DISTRICT OF COLUMBIA BAR
ESTATES, TRUSTS, AND PROBATE LAW SECTION
REVIEW OF RECENT DEVELOPMENTS IN PROBATE DIVISION LAW
2015 - 2016

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PART 1 - LEGISLATIVE CHANGES

Between June 1, 2015 through May 31, 2016, there were no legislative changes that affects practice in the Superior Court Probate Division.

PART 2 - REVIEW OF CASES

NOTE: While published opinions of the Court of Appeals are binding precedent, a ruling or memorandum opinion of a trial judge is not. "Superior Court holdings are never binding authority in other cases, even in the Superior Court itself." *Lewis v. Hotel and Restaurant Employees Union, Local 25*, 727 A.2d 297, 302 (D.C., 1999). *Accord*, *In re Estate of James*, 743 A.2d 224 (D.C., 2000).

Although not binding authority, a memorandum opinion of one trial judge may be persuasive to another judge, or may contain analysis or discussion of precedent that may be helpful in another case with similar facts. Also, on some matters, Probate Division judges do try to be consistent with each other. The practitioner should therefore consider memorandum orders and opinions of Superior Court judges, but should rely on such orders and opinions with caution.

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SEAMOUR v. MIZRAHI

Case No. 2012-LIT-000057
09/16/2014; 08/14/2015 -- Judge Erik P. Christian

GENERAL SUBJECTS:

Validity of Will: A will that has been executed in accord with the statutory requirements is presumed valid, and a party challenging the validity of a will had the burden of showing evidence of either lack of testamentary capacity, undue influence or fraud.

Validity of Will: A challenge to a validly executed Will requires a showing of evidence beyond conclusory allegations or suspicion.

FACTS:

Decedent, Francoise Mizrahi, died in April in 2012, domiciled in the District of Columbia. She was survived by two daughters and a son. She executed a will in 2011 at the office of her attorney in Rockville, Maryland. (The defendant Diane Mizrahi, one of the daughters, brought her mother to the attorney's office for the first meeting.) The Will provided that her estate would pass to her daughter, Diane, but if Diane predeceased her mother, the estate would pass to Ms. Mizrahi's granddaughter Alice, the daughter of Ms. Mizrahi's son, John.

According to the plaintiff Helena Seamour, the decedent's other daughter, and John, the Ms. Seamour and Diane met in the plaintiff's law office and entered into an agreement regarding the disposition of Francoise Mizrahi's estate. According to Ms. Seamour and John, their father Jacques Mizrahi engaged in "abusive atrocities" against his children and an elderly aunt of the plaintiff. At one point, the two sisters both considered filing charges against Jacques, but fearing further abuse and disinheritance – allegedly a frequent threat – they did not. (Their older sister, Marie Jean, had been disinherited or disowned because she told a fried about the abuse; that sister predeceased the mother, Francoise.) The two sisters agreed that, upon the death of the last parent, they would disclaim bequests in any will and allow the estate to pass by intestacy. The alleged agreement was made in 1993.

John was informed of this alleged agreement in 2006 and agreed that it was a good solution to the family problems, but would not join in the agreement unless their older sister, Marie

Jean was included. Purportedly, Marie Jean was informed of the alleged agreement in 2002, but said she did not want anything from her parents. The plaintiff, Ms. Seamour, asserted that Marie Jean was persuaded to allow her share to her grandson Julien or to charity.

When Ms. Mizrahi died, Diane petitioned for unsupervised administration and appointment as personal representative. The decedent's Will was admitted to probate and Diane was appointed.

The plaintiff filed a creditor claim for what she asserted was her share of the estate based on the purported 1993 agreement, and also filed a claim on behalf of Marie Jean's grandson, Julien. Both claims were disallowed. The plaintiff then filed a complaint, and also sought the imposition of a constructive trust based on the 1993 agreement. The plaintiff also challenged the Will, alleging undue influence by the attorney (he was to be a trustee of a trust created by the Will) and lack of capacity.

HOLDING:

The Court initially stated that, although the Will was executed in Maryland and the purported 1993 agreement was made at the plaintiff's office in Virginia, the court had subject matter jurisdiction because the decedent was a domiciliary of the District of Columbia and because the alleged contract was to be performed in the District of Columbia, as it concerned property (the decedent's estate) located in the District of Columbia.

Due execution of a Will created a presumption of validity of the Will, which may be overcome by evidence of lack of testamentary capacity, undue influence, or fraud. However, the party challenging the Will has the burden of proof, and must offer evidence beyond mere conclusory allegations or suspicion. With respect to undue influence, the fact of a disproportionate disposition of assets, a confidential relationship, or the right to receive a benefit, without more, is not enough to rebut the presumption of validity of a Will. Similarly, a person challenging testamentary capacity must produce evidence showing that the decedent did not have a "sense of knowledge sufficient to comprehend the nature of the transaction." General allegations of mental illness, with more specific facts relating to the decedent's understanding of his or her Las Will, are not sufficient to show lack of testamentary capacity. In the absence of any evidence on the issues of due execution, lack of

testamentary capacity, and undue influence, there was no issue of material fact. The Court therefore granted summary judgment to the defendant on the issue of the validity of the decedent's Will.

With respect to the issue of whether there was an oral agreement on the distribution of the estate assets, the burden of proof is on the party seeking to enforce the purported contract. That party must show an agreement as to all material terms and an objective manifestation of an intention to be bound. In this case, the trial court found that there were sufficient evidence to present a genuine issue of material fact, and therefore denied summary judgment. The court rejected the defendant's argument that the agreement to disclaim was, in effect, an illegal attempt to withhold the filing of a Will. (After a trial on the issue of whether there was an agreement to disclaim, the trial court found that there was insufficient evidence to show the existence of an oral agreement to disclaim, and dismissed the plaintiff's complaint.)

NOTE: This opinion provides a general review of the law governing testamentary capacity and undue influence, including many citations to relevant appellate cases.

DORIS SMITH v. ESTATE OF FIELDS, Walter

Unpublished *Per Curium* Memorandum Opinion
03/02/2016

GENERAL SUBJECTS:

Challenge to marriage: A voidable marriage must be annulled by decree entered prior to the death of either spouse.

FACTS:

Perina Gaines married the decedent, Walter Fields, in her own home, with no family members present at the wedding. She was 46 years old, and Mr. Fields was 90 years old. Four months later, Mr. Fields died, leaving an estate worth more than $3 million dollars. Doris Smith, Mr. Fields' sole heir at law, filed a complaint to establish heirship, alleging that Mr. Fields, because of a number of physical and mental problems, lacked capacity to enter into a valid marriage. She relied on D.C. Code Sec. 16-904(d), which provides that a marriage can be annulled if it was contracted during the insanity of either party, was procured by fraud or coercion, or where either party

was "matrimonially incapacitated" at the time of the marriage without the knowledge of the other party and remained so incapacitated.

Applicable statutes provide that a voidable marriage – as opposed to a marriage which is void ab initio [a bigamous marriage or marriage of persons with prohibited relationship] – must be annulled by a decree of annulment. D.C. Code Sec. 46-401.01 and 46-403. Further, binding precedent holds that voidable marriage cannot be annulled after the death of either spouse. *In re Estate of Randall*, 999 A.2d 51 (D.C., 2010). Accordingly, the trial court granted the Estate's motion to dismiss.

HOLDING:

The trial court was affirmed.

ESTATE OF WALKER, Frances

Case No. 1999-ADM-001834

08/21/2015 Judge John M. Campbell

GENERAL SUBJECTS:

Joint Bank Account: The funds in a multi-party account belongs to the surviving account holder when the account documents are substantially in the form prescribed by the statute or specifically designate the account as a survivorship account.

Joint Bank Account: In the absence of the statutory form or a specific designation of survivorship in the account documents, the disposition of the funds in a joint account is made according to the intent of depositor.

FACTS:

This case has a rather tortured history, including a change in the law governing joint accounts which was made during the pendency of estate administration and two appeals of trial court orders. Eventually, the matter came to the attention of the trial court on the cross-motions for summary judgment filed by the personal representative of the estate and a close friend of the decedent whose name was included as a joint account holder on an account opened by the decedent prior to her death.

In previous litigation, including an appeal, several issues were resolved as follows:

- The Uniform Non-Probate Transfers of Death Act (D.C. Code § 19-601.01, *et seq.*) applies to accounts opened prior to the effective date of the act.

- The provision of Section 19-602.12(a) - that, upon the death of a party to a multi-party account, the sums on deposit belong to the surviving multi-party account holder(s) - applies **IF** the account document is in the form prescribed by the statute or otherwise clearly provides for survivorship.

- Section 19-602.04(b) provides that, in the absence of account records that do not clearly identify the account as a multi-party account with right of survivorship, the disposition of the funds in the account is determined by the type of account that most nearly conforms to the depositor's intent.

The parties stipulated that the Court could determine whether the bank account in question, titled in the joint name of the decedent and a long-time close friend, was a survivorship account based on the following facts:

- The decedent was the source of the funds in the account.

- The decedent had added her nephew's name to an existing account. The nephew was the personal representative of the estate.

- Some time later, the decedent advised her bank's manager that she wanted to remove her nephew's name from her account.

- The bank manager advised the decedent that she could not remove her nephew from an existing account, but rather had to close the account and open a new account.

- Several days later, the decedent, accompanied by her long-time friend, Stanley Stefan, came to the bank and met with the bank manager. She closed the existing account titled jointly with her nephew, and opened a new account titled jointly in her name and the name of her friend, Mr. Stefan.

- The decedent told the bank manager that she did not want her nephew "to get one red cent."

- When she opened the new joint account, the bank manager advised the decedent that Mr. Stafen could withdraw all of the money in the account any time he wanted to, and she replied that this was alright with her.

As the account was opened prior to the Uniform Nonprobate Transfers on Death Act, the account documents were not in the statutory form or otherwise clearly establish the type of new account.

HOLDING:

The Court determined that it was not necessary to determine whether the decedent made an *inter vivos* gift of the funds to her friend, but rather only determine whether the account was a multi-party account with right of survivorship. The Court further determined that there was no presumption that was applicable. Instead, the Court had to determine the type of account which most closely conformed to the decedent's intent, and therefore had to weigh the evidence to determine the decedent's intention regarding survivorship rights to the money.

Based on the evidence before the Court, the Court determined that the account must be considered as a multiple party account with right of survivorship. Because it was a multiple party account with right of survivorship, under Section 19-602.12(a), the funds in account belong to the surviving party, Mr. Stefan.

ESTATE OF TURNER, Mary; APPEAL OF GERALD AND GLORIA TURNER

Unpublished *Per Curium* Memorandum Opinion
07/31/2015

GENERAL SUBJECTS:

Non-Probate Transfer of Real Property: Divorce settlement agreement interpreted to provide for establishment of life estate held as tenants by the entireties, with remainder to named remainderman.

Tenancy by the Entireties: Parties to a divorce can, by agreement, preserve the incidents of a tenancy by the entireties after divorce. D.C. Code § 16-910.

FACTS:

Husband and wife divorced in 1981. They had no children together, but husband had son from a prior relationship. They

owned a house together. Prior to their divorce, they executed a separation agreement which provided that they would continue to own the house jointly, the survivor would continue to own the property after the death of the ex-spouse, and the property would pass to the husband's son upon the death of the survivor. While the agreement provided that the parties could mutual agree to sell the property, the intent was to maintain ownership of the land and ultimately pass it onto the husband's son.

The husband died first. A conservator was subsequently appointed for the wife, and the conservator obtained a reverse mortgage secured by the property. The wife, Mary Turner, then died. The husband's son filed an action for declaratory judgment and to quiet title.

The trial court ruled that the separation agreement preserved ownership the property as tenants by the entireties, but that the agreement was not effective as a Will and therefore the provision of the separation agreement providing that ownership would pass to the son was not effective and was void. The trial court therefore held that the property was an asset of the wife's estate and that the reverse mortgage lender had a valid lien.

The son appealed.

HOLDING:

The Court of Appeals determined that, while the language of the separation agreement is clear on its face, because it is so unusual it can be fairly said that the agreement was susceptible to more than one reasonable interpretation and therefore it was appropriate to look beyond the terms of the agreement and determine the intent of the parties to it.

The Court of Appeals concluded that the husband and wife intended to create a life estate, held by both of them as tenants by the entireties, with the son being the remainderman. The Court of Appeals held that a life estate is not incompatible with a tenancy by the entireties; a life estate can be held as tenants by the entireties.

PAPAGEORGE v. ESTATE OF FLEISCHMAN, Julius

Unpublished *Per Curium* Memorandum Opinion
01/14/2016

GENERAL SUBJECTS:

Creditor Claim: Untimely notice of claim results in disallowance of claim

FACTS:

Mr. Papageorge sued the Estate of Julius Fleishman to enforce an option to purchase the decedent's house. Mr. Papageorge gave written notice of his option in an e-mail dated 13 months after the Estate was opened and the notice of appointment of the personal representative was published. He asserted that he gave oral notice of his claim on at a memorial service held approximately 2 months after the decedent's death, but the personal representative and her attorney disputed that and the court credited their testimony.

The court found that, as the notice of the claim was not provided within the six month notice period, the alleged option contract was unenforceable. The plaintiff appealed.

HOLDING:

The Court of Appeals affirmed the trial court. The standard for review is whether the trial court's factual findings were clearly erroneous, and Court of Appeals found that they were not.

NOTE: For the first time on appeal, the plaintiff asserted that he was a reasonably ascertainable creditor and therefore the notice of appointment should have been sent to him but it was not. As this issue was raised the first time on appeal, the Court of Appeals held that the issue was not properly preserved for review.

ESTATE OF NEMEC, Ludmila; APPEAL OF MIROSLAV MACHALA

Unpublished *Per Curium* Memorandum Opinion
08/06/2015

GENERAL SUBJECTS:

Creditor Claims: A claim barred by an applicable statute of limitations is barred.

Claim Preclusion: Final judgment on a claim in another action precludes a second action on that claim.

FACTS:

Mr. Machala asserted that, prior to her death, the decedent Ludmila Nemec entered into a contract to sell real property to Mr. Machala, but then breached the contract by selling the property to a third person. Mr. Machala filed a series of actions to enforce the contract, one of which was brought against the estate. That action was dismissed with prejudice on statute of limitations grounds. Mr. Machala did not appeal that judgment.

Mr. Machala subsequently filed a claim in the estate based on the same contract, which was disallowed by the personal representative. The trial court upheld the personal representative's disallowance of the claim.

Mr. Machala appealed, arguing, among other things, that his claim was not barred by the statute of limitations.

HOLDING:

The Court of Appeals denied Mr. Machala's appeal, holding that a final adjudication of a claim in one action precludes relitigating that claim in another action.

NEILL v. TCA TRUST CORP. AMERICA, TRUSTEE OF THE RAYMOND A. SANDALL TRUST

Case No. 2013-LIT-000053
07/06/2013, Judge Erik P. Christian

GENERAL SUBJECTS:

Termination of Trust: After the death of grantor of a testamentary trust, a trust may be terminated if all trust beneficiaries consent and the termination will not thwart any ascertainable material purpose of the trust.

FACTS:

Raymond Sandall prepared a detailed Will, which was carefully executed. He provided specific bequests for his brother, his sister and his life partner (who was also named as personal representative); the specific bequests included a parcel of real property, Mr. Sandall's auto and personal effects, his tangible personal property, and two $20,000.00 cash bequests. The residuary was placed in trust, naming Legg Mason as Trustee. (The successor in interest to Legg Mason became the trustee after Mr. Sandall's death.)

The trust instrument provided that the net income of the trust was to be distributed each calendar quarter, in equal shares, to ten specified individuals during their respective lives; such that a beneficiary had to be alive when a quarterly distribution was made. Upon the death of the last living beneficiary, the corpus of the trust was to be distributed to the Fred Hutchinson Cancer Research Center or its successor. The trust assets were approximately $1.5 million dollars.

Mr. Sandall had also arranged to have property pass outside of his probate estate. That property included his one-half interest in his residence (passing to his life partner), and approximately $205,000.00 in cash which passed to a nephew, who was also a trust beneficiary.

Approximately 2 ½ years after the Mr. Sandall's death, all of the trust beneficiaries filed a complaint seeking to terminate the trust and distribute the assets to the beneficiaries. At the time the complaint was filed, the ages of the income beneficiaries ranged from 96 years old to 47 years old. The beneficiaries proposed that each life beneficiary would receive approximately $100,000.00, with the Cancer Center receiving just under $500,000.00. The trustee opposed termination of the trust, asserting that it was necessary to continue the trust to achieve Mr. Sandall's purpose in establishing the trust.

Each side filed cross-motions for summary judgment.

HOLDING:

Under common law and the D.C. Uniform Trust Code, after the death of a grantor of a trust, a court can terminate a trust if all beneficiaries consent, or if a non-consenting beneficiary is adequately protected. Here, the oldest beneficiary - the decedent's life partner - was 96 years old and had opposed

termination, but his attorney-in-fact subsequently consented to his termination. The court found that, even if the validity of that beneficiary's consent was debatable, the proposed distribution would adequately protect the partner's interest.

Under common law and the D.C. Uniform Trust Code, even if all beneficiaries consent, a testamentary trust can be terminated only if continuation of the trust is not necessary to achieve any material purpose of the trust or if the reason for termination outweighs the material purpose. The Court reviewed the standards for determining the material purpose(s) of a trust, applying the standards set out in the Restatement (Third) of Trusts. In the absence of an express statement of the primary or material purpose of the trust, the court must examine the trust instrument or formation document as a whole and consider the nature or design of the trust, which may suggest an intention or material purpose. This "four corners doctrine" provides that extrinsic evidence going beyond the trust instrument itself will be examined and considered only if review of the trust instrument is insufficient to determine the purpose of the trust.

The beneficiaries contended that the material purpose of the Trust is to provide funds to the Cancer Center and reduce the tax burden to the grantor's estate. On the other hand, the trustee asserted that the grantor's purpose was to "ensure his lasting memory among his heirs." The Court determined that it was necessary to examine Mr. Sandall's entire testamentary plan to determine the material purpose. The Court noted that the grantor had a careful and deliberate plan for disposition of his assets upon his death. One aspect of the decedent's plan was that, with the exception to his specific bequest to his brother, specific bequests and the income of the trust would be distributed only to surviving beneficiaries and not to heirs. The Court examined the structure of the trust and determined that the grantor's objective was to have income distributed to the beneficiaries during their respective lifetimes, with the Cancer Center receiving a benefit only when there were no living beneficiaries remaining. This plan led the Court to conclude that the trust purpose was to ensure that the beneficiaries received recurring lifetime gifts and a source of income, rather than a one-time bequest. The Court took note that, by designating the residuary beneficiary as a specified cancer research center "or its successor", the grantor recognized that the trust would exist for an extended period of time.

The Court examined the beneficiaries' claim that the material purpose was to reduce tax liability; the beneficiaries asserted that Mr. Sandall, the grantor, intended that the trust be a charitable remainder trust. After reviewing the technical requirements for a charitable remainder trust, the Court determined that the trust did not meet those requirements and therefore the grantor failed to explicitly create a charitable remainder trust; a point that the beneficiaries conceded. Given what that Court found was the grantor's care in creating his overall estate plan, the Court declined to infer an intention or objective that was not plainly set out in the trust instrument itself or the overall estate plan.

Having identified the material purpose of the trust, the Court concluded that continuation of the trust was necessary to achieve the material purpose of the trust. Having determined that there was not dispute of material fact, and applying the existing facts to law, the Court denied that beneficiaries' motion for summary judgment and granted summary judgment to the respondent Trustee.

QUEEN, et al. V. SCHMIDT, et al.

Civil Action Nos. 10-2017 (PLF) and 11-2117 (PLF)
U.S. District Court for the District of Columbia
Judge Paul L. Friedman

GENERAL SUBJECTS:

Probate Exception to Federal Court Jurisdiction

Personal Jurisdiction over trustees.

FACTS:

Elberta Douglass established the Elberta Douglass Living Trust prior to her death in January 2010; Ms. Douglass, the grantor, was the initial trustee and the beneficiary while she was alive. She named her daughter, Kitt Haston, and her granddaughter, Katrina Queen, as successor co-trustees, and William Queen, Katrina' husband, as their successor. In November, 2009, Janet Schmidt, an attorney living and practicing in Virginia, came to Ms. Douglass' D.C. residence and, not withstanding her alleged compromised mental status due to a recent head injury, met with her to discuss legal work Schmidt had been preformed for Ms. Douglass. A week later, Haston and Queen as traveled with Ms. Douglass to Attorney Schmidt's office,

where they signed power of attorney documents at Ms. Schmidt's direction, and also a trust document, which was actually an amendment to the trust established over two years earlier; the original trust was drafted by a different attorney.

The amendment purported to have the trust governed by Florida law rather than D.C. law and named Ms. Schmidt as "trust protector", with authority to "collect fees and control the operation of the trust," among other rights. Less than two months later, In January, 2010, Ms. Douglass died.

Ms. Douglass had executed a Will which was drafted by Attorney Schmidt; Katrina Queen was named personal representative of that Will. Haston and Queen alleged that they were unaware of the Will for several months and not until after they had engaged counsel, who contacted Ms. Schmidt. The Will was eventually submitted to the Superior Court for probate.

A dispute soon arose between Queen and Haston, on one hand, and Ms. Schmidt, on the other. Queen and Haston sold property in a sale that Schmidt opposed. As a result, Schmidt, exercising her powers as trust protector, acted to remove Queen and Haston as co-trustees, remove William Queen as successor, and appointed two residents Mark Cera and Bonnie Miller of Florida as co-trustees. Schmidt also purported to change the situs of the trust to South Carolina. Cera, Miller and Schmidt then filed an action in Florida, seeking a declaration that Schmidt was validly acting as trust protector and her removal of Haston, Queen, and Queen's husband, and her appointment of Cera and Miller was a legitimate exercise of her authority.

Queen and Haston then commenced litigation in the Superior Court, naming Schmidt, Cera and Miller as defendants. Schmidt removed the case to the U.S. District Court on diversity grounds. ("Queen I") Subsequently, Cera and Miller filed a new action in Superior Court seeking to have Queen removed as personal representative of the Estate of Elberta Douglass. Queen, Haston and William Queen the filed a third party complaint against Schmidt in that case, essentially replicating the complaint they originally filed against Schmidt, Cera and Miller. Schmidt then removed that new case to U.S. District Court. ("Queen II").

A large number of procedural issues were before the District Court, including service of process, whether diversity exists,

failure to state a claim, etc. For Estates and Trusts practitioners, the following issues are relevant.

A. The plaintiffs argued that the cases should be remanded to the Superior Court pursuant to the probate exception to federal jurisdiction.

B. The Florida trustees argued that, in Queen I, the court does not have "long arm" personal jurisdiction over them.

HOLDINGS:

A. Probate Exception

The "probate exception" to federal jurisdiction provides that state courts have authority over the determination of the validity of wills and admission of wills to probate, and the administration of a decedent's estate, and also precludes federal courts from endeavoring to dispose of property that is in the custody a state probate court. This is a limited and narrow exception to federal court subject matter jurisdiction.

With respect to Queen I, as that case involved litigation over a trust, the District Court held that the probate exception did not apply. The District Court rejected the argument that the trust administration was inextricably intertwined with the estate administration; as the decedent's Will was a pour-over Will, the estate could not be administered until the trustees of the trust were clearly identified. The District Court found that the issues in the case involved the administration of a trust, not the estate; that the trust litigation merely impacted the estate administration does not bring the case within the probate exception. The District Court further rejected the contention that, because trusts are often employed as "will substitutes", the probate exception should apply, stating a dispute over a trust does not implicate the tasks of probating or invalidating a will, administering a decedent's estate, or disposing of property in the custody of a state probate court. The District Court noted that, once probate assets are "poured over" from a probate estate into a trust, the assets cease to become property in the custody of a state probate court.

B. Personal Jurisdiction over Out-of-State Trustees

The District Court agreed with the plaintiffs that the court could exercise personal jurisdiction over the trustee plaintiffs pursuant to D.C. Code § 19-1302.02 (D.C. Uniform Trust Code). That provision provides that, by accepting the trusteeship of a trust having its principal place of administration in the District of Columbia, the trustee submits to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust. D.C. UTC Section 19-1301.08 provides that a trust's designation of the principal place of administration is valid if (a) the trustee's place of business or residence is in the designated jurisdiction or (b) all or part of the administration of the trust occurs in that jurisdiction. As the two trustees accepted the trusteeship when the principle place of business was in the District of Columbia, and because the plaintiffs' claims stem from the acts of acceptance rather than subsequent conduct, personal jurisdiction exists. A court does not lose jurisdiction if the administration of the trust later moves to another state. (The District Court reviewed the terms of the trust to determine that the grantor intended that the District of Columbia be the principal place of administration of the trust.)

The District Court also determined that, as the trustees accepted their appointment when the trust was, at that time, clearly centered in the District of Columbia and when the trust owned at least one parcel of property in the District of Columbia and when it was the sole beneficiary of the Estate of Elberta Douglas. Thus, they had sufficient minimum contacts to satisfy the due process requirement for personal jurisdiction.

ESTATE OF BERNSTEIN, Ruth; APPEAL OF BRUCE BURTOFF

Unpublished *Per Curium* Memorandum Opinion
08/27/2015

GENERAL SUBJECTS:

Compensation: Litigation fees and costs incurred in litigation brought or defended in good faith and with just cause can be paid, even if the costs exceed the then-existing funds in the estate when the litigation commenced.

Compensation - Procedure: The trial court is required to review the reasonableness of compensation, even after the amount of fees is calculated by the Auditor-Master.

Compensation: Fees calculated on more than one-sixth hour increments will be reduced.

Compensation - Procedure: It is error - abuse of discretion - if the trial court fails to make findings of fact on each of the statutory factors when determining the reasonableness of compensation.

<u>FACTS</u>:

This case was remanded after the Court of Appeals reversed the trial court's finding that a personal representative (who was also an attorney) was not entitled to fees, or to pay fees to outside counsel, for litigation that the personal representative commenced when the residuary of the estate did not have funds sufficient to support the cost of the litigation. <u>See</u> *In re Estate of Bernstein*, 3 A.3d 337 (D.C., 2010).

On remand, the trial court referred the matter to the Auditor-Master to calculate the fees and costs of the litigation fees and the fees already disbursed from the estate. (The personal representative had already paid outside counsel, so the trial court ordered the personal representative to refund to the estate the difference between the compensation paid to outside counsel and the compensation allowed to the personal representative.) The Auditor-Master completed the necessary review and calculations and recommended payment of additional fees to the personal representative and his accountant. With respect to the personal representative fee, the Auditor-Master reduced the fee request by 10% because the statement of services were rendered in quarter-hour increments rather than one-sixth hour increments.

The legatee (who was the defendant in the litigation) objected. The trial court affirmed the Auditor-Master's report, but did not make additional findings regarding the reasonableness of the fees pursuant to D.C. Code § 20-753. The legatee appealed.

<u>HOLDING</u>:

The Court of Appeals held that, even while accepting the Auditor-Master's calculations of the amount of fees owed pursuant

to the statement of services and the amounts paid from estate assets, the trial court, upon proper request, has an obligation to independently review the reasonableness of the compensation pursuant to the statutory factors set out in D.C. Code § 20-753(b), and make specific findings of fact regarding those factors. The failure to do so may be reversible error as an abuse of discretion.

However, in this case, the Court of Appeals affirmed because the appellant did not show that the trial court's error was prejudicial. The appellant argued only that the litigation was misguided and unnecessary, but that claim - raising issues relevant to a determination under Section 20-752 - had already been reviewed and decided. A claim that the fees were unreasonable under the factors of Section 20-753 was not raised in the appellant's brief and therefore the appellant did not show prejudice resulting from the trial court's error.

> **NOTE:** This memorandum opinion contains some useful discussion regarding appellate procedure and the requirements for preserving issues at the trial court level and properly presenting issues on appeal.

IN RE EDWARD T. SMITH; APPEAL OF BRUCE E. GARDNER

--- A.3d --- (D.C., 05/12/16)

GENERAL SUBJECTS:

Compensation: A conservator or guardian can be compensated for legal fees incurred in litigation over the conservator's or guardian's compensation.

FACTS:

An attorney was appointed successor conservator for a ward for whom a conservatorship was established under law existing prior to the effective date of the D.C. Guardianship and Protective Proceedings Act (colloquially referred to as "Old Law" conservatorships). In prior litigation, the Court of Appeals determined that, although D.C. Code § 21-2060 did not apply to "Old Law" conservatorships, given the unique nature of the attorney's appointment in this case, the conservator could be compensated from the Guardianship Fund established pursuant to Section 21-2060(b). See *In re Edward T. Smith; Appeal of Bruce E. Gardner*, 99 A.3rd 714 (D.C. 2014).

While his appeal was pending, the attorney filed another petition for compensation. A significant portion of that petition included services relating to the litigation over the conservator's compensation from the Guardianship Fund, including the pending appeal of the prior orders denying compensation. The District of Columbia opposed the petition, asserting that fee-related litigation is not compensable and that fiduciaries are not entitled to compensation for work that does not provide a benefit to the ward or the ward's estate. The trial court agreed with the District and held that, as most of the conservator attorney's work was related to his appeal of the trial court's denials his petitions for compensation, the work was of no benefit to the ward. The compensation request was denied.

Mr. Gardner appealed.

<u>HOLDING</u>:

The Court of Appeals analyzed the Guardianship Act in light of its purposes. Section 21-2060 provides for compensation for services rendered in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement. The Court stated that the phrase "in connection with" has much broader meaning than direct benefit to a ward, and that litigation which clarified the law concerning guardianships falls within the terms of the statute. The Court of Appeals went further and stated that:

> . . . allowing compensation for work on an appeal related to a compensation claim can be reasonably through to benefit wards and prospective wards generally (even if not any particular ward) by fostering the availability of guardians, who may be more willing to serve with the understanding that they can be compensated for their work in protecting their right to compensation.

The Court of Appeals stated that there are limits to this principle, so that the trial court could, in the exercise its discretion, deny compensation for work on an unsuccessful appeal of an order rejecting reimbursement for a claim which the trial court found to be unreasonable, or when the fiduciary was surcharged for mismanagement. The Court distinguished *In re D.M.B.*, 979 A.2d 15 (D.C., 2009), a case in which the Court of Appeals held that the trial court did not abuse its discretion in disallowing compensation for time incurred by an attorney in

litigation over the trial court’s analysis of a compensation issue.

The Court of Appeals held that “the [Guardianship] Act authorizes the Superior Court in its discretion to approve a petition for compensation based on a conservator’s or guardian’s fee-related appellate work, even without a showing of benefit to the particular ward.” The trial court’s denial of compensation was reversed and the case remanded for reconsideration of the guardian’s petition for compensation.

IN RE SMITH, Gregory

1996-INT-000082
12/18/2015, Judge Erik P. Christian

GENERAL SUBJECTS:

Compensation: Time entries in statements of services must be sufficiently detailed so that the court can evaluate the reasonableness of the services performed and the time incurred.

Compensation: Time entries that combine several tasks in one entry are disfavored.

Compensation: Fees for a legal assistant cannot include compensation for routine clerical or secretarial tasks.

Compensation: The billing rate claimed for compensation for an attorney or for a legal assistant must be justified.

HOLDING:

This memorandum opinion set out the Court’s review of a request for compensation of an attorney conservator which included a request for compensation of the attorney’s legal assistants. The opinion included a general review of the standards governing compensation, but included several specific points which Judge Christian found to be significant.

1. The Court suggested that, while the petition provided “sufficient detail for Court review”, more “context and detail” will be required for future petitions. Persons with whom the attorney interacted should be identified by full names and the role of that person should be explained.

2. The Court particularly disfavors what is described as "block billing", stating that combining multiple tasks in one time entry makes it impossible to evaluate the reasonableness of each task and requires the court to approximate the amount of time allocated to each task. Judge Christian found this to be particularly troublesome because the attorney combined attorney services with legal assistant services.

3. Routine clerical work and routine errands, including routine filing, cannot be compensated.

4. Travel time can be compensated but must be listed separately and must be sufficiently detailed, with the statement of services time entry including the date of travel, the location from which the travel began and the destination, the distance traveled, the time incurred, and the purpose.

The requested compensation of the attorney was reduced from 32 hours to 29 hours. Because the rate of compensation was not justified and because routine clerical tasks were included with other work performed by legal assistants, compensation for legal assistants was entirely denied without prejudice.

IN RE AYO GROOMS; APPEAL OF CHRISTINA C. FORBES

123 A.3d 976 (D.C., 2015)

GENERAL SUBJECTS:

Compensation: Late filing of petitions for compensation requires a showing of excusable neglect.

Compensation: Extended delay in seeking compensation, particularly when combined with delinquencies in other reporting obligations, can result in reduction or disallowance of compensation.

FACTS:

Attorney Forbes was appointed guardian of Ayo Grooms in August, 2005. During her tenure, the guardian filed to timely file the six month guardian reports on twelve occasions. Between 2005 and November 2008, the guardian filed three requests for compensation. The third petition, filed in November, 2008, covered a three year period and was untimely, but the trial court granted the guardian's motion for leave to late-file her petition and awarded the full amount of the compensation requested. (As

the ward had no assets, all compensation was paid from the Guardianship Fund.)

In October, 2013, the guardian filed a petition for compensation for services rendered between August, 2008 to August, 2013, a five year period of time. The guardian accompanied the petition with a motion for leave to late file her petition for compensation.

The trial court noted that the guardian explained that she carried a large caseload and that "the day to day work of serving the needs of her wards and clients takes priority over preparing and filing petitions for compensation." The trial court granted the petition only in part, allowing compensation for only one year of services. The trial court asserted that the reasons given did not constitute good cause or excusable neglect, and also that the guardian had repeatedly ignored court rules, both for petitions for compensation and timely filing guardian reports, even after previously being warned that failure to timely file reports could subject her to removal. The trial court stated that it would exercise its discretion to impose a sanction for repeated violations of court rules which would become meaningless if not enforced, and that reducing compensation from the amount requested -- $13,029.00 -- to $2,603.00 was an appropriate sanction necessary to get the attorney guardian's attention and preserve the court's integrity.

The attorney guardian appealed.

<u>HOLDING</u>:

The Court of Appeals affirmed the trial court.

The Court of Appeals reviewed the trial court's order for abuse of discretion, and affirmed. The trial court held that "run of the mill" untimeliness is not excusable neglect that would justify accepting late filings. Instead, excusable neglect requires a showing of lack of knowledge of entry of a judge or extraordinary circumstances such as physical disability, unusual delay in mail, or unique extenuating circumstances. In addition to considering such a showing by the movant, the trial court has to consider the length of delay, its potential impact on judicial proceedings, the reason for delay, including whether the reason was in control of the movant, whether the movant acted in good faith, and prejudice to other parties.

The Court of Appeals rejected the guardian attorney's argument that only she was prejudiced, since the harm of late filing requests for compensation fell entirely on her because of delay in receiving compensation. The Court of Appeals held that the public at large has an interest in the timely filing and resolution of petitions for compensation, since compensation was paid from a taxpayer-funded source. Long delay may result in the depletion of assets of the ward, resulting in compensation being paid from the Guardianship Fund rather than assets of the ward. The Court of Appeals further noted that prompt filing of requests for compensation allows the court, and parties, to focus on and question fee requests that are contemporaneous with the events for which compensation is sought.

The Court of Appeals stated that consideration of the factor of whether the movant acted in good faith does not require a finding of bad faith. Good faith is an objective test, requiring consideration of, among other things, whether the party had knowledge of the obligation that was neglected and had some objectively reasonable basis for delay. "Good faith is not a purely subjective notion involving the proverbial actor with a pure heart and empty head . . . ."

Finally, the Court of Appeals noted the attorney's repeated late filing of the guardian's reports, and rejected the claim that conscientious services gave rise to the delay. The Court cited D.C. Code § 21-2043(e)(2), which required a guardian to limit his or her caseload in order to maintain regular and reasonable contact with each ward, and sated that timely-filed reports are the means by which the court ensures the regular and reasonable contact. The habitual delinquency "eroded any basis for a finding of good faith."

NOTE: The Court of Appeals requested both the District of Columbia and the Auditor-Master to each file a memorandum *amicus curiae* in this appeal.

ESTATE OF WAUGH, Reuben E.; APPEAL OF GREGORY WAUGH

123 A.3d 958 (D.C., 08/27/2015)

GENERAL SUBJECTS:

Compensation - Procedure: Review of compensation in an estate can be made pursuant to an objection to an account.

Distribution Plan - Procedure: A proposed distribution plan sent to interested persons pursuant to D.C. Code § 20-1102(d) becomes final if objections to the plan are not timely filed.

<u>FACTS</u>:

The co-personal representatives, being the surviving spouse of the decedent and her attorney, sent a proposal for distribution pursuant to D.C. Code § 20-1102(d), with a notice that any objections to the proposed distribution must object in writing within 30 days of mailing or delivery of the proposal. Gregory Waugh, the decedent's son and the other heir, did not file an objection.

Subsequently, the co-personal representatives filed their second and final account, and Mr. Waugh filed objections to that account. The objections included a challenge to the distribution, and a challenge to the compensation shown in the second and final account. Mr. Waugh had previously filed an objection to the first account; in that objection, he also complained about the compensation paid to the co-personal representative attorney.

The trial court held that objections to compensation must be made in the form of a petition for review of compensation filed pursuant to D.C. Code § 20-753(a), and not in the form of an objection to the account in which the compensation is shown. As Mr. Waugh did not file a petition for review, his objection was not sufficient to put the issue of compensation before the court and his failure to timely file a petition for review was deemed a waiver of his right to object.

Mr. Waugh appealed.

<u>HOLDING</u>:

The Court of Appeals held that failure to timely object to a proposed distribution plan sent pursuant to D.C. Code § 20-1102(d) is waiver of the right to object. The Court of Appeals agreed that "the timing requirement is a necessary aspect of efficient estate administration and distribution because the personal representatives must address an objections prior to moving forward with the associated transfer of property and assets."

On the other hand, the Court of Appeals held that an objection filed with respect to an account in which compensation

is shown meets the requirement of D.C. Code § 20-753(a). Section 20-753 provides that compensation may be reviewed "On the petition of any interested person . . . . or on appropriate motion if administration is supervised . . . ." The Court of Appeals construed that statute such that a request for review of compensation may be included as part of an objection to an account, provided that the request otherwise meets the requirements of Title 20 and the Probate Division rules.

With respect to the statutory requirement of a petition, the Court of Appeals suggested that the requirements for a "petition" are loosely defined, and took note of D.C. Code § 20-107, which provides that any interested person may "petition the Court for an order" to resolve an issue arising in an estate administration, and further cited 20-107(c), which provides

> Any request filed by an interested person, including any pleading described in this title as a petition, need not be in any particular format. It will be sufficient for the purpose intended as long as it is in writing and specifically identified the particular issue or concern which the interested person wishes the Court to review or resolve.

Reviewing the relevant statutory provisions, the Court of Appeals stated the requirements of Section 20-753 are satisfied if an objection (1) specifically states that the Court should review and determine the reasonableness of compensation shown in the account and why that Court should review the compensation, (2) addresses the factors for review set out in Section 20-753(b), and (3) includes a certificate of service.

The Court found that Mr. Waugh's objections did that, and therefore remanded the case so that the trial court could specifically review Mr. Waugh's objections to the attorney co-personal representative's objections.

Interestingly, in a footnote, the Court of Appeals suggested that, at least for the purposes of reviews of compensation, there was not meaningful distinction between a "petition" and a "motion", providing a further reason for the Court's interpretation of the statute. [Note: Attorneys should be aware of Probate Rule 407(h), which provides that an objection to an account is treated as an opposition, with the personal representative having ten days to reply.]

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2015 – 2016 D.C. ESTATE TAX DEVELOPMENTS

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LEGISLATIVE DEVELOPMENTS

I. **Tax Revision Commission Implementation Amendment Act of 2014**. The District of Columbia enacted the Tax Revision Commission Implementation Amendment Act of 2014 (the "TRC Act"), which was signed into law on February 26, 2015.[1] Certain provisions of the TRC Act were amended by the Prior Budget Act Amendment Act of 2015 (the "Prior Budget Act"), which was effective on October 1, 2015.[2] Together, the TRC Act and the Prior Budget Act (the "Acts") made several changes to the D.C. estate tax law.

A. Exemption Amount. The District of Columbia imposes a local estate tax on: (i) the taxable estate of its residents; and (ii) the D.C. situs assets of non-residents. The current D.C. estate tax exemption is $1,000,000.

The TRC Act added D.C. Code § 47-181, which provides a list of 17 tax reforms that will be phased in to the D.C. tax system when there is sufficient revenue to support such tax cuts. The 6th tax reform on the list will increase the D.C. estate tax exemption from $1,000,000 to $2,000,000. The 13th tax reform on the list will increase the D.C. estate tax exemption to $5,000,000 (as adjusted for inflation).

The increase of the D.C. estate tax exemption from $1,000,000 to $2,000,000 was scheduled to occur as early as 2016; however, the District of Columbia did not meet the revenue target required to fund the tax cut. Accordingly, the D.C. estate tax exemption remains at $1,000,000 for individuals dying in 2016.

B. Estate Tax Rates. From 2013 through 2015, the D.C. estate tax was tied to the federal credit for state death taxes as in effect on January 1, 2001. D.C. estates that exceeded $1,000,000 were taxed at the lesser of: (i) 40% of all amounts over $1,000,000; or (ii) at graduated rates for all amounts over $100,000. The graduated rates spanned 21 tax brackets ranging from 0% for amounts under $100,000 to 16% for amounts over $10,100,000.

The Acts amend D.C. Code §§ 47-3701 and 47-3702 to create a new estate tax rate structure effective for individuals dying after December 31, 2015. The D.C. estate tax exemption (currently, $1,000,000) is referred to as the "zero bracket amount," and all amounts equal to or below the zero bracket amount are taxed at 0%. Accordingly, D.C. estate tax is now

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[1] 61 D.C. Reg. 9990, 10,083–86 (Oct. 3, 2014).
[2] 62 D.C. Reg. 10,905, 11,012–13 (Aug. 14, 2015).

only paid on the portion of the estate that exceeds the D.C. exemption amount. The Acts also condense the D.C. estate tax rate schedule to 13 brackets that apply to amounts above the D.C. exemption amount, as follows:

Value of Taxable Estate		Tax Rate
Over	**But not Over**	
$0	$1,000,000	0%
$1,000,000	$1,500,000	6.4%
$1,500,000	$2,000,000	7.2%
$2,000,000	$2,500,000	8.0%
$2,500,000	$3,000,000	8.8%
$3,000,000	$3,500,000	9.6%
$3,500,000	$4,000,000	10.4%
$4,000,000	$5,000,000	11.2%
$5,000,000	$6,000,000	12.0%
$6,000,000	$7,000,000	12.8%
$7,000,000	$8,000,000	13.6%
$8,000,000	$9,000,000	14.4%
$9,000,000	$10,000,000	15.2%
$10,000,000		16.0%

C. Definition of Taxable Estate. The Acts also amended D.C. Code § 47-3701(12) to redefine the "taxable estate" for decedents dying after December 31, 2014. The new definition incorporates the definition of taxable estate provided under section 2051 of the current Internal Revenue Code, "but without reduction for the deduction provided in section 2058 of the Internal Revenue Code, and calculated as if the federal estate tax recognized a domestic partner in the same manner as a spouse." Section 2058 of the Internal Revenue Code provides the federal deduction for state death taxes. This amendment formally adopts the position that the District of Columbia has historically taken—that the federal deduction for state death taxes is not available for purposes of calculating the D.C. estate tax.

D. Conforming Amendments. Finally, the Acts made a number of conforming amendments to other provisions of the D.C. estate tax law to reflect the new D.C. exemption amount and rate provisions. For example, D.C. Code § 47-3705(a)(2) was amended to make clear that a personal representative is only required to file a D.C. estate tax return if the gross estate does not exceed $1,000,000 or the zero bracket amount, whichever is higher.

II. **Notice of Proposed Audit Changes Requirement Amendment Act of 2015**. The District of Columbia also enacted the Notice of Proposed Audit Changes Requirement Amendment Act of 2015 (the "Act"), which became effective as of October 1, 2015.[3] The Act amended certain provisions of Title 47, Chapter 43 of the D.C. Code regarding administration of taxes, which affects the assessment and collection of all taxes, including estate taxes.

[3] 62 D.C. Reg. 10,905, 11,015–16 (Aug. 14, 2015).

A. Required Notice of Proposed Audit Changes. The Act amends D.C. Code § 47-4312 by adding the requirement that the Office of Tax and Revenue ("OTR") send a "notice of proposed audit changes" to taxpayers at least 30 days prior to sending the notice of proposed assessment. According to OTR Notice 2015-06, it has been OTR's practice to send such a notice, but the Act now makes the notice a legal requirement.

B. Suspension of Limitations Period. The Act also amends D.C. Code § 47-4303 related to suspending the running of the period of limitations on assessment and collection of tax.

Prior to the amendment, D.C. Code § 47-4303 tolled the running of the limitations period: (i) during a court proceeding; and (ii) between the filing of a protest with the Office of Administrative Hearings and the issuance of a final order. In each case, the limitations period was tolled for an additional 60 days after resolution for assessment and an additional six months after resolution for collection. As a result of the amendment, the tolling in such circumstances begins on the day OTR issues a notice of proposed assessment rather than upon the filing of a protest.

The Act also adds a new tolling provision that suspends the running of the limitations period from the day that OTR issues a notice of proposed audit changes until 90 days after the issuance of such notice or until the issuance of a notice of proposed assessment, whichever occurs first.

ADMINISTRATIVE DEVELOPMENTS

In 2015, the D.C. Office of Tax and Revenue ("OTR") overhauled the D.C. Estate Tax Forms and Instructions. The forms booklet was revised in June 2015 and then again in December 2015.

The June 2015 version applied to estates of individuals who died on or after January 1, 2013. The December 2015 version indicates that it only applies to estates of individuals who died on or after January 1, 2016; however, the OTR website and representatives direct all taxpayers to use the December 2015 version of the forms booklet, regardless of the year of the decedent's death. Taxpayers are still required to use the D.C. Estate Tax Computation Worksheet that corresponds to the year of the decedent's death.

The new forms and instructions make numerous changes to the format and some of the information requested, including the following[4]:

I. **Formatting Changes**. All of the D.C. Estate Tax Forms now include a barcode and use a "single character per box" format. Fillable versions of the forms are available on the OTR website,

[4] Because the June 2015 version of the forms booklet was short-lived, unless otherwise noted, this document only describes the differences between the September 2013 version and the December 2015 version of the forms and instructions.

although the fillable versions do not comply with the "single character per box" format seemingly required by the form.

II. **New and Obsolete Forms**. The new booklet adds, deletes, and replaces certain forms.

A. Extension Request. Form FR-77 (*Application for Extension of Time to File DC Estate Tax Return*) has been removed and replaced with Form D-77 (*Extension of Time to File a DC Estate Tax Return*).

B. Amended Return. Form D-76A (*Amended DC Estate Tax Return*) has been removed and is obsolete. Amended returns are now filed using Form D-76 or D-76 EZ and filling in the new "Amended return" oval as the type of return.

C. Payment Voucher. A new Form D-76P (*Payment Voucher for DC Estate Tax*) has been added. A Payment Voucher must be completed and stapled to the check or money order whenever payment is submitted with a D.C. Estate Tax Return or Extension Request. The Payment Voucher requests the amount of payment, the taxpayer identification number (EIN or SSN), date of death, due date, decedent's name, Personal Representative's name, and Personal Representative's address.

III. **Substantive Changes**. The new forms include some new line items and taxpayer options.

A. Form D-76. Form D-76 (*DC Estate Tax Return*) has undergone the most dramatic changes.

1. **Background Information**. The new form still requires all of the background information that was required on prior versions, including: (i) the decedent's name, date of death, and Social Security Number; (ii) the Personal Representative's name, address, Social Security Number, and telephone number; and (iii) the location of the probate court and probate case number.

The new form still inquires whether the estate was probated and whether the decedent died testate, but the yes/no checkboxes have been replaced by a single oval. The instructions do not address the proper completion of these items, so it is assumed that the oval should be filled in if the answer to the question is "yes."

The new form now requests the following additional information: (i) the estate's Federal Employer ID Number; (ii) the decedent's date of birth; and (iii) the decedent's address.

2. **Gross Value of D.C. Property**. A new line 1 has been added to the form requesting the "gross value of property located in the District of Columbia." This information, which was previously reflected on the D.C. Estate Tax Computation Worksheet, has now been incorporated into the return itself.

3. **Foreign Accounts**. The new form asks whether a refund will go to an account outside of the United States and whether a payment will be made from an account outside of the United States. Although the form directs the taxpayer to "see

instructions" for these questions, the instructions do not address the use of foreign accounts. The "What's New" summary prefacing the short-lived June 2015 version of the forms booklet indicated that funds cannot be deposited into or drawn from an account outside of the United States.

4. **Refund Options**. Under the new form, the taxpayer can now specify whether a refund should be issued by direct deposit or paper check.

5. **Recapitulation**. A second page has been added to the return, which requires a "Recapitulation" of the estate's assets. This is almost an exact duplication of Part 5 of IRS Form 706 (*United States Estate (and Generation-Skipping Transfer) Tax Return*).

B. Form D-76 EZ. Form D-76 EZ (*DC Estate Tax Return*) provides an abbreviated version of the D.C. Estate Tax Return for estates that will pass to a surviving spouse (or domestic partner) and/or charitable organizations resulting in a "0" taxable estate. This form is substantially similar to the prior version, although it does request the same additional background information requested on Form D-76, namely: (i) the estate's Federal Employer ID Number; (ii) the decedent's date of birth; and (iii) the decedent's address.

C. Instructions. The instructions have maintained their minimalist approach. The D.C. Estate Tax Return still relies on IRS Form 706 and its schedules to provide details about the estate's assets. The instructions require that the following portions of the IRS Form 706 be filed as attachments to the Form D-76: (i) Pages 1, 2, and 3 from the IRS Form 706; and (ii) Schedules A through O from IRS Form 706, including all attachments. The new instructions mandate that the IRS Schedules and attachments be "provided on a CD in PDF format."