



THE LAW OFFICES OF
**SAMANTHA
K. WOLFE**
LLC

Providing mindful legal direction

20 EAST SIXTH STREET, SUITE 206
WAYNESBORO, PA 17268
717- 655-2676
www.skwlawoffice.com

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Upcoming Monthly Virtual Seminars from 12:00 p.m. until 1:00 p.m.:

April 11, 2024 "She Works Hard for the Money: Ins and Outs of the Financial Power of Attorney"

May 16, 2024 "Staying Alive: Learning More about the Mental Health Power of Attorney, Health Care Power of Attorney, and Living Will"

June 6, 2024 "Knocking on Heaven's Door: Things to Know about a Last Will and Testament"

Book Writing with the Boss: Orphan's Court Updates

Hi everyone, Jessica took a moment and sat down with Samantha, to discuss a little bit about the book writing process. As always, we do offer free initial consultations and you can call our office at 717-655-2676 or you can also email Amy at Meek@skwlawoffice.com. Below you will find excerpts from the interview between Jess and Samantha. You can view the interview in its entirety on our website, Facebook page or YouTube channel: https://youtu.be/uJhRw_FgVfA?si=NCf-8ew6W5Zefaqx

Jess – Sam, you write a book called "The Pennsylvania Trust Guide." You also write a book called "Remick's Pennsylvania Orphans' Court Practice." What are the books?

Sam – The Pennsylvania Orphans' Court Practice Volumes have been around for a long time and that book provides annual updates with the case law related to the Orphans' Court Practice for the past year. Although it is several volumes, the author's job is to insert case law under the specific headings related to that topic. For example, in Orphans' Court there is a section dealing with wills, so my job is to insert any cases that have been decided related to wills, or will contests, how to execute a will, or administer probate. I select those cases and I summarize the relevant applicable case law decided in the opinions and then insert that material into the specific section of the book. That way any attorney in Pennsylvania can get updated case laws related to each of the topics covered in The Orphans' Court Practice.

Jess – What is Orphans' Court?

Sam – The Orphans' Court is a section of court that deals with certain legal matters. Our office does a small part of Orphans' Court Practice. We do powers of attorneys, wills, and trusts at our office. Those legal areas are subject to the supervision of the Orphans' Court. If there would ever be litigation related to those areas of law, the court that is going to hear the case and decide how to handle it, is going to be the Orphans' Court of whatever county in Pennsylvania. The Orphans' Court governs also covers other areas of law that we don't do at our office; some of those areas are adoptions and guardianships. Those are the two big areas that we refer to our colleagues who practice more regularly in those areas. Because those topics are also under the jurisdiction of the Orphans' Court, I read those cases even though I don't practice in that area, and I still update The Orphans' Court Practice book for those subjects as well.

Jess – It seems like the Orphans’ Court governs a lot of areas of law, right?

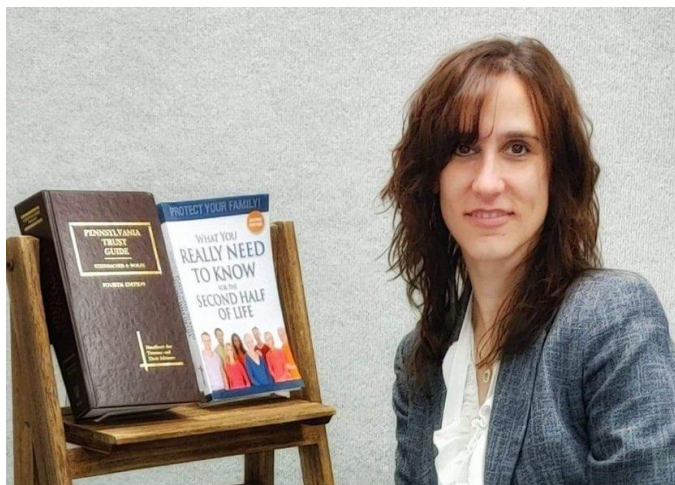
Sam – There are some areas of law that are not under the review of the Orphans’ Court. The Orphans’ Court does not hear criminal matters. There won’t be any homicide cases, assault cases, or anything like that in Orphans’ Court because it would be considered criminal, so those areas are not under the jurisdiction of the Orphans’ Court. The Orphans’ Court hears any litigation or matters related to wills, powers of attorney, trusts, guardianships, and adoptions.

Jess – What does the writing process entail? What do you need to do for that?

Sam – The good news is that the two books work well together. The Pennsylvania Trust Guide is specific to trust law in Pennsylvania but because trust law also falls under the Orphans’ Court Practice, I can take those same cases that I would put in Trust Guide and update them in the Orphans’ Court Volume. The Pennsylvania Trust Guide only covers trusts and Pennsylvania law related to trusts, that content is very specific. The Pennsylvania Trust Guide is a very specific topic, but that information is also included in The Orphans’ Court Practice. For The Pennsylvania Trust Guide, I am looking for cases specifically related to trusts in Pennsylvania and then I do a case summary of each case in Pennsylvania that was decided related to trusts in the last year. For The Orphans’ Court Practice, I am selecting cases that would fall under the Orphans’ Court jurisdiction. There are cases related to powers of attorney, wills, adoptions, and guardianships. For example, there was a case in Pennsylvania about a Power of Attorney being executed naming a child as an agent and court was determining whether the agent could be making certain transfers using the power of attorney. I read the case to extract the important concepts that were in the case so that other attorneys don’t have to read the whole case. Instead, an attorney can read just the excerpts that I pull out that would be important to his or her everyday practice. It is a little bit different writing the two books. For The Pennsylvania Trust Guide, I am providing a more in-depth summary, with all the facts and all the analysis that the court used. With The Orphans’ Court Practice, I am just taking little tidbits from each case, or I may have multiple paragraphs that I am inserting in different sections in The Orphans’ Court Practice because it might apply to different sections. One book is broader in its coverage: The Orphans’ Court Practice. For that manuscript, I am writing little nuggets that you are sprinkling all through the volumes. The Pennsylvania Trust Guide is truly a summary of the case that is then put into the Trust Guide.

Jess – You talked a little bit about the case summaries but exactly what are they? What is the purpose of them? Where do you even find them?

Sam – Typically, every county in Pennsylvania has an Orphans’ Court. Franklin County has one, but there is one in Dauphin County, Cumberland County, York County, and so on. All these courts are hearing cases simultaneously. I practice in Franklin County, and I might have a question about whether or not I should use certain language in a client’s power of attorney. There might have been a court case in York County Orphans’ Court that addressed that specifically. Even though I practice in Franklin County, I may not get all the court opinions in other counties, so my job is to pull cases that would apply to practitioners no matter what county they are in. It can be fun to read the different cases and opinions. You can have some cases that address multiple issues.



Jess – One of the positives of writing is that it allows you to keep up on case law, but it does take a lot of time. Do you enjoy it?

Sam – I want to say that the only negative is that both books have deadlines at the same time. I have to submit a manuscript for each book, and this year they were a week apart. Now there is some overlap with the contents, but you still have to put it in different formats and insert the text in different places. You are also highlighting different aspects of the cases. The closeness of the deadlines is a little bit challenging. This was the first year that I wrote the updates for The

Orphans' Court Practice, so it was challenging learning how to write the content. March through July is when I really focus on writing.

Jess – When you are finished writing, I will help scan the binders and they are the three-inch ginormous binders. There are four or five of them. It is a lot of content.

Sam –For The Orphans' Court Practice, every page is a paragraph and it might be saying this is one point that the case brought out and you do a page for each of those to insert them into The Orphans' Court Practice. It ended up being close to 200 pages of text that I wrote this past year. It is not the full page because it is usually a paragraph or two or maybe three on each page. That's why there are so many pages and there is so much volume there.

Jess –I do get why attorneys would need the books you write, but you mentioned accountants. Why would they need to have anything like this?

Sam –I was working with an accountant in Williamsport, and she was doing a tax return for a trust. She wanted The Pennsylvania Trust Guide because the book covers a lot about the taxation of trusts, the different ways a trust can be taxed, and how to determine what kind of trust it is. We do have some forms in The Pennsylvania Trust Guide too. She wanted a copy because it was like a reference guide for her. Even though she doesn't practice law in the area of trusts, she does do tax returns. Sometimes we see bank trust officers who want it as well.

Jess –If people really want to run out and buy these books, read them, and put themselves to sleep, where they would even go about finding them?

Sam – You go through the publisher. George T. Bisel Publishing Company publishes The Pennsylvania Trust Guide and then The Orphans' Court Practice is through two publishers: LexisNexis and George T. Bisel. If anyone really feels the need to hunker down and read these books, I can certainly send them a direct link, or we do have copies from previous years. If somebody wanted to borrow it to read or look at something they are always welcome to do that.

Jess – What are some of the most interesting cases or interesting things you have seen in the cases?

Sam – The ones I have the most fun reading are always the ones that seem the most ridiculous. For example, there were two cases that came out this year related to COVID. You have to realize there is always a delay when you are going through the court system. I hope that COVID is now in our rearview, but we are just starting to get some of the cases coming through the court system. There were two cases in two different counties related to COVID in Orphans' Court this last year. Every county can decide something different. The reason that it is important to know what each county is deciding, is that as the case is appealed, it gets smaller and smaller. You might have 15 Orphans' Courts across Pennsylvania and each one can decide something different. But when you appeal it, you appeal it to the Superior Court. There are only so many Superior Courts in Pennsylvania. If you don't like that decision, you appeal it to the Supreme Court of Pennsylvania. So, it is important to know what over counties are doing. For example, Franklin County could apply a legal concept to a certain set of facts they have or do it completely differently because the judge feels completely different about it. The two cases that were the most interesting, both dealt with COVID. The first one was an individual that was in a hospital, she had gotten a cancer diagnosis. At that time the hospitals were on lockdown, so no one was able to get in or out of the hospital. In that case, the individual contacted her attorney and asked for a Will to be drafted. She was very clear about what she wanted. She spoke to the attorney. The attorney drafted the Will according to the client's requests. Hospitals were too busy during that time so hospital staff could not serve as witnesses or notaries. Unfortunately, the lady passed away before she could sign the Will. In Pennsylvania if you don't have a Will there are intestate laws that govern how your estate should be divided. In this case, the executor felt that there was a draft of this Will, it was clear that she wanted to sign it. After the lady had received a copy of it via email, she called the attorney and indicated that this was what her wishes were, but because she did not sign it, there was an issue. The case went through the court system to determine whether or not the lady's assets could be distributed according to this unexecuted Will. During COVID, because we practice here in Waynesboro and we are near the Waynesboro Hospital, we did have one client that needed to sign their Will. She was in the hospital, in the ICU. We also had clients in a nursing facility. The facility, like the hospital, was in lockdown,

and we couldn't get into it either. What we had to do with the couple in the nursing home was mail them a hard copy of their wills. The facility kept it in "quarantine" for one week. After the week had passed, the documents were delivered to the residents' room. The individuals signed and dated them at that time. Pennsylvania does not require a notary and two witnesses. With the hospital, I had contemplated having my dad (this is how crazy it was) bring a ladder over to the hospital so I could climb it and look in the window while they signed it. It ended up that we didn't have to do that. In both cases we were able to do something that allowed the individual to sign the documents and after the restrictions were lifted, we had them resign the documents in front of a notary and witnesses. Thankfully neither of those individuals died.

Jess – So what happened with the first case you brought up? Was that ever resolved? Could they use the Will?

Sam – No, because Pennsylvania law states that it has to be signed. The second case was even more interesting. The individual was in a facility that was on lockdown at the height of the COVID pandemic. The client reached out to the attorney, so it was very clear what the individual wanted in her will. She ended up getting a terminal diagnosis, and the attorney was concerned she was going to pass away so they did a remote witness and notarization of the will. It was considered an electronic Will or an e-Will in Pennsylvania. She passed away and the executor admitted the electronic Will for probate. No one was contesting the will. The only reason the will was going through the court system was because it was an electronic signature. Technically at the bottom of the will, when you use an electronic signature, it is a number that was assigned to that signature. The individual is not actually writing his or her name on it. It was admitted for probate and the Register of Wills denied admitting the will to probate. They said it was not a valid Will because there was no signature at the end. It got appealed and the courts have agreed that that is not a valid will even though nobody was contesting it. The Register of Wills pointed to the fact that the Pennsylvania Statute says that the testator's signature has to be affixed at the end of the will. So, they are following what Pennsylvania law is in the strictest sense. The Register of Wills is not doing anything incorrect by not admitting it. I am a part of the Elder Law Section of the Pennsylvania Bar and they decided that we should work with another section, the Real Property & Probate section, to draft a bill that would hopefully get enacted that would allow for electronic wills. The Pennsylvania court system specifically stated in this case that if Pennsylvania wants to allow electronic wills, then there needs to be a statute in Pennsylvania that permits it.

Jess – Thanks for sharing about the writing process and showing us what writing the books entails. If anyone is interested in hearing more, or has questions for Samantha about the cases we covered today, or you would like to read some cases, please just reach out, our phone number is 717-655-2676 or you can email Amy at Meek@skwlawoffice.com.

**20 East Sixth Street, Suite 206,
Waynesboro, PA 17268**

Monday through Friday 8:30 am to 4:30 pm



717-655-2676



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