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Trusts & Estates

The newsletter of the Illinois State Bar Association's Section on Trusts & Estates

Who gets the painting on the living room wall?

BY CARY A. LIND

Distributing tangible property can be one of the most trying tasks that a fiduciary has, whether the distribution is through a Probate estate or through a trust. The issue is complicated by the fact that Courts hate fights over tangible personal property and clients hate fights but they sometimes engage in them nonetheless.

The value of the property rarely justifies the fees that it will take to resolve the disputes. This is especially true of property which has only "sentimental value." Each party should decide in advance how much he or she will have to spend to obtain such items. Otherwise, the client will receive a large bill and will not be happy.

Interested parties with obsessive-compulsive disorder are the worst cases. They usually do not want anything to be thrown out unless they have the ability to either take the items or make decisions with regard to them. It may take a Court order keeping that party out of the house as

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20 estate planning tips

BY MICHAEL H. ERDE

After practicing for over 48 years, there are a number of practical tips that I could relay to other attorneys who practice or will practice in Estate Planning as follows:

1. Blue Ink/Pen/Elderly

Have your clients sign in blue ink so judges and attorneys know which are the originals. Use the same blue ink pens in case the first runs out of ink, then a second in the same color ink and the document will not look like it has been tampered with.

Have your client initial the pages. Have a magnifier available for those who have trouble seeing. Also, offer a "signature guide," which is a plastic/cardboard form with an empty line down the middle so the client can sign in such space if he/she has trouble seeing.

Always test for competency or get a doctor's letter if such is questionable, and test with all others out of the room.

2. Disinheritance

Always mention an heir who is disinherited in a will or trust so that he/she is not forgotten.

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Who gets the painting on the living room wall?

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it is being emptied.

Many problems in dividing property can be avoided by proper planning. The will or trust should include the rules for dividing tangible personal property. My usual first choice is to allow the parties to divide the property as they agree within a specific amount of time. That leaves the issue solely up to the parties involved. Will each of the parties be charged with the value of the tangible property that they receive? If so, there also has to be a mechanism for determining the value. If there is *no* such charge, no valuation needs to be done.

What about items that are wanted by more than one party? My "best" alternative is to provide that for any "disputed" items, the parties shall "bid against each other" until only one is left. That allows those parties to "value" the items on their own. If the value of property each beneficiary receives is also offset against his or her distributive share rather than compelling payment of cash at the time the property is distributed, it makes the process even fairer, because each party has equal "bargaining" rights.

An alternative provision is to give the executor or trustee discretion to divide the property in equal shares, or in an unusual case, in unequal shares. This option should not be utilized where one of the beneficiaries is also the executor or trustee, because it puts the representative in a clear conflict of interest. Using the bidding option avoids the issue of improper use of discretion by the representative or trustee.

In the absence of specific direction, how do you divide the property?

One former Judge in the Probate Division would order the parties to take turns until the property was divided. I think it is fairer to modify that direction to substitute alternate choices, so that if there are two children, the choices will go A, B, B, A, A, B, B, A, etc.

Rather than resorting to such an arbitrary process, I have had client representatives circulate lists of the property and let the bidding take place in writing, via email or by some similar process. Using that mechanism, a representative can go several "rounds" until all the items are decided by the bidding.

Use of one of the above methods makes it less likely that there will be a fight over the painting on the living room wall. ■

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20 estate planning tips

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Do not leave said heir a small amount, i.e. $1, etc. because the executor/trustee will never get a receipt.

If a disproportional amount is left to a legatee, make sure you have a no contest clause, but most important that the said legatee will pay legal fees if he/she contests.

3. Joint Trust (Husband & Wife)

If a husband/wife joint trust is made, be sure to obtain a conflict waiver for representing both.

4. Or/And/If Living/Per Stirpes

Be careful of words like "or," "and," "if living," and "per stirpes." They must relate to the right persons. As an example, John and Betty "if living." Bob, John, "or Fred." Jim, John, "and" George.

5. Assignment or Bill of Sale

Use an assignment form to transfer personal property to a trust. If there is too much valuable personal property, the estate may be worth more than $100,000 and go through probate.

6. Trust Grantee, Deed Needs Accept (760ILCS 5/6.5)

Under 760 ILCS 5\6.5, a deed to a trust must be accepted by the Trust grantee.

7. Executor Access to Safety Deposits & Emails

Some financial organizations will not allow a trustee or agent into a safety deposit box unless there is specific language in the Trust or Power of Attorney to allow the trustee or the agent the authority to do so.

The same powers should be granted for passwords for digital matters, i.e. email, LinkedIn, etc.

8. Memorandum

We also provide for a 'Memorandum,' to give specified individuals certain personal property.

9. Direct Distribution

Allow for a direct distribution from a deceased individual from a pour over Will so that an asset does not have to be changed twice, i.e. once to his/her trust and then distribution from the trust.

10. Airfare Travel Points

Add language about airfare travel points in a trust.

11. No Contest – Pay Legal Fees

Have a no contest clause that causes the person contesting his or her share in a trust to pay all legal fees. This will certainly make said individual think twice before contesting the document.

12. Guns/Pets

If guns/or pets are being distributed, the guns should only be distributed to someone who is licensed. Special care should be placed in the trust for a pet who will take care of the pet; how much money it will cost; some pets like parrots may live longer than their keeper.

13. SNTs Protect

Supplementary Needs (special needs) language should be carefully drafted for any possible legatee that may obtain Medicaid or other government benefits.

14. Trust Too Long

If a trust is too long and the trustee(s) are too old, the number of trustees need be decided and the cost of the trust will be expensive.

15. DNR/Living Will/HIPPA

The agent under the Power of attorney for health and the doctor of the principal need some direction as to health matters.

This should be done with DNR (do not resuscitate), a living will, a HIPPA (Health Insurance Portability and Accountability Act of 1996) release form, cremation and body donation.

16. POA & Gift Powers

Does the power of attorney for property have a Gift power? This could cause conflicts but might be very important for Medicaid reasons, i.e. creating a Medicaid penalty and purchasing a qualified annuity for proper Medicaid planning.

17. POA Health & Religion

Some powers of attorney for health relate to religious matters.

18. Don't Put Personal Property in Will

Do not put many personal property matters in the will as specific bequests because the will becomes a public matter which anyone can read. An advantage of a Trust is that it is private.

19. Trustee Fiduciary Power to Keep Assets Uninvested

One of the powers in a trust should be the ability of a trustee to keep some funds uninvested so that bills can be paid quickly without cashing in a C.D., etc.

20. Trustee's Receipt

In a trust, draft the Trustee's receipt for a small amount, i.e. $10, because a trust needs to own something to be effective. ■

Michael H. Erde is the Principal of Michael H. Erde, P.C. in Chicago, Illinois and focuses his practice in elder law, estate planning and estate administration. An Illinois Super Lawyer for Elder Law as featured in Chicago Magazine, he is a prolific lecturer, author, and guest professor at The John Marshall Law School.

Flinn Report Summary – April 7, 2017 through June 30, 2017

BY JOSEPH P. O'KEEFE

The following is a summary of regulatory decisions of Illinois agencies reported in the Flinn Report that are related to trust and estate practices.

1. The State Employees Retirement System adopted amendments to revise the organization of the Board of Trustees to include the Comptroller, six trustees appointed by the Governor and confirmed by the Illinois Senate, four active members of the system with at least eight years of service elected by the members of the system, and two annuitants, elected by annuitants of the system. In addition, the amendments provide that if a member is receiving a disability benefit and develops another condition that prolongs the member's disability beyond the benefit period for the previous disability, the benefit will continue uninterrupted and they will not be required to obtain a new leave of absence. A physician's report supporting the new finding must be provided. (See 40 Ill Reg 15237 and 15342.)

2. The Department of Insurance adopted a new rule to provide that an insurance company cannot defeat, avoid, or rescind a policy covering automobile, fire, or personal lines (excluding life, accident, and health) after a loss has occurred and a claim has been filed because the company opted not to obtain information from the insured and the named drivers prior to issuing the policy. The rule defines "readily available information" as information from motor vehicle records maintained by the Secretary of State and Lexis Nexis. (See 40 Ill Reg 11232.)

3. The Department of Financial and Professional Regulation adopted amendments to the Credit Union Act to revise policies regarding credit union business loans to reflect recent rule changes by the National Credit Union Administration (NCUA). The revisions define an associated borrower, commercial loan, common enterprise, and other terms. (See 40 Ill Reg 14443.)

4. The Department of Children and Family Services proposed amendments to adoption services for children for whom the Department is legally responsible to implement recent amendments to the Adoption Act. The rulemaking requires disclosures to prospective parents of requests for post adoption contact by the birth parent, and who selected the adoptive parents and why. The rulemaking also amends various definitions under the Act. (See 41 Ill Reg 4528.)

5. The Department of Insurance adopted amendments to implement recent changes to Federal law, and the new rulemaking exempts financial institutions from providing annual privacy notices to customers if its policies regarding release of information to third parties meets specific criteria. (See 40 Ill Reg 15609.)

6. The Department of Financial and Professional Regulation proposed an amendment to capital requirements for banks and trust companies to eliminate rules that are outdated, and no longer have statutory authority. (See 41 Ill Reg 4866.)

7. The Department of Financial and Professional Regulation amended internship requirements for funeral directors and embalmers, to address late intern case reports and to clarify the timing for repeat intern applicants to avoid conflict with the requirement that licenses cannot be renewed more than twice. The rulemaking requires the applicants for a funeral director and embalmer license to include a statement of the place of practice, ownership, and the names and license numbers of all funeral directors and embalmers that are associated with the applicant. (See 41 Ill Reg 5114.)

8. The Department of Revenue adopted an amendment to implement the State Tax Prepare Oversight Act, to define an income tax preparer as anyone who prepares or employs one or more persons to prepare income tax returns or refund claims. The following persons are not considered "tax preparers" under the Act: those providing administrative support including typing and copying; those who prepare returns for their own employers; those who prepare returns as a fiduciary; and those who prepare refund claims in response to an audit or notice of deficiency. As of January 1, 2017, income tax preparers must include their federal preparer tax identification number (PTIN) on any Illinois income tax return they prepare, and they also must sign as preparer. (See 41 Ill Reg 2025.)

9. The Department Revenue proposed amendments to codify the statutes establishing the amount of the standard personal exemption for tax payers, additional exemptions for the blind and elderly, and the application of the cost of living adjustments over future years. (See 41 Ill Reg 6436.)

10. The Department of Insurance proposed

amendments to Long Term Care Insurance to implement changes for Long Term Care Insurance adopted by the National Association of Insurance Commissioners. Changes include annual rate certification requirements, and required notice to consumers that for any notice of an increase in rates, the consumer must be notified that the consumer may reduce insurance coverage in lieu of premium increases. (See 41 Ill Reg 6835.)

11. The Office of the Treasurer adopted new rules effective June 7, 2017, establishing tax advantage savings programs for disabled and blind persons. These ABLE accounts are open to persons with blindness or a disability status determined under the Federal Social Security Act, if the disability occurred before the age of 26. Funds deposited in such an account can be used for certain qualifying expenses, and not included among the assets used to determine eligibility for Social Security or other benefits. (See 41 Ill Reg 789.) ■

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Technology at end-of-life: Estate planning for Millennials

BY STEVEN T. MANN, CAUGHEY, LEGNER, FREEHILL, EHRGOTT & MANN, LLP

If you ever want your worst nightmares about technology realized in television form, watch the British series turned Netflix series, *Black Mirror*. In one episode, during the second season, we find a romantic young couple who has moved to the countryside.[1] The young man, Ash—presumably leaving no Last Will and Testament—is killed in an unfortunate event while at the same time his love, Martha, discovers she is pregnant. Martha then subscribes to a service which essentially uses Ash's past online communications and social media profiles to create a virtual Ash who eventually morphs into android Ash. Spoiler alert: The problem with android Ash is that he isn't anything like the actual, living Ash, but is rather, an incomplete and somewhat unidimensional representation of the latter.

As estate planners, we owe it to our clients to make sure they, unlike Ash, can control how they are represented post-mortem. The fast and ever-changing pace of technology, however, is making this process more and more difficult.[2] Returning to our friend Ash for a moment, consider the following example:

Ash comes to your office prior to his move to the countryside with Martha. He owns an art business with a member-partner, Cameron, named Acme Art, LLC. The art business currently has a website along with a Facebook page that customers can "like". Ash currently has a Microsoft OneDrive cloud account which contains a mix of both personal and business files. Ash also has his own Facebook account, Twitter account, and Gmail account which doubles as both a personal and business account. Ash is highly concerned that his wealth and assets remain private as he has specific siblings in California who he is disinheriting and whom would certainly "arise from the ashes" should they find out his net worth at his death. Although Ash currently lives in Illinois, but he may eventually move to Michigan. He mentions on the way out the door that he initially thought about using LegalZoom to draft his Will, but his friend, Martha, had good things to say about your law firm. Martha, he indicates, will be the executor of estate and receive the majority of his inheritance.

The fact that Ash appears to be an avid user of social media, email, and cloud technology should set off some alarm bells which ring--Revised Uniform Fiduciary Access to Digital Assets Act (2015).[3] The Act, which guides the rules of engagement for when a custodian, for example, Facebook, Twitter, or Gmail, governs a fiduciary-executor's access to online assets or communications on the death (or even prior in the case of a guardian) of a loved one, and when they do not.[4] Ash's situation is particularly complex because he is mixing business and personal assets under the same custodians. His Gmail and OneDrive accounts, for example, contain both his personal and business information. Ash may consent, in his Will, to have certain information disclosed to a fiduciary for business continuity purposes, but ask that his personal correspondence be kept private in an effort to block Martha from creating an automaton of himself. If Ash addresses none of these issues in his Will, Gmail (Google) assures that in certain circumstances, although which circumstances are not spelled out, it *may* provide content from the deceased user's account.[5]

Ash also has significant contacts to Facebook. Facebook allows you to pick a legacy contact who can manage one's account after death.[6] This is what is known under the Digital Assets Act as an "online tool" or a "service provided by a custodian that allows an agreement...to provide directions for disclosure or nondisclosure of digital assets to a third person."[7] In the event that Ash has picked a legacy contact, let's say someone other than Martha, the Digital Assets Act will only allow access to Facebook to the legacy contract, rather

than Martha, who has been named executor in the Will.[8] It might be important to ask Ash who has access to manage, create, and edit pages on his Acme Art Facebook Page. If Ash was the sole administrator for the page which markets to multiple customers, it is important to determine how best to transition Ash's business interests to his partner, Cameron, rather than leaving it to chance. As a cautionary tale, consult the 2015 Georgia Supreme Court case of *Davis v. VCP South*, LLC et al.[9]

Ash wishes for privacy and, therefore, naturally, a discussion regarding Wills versus Trusts will commence. It also becomes critical to discuss Ash's estate's potential online exposure in light of a potential state court probate.[10] The Illinois Supreme Court issued Order M.R. 18368, effective January 1, 2013 requiring state courts to accepting the e-filing of documents. Information that was only accessible previously through a visit to the local court house, may now be available through the use of a standard web browser. As the Illinois circuit courts continue to roll out local orders pertaining to E-filing, it is important to be aware that some circuits have proposed exceptions for the handling of testamentary documents,[11]where others have not.[12]

Ash's intentions to move to Michigan should also raise some red flags--particularly in light of his LegalZoom account. It is important to stress to Ash that he should remove or destroy any online or draft wills that may contradict his current estate planning activities. Michigan and a handful of other jurisdictions have adopted section 2-503 of the Uniform Probate Code that allows a court to consider electronic documents under the harmless error rule which may not comport with the formalities of the Wills Act.[13] Such rule was adopted by certain states, such as Michigan, based on the success of such legislation in Australia and the Manitoba province of Canada. More and more, courts are struggling with the interplay of traditional wills with later-in-time, procedurally deficient, LegalZoom wills.[14]

Finally, although Ash does not know this now, he meets his end tragically. Crowdfunding efforts for funeral expenses or other end-of life costs through websites such as GoFundMe have witnessed an exponential increase for tragic death circumstances. The author of this article recently found 51,632 End of Life Cost fund memorials for deceased loved ones on GoFundMe.com. Is Ash's Will addressing the possibility of a crowdfunding windfall? In one Oklahoma estate, the proceeds from a GoFundMe account effort for a man that was shot and killed by law enforcement, failed to find its way to his estate when an estate dispute broke out between the deceased's girlfriend and deceased's sister.[15] Court intervention was ultimately required.

The days of estate planning, where we remind our clients to write down the location of the safety deposit box keys are long gone. We must now ask our clients to organize their passwords to critical accounts to aid the executor in managing these accounts. We need to understand the scope of our client's digital footprint and help our clients organize the effect of that footprint, post-mortem. Each online service comes with its own terms-of-service agreements and tools for closing/ending/memorializing accounts of which we, as practitioners, must familiarize ourselves. The testamentary documents that we draft for our estate clients can impact what information is obtainable by the executor and could spell out the proper uses of such information. Creation of a virtual "you" may be one prohibited use. How the administrator is to deal with unanticipated estate donations from crowdfunding sites may also require some thought, particularly if large sums are raised. Finally, jurisdictional awareness become relevant, particularly with the adoption of the harmless error doctrine and the increasing rise of e-filing and its effects on privacy.

Although it may be too late for Ash, it is important that we occasionally reach out to our current estate clients just to make sure we are aware of their digital activities. And for our new millennial clients who are beginning to contemplate their own mortality, our we ready to address and discuss the myriad of digital activities in which they engage on a daily basis in relation to their estate plans? ■

This article was originally published in the July 2017 issue of the ISBA's Legal Technology newsletter.

1. *Dark Mirror: "Be Right Back"* (Netflix, Channel Four Television Corporation, Feb. 11, 2013)

2. For an exhaustive discussion on the current pitfalls and challenges of estate planning the context of technology, the author highly recommends the law review article, David Horton, *Tomorrow's Inheritance: The Frontiers of Estate Planning Formalism*, 58 B.C. L. Rev. 539 (March 2017).

3. 755 ILCS 70/1, *et. seq* (P.A. 775 eff. 8-12-16). The Uniform Law Commission promoted the Revised Uniform Fiduciary Access to Digital Assets Act which was complete in 2014 and revised in 2015 with the support of the AARP, National Academy of Elder Law Attorneys, Facebook, Google, and The Center for Democracy and Technology. The complete Act with prefatory notes and comments for each section can be downloaded at http://www.uniformlaws.org.

4. 755 ILCS 70/4 (digital assets); 755 ILCS 70/7 (electronic communications)

5. See Submit a request regarding a deceased user's account https://support.google.com/accounts/troubleshooter/6357590?hl=en

6. www.facebook.com/settings?tab=security&sections=memorialization&view

7. 735 ILCS 70/2(16)

8. 755 ILCS 70/4(b) - "(b) If a user has not used an *online tool*.., the user may allow or prohibit in a will...disclosure to a beneficiary"

9. 297 Ga. 616, 774 S.E.2d 606. Widow of deceased vein care specialist took control of medical practice Facebook page claimed ownership of the page who subsequently took down the page as a means of gaining leverage in an LLC member buyout negotiation; See also www.facebook.com/help/289207354498410, "What are different Page roles and what can they do?"

10. See Hon. Paul H. Anderson, *Future Trends in Public Access: Court Information, Privacy and Technology, in Future Trends in State Courts*, 10-11, 14-16 (National Center for State Courts ed. 2011)

11. See Local Rule 2.60, Twenty-Third Judicial Circuit, General Order 14-6, DESIGNATION OF ELECTRONIC FILING CASE TYPES, "(b) Wills or other testamentary documents, exhibits, or documents that are filed directly with the judge (e.g. proposed orders) shall not be accepted for filing electronically."

12. See generally, Circuit Court Rule Order 13-14, Twentieth Judicial Circuit.

13. MICH. COMP. LAWS § 700.2503 (2016); UNIF. PROBATE CODE § 2-503 (UNIF LAW COMM'N 1969) (amended 2010).

14. See *Litevich v. Probate Court, District of West Haven*, 2013 WL 2945055 (May 2013) (unpublished).

15. See Samantha Vicent http://www.tulsaworld.com/news/courts/attorney-gofundme-money-has-still-not-been-provided-to-terence/article_8e5d7355-f3b2-52d4-90ef-9faad0cde3f2.html (Nov 25, 2016).

Bank does not owe a duty of ordinary care to maintain and guard a customer's accounts and protect the account holder from fraud, abuse and waste

BY KEVIN J. STINE, GENERAL COUNSEL, FIRST CO BANCORP, INC.

The First District Appellate Court recently issued its decision in *Epstein v. Bochko,* 2017 IL App (1st) 160641 (Ill. App. Ct. 2017).

Anna, a 95-year-old woman living alone, eventually required a caregiver. On May 31, 2008, the caregiver took Anna to the caregiver's credit union to open a joint account in the name of the caregiver and Anna. The joint account was opened with a check for more than $50,000 from Anna's account at another bank. The credit union manager testified that Anna was present, that Anna asked to have the account opened, and that Anna signed her own name to the account agreement. The manager also noted that Anna walked into the credit union without assistance.

In the next month, more than $300,000 was transferred or deposited into the joint account at the credit union from Anna's accounts at other financial institutions. From July-October 2008, more than $250,000 was transferred by the caregiver from the joint account at the credit union to bank accounts in the Ukraine.

On October 30, 2008, a psychiatrist determined that Anna was disabled by dementia, and that she had been suffering from dementia for several years. The psychiatrist testified that when Anna went to the credit union on May 31, 2008, she was suffering from dementia. *However, the psychiatrist could not give an opinion regarding how Anna presented herself to the credit union manager on that date.* Based upon the psychiatrist's report, Anna was declared a disabled person and a public guardian was appointed for her estate.

The public guardian filed an action against the credit union asking the court to order the credit union to reimburse Anna for all of the money wired from the credit union account to the Ukraine. The public administrator alleged that banks, savings & loans and credit unions generally owe their customers a duty of ordinary care to maintain and guard their customer's accounts, and protect the account holder from fraud, abuse and waste. The administrator further alleged that the account agreement between Anna and the credit union was a nullity, because Anna was incapable of entering into a contract at the time she signed the account agreement with the credit union on May 31, 2008.

The credit union responded that it did not owe a duty of ordinary care to guard a customer's accounts and protect the account holder from fraud, abuse and waste. The credit union further asserted that there was no evidence suggesting that anyone at the credit union knew or should have known that Anna was disabled when she came to the credit union to open the joint account.

The trial court agreed with the credit union and found that neither the Uniform Commercial Code nor any Illinois authority imposed a tort duty of ordinary care between a depositor and a bank, except with regard to negotiable instruments. Since the wire transfers to the Ukraine were not negotiable instruments, the credit union did not breach any duty owed to Anna. The trial court further found that there were no material facts to suggest that the credit union either knew or should have known of Anna's condition at the time she opened the joint account. The only facts presented concerning Anna's mental condition on the date the account was opened was the testimony of the credit union manager, who stated that Anna appeared to have capacity to open the account.

On appeal, the administrator contended that it was irrelevant whether the credit union knew or should have known about Anna's incompetency, since Anna clearly lacked the capacity to enter into the account agreement with the credit union, and accordingly, the contract should be rescinded and the credit union should reimburse Anna for the loss of her life savings.

The credit union did not dispute Anna's incapacity at the time she opened the account, but rather, asserts that the credit union's lack of knowledge of her condition, as well as the fact that the credit union did not improperly convert Anna's funds or otherwise defraud her, makes the credit union not liable. The appellate court agreed. While the appellate court noted that the psychiatrist stated he believed Anna's dementia had been present for several years, *the psychiatrist could not state how Anna presented herself to the credit union when she opened the account.* The appellate court found that it was clear from the testimony of the credit union's manager that the credit union had no knowledge of Anna's incompetency when she signed the account agreement. There was no other testimony to the contrary. The appellate court noted "a contract made with a lunatic in good faith, without any advantage taken, is valid both in equity and at law, and where a contract is made in ignorance of

the insanity, with no advantage taken and in good faith, a court of equity will not set aside the contract if the parties cannot be restored to their original condition (citing supreme court decision of *Walton v. Malcom*, 264 Ill. 389 (1914)." The appellate court noted that in this case, the credit union entered into the account agreement with Anna in good faith, without taking advantage of its position, and in ignorance of Anna's mental capacity. Accordingly, the credit union was entitled to rely upon the legal presumption that every person is sane until the contrary is proven. *In re Estate of Elias,* 408 Ill.App.3d 301 (2011).

The special administrator relied upon Jordan v. Kirkpatrick, 251 Ill. 116 (1911). In that case, a woman and her husband executed a $1,000 promissory note and mortgage payable to Mr. Kirkpatrick. The wife was determined to be incapacitated, and her conservator filed an action to cancel the note and mortgage, alleging that the wife was a disabled person and incapable of executing the note and mortgage as a matter of law. The trial court found that the wife was insane at the time that the note and mortgage were signed, and ordered that the note and mortgage should be cancelled and set aside, even though the court noted that Kirkpatrick had no knowledge of the wife's mental condition at the time the note and the mortgage were made. The Illinois Supreme Court affirmed the trial court's ruling, relying on the fact that Kirkpatrick was seeking the benefit of the bargain he made with the mentally incompetent person—Kirkpatrick was seeking to enforce the note and mortgage.

In Anna's case, the court found that the credit union received no benefit from the opening of the account or the wire transfers out of the account. The credit union was not seeking to recover anything against Anna. Furthermore, in the Jordan case, Mr. Kirkpatrick at no time talked to the incapacitated person (and the court implied that if he would have spoken to her, he would have known she was incapacitated). Accordingly, the appellate court distinguished the Jordan case, and found that the credit union had no duty to reimburse the funds to Anna's estate. In Anna's case, it was the caregiver who fraudulently converted the funds, not the bank.

The case may have had a different outcome if the credit union was owed money by one of the joint account owners (either Anna or the caregiver), and set off the funds in the joint account to pay the loan. If the credit union had set off funds in the account for debts owed by the caregiver, the credit union would have received a direct benefit from the account, and may have been required to pay back the funds to Anna's estate. ■

This article was originally published in the July 2017 issue of the ISBA's Commercial Banking, Collections & Bankruptcy Law newsletter.

Getting to know the Trusts & Estates Council members

BY COLLEEN L. SAHLAS, CO-EDITOR OF THE TRUSTS AND ESTATES NEWSLETTER

In last month's issue, we introduced two of the 13 new members who have joined the Trusts & Estates Council since March, 2015: Kerry R. Peck and Kathryn Van Eeuwen. This month we're spotlighting two more: Steven M. Novak and Zisl Edelson. We'll continue to introduce our Section's Council members in the coming months. We're grateful for each of our members who dedicate their time, expertise and experience to our Section's Council.

Steven M. Novak

Steven M. Novak concentrates his practice solely in probate law, including trust, estate, and guardianship litigation and administration, with an emphasis on contested trusts, estates, and guardianships. In addition to representing heirs, beneficiaries, and other interested individuals, Mr. Novak has represented individual and corporate fiduciaries, including financial institutions. Steven is also routinely appointed to serve as Guardian ad Litem and Special Administrator in the Probate Division of the Circuit Court of Cook County.

In 2017, Mr. Novak was named an Illinois Super Lawyers Rising Star for his outstanding work in Estate & Trust Litigation.

Prior to joining Leonard J. LeRose, Jr., Ltd., Mr. Novak served as a supervising staff attorney at the John Marshall Veterans Legal Support Center & Clinic. During his time at the Clinic, he managed the Veterans Benefits division, which focused on assisting veterans appealing the denial of their benefits. On behalf of veterans or their family members, Mr. Novak drafted numerous appellate briefs and co-authored two amicus briefs to the United States Supreme Court dealing with veteran's law issues.

Mr. Novak graduated cum laude from the John Marshall Law School in 2010, while serving as the Staff Editor for The John Marshall Law Review. He also received three CALI Awards from John Marshall in the areas of Property, Civil Procedure, and Evidence. Prior to attending law school, Steven graduated from the University of Illinois at Urbana – Champaign in 2007, earning a Bachelor of Arts in History.

Zisl Edelson

Zisl Edelson, of Edelson Law, LLC, is an estate planning, elder law and special needs attorney, in Skokie Illinois. She has practiced exclusively in this area since 2014, and is devoted to representing the best interests of her clients, especially those who are vulnerable due to age and disability.

Ms. Edelson is a graduate of the University of Chicago Law School and Graduate School of Business (1987), where she received both her J.D. and M.B.A. degrees. She was a research assistant to the Hon. Richard Posner, in the area of law and economics. She received her undergraduate degree from Sarah Lawrence College, where she majored in Latin and Greek literature, and was published in the Sarah Lawrence College Literary Review.

After starting her legal career at Mayer Brown, as a corporate and commercial real estate lawyer, and before starting her solo estate and elder law practice, Ms. Edelson practiced law in a variety of disciplines and settings, which has given her a broad exposure to the law and the needs of clients. She has worked as a Project Safe attorney at the Legal Assistance Foundation of Chicago, where she worked with victims of domestic violence, representing clients in federal civil rights cases including police misconduct and free speech issues, and criminal appeals. Ms. Edelson has also worked at prominent firms in the areas of commercial real estate, corporate law, litigation, finance and federal tax law. She has also worked as a consultant on corporate and financial fraud investigations for a nationally-recognized forensic accounting firm, and assisted the managing partner with writing expert reports and preparing for expert testimony.

Ms. Edelson has published articles on white-collar crime, expert witness testimony and damages awards in complex civil litigation cases.

Ms. Edelson's Bar Admissions include the Illinois Supreme Court, the Northern District of Illinois General Bar and the Northern District of Illinois Trial Bar. ■

Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

October

Wednesday, 10-04-17 LIVE Webcast— Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

Thursday, 10-05-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 10-05-17 – Chicago, ISBA Regional Office—The New Bankruptcy Rules and Advanced Topics in Consumer Bankruptcy. Presented by Commercial Banking, Collections & Bankruptcy. 8:55am – 4pm.

Thursday, 10-05-17 – LIVE Webcast—The New Bankruptcy Rules and Advanced Topics in Consumer Bankruptcy. Presented by Commercial Banking, Collections & Bankruptcy. 8:55am – 4pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Beginner DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:45 pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

Friday, 10-06-17 – Chicago, ISBA Regional Office—Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

Monday, 10-09-17 – Chicago, ISBA Regional Office—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Monday, 10-09-17 –Fairview Heights—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Tuesday, 10-10-17 – Webinar—Outlook for Mac. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 10-11-17 – LIVE Webcast—Enforcing Illinois' Eviction Laws: A Basic Guide to Landlord Remedies and Tenant Rights. Presented by Real Estate Law. 12-1 pm.

Wednesday, 10-11-17 – LIVE Webcast—Working Effectively with Interpreters. Presented by Delivery of Legal Services. 2-3:30 pm.

Thursday, 10-12-17 – Chicago, ISBA Regional Office—Illinois Medicaid Rules and Procedures Bootcamp. Presented by Elder Law. 8:15 am – 4:30 pm.

Thursday, 10-12-17 - Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Monday-Friday, 10-16 to 20, 2017 – Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training Master Series. Master Series. Monday, Wednesday, Thursday and Friday 8:30-5:45. Tuesday 8:30-6:30. ■

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