifts made by Decedent's grand-nephew, Anthony Russo, Jr. ("Russo"), who was also Decedent's agent under his power of attorney. The Administrator joined in the litigation the bank at which Decedent kept most of his assets, asserting that it was likewise liable for the improper transfers.

The bank filed a motion for summary judgment, which the court granted. Specifically, the court determined that: (1) the New Jersey Uniform Fiduciaries Law, N.J.S.A. § 3B:14-52 et seq. shielded the bank from liability; (2) the power of attorney document waived liability against the bank; and (3) the only inference that could be drawn from the record was that the bank performed adequate due diligence and did not act in bad faith.

III. DISPUTES REGARDING THE VALIDITY AND INTERPRETATION OF WILLS

***In re Estate of Hoffman*, No. A-3455-19, 2021 WL 914184 (N.J. Super. App. Div. March 10, 2021), *certif. denied*, 258 A.3d 350 (2021).**

This decision addresses the interpretation of a will as to a devise of bank accounts that had become depleted by the testator's death.

Charles and Marian Hoffman had been married for 50 years. They had no children, but had a close relationship with Marian's brother and his three children, the Olivers.

Marian died intestate on June 1, 2016. Charles was her sole heir.

After meeting twice with his attorney and four times with the attorney's paralegal, Charles executed his will on August 2, 2016. Charles died testate on April 4, 2018. Charles's brother Eugene qualified as executor.

Charles's will devised "the total sum of monies received from the estate of his deceased wife, including bank accounts, certificates of deposit, stocks, and bonds to be distributed to the Olivers, *per stirpes,* as set forth on the attached Schedule A (Nos. 2 and 3 only)." *Id.* at *3.

The will devised the remainder of the estate, including the other bank accounts noted on Schedule A, to Eugene. Schedule A was attached to the will. Among other assets, it listed as Nos. 2 and 3, accounts at First Hope Bank with balances of $69,000.00 and $213,000.00, respectively.

Eugene testified that these two accounts were closed at Charles's direction; specifically, Eugene testified that the two accounts, which Charles referred to in his will as accounts Nos. 2 and 3, had been transferred to Charles upon Marian's death. Eugene testified that the funds in those two accounts had been used to pay Charles's caregivers, hospital bills, and transportation costs. The funds had also been used to provide a bond for a sand and gravel business that was operated on Eugene's property. Eugene testified that when Charles died, only $16,000 remained in these two accounts.

The attorney who wrote the will advised Charles that although the will provided for the disposition of these two bank accounts, Charles could use the money any way he wanted to during his lifetime because the accounts were not in a trust.

The trial court found that when Charles died, the funds in these two accounts had been used to pay Charles's expenses and the bond for Eugene's business. The trial court stated that the money never really belonged to the Olivers because it was not in a trust and Charles had the right to dispose of the funds as he saw fit during his lifetime. The court found that the devise of these two accounts to the Olivers was a specific devise which had adeemed.

The Olivers appealed, arguing that the devise of these two accounts was not a specific devise but a demonstrative devise. The court stated:

> There are three types of testamentary gifts: general, specific and demonstrative. *Busch v. Plews,* 19 N.J. Super. 195, 204 (Ch. Div. 1952), *aff'd.* 21 N.J. Super. 558 (App. Div. 1952), *aff'd* 12 N.J. 352 (1953). A general legacy is a bequest of personal property payable out of the general assets of the testator's estate rather than from specific property included therein. Citing *Plews,* 12 N.J. at 356 (citing *In re Low,* 103 N.J. Eq. 435, 437 (Prerog. Ct. 1928).
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> A specific legacy is a bequest of personal property *in specie* and not payable from other assets of the estate. *Id.* (citing *Camden Trust Company v. Kramer,* 136 N.J. at 261, 270 (E&A 1945)). A

> demonstrative legacy is a request payable primarily out of specified property but chargeable against other assets of the estate if that property is insufficient . . ." *Id*. (citing *Kramer,* 136 N.J. Eq. at 270).
>
> To render a bequest specific, a testator must have contemplated the subject of a legacy to be a specific identical thing. *Plews*, 19 N.J. Super. at 205. Absent such an intention, "A legacy will be deemed either general or demonstrative, depending upon whether a fund or particular property is indicated as the primary source of its payment." *Id*. *See also Kramer,* 136 N.J. at 270 (stating that "if the subject matter is not sufficiently individuated, the legacy is treated as general or demonstrative"). Since specific legacies are subject to ademption and thus typically frustrate the testators' donative intent, "courts lean against construing legacies as specific." *Plews*, 12 N.J. at 356 (citing *Kramer*, 136 N.J. Eq. at 270).

Id. at *4-5.

The court also noted that when deciding whether a devise is specific or general, the intention of the testator must control.

On appeal, the Olivers argued that since the devise under Charles's will to them was for "a total sum of monies that Charles had acquired from Marian's estate," that he intended that the devise would be paid from, but not exclusively from, the two accounts listed on Schedule A. *Id*. at *5.

The Appellate Division disagreed and affirmed, noting that the devise limited the "sum of monies to the two accounts listed on Schedule A and identified as Nos. 2 and 3 only." *Id*. at *5.

The Appellate Division found that the will did not give the Olivers a devise in an amount equal to the amount of money received by Charles from Marian's estate but rather that Charles's use of the word "only" was intended to limit the devise to the Olivers to these two accounts. The appellate court noted that the phrase, "total sum of monies," was not defined by a specific amount, but by reference to the two accounts.

The court noted that the language in the will, which specifically provided that the devise shall be paid out of certain specified bank accounts, was intended as a limitation of the fund out of which payment of the devise was to be made. Charles did not intend to give the Olivers a specific sum of money from his estate; he chose instead to give the Olivers a sum of money on deposit in specific bank accounts.

***In re Estate of Grischuk,* A-3890-18, 2021 WL 3160466 (N.J. Super. App. Div. July 27, 2021).**

This appeal encompassed a will contest and a dispute as to counsel fees.

The decedent was survived by her sister, defendant Olga Sweeney ("Olga"), her nephew, plaintiff Michael David ("Michael"), and others.

With the assistance of her long-time attorney, the decedent drafted five wills over an 11-year period. She executed her final will in 2015 ("2015 Will").

Michael sought to invalidate the 2015 Will. He alleged that the decedent lacked testamentary capacity and that Olga exercised undue influence.

After a four-day bench trial, the trial court rejected Michael's claims, upheld the 2015 Will, and ruled on counsel fees. The appeal thus addressed (1) incapacity, (2) undue influence, and (3) counsel fee awards.

1. Incapacity

The trial court found that the decedent had testamentary capacity when she executed the 2015 Will. The court concluded that Michael's incapacity claim was based only on his subjective opinion that the decedent was in failing health when she executed the will. Michael's opinion was contradicted by the other testimony and medical records.

The Appellate Division affirmed and explained that a very low degree of mental capacity is required to execute a will. Courts must consider whether the testator was able to "comprehend the property [she was] about to dispose of; the natural objects of [her] bounty; the meaning of the business in which [she was] engaged; the relation of each of these factors to the others, and the distribution that is made by the will." *In re Livingston's Will*, 5 N.J. 65, 73 (1950). Capacity is tested at the time of execution of the will. *Id.* at 76.

In addition, a decedent is presumed to have been of sound mind and competent when she executed the will. *Haynes v. First Nat'l Bank*, 87 N.J. 163, 175-76 (1981). "[T]he burden of establishing a lack of testamentary capacity is upon the one who challenges its existence . . . [and] must be [proven] by clear and convincing evidence." *In re Estate of Hoover*, 21 N.J. Super. 323, 325 (App. Div. 1952).

Michael argued that the trial court ignored medical records establishing that the decedent suffered from anxiety and depression and was in a weakened state at the time she executed the will. He also argued that the court overlooked testimony from the decedent's caregiver regarding her physical and mental state.

The Appellate Division disagreed and noted that the record contained other evidence that the decedent was mentally sharp and making reasoned decisions at the time she executed the 2015 Will. The attorney who prepared the will and was present for its execution had no doubt of the decedent's capacity.

2. Undue Influence

The trial court concluded that Michael had not proven that Olga exerted undue influence on the decedent as to the 2015 Will. The court relied on the testimony of the drafting attorney. The court further found that, although Olga was present when the decedent met with her attorney before executing the will, Olga neither spoke to the decedent nor the attorney about its contents nor to anyone else to influence the bequests.

As to a presumption of undue influence, the trial court found that Olga and the decedent maintained a confidential relationship – for example, they shared a joint bank account, and had

both been represented by the attorney who drafted the 2015 Will. The trial court also noted that one could reasonably conclude that suspicious circumstances surrounded the decedent's changes to Michael bequests in her series of wills.

Nevertheless, the court concluded that Michael's claim of undue influence failed in the context of the entirety of the case, because the facts simply were lacking to prove that Olga dominated the decedent or that the decedent relied upon Olga to make decisions on her behalf. Instead, the court found that the decedent made all of her financial decisions and continued to pay her own bills until her death. Although Olga had written checks on the joint account she held with the decedent, these were at the decedent's direction and for her convenience. Olga made no financial decisions on behalf of the decedent, nor did she benefit from any of her activities on the decedent's behalf.

The Appellate Division again affirmed, explaining that not all influence is "undue." Mere persuasion, suggestions, or the opportunity to exert influence over a testator are not sufficient to invalidate a will. *Livingston's Will*, 5 N.J. at 73.

Indeed, the Appellate Division agreed with the trial court that, even though a confidential relationship and suspicious circumstances existed, "the suspicion was dispelled by proof of [the] decedent's independent and informed decision to execute the will." *Grischuk*, at *4.

3. Counsel Fees

Michael applied to the trial court for an award of attorney fees and costs from the estate pursuant to *Rule* 4:42-9(a)(3). Olga opposed the motion and cross-moved for sanctions against Michael pursuant to N.J.S.A. § 2A: 15-59.1(a) and *Rule* 1:4-8 for having filed frivolous claims.

The trial court awarded Michael $84,030 in attorney's fees and $5,350.91 in costs and denied Olga's motion for sanctions. The court concluded that Michael had reasonable cause to file his complaint based on information then in his possession. However, Olga's discovery responses made clear that Michael's claims were baseless and he should not have proceeded to trial. As a result, the court awarded Michael only those attorney fees and costs on the incapacity claim up to the point of his receipt of the decedent's medical records and on the undue influence claim up to the last deposition of a trial witness. The court awarded no attorney fees or costs to Michael related to trial preparation after August 12, 2017, or for the trial.

After summarizing the standards for counsel fee awards, the Appellate Division concluded that the trial court acted within its discretion when it awarded the fees and costs to Michael. However, the appellate court agreed with Olga that the trial court's decision lacked precision: the court did not identify the date on which Michael received the decedent's medical records or explain in any detail the amounts sought by Michael but disallowed. In addition, the court issued only a conclusory statement that the time spent by Michael's attorneys and the hours they expended were reasonable.

After noting that a remand would result in additional expenses which would further deplete the relatively modest estate, and that the trial judge had retired, the appeals court undertook its own review of Michael's application for attorney fees. It concluded that the amount of fees and costs awarded reflected an equitable exercise of the trial court's discretion in light of the record, Michael's lack of success, and the court's conclusions regarding reasonable cause.

Finally, the Appellate Division rejected Olga's argument that the trial court erred when it denied her motion for sanctions. Although the trial court did not issue findings of fact and conclusions of law addressing Olga's motion for sanctions, the judge found that Michael had reasonable cause to file his complaint and to pursue his claims through discovery. Implicit in those findings was the conclusion that Michael's complaint was not frivolous. In addition, the trial court's limitation on the award of attorney fees and costs was sufficient to resolve Olga's claims that Michael's pursuit of a trial was wrongful.

***Estate of Small v. Small*, 234 A.3d 657 (PA 2020).**

The central question was whether a father had forfeited his share of his son's estate.

The Pennsylvania Supreme Court determined that forfeiture had not occurred, and the father was entitled to inherit as an intestate heir.

The son was eighteen when he sustained gunshot wounds that rendered him a paraplegic. His mother provided the son with assistance and some financial support until the son's paramour later assumed those duties.

The father was absent and did not provide care or support for the son during the last few years of his life.

The son died intestate at age 37, and without a spouse or descendants. He left no will. He had never been declared incapacitated.

The sole estate asset was a $90,000 wrongful death award recovered by the mother as administrator.

Under Pennsylvania intestacy law, the son's estate would pass to the parents. The mother petitioned for an order that the father should not inherit under a statutory exception where, for one year or more prior to the death of the parent's minor or dependent child, the parent failed to perform the duty to support the minor or dependent child or, for one year, deserted the minor or dependent child.

The Orphan's Court denied the petition. The mother appealed, and the Pennsylvania Supreme Court affirmed.

It notes that the Pennsylvania probate code does not define "dependent child" nor does the statutory construction act. However, the statutes require any dependency on the child's part to be one that gives rise to a duty of support by the parent. The use of the phrase, "the duty," leaves no room for an interpretation whereby the child was dependent, in some sense of the word, but there was no corresponding duty on the part of the parent to provide support. A child cannot have been dependent unless the parent had a support duty.

The forfeiture statute did not support the mother's position that the father's duty should be understood in an informal, social, moral, or colloquial sense. The duty under that statute must arise from some legally recognized source, such as common law, a statute, a contract, or a court order.

The son was an adult when he died. The Court observed that, while a parent may have a duty to support into adulthood a child who becomes disabled while a minor, that concept did not apply here because the son became disabled as an adult.

IV. TRUST DISPUTES

***Jemison v. Jemison*, CV 17-13571, 2021 WL 1171689 (D.N.J. Mar. 29, 2021), *appeal filed*, No. 21-1805 (3d Cir. Apr. 23, 2021).**

The court granted a motion for summary judgment in favor of defendants, William D. Jemison ("William") and Michael S. Jemison ("Michael"), who were former officers and members of the Heyco, Inc. Board of Directors (the "Board") and co-trustees and beneficiaries of the Jemison Family Trust (the "Trust"). Their brother, plaintiff Steven Jemison ("Steven"), a former shareholder of Heyco and a co-trustee and beneficiary of the Trust, brought the action. He alleged that between 2012 and 2017, William and Michael breached their fiduciary duties in their capacities as trustees of the Trust and directors of Heyco, Inc. ("Heyco") when they approved certain transactions. Specifically, Steven charged Michael and William with self-dealing, lack of impartiality, willful misconduct, conflict of interest, breach of loyalty, breach of the duty of care, and unjust enrichment.

The Trust was created by the parties' father, William H. Jemison ("Mr. Jemison"), and he appointed himself the initial trustee. William, Michael, and Steven, along with their sister, Susan Jemison ("Susan"), were beneficiaries of the Trust, with equal interests in its assets, the primary asset being 70% of Heyco voting shares. The remaining shares of Heyco were owned by non-parties, Hank Klumpp ("Klumpp") and Harry Largey ("Largey"). Upon Mr. Jemison's death, the four siblings became co-trustees of the Trust.

Heyco was a holding company for two wholly-owned subsidiaries: Heyco Metals, Inc. ("Metals"); and Heyco Products, Inc. ("Products"). The Board had four members: Michael, William, Klumpp, and Largey.

Steven challenged three corporate actions which took place between 2012 and 2017: (1) Heyco loaned and subsequently forgave two $500,000 loans – one to Michael and the other to William; (2) Heyco paid commissions to Michael and William in connection with the sale of Products; and (3) Heyco sold Metals to a company owned by Michael and his children.

Claims for Breach of Fiduciary Duty as Directors of Heyco

In New Jersey, directors of a corporation are expected to act in good faith with the same diligence, care, and skill a prudent person would exercise under similar circumstances. *See* N.J.S.A. § 14A:6–14. The courts, however, have long recognized "the business judgment rule" doctrine, under which the judiciary resists interfering with decisions made by boards of directors so long as the directors had the power to make the decision and there is "no showing of bad faith." *Jemison*, at *7.

The rule is a rebuttable presumption, and the person who challenges a corporate decision has the burden of showing the corporate decision-maker acted in bad faith. If the challenger is able to make such a showing, the burden of proof shifts to the defendants to show that "the transaction was, in fact, fair to the company." *Id.* (citing *In re PSE&G S'holder Litig.*, 173 N.J. 258, 307 (2002)). "Overcoming the presumptions of the business judgment rule on the merits is

a near-Herculean task" as "the burden ... is to show irrationality." *Id*. (citing *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005)). In deciding whether the rule protects the directors' actions, the court should ask: "(1) whether the actions were authorized by statute or by charter, and if so, (2) whether the action is fraudulent, self-dealing or unconscionable.'" *Id*. (citing *Seidman v. Clifton Sav. Bank, S.L.A.*, 14 A.3d 36, 52 (N.J. 2011)).

Steven argued that issuance and forgiveness of the loans to Michael and William constituted self-dealing or a breach of fiduciary duty. The loans were tied to their compensation, and N.J.S.A. § 14A:6-8(3) gives directors the authority to establish reasonable compensation, and to lend money and otherwise assist any corporate director, officer, or employee if it may reasonably be expected to benefit the corporation. In addition, a corporate board has broad discretion to set the terms and conditions of a loan.

The court determined that Steven did not adequately show that the loans, the forgiveness thereof, and the Products sale commissions paid to William and Michael were an inappropriate exercise of the Board's judgment. In support of its decision, the court explained that during the timeframe when the Board began to forgive the loans, the company had significant assets, and regularly issued dividends to its shareholders. Each time the Board forgave a portion of the loans, and ultimately, the loans in their entirety, the Board reviewed the status of the loans and the company books. The court also determined that the commissions were appropriate and within the discretion of the Board.

Steven's arguments that the sale of Metals to Michael and his family was a conflict of interest, and therefore a breach of fiduciary duty, were likewise unsuccessful. N.J.S.A. § 14A:6-8 allows such transactions provided that one of these three circumstances is met: (1) the transaction is fair and reasonable to the company at the time it is approved; (2) the director's common interest in the transaction is disclosed to the board and the board approves the decision, and at least one consenting director is disinterested; or (3) the director's common interest in the transaction is disclosed or known to the shareholders, and they authorize the transaction. N.J.S.A. § 14A:6-8(a)-(c).

In this case, Michael recused himself from the decision to sell Metals to his family business, the other directors unanimously approved the transaction, and both Klumpp and Largey were disinterested parties; further, all of the directors waived their right to a commission from the sale. Finally, the sale price was in line with valuations from two independent experts.

Claims For Breach of Fiduciary Duty as Trustees

Steven also argued that Michael and William did not act in the best interests of the beneficiaries with regard to the loans, the commissions, and the sale of Metals to Michael's family. The court however limited Steven's breach of fiduciary duty claims to the sale of Metals because he did not raise the claims with regard to the loans and commissions with the trial court.

New Jersey's Uniform Trust Code ("NJUTC") requires trustees "to administer the trust with undivided loyalty to, and solely in the best interests of, the beneficiaries." A conflict of interest arises when a trustee and an enterprise enter into a transaction regarding trust property in which the trustee has an interest that might affect his judgment. *See* N.J.S.A. § 3B:31-55(c)(4). If the trustee fails to act in the beneficiaries' best interests, his is liable for the harm caused by his breach of duty.

The court determined that William and Michael had the authority to vote the Trust's shares of Heyco in order to approve the Board's decision to sell Metals, and Steven did not show that Michael and William acted contrary to the beneficiaries' best interests. The Trust clearly vested in the trustees the right to vote corporate stock, and there was no requirement that the co-trustees act unanimously. In the absence of such a requirement, the NJUTC permits trustees to act by a majority decision. Here, three of the co-trustees – Michael, William, and Susan – voted in favor of the Board's decision.

Steven also argued that Michael and William were prohibited from voting as trustees to approve Board decisions that would benefit them; Steven, however, provided no New Jersey law or statute to support that claim. In fact, such a position is inconsistent with New Jersey trust law and the Trust itself, which sanctioned Michael and William's dual roles as trustees of the Trust and Heyco directors.

Unjust Enrichment

Steven also claimed that Michael was unjustly enriched by taking the loans and commissions, and by approving the sale of Metals to himself for less than the Company's true value.

Unjust enrichment is proven when a plaintiff shows that a defendant received a benefit, at plaintiff's expense and "under circumstances that would make it unjust for defendant to retain said benefit without paying for it." *Id.* at *16. The court determined that these claims were essentially the same as Steven's claims for breach of fiduciary duty, and he did not carry his burden of showing the Michael and William acted beyond the scope of their authority.

***Schultz v. Glasser*, No. A-5239-18T3, 2021 WL 269674 (N.J. Super. App. Div. Jan. 27, 2021).**

Husband and wife, Robert Schultz, Sr. ("Robert") and Mary Ann Schultz ("Mary Ann"), created an *inter vivos* trust ("Trust"), of which they were the primary beneficiaries. Upon the death of the survivor of them, their children, Robert Schultz, Jr., ("Bobby") and Donna Schultz ("Donna"), were the remainder beneficiaries. In the event Bobby or Donna died without issue, the survivor of them would inherit all of the Trust property. The Trust also stated that Bobby would receive real estate owned by the Trust and located in New Jersey.

Robert died in 2014.

The Trust held various parcels of real estate, including the home in New Jersey and real property in South Carolina. In 2017, Bobby and Donna's cousin, Kathleen, prepared a quitclaim deed transferring the South Carolina property from the Trust to Bobby. She claimed Mary Ann wanted to transfer the property to Bobby because he visited the state frequently was hoping to move there; Mary Ann signed the quitclaim deed.

Bobby lived in the New Jersey property until he died in early 2018. Just weeks before he passed away he transferred the New Jersey property from the Trust to himself and Kathleen as joint tenants with right of survivorship. Bobby also listed Kathleen as the sole beneficiary of his will.

After Bobby died, Mary Ann, by her attorney-in-fact, and Donna, individually and on behalf the estate of Robert Schultz, Sr. ("Robert's Estate"), filed a complaint alleging Bobby breached his fiduciary duty to the Trust beneficiaries. They sought a judgment declaring the transfer of the New Jersey property to Kathleen null and void. They argued the New Jersey property belonged to the Trust, not to Bobby's estate.

Kathleen, individually and on behalf of the estate of Robert Schultz, Jr. ("Bobby's Estate"), counterclaimed for equitable relief, seeking the imposition of a resulting or constructive trust because Bobby paid about 54 percent of the purchase price of the New Jersey property.

Donna and Kathleen testified at trial, and the judge found neither witness credible and some of their testimony highly speculative.

In the end, the court was forced to rely primarily on the documents offered for evidence.

With regard to the New Jersey property, Kathleen argued that Bobby was the settlor of the Trust because he had contributed to the purchase price of the property, and therefore had a right to amend the Trust, which the he did by executing the quitclaim deed. The court disagreed, finding that the evidence offered as to why Bobby made payments was purely speculative, and the reason Bobby exchanged funds with his parents was unknown, as he was not a settlor.

Further, the Trust designated Robert and Mary Ann as the sole trustees during their lifetime, and Mary Ann was living when the property was transferred. The judge agreed that Bobby violated his fiduciary duty to the beneficiaries of the Trust and voided the New Jersey deed.

Kathleen and Bobby's Estate appealed. They argued that Bobby paid $163,000 toward the purchase price of the New Jersey property, and thus his estate was entitled to a constructive trust as to the sums paid.

Donna, Robert's Estate, and Mary Ann cross-appealed, asserting that the trial judge erred by not allowing them to amend the complaint to assert an undue influence claim concerning the South Carolina property and because the court failed to award Robert's Estate its attorney fees and costs as tort damages for the undue influence.

The Appellate Division affirmed the trial court's decision. It emphasized that it is the court's obligation to uphold a testator's dispositions of property, whether made by will or trust. Determining the testator's intent is the court's goal, and this can include interpreting a trust; only when necessary should a trust be reformed, and it should be reformed in accordance with the settlor's intent.

In this case, the Trust was clearly worded, and Bobby was never appointed trustee. Bobby would only receive the New Jersey property if he survived Robert and Mary Ann, which he did not. Because he predeceased Mary Ann and left no surviving issue, the Trust plainly stated that his share was to be distributed to Donna, and not his estate. Given that he was not named the trustee, he had no authority to make the transfer.

As to the funds Bobby paid to his parents, a constructive trust is only warranted when the court finds there was some wrongful act and the failure to find a constructive trust will result in unjust enrichment. Kathleen and Bobby's Estate did not meet their burden in this respect.

As to plaintiffs' cross-appeal, the appellate court noted that the grant of leave to file an amended complaint is within the discretion of the trial judge and is specific to the facts of each case. Here, the trial judge denied the plaintiffs' request because to allow them to amend the complaint at the last minute to raise a claim of undue influence would have been unfair to the defendants who would have had the burden shifted to them based on the existence of a confidential relationship.

***Burgess v. Johnson,* 835 F. App'x 330 (10th Cir. 2020).**

The court held that a trustee could not invoke an arbitration provision in a trust to compel beneficiaries to arbitrate.

Defendant Howard Johnson was the sole trustee of a trust created under Oklahoma law. The plaintiffs were the beneficiaries of the trust. In May 2019, the plaintiffs sued the trustee in the United States District Court for the Northern District of Oklahoma alleging that he breached his fiduciary duties by wrongfully taking trust assets and spending trust money.

The trustee moved to stay the proceedings and compel arbitration under under §§ 3 and 4 of the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1–16. He argued that a certain provision of the trust constituted an arbitration agreement that entitled him to compel arbitration under the FAA. The district court denied the trustee's relief, and the trustee appealed.

The Tenth Circuit affirmed the district court's order.

The arbitration provision of the trust was as follows:

> The Arbitration Provision is § II, ¶ (1)(c) of the Trust Declaration. Section II is entitled "General Provisions Relating to Trusts." Aplt. App., Vol. 1 at 25. It states in ¶ 1 that the trustees "shall have power to manage and contract with respect to the Trust estate, in the same manner and to the same extent as Grantor could do had Grantor owned such Trust estate individually," and it also grants the trustees certain additional powers "in their sole discretion," such as the power to lease any portion of the Trust estate and to retain property received by the trustees "without regard to diversification." *Id.* The Arbitration Provision, ¶ 1(c), conveys to the trustees the power "[t]o compromise, contest, *submit to arbitration* or settle all claims by or against, and all obligations of, the Trust estate or the Trustees[.]" *Id.* (emphasis added).

Johnson, 835 F. App'x at *332. The trustee argued that the above provision authorized him to compel the trust beneficiaries to arbitrate their dispute with him.

The court found there was no ambiguity in the arbitration provision in the trust, in that it simply provided the trustee with a range of options in seeking to resolve a dispute involving the trust. The language in the provision was purely permissive. The trustee could decide to arbitrate or settle any claim, but the provision did not compel an adversary to arbitrate disputes. *Id*. at *332-33.

Furthermore, the court rejected the trustee's argument that the trust granted the trustees the power to exercise authority in their sole discretion, and thus, the sole discretion to compel arbitration. The court found that sole discretion does not mean that the trustees have absolute

power to compel arbitration, but rather that no one can tell them whether to decide to arbitrate. *Id*.

Finally, the trustee cited a series of cases to argue that the United States Supreme Court ruled that a permissive arbitration clause is a mandatory arbitration clause. The court found those cases to stand for a narrow proposition of law in the particular context of collective-bargaining agreements and thus not applicable to the facts at hand.

Ultimately, the court held that the arbitration provision in the trust "only allows the [t]rustee to agree to resolve disputes through arbitration and does not empower him to compel others -- even trust beneficiaries -- to submit their disputes to arbitration." *Id*. at *334.

***Attorney General v. Sanford,* 225 A.3d 1026 (ME 2020).**

This case stands for the proposition that the discretionary charitable distributee of a charitable trust has standing under the Uniform Trust Code to sue the trustee of charitable trust for breach.

The decedent established the Seal Cove Auto Museum ("Seal Cove"). He also established a charitable trust to support his automobile collection. After his death in 2007, the trust acquired most of the cars and an endowment to support maintenance and display of the collection. The trust permitted, but did not require, the trustees to make distributions to Seal Cove.

The auto collection was displayed at Seal Cove for many years. In 2008 and again in 2014, the trust entered into contracts that allowed the display of the collection at Seal Cove, and under the contracts the trust paid Seal Cove $200,000 annually to support operations. Under the contract, Seal Cove had the right to renew the contract for five-year periods in perpetuity if Seal Cove met certain museum standards.

Seal Cove sued the trustees, alleging excessive compensation and self-dealing. The attorney general of Maine raised the same allegations and sought the same relief as Seal Cove.

On motion of the trustees, the Seal Cove complaint was dismissed for lack of standing by Seal Cove.

The trial court also approved a consent decree between the trustees and the attorney general that limited future compensation but did not include the disgorgement of previously received compensation.

Seal Cove appealed, and the Maine Supreme Judicial Court reversed the finding of lack of standing. That court determined that Seal Cove was not a qualified trust beneficiary under the Maine Uniform Trust Code (MUTC). However, the MUTC gives a charitable organization expressly designated to receive charitable trust distributions the rights of a qualified beneficiary. A charity having the rights of a qualified beneficiary thus has standing to assert a claim of breach of trust.

V. SPOUSAL RIGHTS IN PROBATE LITIGATION

***Gabey v. Gabey*, A-0322-20, 2021 WL 2011605 (N.J. Super. App. Div. May 20, 2021).**

Husband and wife**,** Richard and Ruth Gabey, had been married for approximately 41 years when Richard filed for divorce in April 2019. While the divorce was pending, Ruth executed a will in September 2019 in which she acknowledged that she was "currently married" to Richard but "anticipate[d]" they would be divorced "shortly." She declared in the will that Richard "[was] to receive no benefit from [her] estate." Ruth died shortly thereafter, while the divorce action was still pending.

In January 2020, the executor of Ruth's estate filed a motion in the matrimonial court to be substituted as the party in interest in Ruth's place.

Richard cross-moved for summary judgment, seeking to dismiss the divorce action in light of Ruth's death. The court denied the executor's motion and granted Richard's motion to dismiss. The executor appealed the dismissal and argued that the executor should be substituted in Ruth's place as the party in interest in the divorce matter.

The Appellate Division affirmed the trial court. Specifically, it noted that except in certain circumstances, divorce proceedings abate with the death of one of the parties. *See Carr v. Carr*, 120 N.J. 336, 342-43 (1990); *Kay v. Kay*, 200 N.J. 551 (2010), *aff'g o.b.*, 405 N.J. Super. 278 (App. Div. 2009).

The executor argued that the exceptions found in *Carr* and *Kay* – that a surviving spouse or a deceased spouse's representative could continue a matrimonial action "for the limited purpose of proving that the deceased spouse had diverted marital assets" – applied in this case. *Kay*, 200 N.J. at 552 (citing *Carr*, 120 N.J. at 353-54). However, the *Kay* decision limited the exception and held that an estate: (1) could not pursue a claim that was "merely one for equitable distribution of an agreed-upon universe of marital property"; and (2) could not "assert a new claim," but would be relegated only to "continu[ing] claims raised before death [that], in fairness, should not be extinguished lightly or prematurely." *Id*. at 553-54.

In light of the restrictions imposed by *Carr* and *Kay* and the fact that Ruth never claimed that Richard had wrongly diverted martial assets, the appellate panel affirmed the trial court's order terminating the matrimonial litigation.

VI. CLAIMS BY AND AGAINST FIDUCIARIES

***In re Estate of Applebaum*, A-3948-18, 2021 WL 1570289 (N.J. Super. App. Div. Apr. 22, 2021).**

The plaintiff appealed numerous orders in connection with the administration of the estate of her deceased husband. The primary assets of the estate were the decedent's interests in certain businesses; the case epitomizes the interplay (and often tension) between a decedent's businesses and his estate.

Three points of the appeal are the focus of this summary. First, the plaintiff appealed the trial court's denial of her request to remove the executor. Citing the standards in N.J.S.A. §

3B:14-21(c), the trial court found that removal of an executor should be granted only sparingly. *Wolosoff v. CSI Liquidating Tr.*, 205 N.J. Super. 349, 360 (App. Div. 1985). The Appellate Division agreed:

> "Where a decedent has chosen and designated persons to act as fiduciaries respecting his estate, . . . courts [should] act[] with reluctance to remove them from office." *Connelly v. Weisfeld,* 142 N.J. Eq. 406, 411 (E. & A. 1948) (citation omitted). Accordingly, "[c]ourts are reluctant to remove an executor or trustee without clear and definite proof of fraud, gross carelessness, or indifference." *In re Hazeltine's Est.*, 119 N.J. Eq. 308, 314 (Prerog. Ct. 1936); *see also In re Margow's Est*., 77 N.J. 316, 326 (1978) (noting courts are "hesitant to defeat the will of the testator," even where a chosen executor is flawed). "[S]o long as an executor or trustee acts in good faith, with ordinary discretion and within the scope of his [or her] powers, his [or her] acts cannot be successfully assailed." *Connelly*, 142 N.J. Eq. at 411.

Applebaum, at *7.

Second, the plaintiff appealed the trial court's approval of an in-cash distribution of the stock that comprised the residue of the estate. The will devised 60% of company stock to a trust but did not directly address the remaining 40% of the stock; the will simply devised the remainder of the estate to plaintiff.

Citing N.J.S.A. § 3B:23-1 to -10, the appeals court found no abuse of discretion concerning the in-cash distribution of the stock. Although that plain language of the will did not indicate whether the decedent preferred distributions in-kind or in cash, the will provided the executor with the discretion to make that determination. Even if the preference for in-kind distribution under N.J.S.A. § 3B:23-3 was applied, both the executor and the trial court had exercised their discretion regarding distribution of the stock in cash.

Third, the plaintiff appealed the trial court's approval of the final accounting. The Appellate Division began by noting that accounting actions are commenced as summary proceedings. *R.* 4:83-1; *R.* 4:67-5; N.J.S.A. § 3B:2-4 (allowing actions by fiduciaries to proceed in summary manner); *Garruto v. Cannici*, 397 N.J. Super. 231, 240-41 (App. Div. 2007). In turn:

> "[A] court must make findings of facts, either by adopting the uncontested facts in the pleadings after concluding that there are no genuine issues of fact in dispute, or by conducting an evidentiary hearing." *Courier News v. Hunterdon Cnty. Prosecutor's Off.*, 358 N.J. Super. 373, 378-79 (App. Div. 2003). If there are genuine issues as to any material fact, the court should conduct an evidentiary hearing on those disputed issues. *Tractenberg v. Twp. of W. Orange*, 416 N.J. Super. 354, 365 (App. Div. 2010) (citing *R.* 4:67-5); *Courier News*, 358 N.J. Super. at 378. Accordingly, "at any stage of the action, the court for good cause shown may order the action to proceed as in a plenary action[.]" *R.* 4:67-5.

Applebaum, at *11.

The Appellate Division also summarized exceptions to accountings, quoting *R.* 4:87-8 and explaining the procedural nature of the process:

> Exceptions to an executor's account are "a vehicle for determining the propriety of the executor's statement of assets and claims for allowance." *Perry v. Tuzzio*, 288 N.J. Super. 223, 229 (App. Div. 1996). Our Supreme Court has described an action to settle an account as "a formalistic proceeding" that "involves a line-by-line review [of] the exceptions to an accounting." *Higgins v. Thurber*, 205 N.J. 227, 229 (2011) (citing *R.* 4:87-1(a)). Although persons making an objection may file an answer, no counterclaim or crossclaim can be filed without leave of court. *R.* 4:67-4(a).

Id.

The court likewise explained that *R.* 4:87-8 does not specify how the exceptions must be presented, except that they must be written, signed by the person making the exceptions or his or her attorney, and must identify "the item or omission excepted to, the modification sought in the account[ing,] and the reasons for the modification." *R.* 4:87-8.

The plaintiff had filed an answer disputing the value of the decedent's business, the executor's commissions, and the executor's claims for counsel and accountant fees. She had also provided the reasons for the modifications she sought.

On this issue, therefore, the appeals court reversed, and remanded for a limited hearing:

> the Chancery court will have the discretion to limit the evidentiary hearing to genuine, material disputes concerning the accounting…. We make this final point because a review of the record establishes that plaintiff's various lawyers have often made allegations of fraud and misconduct while failing to identify specific facts supporting those claims. The brief submitted by plaintiff on this appeal illustrates that point. Plaintiff's counsel repeatedly used words such as "brazenly," "clearly spurious," "draconian," "inhumane," "rampant," "Orwellian," "pernicious," "nefarious," "mind-boggling," and "death penalty." Those hyperboles are a poor substitute for reasoned analysis of the facts and law. Accordingly, although we are constrained to remand this matter for an evidentiary hearing, the Chancery court will have the appropriate discretion to conduct a hearing that is focused on the presentation of facts supported by evidence and facts that are limited to appropriate exceptions to the final accounting.

Applebaum, at *12.

***Anand v. Anand*, A-3253-19, 2021 WL 1714193 (N.J. Super. App. Div. Apr. 30, 2021).**

The plaintiff was the executor of the estate. She asserted that the defendants failed to provide an accounting of funds derived from the sale of the decedent's property under a power of attorney.

The defendants moved to dismiss the action, asserting that: the power of attorney was executed in the United Kingdom; the real property that was sold was located in India; the proceeds were in banks in India; and the decedent's will was probated in the United Kingdom.

The trial court dismissed the action on venue grounds, finding that the proper venue was in India, where the real property was located.

The Appellate Division reversed and remanded. It concluded that the record lacked meaningful findings of fact. The trial court should have permitted "jurisdictional discovery." If jurisdiction were established in New Jersey, then the trial court could address the proper venue. The appeals court also noted that venue requirements are not jurisdictional. Finally, the trial court should have also considered the doctrine of *forum non conveniens*.

***In re Gloria T. Mann Revocable Tr.*, 468 N.J. Super. 160 (App. Div. 2021).**

Gloria Mann ("Gloria") died on August 10, 2017. Her children, plaintiff David Mann ("David") and defendant Doree Gottlieb ("Doree"), were the primary beneficiaries and successor co-trustees of the Gloria T. Mann Revocable Trust ("Trust").

A few months after Gloria passed away, David and Doree retained an attorney to assist them with the Trust administration. They opened bank accounts and bank personnel conducted credit checks and judgment searches that revealed four outstanding judgments against David that were over 10 years old.

David met with Doree and her husband soon thereafter and according to David, Doree was worried that the judgments would affect their ability to administer the Trust. She also expressed this concern to the trust attorney. David agreed to resign as co-trustee. The Trust attorney drafted the resignation documents and David signed them on November 24, 2017. He subsequently submitted the resignation to the banks holding Trust assets, and Doree was thereafter the sole trustee of the Trust.

Displeased with Doree's administration of the Trust, David filed a Verified Complaint about eight months after he resigned, seeking: an account of Doree's administration; return of trust property; an order declaring him trustee of the Trust; compensatory, consequential, incidental, nominal and expectation damages, and interest; and attorney's fees.

The trial court dismissed David's complaint with prejudice and ordered Doree to provide an updated accounting and to distribute the Trust assets in accordance with the court's order. The court additionally set dates for Doree's counsel to file a fee application.

David appealed the trial court's judgment on the above as well as its subsequent order allowing Doree's counsel fees to be paid from Trust assets. He argued that the trial court erred in: (1) finding that David had resigned as trustee; (2) declining to award David adequate

compensatory, punitive, and equitable damages in light of Doree's conduct; (3) failing to order the Trust to pay David's legal fees and costs from the Trust, and assessing all such fees against Doree's interest in the Trust; and (4) preventing David from presenting rebuttal witnesses.

The Appellate Division affirmed the trial court's decision for the reasons set forth below.

Trustee Resignation

The facts supported the trial court's finding that David had resigned as trustee. The resignation document was unambiguous on its face, and David submitted the resignation to the banks which caused him to be removed from the accounts.

While the applicable law generally requires that notice be provided to beneficiaries when a trustee resigns, such notice was not required in this case because the Trust instrument provided for continuing administration of the Trust and the only other primary beneficiary -- Doree -- knew that David resigned.

Compensatory, Punitive, and Equitable Damages for Trustee Misconduct

David claimed that the court should award him compensatory, punitive, and equitable damages for Doree's misconduct, which he claimed included: poor investment decisions, making distributions to herself without offering a similar distribution to David, and failing to keep David informed of the Trust administration.

Investment Decisions

David asserted that Doree's failure to invest over $700,000 violated the Prudent Investor Act ("the Act"). While the Trust allowed Doree to hold Trust funds in commercial and savings loan accounts, David argued that that was only suitable when Gloria was alive and acting as trustee. As a result of being held in savings accounts, the assets realized a return on investment of only 0.45% over a 28-month period. David argued that this investment strategy was not in compliance with the requirements of the Act.

Under the Act, a fiduciary has a six-month grace period in which it is required to review the trust assets, and make and implement a plan regarding the administration of the assets. N.J.S.A. § 3B:20-11.7. After the six-month period expires, the fiduciary has a duty to make the trust property "productive so that a reasonable income will be available for the beneficiaries." *See Pa. Co. for Ins. on Lives v. Gillmore*, 137 N.J. Eq. 51, 58 (Ch. 1945).

The Act also provides that the prudent investor rule "may be expanded, restricted, eliminated, or otherwise altered by express provisions of the trust instrument," and a fiduciary is not liable to a beneficiary to the extent that it relies on those trust provisions. N.J.S.A. § 3B:20-11.2(b).

The Trust at issue had such provisions which allowed Doree to hold Trust property without regard to diversification or productivity, and to deposit them in savings accounts. The court also noted that Doree was under an obligation to manage the Trust's assets with caution. The appellate panel determined that the trial court was correct in its determination that Doree had not violated the Act.

Interim Distributions

The court also determined that damages were not incurred as a result of Doree's refusal to make interim distributions to David. The trust attorney had advised Doree that she should wait to make interim distributions to David from November 2017 until the inheritance taxes were paid. Under the broad powers granted the trustee under the Trust, Doree had authority to pay trust expenses and any liabilities sustained in the Trust's administration, as well as to distribute Trust assets. The Trust instrument did not compel her to make interim distributions. A beneficiary's right to compel distributions is limited by the terms of the trust. *See Tannen v. Tannen*, 416 N.J. Super. 248, 265-67 (App. Div. 2010).

The appellate panel determined that other than Doree's $37,000 distribution to herself, she did nothing inappropriate in administering the Trust. That distribution to herself, without making an equal distribution to David, was in violation of Doree's fiduciary duty. *See* N.J.S.A. § 3B:31-56.

However, David's claim that he was entitled to interest on the $37,000 not distributed to him above and beyond the 5% awarded by the trial court was without merit. David's expert opined on the income David could have earned on his share of the Trust if he was managing the investment. The trial court dismissed the expert's opinion as pure speculation and concluded damages were not appropriate. Specifically, in order for David to recover lost profits, he must show with certainty the amount he lost; the court instead awarded the undistributed funds with 5% interest. The appellate court determined that the trial court's decision was well within its discretion.

An additional award based on punitive damages for Doree's breach of trust for failing to make a distribution to David when she made one to herself was not appropriate, in part because David did not claim punitive damages in his Verified Complaint, as is required. *See* N.J.S.A. § 2A:15-5.1. Even if David had requested the relief in his Complaint he did not demonstrate by clear and convincing evidence that Doree acted with actual malice or acted with wanton and willful disregard. *See* N.J.S.A. § 2A:15-5.12(a).

Informing Beneficiaries of Trust Administration

N.J.S.A. § 3B:31-67(a) requires "[a] trustee [to] keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests." David did not make any inquiries of Doree until April 2018, at which time there was about a two-week delay before the trust attorney responded to him. Other than her breach with regard to the $37,000 distribution, the trial court determined that Doree had complied with her fiduciary duties. Furthermore, David did not show how Doree's failure to inform him of actions she took resulted in any loss to him.

Award of Counsel Fees and Costs

David objected to Doree's counsel fee application by simply stating in his appeal that Doree's misconduct should result in a punitive damages award and that she should not be reimbursed for her legal fees from the Trust. Since he did not adequately brief the issue, David waived his right to challenge the fee award. Irrespective of that failure, the appellate court stated that David failed to show that Doree attempted to deprive David of any Trust asset, which could preclude her from receiving a fee award. *See Behrman v. Egan*, 31 N.J. Super. 95, 100 (Ch. Div.

1953), *modified*, 16 N.J. 97 (1954). The trial court did not abuse its discretion in awarding counsel fees and costs to Doree.

On appeal, David also requested that his fees be paid by the Trust, but he made no such application to the trial court; accordingly, the appellate panel did not address that claim.

***In re Estate of Farag*, A-3204-19, 2021 WL 2309622 (N.J. Super. App. Div. June 7, 2021).**

This family dispute spanned six years of litigation.

The parties were three adult siblings whose mother made an inter vivos transfer to one of the siblings of $228,000, with instructions to hold the funds in trust and distribute the funds evenly among all the siblings following the mother's death. However, the sibling who received the funds allegedly used a large portion of the funds for personal expenses.

The parties' mother also conveyed equal shares of her home to the parties.

Following the mother's death, the trial court appointed an attorney to serve as administrator of her estate.

The plaintiff moved into the home following the mother's death and lived there until it was sold, paying most of the real estate taxes and improvement expenses. The plaintiff ultimately had to be ejected from the home.

The trial court adopted the administrator's recommendations regarding the plaintiff being reimbursed for certain improvement expenses and charged for occupancy of the home, along with the administrator also being awarded fees for his services.

The Appellate Division affirmed a portion of the appeal and dismissed the remainder.

VII. FIDUCIARY AND ATTORNEY COMPENSATION

***In re Estate of Oh*, No. A-2760-18, 2021 WL 1096710 (N.J. Super. App. Div. Mar. 23, 2021).**

This decision is the latest phase in a dispute between two brothers regarding the assets of their father. *In re Estate of Byung Tae-Oh*, 445 N.J. Super. 402 (App. Div. 2016). This ruling dealt with counsel fees.

The decedent died intestate, as a resident of Korea. His estate was valued at $31 million.

The defendant/son, Hyung Kee Oh, had started a business in the United States. The decedent had wired $900,000 to an account of the business.

The plaintiff, Wonki Oh, sued in Korea to determine the value of the estate and further alleged that the defendant's share in the estate had to be reduced by the inter vivos transfers from the decedent to the defendant. In the New Jersey litigation, among other claims, the plaintiff asserted that the decedent had New Jersey assets and sought the appointment of an administrator for the estate. The plaintiff also claimed that the $900,000 transfer represented the decedent's

investment in the other son's business and in turn was an asset of the estate. The defendant denied that the decedent had any assets in New Jersey and argued the $900,000 was a gift.

The trial court awarded counsel fees to both parties. The defendant appealed, arguing that the plaintiff was not entitled to fees because he had done nothing to benefit the estate. The plaintiff cross-appealed.

The Appellate Division found that the defendant's fee application should have been denied in its entirety; it reversed the trial court's award of almost $1 million in fees. The court found that the defendant took no action that benefitted or assisted in the creation of the fund in court; instead, he contested the claim that the $900,000 was an estate asset and instead asserted that the funds were a gift to him personally. Indeed, the defendant did all in his power to avoid the creation of the fund in court.

The appeals court likewise rejected the defendant's claim that the plaintiff's motion for fees was untimely, and traced the standards and rules for fee awards in the rulings of the trial court.

The Appellate Division likewise found that, while the plaintiff's primary motivation may have been for himself, his action still benefitted the estate and the other estate beneficiaries.

Finally, the appeals court supported the award of counsel fees to the plaintiff but found that the trial court needed to assess that award in light of a number of factors, including the value of the estate, the amount in dispute, the skill and ability of the attorney, the result obtained, and the benefits and advantages to the estate. The matter was remanded for that analysis.

***In re Estate of Blair,* No. A-1394-19, 2021 WL 1424066 (N.J. Super. App. Div. Apr. 15, 2021).**

This appeal addressed the courts' ability to limit ongoing filings by a *pro se* petitioner involving the estate of her aunt. Eventually the trial court precluded the party from filing additional pleadings against the estate, its beneficiaries, and its attorneys, without first obtaining leave from the court.

Three prior appeals had already been filed by the petitioner. The dispute centered on a will contest. In 2014, the trial court granted summary judgment against the petitioner. Thereafter, she filed more than 30 pleadings over four years, aimed at reversing the summary judgment.

At one point, in 2015, the trial court granted the estate's motion to impose sanctions for frivolous litigation. The Appellate Division reversed that ruling, as not supported by a proper certification under the Court Rules.

In 2016, the petitioner filed claims in federal court against Bergen County and the Bergen County Surrogate's Office. These claims failed.

Later, in 2019, the petitioner filed a motion to amend prior rulings of the trial court, to remove degrading references to her in those decisions, and to have the judge recuse himself. The court denied that motion.

Around that same time, the trial court granted a motion by the estate to preclude the petitioner from any additional filings without leave from the assignment judge of Bergen County. The trial judge included a 27-page opinion on the constitutional and public policy bases for limiting the petitioner's filings.

The petitioner appealed. The Appellate Division affirmed. It explained that courts have the inherent authority, if not the obligation, to control frivolous or vexatious litigation. Where traditional sanctions fail to deter a litigant, an assignment judge may enjoin that party from bringing further actions. However, this power must be used sparingly, and balanced against the fundamental public right to access to the courts.

In this case, the Appellate Division observed that the petitioner never relented in her filings, despite numerous rulings against her and her brush with sanctions. The appeals court found no basis to disturb the trial court conclusion that the petitioner's filings demonstrated a pattern of frivolous litigation designed to harass the estate, its attorneys, the court, and the court staff.

The estate cross-appealed the trial court's denial of financial sanctions against the petitioner. After reviewing the standards under *R.* 1:4-8 for frivolous filings, the Appellate Division noted that the standard of review on appeal was abuse of discretion. It found no basis to disturb the trial court's denial of financial sanctions against the petitioner. The trial court had sufficiently sanctioned the petitioner by enjoining further filings, and had determined that monetary sanctions would be inadequate to curtail the petitioner.

***In re Estate of Balassone,* A-0399-20, 2021 WL 2285232 (N.J. Super. App. Div. June 4, 2021).**

Nicholas Balassone died on November 25, 2008. Decedent's grandnephew, Robert, was appointed executor. In April 2011, in response to an action by Arthur, a beneficiary, the court entered the first of three orders compelling the executor to file a formal account. The executor failed to do so.

In December 2012, in response to a separate action filed by a different beneficiary, Joyce, the court entered a second order compelling the executor to account. Again, the executor failed to do so.

In July 2015, Arthur and David, the spouse of a beneficiary, filed an action for judgment removing the executor. In September 2015, the court entered an order directing the executor to make final distribution of the estate's assets within 30 days. In November 2015, the executor filed an accounting but did not make distribution.

In January 2016, the court ordered that the executor settle the estate within 30 days. Again, the executor failed to comply.

In June 2016, the probate judge ordered the executor to provide a final estate accounting. Again, the executor did not comply.

In January 2017, the judge removed Robert as executor. In the order, the judge noted, "In removing the executor, the court made no finding as to the cause for the removal of the executor at this time . . . ."

In May 2017, Robert sent a check for $102,000 to the successor fiduciary. However, Robert did not forward the estate's records.

In August 2017, the judge ordered Robert to make the entire estate file available within seven days. The order also awarded plaintiffs $3,300 in attorney's fees.

Three years later, in May 2020, Arthur and David moved for approximately $49,000 in attorney fees from Robert, citing his delay in administering the estate as necessitating their filing of various motions related to the estate. Arthur and David did not seek fees from the estate.

In August 2020, the probate judge denied the motion for fees, concluding that since there was no will contest or attorney malpractice claim, there was no exception to the American Rule that would support fee-shifting against Robert.

The Appellate Division affirmed, noting that plaintiffs were "unable to cite any court rule or statute in support of their claims for attorney's fees." Rather, plaintiffs had relied on *Packard-Bamburger & Co., Inc. v. Collier*, 167 N.J. 427, 444-45 (2001). *Packard-Bamburger* was distinguished by the Appellate Division because in *Packard-Bamburger*, the fee-shifting was based upon an attorney malpractice action.

Since the motion did not seek fees from the estate, there was no discussion of the "fund in court" exception to the American Rule. Also, *R.* 1:10-3, which provides for counsel fees to a party who successfully moves for enforcement of litigant's rights, was apparently never raised by the moving parties because the motion for fees was not a motion to enforce litigants' rights.

***In re Estate of Tkachuk*, A-3578-19, 2021 WL 2711116 (N.J. Super. App. Div. June 30, 2021).**

Karen Lesso Conover ("Conover") was the executor and primary beneficiary of the estate of Margaret C. Tkachuk ("Estate"). The law firm she retained to assist her with the administration of the Estate made a tax allocation error that benefited her.

Mark Lesso ("Lesso"), a residual beneficiary of the Estate, filed a complaint that sought an accounting and alleged that the $61,878 tax payment made from the residuary estate was in error. Conover hired a second law firm to represent her in the litigation, and she eventually reimbursed the tax payment to the Estate. Conover later retained a third firm to represent her with respect to both the administration of the Estate and the litigation.

The parties entered into a settlement agreement and submitted a consent order ("Order") to the court which required Conover to put the first law firm on notice of a potential malpractice claim related to the tax error. Conover never fulfilled this obligation. The Order further required all attorneys seeking fees and costs in connection with the litigation to file their fee applications with the court. Any party whose attorneys who were already paid by the Estate and whose fee application was not approved by the court would be required to return such fees to the Estate.

After reviewing the fee applications, the court rendered a decision that required Conover to reimburse $33,129 to the Estate for counsel fees charged by attorneys who represented her in the litigation and whom she paid from Estate funds – thus creating a fund in court. Any unpaid fees would become Conover's personal responsibility. The court awarded Lesso's attorneys $25,986.85 in fees and costs which were to be paid from the fund in court.

Conover filed a motion for reconsideration, which was denied and increased the amount she owed the Estate to about $39,000. She appealed the trial court order and the reconsideration denial.

On appeal, Conover asserted that the trial court: (1) erred to the extent it awarded Lesso's legal fees to be paid from the Estate under *Rule* 4:42-9(a)(3) and under *In re Estate of Vayda*, 184 N.J. 115 (2005); (2) abused its discretion when it ordered Lesso's feeds be paid from the fund in court, when the court's decision was motivated by equitable considerations; and (3) erred by making determinations as to disputed facts on an incomplete record.

The appellate court affirmed the trial court order and denial of the motion for reconsideration. Specifically, the panel found that the trial judge had noted during the reconsideration motion hearing that the reference to *Rule* 4:42-9(a)(3) was a typographical error, and instead intended to award plaintiff's legal fees under *Rule* 4:42-9(a)(2) which governed the payment of counsel fees from a fund in court. Further Conover's reliance on *Vayda* was misplaced. The appellate panel agreed that in this matter, the successful litigant's – i.e. Lesso's – counsel fees should be paid out of the Estate.

Additionally, the trial court's decision that Conover should be responsible for her own fees and reimburse said fees to the Estate, creating the fund in court, was not an abuse of discretion, nor a misinterpretation of the law. The appellate court confirmed that the trial court correctly followed the two-step process evaluating when legal fees should be paid from a fund in court, as illustrated in *Porreca v. City of Millville*, 419 N.J. Super. 212, 225 (App. Div. 2011). Specifically, the court considered (1) whether Lesso was entitled as a matter of law to an attorney fee award under the fund in court exception, and (2) whether the fee amount, which was within the discretion of the court, was reasonable under the facts of the case.

As to Conover's third argument, the court determined that while the underlying record in this case may have been incomplete, it was harmless error because the basis for determining the allocation of fees was not based on Conover's actions as executor of the Estate, but rather on the creation of a fund in court.

Lastly, Conover argued that she should not be responsible for the first law firm's fees because they were retained to assist with the administration of the Estate. The appellate panel affirmed the lower court's decision since the first firm did not represent the Estate, but rather Conover in her capacity as the executor of the Estate. Furthermore, Conover had agreed and subsequently failed to notice the first law firm of a potential malpractice claim. Had she done so, and prevailed, those fees would have been returned to the Estate.

VIII. DISPUTES AS TO CHARITABLE TRANSFERS

***In re Bierstadt Paintings Charitable Tr., Dated October 6, 1919,* A-0529-20, 2021 WL 3057076 (N.J. Super. App. Div. July 20, 2021).**

In 1919, J. Ackerman Coles ("Coles"), a well-known doctor, art collector, and philanthropist, gifted *inter vivos* two paintings to the City of Plainfield ("the City"). The paintings, by Albert Bierstadt, have been held in a charitable trust by the City and displayed in the City's library in the municipal building.

These paintings have since been held by the City in the charitable trust, with the City acting as trustee. One of the paintings, a landscape, is entitled "Autumn in the Sierras." The other work, the one at issue, is entitled "The Landing of Columbus"; the City alleged that this work depicts racial themes and undertones. As such, the City instituted a lawsuit requesting modification of the trust so it could sell the paintings.

One hundred years after the paintings were donated, the City filed a petition seeking modification of the trust under the *cy pres* doctrine and N.J.S.A. § 3B:31-29(a). The City asserted that the Columbus painting contains racist implications and to display it in a public forum in a community comprised of mostly people of color would continue to cause irreparable harm. The City further alleged that the Columbus painting no longer provided an aesthetic enjoyment to the community, and thus the charitable trust was impractical. The only remedy the City sought was judicial modification of the trust pursuant to the *cy pres* doctrine, to enable the sale of both paintings. The City proposed that the proceeds from the sale would be held in trust by Plainfield Promise, a charitable organization that would use the money to create a financial literacy program for the City's youth, create a college scholarship fund for City residents, and establish and construct the "Plainfield Center of Excellence," a recreational educational facility. The City conceded that the Sierras work was not offensive, but asserted that the municipality did not have the economic resources to maintain and protect the highly valued painting.

In 2016, the Columbus painting was appraised at $15,000,000 and the Sierras was valued at $4,500,000.

The Attorney General's Office had no objection to the sale of the paintings but questioned whether the intended plan to use the proceeds from the sale was in line with the grantor's intent. Thus, they left the ultimate decision on the modification of the trust, the sale of the paintings, and the use of the proceeds to the discretion of the court.

A beneficiary under Coles's will – the Scotch Plains Baptist Church – also submitted a letter to the court stating that if Coles was alive, he would not agree to the sale of the paintings, as he wanted to honor his father with the display of the paintings.

The trial court considered Coles's will, a 1986 memorandum from the City addressing the sale of the paintings, and a 1987 letter authorizing the exposition of the paintings in a museum. The trial court found that there was no evidence that Coles would have intended to have the paintings sold. In fact, his intent was evidenced by the way he devised the paintings with specific instructions and also the way he donated other items of value from the Coles family, which simply could not have been liquidated. The trial court found that the City was permitted to relocate the paintings or donate them to a museum, but denied the City's application to modify the charitable trust and sell the paintings.

The Appellate Division affirmed the trial court decision, finding that in applying the *cy pres* doctrine, the court must make two determinations: (1) if accomplishment of the particular purpose of the trust has become impossible, impractical, or illegal; and (2) if the court makes such a finding, to apply the trust funds to a charitable purpose as nearly as possible to the particular purpose of the settlor if there was a general intent to promote charity. The trial court had rejected the City's argument that it was impractical to retain the paintings, stating that the City did not sufficiently demonstrate why the paintings could not be placed in a different location, such as a museum. The Appellate Division agreed, not convinced by the City's

argument that the current social perceptions of Columbus rendered the continued ownership of the paintings impractical. The City was free to display the paintings in any location it chose. The Appellate Division also noted that the appraised value of the paintings reflected how highly coveted the works of art were.

Although it did not need to address the second prong, finding that City had not demonstrated the accomplishment of the trust was impractical, the appeals court commented on the second prong of the *cy pres* analysis. If the City was able to establish the impracticability test, the paintings could only be sold if a court finds that Coles originally donated with the general intent to promote charity. The Appellate Division found that the City had not offered evidence of Coles's general charitable intent; for instance, if Coles intended to support education in the community, as the City asserted, he would likely have made a monetary donation or bequest, not a gift of two masterpiece paintings valued by him more than any dollar amount.

IX. LEGAL MALPRACTICE AND SIMILAR CLAIMS

***Cohen v. Horn,* No. CV 19-5604, 2021 WL 50279 (D.N.J. Jan. 6, 2021), *aff'd in part, vacated in part, and remanded,* No. 21-1223, 2021 WL 2935029 (3d Cir. July 13, 2021).**

This was a legal malpractice case in the context of a will contest. A *pro se* plaintiff, Barry Cohen ("Cohen"), filed suit against his former attorney, as result of his attorney's alleged negligent representation in connection with Cohen's attempt to challenge his late father's will. The federal district court dismissed Cohen's case on summary judgment.

Cohen's father had executed a last will and testament in 1999 (the "1999 Will"). Under the 1999 Will, any remaining funds after satisfaction of debts and funeral expenses would be placed in trust for Cohen's mother, Selma Cohen ("Selma"). Cohen and his sister were named co-trustees. Upon Selma's death Cohen and his sister were to receive $200,000. In 2011, Cohen's father died and Selma probated the 1999 Will.

Several years following his father's death, in 2016 Cohen retained attorney Horn of the Jeff Horn Law Group, LLC, to represent him in a lawsuit regarding the administration of his father's estate. In response, Selma's counsel advised the parties that Cohen's father had executed a new will in 2009 (the "2009 Will") that left everything to Selma. Selma counterclaimed to probate the 2009 Will. Cohen challenged the 2009 Will on the basis that his father lacked testamentary capacity.

After Cohen and his counsel clashed over litigation strategy, Horn moved to withdraw as Cohen's counsel. Horn was relieved as counsel, and several months later, the trial court issued a judgment finding that Cohen's father had intended to revoke his 1999 Will and admitting the 2009 Will to probate. In response, Cohen filed a malpractice suit against Horn and his law firm in state court. Horn subsequently removed the matter to the federal court based on diversity jurisdiction and then filed a motion for summary judgment.

The federal court granted defendants' motion for summary judgment, finding that Cohen had failed to establish a prima facie case that Horn had breached a duty he owed to Cohen that proximately caused Cohen to suffer damages.

For instance, Cohen asserted that Horn failed to oppose a motion to quash. The record reflected that six days after the motion was filed, Horn emailed Cohen to inform him that the anticipated budget to oppose the motion to quash would be between $1,000 and $2,000, and to confirm whether Cohen wanted Horn to proceed with the opposition. Cohen did not present any evidence which suggested Cohen responded and requested that Horn oppose the motion. In early January, Horn informed Cohen that he was withdrawing as his counsel. On January 27, 2017, Horn informed Cohen, via email, that the court had scheduled both the motion to be relieved as counsel and the motion to quash for February 6, 2017, and that if Cohen did not hire new counsel or file a *pro se* response, the motions would be unopposed. The district court thus found that Cohen did not satisfy his burden of demonstrating that Horn breached a legal obligation regarding the motion to quash.

The district court also noted that Cohen was provided with sufficient time to obtain substitute counsel, such that Cohen's failure to prosecute his case could not be reasonably attributed to Horn's withdrawal from the case. Cohen had ample time to retain new counsel, to pursue discovery and file the responsive briefings or to file them *pro se*.

Finally, the district court also found that Cohen had failed to show he would have prevailed in his will contest. Cohen could not demonstrate that even if Horn had performed the requested actions, the underlying lawsuit would have resulted in a favorable recovery for Cohen, because he has not produced evidence sufficient to create a factual question regarding his father's testamentary capacity or the validity of the 2009 Will.

In granting Horn's motion for summary judgment, the district court reasoned:

> The only admissible evidence which casts doubt on Harry Cohen's testamentary capacity is [Cohen's] own assertion that his father's mental state was failing. But as explained above, failing mental state does not equate to a lack of testamentary capacity. Accordingly, [Cohen's] conclusory statement that his father lacked testamentary capacity is insufficient to establish that [Cohen] could have succeeded in the underlying estate matter.

Id. at *7.

***In re Robertelli,* No. 084373, 2021 WL 4270216 (N.J. Sept. 21, 2021).**

This New Jersey Supreme Court case highlights the importance of lawyers educating themselves on technology and commonly used forms of social media.

In 2007, respondent John Robertelli ("Robertelli") represented the Borough of Oakland and an Oakland police sergeant in a personal-injury lawsuit filed by Dennis Hernandez ("Hernandez"). In preparing a defense, Robertelli requested his paralegal -- Valentina Cordoba ("Cordoba") -- conduct internet research into Hernandez. *Id*. at * 3.

Although some of the facts were in dispute, Robertelli testified that at the time (in 2007-2008), he did know much about Facebook or how it worked. For instance, he did not know that Facebook had different privacy settings or what it meant to send a "friend" request. He stated

that he told Cordoba to monitor whether Hernandez was placing information about the lawsuit on the internet, and that he had no understanding that Cordoba was communicating directly or indirectly with Hernandez. *Id*. at * 7.

Cordoba testified that at first Hernandez's Facebook page was public. When it was turned private, she told Robertelli she could no longer access the information unless she sent him a "friend" request. She testified that Robertelli eventually told her to go ahead and send a "friend" request to Hernandez. Cordoba then forwarded Hernandez a message through Facebook, stating he looked like one of her favorite hockey players. Hernandez then sent her a "friend" request. *Id*.

Hernandez disputed these facts, testifying that his Facebook page was always private, and that Cordoba sent him a "friend" request that he accepted. At the time he accepted the request, he did not know Cordoba was working for the law firm representing the parties he was suing. *Id*.

Robertelli forwarded to Hernandez's attorney the Facebook postings downloaded by Cordoba. Hernandez's attorney accused Robertelli of violating New Jersey Rule of Professional Conduct (RPC) 4.2, which prohibits a lawyer from communicating with another lawyer's client about the subject of the representation without the other lawyer's consent. *Id*. at * 4.

In May 2010, Hernandez filed a grievance with the District Ethics Committee. The Committee declined to docket the grievance for full review. In July 2010, Hernandez's attorney wrote to the Office of Attorney Ethics ("OAE") asking it to investigate the "unethical" conduct of Robertelli. The OAE filed a complaint against Robertelli, alleging he violated several RPCs. After a hearing before the Special Master in 2008, the Special Master concluded that the OAE failed to prove by clear and convincing evidence that Robertelli violated the RPCs and dismissed the disciplinary complaint. *Id*. at * 5.

Following a de novo review of the record, six members of the Disciplinary Review Board determined that Robertelli violated the RPCs. Robertelli filed a petition challenging the determination.

The New Jersey Supreme Court held that the OAE had not sustained its burden of proving by clear and convincing evidence that Robertelli violated the RPCs. The Court found that in 2008 Facebook was not as well-known as a social media platform and that Robertelli did not know how it functioned.

Despite the Court finding that the disciplinary charges against Robertelli be dismissed, the Court warned the bar that had the events of this case occurred in 2021, the conclusion would have be different:

> To be sure, a lawyer litigating a case who -- by whatever means, including through a surrogate -- sends a "friend" request to a represented client does so for one purpose only: to secure information about the subject of the representation, certainly not to strike up a new friendship. Enticing or cajoling the represented client through a message that is intended to elicit a "friend" request that opens the door to the represented client's private Facebook page is no different. Both are prohibited forms of conduct under RPC 4.2. When the communication is ethically proscribed, it makes no difference in what medium the message is communicated. The same rule applies to communications in-person or by letter, email, or telephone, or through social media, such as Facebook.

Id. at * 13

Finally, the Court cautioned that "lawyers must educate themselves about commonly used forms of social media to avoid the scenario that arose in this case. The defense of ignorance will not be a safe haven." *Id*. at *14.

***Schindel v. Feitlin*, A-*2888*-19, 2021 WL 2391583 (N.J. Super. App. Div. June 11, 2021), *certif. denied*, NO. 085973, 2021 WL 4442587 (N.J. Sept. 24, 2021).**

Before his death in November 2016, the decedent, Arnold, executed three wills. In the first will, executed in July 2014, Arnold gave the bulk of his estate to his son, David (the petitioner), and made specific bequests to his friend, Hindy. The will designated David and Hindy as co-executors.

The second will was executed in December 2015 and, among other things, bequeathed Arnold's residuary estate in equal shares to David and Hindy.

The third will, executed in May 2016, contained a number of specific bequests, including $25,000 to David. It bequeathed the bulk of the estate's residue to Hindy and designated her as executor.

The defendant in this matter was the New Jersey attorney who drafted all three wills for Arnold.

When Arnold died in November 2016, Hindy offered the May 2016 will to probate; David filed a caveat and litigation ensued ("Probate Case"). David alleged that Arnold lacked sufficient capacity to execute the May 2016 will, and that it was the product of Hindy's undue influence. David sought instead probate of the July 2014 will and an order designating him as sole executor of the estate.

During the Probate Case, David's counsel deposed the drafting attorney, who represented neither Hindy nor the estate in the Probate Case. The Probate Case settled, and the settlement agreement included terms that released the parties' attorneys from any and all claims or causes of action arising from or pertaining to the Probate Case, including those claims which could have been raised in the Probate Case. The court entered an order in June 2018 probating the July 2014 will, enforcing the terms of the settlement, and dismissing the litigation.

David then filed a legal malpractice claim against the drafting attorney. Specifically, David complained that when the drafting attorney prepared the May 2016 will, he either knew or should have known that Arnold was being unduly influenced by Hindy and that Arnold lacked capacity.

The drafting attorney filed an answer and a third-party complaint against Hindy for contribution and indemnification. Hindy moved to dismiss the drafting attorney's third-party complaint, and he filed a cross-motion seeking dismissal of David's complaint pursuant to the entire controversy doctrine. The Law Division judge granted both motions.

David filed a motion for reconsideration, which the judge denied. David appealed. The issues considered by the Appellate Division were: (1) whether the entire controversy doctrine applies to probate proceedings; (2) if it does apply, whether the drafting attorney suffered

substantial prejudice because of David's failure to bring his malpractice claim at the same time he litigated the Probate Case; and (3) whether David would have been entitled to a jury trial on the malpractice claims.

The appellate court affirmed the Law Division's decision as follows.

Entire Controversy Doctrine

Court Rule 4:30A articulates the entire controversy doctrine principle that all related legal issues in a legal controversy should occur in one litigation and in one court. While the *Rule* does not require the joinder of all parties, *Rule* 4:5-1(b)(2) requires parties to certify in their initial pleading that they have joined all non-parties who should be joined in the action, including those who should be joined due to potential liability under the same facts alleged in the pleadings. This ensures that the courts control which parties should be joined and which claims remain under the jurisdiction of the court. If a party fails to comply with the *Rule*, and the failure was inexcusable, then the right of the undisclosed party to defend itself in the successive action has been substantially prejudiced, and the successive action will be dismissed under the entire controversy doctrine.

In this case, the appellate court determined that David's two claims raised in the malpractice action – that the drafting attorney knew, or should have known, that Arnold lack capacity and that Hindy was unduly influencing Arnold – were based on the same facts raised in the Probate Case, and therefore the malpractice claims arose from interrelated facts and the entire controversy doctrine applied. Therefore, the trial court's dismissal of David's Complaint was appropriate.

Legal Malpractice Claim

David claimed that his malpractice claim did not accrue until the Probate Case ended. The appellate court disagreed and stated that the accrual date in a legal malpractice situation is when the facts of the malpractice claim are discoverable and the client sustained actual damages. Accordingly, David's claim accrued when he knew that the drafting attorney had drafted the three wills and that the third will reduced David's share of the estate and excluded him as executor.

David also argued that under *Higgins v. Thurber*, 205 N.J. 227 (2011), the probate court was an inappropriate forum to assert his legal malpractice claim and that legal malpractice claims that arise in the context of probate litigation are excepted from the entire controversy doctrine. David's reliance on that case was erroneous. The focus of *Higgins* was a summary accounting, which is concerned with the conduct of the executor – it is not an attack on a decedent's will. *Higgins* recognized that in some instances a probate proceeding *should* encompass a claim of legal malpractice. Accordingly, David should have joined the drafting attorney in the Probate Case and asserted the malpractice claims in that proceeding.

Right To a Jury Trial

David asserted that his right to a jury trial on the malpractice claim would be abrogated if he were forced to pursue it in the same forum as his challenge to the 2016 will. *Higgins*, however, explicitly permits a chancery court to include such a claim. The courts have further recognized that the Chancery Division may conduct jury trials unless the right to jury trial is

waived. *See O'Neill v. Vreeland*, 6 N.J. 158, 167–68 (1951). Finally, a court may, on its own initiative, "try with an advisory jury any issue not triable of right by a jury." *Rule* 4:35-2.

Under this guidance, the malpractice claim could have been tried by a jury in the Probate Case, with the trial judge using the jury strictly in an advisory capacity on the issues of testamentary capacity and undue influence.

Accordingly, the appellate panel concluded that David's failure to assert the malpractice claim, or at least advise the court that the drafting attorney might be liable under the same facts as those presented in the will contest, was inexcusable.

Substantial Prejudice

David then argued that even if his failure to alert the court of the potential claim was inexcusable, the drafting attorney did not suffer substantial prejudice from the failure. The appellate court disagreed. It noted that the loss of available evidence and proofs needed to mount a defense is not the only harm suffered by a party who has not been joined in a matter – substantial prejudice can also be a result of the impact of the legal posture of the litigation which might expose the non-joined parties to claims of higher damages than they might otherwise have faced.

Here, for example, the drafting attorney was prejudiced because: he was already deposed in the Probate Case and might have to be deposed again under the malpractice claim; David's claim for damages could include attorney's fees for the Probate Case and the legal malpractice claim; David might have a claim for damages to the extent that the settlement with Hindy diminished his share of the estate; and most importantly, the drafting attorney had no voice in the terms of settlement agreement and the release because he was not a party.

***Clark v. Stover,* 242 A.3d 1253 (Pa. 2020).**

Clients brought a legal malpractice action against their attorney and law firm. The trial court entered summary judgment in favor of the attorney and the law firm and the appellate court affirmed. The clients appealed to the Pennsylvania Supreme Court, arguing that it should implement the "continuous representation rule" with respect to tolling relevant statutes of limitations.

The underlying controversy entailed litigation related to a decedent's estate, wherein David Clark ("David") retained an attorney to commence an action with regard to the estate. The attorney later filed a second complaint on behalf of Monica Clark ("Monica"), the decedent's mother. Both claims failed, and David and Monica filed the legal malpractice action in 2015, alleging professional negligence and breach of contract.

The attorney filed a motion for summary judgment, which the trial court granted, finding that David and Monica knew of the alleged negligence and breach of contract more than four years before filing the malpractice action. The applicable statutes of limitations require a negligence action to be brought within two years after accrual. *See* 42 Pa. C.S. § 5524(7). A breach of contract claim must be raised within four years after the breach. 42 Pa. C.S. § 5525.

The appeals court affirmed the trial court decision based on the "occurrence rule," under which the statutory period begins upon the happening of the alleged breach of duty. David and

Monica urged the adoption of the "continuous representation rule," which states that the statutes of limitations do not begin to run until the attorney's representation is terminated. In its decision not to adopt the continuous representation rule, the appellate panel cited the judiciary's previous rejection of this position in *Glenbrook Leasing Co. v. Beausang*, 839 A.2d 437, 442 (Pa. Super. 2003), *aff'd per curiam*, 881 A.2d 1266 (2005)).

The Pennsylvania Supreme Court also declined to adopt the continuous representation rule, explaining that the legislature establishes statutes of limitations and that the Pennsylvania Constitution specifically prohibits the courts "from suspending or altering any statute of limitations or of repose via rulemaking." *Clark*, 242 A.3d at 1256 (citing PA. CONST. art. V, § 10(c)). David and Monica cited to no relevant statutes that would work in favor of application of a continuous representation approach; the General Assembly alone has the authority to adopt the rule.

X. DISPUTES AS TO CHARITABLE TRANSFERS

***Breslin v. Breslin*, 276 Cal. Rptr. 3d 913 (Ct. App. 2021), *reh'g denied* (Apr. 20, 2021), *review denied* (July 14, 2021).**

The decedent ("Decedent") died in 2018, leaving an estate valued at between $3 and $4 million which was held in a living trust dated July 27, 2017 (the "Trust"). The Trust was amended and restated on November 1, 2017 ("Restated Trust"). David Breslin ("Breslin") was named the successor trustee in the Restated Trust.

The Restated Trust made three specific devises and directed that the remainder be distributed to the persons and charitable organizations listed on exhibit A in the percentages set forth. No such exhibit A was initially located, but Breslin found a document titled "Estates Charities (6/30/2017)" (the "Document") which listed 24 charities with handwritten notes appearing to be percentages.

Breslin filed a petition to confirm him as successor trustee and to determine the Trust's beneficiaries in the absence of exhibit A. Breslin served the charities listed on the Document. Several charities did not file formal responses.

The trial court confirmed Breslin as successor trustee and ordered mediation among all interested parties, including Decedent's intestate heirs and the listed charities. All of the interested parties, including intestate heirs and those listed on the Document, received notice of the mediation before it took place.

The notice explicitly stated that the mediation may result in a settlement agreement, and that persons and parties who received notice of the date, time, and place of the mediation but did not participate may nonetheless be bound by the terms of any agreement reached at the mediation.

Only the intestate heirs and five of the listed charities appeared at the mediation. They reached an agreement that awarded specific amounts to the various parties who had appeared, with the residue paid to the intestate heirs.

One of the participating parties filed a petition to approve the settlement, and the charities who did not participate in the mediation (the "Charities") filed their objections. Sometime

between the signing of the settlement agreement and its submission to the court for approval, Breslin located exhibit A which listed the Charities as beneficiaries of the Trust.

The court granted the petition to approve the settlement and denied the Charities' objections on the grounds that they did not file a response to Breslin's petition to determine the beneficiaries and did not appear at the mediation.

The Charities appealed, and the appellate court affirmed.

The appellate court noted that it had previously held that "a party who chooses not to participate in the trial of a probate matter cannot thereafter complain about a settlement reached by the participating parties." *Id.* at 918 *(citing Smith v. Szeyller,* 242 Cal. Rptr. 3d 585, 591 (Ct. App. 2019)). While there was no trial in this case, the trial court ordered the mediation, and it was a critical part of the probate proceedings. The Charities could not, therefore, ignore the court's order to participate in medication and then oppose the result.

The trial court made participation in mediation a precondition to a trial. *See* Cal. Prob. Code § 17206 (West). When the Charities failed to participate in the mediation, they waived their right to a trial. Since the Charities were not entitled to a determination of factual issues, such as Decedent's intent, they could not raise such issues for the first time on appeal.

The Charities also argued that Breslin failed in his duty as trustee to deal impartially with all beneficiaries, but the court found this argument to be without merit, concluding that the Charities' failure to participate was not Breslin's fault.

The Charities further argued that Breslin breached his fiduciary duties when he approved large gifts to Decedent's family, including himself, even though they stood to receive little or nothing under the terms of the Trust. The court rejected this argument as well noting that the charities who *had* participated in the mediation also approved the gifts to the family members. The Charities' argument also assumed that the beneficiaries of the trust were known, but in fact the court did not determine the identity of the trust beneficiaries.

Based on the above, the appellate court affirmed.

The appellate decision included a dissent. Appellate Judge Martin J. Tangeman asserted that the Trust should be administered according to Decedent's intent, which meant honoring his wishes above all else.

Judge Tangeman further stated that the court's reliance on *Smith, supra,* was misplaced because in that case, the beneficiary's failure to participate in mediation did not impact her inheritance and "preserved a common fund for the benefit of [her and] the [other] nonparticipating beneficiaries." *Breslin,* 276 Cal. Rptr. 3d at 810 *(citing Smith,* 242 Cal. Rptr. 3d at 594). Further, the nonparticipating beneficiary in *Smith* "forfeited her objections because she did not submit them until after the probate court had approved the settlement." *Id.* (*citing Smith,* 242 Cal. Rptr. 3d at 590).

In this case, the settlement disinherited the Charities and redistributed their share of the estate to other beneficiaries. Furthermore, the notice language unilaterally decreed that a party could settle the case on the Charities' behalf.

Lastly, Judge Tangeman pointed out that the facts changed substantially when Breslin found exhibit A, since it confirmed that the Charities had an unqualified right to inherit the funds from the Decedent's estate, and a "charitable gift must be carried into effect if it 'can possibly be made good.'" *Id. (citing Estate of Tarrant*, 38 Cal. 2d 42, 46 (1951)).

XI. MISCELLANEOUS CONCERNS

U.S. v. Estate of Kelley, No. 3:17-cv-965-BRM-DEA, 2020 WL 6194040, 126 AFTR 2d 2020-6605 (D.N.J. Oct. 22, 2020).

Lorraine Kelley died on December 30, 2003, and her brother, Richard Saloom ("Saloom"), and Richard Lecky were co-executors of her estate. The co-executors filed a Form 706 on behalf of the Estate of Lorraine Kelley ("Kelley Estate"), reporting an estate tax liability of $214,412 and a gross estate of over $1.7 million. The IRS examined the estate tax returns, and Saloom consented on the Kelley Estate's behalf to the assessment of an additional tax liability of $448,367, which was based on a corrected gross estate of over $2.6 million for a total tax of $662,780. As of September 2, 2019, the total unpaid balance of the Kelley Estate's estate tax liability was $688,644.

Saloom was the sole beneficiary of the Kelley Estate, and distributed and received all of the estate property without paying the estate tax. In late 2007, Saloom tried to resolve the tax liability and entered into an installment agreement with the IRS. Saloom died in March 2008, and his daughter, Rose Saloom ("Rose"), continued to make payments to the IRS.

When Saloom died, his gross estate included property valued at over $1.1 million. Rose was appointed executor of the estate of Richard Saloom ("Saloom's Estate) and filed a New Jersey inheritance tax return that listed Saloom's debt as including $456,406 in "indebtedness" for "federal tax." *Id.* at *2. Rose was the sole beneficiary of Saloom's Estate, and she eventually distributed and received all the property from it, without paying the tax due to the IRS.

In February 2017, the United States filed a complaint seeking reduction of the estate tax assessment to judgment against the Kelley Estate, transferee liability against Saloom' Estate, fiduciary liability against Saloom's Estate, fiduciary liability against Rose , and liability against Rose under the New Jersey Uniform Fraudulent Transfer Act ("UFTA").

Rose filed a motion to dismiss the complaint, which the court denied. The government later filed a motion for summary judgment. The parties entered into a consent judgment with respect to the claims against the Kelley Estate and closed the case. The United States later requested that the court re-open the case and restore the motion for summary judgment with respect to the claims against Rose and the Saloom Estate.

The court granted summary judgment against the Saloom Estate for the tax liability of the Kelley Estate because a beneficiary who "receives property from a decedent's estate is personally liable for any unpaid estate tax based on the value of the property received." *Kelley*, at * 3 (citing 26 U.S.C. § 6324(a)(2)). Summary judgment was appropriate in this case because Rose presented no arguments or evidence for why neither she nor her father's estate was liable for the Kelley Estate tax liability. Since there was no genuine issue of material fact in this respect, the government's motion was granted.

The court also granted summary judgment against the Saloom Estate for fiduciary liability under 31 U.S.C. § 3713(b) for the estate tax liability of the Kelley Estate. Section 3713 imposes personal liability on a fiduciary when he distributes assets to himself, before paying a government claim.

Personal liability will attach if the government can establish three elements: "(1) the fiduciary distributed assets of the estate; (2) the distribution rendered the estate insolvent; and (3) the distribution took place after the fiduciary had actual or constructive knowledge of the liability for unpaid taxes." *Id.* at *4.

The United States claimed that Saloom, as executor of the Kelley Estate, "distributed all of its approximately $2.6 million in property to himself, which rendered the estate insolvent," even though he had knowledge of the Kelley Estate's unpaid tax liability. *Id.* Rose did not present any evidence to dispute any of the three elements, and the court granted the government's motion for summary judgment as to fiduciary liability against Saloom's estate.

Using the same criteria outlined above, the court also granted the government's request for summary judgment against Rose for fiduciary liability under 31 U.S.C. § 3713(b) for the estate tax liability of the Saloom Estate. Specifically, Rose knew of the Saloom Estate's tax liability, but nonetheless transferred the assets to herself rendering the state insolvent, none of which she disputed.

The court, however, denied the United States' motion for summary judgment against Rose under the UFTA, which has the goal of preventing a debtor from placing his or her property beyond a creditor's reach by way of a fraudulent transfer. The UFTA states that a transfer can be found fraudulent if, among other things, the debtor made the transfer (a) "[w]ith the actual intent to hinder, delay, or defraud any creditor of the debtor," and if the debtor "intended to incur or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they become due." *Kelley*, at *5 (citing N.J.S.A. § 25:2-25).

The court determined Rose had no such intent, but rather, the transfer was the result of an inheritance, and the property remained within the reach of the government because Rose was still personally liable for the unpaid tax – it made no difference that the Saloom Estate was insolvent.

***U.S. v. Giraldi*, No. A-2234-19T1, 2021 WL 243833 (N.J. Super. App. Div. Jan. 26, 2021), *certif. denied*, 246 NJ 4334 (2021).**

This action involves a dispute over penalties for the non-willful failure to file a Report of Foreign Bank and Financial Accounts ("FBAR") form pursuant to the Bank Secrecy Act of 1970 (the "BSA"), 31 U.S.C. § 5311 *et seq.*

Congress enacted the BSA in response to the increasing unavailability of bank records – both foreign and domestic – of persons suspected of being involved in financial crimes such as money laundering. Specifically, the BSA requires the filing of certain reports and records that aid in "criminal, tax, or regulatory investigations or proceedings," or in conducting "intelligence or counter intelligence activities." 31 U.S.C. § 5311.

Under the BSA, U.S. citizens, residents, or those doing business in the U.S. must keep records or file reports when they "make[ ] a transaction or maintain [ ] a relation for any person with a foreign financial agency." 31 U.S.C. § 5314(a).

The Secretary of Treasury has implemented Section 5314 through a series of regulations which include requiring covered individuals who have "a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country" to file an FBAR form annually when those accounts collectively exceed $10,000 during the calendar year. 31 C.F.R. §§ 1010.350, 1010.306(c). The Secretary of Treasury may impose civil monetary penalties on individuals who violate any provision of the BSA, irrespective of whether such violations are willful or non-willful.

In this case, the defendant, Frank Giraldi ("Giraldi"), was a U.S. citizen who owned four foreign financial accounts. The government maintained that Giraldi should have disclosed his four accounts on FBAR forms for the years 2006 through 2009. In 2014, Giraldi voluntarily disclosed that he did not file FBAR forms for any of the tax years at issue.

Accordingly, the government assessed $160,000 for 16 separate $10,000 FBAR penalties – one penalty for each of Giraldi's four accounts that were not disclosed on four years' worth of FBAR forms. Giraldi eventually paid the government $60,000 in four $15,000 checks – one for each of the relevant tax years.

The government then filed a lawsuit to collect the remaining $100,000, plus interest. Giraldi filed a motion for partial summary judgment on the limited issue of whether under the BSA the maximum $10,000 penalty can be assessed against each undisclosed account, or if the maximum $10,000 fine is to be assessed against each non-willful failure to file the FBAR form.

The court focused on whether in enacting the BSA, Congress intended to penalize non-willful violations of Section 5314 on a per-FBAR form or on a per-account basis, when the BSA's non-willful provision simply states that penalties "shall not exceed $10,000." 31 U.S.C. § 5321(a)(5)(B)(i).

The court reasoned that with regard to willful failures to report the existence of a foreign account, Congress clearly intended to penalize such failures on a per account basis. Specifically, the BSA provides a maximum penalty that is the greater of $100,000 or 50 percent of "*the balance in the account* at the time of the violation." 31 U.S.C. §§ 5321(a)(5)(C), 5321(a)(5)(D)(ii) (emphasis added). Given that Congress obviously knew how to attach penalties on an account-specific basis, its failure to use similar account-specific language with regard to non-willful failures to report "is persuasive evidence" that it did not intend the provision to yield account-specific penalties in those situations. *U.S. v. Bittner*, 469 F. Supp. 3d 709, 719 (E.D. Tex. 2020).

For this reason and other reasons set forth in the opinion, the court granted Giraldi's motion for partial summary judgment.

***Pine Brook Care Center v. D'Alessandro*, No. A-3197-18T1, 2020 WL 6852609 (N.J. Super. App. Div. Nov. 23, 2020).**

In 2014, Michael D'Alessandro was adjudicated incapacitated. His three daughters, Antoinette, Nancy and Maryanne, were appointed co-guardians.

In 2016, Michael was admitted to Pine Brook Care Center. The Pine Brook admission package included an Admission Agreement which advised that federal and state law prohibit a nursing home from requiring a third-party guarantee of payment to the facility as a condition of

admission, expedited admission, or continued stay in the facility. The Admission Agreement also obligated the co-guardians to apply for Medicaid.

The admission package included a Payor Agreement which stated that although the facility *did not require* a third-party guarantee of payment, the facility *did require* an individual who has legal access to a resident's income or resources to sign a contract, without incurring personal liability, to provide payment to the facility from the resident's income or resources.

On May 2017, Antoinette and Nancy were discharged as Michael's guardians, leaving Maryanne as the sole guardian.

In October 2017, one year after Michael's admission to the nursing home, Maryanne first applied for Medicaid benefits on Michael's behalf. The application was denied because Maryanne never supplied the requested financial information. No other efforts were made by Maryanne, Antoinette, or Nancy to obtain Medicaid benefits for their father.

Michael obtained approval for Medicaid benefits effective September 21, 2018, apparently as the result of an application filed by Pine Brook.

Pine Brook filed a collection action against Michael and his three daughters for the balance due. The daughters responded that the New Jersey Nursing Home Act left the care facility unable to pursue them. The trial court granted summary judgment to the daughters.

The Appellate Division reversed the grant of summary judgment, noting:

> The Nursing Home Act serves to complement the Federal Nursing Home Reform Act, Congress' statutory scheme intended to protect nursing home residents and their families.… As explained by the court in *Manahawkin Convalescent*, federal law has long barred nursing homes accepting either Medicaid or Medicare from compelling third-party guarantees of resident payment, but permits such facilities to require individuals with legal access to the resident's assets to pay for the resident's care with such assets.

Pine Brook, at *8 (quoting *Manahawkin Convalescent v. O'Neill*, 217 N.J. 99, 116 (2014)).

The Appellate Division continued that in 1997, the New Jersey Legislature amended the Nursing Home Act to add language similar to the federal provision. The New Jersey amendment provides in pertinent part that "a nursing home shall not, with respect to an applicant for admission or a resident of the facility, require a third-party guarantee of payment . . . , except that when an individual has legal access to a resident's income or resources available to pay for facility care pursuant to a durable power of attorney, order of guardianship or other valid document, the facility may require the individual to sign a contract to provide payment to the facility from the resident's income or resources without incurring personal financial liability." *Id. (*quoting N.J.S.A. § 30:13-3.1(a)(2)).

The appellate court disagreed with the trial judge's reliance on *Manahawkin Convalescent* and explained that in that case, the court was required to determine only whether a contract obligating a third-party to make payments for a resident's care from the resident's assets

violated the New Jersey Nursing Home Act. The court was not presented with, and did not decide, the broader issue presented in *Pine Brook* – i.e., whether the New Jersey Nursing Home Act prohibits the imposition of personal liability on a third-party based on (i) contractual obligations that are not guarantees of payment or (ii) other tort-based theories of liability.

It is important to note that the Appellate Division did not grant judgment in favor of Pine Brook; the court only reversed summary judgment in favor of the defendants. In *dicta*, the court stated:

> we observe, however, that an agreement to make an application for Medicaid benefits on Michael's behalf is not a guarantee of payment or an agreement to pay proscribed by the Nursing Home Act. By making any purported agreement to apply for Medicaid payments, the co-guardians did not guarantee payment for the cost of Michael's nursing home care or agree to pay these costs. Thus, any such agreement, if proven, does not run afoul of the New Jersey Nursing Home Act and is not unenforceable under its terms.

Id. at *11.

***Faulk v. Martucci,* No. A-2234-19T1, 2021 WL 243833 (N.J. Super. App. Div. Jan. 26, 2021)*, certif. denied*, 246 NJ 433 (2021)**

Defendant Anne Martucci ("Anne") appealed from an order awarding a constructive trust in favor of plaintiff Janette Faulk ("Janette") as guardian of Harry Faulk ("Harry"), an incapacitated person. Janette was Harry's daughter.

Prior to being found to be an incapacitated person, Harry had a career in construction demolition and later heavy-equipment and machinery scrap sales. Anne worked as Harry's secretary and bookkeeper; they were also in a romantic relationship for over 40 years.

Over the course of his career, Harry was involved with or operated various businesses and owned certain lots of land in connection with those companies, in particular, the parcels that are the subject of this case. Collectively, they were known as the "front lots" and "back lots" of the property called "the Meadows."

In the 1980s, Harry purchased the front lots, and Harry's friend and personal attorney represented him in the transaction. Later, the same attorney created Edgar-Charles Realty Corporation ("Edgar-Charles") for Harry with Anne as incorporator and co-trustee, along with Harry's sister, June Ochsner ("June").

Harry later transferred title of the front lots to Edgar-Charles with the same attorney representing both Harry and Edgar-Charles in the transaction. Later, when the back lots became available for purchase, the attorney represented both parties in the transaction. Edgar-Charles conducted no business and served no purpose other than holding legal title to the properties upon which Harry operated his business.

June later resigned her interest in Edgar-Charles, but received nothing in return. In June 2005, Anne, on behalf of Edgar-Charles, transferred the back lots to Anne Martucci, Inc., by

quitclaim deed for nominal consideration. Anne admitted that Harry did not acknowledge the transfer of title of the front lots in writing.

In 2014, a stroke rendered Harry incapacitated. The following year, Anne deeded the front and back lots to herself for nominal consideration.

In August 2018, the court appointed Janette as Harry's guardian. She learned of the Meadows property transfers to Anne and filed a complaint in her capacity as guardian of the person, seeking to void Anne's legal title to the property. Anne filed a motion to dismiss for lack of standing, which Janette opposed. The trial judge denied the motion, and Anne filed her answer.

After a two-day bench trial, the judge found that Harry retained an equitable interest in the property and that Anne wrongfully transferred the property to herself. The judge imposed a constructive trust for Harry, and ordered Anne to transfer the property and provide an accounting.

Anne appealed on several points. The Appellate Division affirmed the trial court's decision.

The first issue before the appellate panel was whether Janette had standing. While the appellate court determined that the matter was not properly before it because of filing deficiencies by Anne, it nonetheless concluded that Janette had statutory standing under N.J.S.A. § 3B:12-57(f)(10), as Harry's guardian of the person to seek recovery of property held in constructive trust by Anne.

The court next addressed Anne's appeal with regard to the constructive trust. Constructive trusts are appropriate when a person who has acquired possession title to property should not be allowed to retain possession or title because it would be inequitable. In order to impose a constructive trust, the court must find that the property has been obtained through a "wrongful act which unjustly enriches the recipient." *Id.* at *5. The burden to establish the right to the remedy must be established by the party demanding the relief by clear and convincing evidence.

In this case, the trial judge rightly determined the transfer was wrongful. The Appellate Division noted that the trial court did not find Anne or Harry's attorney to be credible witnesses – they could not satisfactorily explain the reasons for their actions, and their testimony was inconsistent and unsupported by documentary evidence.

The trial judge then found that Anne was unjustly enriched when she impermissibly transferred a sizable asset out of the reach of Harry's financial guardian and deprived Harry of a significant resource that could be used for his care.

The appellate court also addressed Anne's laches defense. It noted that Anne failed to assert the defense diligently, and her one-time mention of the defense in her answer did not preserve the defense through the span of the litigation. Even so, the court, relying on *Mancini v. Twp. of Teaneck*, 179 N.J. 425, 433 (2004), analyzed the three factors relevant to the laches defense and found Anne's argument wanting. Specifically, the court considered "(1) whether [the] alleged act [was] unreasonably distant in time, (2) whether [the] plaintiff knew or should have known of a valid claim based on that act, and (3) whether the plaintiff's delay in filing [the]

claim has caused undue prejudice to [the] defendant." *Faulk*, at *7 (quoting *Mancini*, 179 N.J. at 433). The Appellate Division affirmed the lower court, noting that the actions Janette complained of occurred only four years earlier, and Anne was not prejudiced by the delay.

Finally, the appellate court rejected Anne's argument that the trial judge should not have allowed Janette's counsel to cross-examine defendant's sole attorney witness on disciplinary transgressions. The court disagreed, noting that N.J.R.E. 607 allows a party to introduce extrinsic evidence relevant to the issue of credibility, and misconduct by an attorney is admissible to impeach an attorney's credibility.

***Karoyan v. Estate of Grimaldi,* No. A-2695-19, 2021 WL 1115996 (N.J. Super. App. Div. Mar. 24, 2021).**

The decedent resided for many years with plaintiff in a two-family house owned by the decedent. His will granted plaintiff a life estate in one of the two units on the property.

After the probate of the will, the decedent's adult children filed suit, alleging undue influence by plaintiff as to the will and certain *inter vivos* transfers. The settlement of that litigation included plaintiff giving up her life estate and some of the inter vivos transfers.

Following the settlement, plaintiff submitted a claim to the estate's executor, alleging she paid $32,163.63 toward renovation of the house. She provided cancelled checks amounting to $15,563.63 and asserted she had made cash payments of $16,600. Plaintiff then received $15,563.63 from the estate and signed a release stating that plaintiff "will be paid a total of $15,563.63, in full payment of making this [r]elease" by which she "agree[d] that [she] will not seek anything further including any other payment from" the estate.

Several months after that release, plaintiff filed suit seeking $16,600 in damages from the estate. In granting summary judgment in the estate's favor, the trial judge noted the court's obligation to enforce a settlement absent a demonstration of fraud or other compelling circumstances.

The Appellate Division affirmed, rejecting plaintiff's reliance on not having counsel when she signed the release and her assertion that the release was the product of mistake. Instead, the release stated plainly that by signing the release and accepting the payment, plaintiff was releasing the remainder of her claim and would be unable to seek "anything further" from the estate.

***In re Estate of Rost*, A-1807-19, 2021 WL 1307458 (N.J. Super. App. Div. Apr. 8, 2021), *certif. denied*, 258 A.3d 348 (N.J. 2021).**

This decision embodies a rare instance in which, in citing the complete lack of evidence and weak arguments on the merits, a court enforced an *in terrorem*, or no-contest, clause.

Annie Rost died in September 2018, leaving behind a sizeable estate. Her will devised the estate among her four children and various charities. Her will also contained an *in terrorem* provision in Paragraph Fourteenth:

> Any beneficiary under this, my Will, who shall institute, prosecute or abet any action to contest or to set aside in whole or

> in part this, my Will, shall be excluded from any share or interest in my estate, and I hereby direct that the property or interest to which he or she might otherwise have become entitled shall be devised to DEBORAH HOSPITAL FOUNDATION, for general purposes, absolutely and in fee simple, with the exception that the devises under Paragraphs Seventh and Eighth would become part of my residuary estate and distributed pursuant to Paragraph Ninth.

The decedent's daughter, Claudia Handwerker, filed a caveat with the Surrogate's Court six days after her mother's death, which stated (emphasis added):

> I, Claudia Joan Handwerker, Daughter of Annie Rost, late of the town of Princeton, County of Mercer, State of New Jersey, who died on September 12, 2018, *do hereby caveat and protest* against the granting of Letters of Administration, or admitting to probate any paper writing purporting to be the Will of Annie Rost, as well as the appointment of a personal representative of the Estate of Annie Rost.

On multiple occasions, finding the complete failure of Claudia to present any evidence to support her claims, the trial court determined that Claudia's caveat constituted a challenge to the will and that her claim was filed and then continued without probable cause. Therefore, the in terrorem clause barred her from inheriting under the will. Her share was devised to Deborah Hospital.

The Appellate Division affirmed, in an unreported decision.

Both the trial court and the appeals court raised the inconsistency and lack of foundation in Claudia's filings. More specifically, several months after the filing of the caveat, another family member filed a complaint and order to show cause to dismiss the caveat and admit the will to probate. Claudia filed an answer and unverified counterclaim. In her answer, Claudia "consent[ed] to removing the Caveat, allowing the Will to be probated and ask[ed] that the relief set forth in the attached counter-claim be granted." *Id*. at *1. However, in the counterclaim, Claudia objected to "Clause No. [seven] of the Will giving the Princeton house to my brother" and further objected to his appointment as executor under the will. *Id*.

Claudia later filed an amended answer and counterclaim that "consent[ed] to removing the Caveat and allowing the Will to be probated. . . ." *Id*. It also "object[ed] to Clause No. [twelve] of the Will appointing Norman Rost, Executor, and Sonya Bradski as Substitute Executor." *Id*. The answer requested that Claudia be appointed executor. It further "object[ed] to Clause No. [seven] of the Will giving the Princeton house to my brother Norman Rost. . . ." *Id*.

Claudia did not verify the pleadings or provide any certification or affidavits to support her claims.

On the return date of the order to show cause, in March 2019, Claudia's attorney advised the trial court:

> Judge, we do not oppose the introduction of this will today. The provisions of this will, [ninety] percent of it, my client's okay with. She will withdraw the caveat which I said in my answer. She will allow the will to be probated. She will allow the will to proceed. We are here, Judge, on a motion to allow my counterclaim to proceed. . . .

Id. at *2.

The trial judge explained that the record did not support Claudia's allegations, nor did she supply a certification in anticipation of the hearing:

> I don't have anything in support of this counterclaim today. . . . There's nothing in here to indicate that there's any fact supporting this. This is a return date on the order to show cause. This is a summary trial. Since you already agreed the will could be probated, there's nothing about the proving of the will that needs to be tried so there's no discovery required.

Id.

The trial court ruled against Claudia, finding that the court had the authority to dispose of the case on the return date, as a summary proceeding. The caveat was dismissed, all relief to Claudia was denied, and the will was admitted to probate.

Later, Claudia filed another application, by way of a verified complaint and order to show cause demanding an accounting of the estate, the appointment of a temporary executor, and attorney's fees for bringing the action.

Thereafter, Deborah Hospital filed a verified complaint to enforce the *in terrorem* provision of the will.

When argument occurred on those later applications, the trial court assessed two issues. The first was whether the caveat was a challenge to the will. The court found that it was – a caveat is the formal mechanism by which one gives notice of a challenge to a will that has been or is expected to be offered for probate. *In re Stockdale*, 196 N.J. 275 (2008); *In re Myers' Will*, 20 N.J. 228, 235 (1955).

The second issue was whether "probable cause" existed for the caveat, pursuant to N.J.S.A. § 3B:3-47, which provides that "[a] provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings." *Haynes v. First Nat'l. State Bank of N.J.*, 87 N.J. 163, 189 (1981).

Based on the record before it, the trial court determined that: Claudia lacked probable cause to contest the will; the *in terrorem* clause excluded Claudia from inheriting under the will; and Claudia's share in the estate would pass to Deborah Hospital per the terms of the will.

Claudia moved for reconsideration. The trial court denied that motion, noting again that Claudia had presented no evidence and that there was no justification for her continued filings.

Claudia appealed. First, she argued that her caveat was not a challenge to the will. The Appellate Division rejected Claudia's argument, and stressed that Claudia had filed the caveat and refused to withdraw it before litigation ensued. This necessitated the application to seek to admit the will to probate. Further, in response to that application, Claudia continued to assert her claims and challenge at least portions of the will:

> Claudia's argument that the caveat was not a challenge to the will is without merit. Although, upon being sued, she agreed to withdraw the caveat, she continued to object to and contest the will. Despite her contention that she withdrew her caveat, her counterclaims clearly attempted to "contest or to set aside in whole or in part" the provisions laid out in Annie's will, in violation of Paragraph Fourteenth.

Rost, at *6.

The Appellate Division then reached whether probable cause existed for Claudia's challenges. It noted that Claudia's filings were unverified. The appeals court also referred to the trial record as to positions taken by Claudia and her counsel:

> At the hearing on the return date of the order to show cause… Claudia sought the court's leave to file her amended answer and counterclaim. Her attorney stated, "[w]e want to correct some ... things in the will" and "prove that this executor is not honest enough to conduct the job." Claudia's counsel admitted that "[t]hese are allegations, Judge." Moreover, during argument on the motion for reconsideration, Claudia's counsel candidly admitted: "[W]e didn't offer anything in March to support our caveat. We didn't offer any probable cause in March. We didn't really come up with anything in March. That's all true, Judge."

Id. at *7.

The Appellate Division concluded that the trial court properly tried the action on the return date pursuant to *R.* 4:67-5. Claudia had the burden to produce evidence to the court to establish a basis for her challenges and failed to provide any grounds:

> [Claudia] was required to show probable cause to support her caveat on the return date. Claudia did not do so. She did not present any verified pleadings, affidavits, or certifications to rebut the complaint. To the contrary, even six months after the filing of the caveat, on the day of trial of the summary action, her attorney requested time and discovery to prove her allegations. Because there was "no genuine issue as to any material fact," the court properly decided the action on the pleadings. *See R.* 4:67-5.

Id.

The Appellate Division thus did not disturb the trial court's finding that "Claudia did not present any evidence to support her challenge to the will at the [initial] hearing on the order to

show cause. The [trial] court affirmed its decision that the caveat was a challenge to the will during the arguments on Claudia's motion for reconsideration." *Id.*

***Crane v. Crane*, No. BER-C-174-20, 2021 WL 2396548 (N.J. Super. Ch. Div. May 28, 2021).**

After a trial that featured testimony from nine witnesses, the court had to determine the decedent's intentions with respect to her burial location and the disposition of her remains.

Decedent Joyce Crane was the mother of Jacqueline and Michael. Jacqueline resided in New Jersey, while Michael was domiciled in Israel.

Prior to Joyce's death, Jacqueline filed an action in New Jersey seeking to enjoin her brother from removing their mother or her remains from New York Presbyterian-Weill Cornell Medical Center ("NYP"), where she was a patient.

Shortly before Joyce's death, the court scheduled a hearing in connection with Jacqueline's request for a temporary restraining order ("TRO"). As part of these proceedings, the court appointed a guardian ad litem ("GAL")for Joyce. After oral argument, the court enjoined Michael from removing Joyce or her remains from NYP without the express permission of Jacqueline and the GAL.

The day before the TRO hearing in New Jersey, Michael filed his own application in New York, seeking to allow him to control Joyce and the disposition of Joyce's remains and upon her death bury her in Israel. After Joyce died only days later, the New York court declined to exercise jurisdiction over the matter and deferred to the New Jersey court with respect to the disposition of Joyce's remains. The New York action was voluntarily dismissed.

Michael proceeded to file an answer with counterclaims in the New Jersey action. The New Jersey court ordered Joyce to be interred at Mt. Carmel Cemetery in Queens, New York ("Mt. Carmel"), pending an adjudication as to Joyce's wishes as to her final burial location.

At trial, Jacqueline testified that in the 1970s, Joyce's father purchased a burial plot at Mt. Carmel, consisting of eight to 10 burial places for members of the family. According to Jacqueline, Joyce's parents, siblings, aunts, uncles, grandparents, and other family members of Joyce are buried at Mt. Carmel. Although Joyce's burial wishes were not a frequent topic of discussion, Joyce would state to Jacqueline whenever they would visit their deceased relatives that Mt. Carmel was to be "her resting place." Joyce also told her daughter that she wanted a specific song played at her funeral. Jacqueline further testified that she never agreed with Michael that Joyce should be buried in Israel and never discussed Joyce's funeral plans with Michael. Joyce never expressed to Jacqueline a desire to live in Israel.

Michael testified that in 2003, he and Joyce executed reciprocal powers of attorney in which each designated the other as agent. Michael stated that Joyce wanted to execute the 2003 POA because she and Michael were travelling more frequently, and it would be simpler if they had reciprocal powers of attorney to conduct business on the other's behalf. Specifically, section 2(f) of the 2003 POA authorized Michael to "make advance arrangements for [Joyce's] funeral and burial, including the purchase of a burial plot and marker, and such other related arrangements as [Michael] shall deem appropriate." Michael testified that he reviewed this provision with Joyce before she signed it.

Michael further testified that in October 2003, after executing the 2003 POA, Joyce signed a document entitled "Appointment of Agent to Control Disposition of Remains" ("the Designation"), which appointed Michael as agent to control the disposition of Joyce's remains upon her death and advising that her remains were not to be cremated in accordance with Jewish law. Michael drafted the Designation based on a form given to him by a friend who was a New York attorney. Joyce signed the Designation at Michael's office, and the witnesses who signed were acquaintances of Michael who worked in his office building. However, Michael did not have the original of the Designation.

Michael also testified that on several occasions, Joyce expressed a desire to live with Michael in Israel and that she wanted to be buried near Michael in Israel. He further testified that Joyce was not assigned a specific grave in the family burial plot in Mt. Carmel and that there are no documents which state that Joyce intended to be buried in one of the plots in Mt. Carmel. He stated that Joyce never expressed a desire to be buried with her family at Mt. Carmel.

Michael purchased a burial plot for Joyce in Israel on the day of the TRO hearing using Joyce's funds. He testified that he did not purchase the burial plot earlier because he had hoped that Joyce would recover from her illness.

The court also heard testimony from other witnesses, including:

Ronald Marchand, who had known Joyce for over 20 years, testified that he had last seen Joyce about a year before her death, at which time she stated that she wanted to be buried next to her brother and sister at Mt. Carmel.

Bernie Hernando, a close personal friend of Michael's for approximately 20 years, testified that after he discussed a tradition among people from Spain, who bring their deceased relatives from New Jersey back to Spain, Joyce stated that she intended to be buried in Israel.

Sharon Troth was a co-worker and close friend of Joyce who testified that she believed Joyce wanted Michael to be the one to arrange for Joyce's burial because she was closer to Michael and he helped her with finances. Troth also testified that Joyce told her several times that she wanted to be buried in Israel because she was dedicated to Michael.

Ashley Bland, a nurse's aide and Joyce's caretaker, testified that Joyce told her four or five times that she wanted to be buried in Israel and that Joyce often mentioned the Kaddish, a Jewish prayer, and that she wanted to die, but not in New Jersey.

In post-trial briefs, Michael argued that the 2003 POA and the Designation evidence that Joyce wanted Michael to control Joyce's funeral arrangements and the disposition of her remains. On the other hand, Jacqueline questioned the authenticity of the Designation and cited that the 2003 POA does not deal in any manner with Joyce's burial location or wishes.

The trial court analyzed the application of the Cemetery Act, specifically N.J.S.A. § 45:27-22. The court also took into consideration New York Public Health Law § 4201, an updated version of which became law in 2006, which governs the disposition of a decedent's remains. The court found that the New Jersey Cemetery Act governs this dispute, not the New York statute. However, the court noted that there is "no doubt" that the Designation relied upon by Michael is based on the updated New York statute. This fact is significant because the Designation relied upon by Michael at trial to assert that he controls the disposition and burial of

Joyce's remains was purportedly executed in October 2003. However, the updated § 4201, including the proposed format of the Designation, was not enacted into law until 2006. As result, the court found the genuineness of the Designation to be "in serious question."

The trial court determined that Michael's testimony concerning the Designation "is simply not credible," concluding that the Designation could not have been prepared in October 2003 as asserted by Michael. "In light of the court's conclusion that Michael has attempted to mislead the court regarding the Designation, this court has determined to reject all of Michael's testimony at the trial regarding Joyce's intentions as to her burial location and disposition of her remains." *Id.* at *21.

The court's criticism of Michael's actions was clear:

> In short, all the facts and circumstances regarding the Designation lead this court to the conclusion that the Designation is a manufactured document which reveals nothing about Joyce's intentions as to the place of her burial or who should be in charge of disposing of her remains. Rather, the purported Designation simply reveals the lengths to which Michael will go to pursue his own misguided narrative in an effort to subvert the court's determination of Joyce's intentions.

Id.

The trial court also found that the 2003 POA, by itself, is insufficient to demonstrate that Joyce intended to appoint Michael to be her agent for the disposition of her remains or to bury her in Israel.

Since the court concluded that neither the Designation nor the 2003 POA provide sufficient evidence to determine Joyce's probable intent as to the disposition of her remains or her burial wishes, the next step was to reconcile that Jacqueline and Michael have equal statutory standing under the Cemetery Act to determine Joyce's burial wishes.

In its analysis of a decedent's probable intent, the court is to consider any evidence of communications, written or otherwise, between the decedent and others that express the decedent's wishes, desires, and expectations for funeral arrangements or disposition of remains. Citing *Matter of the Estate of Travers*, 457 N.J. Super. 477 (Ch. 2017), the court should consider certain factors, namely (1) the decedent's wishes and who would abide by same, (2) the nature of the relationship between the petitioners and the decedent, (3) the decedent's religious beliefs and/or cultural practices, and (4) the best interests of the estate. *Travers*, 457 N.J. Super. at 484-85.

<u>Decedent's Wishes</u>

Joyce did not express an intent with respect to her burial wishes in her Wills from 1998 and 1999. The 2003 POA does not specifically detail her burial wishes either. There was conflicting testimony regarding Joyce's burial wishes, prompting the court to scrutinize each witness's testimony to determine credibility and Joyce's intent.

The court discounted the testimony of several witnesses, most notably Michael. The court found any testimony that Joyce repeatedly expressed a desire to be buried in Israel to be not credible.

The court found it persuasive that most of Joyce's family is buried at Mt Carmel and that she was close to her sister. Joyce resided in New York and New Jersey her entire life, and while she visited Michael in Israel on several occasions, Joyce never resided there or owned any real property there. The court determined that Joyce did not express an intent to be buried in Israel, and the facts and circumstances indicate that Joyce wished to be buried with her family at Mt. Carmel. The court also concluded that Jacqueline would abide by Joyce's wishes regarding the burial location of her remains.

Nature of Relationship between Petitioners and Decedent

Based on the trial testimony, the court found that Jacqueline maintained a closer relationship with Joyce and that she is in a better position to know Joyce's desires and expectations upon Joyce's death. It was undisputed that Jacqueline and Joyce lived approximately 15 minutes from each other for at least the last 15 years and that Jacqueline and her sons would visit Joyce nearly every day. In addition, Joyce attended Jacqueline's sons' extracurricular events on a weekly basis, and Jacqueline saw Joyce nearly every day after Joyce became ill.

In contrast, Michael has lived outside of the United States since at least 2006. Michael would visit Joyce when he was traveling to the United States for business approximately two to four times per year, and Joyce would visit Michael's son in the United Kingdom on occasions.

Considering these circumstances, the court found that Jacqueline had a closer relationship to Joyce at the time of her death and in the preceding years. Accordingly, Jacqueline is in a better position to know Joyce's wishes and desires for disposition of remains.

Religious Beliefs and Cultural Practices

The parties are "in sharp dispute as to Joyce's religious practices." The evidence presented shows that Joyce observed some, but not all, Jewish traditions. Joyce also served as an inter-faith minister. Based on the evidence, the court concluded that "while Joyce was raised Jewish and was mindful of Jewish traditions, she was not deeply observant and, based on her religious beliefs, she would not have sought to be buried in Israel. *Id.* at *29.

Best Interests of the Estate

The court found that since no one had taken any action to probate Joyce's estate, the "best interests of the estate" factor plays no role in the court's determination.

Lastly, the court addressed the equitable considerations of the case, namely Michael's unclean hands:

> Here, Michael seeks this court's assistance in allowing him to disinter Joyce and bury her remains in Israel. However, Michael's

> own misguided efforts to provide supposed evidence of Joyce's wishes causes this court to conclude he does not have 'clean hands.' As such, the court will not grant the relief requested by Michael.

Id. at *30.

In short, the court found that Joyce did not designate any individual, including Michael, to determine her burial location or to dispose of her remains. In the trial court's view, Joyce intended to be buried with her family at Mt. Carmel.

***In re Estate of Bhagat,* No. A-4986-18, 2021 WL 1327174 (N.J. Super. App. Div. Apr. 9, 2021).**

Three separate lawsuits in different jurisdictions were involved in this matter: Burlington County, New Jersey; the Bombay High Court in India; and Essex County, New Jersey.

The Burlington County litigation ("Burlington Litigation") involved a business dispute between the decedent, Amratlal C. Bhagat ("Amratlal"), and his son, Bharat A. Bhagat ("Bharat"). Amratlal sued Bharat claiming that this son transferred a hotel owned by Amratlal's family corporation to a limited liability company owned by Bharat. Bharat filed a motion for summary judgment, which the trial court granted after finding that the transfer was a presumptive gift. The appellate court agreed.

Amratlal filed a petition for certification. The New Jersey Supreme Court reversed the summary judgment, holding that the burden to overcome the presumption that the transferred property was a gift required clear and convincing evidence. *Bhagat v. Bhagat*, 217 N.J. 22, 47 (2014). The Court concluded that there were sufficient factual issues to preclude summary judgment and to require a trial. Amratlal died before the matter was resolved at the trial court.

The estate litigation involved three wills executed by Amratlal: a 1997 will, a 2003 will, and a 2011 limited will/codicil. The 2003 will disinherited Bharat after he transferred the hotel, so he attempted to probate the 1997 will before the Bombay High Court. Ranjana Jethwa ("Ranjana") filed suit in Essex County to probate the 2003 will and void the 1997 will ("Essex Litigation"). The Essex County Court denied Ranjana's petition given the pending will contest in the Bombay High Court, but acknowledged the need for a neutral administrator to represent the Estate in the Burlington Litigation.

In 2014, the Essex County court appointed an attorney as temporary limited administrator of Bharat's estate (the "Administrator") to prosecute the Burlington Litigation. The Administrator reviewed the Burlington Litigation and determined to settle the matter because it was "a close case" and the Estate had insufficient assets to fund a trial.

The Administrator and Bharat agreed that the hotel would be sold for $4 million and the Estate would receive 59 percent of the net proceeds. The Administrator filed a motion in the Essex Litigation seeking leave to approve the settlement. Ranjana opposed the motion, arguing that the Estate's claim against Bharat in the Burlington Litigation was worth $29 million.

After hearing arguments from Ranjana's counsel and the Administrator "and conducting his own cost-benefit analysis, the judge in the Essex Litigation concluded it was in the best

interest of the Estate to compromise the claim.... The judge noted [c]ourts place a high value on settlement and determined the Burlington Litigation should be settled." *Id.* at *3 *(internal quotes omitted).* The court called Ranjana's $29 million valuation of the claim "fanciful." *Id.*

Ranjana appealed and argued that the Essex County judge's approval of the settlement was in error. The appellate court disagreed. It was satisfied that the trial court did not abuse its discretion in approving the litigation. The trial judge outlined in his decision the "weaknesses in the evidence, the risks to both parties associated with a trial, and the possibility of a "recoverability issue" because Bharat may not have the "the assets to ... pay off a $29 million judgment." *Id.* at *5. The judge "conducted a thorough cost-benefit analysis of the settlement and determined the settlement was fair, reasonable, and not overly generous to either Ranjana or Bharat." *Id.*

***In re Administration of Estate of John J. McLaughlin*, No. A-2718-19, 2021 WL 4239656, (N.J. Super. App. Div. Sept. 17, 2021).**

This ruling addressed whether a settlement had been reached, based primarily on email exchanges of counsel.

The decedent was the brother and uncle of the parties, who had long been litigating issues as to the administration of the estate.

The parties informed the trial judge several times that they had settled, but never submitted a stipulation. The judge directed certain parties to file a motion to enforce a settlement. The judge next reviewed various emails between counsel, exchanging the written proposed settlement agreement, as well as the agreement itself. The trial court noted that the attorney for the decedent's sister, Rita Loughlin, advised his adversary and the administrator of the estate, "I'll get back to you," after receiving a final draft of the agreement that included contested mutual releases. The judge interpreted that final email to mean that noting was left open and concluded that, since counsel was acting with apparent authority on his client's behalf, a settlement had been reached.

Rita Loughlin appealed.

The Appellate Division reversed and found that the email exchange did not support the finding that Loughlin's attorney (as her agent) gave final consent on his client's behalf to the settlement. The appellate court explained that, while an attorney is presumed to possess authority to act on behalf of the client, settlements are governed by contract law and require assent to the essential terms to be valid. After a detailed review of the email exchanges of counsel --- against the backdrop of a long history to the litigation -- the court concluded that a settlement had not been reached. The emails constituted offers and counteroffers, not unequivocal acceptance of a proposal, and so no contract was formed. Moreover, questions of fact were left open by the email chain and the delay in that chain. The issue should not have been decided without further proceedings and a more developed record.

***N.J. Advisory Comm. on Prof'l Ethics*, Op. No. 739 (2021).**

The Opinion concludes that lawyers who copy their clients on emails to opposing counsel should not then claim an ethics violation when opposing counsel uses "reply to all" and includes

the client in the email. Lawyers who include their clients on group emails are deemed to have implicitly consented to opposing counsel replying to the entire group.

An attorney asked the Advisory Committee on Professional Ethics (the "Committee") whether opposing attorneys violate Rule of Professional Conduct 4.2 when they "reply all" to an email on which the sending attorney included his client. The Rule provides: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter." RPC 4.2.

The goal of the RPC 4.2 is to protect the clients from "overreaching by opposing counsel and guarding the clients' right to advice from their own lawyer." N.J. Advisory Comm. on Prof'l Ethics, Op. No. 739 (2021**)**.

The Committee found that it is not a violation of RPC 4.2, for opposing counsel to "reply all" to an email on which the sending attorney has included his or her client in the "to" or "cc" line of a group email. In those instances, the attorney is "deemed to have provided informed consent" to the communication from opposing counsel who replies to all.

If the sending lawyer does not wish to provide such consent, he has the burden of forwarding the communication separately to the client or blind-copying the client. The Committee further recommended that if an attorney wishes to show opposing counsel that the client has been provided a copy of the email, the sending attorney should simply type "cc:" and the client's name at the end of the email.

Finally, the Opinion (footnote 4) lists other jurisdictions that have rejected this concept of implied consent in the emails.

***In re Estate of McAleer*, 248 A3d 445 (PA 2021).**

In February 2019, the Supreme Court of Pennsylvania granted allowance of appeal of an appellate decision regarding discoverability of invoices for legal fees in trust litigation, stating the issue as follows: "Do the attorney-client privilege and work product doctrines protect communications between a trustee and counsel from discovery by beneficiaries when the communications arose in the context of adversarial proceedings between the trustees and beneficiaries?"

On April 7, 2021, after hearing argument in May 2020, the Pennsylvania Supreme Court issued a series of opinions that recited that the Justices were unable to reach a consensus on the merits. By operation of law, therefore, the trial court was affirmed.

A summary of the appellate decision, *In re Estate of McAleer*, 2018 PA Super. 227 (2018), is below.

***In re Estate of McAleer*, 194 A3d 587 (PA Super. 2018), *rev'd*, 248 A3d 445 (PA 2021), and *rev'd*, 248 A3d 416 (PA 2021).**

The settlor's son and trustee, William McAleer, was involved in extensive litigation with two stepsons of the settlor, who were beneficiaries of the trust. Upon an accounting by the

trustee, the beneficiaries raised objections, including that certain expenses paid by the trustee for legal fees were unreasonable.

The trust provided that the trustee could "charge additional fees for services… such as fees for legal services…." Later in the document, the settlor "encourage[d] my Trustee to obtain appropriate legal advice if my Trustee has any questions concerning its duties and responsibilities as Trustee."

An accounting set forth approximately $220,000 in claimed legal fees. In discovery on that issue, the beneficiaries requested "BILLING STATEMENTS; Produce copies of billing statements for all … attorney fees as such are included in the Second and Final Account." In response, the beneficiaries received redacted bills with 223 entries blacked out. The trustee had never filed any objection to the beneficiaries' discovery request for those invoices. And when the beneficiaries filed a motion to compel their production, the trustee failed to respond until oral argument on that motion. The lower court ordered production of un-redacted invoices. The trustee had filed a similar request (for legal bills directed to the beneficiaries), but it was denied.

The Pennsylvania Superior Court held that the trustee "failed to set forth specific facts to show that either the attorney-client privilege or the work product doctrine was applicable and properly invoked." *Id.* at 596. As a result, the Superior Court held that appellate review was precluded. Because it found that the order under review was not a final order, an order certified as final, an interlocutory order appealable as of right, an interlocutory order appealable by permission, or an appealable collateral order, the appeal was quashed.

However, at the end of its opinion, the court began a discussion of a trustee's duty to furnish information to beneficiaries, referring to Section 82 of The Restatement (Third) of Trusts, and specifically comment f concerning communications with counsel, and the opinion of the Allegheny County Court in *Follansbee v. Gerlach*, 56 Pa. D. & C.4th 483, 22 Fid. Rep.2d 319 (2002). The Superior Court indicated that it was "constrained to agree" with the trial court, which had followed *Follansbee*. *McAleer*, 194 A.3d. at 596. That case had followed other cases (among mixed authority) that held that communications concerning claims or potential claims against the trustee might be protected, but that communications about trust administration would not be.

***Wilburn v. Mangano,* 851 S.E.2d 474 (Va. 2020).**

The decedent signed a will devising her home to her daughters but giving her son the option to purchase the property from his sisters for an amount equal to the tax assessed value in the year of the decedent's death. A month before she died, the decedent signed a codicil that revised the option purchase price to "an amount equal to the fair market value at the time of [her] death."

Soon after the decedent died, her son sent his sisters notice of his intent to exercise the option, and indicated that he intended to purchase to the property according to the terms of the will or the terms of the codicil – depending upon which the court upheld. He then sued to set aside the codicil. After a trial, the jury found that the codicil was valid.

The sisters then sued to compel the son to purchase the property under his exercise of the option and offered to settle by selling at the mean price between two appraisals that they had obtained. The son contended that there was no enforceable contract because "fair market value

at the date of [Decedent's] death is not a sufficiently specific term to establish mutual assent to the Property's purchase price." *Id*. at *475.

The Virginia Supreme Court acknowledged that an option contract becomes a contract of sale once the holder gives notice of his desire to exercise the option. Contracts for sale of land that are incomplete, uncertain, or indefinite in their material terms are not to be specifically enforced by a court in equity. Since it is a material term, the price of the property must be stated in the agreement itself or the agreement must provide a mode for ascertaining the price with certainty. Absent a fixed price or a mode for fixing the price, an agreement is incomplete.

Accordingly, the term "fair market value" was insufficient to compel specific performance by the son. Fair market value is usually understood to mean the price that the seller is willing to accept, and the buyer is willing to pay, in an arm's-length transaction and on the open market. It appears, then, that the decedent gave her son the option to purchase the property at a price he was willing to pay and his sisters were willing to accept on the open market and in an arm's-length transaction. Since the codicil did not provide the price, or a means of ascertaining the price with certainty, it lacked the precision that would allow the court to compel specific performance by the son.

***P.A. Comm. on Legal Ethics and Prof'l Responsibility*, Op. No. 2021-300 (2021).**

The Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility (the "Committee") adopted and endorsed New York State Bar Association Ethics Opinion 1182 ("NY Opinion") in Opinion 2021-300 ("PA Opinion"), to provide guidance to attorneys who retain original, signed Wills belonging to their estate planning clients.

The Committee concluded that under Pa.R.P.C. 1.15, attorneys must maintain original, signed Wills until they are permitted to dispose of them in the manner outlined in the PA Opinion.

Many estate planning attorneys store clients' original, signed estate planning documents so that the documents are available when needed. Since these original documents are client property, attorneys have certain obligations related to securely storing Wills and maintaining up-to-date client address information so they can inform the client of office moves and closures.

The NY Opinion was issued in response to an attorney inquiry regarding the more than 500 Wills, some more than 70 years old, that were in his possession and for whom he could not locate the testators with due diligence. The attorney asked that he be permitted to dispose of the Wills. The New York State Bar Association Ethics Committee concluded that the attorney was prohibited by New York Rule of Professional Conduct 1.15 from disposing of the documents because the Wills constitute property.

Pa. R.P.C. 1.15, like NY R.P.C. 1.15, upon which the NY Opinion relied, requires attorneys to safeguard client property. Therefore, an attorney must store original Wills separately from the attorney's own property and take appropriate steps to protect the documents.

Pa. R.P.C. 1.15(c) also requires attorneys to preserve client property "for a period of five years after termination of the client-attorney or Fiduciary relationship or after distribution or disposition of the property, whichever is later." The Committee concluded that:

> attorneys must maintain original Wills until they (1) provide them to the client, the client's executor or some other person authorized to possess the Will, (2) are notified that the client no longer needs the Wills to be stored (such as when a client drafts a new Will), or (3) are authorized to dispose of them by statute, rule or some other procedure.

P.A. Comm. on Legal Ethics and Prof'l Responsibility, Op. No. 2021-300.

The Committee also suggested that attorneys who are currently keeping original documents for their clients review their files and confirm that they have current contact information for those clients. If they do not have current information, attorneys should take reasonable steps to obtain current addresses. An attorney should also notify clients if the attorney's office has relocated or their contact information has changed, and ask the client as to whether the client prefers that the attorney continue storing the documents, return them to the client, or meet with the client to review and revise the documents.

XII. NEW JERSEY GUARDIANSHIP COURT RULES

Guardianship Rule Amendments: *R*. 4:86-2(b); *R*. 4:86-4; *R*. 4:86-6

The New Jersey guardianship Court Rules have been amended to establish a policy for background screenings of certain proposed guardians of incapacitated persons. The amendments are effective as of May 15, 2021, and are summarized as follows.

R. 4:86-2(b) has been amended to require the petitioner to annex to the complaint an affidavit or certification setting forth the criminal and civil judgment history of the proposed guardian. If the complaint does not identify a proposed guardian, the certification shall be filed prior to the entry of the judgment of legal incapacity and the appointment of the guardian. The Administrative Director of the Courts will establish a background screening policy for proposed guardians of incapacitated adults, which may include fingerprinting.

Certain individuals and entities are exempt from the new requirement. These include: parents of allegedly incapacitated children; spouses of, and those in a civil unions or domestic partnerships with, allegedly incapacitated persons; certain temporary guardians; certain agencies; public officials appointed as limited guardians for medical purposes; financial institutions; and attorneys licensed and in good standing in the State of New Jersey. The court, however, may require any of the above individuals and entities to undergo background screening as a prerequisite to appointment based on the individual facts of the case.

R. 4:86-4 was amended to require the order to show cause to include provisions requiring any proposed guardian to comply with any applicable background screening policy, and to provide that a copy of the policy shall be provided with the order.

R. 4:86-6 requires the guardian's acceptance of appointment to include an acknowledgment of compliance with any background screening policy for proposed guardians of incapacitated adults promulgated by the Administrative Director of the Courts.

The amended Rules can be found at https://njcourts.gov/notices/2021/n210322a.pdf.

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Practice Areas

Business Counseling
Estates & Trusts
International Law
Nonprofit Law
Tax Law

Admitted

District of Columbia
Pennsylvania
United States Tax Court
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Education

The American University
Bachelor of Arts, 1970
University of Virginia
Juris Doctor, 1973
George Washington University
LL.M., Taxation, 1979

Mr. Ahl's practice concentrates in the area of taxation and includes business and individual tax planning, estate planning, trust and estate administration and tax litigation. He practices before the Internal Revenue Service representing clients in a variety of matters, including audits, refund claims, ruling requests, collection matters and tax litigation. Ken provides sophisticated tax and business planning for business entities, nonprofit organizations and individuals at the Federal, State and local level.

He represents numerous clients in matters involving international taxation, including tax planning for non-resident aliens, dual citizens, green card holders and U.S. citizens residing abroad. He has extensive experience in U.S. tax issues involving foreign estates and trusts, and the use of tax treaties to avoid the double taxation of income and death taxes. He frequently works with immigration lawyers to plan for the tax issues of non U.S. citizen clients both coming to and exiting from the United States. He is very experienced in dealing with the special tax needs of U.S. citizens and green card holders residing abroad. He has counseled numerous taxpayers on Offshore Account Voluntary Disclosure Initiatives.

Mr. Ahl’s law career started with positions at the Department of State and at the National Office of the Internal Revenue Service, where he obtained a broad range of experience in international and tax issues. At the State Department, he determined issues of citizenship and dual nationality. At the IRS, he issued rulings and technical opinions dealing with numerous tax issues, including tax treaties, capital gains and sales and exchanges of property. He has an in-depth knowledge of the Internal Revenue Code and its regulations as well as in matters of state and local taxation. He has extensive experience in practicing before the IRS including the audit, appeal and collection process.

Ken is experienced in administering Estates and Trusts and serves as a fiduciary of numerous estate and trusts. He advises corporate and individual fiduciaries in matters of taxation and where needed represents them in audits and tax appeals. His expertise includes planning for noncitizens residents of the U.S. and administering estates with foreign tax issues.

Representative Experience

- Represented numerous taxpayers in tax audits and appeals on Federal, State and local levels.
- Advised clients with respect to Offshore Voluntary Disclosure Initiatives.
- Advised clients with respect to tax and estate planning on Federal, State and local level.
- Supervises tax preparation program involving the preparation and review of more than 200 tax returns annually.
- Experienced fiduciary, currently serving as a fiduciary for more than 30 trusts and estates.

- Advises clients on all aspects of double taxation problems involving foreign and U.S. taxation, tax treaties and tax credits
- Prepared Tax Court Petitions and litigated cases before the U.S. Tax Court
- Advised nonprofit organizations and corporations on issues of tax exempt status, tax reporting, and determination of tax liability
- Successful decision in "hobby loss" case before PA Board of Finance and Revenue which clarified the criteria for taking losses arising from horse racing and horse breeding activities.

Professional and Community Involvement

- Member Pennsylvania, Philadelphia, District of Columbia, and Washington, D.C. Bar Associations
- Member Philadelphia Tax Supper Group
- Member of Board of Directors of The Academy of Vocal Arts

Awards and Recognition

- Top Rated Lawyer, "Philadelphia Legal Leaders" Philadelphia Inquirer 2015
- Top rated lawyer in Taxation in 2012 edition of LexisNexis and Martindale-Hubbell Guide to Legal Representation in Philadelphia

Articles and Presentations

- Taxpayers on Both Coasts Win Non-Willful Foreign Account Reporting Penalty Cases, *Bloomberg Daily Tax Report* (June 2021)
- FBAR Penalty Stacking: A Clear Coast for Taxpayers?, *Tax Notes* (May 2021)
- Court Denies IRS ‘Stacking Penalties’ on FBARs, *Accounting Today* (March 2021)
- Archer Client Advisory, December 23, 2015 – "Congress Enacts Legislation to Restore and Expand Tax Savings Provisions"
- National Webinar, The Knowledge Group, June 5, 2015 - "Pre-Immigration Tax Planning: What you need to know in 2015 and Beyond"
- Presentation to The Oxford Club, June 28, 2014 in Istanbul, Turkey - "The IRS Hunt for Unreported Foreign Income"
- Presentation to Philadelphia Paralegal Association, May 2, 2014 – "Special Tax Problems in Handling Estates with International Issues"

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Practice Areas

Business Counseling
Estate & Trust Litigation
Estates & Trusts
Elder & Disability Law

Admitted

New Jersey
United States Court of Appeals for the Third Circuit

Education

New York University School of Law, Juris Doctor, 1980, LL.M. in Taxation, 1987
Fordham University, B.S., *summa cum laude,* Phi Betta Kappa, 1977

Andrew J. Cevasco has handled a broad array of matters over his 40-year career, representing businesses and individuals in a variety of transactional matters. Andrew appears regularly in Superior Court in will contests, trust litigation and probate matters. He prepares Wills, Trusts and related estate planning documents, and is experienced in the administration of estates and trusts. He also represents clients with regard to guardianship and elder law issues. He has been appointed by the Court to administer estates and to represent minors and allegedly incapacitated persons in both contested and uncontested matters.

Andrew provides a broad range of services to the firm's commercial clients, including business planning, business formation and dissolution, employment and contract issues, and real estate matters. He has also appeared before the Disciplinary Review Board and the New Jersey Supreme Court to represent attorneys who have been charged with violations of the Rules of Professional Conduct. Andrew represents clients in trials in both the Law and Chancery Divisions of the N.J. Superior Court. He has also argued appeals to the Appellate Division of the New Jersey Superior Court and appeared before the New Jersey Supreme Court.

Andrew is AV Rated by Martindale Hubbell. He is listed by the Supreme Court of New Jersey as a mediator and mentor on its Roster of Mediators and also serves as an arbitrator in the New Jersey Superior Court of New Jersey, Bergen County. Throughout his career, Andrew has demonstrated dedication to public service, most recently through his work on the N.J. Supreme Court Committee on Character, which reviews applications for admission to the New Jersey Bar, and serving on the Board of Trustees of the Bergen County Bar Association. Andrew served as President of the Bergen County Bar Association for the 2019-2020 term. He co-chairs the Association's Professionalism and Estate Planning/Probate Committees. Andrew is a frequent lecturer for the New Jersey Institute for Continuing Legal Education and the National Business Institute in the areas of estate and tax planning, estate litigation, and trusts and ethics.

Representative Experience

- Obtained a Judgment after Trial admitting a Holographic Will to probate in the face of challenges based on the claim of insane delusions of the testator for an estate valued at $18,000,000.
- Negotiated settlement and obtained Judgment construing charitable provisions of a Will pursuant to the doctrine of Cy Pres.

- Successfully defended a multi-million dollar flood claim for a N.J. public utility. Tried the matter for two weeks to a verdict of no cause of action.
- Obtained Judgment after Trial against Trustee for breach of fiduciary duty and successfully defended Appeal.
- Obtained Summary Judgment for a client charged in Federal District Court with defrauding claimants of German reparation payments.
- Defeated application to N.J. Supreme Court by Office of Attorney Ethics for temporary suspension and disbarment of client.
- Defeated a contested Guardianship application on behalf of court-appointed client.
- Established and administering multi-million dollar Trust for disabled son of deceased client.
- Successfully represented both employers and employees in restrictive covenant litigation.
- Regularly prepares estate plans for clients with estates ranging from modest to large, providing planning for tax avoidance and protective trusts for their children.
- Provides legal counsel to Executors and Trustees for the administration of trusts and estates.
- Established and advised clients regarding court-settled trusts for minor children to hold and administer proceeds of tort litigation and 9-11 awards.
- Advises Corporate clients regarding contract, employment, organizational and governance issues.

Professional and Community Involvement

- President, Bergen County Bar Association (2019-2020)
- Member, N.J. Supreme Court Committee on Character (2008 – present)
- Trustee and Officer, Bergen County Bar Association (2005 – present)
- Past Member, N.J. Supreme Court Ethics Committee IIB (1994 – 1998)
- Roster of Mediators, Supreme Court of New Jersey (1999-present)
- Arbitration Panelist, Superior Court of New Jersey, Bergen County (2002-2018)
- Member, National Academy of Elder Law Attorneys
- Member, Greater New Jersey Estate Planning Counsel
- Member, American Bar Association
- Member, New Jersey State Bar Association
- Co-Chair, Professionalism Committee, Bergen County Bar Association
- Co-Chair, Estate Planning Probate Committee, Bergen County Bar Association
- Member, General Equity Committee, Bergen County Bar Association
- Trustee, former President and Founding Member, Rutherford Education Foundation, Rutherford, N.J. (2002 – 2019)
- President/Director, Community of God’s Love, Rutherford, NJ (2008 – 2012)
- Member, Cornerstone Committee, Immaculate Conception Seminary, Seton Hall University, West Orange, N.J. (2001 – present)

- Past Member, Board of Directors, Greater Bergen YMCA, Hackensack, NJ (1997 – 2008)
- Past Member, Executive Committee, St. Peter’s Prep Parents Association, Jersey City, NJ (2006 - 2010)
- Past Member, Board of Directors, Catholic Youth Organization, Archdiocese of Newark, NJ and Bergen County, NJ
- Coach and League Director, Rutherford Recreation (20+ years)

Awards and Recognition

- AV rated by Martindale Hubbell (1996– present)
- Named "Top Attorney" for Elder Law by SJ Magazine (2021)
- Bergen County Top Lawyer, Bergen Magazine (2019, 2020)
- Bergen's Top Lawyers, (201) Magazine (2012, 2013, 2016, 2017, 2018)
- Accredited Estate Planner, National Association of Estate Planners & Councils (2011-present)
- Sesquicentennial Award, Roman Catholic Archdiocese of Newark, N.J. (2010)

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(856) 354-3080

Haddonfield, NJ

Practice Areas
Estate & Trust Litigation

Admitted
New Jersey
United States Court of Appeals for the Third Circuit
United States Supreme Court

Education
Rutgers University, College of Arts and Sciences
Bachelor of Arts, 1978
Rutgers Law School
Juris Doctor, 1981

Don concentrates his practice in the area of estate litigation, including will contests, disputes between fiduciaries and beneficiaries, guardianship matters and accountings.

Prior to joining Archer, Don served for 25 years as counsel to the Surrogate of Camden County. Don reviewed wills for submission to probate in the Camden County Surrogate's Court. Don reviewed all probate pleadings filed in the Superior Court in Camden County, including the audit of all fiduciary accountings filed during his 25-year tenure.

Don is a frequent lecturer regarding probate and guardianship practice. Don has presented lectures to the Camden County Bar Association, the Burlington County Bar Association, the Philadelphia Bar Association, the New Jersey Title Insurance Producers Association, the Guardians Association of New Jersey and the Surrogate's Section of the Constitutional Officers Association of New Jersey. For 15 years Don presented annual seminars regarding estate litigation to newly admitted attorneys on behalf of the New Jersey Supreme Court's Institute for Continuing Legal Education.

Representative Experience

- Don has been an active litigator for over 35 years.
- Don has served as counsel to the Borough of Magnolia and the Borough of Magnolia Planning Board.
- Don served for more than a decade as counsel to the Borough of Oaklyn Planning Board.
- Don served for 25 years as counsel to the Borough of Lindenwold Zoning Board of Adjustment.

Professional and Community Involvement

- Camden County Bar Association
- Ten year member of the Board of Directors of the Our Lady of Mt. Carmel Regional School in Berlin, New Jersey

Articles and Presentations

- 6th Annual Estate Litigation Seminar (May 2018) Hot Trends in Estate Litigation
- The State of the Probate Court*, presented to the Camden County Bar Association annually for several years.*
- Fundamentals of Probate Practice*, presented to the Burlington County Bar Association.*

- Crossing the Bridge, Probate Practice in New Jersey*, presented to the Philadelphia Bar Association, Philadelphia, PA.*
- Fundamentals of Probate Practice*, presented to the New Jersey Title Insurance Producers Association, Mount Laurel, NJ.*
- Guardianship Monitoring, *presented to the Guardian's Association of New Jersey, New Brunswick, NJ.*
- Estate Litigation Skills and Methods*, presented to newly admitted attorneys on behalf of the New Jersey Supreme Court's Institute for Continuing Legal Education, annually for fifteen years.*
- Developing Trends in Probate Litigation, *presented to the Constitutional Officers Association of New Jersey, Surrogates' Section, Atlantic City, NJ, September, 2012.*
- Hot Trends in Estate Litigation, *Estate Litigation Forum, Archer & Greiner Estate Litigation Group, Tavistock, NJ April, 2013.*
- Developing Trends in Probate Litigation, *presented to the Constitutional Officers Association of New Jersey, Surrogates' Section, Atlantic City, NJ, September, 2013.*
- Fundamentals of NJ Probate Practice*, Rutgers University School of Law, Rutgers Institution For Professional Education, Camden, November, 2013.*
- Accountings Across the Counties, *Estate Litigation Forum, Archer & Greiner Estate Litigation Group, Tavistock, NJ April, 2014.*
- Accountings Across the Counties, *presented on behalf of the New Jersey Supreme Court's Institute for Continuing Legal Education, September, 2014.*
- Developing Trends in Probate Litigation, *presented to the Constitutional Officers Association of New Jersey, Surrogates' Section, Atlantic City, NJ, September, 2014.*
- Fundamentals of NJ Estate Planning, *Rutgers University School of Law, Rutgers Institution For Professional Education, Camden, October 8, 2014.*
- Fundamentals of NJ Probate Practice*, Rutgers University School of Law, Rutgers Institution For Professional Education, Camden, April, 2015.*
- Hot Trends in Estate Litigation, *Estate Litigation Forum, Archer & Greiner Estate Litigation Group, Tavistock, NJ April, 2015.*
- Attorney and Fiduciary Compensation in New Jersey: An Overview of Relevant Authority, *Estate Litigation Forum, Archer & Greiner Estate Litigation Group, Tavistock, NJ April, 2015.*
- Developing Trends in Probate Litigation, *presented to the Constitutional Officers Association of New Jersey, Surrogates' Section, Atlantic City, NJ, September, 2015.*
- Fundamentals of NJ Probate Practice, *Rutgers University School of Law, Rutgers Institution For Professional Education, Camden, October, 2015.*
- Virtual Representation, Charitable Interests and Related Issues Under the Uniform Trust Code, *Estate Litigation Forum, Archer & Greiner Estate Litigation Group, Tavistock, NJ April, 2016.*

- Developing Trends in Probate Litigation*, presented to the Constitutional Officers Association of New Jersey, Surrogates' Section, Atlantic City, NJ, September, 2016.*
- The Application of Judicial Discretion in the Surrogates' Courts, *presented to the Constitutional Officers Association of New Jersey, Surrogates' Section, Atlantic City, NJ, September, 2016.*
- Fundamentals of NJ Probate Practice, *Rutgers University School of Law, Rutgers Institution For Professional Education, Camden, November, 2016.*
- The New Guardianship Rules, Estate Litigation Forum, *Archer & Greiner Estate Litigation Group, Tavistock, NJ, May, 2017*
- Developing Trends in Probate Litigation, *Presented to the Constitutional Officers Association of NJ, Surrogates' Section, Atlantic City, NJ, September, 2017*
- Fundamentals of NJ Probate Practice, *Rutgers University School of Law, Rutgers Institute For Professional Education, Camden, NJ, November, 2017*

Melissa Osorio Dibble

Partner
mdibble@archerlaw.com
856-616-6146

Haddonfield, NJ

Philadelphia, PA

Practice Areas
Estate & Trust Litigation

Admitted
New Jersey
Pennsylvania

Education
Rutgers Law School,
Juris Doctor, May 2010
Bryn Mawr College,
B.A., English Literature and Political Science,
cum laude, May 2005

Melissa Osorio Dibble concentrates her practice in the area of Estate and Trust Litigation in New Jersey and Pennsylvania. Melissa has handled all varieties of probate, general equity, and Orphans' Court matters, including, but not limited to accountings, will contests, breach of fiduciary duty actions, trust modifications, and matters involving the Uniform Prudent Management of Institutional Funds Act and the Slayer Statute. Melissa has represented a variety of institutions and individuals, including banks, universities, executors, trustees, beneficiaries of estates and trusts, and intestate heirs.

Melissa is the current president of the Estate and Financial Planning Council of Southern New Jersey. She is a frequent speaker on topics regarding estate and trust litigation and has authored articles on the doctrine of writings intended as wills and the Uniform Trust Code.

Prior to joining Archer, Melissa served as the law clerk for the Honorable Richard F. Wells in the Superior Court of New Jersey, Camden Vicinage.

Melissa received her Juris Doctorate from Rutgers University School of Law-Camden. She was the recipient of the Archer Diversity Scholarship during her tenure at Rutgers. During law school, Melissa was the President of the Association for Public Interest Law (APIL); articles editor for the Rutgers Journal of Law & Public Policy; and a member of the Domestic Violence Clinic. During her first year, she received recognition as the Best Appellant Oral Argument in her Legal Analysis Writing & Research course. Melissa was a Marshall Brennan Fellow, teaching Constitutional Law to students at Camden High School.

Representative Experience

- Successfully obtained dismissal of a will challenge on the return date on behalf of an executor.
- Handled the termination of several uneconomical charitable trusts for a corporate trustee.
- Served as co-counsel defending an agent under a power of attorney in Orphans’ Court.
- Represented a University in several successful applications to modify scholarships and prize funds under UPMIFA.
- Obtained countless settlements on behalf of individuals and institutions regarding disputes as to fiduciary compensation, fiduciary removal actions, and will and trust disputes.

Professional and Community Involvement

- Probate & Fiduciary Litigation Vice-Chair, American Bar Association Section of Real Property, Trust and Estate Law (2020-2021; 2021-2022)
- President, Estate and Financial Planning Council of Southern New Jersey
- Member of the Inaugural Class of the Mid-Atlantic Fellows Institute of the American College of Trust and Estate Counsel (ACTEC)
- New Jersey State Bar Association
- New Jersey Women Lawyers
- Camden County Bar Association, Probate & Trust Committee
- Burlington County Bar Association
- Pennsylvania State Bar Association
- Philadelphia Bar Association, Probate & Trust Section
- Member, Samaritan's Healthcare & Hospice Planned Giving Committee
- Board Member, Interfaith Caregivers of Haddonfield, NJ (nonprofit organized to assist seniors with independent living)
- Board Member, CONTACT Community Helplines (nonprofit agency staffed by trained and dedicated volunteers, and supported by the United Way (2013-2016)
- Mock Trial Coach for Paul VI High School (2011-2015)
- Homeless Advocacy Project Volunteer-Pro Bono Representation of Veterans (2011-2015)

Awards and Recognition

- Named a "Top Attorney" for Wills, Estates & Trusts by SJ Magazine (2020, 2021)
- Probate & Property Magazine's Excellence in Writing Award (2014)

Articles and Presentations

- "Evidence in Trust and Estate Litigation," NJICLE, (August 2021)
- "Developing Trends in Probate Litigation," Constitutional Officers Association of New Jersey, Surrogates' Section *(*August 2020)
- "Toss the Blue-Backs and Sealing Wax, Electronic Wills Are Here! Or Are They?," American Bar Association Annual Real Property, Trust & Estate Law National CLE Conference (May 2020)
- "Estate and Trust Fiduciary Litigation: Minimizing and Defending Breach of Duty Claims" Webinar (February 27, 2020)
- "Evidence Issues for Trust & Estate Litigation," Camden County Bar Association (2019)
- "Wills and Estate Planning Workshop," The Samaritan Center at Voorhees (2019)
- "Hot Trends in Estate Litigation," CCBA (2018)
- "Fiduciary Litigation Update," Greater Middlesex/Somerset County Estate Planning Council (2018)
- "The Final Frontier: Concerns and Considerations of Electronic Wills Seminar," EFPCSNJ (2018)
- "Hot Trends in Estate Litigation; Seven Deadly Claims," Archer Annual Estate Litigation Seminar (2014, 2015, 2016, 2017, 2018)

- "Wills Seminar," The Samaritan Center at Voorhees (2017)
- "Guardianship Update From The Surrogate's Office," Camden County Bar Association (2017)
- "A Case Study on the UTC," Society of Financial Service Professionals (2017)
- "Charitable Bequests: How to Make Them Last," Samaritan Healthcare & Hospice (2017)
- "Recent Developments in Trust Law: New Jersey Enacts the Uniform Trust Code," Chamber of Commerce Southern New Jersey *Connection Newsletter* (2016)
- "Hot Trends in Probate Litigation," Camden County Bar Association Annual Forum (2013, 2014, 2015, 2016)
- "What We've Learned So Far Under Uniform Trust Code," Burlington County Bar Association (2016)
- "What's in a Name: Writings Intended as Wills (co-author)," *ABA Probate & Property* (2014)
- "No Signature Required: NJ Leads the Way with Writings Intended as Wills," *New Jersey Law Journal* (2013)
- "Federal Exception to Probate Litigation, Fiduciary Litigation, Ethics & Malpractice Committee," ABA Real Property, Trust & Estate Law Section

Eimi S. Figlio

Associate
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Hackensack, NJ

New York, NY

Practice Areas
Estates & Trusts

Admitted
New Jersey
New York

Education
Pace University School of Law, Juris Doctor, 2005
The College of New Jersey, B.S., International Business, 2002

Eimi specializes in the area of Estate Planning and Estate Administration. Eimi's estate planning practice includes planning for both simple and complex estates. Her services include drafting basic and tax planning Wills, Durable Powers of Attorney and Advance Medical Directives, as well as preparing trust documents necessary to preserve family wealth and minimize tax consequences. Eimi also assists clients with gifting and transfers of family assets and closely-held businesses.

Eimi's estate administration practice includes all aspects of probate matters, including intestacy proceedings, probate of Wills, marshaling estate assets and providing an inventory, preparation and filing of Federal and New Jersey and New York estate tax returns, preparation of formal and informal estate accountings, and the final distribution of estate assets to the beneficiaries and heirs of the estate. Eimi also assists clients with post mortem estate planning opportunities.

Eimi also represents clients in matters regarding Trust administration and Trust termination by way of informal agreement or formal court applications, including filing of accountings, as well as modification and revocation of Trusts by way of information agreement or by court application.

Professional and Community Involvement

- Greater New Jersey Estate Planning Council – Programming Committee
- Co-Chair, Estate Planning and Administration Committee, Bergen County Bar Association
- Member of New Jersey State Bar Association
- Member of Supreme Court of New Jersey District II-B Ethics Committee
- Women Lawyers in Bergen

Articles and Presentations

- Ethical Considerations Involving Trust and Estate Planning, Administration and Litigation, Bergen County Bar Association (December 2019)
- Ethics in Estate Planning, Archer 6th Annual Estate Litigation Seminar (May 2018)

Anthony R. La Ratta

Partner
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(856) 354-3094

Haddonfield, NJ

Practice Areas

Alternative Dispute Resolution
Commercial Litigation
Estate & Trust Litigation

Admitted

New Jersey
Pennsylvania
United States Court of Appeals for the Third Circuit

Education

La Salle University
Bachelor of Arts, *maxima cum laude*, 1993
Villanova University School of Law
Juris Doctor, 1996
Clerkship: Honorable Joseph C. Visalli (Ret.), Judge of the Superior Court of New Jersey, Law Division, Cape May County (1996-97)

Tony concentrates his practice in the area of Trust & Estate litigation, with an emphasis in litigation involving probate matters, estates, trusts, guardianships, and fiduciaries.

Tony has represented institutions and individuals in a variety of contexts, including banks, corporate fiduciaries, executors, trustees, beneficiaries of estates and trusts, incapacitated persons, surviving spouses, and intestate heirs. He has handled cases involving will contests, undue influence, diminished capacity, contested guardianships, writings intended as wills, breach of fiduciary duty, and accountings of estates and trusts.

Tony is also admitted by the State of New Jersey to the roster of court-approved mediators for probate cases and has been appointed by the courts to assist in resolving such disputes through mediation.

Representative Experience

- Representing corporate and individual fiduciaries in actions brought by beneficiaries concerning the administration of estates and trusts
- Representing will contestants in disputes over the validity of wills, based on undue influence, lack of testamentary capacity, and similar grounds
- Handling accounting actions and exceptions thereto
- Representing institutions seeking reformation and cy pres relief relating to charitable bequests or endowments
- Litigating will construction cases involving the doctrine of probable intent
- Representing surviving spouses, omitted spouses, and those claiming an elective share
- Litigating cases concerning holographic wills and writings intended as wills, including the successful admission to probate of a videotaped will
- Representing family members in contested guardianship disputes
- Serving as court-appointed counsel to alleged incapacitated persons
- Serving as court-appointed guardian of the person and the property of elderly adults or those adjudged to be mentally incapacitated
- Serving as court-appointed mediator in probate and general equity cases

Professional and Community Involvement

- Fellow, American College of Trust and Estate Counsil (ACTEC)
- Estate and Financial Planning Council of Southern New Jersey (2012-2013 Immediate Past President; 2011-12 President; 2010-11 1st Vice

President; 2009-10 2nd Vice President; 2008-09 Treasurer; 2007-08 Secretary)
- American Bar Association
- American Bar Association Section of Real Property, Trust and Estate Law, Probate & Fiduciary Litigation Committee (Chair)
- American Bar Association Section of Real Property, Trust and Estate Law, Standing Committee of National Conference of Lawyers and Corporate Fiduciaries (Chair)
- New Jersey State Bar Association
- New Jersey State Bar Association Equity Jurisprudence Committee (2013 -)
- New Jersey State Bar Association Bylaws Committee (2009 - 2013)
- Burlington County Bar Association
- Burlington County Bar Association Probate Committee
- Camden County Bar Association
- Camden County Bar Association Probate & Trust Committee (Co-Chair)
- Cape May County Bar Association
- Cape May County Bar Association Chancery & Probate Committee (Co-Chair)
- Gloucester County Bar Association
- Gloucester County Bar Association Probate Committee
- Jefferson Health – New Jersey Foundation Board (Vice Chair)
- Justinian Society
- Member, New Jersey Supreme Court District IV Ethics Committee, Camden and Gloucester Counties
- Kennedy Health System Foundation Board
- La Salle University Communication Department Alumni Advisory Board
- Lector, Saints Peter and Paul Church
- Saints Peter and Paul Church Parish Council
- Glassboro Center for the Arts
- Guest lecturer on radio and at La Salle University, Villanova University, Rutgers University-Camden, and Camden County College
- Coach of youth recreation and travel sports teams (baseball, basketball, soccer, and softball)

Awards and Recognition

- Named a “Top Attorney” by SJ Magazine for Estate Litigation and Trust/Guardianship (2007)
- Selected by the New Jersey Law Journal to its prestigious “40 under 40” list, an honor bestowed on 40 promising young professionals in New Jersey’s legal community (2010)
- Recognized by peers as one of the Super Lawyers New Jersey Rising Stars in the area of Estate and Trust Litigation (2011)
- Awarded by American Bar Association Section of Real Property, Trust & Estate Law's *Probate & Property* magazine Excellence in Writing Award (2014)

- Recipient of Bishop Eustace Preparatory School's Alumni Excalibur Award (2019)

Articles and Presentations

- 11/04, *The Power of (Probable) Intent*, EFPC Southern New Jersey newsletter
- 1/06, *New Standards for Termination of Trusts*, NJ Law Journal
- 9/10/09, *The Increasing Prospect of the Imposition of Fees or Sanctions on Parties Estate Litigation*, EFPC Southern New Jersey newsletter
- 2/21/11, *Are Unsigned Wills a Sign of the Times?*, NJ Law Journal
- 8/12/13, *No Signature Required: NJ Leads the Way with Writings Intended as Wills*, NJ Law Journal
- 5/14, *What's in a Name: Writings Intended as Wills*, ABA Probate & Property
- Hot Litigation Topics Every Estate Planner (and Litigator!) Should Know, 9/25/02 *(Provided by CCBA)*
- Administering the Modest Estate: Challenges and Solutions, 1/25/03 *(Provided by NJICLE)*
- The Future of Probate Litigation: Doctrine of Probable Intent and Tortious Interference with Inheritance, 4/22/03 *(Provided by BCBA)*
- Hot Trends in Probate Litigation, 11/19/03 *(Provided by CCBA)*
- 51st Semi-Annual Tax and Estate Planning Forum, 6/9/04 *(Provided by NJICLE)*
- Estate and Trust Litigation: Will Contests and More, 10/2/04 *(Provided by NJICLE)*
- Annual Forum: Hot Trends in Probate Litigation, 11/17/04 *(Provided by CCBA)*
- Mock Probate Trial, 4/21/05 *(Provided by CCBA)*
- Guardianship: The Basics and Beyond, 4/25/05 *(Provided by CCBA)*
- The “New” New Jersey Probate Code, 4/26/05 *(Provided by BCBA)*
- Probate & Fiduciary Litigation: What’s on the Horizon, 10/15/05 *(Provided by NJICLE)*
- Annual Forum: Hot Trends in Probate Litigation, 12/7/05 *(Provided by CCBA)*
- Critical Estate Planning Topics and Issues, 10/19/06 *(Provided by PBI)*
- Guide to Surrogate’s Court and Probate Proceedings, 11/2/06 *(Provided by NJICLE)*
- Annual Forum: Hot Trends in Probate Litigation, 12/13/06 *(Provided by CCBA)*
- Hot Trends in Probate Litigation, 2/5/07 *(Provided by BCBA)*
- Orphans’ Court Practice & Procedure, 8/2/07 *(Provided by PBI)*
- Annual Forum: Hot Trends in Probate Litigation, 12/6/07 *(Provided by CCBA)*
- 5-part workshop: Contested Guardianships from the Front Line, 2-4/08 *(Provided by CCBA)*
- Accounting for Estates and Trusts, 6/27/08 *(Provided by Lorman)*

- Proper Will Drafting: How to Avoid a Will Contest, 9/25/08 *(Provided by GCBA)*
- NJSBA Annual Mid-Year Convention -- Recent Trends in Estate Litigation, 11/6/08 *(Provided by NJSBA)*
- Hot Trends in Trust and Estate Litigation, 11/20/08 *(Provided by EFPCSNJ)*
- Annual Forum: Hot Trends in Probate Litigation, 12/4/08 *(Provided by CCBA)*
- Latest Trends in Estate Litigation, 2/12/09 *(Provided by NJICLE)*
- Hot Trends in Trust and Estate Litigation, 4/6/09 *(Provided by BCBA)*
- ABA Real Property, Trust & Estate Law Section;20th Annual Real Property & Estate Planning Symposia:Last Beneficiary Standing -- Identifying the Proper Parties in Breach of Fiduciary Cases, 4/30/09 *(Provided by ABA)*
- Where There's a Will There's a Way -- Guide to Surrogate's Court and Probate Proceedings, 6/6/09 *(Provided by NJICLE)*
- 11th Annual NJ Trust & Estate Law Forum, 10/29/09 *(Provided by NJICLE)*
- Annual Forum: Hot Trends in Probate Litigation, 12/9/09 *(Provided by CCBA)*
- Annual Forum: Hot Trends in Estate Litigation, 3/1/10 *(Provided by BCBA)*
- Latest Trends in Estate Litigation, 3/27/10 *(Provided by NJICLE)*
- 2010 Atlantic Regional Osteopathic Convention: End of Life & the Law, 4/15/10 *(Provided by NJ Assoc. of Osteopathic Physicians and Surgeons)*
- ABA Real Property, Trust & Estate Law Section; 21st Annual Real Property & Estate Planning Symposia: What to Do When the Client Slips the Leash: Real-World Trust Litigation and Ethics, as You Hope You'll Never Have to See Them, 5/7/10 *(Provided by ABA)*
- ABA Real Property, Trust & Estate Law Section; 21st Annual Real Property & Estate Planning Symposia: What to Do When the Client Slips the Leash: Real-World Trust Litigation and Ethics, as You Hope You'll Never Have to See Them, 7/13/10 *(Provided by ABA)*
- Recent Developments in NJ Law -- Fiduciary Litigation, 8/11/10 *(Provided by NJICLE)*
- 12th Annual NJ Trust & Estate Law Forum, 9/21/10 *(Provided by NJICLE)*
- Do It Yourself Estate Planning: Why It Costs More Than It Saves, 10/21/10 *(Provided by ABA)*
- Annual Forum: Hot Trends in Probate Litigation, 11/30/10 *(Provided by CCBA)*
- Annual Forum: Hot Trends in Probate Litigation, 2/7/11 *(Provided by BCBA)*
- Latest Trends in Estate Litigation, 2/11/11 *(Provided by NJICLE)*
- Interplay Between Family Law and Trust & Estate Practitioners, 2/15/11 *(Provided by CCBA)*

- Attorney Fees in Civil Cases: When They Are Available & How to Get Them, 2/26/11 *(Provided by NJICLE)*
- What Every Financial Professional Should Know about Estate Litigation, 3/10/11 *(Provided by EFPCSNJ)*
- Recent Developments in NJ Law – Fiduciary Litigation, 7/28/11 *(Provided by NJICLE)*
- Wills and Estates in NJ, 8/18/11 *(Provided by NJ State Retired Police & Fire Assoc.)*
- 13th Annual NJ Trust & Estate Law Forum, 10/24/11 *(Provided by NJICLE)*
- Annual Forum: Hot Trends in Probate Litigation, 12/6/11 *(Provided by CCBA)*
- Guest Lecturer, *Film and the Law*, "Anatomy of a Murder," 1/25/12 *(Provided by La Salle Univ.)*
- Latest Trends in Estate Litigation, 2/13/12 *(Provided by NJICLE)*
- What's New in Estate Litigation, 2/16/12 *(Provided by EFPCCNJ)*
- Annual Forum: Hot Trends in Probate Litigation, 3/5/12 *(Provided by BCBA)*
- Anatomy of a Will Contest: How to Succeed at Trial, 4/26/12 *(Provided by Lorman)*
- What's New in Estate Litigation, 5/8/12 *(Provided by SFSP-SJC)*
- Recent Developments in NJ Law - Fiduciary Litigation, 7/28/12 *(Provided by NJICLE, New Brunswick,NJ)*
- Developing Trends in Probate Litigation, 9/12/12 (*Provided by Constitutional Officers Assoc. of NJ, Surrogate's Section, Atlantic City, NJ)*
- Contested Guardianships - Winning in the Courts, 9/22/12 *(Provided by NJICLE, New Brunswick, NJ)*
- Estate Litigation Update 2012, 10/13/12 *(NJSBA/Mid-Year Meeting in Las Vegas, NV)*
- 14th Annual NJ Trust & Estate Forum, 10/23/12 *(Provided by NJICLE, New Brunswick, NJ)*
- Annual Forum: Hot Trends in Probate Litigation, 12/11/12, *(Provided by CCBA)*
- Latest Trends in Estate Litigation, 2/12/13 *(Provided by NJICLE, New Brunswick, NJ)*
- Annual Forum: Hot Trends in Probate Litigation, 3/13/13 *(Provided by BCBA)*
- Anatomy of a Will Contest: How to Succeed at Trial, 3/27/13 *(Provided by Lorman)*
- Archer Estate Litigation Seminar, 4/18/13
- What PA Lawyers Need to Know about NJ Estate Practice, 7/24/13 *(Provided by PBI)*
- Recent Developments in NJ Law, 7/25/13 *(Provided by NJICLE)*
- Developing Trends in Probate Litigation, 9/19/13, *(Provided by Constitutional Officers Assoc. of NJ, Surrogate's Section, Atlantic City, NJ)*

- 15th Annual NJ Trust & Estate Forum, 10/29/13 *(Provided by NJICLE, New Brunswick, NJ)*
- Annual Forum: Hot Trends in Probate Litigation, 11/5/13, *(Provided by CCBA at Tavistock)*
- Trust & Probate Challenges: Minimizing and Litigating Claims of Undue Influence, Fraud, Capacity, and Mistakes, 1/16/14, *(Provided by Strafford)*
- Special Situations in Estate Administration, 1/23/14, *(Provided by NJICLE)*
- Anatomy of a Will Contest: How to Succeed at Trial, 2/13/14 *(Provided by Lorman)*
- Latest Trends in Estate Litigation, 2/24/14 *(Provided by NJCLE)*
- What Pennsylvania Lawyers Need to Know About NJ Estate Practice, *3/11/14 (Provided by PBI)*
- Hot Trends in Probate Litigation, 3/12/14 *(Provided by BCBA)*
- 2nd Annual A&G Estate Litigation Seminar, 4/2/14 *(Provided by Archer)*
- Ethics CLE Series: Part 1, 4/28/14 (*Provided by NJICLE)*
- Preparing And Trying An Undue Influence Case, 6/3/14 *(Provided by ABA)*
- Estate and Trust Fiduciary Litigation: Minimizing and Defending Breach of Duty Claims, 7/15/14 *(Provided by Strafford)*
- Contested Guardianships: Effective Strategies To Quickly and Confidently Handle These Challenging Situations, 7/21/14 *(Provided by NJSBA)*
- Recent Developments in New Jersey Law: 2014 Update, 7/31/14 *(Provided by NJSBA)*
- Anatomy of a Will Contest: How to Succeed at Trial, 8/14/14 *(Provided by Lorman)*
- What PA Lawyers Need to Know about NJ Estate Practice, 8/19/14 *(Provided by PBI)*
- Developing Trends in Probate Litigation, 9/18/14 *(Provided by COANJ)*
- Potential Ethical Pitfalls of Estate Practice, 10/14/14, *(Provided by CMCBA / Cape May Court House)*
- Writing Intended as Wills, 11/13/14 *(Provided by NCPJ)*
- Annual Forum: Hot Trends in Probate Litigation, 11/20/14 *(Provided by CCBA)*
- Latest Trends in Estate Litigation, 2/4/15 *(Provided by NJICLE)*
- Writings Intended as Wills, 3/25/15, *(Provided by CMCBA / Cape May Court House)*
- Recent Developments in New Jersey Law: 2015 Update, 7/30/15 *(Provided by NJICLE)*
- Estate and Trust Fiduciary Litigation: Minimizing and Defending Breach of Duty Claims, 8/18/15 (Provided by Strafford)
- It's a World of Tears and a World of Fears: Crisis Management of Estates, American Bar Association, Section of Real Property, Trust and Estate Law Spring Symposia, Orlando, FL (May 2018)
- 6th Annual Estate Litigation Seminar (May 2018) The Intersection of Estate and Family Law; Ethics in Estate Planning

- NJICLE - 12th Annual Latest Trends In Estate Litigation – An Essential 2019 Update 2/14/19
- NJICLE - 14th Annual Latest Trends in Estate Litigation Webcast 3/11/21
- Annual Forum: Hot Trends in Probate Litigation, 4/27/21 (*Provided by BCBA*)

Meredith M. Mazzola

Partner
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Hackensack, NJ

Practice Areas

Estates & Trusts

Admitted

California
New Jersey
New York
New York State Supreme Court - Appellate Division
United States Supreme Court
United States Tax Court

Education

New York University, LL.M., Taxation
California Western School of Law, J.D., *cum laude*
The State University of New York at Buffalo, B.S., Sociology, *cum laude*

Meredith concentrates her practice in the areas of estate and tax planning, and estate and trust administration. She represents and advises high-net-worth individuals, closely held businesses, individual and corporate fiduciaries, and nonprofit and charitable entities. Meredith handles lifetime and end-of-life planning and related document preparation, including Wills, Trusts, Powers of Attorney, and Advance Directives, as well as lifetime giving, business succession, and charitable planning matters. She also provides counsel regarding estate and income tax saving techniques, and where needed represents clients in audits and tax appeals.

In the area of estate administration, Meredith represents fiduciaries and beneficiaries in probate matters, including intestacy proceedings, probate of Wills, marshaling estate assets and providing an inventory, the satisfaction of federal and state tax obligations, the preparation of petitions and supporting documents, and the settlement of complex estates, including probate litigation involving contested wills and fiduciary accountings.

Meredith also handles international tax matters, including inbound and outbound income, gift and estate tax planning, and issues relating to controlled foreign corporations, passive foreign investment companies, permanent establishment and treaty benefits. Additionally, she provides tax planning for high-net-worth individuals with closely held businesses or equity compensation.

Representative Experience

- Restructured non-resident multi-million dollar U.S. holdings to avoid millions in potential U.S. estate taxes.
- Structured sale of $9,000,000 vacation home through Charitable Remainder Trust to save significant income and estate taxes netting the donor a greater benefit while accomplishing their charitable goals.
- Structured sale of privately-held company to maximize income and estate tax savings.
- Settled Tax Court case involving estate tax valuations issues.
- Acted as primary tax counsel for an emerging Swiss tech company in structuring the acquisition of $40 million dollar U.S. tech company.

Articles and Presentations

- Practical Law Private Client Guide, Executive Transfers to the United States: Planning and Avoiding Pitfalls, Thomson Reuters (2017)

- What Advisors to HNW Foreign Investors Should Know About Investment-Related Immigration and Tax issues in the U.S., PAM Breakfast Briefings (2014)
- Protecting Your Ideas – What Should You Do, New York City Comic Con (2014)
- Starting a Business in the United States, Mid-Sweden Chamber of Commerce (2014)
- Business, Investment and Immigration Strategies in the U.S., CIS Wealth Conference & Expo – St. Petersburg (2014)
- What Should I Do?: The Legal Aspects of Making You and Your Business Famous, New York Comic Con (2013)
- Starting a Business in the United States, Young Entrepreneurs of Sweden (2013)

Steven K. Mignogna

Partner
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Haddonfield, NJ

Practice Areas

Commercial Litigation
Estate & Trust Litigation
Estates & Trusts

Admitted

New Jersey
Pennsylvania
United States Court of Appeals for the Third Circuit
United States Supreme Court

Education

St. Joseph's University (B.A., English, 1986)
Rutgers Law School (J.D., 1989)

Steven K. Mignogna serves as both Co-Chair of Archer's Estates and Trusts Department and Chair of the firm's Estate and Trust Litigation Group. Steve specializes in commercial litigation, including litigation involving probate matters, estates, trusts, gifts, fiduciaries, guardianships, and real estate, handling cases in the state and federal courts, at both the trial and appellate levels. Representing both institutions and individuals, Steve's clients include banks, corporate fiduciaries, investment companies, educational and charitable institutions, and real estate firms, as well as beneficiaries of estates and trusts, executors, trustees, guardians, incapacitated persons, surviving spouses, and persons having an interest in real estate.

Steve serves on the Advisory Committee of the Heckerling Institute. He is a Fellow of the American College of Trust and Estate Counsel (ACTEC), where he is the ACTEC State Chair for New Jersey. Steve is also the Chair of ACTEC's Fiduciary Litigation Committee, and is active in ACTEC in several other areas, which include the Professional Responsibility Committee, Program Committee, Joint Task Force of ACTEC and the National College of Probate Judges, and Advisory Committee to ACTEC's Mid-Atlantic Fellows Institute.

Active in the American Bar Association (ABA), Steve has held leadership roles in the ABA's Real Property, Trust and Estate Law Section, including: Chair of the Litigation, Ethics and Malpractice Group, as well as Chair of the Group's Alternative Dispute Resolution Committee and Probate and Fiduciary Litigation Committee; Section Liaison to the ABA Dispute Resolution Advisory Committee; and several administrative Committees in the Section.

Steve is a national lecturer and author. He has lectured and published for the American College of Trust and Estate Counsel, the Heckerling Institute, the National College of Probate Judges, the New Jersey Bar Association, the New Jersey Institute for Continuing Legal Education, the American Law Institute Continuing Legal Education Group, the American Bar Association, the Duke University Estate Planning Conference, the Delaware Trust Conference, and Estate Planning Councils around the country. He authors the treatise, *Estate and Trust Litigation,* and is the editor and contributing author of *The New Jersey Estate Planning Manual* and *New Jersey Probate Procedures Manual*. In 2017, the New Jersey Institute for Continuing Legal Education honored him with the Distinguished Service Award. Steve is also a Senior Fellow of the Litigation Counsel of America, a national honorary society for trial lawyers.

Steve has been with Archer since 1988, when he joined the firm as a law clerk. He remains active in various charitable and community organizations, including the Philly Pops, Alicia Rose Victorious Foundation, the Loyola Executive Council and the Barbelin Society of St. Joseph's University, the Chevaliers du Tastevin, and the Knights of Columbus. In 2020, Steve was recognized by the Camden County Bar Association as the Professional Lawyer of the Year, through the New Jersey Commission on Professionalism in the Law. In 2017, Steve received the Excalibur Award from the Bishop Eustace Preparatory School Alumni Association, recognizing his lifetime achievement in civic, religious, humanitarian, and professional endeavors.

Representative Experience

- Represent institutions, including banks, corporate fiduciaries, investment companies, real estate firms, and title insurance companies.
- Represent individuals, including the beneficiaries of estates and trusts, executors, trustees, guardians, incapacitated persons, surviving spouses, investors, realtors, and persons having an interest in real estate.

Professional and Community Involvement

- Fellow of the American College of Trust and Estate Counsel (ACTEC)
- State Chair, ACTEC for New Jersey
- Chair, ACTEC Fiduciary Litigation Committee
- Member of the Advisory Committee of the Heckerling Institute on Estate Planning
- Fellow of the American College of Trust and Estate Counsel (ACTEC)
- Member of ACTEC's Professional Responsibility Committee, Program Committee, and Fiduciary Litigation Committee and its Subcommittee on Fiduciary Surcharge and Damages/Remedies
- Member, Senior Advisory Committee, ACTEC Mid-Atlantic Fellows Institute
- Active in the American Bar Association (ABA), Steve has held leadership roles in the ABA's Real Property, Trust and Estate Law Section, including: Chair of the Litigation, Ethics and Malpractice Group, as well as Chair of that Group's Alternative Dispute Resolution Committee and Probate and Fiduciary Litigation Committee; Section Liaison to the ABA Dispute Resolution Advisory Committee; and several administrative Committees in the Section.
- Professional Member, National College of Probate Judges
- Senior Fellow, Litigation Counsel of America, The Trial Lawyer Honorary Society (includes membership in the Diversity Law Institute and Trial Law Institute)
- Member, Board of Directors, The Philly POPS
- Member, Board of Trustees, Alicia Rose Victorious Foundation: The Foundation raises awareness, and provides strength and support, for teens and young adults with cancer and other life-threatening illnesses. The Foundation is dedicated to encourage and empower

hospitalized teens and young adults diagnosed with cancer and other life-threatening illnesses. It has created one-of-a kind programs that include Teen Lounges, Teen Kits, activities, and social events. The Foundation has partnered with 99 hospitals around the world to fund 67 teen lounges and distribute over 12,000 teen kits.
- Knights of Columbus
- Member, Tavistock Country Club
- The Loyola Executive Council and the Barbelin Society of St. Joseph's University
- Chevaliers du Tastevin

Awards and Recognition

- Named Camden County Bar Association Professional Lawyer of the Year (2020)
- Named an "Awesome Attorney" by South Jersey Magazine (2019)
- Distinguished Service Award, New Jersey Institute for Continuing Legal Education (November 2017)
- Excalibur Award, Bishop Eustace Preparatory School Alumni Association (April 2017)
- Named to The Best Lawyers in America for Litigation-Trusts & Estates (2007-2022)
- Selected by The Best Lawyers in America as the Philadelphia "Lawyer of the Year" for Trusts and Estates Litigation (2013)
- Named to New Jersey Super Lawyers list for Estate & Trust Litigation (2010-2021)
- Named to New Jersey Super Lawyers list for General Litigation (2005-2009)
- Founders Award, South Jersey Estate Planning Counsel
- New Jersey Law Journal "Top 40 Under 40" lawyers

Articles and Presentations

- Co-Author, "Challenges for Probate Judges: Trust Investments and Diversification," National College of Probate Judges Fall Journal (2020)
- Main author of the treatise, *Estate and Trust Litigation*
- Editor and contributing author, *The New Jersey Estate Planning Manual* and *New Jersey Probate Procedures Manual,* New Jersey Institute for Continuing Legal Education
- *Increasing Enforceability of Mandatory Arbitration Clauses in Wills and Trusts,* 213 NJLJ 374 (July 29, 2013)
- *Gifts Gone Astray: Disputes Involving Charitable Transfers*, ABA Probate and Property Magazine, Vol 24, No., p. 56 (September/October 2010)
- *Expanding the Probable Intent Doctrine*, N.J. Lawyer (October 29, 2007)
- *Old Doctrine Invigorated: The Doctrine of Probable Intent Appears to be Expanding,* 184 NJLJ 602 (May 22, 2006)
- *New Standards for Termination of Trusts* NJLJ (Feb. 27, 2006)

- *Scope of "Probate Exception" To Be Determined* 183 NJLJ 307 (Jan. 30, 2006)
- *The new New Jersey Probate Code* NJ Lawyer, 13 NJL 863 (May 2, 2005)
- *The Grudge Match: The Family Part vs. The Probate Part* NJ Family Lawyer, Vol 25, No. 4, p. 98 (December 2004)
- *The New Potential for Fee Awards in Undue Influence Cases*, ABA Litigation Section's Real Estate & Probate Litigation Committee Newsletter, Vol. 4, Issue 1, May 2004 (May 2004)
- *Can an Incapacitated Person Change Domicile? The National Clash Between Two Strong Legal Concepts*, ABA Litigation Section's Real Estate & Probate Litigation Committee Newsletter, Vol. 3, Issue 1, May 2003 (May, 2003)
- *The Supreme Court „Rocks' Estate Planning*, Estate & Financial Planning Council of Southern New Jersey, January/February 2003 Newsletter (January/February 2003)
- *On the Brink of Tortious Interference with Inheritance*, Property & Probate Magazine, of the American Bar Association's Real Property, Probate & Trust Law Section, (Vol. 16, No. 2) [Republished in the ABA Litigation Section's Real Estate & Probate Litigation Committee Newsletter, Vol. 2, Issue 1, May 2002] (March/April 2002)
- *The Prudent Investor Act in New Jersey*, New Jersey Bar Association, Real Property, Probate & Trust Law Section Newsletter (December 2001)
- *Strategies for Mediation of Estate Litigation in New Jersey*, Estate and Financial Planning Council of South Jersey Newsletter (November/December 2001)
- *The Evolution of the Prudent Investor Act in New* Jersey, South Jersey Estate Planning Council Newsletter (2001)
- *Is There a Fork in the Road: The Determination of Domicile in the Initial Phase of Probate Litigation,* American Bar Association, Section of Litigation, Real Estate & Probate Litigation Committee Newsletter (November, 2000)
- *The Forgotten Weapon: Enforceability of In Terrorem Clauses,* New Jersey Bar Association, Real Property, Probate & Trust Law Section Newsletter (April, 1998)
- Moderator & Presenter, 8th Annual Estate & Trust Ligation Seminar (September 2020)
- National Meeting of the American College of Trust and Estate Counsel ("ACTEC") Fiduciary Litigation Committee, Philadelphia, PA (October 2019)
- Mid-Atlantic Regional Meeting of the American College of Trust and Estate Counsel ("ACTEC"), New York, NY (September 2019)
- New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (September 2019)
- Fiduciary Litigation Update, New Jersey State Bar Association Annual Meeting and Convention, Atlantic City, NJ (May 2019)

- Seven Deadly Claims, Philadelphia Estate Planning Council Annual Meeting, Seminar & Reception, Philadelphia, PA (May 2019)
- Hot Trends in Probate Litigation, Camden County Bar Association, Tavistock, NJ (December 2018)
- Fiduciary Litigation Update, Greater Middlesex/Somerset County - Estate Planning Counsel, Bedminster Twp., NJ (November 2018)
- Hot Topics in Estates and Trusts, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (September 2018)
- Hot Trends in Probate Litigation, Burlington County Bar Association, Mt. Holly, NJ (June 2018)
- Hot Trends in Estate Litigation; Seven Deadly Claims, 6th Annual Estate Litigation Seminar (May 2018)
- It's a World of Tears and a World of Fears: Crisis Management of Estates, American Bar Association, Section of Real Property, Trust and Estate Law Spring Symposia, Orlando, FL (May 2018)
- Fiduciary Litigation Update, NJSBA Annual Meeting and Convention, Atlantic City, NJ (May 2018)
- Annual Probate symposium: Estate and Trust Litigation Update, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March 2018)
- Ethics and Negotiations, Heckerling Institute, Orlando, FL (January 2018)
- Seven Deadly Claims, National College of Probate Judges, Ponte Vedra Beach, FL (November 2017)
- Recent Developments in New Jersey Law, Pennsylvania Bar Institute, Philadelphia, PA (November 2017)
- Fiduciary Litigation Update, New Jersey Institute for Continuing Legal Education, Edison, NJ (September 2017)
- Resolving Trust Issues-Hopefully Without Court Intervention, American College of Trust and Estate Counsel, Long Branch, NJ (September 2017)
- Fiduciary Litigation Update, New Jersey State Bar Association, Atlantic City, NJ (May 2017)
- The New Jersey UTC: Trustee Reporting and Limitations of Actions, New Jersey State Bar Association, Atlantic City, NJ (May 2017)
- Charitable Funds, Archer & Greiner P.C. Annual Estate Litigation Seminar, Haddonfield, NJ (May 2017)
- Hot Trends in Probate Litigation, Burlington County Bar Association, Mt. Holly, NJ (April 2017)
- 8th Annual Probate Symposium: Estate and Trust Litigation Update, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March 2017)
- What We've Learned So Far Under Uniform Trust Code, Burlington County Bar Association, Mt. Laurel, NJ (December 2016)
- Hot Trends in Litigation, Camden County Bar Association, Haddonfield, NJ (December 2016)
- Ethics and Technology in Estates and Trusts, American College of Trust and Estate Counsel; Professional Responsibility Committee,

Charleston, NC (October 2016)

- Lawyer as Witness, American College of Trust and Estate Counsel, Charleston, NC (October 2016)
- Hot Topics in Estate and Trusts, New Jersey Institute for Continuing Legal Education, New Brunswick (September 2016)
- Uniform Trust Code, New Supreme Court Committee on Judicial Education; Conference of General Equity Presiding Judges of New Jersey, Trenton, NJ (July 2016)
- The New Jersey Uniform Trust Code, New Jersey Institute for Continuing Legal Education, Mt. Laurel, NJ (June 2016)
- Ethics and Technology in Estates, Bryn Mawr Trust Co., Radnor, PA (June 2016)
- Fiduciary Litigation Update, NJSBA, Atlantic City, NJ (May 2016)
- The New Jersey Uniform Trust Code, NJSBA, Atlantic City, NJ (May 2016)
- Estate Litigation Seminar, Haddonfield, NJ (April 2016)
- Hot Trends in Probate Litigation, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March 2016)
- Hot Trends in Probate Litigation, Camden County Bar Association, Tavistock, NJ (December 2015)
- Estate Litigation, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (November 2015)
- Seven Deadly Claims, National Colleges of Probate Judges, Washington, D.C. (November 2015)
- Ethics in Trusts, Delaware Trust Conference, Wilmington, DE (October 2015)
- The Use and Abuse of Exculpatory Clauses, ABA Webinar (October 2015)
- Ethics in Technology in Estates and Trusts Practices, 37th Annual Duke University Estate Planning Conference, Durham, NC (October 2015)
- Seven Deadly Claims, County Officers Association of New Jersey, Atlantic City, NJ (October 2015)
- Protection for Trustees Facing Fiduciary Liability, ICLE, New Brunswick, NJ (July 2015)
- Contested Guardianships, ABA Webinar (May 2015)
- Fiduciary Litigation Update, New Jersey State Bar Association, Atlantic City, NJ (May 2015)
- Fiduciary Litigation Update, ACTEC-NJ, Woodbridge, NJ (May 2015)
- Go Where No Ethics Have gone Before - Staying on the Right Course in an Expanding Universe of Technology, American Bar Association, Washington, D.C. (May 2015)
- Letters, Notes, and Napkins: Harmless Error and Writings Intended as Wills, American Bar Association, Washington, D.C. (April 2015)
- The Use and Abuse of Exculpatory Clauses, American Bar Association, Washington D.C. (April 2015)
- 3rd Annual Estate Litigation Seminar, Haddonfield (April 2015)
- Hot Trends in Probate Litigation, Burlington County Bar Association Probate Committee, Mount Holly, NJ (April, 2015)

- Law as a Career, Bishop Eustace Prep School, Pennsauken Twp., NJ (April 2015)
- Hot Trends in Probate Litigation, 2015 Probate Symposium, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March 2015)
- Will to Litigate, 49th Annual Heckerling Institute on Estate Planning, Orlando, FL (January, 2015)
- Hot Topic Trends in Estate and Trusts, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (September, 2014)
- Accountings Across the Counties, New Jersey Institute for Continuing Legal Education, Fairfield, NJ (September, 2014)
- Seven Deadly Claims at the American Law Institute Continuing Legal Education Group (ALI-CLE), Representing Estate and Trust Beneficiaries and Fiduciaries Seminar, Chicago, IL (July, 2014)
- Contested Guardianships and Uniform Acts, 25th Anniversary of the Section of Real Property, Trust and Estate Law Spring Symposia of the American Bar Association, Chicago, IL (May, 2014)
- Fiduciary Litigation Update – 2014, New Jersey State Bar Association Annual Meeting and Convention, Atlantic City, NJ (May, 2014)
- Hot Trends; Ethics and Estate Litigation, Archer, P.C., Estate and Trust Litigation Group, Haddonfield, NJ (April, 2014)
- Hot Trends in Probate Litigation 2013-2014, New Jersey Institute for Continuing Legal Education (NJICLE), (March, 2014)
- Hot Trends in Probate Litigation, Burlington County Bar Association Probate Committee, Mount Holly, NJ (March, 2014)
- When Donor's Intention Comes Undone, Community Foundation of South Jersey, Mt. Laurel (February, 2014)
- Ethics in Estate & Trust Disputes, Heckerling Institute, Orlando, FL (January, 2014)
- Hot Trends in Estate Litigation, Camden County Bar Association, Cherry Hill, NJ (November, 2013)
- Trends in Estates and Trusts - Planning, Administration and Litigation," New Jersey Institute for Continuing Legal Education (NJICLE), New Brunswick, NJ (September, 2013)
- 10 Things You Need to Know About New Jersey Estates, New Jersey Bar Association, Atlantic City, NJ (May, 2013)
- Ethics and Estate Litigation, American Bar Association, Washington, D.C. (May, 2013)
- Estate Litigation Forum, Archer Estate and Trust Litigation Group, Tavistock, NJ (April, 2013)
- Estate and Trust Symposium, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March, 2013)
- Hot Trends in Probate Litigation, Burlington County Bar Association Probate Committee, Mount Holly, NJ (March, 2013)
- Hot Trends: Ethics and Estate Litigation, Archer & Greiner estate and Trust Litigation Symposium, Tavistok, NJ (March 2013)
- Summary of New Jersey Estate and Trust Law, AMG Institutional Investments Trust Banking Program (PNC Bank), (March 2013)

- Hot Trends in Probate Litigation, Camden County Bar Association, Tavistock, NJ (December, 2012)
- Gifts Gone Awry, AMG Institutional Investments Trust Training Program, Telephonic (November, 2012)
- Gifts Gone Awry, South Jersey Estate Planning Council, Tavistock, NJ (September, 2012)
- Gifts Gone Awry, Philadelphia Estate Planning Council, Philadelphia, PA (May, 2012)
- Probate Symposium, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March, 2012)
- Hot Trends in Probate Litigation, Burlington County Bar Association, Mt. Holly, NJ (March, 2012)
- Seven Deadly Claims: Estate Claims Practitioners May Not Know About, Estate Planning Council of Portland, Oregon (February, 2012)
- Hot Trends in Probate Litigation, Camden County Bar Association, Tavistock, NJ (December, 2011)
- Overlooked Yet Significant Issues in Trust Litigation, PNC Bank, N.A. (November 2011)
- Discovery in Probate Litigation, Somerset County Bar Association, Bridgewater, NJ (May, 2011)
- Estate and Trust Symposium, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March, 2011)
- Hot Trends in Probate Litigation, Burlington County Bar Association, Mt. Holly, NJ (February, 2011)
- Seven Deadly Claims: Estate Claims Practitioners May Not Know About, Heckerling Institute, Orlando, FL (January, 2011)
- Hot Trends in Probate Litigation, Camden County Bar Association, Haddon Township, NJ (November, 2010)
- Significant developments in Estate Litigation, PNC Bank, N.A. (October 2010)
- Gifts Gone Wild: Difficulties with Charitable Dispositions, American Bar Association, Philadelphia, PA (May, 2010)
- Fiduciary Accountings: Exceptions and Hearings, Camden County Bar Association, Cherry Hill, NJ (April, 2010)
- Estate and Trust Symposium, New Jersey Institute for Continuing Legal Education, Edison, NJ (March, 2010)
- Hot Trends in Probate Litigation, Burlington Bar Association, Mt. Holly, NJ (March, 2010)
- Hot Trends and Probate Litigation, Camden County Bar Association, Haddon Township, NJ (December, 2009)
- Litigation Issues for Estate Planners, American College of Trust and Estate Counsel (ACTEC), NJ Fellows, Woodbridge, NJ (October, 2009)
- Significant developments in Estate Litigation, PNC Bank, N.A. (October 2009)
- Guide to Surrogate Court and Probate Proceedings, New Jersey Institute for Continuing Legal Education, Voorhees, NJ (June, 2009)
- Significant developments in Estate Litigation: The Duty to Communicate/Disclose, PNC Bank, N.A. (April 2009)

- Hot Trends in Probate Litigation, Burlington County Bar Association, Mt. Holly, NJ (April, 2009)
- Estate and Trust Symposium, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (March, 2009)
- Litigation for the Ethical Estate Planner, Heckerling Institute, Orlando, FL (January, 2009)
- Disputes as to Charitable Dispositions, New Jersey Institute for Continuing Legal Education, Iselin, NJ (November, 2008)
- Hot Trends in Trust and Estate Litigation, Estate & Financial Planning Council of Southern NJ, Voorhees, NJ (November, 2008)
- Significant developments in Estate Litigation, PNC Bank, N.A. (October 2008)
- Litigation for the Ethical Estate Planner, American Bar Association, Washington, DC (May, 2008)
- Significant developments in Estate Litigation, PNC Bank, N.A. (April 2008)
- Mock Deposition in a Will Contest, Heckerling Institute, Orlando, FL (January, 2008)
- Hot Trends in Probate Litigation, Camden County Bar Association, Haddon Township, NJ (December, 2007)
- Key Trends in Probate Litigation, NJ Bankers Association, Jamesburg, NJ (October, 2007)
- Litigation Issues for Trust Officers, PNC Bank, N.A. (October 2007)
- Litigation Issues for Trust Officers, PNC Bank, N.A. (May 2007)
- Key Litigation Trends for Corporate Fiduciaries, Corporate Fiduciaries Association of Philadelphia, Philadelphia, PA (February, 2007)
- Hot Trends in Probate Litigation, Burlington County Bar Association, Mt. Holly, NJ (February, 2007)
- Hot Trends in Probate Litigation, Camden County Bar Association, Haddon Township, NJ (December, 2006)
- Measuring Damages in Fiduciary Litigation, American Bar Association, Denver, CO (October, 2006)
- The "Newer" NJ Probate Code, New Jersey Institute for Continuing Legal Education, Mt. Laurel, NJ (June, 2006)
- Mock Trial of a Will Contest, Heckerling Institute, Miami Beach, FL (January, 2006)
- Hot Trends in Probate Litigation, Camden County Bar Association, Haddon Township, NJ (December, 2005)
- Estate Litigation, New Jersey Institute for Continuing Legal Education, Mt. Laurel, NJ (October, 2005)
- Guide to Surrogate Court and Probate Proceedings, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (June 2, 2005)
- The New Probate Code, New Jersey State Bar Association (Annual Meeting), Atlantic City, NJ (May, 2005)
- Erosion of the Attorney/Client Privilege, American Bar Association, Washington, DC (April, 2005)

- Writings Intended as Wills, Camden County Bar Association, Voorhees, NJ (April, 2005)
- New Probate code Provisions for Surrogates and their Staff, Camden County Surrogate's Office, Camden, NJ (March 2005)
- Representing Estate & Trust Beneficiaries and Fiduciaries: The Rise of Domestic Partnerships and the Fall of Attorney-Client Privilege, American Law Institute – American Bar Association, New Orleans, LA (February, 2005)
- "New" New Jersey Probate Code, New Jersey Institute for Continuing Legal Education, Atlantic City, NJ (January, 2005)
- "New" New Jersey Probate Code for Surrogates of New Jersey, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (January, 2005)
- "New" New Jersey Probate Code, New Jersey Institute for Continuing Legal Education, Mt. Laurel, NJ (November, 2004)
- Current Trends in Probate Litigation, Camden County Bar Association, Camden County, NJ (November, 2004)
- Annual Probate & Trust Law Symposium, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (October, 2004)
- Estate & Trust Litigation: Will Contests and More, New Jersey Institute for Continuing Legal Education, Mt. Laurel, NJ (October, 2004)
- Representing Estate & Trust Beneficiaries and Fiduciaries: The Rise of Domestic Partnerships and the Fall of the Attorney-Client Privilege, American Law Institute-American Bar Association, Boston, MA (July, 2004)
- Current Trends in Probate Litigation, Camden County Bar Association, Camden County, NJ (November, 2003)
- Annual Probate and Trust Law Symposium, New Jersey Institute for Continuing Legal Education, and New Jersey State Bar Association, New Brunswick, NJ (October, 2003)
- Hot Issues for Corporate Fiduciaries, Corporate Fiduciaries Association of Philadelphia, Philadelphia, PA (September, 2003)
- Guide to Surrogate Court and Probate Proceedings, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (May, 2003)
- Estate Litigation: What Every Estate Planner Should Know About Probate Litigation, American Bar Association: Real Property, Probate & Trust Law Section Annual Symposium, New York, NY (May, 2003)
- Hot Litigation Topics Every Estate Planner (and Litigator!) Should Know, New Jersey State Bar Association, Orlando, FL (November, 2002)
- Representing Estate and Trust Beneficiaries and Fiduciaries, American Law Institute- American Bar Association, San Francisco, CA (July, 2002)
- Fiduciary Accounting Litigation, American Bar Association: Real Property, Probate & Trust Law Section Annual Symposium, San Francisco, CA (April, 2002)

- Probate and Trust Law Symposium: Diversification of Investments, New Jersey Institute for Continuing Legal Education, and New Jersey State Bar Association, New Brunswick, NJ (March, 2002)
- Hot Issues for Corporate Fiduciaries, Corporate Fiduciaries Association of Philadelphia, Philadelphia, PA (February, 2002)
- Fiduciary Accountings, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (December, 2001)
- Representing Estate and Trust Beneficiaries and Fiduciaries, American Law Institute-American Bar Association, Boston, MA (July, 2001)
- Representing Estate and Trust Beneficiaries and Fiduciaries, American Bar Association: Real Property, Probate & Trust Law Section Annual Symposium, Washington, DC (April, 2001)
- Estate and Trust Litigation: Will Contests and More, New Jersey Institute for Continuing Legal Education, Mount Laurel, NJ (December, 2000)
- Five Hot Trends in Probate, Corporate Fiduciaries Association of Philadelphia, Philadelphia, PA (November, 2000)
- Representing Estate and Trust Beneficiaries and Fiduciaries, American Law Institute-American Bar Association, Chicago, IL (June, 2000)
- Semi-Annual Tax & Estate Planning Forum, New Jersey Institute for Continuing Legal Education, New Brunswick, NJ (December, 1999)
- Representing Estate and Trust Beneficiaries and Fiduciaries, American Law Institute-American Bar Association, San Francisco, CA (June, 1999)
- Will Contests, New Jersey Institute for Continuing Legal Education, Mount Laurel, NJ (October, 1998)
- Administering Estates in New Jersey, New Jersey Institute for Continuing Legal Education, Mount Laurel, NJ (August, 1998)
- How to Avoid and Handle Probate Litigation, Corporate Fiduciaries Association of Philadelphia, Philadelphia, PA (May, 1998)
- Practice Problems In Administering Estates And Trusts, New Jersey Institute for Continuing Legal Education, Cherry Hill, NJ (April, 1996)

Lawrence C. Wohl

Partner
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609-580-3707

Princeton, NJ

Practice Areas

Commercial Litigation
Equine Law
Estate & Trust Litigation
Estate Planning
Estates & Trusts
Land Use, Environmental Permitting & Compliance
Real Estate

Admitted

New Jersey
Pennsylvania
United States Court of Appeals for the Third Circuit

Education

Rutgers Law School
Juris Doctor, 1984
Rutgers University
Bachelor of Arts, 1981

Following Law School, Mr. Wohl served as a Judicial Law Clerk for the New Jersey Appellate Division serving with The Honorable Neil F. Deighan, Jr., The Honorable Patrick King and The Honorable Lawrence Bilder. Following his clerkship, he was then associated with Katzenbach, Gildea & Rudner of Lawrenceville, New Jersey and a partner with the law firms of Rubin & Wohl, P.C. and Pellettieri, Rabstein & Altman, before joining Archer. Mr. Wohl's practice focuses on the areas of Estate Planning, Wills, Trusts and Probate, Complex Estate and Trust Litigation, Complex Real Estate Transactions, and Environmental and Land Use Litigation. Mr. Wohl has substantial experience in drafting estate planning documents, including Wills, Insurance Trusts, Personal Residence Trusts and Grantor Trusts. He provides counsel to both fiduciaries and beneficiaries in all aspects of the probate and estate administration, including the litigation of contested estates. Mr. Wohl's real estate practice focuses on contracts for purchase and sale, leases and environmental issues related to real estate and land use.

Professional and Community Involvement

- Provides legal counsel for several local tax-exempt charities
- Successfully created several 501(c)(3) charitable organizations
- Currently serving on the Delaware Township Board of Education in Hunterdon County, New Jersey Member of the Board of Trustees of DanceVision, Inc., a New Jersey not-for-profit organization and the DanceVision Youth Ensemble and its youth ballet programs
- Member, New Jersey Supreme Court District Fee Arbitration Committee for Mercer County, District VII (1993-2003)
- Member, Mercer County Bar Association (Trustee, 1992-1995)
- Chairman, Real Estate Section, 1996-1997)
- New Jersey State, Pennsylvania, American and Princeton Bar Associations

Articles and Presentations

- 6th Annual Estate Litigation Seminar (May 2018) 'Seven Deadly Claims'

Tara Hagopian Zane

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Haddonfield, NJ

Practice Areas

Estate & Trust Litigation
Estates & Trusts

Admitted

New Jersey
Pennsylvania
United States Tax Court

Education

Villanova University School of Law, LL.M. in Taxation, 2002
Boston College Law School, Juris Doctor, 1998
Villanova University, Bachelor of Arts, 1995

Tara is Co-Chair of Archer's Estates and Trusts Group, and a member of the firm's Estate and Trust Litigation Group. She concentrates her practice in the areas of estate planning, estate and trust administration, and estate and trust litigation. Tara specializes in the overlap of these practice areas, which allows her to better serve her clients.

Tara's estate planning services include lifetime and end-of-life planning and related document preparation such as Wills, Trusts, Powers of Attorney, and Advance Directives, as well as lifetime giving, business succession, and charitable planning matters. Tara's administration services are equally diverse. She represents families with complex estate and trust administration issues, including those with complicated tax matters or related litigation. She also represents individuals and corporate fiduciaries who serve as Executor, Trustee, and Guardian.

Representative Experience

- Obtained a private letter ruling from the IRS on a generation-skipping transfer tax issue in accordance with the settlement of litigation.
- Served as counsel for beneficiaries and fiduciaries in the modification and termination of trusts under the Uniform Trust Code, with and without court approval.
- Represented corporate trustees in the modification of charitable trust documents to comply with private foundation and related rules.
- Handled the complex administrations of spouses who died intestate -- the survivor leaving over three dozen heirs, multiple years of unfiled and unpaid income taxes, and assets in multiple jurisdictions.
- Successfully negotiated the settlement of a matter involving the dispute between siblings of pre-death transfers made by a deceased parent.

Professional and Community Involvement

- American Bar Association
- New Jersey Bar Association
- Pennsylvania Bar Association
- Camden County Bar Association– Probate & Trust Committee
- Burlington County Bar Association – Probate & Trust Committee
- Society of Financial Service Professionals – South Jersey Chapter
- Estate and Financial Planning Council of Southern New Jersey

Awards and Recognition

- Named a "Top Attorney" for Wills, Estates & Trusts by SJ Magazine (2021)
- Named an “Awesome Attorney” by South Jersey Magazine (2018, 2019)

Articles and Presentations

- Co-Author, "Challenges for Probate Judges: Trust Investments and Diversification," National College of Probate Judges Fall Journal (2020)
- Presenter, "Year-end Tax Planning Webinar," Catholic Charities Diocese of Trenton (December 2020)
- Presenter, "19th Annual Forum: Hot Trends in Estate Litigation," Camden County Bar Association (December 2020)
- Presenter, "8th Annual Estate Litigation Seminar" (September 2020)
- “Wills and Estate Planning Workshop,” Samaritan Healthcare & Hospice (September 2019)
- "Ethics in Estate Planning: Putting Testimony to the Test," Archer 7th Annual Estate Litigation Seminar (April 2019)
- "Ethics in Estate Planning," Archer 6th Annual Estate Litigation Seminar (May 2018)
- "Collaborative Planning for Closely-Held Business Owners and Their Families – A Case Study" (November 2017)
- UTC Case Study Presentation (January 2017)