



Bench Bar Conference – November 7-9, 2024

Course Outline: Complex Estate Administration

1. Introduction
 - a. Welcome and Introductions
 - b. Introduction of Colleen R. Stumpf, Esq.
 - c. Overview of the course objectives and structure.
2. Overview of estate administration process
 - a. Basic process of estate administration
 - i. Petition for Probate and Grant of Letters Testamentary
 - ii. Marshalling and valuation of assets
 - iii. Filing of relevant tax returns including Pennsylvania Inheritance Tax Return and Federal Estate Tax Return
 - iv. Distribution of assets following execution of Final Receipt, Release, and Indemnification Agreement/Family Settlement Agreement
 - b. Complicating factors associated with estate administration
 - i. Issues associated with Petition for Probate
 - ii. Valuation of unique assets
 - iii. Necessity of addressing beneficial interests through audit and adjudication of accounts
 - iv. Addressing charitable interests and involvement of the Pennsylvania Office of the Attorney General
3. Issues associated with Petition for Probate
 - a. Need to consider wills presented for probate and potential challenges to a will
 - i. Particularly true in the estate of Aretha Franklin
 - ii. While you may "Respect" her and "Think" her music is amazing, her estate planning left much to be desired
 - iii. In 2023, five years after her death, trial was set to determine which of two handwritten wills was her true will, including one found in couch cushions
 - iv. No formal, typewritten will
 - v. Instead a 2010 document found in a cabinet and a 2014 document inside a notebook under cushions in her home
 - vi. Set the stage for contentious proceeding between the family
 - vii. Both wills were holograph and, while being signed and dated, had portions that were illegible and ambiguous

- viii. The 2010 will was signed on every page and notarized while the 2014 document was only signed on the last page
 - 1. Albeit with a smiley face written inside of the letter "A"
- ix. Differences in distribution of assets
 - 1. Son, Ted White II, through 2010 will should control
 - a. This version said Ted would receive Ms. Franklin's main home in Bloomfield Hills, valued at \$1.1 million when she died
 - b. Also mandated that her sons would need to get a certificate or degree in business before becoming entitled to her estate
 - 2. Sons, Kecalp Franklin and Edward Franklin, favored 2014 document
 - a. This version said Kecalp and grandchildren would receive the home
 - 3. Both wills indicated that the sons would share income from music and copyright
- x. After trial, a jury determined that the 2014 will was valid
- xi. In November 2023, a probate judge in Michigan
 - 1. Awarded the Bloomfield house to Kecalp
 - 2. Ted White, II received another house but it had been sold by the estate before the wills were discovered and requested the sale proceeds
 - 3. Edward received property
 - 4. A fourth home was expected to be sold and the proceeds divided between all four of her sons
- xii. Did this just make everyone involved in the estate's administration just look like a "Chain of Fools"?
- b. Recent Pennsylvania law addressing this type of matter
 - i. Critical role of the Orphans' Court should there be an appeal from a Register's hearing on the probate of a will
 - ii. If the Register hears all the evidence, he or she may enter a decree refusing probate or may dismiss the caveat and probate the will.
 - iii. Alternatively, the Register may certify the entire record to the Orphans' Court which proceeds to a determination of the issue in dispute.
 - iv. The court may also, upon petition of any party in interest, direct the Register at any stage of the proceedings to certify the record to the court. 20 Pa.C.S. § 907.
- c. Recent Pennsylvania Superior Court case from an appeal from Mercer County Orphans' Court
 - i. *Ruhlman v. Ruhlman*, 2023 PA Super 43, 291 A.3d 916
- d. Facts
 - i. The Decedent died in December 2021 at a senior living community

- ii. Following her death, her step-daughter, Diane Ruhlman, found a Last Will and Testament dated March 23, 1990
 - iii. Ms. Ruhlman presented the Will for probate in Mercer County on February 4, 2022
 - iv. On March 22, 2022, Ms. Ruhlman found a will dated October 25, 2000 in a safe deposit box
 - v. Ms. Ruhlman filed a petition to the Orphans' Court on April 5, 2022 to have the 2000 Will probated instead of the 1990 Will
 - 1. 14 days after the discovery of the 2000 Will and 3 months and 18 days after the decedent's death
 - vi. The 1990 will left assets to St. Paul Homes, a charitable organization and her two stepchildren
 - vii. The 2000 will left all assets to her stepchildren
 - viii. The Orphans' Court concluded the petition was untimely and denied the request to probate the 2000 Will
 - ix. A single matter was taken on appeal
 - 1. When the Administrator [C.T.A.], 61 days after probate of the first-discovered will, petitions under 20 Pa.C.S. Section 908 (appeal from probate authorized if filed within one year from probate of the earlier will) to probate a valid after-discovered and later-dated will, does the Orphans' Court err as a matter of law by involving 20 Pa.C.S. Section 3138 (register authorized to admit to probate a later will when presented within 3 months of testator's death) and denying the petition on the ground it was filed 109 days after the decedent's death, thereby frustrating testator's intentions as expressed in the later will?
- e. Applicable Law
- i. Section 908 - Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree...
 - ii. Section 3138 - If a later will or codicil is submitted to the register for probate within three months of the testator's death but after the register shall have probated an earlier instrument, the register, after such notice as he deems advisable, but with at least ten-days' notice to the petitioner who presented the probated instrument if he has not requested probate of the later will or codicil, shall have the power to open the probate record, receive proof of the later instrument or instruments and amend his probate record.
- f. Discussion
- i. Resolution was a matter of statutory interpretation and needed to utilized tools of statutory construction

- ii. Determined that it was appropriate to consider the official comments to the statute, noting that the Legislature did not intend to produce an absurd or unreasonable result
- iii. Section 908 had been amended after its misapplication in deciding a 1999 case
- iv. The Comment indicated that the Legislature intended
 - 1. to change existing caselaw which precluded a petition from submitting a later-discovered will or codicil to probate if it was not submitted to the register within three months of the decedent's death
 - 2. Section 3138 is not an exclusive procedure but provided an alternative method for having a later discovered will or codicil
 - 3. Specifically provided that a later-discovered will or codicil may be submitted directly to the Orphans' Court for probate so long as it is presented within a year of the previously probated wills

g. Ruling

- i. Consequently, we conclude that an interested party, pursuant to section 908 of the Probate Code, may present a later-discovered will or codicil directly to the orphans' court for probate as an appeal to set aside a prior will, as long as the petition is filed within a year of the original probate. Based upon our interpretation of the relevant statutes, we further conclude that the orphans' court erred in applying section 3138 of the Probate Code instead of section 908 in this case when it denied Ruhlman's request to probate the 2000 Will. Decedent's 1990 Will was probated on February 4, 2022, and Ruhlman filed her petition seeking probate of the 2000 Will on April 5, 2022.
- ii. This filing was well within the one-year time frame set forth in section 908.
- iii. Accordingly, we reverse the orphans' court's order denying Ruhlman's request to probate Decedent's 2000 Will and remand to the orphans' court for further proceedings in accordance with this opinion.

4. Valuation of Complex assets

- a. Valuation of assets can become problematic in estates, particularly as some assets are difficult to value
 - i. Stock in publicly traded companies should be easy to value
 - ii. Some assets are more nebulous in their value
- b. Valuations should not be Off the Wall or the IRS will tell your client to Beat It
- c. This was true in the case of Michael Jackson
 - i. Estate consisted of real estate, music rights, Michael Jackson's name and likeness, and other assets
 - ii. As a basis of comparison, valuations associated with Aretha Franklin's estate didn't originally include the value of her music and intellectual property. That originally had been valued at only \$1

- iii. The issue in Estate of Jackson was one of the largest personal deficiencies in the history of the Tax Court - over \$1 billion
 - 1. Nearly \$200 million in accuracy related and gross valuation misstatement penalties
 - 2. Resulting liability was over \$500 million
 - 3. To put this in context
 - a. Had the full liability been collected, it would have been nearly enough to finance the entire operating budget of the investigations arm of the IRS in 2013 when the case was filed
 - b. The Deficiency is approximately \$50 million above the GDP of the nation of Tonga
- iv. Deficiency hung on three contested assets
 - 1. Jackson's image and likeness
 - 2. His interest in a music publishing company (Sony/ATV)
 - 3. His interest in a catalog of music comprised of recordings of many artists including the Beatles and Jackson (Mijac Music)
- v. The Estate claimed that the value of Jackson's image and likeness was \$4 million (originally \$2,100.00) while the IRS valued it at \$161 million
- vi. The Estate claimed the interest in Sony/ATV had no value while the IRS valued it at \$206 million
- vii. The estate valued Mijac Music at \$2 million while the IRS valued it at \$114 million
- viii. Property should be valued at the moment at death rather than with post-death evidence, such as the development of a film, musical, and Cirque du Soleil show
- ix. The resulting Tax Court opinion was 271 pages focusing on valuation
- x. Enter the experts - a chorus on the side of the estate and a soloist on the side of the IRS
 - 1. Soloist was West Anson who testified that he had never worked for the IRS but had prepared an intellectual property valuation report in the Whitney Houston estate-tax case
 - 2. Also lectured that he was testifying in a "billion-dollar case" and implied that he was the expert of the century
 - 3. Tax Court did not grant the Estate's motion to strike Anson's testimony *in toto*, it observed "Anson did undermine his own credibility in being so *parsimonious with the truth* about these things he didn't even benefit from being untruthful about."
- xi. Three methods may be used in valuing unique assets
 - 1. The income approach
 - a. values an asset by calculating how much foreseeable revenue it will produce and discounting that revenue back to its present value

2. The market approach
 - a. values an asset by comparing it to the prices at which similar assets have changed hands in arm's-length transactions close in time to the decedent's offering
3. The cost approach
 - a. values an asset by computing the cost of recreating it.
4. Both the IRS and the estate used the income approach with respect to Jackson's image and likeness
- xii. The Income Approach - discounted cash flow and capitalization
 1. Discounted cash flow
 - a. Used by both the estate and IRS
 - b. Has two main variables: the projected future cashflow stream and the discounted rate
 - c. Accounts for the time-value of money in computing the present value of an assets future income
 - d. The disagreement between the parties was whether the Tax Court could consider the effect that Jackson's other assets might have on his image and likeness, a concept known as synergy except the Tax Court was not permitted to consider synergy in its computation
 - xiii. Tax Court rejected the aggregation of additional assets into the valuation of Jackson's image and likeness and did not include futuristic opportunities
 - xiv. Tax Court did not agree in all respects with the valuation provided by Estate experts but found \$3.1 million to be much closer to reality
 - xv. Tax Court exercised prerogative and calculated the value of the image and likeness to be \$4.2 million
 - xvi. The Court ultimately disallowed all accuracy-related and gross valuation misstatement penalties assessed against the estate as the Estate's reliance on each of the appraisals was objectively reasonable under the Internal Revenue Code
5. Distribution of estate assets
 - a. This, among other issues, can be raised as part of an Audit and Adjudication of the Account of the Estate
 - i. Petition for Adjudication can be filed by a Personal Representative requesting that the Orphans' Court provide an audit of the Account of the Personal Representative and adjudicate matters associated with the estate's administration
 - b. Pennsylvania Orphans' Courts vary in review of the Petition for Adjudication and Account
 - i. Consideration for counties and judges in how Accounts are reviewed
 - ii. County alternatives
 1. Erie County utilizes an auditor to review the Account

2. Crawford, Venango, and Bradford Counties do not utilize an auditor but hear objections to the account
3. Montgomery County does not utilize an auditor but requires a hearing on every Petition for Adjudication
 - a. These are heard in a single virtual hearing
- iii. Often not a hearing unless objections are filed by an interested party
- c. Slayers' Act
 - i. This may be a matter to be raised within the Petition for Adjudication
 - ii. Most are familiar with Pennsylvania's Slayers' Act under which a slayer shall be treated as if he or she predeceased the decedent
 1. The slayer shall not acquire property or receive any benefit as a result of the death of the decedent
 - iii. One of the most famous examples of the Slayers' Act that is enjoying a resurgence of attention is that of the Menendez Brothers
 1. Minimal information is found in the court dockets associated with the administration and distribution of this estate
 2. The estate was estimated to be worth about \$14 million
 3. It appears that the brothers were able to obtain access to some of the wealth in the days after they killed their parents
 - a. Perhaps through non-probate distribution of transfer on death accounts
 4. It is reported that Kyle and Erik's parents did not leave a will so the estate would have been divided according to California's intestate succession rules
 5. California law states that a person who feloniously and intentionally kills the decedent is not entitled to benefit under the decedent's will or trust
 - iv. Several similar cases have sparked public debate associated with this rule
 1. It may seem unjust for a convicted murderer to financially benefit from the death of a victim
 2. It also may seem unjust for a victim of abuse not to inherit from their abuser
 - v. Effective December 30, 2024, in Pennsylvania an elder abuser may not acquire property or receive any benefit upon the death of a victim
 - vi. Pennsylvania defines a slayer to be a person who participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of any other person
 - vii. Case law has developed that what constitutes a benefit under the Slayer's Act "has been broadly construed to include anything that works to the advantage or gain of the recipient"
 - viii. Elder abuse is defined to include assault, sexual offenses, theft and related offenses, forgery and fraudulent practices, criminal attempt,

- criminal solicitation, and criminal conspiracy with the victim being 60 years of age or older
- ix. Record of a conviction is admissible in evidence against a claimant of property
 - 1. If there is a charge but not a conviction, share to be placed in escrow upon petition to the Register
 - 2. Can petition court for payment from escrowed funds of child support and related expense and expenses of estate administration
 - x. An elder abuser may acquire property or benefits if it is proven that the victim ratified the intent to transfer or there is reconciliation following conviction of elder abuse
 - 1. Query as to what constitutes reconciliation
 - a. Writings of the victim?
 - b. Testimony of close friends and family?
 - 2. Case law may develop as to the definition of reconciliation
 - a. Key factors for Orphans' Court judges to consider
6. Consideration of charitable interests but consider interaction with pet trusts
- a. Many of us have heard about pets receiving large shares of estates
 - i. As pets cannot receive an inheritance directly, these funds typically held in trust with the remainder being charitable
 - ii. This charitable remainder interest results in the involvement of state attorney generals due to their parens patriae power
 - b. Trouble for Leona Helmsley
 - i. When Leona Helmsley, hotel heiress and the "Queen of Mean" died, she left her pet Maltese, named Trouble, a trust fund valued at \$12 million dollars
 - 1. That made Trouble the third wealthiest dog in the world at the time
 - ii. In her will, Helmsley left her personal estate, valued at more than \$4 billion, to a charitable trust, and most of her inheritance from her husband to dog charities
 - 1. Two of Helmsley's four grandchildren were also given a \$5 million trust – as long as they provided proof each year that they had visited their father's gravesite at least once
 - 2. The other two grandchildren were initially disinherited entirely, for reasons unknown
 - 3. When the will was challenged in court, a judge took \$6 million from Trouble's trust fund and gave it to the two grandchildren not named in the will.
 - iii. Helmsley's brother Alvin, one of five executors named in her will, was also given an inheritance and charged with caring for Trouble after her death.

1. Alvin refused to look after Trouble who lived out his years at a Florida hotel
 2. Sadly, Trouble passed away in 2011 at the age of 12
 3. The remainder of his fortune was contributed to the Charitable Trust
- iv. The New York Attorney General, as the statutory representative of the ultimate beneficiaries of the Charitable Trust, had objected to the proposed commission of five executors
 - v. The AG filed objections to the account, none of which alleges that the executors acted improperly in administering the vast and complex estate.
 1. Rather, the AG took exception
 - a. The amount Petitioners seek as "reasonable compensation" for their services and the services of Alvin Rosenthal
 - b. The legal fees that were paid or are proposed to be paid to two law firms associated with executor, Sandor Frankel
 2. The Charitable Trust did not object to the commission but the court found it to have a conflict of interest as the trustees are also the executors
 - vi. Helmsley provided that her executors receive reasonable compensation rather than statutory compensation set forth in New York
 1. New York, like Pennsylvania examines reasonable compensation in light of time spent, the value of assets involved, the nature of the services rendered, the difficulty of the issues and the skills required to handle these issues, the benefits to the estate or trust from the services performed, and the service provider's experience, ability, and reputation
 2. The Attorney General believe that there should be only a calculation of hourly rate times hours worked
 - vii. Nearly 12 years after her death, a judge awarded Helmsley's four living executors \$100 million in fees (Alvin passed away in 2012) along with a commission for the Alvin's estate
 1. Two of Helmsley's grandchildren, one of her lawyers, and a friend and business advisor
 2. Each of the four received \$25 million with an additional commission for Alvin's estate for his work
 - viii. The court utilized the standard of reasonable compensation and the unique challenges faced by the executors due to the unique assets and challenging real estate landscape during the course of the estate's administration
 - ix. The Attorney General also objected to the legal fees billed by the two law firms associated with one of the executors

1. The Attorney General found these legal fees to be duplicative of the executor's commission
 2. The attorney/executor has the burden to substantiate the fees and differentiate between executorial and legal services for billing purposes
 3. The executor/attorney was found to have met his burden of proof
 - a. Demonstrated that the services performed were authorized by the co-fiduciaries in advance, notwithstanding the lack of a form retainer agreement
 - b. All legal bills submitted were paid only after a vetting process, which involved initial review by the Office of the General Counsel of Helmsley Enterprises, Inc. and review by counsel of each executor
 - c. When administering estates for the benefit of pets, also consider the ultimate beneficiaries , as they could be charitable in nature
7. Conclusion
- a. Many of these humorous and litigious scenarios can be summarized in the my daughter's favorite case study
 - b. Can you spot the issues?