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Presentation of Claims Against Decedents' Estates: Current Pitfalls and Coming Changes

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Ohio law concerning creditors' claims against a decedent's estate is exacting. A creditor must take action within ***six months*** of a person's death—whether or not they have notice of the death. In most states, creditors have a period of time that begins to run from the opening of an estate administration or the service or publication of notice of the same. Not so in Ohio. Even if a creditor knows of a death *and* knows they must present a claim for what they are owed within six months of the death, the method of presenting the claim—and to whom—is very specific and currently enforced with a scrutiny that surprises many an unwary creditor. This article will provide a concise summary of the *current* requirements for presentation of a claim against a decedent's estate and also summarize some changes to these requirements currently pending in the Ohio legislature.

The requirements for presentment of a creditor's claim against a decedent's estate are found in R.C. 2117.06. But a clear determination of what constitutes presentment under that statute has been elusive and the cause of significant litigation in the past few years. Following Ohio Supreme Court's 2017 decision *Wilson v. Lawrence*, discussed below, a committee of the Ohio State Bar Association's Estate Planning, Trust, and Probate Law Section Council proposed revisions to the statute. These revisions, also outlined below, have been pending in the Ohio legislature for nearly two years now, delayed by unrelated political controversies and a global pandemic. But change is coming, and when it does, both creditors and executors alike will know more clearly whether a creditor's claim should or should not be paid.

The Current Statute

R.C. 2117.06 provides the following instructions for presentment of a claim against an estate:

(A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall **present** their claims in one of the following manners:

> (1) **After the appointment of an executor or administrator** and prior to the filing of a final account or a certificate of termination, in one of the following manners:
>
> > (a) To the executor or administrator in a writing;
> >
> > (b) To the executor or administrator in a writing, **and** to the probate court by filing a copy of the writing with it;
> >
> > (c) In a writing that is sent by ordinary mail addressed to the decedent and that is actually received by the executor or administrator within the appropriate time specified in division (B) of this section. For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section. (Emphasis added).

Note that a creditor cannot present a claim to anyone for payment until ***after*** an estate has been opened and ***after*** a fiduciary[1] has been appointed. Presentment of a claim to a person before their formal appointment as a fiduciary is not effective to preserve the creditor's claim—even if the person is named in a will or has applied for appointment within the statutory time period.[2] For this reason, it is not uncommon for executors or administrators to delay opening estates until after six months have passed from the death of the decedent, forcing creditors to open the estate themselves in order to present and preserve their claims.[3]

Under the current statute, once the estate is opened and the fiduciary has been appointed, a creditor has three options for presentment of a claim. First, they can present the claim to the fiduciary in a writing. Second, they can present the claim to the fiduciary in a writing ***and*** file it with the probate court. Third, they can send it by ordinary mail addressed to the decedent and hope that it finds its way into the hands of the fiduciary within six months of the death of the decedent. If a bank or corporate fiduciary is serving, the writing must find its way into the hands of the specific person who has "primary responsibility" for administering the decedent's estate within that time.

Wilson v. Lawrence

In *Wilson v. Lawrence*[4], a creditor to whom the decedent owed approximately $200,000 at his death sent a written claim to the decedent's "personal secretary" and trustee of his trust, with the salutation "to the heirs, administrators or executors of the Estate . . .".[5] The evidence showed that the letter had been forwarded on to the duly-appointed executor of the decedent's estate immediately and was likely received within the required six-month period.[6] The Eighth District Court of Appeals found the creditor's claim to have been timely presented. The Supreme Court of Ohio reversed the decision of the Eighth District Court of Appeals and held: "delivery of the claim to a person not appointed by the probate court who gives it to the executor or administrator fails to present a claim against the estate."[7]

The 6-1 majority opinion found that RC 2117.06(a)(1)(a) was unambiguous in its requirement that creditors "shall present their claims . . . to the executor or administrator."[8] The creditor's "substantial compliance" with the statute was insufficient to present a claim. The majority specifically dismissed the idea of a "softened standard" for presentment of claims under the statute, noting that no court has the authority to ignore plain and unambiguous statutory language.[9]

Justice O'Neill dissented, writing that a jury could reasonably conclude that the creditor met the requirements of R.C. 2117.06 because the creditor sent his written claim in a manner "reasonably calculated" to get it "to" the executor.[10] Under Justice O'Neill's reading of the statute, a letter directed in the salutation line to the executor that makes its way to the executor prior to the notice deadline would satisfy the requirements of R.C. 2117.06 because the writing was presented "to" the executor.

According to the dissent, the majority opinion leaves open the question of whether sending a written claim by private courier fails under the majority's rule: "[m]ust creditors now track down the executor on the seventh hole of the local country club and physically hand the claim to the executor to establish that the claim was 'presented'?"[11]

The majority's opinion does not say that transmission of a claim by U.S. Mail or private courier addressed to the executor or administrator would be insufficient to present a claim under the statute. But the majority offers no response to the dissent's question "[w]ould sending a written claim by FedEx or private courier fail the majority's rule?"[12] The majority's opinion also notes that the claim was not presented to the executor "**or** [his attorney]," but does not speak to whether a creditor may present a claim to an executor through the executor's attorney.[13] While prior Ohio appellate court case law has held that presentment of a claim to an attorney representing a fiduciary in administration of an estate satisfies the statute,[14] the wording of the majority opinion in *Wilson v. Lawrence* left a significant question unanswered.

Stafford Law Co., L.P.A. v. Estate of Ruby Coleman

Almost exactly four years after the Supreme Court of Ohio overturned the 8th District Court of Appeals in *Wilson v. Lawrence,* the 8th District issued a decision in *Stafford Law Co. v. Estate of Ruby Coleman* that showed it was paying attention.[15] In *Stafford*, an attorney who was owed money by a deceased client filed a claim in the probate court case in which the decedent's estate was being administered. The attorney served a copy of the claim on the attorney for the fiduciary, as a reasonable lawyer might do to avoid running afoul of ethical rules requiring attorneys not to contact parties they know to be represented by counsel directly. But the executor's attorney—clearly having read the *Wilson v. Lawrence* case—rejected the claim as not properly presented under R.C. 2117.06. When the attorney appealed, the 8th District, perhaps not surprisingly, held that because the claim had not been presented "to" the fiduciary it was not valid. The court pointed to the Supreme Court's language in *Wilson v. Lawrence* and applied it exactly. The *Stafford* case shows the concerns raised following the *Wilson v. Lawrence* decision that prompted legislative revision work were well-founded. While one might have expected a lawyer in the very appellate district that was overturned on the issue in *Wilson v. Lawrence* to have known better, it underscores the point that creditors are likely to miss this nuance.

Coming Changes

The proposed revisions to R.C. 2117.06 are as follows, with additions underlined and in bold font.

(A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall present their claims in one of the following manners:

(1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

(a) To the executor or administrator, **or to an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent,** in a writing;

(b) To the probate court in a writing **that includes the probate court case number of the decedent's estate**;

(c) In a writing that is actually received by the executor or administrator, **or by an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent,** within the appropriate time specified in division (B) of this section, **without regard to whom the writing is addressed.** For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section.

These changes accomplish several goals:

1. They clarify that presentation of a claim to an attorney who has appeared of record as the attorney representing the fiduciary in a pending estate case satisfies the statute. This will enable claims to be presented with some increased certainty.
2. They provide a mechanism for presentment of a claim by filing of the claim with the probate court. The changes require that the claim include the case number of the decedent's estate to underscore that an estate must already be open and facilitate the filing of the claim in the correct case.
3. They provide clarity that any written claim actually received by an appointed fiduciary within the six-month period is properly presented, no matter what form of transmission is used to send it and no matter the addressee. This change takes into account the fact that many bills are now sent electronically rather than by ordinary mail and that some claims may reasonably be addressed to someone known to be in charge of the decedent's affairs, as was the case in *Wilson v. Lawrence*.

SB 199

These changes to R.C. 2117.06 are contained within Ohio SB 199, which unanimously passed in the Ohio Senate in March 2022 and is pending in the Ohio House of Representatives. Passage is expected any day, but the effective date is yet unknown.

Conclusion

Creditors with claims against decedent's estates should proceed with caution and consult with counsel familiar with this area of law to ensure proper presentment of their claims. The proposed changes to R.C. 2117.06 will make it easier for creditors to know when a claim against an estate has been properly presented. But until the changes become effective, the path has snares and pitfalls. Stay watchful.

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[1] An administrator is a fiduciary appointed by a probate court to administer an estate who is not named as an executor in a decedent's will. An executor is a fiduciary appointed by a probate court to administer an estate who is named in a decedent's will. The term "fiduciary" will be used in this article to refer to both administrators and executors.

[2] *See, e.g., Shepherd of the Valley Lutheran Retirement Servs., Inc. v. Cesta*, 2019-Ohio-415, Eleventh Dist. Trumbull County.

[3] *See Wrinkle v. Trabert*, 174 Ohio St. 233, 188 N.E.2d 587 (1963) (holding that it is incumbent upon creditors to open an estate to present their claims if none has been opened).

[4] 150 Ohio St.3d 368, 2017-Ohio-1410.

[5] 150 Ohio St.3d 368, 2017-Ohio-1410, ¶¶ 4 and 26.

[6] Because summary judgment was granted against the creditor, the factual question of actual receipt by the executor within the statutory period was never determined.

[7] 150 Ohio St.3d 368, 2017-Ohio-1410, ¶ 1.

[8] *Id*.

[9] *Id*. at ¶ 18.

[10] *Id*. at ¶ 34.

[11] *Id*. at ¶ 32.

[12] *Id*. at ¶ 30.

[13] *Id*. at ¶ 4, emphasis added.

[14] *See, e.g., Peoples National Bank v. Treon*, 16 Ohio App. 3d 410, 476 N.E.2d 372 (Ohio Ct. App., Miami County 1984) (where the executrix of an estate appoints an attorney to represent her in the administration of the estate a claim against the estate presented to the attorney but not to the executrix personally satisfies the presentment requirements of R.C. 2117.06).

[15] 2021-Ohio-1097, 8th Dist.