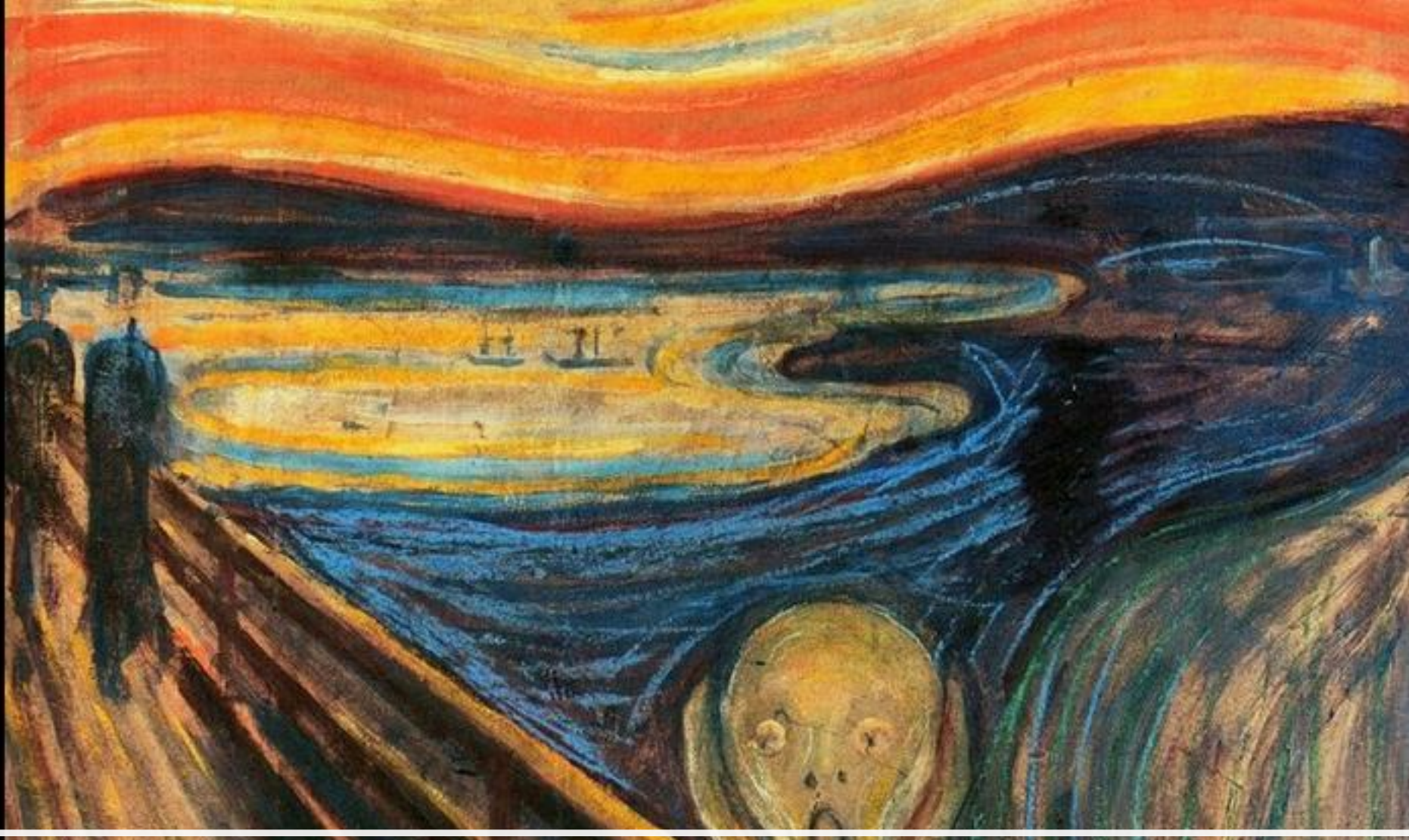


# AZ JUDICIAL CONFERENCE

*No Contest  
Clauses and Non-  
Probate  
Proceedings in  
Probate Cases*





In Terrorem Clauses: Invoking Fear From the Grave



# What is it?



An interorem clause aka no-contest clause in a will or trust is a provision that punishes a devisee or beneficiary by revoking their inheritance if they challenge the document's validity, aiming to prevent costly family disputes and ensure the grantor's wishes are followed, though enforceability varies by state and often doesn't apply to good-faith challenges or specific fiduciary issues, acting as a deterrent by creating fear of losing everything if the contest fails.



E X A M P L E S

# Old School

---

*He that bereaves my will, which by God's permission  
I have now made, let him  
be bereaved of these earthly joys; and may the  
Almighty Lord — cut him off  
from all holy men's communion in Doomsday; and  
be he delivered to Satan, the  
Devil and all his cursed companions to hell's bottom,  
and there be tortured, with  
those whom God has cast off or forsaken, without  
intermission, and never  
trouble my heirs.*

Will of Wolgith, A.D. 1046, translation from Charles Watkins, Esq., *The Law of Tenures, Including the Theory and Practice of Copyholds* (1796).



### **Section 8.03: Incontestability**

The beneficial provisions of this Declaration of Trust and the Creator's Last Will and Testaments are intended to take priority over any other rights, claims, or interest of any nature, statutory or otherwise. This excludes bona fide pre-death debts which any beneficiary herein may have against or in either Creator's Estate and/or the properties in this Trust. Accordingly, if any beneficiary herein asserts any claim (except a legally enforceable debt), statutory election, other right or interest against or in either Creator's Estate or Will or any properties of this Trust, other than pursuant to the express terms hereof or of said Will, directly or indirectly contests, disputes, or calls into question before any court, the validity of this Declaration of Trust or of said Will or the validity of any provisions of this Declaration of Trust or of said Will, then;

(A) Such beneficiary shall thereby absolutely forfeit any and all beneficial interests of whatsoever kind and nature which such beneficiary might otherwise have under

---

The Pendergast Family Trust  
Section 1 / Page 27

---

this Declaration of Trust. The interests of the other beneficiaries herein shall then be appropriately and proportionately increased and/or advanced.

(B) All of the provisions of this Declaration of Trust, to the extent that they confer any benefits, powers, or rights whatsoever upon such claiming, electing, or contesting beneficiary, shall thereupon become absolutely void and revoked.

(C) If then acting as a Trustee, such claiming, electing, or contesting beneficiary shall automatically cease to be a Trustee. He or she shall thereafter be ineligible to select, remove, or become a Trustee. The foregoing shall not be construed so as to limit the appearance of any beneficiary as a witness in any proceeding involving this Declaration of Trust or said Will or in any capacity in any proceeding solely for the construction of either of said documents.

**Article III (D) of the Trust is stated as follows:**

**Non-Contestation. Settlor has purposely made no provision for any other person, whether claiming to be an heir or beneficiary of Settlor or not. If any person, whether a beneficiary under this Trust Agreement or not, shall contest this Trust Agreement or object to any provisions hereof, Trustee is hereby directed from Settlor to give to such person as contesting or objecting the sum of One Dollar (\$1.00) and no more. This One Dollar (\$1.00) distribution shall be considered in lieu of any provision which Settlor has made or might have made herein or have not made for such person so contesting or objecting.**

**ARTICLE XVI  
NO-CONTEST CLAUSE**

In the event that any beneficiary under this trust shall, singly or in conjunction with any other person or persons, contest in any court the validity of this trust or of a deceased Co-Trustor's Last Will or shall seek to obtain an adjudication in any proceeding in any court that this trust or any of its provisions, or that such Will or any of its provisions, is void, or seek otherwise to void, nullify, or set aside this trust or any of its provisions, or such Will or any of its provisions, then the right of that person to take any interest given to him by this trust shall be determined as it would have been determined had the person

22 | Page

predeceased the execution of this Trust Agreement. The Trustee is authorized to defend, at the expense of the trust estate, any contest or other attack of any nature on this trust or any of its provisions.

**SIXTH**  
**Will Contest and Disinheritance Provisions**

A. If any beneficiary or remainderman under this Will in any manner, directly or indirectly, contests or attacks this Will or any of its provisions, any share or interest in my

Page 2 of 4

---

estate or in the estate of any trust established by this Will given to that contesting beneficiary or remainderman under this Will is revoked and shall be disposed of in the same manner as if that contesting beneficiary or remainderman had predeceased me without issue.

B. It is my specific intention with full knowledge of the consequences not to provide in this Will for AMY McALLISTER to share in my estate in any way.

## **ARTICLE VII**

### **DISINHERITANCE AND NO CONTEST PROVISIONS**

- A. Disinheritance.** Except as otherwise provided in this Will, I have intentionally made no provision for any child of mine, or for the issue of any deceased child of mine, or for any other person or relative, whether claiming to be an heir of mine or not.
  
- B. No Contest Provision.** If any beneficiary under this Will shall directly or indirectly contest this Will (which shall include any Codicil hereto) or any of its provisions, then any share or interest in my estate given to that contesting beneficiary is revoked and shall be added to the residue of my estate, and shall be distributed to the other beneficiary of such residue as herein provided in the same shares and in the same manner as if that contesting beneficiary had predeceased me without issue.

22           7. Article III of the B.B. US Will includes the following no-contest  
23 provision:

24           F. Notwithstanding the foregoing, should any person  
25 challenge or question any provisions of this my Last Will and  
26 Testament, or challenge its validity, then such person shall receive  
property with a value of \$1.00 from my estate.

B. A Second Amendment to the Reba Trust with the following provisions, among others:

i. (Section 5.03) Appointing Providence First Trust

3

Company as Successor Trustee and Neela as subsequent Successor Trustee.

ii. (Section 2.05) A no-contest provision as follows:

2.05 No Contest. If any beneficiary of this Trust contests or attacks, in any manner, directly or indirectly, this Trust, the validity of this Trust Agreement, any disposition hereunder, of any provisions hereof without probable cause, that beneficiary shall take nothing under the terms of this Trust either as an individual or as a member of a class, and the interest of any such beneficiary shall instead pass as if such beneficiary and all descendants of such beneficiary had predeceased Settlor.



ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

ARIZONA  
REVISED  
STATUTES  
—  
ANNOTATED

13  
Part 2  
Sections  
42-12001  
to  
42-End  
Taxation

13  
Part 1  
Sections  
42-101  
to  
42-12000  
Taxation

12C  
Sections  
41-1831  
to  
41-End  
State  
Government

12B  
Sections  
41-1001  
to  
41-2000.99  
State  
Government

12A  
Sections  
41-201  
to  
41-2100  
State  
Government

12  
Sections  
41-2101  
to  
41-2200  
State  
Government

11C  
Sections  
41-2201  
to  
41-2300  
State  
Government

11B  
Sections  
41-2301  
to  
41-2400  
State  
Government

11A  
Sections  
41-2401  
to  
41-2500  
State  
Government

11  
Sections  
41-2501  
to  
41-2600  
State  
Government

10C  
Sections  
41-2601  
to  
41-2700  
State  
Government

10B  
Sections  
41-2701  
to  
41-2800  
State  
Government

10A  
Sections  
41-2801  
to  
41-2900  
State  
Government

# Statute (Will)

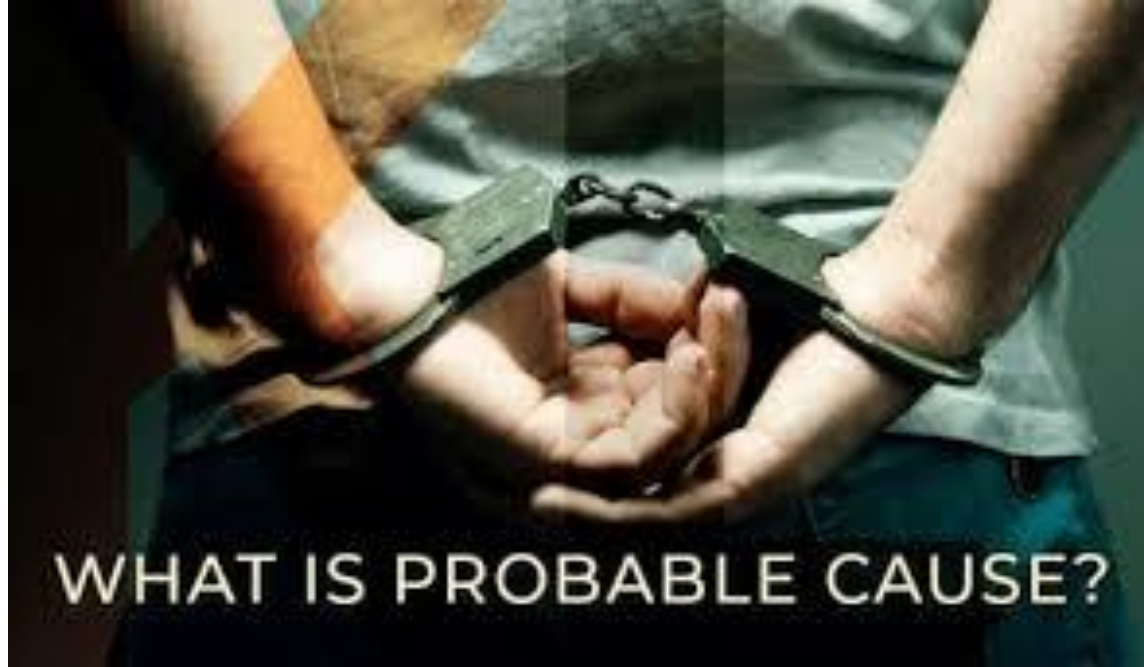
A.R.S. § 14-2517. Penalty clause for contest; restriction

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings or actions relating to the estate is unenforceable if probable cause exists for the contest, proceedings or actions.

# Statute (Trust)

## **14-10113. Penalty clause for contest; restriction**

A provision in a trust instrument that purports to penalize an interested person for contesting the trust instrument or instituting other proceedings or actions relating to the trust property is unenforceable if probable cause exists for the contest, proceedings or actions.



WHAT IS PROBABLE CAUSE?



CASE LAW

# *Estate of Shumway*

- Testator executed Will, six days before death
- Will nominated “helper and bookkeeper” as P.R., and left her 25%
- Daughter challenged Will
- Trial Court – Will was valid – Daughter out
- Court of Appeals affirmed:
  - Probable Cause = would reasonably prudent person believe Will was invalid?
  - Dissent – analysis should focus on facts known before litigation, not after development of record

# *Estate of Shumway*

Review – What does “Probable Cause” mean under 14-2517?

Given unique public policy concerns, will contests  $\neq$  criminal cases

Thus, Probable Cause definitions must be different

So why not look to the Restatement?

# *Estate of Shumway*

## Restatement

Probable Cause = “evidence which would lead a reasonable person, properly informed and advised, to conclude that there is a **substantial likelihood** that the contest or attack will be successful.”

Did contestant rely on advice of “disinterested counsel sought in good faith after a full disclosure of the facts?”

# *Estate of Shumway*

## Additionally

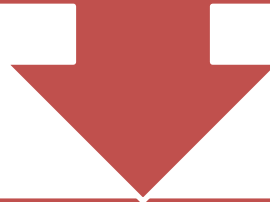
Good faith (subjective belief in substantial likelihood of success) required

Evidentiary burden less when strong public policy supports ground for challenge, e.g., suspected undue influence

Refer to evidence known when lawsuit initiated, not after discovery, etc.

# *Estate of Stewart*

In Terrorem clauses in Will and Trust disinherited Will/Trust Contestant and anyone who “cooperates or aids” that Contestant.



Trial Court invalidated clauses

Would penalize Contestant even if contest made in good faith or was successful

Could force others to disobey subpoena or refuse to testify

*Estate  
of  
Stewart*

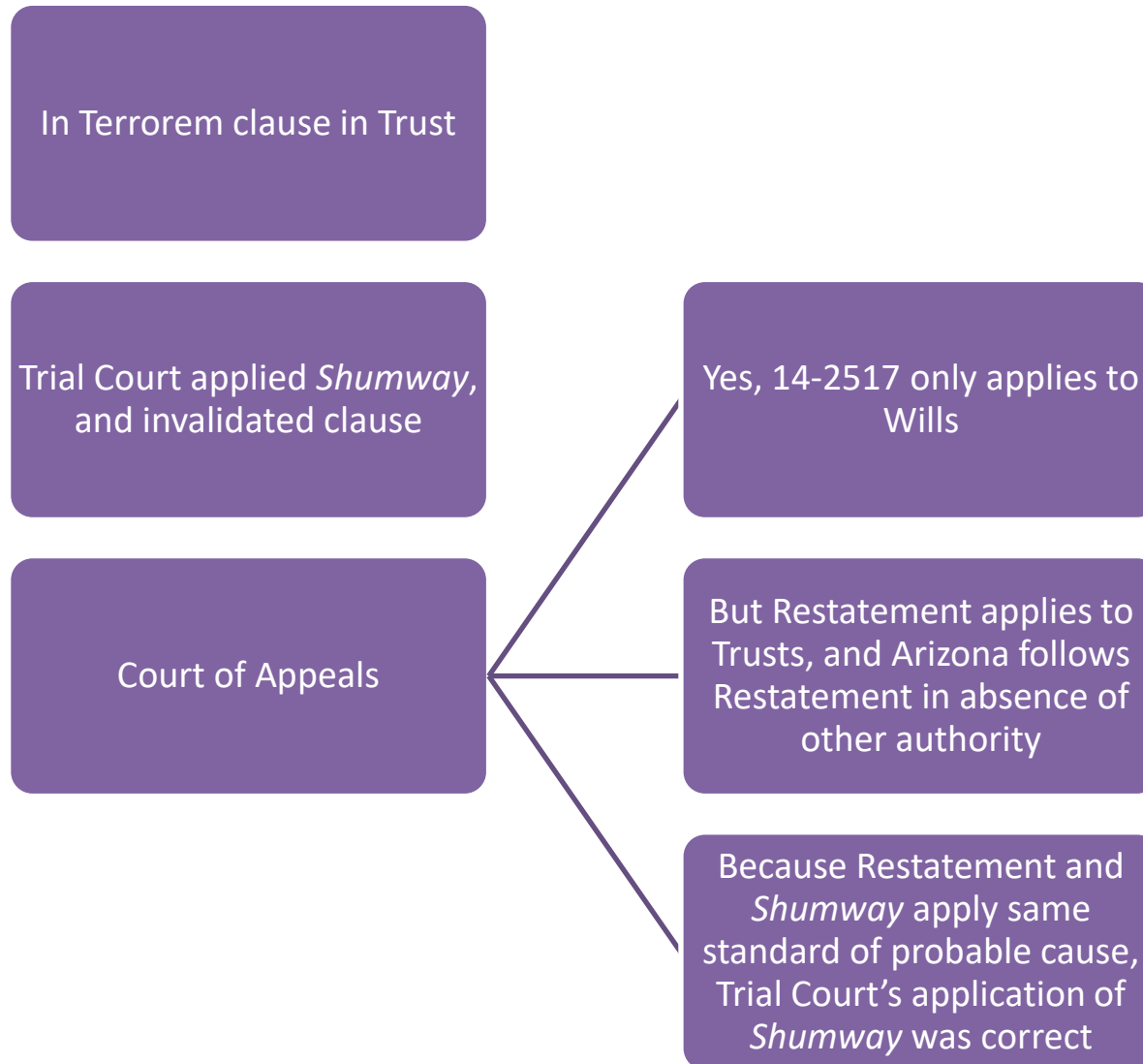
## Court of Appeals Reversed

On its face, 14-2517 only references Wills, so no basis to invalidate Trust's clause (an argument no one raised).

Clauses not completely invalid – should still apply if contestant lacks probable cause (per *Shumway*).

Those who “urge or *voluntarily* aid”  
Contestant can be penalized.

# Shaheen Trust



# *Shaheen Trust*

---

But . . . Probable Cause must exist as to each individual challenge

In other words, Contestant must have probable cause (as defined by *Shumway*) for each claim

Nine different claims = nine different “contests”

One of the claims clearly lacked probable cause, so they lose.

# Other Cases In and Out of AZ

## **Rodriguez v. Gavette (In re Estate of Shumway), 198 Ariz. 323 (2000)**

Leading Arizona case establishing the probable cause standard for enforcing no-contest clauses.

## **In re McCauley's Estate, 101 Ariz. 8 (1966)**

Cited for the indicia of undue influence used to evaluate probable cause.

## **Barrow v. Wulf (In re Wulf), 244 Ariz. 133 (Ct. App. 2017)**

Clarified that probable cause is required for each claim, not for each factual allegation.

## **Keener v. Keener, 278 Va. 435 (2009)**

Held that a no-contest clause in a trust does not apply to a will unless explicitly stated.

## **Seymour v. Davis (In re Estate of Seymour), 93 N.M. 328 (1979)**

A petition for interpretation was held not to be a contest.

## **Eversole v. Scarth, 787 P.2d 470 (Okla. Ct. App. 1989)**

Request for interpretation due to tax law changes was not a contest.

## **Commonwealth Bank & Trust Co. v. Young, 361 S.W.3d 344 (Ky. Ct. App. 2012)**

Administrative claim requiring construction of trust was not a contest.

# Other Cases

**In re Estate of Stewart, 230 Ariz. 480 (Ct. App. 2012)**

Assisting another in bringing a contest violates a no-contest clause.

**Peppler v. Connelly (In re Estate of Peppler), 971 P.2d 694 (Colo. App. 1998)**

Offering a later will can be a contest depending on probable cause.

**Seymour v. Biehslich, 266 S.W.3d 722 (Ark. 2007)**

Offering a later will without good-faith belief triggers enforcement.

**In re Estate of Westfahl, 674 P.2d 21 (Okla. 1983)**

Obligation to produce will protects filer unless they know it is invalid.

**Ferguson v. Ferguson, 473 P.3d 363 (Idaho 2020)**

Administrative litigation over trust funding not subject to clause.

**Hunter v. Hunter, 838 S.E.2d 721 (Va. 2020)**

Court endorsed pleadings crafted to avoid triggering no-contest clauses.

**Parker v. Benoist, 160 So. 3d 198 (Miss. 2015)**

Probable cause existed due to mental decline and suspicious circumstances.

**Siegfried v. Barger, 931 N.W.2d 660 (Neb. 2019)**

Probable cause based on multiple wills and suspicious conditions.



# Other Cases

---

**Hamel v. Hamel, 299 P.3d 278 (Kan. 2013)**

---

Probable cause existed where trustee violated trust terms.

---

**Estate of Gonzales, 102 Cal. App. 4th 1296 (2002)**

---

No probable cause where proponent coerced execution of invalid will.

---

**Russell v. Wachovia Bank, N.A., 633 S.E.2d 722 (S.C. 2006)**

---

No probable cause where claim was based only on family discord.

---

**In re Estate of Mumby, 982 P.2d 1219 (Wash. App. 1999)**

---

No probable cause where contestant withheld key facts from counsel.

# What does the UPC say?

---

The Uniform Probate Code (UPC) makes no-contest (or *in terrorem*) clauses unenforceable if a beneficiary has **probable cause** to contest the will or estate proceeding, meaning a reasonable person would believe the challenge has a substantial likelihood of success. While such clauses aim to deter disputes by threatening forfeiture of inheritance, the UPC protects beneficiaries with legitimate, evidence-based challenges, preventing the clause from being used to silence meritorious claims.

## Key Aspects of UPC on No-Contest Clauses:

- **Probable Cause Exception:** The central tenet is that a clause is void if the challenger has probable cause, even if they ultimately lose the contest.
- **Definition of Probable Cause:** It exists when facts known to the challenger would lead a reasonable person to believe there's a substantial chance the challenge will succeed after further investigation.
- **Purpose:** To discourage frivolous lawsuits and uphold the testator's wishes by making beneficiaries think twice before challenging the document.
- **Application:** Applies to both wills (UPC § 2-517) and other estate proceedings (UPC § 3-905).
- **State Adoption:** Many states have adopted or adapted these UPC provisions, often with their own case law defining probable cause.

In essence, the UPC balances a testator's desire for finality with the need to allow legitimate challenges to potentially invalid wills or trusts.



# What does the UTC say?

The Uniform Trust Code (UTC) itself is generally silent on no-contest clauses (NCCs) for trusts, but many adopting states apply the Uniform Probate Code exception, making NCCs unenforceable if a beneficiary has **probable cause** to challenge the trust, meaning a reasonable person would believe the contest would succeed. While the UPC (Sections 2-517, 3-905) directly addresses wills, states often extend this probable cause rule to trusts, preventing forfeiture for legitimate challenges, though some states like New York have stricter rules, and others have unique standards.

---

# Discussion

Procedurally How  
Do you Handle?



Stay? Proceed?

# Discussion

Petitions for  
Declaratory  
Judgment?

*(A.R.S. 12-1831 to A.R.S. 12-1846)*



Determine Probable  
Cause Before Filing  
Challenge

# Thoughts from the bar...

50 to 60 % of wills/trust  
have NCC v All

Often ineffective  
(poorly drafted)

Very fact dependent

Family dynamic  
controls everything.

# More from the bar...

---

- Duty of Loyalty, Impartiality – some feel TT/PR must file Petition for Instructions to avoid bias/unfairness.
- Duty of Prudent Administration – cost benefit analysis.
- May see Petitions with opinions of disinterested counsel (*Shumway*).
- Petitions for Declaratory Judgment “safe harbor petitions” are more common than thought. Others feel the DJA does not apply.



# More from the bar...



- Making a claim post-*Shaheen*. As a practical matter, challengers should limit their claims to only those for which probable cause clearly exists. Many practitioners include multiple-count petitions that include every possible challenge to the validity of a document. That practice is discouraged. After discovery is undertaken, the petition may be amended to include other claims that are supported by the facts.
- Procedurally? Will agree to stay some actions others want to move forward.



# New York

---

New York – in terrorem clauses that attempt to preclude a beneficiary from questioning the eligibility or conduct of a fiduciary will not be enforced because it goes against public policy and is assumed as against the intentions of the testator (In re Estate of Prevratil).



# New York

If a will contains an in terrorem clause, beneficiaries are entitled to conduct limited pre-objection discovery under the Surrogate's Court Procedure Act 1404(4)<sup>[7]</sup> (i.e., depositions of the attesting witnesses, attorney-drafter, and the nominated executors and proponents) before deciding whether to file objections to the probate of the propounded instrument. Safe harbor provisions under Estates, Powers & Trusts Law 3-3.5(b)(3)(E)<sup>[8]</sup> include “[t]he institution of, or the joining or acquiescence in a proceeding for the construction of a will or any provision thereof.”





# California

---

California courts have held that they may decline to enforce in terrorem clauses where "the beneficiary challenging the will acted in good faith and had probable cause for the challenge" (See Estate of Gonzalez). Under this exemption, "probable cause" is defined as "the existence . . . of evidence which would lead a reasonable person . . . to conclude that there is a substantial likelihood that the contest or attack will be successful." The probable cause exemption is used to protect legitimate challenges to wills, and probable cause can be found in evidence indicating that a will may be legally invalid, such as undue influence on the testator or forgery of the will.

# Georgia

---

Georgia's courts have instead held that in terrorem clauses are void unless the will contains directions to how property will be allocated if the clause is violated (See *Duncan v Rawls*). Therefore, under Georgia law, in terrorem clauses do not only have to contain the condition that the challenger of the will shall lose their interest, but where that interest will be reallocated as well.



# The 2025 Florida Statutes

---

## [Title XLII](#)

ESTATES AND  
TRUSTS

## [Chapter 732](#)

PROBATE CODE: INTESTATE SUCCESSION AND  
WILLS

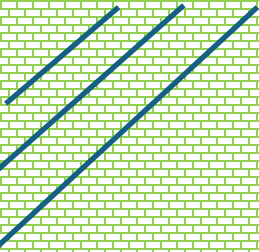
[View Entire  
Chapter](#)

**732.517**     **Penalty clause for contest.**—A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

ANY  
QUESTIONS?





# Non-Probate Proceedings in Probate Cases

**Honorable Dean M. Fink**

Arizona Judicial Conference – June 16, 2026



# Two Presentation Objectives



Learn ins and outs of handling non-probate matters (such as a civil complaint) that get filed in a probate case.



Learn about a specific type of civil action commonly seen in probate: claims of financial exploitation of vulnerable adults.

## IMPORTANT DISTINCTIONS (from Probate Rule 3)

### “Probate Case” vs. “Probate Proceeding” vs. “Non-Probate Proceeding”

**Probate Case**: All probate cases must be started by filing a probate proceeding. The probate case will receive a case number. Multiple probate or non-probate proceedings may be filed within a probate case.

**Probate Proceeding**: A probate proceeding must be started with a petition. Each separate petition within a case constitutes a separate proceeding. There are three types of probate proceedings.

1. Any petition filed arising from Title 14.
2. Any petition for declaratory relief associated with a Title 14 matter.
3. Any petition arising from Title 36, Chapter 32 regarding living wills and health care directives.

**Non-Probate Proceeding**: A **civil** action, a Title 25 **family** law proceeding or a Title 8 **juvenile** proceeding that may be filed in or consolidated with a probate case. Probate Rule 4 says a non-probate proceeding is governed by the same procedures and rules that would have applied if litigated as a separate case.



6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

Case No. \_\_\_\_\_

**VERIFIED PETITION TO SET ASIDE TRUST RE-  
STATEMENT AND AMENDMENTS**

AND

**PETITION TO INVALIDATE MARRIAGE  
(LACK OF CAPACITY/FRAUD/UNDUE  
INFLUENCE)**

AND

**COMPLAINT**

1. Undue Influence
2. Financial Exploitation
3. Conspiracy to Commit Financial Ex-  
ploitation
4. Breach of Fiduciary Duty

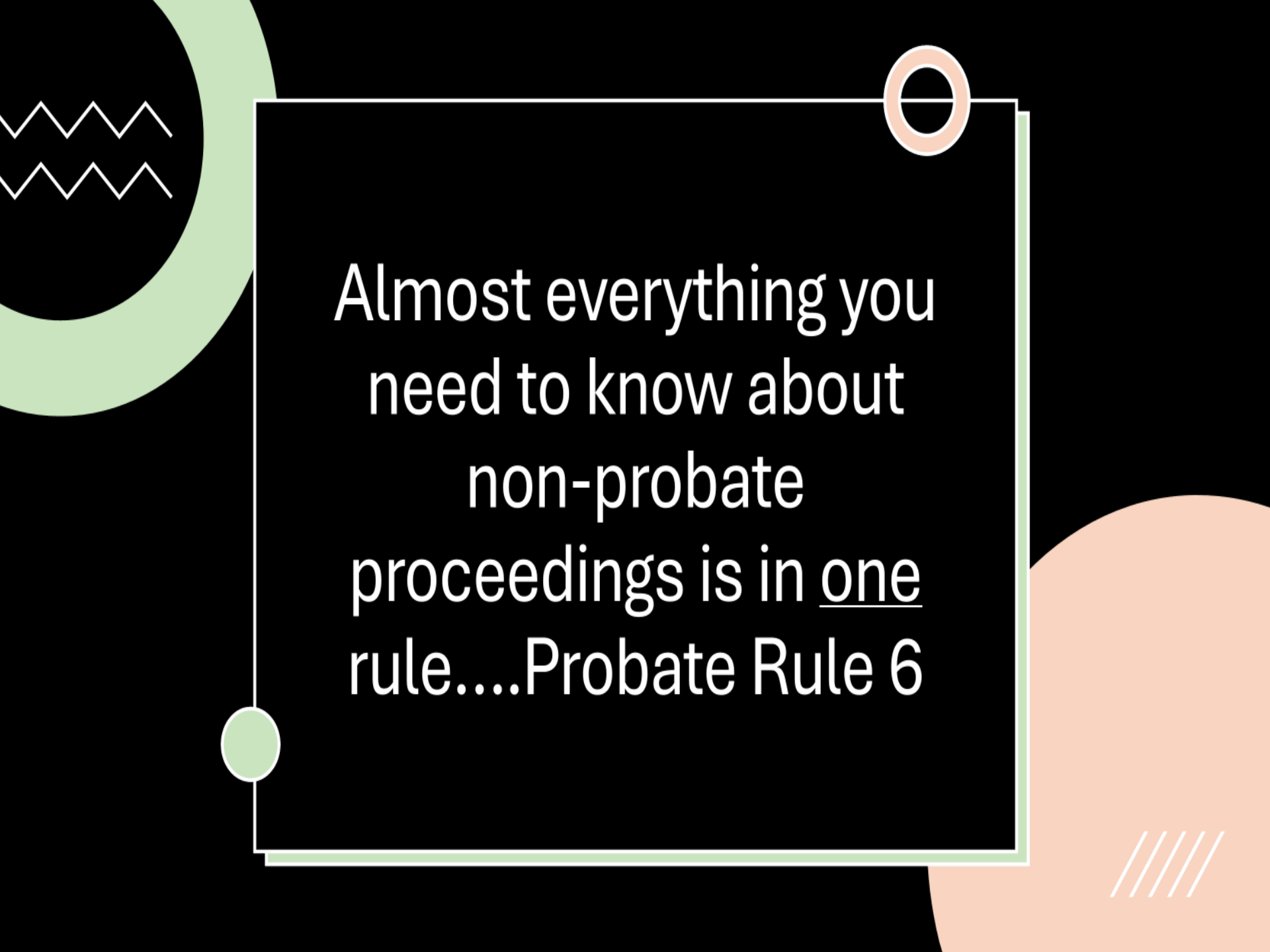
# Pending Rule Change Petition



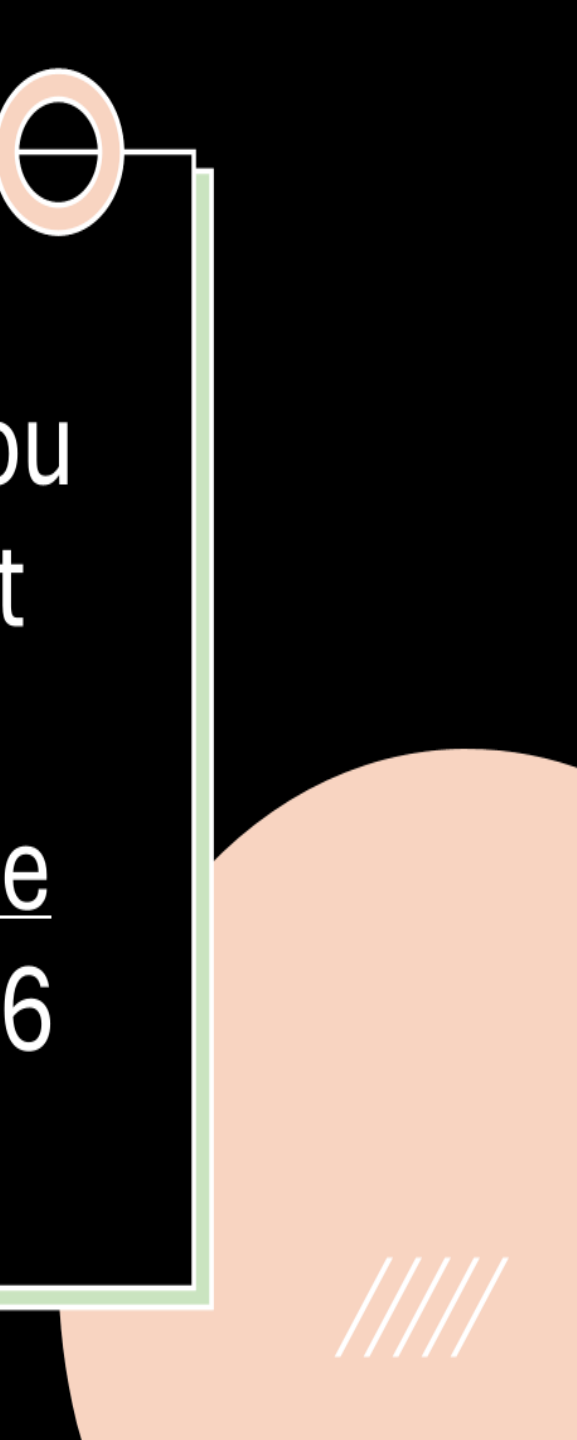
- The following language would be added to Rule 3:

**A non-probate proceeding must be initiated by the appropriate pleading for that type of matter and may not be initiated by, joined with, or combined in a petition filed under these rules, including a petition described in Rule 15.**

If approved, rule will likely take effect Jan. 1, 2027.



Almost everything you  
need to know about  
non-probate  
proceedings is in one  
rule....Probate Rule 6



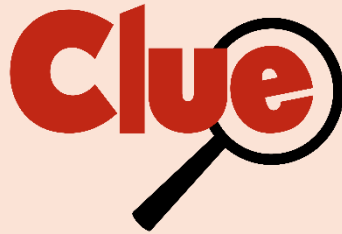
# Probate Rule 6(a): Requirements

(a) A non-probate proceeding may be filed within or consolidated with a probate case, under the case number assigned to the probate case, only under one of the following conditions:

If the probate case involves a **decedent's estate**, the **Personal Representative** must be a party to the non-probate proceeding.

If the probate case involves a **guardianship or conservatorship** proceeding, the subject person's **guardian or conservator** must be a party to the non-probate proceeding.

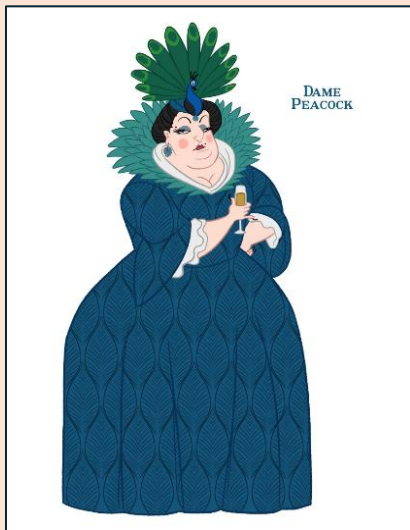
If the probate case involves the internal affairs of a **trust**, the **trustee** must be a party to the non-probate proceeding.



Petitioner



Counterclaimant



Plaintiff

## Probate Rule 6(c): Meaning of “party”

- For purposes of just this rule, “party” means plaintiff, petitioner, defendant, respondent, counterclaimant, counter-defendant, cross-claimant, cross-defendant, third-party plaintiff, third-party defendant, or intervenor *in the case filed within, or consolidated with, a probate case.*

# Probate Rule 6(b): Severance Options

The Court may:

1. Order separate hearings on one or more issues.
2. Sever the non-probate proceedings from the probate case.



NOTE: Rule says the Court “may” do either. No guidance is provided on how to exercise the discretion.

## Things to think about in exercising your discretion:

Consider judicial economy/efficiency. Does it make sense to keep the non-probate claims with the probate judicial officers?

Is the non-probate claim inextricably tied to the probate issues or other pending claims (e.g., breach of fiduciary duty and conversion claims against the fiduciary), or can the non-probate claim stand totally on its own?

Commonality of parties?

Chance of contradictory rulings/findings by different judicial officers or juries?

Should the case be severed for administrative/tracking purposes?

# Common types of Non-Probate Proceedings filed in or combined with a Probate case:

## Civil:

Financial exploitation  
("APSA") claims  
Fraud  
Conversion  
Quiet Title

## Family:

Annulments  
Dissolutions

## Juvenile:


Dependencies

# Tricky part: when do I use 54(c) language?



## 54(c) Judgment as to All Claims and Parties.

A judgment as to all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 54(c).



Q. Why does Probate have to be different?

A: Because we are special!

- Each Petition is its own “Probate Proceeding” and each Civil Complaint is its own “Non-Probate Proceeding”
- If a proceeding is completely resolved, 54(c) language is appropriate, even though other proceedings may be pending.
- Court of Appeals would still probably prefer you wrap up as many proceedings as you can into one judgment to avoid piecemeal appeals.
- If there are multiple proceedings pending, I add “on the \_\_\_\_\_ Petition” to the Rule 54(c) magic language to be as clear as possible.

## Bottom Line:

- For purposes of Civil Rule 54(c), a final judgment can be issued on each **proceeding** (probate OR non-probate) that is fully adjudicated. You don't need to have the entire **case** wrapped up to issue a 54(c) appealable judgment.



# Examples

#1

Say one case has these three petitions pending:

1. Petition to Remove Trustee and Appoint Successor
2. Petition for Trust Accounting
3. Petition to Modify Trust Terms

\*Contrast with a single Petition filed requesting all three things.



# Examples

#2

Say one **case** has these two things pending:

1. Decedent's Estate case (Formal Probate Petition)
2. Civil Complaint for Wrongful Death of Decedent  
Against Nursing Home and Doctors



# Adult Protective Services Act (“APSA”) Claims

Purpose of APSA: Protect vulnerable adults.

“APSA is strong medicine for a serious malady—a statutory elixir of criminal penalties and civil remedies, legislatively prescribed to ‘protect[ ] vulnerable adults’ from neglect, abuse or exploitation.”

*Fadely v. Encompass Health Valley of the Sun Rehab. Hosp.*, 253 Ariz. 515, 521, ¶ 22, 515 P.3d 701, 707 (App. 2022)




APSA

Two Primary  
Statutes

A.R.S. §  
46-455

A.R.S. §  
46-456





A.R.S. § 46-455: Is about allowing neglect, abuse or exploitation to endanger or harm a vulnerable adult's health or life (harm to the person)

- Can result in a civil action
- Can also be criminally prosecuted by the state. Violations are a class 5 felony.





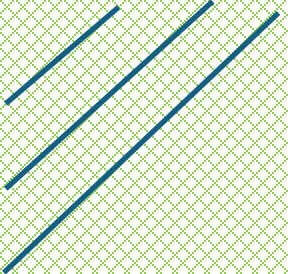
A.R.S. § 46-456: Is about financial exploitation of vulnerable adults (harm to the estate)

Must be filed as a Civil Complaint (not a Petition) – can be filed as separate civil action or within a probate case

This is the one we see the most

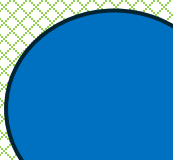
## The law regarding financial exploitation:

- A person in a **position of trust and confidence** to a **vulnerable adult**, has a legal duty to use the vulnerable adult's assets solely for the vulnerable adult's benefit.



“Vulnerable adult” means an individual who is 18 years of age or older and who is unable to protect himself or herself from abuse, neglect or exploitation by others because of a physical or mental impairment.

Vulnerable adult includes an incapacitated person as defined in A.R.S. §  
14-5101.



All  
incapacitated  
persons are  
vulnerable  
adults.

The diagram consists of two circles connected by a right-pointing arrow. The left circle is orange and contains the text 'All incapacitated persons are vulnerable adults.' The right circle is green and contains the text 'But not all vulnerable adults are incapacitated persons.' The arrow is orange and points from the left circle to the right circle.

But not all  
vulnerable  
adults are  
incapacitated  
persons.

"Position of trust and confidence" means that a person is any of the following:



- (a) A person who has **assumed a duty to provide care** to the vulnerable adult.
- (b) A **joint tenant** or a **tenant in common** with a vulnerable adult.
- (c) A person who is in a **fiduciary relationship** with a vulnerable adult including a **de facto guardian or de facto conservator**.
- (d) A person who is in a **confidential relationship** with the vulnerable adult. The issue of whether a confidential relationship exists shall be an issue of fact to be decided by the court based on the totality of the circumstances.
- (e) A **beneficiary** of the vulnerable adult in a governing instrument.

# APSA

What does A.R.S. § 46-456 do?

Prohibits the use  
of a vulnerable  
adult's assets for  
the benefit of the  
person in a  
position of trust

Defines when a  
transaction is  
permitted

Outlines civil  
penalties for  
violating the law

## What is financial exploitation?

Financial exploitation of vulnerable adults can include:

- Excessive gifts
- Forged checks
- Large ATM or cash withdrawals
- Excessive expenses
- Changes to financial account signers
- Changes to real estate titles
- Changes to beneficiary designations

APSA

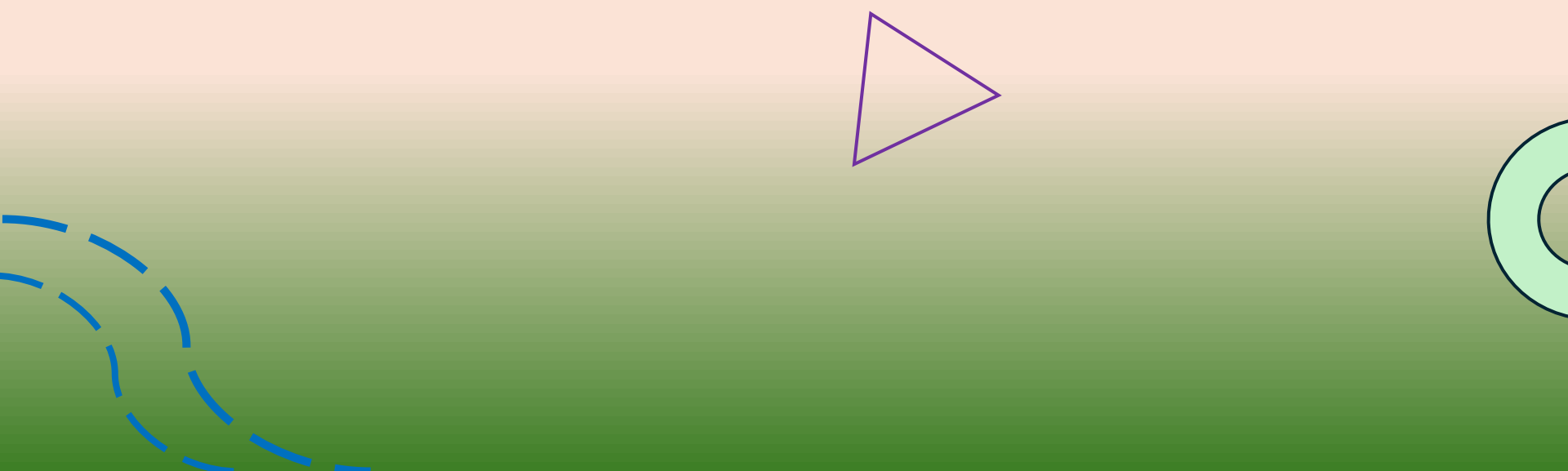
# APSA

What are the potential penalties for financial exploitation?

- Actual damages are mandatory; the Court has discretion to award up to 2 times more.
- Reasonable attorney fees and costs to the petitioner are mandatory.
- Court may disinherit the exploiter from all wills, trusts, etc.



Who can bring an APSA claim?

- The vulnerable adult
  - The vulnerable adult's conservator or personal representative
  - Any other interested person, with the Court's permission
- 

# How does an interested person get permission to file an APSA claim?

They must file a Petition asking for permission. Title 14 Notice requirements apply.

- Court is not supposed to decide the merits of the claim in granting the petition, but
- *In re: Lindquist, 254 Ariz. 594 (Ct. App. 2023)*:
- For an “interested person” to be allowed to sue, all three of the following must be true:
  - 1) he or she is an “interested person”;
  - 2) the person to be protected is “vulnerable,” and
  - 3) the higher priority filers have not filed.
- Trial court erred in failing to find that mother was “vulnerable” before granting son’s petition asking for permission to file the exploitation claim and sends the case back for that determination.
- The ruling notes that the statute “was passed to protect vulnerable adults. . . . It was not passed to annoy or harass senior citizens who are not vulnerable . . . .”
- Unanswered questions:
  - If court finds person is vulnerable, is that finding res judicata in the subsequent civil action? Or will it be litigated again?
  - If person is dead, does Court still need to make that finding? What if they are alive, but not objecting to Petitioner’s request?

# 2026 NCPJ Fall Conference

## November 11 - 14, 2026

*Save the Date!*

Hilton Beachfront Resort and Spa  
One Hotel Circle  
Hilton Head Island, South Carolina, 29928

Registration opens late July 2026 at [NCPJ.org](https://www.ncpj.org)

*Save the Date!*

NCPJ 2027 Spring  
Conference  
**May 12-15, 2027**

The Camby Hotel  
2401 E Camelback Rd  
Phoenix, AZ 85016

<https://www.ncpj.org/events/>



Registration will open late January 2027

