

# Adams County Legal Journal

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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**NOTICE BY THE ADAMS COUNTY  
CLERK OF COURTS**

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, October 9, 2015, 8:30 am.

**SNEERINGER**— Orphans' Court Action Number - OC-71-2014. The First and Final Account of Sandra M Sneeringer, Executrix of the Estate of Edward M Sneeringer, deceased, late of, Mount Pleasant Township, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

9/25 & 10/2

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**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation-Nonprofit were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about September 8, 2015 for the incorporation of PINK JOURNEY OF LIGHTS, INC., a 501(c)(3) charitable corporation, under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 21 Cavalry Field Road, Gettysburg, PA 17325.

Bernard A. Yannetti, Jr., Esq.  
Hartman & Yannetti  
Solicitors

9/25

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**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed and accepted by the Pennsylvania Department of State, Harrisburg, PA, for RUTH'S HARVEST – FAIRFIELD, a nonprofit corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988, as amended. The purpose of the corporation is to provide the elementary children of the Fairfield School System, who qualify for free or reduced cost lunches, individual meals and snacks to cover the weekend when they are not in school. The location of the corporation's registered office is 13 East Main St., Fairfield, PA, 17320.

9/25

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**DISSOLUTION NOTICE**

NOTICE IS HEREBY PROVIDED that the Pennsylvania corporation known as The Meadows Property Owners Association, Inc., a nonprofit corporation with a mailing address of P.O. Box 3902, Gettysburg, Adams County, Pennsylvania 17325, is winding down its business affairs and is intending to dissolve as an organized corporation. Regular business ceased as of April 13, 2015, and the period of winding down is now under way.

Any persons, companies or other entities owing money to The Meadows Property Owners Association, Inc., are hereby directed to promptly pay same at the address listed above. Likewise any creditors of The Meadows Property Owners Association, Inc., must present their claims for payment to the aforesaid corporation at the address listed above.

John S. Phillips, Esq.  
Corporate Counsel  
101 West Middle Street  
Gettysburg, PA 17325

9/25

STRABAN TOWNSHIP, ADAMS COUNTY,  
PENNSYLVANIA V. HANOVERIAN TRUST, HEYWOOD  
BECKER, TRUSTEE, AND LISA M. PHILLIPS

1. Generally, a trust is a legal instrument created by a person or entity (settlor) who transfers property (trust property) to another person or entity (trustee) to hold in trust for the benefit of another (beneficiary).
2. The trustee is bestowed with legal title to the trust property in order to manage and transfer the property for the benefit of the beneficiary who has an equitable interest in the subject matter of the trust. Because the role of the trustee involves the management of another's property for the benefit of a third party, the trustee has a fiduciary duty to act in the best interest of the beneficiary, consistent with the purpose of the trust and the powers granted to the trustee.
3. In Pennsylvania, business trusts are governed by statute.
4. This type of trust may be created in real property with power in the trustee to take title to and/or convey the property for the use of the trust, receive rents and earnings from the trust estate and to do any lawful act with the trust property that an individual owning the property might do.
5. Trusts created by statute are also subject to the Uniform Trust Code.
6. The Powers, duties and liabilities of a trustee are the same as many of those applicable to the personal representative of a decedent's estate.
7. Our Superior Court first addressed the issue of whether a corporation may appear in court and be represented by a non-lawyer in **Walacavage v. Excell 2000, Inc.**, 480 A.2d 281 (Pa. Super. 1984). That Court adopted the reasoning shared by other jurisdictions that a corporation may appear in court only through an attorney admitted to practice before the court.
8. By whatever standard or definition, the in-court representation of another - a paradigmatic function of the attorney-at-law - amounts to the 'practice of law' in this Commonwealth.
9. In **Kohlman** the court held that Smith was generally engaged in the unauthorized practice of law. The court also noted that the Probate Code authorizes an agent to act as the client in an attorney-client relationship with respect to probate and administrative matters. However, that authority does not grant to the agent the right to practice law.
10. An agent may stand in the shoes of the principal in deciding whether to prosecute, defend, settle or arbitrate a claim belonging to the principal and may control the attorney-client relationship. However, the agent lacks authority to litigate pro se in the principal's stead.
11. On appeal, the court found Pennsylvania law to be clear that a corporation may not appear in a court of law unless represented by an attorney. It noted, however, that generally a partnership is different than a corporation in that a partnership is not recognized as an entity separate and apart from its members as is a corporation. Nevertheless, the court also noted that a limited partnership is unlike other partnerships in that a limited partnership is somewhat "quasi-corporate" in nature and can act only through its designated representative, the general partner. The general partner has unlimited liability for the obligations of the limited partnership.
12. Thus, the individual with unlimited liability for the partnership obligations is authorized to prosecute and defend actions arising from the partnership's activities.
13. The appellate court noted that, like a corporation, an estate can only act through an agent (the administrator) and by its very nature cannot represent itself.

14. It has been the law for the better part of two centuries...that a corporation may appear in the federal courts only through licensed counsel. As the courts have recognized, the rationale for that rule applies equally to all artificial entities ... Thus, a non-lawyer trustee, . . . may not represent a trust pro se before this Court.

15. Applying the principles from these cases I again conclude that generally a trust, such as the Hanoverian Trust, must be represented by counsel if it participates as a party in litigation of this nature.

16. Like a corporation and an estate, a trust can only act through its agent and that person must act in his fiduciary and not his individual personal capacity as respects the subject property. Allowing a trustee to represent the trust before the court by filing pleadings and briefs and engaging in legal argument raises all the concerns regarding the unauthorized practice of law raised in the above cases.

17. It makes no difference whether the trustee holds title to the real estate. He is nevertheless acting on behalf of the trust in his fiduciary capacity.

18. Becker, as trustee, held legal title to the trust property at the same time he, as the beneficiary, held the equitable title. Pursuant to the doctrine of merger when the two interests coalesced in the same person the trust actually terminated by operation of law at the point of creation.

19. Becker, as Beneficiary, may have attempted to avoid termination in 2014 when he assigned his beneficial interest in the trust property; however, by that time the Trust had already terminated by operation of law.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 2013-S-215, STRABAN TOWNSHIP,  
ADAMS COUNTY, PENNSYLVANIA V. HANOVERIAN TRUST,  
HEYWOOD BECKER, TRUSTEE, and LISA M. PHILLIPS

Walton V. Davis, Esq., Attorney for Plaintiff  
Heywood Becker, Pro se

Kuhn, J., September 2, 2015

## OPINION

Before the Court for disposition is round two regarding the Motion To Compel Defendant To Obtain Legal Counsel filed by Straban Township (hereinafter “the Township”) on February 5, 2014. For the reasons set forth herein, the Motion is denied. However, if Heywood Becker attempts to convey the subject property to a trust, that trust and/or the trustee will be required to immediately obtain counsel in order to participate in these proceedings.

This matter was commenced on February 27, 2013, when the Township filed a Complaint against the Hanoverian Trust (hereinafter “the Trust”), Heywood Becker, Trustee (hereinafter “Becker”), and Lisa M. Phillips. The Complaint alleges that the Trust owns real estate at 2440 Old Harrisburg Road in Straban Township.<sup>1</sup> The property contains a number of structures, some of which were formerly used for a motel. The Township claims that the Trust has allowed persons, including Ms. Phillips, to reside in the structures in violation of the Township’s regulations. The Township seeks injunctive relief.

Becker filed preliminary objections to the Complaint, seemingly on his own behalf but perhaps as the trustee. The Court overruled the objections and directed the filing of an answer. On November 4, 2013, the “Answer of Defendant Heywood Becker” was filed. Therein, Becker averred that he, as the “Trustee of the Hanoverian Trust, is the owner of the said real estate.”

In its Motion To Compel, the Township contends that the Trust must be represented in this matter by an attorney authorized to practice law in the Commonwealth of Pennsylvania. Becker filed an answer to the Motion, as “Trustee of the Hanoverian Trust,” principally suggesting

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<sup>1</sup> The Township avers that the real estate is owned by the Trust. Becker responds that “Heywood Becker, Trustee of the Hanoverian Trust” is the owner. See Complaint and Answer Para. 4. A copy of the deed has not been made a part of the record. For purposes of disposition of this Motion, the difference is immaterial.

that the Motion should have been filed earlier in the proceedings. The Motion was scheduled for hearing/argument on March 7, 2014.

By Order and Opinion dated March 27, 2014, this Court granted the Motion To Compel. In rendering that Opinion, the undersigned recognized that there were no appellate Pennsylvania cases precisely on point. Nevertheless, after analyzing several cases which held that a corporation, a power-of-attorney, and an estate must be represented by an attorney in court and applying the principles from these cases to a trust situation, the undersigned concluded that the Trust needed to be represented by counsel. The Trust and Trustee were granted 60 days to secure counsel; otherwise, they would be precluded from filing pleadings, presenting evidence and making legal argument.

On April 28, 2014, Becker appealed this decision to Commonwealth Court. On April 22, 2015, a panel of that court vacated the March 27, 2014 Order and remanded the case for further proceedings. Commonwealth Court noted that our decision was based upon a conclusion that the Trust was similar to a Pennsylvania business trust. However, when the evidence was presented on March 7, 2014, the Trust Agreement was missing pages and it was unclear what kind of trust was created. Becker argued on appeal that the Trust Agreement states it is not to be construed as “a corporation, limited partnership, association or estate, but rather ... a contract between the Trustee and the Beneficiary” and requested a remand so that the nature of the Trust could be established. The Township agreed that remand was appropriate because if Becker is both the trustee and sole beneficiary, a trust would not exist and the issue whether the Trust needed counsel would become moot. The panel determined that “it is premature to consider whether Becker’s representation of the ... Trust is the unauthorized practice of law.” Specifically, this Court was

instructed to conduct an evidentiary hearing and “determine the settlor’s objective intent; decide whether the ... Trust is a valid trust; and, if so, what type of trust was created by the Trust Agreement.”

By Order dated May 7, 2015, hearing was scheduled for June 1. At hearing, Becker introduced an undated and unsigned copy of the Trust Agreement (Exhibit 1) which he claimed to be a true and correct rendition of the original document.<sup>2</sup> He testified that he had purchased the mortgage and note that secured the subject real estate from PNC. When the owners defaulted, he ultimately obtained a deed in lieu of mortgage foreclosure from them. He created the Trust with the understanding it would be the grantee. The beneficiary of the Trust was to be Becker’s wife, but she was reportedly “unavailable” at that time so he designated himself as both the Trustee and the beneficiary of the Trust.<sup>3</sup> Not until March 8, 2014, did Becker “remember” to assign his right as beneficiary to his wife as originally intended (Exhibit 2).<sup>4</sup>

Generally, a trust is a legal instrument created by a person or entity (settlor) who transfers property (trust property) to another person or entity (trustee) to hold in trust for the benefit of another (beneficiary). *Milton Hershey School and Hershey Trust Comp., Trustee of Milton Hershey Trust*, 867 A.2d 674, 681 (Pa. Comwlth Ct. 2005). The trustee is bestowed with legal title to the trust property

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<sup>2</sup> A signed copy of the Trust Agreement contained in Becker’s Motion For Reconsideration filed April 14, 2014, is dated September 3, 2003, and is the date we will use for purpose of this proceeding until other more credible documentation is submitted.

<sup>3</sup> It is unclear why the unavailability of Becker’s wife in any manner caused him, as settlor, to designate himself as beneficiary of the Trust if he truly wanted his wife to be the beneficiary.

<sup>4</sup> Whether this change made nine years after creation of the Trust in fact resulted from some sort of oversight or the realization that, as will be discussed later, having the legal and equitable title to the Trust property in the same person would nullify the Trust’s validity and existence is unknown.

in order to manage and transfer the property for the benefit of the beneficiary who has an equitable interest in the subject matter of the trust. Because the role of the trustee involves the management of another's property for the benefit of a third party, the trustee has a fiduciary duty to act in the best interest of the beneficiary, consistent with the purpose of the trust and the powers granted to the trustee. *Id.* at 682.<sup>5</sup>

It is clear from the documents submitted that Becker originally intended to create an express trust in the nature of a business trust. The Trust document and Becker's comments support that intention. Although not dispositive, the document uses the terms trust, trustee and beneficiary. The Trust provides, in pertinent part, that the purpose of the Trust is to acquire real estate for the benefit of the beneficiary. Specifically, the Agreement states

The purpose of this agreement is to facilitate obtaining the subject real property, regardless of whether through purchase of the mortgage covering the land, or through acquisition of the land itself, and regardless of whether title thereto shall be taken in the name of the trust, or the Trustee, or in some combination thereof, and to preserve and manage the same until its sale, or other disposition. This Trust Agreement shall not be deemed to be, create, or evidence the existence of an entity, such as a corporation, limited partnership, association or estate, but rather

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<sup>5</sup> It has also been expressed that a trust is a fiduciary relationship with respect to property arising from a manifestation of intention to create a relationship and subjecting the person who holds title to the property to duties to deal with it for the benefit of the beneficiary. Restatement (Third) Trusts §2. A trust involves three elements – a trustee who holds the trust property and is subject to duties to deal with it for the benefit of another, one or more beneficiaries, to whom and for whose benefit the trustee owns the duties, and the trust property. Restatement (Third) Trusts §2, comment f. The beneficiary has equitable title to the trust property and the trustee normally has the legal title to the trust property. Holding title is not the same as ownership because ownership indicates that one holds an interest for one's own benefit while title does not distinguish between holding an interest for oneself and for another. Restatement (Third) §2, comment d. *City of Philadelphia v. Cumberland County Board of Assessment Appeals*, 18 A.3d 421 (Pa. Comwlth Ct. 2011).



this Trust Agreement is, and shall be construed for all purposes, to be a contract between the Trustee and the Beneficiary.

The Agreement goes on to describe the powers and duties of the Trustee, the compensation to be paid to the Trustee, that the Trustee can be removed and a successor named by the Beneficiary, that the Beneficiary is responsible for filing appropriate individual income tax returns for the profits, earnings and proceeds derived from the real estate in the Trust, and that the Trust could be terminated upon written notice from the Beneficiary to the Trustee. The real estate subject to this litigation is identified as the trust property. In his current brief, Becker insists that the intent was to create a trust.

Additionally, at the hearing in 2014, Becker argued that the subject trust is a business trust (referred to at common law as a Massachusetts trust). In Pennsylvania, business trusts are governed by statute. 15 Pa. C.S.A. §9501, et seq. A business trust is created by a written instrument, subscribed to by an individual, association or other entity, and is to be filed with the Department of State by the trustee(s). §9503.<sup>6</sup> This type of trust may be created in real property with power in the trustee to take title to and/or convey the property for the use of the trust, receive rents and earnings from the trust estate and to do any lawful act with the trust property that an individual owning the property might do. §9502. Unless the trust document provides otherwise, the beneficiaries of a business trust are entitled to the same limitation of personal liability as is extended to shareholders of a domestic business corporation and the trust, rather than the trustees, is liable for any act or obligation of the trust. §9506(a). Normally, the trustees hold title to the property of the trust. 51 Pa. Law Encyclopedia §123. Business trusts are subject to capital stock tax. *Eat/n Park*

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<sup>6</sup> Instantly no evidence of such filing was presented.

***Biz Trust v. Commonwealth of Pennsylvania***, 821 A.2d 160 (Pa. Comwlth Ct. 2003).

Trusts created by statute are also subject to the Uniform Trust Code, 20 Pa. C.S.A. §7701 et seq. The UTC provides that trustees are empowered to take reasonable steps to enforce and/or defend claims against the trust. §7780.1 and 7780.6(2) and (4). Furthermore, the powers, duties and liabilities of a trustee are the same as many of those applicable to the personal representative of a decedent's estate. §7792. The trustee has a duty to administer the trust in good faith. §7771. A trustee is not liable on contracts entered into in his fiduciary capacity. §7790. As such, many attributes of a trust are quite similar to an estate.

**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

**FIRST PUBLICATION****ESTATE OF ROSE M. ARENTZ, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Joseph Arentz, Jr., 2848 Pumping Station Road, Fairfield, PA 17320

Attorney: John J. Murphy III, Esq., Patrono & Murphy, LLC, 28 West Middle Street, Gettysburg, PA 17325

**ESTATE OF FRANCIS G. HEINDEL, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Jean Heindel, 3196 Hanover Pike, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF RANDALL L. ROSE a/k/a RANDALL LOU ROSE, DEC'D**

Late of Germany Township, Adams County, Pennsylvania

Co-Executors: Mr. Edward L. Kehr and Mr. Dale C. Brown, Jr., P.O. Box 167, Biglerville, PA 17307

Attorney: Todd A. King, Esq. Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

**ESTATE OF BRANDY LEE SEIFERD a/k/a BRANDY L. SEIFERD, DEC'D**

Late of Liberty Township, Adams County, Pennsylvania

Administratrix: Susan C. Seiferd, 18 Fruitwood Trail, Fairfield, Pennsylvania 17320

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

**ESTATE OF ADAM M. WOLF, DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Ernest L. Wolf, 1031 Lake Meade Rd., East Berlin, PA 17316

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

**SECOND PUBLICATION****ESTATE OF RICHARD W. GLADFELTER, DEC'D**

Late of Abbottstown, Hamilton Township, Adams County

Executor: David R. Gladfelter, 384 Honda Road, Littlestown, PA 17340

Attorney: George W. Swartz, II, Esquire, Mooney & Associates, (717) 398-2205, 18 E. Middle Street, Gettysburg, PA 17325

**ESTATE OF LORRAINE A. RUNK, DEC'D**

Late of New Oxford Borough, Adams County, Pennsylvania

Executor: Rodger W. Dubbs, Jr., 1408 Chami Dr., Spring Grove, PA 17362

Attorney: Keith R. Nonemaker, Esquire, Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331, (717) 632-5315

**ESTATE OF VIOLET ANN SHRADER, DEC'D**

Late of New Oxford, Straban Township, Adams County, Pennsylvania

Co-Executors: Earl R. Shrader, Jr., 275 Manor Drive, New Oxford, PA 17350; Keith Shrader, 2935 Oxford Road, New Oxford, PA 17350

Attorney: Clayton A. Lingg, Esquire, Mooney & Associates, (717) 846-4722, 40 E. Philadelphia Street, York, PA 17401

**ESTATE OF GLENN E. WIMSETT, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Personal Representative: Mrs. Kristen D. McKain, 720 Sells Station Road, Littlestown, PA 17340

Attorney: Arthur J. Becker, Jr., Esquire, Becker & Strausbaugh, P.C. 544 Carlisle Street, Hanover, PA 17331

**ESTATE OF CHARLES EDWARD WOLF, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Administrator: Timothy Edward Wolf, 224 Navajo Drive, Red Lion, PA 17356

**THIRD PUBLICATION****ESTATE OF WILBUR L. KEENER, SR., DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Carolyn L. Zeigler, 1065 Canal Road Ext., Manchester, PA 17345

Attorney: Alex E. Snyder, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

**ESTATE OF NORA FRANCES SAUM, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executors: Donald Avery Saum, 2387 Idaville-York Springs Road, York Springs, PA 17372; Joseph Harold Saum, 138 Liberty Lane, Aspers, PA 17304

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

**ESTATE OF JANET S. WICKERHAM, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

## 2015 ADAMS COUNTY BENCH-BAR CONFERENCE

**Date:** Friday, October 30, 2015

**Place:** Gettysburg Hotel, Lincoln Square, Gettysburg, Pennsylvania

**Time:** Registration and breakfast begin at 8:00 a.m.

**CLE:** This program has been approved by the Pennsylvania Continuing Legal Education Board for up to 4.0 hours of substantive law, practice and procedure CLE credit and 1.0 hour of ethics, professional or substance abuse CLE credit.

**CLE Speakers:** Prof. Randy Lee – Plenary session: Lessons from Abe Lincoln  
Ellen Freedman – The Top Legal Technologies and The Paperless Office  
J. Paul Dibert – Pennsylvania Inheritance Tax Update  
Melissa P. Tanguay, Esq. & Sherri R. DePasqua, M.S.W. – An Attorney’s Guide to CYS  
Stuart B. Suss, Esq. – Criminal Law Update  
Arnold T. Shienvold, Ph.D. – Domestic Violence, Alienation, Abuse, and Custody Evaluations

Cost for Adams County Bar Association members is \$35.00 for the Conference. Cost for non-members is \$300.00 for the Conference or \$60.00 per credit hour. Full conference registration fee includes a light breakfast and lunch in addition to CLE credit. Registration form and payment must be received by Friday, October 16, 2015. Space is limited, so register early!

For registration inquiries and to make requests for reduced tuition due to economic hardship, please contact:

Cecelia Brown  
117 Baltimore Street, Room 305  
Gettysburg, PA 17325  
717-337-9812  
cbrown@adamscounty.us