



**Council of Delegates
Meeting**

**May 7, 2024
Ohio Statehouse
Columbus**

Council of Delegates Meeting
Tuesday, May 7, 2024
1:00 PM

President Michelle L. Kranz presiding

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COUNCIL OF DELEGATES MEETING AGENDA
Tuesday, May 7, 2024
1:00 p.m.

President Michelle L. Kranz, presiding

Roll Call of the Council, CEO and Corporate Secretary Mary Amos Augsburg

I. Committee and Section Reports

A. Report of the Estate Planning, Trust and Probate Law Section

To amend the Fiduciary Claims Statute to clarify that a fiduciary, executor, or administrator is not exempt from the requirements of the general claims' statute, R.C. §2117.06.

B. Report of the Estate Planning, Trust and Probate Law Section

To amend Ohio law to provide that actions under the Ohio Uniform Fraudulent Transfer Act occasioned by transfers of property at a decedent's death outside of probate administration may only prevail if the transfer was made with an actual intent to hinder, delay or defraud a creditor and in such case to limit the time period during which such an action may be brought to six months after the decedent's death.

C. Report of the Estate Planning, Trust and Probate Law Section

To enact a new Chapter 5818 to supplement R.C. §5808.08 to provide that a party that has the power to direct ("trust protector") a trustee ("directed trustee"), by default, serves in a fiduciary capacity and is held to the same standard as a trustee in a like position under like circumstances. If the trust instrument provides that the trust protector serves in a non-fiduciary capacity, the trust protector will be liable for willful misconduct to protect a trust beneficiary.

D. Report of the Estate Planning, Trust and Probate Law Section

To enact a new R.C. §5808.161 to provide an Ohio trustee with a discretionary power to pay a taxing authority directly or reimburse a grantor for income tax owed by the grantor attributable to grantor trust income and amend R.C. §5812.43 to provide that such a disbursement is paid from principal.

E. Report of the Estate Planning, Trust and Probate Law Section

To amend Sections 1337.42 and 1337.34 of the Ohio Revised Code by incorporating a key sentence from the official comments to the Uniform Power of Attorney Act regarding the mandatory nature of duties imposed upon all agents under powers of attorney governed by Chapter 1337; to amend Sections 1337.42, 1337.52, and 5806.02 to more explicitly state the inability of an agent under a power of attorney to exercise the principal's right to withdraw assets from a revocable trust of which the principal is the

settlor without such authorization being granted in both the trust agreement and the power of attorney; and to amend Section 1337.36 to grant to courts the same power to award attorney fees in actions involving powers of attorney that they already have in cases involving the administration of trusts.

F. Report of the Military and Veterans' Affairs Committee

To amend Ohio R.C. §5901.03 to authorize veteran service commissions to provide direct financial support to veterans treatment courts, including by hiring and compensating individuals at the court who provide outreach.

G. Report of the Military and Veterans' Affairs Committee

To require all Ohio confinement facilities to identify and verify veterans who are imprisoned.

H. Report of the Military and Veterans' Affairs Committee

To enact the Ohio Veterans Justice Act, an act to provide for alternative sentencing options for U.S. veterans charged with certain crimes that may derive from conditions regarding military service and that recognize their service to the country.

II. Report of the Ohio State Bar Association Board of Governors

A. To adopt the recommendations of the Rural Practice Task Force.

III. Adjournment

Awards will also be presented throughout this session for the the Nettie Cronise Lutes Award, the Eugene R. Weir Award the Ohio Access to Justice Foundation Presidential Award and the John and Ginny Elam Pro Bono Award.

**Ohio State Bar Association
2023-2024 Council of Delegates
Michelle Kranz, President**

District 1

Counties: **Butler, Clermont, Clinton, Hamilton and Warren**

Board of Governors Representative:

Term End Date:

Eric K. Combs, 255 E. 5th Street, Suite 1900, Cincinnati, OH
45202

06/30/26

Council of Delegates (18):

Term End Date:

Vacant

06/30/24

Sara Cooperrider, 425 Walnut Street, Suite 1800, Cincinnati,
OH 45020

06/30/24

Gary T. Stedronsky, 1714 W. Galbraith Road
Cincinnati, OH 45239

06/30/24

Vacant

06/30/24

Vacant

06/30/24

Doloris F. Learmonth, 3498 Forest Oak Court, Cincinnati,
OH 45208

06/30/24

Kelly M. Myers, 600 Vine Street, 9th Floor, Cincinnati, OH
45202

06/30/24

Zachary D. Prendergast, 250 E. 5th Street, Suite 310, Cincinnati, OH
45202

06/30/24

James C. Shew, 16 N. Main Street, Middletown, OH
45042

06/30/24

Terrence M. Donnellon, 9079 Montgomery Road, Cincinnati, OH
45242

06/30/25

Vacant

06/30/25

Gregory S. French, 1244 Padlock Hills Avenue, Cincinnati,
OH 45229

06/30/25

Michael L. Gay, 201 E. Fifth Street, Suite 900, Cincinnati,
OH 45202

06/30/25

Barbara J. Howard, 120 E. Fourth Street, Suite 960, Cincinnati, OH 45202	06/30/25
Lauren E. Raizk, 145 N. South Street, Wilmington, OH 45177	06/30/25
Charles E. Strain, 1535 Cohasset Drive, Cincinnati, OH 45255	06/30/25
John J. Williams, 600 Vine Street, Suite 1400, Cincinnati, OH 45202	06/30/25
Lisa M. Zaring, 600 Vine Street, Suite 2650 Cincinnati, OH 45202	06/30/25

District 2

Counties: **Darke, Miami, Montgomery, Preble and Shelby**

Board of Governors Representative:

Term End Date:

Magistrate Kathleen S. Lenski, 380 W. 2 nd Street, Dayton, OH 45422-4240	06/30/24
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Council of Delegates (7):

Term End Date:

Judge Gary J. Carter, 201 W. Poplar St., Sidney, OH 45365	06/30/24
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Gina A. Feller, 380 W. Second Street, Dayton, OH 45422	06/30/25
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Andrew T. French, 301 West Third Street, Suite 500, Dayton, OH 45402	06/30/25
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Michelle M. Maciorowski, 7333 Paragon Road, Suite 170, Centerville, OH 45459	06/30/25
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Matthew J. Pierron, 507 S. Broadway Street, Greenville, OH 45331	06/30/25
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Michael W. Sandner, 40 N. Main Street, Suite 2700, Dayton, OH 45423	06/30/25
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Katrina L. Wahl, 40 N. Main Street, Suite 2700, Dayton, OH 45423	06/30/25
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District 3

Counties: Defiance, Fulton, Hancock, Henry, Paulding, Putnam,
Van Wert, Williams and Wood

Board of Governors Representative:

Term End Date:

Matthew A. Miller, 120 S. Walnut Street Paulding,
OH 45879

06/30/25

Council of Delegates (3):

Term End Date:

Ryan S. Breininger, 117 W. Maple Street, Bryan,
OH 43506

06/30/24

Clay Crates, 901 Ralston Ave.
Defiance, OH 43512

06/30/24

Laura Justen, 810 N. Perry Street Napoleon, OH
43545

06/30/25

District 4

Counties: Lucas, Ottawa and Sandusky

Board of Governors Representative:

Term End Date:

Vallie T. Bowman-English, 555 N. Erie Street, Toledo, OH
43604

06/30/26

Council of Delegates (7):

Term End Date:

Joseph K. Cole, 1000 Jackson Street, Toledo, OH
43604

06/30/24

Shelly R. Kennedy, 725 W. Broadway Street, Maumee, OH
43537

06/30/24

Linde H. Webb, 2630 Edgehill Road, Ottawa
Hills, OH 43615

06/30/24

Adam S. Nightingale, One SeaGate, 24th Floor,
P.O. Box 10032, Toledo, OH 43699

06/30/25

Sarah K. Skow, 900 Adams Street, Toledo, OH
43604

06/30/25

Kyle Silvers, 405 Madison Avenue, Suite 100

Toledo, OH 43604	06/30/25
Judge Myron Duhart, One Constitution Ave. Toledo, OH 43604	06/30/25

District 5

Counties: Crawford, Delaware, Marion, Morrow, Seneca and Wyandot

Board of Governors Representative:	Term End Date:
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Robert J. Rice, 145 N. Union Street, Delaware, OH 43015	06/30/26
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Council of Delegates (3):	Term End Date:
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Russell J. Long, 111 W. Rensselaar St, Bucyrus, OH 44820	06/30/24
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Eric J. Figlewicz, 109 South Sandusky Ave. Upper Sandusky, OH 43351	06/30/24
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Ronald D. Cramer, 116 S. Main Street, Marion, OH 43302	06/30/25
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District 6

Counties: Champaign, Clark, Fayette, Greene, Logan, Madison and Union

Board of Governors Representative:	Term End Date:
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Gregory R. Flax, 500 N. Fountain Avenue, Urbana, OH 43078	06/30/25
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Council of Delegates (3):	Term End Date:
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William C. Hicks, P. O. Box 1687, Springfield, OH 45501	06/30/24
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Amanda J. Lantz, P.O. Box 1488, 500 N. Fountain Ave. Springfield, OH 45501-1488	06/30/25
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Douglas M. Smith, 112 N. Main Street, Bellefontaine, OH 43311	06/30/25
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District 7

Counties: Franklin

Board of Governors Representative:

Term End Date:

Jay E. Michael, 729 S. Front Street Columbus, OH
43206

06/30/26

Council of Delegates (28):

Term End Date:

Belinda S. Barnes, 471 E. Broad Street, 19th Floor,
Columbus, OH 43215

06/30/24

Sally W. Bloomfield, 100 S. Third Street, Columbus,
OH 43215

06/30/24

Leah F. Curtis, 280 N. High Street, 6th Floor
Columbus, OH 43215

06/30/24

Paul Giorgianni, 1538 Arlington Avenue, Columbus,
OH 43212

06/30/24

Eric W. Johnson, 400 S. Fifth Street, Suite 101, Columbus, OH
43215

06/30/24

Helen Mac Murray, 6530 West Campus Oval, Suite 210, New
Albany, OH 43054

06/30/24

Jane Higgins Marx, 366 E. Broad Street, Columbus,
OH 43215

06/30/24

Heather G. Sowald, 400 S. Fifth Street, Suite 101, Columbus,
OH 43215

06/30/24

Magistrate Elizabeth J. Watters, 345 S. High Street, Room 5807,
Columbus, OH 43215

06/30/24

Bradley B. Wrightsel, 3300 Riverside Drive, Suite 100, Columbus, OH
43221

06/30/24

Thomas J. Bonasera, 191 W. Nationwide Boulevard, Ste. 200,
Columbus, OH 43215

06/30/25

David A. Bressman, 5186 Paul G. Blazer Parkway, Dublin, OH
43017

06/30/25

Stephen E. Chappellear, 100 E. Broad Street, 21st Floor, Columbus, OH
43215

06/30/25

Hilary R. Damaser, 30 E. Broad Street, 26 th Floor, Columbus, OH 43215	06/30/25
Sandra R. Goolsby, 1320 Dublin Road, Suite 101, Columbus, OH 43215	06/30/25
Polly J. Harris, 41 South High Street, Suite 2900, Columbus, OH 43215	06/30/25
Brian Kelso, 843 City Park Avenue, Columbus, OH 43206	06/30/25
Hayley E. Kick, 250 Civic Center Drive, Suite 300, Columbus, OH 43215	06/30/25
Steven C. Kramer, 30 W Spring Street, Columbus, OH 43215	06/30/25
Caitlyn Nestleroth Johnson, 30 E. Broad Street, 17 th Floor, Columbus, OH 43215	06/30/25
Judge Stephen L. McIntosh, 345 S. High Street, Ct Rm 4B, Columbus, OH 43215	06/30/25
Elizabeth A. Mote, 1350 W. Fifth Avenue, Suite 330, Columbus, OH 43212	06/30/25
Scott R. Mote, 1650 Lake Shore Drive, Suite 375, Columbus, OH 43204	06/30/25
Andrew W. Owen, 65 East State Street, Suite 1100, Columbus, OH 43215	06/30/25
Jalyn Parks, 1465 E. Broad Street, Suite B, Columbus, OH 43205	06/30/25
Beatrice K. Sowald, 125 Eastmoor Boulevard, Columbus, OH 43209	06/30/25
Audrey E. Varwig, 65 E. State Street, Suite 1510, Columbus, OH 43215	06/30/25
Mindy K. Yocum, 7652 Sawmill Road, Suite 263, Dublin, OH 43016	06/30/25

District 8

Counties: Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto and Vinton

Board of Governors Representative:

Term End Date:

Frederick C. Fisher, Jr., 311 Park Avenue,
Ironton, OH 45638

06/30/24

Council of Delegates (2):

Term End Date:

Richard W. Clagg, 16 E. Broadway Street,
Wellston, OH 45692

06/30/24

Brian M Cremeans, 311 Park Avenue
Ironton, OH 45638

06/30/25

District 9

Counties: Coshocton, Fairfield, Knox, Licking, Muskingum and Perry

Board of Governors Representative:

Term End Date:

Wendi Fowler, 1 S. Main St., Mount
Vernon, OH 43050

06/30/25

Council of Delegates (3):

Term End Date:

Jennifer Sitterley, 166 W. Main Street, Suite 201 Lancaster,
OH 43130

06/30/24

Judge Jason W. Given, 318 Chestnut Street, Coshocton, OH
43812

06/30/25

Patrick S. Carpenter, 32 North Park Place, P.O. Box 309, Newark, OH
43058

06/30/25

District 10

Counties: Ashland, Erie, Holmes, Lorain, Medina, Richland, Huron and Wayne

Board of Governors Representative:

Term End Date:

Christopher Lake Brown, 30 N. Diamond Street,
Mansfield, OH 44902

06/30/26

Council of Delegates (6):**Term End Date:**

Gowri V. Hampole, 124 Middle Avenue, 4th Floor, Elyria, OH
44035

06/30/24

Robert J. Reynolds, P. O. Box 958, Wooster, OH
44691

06/30/24

Patricia A. Walker, 231 S. Broadway St., Medina,
OH 44256

06/30/24

Lee E. Belardo, 1001 Jaycox Rd., Suite 1, Avon,
OH 44011

06/30/25

Kevin W. Donovan, 409 East Ave., Suite A, Elyria, OH
44035

06/30/25

Andrew P. Lycans, 225 N. Market St., Wooster,
OH 44691

06/30/25

District 11

Counties: Portage and Summit

Board of Governors Representative:**Term End Date:**

William G. Chris, 50 S. Main St., 10th Floor, Akron, OH
44308

06/30/24

Council of Delegates (8):**Term End Date:**

Karen D. Adinolfi, 222 S. Main Street, Suite 400, Akron,
OH 44308

06/30/24

Peter Kratcoski, 11 S. River Street, Suite A Kent, OH
44240

06/30/24

Ronald S. Kopp, 222 S. Main Street, Suite 400, Akron, OH
44308

06/30/24

Maura E. Scanlon, 4040 Embassy Parkway, Suite 240, Akron, OH
44333

06/30/24

Alisa Benedict O'Brien, C Blake McDowell Law Center, Akron, OH
44325

06/30/25

Melissa A. Graham-Hurd, 4030 Massillon Road, Suite B, Uniontown, OH 44685	06/30/25
Magistrate Carol Tran, 209 S High St., Akron, OH 44308	06/30/25
Bruce H. Wilson, 120 E. Mill Street, Suite 416, Akron, OH 44308	06/30/25

District 12

Counties: **Cuyahoga**

Board of Governors Representative:

Term End Date:

Michael J. Frantz, Jr., 200 Public Square, Ste. 3000, Cleveland, OH 44114	06/30/25
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Council of Delegates (25)

Term End Date:

Christa A.G. Heckman, 20788 N. Greystone Drive, Strongsville, OH 44149	06/30/24
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Lisa A. Reid, 615 W. Superior Avenue, 11th Floor, Cleveland, OH 44113	06/30/24
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Karen E. Rubin, 2904 Washington Blvd. Cleveland Heights, OH 44118	06/30/24
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John P. Thomas, 301 Hamilton Drive, Broadview Heights, OH 44147	06/30/24
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Vacant	06/30/24
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Erin McDevitt-Frantz, 812 Huron Rd, Suite 650, Cleveland, OH 44115	06/30/24
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Chris Hawley, 600 Superior Ave. E., Suite 2100, Cleveland, OH 44114	06/30/24
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Ian Friedman, 1360 E. 9 th St., Suite 650, Cleveland, OH 44114	06/30/24
--	----------

Alison Archer, 615 W. Superior Ave., Floor 11, Cleveland, OH 44113	06/30/24
---	----------

Jonathan Scandling, 200 Public Square, Suite 3000, Cleveland, OH 44114	06/30/24
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Andrew Hanna, 200 Public Square, Suite 3000, Cleveland, OH 44114	06/30/24
Vacant	06/30/25
Keith A. Ashmus, 5065 Park Drive Vermilion, OH 44089	06/30/25
Awatef Assad, 2079 E. 9 th St., Suite 8-310, Cleveland, OH 44115	06/30/25
Eileen M. Bitterman, 965 Keynote Circle, Brooklyn Heights, OH 44131	06/30/25
Jeffrey A. Brauer, 200 Public Square, Suite 2800, Cleveland, OH 44114	06/30/25
Luke T. Brewer, 623 W. St. Clair Avenue, Cleveland, OH 44113	06/30/25
Michael C. Brink, 6055 Parkland Avenue, Mayfield Heights, OH 44124	06/30/25
Megan E. Goedeker, 812 Huron Road, Suite 650 Cleveland, OH 44115	06/30/25
Alicia N. Graves 50 Public Square, Suite 3200, Cleveland, OH 44113	06/30/25
Fredric E. Kramer, 1187 Golden Gate Blvd, Mayfield Heights, OH 44124	06/30/25
John P.L. Mills, 5500 Venture Drive Parma, OH 44130	06/30/25
Vacant	06/30/25
Daniel J. Ryan, 55 Public Square, Suite 2100, Cleveland, OH 44113	06/30/25
Nancy C. Schuster, 2913 Clinton Avenue, Cleveland, OH 44113	06/30/25

District 13

Counties: **Columbiana and Mahoning**

Board of Governors Representative:

Term End Date:

Mark A. Hutson, 33 Pittsburgh St.,
Columbiana, OH 44408

06/30/26

Council of Delegates (3):

Term End Date:

J. Michael Thompson, 6 Federal Plaza Central, Ste. 1300, Youngstown,
OH 44503

06/30/24

David “Chip” C. Comstock, Jr., 3701B Boardman Canfield Rd., Canfield,
OH 44406

06/30/24

Ryan Weikart, 105 S. Market St.,
Lisbon, OH 44432-1295

06/30/24

District 14

Counties: **Carroll, Stark and Tuscarawas**

Board of Governors Representative:

Term End Date:

Howard L. Wernow, 4940 Munson Street NW, Suite
1100, Canton, OH 44718

06/30/24

Council of Delegates (4):

Term End Date:

Matthew P. Mullen, 405 Chauncey Ave. NW New
Philadelphia, OH 44663-1232

06/30/24

Jennifer L. Thomas, P. O. Box 235, Carrollton, OH
44615

06/30/24

Stephanie A. Lehota, 4775 Munson St. NW, Canton,
OH 44735

06/30/25

Thomas P. Moushey, 1844 W. State Street, Suite A, Alliance, OH
44601

06/30/25

District 15

Counties: Belmont, Guernsey, Harrison, Jefferson and Monroe

Board of Governors Representative:

Term End Date:

Bryan C. Conaway, 126 N. 9th Street,
Cambridge, OH 43725

06/30/24

Council of Delegate (2):

Term End Date:

Kyle Bickford, 46457 National Road W.,
Saint Clairsville, OH 43950

06/30/24

Haley Brown, 139 W. 8th St.,
Cambridge, OH 43725

06/30/25

District 16

Counties: Allen, Auglaize, Hardin and Mercer

Board of Governors Representative:

Term End Date:

Amy B. Ikerd, 119 N. Walnut Street,
Celina, OH 45822

0 6/30/24

Council of Delegates (2):

Term End Date:

Andrea L. Henning, 102 Devonshire Dr. #C,
Lima, OH 45804

06/30/24

Zach G. Ferrall, 146 E. Spring St.,
St. Marys, OH 45885

06/30/24

District 17

Counties: Athens, Hocking, Meigs, Morgan, Noble and Washington

Board of Governors Representative:

Term End Date:

Scott M. Robe, 14 W. Washington Street,
Athens, OH 45701

06/30/25

Council of Delegates (2):

Term End Date:

Kristopher O. Justice, 424 2nd Street,
Marietta, OH 45750

06/30/24

Anna M. Mason, 24 September Street,
Nelsonville, OH 45764

06/30/25

District 18

Counties: Ashtabula, Geauga, Lake and Trumbull

Board of Governors Representative:

Term End Date:

Matthew G. Vansuch, 6550 Seville Drive, Ste. B,
Canfield, OH 44406

06/30/25

Council of Delegates (4):

Term End Date:

Samuel R. Martillotta, 11715 Riverwood Drive,
Chardon, OH 44024

06/30/24

Matthew M. Ries, 108 Main Ave. SW, Suite 500
Warren, OH 44481

06/30/24

Michael E. Hamper, III, 531 East Beech Street,
Jefferson, OH 44047

06/30/25

Anna M. Parise, 60 S. Park Place,
Painesville, OH 44077

06/30/25

At-Large Delegates

Term End Date:

Martin E. Mohler, 405 Madison Avenue, Ste. 1000,
Toledo, OH 43604

06/30/24

Gina Russo, 375 S. High Street, 6th Floor, 12C
Columbus, OH 43215

06/30/24

David H. Lefton, 3074 Madison Road
Cincinnati, OH 45209

06/30/24

Carol Seubert Marx, 106 Starrit Street, Ste. 210,
Lancaster, OH 43130

06/30/25

Rachel A. Sabo, 6612 Dalmore Lane,
Dublin, OH 43016

06/30/25

Lawrence J. Scanlon, 57 S. Broadway St., 3rd Floor,
Akron, OH 44308

06/30/25

Parliamentarian

Term End Date:

Robert A. Brundrett, 33 N. High Street, 6th Floor
Columbus, OH 43215

06/30/24

At-Large Board of Governors Appointees

Term End Date:

Marlon A. Primes
200 Public Square, Suite 1850, Cleveland, OH 44114

06/30/24

Jan A. Baughman, 111 N. 4th Street,
Zanesville, OH 43701

06/30/25

Robert S. Salem, 2801 W. Bancroft St., MS 507
Toledo, OH 43606

06/30/26

OSBA Elected Officers

Term End Date:

Michelle L. Kranz, President
6627 W. Central Avenue, Ste. 100, Toledo, OH 43617

06/30/24

Daniel R. Griffith, President-Elect
4481 Munson St., NW, Suite 200, Canton, OH 44718

06/30/24

Judge Dean Wilson, Immediate Past-President,
105 N. Main St., New Lexington, OH 43764

06/30/24

**OHIO STATE BAR ASSOCIATION
BYLAWS OF THE
COUNCIL OF DELEGATES**

Section I

In the absence or disability of both the president and president-elect of the Association, the meetings of this Council shall be presided over by a chairperson pro tempore, elected by a majority vote of the Council members present, which chairperson, when elected, shall serve in that capacity only during the sessions of the meeting at which he or she is elected. The secretary shall convene the first session of any meeting from or at which both the president and president-elect are absent or unable to preside, and preside during the election of such chairperson pro tempore.

Section II

No action shall be taken upon reports of committees or sections of the Association unless they are submitted in writing; and no such committee or section report, which has been published in the *Ohio State Bar Association Report* or other publication of the Association that is distributed to all regular members, as directed by the Board of Governors, prior to the date of the meeting of the Council, shall be read orally to the meeting unless, by motion adopted by two-thirds vote of the delegates present, such a reading be ordered.

Section III

No person shall, without the consent of two-thirds of the delegates present, be entitled to speak more than once or for more than five minutes on any issue before the Council. Reports presented by committees and sections shall be limited to ten minutes, provided, however, that the ten-minute restriction shall not apply to the discussion of a proposal subsequent to its initial presentation. A member of the council or person presenting a report or resolution shall be entitled to open and close the discussion on the matter under consideration.

Section IV

Voting on all matters shall be by voice vote unless the presiding officer is in doubt concerning the result, or a division of the house is requested by any member, in either of which events a standing vote shall be taken.

Section V

The president of the Association shall, with the advice and consent of the Board of Governors, appoint a parliamentarian to aid and assist him or the chairperson at all meetings of the Council of Delegates. Said parliamentarian, whose term of office shall be concurrent with that of the president, shall not be a member of the current Board of Governors or the Council of Delegates.

Section VI

The order of business of all meetings of the Council of Delegates shall be the following:

1. Roll call.
2. Action of minutes of previous meetings.
3. Unfinished business from preceding day, if any.
4. Special order of business for the day, as previously prepared by the president, president-elect and secretary of the Association.
5. New business.

Section VII

Roberts' Rules of Order shall govern the Council of Delegates in all its proceedings, except to the extent to which these bylaws are, or the Constitution of the Association is, inconsistent therewith.

Section VIII

These bylaws may be amended by the majority vote of the delegates present at any meetings, provided the proposed amendment has been published in the *Ohio State Bar Association Report* or other publication of the Association that is distributed to all regular members as directed by the Board of Governors at least once, not less than one week prior to the date of the meeting at which action on said amendment is taken.

As amended by the Council of Delegates November 7, 2003

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1 **REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION**

2
3 *To the Council of Delegates*

4
5 The Estate Planning, Trust and Probate Law Section requests your favorable consideration of the
6 following proposal:
7

8 To amend the Fiduciary Claims Statute to clarify that a fiduciary, executor, or administrator
9 is not exempt from the requirements of the general claims' statute, R.C. §2117.06.
10

11 Respectfully submitted,

12
13 Brian C. Layman, Canton
14 Chair, Estate Planning, Trust and Probate Law Section
15
16

17 **Summary and Rationale for Proposal**

18
19 In recent years, courts have struggled with the issue of whether a fiduciary's claim for maintenance
20 of estate is barred by operation of the limitations period set forth under R.C. §2117.06, governing
21 creditors' claims; or, alternatively, whether the claim was presented within the limitations period
22 set forth under R.C. §2117.02, the statute. governing presentation of claims for executors and
23 administrators.
24

25 In two cases, the courts of appeals overruled the local probate courts of Trumbull and Stark
26 counties and held that the Fiduciary Claims Statute is not subject to the "general" claims
27 statute, R.C. §2117.06:
28

29 *Estate of Curc*, 2019-Ohio-416 (11th Dist. Trumbull Co., 2019). DOD 1987; Estate was
30 opened in 2017 (30 years later) with claims for repairs to real estate taxes, utilities and
31 funeral expenses. Court of appeals reversed the probate court and reversed and remanded
32 it back for consideration.
33

34 *In re Estate of Gates*, 2022-Ohio-1091 (5th Dist. Stark Co., 2022). DOD 9/14/2020; Estate
35 opened 6/3/2021; claim filed 8/3/2021. Court of appeals reversed the probate court and
36 remanded it back for consideration. The claim was disallowed on remand.
37
38

39 Courts have found that the mere existence of the Fiduciary Claims Statute is recognition of the
40 intention to treat these claims differently than the General Claims Statute, despite the fact that
41 RC §2117.06 states that it applies to all parties and all claims.
42

43 To resolve this conflict and provide practitioners with clarity, the Estate Planning, Trust and
44 Probate Law section proposes to add language to the Fiduciary Claims Statute to make it clear
45 that the statute is not exempt from the requirements of the General Claims Statute.
46

47
48 **Text of the Proposal**
49

50
51 R.C. 2117.02 Presentation of claim to probate court.
52
53

54 An executor or administrator within three months after the date of appointment, and the period
55 prescribed by section 2117.06, whichever is earlier, shall present any claim the executor or
56 administrator has against the estate to the probate court for allowance. The claim shall not be paid
57 unless allowed by the court. When an executor or administrator presents a claim amounting to five
58 hundred dollars or more, the court shall fix a day not less than four nor more than six weeks from
59 its presentation, when the testimony touching it shall be heard. The court shall issue an order
60 directed to the executor or administrator requiring the executor or administrator to give notice in
61 writing to all the heirs, legatees, or devisees of the decedent interested in the estate, and to the
62 creditors named in the order. The notice shall contain a statement of the amount claimed, designate
63 the time fixed for hearing the testimony, and be served upon the persons named in the order at
64 least twenty days before the time for hearing. If any persons mentioned in the order are not
65 residents of the county, service of notice may be made upon them by publication for three
66 consecutive weeks in a newspaper published or circulating in the county, or as the court may direct.
67 All persons named in the order shall be parties to the proceeding, and any other person having an
68 interest in the estate may be made a party.

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69 **REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION**

70
71 *To the Council of Delegates*

72
73 The Estate Planning, Trust and Probate Law Section requests your favorable consideration of the
74 following proposal:
75

76 To amend Ohio law to provide that actions under the Ohio Uniform Fraudulent Transfer
77 Act occasioned by transfers of property at a decedent's death outside of probate
78 administration may only prevail if the transfer was made with an actual intent to hinder,
79 delay or defraud a creditor and in such case to limit the time period during which such an
80 action may be brought to six months after the decedent's death.

81
82 Respectfully submitted,

83
84 Brian C. Layman, Canton
85 Chair, Estate Planning, Trust and Probate Law Section
86
87

88 **Summary and Rationale for Proposal**

89
90 Property subject to probate administration is clearly subject to claims by creditors of a decedent
91 under R.C. Chapter 2117. R.C. §2117.06 limits the claim period to six months after a decedent's
92 death. This proposal deals with property passing outside probate administration. Examples are
93 property titled in trust prior to the decedent's death, property passing by transfer-on-death,
94 payable-on-death or other beneficiary designation, and property passing by survivorship tenancy.
95

96 In the case of *Schofield v. Cleveland Trust Company*¹, the Ohio Supreme Court found that the
97 creditor by contract of a deceased settlor of a revocable trust could not recover against property
98 which the settlor-decedent had titled in his revocable trust prior to his death. The court reached its
99 decision based on the language of a statute² and the time period's need to find actual intent on the
100 part of the settlor-decedent to invalidate the transfer.

101
102 Subsequently, the statute on which *Schofield* was largely based was repealed, effective January 1,
103 2007, a statutory framework for actual and constructive fraud was enacted and two Ohio appellate
104 cases allowing a creditor to reach property of a deceased settlor's formerly revocable trust were

¹ 135 Ohio St. 328, 21 N.E.2d 119 (1939).

² General Code §8617 / later Ohio Revised Code §1335.01(A):

All deeds of gifts and conveyance of real or personal property made in trust for the exclusive use of the person or persons making the same shall be void and of no effect, but the creator of a trust may reserve to himself any use or power, beneficial or in trust, which he might lawfully grant to another, including the power to alter, amend or revoke such trust, and such trust shall be valid as to all persons, except that any beneficial interest reserved to such creator shall be subject to be reached by the creditors of such creator, and except that where the creator of such trust reserves to himself for his own benefit a power of revocation, a court of equity, at the suit of any creditor or creditors of the creator, may compel the exercise of such power of revocation so reserved, **to the same extent and under the same conditions that such creator could have exercised the same.** (Emphasis added.)

105 decided³. These developments cast some doubt as to whether *Schofield* would be decided the same
106 way today.

107
108 The advent of the Ohio Fraudulent Transfers Act, Ohio Revised Code Chapter 1336, gives a
109 creditor a remedy in five contexts:

110
111 §1336.04(A)(1) – Actual Fraud. A transfer made or an obligation incurred by a debtor is
112 fraudulent as to a creditor, whether the claim of the creditor arose before, or within a
113 reasonable time not to exceed four years after, the transfer was made or the obligation was
114 incurred, if the debtor made the transfer or incurred the obligation ... with actual intent to
115 hinder, delay, or defraud any creditor of the debtor.

116
117 §1336.04(A)(2)(a) – Constructive Fraud. A transfer made or an obligation incurred by a
118 debtor is fraudulent as to a creditor, whether the claim of the creditor arose before, or within
119 a reasonable time not to exceed four years after, the transfer was made or the obligation
120 was incurred, if the debtor made the transfer or incurred the obligation ... without receiving
121 a reasonably equivalent value in exchange for the transfer or obligation, and if ... the debtor
122 was engaged or was about to engage in a business or a transaction for which the remaining
123 assets of the debtor were unreasonably small in relation to the business or transaction.

124
125 §1336.04(A)(2)(b) – Constructive Fraud. A transfer made or an obligation incurred by a
126 debtor is fraudulent as to a creditor, whether the claim of the creditor arose before, or within
127 a reasonable time not to exceed four years after, the transfer was made or the obligation
128 was incurred, if the debtor made the transfer or incurred the obligation ... without receiving
129 a reasonably equivalent value in exchange for the transfer or obligation, and if ... the debtor
130 intended to incur, or believed or reasonably should have believed that the debtor would
131 incur, debts beyond the debtor's ability to pay as they became due.

132
133 §1336.05(A) – Constructive Fraud. A transfer made or an obligation incurred by a debtor
134 is fraudulent as to a creditor whose claim arose before the transfer was made or the
135 obligation was incurred if the debtor made the transfer or incurred the obligation without
136 receiving a reasonably equivalent value in exchange for the transfer or obligation and the
137 debtor was insolvent at that time or the debtor became insolvent as a result of the transfer
138 or obligation.

139
140 §1336.05(B) – Constructive Fraud. A transfer made or an obligation incurred by a debtor
141 is fraudulent as to a creditor whose claim arose before the transfer was made or the
142 obligation was incurred if the transfer was made to or the obligation was incurred with
143 respect to an insider for an antecedent debt, the debtor was insolvent at that time, and the
144 insider had reasonable cause to believe that the debtor was insolvent.

³ *Sowers v. Luginbill*, 2008-Ohio-1486 (Van Wert County) and *Watterson v. Burnard*, 2013-Ohio-316 (Lucas County).

146 In *Kingston of Miamisburg LLC v. Jeffery*⁴, the decedent provided the plaintiff nursing home with
147 her financial statements at the time of admission, but then died and left an investment account to
148 her son Frederic by transfer-on-death (TOD) designation.

149
150 As in *Schofield*, the trial court could not find actual fraud under R.C. §1336.04(A)(1) either at the
151 time of the TOD was established or at the time of the decedent's death. Examining the other types
152 of fraud, the lower court confusingly⁵ treated the time of transfer as when the decedent executed
153 the transfer-on-death designation, and then found that at that time she was not engaged or about to
154 engage in a business transaction for which her remaining assets were unreasonably small, she did
155 not believe that she would incur debts beyond her ability to pay, and that therefore neither R.C.
156 §1336.04(A)(2)(a) nor R.C. §1336.04(A)(2)(b) provided any relief.

157
158 If the transfer occurred at death, as is believed to be the case, it is a strain for either R.C.
159 §1336.04(A)(2)(a) or R.C. §1336.04(A)(2)(b) to apply. The former requires that “the debtor was
160 engaged or was about to engage in a business or a transaction for which the remaining assets of
161 the debtor were unreasonably small in relation to the business or transaction.” The latter requires
162 that “the debtor intended to incur, or believed or reasonably should have believed that the debtor
163 would incur, debts beyond the debtor's ability to pay as they became due.” At the time of the
164 decedent's death, she was not about to enter a transaction, and she could not have intended or be
165 held to an intent to incur debts beyond her ability to pay.

166
167 The appellate court criticized the lower court for not considering R.C. §1336.05(A). Read as
168 though the “transfer” occurred at the decedent's death, that statute appears on its face to raise the
169 possibility of a successful argument for fraud:

170
171 A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose
172 claim arose before the transfer was made or the obligation was incurred if the debtor made
173 the transfer or incurred the obligation without receiving a reasonably equivalent value in
174 exchange for the transfer or obligation and the debtor was insolvent at that time or the
175 debtor became insolvent as a result of the transfer or obligation.

176
177 Because additional probate property was found on remand, it became unnecessary for the lower
178 court to consider R.C. §1336.05(A).

179
180 Under R.C. §1336.09, the limitations period for actual fraud expires four years after the transfer
181 or one year from reasonable discovery, whichever is later. For other types of fraud, limitations
182 period expires four years after the transfer. The EPTPL Section Council unanimously felt that these
183 limitations periods in the context of concluding the affairs of a decedent are excessive in that they
184 force a decedent's affairs to remain unsettled for period time that greatly exceeds the period of
185 time necessary to administer a decedent's estate if all property had been subject to probate
186 administration, defies the intent of the General Assembly in requiring most estates to close within
187 six months under R.C. §2109.301, and are therefore beyond the expectations of most Ohioans.

⁴ 2019-Ohio-1905 – 10th District

⁵ I.E., contrary to RC §1336.06, §1709.06, 2131.10 and 2131.13

The EPTPL Section Council nearly unanimously felt that: (1) a transfer of property outside probate administration should not amount to constructive fraud and (2) if there was actual fraud, i.e., fraud of the kind that would have been actionable had it been found in *Schofield*, it could be actionable but it should proceed within six months of death, consistent with R.C. §2117.06. In other words, a creditor seeking recovery from property transferred outside probate administration based on actual fraud should not have longer to bring his claim than a creditor pursuing only probate property.

Text of the Proposal

R.C. 1336.04 Transfer made or obligation incurred fraudulent as to creditor.

(A) Subject to division (C) of this section, a transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the claim of the creditor arose before, or within a reasonable time not to exceed four years after, the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following ways:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor;

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and if either of the following applies:

(a) The debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;

(b) The debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(B) In determining actual intent under division (A)(1) of this section, consideration may be given to all relevant factors, including, but not limited to, the following:

(1) Whether the transfer or obligation was to an insider;

(2) Whether the debtor retained possession or control of the property transferred after the transfer;

(3) Whether the transfer or obligation was disclosed or concealed;

(4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;

(5) Whether the transfer was of substantially all of the assets of the debtor;

(6) Whether the debtor absconded;

(7) Whether the debtor removed or concealed assets;

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred;

(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

(C) No transfer made or obligation incurred by a debtor due to or as a result of such debtor's death shall be actionable under division (A)(2) of this section.

R.C. 1336.05 Claims arising before the transfer or obligation incurred.

(A) Subject to division (C) of this section, ~~a~~ A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(B) Subject to division (C) of this section, ~~a~~ A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the transfer was made to or the obligation was incurred with respect to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent

(C) No transfer made or obligation incurred by a debtor due to or as a result of such debtor's death shall be actionable under divisions (A) or (B) of this Section.

R.C. 1336.09 Statute of limitations.

A claim for relief with respect to a transfer or an obligation that is fraudulent under section 1336.04 or 1336.05 of the Revised Code is extinguished unless an action is brought in accordance with one of the following:

(A) Subject to division (D) of this section, ~~if~~ If the transfer or obligation is fraudulent under division (A)(1) of section 1336.04 of the Revised Code, within four years after the transfer was

made or the obligation was incurred or, if later, within one year after the transfer or obligation was or reasonably could have been discovered by the claimant;

(B) Subject to division (D) of this section, if If the transfer or obligation is fraudulent under division (A)(2) of section 1336.04 or division (A) of section 1336.05 of the Revised Code, within four years after the transfer was made or the obligation was incurred;

(C) Subject to division (D) of this section, if If the transfer or obligation is fraudulent under division (B) of section 1336.05 of the Revised Code, within one year after the transfer was made or the obligation was incurred.

(D) If a claim for relief is based on a transfer made or obligation incurred by a debtor due to or as a result of such debtor's death, then any action based on such claim for relief must be brought within six months after the debtor's death.

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295 **REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION**

296
297 *To the Council of Delegates*

298
299 The Estate Planning, Trust and Probate Law Section requests your favorable consideration of the
300 following proposal:

301
302 To enact a new Chapter 5818 to supplement R.C. §5808.08 to provide that a party that has
303 the power to direct (“trust protector”) a trustee (“directed trustee”), by default, serves in a
304 fiduciary capacity and is held to the same standard as a trustee in a like position under like
305 circumstances. If the trust instrument provides that the Trust Protector serves in a non-
306 fiduciary capacity, the trust protector will be liable for willful misconduct to protect a trust
307 beneficiary.

308
309 Respectfully submitted,

310
311 Brian C. Layman, Canton
312 Chair, Estate Planning, Trust and Probate Law Section
313

314
315 **Summary and Rationale for Proposal**

316
317 Under current Ohio law (R.C. §5808.08(D)), settlors have the freedom to provide whether a trust
318 protector acts in a fiduciary or non-fiduciary capacity and to define the parameters of relationship
319 between the trust protector, directed trustee and beneficiary. If a trust instrument provides that a
320 trust director is acting in a non-fiduciary capacity and the directed trustee has no liability for
321 following the trust director’s direction, there is concern that a beneficiary will have no recourse
322 for a “bad act.”

323
324 In a limited manner, R.C. §5815.25 addresses the authority and liability of a directed trustee.
325 However, this section does not address the capacity, authority or liability of a trust protector.
326

327 The proposal will codify the relationship among a trust protector, directed trustee and
328 beneficiary. As provided under existing law, trust protector, by default, will serve in a fiduciary
329 capacity and be held to the same standard as a trustee in a like position under like circumstances.
330 While R.C. §5808.08(D) provides that a trust protector, by default, serves in a fiduciary capacity,
331 Ohio law does not currently address the relationship among the trust protector, directed trustee
332 and beneficiary if the instrument provides that a trust protector serves in a non-fiduciary
333 capacity. The proposal addresses these issues and provides that a trust protector acting in a non-
334 fiduciary capacity will be liable for willful misconduct to protect a trust beneficiary. Willful
335 misconduct is a mandatory minimum. The instrument may provide a standard of conduct greater
336 than willful misconduct. The definition of willful misconduct was based on the definition
337 established by the Supreme Court in *Anderson v. Massillon*, 134 Ohio St.3d 380 (2012).
338
339
340

Text of Proposal

Ohio Trust Protector and Directed Trust Act

Part 1: Applicable to All Directed Trusts and All Protectors

R.C. 5818.01 Short title.

This Chapter may be cited as the Ohio Trust Protector and Directed Trust Act.

R.C. 5818.02 Definitions.

As used in this Chapter:

- A. “Breach of trust” means a breach of a fiduciary duty imposed on a protector by the terms of: i.) a trust, ii.) this Chapter, or, iii.) the law of this State pertaining to trusts. Further:
 - i. “Breach of trust” includes only acts or omissions undertaken by a protector while acting in a fiduciary capacity, and does not include any act or omission undertaken by a protector in a non-fiduciary capacity.
 - ii. “Breach of trust” does not encompass or include any act or omission of a protector if the act or omission is permitted or allowed by:
 - a. The terms of a trust and such terms are permitted or allowed by the law of this State, or,
 - b. This Chapter and the terms of a trust do not expressly prohibit such act or omission.
- B. “Directed trust” means a trust that includes terms of a trust granting one or more powers of direction to a protector.
- C. “Legacy trust” has the same meaning as in section 5816.02 of the Revised Code.
- D. “Legacy Trust Act” means Ohio Rev. Code Ch. 5816.
- E. “Person” has the same meaning as in section 5801.01 of the Revised Code.
- F. “Power of direction” means a power or authority, vested in a protector by the terms of a trust, that authorizes, allows, or permits a protector to do any of the following:
 - i. Issue binding trust directives to another trust officeholder, including but not limited to trust directives that direct, order, mandate, require, veto, bar, prohibit, or prevent any actual or proposed decisions or actions by a trust officeholder regarding the trust or trust estate, including but not

- 387 limited to decisions or actions regarding trust investments, trust
388 administration, or distributions to or for trust beneficiaries.
389
- 390 ii. Remove another trust officeholder from a trust office, or appoint another
391 person to a trust office.
392
- 393 iii. Modify or amend the trust instrument, including but not limited to
394 amendments that: i.) Achieve favorable tax treatment, ii.) Respond to or
395 take advantage of any changes in any federal, state, local, or other tax laws
396 that affect or might affect a trust, its settlor, any of its beneficiaries, or its
397 administration, or, iii.) Respond to or take advantage of any changes in
398 the circumstances of any beneficiary.
399
- 400 iv. Increase or decrease the interests of any beneficiaries to the trust.
401
- 402 v. Modify the terms of any power of appointment granted by the trust,
403 provided, however, that, except to the extent the terms of a trust expressly
404 allow otherwise, such a modification may not allow for appointments to
405 any person or class of persons who are not beneficiaries of the trust.
406
- 407 vi. Terminate a trust.
408
- 409 vii. Change the situs or the governing law of a trust.
410
- 411 viii. Make binding interpretations of the terms of a trust.
412
- 413 ix. Require a trustee to consult with the protector regarding specified matters.
414
- 415 x. Add or delete one or more persons as beneficiaries of a trust.
416
- 417 xi. Add or delete powers and discretions to the terms of a trust.
418
- 419 xii. Otherwise direct: i.) the administration of a trust or, ii.) a trust
420 officeholder.
421
- 422 G. “Protector” means a trust officeholder, other than a trustee, that holds a power of direction
423 pursuant to the terms of a trust. A person holding a power of direction is a protector
424 whether the terms of a trust refer to such person as a “protector,” “adviser,” “director,” or
425 other name or title.
426
- 427 H. “Settlor” has the same meaning as in section 5801.01 of the Revised Code.
428
- 429 I. “State” has the same meaning as in section 5801.01 of the Revised Code.
430
- 431 J. “Terms of a trust” has the same meaning as in section 5801.01 of the Revised Code.
432

- 433 K. “Trust directive” means a verbal, written, or other directive, order, or instruction issued by
434 a protector to another trust officeholder whereby the protector, as part of such protector’s
435 exercise or non-exercise of a power of direction, requires such trust officeholder to
436 implement, comply with, or otherwise act in a manner consistent with such directive, order,
437 or instruction.
438
- 439 L. “Trustee” has the same meaning as in section 5801.01 of the Revised Code.
440
- 441 M. “Trust instrument” has the same meaning as in section 5801.01 of the Revised Code.
442
- 443 N. “Trust office” means any office, position, or role created by the terms of a trust whereby
444 the person holding or occupying such office is wholly or partially responsible for: i.) The
445 management, administration, or supervision of the trust or the trust estate, or, ii.) The
446 investment of trust property. Without limiting the generality of the foregoing, “trust office”
447 includes but is not limited to the offices of trustee, protector, advisor, and investment
448 advisor. Further:
449
- 450 i. “Trust office” does not include the position or role of settlor or
451 beneficiary.
452
- 453 ii. The position or role of beneficiary surrogate, as described in section
454 5801.01 of the Revised Code, shall not be considered a “trust office”
455 except to the extent that a trust instrument expressly provides otherwise.
456
- 457 O. “Trust officeholder” means any person who holds or occupies a trust office.
458
- 459 P. “Willful misconduct” means an intentional deviation from a clear duty or from a definite
460 rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or
461 purposefully doing wrongful acts with knowledge or appreciation of the likelihood of
462 resulting injury.
463
464

465 R.C. 5818.03 Application: Trusts and protectors subject to OTPDTA – in general.
466

467 Subject to §5818.04, the following rules shall govern the scope of this Chapter’s application to a
468 trust, a protector, and a protector’s exercise or non-exercise of any power of direction:
469

- 470 A. Except to the extent otherwise provided by the terms of a trust, and to the maximum extent
471 allowed by the Constitution of the United States and the Constitution of Ohio, this Act
472 applies to any trust, whenever created, that is wholly or partially administered in this State
473 or that is wholly or partially governed by the law of this State.
474
- 475 B. The terms of a trust may provide that the laws of this State wholly or partially govern some
476 of the rights, powers, discretion, duties, or liabilities of a protector while the laws of one
477 or more jurisdictions other than this State govern all other rights, powers, discretion, duties,
478 or liabilities of a protector.

479
480
481 R.C. 5818.04 Application: Coordination with Legacy Trust Act.
482

483 In connection with any legacy trust: i.) Any person who is an “advisor” within the meaning of the
484 Legacy Trust Act shall be considered a protector for purposes of this Chapter, and, ii.) This Chapter
485 shall apply to any legacy trust that provides for, permits, allows, or includes such an advisor, except
486 that the Legacy Trust Act shall govern and control in the event of any conflict between the Legacy
487 Trust Act and this Chapter.
488

489
490 R.C. 5818.05 Application: Coordination with terms of a trust.
491

492 This Chapter shall govern the rights, powers, discretion, duties, and liabilities of a protector in
493 connection with such protector’s exercise or non-exercise of a power of direction. Where
494 permitted by this Chapter, the terms of a trust shall prevail over this Chapter and may modify,
495 supplement, limit, eliminate, waive, or restrict the application of this Chapter.
496

497
498 R.C. 5818.06 Protector’s default status as fiduciary.
499

500 A protector is a fiduciary except to the extent that the terms of a trust expressly provide otherwise.
501

502
503 R.C. 5818.07 Eligibility to serve as protector: Non-trustees only and related matters.
504

505 Subject to division (D) of this section, any person who is not at the time in question a trustee of a
506 trust may serve as a protector to that trust. No person may concurrently serve as trustee of a trust
507 and as a protector of that trust. Further:
508

- 509 A. The terms of a trust may further restrict or limit the eligibility of a person to serve as a
510 protector to a trust.
511
512 B. If a trust instrument creates more than one trust, then a person may serve as protector to
513 any such trust for which such person is not concurrently serving as trustee.
514
515 C. The terms of a trust may provide that any rights, powers, or authority granted to a protector
516 may vest in and be exercised by a trustee during any time such protector’s office is vacant
517 or upon the happening of a stated contingency, but the trustee will be treated as holding
518 and exercising such vested rights, powers, and authorities in such trustee’s capacity as a
519 trustee and fiduciary.
520
521 D. Notwithstanding this section, a person who, within the meaning of the Legacy Trust Act,
522 is a transferor to a legacy trust may serve as an advisor to that legacy trust only to the
523 extent authorized by ORC § 5816.11(A).
524

525
526 R.C. 5818.08 Effect of attempted concurrent service as trustee and protector.
527

528 If a person attempts or purports to concurrently serve as a trustee and protector of the same trust,
529 then all of the following shall apply:
530

531 A. Such person shall be treated as having acted as a trustee rather than as protector during the time
532 of the attempted or purported concurrent service.
533

534 B. The terms of a trust may provide for rules and procedures whereby a subsequent protector may
535 wholly or partially ratify, assume, affirm, reject, invalidate, or disavow any trust directives
536 issued by such person during the time of such person's attempted or purported concurrent
537 service as trustee and protector. Further:
538

539 i. Except to the extent otherwise provided by or decided pursuant to the terms of
540 a trust, a subsequent protector shall be presumed to have ratified and affirmed
541 all trust directives issued by such person during such person's time of
542 attempted or purported concurrent service.
543

544 ii. Any actions taken or treated as having been taken by such person in the
545 capacity of trustee during such person's time of attempted or purported
546 concurrent service shall be treated as valid and effective to the same extent,
547 and in the same fashion, that such trustee actions would be if the office of
548 protector was vacant during such time of concurrent service.
549

550
551 R.C. 5818.09 Allocating authority, duties, and liabilities of and among protectors.
552

553 Subject to §5818.15, the rights, powers, discretion, duties, and liabilities of a protector may be
554 varied, allocated, and limited among one or more protectors as follows:
555

556 A. The terms of a trust may: i.) Provide that a protector is a fiduciary in connection with one
557 or more matters and not a fiduciary in connection with one or more other matters, and, ii.)
558 Impose different duties and liabilities on a protector regarding different matters.
559

560 B. If a trust has more than one protector, then the terms of the trust may: i.) Allocate different
561 rights, powers, duties, discretion, and authority to different protectors, and, iii.) Provide
562 different standards of liability for different protectors.
563

564 C. Protectors with jointly held powers must act by majority decision except to the extent the
565 terms of a trust provide otherwise.
566

567
568 R.C. 5818.10 Protector authority: Supplemental authority.
569

570 Except to the extent provided by the terms of a trust, a protector may take such additional,
571 supplemental, or ancillary steps that the protector reasonably deems to be necessary or appropriate
572 to exercise or refrain from exercising a power of direction.

573
574
575 R.C. 5818.11 Protector authority: Scope of discretion.
576

577 Subject to §§5818.12, 5818.13, 5818.14, and 5818.15, the following shall determine the scope of
578 a protector's discretion:

- 579
- 580 A. If a protector is acting in a fiduciary capacity, then the protector may exercise any
581 protector's power of direction to the same extent as, and subject to the same fiduciary
582 obligations and limitations applicable to, a trustee of the trust if such trustee was authorized
583 to exercise the same power.
 - 584
 - 585 B. If a protector is not acting in a fiduciary capacity, then, except to the extent the terms of a
586 trust provide otherwise, the protector may exercise any protector's power in the protector's
587 sole and absolute discretion.
 - 588
 - 589 C. Nothing in this section shall limit or impair any power or discretion that a person serving
590 as protector might hold in such person's capacity as a settlor or beneficiary.
- 591
592

593 R.C. 5818.12 Protector Authority: Limit on power to direct distributions to protector.
594

595 Except to the extent that the terms of a trust expressly provide otherwise, a person serving as
596 protector cannot exercise a protector's power of direction to require or compel a distribution to or
597 for the benefit of such person.

598
599
600 R.C. 5818.13 Protector authority: Limit on power to exculpate trust officeholders.
601

602 Regardless of the terms of a trust, a protector may not use a power of direction to: i.) Require
603 another person to release a trust officeholder from liability for the willful misconduct of such trust
604 officeholder, or, ii.) Alter the terms of a trust in ways that exculpate a trust officeholder from
605 liability for the willful misconduct of such trust officeholder.
606
607

608 R.C. 5818.14 Protector liability: General rules.
609

610 Subject to §5818.15, the following shall apply when determining a protector's liability:
611

- 612 A. If a protector holds a power of direction in a fiduciary capacity, then a protector may be
613 found liable for breach of trust due to the protector's exercise or non-exercise of such a
614 power of direction whenever the protector has committed such a breach. Further:
615

- 616 i. If a protector is found liable for breach of trust, then the protector's
617 liability will be the same that would attach under similar circumstances:
618 i.) To a sole trustee holding such power, if the protector is the only
619 protector holding such power, or, ii.) To a co-trustee holding such power
620 with another co-trustee, if the protector jointly holds such power with
621 another protector.
622
623 ii. Nothing in this division (A) precludes a protector from being found liable
624 for wrongful acts or omissions other than or in addition to breach of trust.
625
626 B. If a protector holds a power of direction in a non-fiduciary capacity, then a protector may
627 not be found liable for breach of trust or other breach of fiduciary duty due to a protector's
628 exercise or non-exercise of such power of direction. Further:
629
630 i. Nothing in this division (B) precludes a protector from being found liable
631 for wrongful acts or omissions other than breach of trust or breach of
632 fiduciary duty.
633
634 C. If a protector is licensed, certified, or otherwise authorized or permitted by law to provide
635 health care in the ordinary course of the protector's business or practice of a profession,
636 then, to the extent the protector acts in the capacity of a health care provider, the protector
637 has no duty or liability under this Chapter.
638
639 D. The terms of a trust may impose duties or liabilities on a protector in addition to the duties
640 and liabilities imposed by this Chapter.
641
642

643 R.C. 5818.15 Protector liability: Limited right to exculpation.
644

645 The following shall apply regarding the duties and the actual or potential liability of a protector:
646

- 647 A. Whenever a protector is not a fiduciary, the terms of a trust may vary, limit, restrict, or
648 eliminate the duties or liability of a protector, except that the terms of a trust may not: i.)
649 Eliminate a protector's liability for acts or omissions that constitute willful misconduct by
650 a protector, or, ii.) Preclude a court of competent jurisdiction from removing a fiduciary on
651 account of the fiduciary's willful misconduct.
652
653 B. Whenever a protector is a fiduciary, a term of a trust relieving the protector of liability for
654 breach of trust is unenforceable to the extent that it: i.) Relieves the protector of liability
655 for breach of trust committed in bad faith or with reckless indifference to the purposes of
656 the trust or the interests of the beneficiaries, or, ii.) Was inserted as the result of an abuse
657 by the protector of a fiduciary or confidential relationship with the settlor.
658
659 C. Notwithstanding any other provision of this Chapter, a protector shall always be liable for
660 any act or omission that constitutes willful misconduct by such protector.
661

- 662 D. In the event of any conflict between this Section or any other provision of this Chapter, this
663 Section shall govern and control.

664
665
666 R.C. 5818.16 Protector liability: Defenses against actions.

667
668 Subject to §5818.15, the following shall apply except to the extent that a protector has waived or
669 released a defense:

- 670
671 A. In any action against a protector, the protector may assert any defense available at law or
672 equity, including but not limited to any defense available: i.) Under this Chapter, or, ii.)
673 Under the terms of a trust.
674
675 B. If a protector is a fiduciary, then, in connection with any claim for breach of trust asserted
676 against such protector, the protector may also assert any defense available to a trustee in a
677 like position and under similar circumstances regarding an action for breach of trust against
678 the trustee.
679
680 C. A protector who undertakes acts or omissions in a non-fiduciary capacity shall not have
681 any liability for breach of trust based on such acts or omissions.
682
683

684 R.C. 5818.17 Trust officeholder: Trust directive presumed valid and related matters.

685
686 Upon receipt of a trust directive, a trust officeholder shall take reasonable steps to implement or
687 comply with the trust directive. Further:

- 688
689 A. A trust officeholder shall have no duty to implement or comply with a trust directive until
690 such trust directive is actually received by the trust officeholder.
691
692 B. Except to the extent that a trust officeholder's conduct constitutes willful misconduct, all
693 of the following shall apply:
694
695 i. A trust officeholder may presume that a trust directive is valid and
696 appropriate.
697
698 ii. A trust officeholder may rely upon information provided by a protector in
699 connection with a trust directive.
700
701 iii. A trust officeholder may ask a protector to clarify trust directives.
702
703 iv. A trust officeholder may require a protector to place a verbal trust
704 directive in writing before such trust officeholder implements or complies
705 with such trust directive.
706

- v. A trust officeholder shall have no liability to any person for implementing or complying with a trust directive.
- C. A trust officeholder shall not: i.) Presume that a trust directive is valid or appropriate, ii.) Implement or comply with a trust directive, or, iii.) Rely upon information provided by a protector in connection with such trust directive, to the extent that such presumption, implementation, compliance, or reliance would constitute willful misconduct by the trust officeholder.
- D. A person claiming that a trust officeholder engaged in willful misconduct when implementing or complying with a trust directive bears the burden of proving such misconduct.
- E. The terms of a trust may impose duties or liabilities on a trust officeholder in addition to the duties and liabilities imposed by divisions (A) – (D) of this section.
- F. Notwithstanding any other provision of this Chapter, a trust officeholder who has actually received a trust directive shall always be liable for any act or omission, undertaken by such trust officeholder in connection with such trust directive, that constitutes willful misconduct by such trust officeholder.
- G. In the event of any conflict between this Section or any other provision of this Chapter, this Section shall govern and control.

R.C. 5818.18 Trust officeholder: Right to seek judicial instruction.

A trust officeholder may petition a court of competent jurisdiction for instructions regarding its duties under § 5818.17. The right conferred on a trust officeholder by this section is in addition to a trust officeholder's rights under: i.) Section 5818.17 to ask a protector to clarify a trust directive or to require a trust directive to be in writing, and, ii.) Section 5818.25 to ask a person to clarify what capacity such person is acting in. A trust officeholder may exercise such trust officeholder's rights under §§ 5818.17 and 5818.25 in addition to or in lieu of petitioning for judicial instructions.

R.C. 5818.19 Rules of construction: For all protectors and directed trusts.

The following rules of construction shall apply in connection with all protectors, directed trusts, and trust directives:

- A. Courts shall give effect to this State's policy of maximizing a settlor's freedom of disposition as set forth in Ohio Rev. Code § 5801.04(D).
- B. Courts shall liberally interpret, construe, and apply this Chapter in ways and means that: i.) Recognize and allow directed trusts, ii.) Uphold the rights, powers, discretion, and authority of a protector, and, iii.) Uphold the validity and enforceability of trust directives.

Without limiting the generality of the foregoing, the term “power of direction” shall be liberally and broadly interpreted, construed, and applied.

- C. The rule that statutes in derogation of common law are to be strictly construed shall have no application to this Chapter.

R.C. 5818.20 Protectors and trustees: Limited duty to share information.

Except to the extent provided otherwise by § 5818.21 or the terms of a trust, protectors and trustees shall have the following limited duties to share information with each other:

- A. A trustee shall provide information to a protector, and a protector shall provide information to a trustee, to the extent the information is reasonably related to both: i.) The powers or duties of such trustee, and, ii.) The powers or duties of such protector.
- B. A protector (referred to in this division as a “first protector”) shall provide information to another protector to the extent the information is reasonably related to the powers or duties of the other protector, provided, however, that, unless the first protector’s failure to provide information to such other protector would constitute willful misconduct by the first protector, a first protector need not provide another protector with any information related to: i.) Any power to direct that may be exercised by such other protector without the consent or approval of the first protector, or, ii.) Any duty that the first protector does not share with such other protector.

R.C. 5818.21 Protectors and trustees: No duty to monitor, supervise, inform, or advise.

Except to the extent provided otherwise by the terms of a trust, the following rules apply to all trustees and protectors of a trust:

- A. A trustee does not have any duty to: i.) Monitor or supervise a protector, ii.) Inform a protector of such trustee’s communications with beneficiaries regarding a protector’s performance in or suitability for trust office, iii.) Inform a protector of matters that were communicated in confidence to such trustee by a beneficiary, or that a trustee reasonably believes were communicated in confidence to such trustee by a beneficiary, or, iv.) Inform or give advice to a settlor, beneficiary, trustee, or protector regarding any instance in which the trustee might have acted differently than a protector.
- B. A protector (referred to in this division as a “first protector”) does not have any duty to: i.) Monitor a trustee or another protector, ii.) Inform a trustee of such first protector’s communications with beneficiaries regarding a trustee’s performance in or suitability for trust office, iii.) Inform another protector of such first protector’s communications with beneficiaries regarding such other protector’s performance in or suitability for trust office, iv.) Inform a trustee or another protector of matters that were communicated in confidence to the first protector by a beneficiary, or that a first protector reasonably believes were

communicated in confidence to such first protector by a beneficiary, or, v.) Inform or give advice to a settlor, beneficiary, trustee, or another protector regarding any instance in which the first protector might have acted differently than a trustee or another protector.

- C. No act, omission, or course of conduct undertaken by a trustee or protector shall impair, limit, restrict or waive the rules of divisions (A) and (B) of this Section, except that a trustee may wholly or partially assume any duty referred to or described in division (A), and a protector may wholly or partially assume any duty referred to or described in division (B), by means of an express signed written agreement to wholly or partially assume such a duty.

R.C. 5818.22 Protectors and trustees: Right to rely on information from each other.

The following shall apply to all trustees and protectors:

- A. A protector (referred to in this division as a “first protector”) that acts in reliance on information provided by a trustee or another protector is not liable for any damage or loss directly or indirectly caused by such reliance except to the extent that such reliance constitutes willful misconduct by the first protector.
- B. A trustee that acts in reliance on information provided by a protector is not liable for any damage or loss directly or indirectly caused by such reliance except to the extent to that such reliance constitutes willful misconduct by the trustee.
- C. The terms of a trust may expressly impose on trustees and protectors duties and liabilities greater than those imposed by divisions (A) and (B) of this Section.

Part 2: Applicable to Powers of Settlers and Beneficiaries

R.C. 5818.23 Act inapplicable to settlor or beneficiary acting as such.

This Act does not apply to any exercise or non-exercise of a power or authority by:

- A. A settlor if such power or authority was conferred on or retained by the settlor, in the capacity of settlor, pursuant to the terms of a trust.
- B. A beneficiary if such power or authority was conferred on a beneficiary, in the capacity of a beneficiary, pursuant to the terms of a trust.

R.C. 5818.24 Determining when a person is acting as settlor or beneficiary.

The following rules shall apply to determine whether a person is acting in such person’s capacity as a settlor, beneficiary, or protector:

- 845 A. The first factor to consider shall be the terms of a trust.
846
847 B. The second factor to consider shall be any documents or communications regarding such
848 person's exercise or non-exercise of a power or authority. Further, if: i.) A person executes
849 a document specifying the capacity in which a person acts, and, ii.) The terms of a trust
850 grant such person the capacity specified in such document, then there shall be a
851 presumption that the capacity asserted or identified by such person in such document is
852 correctly asserted or identified, and such presumption may be rebutted only by clear and
853 convincing evidence.
854
855 C. If a person's capacity as settlor, beneficiary, or protector is unclear after applying divisions
856 (A) and (B) of this section, then a court may consider any other facts or circumstances that
857 may be relevant to determining the capacity in which a person is acting.
858
859

860 Part 3: Miscellaneous Provisions Applicable to all Trusts and Protectors
861

862 R.C. 5818.25 Right to request clarification of capacity asserted.
863

864 In addition to any other rights conferred upon a trust officeholder by this Chapter or by the terms
865 of a trust, a trust officeholder may ask a person to clarify whether a communication or instruction
866 issued by such person was issued in such person's capacity as a settlor, beneficiary, or trust
867 officeholder. If a person purports to issue a communication or instruction in such person's capacity
868 as a trust officeholder, then any other trust officeholder receiving such communication or
869 instruction may ask the issuer to specify the official capacity that the issuer is acting in.
870

871
872 R.C. 5818.26 Jurisdiction over protector.
873

874 To the maximum extent allowed by the Constitution of the United States and the Constitution of
875 this State, the courts of this State shall have personal jurisdiction over a person who accepts an
876 appointment to serve as a protector of a trust subject to this Chapter.
877

878 R.C. 5818.27 Limitation of actions against protector.
879

880 The following rules shall apply in connection with the time period for bringing claims against a
881 protector:
882

- 883 A. If a claim is brought against a protector regarding acts or omissions undertaken by the
884 protector in a fiduciary capacity, then:
885
886 i. An action against a protector for breach of trust must be commenced
887 within the same limitation period provided by O.R.C. § 5810.05 for an
888 action for breach of trust against a similarly situated trustee.
889

- 890 ii. A report or accounting has the same effect on the limitation period for an
891 action against a protector for breach of trust that the report or accounting
892 would have under O.R.C. § 5810.05 on a similarly situated trustee.
893

- 894 B. If an action is brought against a protector regarding acts or omissions undertaken by the
895 protector in a non-fiduciary capacity, or for causes of action other than breach of trust, then
896 such action must be commenced within the same limitation period that would normally
897 apply to such action.
898
899

900 R.C. 5818. 28 Protector not required.
901

902 Nothing in this Chapter shall require a trust to have a protector, and the terms of a trust may omit
903 any requirement for or reference to a protector.
904
905

906 R.C. 5818.29 Procedures for issuing or delivering trust directives.
907

908 Subject always to §5818.17(A), the following shall apply to every trust:
909

- 910 A. The terms of a trust may set forth reasonable procedures for the issuance or delivery of:
911

912 A trust directive, or,
913

- 914 i. Any other document related to or arising out of:
915

- 916 a. The implementation of a trust directive,
917

- 918 b. A protector's exercise or non-exercise of the protector's rights, powers, authority,
919 or discretion, or,
920

- 921 c. Any other matter related to or arising out such protector's duties, liabilities, or
922 service as protector.
923

- 924 B. The terms of a trust regarding the issuance or delivery of any item referred to in division
925 (A) of this section shall be presumed to be: i.) reasonable, and, ii.) the exclusive means for
926 such issuance or delivery. The presumptions set forth in this division may be rebutted only
927 by clear and convincing evidence. Notwithstanding the foregoing, nothing in this division
928 will impair, limit, or restrict a trust officeholder's rights under: i.) Section 5818.17 to ask
929 a protector to clarify a trust directive or to require a trust directive to be in writing, ii.)
930 Section 5818.18 to seek judicial instructions, or, iii.) Section 5818.25 to ask a person to
931 clarify the capacity that such person is acting in.
932

- 933 C. If the terms of a trust do not set forth reasonable procedures for the issuance or delivery of
934 any item referred to in division (A) of this section, or if the terms of a trust provide that
935 such reasonable procedures are non-exhaustive, then any item referred to in division (A)

of this section may be issued or delivered by any method that is consistent with ORC § 5801.08.

R.C. 5818.30 Miscellaneous cross-references.

Except to the extent that the terms of a trust provide otherwise, the rules regarding the following matters shall apply to a protector as they would to a trustee:

- A. Ohio Rev. Code §5807.01 regarding acceptance or rejection of office.
- B. Ohio Rev. Code §5807.02 regarding the need for a bond to secure performance.
- C. Ohio Rev. Code §5807.04(A) regarding vacancies in office.
- D. Ohio Rev. Code §5807.05 regarding resignation from office.
- E. Ohio Rev. Code §5807.06 regarding removal from office.
- F. Ohio Rev. Code §5807.08 regarding reasonable compensation.

R.C. 5801.04 Freedom of disposition.

(A) Except as otherwise provided in the terms of the trust, Chapters 5801. to 5811. of the Revised Code govern the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(B) The terms of a trust prevail over any provision of Chapters 5801. to 5811. of the Revised Code except the following:

- (1) The requirements for creating a trust;
- (2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) The requirement that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) The power of the court to modify or terminate a trust under sections 5804.10 to 5804.16 of the Revised Code;
- (5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Chapter 5805. of the Revised Code;
- (6) The power of the court under section 5807.02 of the Revised Code to require, dispense with, or modify or terminate a bond;

(7) The power of the court under division (B) of section 5807.08 of the Revised Code to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to division (C) of this section, the duty under divisions (B)(2) and (3) of section 5808.13 of the Revised Code to notify current beneficiaries of an irrevocable trust who have attained twenty-five years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;

(9) Subject to division (C) of this section, the duty under division (A) of section 5808.13 of the Revised Code to respond to the request of a current beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(10) The effect of an exculpatory term under section 5810.08 of the Revised Code;

(11) The rights under sections 5810.10 to 5810.13 of the Revised Code of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take any action and exercise any jurisdiction that may be necessary in the interests of justice;

(14) The subject-matter jurisdiction of the court for commencing a proceeding as provided in section 5802.03 of the Revised Code.

(C) With respect to one or more of the current beneficiaries, the settlor, in the trust instrument, may waive or modify the duties of the trustee described in divisions (B)(8) and (9) of this section. The waiver or modification may be made only by the settlor designating in the trust instrument one or more beneficiary surrogates to receive any notices, information, or reports otherwise required under those divisions to be provided to the current beneficiaries. If the settlor makes a waiver or modification pursuant to this division, the trustee shall provide the notices, information, and reports to the beneficiary surrogate or surrogates in lieu of providing them to the current beneficiaries. The beneficiary surrogate or surrogates shall act in good faith to protect the interests of the current beneficiaries for whom the notices, information, or reports are received. A waiver or modification made under this division shall be effective for so long as the beneficiary surrogate or surrogates, or their successor or successors designated in accordance with the terms of the trust instrument, act in that capacity.

(D) Except as provided by divisions (B) and (C) of this section, it is the policy of this State to give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments.

R.C. 5810.08 Enforceability of exculpatory trust term

The following shall apply:

(A) Except as provided in division (B) of this section, a ~~A~~ term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it: i.) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries, or, ii.) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship ~~to with~~ the settlor.

(B) A trustee may be relieved from liability for implementing or complying with a trust directive to the extent that such relief is: i.) Permitted or allowed by Chapter 5818 of the Revised Code, ii.) Authorized by any term of a trust that is permitted or allowed by Chapter 5818 of the Revised Code, or, iii.) Otherwise allowed by the Ohio Trust Code.

R.C. 5816.11 Trust advisors; eligibility; default fiduciary status.

(A) Any person may serve as an advisor of a legacy trust except that: i.) A ~~a~~ transferor may act as an advisor only in connection with investment decisions, and, ii.) No person may concurrently serve as a trustee and advisor of a legacy trust. If a person concurrently serves or purports to concurrently serves as trustee and advisor of a legacy trust, then the effects, consequences, and time period of such concurrent service shall be subject to ORC § 5818.08.

(B) An advisor shall be considered a fiduciary unless the terms of a legacy trust instrument expressly provide otherwise.

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1051 **REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION**

1052
1053 *To the Council of Delegates*

1054
1055 The Estate Planning, Trust and Probate Law Section requests your favorable consideration of the
1056 following proposal:

1057
1058 To enact a new R.C. §5808.161 to provide an Ohio trustee with a discretionary power to
1059 pay a taxing authority directly or reimburse a grantor for income tax owed by the grantor
1060 attributable to grantor trust income and amend R.C. §5812.43 to provide that such a
1061 disbursement is paid from principal.

1062
1063 Respectfully submitted,

1064
1065 Brian C. Layman, Canton
1066 Chair, Estate Planning, Trust and Probate Law Section
1067

1068
1069 **Rationale for the Proposal:**

1070
1071 All items of income, deduction, and credit of a grantor trust will be included in the grantor's federal
1072 income tax return. I.R.C. §671. For the most part, states follow the federal treatment. The result is
1073 that the grantor must pay the income tax attributable to the grantor trust's income personally and
1074 without a distribution or reimbursement from the trust unless the trust instrument provides
1075 otherwise. Older trust instruments likely do not include such a provision because until Rev. Rul.
1076 2004-64 there was not clear guidance on how to grant such a power without causing negative
1077 federal tax consequences. Further, grantor trust instrument drafting has not necessarily changed
1078 quickly, even after Rev. Rul. 2004-64.

1079
1080 Grantor trust planning is a powerful estate and tax planning tool. However, circumstances may
1081 have changed since the creation of the grantor trust, and the grantor may be unable to pay the tax,
1082 or the payment of tax may inhibit utilization of techniques that may provide for the best and most
1083 holistic estate planning for the family. Examples:

- 1084
1085 1. Grantor trust status is unable to be toggled off (e.g., someone else holds a power of
1086 substitution triggering I.R.C §675(4), a related party is trustee with broad discretionary
1087 powers triggering I.R.C §674, there is an outstanding loan to grantor, a spouse is a
1088 discretionary beneficiary, etc.).
1089
1090 2. Grantor with a temporary or extended liquidity problem.
1091
1092 3. Grantor is no longer in a taxable estate position because of a change in law, new estate
1093 plan, excess transfer tax exemption, reduced asset values, or other reasons.
1094
1095 4. Significant one-time tax event such as the sale of a business (perhaps with low basis),
1096 income generated from a successful private equity investment, and the like.

5. Former/divorcing spouses where grantor-spouse no longer has indirect access via the beneficiary-spouse to the trust property to pay the income tax liability.

6. Family disharmony.

In response, at least seven states have enacted grantor trust reimbursement statutes that provide the trustee with the discretionary power to reimburse the grantor for income taxes paid on the grantor trust's income or pay the taxing authority directly.

The proposal seeks to 1) create a new grantor reimbursement statute which will provide Ohio trustees with a discretionary power to pay taxing authorities directly or reimburse the grantor for income taxes attributable to income generated by the grantor trust and 2) to amend the Ohio Principal and Income Act to provide that such disbursements be paid from principal. Such proposal is the culmination of several years of study, debate, and drafting by the Technical Tax Issues Under the Ohio Trust Code Committee of our Section. The proposal was unanimously approved by the Section Council.

Text of Proposal

R.C. 5808.161 Grantor reimbursement power.

(A) With respect to any trust, or portion thereof, that is treated as being owned by a person under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code or any similar tax law, the trustee may, in the trustee's sole discretion, reimburse the person being treated as the owner for any amount of the person's federal, state, or other income tax liability which is attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the person's taxable income. In the trustee's sole discretion, the trustee may pay such tax reimbursement amount to the person directly or to the appropriate taxing authority.

(B) This section applies to all trusts, whether created on, before, or after the effective date of the statute, unless:

(1) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution.

(2) The trust is a grantor retained annuity trust or grantor retained unitrust during a term interest under 2702(c)(3) of the Internal Revenue Code.

(3) Applying this section would be the only trigger that would result in any trust, or portion thereof, as treated as being owned by a person under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code or any similar tax law. This

1138 does not prohibit reimbursement in a subsequent year provided that the
1139 reimbursement relates to a year in which the person was treated as an owner under
1140 subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code or any
1141 similar tax law.

1142 (C) A trustee who acts in good faith in exercising or not exercising the power granted by this
1143 section is presumed to have acted in accordance with the terms and purposes of the trust
1144 and the interests of the beneficiaries, and no inference of impropriety shall arise as a
1145 result of a trustee exercising or not exercising the power.

1146 (D) If the terms of a trust require the trustee to act at the direction or with the consent of a
1147 trust advisor, a protector, or any other person, or that the decisions addressed in this
1148 section be made directly by a trust advisor, a protector, or any other person, the powers
1149 granted by this section to the trustee must instead or also be granted, as applicable under
1150 the terms of the trust, to the advisor, protector, or other person subject to the foregoing
1151 limitations, which must be applied as if the advisor, protector, or other person were a
1152 trustee.

1153 (E) A person shall not be considered a beneficiary of a trust solely by reason of the
1154 application of this section or the application of a similar provision in the trust instrument.
1155
1156

1157 R.C. 5812.43 Disbursements from principal.
1158

1159 (A) A trustee shall make all of the following disbursements from principal:
1160

1161 (1) The remaining one-half of the disbursements described in divisions (A) and (B) of
1162 section 5812.42 of the Revised Code;
1163

1164 (2) All of the trustee's compensation calculated on principal as a fee for acceptance,
1165 distribution, or termination, and disbursements made to prepare property for sale;
1166

1167 (3) Payments on the principal of a trust debt;
1168

1169 (4) Expenses of a proceeding that concerns primarily principal, including a proceeding to
1170 construe the trust or to protect the trust or its property;
1171

1172 (5) Premiums paid on a policy of insurance not described in division (D) of section
1173 5812.42 of the Revised Code of which the trust is the owner and beneficiary;
1174

1175 (6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the
1176 trust;
1177

1178 (7) Disbursements related to environmental matters, including reclamation, assessing
1179 environmental conditions, remedying and removing environmental contamination,
1180 monitoring remedial activities and the release of substances, preventing future releases of
1181 substances, collecting amounts from persons liable or potentially liable for the costs of

those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(8) Disbursements related to direct payments to a taxing authority or reimbursement of a person being treated as the owner under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code or any similar federal, state, or other tax law, for any amount of the person's federal, state, or other income tax liability which is attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the person's taxable income.

- (B) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

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REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION

To the Council of Delegates

The Estate Planning, Trust and Probate Law Section requests your favorable consideration of the following proposal:

To amend Sections 1337.42 and 1337.34 of the Ohio Revised Code by incorporating a key sentence from the official comments to the Uniform Power of Attorney Act regarding the mandatory nature of duties imposed upon all agents under powers of attorney governed by Chapter 1337; to amend Sections 1337.42, 1337.52, and 5806.02 to more explicitly state the inability of an agent under a power of attorney to exercise the principal's right to withdraw assets from a revocable trust of which the principal is the settlor without such authorization being granted in both the trust agreement and the power of attorney; and to amend Section 1337.36 to grant to courts the same power to award attorney fees in actions involving powers of attorney that they already have in cases involving the administration of trusts.

Respectfully submitted,

Brian C. Layman, Canton
Chair, Estate Planning, Trust and Probate Law Section

Summary and Rationale for Proposal

Duty to Attempt to Preserve the Principal's Estate Plan

Among the mandatory duties of an agent listed in R.C. §1337.34 is the duty to attempt to preserve the principal's estate plan if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

- (a) The value and nature of the principal's property;
- (b) The principal's foreseeable obligations and need for maintenance;
- (c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (d) Eligibility for a benefit, a program, or assistance under a statute or regulation.

Section 1337.42 lists the following so-called "hot powers" which can only be granted if those powers are specifically granted in the power of attorney document:

- (1) Create, amend, revoke, or terminate an inter vivos trust to the extent permitted by section [5801.05](#) of the Revised Code or any other provision of Title LVIII of the Revised Code;
- (2) Make a gift;
- (3) Create or change rights of survivorship;

- (4) Create or change a beneficiary designation;
- (5) Delegate authority granted under the power of attorney;
- (6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (7) Exercise fiduciary powers that the principal has authority to delegate.

There are several reported cases from both Ohio and other states that have also enacted the Uniform Power of Attorney Act (UPOAA) in which agents who were granted one or more of the hot powers have exercised them in a manner that does not comply with their duty to attempt to preserve the estate plan. In these cases, courts sometimes treat the granting of very broad powers as dispensing with the duty to attempt to preserve the estate plan, which is contrary to the intent of the uniform act. In some of these cases, courts have upheld agents' actions for the primary reason that the underlying power had been granted, without examining the agents' conduct in light of the Section 1337.34 mandatory duties. The official comments to UPOAA state that notwithstanding the granting of these broad hot powers, agents remain bound in all events to their mandatory duties. In most states, the enactment of uniform acts includes both the act's text as well as the official comments, however in Ohio that is not the case. Amending R.C. §1337.42 by adding the proposed new Division (H), which is a nearly verbatim copy of a UPOAA official comment, will remind practitioners, agents under powers of attorney, and courts that the exercise of these powers must always be viewed through the lens of the mandatory duties. Because mandatory duties apply not just to the hot powers but also to *all* powers, the proposed rewording of R.C. §1337.34 governing agent duties adds to that section this same reminder. These two amendments would add the important point that the mandatory duties always apply, a point that is too often overlooked by reviewing courts. With these changes, agents would retain their ability to exercise those hot powers granted to them, if the exercise of those powers would be in the principal's best interest considering all relevant factors, including the four enumerated items listed above as (a) through (d). In other words, no flexibility would be lost, but a critical safeguard would be added.

Agent's Exercise of Rights Reserved by Settlor in Revocable Trusts

In Ohio's enactment of both the Uniform Trust Code (UTC) and UPOAA, amendments were made to both acts stating that an agent under a power of attorney cannot exercise the principal's right to "distribute" assets from a revocable trust, unless the power to do so is granted both in the trust agreement and the power of attorney. Reasons for this limitation include the fact that trustees are held to higher fiduciary duties than are agents under powers of attorney, and that almost all revocable trusts include requirements that trustees administer trust assets for the benefit of the trust settlor. Attempts by agents to withdraw assets from the principal's trust are often made under suspicious circumstances, particularly when a professional trustee is involved. The wording of this limitation in the Ohio enactments of both the UTC and UPOAA, by using "distribute" rather than "right of withdrawal" has been problematic.

The problem involved with an agent's exercise of a principal's reserved rights under a revocable trust was discussed in the Ohio case *Vogel v. Campanaro* and in the Pennsylvania case *Estate of Kane*. Both states modified their versions of UTC §602 (i.e. R.C. §5806.02[E] and Pa. Cons. Stat. Ann. §7752) to address this issue in somewhat different ways, with Ohio also incorporating that change in R.C. §1337.42. The Ohio court in *Vogel* as well as counsel for both sides all seem to

have overlooked those Ohio UTC and UPOAA changes, otherwise a different result likely would have been reached. The Pennsylvania modification to UTC §602 (the equivalent of R.C. §5806.02), which was both broader and more specific than Ohio’s change, was addressed by the court in the *Kane* decision. In order for the intent of the earlier Ohio changes to the applicable UTC and UPOAA provisions to be given effect, the language of R.C. §5806.02(E) should be clarified.

Compare the Ohio and PA changes to §602:

PA: (e) Agent.--A settlor's powers with respect to revocation or amendment of the not dispositive provisions of *or withdrawal of property from a trust may be exercised* by an agent under a power of attorney *only to the extent expressly authorized by the trust instrument or the power*. The agent under a power of attorney that expressly authorizes the agent to do so may amend the dispositive provisions of a revocable trust as the court may direct (emphasis added).

OH: (E) An agent under a power of attorney may exercise a settlor's powers with respect to revocation, amendment, or *distribution of trust property* only to the extent expressly authorized by both the terms of the trust and the power (emphasis added).

Our EPTPL Section Council proposes that R.C. §5806.02(E) and R.C. §1337.42(A) be amended to specifically apply the withdrawal of trust property as well as the ability to direct the distribution of trust property.

Arguably no change should be required to the R.C. §1337.52 power, “Estates, Trusts, and Other Beneficial Interests,” but because the court in *Vogel* held that inclusion of “disburse” included the power to withdraw principal, reference should be made in R.C. §1337.52 to R.C. §§5806.02(E) and 1337.42(A). Similarly, because this statutory power, if incorporated by reference into a power of attorney, grants to the agent the power to exercise the principal’s right to withdraw principal (thereby satisfying one of the two specific required authorizations), reference should also be made to both of those sections to make clear that this power can only be exercised if it is also granted by the trust instrument. Failing to add this cross reference arguably creates an ambiguity between Ohio’s UTC and UPOAA enactments. Further, because of the court’s interpretation of the word “disburse” in the *Vogel* case to allow the agent to exercise the settlor’s power of withdrawal over the trust, which was intended to be a hot power under R.C. §1337.42 that requires an express grant of authority in the power of attorney (in addition to being specifically authorized by the trust), language should be added to R.C. §1337.52(B)(2) specifically excluding the exercise of a settlor’s right of withdrawal from being a power that falls under the general grant of authority.

Court’s Power to Award Attorney Fees

Regarding a court’s power to award attorney fees in cases involving powers of attorney, R.C. §1337.37 provides:

An agent that violates Sections 1337.21 to 1337.64 of the Revised Code is liable to the principal or the principal's successors in interest for the amount required to restore the value

of the principal's property to what it would have been had the violation not occurred and the amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

There are cases involving bad conduct by agents in which courts awarded attorney fees to the prevailing party, only to be reversed on appeal because the award did not fit squarely with the narrow confines of the UPOAA section corresponding to R.C. §1337.37. The changes made to UPOAA by Nebraska, Idaho, and Virginia have the common theme of giving courts the same discretion in cases involving powers of attorney that they have under the UTC. Courts have not abused their power to award attorney fees in those cases under the UTC where they deem it necessary to do so in the interest of justice, so there is no reason to believe that it would be any different if they had that same flexibility in cases involving powers of attorney. This is particularly important because of the fact that there are far more cases dealing with abusive conduct by agents as compared with litigation involving trustees.

In the Ohio case *Cartwright v. Batner*, 15 N.E.3d 401 (2nd Dist., Montgomery County, 2014) the court found a way to award attorney fees against an agent who acted in “bad faith” based upon an earlier appellate decision (*Schiavoni v. Roy*, 2012-Ohio-4435 (Ohio App. 9th Dist.)), which in part relied upon dictum from an even earlier Ohio Supreme Court case. The entire point of codifying this area of the law is to provide certainty by avoiding the need to track down often competing appellate decisions. Making changes to R.C. §1337.36 similar to those made by Nebraska, Idaho, and Virginia would in effect codify existing common law as laid out by the court in *Cartwright*, but would additionally apply the same standard to both trust and power of attorney litigation, resulting in more consistency than the undefined and amorphous “bad faith” standard from the *Cartwright*. Accordingly, the EPTPL Section Council recommends that the UTC provision regarding attorney fees be added to R.C. §1337.36.

Text of the Proposal

R.C. 1337.42 Authority that requires specific grant; grant of general authority.

(A) An agent under a power of attorney may do any of the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and if exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject, and, with respect to a revocable trust of which the principal was the settlor, if the trust agreement expressly authorizes the agent to exercise the principal's powers with respect to the revocation, amendment, or distribution withdrawal of trust property, or the ability to direct the distribution of trust property:

- (1) Create, amend, revoke, or terminate an inter vivos trust to the extent permitted by section 5801.05 of the Revised Code or any other provision of Title LVIII of the Revised Code;
- (2) Make a gift;
- (3) Create or change rights of survivorship;
- (4) Create or change a beneficiary designation;
- (5) Delegate authority granted under the power of attorney;

(6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) Exercise fiduciary powers that the principal has authority to delegate.

(B) Notwithstanding a grant of authority to do an act described in division (A) of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(C) Subject to divisions (A), (B), (D), and (E) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 1337.45 to 1337.57 of the Revised Code.

(D) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 1337.58 of the Revised Code.

(E) Subject to divisions (A), (B), and (D) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(F) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(G) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

(H) Notwithstanding a grant of authority to perform any of the enumerated acts in Division (A), an agent is bound by the mandatory fiduciary duties set forth in Section 1337.34(A), including but not limited to the duty to attempt to preserve the principal's estate plan, as well as the default duties set forth in Section 1337.34(B) that the principal has not modified.

R.C. 1337.34 Agent's duties.

(A) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall act in accordance with all of the following mandatory duties, none of which can be waived: do all of the following:

(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(2) Act in good faith;

(3) Act only within the scope of authority granted in the power of attorney;

(4) Attempt to preserve the principal's estate plan to the extent actually known by the agent if preserving the plan is consistent with the principal's best interest based on all relevant factors, including all of the following:

- (a) The value and nature of the principal's property;
- (b) The principal's foreseeable obligations and need for maintenance;
- (c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (d) Eligibility for a benefit, a program, or assistance under a statute or regulation.

(B) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall do all of the following:

- (1) Act loyally for the principal's benefit;
- (2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
- (3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.

(C) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(D) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(E) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(F) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(G) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(H) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days.

R.C. 5806.02 Revocation or amendment of trust.

(A) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This division does not apply to a trust created under an instrument executed before January 1, 2007.

(B) If a revocable trust is created or funded by more than one settlor, all of the following apply:

(1) To the extent the trust consists of community property, either spouse acting alone may revoke the trust, but the trust may be amended only by joint action of both spouses.

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(3) Upon the revocation or amendment of the trust by less than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(C) The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor's intent, provided that a revocable trust may not be revoked or amended by a will or codicil, regardless of whether it refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust unless the terms of the trust expressly allow it to be revoked or amended by a will or codicil.

(D) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(E) An agent under a power of attorney may exercise a settlor's powers with respect to revocation, amendment, or withdrawal of trust property, or the ability to direct the distribution of trust property only to the extent expressly authorized by both the terms of the trust and the power.

(F) A guardian of the estate of the settlor or, if no guardian of the estate has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(G) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

R.C. 1337.52 Estates, trusts, and other beneficial interests.

(A) As used in this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

(B) Subject to Sections 5806.02(E) and 1337.42(A), unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to do all of the following:

(1) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

(2) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise; but with respect to a revocable trust of which the principal is the settlor, an agent may not exercise a right reserved by the principal to withdraw, or to direct the distribution of, assets from the trust unless specifically permitted by the trust instrument.

(3) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(6) Conserve, invest, disburse, or use anything received for an authorized purpose;

(7) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor;

(8) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

R.C. 1337.36 Judicial relief.

(A) Any of the following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(1) The principal or the agent;

(2) A guardian, conservator, or other fiduciary acting for the principal, including an executor or administrator of the estate of a deceased principal;

1563 (3) A person authorized to make health-care decisions for the principal;
1564 (4) The principal's spouse, parent, or descendant;
1565 (5) An individual who would qualify as a presumptive heir of the principal;
1566 (6) A person named as a beneficiary to receive any property, benefit, or contractual right
1567 on the principal's death or as a beneficiary of a trust created by or for the principal that has
1568 a financial interest in the principal's estate;
1569 (7) A governmental agency having regulatory authority to protect the welfare of the
1570 principal;
1571 (8) The principal's caregiver or another person that demonstrates sufficient interest in the
1572 principal's welfare;
1573 (9) A person asked to accept the power of attorney.
1574
1575 (B) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless
1576 the court finds that the principal lacks capacity to revoke the agent's authority or the power of
1577 attorney.
1578
1579 (C) In a judicial proceeding under this Chapter, involving the administration of a power of attorney,
1580 including but not limited to actions under this Section, the court, as justice may require, may award
1581 costs and expenses, including reasonable attorney fees to any party, to be paid by another party.

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1582 **REPORT OF THE MILITARY AND VETERANS' AFFAIRS COMMITTEE**

1583
1584 *To the Council of Delegates*

1585
1586 The Military and Veterans' Affairs Committee requests your favorable consideration of the
1587 following proposal:

1588
1589 To amend Ohio R.C. §5901.03 to authorize a veteran service commission to provide
1590 direct financial support to veterans treatment courts, including by hiring and
1591 compensating individuals at the court who provide outreach.

1592
1593
1594 Respectfully submitted,

1595
1596 Scott J. Wilkov, Cleveland
1597 Chair, Military and Veterans' Affairs Committee
1598

1599 **Summary and Rationale for Proposal**

1600
1601 This proposal is based on an Attorney General's opinion that authorizes this financial support, as
1602 discussed below. The Attorney General concluded: "[A] VSC 'has a duty' under R.C. 5901.03(E)
1603 to establish programs that make 'a systematic attempt, working together with other agencies, to
1604 increase available services specifically to veterans within the county.'" Op. Att'y Gen. No. 2011-
1605 029.

1606
1607 Based on the duties of a VSC, the Attorney General concluded:

1608
1609 "Pursuant to R.C. 5901.03(E), a VSC may establish an outreach program that is intended
1610 to work with and support a veterans treatment court. A veterans treatment court is designed
1611 to meet the unique needs of veterans appearing as defendants before the court by offering
1612 a variety of services to such defendants. Accordingly, an outreach program established by
1613 a VSC to work with and support a veterans treatment court constitutes "a systematic
1614 attempt, working together with other agencies, to increase available services specifically
1615 to veterans within the county" as required by R.C. 5901.03(E)." Op. Att'y Gen. No. 2011-
1616 047.

1617
1618 Each county in Ohio has a veterans service commission (VSC) composed of five members. R.C.
1619 §5901.02. Each VSC is responsible for providing financial assistance and other aid to indigent
1620 veterans and their families. R.C. §§5901.03; 5901.08; 5901.15. A VSC is funded through a tax
1621 levy made by the board of county commissioners as the county's taxing authority. R.C §5901.11;
1622 *see also* 2011 Op. Att'y Gen. No. 2011-029.

1623
1624 This proposal will dramatically help veterans treatment courts (VTC) because their resources are
1625 limited and access to VA employees is often limited as well. This proposal bridges that gap by
1626 codifying Ohio Attorney General Opinion No. 2011-047. It is important to remember these tax
1627 revenues are for veterans. All of the 29 VTCs in 22 of 88 Ohio counties will greatly benefit from

1628 this financial assistance. The courts are typically staffed by a treatment team comprised of a judge,
1629 prosecutor, public defender, VA employees, and veteran peer mentors. The proposed amendment
1630 specifically authorizes VSCs to hire an employee who may assist a VTC and that employee could
1631 be assigned to work out of the courthouse. This is consistent with the outreach VSCs are expected
1632 to provide.

1633
1634 **Text of Proposal:**

1635
1636 R.C. 5901.03 Organization and duties of commission.

1637
1638 The veterans service commission shall select one of its members as president, one as vice-
1639 president, and one as secretary. The commission shall meet at least once each month. A judge of
1640 the court of common pleas may remove, for cause, any member of the commission appointed under
1641 section 5901.02 of the Revised Code, and shall fill vacancies occurring among memberships
1642 appointed under that section for the unexpired terms in the manner provided for the original
1643 appointments.

1644
1645 The commission's duties shall include but are not limited to the following:

1646
1647 (A) Employing such staff as are necessary to carry out the commission's duties, and fixing
1648 their compensation;

1649
1650 (B) Establishing policies and procedures for the administration of the commission and the
1651 veterans service office;

1652
1653 (C) Establishing policies and procedures for the administration of assistance as provided
1654 under this chapter;

1655
1656 (D) Causing the budgets of the veterans service commission and veterans service office to
1657 be presented to the board of county commissioners for approval;

1658
1659 (E) Establishing programs of outreach and coordination with other agencies to enhance
1660 available services to veterans within the county. Both of the following apply:

1661
1662 (1) The veterans service commission may provide financial assistance to a veterans
1663 treatment court to the extent that such assistance is directed to establishing and
1664 fulfilling an outreach program under R.C. 5901.03(E); and

1665
1666 (2) the veterans service commission may hire and compensate a person who will
1667 work at the veterans treatment court and provide assistance to the court as specified
1668 by the terms of an outreach program established under R.C. 5901.03(E). This
1669 Amendment adopts an Ohio Attorney General's Opinion No. 2011-047.

1670
1671 (F) Promoting, monitoring, and providing funding for ongoing education and training for
1672 veterans service commissioners and staff;

- 1674 (G) Making reports to the organizations represented on the commission, as provided in
1675 section 5901.02 of the Revised Code, and to others, upon request;
1676
- 1677 (H) Establishing regularly scheduled transportation for veterans to and from veterans
1678 administration medical centers whose districts the county is within, through contractual
1679 agreements or through other arrangements determined by the commission to be most cost-
1680 effective;
1681
- 1682 (I) Participating in appropriate memorial and commemorative activities to help promote
1683 patriotism and veterans services;
1684
- 1685 (J) Taking any other actions required by this chapter.

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1686 **REPORT OF THE MILITARY AND VETERANS' AFFAIRS COMMITTEE**

1687
1688 *To the Council of Delegates*

1689
1690 The Military and Veterans' Affairs Committee requests your favorable consideration of the
1691 following proposal:

1692
1693 To require all Ohio confinement facilities to identify and verify veterans who are
1694 imprisoned.

1695
1696 Respectfully submitted,

1697
1698 Scott J. Wilkov, Cleveland
1699 Chair, Military and Veterans' Affairs Committee
1700

1701 **Summary and Rationale for Proposal**

1702
1703 Over a decade ago, the Homeless Programs Office within the Department of Veterans Affairs
1704 created the Veterans Reentry Research Service (<https://vrss.va.gov>), an online tool that allows
1705 prisons, jails and court staff to identify individuals within their custody that have a record of
1706 military service. The Department of Justice Bureau of Justice Statistics estimates that 7-8% of the
1707 U.S. prison population is comprised of military veterans. Historically, efforts to identify veterans
1708 in criminal justice settings have relied on self-reporting. Yet, for a variety of reasons, veterans may
1709 not self-report, frequently out of shame. This is a problem because incarceration is a significant
1710 predictor of future homelessness. Identifying justice-involved veterans at the earliest opportunity
1711 will enable the state to connect these people with resources and intervention often not available to
1712 the local confinement facility staff.

1713
1714 Our proposal requires all Ohio confinement facilities to use an existing and very effective online
1715 database developed by the U.S. Department of Veterans Affairs (VA) to identify veterans who are
1716 imprisoned. The VA created a nationwide database of every person who has served in the armed
1717 services, called the Veteran's Reentry Search Service (VRSS). Presently, VA personnel use VRSS
1718 to identify veterans in Ohio's confinement facilities and those in other states for many purposes
1719 related to services provided by the VA.

1720
1721 Texas and Indiana have enacted VRSS acts that require their respective confinement facilities to
1722 use this system and database without charge by the VA. Likewise, some of Ohio's confinement
1723 facilities presently use the VRSS database to verify a veteran's status. In many cases, the results
1724 have shown significantly more veterans were identified in their confinement facilities than
1725 anticipated. That occurs because veterans frequently do not self-report when asked.
1726 Representatives of the Ohio judicial system have, in various ways, exerted significant efforts over
1727 a reasonable period to inform and encourage all other Ohio confinement facilities to adopt and
1728 utilize the VRSS system and database. Unfortunately, the results have been mixed.

1729
1730 An Ohio VRSS Act is needed to standardize the treatment of veterans in our confinement facilities
1731 so that all justice-involved veterans can be aware of and take advantage of their VA benefits,

programs, and treatment opportunities to the extent possible in their confinement facility. Often local confinement facilities cannot provide benefits, programs, and treatment opportunities that are available through the VA. Given that incarceration is a significant predictor of future homelessness, identifying and helping veterans through the VA while in Ohio's confinement facilities may reduce future homelessness.

The VRSS Act would requires confinement facilities: (1) to investigate and verify the veteran status of each imprisoned individual, (2) to note the veteran status on all appropriate records of each imprisoned individual, (3) to use the VRSS data to assist each imprisoned veteran in applying for federal and Ohio benefits or compensation for which imprisoned veterans may be eligible under programs administered by the VA or any department of the State of Ohio, and (3) to provide funds to train properly qualified individual(s) to use VRSS at each confinement facility and to develop a training manual for this position.

Text of Proposal

New R.C. Section –Veteran Status Verification of Imprisoned Individuals

(A) The following institutions or entities stated in this section shall designate as soon as practicable at least one individual qualified to perform properly the duties set forth in Paragraphs (1) - (3). The institutions or entities are: institutions that are under the control of the Ohio Department of Rehabilitation and Correction, or any one of the following entities: a county, multicounty, municipal, municipal-county, or multicounty-municipal, which has one of the following: a jail or workhouse, a minimum security jail, a community-based correctional facility, or another facility described or referred to in section 2929.34 of the Revised Code for the type of criminal offense and under the circumstances specified or referred to in that section. The number of qualified individuals needed for a particular institution or entity shall be determined by the [Appropriate Ohio Department to be Determined].

- (1) To investigate and verify the veteran status of each imprisoned individual by using data made available from the Veteran's Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and
- (2) To note the veteran's status on all appropriate records of each imprisoned individual; and
- (3) To use the data described in Paragraph (1) to assist each imprisoned individuals who are veterans in applying for federal and Ohio benefits or compensation for which imprisoned individuals may be eligible under a program administered by the United States Department of Veterans Affairs and administered by any department of the State of Ohio.

(B) The [Appropriate Ohio Department to be Determined] shall provide the funds to train properly such qualified individual(s) for each institution or entity described in Paragraph (A) and develop a training manual for this position. Thereafter, should a vacancy occur, each of the named institutions or entities set forth above shall provide the funds to train properly such qualified

individual(s) by following the training manual prepared by the [Appropriate Ohio Department to be Determined].

(C) As used in R. C. §105 (A), unless the context otherwise requires, "imprisoned" or "imprisonment" means being imprisoned under a sentence imposed for an offense or serving a term of imprisonment, prison term, jail term, term of local incarceration, or other term under a sentence imposed for an offense in an institution under the control of the department of rehabilitation and correction, a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a minimum security jail, a community-based correctional facility, or another facility described or referred to in section 2929.34 of the Revised Code for the type of criminal offense and under the circumstances specified or referred to in that section. (B) As used in division (A) of this section, "community-based correctional facility" has the same meaning as in section 2929.01 of the Revised Code. R.C. § 1.05.

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REPORT OF THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

To the Council of Delegates

The Military and Veterans' Affairs Committee requests your favorable consideration of the following proposal:

To enact the Ohio Veterans Justice Act, an act to provide for alternative sentencing options for U.S. veterans charged with certain crimes that may derive from conditions regarding military service and that recognize their service to the country.

Respectfully submitted,

Scott J. Wilkov, Cleveland
Chair, Military and Veterans' Affairs Committee

Summary and Rationale for the Proposal

The Ohio Attorney General's Office reports there are approximately 680,000 veterans living in Ohio, the fifth largest state. This includes 17,000 who served in the wake of 9/11 and are suffering with post-traumatic stress disorder (PTSD) and traumatic brain injuries (TBI). Former service members make up 6.5% of Ohio's homeless population.

The model Veterans Justice Act is a product of the research by the Veterans Justice Commission (VJC) which is led by former Secretary of Defense and Senator Chuck Hagel, a Vietnam veteran. The commission was established under the non-partisan, not-for-profit think tank known as the Council on Criminal Justice (CCJ). Website: counciloncj.org

The role of the VJC is to examine the extent and nature of veterans' involvement in the criminal justice system and develop recommendations for evidence-based policy changes that enhance safety, health, and justice. This information is reprinted, in pertinent part, from the Aug. 2022 report of the council, entitled "From Service through Reentry: A Preliminary Assessment of Veterans in the Criminal Justice System."

Roughly 200,000 active-duty service members leave the armed forces each year, and most transition successfully, demonstrating often extraordinary resilience in the face of a wide array of risk factors and obstacles. Others struggle with mental health and substance use disorders, the after-effects of traumatic brain injury, homelessness, and criminality.

Approximately one-third of veterans self-report having been arrested and booked into jail at least once, compared to fewer than one-fifth of civilians. According to the last comprehensive count, there were 181,500 veterans in American prisons and jails. A separate survey showed that nearly 8% of those incarcerated in state prisons and more than 5% of people in federal prisons were veterans.

Overall, studies show that service-related trauma exposure, combined with increased incidence of mental health and substance use disorders, elevates veterans' risk of justice system involvement. Veterans who served in the military since September 11, 2001, may be especially at risk, in part because they are younger and more racially diverse than the general public and they have seen more combat deployments and redeployments than any previous cohort of service members.

Combat deployment is strongly associated with the development of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). Veterans with multiple deployments are three times more likely than service members who were not previously deployed to develop PTSD, and estimates indicate that 20% of post-9/11 veterans experienced a probable TBI during deployment. PTSD and TBI symptoms fuel substance misuse, increase risk for separation from the military under "other than honorable" circumstances, and are associated with crime and justice involvement for veterans.

Most arrested veterans will spend some period of time in jail, where, as with other subpopulations, programs tailored to their unique needs are rare. The VA, local governments, and community organizations have developed certain initiatives to assist veterans who come in contact with the criminal justice system, including programs to divert them away from incarceration.

Veterans treatment courts (VTC) are perhaps the most common standardized front-end intervention to permit some veterans to avoid long-term confinement and access supportive resources. Modeled after drug and mental health courts, such courts serve veterans diagnosed with mental health and/or substance use disorders, although protocols for such courts may vary. A VTC typically has a treatment team comprised of a judge, prosecutor, public defender, VA employees, and veteran peer mentors. There are 29 VTCs in 22 of 88 counties in Ohio. As a result, many justice-involved veterans do not have access to a VTC. The Veterans Justice Act would address this issue by making this act available to all veterans in a county who meet the criteria. Accordingly, this act is not a replacement for the VTCs. In all likelihood, veterans eligible for the act who live in a county with a VTC will be supervised while on probation in that VTC.

Sentencing data for veterans is limited, particularly for those sentenced to probation or those who receive a deferred prosecution. For those sentenced to incarceration, a higher proportion of veterans (80%) than non-veterans (70%) receive sentences of five years or more. Some courts have been known to impose a harsher sentence because more was expected of a veteran. On the other hand, Ohio courts must consider military service as a mitigating factor at sentencing. Other state courts do so, but this consideration often is limited to those with honorable discharges. Similarly, some deferred prosecution statutes allow veterans to avoid a conviction even after they plead or are found guilty, if they can prove they suffer from an applicable condition stemming from military service, such as PTSD, TBI, or other service-related trauma. This option has only recently become available in a limited number of jurisdictions, and the number and rate of veteran deferred prosecutions are unknown.

The proposed legislation is mechanism by which justice-involved veterans across the state of Ohio may be assured of a standard level of treatment geared toward diversion as opposed to incarceration.

1881 The committee requests that the Ohio Bar Council of Delegates authorizes the Ohio Bar to lobby
1882 for the enactment of the Veterans Justice Act in Ohio: a model policy that is being submitted to
1883 state legislators nationwide to detail alternative sentencing options for U.S. veterans charged with
1884 certain crimes that may derive from conditions regarding military service and that recognize their
1885 service to the country.

1886
1887 Veterans charged with certain offenses that are eligible for probation shall be given the opportunity
1888 to avoid a record of conviction, or have a felony reduced to a misdemeanor, in probation-eligible
1889 offenses and avoid incarceration, and instead receive probation and treatment that has been tailored
1890 to address the specific challenges they face stemming from their military service. The options are
1891 grounded in evidence-based practices for effective supervision and rehabilitation.

1892
1893

1894 **Text of the Proposal**

1895

1896 **To Enact a Veterans Justice Act**

1897

1898 **Section 1. Purpose**

1899 (1) Veterans charged with certain offenses shall be given the opportunity to avoid a record of
1900 conviction, or have a felony reduced to a misdemeanor, in probation eligible offenses and avoid
1901 incarceration, and instead receive probation and treatment that has been tailored to address the
1902 specific challenges they face stemming from their military service.

1903 **Section 2. Definitions**

1904 (1) As used in this act, the words defined in this section have the meaning given.

1905 (a) “VETERAN” refers to a person who swore an oath and entered any branch of the Armed
1906 Forces, including the National Guard or Reserve, and is either, (1) currently serving in such
1907 branch and has not been discharged, or (2) was discharged or released from such service
1908 under any characterization except for those receiving a dishonorable discharge, unless the
1909 individual receiving the dishonorable discharge has been diagnosed with substance-use
1910 disorder (SUD), military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic
1911 stress disorder (PTSD), or another mental health condition.

1912 (b) “CONDITION FROM MILITARY SERVICE” refers to substance-use disorder (SUD),
1913 military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder
1914 (PTSD), or another mental health condition that is related to an individual’s military service
1915 in some manner.

1916 (c) “CASE PLAN” means a set of goals, conditions, and programs that is based on a
1917 professional risk and needs assessment, tailored to the specific risks, and needs of the
1918 veteran, and developed in collaboration with the veteran.

1919 (d) “VETERAN SENTENCING OPTION” means that the disposition or adjudication of
1920 the case is postponed pending the completion of the case plan. If the veteran successfully
1921 completes their case plan, they receive the associated incentive described in Section 5.
1922 Except in cases where the judge approves a case plan in a pre-plea situation, if the veteran
1923 does not successfully complete the case plan, they waive their right to a trial and accept
1924 that they will be convicted of the crime and resume the standard sentencing process.

1925 **Section 3. Eligibility**

1926 (1) Law enforcement, court, and correctional personnel shall verify the veteran status of all
1927 individuals being processed, using the definition of veteran from Section 2(1)(a), to identify
1928 individuals who may be eligible for a veteran sentencing option.

1929 (2) All veterans shall be eligible for a veteran sentencing option if there are one or more indicators
1930 of mental or physical symptoms of a condition from military service which could have contributed
1931 to the offense. This includes the psychological effects from their time in service as well as from
1932 the period of family separation related to deployment.

1933 (3) A presumption in favor of a veteran sentencing option exists for any offense that is eligible for
1934 probation, which can only be overcome by a judicial finding that such a sentencing option would
1935 not reasonably ensure public safety based on an individualized assessment of the veteran and
1936 consideration of the supervision, treatment, and other programs available in that community. The
1937 presumption may apply to veterans who previously absconded or were re-arrested for a new
1938 offense while previously given the benefit of this option.

1939 **Section 4. Program Details**

1940 (1) Veterans who are eligible for, and choose to receive, a veteran sentencing option, as described
1941 in Section 3 shall enter a program that contains the following elements:

1942 (a) Probation

1943 (b) Evidence-based treatment tailored to address the specific challenges facing veterans,
1944 such as posttraumatic stress disorder (PTSD), traumatic brain injury (TBI), military sexual
1945 trauma (MST), or another mental health condition.

1946 (c) A case plan:

1947 (i) Developed by the court, corrections agencies, and/or appropriate psychological
1948 experts

1949 (ii) Based on a professional assessment of the veteran’s specific risks and needs

- 1950 (iii) Created in conjunction with input from the veteran
- 1951 (iv) Containing clear and individualized supervision and treatment goals, including
 1952 guidelines that detail the program rules, consequences for violating the rules, and
 1953 incentives for compliance
- 1954 (v) Communicated to the veteran at the start of the program
- 1955 (d) In the implementation of the program, judges shall retain discretion in:
- 1956 (i) Deciding veteran eligibility
- 1957 (ii) Establishing the conditions of the program, including the creation of the case
 1958 plan
- 1959 (iii) Setting the terms of successful program completion and release upon that
 1960 successful completion
- 1961 (iv) Determining if the veteran has successfully completed their program at a final
 1962 hearing
- 1963 (e) All eligible veterans may request having their supervision changed to their county of
 1964 residence, provided that being moved to their county of residence does not interfere with:
- 1965 (i) The ability of the veteran to receive appropriate supervision and treatment
- 1966 (ii) The rights of the victim according to existing state law
- 1967 (f) Family members may elect to receive information about case plans and progress.
- 1968 (i) If a no-contact order is in place between the veteran and their family, that order
 1969 shall be evaluated periodically to determine if preventing contact is necessary.
- 1970 (g) Victims/survivors shall have the opportunity to be involved in the process, including
 1971 the opportunity to submit a written statement to be read at the final hearing where program
 1972 completion is determined.
- 1973 (i) In domestic violence cases, the victim shall have the opportunity to receive a
 1974 victim advocate to mentor them throughout the process.
- 1975 (2) This program shall be operated by existing pretrial and/or probation departments.

1976 **Section 5. Incentives for Successful Program Completion and Record Expungement**

1977 (1) Veterans who successfully complete their program shall avoid a term of incarceration upon
1978 successful completion and have a presumption in favor of either having their case dismissed and
1979 their conviction not recorded or have their felony conviction converted to a misdemeanor. This
1980 presumption can only be overcome by a judicial finding that the veteran remains an ongoing risk
1981 to public safety and such a dismissal or conversion would not reasonably ensure public safety. The
1982 determination must be stated on the record to include the facts upon which the judge relied to reach
1983 it.

1984 (2) Veterans, like other eligible individuals, should be eligible for expungement as provided for by
1985 existing state law.

1986 **Section 6. Sentencing Mitigation**

1987 (1) Veterans who are not eligible for a veteran sentencing option as detailed in Section 3 shall have
1988 their veteran status recognized as a factor in determining their sentence.

1989 (2) Sentencing mitigation for veterans shall contain the following elements:

1990 (a) At arraignment, the court shall notify the veteran that their veteran status may have
1991 mitigation value.

1992 (i) The court shall offer the veteran the ability to communicate their veteran status
1993 through counsel or by other means, avoiding the need for self-identification of veteran
1994 status in open court.

1995 (b) A bar on using veteran status as an aggravating factor, meaning veterans cannot receive a more
1996 severe punishment by virtue of being a veteran.

1997 (c) Veteran status shall be considered in addition to any other existing mitigation provided for
1998 mental health conditions in a jurisdiction.

1999 (i) Other trauma suffered by the veteran, such as Adverse Childhood Experiences, shall not
2000 be used to deny the existence of military trauma.

2001 (d) The court may take into consideration individual merit earned during service, overseas
2002 deployment, exposure to danger, and service-connected disability ratings when considering
2003 sentencing mitigation. When considering multiple factors, the court should give additional credit
2004 for each factor.

2005 (e) The court shall not mandate a connection between the offense and a condition from military
2006 service in order to consider a veteran for sentencing mitigation.

2007 (f) When the veteran can show a clear connection between the offense and a condition from
2008 military service, and progress in treating that condition, prison is inappropriate in all but the most
2009 severe cases.

2010 **Section 7. Training**

2011 (1) Law enforcement, courts, and corrections personnel shall receive training designed to increase
2012 their understanding of cases involving veterans, including veterans exposure to violence and
2013 trauma.

2014 (a) Training shall include attention to issues that disproportionately impact female veterans,
2015 such as military sexual trauma (MST).

2016 **Section 8. Data Collection and Evaluation**

2017 (1) Courts shall track and report the number of veterans receiving, successfully completing,
2018 declining, and denied a veteran sentencing option and sentencing mitigation.

2019 (2) Prosecutors and law enforcement shall track and report the number of veterans receiving,
2020 successfully completing, declining, and denied prosecutorial or law enforcement veterans
2021 diversion and treatment courts.

2022 (3) All data collected and reported shall be categorized by race, ethnicity, gender, age, military
2023 discharge characterization, and offense type.

2024 (4) The legislature shall identify an agency to develop a plan for tracking outcomes among veterans
2025 who receive a veteran sentencing option, including successful completion of the program,
2026 recidivism, housing status, and employment status.

2027 (5) The legislature shall identify an agency to develop a plan for ongoing evaluations of the veteran
2028 sentencing option, including occasional independent evaluations that employ causal methods.

2029 (6) Law enforcement, courts, and corrections are authorized to seek federal funding to support the
2030 infrastructure and operating costs associated with implementing this act.

2031 **Section 9. Enactment**

2032 (1) This act shall take effect on _____.

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REPORT OF THE OHIO STATE BAR ASSOCIATION BOARD OF GOVERNORS

To the Council of Delegates

The Ohio State Bar Association Board of Governors requests your favorable consideration of the following proposal:

To approve of the recommendations of the Ohio State Bar Association Rural Practice Gap Task Force.

Respectfully submitted,

Michelle L. Kranz, Toledo
President, Ohio State Bar Association

Text of the Proposal

WHEREAS, the State of Ohio is experiencing critical attorney shortages in many rural communities; and

WHEREAS, the statistical trends of attorneys working in private practice are not keeping pace to provide sufficient access to legal services in rural communities; and

WHEREAS, adequate access to legal services has been defined as approximately one attorney per 700 residents and currently eighty-two of eighty-eight Ohio counties are considered underserved with inadequate access to attorneys; and

WHEREAS, seventy-three percent of Ohio's active private practice attorneys serve only forty-two percent of the state's population geographically; and

WHEREAS, the Ohio Bar Rural Practice Gap Task Force has examined attorney shortages within the state and issued a report to recommend strategies to combat the growing gap of available attorneys; and

WHEREAS, the Ohio Bar has advocated for increased public funding to support legal aid and other access to justice initiatives.

NOW, THEREFORE, BE IT RESOLVED that the Ohio Bar supports expanded access to the Rural Practice Incentive Program established in House Bill 150 of the 134th General Assembly under the Ohio Department of Higher Education; and

BE IT RESOLVED that the Ohio Bar supports the removal of the requirement that assistant state public defenders serve in a full-time capacity only; and

2077
2078 BE IT RESOLVED that the Ohio Bar supports encouraging the Ohio Public Defender Commission
2079 to review and re-visit experience requirements for appointed counsel to receive state
2080 reimbursements for providing indigent defense; and
2081
2082 BE IT FURTHER RESOLVED that the Ohio Bar use its legislative resources to pursue
2083 enactment of the aforementioned public policy position.

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