



DCBA MEMBER BENEFIT
CLE COMPLIANCE SESSION HANDOUTS

WEDNESDAY, APRIL 9, 2025

Dauphin County Bar Association
213 North Front Street
Harrisburg, PA

Reminder: Parking is NOT available at the DCBA Building. The parking behind our building are spaces rented by individuals who have paid a monthly fee.

You may find parking available in the River Street Parking Garage located behind the Bar Association for \$10 for 2 hours or less; \$15 for 2 to 4 hours and \$30 for the entire day.

SESSION AGENDA

Dauphin County Bar Association
213 North Front Street, Harrisburg, PA
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\$10 for 2 hours or less; \$15 for 2 to 4 hours; and \$30 for the entire day

Please DO NOT ARRIVE before 8:30. This will allow staff time to complete set up for the day.

- 8:30 – 8:55am – Pick up your registration form at registration table
 - 9:00 – 10:00am | Session #1 | RTKL Case Law Updates
Melissa Chapaska & Victoria Edwards | Substantive
- 10:15 – 11:15am | Session #2 | What you Need to Know About the Dauphin County Guardian Monitor Program | Kim Snell-Zarcone & Mary Catherine Scott | Substantive
- 11:30am – 12:30pm | Session #3 | PBA Malpractice Avoidance | Josh Byrne & Kyle Murphy | Ethics

LUNCH BREAK – set up in bar area
(R&K Subs bagged lunches for those that have registered for the lunch)
Please be sure to take the appropriate sub that you ordered.

- 1:30 – 2:30pm | Session #4 | The Federal Estate and Gift Tax - Where do we go from here?
Neil W. Yahn & Thomas P. Gacki | Substantive
 - 2:45 – 3:45pm | Session #5 | Poetry, the Law and Legal Ethics
Emeritus Professor Robert Rains & Justice J. Michael Eakin | Ethics
 - 4:00 – 5:00pm | Session #6 | **Workers' Compensation Case Law**
Update | Kaleigh M. Ryder & Jesse Rhodeside | Substantive
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Important Info:

- Parking is NOT available at the DCBA Building. The parking behind our building are spaces rented by individuals who have paid a monthly fee.
- The Wi-Fi password and log in information will be at the TOP of your CLE confirmation form.
- Space is limited for each session due the classroom size.
- You must be in attendance for the complete HOUR of a program to receive credit.
- Coffee will be provided in the morning only. Pitchers of water and some canned soda will also be available.
- After completion of your last session, please drop off your SIGNED CLE form at the registration table at the bottom of the steps.
- Please bring a sweater if you think you may get chilly.
- **PLEASE KEEP ALL CELL PHONE CALLS TO BETWEEN SESSIONS!**

See you at DCBA HEADQUARTERS tomorrow!

Speaker Biographies

Session 1 – Government Law - RTKL Case Updates



Melissa A. Chapaska, Esquire – HMS Legal, LLP

Melissa Chapaska is an attorney at HMS Legal LLP, a Harrisburg-based law firm, where she represents clients in administrative litigation and appeals before state agencies and appellate courts, including Right-to-Know law appeals. Ms. Chapaska has published numerous articles and frequently lectures on administrative and appellate issues. Additionally, she regularly contributes to Pennsylvania Appellate Advocate (www.paablog.com), a resource for pending issues before the Commonwealth's appellate courts including Right-to-Know cases before the Commonwealth and Pennsylvania Supreme Courts. She earned her B.A. from the University of Pittsburgh and her J.D. from Widener University Commonwealth Law School, and is currently a member of the DCBA Government Lawyers Section Executive Committee.



Victoria P. Edwards, Esquire – Department of Transportation

Victoria Edwards is Assistant Chief Counsel for the Office of Chief Counsel, Department of Transportation. At the Office of Chief Counsel, Victoria focuses on regulations, contract drafting and review, right to know law, and torts. Before joining the Commonwealth in 2022, Victoria was a shareholder at Mette, Evans & Woodside, where she focused her practice on workers' compensation defense and real estate litigation. Victoria graduated from the Penn State Dickinson School of Law in 2005.

Session 2 – What You Need to Know About the Dauphin County Guardian Monitor Program



**Kimberly Snell-Zarccone, Esquire, Deputy Director
Dauphin County Bar Association**

Kim is a graduate of Gettysburg College and Vermont Law School, where she received both her Masters of Studies in Environmental Law and her Juris Doctor. After law school, she returned to the area and worked in the litigation department of a large Harrisburg law firm. She was then lucky to land a dream job in the environmental field with one of the largest environmental advocacy organizations in Pennsylvania, PennFuture. Kim focused her practice at PennFuture on the interface of clean water and agriculture and the impacts upon the Chesapeake Bay watershed. After a decade at PennFuture, Kim was the Policy Director for the state affiliate of the League of Conservation Voters for four years and a consultant to the National Wildlife Federation for two years. After a professional siesta, Kim joined

DCBA as the Director of Legal and Community Services and now serves as the Deputy Director of DCBA.



**Mary Catherine Scott, Esquire, Director
Widener Law Commonwealth's Central PA Law Clinic**

Professor Scott has been with Widener Law Commonwealth's Central Pennsylvania Law Clinic since 2002, first as a supervising attorney and more recently as its director. The clinic is distinguished in two primary ways. It provides free legal assistance to those in our community who cannot afford legal services as it prepares law students to become lawyers. This real-world experience gives students an opportunity to practice in a supervised setting and handle real cases with real elderly and indigent clients in areas of law that include administrative law, family law, landlord tenant law, consumer law and elder law.

Professor Scott recognizes that the access to justice for such underserved clients is wide and the clinical program at Widener Law Commonwealth steps in to help fill this gap. Many practicing attorneys in our region have participated in the clinic while at Widener, assisting those who needed legal help, and are now successful practitioners.

In addition to her work at the clinic, Professor Scott is active in the Dauphin County Bar Association Public Services Committee, where she works with other practicing attorneys providing pro bono opportunities in the community. She is also a board member on the Advisory Council of Elder Justice in the Courts, where she works with other elder law experts to identify and understand elder justice issues for one of Pennsylvania's most vulnerable populations.

Session 3 – PBA Malpractice Avoidance (Ethics)



Josh J.T. Byrne, Esquire – Marshall Dennehey

Josh J.T. Byrne is Co-Chair of the firm's Disciplinary Board Representation Practice and concentrates his practice on representing and defending professionals in a variety of professional liability matters. Josh regularly represents attorneys in legal malpractice, wrongful use of civil proceedings and disciplinary matters. He also represents many other types of professionals, including those in the health care field, in the federal and state courts in Pennsylvania and New Jersey and before disciplinary boards.

Josh has devoted his legal career to the protection of professionals and is highly regarded in this arena throughout the state. He is the former Chair of the Pennsylvania Bar Association's Professional Liability Committee; Co-Chair of the Amicus Curiae Brief Committee; and an active member of the Ethics Committee. He is also Co-Chair of the Philadelphia Bar Association's Professional Responsibility Committee, the former Co-Chair of the Philadelphia Bar Association's Professional Guidance Committee and is a former Hearing Committee Member serving the Disciplinary Board of the Supreme Court of

Pennsylvania. He serves as a Zone One delegate to the Pennsylvania Bar Association's House of Delegates and as a Judge Pro Temp for the Philadelphia Court of Common Pleas.

A prolific writer, Josh publishes extensively on malpractice avoidance and authors a recurring column in The Legal Intelligencer on professional liability topics. Josh frequently presents to legal and business organizations throughout Pennsylvania on professional liability themes.

Josh graduated with a dual major in Political Science and Japanese Studies From Earlham College in Richmond, Indiana. After college, he worked for two years as a coordinator for international relations in Chiba, Japan. He then obtained his juris doctor from Rutgers University School of Law. He is rated AV-Preeminent by Martindale-Hubbell, the highest rating for professional competence.



Kyle Murphy, USI Affinity

Kyle Murphy focuses on providing comprehensive solutions, coverage, claims and risk control services to protect lawyers from a wide range of professional exposures and to offer a full suite of value-added insurance benefits

Session 4 – Estate Planning & Probate

The Federal Estate and Gift Tax - Where do we go from here?



Neil Warner Yahn, Esquire - JSDC Law

Neil Warner Yahn, Sr., is a partner with the firm of JSDC Law Offices and he also serves on the faculty at Villanova University since 2011 as an adjunct professor where he teaches Individual Taxation and Taxation of Business Entities.

Neil primarily concentrates his law practice on income, partnership, corporate and estate tax matters and related litigation. Neil advises clients with respect to the use of partnerships, S corporations, limited liability companies (LLCs) and other pass-through entities to assist clients in a wide range of tax planning matters. He works with our clients to use pass-through entities to avoid double taxation, to allow business owners to obtain the full benefit of tax losses or tax incentives, and to minimize the tax impact of various asset acquisitions or dispositions. In the controversy area, Neil has represented clients at the audit and appellate levels of the IRS and in litigation before the U.S. Tax Court. He has also represented large estates and beneficiaries in disputes over testamentary documents and claims of undue influence.

Neil also writes and lectures extensively on tax planning topics and related matters for the Pennsylvania Bar Institute, the Pennsylvania Institute for Certified Public Accountants and the Financial Planning Association. He is a graduate of the Villanova University School of Law. At Villanova, Neil earned his Juris Doctorate and Masters in Taxation (LL.M.). Neil

supplemented his Masters in Taxation from the Georgetown University Law Center where he focused on employee benefits, employer plan designs and fiduciary provisions under ERISA.

Neil is AV Rated.



Thomas P. Gacki, Esquire – Law Office of Thomas P. Gacki

Tom is a graduate of Gannon University and The Dickinson School of Law. After a year at a small firm in Lebanon, Tom came to Dauphin County in 1986 as an associate with the former Hepford Swartz & Morgan firm. Tom launched a solo career in downtown Harrisburg in 1994. In 1999, he joined the Harrisburg office of Eckert Seamans and practiced there until October, 2020, when he returned to practice as a sole practitioner in Lower Paxton Township. He practices extensively in the areas of estate planning and administration, real estate and general business law.

Tom has been active in the Dauphin County Bar since coming to Harrisburg. He was the Chair of the Young Lawyers Division and became President of the DCBA in 2006. He currently serves as Treasurer. Tom has also been active in community organizations, serving on the board and as president of the Dauphin County Historical Society and the Central Pennsylvania Senior and Retired Volunteer Program, among others.

Session 5 – Poetry, the Law and Legal Ethics



Justice Eakin was elected to the Pennsylvania Supreme Court in 2001, retained in 2011 and retired in 2016. He was elected to the Pennsylvania Superior Court in 1995. He served three terms as District Attorney of Cumberland County from 1984-1995. During that time, he was an invited speaker at various national programs, and served on the faculty of the National College of District Attorneys, receiving their "Lecturer of Merit" Award in 1990. Justice

Eakin served as president of the Pennsylvania District Attorneys Association in 1992-1993, and served as that organization's Education Chair for nine years. A past Chairman of the Criminal Procedural Rules Committee of the Supreme Court, he is a member of the Bar Associations of Cumberland, Dauphin, and Lancaster Counties, as well as the PBA and ABA. A 1970 graduate of Franklin & Marshall College, he received his degree from the Dickinson School of Law in 1975. Justice Eakin received an honorary Doctor of Laws degree from Widener Law in 2004 where he also served as an adjunct professor.

Justice Eakin works directly with our firm, Walters & Galloway, PLLC, as a mediator and appellate practice advisor as "Of Counsel."



Emeritus Professor Robert E. Rains

Robert E. (Bob) Rains is an emeritus professor at Penn State Dickinson Law. In addition to numerous scholarly articles on topics including legal ethics, he has published multiple “law verses” in various academic and professional journals, including the Hastings Law Journal, Oregon Law Review, Green Bag, Journal of the Legal Profession, Journal of Legal Education, A.B.A. Family Advocate, Pennsylvania Lawyer, etc. He is also the editor of the PBA Quarterly and will be happy to consider proposals for articles from potential authors.

Session 6 – Workers’ Compensation Case Law Update



Kaleigh M. Ryder, Esquire – Schmidt Kramer

Kaleigh M. Ryder grew up right here in Harrisburg and attended Central Dauphin High School. She remained local for both undergraduate and law school. Kaleigh attended Lebanon Valley College where she graduated in 2017 with a B.S. in Psychology. She then attended Widener Commonwealth Law School here in Harrisburg and graduated in May of 2020. During law school, Kaleigh participated in the Trial Advocacy Honor Society and as a certified intern for the York County District Attorney’s Office and then with the Department of Revenue.

Kaleigh has practiced workers’ compensation law since 2021. She initially began practicing as a defense attorney which provides her a unique prospective into the inner workings of insurance companies and employers to help guide her clients to positive outcomes. Kaleigh is a member of the Dauphin County Bar Association and sits as the President of the Workers’ Compensation Section. She is also a member of the Pennsylvania Bar Association.

In her off-time, Kaleigh enjoys spending time with her two children and boyfriend, Sam. She has continued to remain in Harrisburg and has enjoyed having her children grow up and live where she always has. Kaleigh enjoys volunteering to chaperone her daughter’s school fieldtrip and activities and volunteering in her son and daughter’s various extracurricular activities. Kaleigh enjoys her various crafting hobbies in addition to participating in a local Dungeons and Dragons campaign and video games.

Kaleigh Ryder is admitted to practice law in the Commonwealth of Pennsylvania since 2020.



Jesse M. Rhodeside, Esquire – Marzzacco Niven & Associates Injury Law

Jesse represents injured workers in workers’ compensation matters. He handles workers’ compensation litigation before workers’ compensation judges across Pennsylvania, and has extensive experience in appellate practice before the workers’ compensation appeal board and the

Commonwealth Court. He has helped his clients recover millions of dollars in lost wages and medical expenses through his advocacy.

Jesse is certified as a specialist in the practice of workers' compensation law by the Pennsylvania Bar Association's Section on Workers' Compensation Law as authorized by the Pennsylvania Supreme Court.

Jesse attended Widener University School of Law in Harrisburg, and received his law degree in 2014. While in law school, he gained valuable experience through internships with the Governor's Office of General Counsel and the Supreme Court of Pennsylvania. He was also a member of the Moot Court Honor Society. Prior to law school, Jesse attended Temple University, and earned his B.A. in 2011.

SESSION #1

RTKL
Case Law Updates

Presented by:
Melissa Chapaska, Esquire
&
Victoria Edwards, Esquire

RTKL

Case Law Updates

Victoria Edwards

Assistant Chief Counsel
Governor's Office of General Counsel
Department of Transportation

victoredwa@pa.gov

Melissa Chapaska

Of Counsel
HMS Legal, LLP

machapaska@hmslegal.com

RTKL Basics: A Refresher

- All state and local government agency records are presumed public.
- In order to withhold a record, the agency must prove that it is entitled to do so under the RTKL, another law or regulation, privilege, or court order.
- A requester may challenge an agency's denial of records to the Office of Open Records (OOR)



The Basics

Is it a **Commonwealth, local, judicial, or legislative agency**. ?

Is it a **record**?

Is it a **public record**?



Is it an agency?

Commonwealth Agency	Local Agency
"Any office, department, authority, board, multistate agency or commission of the executive branch, an independent agency and a State-affiliated entity" incl. "an organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function."	(1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school. (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

Is it a record?

RTKL, Section 102:

Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.

Is it a public record?

- Exempt under section 708?
- Exempt from disclosure under any other Federal or State law or regulation or judicial order or decree?
- Protected by a privilege?



Appeals

15 Business Days to appeal agency denial to OOR

30 Days to appeal to:

Commonwealth Court for state agencies

Common Pleas for local agencies

De Novo Review

Automatic Stay

Baron v. Commonwealth Dep't of Human Svcs., 169 A.3d 1268 (Pa. Cmwlth. 2017) (direct-interest participants entitled to RTKL automatic stay.)



Supreme Court Update

***Pa. Interscholastic Athletic Ass'n v. Campbell,*
310 A.3d 271 (Pa. 2024)**

The PIAA is a "state agency" for purposes of the RTKL.

65 P.S. § 67.102:

"State-affiliated entity." A Commonwealth authority or Commonwealth entity. The term includes the [...] the Pennsylvania Interscholastic Athletic Association [...] The term does not include a State-related institution.

Supreme Court Update

Pa. Interscholastic Athletic Ass'n v. Campbell, 310 A.3d 271 (Pa. 2024)

- RTKL's record-access provisions were not subordinated to those of Nonprofit Law as to PIAA
- PIAA's inclusion in RTKL's definition of "state-affiliated entity" did not violate state constitution's no-special-laws clause; and
- PIAA was "state-affiliated entity" subject to RTKL's record-access provisions.

Supreme Court Update

Pa. Interscholastic Athletic Ass'n v. Campbell, 310 A.3d 271 (Pa. 2024)

PIAA plays a vital role in managing an important aspect of the education of middle- and high-school students in Pennsylvania, and it does so through the use of powers derivative of those attendant to school officials acting in an official capacity as authorized under the Public School Code. PIAA fulfills that role ultimately through a board of directors largely consisting of school officials acting in their official capacities. Given this state of affairs, we ultimately conclude PIAA falls within the scope of the phrase "Commonwealth entity."

Supreme Court Update

Penncrest Sch. Dist. v. Cagle,

allocatur granted Dec. 4, 2023 (No. 31 WAP 2023)

Does the RTKL require the disclosure of school board members' social media posts on their private Facebook accounts relating to the propriety of a display of certain books in the school library?



Supreme Court Update

Penncrest Sch. Dist. v. Cagle,

allocatur granted Dec. 4, 2023 (No. 31 WAP 2023)

...[W]e respectfully disagree with the trial court's holding that it "does not matter" if the social media post was on a public or private account... We also disagree with the court to the extent it suggested that merely because a board member expressed his views about board business in a social media post, he created a public record... We hold the court must address, among other factors, whether that board member acted in an "official capacity."

Commonwealth Court Update

Bergere v. Pa. Dep't of Community & Econ. Dev.,

-- A.3d --- (Pa. Cmwlt. Jan. 30, 2025)

In camera review was not required where redacted documents and agency affidavit were sufficient to determine whether redactions on the basis of attorney – client privilege were appropriate.



Commonwealth Court Update

Posey v. Dep't of Corrections,

329 A.3d 864 (Pa. Cmwlt. 2025)

The RTKL's personal security exemption, Section 708(b)(1)(ii), does not *per se* exempt correctional officers' full names from public disclosure.

- Department did not offer any evidence that disclosure of officers' first names would be reasonably likely to result in substantial and demonstrable risk of harm to officers' personal security.
- No general judicial rule by precedent carving out exception to RTKL for names of correctional officers.

Commonwealth Court Update

Trethewey v. Downingtown Area Sch. Dist.,

--- A.3d --- (Pa. Cmwlth. Feb. 25, 2025)

Exemption of school district's diversity, equity, and inclusion (DEI) training materials exempt from disclosure under the RTKL as trade secret and confidential proprietary information.

- School district did not establish that requested materials constituted trade secret information exempt from disclosure, and
- School district did not provide factual detail sufficient to establish that exemption for confidential and proprietary information applied to requested materials.

Commonwealth Court Update

Trethewey v. Downingtown Area Sch. Dist.,

--- A.3d --- (Pa. Cmwlth. Feb. 25, 2025)

The Copyright Act limits access to a public record only with respect to duplication, not inspection. Thus, **a copyrighted public record must still be made available for inspection under the RTKL.** Accordingly, any copyrighted material used by Brown and DEI staff to instruct or lead any training or programs to the School District staff must be made available to Requester for inspection.

Commonwealth Court Update

Trethewey v. Downingtown Area Sch. Dist.,

--- A.3d --- (Pa. Cmwlth. Feb. 25, 2025)

Regarding any non-copyrighted training materials, Brown's affidavits do not provide meaningful factual information. It cannot be ascertained whether the training materials are videos, PowerPoints, outlines, lesson plans, or something else. The affidavits do not explain how this information has value to the School District's competitors; the identity of competitors in the DEI training market; and the likelihood of substantial injury if the information was released.

Lessons learned

- Agency status
- Private social media posts by agency officials
- Sufficiency of affidavits
- In camera review
- Public access to copyrighted information



Thank You!

Victoria Edwards

Assistant Chief Counsel
Governor's Office of General Counsel
Department of Transportation

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Melissa Chapaska

Of Counsel
HMS Legal, LLP

machapaska@hmslegal.com

SESSION #2

“What you Need to
Know About the
Dauphin County
Guardian Monitor
Program”

Presented by:
Kim Snell-Zarcone, Esquire
&
Mary Catherine Scott, Esquire



Guardian Monitor

Serve as the eyes and ears of the Court

3 Basic Components of the Program

Review the annual reports related to the Guardianship.

Meet with the guardian and ward at least once a year to ensure that the ward is not being physically abused or financially manipulated.

Submit a form to the Court about the welfare of the ward.

Getting Started

Notify Sara Shaffer that you would like to become a guardian monitor. The Court will issue an Order assigning you to a case or two.

Sign a confidentiality statement. Amanda Miller facilitates this process. Once you sign the confidentiality statement, you can access the file for the case either in person or via the Guardian Tracking System.

Reach out to the guardian and ward with a letter of introduction. Provide contact information where they can reach you to schedule a meeting.

Meet with both the guardian and ward at the same time. It is preferred that meetings be in person, but they can also be over the phone or zoom. If you would like additional resources to enhance communication with an incapacitated or incompetent ward, consider contacting the Dauphin County Area Agency on Aging or the Dauphin County Mental Health Program.

Complete a straightforward and simple form and submit to the Court via Sara Shaffer. Every report is reviewed by the Court. The Court may request a hearing if the report flags any issues that need revisited.

Sara Shaffer

Deputy Court Administrator, Civil, Family & Orphans' Court

sshaffer@dauphincounty.gov

717-780-6646

Administers Program; Assigns & Discontinues Monitors;

Collects Monitor Reports

Amanda (Mandy) Miller

Second Deputy, Orphans' Court

amiller@dauphincounty.gov

717-780-6498

Collects Confidentiality Statement and

Provides Access to File (in person or online via GTS)



There are three basic components to the program:

1. Review current status of the Guardianship.
2. Meet with Guardian and Ward once a year.
3. Submit a report to the Court.



First Component: Review Current Status

1. Review original petition
2. Check previous and current status reports



<p>IN THE COURT OF COMMON PLEAS MONTGOMERY COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION</p> <p>20 -X-</p> <p>ESTATE OF [] AN ALLEGED INCAPACITATED PERSON } PETITION FOR ADJUDICATION OF INCAPACITY AND APPOINTMENT OF LIMITED GUARDIANS OF THE PERSON AND ESTATE (Pursuant to 20 PA C.S.A. §5511)</p> <p>I, _____, ("Petitioner"), petition the Court to appoint Limited Permanent Guardian(s) of the Person and Estate of _____, the "Alleged Incapacitated Person."</p> <p>1. I am a person interested in the welfare of the Alleged Incapacitated Person.</p> <p>2. The Alleged Incapacitated Person currently resides at _____ (address) and has a mailing address (if different) of _____. Because the Alleged Incapacitated Person resides in Montgomery County, Pennsylvania, this Court has jurisdiction pursuant to 20 PA C.S.A. §5512(a).</p> <p>3. The birthdate of the Alleged Incapacitated Person is: _____</p> <p>4. The Alleged Incapacitated Person has the following spouse, parents, adult children and other adult heirs: (list name and address of each known heir; write "none" or "unknown" if appropriate)</p> <p>_____</p> <p>5. The following residential care facility or other services providers are currently providing services to the Alleged Incapacitated Person</p> <p>_____</p> <p>6. The Alleged Incapacitated Person's Income and Assets are as follows: (list all known property, such as a residence, bank accounts, investment accounts as well as all known income including Social Security, etc., along with value of each)</p> <p>_____</p> <p>7. The Alleged Incapacitated Person's longtime physician is Dr. _____ (name, address and phone).</p> <p>8. CHECK the appropriate paragraph(s): I am unaware of any Powers of Attorney, Health Care Powers of Attorney or Advance Health Care Directives which have been executed by the Alleged Incapacitated Person. The Alleged Incapacitated Person signed a Power of Attorney on the filing date _____ (date). A copy is attached as Exhibit naming as agent _____. The Alleged Incapacitated Person signed a Health Care Power of Attorney on _____ (date). A copy is attached as Exhibit naming as agent _____. The Alleged Incapacitated Person signed a Health Care Directive and/or Living Will on _____ (date). A copy is attached as Exhibit _____.</p> <p>9. The Alleged Incapacitated Person has been diagnosed with (insert conditions as diagnosed by a physician): _____ and as a result he/she requires (insert type of care or assistance required or nature of impairment): _____</p> <p><small>Montgomery County Orphans' Court Division. Petition and Return filed on _____ (date). Information on Current Guardianship and Financial Status, Revised 02/2015. www.montgomerycountypa.gov/ocd/ocd.htm</small></p>	<p>10. As a result of the conditions mentioned in Paragraph 9 above, the Alleged Incapacitated Person is unable to attend to or participate in the following activities and responsibilities:</p> <p>_____</p> <p>11. Because of the conditions mentioned in Paragraph 9 above, the Alleged Incapacitated Person is unable to manage his/her financial affairs and is unable to make and communicate any decisions relating to those affairs and appointment of a Limited Permanent Guardian of the Estate is necessary, provided that the duties and responsibilities of the Limited Guardian of the Estate should be as follows:</p> <p>_____</p> <p>12. Because of the conditions mentioned in Paragraph 9 above, the Alleged Incapacitated Person is unable to make or communicate decisions concerning his/her person, residence, or medical care and appointment of a Limited Permanent Guardian of the Person is necessary, provided that the duties and responsibilities of the Limited Guardian of the Person should be as follows:</p> <p>_____</p> <p>13. I have taken the following steps to consider alternatives to Guardianship:</p> <p>However, the condition of the Alleged Incapacitated Person requires Limited Guardianships for both his/her person and estate and no less restrictive alternative is available or adequate.</p> <p>14. The proposed Limited Guardian of the Person is (name and address of guardian): _____</p> <p>15. The proposed Limited Guardian of the Estate is (name and address of guardian): _____</p> <p>16. The Proposed Guardian(s) has/have no interests in conflict with the alleged incapacitated and agreed to become Guardian if the Court approves.</p> <p>17. No Court has ever assumed jurisdiction in any proceeding to determine the capacity of the Alleged Incapacitated Person and no person has previously been appointed Guardian of the Estate or Person of the Alleged Incapacitated Person.</p> <p>WHEREFORE, Petitioner respectfully requests this Honorable Court issue a Citation directed to (name), the Alleged Incapacitated Person, to demonstrate whether or not he/she should be adjudged to be a totally Incapacitated Person and have Limited Guardians appointed, and whether (name of Proposed Guardian(s)) should be appointed Limited Permanent Guardian of his/her Person and Estate.</p> <p>Respectfully submitted,</p> <p>_____ Signature of Petitioner or Attorney</p> <p>Name: _____ Address: _____ Telephone Number: _____ Email Address: _____</p> <p><small>Montgomery County Orphans' Court Division. Petition and Return filed on _____ (date). Information on Current Guardianship and Financial Status, Revised 02/2015. www.montgomerycountypa.gov/ocd/ocd.htm</small></p>
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COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

GUARDIAN'S INVENTORY FOR AN INCAPACITATED PERSON

Estate of: _____ an Incapacitated Person

Case File No: _____

DATE COURT APPOINTED YOU AS GUARDIAN: _____

PART I: INTRODUCTION

Inventory type:
☒ Initial
☐ Amended

PART II: ASSETS (PRINCIPAL)

1. List all bank accounts, real estate, burial accounts, and other personal property below. If the property is owned by both the incapacitated person and others, indicate in the last column the name of the co-owner.

Asset	Value	Name of Co-Owner(s)
	\$	
TOTAL	\$	

2. Is any property (specifically bank accounts or real estate) co-owned by the Incapacitated Person and the guardian?
☐ Yes
☒ No

If yes:
a. On what date was the property acquired? _____
b. On what date was the guardian's name added? _____
c. The guardian is:
☐ an individual having access or control over the account
☐ an owner of the account

3. Does the Incapacitated Person have a homeowners insurance policy for real property?
☐ Yes (Copy of policy to be provided upon request)
☒ No

GTS Form G-05 v. 0.011 rev. 03/26/2018 Page 1 of 8

COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

REPORT OF GUARDIAN OF THE PERSON

Estate of: _____ an Incapacitated Person

Case File No: _____

DATE COURT APPOINTED YOU AS GUARDIAN: _____

PART I: INTRODUCTION

1. Name(s) of Guardian(s): _____

2. Is this a limited Guardianship? ☐ Yes ☒ No

3. Report Period
☒ This is the **Report** for the period from **September 10, 2023** to **September 9, 2024** (the "**Report Period**"); or
☐ This is the **Final Report** for the period from _____ to _____ (the "**Report Period**") and is filed for the following reason:
☐ The death of the Incapacitated Person.
Date of Death: _____
Name of Executor/Administrator: _____
☐ The Guardian was discharged by a court order dated: _____
☐ Order for Adjudication of Capacity dated: _____
☐ Limited Duration Order Expired, dated: _____
☐ Transfer of Guardianship to: _____
Date of court order approving transfer: _____

IF THIS IS A FINAL REPORT, ONLY COMPLETE PARTS I AND V.

Form G-03 (Effective January 1, 2023) Page 1 of 7

Report of Guardian of the Estate		
PART II. INCOME		
1. List all sources of income received during the Report Period :		
Did the Incapacitated Person receive any of the following?		Amount During Report Period
Alimony or Support	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Annuity Payments	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Dividends	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Interest Income	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
IRA Distributions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Long Term Care Insurance Benefits	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Pension/Retirement Benefits (for example: 401(k), 403(b), etc.)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Public Assistance	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Rental Property Income	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Royalties (including from mineral and land rights)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Social Security Benefits (Retirement, Disability, SSI)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 26,804.00
Tax Refund	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Trust Income	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Veterans Benefits (disability/pension/aid and attendance)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Wages	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Worker's Compensation Benefits	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
TOTAL		\$ 26,804.00

Form G-02 (Effective January 1, 2023) Page 2 of 9

PART III. ANNUAL EXPENSES		
1. List all payments made for the care and maintenance of the Incapacitated Person during the Report Period :		
Expense	To Whom Was It Paid?	Total for Report Period
Auto Insurance (Insurance for Van)	Geico	\$ 564.00
Cable/Satellite/Internet (Internet/TV)	Comcast	\$ 480.00
Child/Spousal Support/Alimony		
Clothing (Clothes/shoes)	Various	\$ 3,600.00
Condo/Co-op Assessments		
Debt (incurred prior to your appointment)		
Entertainment (Movies, out to eat, shopping)	Various	\$ 3,900.00
Fees/Costs Paid to Guardian		
Food (Food)	Various	\$ 4,800.00
Gifts - Personal or Charitable (Bday and Christmas Gifts)	Various	\$ 1,100.00
Home Health Care/Personal Aide		
Homesteaders Insurance		
Home/Property Maintenance & Repair		
Income Taxes		
Life Insurance Premiums		
Medical Insurance Premiums		
Medical Expenses		
Medicine		
Mortgage (Mortgage/tax/insurance)	Citizens	\$ 6,960.00
Nursing Home/Assisted Living/Institutionalized Care		
Personal Expenses (including allowance) (Depends/Paid/wipes/vitamins/allowance/vacation)	Various	\$ 2,763.00
Phone/Cell Phone (Phone)	AT&T	\$ 600.00
Real Estate Taxes		
Rent		
Utilities (Heat and Electric and Sewer)	Columbia Gas/Met Ed/Dover Township	\$ 1,383.00
Other (Apps)	Disney, netflix, peacock, paramount+	\$ 648.00
TOTAL		\$ 26,798.00

Form G-02 (Effective January 1, 2023) Page 3 of 9

The Unified JUDICIAL SYSTEM of PENNSYLVANIA WEB PORTAL

Unified Judicial System website
 UJS Forms
 PhePay® Brochure
 PhePay® Brochure (Español)
 Collections in the Courts
 Financial Records

Home
My Services
Case Information
Guardianship
PAeCFire®
Pay Online
Help & Support

Home > Guardian Dashboard > Guardianship Case

GTS Case - - Guardianship of

General Information

Judicial Authority	Is Sealed	Filing Fees Waived	Case Status	Case State	Filing Date	Requested Domain	Ordered Domain	His Notes
Morris, Royce	<input type="checkbox"/>	<input type="checkbox"/>	Adjudicated Incapacitated	Open		Person (Plenary) Estate (Plenary)	Person (Plenary) Estate (Plenary)	

Incapacitated Person

Case Actions

Guardians

Other Case Participants

Attorneys

Reports

Bond Ordered

Action Date/Time	Case Action	Files	Documents
06/07/2018 10:58 AM	Petition for Adjudication of Incapacity and Appointment of Guardian		
09/10/2018 11:04 AM	Final Decree - Adjudication of Incapacity/Appointment of Guardian	Morris, Royce	
11/09/2018 12:00 AM	eService Reminder Notice Sent		
11/23/2018 11:19 AM	Inventory for an Incapacitated Person Report Submitted		
11/28/2018 09:11 AM	Inventory for an Incapacitated Person Report Accepted		
12/09/2018 10:51 AM	Inventory for an Incapacitated Person Report Reviewed		
08/10/2019 12:00 AM	eService Reminder Notice Sent		
08/10/2019 12:00 AM	eService Reminder Notice Sent		
09/11/2019 12:00 AM	eService Overdue Notice Sent		
09/11/2019 12:00 AM	eService Overdue Notice Sent		
09/30/2019 12:01 AM	eService Overdue Notice Sent		
09/30/2019 12:01 AM	eService Overdue Notice Sent		
10/08/2019 01:41 PM	Annual Report of Guardian of the Person Submitted		

https://ujspportal.pacourts.us/Guardianship/GuardianDashboard

Second Component: Meet with Guardian & Ward

1. Send introduction
2. In person is best
3. Meet with Guardian and Ward at the same time
4. Meet at least once each year
5. Resources to enhance communication with an incapacitated or incompetent Ward



Third Component: Submit a Report to the Court

1. Simple and straightforward Report to Court
2. Report reviewed by Court
3. Possible hearing if Court deems necessary



<p>IN THE MATTER OF: [Redacted]</p> <p>Incapacitated Person</p> <p>SUMMA</p> <p>I, [Redacted], the undersigned, have met with the guardian (below), and aver as follows:</p> <p>The undersigned monitor:</p> <p><input type="checkbox"/> EXCELLENT: care is basic needs of the ward</p> <p><input type="checkbox"/> SATISFACTORY: care is adequate</p> <p><input type="checkbox"/> MARGINAL: overall care is adequate but not dangerous to the ward</p> <p><input type="checkbox"/> UNACCEPTABLE: in serious negative effect required.</p> <p>The undersigned monitor specifies: Possible recommendation: court order directing guardian to [Redacted] (terminating guardianship.)</p> <p>The undersigned monitor:</p> <p>Date: [Redacted]</p>	<p>IN THE MATTER OF: [Redacted] : IN THE COURT OF: DAUPHIN CO</p> <p>Incapacitated Person : ORPHANS' COURT: NO. [Redacted]</p> <p>PRO BONO MONITOR'S NOTES FOR:</p> <p>WARD INFORMATION: Date of Contact: [Redacted]</p> <p>In person: <input type="checkbox"/> phone: <input type="checkbox"/> No contact: <input type="checkbox"/></p> <p>Age: [Redacted] Sex: [Redacted] Marital Status: [Redacted]</p> <p>Guardianship: Person: <input type="checkbox"/> Estate: <input type="checkbox"/></p> <p>Other: <input type="checkbox"/> If other, please explain: [Redacted]</p> <p>Reason for guardianship: Intellectual Disability <input type="checkbox"/> Alzheimer's/Dementia <input type="checkbox"/> Chronic Mental Illness <input type="checkbox"/> Chronic Alcohol/Drug Use <input type="checkbox"/> Head Injury/Stroke <input type="checkbox"/> Other (please specify): [Redacted] Unknown: <input type="checkbox"/></p> <p>Annual Income: [Redacted] Size of Estate: [Redacted]</p> <p>Monthly pension, annuity, government benefits received and source: [Redacted]</p> <p>1. [Redacted] 2. [Redacted] 3. [Redacted] 4. [Redacted]</p>	<p>Has eligibility for such programs as Social Security, SSI, Stamps been checked? Yes <input type="checkbox"/> No <input type="checkbox"/> Has a burial arrangement been made? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Ward resides: <input type="checkbox"/> in own home <input type="checkbox"/> guardian's home <input type="checkbox"/> relative's home <input type="checkbox"/> nursing home <input type="checkbox"/> hospital/state hospital <input type="checkbox"/> group home <input type="checkbox"/> other [Redacted]</p> <p>If in a facility: Name of facility: [Redacted] Address: [Redacted] Telephone number: [Redacted]</p> <p>GUARDIAN INFORMATION: Date of Contact: [Redacted]</p> <p>In person: <input type="checkbox"/> By telephone: <input type="checkbox"/> No contact: <input type="checkbox"/> If no contact: [Redacted]</p> <p>Guardian/Ward Relationship: <input type="checkbox"/> Spouse <input type="checkbox"/> Parent <input type="checkbox"/> Child of ward <input type="checkbox"/> Other relative <input type="checkbox"/> Friend <input type="checkbox"/> Other [Redacted]</p> <p>Does ward live with the guardian? Yes <input type="checkbox"/> No <input type="checkbox"/> If no, Guardian visit Ward each month? [Redacted]</p> <p>What does Guardian do for Ward (check all that apply)?</p> <p><input type="checkbox"/> Manage financial affairs <input type="checkbox"/> Provide necessary services <input type="checkbox"/> Housekeeping <input type="checkbox"/> Take on out of home care <input type="checkbox"/> Provide transportation <input type="checkbox"/> Bathe <input type="checkbox"/> Arrange social services/training <input type="checkbox"/> Provide companionship <input type="checkbox"/> Feed <input type="checkbox"/> Visit <input type="checkbox"/> Other (list): [Redacted]</p> <p>Does Guardian note the occurrence of any significant change in health, intellectual functioning, emotional health, and/or living situation? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe: [Redacted]</p>	<p>MONITOR OBSERVATIONS: Please record any observations/concerns that may be helpful to the Court. [Redacted]</p> <p>ASSESSMENT OF WARD: EXCELLENT - SATISFACTORY - FAIR - POOR - UNKNOWN</p> <p>Physical health <input type="checkbox"/> Excellent <input type="checkbox"/> Satisfactory <input type="checkbox"/> Fair <input type="checkbox"/> Poor <input type="checkbox"/> Unknown <input type="checkbox"/></p> <p>Emotional health <input type="checkbox"/> Excellent <input type="checkbox"/> Satisfactory <input type="checkbox"/> Fair <input type="checkbox"/> Poor <input type="checkbox"/> Unknown <input type="checkbox"/></p> <p>Intellectual function <input type="checkbox"/> Excellent <input type="checkbox"/> Satisfactory <input type="checkbox"/> Fair <input type="checkbox"/> Poor <input type="checkbox"/> Unknown <input type="checkbox"/></p> <p>Living situation <input type="checkbox"/> Excellent <input type="checkbox"/> Satisfactory <input type="checkbox"/> Fair <input type="checkbox"/> Poor <input type="checkbox"/> Unknown <input type="checkbox"/></p> <p>RESPECTFULLY SUBMITTED,</p> <p>_____, Monitor</p> <p>Date: [Redacted]</p> <p>CONTACT INFORMATION:</p> <p>Monitor Information:</p> <p>Name: [Redacted] Pa. Supreme Court Identification Number: [Redacted] Telephone: [Redacted] Address: [Redacted] Email: [Redacted]</p> <p>Guardian Information:</p> <p>Name: [Redacted] Telephone: [Redacted] Address: [Redacted] Email: [Redacted]</p> <p>Ward Information:</p> <p>Name: [Redacted] Telephone: [Redacted] Address: [Redacted] Email: [Redacted]</p>
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Updated 1/3/2024 Updated 1/3/2024 Updated 1/3/2024 Updated 1/3/2024

How to Become a Guardian Monitor

1. Reach out to Court and let them know whether you would like 1 case or 2
2. Court issues an Order assigning you to a case/s
3. Sign confidentiality statement
4. Granted access to file for the case



Who to Contact:

Sara Shaffer

Deputy Court Administrator
Civil, Family & Orphans' Court
sshaffer@dauphincounty.org
717-780-6646

- Administers Program
- Assigns & Discontinues Monitors
- Collects Monitor Reports

Amanda (Mandy) Miller

Second Deputy
Orphans' Court
amiller@dauphincounty.gov
717-780-6498

- Provides Access to Files in Orphans' Court
- Provides Remote Access to GTS to review Annual Reports
- Collects Statements of Confidentiality

Guardian Tracking System (GTS) Helpdesk

GTSAPC@pacourts.us

1-877-227-2672, Option 1

Available M-F, 8 a.m. to 4:30 p.m.



SESSION #3

Ethics

“PBA Malpractice
Avoidance”

Presented by:
Josh Byrne, Esquire
&
Kyle Murphy (USI Affinity)

They're Twins, I Assumed that's What They Both Wanted

An Avoiding Legal Malpractice CLE program provided
by the PBA Professional Liability Committee
in partnership with USI Affinity

2024 - 2025



They're Twins, I Assumed that's What They Both Wanted

Recorded 5/9/24 in Hershey, PA



Issue Spotting

- Corporate Transparency Act
- Conflicts
- Engagement letters
- Scope of Engagement
- Civility in the Profession
- The Diminished Capacity Client
- Succession Planning
- AI
- Dabbling / Competence
- Others for discussion?

 Avoiding Legal Malpractice

Issue Spotting

Corporate Transparency Act

Conflicts


Engagement letters

Scope of Engagement

Civility in the Profession


The Diminished Capacity Client

Succession Planning

 Avoiding Legal Malpractice

CORPORATE TRANSPARENCY ACT

31 U.S.C.A. Section 5336; 31 CFR Section 1010.380

 Avoiding Legal Malpractice

The CTA: The Basics



What is it?

New federal law effective January 1, 2024 requiring certain U.S. business entities, or entities registered to do business in the U.S., to report beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN)



Why?

Identifying bad actors from hiding or benefiting from their illegal gains through shell companies (money laundering, terrorism, etc.)
•FinCEN wants to know who directly or indirectly controls a company

 Avoiding Legal Malpractice


The CTA: The Basics

Who does it apply to ?


- Broad application
- With specified exemptions, all domestic entities or foreign entities registered to do business in the U.S.

What is required?

- Reporting companies must file beneficial ownership reports (BOI Report) with FinCEN by applicable deadlines
- Entities created *after* January 1, 2024 have 90 calendar days after creation
- Entities created *before* January 1, 2024 have until January 1, 2025
- After January 1, 2025, reporting companies will have 30 days

 Avoiding Legal Malpractice

The CTA: The Basics




What happens if a reporting company doesn't comply?

Willful failure to report or false information:

Civil Penalties – up to \$500 each day the violation continues

Criminal Penalties – up to \$10,000 fine and up to 2-year imprisonment

No extensions



The CTA: Constitutional Challenges

On December 3, 2024, the Eastern District of Texas issued a **nationwide preliminary injunction** that enjoins the CTA, including enforcement of its Beneficial Ownership Information reporting requirements and which stay all deadlines

Texas Top Cop Shop, Inc., et al v. Garland, et al., No. 4:24-cv-00478 (E.D. Texas).

The CTA:
Constitutional
Challenges

On December 3, 2024, the Eastern District of Texas issued a **nationwide preliminary injunction** that enjoins the CTA, including enforcement of its Beneficial Ownership Information reporting requirements and which stay all deadlines

Texas Top Cop Shop, Inc., et al v. Garland, et al., No. 4:24-cv-00478 (E.D. Texas).



The CTA: Constitutional Challenges

DOES IT STILL MATTER??

FinCEN issued statement it will comply with Court’s Order “for as long as it remains in effect” but reporting companies may continue to submit BOI Reports “voluntarily”

Government filed Notice of Appeal

Competing Decisions Among Other Circuit Courts

For now, reporting companies not currently required to file BOI reports but need to be vigilant in monitoring developments

The CTA:
How Does
this Pose
Risk to
Lawyers?

Many business entities remain unaware of their obligations or alternatively, unaware of current status of CTA and what it means to them.

Might a client expect you to have advised them of the CTA?

Might a client expect you to have prepared the BOI Report under the CTA?

The CTA: Managing the Risk

ENGAGEMENT LETTERS!!!

Be **specific** in the scope of work

If you are **NOT** doing the work:

Specify that your engagement does **not** include responsibility for timely compliance under the CTA unless specifically engaged to do so in writing

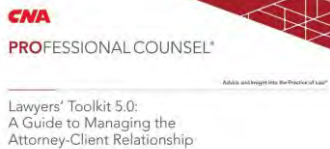
If you **ARE** performing CTA work:

What are you agreeing to do? What are you NOT agreeing to do



SAMPLE LANGUAGE / OUTSIDE SCOPE OF REPRESENTATION

Corporate Transparency Act/Beneficial Ownership Reporting Outside Scope of Representation: Assisting you with your compliance with the Corporate Transparency Act ("CTA"), including beneficial ownership information ("BOI") reporting, is not within the scope of this engagement. You have sole responsibility for your compliance with the CTA, including its BOI reporting requirements and the collection of relevant ownership information. We shall have no liability resulting from your failure to comply with the CTA. Information regarding the BOI reporting requirements can be found at <https://www.fincen.gov/boi>. Consider consulting with another law firm if you have questions regarding the applicability of the CTA's reporting requirements, as well as issues surrounding the collection of relevant ownership information.



The CTA: Managing the Risk

I've agreed to do CTA Work – Now What?

EDUCATE YOURSELF!!

More complex than you think
Read statute, FinCEN FAQs,
Small Business Entity Guide,
etc.

STAY UP TO DATE ON CONSTITUTIONAL CHALLENGES!!

Advise Clients of Status of CTA,
Options, Risks and Benefits

Rule 1.1 – Competence

Cmt. 2 – "A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through association of a lawyer of established competence in the field in question."

Issue Spotting

Corporate Transparency Act

Conflicts


Engagement letters

Scope of Engagement

Civility in the Profession

The Diminished Capacity Client

Succession Planning


 Avoiding Legal Malpractice


Pa.R.P.C. 1.7.
Conflicts: Current
Clients

(a) . . . A concurrent conflict of interest exists if:

(1) the representation of one client will be **directly adverse** to another client; or


(2) there is a **significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities** to another client, a former client or a third person or by a personal interest of the lawyer.



 Avoiding Legal Malpractice

Pa. R.P.C. 1.7-
Comment 1

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client, or a third person or from the lawyer's own interests.

 Avoiding Legal Malpractice



Pa. R.P.C. 1.7- Comment 8

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.

For example, a lawyer seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty or loyalty to the others.

Pa. R.P.C. 1.7 - Comment 31

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation.

... each client has the right to be informed of anything bearing on the representation that might affect the client's interests and the right to expect that the lawyer will use that information to that client's benefit.

Pa. R.P.C. 1.7- Comment 28

[28] Whether a conflict is consentable depends on the circumstances. For example, lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable or mutually advantageous basis, for example, in helping to organize a business in which two or more clients are entrepreneurs...

Pa.R.P.C.
1.7. Conflict
of Interest:
Current
Clients

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent.

Pa.R.P.C. 1.7. Conflict
of Interest: Current
Clients

Resolution of a conflict of interest problem requires the lawyer to clearly IDENTIFY the client or clients!!!

See comment [2] to Rule
1.7



Pa.R.P.C. 1.13– Organization as
Client

Avoiding Legal Malpractice

Engagement Letters

Beyond 1.5 . . . The 5 Essential Ingredients

- Identify the Client
- Define the Scope of Work
- State the Basis of Your Fee
- Address File Retention/Destruction Practices
- Secure the Client's Signature





Engagement Letters – an invaluable best practice in managing your risk

- Designed to
- establish client expectations
 - reduce client misunderstandings
 - improve client communications
 - provide opportunities for additional services.
- An engagement letter may not prevent legal malpractice claims, but a good letter/agreement can support a stronger defense.

- [illegible]

- Corporate Transparency Act
- Conflicts
- Engagement Letters
- Scope of Engagement
- Civility in the Profession
- The Diminished Capacity Client
- Succession Planning

Rule 1.2 (c) – Limiting Scope of Representation

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.



 Avoiding Legal Malpractice

Use Your Engagement Letters!

- Include Limited Scope Language
- Consider Use of Checklists
- Define Lead Counsel vs. Local Counsel Duties
- Identify when the Representation is to End, when appropriate
- Search for Specific Language in the Toolkit to Address Unique Contexts



 Avoiding Legal Malpractice

Issue Spotting

- Corporate Transparency Act
- Conflicts
- Engagement letters
- Scope of Engagement
- Civility in the Profession**
- The Diminished Capacity Client
- Succession Planning

 Avoiding Legal Malpractice

Civility in the Profession Stems from:



The Code of Civility Art. II
(The Lawyer's Duties to the
Court and to Other Lawyers)




The expectations of an
Officer of the Court





Common Sense

 Avoiding Legal Malpractice

Lack of Civility (e.g. Speaking Objections / Interference) Increases the Risk of Sanctions


 *Lau v. AGH*(2021 Allegheny Co.)(J. Ignelzi)

 *Troiano-Tominello v. Quest* (2023 Allegheny Co.)(J. Ignelzi)

 *Karim Reedy* (2016 Lacka. Co.)(J. Nealon)

 *Fiduciary Trust v. Geisiger* (2022 Lacka Co.)(J. Nealon)

 *Hall v. Clifton Precision*, 150 FRD 525 (E.D. Pa. 1993)

 *McCartney v. Kids 2, Inc.*, No. 3:21-cv-166 (W.D. Pa. 2023) (J. Haines)

 Avoiding Legal Malpractice

Depositions are Question and Answer Sessions

Objections are to be concise, non
argumentative and non-suggestive
Counsel may not direct the witness
not to answer, unless a privilege or
other limitation of the court is
asserted

Never forget that although the
deposition may not be taking place
in court, counsel are operating as
officers of the court.

 Avoiding Legal Malpractice

Issue Spotting

Corporate Transparency Act

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Succession Planning

Avoiding Legal Malpractice

Reasons for diminished capacity

Minority

Advanced Age

Language Barriers

Mental Impairment

Physical Condition

Other Reasons

Avoiding Legal Malpractice

Rule 1.14 Obligations

Maintain	Maintain as normal a relationship as possible
Take	Take reasonably necessary protective action if the client is at substantial risk of harm -Physical -Financial -Other Harm
Reveal	Reveal confidential information only to the extent reasonably necessary to protect the client's interests
Consider	Consider whether the person consulted will act in the client's best interests

Avoiding Legal Malpractice

Types of Protective Measures (Comment 5)

- Consult with Family Members/Friends
- Using a reconsideration period to permit clarification or improvement of circumstances
- Using voluntary surrogate decision-making tools (e.g. POA)
- Consult with professional services or adult-protective agencies
- Seek guidance from an appropriate diagnostician
- Consider the need for a legal representative

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ABA Formal Opinion 500 and Language Access

- ▶ A lawyer must ensure the client understands the significance of translated or interpreted communications
- ▶ The lawyer must understand the client, keeping in mind potential cultural differences and social assumptions that may impact meaning

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Risk Management Tips

- ▶ **Document** Concerns Objectively
- ▶ **Document** Competence or Lack Thereof Objectively
- ▶ **Document** Your Own Decision-Making Process

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Issue Spotting

Corporate Transparency Act

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Succession Planning

 Avoiding Legal Malpractice

Proposed Rule 1.20

If adopted, the Rule would require each active attorney in private practice in the state have a written succession plan, "either alone or as part of a law firm plan, specifying the steps to be taken in the event of the designating lawyer's extended incapacity from practicing law."


 Avoiding Legal Malpractice


Rule 1.3
Existing Duty to Plan

A lawyer's duty of diligence includes arranging to safeguard the client's interests in the event of the lawyer's death, disability, impairment or incapacity.



Comment (5)


... the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.


 Avoiding Legal Malpractice





Manage your risk ... Know when to say when





 Retire or Keep Working?


 Financial Pressures

 "My Files"

 Future Income

 Not knowing when to say when

 Tail coverage

 Avoiding Legal Malpractice

Disability/Retirement Planning

Short Term Medical Issues

Declining Cognitive Function

Long term Disability


Lawyers Working Longer

Law on mandatory retirement provisions

 Avoiding Legal Malpractice

Symptoms of Cognitive Related Risks

Confusion, forgetfulness, indecisiveness
Anxiety, worry, fretting
Memory lapses
Failure to return calls or correspondence
Over-reaction to events
Under-reaction to events
Unsteady gait, poor balance, tremors
Unpreparedness


 Avoiding Legal Malpractice


Cognitive impairment – competence

Rules of Disciplinary Enforcement

Rule 301 – Proceedings Where an Attorney is Declared to be Incapacitated or Severely Mentally Disabled

Rule 321 – Appointment of Conservator to Protect Interest of Clients of Absent Attorney

 Avoiding Legal Malpractice




Ways to Wrap-up Practice

Involuntarily

- Disability
- Death
- Discipline

Voluntarily

- Retire
- Sale
- Partner/Merger/Affiliation/Of Counsel

 Avoiding Legal Malpractice

Rule 1.17

Area of practice can be sold if:


Information exchanged appropriately

Appropriate notice given to clients

Lawyer ceases to practice in that area

Conflicts addressed

Orderly transition (fees etc.)

 Avoiding Legal Malpractice

Stepping Down with Dignity

Older lawyers may fear losing their independence
Mandatory retirement ?
Lawyers are working longer; putting off retirement
Enlist the assistance of family members
Physicians
Psychologists
Partners and colleagues
Judiciary
Seek assistance from the Bar Association
Disciplinary Board

 Avoiding Legal Malpractice

Succession Planning - PBA member benefits

There are numerous resources to help you develop succession plans available through our Law Practice Management page and the Solo and Small Firm Section. At least 10 documents are provided in the ALM materials web page which you received as part of your materials today - pabar.org/site/ALM
Exclusive to PBA members, the Solo and Small Firm Section has developed a "Succession Planning Toolkit." It is available on the PBA website.



 Avoiding Legal Malpractice

Questions?

Jay Silberblatt, Esquire
Silberblatt Mermelstein, P.C.
1501 Ardmore Boulevard Suite 101
Pittsburg, PA 15221
412-232-0580
jay@smlawpa.com

Bethann Lloyd, Esquire
DiBella Weinheimer
429 Fourth Avenue Suite 200
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blloyd@d-wlaw.com

Mark Lefever, CIC
Vice President, Sales & Client Management
USI Affinity
3805 West Chester Pike, Suite 200
Newtown Square, PA 19073
610-537-1435
mark.lefever@usi.com

 Avoiding Legal Malpractice

SESSION #4

"The Federal Estate and
Gift Tax - Where do we
go from here?"

Presented by:
Neil W. Yahn, Esquire
&
Thomas P. Gacki, Esquire

Tax Planning in 2025

DAUPHIN COUNTY BAR ASSOCIATION

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I. A Brief History of the Federal Estate and Gift Tax

- A. Prior to the Tax Reform Act of 1976
- B. Tax Reform Act of 1976
- C. Economic Recovery Tax Act of 1981
- D. Taxpayer Relief Act of 1997
- E. Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001
- F. 2010 Tax Act
- G. American Taxpayer Relief Act (ATRA) of 2012
- H. Tax Cut and Jobs Act (TCJA) of 2017
- I. Tables of Historic Rates, Estates Affected

II. Features of the Current Federal Estate and Gift Tax

- A. Unified Credit against Estate Gift Tax
- B. Annual Exclusion for Lifetime Gifts
- C. Stepped up Basis
- D. Unlimited Marital Deduction
- E. Portability of Lifetime Exemption between Spouses
- F. Indexing for Inflation
- G. Generation Skipping Transfer Tax

III. What Happens to the Federal Estate and Gift Tax if TCJA provisions sunset after 2025?

- A. Unified Credit reverts to the amount set in the 2017 TCJA (\$5,000,000 indexed for inflation, likely about \$7,000,000)
- B. Portability, Stepped up Basis, etc. continue in effect
- C. Planning Strategies for 2025

IV. Crystal Ball Time—What Happens Next

- A. Compromise between the R's and D's is not going to happen
- B. Republicans will need to use "Budget Reconciliation" as was used to pass the 2017 TCJA under Trump
- C. What is Budget Reconciliation and what are the rules?
 - 1. Avoids filibuster
 - 2. Can only address taxes, spending or debt limits
 - 3. Can only be used limited times each year
- D. Problems for Republicans
 - 1. Razor thin majorities in both House and Senate
 - 2. Internal Disagreements
 - 3. Have to work within Budget Reconciliation rules
- E. So, what is going to happen? Let's speculate!



How history ties into our 2025 agenda

Federal Estate and Gift Tax

- 1. 706 - Federal Estate Tax – Rev Proc – 2022-32
- Preserve the DSUE and Use of it – Example
- 2. Spousal Lifetime Access Trust/SLATS
- 3. Gift Splitting - Update to 709 for 2024 (consent of spouses to split gift – critical)

FEDERAL ESTATE TAX RETURN

Form 706 (Rev. August 2013) Department of the Treasury Internal Revenue Service		United States Estate (and Generation-Skipping Transfer) Tax Return ▶ Estate of a citizen or resident of the United States (see instructions). To be filed for decedents dying after December 31, 2012. ▶ Information about Form 706 and its separate instructions is at www.irs.gov/form706 .		OMB No. 1545-0015	
Part 1—Decedent and Executor	1a Decedent's first name and middle initial (and maiden name, if any)		1b Decedent's last name		2 Decedent's social security no.
	3a City, town, or post office; county; state or province; country; and ZIP or foreign postal code.		3b Year domicile established	4 Date of birth	5 Date of death
	6a Name of executor (see instructions)		6b Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code) and phone no. Phone no.		
	6c Executor's social security number (see instructions)				
	6d If there are multiple executors, check here <input type="checkbox"/> and attach a list showing the names, addresses, telephone numbers, and SSNs of the additional executors.				
	7a Name and location of court where will was probated or estate administered				

Federal Estate Tax Exemption – HISTORY

- 40% tax
- Date of death value – 706 due nine (9) months following death
- Basic exclusion amount (unified Estate and Gift):

1997	\$ 600,000
2002	\$ 1,000,000
2017	\$ 5,490,000
2018	\$11,180,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000
2022	\$12,060,000
2023	\$12,920,000
2024	\$13,610,000
2025	\$13,990,000
2026	\$ 7,000,000

The current estate and gift tax exemption is scheduled to end on the last day of 2025 and thus in 2026 \$5,000,000 (** as adjusted for inflation)(speculate about \$7,000,000)

2025 Federal Estate Tax (Cont.)

- 40% tax
- Basic exclusion amount (unified Estate and Gift):
2025 **\$13,990,000**

So, what is the Estate Tax Credit on \$13,990,000?

$$\begin{array}{r}
 \text{First } \$1,000,000 = \$345,800 \\
 \$12,990,000 \\
 \hline
 \times 40\% = \$5,196,000 \\
 \hline
 \text{\$5,541,800 Estate Tax Credit}
 \end{array}$$

***\$27,980,000 per couple

Generally, each individual taxpayer is allocated a dollar amount to give away during his or her lifetime and bequeath at death to avoid a federal transfer tax. For 2025, that dollar amount was \$13,990,000, which is referred to as the federal basic exclusion amount (also known as "estate and gift tax exemption").

This exclusion or exemption amount correlates to an actual tax amount known as the "applicable credit" (formerly "unified credit"). Thus, as per above, the \$13,990,000 exclusion produces an Estate Tax or/and Gift Tax of \$5,541,800 ("credit").

2024 Federal Estate Tax (Cont.)

- 40% tax
- Basic exclusion amount (unified Estate and Gift):
2024 **\$13,610,000**

So, what is the Estate Tax Credit on \$13,610,000?

$$\begin{array}{r}
 \text{First } \$1,000,000 = \$345,800 \\
 \$12,610,000 \\
 \hline
 \times 40\% = \$5,044,000 \\
 \hline
 \text{\$5,389,800 Estate Tax Credit}
 \end{array}$$

***\$27,220,000 per couple

Generally, each individual taxpayer is allocated a dollar amount to give away during his or her lifetime and bequeath at death to avoid a federal transfer tax. For 2024, that dollar amount was \$13,610,000, which is referred to as the federal basic exclusion amount (also known as "estate and gift tax exemption").

This exclusion or exemption amount correlates to an actual tax amount known as the "applicable credit" (formerly "unified credit"). Thus, as per above, the \$13,610,000 exclusion produces an Estate Tax or/and Gift Tax of \$5,389,800 ("credit").

2022 Federal Estate Tax (Cont.)

- 40% tax
- Basic exclusion amount (unified Estate and Gift):
2022 \$12,060,000

So, what is the Estate Tax Credit on \$12,060,000?

$$\begin{array}{r}
 \text{First } \$1,000,000 = \$345,800 \\
 \$11,060,000 \\
 \hline
 \times 40\% = \$4,424,000 \\
 \hline
 \$4,769,800
 \end{array}$$

Generally, each individual taxpayer is allocated a dollar amount to give away during his or her lifetime and bequeath at death to avoid a federal transfer tax. For 2022, that dollar amount was \$12,060,000, which is referred to as the federal basic exclusion amount (also known as “estate and gift tax exemption”). This exclusion or exemption amount correlates to an actual tax amount known as the “applicable credit” (formerly “unified credit”). Thus, as per above, the \$12,060,000 exclusion produces an Estate Tax or/and Gift Tax of \$4,769,800 (“credit”).

What are the current estate and gift tax exemptions, and do they ‘expire’?

- The increased exemption amounts are scheduled to cease at the end of the year **2025**, but see:
 - IRS, “Final regulations confirm: Making large gifts now won’t harm estates after 2025.”
https://www.irs.gov/newsroom/final-regulations-confirm-making-large-gifts-now-wont-harm-estates-after-2025?fbclid=IwAR1KvclVEM2T1wr2E_eEqWRZX36vqyUI_N1WWUwa03XND13Vg3ce_iPdRl

Estate Tax – Portability

- Decedents dying after 1/1/2011
- Elect to transfer unused basic exclusion amount to surviving spouse, known as the **Deceased Spousal Unused Exclusion (DSUE)**
- **Code § 2010(c)(5)(A)** states that an election must be made on a return that must be filed within the time “prescribed by law.”
- Why file the 706 if under the Estate Tax exemption?

Preserve the DSUE

Revenue Procedure 2022-32

New tax savings opportunity was effective July 8, 2022!

- ▶ The Section 2010 (c)(5)(A) of the Internal Revenue Code allows certain taxpayers a simplified way to make a portability election in order to reduce the number of letter ruling requests.

The portability election to elect DSUE:

- ▶ **Previously:** had to be made within nine months of the decedent’s date of death if a Form 706 was required **or within two (2) years of death if a Form 706 was not required as per Rev Proc 2017-34.**
- ▶ **Now:** within five (5) years of the decedent’s date of death under Rev Proc. 2022-32.

Estate Tax – Portability (Cont.)

- Timely filed federal estate tax return or filed “Pursuant to Rev. Proc. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(a)”
- But now use:
<https://www.irs.gov/pub/irs-drop/rp-22-32.pdf>

If the executor files Form 706 solely for Portability purposes, Form 8971 (Information Regarding Beneficiaries Acquiring Property from a Decedent) does not need to be filed.

Estate Tax – Portability (Cont.)

- Rev Proc 2032-32
- SECTION 3. SCOPE
- The simplified method of this revenue procedure is available to the executor (either an appointed executor or, if none, a non-appointed executor, as provided in § 20.2010-2(a)(6)) of the estate of a decedent if:
 - (1) The decedent: (a) was survived by a spouse; (b) died after December 31, 2010; and (c) was a citizen or resident of the United States on the date of death.
 - (2) The executor is not required to file an estate tax return under § 6018(a) as determined based on the value of the gross estate and adjusted taxable gifts and without regard to the need to file for portability purposes;
 - (3) The executor did not file an estate tax return within the time required by § 20.2010-2(a)(1) for filing an estate tax return; and
 - (4) The executor satisfies all requirements of section 4.01 of this revenue procedure.

Revenue Procedure 2022-32 (Cont.)

- ▶ If the surviving spouse has already passed away and paid the estate tax, the executor of the surviving spouse's estate can file a protective claim for a refund or credit. This credit is for any over payment of tax within the next three (3) years after filing.
- ▶ The statute of limitations still applies under the IRC Section 6511(a) if the increase in the surviving spouse's exemption amount with the addition of the DSUE is now an overpayment of gift or estate tax.
 - ▶ In anticipation of the DSUE being added to the exemption, the surviving spouse can file a protective claim for credit in anticipation of the DSUE. This will prevent the spouse from the statute of limitations barring their credit.
- ▶ The grant of relief will be null if it is later determined that the estate needed to file a return.
- ▶ IRS Revenue Procedure 2022-32 PDF:
<https://www.irs.gov/pub/irs-drop/rp-22-32.pdf>

Estate Tax Portability – (Example)

- John dies 1/1/2025 with \$4,000,000 passing all to wife.
- Jane, wife, already has \$4,000,000 and John's basic exclusion \$13,990,000 in 2025 (year of his death).
- DSUE to wife by filing a timely 706 \$13,990,000 (marital deduction) so she gets John's exemption.
- **What if missed the filing – are we too late?**
 - *** Filed Pursuant to Rev. Proc. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(a) ***
 - Nine (9) months from date of death, the 706 is due.

Estate Tax – Portability (Example)

- **DSUE applies to:**
 - Surviving spouse lifetime gifting first
 - Then to surviving spouse's estate
- Wife can shield \$13,990,000 (DSUE) and her Exemption in 2026*** \$ 7,000,000 (Exemption phased back down)
\$20,990,000 DSUE and Exemption

*** 2026 Exemption is unknown – illustration only

Estate Tax – Portability (Cont.)

- Filing for portability only:
 - Page 1 – Box 11: If you are estimating the value of assets included in the gross estate on line 1 pursuant to the special rule of Reg. section 20.2010-2T(a)(7)(ii) check here.
 - If the executor files Form 706 solely for Portability purposes, Form 8971 (Information Regarding Beneficiaries Acquiring Property from a Decedent) does not need to be filed.
 - Does not toll statute of limitations? IRS Audit of Portability and no closing letter?
 - It is critical to note that there is no statute of limitations on the number of years the IRS can go back to audit and correct a DSUE reported by the estate of the spouse who died first.
 - This increases the importance of retaining the first spouse's 706 and the underlying documents supporting the DSUE calculation. The executor especially wants to get appraisals for hard-to-value assets.

Estate Tax – Portability (Cont.)

Table of Estimated Values

If the total estimated value of the assets eligible for the special rule under Reg. section 20.2010-2T(a)(7)(ii) is more than	But less than or equal to	Include this amount on lines 10 and 23:
\$0	\$250,000	\$250,000
\$250,000	\$500,000	\$500,000
\$500,000	\$750,000	\$750,000
\$750,000	\$1,000,000	\$1,000,000

MARY AND BILL SMITH –
Estate Tax Form 706 – DSUE
DCBA HYPO

Smith Family

Bill & Mary Smith – Married 2019 – Second Marriage



The New Smith Family – created in 2019

Susan
(Mary's daughter from prior marriage)

Neil
(Bill's son from prior marriage)

Mary

Bill



Mary's Estate \$7,000,000

- ▶ Marketable Securities: \$3,000,000
 - ▶ Apple Inc Stock: \$1,000,000
 - ▶ Sale Force: \$1,000,000
 - ▶ Hershey Stock: \$1,000,000
- ▶ Cocoa LLC (closely held business): \$2,000,000 (Valuation - Capitalization of Earnings)(Susan is now the President)
- ▶ Commercial Property – Cocoa Avenue, Hershey, PA: \$2,000,000

Bill's Estate \$4,000,000

- ▶ Shore Property: Stone Harbor, NJ - Parcel 10 – Block 8, Cape May County, NJ: \$2,000,000
- ▶ Marketable Securities: IRA – \$1,000,000
- ▶ Life Insurance: \$1,000,000 (owned by Bill on his life payable to Neil on his death)

Owned Jointly by and between Bill and Mary

- ▶ Primary Residence: \$1,000,000 – 124 Maple Avenue, Hershey, PA (not encumbered)

Total Combined Assets: \$ 12,000,000 (with insurance)

Mary dies in 1/1/2025 leaves all to Bill in a QTIP Trust



- **Estate Tax Exemption 2025: \$13,990,000**
- Complete Form 706 and **use DSUE** (\$7,000,000)
 - Marketable Securities: \$3,000,000 (new tax basis for shares)
 - Cocoa LLC (closely held business): \$2,000,000 (Valuation - Capitalization of Earnings)(754 election)
 - Commercial Property – Cocoa Avenue, Hershey, PA: \$2,000,000 - new tax basis for depreciation – 39 years – why is this important?
 - Jointly Held Property – Residence

QTIP Trust – FBO Bill

ARTICLE VII QTIP Marital Trust fbo Bill

Property that is to be held in the QTIP Marital Trust shall be held under this Article and all references to the "QTIP Marital Trust" shall be to the trusts held under this Article.

- A. During The Settlor's (Bill) Husband's Life. The following provisions shall apply during the Settlor's Husband's life.
1. The Trustee shall distribute to the Settlor's Husband the net income of the trust at least quarterly.
 2. The Trustee shall distribute to the Settlor's Husband as much of the principal of the trust as the Trustee may from time to time determine, for the Settlor's Husband's health, education, support in his accustomed manner of living, or maintenance.

QTIP Trust – FBO Bill

3. The Settlor's Husband may direct the Trustee to make any unproductive assets productive of income or to convert any unproductive assets to property that produces income, within a reasonable time, notwithstanding any provision of this Agreement otherwise authorizing the Trustee to retain unproductive property. The application of any specific provision of this Agreement shall in all events be construed so as to give the Settlor's Husband that degree of beneficial enjoyment of the trust property during his life, which the principles of the law of trusts accord to a person who is the sole income beneficiary of a trust, and to ensure that the QTIP Marital Trust qualifies for the federal estate tax marital deduction to the extent so elected.

QTIP Trust – Upon Bill's death

B. Upon The Settlor's Husband's Death. The following provisions shall apply after the Settlor's Husband's death.

1. Unless the Settlor's Husband provides otherwise by specific reference to this paragraph in a will or other writing, the Trustee shall pay any increase in death taxes payable upon the death of the Settlor's Husband caused by the inclusion of a QTIP marital trust or a portion of a marital trust in his gross estate from the principal of the trust or portion so included. The Trustee may rely upon the written statement by the Settlor's Husband's Trustee of the amounts thus payable.

2. The balance of the property then held in the Marital Trust shall be distributed to the Settlor's daughter, Susan, and if she fails to survive to her descendants then living, per stirpes, subject to the terms of the Descendants' Separate Trust.

Bill dies in 2026 and leaves all his assets to Neil...
What is his estate tax exemption? \$7,000,000

Prepare 706 – QTIP Trust assets now worth \$10,000,000, which go to Susan? DSUE?



Estate Tax Return – Bill Passes Away – No DSUE

- 40% tax

2026 \$15,000,000 – see Estate Tax Return (\$10,000,000 from QTIP - QTIP Trust \$10,000,000)

Bill's Assets \$5,000,000 (includes the 124 Maple House)

So, what is the Estate Tax on \$15,000,000?

First \$ 1,000,000 = \$345,800
 \$14,000,000
 x 40% = \$5,600,000
 \$5,945,800

But if exemption is now \$7,000,000 in 2026 and no DSUE

First \$1,000,000 = \$345,800
 \$6,000,000 =
 x 40% = \$2,400,000
 \$2,745,800

\$5,945,800 - \$2,745,800 of 2026 credit =
 \$3,200,000 of estate tax

Estate Tax Return – Bill Passes Away – With a DSUE

- 40% tax

2026 \$15,000,000 – see Prior Slide Estate Tax Return \$5,945,800

But see box 9 (a) and 9 (b) of the 706? 20,990,000 (\$13,990,000 = \$7,000,000)

First \$ 1,000,000 = \$345,800
 \$19,990,000
 x 40% = \$7,996,000

\$8,341,800 of credit, so no estate tax owed with proper use of DSUE.

Line 9 (b) on Bill's 706 is critical!

See attached Forms 706

What is the tax basis in the assets passing to Susan?

QTIP Trust assets now worth \$10,000,000, which go to Susan? Did the trustee diversify inside the trust after Mary passed away in 2025 (or did they stay the same?)?



Marketable Securities: \$4,000,000

Apple Inc Stock:	\$1,500,000
Sales Force:	\$1,500,000
Hershey Stock:	\$1,000,000

Cocoa LLC (closely held business): \$3,000,000 (Valuation - Capitalization of Earnings)(CVA)

Commercial Property – Cocoa Avenue, Hershey, PA: \$3,000,000 (39/3,000,000) = roughly \$76,925 in depreciation deduction

What is the tax basis in the assets passing to Susan?

Commercial Property – Cocoa Avenue, Hershey, PA: \$3,000,000 (39/3,000,000) = roughly \$76,925 in depreciation deduction

Rental Income Schedule E		2025	2026
Rental Income	\$	300,000.00	\$ 300,000.00
Depreciation	\$	-	\$77,000
Insurance	\$	9,343.00	
Mortgage	\$	4,482.00	
Labor hired	\$	7,925.00	
Repairs and maintenance	\$	5,360.00	
Taxes	\$	13,812.00	
Utilities	\$	1,339.00	
Other expenses	\$	1,090.00	
Total expenses	\$	43,351.00	
Net Taxable Income	\$	256,649.00	\$ 179,649.00

What is the tax basis in the assets passing to Susan out of the QTIP?

Apple Inc Stock: \$1,500,000
 Sales Force: \$1,500,000
 Hershey Stock: \$1,000,000

MARY AND BILL SMITH –
USE EXEMPTION NOW -
SLAT – Spousal Lifetime Access Trust

Smith Family

The New Smith Family – created in 2009
Use of SLAT

Susan
(Mary's daughter from prior marriage)

Neil
(Bill's son from prior marriage)

Mary

Bill



Mary's Estate **\$11,000,000**

- ▶ Marketable Securities: \$5,000,000
 - ▶ Apple Inc Stock: \$1,000,000
 - ▶ Sale Force: \$1,000,000
 - ▶ Hershey Stock: \$3,000,000
- ▶ Cocoa LLC (closely held business): \$3,000,000 (Valuation - Capitalization of Earnings)(Susan is now the President)
- ▶ Commercial Property – Cocoa Avenue, Hershey, PA: \$3,000,000 _____

Bill's Estate **\$3,000,000**

- ▶ Shore Property: Stone Harbor, NJ - Parcel 10 – Block 8, Cape May County, NJ: \$1,000,000
- ▶ Marketable Securities: IRA – \$1,000,000
- ▶ Life Insurance: \$1,000,000 (owned by Bill on his life payable to Neil on his death)

Owned Jointly by and between Bill and Mary

- ▶ Primary Residence: \$1,000,000 – 124 Maple Avenue, Hershey, PA (not encumbered)

Total Combined Assets: \$ 14,000,000 (with insurance)

1. Mary makes a gift into SLAT from her own assets

Mary makes a gift totaling \$10,000,000 into a Spousal Lifetime Access Trust (SLAT) and assets are then held during Bill's life as per Article Four of SLAT

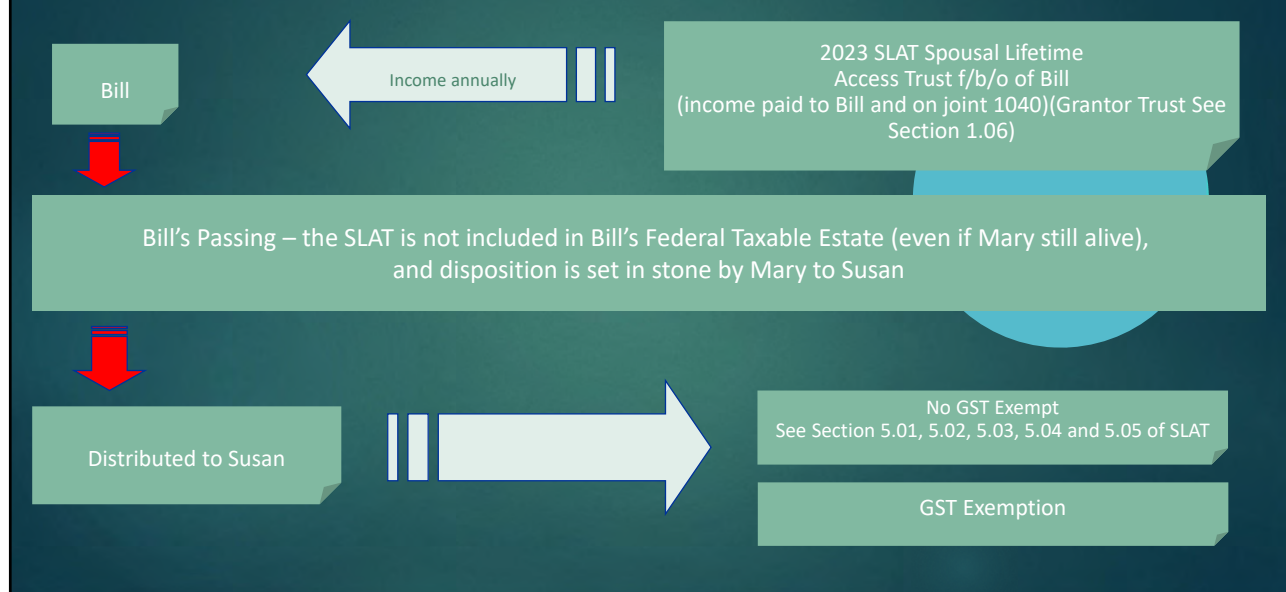
Gift
Mary's
Remaining Estate
Exemption
\$13,990,000
- \$10,000,000
= \$3,990,000
Exemption remaining

(2) \$10,000,000 Gift into the SLAT in 2025

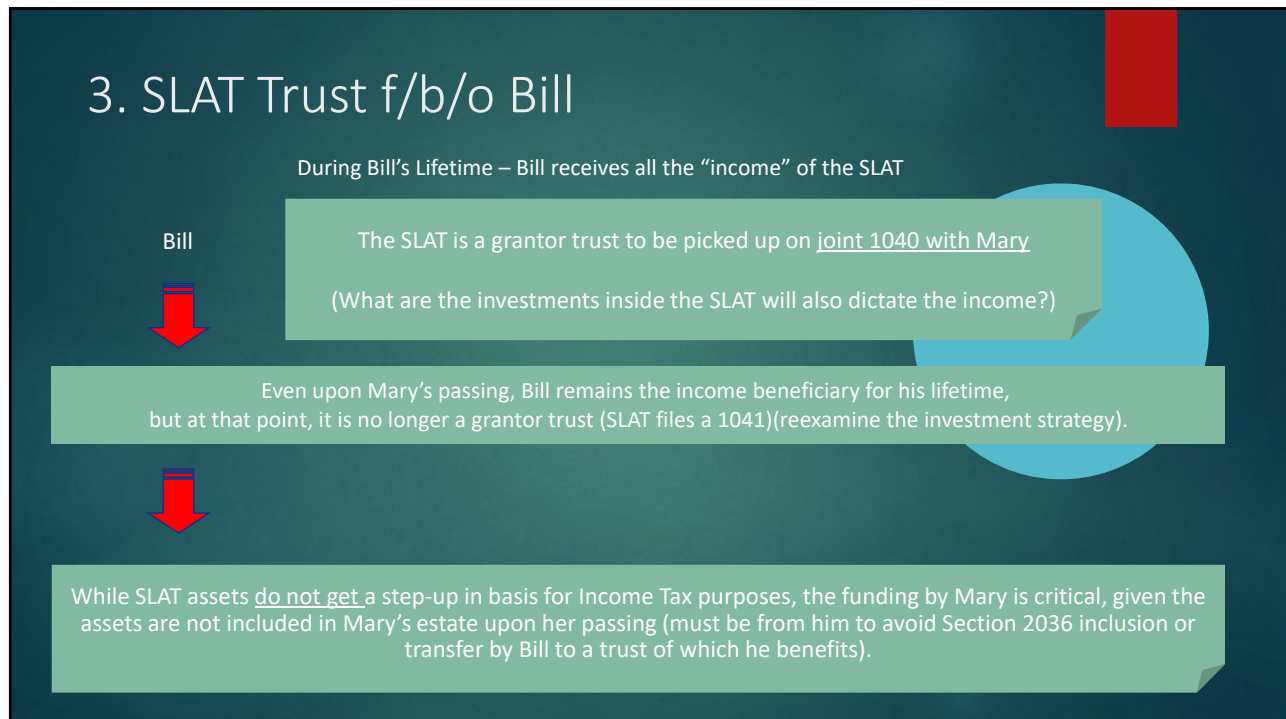
_____ Special Trustee and
Successor Trustee of the SLAT

Even if exemption drops back to \$7,000,000 in 2026, no claw-back (inflation adjusted) and files a 2025 Federal Gift Tax Return Form 709 documenting the gift:
<https://www.irs.gov/pub/irs-pdf/f709.pdf> (allocate GST Exemption? Discuss)
 (also discuss 2025 exemption of \$13,900,000 and full use not just \$10,000,000)

2. Mary SLAT Trust f/b/o Bill

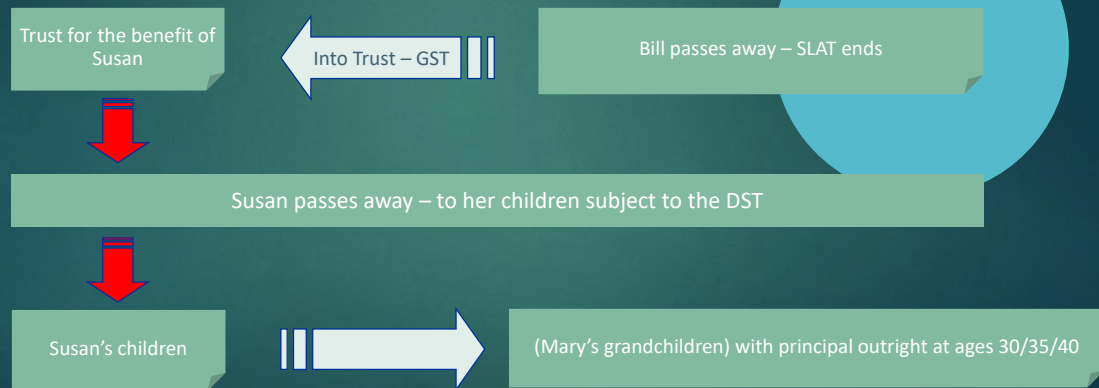


3. SLAT Trust f/b/o Bill



4. Outright/Descendant's Separate Trust at Bill's Passing?

Does the SLAT provide for a GST Exempt Trust and not pass outright to Susan, but rather in trust for her lifetime subject to ascertainable standards



Critical SLAT Issues

SLAT critical issues to consider...

- Risk of death or divorce of the non-donor spouse ...
- The reciprocal trust doctrine ...
- Ability for non-donor spouse to serve as trustee ...
- Tradeoffs with respect to basis step-up at death ... None!
- Types of assets to fund a SLAT ... Productive
- Tax return filing requirements ... IDGTs and PA (non-grantor trust status)

2024 Gift Tax Return

[Neil Donor] [SSN of Neil Donor]

NOTICE OF CONSENT - Form 709, Part III, Line 17

As required by Part III, Line 7 of IRS Form 709, the undersigned spouse of Donor hereby consents to Donor's election to split gifts under IRC § 2513. Pursuant to such election, the undersigned spouse consents to, and acknowledges, the following:

- I am the consenting spouse whose information is listed on Part III, Lines 2 and 3 of Donor's Form 709 to which this Notice of Consent is attached, and such information is true and correct.
- By my signature below, I am electing to treat all gifts made by the Donor to third parties during the calendar year to which this Return applies as having been made one-half by the donor and one-half by me.
-

2024 Gift Tax Return

[Neil Donor] [SSN of Neil Donor]

NOTICE OF CONSENT - Form 709, Part III, Line 17

- By my signature below, I am jointly and severally liable for any tax associated with such gifts.
-

This Notice of Consent is not effective for any calendar year other than the calendar year to which this Return applies.

This Notice of Consent must be signed and dated by the consenting spouse no later than April 15 or the filing of the Return by the Donor, and, is not effective without completion of both the written signature and date.

Such date of signature may occur after the end of the calendar year to which this Return applies.

Spouse of Neil Donor
Notary and Date

2024 Gift Tax Return - Gift Splitting

No longer can the consenting spouse simply sign Line 18 to consent to gift-splitting

- Instead, a separate Notice of Consent must be completed and attached
- Importantly, this Notice must be signed AND dated by the consenting spouse in order to be effective!



FORM 706

**United States Estate (and Generation-Skipping Transfer)
Tax Return****► Estate of a citizen or resident of the United States (see instructions). To be filed for
decedents dying after December 31, 2018.****► Go to www.irs.gov/Form706 for instructions and the latest information.**

OMB No. 1545-0015

Part 1—Decedent and Executor	1a Decedent's first name and middle initial (and maiden name, if any)	1b Decedent's last name	2 Decedent's social security no.	
	3a City, town, or post office; county; state or province; country; and ZIP or foreign postal code	3b Year domicile established	4 Date of birth	5 Date of death
	6a Name of executor (see instructions)	6b Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code) and phone no.		
	6c Executor's social security number (see instructions)			
	Phone no.			
	6d If there are multiple executors, check here <input type="checkbox"/> and attach a list showing the names, addresses, telephone numbers, and SSNs of the additional executors.			
	7a Name and location of court where will was probated or estate administered			7b Case number
8 If decedent died testate, check here <input type="checkbox"/> and attach a certified copy of the will.	9 If you extended the time to file this Form 706, check here <input type="checkbox"/>			
10 If Schedule R-1 is attached, check here <input type="checkbox"/>	11 If you are estimating the value of assets included in the gross estate on line 1 pursuant to the special rule of Reg. section 20.2010-2(a)(7)(ii), check here <input type="checkbox"/>			

Part 2—Tax Computation	1 Total gross estate less exclusion (from Part 5—Recapitulation, item 13)	1
	2 Tentative total allowable deductions (from Part 5—Recapitulation, item 24)	2
	3a Tentative taxable estate (subtract line 2 from line 1)	3a
	b State death tax deduction	3b
	c Taxable estate (subtract line 3b from line 3a)	3c
	4 Adjusted taxable gifts (see instructions)	4
	5 Add lines 3c and 4	5
	6 Tentative tax on the amount on line 5 from Table A in the instructions	6
	7 Total gift tax paid or payable (see instructions)	7
	8 Gross estate tax (subtract line 7 from line 6)	8
	9a Basic exclusion amount	9a
	b Deceased spousal unused exclusion (DSUE) amount from predeceased spouse(s), if any (from Section D, Part 6—Portability of Deceased Spousal Unused Exclusion)	9b
	c Restored exclusion amount (see instructions)	9c
	d Applicable exclusion amount (add lines 9a, 9b, and 9c)	9d
	e Applicable credit amount (tentative tax on the amount in line 9d from Table A in the instructions)	9e
	10 Adjustment to applicable credit amount (May not exceed \$6,000. See instructions.)	10
	11 Allowable applicable credit amount (subtract line 10 from line 9e)	11
	12 Subtract line 11 from line 8 (but do not enter less than zero)	12
	13 Credit for foreign death taxes (from Schedule P). (Attach Form(s) 706-CE.)	13
	14 Credit for tax on prior transfers (from Schedule Q)	14
15 Total credits (add lines 13 and 14)	15	
16 Net estate tax (subtract line 15 from line 12)	16	
17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17	
18 Total transfer taxes (add lines 16 and 17)	18	
19 Prior payments (explain in an attached statement)	19	
20 Balance due (or overpayment) (subtract line 19 from line 18)	20	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the executor) is based on all information of which preparer has any knowledge.

Sign Here	Signature of executor		Date		
	Signature of executor		Date		
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ►			Firm's EIN ►	
	Firm's address ►			Phone no.	

Estate of:	Decedent's social security number
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Part 3—Elections by the Executor

Note: For information on electing portability of the decedent's DSUE amount, including how to opt out of the election, see Part 6—Portability of Deceased Spousal Unused Exclusion.

Note: Some of the following elections may require the posting of bonds or liens.

Please check "Yes" or "No" for each question. See instructions.

		Yes	No
1 Do you elect alternate valuation?	1		
2 Do you elect special-use valuation? If "Yes," you must complete and attach Schedule A-1	2		
3 Do you elect to pay the taxes in installments as described in section 6166? If "Yes," you must attach the additional information described in the instructions. Note: By electing section 6166 installment payments, you may be required to provide security for estate tax deferred under section 6166 and interest in the form of a surety bond or a section 6324A lien.	3		
4 Do you elect to postpone the part of the taxes due to a reversionary or remainder interest as described in section 6163?	4		

Part 4—General Information

Note: Please attach the necessary supplemental documents. **You must attach the death certificate.** See instructions.

Authorization to receive confidential tax information under Reg. section 601.504(b)(2)(i); to act as the estate's representative before the IRS; and to make written or oral presentations on behalf of the estate:

Name of representative (print or type)	State	Address (number, street, and room or suite no., city, state, and ZIP code)
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I declare that I am the ☐ attorney/ ☐ certified public accountant/ ☐ enrolled agent (check the applicable box) for the executor. I am not under suspension or disbarment from practice before the Internal Revenue Service and am qualified to practice in the state shown above.

Signature	CAF number	Date	Telephone number
-----------	------------	------	------------------

1 Death certificate number and issuing authority (attach a copy of the death certificate to this return).

2 Decedent's business or occupation. If retired, check here ☐ and state decedent's former business or occupation.

3a Marital status of the decedent at time of death:
☐ Married ☐ Widow/widower ☐ Single ☐ Legally separated ☐ Divorced

3b For all prior marriages, list the name and SSN of the former spouse, the date the marriage ended, and whether the marriage ended by annulment, divorce, or death. Attach additional statements of the same size if necessary.

4a Surviving spouse's name	4b Social security number	4c Amount received (see instructions)
-----------------------------------	----------------------------------	--

5 Individuals (other than the surviving spouse), trusts, or other estates who receive benefits from the estate (do not include charitable beneficiaries shown in Schedule O) (see instructions).

Name of individual, trust, or estate receiving \$5,000 or more	Identifying number	Relationship to decedent	Amount (see instructions)

All unascertainable beneficiaries and those who receive less than \$5,000 ▶

Total

If you answer "Yes" to any of the following questions, you must attach additional information as described.

	Yes	No
6 Is the estate filing a protective claim for refund? If "Yes," complete and attach two copies of Schedule PC for each claim.		
7 Does the gross estate contain any section 2044 property (qualified terminable interest property (QTIP) from a prior gift or estate)? See instructions		
8a Have federal gift tax returns ever been filed? If "Yes," attach copies of the returns, if available, and furnish the following information.		
b Period(s) covered		
c Internal Revenue office(s) where filed		
9a Was there any insurance on the decedent's life that is not included on the return as part of the gross estate?		
b Did the decedent own any insurance on the life of another that is not included in the gross estate?		

Estate of:	Decedent's social security number
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Part 4—General Information *(continued)*

If you answer "Yes" to any of the following questions, you must attach additional information as described.

	Yes	No
10 Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which (a) one or more of the other joint tenants was someone other than the decedent's spouse, and (b) less than the full value of the property is included on the return as part of the gross estate? If "Yes," you must complete and attach Schedule E		
11a Did the decedent, at the time of death, own any interest in a partnership (for example, a family limited partnership), an unincorporated business, or a limited liability company; or own any stock in an inactive or closely held corporation?		
b If "Yes," was the value of any interest owned (from above) discounted on this estate tax return? If "Yes," see the instructions on reporting the total accumulated or effective discounts taken on Schedule F or G		
12 Did the decedent make any transfer described in sections 2035, 2036, 2037, or 2038? See instructions. If "Yes," you must complete and attach Schedule G		
13a Were there in existence at the time of the decedent's death any trusts created by the decedent during his or her lifetime?		
b Were there in existence at the time of the decedent's death any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trusteeship?		
c Was the decedent receiving income from a trust created after October 22, 1986, by a parent or grandparent? If "Yes," was there a GST taxable termination (under section 2612) on the death of the decedent?		
d If there was a GST taxable termination (under section 2612), attach a statement to explain. Provide a copy of the trust or will creating the trust, and give the name, address, and phone number of the current trustee(s).		
e Did the decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in line 13a or 13b? If "Yes," provide the EIN for this transferred/sold item. ▶		
14 Did the decedent ever possess, exercise, or release any general power of appointment? If "Yes," you must complete and attach Schedule H		
15 Did the decedent have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?		
16 Was the decedent, immediately before death, receiving an annuity described in the "General" paragraph of the instructions for Schedule I or a private annuity? If "Yes," you must complete and attach Schedule I		
17 Was the decedent ever the beneficiary of a trust for which a deduction was claimed by the estate of a predeceased spouse under section 2056(b)(7) and which is not reported on this return? If "Yes," attach an explanation		

Part 5—Recapitulation. **Note:** If estimating the value of one or more assets pursuant to the special rule of Reg. section 20.2010-2(a)(7)(ii), enter on both lines 10 and 23 the amount noted in the instructions for the corresponding range of values. See instructions for details.

Item no.	Gross estate		Alternate value	Value at date of death
1	Schedule A—Real Estate	1		
2	Schedule B—Stocks and Bonds	2		
3	Schedule C—Mortgages, Notes, and Cash	3		
4	Schedule D—Insurance on the Decedent's Life (attach Form(s) 712)	4		
5	Schedule E—Jointly Owned Property (attach Form(s) 712 for life insurance)	5		
6	Schedule F—Other Miscellaneous Property (attach Form(s) 712 for life insurance)	6		
7	Schedule G—Transfers During Decedent's Life (att. Form(s) 712 for life insurance)	7		
8	Schedule H—Powers of Appointment	8		
9	Schedule I—Annuities	9		
10	Estimated value of assets subject to the special rule of Reg. section 20.2010-2(a)(7)(ii)	10		
11	Total gross estate (add items 1 through 10)	11		
12	Schedule U—Qualified Conservation Easement Exclusion	12		
13	Total gross estate less exclusion (subtract item 12 from item 11). Enter here and on line 1 of Part 2—Tax Computation	13		
Item no.	Deductions			Amount
14	Schedule J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	14		
15	Schedule K—Debts of the Decedent	15		
16	Schedule K—Mortgages and Liens	16		
17	Total of items 14 through 16	17		
18	Allowable amount of deductions from item 17 (see the instructions for item 18 of the Recapitulation)	18		
19	Schedule L—Net Losses During Administration	19		
20	Schedule L—Expenses Incurred in Administering Property Not Subject to Claims	20		
21	Schedule M—Bequests, etc., to Surviving Spouse	21		
22	Schedule O—Charitable, Public, and Similar Gifts and Bequests	22		
23	Estimated value of deductible assets subject to the special rule of Reg. section 20.2010-2(a)(7)(ii)	23		
24	Tentative total allowable deductions (add items 18 through 23). Enter here and on line 2 of the Tax Computation	24		

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Part 6—Portability of Deceased Spousal Unused Exclusion (DSUE)**Portability Election**

A decedent with a surviving spouse elects portability of the DSUE amount, if any, by completing and timely filing this return. No further action is required to elect portability of the DSUE amount to allow the surviving spouse to use the decedent's DSUE amount.

Section A. Opting Out of Portability

The estate of a decedent with a surviving spouse may opt out of electing portability of the DSUE amount. Check here and do not complete Sections B and C of Part 6 only if the estate opts **NOT** to elect portability of the DSUE amount. ☐

Section B. Qualified Domestic Trust (QDOT)

Are any assets of the estate being transferred to a QDOT?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If "Yes," the DSUE amount portable to a surviving spouse (calculated in Section C, below) is preliminary and shall be redetermined at the time of the final distribution or other taxable event imposing estate tax under section 2056A. See instructions for more details.

Section C. DSUE Amount Portable to the Surviving Spouse (To be completed by the estate of a decedent making a portability election.)


Complete the following calculation to determine the DSUE amount that can be transferred to the surviving spouse.

1	Enter the amount from line 9d, Part 2—Tax Computation	1	
2	Reserved	2	
3	Enter the value of the cumulative lifetime gifts on which tax was paid or payable. See instructions	3	
4	Add lines 1 and 3	4	
5	Enter amount from line 10, Part 2—Tax Computation	5	
6	Divide amount on line 5 by 40% (0.40) (do not enter less than zero)	6	
7	Subtract line 6 from line 4	7	
8	Enter the amount from line 5, Part 2—Tax Computation	8	
9	Subtract line 8 from line 7 (do not enter less than zero)	9	
10	DSUE amount portable to surviving spouse (Enter lesser of line 9 or line 9a, Part 2—Tax Computation)	10	

Section D. DSUE Amount Received From Predeceased Spouse(s) (To be completed by the estate of a deceased surviving spouse with DSUE amount from predeceased spouse(s))

Provide the following information to determine the DSUE amount received from deceased spouses.

A Name of Deceased Spouse (dates of death after December 31, 2010, only)	B Date of Death (enter as mm/dd/yy)	C Portability Election Made?		D If “Yes,” DSUE Amount Received From Spouse	E DSUE Amount Applied by Decedent to Lifetime Gifts	F Year of Form 709 Reporting Use of DSUE Amount Listed in col. E	G Remaining DSUE Amount, if any (subtract col. E from col. D)
		Yes	No				
Part 1 — DSUE RECEIVED FROM LAST DECEASED SPOUSE							
Part 2 — DSUE RECEIVED FROM OTHER PREDECEASED SPOUSE(S) AND USED BY DECEDENT							
Total (for all DSUE amounts from predeceased spouse(s) applied)							

Add the amount from Part 1, column D, and the total from Part 2, column E. Enter the result on line 9b, Part 2—Tax Computation 

Estate of:**Decedent's social security number****SCHEDULE A—Real Estate**

- For jointly owned property that must be disclosed on Schedule E, see instructions.
- Real estate that is part of a sole proprietorship should be shown on Schedule F.
- Real estate that is included in the gross estate under sections 2035, 2036, 2037, or 2038 should be shown on Schedule G.
- Real estate that is included in the gross estate under section 2041 should be shown on Schedule H.
- If you elect section 2032A valuation, you must complete Schedule A and Schedule A-1.

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
1				
Total from continuation schedules or additional statements attached to this schedule				
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 1.)				

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:

Decedent's social security number

SCHEDULE A-1 – Section 2032A Valuation**Part 1. Type of Election** (Before making an election, see the checklist in the instructions):

- ☐ **Protective election (Reg. section 20.2032A-8(b)).** Complete Part 2, line 1, and column A of lines 3 and 4. See instructions.
- ☐ **Regular election.** Complete all of Part 2 (including line 11, if applicable) and Part 3. See instructions.

Before completing Schedule A-1, see the instructions for the information and documents that must be included to make a valid election.

The election is not valid unless the agreement (that is, *Part 3. Agreement to Special Valuation Under Section 2032A*):

- Is signed by each qualified heir with an interest in the specially valued property, and
- Is attached to this return when it is filed.

Part 2. Notice of Election (Reg. section 20.2032A-8(a)(3))

Note: All real property entered on lines 2 and 3 must also be entered on Schedules A, E, F, G, or H, as applicable.

- 1** Qualified use—check one ☐ Farm used for farming, or
☐ Trade or business other than farming
- 2** Real property used in a qualified use, passing to qualified heirs, and to be specially valued on this Form 706.

A Schedule and item number from Form 706	B Full value (without section 2032A(b)(3)(B) adjustment)	C Adjusted value (with section 2032A(b)(3)(B) adjustment)	D Value based on qualified use (without section 2032A(b)(3)(B) adjustment)
Totals			

Attach a legal description of all property listed on line 2.

Attach copies of appraisals showing the column B values for all property listed on line 2.

- 3** Real property used in a qualified use, passing to qualified heirs, but not specially valued on this Form 706.

A Schedule and item number from Form 706	B Full value (without section 2032A(b)(3)(B) adjustment)	C Adjusted value (with section 2032A(b)(3)(B) adjustment)	D Value based on qualified use (without section 2032A(b)(3)(B) adjustment)
Totals			

If you checked "Regular election," you must attach copies of appraisals showing the column B values for all property listed on line 3.
(continued on next page)

Estate of:	Decedent's social security number
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4 Personal property used in a qualified use and passing to qualified heirs.

A Schedule and item number from Form 706	B Adjusted value (with section 2032A(b)(3)(B) adjustment)	A (continued) Schedule and item number from Form 706	B (continued) Adjusted value (with section 2032A(b)(3)(B) adjustment)
		"Subtotal" from col. B, below left	
Subtotal		Total adjusted value	

5 Enter the value of the total gross estate as adjusted under section 2032A(b)(3)(A). ►**6** Attach a description of the method used to determine the special value based on qualified use.**7** Did the decedent and/or a member of his or her family own all property listed on line 2 for at least 5 of the 8 years immediately preceding the date of the decedent's death?

Yes	No

8 Were there any periods during the 8-year period preceding the date of the decedent's death during which the decedent or a member of his or her family:

- a** Did not own the property listed on line 2?
- b** Did not use the property listed on line 2 in a qualified use?
- c** Did not materially participate in the operation of the farm or other business within the meaning of section 2032A(e)(6)? If you answered "Yes" to any of the above, attach a statement listing the periods. If applicable, describe whether the exceptions of sections 2032A(b)(4) or (5) are met.

9 Attach affidavits describing the activities constituting material participation and the identity and relationship to the decedent of the material participants.**10** Persons holding interests. Enter the requested information for each party who received any interest in the specially valued property. (Each of the qualified heirs receiving an interest in the property must sign the agreement, to be found on Part 3 of this Schedule A-1, and the agreement must be filed with this return.)

A	Name	Address
B		
C		
D		
E		
F		
G		
H		

A	Identifying number	Relationship to decedent	Fair market value	Special-use value
B				
C				
D				
E				
F				
G				
H				

You must attach a computation of the GST tax savings attributable to direct skips for each person listed above who is a skip person. See instructions.

11 **Woodlands election.** Check here ☐ if you wish to make a Woodlands election as described in section 2032A(e)(13). Enter the schedule and item numbers from Form 706 of the property for which you are making this election ►

Attach a statement explaining why you are entitled to make this election. The IRS may issue regulations that require more information to substantiate this election. You will be notified by the IRS if you must supply further information.

Estate of:	Decedent's social security number
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Part 3. Agreement to Special Valuation Under Section 2032A

There cannot be a valid election unless:

- The agreement is executed by each one of the qualified heirs, and
- The agreement is included with the estate tax return when the estate tax return is filed.

We (list all qualified heirs)

_____ ,
being all the qualified heirs and (list all other persons having an interest in the property required to sign this agreement)

_____ ,
being all other parties having interests in the property, which is qualified real property and which is valued under section 2032A, do hereby approve of the election made by _____ ,

Executor/Administrator of the estate of _____ ,
pursuant to section 2032A to value said property on the basis of the qualified use to which the property is devoted and do hereby enter into this agreement pursuant to section 2032A(d).

The undersigned agree and consent to the application of subsection (c) of section 2032A with respect to all the property described on Form 706, Schedule A-1, Part 2, line 2, attached to this agreement. More specifically, the undersigned heirs expressly agree and consent to personal liability under subsection (c) of 2032A for the additional estate and GST taxes imposed by that subsection with respect to their respective interests in the above-described property in the event of certain early dispositions of the property or early cessation of the qualified use of the property. It is understood that if a qualified heir disposes of any interest in qualified real property to any member of his or her family, such member may thereafter be treated as the qualified heir with respect to such interest upon filing a Form 706-A, United States Additional Estate Tax Return, and a new agreement.

The undersigned interested parties who are not qualified heirs consent to the collection of any additional estate and GST taxes imposed under section 2032A(c) from the specially valued property.

If there is a disposition of any interest which passes, or has passed to him or her, or if there is a cessation of the qualified use of any specially valued property which passes or passed to him or her, each of the undersigned heirs agrees to file a Form 706-A, and pay any additional estate and GST taxes due within 6 months of the disposition or cessation.

It is understood by all interested parties that this agreement is a condition precedent to the election of special-use valuation under section 2032A and must be executed by every interested party even though that person may not have received the estate (or GST) tax benefits or be in possession of such property.

Each of the undersigned understands that by making this election, a lien will be created and recorded pursuant to section 6324B on the property referred to in this agreement for the adjusted tax differences with respect to the estate as defined in section 2032A(c)(2) (C).

As the interested parties, the undersigned designate the following individual as their agent for all dealings with the Internal Revenue Service concerning the continued qualification of the specially valued property under section 2032A and on all issues regarding the special lien under section 6324B. The agent is authorized to act for the parties with respect to all dealings with the Internal Revenue Service on matters affecting the qualified real property described earlier. This includes the authorization:

- To receive confidential information on all matters relating to continued qualification under section 2032A of the specially valued real property and on all matters relating to the special lien arising under section 6324B;
- To furnish the Internal Revenue Service with any requested information concerning the property;
- To notify the Internal Revenue Service of any disposition or cessation of qualified use of any part of the property;
- To receive, but not to endorse and collect, checks in payment of any refund of Internal Revenue taxes, penalties, or interest;
- To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund; and
- To execute closing agreements under section 7121.

(continued on next page)

Estate of:**Decedent's social security number****Part 3. Agreement to Special Valuation Under Section 2032A** *(continued)*

• Other acts (specify) ► _____

By signing this agreement, the agent agrees to provide the Internal Revenue Service with any requested information concerning this property and to notify the Internal Revenue Service of any disposition or cessation of the qualified use of any part of this property.

Name of Agent_____
Signature_____
Address

The property to which this agreement relates is listed in Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and in the Notice of Election, along with its fair market value according to section 2031 and its special-use value according to section 2032A. The name, address, social security number, and interest (including the value) of each of the undersigned in this property are as set forth in the attached Notice of Election.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands at _____,

this _____ day of _____.

SIGNATURES OF EACH OF THE QUALIFIED HEIRS:

Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signature of qualified heir_____
Signatures of other interested parties_____
Signatures of other interested parties

Estate of:

Decedent's social security number

SCHEDULE B—Stocks and Bonds

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last four columns.

Item number	Description, including face amount of bonds or number of shares and par value for identification. Give CUSIP number. If trust, partnership, or closely held entity, give EIN.	Unit value	Alternate valuation date	Alternate value	Value at date of death
1	CUSIP number or EIN, where applicable				
Total from continuation schedules (or additional statements) attached to this schedule .					
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 2.)					

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:

Decedent's social security number

SCHEDULE C—Mortgages, Notes, and Cash

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
1				
Total from continuation schedules (or additional statements) attached to this schedule .				
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 3.)				

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:

Decedent's social security number

SCHEDULE D—Insurance on the Decedent's Life

You must list all policies on the life of the decedent and attach a Form 712 for each policy.

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
1				
Total from continuation schedules (or additional statements) attached to this schedule .				
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 4.)				

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:

Decedent's social security number

SCHEDULE E—Jointly Owned Property

(If you elect section 2032A valuation, you must complete Schedule E and Schedule A-1.)

PART 1. Qualified Joint Interests—Interests Held by the Decedent and His or Her Spouse as the Only Joint Tenants (Section 2040(b)(2))

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN.	CUSIP number or EIN, where applicable	Alternate valuation date	Alternate value	Value at date of death
1					
Total from continuation schedules (or additional statements) attached to this schedule					
1a	Totals			1a	
b	Amounts included in gross estate (one-half of line 1a)			1b	

PART 2. All Other Joint Interests

2a State the name and address of each surviving co-tenant. If there are more than three surviving co-tenants, list the additional co-tenants on an attached statement.

Name	Address (number and street, city, state, and ZIP code)
A.	
B.	
C.	

Item number	Enter letter for co-tenant	Description (including alternate valuation date, if any). For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	CUSIP number or EIN, where applicable	Percentage includible	Includible alternate value	Includible value at date of death
1						
Total from continuation schedules (or additional statements) attached to this schedule						
b	Total other joint interests				2b	
3	Total includible joint interests (add lines 1b and 2b). Also enter on Part 5—Recapitulation, page 3, at item 5				3	

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

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SCHEDULE F—Other Miscellaneous Property Not Reportable Under Any Other Schedule

(For jointly owned property that must be disclosed on Schedule E, see instructions.)
(If you elect section 2032A valuation, you must complete Schedule F and Schedule A-1.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

1 Did the decedent own any works of art, items, or any collections whose artistic or collectible value at date of death exceeded \$3,000? If "Yes," submit full details on this schedule and attach appraisals.	Yes	No
2 Has the decedent's estate, spouse, or any other person received (or will receive) any bonus or award as a result of the decedent's employment or death? If "Yes," submit full details on this schedule.		
3 Did the decedent at the time of death have, or have access to, a safe deposit box? If "Yes," state location, and if held jointly by decedent and another, state name and relationship of joint depositor.		

If any of the contents of the safe deposit box are omitted from the schedules in this return, explain fully why omitted.

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	CUSIP number or EIN, where applicable	Alternate valuation date	Alternate value	Value at date of death
1					
Total from continuation schedules (or additional statements) attached to this schedule .					
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 6.)					

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:	Decedent's social security number
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SCHEDULE G—Transfers During Decedent's Life

(If you elect section 2032A valuation, you must complete Schedule G and Schedule A-1.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	Alternate valuation date	Alternate value	Value at date of death
A.	Gift tax paid or payable by the decedent or the estate for all gifts made by the decedent or his or her spouse within 3 years before the decedent's death (section 2035(b))	X X X X X		
B.	Transfers includible under sections 2035(a), 2036, 2037, or 2038:			
1				
Total from continuation schedules (or additional statements) attached to this schedule .				
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 7.)				

SCHEDULE H—Powers of Appointment

(Include "5 and 5 lapsing" powers (section 2041(b)(2)) held by the decedent.)
(If you elect section 2032A valuation, you must complete Schedule H and Schedule A-1.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
1				
Total from continuation schedules (or additional statements) attached to this schedule .				
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 8.)				

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:**Decedent's social security number****SCHEDULE I—Annuities****Note:** Generally, no exclusion is allowed for the estates of decedents dying after December 31, 1984. See instructions.**Note:** If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

- A** Are you excluding from the decedent's gross estate the value of a lump-sum distribution described in section 2039(f)(2) (as in effect before its repeal by the Deficit Reduction Act of 1984)?
- If "Yes," you must attach the information required by the instructions.

Yes	No

Item number	Description. Show the entire value of the annuity before any exclusions	Alternate valuation date	Includible alternate value	Includible value at date of death
1				
Total from continuation schedules (or additional statements) attached to this schedule .				
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 9.)				

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

► Use Schedule PC to make a protective claim for refund due to an expense not currently deductible. For such a claim, report the expense on Schedule J but without a value in the last column.

If executors' commissions, attorney fees, etc., are claimed and allowed as a deduction for estate tax purposes, they are not allowable as a deduction in computing the taxable income of the estate for federal income tax purposes. They are allowable as an income tax deduction on Form 1041, U.S. Income Tax Return for Estates and Trusts, if a waiver is filed to forgo the deduction on Form 706. See the Instructions for Form 1041.

If "Yes," attach a statement describing the expense(s) subject to potential reimbursement. See instructions.

Item number	Description	Expense amount	Total amount
	A. Funeral expenses:		
1			
Total funeral expenses			►

1 Executors' commissions—amount estimated/agreed upon/paid. (Strike out the words that do not
 apply.)
 2 Attorney fees—amount estimated/agreed upon/paid. (Strike out the words that do not apply.) . . .
 3 Accountant fees—amount estimated/agreed upon/paid. (Strike out the words that do not apply.) . . .

4 Miscellaneous expenses:		Expense amount	
Total miscellaneous expenses from continuation schedules (or additional statements) attached to this schedule			
Total miscellaneous expenses			▶
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 14.)			▶

Schedule J—Page 17

Estate of:

Decedent's social security number

SCHEDULE K—Debts of the Decedent, and Mortgages and Liens

► Use Schedule PC to make a protective claim for refund due to a claim not currently deductible.
For such a claim, report the expense on Schedule K but without a value in the last column.

	Yes	No
Are you aware of any actual or potential reimbursement to the estate for any debt of the decedent, mortgage, or lien claimed as a deduction on this schedule?		
If "Yes," attach a statement describing the items subject to potential reimbursement. See instructions.		
Are any of the items on this schedule deductible under Reg. section 20.2053-4(b) and Reg. section 20.2053-4(c)? . . .		
If "Yes," attach a statement indicating the applicable provision and documenting the value of the claim.		

Item number	Debts of the Decedent—Creditor and nature of debt, and allowable death taxes	Amount
1		

Total from continuation schedules (or additional statements) attached to this schedule

TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 15.)

Item number	Mortgages and Liens—Description	Amount
1		

Total from continuation schedules (or additional statements) attached to this schedule

TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 16.)

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:

Decedent's social security number

SCHEDULE L—Net Losses During Administration and Expenses Incurred in Administering Property Not Subject to Claims

▶ Use Schedule PC to make a protective claim for refund due to an expense not currently deductible.
For such expenses, report the expense on Schedule L but without a value in the last column.

Item number	Net losses during administration (Note: Do not deduct losses claimed on a federal income tax return.)	Amount
1		
Total from continuation schedules (or additional statements) attached to this schedule		
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 19.)		
Item number	Expenses incurred in administering property not subject to claims. (Indicate whether estimated, agreed upon, or paid.)	Amount
1		
Total from continuation schedules (or additional statements) attached to this schedule		
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 20.)		

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:

Decedent's social security number

SCHEDULE M—Bequests, etc., to Surviving Spouse

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entry in the last column.

	Yes	No
1 Did any property pass to the surviving spouse as a result of a qualified disclaimer? If "Yes," attach a copy of the written disclaimer required by section 2518(b).	1	
2a In what country was the surviving spouse born? _____		
b What is the surviving spouse's date of birth? _____		
c Is the surviving spouse a U.S. citizen?	2c	
d If the surviving spouse is a naturalized citizen, when and where did the surviving spouse acquire citizenship? _____		
e If the surviving spouse is not a U.S. citizen, of what country is the surviving spouse a citizen? _____		
3 Election Out of QTIP Treatment of Annuities. Do you elect under section 2056(b)(7)(C)(ii) not to treat as qualified terminable interest property any joint and survivor annuities that are included in the gross estate and would otherwise be treated as qualified terminable interest property under section 2056(b)(7)(C)? See instructions	3	

Item number	Description of property interests passing to surviving spouse. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	Amount
QTIP property:		
A1		
All other property:		
B1		
Total from continuation schedules (or additional statements) attached to this schedule		
4 Total amount of property interests listed on Schedule M	4	
5a Federal estate taxes payable out of property interests listed on Schedule M	5a	
b Other death taxes payable out of property interests listed on Schedule M	5b	
c Federal and state GST taxes payable out of property interests listed on Schedule M	5c	
d Add items 5a, 5b, and 5c	5d	
6 Net amount of property interests listed on Schedule M (subtract item 5d from item 4). Also enter on Part 5—Recapitulation, page 3, at item 21	6	

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:	Decedent's social security number
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SCHEDULE O—Charitable, Public, and Similar Gifts and Bequests

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entry in the last column.

	Yes	No
1a If the transfer was made by will, has any action been instituted to contest or have interpreted any of its provisions affecting the charitable deductions claimed in this schedule? If "Yes," full details must be submitted with this schedule.	<input type="checkbox"/>	<input type="checkbox"/>
b According to the information and belief of the person or persons filing this return, is any such action planned? If "Yes," full details must be submitted with this schedule.	<input type="checkbox"/>	<input type="checkbox"/>
2 Did any property pass to charity as the result of a qualified disclaimer? If "Yes," attach a copy of the written disclaimer required by section 2518(b).	<input type="checkbox"/>	<input type="checkbox"/>

Item number	Name and address of beneficiary	Character of institution	Amount
1			
Total from continuation schedules (or additional statements) attached to this schedule			

3 Total	3	
4a Federal estate tax payable out of property interests listed above	4a	
b Other death taxes payable out of property interests listed above	4b	
c Federal and state GST taxes payable out of property interests listed above	4c	
d Add items 4a, 4b, and 4c	4d	
5 Net value of property interests listed above (subtract item 4d from item 3). Also enter on Part 5—Recapitulation, page 3, at item 22	5	

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of:	Decedent's social security number
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SCHEDULE P—Credit for Foreign Death Taxes

List all foreign countries to which death taxes have been paid and for which a credit is claimed on this return.

If a credit is claimed for death taxes paid to more than one foreign country, compute the credit for taxes paid to one country on this sheet and attach a separate copy of Schedule P for each of the other countries.

The credit computed on this sheet is for the _____

(Name of death tax or taxes)

imposed in _____

(Name of country)

Credit is computed under the _____

(Insert title of treaty or statute)

Citizenship (nationality) of decedent at time of death

(All amounts and values must be entered in U.S. money.)

1 Total of estate, inheritance, legacy, and succession taxes imposed in the country named above attributable to property situated in that country, subjected to these taxes, and included in the gross estate (as defined by statute) .	1	
2 Value of the gross estate (adjusted, if necessary, according to the instructions)	2	
3 Value of property situated in that country, subjected to death taxes imposed in that country, and included in the gross estate (adjusted, if necessary, according to the instructions)	3	
4 Tax imposed by section 2001 reduced by the total credits claimed under sections 2010 and 2012 (see instructions)	4	
5 Amount of federal estate tax attributable to property specified at item 3. (Divide item 3 by item 2 and multiply the result by item 4.)	5	
6 Credit for death taxes imposed in the country named above (the smaller of item 1 or item 5). Also enter on line 13 of Part 2—Tax Computation	6	

SCHEDULE Q—Credit for Tax on Prior Transfers

Part 1. Transferor Information

	Name of transferor	Social security number	IRS office where estate tax return was filed	Date of death
A				
B				
C				

Check here ☐ if section 2013(f) (special valuation of farm, etc., real property) adjustments to the computation of the credit were made. See instructions.

Part 2. Computation of Credit (see instructions)

Item	Transferor			Total A, B, and C
	A	B	C	
1 Transferee's tax as apportioned (from worksheet, (line 7 ÷ line 8) × line 35 for each column)				
2 Transferor's tax (from each column of worksheet, line 20)				
3 Maximum amount before percentage requirement (for each column, enter amount from line 1 or line 2, whichever is smaller)				
4 Percentage allowed (each column) (see instructions)	%	%	%	
5 Credit allowable (line 3 × line 4 for each column) .				
6 TOTAL credit allowable (add columns A, B, and C of line 5). Enter here and on line 14 of Part 2—Tax Computation				

Estate of:**Decedent's social security number****SCHEDULE R—Generation-Skipping Transfer Tax**

Note: To avoid application of the deemed allocation rules, Form 706 and Schedule R should be filed to allocate the GST exemption to trusts that may later have taxable terminations or distributions under section 2612 even if the form is not required to be filed to report estate or GST tax.

The GST tax is imposed on taxable transfers of interests in property located outside the United States as well as property located inside the United States. See instructions.

Part 1. GST Exemption Reconciliation (Section 2631) and Special QTIP Election (Section 2652(a)(3))

You no longer need to check a box to make a section 2652(a)(3) (special QTIP) election. If you list qualifying property in Part 1, line 9, below, you will be considered to have made this election. See instructions for details.

1	Maximum allowable GST exemption	1	
2	Total GST exemption allocated by the decedent against decedent's lifetime transfers	2	
3	Total GST exemption allocated by the executor, using Form 709, against decedent's lifetime transfers	3	
4	GST exemption allocated on line 6 of Schedule R, Part 2	4	
5	GST exemption allocated on line 6 of Schedule R, Part 3	5	
6	Total GST exemption allocated on line 4 of Schedule(s) R-1	6	
7	Total GST exemption allocated to inter vivos transfers and direct skips (add lines 2–6)	7	
8	GST exemption available to allocate to trusts and section 2032A interests (subtract line 7 from line 1)	8	
9	Allocation of GST exemption to trusts (as defined for GST tax purposes):		

A Name of trust	B Trust's EIN (if any)	C GST exemption allocated on lines 2–6 above (see instructions)	D Additional GST exemption allocated (see instructions)	E Trust's inclusion ratio (optional) (see instructions)

9D Total. May not exceed line 8 above	9D	
10 GST exemption available to allocate to section 2032A interests received by individual beneficiaries (subtract line 9D from line 8). You must attach special-use allocation statement. See instructions .	10	

Name of skip person	Description of property interest transferred	Estate tax value

1	Total estate tax values of all property interests listed above	1	
2	Estate taxes, state death taxes, and other charges borne by the property interests listed above	2	
3	GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part 2 (see instructions)	3	
4	Total fixed taxes and other charges (add lines 2 and 3)	4	
5	Total tentative maximum direct skips (subtract line 4 from line 1)	5	
6	GST exemption allocated	6	
7	Subtract line 6 from line 5	7	
8	GST tax due (divide line 7 by 3.5)	8	
9	Enter the amount from line 8 of Schedule R, Part 3	9	
10	Total GST taxes payable by the estate (add lines 8 and 9). Enter here and on line 17 of Part 2—Tax Computation	10	

Estate of:	Decedent's social security number
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Part 3. Direct Skips Where the Property Interests Transferred Do Not Bear the GST Tax on the Direct Skips

Name of skip person	Description of property interest transferred	Estate tax value

1	Total estate tax values of all property interests listed above	1	
2	Estate taxes, state death taxes, and other charges borne by the property interests listed above . .	2	
3	GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part 3 (see instructions)	3	
4	Total fixed taxes and other charges (add lines 2 and 3)	4	
5	Total tentative maximum direct skips (subtract line 4 from line 1)	5	
6	GST exemption allocated	6	
7	Subtract line 6 from line 5	7	
8	GST tax due (multiply line 7 by 0.40). Enter here and on Schedule R, Part 2, line 9	8	

Estate of:	Decedent's social security number
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SCHEDULE U—Qualified Conservation Easement Exclusion

Part 1. Election

Note: The executor is deemed to have made the election under section 2031(c)(6) if he or she files Schedule U and excludes any qualifying conservation easements from the gross estate.

Part 2. General Qualifications

- 1 Describe the land subject to the qualified conservation easement. See instructions _____
- 2 Did the decedent or a member of the decedent's family own the land described above during the 3-year period ending on the date of the decedent's death? ☐ Yes ☐ No
- 3 Describe the conservation easement with regard to which the exclusion is being claimed. See instructions. _____

Part 3. Computation of Exclusion

4 Estate tax value of the land subject to the qualified conservation easement (see instructions)	4		
5 Date of death value of any easements granted prior to decedent's death and included on line 10 below (see instructions)	5		
6 Add lines 4 and 5	6		
7 Value of retained development rights on the land (see instructions)	7		
8 Subtract line 7 from line 6	8		
9 Multiply line 8 by 30% (0.30)	9		
10 Value of qualified conservation easement for which the exclusion is being claimed (see instructions)	10		
Note: If line 10 is less than line 9, continue with line 11. If line 10 is equal to or more than line 9, skip lines 11 through 13, enter "0.40" on line 14, and complete the schedule.			
11 Divide line 10 by line 8. Figure to 3 decimal places (for example, "0.123")	11		
Note: If line 11 is equal to or less than 0.100, stop here; the estate does not qualify for the conservation easement exclusion.			
12 Subtract line 11 from 0.300. Enter the answer in hundredths by rounding any thousandths up to the next higher hundredth (that is, 0.030 = 0.03, but 0.031 = 0.04)	12		
13 Multiply line 12 by 2.0	13		
14 Subtract line 13 from 0.40	14		
15 Deduction under section 2055(f) for the conservation easement (see instructions)	15		
16 Amount of indebtedness on the land (see instructions)	16		
17 Total reductions in value (add lines 7, 15, and 16)	17		
18 Net value of land (subtract line 17 from line 4)	18		
19 Multiply line 18 by line 14	19		
20 Enter the smaller of line 19 or the exclusion limitation. See instructions. Also enter this amount on item 12, Part 5—Recapitulation, page 3	20		

Protective Claim for Refund

OMB No. 1545-0015

► **To be used for decedents dying after December 31, 2011. File 2 copies of this schedule with Form 706 for each pending claim or expense under section 2053.**

- Timely filing a protective claim for refund preserves the estate's right to claim a refund based on the amount of an unresolved claim or expense that may not become deductible under section 2053 until after the limitation period ends.
- Schedule PC can be used to file a protective claim for refund and, once the claim or expense becomes deductible, Schedule PC can be used to notify the IRS that a refund is being claimed.
- Schedule PC can be used by the estate of a decedent dying after 2011.
- Schedule PC must be filed with Form 706 and cannot be filed separately. (To file a protective claim for refund or notify the IRS that a refund is being claimed in a form separate from the Form 706, instead use Form 843, Claim for Refund and Request for Abatement.)
- Each separate claim or expense requires a separate Schedule PC (or Form 843, if not filed with Form 706).
- Schedule PC must be filed in duplicate (two copies) for each separate claim or expense.

Part 1. General Information

1. Name of decedent	2. Decedent's social security no.
3. Name of fiduciary	4. Date of death
5a. Address (number, street, and room or suite no.)	5b. Room or suite no.
5c. City or town, state, and ZIP or postal code	6. Daytime telephone number

7. Number of Claims. Enter number of Schedules PC being filed with Form 706. _____

If the number is greater than one OR if another Schedule PC or Form 843 was previously filed by or on behalf of the estate, complete Part 3 of this Schedule PC.

8. Fiduciary ☐ Check here if this Schedule PC is being filed with the original Form 706 or is being filed by the same fiduciary who filed the original Form 706 for decedent's estate. If a different fiduciary is filing this Schedule PC, see instructions for establishing the legal authority to pursue the claim for refund on behalf of the estate.

Part 2. Claim Information

Check the box that applies to this claim for refund.

a. ☐ Protective claim for refund made for unresolved claim or expense.

Amount in contest: _____

b. ☐ Partial refund claimed: partial resolution and/or satisfaction of claim or expense for which a protective claim for refund has been filed previously.

Date protective claim for refund filed for this claim or expense: _____

Amount of claim or expense partially resolved and/or satisfied and presently claimed as a deduction under section 2053 (do not include amounts previously deducted): _____

c. ☐ Full and final refund claimed for this claim or expense: resolution and/or satisfaction of claim or expense for which a protective claim for refund has been filed previously.

Date protective claim for refund filed for this claim or expense: _____

Amount of claim or expense finally resolved and/or satisfied and presently claimed as a deduction under section 2053 (do not include amounts previously deducted): _____

Estate of:				Decedent's social security number	
A Form 706 Schedule and Item number	B Identification of the claim • Name or names of the claimant(s) • Basis of the claim or other description of the pending claim or expense • Reasons and contingencies delaying resolution • Status of contested matters • Attach copies of relevant pleadings or other documents	C Amount, if any, deducted under Treas. Reg. sections 20.2053-1(d)(4) or 20.2053-4(b) or (c) for the identified claim or expense	D Amount presently claimed as a deduction under section 2053 for the identified claim	E Ancillary expenses estimated/ agreed upon/paid (Please indicate)	F Amount of tax to be refunded

Part 3. Other Schedules PC and Forms 843 Filed by Estate

If a Schedule PC or Form 843 was previously filed by the estate, complete Part 3 to identify each claim for refund reported.

A Date of death	B Internal Revenue office where filed	C Date filed	D Indicate whether (1) Protective Claim for Refund, (2) Partial Claim for Refund, or (3) Full and Final Claim for Refund	E Amount in Contest
1				

To inquire about the receipt and/or processing of the protective claim for refund, please call 866-699-4083.

Decedent's social security number

(Enter letter of schedule you are continuing.)

FORM 709

2024

Part I

General Information

1 Donor's first name and middle initial

2 Donor's last name

3 Donor's social security number

4 Address (number and street). If you have a P.O. box, see instructions.

5 Apt. no.

6 City, town, or post office. If you have a foreign address, also complete spaces below.

7 State

8 ZIP code

9 Foreign country name

10 Foreign province/state/county

11 Foreign postal code

12 Legal residence (domicile)

13 Citizenship (see instructions)

14 If the donor died during the year, check here ☐ and enter date of death

15 If an amended return, check here ☐

16 If you extended the time to file this Form 709, check here ☐

17 Enter the total number of donees listed on Schedule A. Count each person only once

18a Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 18b

18b Has your address changed since you last filed Form 709 (or 709-A)?

19 Gifts by spouses to third parties. Did you and your spouse make gifts to third parties? See instructions. (If the answer is "Yes," complete Part III on page 2.)

20 Have you applied a deceased spousal unused exclusion (DSUE) amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If "Yes," complete Schedule C

21 Does any gift or other transfer reported on this Form 709 include a digital asset (or a financial interest in a digital asset)? See instructions

Yes

No

Part II

Tax Computation

1 Enter the amount from Schedule A, Part 4, line 11

2 Enter the amount from Schedule B, line 3

3 Total taxable gifts. Add lines 1 and 2

4 Tax computed on amount on line 3 (see Table for Computing Gift Tax in instructions)

5 Tax computed on amount on line 2 (see Table for Computing Gift Tax in instructions)

6 Balance. Subtract line 5 from line 4

7 Applicable credit amount. If donor has DSUE amount from predeceased spouse(s) or Restored Exclusion Amount, enter amount from Schedule C, line 5; otherwise, see instructions

8 Enter the applicable credit against tax allowable for all prior periods from Schedule B, line 1, col. (c)

9 Balance. Subtract line 8 from line 7. Do not enter less than zero

10 Enter 20% (0.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977. See instructions

11 Balance. Subtract line 10 from line 9. Do not enter less than zero

12 Applicable credit. Enter the smaller of line 6 or line 11

13 Credit for foreign gift taxes. See instructions

14 Total credits. Add lines 12 and 13

15 Balance. Subtract line 14 from line 6. Do not enter less than zero

16 Generation-skipping transfer taxes from Schedule D, Part 3, col. (g), total

17 Total tax. Add lines 15 and 16

18 Gift and generation-skipping transfer taxes prepaid with extension of time to file

19 If line 18 is less than line 17, enter balance due. See instructions

20 If line 18 is greater than line 17, enter amount to be refunded

1

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11

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13

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19

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Sign Here

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

Signature of donor

Date

May the IRS discuss this return with the preparer shown below?
See instructions. ☐ Yes ☐ No

Paid Preparer Use Only

Preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name

Firm's EIN

Firm's address

Phone no.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see the instructions for this form.

Cat. No. 16783M

Form 709 (2024)

Part III

Spouse's Consent on Gifts to Third Parties

1	Gifts by spouses to third parties. Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? See instructions. (If the answer is "Yes," the following information must be furnished. If the answer is "No," skip lines 2–7.)	Yes	No
2	Name of consenting spouse		
3	SSN of consenting spouse		
4	Were you married to one another during the entire calendar year? See instructions		
5	If line 4 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/deceased, and give date. See instructions		
6	Will a gift tax return for this year be filed by your spouse? If "Yes," mail both returns in the same envelope		
7	Consent of Spouse. Have you obtained required spousal consent for gifts made to third parties to be considered as made one-half by each spouse? If "Yes," you must attach a Notice of Consent. See instructions		

SCHEDULE A

Computation of Taxable Gifts (Including transfers in trust) (see instructions) (continued)

Part 4—Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column (l) of Parts 1, 2, and 3	1	
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	
3	Total included amount of gifts. Subtract line 2 from line 1	3	
Deductions (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed. Enter the total value of items on Parts 1 and 3 of Schedule A for which the box in column (l) is checked	4	
5	Exclusions attributable to gifts on line 4	5	
6	Marital deduction. Subtract line 5 from line 4	6	
7	Charitable deduction. Enter the total value of items on Parts 1 and 3 of Schedule A for which the box in column (k) is checked, less exclusions	7	
8	Total deductions. Add lines 6 and 7	8	
9	Subtract line 8 from line 3	9	
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. (g), total)	10	
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part II—Tax Computation, line 1	11	

Qualified Terminable Interest Property (QTIP) Marital Deduction (See instructions for Schedule A, Part 4, line 4.)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

a. The trust (or other property) is listed on Schedule A; and

b. The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4, then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon your spouse's death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, your spouse will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the instructions.

12 Election Out of QTIP Treatment of Annuities

☐ Check here if you elect under section 2523(f)(6) **not** to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election.

If you answered "Yes" on line 18a of page 1, Part I, see the instructions for completing Schedule B. If you answered "No," skip to Part II, Tax Computation on page 1 (or Schedule C or D, if applicable). Complete Schedule A before beginning Schedule B. See instructions for recalculation of the column (c) amounts. Attach calculations.

[illegible]

SCHEDULE C Deceased Spousal Unused Exclusion (DSUE) Amount and Restored Exclusion

Provide the following information to determine the DSUE amount and applicable credit received from prior spouses. Complete Schedule A before beginning Schedule C.

(a) Name of deceased spouse (dates of death after December 31, 2010, only)	(b) Date of death	(c) Portability election made?		(d) If "Yes," DSUE amount received from spouse	(e) DSUE amount applied by donor to lifetime gifts (list current and prior gifts)	(f) Date of gift(s) (enter as mm/dd/yy for Part 1 and as yyyy for Part 2)
		Yes	No			
Part 1—DSUE RECEIVED FROM LAST DECEASED SPOUSE						
Part 2—DSUE RECEIVED FROM PREDECEASED SPOUSE(S)						
TOTAL (for all DSUE amounts applied from column (e) for Part 1 and Part 2. Enter here and on line 2 below)						
1 Donor's basic exclusion amount (see instructions)						1
2 Total from column (e), Parts 1 and 2						2
3 Restored Exclusion Amount (see instructions)						3
4 Add lines 1, 2, and 3						4
5 Applicable credit on amount on line 4 (see Table for Computing Gift Tax in the instructions). Enter here and on line 7, Part II—Tax Computation						5

SESSION #5

Ethics

“Poetry, the Law and
Legal Ethics”

Presented by:
Professor Robert Rains
&
Justice J. Michael Eakin

Poetry, The Law, and Legal Ethics

DCBA
April 2025
Justice J. Michael Eakin
Prof. Robert E. Rains

Trial By Jury, W. S. Gilbert



ETHICS QUIZ (choose one)

- No problem; the usher told the jury to be free of bias.
- The judge is in the clear; he wasn't even in court when the usher addressed the jury.
- The judge has a problem under CJC 2.12, Supervisory Duties.
- The defendant has a problem.

The Law Is the True Embodiment from Iolanthe, W. S. Gilbert



ETHICS QUIZ (choose one)

- The Lord Chancellor is a dirty/lonely old man.
- The Lord Chancellor has a conflict of interest and should disqualify himself per CJC 2.11.
- The Lord Chancellor should get another judge to sit in for a day and award him a pretty young Ward in Chancery.

VERBATIM FROM BOILEAU QUIZ

- The judge had no choice; you can't cut an oyster in half.
- It served the two travelers right; they should have kept this one out of court and not wasted the judge's time.
- Violation of CJC 1.3, but possibly de minimus(?).

POOR RICHARD'S OPINION

- Excess fees, per RPC 1.5?

WHY LAWYERS MULTIPLY

- “Lawyers should never marry other lawyers. This is called in-breeding. From this comes idiot children... and other lawyers.” Adam’s Rib
- Excess fees issue?

THE LAWYERS KNOW TOO MUCH

- A horse's revenge.
- What about the duties of competence and diligence? Rules 1.1 and 1.2.

JUSTICE PEEPING QUIZ

- Grounds for mistrial?
- Violation of CJC 2.2, impartiality?

PORRECO v. PORRECO (dissent)

- Is this really a violation of CJC 1.2?
- C'mon already.

COUGH-MEDICINE

- Three parties to a divorce?
- Possible violation of Rules due to wife's lawyer's relationship with husband?

SUM JUSTICE

- A limit to judicial generosity.
- “Judges, as a class, display, in the matter of arranging alimony, that reckless generosity which is found only in men who are giving away someone else’s cash.” P. G. Wodehouse

ZANGRANDO v. SIPULA

- Dog cases are inherently funny.
- Except when they aren’t.
- CJC 1.2?

COURTING CANINE CUSTODY

- But see the Washington Post, January 24, 2017, “In a first, Alaska divorce courts will now treat pets more like children.”
- Meritorious claims rule, 3.1?

LOOSE LIPS: A LESSON IN CIVIL LAW

- Violation of Code of Civility, Art. II, Rules 2, 3, 5, 18?

PANTS ON FIRE

- Violation of RPC 3.5(d)?
- Or plain bad luck?

WHEN I WENT TO THE BAR AS A VERY YOUNG MAN



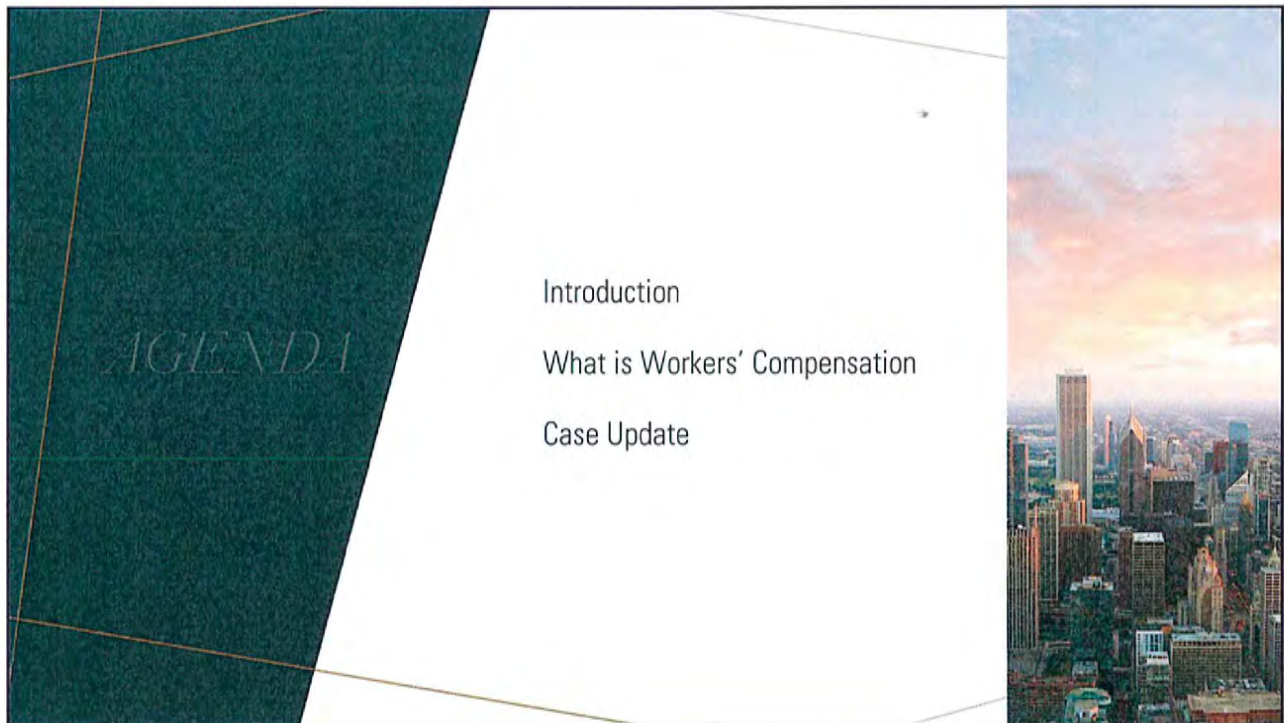
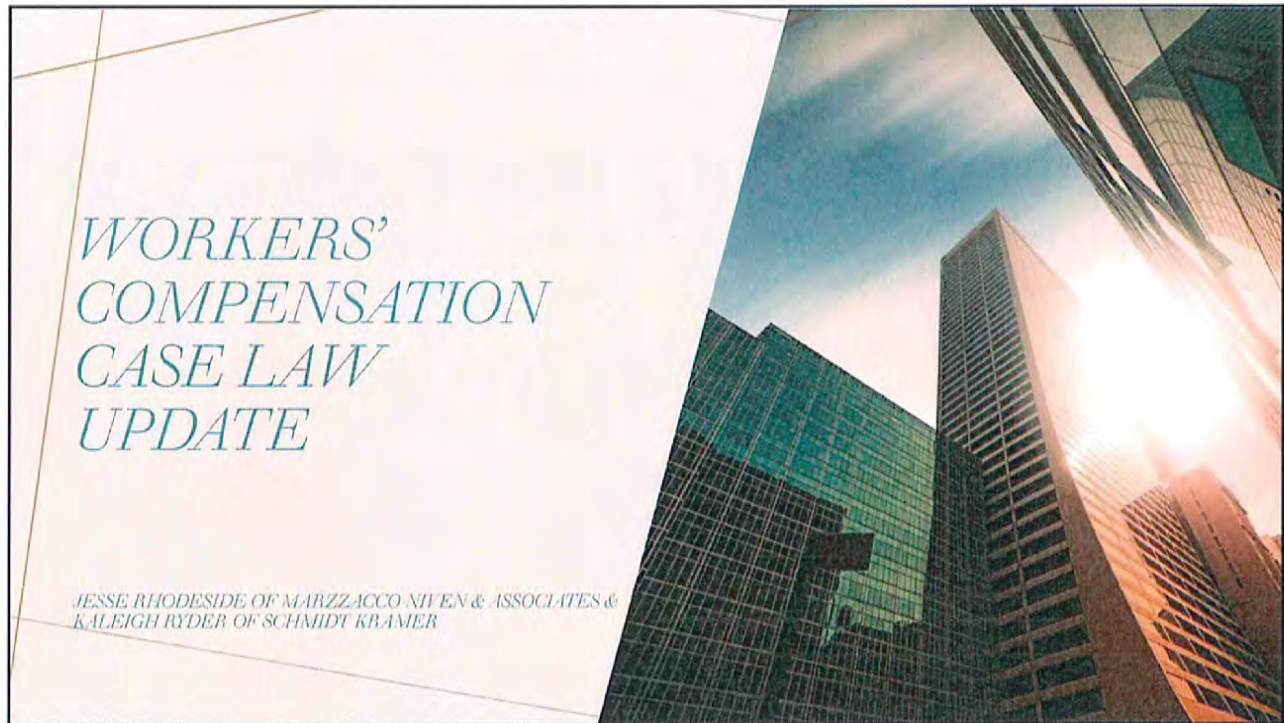
WHEN I WENT TO THE BAR QUIZ

- Isn't this all we need to know?
- RPC 1.1 Competence.
- RPC 1.3 Diligence.
- RPC 1.5 Fees.
- RPC 3.1 Meritorious Claims
- RPC 3.3 Candor Toward the Tribunal

SESSION #6

“Workers’ Compensation Case Law Update”

Presented by:
Kaleigh M. Ryder, Esquire
&
Jesse Rhodeside, Esquire





JACKIW V. SOFT PRETZEL FRANCHISE (WCAB)

329 A.3D 1152 (PA 2025)

MAXIMUM COMPENSATION RATE FOR SPECIFIC LOSS BENEFITS

MAXIMUM COMPENSATION RATE FOR SPECIFIC LOSS BENEFITS

Case Summary and Holding

- The Claimant required amputation of her right forearm which would provide for a specific loss benefit of 370 weeks plus a 20-week healing period.
- Employer asserted that this benefit should be calculated using TTD rates under 306(a) while the Claimant argued it should be calculated under Section 306(c)(25).
- The Supreme Court held that Section 306(c) calculations must be used for specific loss benefits and that the reference to a benefit cap from subsection (a) provides the floor for the Section 306(c) calculations.

Prior Calculations

- Claimant's AWW based on weeks of pay
- AWW is put into state CR chart for rate

January 1, 2025 Maximum	\$1,347.00
\$2,020.00	
\$1,010.26	66 2/3%
\$1,010.25	
\$718.33	\$475.00
\$718.32	
or Less	90%
72%	

New Calculations

- Straight 66 2/3% of Claimant's AWW subject to the state maximum and minimum amounts.
- State minimum is no less than what their TTD compensation rate would have been.

REIHL V. BEILER BROS., LLC (WCAB)

2024 WL 4806807 (PA, CMWLTH. 2024)

SPECIFIC LOSS BENEFITS

DEATH DUE TO WORK-INJURY

SURVIVABILITY OF SPECIFIC LOSS BENEFITS

Case Summary

- Claimant sustained a work injury in 2011 resulting in incomplete tetraplegia (bilateral loss of upper and lower extremities) & anxiety and received temporary total disability (TTD) wage loss benefits
- In 2020, Claimant filed petition to convert his TTD benefits to specific loss benefits, payable as 1,640 weeks of benefits. Prior to adjudication, Claimant passed away due to work-injury.
- WCJ denies conversion of benefits under Section 306(g) of the Act, which allows surviving widows to collect the specific loss benefits except when death results from the work-injury, finding that the Claimant's passing rendered the petition moot. WCAB affirms.
- Widow unable to pursue death benefits as death occurred outside 300 weeks from the date of injury.
- Commonwealth Court reverses WCJ & WCAB, finding that Section 410 of the Act directs the courts to look to entitlement of the benefits as of the date of the filing of the petition – was claimant eligible at that time? Provided claim meritorious, and filed prior to death, Section 410 allows recovery for beneficiaries

What This Means

- Section 410 survivability of benefits requires pursuing specific loss benefits prior to death
- Failure to pursue specific loss benefits prior to work-injury related death likely a bar to recovery
- Importance to recognize loss of use in claims, seek adjudication of any entitlements – no other WC benefits available to dependents in this case aside from specific loss

DURA-BOND COATING, INC. V. MARSHALL AND PI&I MOTOR EXPRESS (WCAB)

2024 WL 4807012 (PA, CMWLTH. 2024)

MEDICAID SUBROGATION LIENS

EMPLOYER RESPONSIBILITY FOR MEDICAID REIMBURSEMENT

Case Summary

- Claimant sustained a work injury in 2014, and Dura-Bond & PI&I were found responsible in 2016. DHS was reimbursed for expenses incurred through that determination which were paid by Medicaid.
- After claim acknowledged, Claimant received additional work-injury medical expenses which were paid by Medicaid, and DHS again sought reimbursement in 2021 of more than \$150,000 in new expenses. Employer refused, demanding submission of bills consistent with Section 306(f.1) of the Act, and filed review petition to determine their obligations to reimburse lien.
- Commonwealth Court examines interplay of Fraud and Abuse Control Act ("FACA") 62 P.S. §§1401-1418 and Section 306(f.1) of the WC Act
- FACA requires DHS to seek reimbursement from third parties responsible for medical treatment paid through Medicaid program
- Under Section 306(f.1) employers and WC insurers only liable to pay for treatment when proper billing forms and related medical records submitted in conjunction with the bills
- Commonwealth Court finds the statutes can be read to work in conjunction

What This Means

- WC insurers responsible for reimbursing DHS for work-injury related medical expenses only after provider / DHS supplies underlying medical records and billing forms so carrier can confirm causal relationship
- Carriers retain right to challenge reasonability / necessity of treatment through Utilization Review process, which allows outside review of treatment records prior to obligation to pay
- Potential conflict in statutes if treatment not reasonable and necessary, but causally related to work-injury?



PAYMENT FOR OVER-THE-COUNTER MEDICATIONS AND EQUIPMENT

Case Summary

- Claimant sustained a work injury in the nature of an aggravation of his pre-existing degenerative disc disease.
- Claimant's doctor prescribed him CBD oil in an effort to alleviate his pain symptoms instead of use of narcotic medications.
- Claimant submitted receipts for his purchase of the over-the-counter CBD oil which was used as directed by his physician.
- Employer's carrier refused to reimburse Claimant for his expenses because CBD oil is not a pharmaceutical drug¹.
- The PA Supreme Court held that the CBD usage fell within the confines of the phrase "medicine and supplies" and reasoned that any recommendation or part of a health care provider's treatment plan falls within this phrasing and is, thus, compensable. They also held that the cost containment provisions of the Act only apply to health care providers of which the Claimant is not.

What This Means

- Any part of a health care provider's treatment plan is compensable under the Act within the purview of the phrase "medicines and supplies" under Section 306(f.1)(1)(i).
- This includes over the counter medications such as Advil, lidocaine patches, and Tylenol as well as durable medical equipment such as canes, walkers, and heating devices.

1. In their brief to the PA Supreme Court, the Employer also attempted to argue that CBD oil has not been federally approved and, thus, is not compensable under the Act. This issue was not addressed because that is a matter for a Utilization Review not for the scope of this case.

WILLIAMS V. CITY OF PHILADELPHIA (WCAB)

312 A.3D 976 (PA. CMWLTH. 2024)
COUNSEL FEES ON MEDICAL EXPENSES

MEDICAL PROVIDERS MAY NOT RECOUP FROM CLAIMANT AMOUNTS DEDUCTED AS COUNSEL FEES

Case Summary

- Claimant sustained a work injury in 2021 which was acknowledged by her employer. She subsequently filed through counsel petitions to expand her description of injury, which was successful
- Contingent fee agreement called for payment of 20% of all benefits if successful in litigation, including medical benefits payable.
- WCJ and WCAB limit counsel fee to indemnity benefits only, finding future medical expenses speculative and Claimant did not demonstrate understanding of potential future exposure and liability.
- Commonwealth Court rules that, consistent with *Neves v. WCAB (Grayhound Lines, Inc.)*, 232 A.3d 996 (Pa. Cmwlth. 2020) (*en banc*), and prior case law, provided that the claimant understands the agreement, that a 20% contingent fee agreement is *per se* reasonable, and can be applied to future medical expenses.
- Court goes on to find that medical providers may not seek to recoup the 20% deducted directly from the injured worker, pursuant to Section 306(f.1)(7) which prohibits "balance billing" injured workers for any difference between providers' normal fee and the Medicare approved reimbursement rate

What This Means

- Claimant counsel may pursue a fee on medical expenses received pursuant to their representation, without incurring direct costs to injured workers
- Indirect costs – will providers agree to see injured workers whose counsel are receiving fees, or participating in the WC system at all?
- Due process implications – provider was not given opportunity to intervene in this litigation. Anticipated litigation from provider seeking to address its right to compensation for services

700 PHARMACY V. BWC FEE REVIEW HEARING OFFICE

315 A.3D 914 (PA CMWLTH. CT. 2024)

PROHIBITED SELF-REFERRALS

PROHIBITED SELF-REFERRALS

Case Summary

- 700 Pharmacy issued medications based on the prescription written by Dr. Miteswar Purewal
- Dr. Purewal was both the treating physician and part owner-founder of 700 pharmacy
- The fee review application submitted by the Pharmacy was not valid because this is a case of prohibited self-referral.
- Statute prohibits providers from referring a person for goods or services to an entity in which the provider has a financial interest.
- Here, Dr. Purewal had a financial interest in 700 Pharmacy as a co-owner of the business. He had his patient get prescriptions issued by him filled by the pharmacy he owned. Thus the applications were denied and dismissed.

What does this mean?

- No pharmaceutical bills from 700 Pharmacy in this case needed to be paid for by the provider due to prohibited self-referral.
- The Claimant is potentially out of pocket for the costs of these prescriptions.
- Moving forward, carriers can use this case to deny payment for prescriptions from Dr. Purewal which are filled by 700 Pharmacy.
- Looking forward, many claimant's physicians own shares or stakes in provider locations that they often refer their patients to. This could pose a threat to potential payment of medical bills for treatment rendered as this involvement is discovered by carriers.



THANK YOU

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