

## **JURISDICTION** [R.C. 2109.50]

Probate court has jurisdiction when:

- Court has jurisdiction of administration of an estate, testamentary trust, or guardianship; or
- Person subject of complaint resides in that county

Court has no jurisdiction over real estate

## **COMPLAINTS MADE BY** [R.C. 2109.50]

- A person interested in the estate, testamentary trust, or guardianship
- The creditor of a person interested in the estate, testamentary trust, or guardianship

## **COMPLAINTS MADE AGAINST** [R.C. 2109.50]

- Any person suspected of having concealed, embezzled, or conveyed away or of being or having been in the possession of any moneys, personal property, or choses in action of the estate, testamentary trust, or guardianship.

## **PROCEEDING** [R.C. 2109.50]

- 1) Complaint filed in probate/court's own motion
- 2) Issue citation/other judicial order to compel person suspected to appear to be examined, on oath
  - May be issued into any county in Ohio
  - Service and return by officer to whom it is delivered (Officer liable for negligence)
  - Before issuing extra-county citation, judge may require complainant to post security in an acceptable amount and form to cover costs of proceeding (e.g., travel expenses of person subject to extra-county citation)
- 3) Examination of person suspected, court may swear witnesses (examination and answers in writing, signed by party examined, filed in court)

- 4) Costs generally assessed against complainant
- 5) Burden of proof by preponderance of the evidence

## **IMPRISONMENT FOR DISOBEYING CITATION** [R.C. 2109.51]

- Court may commit person to county jail who fails to answer interrogatories; remain until complies

## **JUDGMENT ON COMPLAINT** [R.C. 2109.52]

- Jury may be demanded by either party
- Guilty verdict: court may assess damages, order return of asset, order restoration in kind
- Court may issue citation into any county in Ohio requiring any person who claims interest in assets to appear before the court (hearing to determine title)
- Except when person found guilty is fiduciary, judgment for fiduciary. If no fiduciary in Ohio, judgment for the state
- Judgment in amount of:
  - Moneys/value of personal property/ choses in action concealed, embezzled, conveyed away, or held in possession; **PLUS**
  - 10-percent penalty and all costs
  - Judgment reduced to extent of value of anything restored or returned in kind

## **FIDUCIARY FOUND GUILTY** [R.C. 2109.52, 2109.53]

- Judgment for the state against the fiduciary for amount of moneys or value of personal property or choses in action concealed, embezzled, conveyed away, or held in possession, together with penalty and costs

- Fiduciary removed with successor appointed
  - Removed fiduciary; no compensation
  - Charged amount of judgment
  - Fiduciary's property liable for satisfaction of judgment on execution issued on judgment

### **CERTIFICATE OF JUDGMENT; DELIVERY TO CLERK OF THE COURT OF COMMON PLEAS**

[R.C. 2109.54]

- 1) Fiduciary delivers certificate of judgment to clerk of court of common pleas
- 2) Probate court completes and delivers certificate to fiduciary on demand
- 3) Clerk issues execution of court of common pleas for amount of judgment and costs accrued or that may accrue on judgment
- 4) Further proceedings on execution same as if judgment rendered in court of common pleas

### **JUDGMENT IN FAVOR OF STATE [R.C. 2109.55]**

- When no fiduciary in Ohio, prosecuting attorney files certificate in clerk's office and executes on judgment
- Prosecuting attorney pays money realized upon execution to county treasurer for use of estate, testamentary trust, or guardianship (probate court allows reasonable attorney compensation)

### **CONVEYANCES [R.C. 2109.56]**

- All gifts, grants, or conveyances of real property, rents, or personal property and all bonds, judgments, or executions made or obtained with intent to avoid the purpose of concealment proceedings, or in contemplation of any examination or concealment complaint, are void