DISTRICT OF COLUMBIA LAW DEVELOPMENTS

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2014 LEGISLATION

D.C. Estate Tax

On May 28, 2014, the Council passed the FY 2015 Budget Support Act (Bill 20-750) which included, among other things, the majority of the tax cuts recommended by the DC Tax Revision Commission. As passed on the first reading, the exemption amount for the D.C. Estate Tax will remain at $1 million through 2015 but increase to $2 million for estates of decedents dying on or after January 1, 2016. For estates of decedents dying on or after January 1, 2018, the exemption amount will be increased to the Federal indexed exemption amount so for those estates, a D. C. Estate Tax Return will be required to be filed only if a Federal Estate Tax Return is filed. However, the Chief Financial Officer of the District refused to certify that the budget deal passed on May 28 was balanced and comports with city law and, prior to final passage, the bill was amended so that the tax cuts (including the increase in the Estate Tax exemption amount) are triggered to take effect *only* if city revenue rises above current projections making them dependent on the District's continued economic growth. In other words the increase in the D.C. Estate Tax exemption amount is not a done deal.

JUDICIAL DECISIONS

IN RE ESTATE OF ROOSEVELT RUFFIN, An Adult, 2012 INT 378 (Judge Long, February 11, 2013) Rita Johnson, the "girlfriend "of the Subject, Roosevelt Ruffin, filed a *pro se* Petition, for Appointment of Temporary Guardian for health care decisions. At the time the Petition was filed, the Subject was a patient at the VA Hospital in the District of Columbia but the Petitioner represented in her Petition that that she and the Subject resided together in Hyattsville, Maryland, even though he was still married to his Wife. While the Petition was pending, the Subject's family (his Wife and daughters), with the Subject's agreement, arranged to have him transferred to the VA Hospital in Richmond, VA. At the initial hearing, the issue of jurisdiction was raised and the case was continued for a status hearing. At the status hearing, the Court conducted a detailed hearing regarding the Subject's connection to the District of Columbia and the legal issue of jurisdiction and ruled that the Court lacked jurisdiction to grant the Petition because the District of Columbia was not the "home state" of the Subject.

The GAL and court-appointed counsel each filed a Petition of Compensation and were each awarded compensation from the "Subject's estate". Mr. and Mrs. Ruffin then asked the Court to reconsider the mandate that Mr. Ruffin must pay the compensation of the lawyers in the case arguing that the Court never had jurisdiction over Mr. Ruffin. They argued that the Petitioner should be held responsible for paying the fees. The Court held that the ruling on jurisdiction was the "law of the case" and controlled all subsequent issues that impinge on the Superior Court's authority. Since the Superior Court had no jurisdiction over Mr. Ruffin, the Court in this matter took the "common sense" approach in resolving the issue and amended the Orders granting compensation, *sua spon*te, to state that all payments will be made from the Guardianship Fund.

IN RE MARY LOU PHILLIPS, An Adult, 2010 INT 333 (Judge Erik Christian, April 30, 2013). Vincent Philips, who had been appointed Co-Conservator with Bryant T. Perry, filed a Petition Post Appointment to amend the March 5, 2013 Order of Appointment by removing Mr. Perry as a Co-Conservator due to his inability to be bonded, leaving Mr. Phillips as the sole Conservator. Joyce Phillips, an Interested Person in the proceedings, had timely filed an appeal of the March 5, 2013 Order and opposed the Petition Post Appointment arguing that upon filing her appeal the Superior Court no longer had jurisdiction over the March 5, 2013 Order and therefore, could not amend that Order. In granting the Petition Post Appointment the Court held that the timely filing of a motion to alter or amend the findings and judgment renders premature the filing of the notice of appeal from the judgment. Appeals noted while the time within which they are to be taken has been terminated (by a timely filed motion to alter or amend findings and judgment) are deemed premature.

IN RE ESTATE OF CORNELL JACKSON, Deceased, 2012 SEB (Judge Campbell, May 20, 2013). The decedent was survived by a spouse and a minor child who was not the child of the surviving spouse and who was not living with the surviving spouse. The Estate had only $524.85 available to pay the statutory allowances and the issue before the Court was whether the "homestead allowance" payable to the surviving spouse, or the "family allowance", payable to the surviving spouse and minor children had priority for payment. The Court noted that D.C. Code §19-101.02 provides that the Homestead Allowance has priority over claims against the estate (with certain exceptions not relevant in this case) while D.C Code §19-101.04 provides that the Family Allowance has priority over all claims except the Homestead Allowance. The Court held that the plain meaning of §19-101.02 provided that the Homestead Allowance is superior to all claims while the Family Allowance provided in §19-101.04 is superior to all claims except the Homestead Allowance and concluded that all of the funds available in the estate must be distributed to the surviving spouse under the Homestead Allowance.

IN RE ESTATE OF SALLIE ADELL, Decedent, 2013 ADM 33 (Judge Fisher, May 29, 2013) The Petitioner filed a Petition for Probate on January 11, 2013, petitioning the Court to admit the Decedent's Will to Probate in an Abbreviated Probate Proceeding. For the following reasons, the Court ordered a hearing to be held to determine the circumstances of the execution of the will and the possible existence of a second will or codicil:

- The Decedent's will dated April 14, 2008, bore the decedent's signature, the signature of Negist Tesfaye, later known as Burktan Mohamed; and the signature certification, and seal of Jamie D. Brown, Maryland Notary Public;

- Instead of including the signature of a second witness alongside Tesfaye's signature, Mr. Tesfaye wrote his name and signature again in the blanks usually reserved for the second witness. The will read: "We, Negist Tesfaye [handwritten] and Negist Tesfaye [handwritten], the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that Testator signs and executes this instrument as Last Will and Testament and *She* signs it willingly, and that each of us, in the presence and hearing of the Testator hereby signs this Will as witness to the Testator signing, that to the best of our knowledge the Testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence
  Negist Tesfaye [signed]
  Negist Tesfaye [signed]
- Following the decedent's signature witnessing the signature and attestation of Mr. Tesfaye, the will reads:
  I, Jamie D. Brown [handwritten], a Notary Public for said County and State, do hereby certify that SALLIE ADELL personally appeared before me this day and acknowledged the due execution of the foregoing and attached LAST WILL AND TESTATMENT.
  WITNESS my hand and notarial seal this 14th [handwritten] day of April [handwritten], 2008
- Following this text, Ms. Brown affixed her official stamp and signature. Additionally, Mr. Tesfaye and Ms. Brown submitted Affidavits of Witnesses filed with the Court.

In order for the will to conform to the requirements of § 18-103(2), the Court must conclude that, by signing the will after witnessing the decedent's acknowledgment of due execution as a notary, Ms. Brown was also acting as an attesting and subscribing witness within the meaning of the statute. On September 26, 2013 the Court held a hearing and found that the Will was signed in the presence of two witnesses [Jamie Brown and Burktan Mohamed] and signed an Order admitting the Will to probate.

IN RE JULIA KATIE WOOTEN, Decedent, 2005 ADM 666 (Judge Rhonda Reid Winston, June 19, 2013) This case was before the Court on remand from the Court of Appeals. By Order dated August 28, 2009, the Court directed Barbara Washington Franklin, Esq. ("Franklin") former counsel for Katie Jones ("Jones") the removed Personal Representative of the Estate of Julia Katie Wooten ("Mrs. Wooten" or "the Decedent"), to reimburse the estate $37,911.46, the entire amount of compensation she received for legal services rendered to Ms. Jones. Jones was appointed guardian and conservator for Mrs. Wooten on September 9, 2004. At the time Mrs. Wooten was suffering from dementia and in a nursing home. While serving as Mrs. Wooten's Guardian and Conservator, Jones discovered that she had executed a will in 1999, leaving most of her estate to her friend Lisa Carrington ("Carrington") in trust for her husband, Willie Wooten. Upon Willie Wooten's death, the Will provided the remainder of the estate would pass to Carrington. On April 11, 2005, Jones hired Franklin to draft a new will for Mrs. Wooten. Franklin drafted the Will without ever having communicated with Mrs. Wooten. At the time she drafted the Will, Franklin knew that Mrs. Wooten had been declared incapacitated by the Court and that Linda Aikens, the attorney who had represented Jones at the intervention proceeding, had refused to draft a new will. In drafting the new Will, Franklin accepted the representations of

Jones – who was to be the sole beneficiary and who was nominated Personal Representative under the new will – that Mrs. Wooten's testamentary desires had been stated on the record at the intervention hearing. Mrs. Wooten executed the new will on May 10, 2005 and died the next month on June 12, 2005. After Mrs. Wooten's death, Franklin was retained by Jones to provide legal assistance in probating the estate. The 2005 Will was filed and admitted to probate. Carrington, the beneficiary of the 1999 will filed a Complaint contesting the validity of the 2005 Will. Franklin was served with a copy of the Complaint on July 15, 2005. Thereafter she continued as Jones' counsel defending the validity of the 2005 Will until she was disqualified by the Court from acting as counsel for Jones at trial. The Court admitted the 1999 Will to probate on December 18, 2007. On remand, the Court found that Franklin was laboring under a conflict of interest, at the latest, beginning when Carrington served her with the complaint on July 15, 2005 and that all fees paid Franklin after that date should be refunded to the estate – which the Court, upon review of all the invoices, determined to be $29,432.51.

IN RE TAHA AL-BASEER, An Adult, 2002 INT 276**,** D.C. App. No. 10-PR-225 (May 12, 2011) D.C. App. No. 11-PR-1428 (December 27, 2012) (June 20, 2013, Judge Long) This case, involving the Petition of a Spouse to be compensated from the Guardianship Fund for her daily services taking care of her husband as his Successor Guardian has been up on appeal twice and has been remanded to the trial court for further findings twice. Her second appeal was from an Order compensating her for six (6) hours a day (rather than the 10 hours requested) 7 days a week since there were no paid caregivers and because she had been ordered by her husband's physician to attend to him continuously over an eighteen (18) month period, for a total fee of $16,425. On this second remand, the Court held that the spouse was entitled to no compensation as Guardian because the activities underlying her time expenditures were legally not compensable and denied her Petition in its entirety. The Court found that the Guardian sought to be paid personally for the in-home, personal care of her husband (the Ward) and to have all of her compensation paid at public expense from the Guardianship Fund. The Court cited D.C. Code § 21-2047, the Powers and Duties of General Guardian and Limited Guardian, and found that nothing in the Code authorized or required a court-appointed Guardian to perform personally any nursing services, chauffeuring, cooking, housecleaning, or medical care of any kind and for that reason denied the entire free request.

IN RE ESTATE OF BARBARA JUDY HALPERN, Deceased, 2012 ADM 1110 (Judge Fisher, July 2, 2013) This matter was before the Court for a hearing on May 29, 2013 on the Petition for Standard Probate, filed on November 6th, 2012. Petitioner was requesting that the Court NOT admit the Last Will and Testament of Barbara Judy Halpern or the Codicil to Barbara Halpern's Last Will and Testament, filed on June 4th 2012 to probate. Instead, Petitioner asked that the Court find the decedent died intestate. Ms. Halpern died on April 24, 2012. On June 4, 2012, a friend of the Decedent filed a document entitled "Last Will and Testament of Barbara Judy Halpern" and another document entitle "Codicil to Barbara Halpern's Last Will and Testament September, 2010". Both the Will and the Codicil bore the date October 6, 2010. The Will was prepared by a law firm; Ms. Halpern allegedly prepared the codicil herself. The terms of the codicil substantially contradicted the terms of the Will. The Petitioner alleged that Ms. Halpern may have executed both documents at around the same time on the same day, October 6, 2010, at SunTrust Bank. Both the Will and the Codicil contained possible flaws in their execution.

- The will contained the signature of Ms. Halpern and two witnesses, employees of the bank;
- The will also included the expiration of commission stamp for a notary next to both signatures, with what appears to be one person's handwriting filling in the blanks, but no seal;
- Where the will lists the date of the testator's attestation, "2010" was handwritten above the printed "2009" which was neither crossed out nor initialed. It was unclear who made the correction or when it was made.
- The codicil included the signatures of Ms. Halpern and one witness, both dated October 6, 2010, without the signature of a second witness. A full notary stamp also recited the date of October 6, 2010;

Furthermore, there were no witness affidavits proving due execution pursuant to D.C. Code §20-324.

The Petitioner argued that the will did not comply with the statutory due execution requirements because Ms. Halpern neither initialed nor crossed through the alleged correction in the date of her attestation and because a witness also notarized the document. She also argued that the codicil partially revokes the will.

The Court found that because the decedent did not initial the change in the date of attestation, the testator did not duly execute the will and therefore died intestate. In order to be in compliance with the statute, the testator and witnesses must sign the will at substantially the same time. Since the witnesses and the testator may not have attested and subscribed to the document on the same date, and could have signed the will a year apart, the Court found that the will did not comply with the statutory due execution requirements. Since the Codicil includes only one witness's signature when D.C. Code § 18-103 requires two witness signatures, the codicil was not executed as required by statute and therefore would not have been an effective revocation of the will.

IN RE ESTATE OF CLARATEEN G. NELSON, James M. Taylor, Jr., Appellant **D.**C. App. No. 12-PR-1733 (February 27, 2014), James Taylor, Jr. challenged his removal as co-personal representative of his mother's estate and the denial of his emergency petition for appointment of a successor personal representative. Taylor and his sister, Jo Ann Smoak, had been appointed co-personal representatives of the Estate of Clarateen Nelson. Taylor retained Andrea Sloan, who had been appointed previously as Nelson's conservator and guardian, to represent him in the estate administration. Following a period of friction between the Co-Personal Representatives and a delay in administering the estate, Taylor and his brother, Carl Taylor, filed a joint emergency petition to remove Smoak as Co-Personal Representative. In doing, so Taylor offered to resign on the condition that Smoak be removed and that a disinterested member of the bar be appointed in their place. Smoak filed an opposition denying Taylor's allegations that she had breached her fiduciary duties, and asked the Court to accept his resignation and allow her to administer the estate as the sole Personal Representative. James Taylor then filed a Joint Motion, in which his brother Carl joined, for Judgment on the Pleadings or, in the alternative, a Joint Motion for Summary Judgment on the Petition to remove Smoak as Co-Personal Representative. Smoak then filed an Opposition to the Joint Motion as well as a Motion to Strike Sloan's appearance and disqualify her as James' counsel, noting that she had an "actual, unwaivable conflict of interest resulting from her position as Conservator of Clarenteen Nelson. The trial court denied the Motion to remove Smoak. At a subsequent hearing on the

Smoak's Motion to Strike Sloan, the trial judge stated that he could not "find grounds at this point to remove Ms. Sloan under [the Rules of Professional Conduct]" but then went on remove Taylor as Co-Personal Representative, even though a motion for his removal had never been filed, leaving Smoak as sole personal representative of the Estate. James and Carl Taylor then filed an emergency petition for the appointment Carl Taylor, the nominated successor in Nelson's Will, as successor personal representative but that petition was also denied. Both the Order removing James as Co-PR and the Order denying the emergency petition to appoint Carl as successor were appealed. One of the issues on appeal was whether the removal of a personal representative is a final order for purposes of appeal. The Comment to Super. Ct. Prob. R. 8 references "orders appointing or removing fiduciaries" as an example of probate orders that are not final absent an express determination by the Court. Citing D.C. Code § 11-721 giving jurisdiction of appeals from all final orders and judgments of the Superior Court to the D.C. Court of Appeals, the Court of Appeals held that an Order removing a PR is a final order and therefore appealable despite the language contained in Probate Rule 8. The Court of Appeals then went on to hold that the trial court made no findings that James Taylor had violated Section 20-526 of the D.C. Code and in the absence of such reviewable findings, the case was remanded for the judge to conduct a hearing on the issue and state the grounds for Taylor's removal, if such grounds are found to exist. The issue of whether the trial court erred in not appointing Carl Taylor as successor Personal Representative was not addressed on appeal because a personal representative who has been removed by the probate court has no standing to contest the appointment of a successor.

Reversed and Remanded

IN RE ESTATE OF GEORGE S. DRAVILLAS, Deceased, **Tapankidis et al v. Massouris, et al**. 2010 LIT 68 (Judge Campbell, June 3, 2014). Plaintiffs challenged the validity of the Decedent's Will on two grounds: First they argued that the Will was not duly executed pursuant to D.C. Code § 18-103 and therefore void; Secondly they argued that the Will was not an integrated document at the time it was witnessed because the first page was not affixed to the second, or even seen by the witnesses. The copy of the Will, which the Petitioners sought to have admitted to probate, bore the signature of the Decedent and two witnesses as well as a stamped version of the Decedent's signature to the left of his hand-written signature. The witnesses testified that the Decedent did not sign or make any other mark on the will in their presence. They also testified that the Decedent's handwritten signature was not on the document when they signed it but that the stamped signature was on the page they signed. The Defendants argued that the stamp of the Decedent's name was the functional equivalent of his actual signature but the Court found, on the evidence presented, that the Decedent did not use the stamp as a substitute for his signature on the will since he did, in fact, actually sign the will, in his own handwriting, but at some later point after the witnesses signed it although not in their presence and not as part of the same transaction. The Court therefore concluded that the Will was not duly executed within the meaning of the statute and as interpreted by the courts and granted the Plaintiffs' Motion for Summary Judgment. Because the Court found that the Will was not duly executed, it did not address Plaintiffs' second argument that the will was not an integrated document at the time it was witnessed.

COMPENSATION CASES:

IN RE EDWARD W. VAN WEY, Adult Ward, 2009 INT 252 (Judge Kaye K. Christian, 01/02/2013). The Petition for Compensation of the court-appointed guardian and conservator, in which he petitioned for payment of 0.6 hours of service @ $50 per hour by his employee or intern was denied because no information concerning the intern's educational background and years of service to justify the hourly billing rate was provided. Petitioner did not disclose whether the intern was a volunteer, receiving class credit, or a paid employee. The Court cited *In Re Maiden* INT 09-243 (D.C. Super. Ct. Jan. 5, 2012, Wolf, J.) which reasoned that law clerks and paralegals should be compensated at no more than $45 per hour from the Guardianship Fund.

IN RE TIRAY SPRIGGS SPECIAL NEEDS TRUST, 2008 TRP 000029 (Judge Kaye K. Christian, 01/02/2013). Petitioner sought compensation from the assets of the trust for 13.0 hours of service by his paralegal at $90.00 per hour which the Court denied without prejudice to resubmission. Although some information concerning the paralegal's educational background was provided in an effort to justify her billing rate, the Petitioner excluded her graduation year and years of service/experience. Again citing *In Re Maiden* INT 09-243 (D.C. Super. Ct. Jan. 5, 2012, Wolf, J.) the Court ruled that the Petitioner must provide more information regarding the credentials of the paralegal so that the court could make an informed determination concerning the reasonableness of the hourly rate requested.

IN RE SALLY NEVIUS GEHMAN, Adult Ward, 2010 INT 000372 (Judge Kaye K. Christian, 01/02/2013). The first fee petition of the Court appointed guardian and conservator was denied because of issues related to the hourly rate requested, lengthy time entries, and travel time. The Petitioner, a non-lawyer, resubmitted his fee petitioner requesting compensation at $250.00 an hour. Compensation was approved at $118.51 an hour the rate computed using the Petitioner's final salary based on the standard 40 hour work week.

IN RE JOAN HARRIS, Adult Ward, 2006 IDD 83 (Judge Kaye K. Christian, 02/08/2013). The Court held that personal tasks performed by court-appointed Guardian, such as purchasing and bagging holiday items for the ward, do not fall within the categories that define the statutory powers of a Guardian [D.C. Code § 21-2047] and do not warrant compensation at the rates commanded by an attorney. The Court approved compensation for such tasks at $25.00 an hour.

IN RE ESTHER DODD, Adult Ward, 2003 INT 000257 (Judge Kaye K. Christian, 02/28/2013). The Court denied compensation to the court-appointed guardian and co-conservator for multiple trips to visit the ward in a single month. The statutorily mandated fiduciary duties require that the guardian maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health. D.C. Code §21-2047(a)(1). The Court has interpreted this to require that the guardian visit the ward at least once per month but approved compensation for 4 visits per month in this case at the rate of $30 per hour.

IN RE DELORES SPELL, Adult Ward, 2011 INT 408 (Judge Kaye K. Christian, 03/21/2013) The court held that to be compensable travel time must be specifically and separately stated as to

where the court-appointed professional is traveling to and from and the time the trip took so that the court is able to make an independent assessment of the reasonableness of the travel time or expense sought and whether it benefits the ward. Departure locations and destination locations must be specified. Travel time to and from the Court is disallowed. The Court also disallowed compensation at $90 an hour for non-compensable tasks such as purchasing and unloading groceries and purchasing and installing various home appliances on behalf of the Ward but approved compensation for those services at the $25 hourly rate.

IN RE ELAINE GEORGE, Adult Ward, 2010 INT 14 (Judge Gerald I. Fisher, 06/19/2013) In reviewing the Petition for Compensation of Conservator the Court noted that "hours are not reasonably expended if an attorney performs tasks that are normally performed by paralegal, clerical personnel or other non-attorneys." Tasks such as the filing of briefs, copying documents, and the mailing of letters are disallowed even when billed at the rate of a legal assistant. Purely clerical or secretarial tasks should not be billed at a paralegal rate regardless of who performs them. The Court reduced the hourly rate of the paralegal from $150 to $50.

IN RE ROSINSKI SMITH, An Adult, 2011 INT 331 (Judge Gerald I. Fisher, 09/03/2013). The Guardian requested $3,000.00 for reimbursement for room, board and clothing for the Ward while the Ward was staying with her but provided no receipts for any expenditures. The Court denied reimbursement from the Guardianship Funds for those expenses since, according to the terms of the statute the Guardian cannot be reimbursed from the Guardianship Fund for expenditures she had made on the Ward's behalf since reimbursement may only come from the estate of the Ward.

IN RE MARIA THEREZA ZUCKERMAN, Adult Ward, 2006 INT 133 (Judge Gerald I. Fisher, 09/25/2013). The Court denied compensation for Petitioner's almost daily routine of conferences with the Guardian's private caregivers hired to provide nursing services to the Ward (more than 100 such entries lasting 0.20 to 0.40 Hrs. at $65 to $140 per entry -- $6,500.00) The Ward was bed-ridden and in a virtually unconscious state most of the time and her condition changed little from day to day. The court noted the remedy for overbilling is a percentage reduction to the gross amount sought by the fiduciary and reduced the fee requested by approximately two-thirds. In addition, Petitioner petitioned for compensation for his paralegal at the rate of $195.00 per hour for the services he contracted for at $30.00 an hour – a profit of 200% which the Court found to be of questionable legitimacy and possibly a violation of several principles of professional ethics. The Court also disallowed compensation for bill-paying and bookkeeping tasks at his $350.00 hourly rate.