

New Judges
Orientation: Part II
Probate Track

May 15-16, 2025
Thomas J. Moyer
Ohio Judicial Center
Columbus



THE SUPREME COURT *of* OHIO
JUDICIAL COLLEGE



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New Judges Orientation: Part II – Probate Track

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AGENDA

THURSDAY, MAY 15

Faculty: Hon. Kelly Badnell, *Richland County Court of Common Pleas, Probate Division*
Hon. James T. Walther, *Lorain County Court of Common Pleas, Probate Division*

9:00 Duties of a Probate Court Judge – Overview Clerk of Your Own Court

9:45 Estate Administration

10:30 Adoption

11:00 Break

11:15 Guardianship

12:00 Lunch – Pick up boxed lunches and reconvene

12:15 Attorney Fees

12:45 Administrative Duties

1:45 Local Rules

2:00 Miscellaneous/Current Issues

2:30 General Questions and Answers

3:00 Conclude

FRIDAY, MAY 16, 2025

Faculty: Hon. James T. Walther, *Lorain County Court of Common Pleas, Probate Division*
Hon. Philip Alan B. Mayer, Retired, *Richland County Common Pleas Court, Probate Division*

9:00 Discussion: Successes, Challenges, and Questions

9:15 Will Contests and Trial Management

10:15 Break

- 10:30 Name Changes/Name Conformities**
- 11:15 Birth Certificates/Birth Corrections**
- 12:00 Lunch – Pick up boxed lunches and reconvene.
- 12:15 Trusts**
- Special Needs
 - PSA
 - Removal of Trustee
 - Eminent Domain
 - Contempt
 - Service
- 2:00 **Special Topics**
- BCI
 - Media (recording)
 - Local rules
- 2:30 **Open Discussion – Questions, Challenges, etc.**
- 3:00 Conclude

FACULTY BIOGRAPHIES

KELLY L. BADNELL has served as Judge of the Probate Division of the Richland County Common Pleas Court since February 2021. Judge Badnell currently serves as the Presiding Judge of the Richland County Common Pleas Court. Judge Badnell received two undergraduate degrees from Washington & Jefferson College, a B.A. in Business Administration and a B.A. in Political Science. She earned her Juris Doctorate Degree from Ohio Northern University, Claude W. Pettit College of Law. Judge Badnell is a former assistant prosecutor and was engaged in the private practice of law in civil litigation for over 20 years.

Judge Badnell is a member of the Ohio Association of Probate Judges, the National College of Probate Judges and the Ohio State Bar Association. She serves as a member of the Probate Law and Procedure Committee and the Probate Forms Committee. She has been a presenter for the Ohio Judicial College.

Judge Badnell is married to attorney, David C. Badnell, and they have two children.

PHILIP ALAN B. MAYER, (Ret.) was in the private practice of law for 25 years prior to being elected in 2002 as Judge of the Probate Division of the Richland County Common Pleas Court located in Mansfield, Ohio. He received his Bachelor of Science Degree and Juris Doctorate Degree in Law from the Ohio State University and Ohio Northern University, respectively. Judge Mayer is a current member of the Executive Committee and a past president of the Ohio Association of Probate Judges. He has served as a member of the Ohio Judicial Conference Executive Board and is a member of the Conference's Probate Law and Procedure Committee, Public Confidence and Community Outreach Committee, and the Judicial Advisory Group. He is also a faculty member of the Ohio Judicial College, a member of the National College of Probate Judges as well as the Ohio and Richland County Bar Associations. He is involved in various other judicially oriented committees, sub-committees, and summits, including Summits on Aging. Judge Mayer retired February 9th, 2021.

JAMES T. WALTHER is currently serving his second term as Judge of the Lorain County Probate Court and the Lorain County Veterans Treatment Court. He previously served for 11 years as a staff attorney in the General Division of the Lorain County Court of Common Pleas, Acting Judge of the Lorain Municipal Court and as an assistant law director/prosecutor for the City of Lorain. Before his election to the bench, Judge Walther was in private practice concentrating on civil litigation and probate matters. Judge Walther received his BBA in Economics from Cleveland State University and his JD from Cleveland Marshall College of Law in 1987. Judge Walther is the past District Chairman for Boy Scouts of America for the Great Frontier District, which serves all of Lorain County. In 2015, he was the first recipient of the Lorain County Friend of 4-H Award and in 2017 received the Ohio Friend of 4-H Award. He is a frequent presenter around the State of Ohio for the Ohio Judicial College and other legal organizations. Judge Walther is a member and Treasurer of the Ohio Association of Probate Judges and serves on the Executive Committee of the National College of Probate Judges. Judge Walther also serves on the Subcommittee for Adult Guardianship, the Ohio Supreme Court's Commission on Technology and the Courts, the Ohio Attorney General's Elder Abuse Commission and the Ohio Judicial Conference Probate Law and Procedure Committee. He is a member of the American Judges Association, National Guardianship Association, and Ohio Guardianship Association. He also is a member and serves on various committees of the Lorain County, Ohio State and American Bar Associations.

Probate Topics

- I. Preserving/Oversight of Minors' Money
- II. In re Adoption of Y.E.F./Indigent Representation
- III. Financial Disclosure Form
- IV. Probate Court Costs and Funding
- V. Jury Trials & Best Practices in Probate Court

Hon. James T. Walther
Lorain County Probate Court

Hon. Philip Alan B. Mayer
Retired
Richland County Common Pleas Court,
Probate Division



I. Preserving/Oversight of Minors' Money

Preserving/Oversight of Minor's Money

April, 2021

Hon. Philip A. Mayer (Ret.)

I. Overview

- a. Jurisdiction over minor's money.
 - i. Minor inherits legacy as a beneficiary of an estate.
 - ii. Minor entitled to receive money as a beneficiary of an insurance policy (ies).
 - iii. Minor entitled to receive money as a beneficiary of a federal, state, municipal, or private retirement/ pension plan.
 - iv. Minor entitled to a distribution from a trust.
 - v. Minor entitled to receive money as a result of an injury or tort claim to person and/or property.
 - vi. Minor entitled to receive money and Court considers establishment of an Ohio Transfer to Minor's Account. **R.C. 5814.02(E) and 5814.07**

II. Philosophy of the Court

- a. When Should a minor receive control and oversight of the minor's money?
 - i. Before attaining the age of majority, direct to minor. **R.C. 2111.131 (A)(3) and R.C. 2111.181**
 - ii. Upon attaining age of majority. **R.C. 2111.18**
 - iii. After attaining the age of majority and if so, when and under what circumstances? (See Ohio Transfer to Minor's Account, **R.C. 5814.02 (E)** and Trust to Age 25, **R.C. 2111.182**)
 - iv. Structured Settlement in appropriate circumstances (R.C. 2111.18 claims)
 - v. A mix of the above.

III. Tools of Probate Court, aka Gizmos, Gadgets, Whatnots, and What Cha Call Its

- a. Estates
 - i. If less than \$5,000.00, **R.C. 2111.131**, the Court can order minor's money paid to:
 - a. Guardian of the person;
 - b. Minor's parent(s) **R.C. 2111.08**;
 - c. The minor;
 - d. Any person with care and custody of the minor other than above;
 - e. A depository that's **federally insured** in the minor's name, or;

- f. A custodian designated pursuant to **R.C. 5814.01**, et seq. (Note: the \$5,000.00 cap is an annual amount, but most estates should be fully administered before expiration of the twelve (12) months after initial distribution).
 - ii. More than \$5,000.00 but less than \$25,000.00 net, as per **R.C. 2111.05**. No guardian required.
 - a. Court can order money deposited in depository authorized to receive fiduciary funds.
 - b. Payable to a guardian if appointed, or to ward when ward attains age of majority. (Note: no requirement depository to be federally insured like **R.C. 2111.131** deposits).
 - c. Query: Can an executor or administrator utilize a Transfer to a Minor's Account with custodian appointed to oversee minor's money? If so, to what age, 18, 21, 25 or some other age? Can such account be restructured as to access?
 - iii. More than \$25,000.00 net up to the sky is the limit.
 - a. Initiate a guardianship of the minor's estate **R.C. 2111.02**.
 - b. Consider an Ohio Transfer to Minor's Account in lieu of a guardianship **R.C. 5814.02**
 - i. An executor, administrator, or trustee may make a transfer to self, or to a Trust company or any person over 18 as custodian.
 - ii. Irrespective of the value if the fiduciary considers the transfer in the minor's best interest
 - iii. So long as the intended transfer is not prohibited by the will or other governing document.
 - iv. If value exceeds \$25,000.00, the transfer is authorized by the appropriate court. (**R.C. 5814.01 (C)** Probate Court)
 - iv. Consider initiating a trust not to exceed age 25 (**R.C. 2111.182**).
 - a. Parent(s) notified and guardian, if applicable
 - b. Parent(s) to approve trustee unless otherwise ordered by the court.
 - c. Consider parent(s) and restrict authority to distribute, withdraw, invest, etc. as deemed appropriate.
- b. Trusts
 - i. Distribute to minors, similar to Estates above

- c. Minor receiving money as beneficiary of a life insurance policy; federal, state, municipal, or private employer retirement plans; annuity; individual retirement account; 401(K); and the like.
 - i. Consider appointment of a guardian of the minor's estate.
 - ii. Most federal, state, municipal, and private plan administrators will insist prior to payment.
 - iii. Consider a **R.C. 2111.182** minor's trust to age 25 under appropriate circumstances.
- d. Minors receiving money from personal injury and/or property damage claims
 - i. **R.C. 2111.18** sets forth parameters for setting minor's claims.
 - a. Less than \$25,000.00 net, court can authorize applicant to settle claim, place proceeds in a depository, waive bond, payable to the minor upon attaining majority.
 - b. Most insurance companies representing a tortfeasor will insist on appointment of a guardian (consider appointment, authorize guardian to execute settlement documents, dismiss guardianship and handle money through minor's settlement case).
 - c. Recap Superintendence Rule 68 and local rule counterpart.
 - i. Applicant a parent or custodian;
 - ii. Notice to parent(s) at least 7 days prior to hearing;
 - iii. Need examining physician's statement unless waived;
 - iv. Info as to anyone else receiving money from same accident;
 - v. Attendance of minor and applicant/parent necessary, and;
 - vi. Review and approve attorney fee contract.
 - d. Hearing presents an excellent opportunity to meet, greet, discuss with parent(s)/applicant and the minor not only injury concerns, but also aspirations, educational plans, level of economic sophistication, family dynamics, concerns, goals, desires, and the like.
 - i. Clarify the money belongs to the minor.
 - ii. Parents' responsibility to provide for their children.
 - iii. Touch on procedures and/or circumstances the court might consider releasing money before final distribution.
 - e. Ask for input from parent(s)/applicant; their attorney(s); guardian ad litem, if applicable; and any other professional involved in determining what, if any, oversight would be appropriate.
 - i. Most parents are not comfortable with the thought of their son or daughter receiving a seven, six, or even five figure sum on their 18th birthday.

- ii. Most parents ask if anything can be done to delay distribution later than 18.
- f. Consider advantages of **R.C. 2111.182** Trust.
 - i. Parent/applicant can be a trustee and if unable, can express their choice to the court.
 - ii. Court can consider waiving bond to reduce administrative expense.
 - iii. Insures oversight and protection through court monitored restrictions.
 - iv. Is flexible and can be modified for good cause.
 - v. Can be terminated prior to age 25.
 - vi. Ensures a post-secondary education structured settlement is protected and used for intended purposes.
 - vii. Prevents others from taking advantage and/or exploiting the minor as a young adult.
- g. Suggest discussion with your judge as to continuity of factors in determining what, if any, oversight ought to be exercised. Rule of thumb used in Richland County:
 - i. 0 to \$1,000 -- to the minor or parent(s).
 - ii. \$1,001 to \$10,000 – deposit in restricted bank account until minor’s 18th birthday.
 - iii. \$10,001 to \$25,000 – consider a transfer to minors account until age 21.
 - iv. \$25,000 and up – **R.C. 2111. 182** Trust to age 25.

IV. Bond Considerations

- a. Can deposit in lieu of bond. **R.C. 2109.13**
 - i. Bank, savings bank, association, credit union, or trust company. No withdrawal or expenditure without court order.
- b. Can waive bond if estate less than \$10,000. **R.C. 2109.04 (A)(4)**
- c. Otherwise order bond. Suggest fiduciary familiarize themselves with Prudent Investor Rule. **R.C. 5809.01**, et. seq.

II. In re Adoption of Y.E.F./ Indigent Representation

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2020-OHIO-6785

IN THE MATTER OF THE ADOPTION OF Y.E.F.

IN THE MATTER OF THE ADOPTION OF M.M.F.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *In re Adoption of Y.E.F.*, Slip Opinion No. 2020-Ohio-6785.]

Constitutional law—Because indigent parents facing the termination of their parental rights in adoption proceedings in probate courts are similarly situated to indigent parents facing termination of their parental rights in permanent-custody proceedings in juvenile courts, indigent parents in adoption proceedings must be afforded the same right to appointed counsel that is statutorily provided to indigent parents in permanent-custody proceedings—Court of appeals’ judgment reversed and cause remanded to probate court.

(Nos. 2019-0420 and 2019-0421—Submitted January 28, 2020—Decided December 22, 2020.)

APPEALS from the Court of Appeals for Delaware County,
Nos. 18 CAF 09 0069, 2019-Ohio-448 and 18 CAF 09 0070, 2019-Ohio-449.

SYLLABUS OF THE COURT

Indigent parents are entitled to counsel in adoption proceedings in probate court as a matter of equal protection of the law under the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution.

DONNELLY, J.

{¶ 1} Although indigent parents faced with losing parental rights in a custody proceeding in juvenile court are entitled to appointed counsel, indigent parents faced with losing parental rights in an adoption proceeding in probate court are not entitled to appointed counsel. Appellant, E.S., argues that this disparate treatment is a violation of the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution. We agree.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} E.S. is the mother of twin boys, Y.E.F. and M.M.F. In April 2015, when the boys were under a year old, their father, R.H., fled their home to avoid apprehension for federal criminal charges. With no funds, because R.H. had allegedly emptied their bank account, E.S. asked R.H.’s sister, C.F., and C.F.’s husband, D.F., to care for her sons while she sought shelter for herself and her daughter. E.S. contends that the arrangement with C.F. and D.F. was supposed to be temporary. But in May 2015, C.F. filed a complaint in juvenile court for allocation of parental rights.

{¶ 3} C.F. was awarded temporary custody, and then, based on an “agreed judgment entry” dated September 9, 2016, C.F. and D.F. were granted final custody. The entry set E.S.’s and R.H.’s child-support obligations at zero. E.S. received visitation rights, but only at the discretion of C.F. and D.F., who denied

her visitation requests based on their belief that E.S. had a substance-abuse problem and could not provide a safe environment at her home for the boys.

{¶ 4} In April 2018, C.F. and D.F. filed petitions in the Delaware County Probate Court to adopt Y.E.F. and M.M.F., alleging that the consent of E.S. and R.H. was not required because neither parent had had more than de minimus contact with the boys nor provided financial support in the year preceding the filing of the adoption petitions. On August 22, 2018, E.S. filed a request for appointed counsel and attached a letter from the Legal Aid Society of Columbus raising equal-protection and due-process arguments in support of her request. The court denied E.S.'s request on August 27, and instead confirmed that it would proceed with a previously scheduled hearing on August 29 to determine whether E.S.'s consent to the boys' adoption was necessary.

{¶ 5} At the hearing, E.S. struggled to understand the process. After her own testimony (elicited through cross-examination by C.F. and D.F.'s attorney) and that of C.F. and D.F., E.S. vocalized her realization that she was in over her head, stating, "I didn't know that this would be a whole cross-examination and the whole thing would take place. Because maybe I should get an attorney, because I don't know how to cross-examine." The magistrate disregarded her request and the hearing proceeded. At the conclusion of the hearing, the probate court continued the case for further hearing, which it set for September 12, 2018. On September 10, E.S. appealed the court's August 27 denial of her request for appointed counsel.

{¶ 6} The Fifth District Court of Appeals affirmed, concluding that equal-protection and due-process guarantees are inapplicable to requests for appointed counsel in adoption cases brought by private petitioners. We granted E.S.'s discretionary appeals, 155 Ohio St.3d 1467, 2019-Ohio-2100, 122 N.E.3d 1298, 155 Ohio St.3d 1467, 2019-Ohio-2100, 122 N.E.3d 1297, and consolidated the cases for review, 156 Ohio St.3d 1401, 2019-Ohio-2126, 123 N.E.3d 1023, 156 Ohio St.3d 1401, 2019-Ohio-2126, 123 N.E.3d 1022.

II. ANALYSIS

A. R.C. 2505.02(B)(2)

{¶ 7} After oral argument, this court sua sponte requested that the attorney general file an amicus brief addressing, among other issues, whether the probate court’s denial of E.S.’s request for appointment of counsel constituted a final, appealable order. 157 Ohio St.3d 1409, 2019-Ohio-3749, 131 N.E.3d 87; 157 Ohio St.3d 1409, 2019-Ohio-3749, 131 N.E.3d 88. Accordingly, we will address that issue first.

{¶ 8} Pursuant to R.C. 2505.02(B)(2), an order is a final, appealable order when it “affects a substantial right made in a special proceeding.” Adoption proceedings are “special proceeding[s],” *see In re Adoption of Greer*, 70 Ohio St.3d 293, 297, 638 N.E.2d 999 (1994), a point that the attorney general concedes in his amicus curiae brief urging affirmance of the Fifth District’s judgment. Thus, the question that remains for purposes of resolving this issue is whether E.S.’s claim that she has a right to counsel in these adoption proceedings involves a substantial right. We conclude that it does. *See Wilhelm-Kissinger v. Kissinger*, 129 Ohio St.3d 90, 2011-Ohio-2317, 950 N.E.2d 516, ¶ 8-11 (observing that we had previously held that orders *disqualifying* counsel were immediately appealable), citing *Russell v. Mercy Hosp.*, 15 Ohio St.3d 37, 39, 472 N.E.2d 695 (1984); *State v. Chambliss*, 128 Ohio St.3d 507, 2011-Ohio-1785, 947 N.E.2d 651, syllabus.

{¶ 9} Moreover, E.S. has a “fundamental liberty interest” in parenting her children, grounded in the Fourteenth Amendment to the United States Constitution. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *see In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990). This fundamental liberty interest is also a substantial right under R.C. 2505.02(B)(2). *See* R.C. 2505.02(A)(1) (defining “substantial right” as “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect”); *see also Thomasson v.*

Thomasson, 153 Ohio St.3d 398, 2018-Ohio-2417, 106 N.E.3d 1239, ¶ 13, 21. The entire adoption proceeding is aimed at determining whether E.S. can continue to have a role in the lives of her children.

{¶ 10} In *Guccione v. Hustler Magazine, Inc.*, 17 Ohio St.3d 88, 89, 477 N.E.2d 630 (1985), we held that “an order denying permission for out-of-state counsel (otherwise competent) to represent a litigant is a final appealable order.” We reasoned that effective review of the denial after the case reached completion in the trial court would not be possible because “[t]he burden on that party at the end of the case to show that he was prejudiced would in effect be an ‘insurmountable burden.’ ” *Id.* at 90, quoting *Armstrong v. McAlpin*, 625 F.2d 433, 441 (2d Cir.1980). This case is potentially worse because, without adequate funds for an attorney, E.S. is left to protect a fundamental right without *any* counsel, not merely without her preferred counsel.

{¶ 11} Without counsel, E.S.’s acknowledged inability to understand the process and to properly cross-examine, and her likely inability to properly preserve issues for appeal, among other limitations common among nonattorneys, will render effective appellate review unlikely, perhaps even impossible. *See State ex rel. Asberry v. Payne*, 82 Ohio St.3d 44, 49, 693 N.E.2d 794 (1988) (recognizing that a party “lack[ed] an adequate remedy in the ordinary course of law to challenge [the lower court’s] refusal to appoint her counsel”).

{¶ 12} We conclude that the denial of E.S.’s request for appointed counsel affects a substantial right in a special proceeding. Accordingly, the trial court’s order denying E.S.’s request for appointed counsel is a final, appealable order pursuant to R.C. 2505.02(B)(2).

B. R.C. 2151.352

{¶ 13} R.C. 2151.352 provides, “A child, the child’s parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the

Revised Code. If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided * * *.” We have stated that R.C. 2151.352 means that indigent parents “are entitled to appointed counsel in all juvenile proceedings,” which includes custody proceedings. *Asberry* at 48; *see also In re R.K.*, 152 Ohio St.3d 316, 2018-Ohio-23, 95 N.E.3d 394, ¶ 5 (“a parent has the right to counsel at a permanent-custody hearing, including the right to appointed counsel if the parent is indigent”), citing R.C. 2151.352.

{¶ 14} Indigent parents in adoption proceedings in probate court, governed by R.C. Chapter 3107, are not statutorily entitled to appointed counsel. Although this court used broad language in *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 232, 479 N.E.2d 257 (1985), stating “R.C. 2151.352 and Juv.R. 4(A) provide for the appointment of counsel in cases where parental rights are subject to termination,” that case involved a juvenile-court proceeding and did not extend to adoption proceedings. E.S. argues that Ohio denied her equal protection of the laws when it failed to provide appointed counsel in the underlying adoption proceedings involving her twin sons. She contends that there is no material substantive difference between a custody proceeding in juvenile court, in which a parent is at risk of losing custody of her child, and an adoption proceeding in probate court, in which a parent faces termination of her parental rights. Even if the proceedings involving parental rights occur in different courts, E.S. asserts that the same interest is at risk: the parent-child relationship.

C. Equal Protection

1. The Fourteenth Amendment

{¶ 15} The Fourteenth Amendment to the United States Constitution provides that “[n]o State shall * * * deny to any person within its jurisdiction the equal protection of the laws.” The Ohio Constitution likewise guarantees to the people the equal protection of the laws; it states, “All political power is inherent in the people. Government is instituted for their equal protection and benefit.” Article

I, Section 2, Ohio Constitution. The essence of the Equal Protection Clauses “require[s] that individuals be treated in a manner similar to others in like circumstances.” *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 6; *see also State ex rel. Patterson v. Indus. Comm.*, 77 Ohio St.3d 201, 204, 672 N.E.2d 1008 (1996) (the constitutional guarantee of equal protection requires that “laws are to operate equally upon persons who are identified in the same class”).

{¶ 16} The United States Constitution, when applicable to the states, provides a floor of protection with respect to individual rights and civil liberties; states may not deny individuals the minimum level of protection mandated by the federal constitution. *Arnold v. Cleveland*, 67 Ohio St.3d 35, 42, 616 N.E.2d 163 (1993). States possess authority to grant broader protections under their own constitutions than those granted by the federal constitution. *Id.* at 41-42.

{¶ 17} The Fourteenth Amendment’s guarantee of equal protection does not forbid the state from treating different classes of persons differently. *Eisenstadt v. Baird*, 405 U.S. 438, 446-447, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972), citing *Reed v. Reed*, 404 U.S. 71, 75-76, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971). But a classification must not be arbitrary; it “ ‘must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’ ” *Reed* at 76, quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 64 L.Ed. 989 (1920).

{¶ 18} In determining whether state legislation violates the federal Equal Protection Clause, we “ ‘apply different levels of scrutiny to different types of classifications.’ ” *State v. Thompson*, 95 Ohio St.3d 264, 2002-Ohio-2124, 767 N.E.2d 251, ¶ 13, quoting *Clark v. Jeter*, 486 U.S. 456, 461, 108 S.Ct. 1910, 100 L.Ed.2d 465 (1988). “[A]ll statutes are subject to at least rational-basis review, which requires that a statutory classification be rationally related to a legitimate

government purpose.” *Id.*, citing *Clark* at 461. But when a statutory classification affects a fundamental constitutional right, we conduct a more demanding strict-scrutiny inquiry, which requires that the classification “be narrowly tailored to serve a compelling state interest.” *Id.* When a statutory classification affects a fundamental right, “the state must assume the heavy burden of proving that the legislation is constitutional.” *Beatty v. Akron City Hosp.*, 67 Ohio St.2d 483, 492, 424 N.E.2d 586 (1981), citing *Eisenstadt* at 447, fn. 7.

2. Involuntary Termination of a Parent-Child Relationship

{¶ 19} Ohio law provides alternative statutory proceedings that may result in the involuntary termination of a parent-child relationship. Under R.C. 2151.414, a juvenile court may grant a motion for permanent custody of a child; a grant of permanent custody permanently divests the parents of their parental rights. *Id.* Alternatively, a parent-child relationship may be terminated by a judicial decree granting a private adoption in proceedings before a probate court under R.C. Chapter 3107. A final decree of adoption has the effect of terminating the biological parents’ parental rights and creating new parental rights in the adoptive parents. R.C. 3107.15(A). Whether in custody proceedings in juvenile court or in adoption proceedings in probate court, parents who contest the involuntary and permanent termination of their parental rights fight the same battle against “ ‘the family law equivalent of the death penalty.’ ” *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997), quoting *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist.1991).

{¶ 20} In proceedings in juvenile court under R.C. Chapter 2151, the child and the child’s parents are statutorily entitled to legal representation, including a right to appointed counsel if they are indigent, at all stages of the proceedings. R.C. 2151.352. An indigent parent who opposes the termination of his or her parental rights in adoption proceedings in probate court, on the other hand, has no statutory right to appointed counsel. Thus, Ohio’s statutory scheme distinguishes between

indigent parents facing termination of their parental rights in juvenile court and indigent parents facing termination of their parental rights in adoption proceedings in probate court, affording only the former class of parents the right to appointed counsel.

{¶ 21} E.S. maintains that Ohio’s different treatment of indigent parents facing termination of their parental rights in juvenile-court proceedings and indigent parents facing termination of their parental rights in probate-court proceedings violates federal and state constitutional guarantees of equal protection.

3. Lower-Court Decision

{¶ 22} The court of appeals concluded that equal protection does not require that indigent parents subject to losing parental rights in an adoption proceeding in probate court be afforded appointed counsel. First, it determined that equal-protection concerns are not applicable in adoption cases because the proceedings are initiated by private parties and “[t]he Equal Protection Clause provides protection against governmental, not private, action.” 2019-Ohio-448 at ¶ 24; 2019-Ohio-449, 130 N.E.3d 1044, at ¶ 22, citing *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991). Further, even assuming the Equal Protection Clause is a relevant consideration here, the court of appeals observed that “adoption and permanent custody are ‘distinct concepts under Ohio law.’ ” 2019-Ohio-448 at ¶ 24; 2019-Ohio-449, 130 N.E.3d 1044, at ¶ 24, quoting *In re Adoption of J.L.M-L*, 5th Dist. Muskingum No. CT2016-0030, 2017-Ohio-61, ¶ 12. The court reasoned that “adoption and permanent custody are each contained within different statutes with different purposes and each with different tests involved before a court can grant them. Thus, biological parents in adoption actions and permanent custody actions are not ‘similarly situated individuals [that] are treated differently.’ ” 2019-Ohio-448 at ¶ 24; 2019-Ohio-449, 130 N.E.3d 1044, at ¶ 24.

{¶ 23} We declined jurisdiction in *J.L.M.-L.* See 148 Ohio St.3d 1446, 2017-Ohio-1427, 72 N.E.3d 658. Thus, the court of appeals was appropriately following its own precedent. Nevertheless, for the following reasons, we conclude that equal protection is applicable in this context, and further, that indigent parents in custody proceedings in juvenile courts and indigent parents in adoption proceedings in probate courts are similarly situated.

4. Application of Equal-Protection Standards

a. State Action

{¶ 24} “The Constitution’s protections of individual liberty and equal protection apply in general only to action by the government.” *Edmonson* at 619, citing *Natl. Collegiate Athletic Assn. v. Tarkanian*, 488 U.S. 179, 191, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988). An act that violates the federal Constitution when committed by a government actor does not necessarily also violate the Constitution when committed by a private actor. *Id.* And because the Fourteenth Amendment is directed at the states, “it can be violated only by conduct that may be fairly characterized as ‘state action.’ ” *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 924, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982). However, the Fifth District’s focus on the character of the underlying adoption proceedings and that private parties initiated these proceedings is misplaced.

{¶ 25} E.S. challenges the General Assembly’s distribution of the right to appointed counsel among indigent parents. The statutory entitlement to appointed counsel, which the General Assembly extended to parents facing termination of their parental rights in juvenile court but not to parents facing termination of their parental rights in probate court, stems from legislative action. Enactment of legislation qualifies as state action, see *In re Adoption of L.T.M.*, 214 Ill.2d 60, 74-75, 824 N.E.2d 221 (2005), and it is that state action, not any conduct by a private party, that purportedly justified the trial court’s denial of E.S.’s request for appointed counsel.

{¶ 26} Additionally, a challenge to the extinguishment of a parent-child relationship is a challenge to state action, even when a private party initiates the judicial process, because only the state has the power to extinguish the parent-child relationship. *M.L.B. v. S.L.J.*, 519 U.S. 102, 116, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996), fn. 8. Even though private parties may initiate adoption proceedings, adoption itself is a “function of the state” and may be accomplished only by the exercise of government authority. *State ex rel. Portage Cty. Welfare Dept. v. Summers*, 38 Ohio St.2d 144, 150, 311 N.E.2d 6 (1974). The mere fact that private parties initiated the adoption proceedings in which E.S. requested appointed counsel to defend her parental rights does not demonstrate the absence of state action, so as to preclude her equal-protection challenge. The Fifth District erred in holding otherwise.

b. Similarly Situated Parents

{¶ 27} The Fifth District independently rejected E.S.’s equal-protection challenge based on its determination that biological parents facing termination of their parental rights in adoption proceedings are not similarly situated to biological parents facing termination of their parental rights in permanent-custody proceedings. 2019-Ohio-448 at ¶ 24; 2019-Ohio-449, 130 N.E.3d 1044, at ¶ 24. The Equal Protection Clauses in both the United States and Ohio Constitutions require that state laws treat similarly situated individuals in a similar manner. *McCrone*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, at ¶ 6. In other words, the law must “operate equally upon persons who are identified in the same class.” *Patterson*, 77 Ohio St.3d at 204, 672 N.E.2d 1008. “The comparison of only similarly situated entities is integral to an equal protection analysis,” *GTE N., Inc. v. Zaino*, 96 Ohio St.3d 9, 2002-Ohio-2984, 770 N.E.2d 65, ¶ 22, as equal protection does not “ ‘require things which are different in fact * * * to be treated in law as though they were the same,’ ” (ellipsis added in *T. Ryan Legg*) *T. Ryan Legg Irrevocable Trust v. Testa*, 149 Ohio St.3d 376, 2016-Ohio-8418, 75 N.E.3d

184, ¶ 73, quoting *Tigner v. Texas*, 310 U.S. 141, 147, 60 S.Ct. 879, 84 L.Ed. 1124 (1940).

{¶ 28} The Fifth District based its conclusion that biological parents in adoption proceedings are not similarly situated to biological parents in permanent-custody proceedings on the fact that the “concepts of adoption and permanent custody are each contained within different statutes with different purposes and each with different tests involved before a court can grant them.” 2019-Ohio-448 at ¶ 24; 2019-Ohio-449, 130 N.E.3d 1044, at ¶ 24. Despite those differences, however, indigent parents in both proceedings face the same termination of their fundamental constitutional right to parent their children as a result of judicial action.

{¶ 29} We conclude that, under Ohio’s dual statutory scheme for terminating parental rights, indigent parents facing termination of their parental rights by adoption in probate court are similarly situated to indigent parents facing termination of their parental rights in juvenile court. *See In re Adoption of A.W.S. and K.R.S.*, 377 Mont. 234, 238, 339 P.3d 414 (2014) (parents facing the loss of parental rights in either state-initiated abuse-and-neglect proceedings or in adoption proceedings initiated by private parties are similarly situated); *In re Adoption of K.A.S., D.S., and B.R.S.*, 499 N.W.2d 558, 566 (N.D.1993); *In the Interest of S.A.J.B.*, 679 N.W.2d 645, 650-651 (Iowa 2004) (citing *K.A.S.* with approval); *In re Adoption of Fanning*, 310 Or. 514, 522-523, 800 P.2d 773 (1990).

c. Strict Scrutiny

{¶ 30} The rejection of the Fifth District’s dual rationales—that this case does not implicate the constitutional guarantees of equal protection because adoption proceedings do not involve state action and because E.S. is not similarly situated to a parent facing termination of her parental rights in a permanent-custody proceeding in juvenile court—is but a prelude to the substantive application of the Equal Protection Clause. Because Ohio’s statutory distinction between indigent parents facing the involuntary termination of their parental rights based on the type

of proceeding in which they challenge such a termination implicates a fundamental right, the Equal Protection Clause requires equal treatment of those two classes of parents absent a compelling interest to treat them differently and a statutory mechanism narrowly tailored to address only that interest. *Santosky*, 455 U.S. at 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (the right to parent one’s own child is a “fundamental liberty interest”); *see also In re Murray*, 52 Ohio St.3d at 157, 556 N.E.2d 1169, quoting *In re Perales*, 52 Ohio St.2d 89, 97, 369 N.E.2d 1047 (1977) (“suitable persons have a ‘paramount’ right to the custody of their minor children”)

{¶ 31} The state has offered no compelling justification for affording parents facing termination of their parental rights in juvenile court a right to appointed counsel while withholding that benefit from parents facing termination of their parental rights through adoption proceedings in probate court. The putative adoptive parents, as appellees here, did not file a merit brief in this court, and the attorney general does not purport to demonstrate a compelling state interest and instead argues that rational-basis review applies. The state interest proffered by the attorney general—the “responsible management of taxpayer funds”—is a legitimate state interest. *See Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 353-354, 639 N.E.2d 31 (1994). But it is not a compelling interest, especially when compared to the fundamental right at stake.

{¶ 32} Moreover, the appointment of state-funded counsel for indigent parents in adoption cases will serve purposes—beyond not violating equal protection—that are both legitimate and salutary. It will help ensure that a probate court’s decision is in the best interests of the child by testing the relevant facts and law in the crucible of the adversarial process. *See In re Adoption of J.E.V.*, 226 N.J. 90, 109-110, 141 A.3d 254 (2016). It will also help ensure “that the adoption process is completed in an expeditious manner,” which we have stated is in the best interests of children. *In re Adoption of Zschach*, 75 Ohio St.3d 648, 651, 665

N.E.2d 1070 (1996). Finally, it is probable that appointed counsel for indigent parents will lower the risk of error, just as it does now in juvenile-court proceedings.

III. CONCLUSION

{¶ 33} We conclude that R.C. 2151.352 is unconstitutionally underinclusive as applied to indigent parents facing the loss of their parental rights in probate court. Instead of declaring the statute unconstitutional on its face, and significantly disrupting the multifarious juvenile-court proceedings in the state, we declare that indigent parents are entitled to counsel in adoption proceedings in probate court as a matter of equal protection of the law under the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution.

{¶ 34} Because we base our conclusion on the Equal Protection Clauses of the United States and Ohio Constitutions, we need not address her claims that she was deprived of due process under the United States Constitution and the Ohio Constitution. Therefore, we reverse the judgment of the Fifth District Court of Appeals and remand this cause to the Delaware County Probate Court for further proceedings consistent with this opinion.

Judgment reversed
and cause remanded.

O’CONNOR, C.J., and KENNEDY and FRENCH, JJ., concur.

FISCHER, J., concurs in judgment only.

DEWINE, J., dissents, with an opinion joined by STEWART, J.

DEWINE, J, dissenting.

{¶ 35} This case comes to us by way of an interlocutory appeal. In most situations, appellate courts lack jurisdiction over interlocutory appeals—the ordinary rule is that a party must pursue all claims of error in one appeal following trial on the merits. Today, the majority provides only a cursory analysis of the

jurisdictional question and then announces that the legislature has violated the equal-protection guarantees of the United States and the Ohio Constitutions by providing appointed counsel for indigent parents in permanent-custody proceedings in juvenile courts without, at the same time, providing appointed counsel for indigent parents in adoption proceedings held in probate courts. As eager as the majority may be to get to the merits, we cannot do so without a proper grant of jurisdiction. Because I do not believe that the trial court's interlocutory order was immediately appealable, I would vacate the decision of the court of appeals and order the matter dismissed for lack of appellate jurisdiction. I dissent from the majority's decision to do otherwise.

The Order at Issue

{¶ 36} The order being appealed was issued in an adoption proceeding involving twin siblings. A week before the proceeding was scheduled to begin, E.S., the biological mother of the twins, filed a request for the appointment of counsel. The probate court denied the request and the adoption hearing proceeded as scheduled. Both potential adoptive parents testified, and E.S. was called to the stand and cross-examined. Near the end of the proceeding, E.S. indicated to the court that she would like a continuance “[t]o possibly get an attorney.” The court continued the case based on E.S.’s oral motion. Before the hearing resumed, however, E.S. appealed the probate court’s denial of her request for the appointment of counsel.

{¶ 37} The Fifth District Court of Appeals affirmed the probate court’s order denying E.S.’s request for appointed counsel but never addressed its jurisdiction over the interlocutory appeal. After oral argument in this court, we asked the parties to provide supplemental briefing addressing whether the probate court’s denial of E.S.’s request constituted a final, appealable order. 157 Ohio St.3d 1409, 2019-Ohio-3749, 131 N.E.3d 87.

Ohio’s Final-Order Requirement

{¶ 38} The Ohio Constitution grants the courts of appeals “such jurisdiction as may be provided by law to review * * * judgments or final orders.” Ohio Constitution, Article IV, Section 3(B)(2). The “provided by law” part of this constitutional grant is effectuated by R.C. 2505.02, which defines what constitutes a final order. “An appellate court can review only final orders, and without a final order, an appellate court has no jurisdiction.” *Supportive Solutions, L.L.C. v. Electronic Classroom of Tomorrow*, 137 Ohio St.3d 23, 2013-Ohio-2410, 997 N.E.2d 490, ¶ 10, citing *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, ¶ 9, citing *Gen. Acc. Ins. Co v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

{¶ 39} The requirement of a final order reflects the general principle that “all judgments in a case should be reviewed in a single appeal.” *State v. Craig*, 159 Ohio St.3d 398, 2020-Ohio-455, 151 N.E.3d 574, ¶ 9, citing *Anderson v. Richards*, 173 Ohio St. 50, 55, 179 N.E.2d 918 (1962); *see also Ashtabula v. Pub. Util. Comm.*, 139 Ohio St. 213, 215, 39 N.E.2d 144 (1942); *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868, 114 S.Ct. 1992, 128 L.Ed.2d 842 (1994) (the “general rule [is] that a party is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of [trial] court error at any stage of the litigation may be ventilated” [citation omitted]).

{¶ 40} The final-order requirement is a long-standing feature of appellate jurisdiction with its origins in the English common law. *See Crick, The Final Judgment as a Basis for Appeal*, 41 Yale L.J. 539, 541-544 (1932). By requiring most appeals to wait until the conclusion of litigation in the trial court, the rule emphasizes the deference that appellate courts owe to the trial judge and “minimiz[es] appellate-court interference with the numerous decisions [a trial judge] must make in the prejudgment stages of litigation.” *Flanagan v. United States*, 465 U.S. 259, 263-264, 104 S.Ct. 1051, 79 L.Ed.2d 288 (1984). It also

prevents the harassment and excessive costs that could result from successive appeals during a single piece of litigation. *Id.* at 264. And by preventing piecemeal appeals, the rule promotes efficient judicial administration. *Id.*

{¶ 41} E.S. argues that this case is an exception to the general principle because the probate court’s denial of her motion for the appointment of counsel falls within the definition of “final order” provided in R.C. 2505.02(B)(2). That provision defines “[a]n order that affects a substantial right made in a special proceeding” as a final order. *Id.*

{¶ 42} Everyone agrees that an adoption proceeding is a “special proceeding:” it is an action “specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.” *See* R.C. 2505.02(A)(2). The issue is whether the probate court’s order “affects a substantial right.”

If an Order Does Not Foreclose Appropriate Relief in the Future, It Does Not Affect a Substantial Right

{¶ 43} Our precedent provides the framework for answering this question. In *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993), we held that “[a]n order which affects a substantial right has been perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future.” To meet this requirement, an order has to be one that “must be appealed immediately or its effect will be irreversible.” *Wilhelm-Kissinger v. Kissinger*, 129 Ohio St.3d 90, 2011-Ohio-2317, 950 N.E.2d 516, ¶ 10. An order’s effect is irreversible if it cannot be meaningfully or effectively remedied by an appeal following a final judgment. *See In re D.H.*, 152 Ohio St.3d 310, 2018-Ohio-17, 95 N.E.3d 389, ¶ 18.

{¶ 44} In most cases, an appeal following final judgment at the conclusion of the case will provide a sufficient remedy for a trial error. The appellate court can simply order a new trial. Certain things—such as litigation cost, inconvenience to the parties, and potential harms caused by delays in resolution—are almost

always part and parcel of waiting for final judgment before an appeal. But these types of harms are inherent in the final-order rule and have never been considered to be the type of irreversible effects requiring immediate appeal. *See, e.g., In re D.H.* at ¶ 21 (“passage of time and speculation about its effect” will not render appeal after final judgment ineffective); *Gardner v. Ford*, 1st Dist. Hamilton No. C-150018, 2015-Ohio-4242, ¶ 8 (“the prospect of high litigation costs” that might be avoided by an immediate appeal does not make appeal following final judgment ineffective).

{¶ 45} In only a very limited number of cases have we concluded that a trial error could not be fixed following an appeal from a final judgment. These are cases in which “ ‘the proverbial bell cannot be unrung and an appeal after final judgment on the merits will not rectify the damage’ suffered by the appealing party.” *State v. Muncie*, 91 Ohio St.3d 440, 451, 746 N.E.2d 1092 (2001), quoting *Gibson-Myers & Assocs., Inc. v. Pearce*, 9th Dist. Summit No. 19358, 1999 WL 980562, *2 (Oct. 27, 1999). The prototypical case is the administration of forced medication to an incompetent criminal defendant; reversal on appeal could not remedy the effects of the medication once administered. *Id.* at 451-452. Similarly, an immediate appeal is available to protect the right against double-jeopardy because the constitutional guarantee protects against being placed on trial for a second time: absent an immediate appeal, the right cannot be vindicated. *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, ¶ 53-59. And we have found the denial of an order preventing disclosure of confidential information to be immediately appealable, because once the information was disclosed, there could be “no remedy,” the confidentiality of the information having been “irretrievably lost.” *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, 898 N.E.2d 589, ¶ 12-13.

***The Denial of an Immediate Appeal Would Not Foreclose E.S. from Receiving
Appropriate Relief in the Future***

{¶ 46} Under this rubric, it is evident that the effect of the trial court’s order denying appointed counsel would not foreclose E.S. from receiving effective relief in the future. If the trial court rules against E.S. and allows the adoption of her children over her objection, she could appeal and raise the equal-protection and due-process claims that she advances here. If she is successful on those claims, a new adoption hearing would be in order and she would be entitled to court-appointed counsel. The right E.S. seeks to vindicate would be fully protected—if successful, she would obtain exactly what she is asking for here: an adoption hearing with representation by court-appointed counsel. This is by no means a case in which the bell cannot be unrung.

{¶ 47} In reaching a contrary conclusion, the majority never squarely addresses the standard established by our case law: whether the order, “if not immediately appealable, would foreclose appropriate relief in the future.” *Bell*, 67 Ohio St.3d at 63, 616 N.E.2d 181. Instead, it notes that E.S. has a “ ‘fundamental liberty interest’ in parenting her children,” majority opinion at ¶ 9, quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982), and points to a 1985 opinion, in which we held that the disqualification of a litigant’s chosen counsel is a final, appealable order because the “ ‘insurmountable burden’ ” of demonstrating prejudice after completion of the trial-court proceedings prevents effective review without an immediate appeal. Majority opinion at ¶ 10, quoting *Guccione v. Hustler Magazine, Inc.*, 17 Ohio St.3d 88, 90, 477 N.E.2d 630 (1985), quoting *Armstrong v. McAlpin*, 625 F.2d 433, 441 (2d Cir.1980).

{¶ 48} The fundamental right allegedly affected here, though, is E.S.’s right to appointed counsel, not her right to raise her children. Moreover, *Guccione* is of questionable relevance to the question in front of us. At the time *Guccione* was decided, we protected the interests underlying the final-judgment rule by defining

“special proceeding” through a test that balanced “the harm to the ‘prompt and orderly disposition of litigation,’ and the consequent waste of judicial resources, resulting from the allowance of an appeal, with the need for immediate review because appeal after final judgment is not practicable.” *Amato v. Gen. Motors Corp.*, 67 Ohio St.2d 253, 258, 423 N.E.2d 452 (1981). We relied on that test in deciding *Guccione*. *Guccione* at 89-90. Subsequently, though, in *Polikoff v. Adam*, 67 Ohio St.3d 100, 616 N.E.2d 213 (1993), syllabus, we overruled *Amato*, disavowed the balancing test, and adopted a bright-line definition of “special proceeding” now embodied in R.C. 2505.02(A)(2). The same day we decided *Polikoff*, we announced in *Bell* that an order affects a substantial right only if the unavailability of immediate appeal would preclude effective relief in the future. *Bell* at 63. Remarkably, the majority doesn’t even bother to mention *Bell* today.

{¶ 49} Even aside from its dubious precedential value, *Guccione* is distinguishable. The *Guccione* holding was motivated by this court’s concern about the burden a litigant would face in showing prejudice, that is, that the outcome of the trial would have been different but for the erroneous disqualification of counsel. *Id.* at 90. The concern was about the difficulty in establishing prejudice from a comparison between how disqualified counsel might have performed versus how replacement counsel actually performed. *Id.* This case does not present that kind of problem, because the issue here is whether E.S. is entitled to appointed counsel at all.

{¶ 50} Indeed, the need for immediate appeal of decisions denying court-appointed counsel is belied by the facts of this case. By the time that E.S. filed her appeal, the proceeding was near its end and she had already been subject to cross-examination. The remedy that the majority awards her today—a new adoption hearing—could just as easily have been issued following a final judgment. The violence the majority does to the final-order rule is completely unnecessary.

The Impact of the Majority Decision

{¶ 51} The majority’s resolution of the jurisdictional issue fails to consider the deleterious impact its decision will have on the final-judgment rule. The final-order rule is categorical: whether something is a final order depends not on the exigencies of a particular case, but on whether that order falls within a class of orders that has been deemed final. Here, the class consists of orders denying the appointment of court-appointed counsel. Under the precedent established by the majority today, any time a litigant requests a court-appointed attorney—whether there is any arguable merit to the claim of entitlement or not—and that request is denied, the litigant will be entitled to an immediate appeal. Thus, if a court finds that a criminal defendant fails to meet indigency requirements, the defendant can immediately appeal and the criminal proceeding must halt until the appeal is adjudicated. Similarly, a party in any civil lawsuit can ask for court-appointed counsel even if no such right has previously been thought to exist. If the request is denied, then the party can stop the proceedings and pursue an immediate appeal. Thus, by concluding that this category of decisions is immediately appealable, the majority invites many of the problems that the final-order rule is meant to avoid—piecemeal litigation, strategic delay, harassment of opponents, and premature review of trial-court decisions.

{¶ 52} One wonders what the state of the law is for final orders in Ohio following today’s decision. The majority doesn’t explicitly overrule the standard established in *Bell*, 67 Ohio St.3d at 63, 616 N.E.2d 181—that to affect a substantial right an order must foreclose appropriate relief in the future—but it does ignore the standard altogether. I don’t envy future appellate courts and litigants who will have to try to make sense of R.C. 2505.02(B)(2)’s “affects a substantial right” requirement in the face of this court’s inconsistent treatment of the provision.

{¶ 53} The majority’s decision today cannot be explained by our precedent; it can only be explained by the majority’s desire to immediately reach the result it

finds most efficacious. And no doubt, forcing a litigant to wait for a final order before challenging the denial of counsel can impose a hardship on that individual. But that is not sufficient justification to ignore the jurisdictional barriers. It would be “ ‘a disservice to the Court, to litigants in general and to the idea of speedy justice if we were to succumb to enticing suggestions to abandon the deeply-held distaste of piecemeal litigation in every instance of temptation.’ ” *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 440, 105 S.Ct. 2757, 86 L.Ed.2d 340 (1985), quoting *Bachowski v. Usery*, 545 F.2d 363, 373 (3d Cir.1976). Moreover, ignoring the jurisdictional requirements in those cases “ ‘where the merits of the dispute may attract the deep interest of the court’ ” will lead to “ ‘a lack of principled adjudication’ ” and “ ‘perhaps the ultimate devitalization of the finality rule.’ ” *Id.*, quoting *Bachowski* at 373-374.

Conclusion

{¶ 54} Under the rule that we announced in *Bell* at 63, the court of appeals did not have jurisdiction over E.S.’s interlocutory appeal. The trial court’s order refusing to appoint counsel for E.S. did not affect a substantial right because it did not foreclose appropriate relief in the future. Thus, I would vacate the decision of the court of appeals and order the appeal dismissed.

STEWART, J., concurs in the foregoing opinion.

Welch Legal Services, L.L.C., and Porter R. Welch, for appellees.

Staci K. Thomas, Legal Aid Society of Columbus; and James M. Daniels, and Matthew P. Waigand, Southeastern Ohio Legal Services, for appellant.

Dave Yost, Attorney General, Benjamin M. Flowers, Solicitor General, and Stephen P. Carney, Deputy Solicitor General, urging affirmance for amicus curiae Ohio Attorney General Dave Yost.

Legal Aid Society of Cleveland, Katherine Hollingsworth, Thomas Mlakar, and Joseph Tomino; McDonald Hopkins, L.L.C., R. Jeffrey Pollock, and Amy

Wojnarwsky; Legal Aid of Western Ohio, Inc., Lucinda Weller, Frank Catanzariti, Cara Williams, and Sarvani Nicolosi; Advocates for Basic Legal Equality, Inc., and Heather Hall; Legal Aid Society of Southwest Ohio, L.L.C., and John Schrider; Community Legal Aid Services, Inc., and Jennifer van Dulmen, urging reversal for amicus curiae Legal Aid Society of Cleveland, Legal Aid of Western Ohio, Inc., Legal Aid Society of Southwest Ohio, L.L.C., Advocates for Basic Legal Equality, Inc., Community Legal Aid Services, Inc., National Coalition for a Civil Right to Counsel, and National Association of Counsel for Children.

III. Financial Disclosure Form

FINANCIAL DISCLOSURE FORM

(\$25.00 application fee may be assessed—see notice on reverse side)

I. PERSONAL INFORMATION

Applicant's Name		D.O.B.	Name of Person Being Represented (if juvenile)		D.O.B.
Mailing Address			City	State	Zip Code
Case No.			Phone ()	Cell Phone ()	
SSN Last 4	Gender	Race <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Pacific Islander <input type="checkbox"/> Spanish or Latino <input type="checkbox"/> White <input type="checkbox"/> Other			

II. OTHER PERSONS LIVING IN HOUSEHOLD

Name 1)	D.O.B.	Relationship	Name 3)	D.O.B.	Relationship
2)			4)		

III. PRESUMPTIVE ELIGIBILITY

The appointment of counsel is presumed if the person represented meets any of the qualifications below. Please place an 'X'

Ohio Works First / TANF: ____ SSI: ____ SSD: ____ Medicaid: ____ Poverty Related Veterans' Benefits: ____ Food Stamps: ____

Refugee Settlement Benefits: ____ Incarcerated in state penitentiary: ____ Committed to a Public Mental Health Facility: ____

Other (please describe): _____ Juvenile: ____ (if juvenile, please continue at Section VIII)

IV. INCOME AND EMPLOYER

	Applicant	Spouse (Do not include spouse's income if spouse is alleged victim)	Total Income
Gross Monthly Employment Income			
Unemployment, Worker's Compensation, Child Support, Other Types of Income			
TOTAL INCOME			\$

Employer's Name: _____ Phone Number: _____

Employer's Address: _____

V. LIQUID ASSETS

Type of Asset	Estimated Value
Checking, Savings, Money Market Accounts	\$
Stocks, Bonds, CDs	\$
Other Liquid Assets or Cash on Hand	\$
Total Liquid Assets	\$

VI. MONTHLY EXPENSES

Type of Expense	Amount	Type of Expense	Amount
Child Support Paid Out		Telephone	
Child Care (if working only)		Transportation / Fuel	
Insurance (medical, dental, auto, etc.)		Taxes Withheld or Owed	
Medical / Dental Expenses or Associated Costs of Caring for Infirm Family Member		Credit Card, Other Loans	
Rent / Mortgage		Utilities (Gas, Electric, Water / Sewer, Trash)	
Food		Other (Specify)	
EXPENSES	\$	EXPENSES	\$

VII. DETERMINATION OF INDIGENCY

If applicant's Total Income in Section IV is at or below 187.5% of the Federal Poverty Guidelines, counsel must be appointed.

For applicants whose Total Income in Section IV is above 125% of the Federal Poverty Guidelines, see recoupment notice in Section XI.

If applicant's Liquid Assets in Section V exceed figures provided in OAC 120-1-03, appointment of counsel may be denied if applicant can employ counsel using those liquid assets.

If applicant's Total Income falls above 187.5% of Federal Poverty Guidelines, but applicant is financially unable to employ counsel after paying monthly expenses in Section VI, counsel must be appointed.

VIII. \$25.00 APPLICATION FEE NOTICE

By submitting this Financial Disclosure Form, you will be assessed a non-refundable \$25.00 application fee unless waived or reduced by the court. If assessed, the fee is to be paid to the clerk of courts within 7 days of submitting this form to the entity that will make a determination regarding your indigency. No applicant may be denied counsel based upon failure or inability to pay this fee.

IX. APPLICANT CERTIFICATION

I, _____ (applicant or alleged delinquent child) state:

1. I am financially unable to retain private counsel without substantial hardship to me or my family.
2. I understand that I must inform the public defender or appointed attorney if my financial situation should change before the disposition of the case(s) for which representation is being provided.
3. I understand that if it is determined by the county or the court that legal representation should not have been provided, I may be required to reimburse the county for the costs of representation provided. Any action filed by the county to collect legal fees hereunder must be brought within two years from the last date legal representation was provided.
4. I understand that I am subject to criminal charges for providing false financial information in connection with this application for legal representation, pursuant to Ohio Revised Code sections 120.05 and 2921.13.
5. I hereby certify that the information I have provided on this financial disclosure form is true to the best of my knowledge.

Signature

Date

X. JUDGE CERTIFICATION

I hereby certify that the above-noted applicant is unable to fill out and/or sign this financial disclosure for the following reason: _____. I have determined that the party represented meets the criteria for receiving court-appointed counsel.

Judge's Signature

Date

XI. NOTICE OF RECOUPMENT

ORC. §120.03 allows for county recoupment programs. Any such program may not jeopardize the quality of defense provided or act to deny representation to qualified applicants. No payments, compensation, or in-kind services shall be required from an applicant or client whose income falls below 125% of the federal poverty guidelines. See OAC 120-1-05.

Through recoupment, an applicant or client may be required to pay for **part** of the cost of services rendered, if he or she can reasonably be expected to pay. See ORC §2941.51(D)

XII. JUVENILE'S PARENTS' INCOME* – FOR RECOUPMENT PURPOSES ONLY – NOT FOR APPOINTMENT OF COUNSEL

	Custodial Parents' Income (Do not include parents' income if parent or relative is alleged victim)	Total
Employment Income (Gross)		
Unemployment, Workers Compensation, Child Support, Other Types of Income		
	TOTAL INCOME	\$

*Please complete Section VI on page 1 of this form if you would like the court to consider your monthly expenses when determining the amount of recoupment which you can reasonably be expected to pay.

IV. Probate Court Costs and Funding

Court Costs, Court Funds & What Other Courts Are Doing

*When the cupboard is bare,
where will you look?*

Judge James T. Walther
Lorain County Probate Court
225 Court St, 6th Floor
Elyria, Ohio 44035
(440) 329-5443
FAX (440) 328-2157
Email: jwalther@loraincounty.us

Overview of Funds and Fees

<u>Fund</u>	<u>O.R.C. Section</u>
Dispute Resolution Fund	§2101.163
Specific Special Project Fund	§2303.201(E)(1)
General Special Project Fund	§2303.201(E)(1)
Statutory Fees	§2101.16(A)
Clerk Computerization Fund	§2101.162(B)(1)
Computerized Legal Research Fund	§2101.162(A)(1)
Probate Court Conduct of Business Fund	§2101.19
Indigent Guardianship Fund	§2111.51
Certification of Fees	§2101.15
Waiving Fees	§2101.16(B)
Deposits for costs	

Funds under the exclusive control of the Probate Court

§2101.162. Computerizing court of paying cost of computerized legal research

(A)(2) All moneys collected under division (A)(1) of this section shall be paid to the county treasurer. The treasurer shall place the moneys from the fees in a separate fund to be disbursed, upon an order of the probate judge, in an amount no greater than the actual cost to the court of procuring and maintaining computerization of the court, computerized legal research services, or both.

§2101.162. Computerizing court of paying cost of computerized legal research

(B)(1) Subject to division (B)(2) of this section, all moneys collected under this division shall be paid to the county treasurer to be disbursed, upon an order of the probate judge and subject to appropriation by the board of county commissioners, in an amount no greater than the actual cost to the probate court of procuring and maintaining computer systems for the office of the clerk of the court.

§2101.163 Dispute resolution procedures in probate court.

(B) The probate court shall pay to the county treasurer of the county in which the court is located all fees collected under division (A) of this section. The treasurer shall place the funds from the fees in a separate fund to be disbursed upon an order of the probate judge.

§2101.19. Limitation of charges by probate judge - probate court conduct of business fund

(B) *** Upon receipt of an order of the probate judge for the payment of moneys from the fund for the conduct of the business of the court, the county auditor shall draw a warrant on the county treasurer for the amount of money specified in the order, but not exceeding the balance of the moneys in the fund, which warrant shall be made payable to the probate judge or another person designated in the order.

§2111.51. County indigent guardianship fund

Expenditures from the fund shall be made only upon order of the probate judge and only for payment of any cost, fee, charge, or expense associated with the establishment, opening, maintenance, or termination of a guardianship for an indigent ward.

§2303.201 (General and Specific special project funds)

Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project.

Dispute Resolution Fund

§2101.163 Dispute resolution procedures in probate court.

(A) A probate judge may establish by rule procedures for the resolution of disputes between parties to any civil action or proceeding that is within the jurisdiction of the probate court. Any procedures so adopted shall include, but are not limited to, mediation. If the probate judge establishes any procedures under this division, the probate judge may charge, in addition to the fees and costs authorized under section 2101.16 of the Revised Code, a reasonable fee, **not to exceed fifteen dollars**, that is to be collected on the filing of each action or proceeding and that is to be used to implement the procedures.

(B) The probate court shall pay to the county treasurer of the county in which the court is located all fees collected under division (A) of this section. The treasurer shall place the funds from the fees in a separate fund to be disbursed upon an order of the probate judge.

(C) If the probate judge determines that the amount of the moneys in the fund described in division (B) of this section is more than the amount that is sufficient to satisfy the purpose for which the additional fee described in division (A) of this section was imposed, the probate judge **may declare a surplus in the fund** and expend the surplus moneys **for other appropriate judicial expenses** of the probate court.

Effective Date: 04-08-2004

December 18, 2009

Ms. Lisa Hobart
Budget Director
Lorain County Commissioners
226 Middle Ave., 4th floor
Elyria, OH 44035

Re: Probate Court Dispute Resolution Trust Fund

Dear Ms. Hobart:

In 2004 Ohio House Bill 51 amended Ohio Revised Code section 2101.163 to allow the judge of the Probate Court to establish a trust fund for the purpose of dispute resolution.

The Court would like to establish this fund for the purpose of paying fees for mediators who will attempt to settle cases before the Probate Court. O.R.C. §2101.163 allows the Probate Court to assess a reasonable fee, not to exceed fifteen dollars, that is to be collected on the filing of each action or proceeding and that is to be used to implement the procedures.

It is the Court's intention to implement this program as soon as the Lorain County Commissioner's approve the resolution to establish the fund and the Lorain County Auditor establishes a separate dedicated trust fund. For your convenience, attached hereto is a copy of O.R.C. §2101.163 in its current form.

If you should have any further questions in this regard, please feel free to contact me at your convenience.

Sincerely,

James T. Walther

cc: Mark Stewart, Auditor

Specific Special Project Fund

§2303.201

(E)(1) The court of common pleas may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for **special projects of the court**, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

If the court of common pleas offers a special program or service in cases of a specific type, the court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (E) of this section shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a **specific special project**. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (E) of this section, the court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

(2) As used in division (E) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

December 21, 2009

Ms. Lisa Hobart
Budget Director
Lorain County Commissioners
226 Middle Ave., 4th Floor
Elyria, OH 44035

Re: Probate Court Volunteer Guardianship Program Special Project Trust
Fund

Dear Ms. Hobart:

On October 16, 2009, Ohio House Bill 1 amended Ohio Revised Code section 2303.201. O.R.C. §2303.201(E)(1) was implemented to allow a common pleas judge to initiate additional funds that are necessary to acquire and pay for special projects of the court.

The Court would like to establish this fund for the purpose of collecting fees to fund a community service program known as the Volunteer Guardianship Program. O.R.C. §2303.201(E)(1) allows the Probate Court to assess a reasonable fee, in this case not to exceed fifteen dollars (\$15.00), that is to be collected on the filing of each action or proceeding and that is to be used to fund the Volunteer Guardianship Program.

It is the Court's intention to implement this program as soon as the Lorain County Commissioner's approve the resolution to establish the fund and the Lorain County Auditor establishes a separate dedicated trust fund. For your convenience, attached hereto is a copy of O.R.C. §2303.201(E)(1) in its current form.

If you should have any further questions in this regard, please feel free to contact me at your convenience.

Sincerely,

James T. Walther

cc: Mark Stewart, Auditor

**COURT OF COMMON PLEAS
PROBATE DIVISION
LORAIN COUNTY, OHIO**

**IN RE: PROBATE COURT VOLUNTEER
GUARDIANSHIP PROGRAM
SPECIAL PROJECT FUND**

JUDGMENT ENTRY

IT IS HEREBY determined that the efficient operation of the Lorain County Probate Court requires additional funds be made available for the funding of a community service program known as the Volunteer Guardianship Program and the Clerk of the Common Pleas, Probate Division is authorized and directed to charge an additional fee pursuant to the provisions of Ohio Revised Code Section 2303.201(E)(1) in the sum of fifteen dollars (\$15.00) to be made upon the filing of each action or proceeding and that is to be used for the purpose of funding the Volunteer Guardianship Program, beginning February 1, 2010.

The proper authority is hereby authorized and directed to establish a fund to be known as the "PROBATE COURT VOLUNTEER GUARDIANSHIP PROGRAM SPECIAL PROJECT FUND". The amount of fifteen dollars (\$15.00) for each filing as hereinbefore defined shall be paid over to the Lorain County Treasurer. The treasurer shall place the funds from the fees in a separate fund to be disbursed upon an order of the Lorain County Probate Judge.

James T. Walther, Judge

General Special Project Fund

March 16, 2010

Ms. Lisa Hobart
Budget Director
Lorain County Commissioners
226 Middle Ave., 4th Floor
Elyria, OH 44035

Re: Probate Court General Special Projects Fund

Dear Ms. Hobart:

On October 16, 2009, Ohio House Bill 1 amended Ohio Revised Code section 2303.201. O.R.C. §2303.201(E)(1) was implemented to allow common pleas judges to initiate additional funds that are necessary to acquire and pay for special projects of the court.

The Court would like to establish this fund because additional funds are necessary to acquire and pay for special projects of the Probate Court. O.R.C. §2303.201(E)(1) allows the Probate Court to assess a reasonable fee, in this case not to exceed fifty dollars (\$50.00), that is to be collected on the filing of each action or proceeding and that is to be used to fund special projects of the Probate Court.

It is the Court's intention to implement this program as soon as the Lorain County Commissioner's approve the resolution to establish the fund and the Lorain County Auditor establishes a separate general special projects fund. For your convenience, attached hereto is a copy of O.R.C. §2303.201(E)(1) in its current form.

If you should have any further questions in this regard, please feel free to contact me at your convenience.

Sincerely,

James T. Walther

cc: Mark Stewart, Auditor

§2303.201

(E)(1) The court of common pleas may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for **special projects of the court**, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

If the court of common pleas offers a special program or service in cases of a specific type, the court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (E) of this section shall be paid to the county treasurer for deposit into either a **general special projects fund** or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (E) of this section, the court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

(2) As used in division (E) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

**COURT OF COMMON PLEAS
PROBATE DIVISION
LORAIN COUNTY, OHIO**

**IN RE: PROBATE COURT GENERAL
 SPECIAL PROJECT FUND**

JUDGMENT ENTRY

IT IS HEREBY determined that the efficient operation of the Lorain County Probate Court requires additional funds that are necessary to acquire and pay for special projects of the Lorain County Probate Court and the Clerk of the Common Pleas, Probate Division is authorized and directed to charge an additional fee pursuant to the provisions of Ohio Revised Code Section 2303.201(E)(1) in the sum of twenty-five dollars (\$25.00) to be made upon the filing of each Guardianship (16.0 and 17.0); and in the sum of fifty dollars (\$50.00) to be made upon the filing of each Estate with Full Administration (4.0); Application to Settle a Minor's Claim (22.0); Trust; and Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (14.0); and that is to be used to acquire and pay for special projects of the Lorain County Probate Court, beginning April 1, 2010.

The proper authority is hereby authorized and directed to establish a fund to be known as the "PROBATE COURT GENERAL SPECIAL PROJECT FUND". The amounts as hereinbefore defined shall be paid over to the Lorain County Treasurer. The Treasurer shall place the funds from the fees in a separate fund to be disbursed upon an order of the Lorain County Probate Judge.

James T. Walther, Judge

Statutory Fees

§ 2101.16. Fees

(A) Except as provided in section [2101.164](#) of the Revised Code, the fees enumerated in this division shall be charged and collected, if possible, by the probate judge and shall be in full for all services rendered in the respective proceedings:

- (1) Account, in addition to advertising charges
.....\$ 12.00
Waivers and proof of notice of hearing on account, per page,
minimum one dollar
\$ 1.00
- (2) Account of distribution, in addition to advertising charges
.....\$ 7.00
- (3) Adoption of child, petition for
.....\$ 50.00
- (4) Alter or cancel contract for sale or purchase of real property,
complaint to
.....\$ 20.00
- (5) Application and order not otherwise provided for in this section
or by rule adopted pursuant to division (E) of this section
.....\$ 5.00
- (6) Appropriation suit, per day, hearing in
.....\$ 20.00
- (7) Birth, application for registration of
.....\$ 7.00
- (8) Birth record, application to correct
.....\$ 5.00
- (9) Bond, application for new or additional
.....\$ 5.00
- (10) Bond, application for release of surety or reduction of
.....\$ 5.00
- (11) Bond, receipt for securities deposited in lieu of
.....\$ 5.00
- (12) Certified copy of journal entry, record, or proceeding, per page,
minimum fee one dollar
.....\$ 1.00
- (13) Citation and issuing citation, application for
.....\$ 5.00
- (14) Change of name, petition for
.....\$ 20.00
- (15) Claim, application of administrator or executor for allowance of
administrator's or executor's own
.....\$ 10.00
- (16) Claim, application to compromise or settle
.....\$ 10.00
- (17) Claim, authority to present
.....\$ 10.00
- (18) Commissioner, appointment of
.....\$ 5.00
- (19) Compensation for extraordinary services and attorney's fees for
fiduciary, application for
.....\$ 5.00

(20)	Competency, application to procure adjudication of	\$ 20.00
(21)	Complete contract, application to	\$ 10.00
(22)	Concealment of assets, citation for	\$ 10.00
(23)	Construction of will, complaint for	\$ 20.00
(24)	Continue decedent's business, application to	\$ 10.00
	Monthly reports of operation	\$ 5.00
(25)	Declaratory judgment, complaint for	\$ 20.00
(26)	Deposit of will	\$ 5.00
(27)	Designation of heir	\$ 20.00
(28)	Distribution in kind, application, assent, and order for	\$ 5.00
(29)	Distribution under section 2109.36 of the Revised Code, application for an order of	\$ 7.00
(30)	Docketing and indexing proceedings, including the filing and noting of all necessary documents, maximum fee, fifteen dollars	\$ 15.00
(31)	Exceptions to any proceeding named in this section, contest of appointment or	\$ 10.00
(32)	Election of surviving partner to purchase assets of partnership, proceedings relating to	\$ 10.00
(33)	Election of surviving spouse under will	\$ 5.00
(34)	Fiduciary, including an assignee or trustee of an insolvent debtor or any guardian or conservator accountable to the probate court, appointment of	\$ 35.00
(35)	Foreign will, application to record	\$ 10.00
	Record of foreign will, additional, per page	\$ 1.00
(36)	Forms when supplied by the probate court, not to exceed	\$ 10.00
(37)	Heirship, petition to determine	\$ 20.00
(38)	Injunction proceedings	\$ 20.00
(39)	Improve real property, petition to	\$ 20.00
(40)	Inventory with appraisalment	\$ 10.00
(41)	Inventory without appraisalment	\$ 7.00
(42)	Investment or expenditure of funds, application for	\$ 10.00
(43)	Invest in real estate, application to	

	.....\$	10.00
(44)	Lease for oil, gas, coal, or other mineral, petition to	
	.....\$	20.00
(45)	Lease or lease and improve real property, petition to	
	.....\$	20.00
(46)	Marriage license	
	.....\$	10.00
	Certified abstract of each marriage	
	.....\$	2.00
(47)	Minor or incompetent person, etc., disposal of estate under	
	twenty-five thousand dollars of	
	.....\$	10.00
(48)	Mortgage or mortgage and repair or improve real property,	
	complaint to	
	.....\$	20.00
(49)	Newly discovered assets, report of	
	.....\$	7.00
(50)	Nonresident executor or administrator to bar creditors' claims,	
	proceedings by	
	.....\$	20.00
(51)	Power of attorney or revocation of power, bonding company	
	.....\$	10.00
(52)	Presumption of death, petition to establish	
	.....\$	20.00
(53)	Probating will	
	.....\$	15.00
	Proof of notice to beneficiaries	
	.....\$	5.00
(54)	Purchase personal property, application of surviving spouse to	
	.....\$	10.00
(55)	Purchase real property at appraised value, petition of surviving	
	spouse to	
	.....\$	20.00
(56)	Receipts in addition to advertising charges, application and	
	order to record	
	.....\$	5.00
	Record of those receipts, additional, per page	
	.....\$	1.00
(57)	Record in excess of fifteen hundred words in any proceeding in	
	the probate court, per page	
	.....\$	1.00
(58)	Release of estate by mortgagee or other lienholder	
	.....\$	5.00
(59)	Relieving an estate from administration under section 2113.03 of	
	the Revised Code or granting an order for a summary release from	
	administration under section 2113.031 of the Revised Code	
	.....\$	60.00
(60)	Removal of fiduciary, application for	
	.....\$	10.00
(61)	Requalification of executor or administrator	
	.....\$	10.00
(62)	Resignation of fiduciary	
	.....\$	5.00
(63)	Sale bill, public sale of personal property	
	.....\$	10.00
(64)	Sale of personal property and report, application for	
	.....\$	10.00

(65)	Sale of real property, petition for	.....\$ 25.00
(66)	Terminate guardianship, petition to	.....\$ 10.00
(67)	Transfer of real estate, application, entry, and certificate for	.....\$ 7.00
(68)	Unclaimed money, application to invest	.....\$ 7.00
(69)	Vacate approval of account or order of distribution, motion to	.....\$ 10.00
(70)	Writ of execution	.....\$ 5.00
(71)	Writ of possession	.....\$ 5.00
(72)	Wrongful death, application and settlement of claim for	.....\$ 20.00
(73)	Year's allowance, petition to review	.....\$ 7.00
(74)	Guardian's report, filing and review of	.....\$ 5.00
(75)	Mentally ill person subject to court order, filing of affidavit and proceedings for	.....\$ 25.00

(B) (1) In relation to an application for the appointment of a guardian or the review of a report of a guardian under section 2111.49 of the Revised Code, the probate court, pursuant to court order or in accordance with a court rule, may direct that the applicant or the estate pay any or all of the expenses of an investigation conducted pursuant to section 2111.041 or division (A)(2) of section 2111.49 of the Revised Code. If the investigation is conducted by a public employee or investigator who is paid by the county, the fees for the investigation shall be paid into the county treasury. If the court finds that an alleged incompetent or award is indigent, the court may **waive** the costs, fees, and expenses of an investigation.

(2) In relation to the appointment or functioning of a guardian for a minor or the guardianship of a minor, the probate court may direct that the applicant or the estate pay any or all of the expenses of an investigation conducted pursuant to section 2111.042 of the Revised Code. If the investigation is conducted by a public employee or investigator who is paid by the county, the fees for the investigation shall be paid into the county treasury. If the court finds that the guardian or applicant is indigent, the court may **waive** the costs, fees, and expenses of an investigation.

(3) In relation to the filing of an affidavit of mental illness for a mentally ill person subject to court order, the court may **waive** the fee under division (A)(75) of this section if the court finds that the affiant is indigent or for good cause shown.

(C) Thirty dollars of the thirty-five-dollar fee collected pursuant to division (A)(34) of this section and twenty dollars of the sixty-dollar fee collected pursuant to division

(A)(59) of this section shall be deposited by the county treasurer in the indigent guardianship fund created pursuant to section 2111.51 of the Revised Code.

(D) The fees of witnesses, jurors, sheriffs, coroners, and constables for services rendered in the probate court or by order of the probate judge shall be the same as provided for similar services in the court of common pleas.

(E) The probate court, by rule, may require an advance deposit for costs, not to exceed one hundred twenty-five dollars, at the time application is made for an appointment as executor or administrator or at the time a will is presented for probate.

(F) (1) Thirty dollars of the fifty-dollar fee collected pursuant to division (A)(3) of this section shall be deposited into the "putative father registry fund," which is hereby created in the state treasury. The department of job and family services shall use the money in the fund to fund the department's costs of performing its duties related to the putative father registry established under section 3107.062 of the Revised Code.

(2) If the department determines that money in the putative father registry fund is more than is needed for its duties related to the putative father registry, the department may use the surplus moneys in the fund as permitted in division (C) of section 2151.3534, division (B) of section 2151.3530, or section 5103.155 of the Revised Code.

R.C. 2151.3534(C) If the department of job and family services determines that money in the putative father registry fund created under section 2101.16 of the Revised Code is more than is needed for its duties related to the putative father registry, the department may use surplus moneys in the fund for costs related to the development and publication of forms and materials promulgated pursuant to divisions (A) and (B) of this section.

R.C. 2151.3530(B) Divisions (A)(1) and (2) of this section do not apply with respect to a person who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child.

R.C. 5103.155 If the department of job and family services determines that money in the putative father registry fund created under section 2101.16 of the Revised Code is more than is needed to perform its duties related to the putative father registry, the department may use surplus moneys in the fund to promote adoption of children with special needs.

Computerized Legal Research Fund

§ 2101.162. Computerizing court of paying cost of computerized legal research

- (A)
- (1) The probate judge may determine that, for the efficient operation of the probate court, additional funds are required to computerize the court, make available computerized legal research services, or to do both. Upon making a determination that additional funds are required for either or both of those purposes, the probate judge shall charge a fee **not to exceed three dollars** or authorize and direct a deputy clerk of the probate court to charge a fee not to exceed three dollars, in addition to the fees specified in divisions (A)(1), (3), (4), (6), (14) to (17), (20) to (25), (27), (30) to (32), (34), (35), (37) to (48), (50) to (55), (59) to (61), (63) to (66), (69), and (72) of section **2101.16** of the Revised Code and the fee charged in connection with the docketing and indexing of an appeal.
 - (2) All moneys collected under division (A)(1) of this section shall be paid to the county treasurer. The treasurer shall place the moneys from the fees in a separate fund to be disbursed, upon an order of the probate judge, in an amount no greater than the actual cost to the court of procuring and maintaining computerization of the court, computerized legal research services, or both.
 - (3) If the court determines that the funds in the fund described in division (A)(2) of this section are more than sufficient to satisfy the purpose for which the additional fee described in division (A)(1) of this section was imposed, **the court may declare a surplus in the fund** and expend those surplus funds **for other appropriate technological expenses** of the court.

Clerk Computerization Fund

§2101.162 Computerizing court of paying cost of computerized legal research.

- (B)
- (1) The probate judge may determine that, for the efficient operation of the probate court, additional funds are required to computerize the office of the clerk of the court and, upon that determination, may charge a fee, not to exceed ten dollars, or authorize and direct a deputy clerk of the probate court to charge a fee, **not to exceed ten dollars**, in addition to the fees specified in divisions (A)(1), (3), (4), (6), (14) to (17), (20) to (25), (27), (30) to (32), (34), (35), (37) to (48), (50) to (55), (59) to (61), (63) to (66), (69), and (72) of section 2101.16 of the Revised Code and the fee charged in connection with the docketing and indexing of an appeal. Subject to division (B)(2) of this section, all moneys collected under this division shall be paid to the county treasurer to be disbursed, upon an order of the probate judge and subject to appropriation by the board of county commissioners, in an amount no greater than the actual cost to the probate court of procuring and maintaining computer systems for the office of the clerk of the court.
 - (2) If the probate judge makes the determination described in division (B)(1) of this section, the board of county commissioners may issue one or more general obligation bonds for the purpose of procuring and maintaining the computer systems for the office of the clerk of the probate court. In addition to the purposes stated in division (B)(1) of this section for which the moneys collected under that division may be expended, the moneys additionally may be expended to pay debt charges on and financing costs related to any general obligation bonds issued pursuant to this division as they become due. General obligation bonds issued pursuant to this division are Chapter 133. securities.

Probate Court Conduct of Business Fund

§ 2101.19. Limitation of charges by probate judge - probate court conduct of business fund

(A) No probate judge or his deputy clerk shall sell or offer for sale for more than one dollar any merchandise to be used in connection with any license, order, or document issued by the probate court, or make any charge in connection with the issuance of any license, order, or document except that specifically provided by law.

(B) All moneys obtained from the sale of merchandise to be used in connection with any license, order, or document issued by a probate court shall be paid by the probate judge or the deputy clerk of the court into the county treasury. The moneys shall be credited to a fund to be known as the probate court conduct of business fund. The moneys so credited shall be used solely for the conduct of the business of the probate court.

Upon receipt of an order of the probate judge for the payment of moneys from the fund for the conduct of the business of the court, the county auditor shall draw a warrant on the county treasurer for the amount of money specified in the order, but not exceeding the balance of the moneys in the fund, which warrant shall be made payable to the probate judge or another person designated in the order.

History. Effective Date: 03-13-1986

Indigent Guardianship Fund

Current through legislation filed and passed through 6/18/2010

§ 2111.51. County indigent guardianship fund

Each county shall establish in the county treasury an indigent guardianship fund. All revenue that the general assembly appropriates to the indigent guardianship fund for a county, thirty dollars of the thirty-five-dollar fee collected pursuant to division (A)(34) of section [2101.16](#) of the Revised Code, and twenty dollars of the sixty-dollar fee collected pursuant to division (A)(59) of that section shall be deposited into the fund that is established in that county. Expenditures from the fund shall be made only upon order of the probate judge and only for payment of any cost, fee, charge, or expense associated with the establishment, opening, maintenance, or termination of a guardianship for an indigent ward.

If a probate court determines that there are reasonably sufficient funds in the indigent guardianship fund of the county in which the court is located to meet the needs of indigent guardianships in that county, the court, by order, **may declare a surplus** in the indigent guardianship fund and **expend the surplus funds for other guardianship expenses or for other court purposes**.

§ 2101.16. [Effective 3/23/2010] Fees

(A)(34) Fiduciary, including an assignee or trustee of an insolvent debtor or any guardian or conservator accountable to the probate court, appointment of

.....\$ 35.00

(A)(59) Relieving an estate from administration under section 2113.03 of the Revised Code or granting an order for a summary release from administration under section 2113.031 of the Revised Code

.....\$ 60.00

Certification of Costs

§ 2101.15. Probate judge to file itemized account of fees with county auditor

In each case, examination, or proceeding, the probate judge shall file an itemized account of fees received or charged by the judge. On the first day of January, in each year, the judge **shall** file with the county auditor an account, certified by the judge, of all fees received by the judge during the preceding year. No judge shall fail to perform the duties imposed in this section. At the instance of any person, the prosecuting attorney shall institute and prosecute an action against the defaulting judge.

Effective Date: 10-01-1953.

Waiving Fees

§ 2101.164. Fees waived for combat zone military casualties

(A) As used in this section, "combat zone" means an area that the president of the United States by executive order designates for purposes of [26 U.S.C. 112](#) as an area in which armed forces of the United States or the national guard are engaging or have engaged in combat.

(B) A probate judge shall not charge, or collect from, the estate of a decedent who died while in active service as a member of the armed forces of the United States or the national guard any of the following fees if the death occurred while the decedent was serving in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone:

- (1) Any fee for or associated with the filing of the decedent's will for probate;
- (2) Any fee for any service rendered by the probate court that is associated with the administration of the decedent's estate;
- (3) Any fee for relieving the decedent's estate from administration under section [2113.03](#) of the Revised Code or granting an order for a summary release from administration under section [2113.031](#) of the Revised Code.

(C) In determining whether a decedent died in a place or manner that exempts the estate of the decedent from fees under division (B) of this section, a probate judge may consider a casualty report issued pursuant to Army Regulation 600-8-1 or the regulations of any of the armed services of the United States or the national guard, the list of combat zones set forth in Publication 3, "The Armed Forces' Tax Guide," of the Internal Revenue Service, or any other form of documentation satisfactory to the probate judge.

Deposits for Costs

Do you want to be a Bank or a Collection Agency?

“I would rather owe you money, than beat it out of you.”

When I was young I used to think that money was the most important thing in life; now that I am old, I know it is. ~ Oscar Wilde

Lorain County
Deposit Schedule County Local Rule 25.1 (Effective April 1, 2010)

Filing of Application for Letters of Authority to Administer Estate (with or without will).....	300.00
Application for Estate Relieved (with or without a will).....	177.00
Summary Release from Administration.....	129.00
Affidavit and Application for Estate Relieved (Assets of \$2,000.00 or less).....	75.00
Filing of Will with no Application to Probate Court.....	69.00
Tax Filing only.....	5.00
Application to Probate Will only.....	98.00
Filing of Authenticated or Exemplified Copies.....	38.00
Authenticated or Exemplified Copies-Ancillary Administration or Barring of Claims...	125.00
Affidavit of Inheritance.....	76.00
Filing of Trust Estates	200.00
Disposal of Minor's Estate.....	98.00
Application for Appointment of Guardian-Minor.....	175.00
Application for Appointment of Guardian-Incompetent (person and estate).....	300.00
Application for Appointment of Guardian-Incompetent (person only).....	250.00
Application for Settlement Claim of a Minor.....	160.00
Appointment of a Conservator.....	175.00
Complaint-Civil Actions (land sales, surviving spouse to purchase, or completion of land contract, determination of heirships, declaratory judgments, etc).....	250.00
Application for Designation of Heir.....	140.00
Adoption Petition for One Child.....	170.00
Petition for Foreign Adoption.....	170.00
Petition for Adoption Placement.....	125.00
Petition for Release of Adoption Information.....	100.00
Acknowledgment of Paternity.....	55.00
Application for Delayed Registration of Birth Record.	80.00
Application for Correction of Birth Record.....	80.00
Application to Change Name.....	139.00
Application for Approval of Retainer Agreement.....	75.00

Deposit of a Will.....	9.00
Claims against the Estate (deposit from Claimant).....	10.00
Exceptions to Inventory or an Account (deposit received from Exceptor).....	30.00
Miscellaneous Actions.....	exact cost
Citation to Produce Will.....	110.00
Certified copy per judgment entry per page.....	1.00
Marriage License Application Fee.....	57.00

Court Credit Cards

CREDIT CARD POLICY

INTRODUCTION

The Lorain County Probate Court, recognizes the value of an efficient method of payment and record keeping for certain expenses. Therefore, the Lorain County Probate Court permits employees to use Court credit cards for the purchase of goods and services, provided that the following procedures are followed:

CREDIT CARD PROCEDURES

1. Credit card(s) can only be used for official county business. Pursuant to R.C. 301.27, credit card use is limited to the following work-related expenses: food, transportation, gasoline and oil, motor vehicle repair and maintenance, telephone, lodging and internet service provider expenses, webinar expenses, and the expenses for purchases of automatic or electronic data processing or record-keeping equipment, software, or services.
2. Credit card(s) can only be used by designated employees who have received written authorization. Designated employees as of this date are:
James T. Walther, Judge
Darlene Chapman, Court Administrator
3. Detailed receipts must be obtained when using credit card(s) and provided to the Court Administrator. If the Court Administrator is making the purchase, detailed receipts shall be submitted to the Judge.
4. Employees may be held liable for charges if receipts are lost or not provided.
5. In the event credit card(s) cannot be located or are determined to be stolen, employee(s) must contact the credit card company immediately to cancel credit card(s).

6. Employee(s) authorized to utilize credit card(s) will sign a copy of this policy prior to use of credit card(s).
7. The Judge or Court Administrator shall retain credit card(s) in a secured location when not in use.
8. Any employee utilizing credit card(s) inappropriately may be subject to disciplinary action, which can include financial reimbursement, revocation of credit card(s) privileges and/or possible civil actions.

This policy is effective March ____, 2015.

James T. Walther, Judge

§ 301.27. Use of county credit cards

(A) As used in this section:

- (1) "Credit card" includes gasoline and telephone credit cards but excludes any procurement card authorized under section **301.29** of the Revised Code.
- (2) "Officer" includes an individual who also is an appointing authority.
- (3) "Gasoline and oil expenses" and "motor vehicle repair and maintenance expenses" refer to only those expenses incurred for motor vehicles owned or leased by the county.

(B) (1) A credit card held by a board of county commissioners or the office of any other county appointing authority shall be used only to pay the following work-related expenses:

- (a) Food expenses;
- (b) Transportation expenses;
- (c) Gasoline and oil expenses;
- (d) Motor vehicle repair and maintenance expenses;
- (e) Telephone expenses;
- (f) Lodging expenses;
- (g) Internet service provider expenses;
- (h) In the case of a public children services agency, expenses for purchases for children for whom the agency is providing temporary emergency care pursuant to section **5153.16** of the Revised Code, children in the temporary or permanent custody of the agency, and children in a planned permanent living arrangement;
- (i) Webinar expenses;
- (j) The expenses for purchases of automatic or electronic data processing or record-keeping equipment, software, or services, provided that, in a county that has established an automatic data processing board, the county office and the county officer or employee authorized to use the credit card comply with sections **307.84** to **307.847** of the Revised

Code. The expenses paid by a credit card under division (B)(1)(j) of this section shall not exceed ten thousand dollars per quarter, unless the board of county commissioners adopts a resolution approving the payment by credit card of such expenses that exceed that amount during that time period.

- (2) No late charges or finance charges shall be allowed as an allowable expense unless authorized by the board of county commissioners.
- (C) A county appointing authority may apply to the board of county commissioners for authorization to have an officer or employee of the appointing authority use a credit card held by that appointing authority. The authorization request shall state whether the card is to be issued only in the name of the office of the appointing authority or whether the issued card also shall include the name of a specified officer or employee.
- (D) The debt incurred as a result of the use of a credit card pursuant to this section shall be paid from moneys appropriated to specific appropriation line items of the appointing authority for work-related expenses listed in division (B)(1) of this section.
- (E)
 - (1) Except as otherwise provided in division (E)(2) of this section, every officer or employee authorized to use a credit card held by the board or appointing authority shall submit to the board by the first day of each month an estimate of the officer's or employee's work-related expenses listed in division (B)(1) of this section for that month along with the specific appropriation line items from which those expenditures are to be made, unless the board authorizes, by resolution, the officer or employee to submit to the board such an estimate for a period longer than one month. The board may revise the estimate and determine the amount it approves, if any, not to exceed the estimated amount. The board shall certify the amount of its determination to the county auditor along with the specific appropriation line items from which the expenditures are to be made. After receiving certification from the county auditor that the determined sum of money is in the treasury or in the process of collection to the credit of the specific appropriation line items for which the credit card is approved for use, and is free from previous and then-outstanding obligations or certifications, the board shall authorize the officer or employee to incur debt for the expenses against the county's credit up to the authorized amount.
 - (2) In lieu of following the procedure set forth in division (E)(1) of this section, a board of county commissioners may adopt a resolution authorizing an officer or employee of an appointing authority to use a county credit card to pay for specific classes of the work-related expenses listed in division (B)(1)

of this section, or use a specific credit card for any of those work-related expenses listed in division (B)(1) of this section, without submitting an estimate of those expenses to the board as required by division (E)(1) of this section. Prior to adopting the resolution, the board shall notify the county auditor. The resolution shall specify whether the officer's or employee's exemption extends to the use of a specific credit card, which card shall be identified by its number, or to one or more specific work-related uses from the classes of uses permitted under division (B)(1) of this section. Before any credit card exempted for specific uses may be used to make purchases for uses other than those specific uses listed in the resolution, the procedures outlined in division (E)(1) of this section must be followed or the use shall be considered an unauthorized use. Use of any credit card under division (E)(2) of this section shall be limited to the amount appropriated and encumbered in a specific appropriation line item for the permitted use or uses designated in the authorizing resolution, or, in the case of a resolution that authorizes use of a specific credit card, for each of the permitted uses listed in division (B) of this section, but only to the extent the moneys in those specific appropriation line items are not otherwise encumbered.

- (F) (1) Any time a county credit card approved for use for an authorized amount under division (E)(1) of this section is used for more than that authorized amount, the appointing authority may request the board of county commissioners to authorize after the fact the expenditure of any amount charged beyond the originally authorized amount if, upon the board's request, the county auditor certifies that sum of money is in the treasury or in the process of collection to the credit of the appropriate appropriation line item for which the credit card was used, and is free from previous and then-outstanding obligations or certifications. If the card is used for more than the amount originally authorized and if for any reason that amount is not authorized after the fact, the county treasury shall be reimbursed for any amount spent beyond the originally authorized amount in the following manner:
- (a) If the card is issued in the name of a specific officer or employee, that officer or employee is liable in person and upon any official bond the officer or employee has given to the county to reimburse the county treasury for the amount charged to the county beyond the originally authorized amount.
 - (b) If the card is issued to the office of the appointing authority, the appointing authority is liable in person and upon any official bond the appointing authority has given to the county for the amount charged to the county beyond the originally authorized amount.

- (2) Any time a county credit card authorized for use under division (E)(2) of this section is used for more than the amount appropriated under that division, the county treasury shall be reimbursed for any amount spent beyond the originally appropriated amount in the following manner:
- (a) If the card is issued in the name of a specific officer or employee, that officer or employee is liable in person and upon any official bond the officer or employee has given to the county for reimbursing the county treasury for any amount charged on the card beyond the originally appropriated amount.
 - (b) If the card is issued in the name of the office of the appointing authority, the appointing authority is liable in person and upon any official bond the appointing authority has given to the county for reimbursement for any amount charged on the card beyond the originally appropriated amount.
- (3) Whenever any officer or employee who is authorized to use a credit card held by the board or the office of any other county appointing authority suspects the loss, theft, or possibility of unauthorized use of the card, the officer or employee shall notify the county auditor and either the officer's or employee's appointing authority or the board immediately and in writing.
- (4) If the county auditor determines there has been a credit card expenditure beyond the appropriated or authorized amount as provided in division (E) of this section, the auditor immediately shall notify the board of county commissioners. When the board determines, on its own or after notification from the county auditor, that the county treasury should be reimbursed for credit card expenditures beyond the appropriated or authorized amount as provided in divisions (F)(1) and (2) of this section, it shall give written notice to the county auditor and to the officer or employee or appointing authority liable to the treasury as provided in those divisions. If, within thirty days after issuance of the written notice, the county treasury is not reimbursed for the amount shown on the written notice, the prosecuting attorney of the county shall recover that amount from the officer or employee or appointing authority who is liable under this section by civil action in any court of appropriate jurisdiction.
- (G) Use of a county credit card for any use other than those permitted under division (B)(1) of this section is a violation of section **2913.21** of the Revised Code.

History. Amended by **130th General Assembly File No. TBD, SB 243, §1**, eff. 3/23/2015.

Effective Date: 02-12-2004 .

V. Jury Trials & Best Practices in Probate Court

Cases Entitled to Jury Trials & Best Practices

Producing, directing and starring in your own reality TV show



Judge James T. Walther
Lorain County Probate Court
225 Court St, 6th Floor
Elyria, Ohio 44035
(440) 329-5443
FAX (440) 328-2157
Email: jwalther@loraincounty.us

Judge Elinore Marsh Stormer
Summit County Probate Court
209 South High Street
Akron, Ohio 44308
(330) 643-2330
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Email: estormer@SummitOhioProbate.com

Who gets a jury trial in Probate Court?

Persons prohibited from benefiting from the death of another

Will Contests

Concealment of Assets

Appropriation of Property (Eminent domain)

Payment of Contingent claims against after settlement of estate

Charges against municipal officers

Claim for damages by a survey done by ODOT

Resolution for a grade crossing improvement

§ 2101.31. Determination of questions of fact

All questions of fact shall be determined by the probate judge, unless the judge orders those questions of fact to be tried before a **jury** or refers those questions of fact to a special master commissioner as provided in sections **2101.06** and **2101.07** of the Revised Code.

Rule 38. Jury Trial of Right

- (A) **Right preserved.** The right to trial by jury shall be preserved to the parties inviolate.
- (B) **Demand.** Any party may demand a trial by jury on any issue triable of right by a jury by serving upon the other parties a demand therefor at any time after the commencement of the action and not later than fourteen days after the service of the last pleading directed to such issue. Such demand shall be in writing and may be indorsed upon a pleading of the party. If the demand is indorsed upon a pleading the caption of the pleading shall state "**jury demand endorsed hereon.**" In an action for appropriation of a right of way brought by a corporation pursuant to Article XIII, Section 5, of the Ohio Constitution, the jury shall be composed of twelve members unless the demand specifies a lesser number; and in the event of timely demand by more than one party in such action the jury shall be composed of the greater number not to exceed twelve. In all other civil actions the jury shall be composed of **eight members** unless the demand specifies a lesser number; and in the event of timely demand by more than one party in such actions the jury shall be composed of the greater number not to exceed eight.
- (C) **Specification of issues.** In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within fourteen days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.
- (D) **Waiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(D) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Rule 47. Jurors

- (A) **Brief introduction of case.** To assist prospective jurors in understanding the general nature of the case, the court, in consultation with the parties, may give jurors a brief introduction to the case. The brief introduction may include a general description of the legal claims and defenses of the parties.
- (B) **Examination of prospective jurors.** Any person called as a prospective juror for the trial of any cause shall be examined under oath or upon affirmation as to the prospective juror's qualifications. The court may permit the parties or their attorneys to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by further inquiry. Nothing in this rule shall limit the court's discretion to allow the examination of all prospective jurors in the array or, in the alternative, to permit individual examination of each prospective juror seated on a panel, prior to any challenges for cause or peremptory challenges.
- (C) **Challenges to prospective jurors.** In addition to challenges for cause provided by law, each party peremptorily may challenge three prospective jurors. If the interests of multiple litigants are essentially the same, "each party" shall mean "each side."

Peremptory challenges shall be exercised alternately, with the first challenge exercised by the plaintiff. The failure of a party to exercise a peremptory challenge constitutes a waiver of that challenge, but does not constitute a waiver of any subsequent challenge. However, if all parties or sides, alternately and in sequence, fail to exercise a peremptory challenge, the joint failure constitutes a waiver of all peremptory challenges.

A prospective juror peremptorily challenged by either party shall be excused.

Nothing in this rule shall limit the court's discretion to allow challenges to be made outside the hearing of prospective jurors.

- (D) **Alternate jurors.** The court may direct that no more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are

found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. The court may retain alternate jurors after the jury retires. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. Each party is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed shall not be used against an alternate juror.

- (E) **Taking of notes by jurors.** The court, after providing appropriate cautionary instructions, may permit jurors who wish to do so to take notes during a trial. If the court permits the taking of notes, notes taken by a juror may be carried into deliberations by that juror. The court shall require that all juror notes be collected and destroyed promptly after the jury renders a verdict.
- (F) **Juror questions to witnesses.** The court may permit jurors to propose questions for the court to ask of the witnesses. If the court permits jurors to propose questions, the court shall use procedures that minimize the risk of prejudice, including all of the following:
 - (1) Require jurors to propose any questions to the court in writing;
 - (2) Retain a copy of each proposed question for the record;
 - (3) Instruct the jurors that they shall not display or discuss a proposed question with other jurors;
 - (4) Before reading a question to a witness, provide counsel with an opportunity to object to each question on the record and outside the hearing of the jury;
 - (5) Read the question, either as proposed or rephrased, to the witness;

- (6) Permit counsel to reexamine the witness regarding a matter addressed by a juror question;
- (7) If a question proposed by a juror is not asked, instruct the jurors that they should not draw any adverse inference from the court's refusal to ask any question proposed by a juror.

Rule 50. Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

(A) Motion for directed verdict.

- (1) **When made.** A motion for a directed verdict may be made on the opening statement of the opponent, at the close of the opponent's evidence or at the close of all the evidence.
- (2) **When not granted.** A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts.
- (3) **Grounds.** A motion for a directed verdict shall state the specific grounds therefor.
- (4) **When granted on the evidence.** When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.
- (5) **Jury assent unnecessary.** The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Rule 48. Juries: Majority Verdict; Stipulation of Number of Jurors

In all civil actions, a jury shall render a verdict upon the concurrence of **three-fourths** or more of their number. The verdict shall be in writing and signed by each of the jurors concurring therein. All jurors shall then return to court where the judge shall cause the verdict to be read and inquiry made to determine if the verdict is that of three-fourths or more of the jurors. Upon request of either party, the jury shall be polled by asking each juror if the verdict is that of the juror; if more than one-fourth of the jurors answer in the negative, or if the verdict in substance is defective, the jurors must be sent out again for further deliberation. If three-fourths or more of the jurors answer affirmatively, the verdict is complete and the jury shall be discharged from the case. If the verdict is defective in form only, with the assent of the jurors and before their discharge, the court may correct it.

The parties may stipulate that the jury shall consist of any number less than the maximum number provided by Rule **38(B)**. For the purpose of rendering a verdict, whenever three-fourths of the jury does not consist of an integral number, the next higher number shall be construed to represent three-fourths of the jury. For juries with less than four members, the verdict must be unanimous.

§ 2101.30. Jury - drawing

Whenever a jury is required in the probate court, the probate judge shall notify the commissioners of jurors, who shall cause to be drawn from the annual jury list the names of sixteen jurors. Additional names may be drawn if required. The clerk of the court of common pleas or one of the clerk's deputies shall make a list of those names in the order drawn and certify the list to the probate court, and the court shall issue a summons commanding the persons whose names were drawn to appear on the day and at the hour set for trial. The probate court shall deliver the summons to the sheriff, who shall serve it within five days of delivery and make prompt return of the service.

Persons prohibited from benefiting from the death of another

§ 2105.19. Persons prohibited from benefiting by the death of another

- (A) Except as provided in division (C) of this section, no person who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of a violation of or complicity in the violation of section 2903.01, 2903.02, or 2903.03 of the Revised Code or a violation of division (A) of section 2903.04 of the Revised Code that is not a proximate result of a felony violation of section 2903.06 of the Revised Code, or of an existing or former law of any other state, the United States, or a foreign nation, substantially equivalent to a violation of or complicity in the violation of any of these sections, no person who is indicted for a violation of or complicity in the violation of any of those sections or laws and subsequently is adjudicated incompetent to stand trial on that charge, and no juvenile who is found to be a delinquent child by reason of committing an act that, if committed by an adult, would be a violation of or complicity in the violation of any of those sections or laws, shall in any way benefit by the death. All property of the decedent, and all money, insurance proceeds, or other property or benefits payable or distributable in respect of the decedent's death, shall pass or be paid or distributed as if the person who caused the death of the decedent had predeceased the decedent.
- (B) A person prohibited by division (A) of this section from benefiting by the death of another is a constructive trustee for the benefit of those entitled to any property or benefit that the person has obtained, or over which the person has exerted control, because of the decedent's death. A person who purchases any such property or benefit from the constructive trustee, for value, in good faith, and without notice of the constructive trustee's disability under division (A) of this section, acquires good title, but the constructive trustee is accountable to the beneficiaries for the proceeds or value of the property or benefit.

(C) A person who is prohibited from benefiting from a death pursuant to division (A) of this section either because the person was adjudicated incompetent to stand trial or was found not guilty by reason of insanity, or the person's guardian appointed pursuant to Chapter 2111. of the Revised Code or other legal representative, may file a complaint to declare the person's right to benefit from the death in the probate court in which the decedent's estate is being administered or that released the estate from administration. The complaint shall be filed no later than sixty days after the person is adjudicated incompetent to stand trial or found not guilty by reason of insanity. The court shall notify each person who is a devisee or legatee under the decedent's will, or if there is no will, each person who is an heir of the decedent pursuant to section 2105.06 of the Revised Code that a complaint of that nature has been filed within ten days after the filing of the complaint. The person who files the complaint, and each person who is required to be notified of the filing of the complaint under this division, is entitled to a **jury trial** in the action. To assert the right, the person desiring a **jury trial shall demand a jury** in the manner prescribed in the Civil Rules.

A person who files a complaint pursuant to this division shall be restored to the person's right to benefit from the death unless the court determines, by a preponderance of the evidence, that the person would have been convicted of a violation of, or complicity in the violation of, section 2903.01, 2903.02, or 2903.03 of the Revised Code or a violation of division (A) of section 2903.04 of the Revised Code that is not a proximate result of a felony violation of section 2903.06 of the Revised Code, or of a law of another state, the United States, or a foreign nation that is substantially similar to any of those sections, if the person had been brought to trial in the case in which the person was adjudicated incompetent or if the person were not insane at the time of the commission of the offense.

Will Contests

§ 2107.71. Civil action to contest validity of will

- (A) A person interested in a will or codicil admitted to probate in the probate court that has not been declared valid by judgment of a probate court pursuant to section 2107.084 of the Revised Code or that has been declared valid by judgment of a probate court pursuant to section 2107.084 of the Revised Code but has been removed from the possession of the probate judge, may contest its validity by filing a complaint in the probate court in the county in which the will or codicil was admitted to probate.
- (B) Except as otherwise provided in this division, no person may contest the validity of any will or codicil as to facts decided if it was submitted to a probate court by the testator during the testator's lifetime and declared valid by judgment of the probate court and filed with the judge of the probate court pursuant to section 2107.084 of the Revised Code and if the will was not removed from the possession of the probate judge. A person may contest the validity of that will, modification, or codicil as to those facts if the person is one who should have been named a party defendant in the action in which the will, modification, or codicil was declared valid, pursuant to section 2107.081 or 2107.084 of the Revised Code, and if the person was not named a defendant and properly served in that action. Upon the filing of a complaint contesting the validity of a will or codicil that is authorized by this division, the court shall proceed with the action in the same manner as if the will, modification, or codicil had not been previously declared valid under sections 2107.081 to 2107.085 of the Revised Code.
- (C) No person may introduce, as evidence in an action authorized by this section contesting the validity of a will, the fact that the testator of the will did not file a complaint for a judgment declaring its validity under section 2107.081 of the Revised Code.

§ 2107.72. Rules of procedure - jury trial

- (A) The Rules of Civil Procedure govern all aspects of a will contest action, except as otherwise provided in sections 2107.71 to 2107.77 of the Revised Code.
- (B)
 - (1) Each party to a will contest action has the right to a **jury trial** of the action. To assert the right, a party shall demand a **jury trial** in the manner prescribed in the Rules of Civil Procedure. Subject to division (B)(2) of this section, if a party demands a jury trial in that manner, the action shall be tried to a **jury**.
 - (2) Notwithstanding any provision to the contrary in Civil Rule 38, a demand of a **jury trial** in a will contest action may be withdrawn, if either of the following applies:
 - (a) All parties to the action who are not in default of answer, consent to the withdrawal of the demand prior to the commencement of the trial;
 - (b) All parties to the action who are not in default of answer and who are present at the time of the commencement of the trial, consent to the withdrawal of the demand.

Concealment of Assets

§ 2109.50. Proceedings when assets concealed or embezzled

Upon complaint made to the probate court of the county having jurisdiction of the administration of an estate, a testamentary trust, or a guardianship or of the county where a person resides against whom the complaint is made, by a person interested in the estate, testamentary trust, or guardianship or by the creditor of a person interested in the estate, testamentary trust, or guardianship against 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, the court shall by citation or other judicial order compel the person or persons suspected to appear before it to be examined, on oath, touching the matter of the complaint.

§ 2109.52. Judgment on the complaint

When passing on a complaint made under section 2109.50 of the Revised Code, the probate court shall determine, by the verdict of a **jury** if either party requires it or without if not required, whether the person accused is guilty of having concealed, embezzled, conveyed away, or been in the possession of moneys, personal property, or choses in action of the estate, testamentary trust, or guardianship. If the person is **found guilty**, the probate court shall assess the amount of damages to be recovered or the court may order the return of the specific thing concealed or embezzled or may order restoration in kind. The probate court may issue a citation or other judicial order into any county in this state that shall be served and returned as provided in section 2109.50 of the Revised Code. The citation or other judicial order shall require any person who claims any interest in the assets alleged to have been concealed, embezzled, conveyed, or held in possession to appear before the court. At the hearing, the court may hear and determine questions of title relating to those assets. In all cases, except when the person found guilty is the fiduciary, the probate court shall render judgment in favor of the fiduciary or if there is no fiduciary in this state, the probate court shall render judgment in favor of the state, against the person found guilty, for the amount of the moneys or the value of the personal property or choses in action concealed, embezzled, conveyed away, or held in possession, together with ten per cent penalty and all costs of the proceedings or complaint; except that the

judgment shall be reduced to the extent of the value of any thing specifically restored or returned in kind as provided in this section.

If the person found guilty is the fiduciary, the probate court shall render judgment in favor of the state against the fiduciary for the amount of the moneys or the value of the personal property or choses in action concealed, embezzled, conveyed away, or held in possession, together with penalty and costs as provided in this section.

Appropriation of Property (Eminent domain)

§ 163.01. Appropriation of property definitions

As used in sections 163.01 to 163.22 of the Revised Code:

- (D) "Court" means the court of common pleas or the **probate** court of any county in which the property sought to be appropriated is located in whole or in part.

§ 2101.25. Optional jurisdiction of probate judge

When any action for the appropriation of property or any appeal in a road case, in a sewer district case, or in any county water supply system case is filed in the probate court, *the judge may certify such cause to the court of common pleas of the county*, together with all the papers filed therein, whereupon the clerk of the court of common pleas shall file said papers and enter said cause on the docket. Thereupon the court of common pleas shall have jurisdiction to hear, determine, and make a record of said cause, as if commenced in such court. The court of common pleas, upon said case being docketed in that court, shall advance the same for trial at the earliest date permitted, on application by any party to said case.

§ 163.09. Valuation of property

- (A) If no answer is filed pursuant to section 163.08 of the Revised Code, and no approval ordered by the court to a settlement of the rights of all necessary parties, the court, on motion of a public agency, shall declare the value of the property taken and the damages, if any, to the residue to be as set forth in any document properly filed with the clerk of the court of common pleas by the public agency. In all other cases, the court shall fix a time, within twenty days from the last date that the answer could have been filed, for the assessment of compensation by a **jury**.
- (B) (1) When an answer is filed pursuant to section 163.08 of the Revised Code and any of the matters relating to the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation are specifically denied in the manner provided in that section, the court shall set a day, not less than five or more than fifteen days from the date the answer was filed, to hear those matters. Upon those matters, the burden of proof is upon the agency by a preponderance of the evidence except as follows:
- (a) A resolution or ordinance of the governing or controlling body, council, or board of the agency declaring the necessity for the appropriation creates a rebuttable presumption of the necessity for the appropriation if the agency is not appropriating the property because it is a blighted parcel or part of a blighted area or slum.
 - (b) The presentation by a public utility or common carrier of evidence of the necessity for the appropriation creates a rebuttable presumption of the necessity for the appropriation.
 - (c) Approval by a state or federal regulatory authority of an appropriation by a public utility or common carrier creates an irrebuttable presumption of the necessity for the appropriation.
- (2) Subject to the irrebuttable presumption in division (B)(1)(c) of this section, only the judge may determine the necessity of the appropriation. If, as to any or all of the property or other interests sought to be appropriated, the court determines the matters in favor of the agency, the court shall set a time for the assessment of

compensation by the **jury** not less than sixty days from the date of the journalization of that determination, subject to the right of the parties to request mediation under section 163.051 of the Revised Code and the right of the owner to an immediate appeal under division (B)(3) of this section. Except as provided in division (B)(3) of this section, an order of the court in favor of the agency on any of the matters or on qualification under section 163.06 of the Revised Code shall not be a final order for purposes of appeal. An order of the court against the agency on any of the matters or on the question of qualification under section 163.06 of the Revised Code shall be a final order for purposes of appeal. If a public agency has taken possession prior to such an order and such an order, after any appeal, is against the agency on any of the matters, the agency shall restore the property to the owner in its original condition or respond in damages, which may include the items set forth in division (A)(2) of section 163.21 of the Revised Code, recoverable by civil action, to which the state consents.

- (3) An owner has a right to an immediate appeal if the order of the court is in favor of the agency in any of the matters the owner denied in the answer, unless the agency is appropriating property in time of war or other public exigency imperatively requiring its immediate seizure, for the purpose of making or repairing roads which shall be open to the public without charge, for the purpose of implementing rail service under Chapter 4981. of the Revised Code, or under section 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code or by a public utility owned and operated by a municipal corporation as the result of a public exigency.
- (C) When an answer is filed pursuant to section 163.08 of the Revised Code, and none of the matters set forth in division (B) of this section is specifically denied, the court shall fix a time within twenty days from the date the answer was filed for the assessment of compensation by a **jury**.
- (D) If answers are filed pursuant to divisions (B) and (C) of this section, or an answer is filed on behalf of fewer than all the named owners, the court shall set the hearing or hearings at such times as are reasonable under all the circumstances, but in no event later than twenty days after the issues are joined as to all necessary parties or twenty days after rule therefor, whichever is earlier.

- (E) The court, with the consent of the parties, may order two or more cases to be consolidated and tried together, but the rights of each owner to compensation, damages, or both shall be separately determined by the **jury** in its verdict.
- (F) If an answer is filed under section 163.08 of the Revised Code with respect to the value of property, the trier of fact shall determine that value based on the evidence presented, with **neither party having the burden of proof with respect to that value.**
- (G) If the court determines the matter in the favor of the owner as to the necessity of the appropriation or whether the use for which the agency seeks to appropriate the property is a public use, in a final, unappealable order, the court shall award the owner reasonable attorney's fees, expenses, and costs.

§ 163.12. View of premises - court may amend defect or informality in proceedings

- (A) A view of the premises to be appropriated or of premises appropriated shall be ordered by the court when requested by a party to the proceedings.
- (B) The **property owners shall open and close the case** except that, if the premises are appropriated under section 163.06, 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code as the result of a public exigency, the party or parties other than the owners shall open and close the case.
- (C) The court may amend any defect or informality in proceedings under sections **163.01** to **163.22** of the Revised Code. The court may cause new parties to be added and direct further notice to be given to a party in interest as the court considers proper.
- (D) No part of the pleadings shall be read or exhibited to the jury.

Payment of Contingent claims against after settlement of estate

§ 2117.37. Presentation of contingent claims

If a claim is contingent at the time of a decedent's death and a cause of action subsequently accrues on the claim, it shall be presented to the executor or administrator, in the same manner as other claims, before the expiration of six months after the date of death of the decedent, or before the expiration of two months after the cause of action accrues, whichever is later, except as provided in section **2117.39** of the Revised Code. The executor or administrator shall allow or reject the claim in the same manner as other claims are allowed or rejected. If the claim is allowed, the executor or administrator shall proceed to pay it. If the claim is rejected, the claimant shall commence an action on the claim within two months after the rejection or be forever barred from maintaining an action on the claim.

§ 2117.41. Payment of contingent claims after settlement of estate

A claimant whose cause of action accrues as provided in section **2117.37** of the Revised Code may bring suit to recover on the claim *against the heirs, next of kin, surviving spouse as next of kin, devisees, and legatees under the decedent's will*, each of whom shall be liable to the claimant in an amount not exceeding the value of the real and personal property that the person received under the will or on distribution of the estate. If, by the will of the deceased, any part of the estate or any one or more of the devisees and legatees is made exclusively liable for the debt, in exoneration of the residue of the estate or of the other devisees or legatees, the terms of the will shall be complied with in that respect and the persons and estate so exempt by the will shall be liable for only so much of the debt that cannot be recovered from those first chargeable with the debt.

No suit shall be maintained under this section unless commenced within six months next after the time when the cause of action first accrues, except in case the suit is for the balance due after a payment by the executor or administrator, in which case suit shall be brought within two months after the final payment by the executor or administrator. If the person entitled to bring the suit is under legal disability, the person may bring the action within one year after the person's disability is removed.

If any of those heirs, next of kin, surviving spouse as next of kin, devisees, or legatees dies without having paid the person's just proportion of the debt, the executors or administrators of that deceased person's estate shall be liable for that proportion to the extent the deceased person would have been if living.

§ 2117.42. Creditors may proceed against all in one action

If, in the cases specified in section **2117.41** of the Revised Code, more than one person is liable for the debt, the creditor shall proceed by one action to recover the debt against all so liable, or as many of them who are within the reach of process. By the verdict of a **jury** if either party requires it, the court shall determine what sum is due to the plaintiff. The **jury** also, according to the equities of the case, shall decide how much each of the defendants is liable to pay toward the satisfaction of the debt and the court shall render judgment accordingly.

§ 733.72. Charges against municipal officers filed with probate judge – proceedings

When a complaint under oath is filed with the **probate judge** of the county in which a municipal corporation or the larger part thereof is situated, by any elector of the municipal corporation, signed and approved by four other electors thereof, the judge shall forthwith issue a citation to any person charged in the complaint for his appearance before the judge within ten days from the filing thereof, and shall also furnish the accused and the village solicitor or city director of law with a copy thereof. The complaint shall charge any of the following:

- (A) That a member of the legislative authority of the municipal corporation has received, directly or indirectly, compensation for his services as a member thereof, as a committeeman, or otherwise, contrary to law;
- (B) That a member of the legislative authority or an officer of the municipal corporation is or has been interested, directly or indirectly, in the profits of a contract, job, work, or service, or is or has been acting as a commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by the municipal corporation, contrary to law;
- (C) That a member of the legislative authority or an officer of the municipal corporation has been guilty of misfeasance or malfeasance in office.

Before acting upon such complaint, the judge shall require the party complaining to furnish sufficient security for costs.

§ 733.73. Appearance of counsel – jury

On the day fixed by the **probate judge** for the return of the citation issued pursuant to section **733.72** of the Revised Code, the village solicitor or city director of law shall appear on behalf of the complainant to conduct the prosecution, and the accused may also appear by counsel. A time shall be set for hearing the case, which shall be not more than ten days after such return. If **a jury is demanded by either party, the probate judge shall direct the summoning of twelve jurors in the manner provided by Chapter 2313. of the Revised Code.** In a municipal corporation having no village solicitor or city director of law, or in case the village solicitor or city director of law is accused of any misfeasance or malfeasance in office, the prosecuting attorney shall appear on behalf of the complainant to conduct the prosecution.

§ 5517.01. Filing plans of proposed projects – right of entry

The director of transportation shall make a map in outline and profile, and plans, specifications, profiles, and estimates covering proposed projects. When completed the director shall indorse upon such maps, profiles, plans, specifications, and estimates of quantities his approval of the same and cause one copy thereof to be placed on file in his office and another in the office of the district deputy director of transportation, for public inspection on or before starting the publication of notice to bidders. The director may sell prints or copies of any plans, specifications, or contracts for a charge not to exceed the cost of such prints or copies. The money received from such sale shall be deposited with the state treasury to the credit of the appropriate fund.

In the execution of any survey authorized by the director any person, firm, or corporation, without doing unnecessary injury thereto, may enter upon any lands within the state for the purpose of inspecting, surveying, leveling, or doing any work deemed necessary to carry out Chapters 5501., 5503., 5511., 5512., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code. If the person, firm, or corporation, whose premises are entered upon for this purpose, makes any claim for compensation or damages for injury thereto, and the parties cannot agree as to the amount to be paid, either party may petition the **probate court** of the county in which such land is situated. The court shall appoint a time for a preliminary hearing in such petition, notify the parties interested, fix a time for hearing of the matter in controversy, and the court may view the premises if it sees fit, hear evidence relating thereto, and assess such compensation or damages as the court deems just. **When a petition is filed with the probate court it shall require the party filing such petition to give bond in such sum as it may fix to cover costs of proceedings on appeal. If either party is not satisfied with the judgment of the court, he may ask for a jury trial, and the court shall thereupon summon a jury and the trial shall proceed as provided by law relating to appeals in road cases.**

§ 5561.08. Service of summons and publication

Notice of the passage of a **resolution for a grade crossing improvement** shall be served by the sheriff of the county, upon the owner of each piece of property which will be affected by any change of grade, in the manner provided for the service of summons in civil actions. If any of such owners are nonresidents of the county, or if it appears from the return that they cannot be found, the notice shall be published for at least two weeks in a newspaper of general circulation in the county or as provided in section [7.16](#) of the Revised Code. Notice shall be completed at least twenty days before any work is done on such improvement, and the sheriff's return shall be prima-facie evidence of the facts recited therein.

Section [727.18](#) of the Revised Code shall apply to the notice provided for in this section, and to all claims for damages by reason of such improvement. Such claims shall be filed with the county auditor within the time, and rights thereunder shall pass to vendees, as provided in such section. After the expiration of the time provided for the filing of claims, the board of county commissioners, when claims have been filed within the time limited, shall determine, by resolution, whether such claims are to be judicially inquired into before commencing or after the completion of the proposed improvement. Thereupon, the county prosecutor shall make application **for a jury**, to the court of common pleas, or **probate court of the county**, before commencing or after the completion of the improvement, as the board determines, and all proceedings upon such application shall be governed by the laws relating to similar applications provided for in cases of city improvements.

Order of Jury Trial

1. Read preliminary statement welcoming jurors and describing case
2. Bailiff swears in all prospective jurors
3. Introduce the attorneys and the attorneys introduce the parties
4. Provide jurors recess instructions and admonitions
5. Voir Dire by Court
 - a. Challenges for cause
6. Instruction by Court on burden of proof, preponderance of the evidence and credibility
7. Voir Dire by counsel
 - a. Challenges for cause
8. Peremptory challenges
9. Excuse jurors not chosen
10. Swear in empaneled jurors
11. Orientation for new jury
12. Plaintiff (Owner) opening statement
13. Defendant (Agency) opening statement
14. Jury view (if any)
15. Plaintiff (Owner) presentation of case
16. Plaintiff (Owner) moves exhibits into evidence
17. Defense (Agency) presentation of case
18. Defense (Agency) moves exhibits into evidence
19. Rebuttal evidence (if any)
20. Plaintiff (Owner) closing statement
21. Defendant (Agency) closing statement
22. Plaintiff (Owner) final closing statement
23. Read jury instructions. Also read verdict forms and interrogatories
24. Excuse alternate juror(s)
25. Jury deliberations
26. Jury verdict
 - a. Verdict forms
 - b. Interrogatories
27. Thank jurors for their service
28. Enter judgment on the verdict

Tips for a successful jury trial

1. Require Motions in Limine 4-5 weeks before trial
2. Always have a final pretrial 1-2 weeks before trial and require the parties to attend
3. Require trial briefs be provided at least one week before trial
4. Require complete jury instructions be provided at least one week before trial (email in Word format is best for me)
5. Go over courtroom ground rules before trial
6. Court personnel test technology at least one day before trial
7. Require attorneys to test technology at least one day BEFORE the trial
8. Ask the parties what evidentiary issues do they anticipate
9. Buy donuts for the jurors
10. Voir Dire-traditional or struck jury system
11. Do jury view right after opening statements
12. Set the tone early for how much shenanigans you will put up with
13. Admonish the jury of their responsibilities every time they leave the Courtroom, including not investigating the matter through the internet
14. Try to keep breaks to the time allotted (Jurors hate extended breaks)
15. Explain to jurors why a break took so long
16. Jury interaction should be preserved on the record
17. I allow jurors to take notes during the trial
18. During deliberations, if the jurors have a question, it must be in writing
19. If possible, talk with the jurors after the trial. See what they liked and what they didn't like
20. Send jurors a letter thanking them for their service after the trial

Juror brings in newspaper, leading to mistrial and contempt charge

By **Brad Dicken** | The Chronicle-Telegram

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ELYRIA — A copy of The Chronicle-Telegram brought in by a juror led to a mistrial Wednesday in the case of a Wellington man accused of exposing himself to two gas station attendants.

Lorain County Common Pleas Judge Christopher Rothgery said a juror, identified in court documents as Frederick Flesch, read an article on the trial of Thomas Fourdyce that appeared in Wednesday's newspaper and brought up the article while he and fellow jurors were deliberating.

Flesch then produced a copy of the paper and slapped it down on the table in the jury room at the Lorain County Justice Center, the judge said.

It was a clear violation, Rothgery said, of a ban that he places on jurors against reading or viewing media accounts of trials.

“Because I would admonish the jurors, several times, not to come anywhere close to doing anything like that, I was forced to find him in direct contempt of court and declare a mistrial,” Rothgery said.

Flesch is due back in court next week for a sentencing hearing in which he could receive up to a \$250 fine and up to 30 days in jail. Rothgery said he could also order Flesch to reimburse the county what it cost to bring in jurors for the three days of the trial.

Rothgery said he questioned Flesch and several other jurors about what happened before coming to the conclusion that the jury couldn't continue its deliberation.

When Rothgery asked Flesch about his decision to read the article and bring the paper into the jury room, Flesch responded that he had been looking for the obituaries in the newspaper when he ran across the article, according to a transcript of the hearing.

Flesch also said that he saw the article, which was accompanied by a photo of Fourdyce during Tuesday's closing arguments but didn't fully read it. Rothgery said after the hearing that it appeared Flesch had read the article in enough depth to discuss its contents with fellow jurors.

Flesch also told the judge that he didn't think the article should have appeared in the newspaper.

"What shouldn't have been in the paper?" Rothgery asked.

"The article and his picture while it was in deliberations," Flesch said. "It's only a feeling I have. Doesn't change anything else. I think it's inappropriate."

Jurors began their deliberations Tuesday afternoon but didn't reach a verdict and returned Wednesday morning to continue discussing the case.

Rothgery said he learned about the incident after bailiff Rob Bennett went in to check with jurors about getting lunch about 11:20 a.m. He said other jurors brought up the newspaper problem to Bennett, who brought the matter to the judge.

Fourdyce will receive a new trial in June, the judge said.



THE SUPREME COURT *of* OHIO
JUDICIAL COLLEGE