

## ACBA Bench Bar Orphans' Court

### Presentation

1. Update from the Court
2. Guardianship Update
3. Legislative and Case Law Update
4. Question and Answer

### Legislative Updates

No federal legislation has passed.

Law is to sunset on January 1, 2026

If law sunsets:

#### **For Individuals:**

- **Individual Income Tax Rates:** Current tax brackets and rates will revert to pre-TCJA (2016 tax rates) levels, potentially increasing tax liability for many. If no new legislation, would want to accelerate any Roth conversions.

#### **2016**

Rate	Single Filers	Married Joint Filers	Head of Household Filers
10%	\$0 to \$9,275	\$0 to \$18,550	\$0 to \$13,250
15%	\$9,275 to \$37,650	\$18,550 to \$75,300	\$13,250 to \$50,400
25%	\$37,650 to \$91,150	\$75,300 to \$151,900	\$50,400 to \$130,150
28%	\$91,150 - \$190,150	\$151,900 to \$231,450	\$130,150 to \$210,800
33%	\$190,150 - \$413,350	\$231,450 to \$413,350	\$210,800 to \$413,350
35%	\$413,350-\$415,050	\$413,350 to \$466,950	\$413,350 to \$441,000
39.6%	\$415,050+	\$466,950+	\$441,000+

#### **2025**

10%	\$0 to \$11,925	\$0 to \$23,850	\$0 to \$17,000
12%	\$11,925 to \$48,475	\$23,850 to \$96,950	\$17,000 to \$64,850

22%	\$48,475 to \$103,350	\$96,950 to \$206,700	\$64,850 to \$103,350
24%	\$103,350-\$197,300	\$206,700 to \$394,600	\$103,350 to \$197,300
32%	\$197,300-\$250,525	\$394,600 to \$501,050	\$197,300 to \$250,500
35%	\$250,525-\$626,350	\$501,050 to \$751,600	\$250,500 to \$626,350
37%	\$626,350 or more	\$751,600 or more	\$626,350 or more

- **Standard Deduction:** The increased standard deduction established by the TCJA will revert to pre-TCJA amounts, adjusted for inflation.
- **Child Tax Credit:** The child tax credit will decrease from \$2,000 per qualifying child to \$1,000, and income thresholds for eligibility will be reduced.
- **State and Local Tax (SALT) Deduction:** The \$10,000 cap on the SALT deduction will expire, potentially allowing taxpayers in high-tax states to deduct more of their state and local taxes.
- **Mortgage Interest Deduction:** The limitation on the deduction for mortgage interest to loans up to \$750,000 will be lifted, reverting to the pre-TCJA limit of \$1 million.
- **Estate and Gift Tax Exemption:** The lifetime exemption from estate and gift taxes will be significantly reduced, reverting to pre-TCJA levels (around \$5 million, adjusted for inflation).
- **Charitable Deduction:** Decreases from 60% to 50%.

#### For Businesses:

- **Qualified Business Income (QBI) Deduction:** The deduction of up to 20% of qualified business income for pass-through entities (LLCs, S-corporations, etc.) will expire.
- **Bonus Depreciation:** The ability for businesses to immediately deduct 100% of the cost of certain qualified property will be phased out by 2027.
- **Business Interest Deduction:** The limitation on the deduction for net interest expenses to 30% of adjusted taxable income will revert to pre-TCJA rules

#### Pennsylvania Legislation

Amount allowed to be removed from bank account for funeral expenses increased

Exemption for all 529 Plans introduced but has not moved

New process for trustees to provide an accounting.

§ 7785. LIMITATION OF ACTION AGAINST TRUSTEE.

**(a) IMPOSED BY TRUSTEE'S WRITTEN REPORTS.**

**(1) A beneficiary is barred from challenging a transaction or asserting a claim against a trustee for breach of trust if:**

**(i) the trustee provided the beneficiary at least annually with periodic written financial reports concerning the trust;**

**(ii) the transaction was disclosed in a report to which subparagraph (i) refers or such report provided sufficient information so that the beneficiary knew or should have known of the potential claim or should have inquired into its existence;**

**(iii) in the 30 months after a report to which subparagraph (ii) refers was sent by the trustee to the beneficiary, the beneficiary did not notify the trustee in writing that the beneficiary challenges the transaction or asserts a claim and provides in writing the basis for that challenge or assertion; and**

**(iv) all reports were accompanied by a conspicuous written statement describing the effect of this paragraph.**

**(2) A claim not barred by paragraph (1) may nevertheless be barred by subsection (b).**

**(3) In a writing given to the trustee, a beneficiary of a trust may nominate another person to receive, on behalf of the beneficiary, the reports required by this section. By giving the reports required by this section to the nominee of the beneficiary, the trustee satisfies the trustee's duty to give the beneficiary the reports required by this section if:**

**(i) the trustee notifies the nominee that the report and future reports required by this section are being given to the nominee as representative of the beneficiary; and**

**(ii) the nominee does not decline to receive reports on behalf of the beneficiary in a writing given to the trustee no later than 60 days after receipt of the notice described in this subsection.**

**(4) The trustee may rely upon the beneficiary's nomination of another person to receive the reports required by this section on behalf of the beneficiary and the nominee's presumed acceptance of that representation under this subsection until the trustee receives a written rescission of the nomination from the beneficiary or a written declination to receive further reports from the nominee. No such rescission or declination shall render ineffective any report given by the trustee to the nominee before the trustee received the rescission or declination.**

**(b) FIVE-YEAR ABSOLUTE BAR. If not previously barred by subsection (a) or section 7798 (relating to failure to present claim at audit):**

**(1) Except as provided in paragraph (1.1), (2) or (3), a claim by a beneficiary against a trustee, including a claim preserved by the beneficiary notifying the trustee in the manner described in subsection (a), shall be barred five years after the first to occur of the following events:**

(i) the date after the removal, resignation or death of the trustee on which the beneficiary was given the notice required by section 7780.3(g) (relating to duty to inform and report);

(ii) the termination of the beneficiary's interest in the trust; or

(iii) the termination of the trust.

(1.1) A beneficiary who has challenged a transaction or asserted a claim as provided in subsection (a)(1)(iii) may not challenge the transaction or assert the claim against the trustee in a court or an arbitration proceeding commenced more than five years after the date the trustee sent the beneficiary the report described in subsection (a)(1)(i) and (ii).

(2) Except as set forth in paragraph (3), if the first to occur of the events set forth in paragraph (1) occurred before November 6, 2006, a claim described in paragraph (1) shall be barred five years after November 6, 2006.

(3) A claim described in paragraph (1) or (1.1) is not barred if, prior to the respective date set forth in either paragraph (1) or (2), the trustee has filed an account with the court or the beneficiary has petitioned the court to compel the trustee to file an account.

UTA-Directed Trust Act 20 Pa.C.S.A. Section 7780.11

Slightly different than Uniform Directed Trust Act

Trust Protector Provisions

Cases (Summaries from Dan Evans website: <https://resources.evans-legal.com>) Highly recommend checking this website and getting the subscription.

PA Supreme Court

Intent based parentage

The Supreme Court has adopted a common law doctrine of “intent-based parentage” as a fifth way to establish parentage in Pennsylvania. In the case that was decided, a couple in a same-sex marriage had arranged to have a child through assistive reproductive technology and the artificial insemination of one of the spouses. The presumption that a child born during a marriage is the child of both parents did not apply because the parties separated and began divorce proceedings before the birth of the child, and neither the various documents that were signed by one or both of the parties nor the testimony of the parties were sufficient to establish parentage by contract. Because there was extensive evidence that the parties mutually intended to conceive and raise a child, the Supreme Court extended Pennsylvania’s parentage jurisprudence to adopt a doctrine of intent-based parentage, allowing a spouse who is not a biological parent to become a parent of a

child which is not born during the marriage and for which there was no opportunity to adopt and no express contract. *Glover v. Junior*, \_\_\_ A.4th \_\_\_, \_\_\_ Pa. \_\_\_, [9 EAP 2024](#) (3/20/2025).

#### PA Superior/Commonwealth Court

The mistaken beliefs by the settlors that transferring their home to an irrevocable trust would preserve their Medicaid eligibility and protect the home against health care claims were mistakes of law and not “circumstances that were apparently not anticipated” within the meaning of 20 Pa.C.S. § 7740.2(a), and it was within the discretion of the Orphans’ Court, and not an error of law, to deny the settlors’ petition to terminate the trust. The “strained” relationship between the settlors and the trustee (their daughter) was also not grounds to terminate the trust. *In the Matter of: Peterson Family Irrevocable Trust*, \_\_\_ A.4th \_\_\_, [2025 PA Super 60](#) (3/13/2025).

A testamentary gift by a wife to a trust created by the husband and wife, and the transfers for the benefit of the surviving husband within the trust, both qualified for the 0% inheritance tax rate as transfers “for the use of” the surviving spouse. *In re: Estate of Anne Mae Crum*, \_\_\_ A.4th \_\_\_, [223 C.D. 2023](#) (Pa. Cmwlth. 3/12/2025).

It was proper for the Orphans’ Court to dismiss objections to an account of an executor for amounts paid to the executor for legal fees incurred in defending the executor against claims asserted against the executor as agent under the decedent’s general power of attorney when the power stated that the principal agreed to indemnify his agent for all claims that might be made against the agent as a result of his service. It was also proper for the court to dismiss objections to legal fees paid by the estate in connection with the same litigation under the power of attorney because the main issue in the litigation was an estate issue and the attorney for the estate had been allowed to intervene. *In re: Estate of Bernard L. Klionsky*, [198 WDA 2024](#) (Pa. Super. 11/21/2024) (non-precedential).

In an action by a lawyer for the collection from an estate of contingent fees owed by the heirs for representation in a will contest, the heirs had standing to appeal from the decisions of the Orphans’ Court but the administrators of the estate did not because there was no surcharge against them and so they were not adversely affected by the decisions of the court. An agreement for a contingent fee of “40% of any judgment” was interpreted to mean 40% of the net value of the estate passing to the heirs, and not 40% of the gross inventory value of the assets of the estate, and additional fees for appellate work was not allowed because the agreement allowed for additional compensation for an appeal by the heirs of an unsuccessful result but did not allow any additional compensation for an appeal by the opposing parties after a successful result for the heirs. *In re: Estate of John J. Thomas, Deceased*, [1297 WDA 2023](#) (Pa. Super. 10/24/2024) (non-precedential).

An agreement to settle litigation is governed by principles of contract law, and an oral agreement among multiple parties may be enforced by the court even though the parties intend to later reduce the contract to writing. The Orphans’ Court has jurisdiction to enforce a settlement of a malpractice action in the Civil Division that is related to proceedings in the Orphans’ Court and

part of the global settlement of the parties. *Kane Trust*, 2 Fid.Rep.4th 323 (Montgomery O.C. 2024), *app. quashed*, 557 EDA 2024 (Pa. Super. 7/19/2024).

The Orphans' Court had jurisdiction to appoint an administrator of an estate following the removal of the administrator originally agreed to by the parties and it was not necessary to remand the choice of administrators to the Register of Wills. In light of the protracted litigation among the beneficiaries, it was not error to appoint an independent administrator rather than a beneficiary named in a codicil that had not been admitted to probate. *Romano Estate*, 2 Fid.Rep.4th 301 (Bucks O.C. 2024), *aff'd* [45 EDA 2024](#) (Pa. Super. 10/23/2024) (non-precedential; claims deemed waived), *pet. for app.*, 549 MAL 2024 (Pa.).

Florida was the proper jurisdiction to probate the will of the decedent, and not Pennsylvania, when the decedent was physically present in Florida for the last years of his life, had obtained a Florida driver's license, had registered to vote in Florida, had filed nonresident Pennsylvania income tax returns, owned no real property in Pennsylvania except through a limited liability company, and had no bank accounts in Pennsylvania, although the decedent had formed a revocable trust that was administered by a Pennsylvania lawyer. *Milligan Estate (No. 1)*, 2 Fid.Rep.4th 276 (Chester O.C.. 2024), *app. pend.*, 2310 EDA 2024 (Pa. Super.).

An order allowing the executor to enter the decedent's residence is proper when the decedent's residence was not specifically devised by her will and two of the three of the residuary beneficiaries occupy the residence, the court was not divested of jurisdiction over the administration of the estate by an appeal from the grant of letters, and the order is not appealable. *O'Brien Estate (No. 1)*, 2 Fid.Rep.4th 223 (Montgomery O.C. 2024), *app. quashed*, 941 EDA 2024 (Pa. Super. 6/14/2024), *pet. app.*, 389 MAL 2024 (Pa.)

A judgment declaring a power of attorney to be invalid and ordering the purported agent to return property to the estate of the decedent is a final appealable order, but the appeal will be dismissed when the record on appeal fails to include a transcript of the hearing which produced the testimony which is the subject of the appeal. *David Paul Washinsky, Executor of the Estate of Paul Washinsky v. Thomas Nicholas Washinsky*, [468 WDA 2023](#) (Pa. Super. 8/6/2024) (non-precedential).

The appointment of a "guardian ad litem" to manage the financial affairs and make medical decisions for the alleged incapacitated person was vacated when three years had elapsed from the initial petition, there was no record of any notice to the alleged incapacitated person, and there was no finding of incapacity, because the appointment was not authorized by 20 Pa.C.S. §§ 5511 or 5513 or by the rules of court for the appointment of guardians ad litem. *Estate of J.L.C., an Alleged Incapacitated Person*, [2024 PA Super 151](#), \_\_\_ A.3d \_\_\_ (7/22/2024).

The power of an agent to engage in "banking and financial transactions" gave the agent the power to liquidate certificates of deposit created by the decedent (referred to as "Totten trusts"). The beneficiary named on the C.D.s raised other issues in support of her claim against the estate for the proceeds of the C.D.s, but the claims were all considered to be waived for failure to properly develop her arguments, or were found to be harmless errors by the Orphans' Court. *In re: Estate of Willard Charles Gritser, Deceased*, [741 WDA 2023](#) (Pa. Super. 5/7/2024) (non-precedential).

### 3<sup>rd</sup> Circuit

The “testamentary exception” to the attorney-client privilege would allow the admission of evidence of communications between the decedent and his lawyer in order to carry out the testamentary intentions of the decedent, but the exception will not be extended to communications between the surviving spouse and her lawyer in order to prove a contract to make a will. *Kyriakopoulos v. Maigetter*, \_\_\_ F.4th \_\_\_, [No. 23-2276](#) (3rd Cir. 11/20/2024) (precedential; applying Pennsylvania law).