



**Angela G. Carlin** is the Co-Chair of Weston Hurd's Estate, Trust and Probate Practice Group. She focuses her practice on estate, trust and probate administration and litigation, and tax matters. Angela is the author of the Merrick-Rippner Probate Law publication which is the recognized authority in Ohio on probate law. She received the Nettie Cronise Lutes Award from the Ohio State Bar Association in 1996 as the Outstanding Woman Lawyer and for many years, she has been named as an *Ohio Super Lawyer* by [Thomson Reuters](#) and a *Leading Lawyer* by [Inside Business Magazine](#).



**Karen A. Davey** focuses her practice on estates, trust and probate administration. She also handles litigation in probate related matters, such as will contests, trust contests, and power-of-attorney disputes.



**Jerrold L. Goldstein** focuses his practice on estate planning, probate and corporate law. Jerry is also Co-Chair of Weston Hurd's Estate, Trust and Probate Practice Group. He represents clients in a wide variety of matters involving probate administration, probate litigation, estate and income tax compliance, wills and trusts, business formation, contract negotiations, and commercial real estate.



**Gary W. Johnson** advises clients on matters involving commercial litigation, business entities creation and maintenance, land use, construction law, zoning, estate planning and probate. Gary has been recognized as an *Ohio Super Lawyer* in the area of Business Litigation by [Thomson Reuters](#).



**Eugene (Gene) A. Kratus** advises individuals in the areas of tax, business and estate planning and counsels privately-owned businesses and their owners on corporate, tax, mergers, acquisitions and business succession issues. His estate planning practice includes implementing various estate planning techniques, ranging from modest By-Pass Trusts to the implementation of sophisticated planning with family limited partnerships, family limited liability companies, charitable trusts and private foundations.



**Samuel J. Lauricia III** focuses his practice on tax planning, at both the Federal and state level, involving corporate, partnership, individual and gift tax issues, succession planning and general corporate transactions, contracts, mergers and acquisitions. Sam has been recognized as an *Ohio Rising Star* in the area of Taxation by [Thomson Reuters](#).



**Shawn W. Maestle** is the Chair of Weston Hurd's Appellate section and a member of the firm's Litigation section. He focuses his practice in the areas of appellate, estate planning and probate litigation.

Other than procuring tax releases for each of decedent's (Virginia Escher) 23 separate bank accounts, Plaintiff Janice C. Specht's actions in executing the estate was limited to calling attorney Mary Backsman inquiring about the estate status. When Backsman advised Specht that the former had obtained an extension to file a return and pay the tax, when in fact she had not, Specht did not ask for proof of the extension. This deception by Backsman eventually led to malpractice claims and voluntary relinquishment of her law license. (Backsman was later declared incompetent and put under a full guardianship.)

In addition to the above failures to perform her fiduciary duties, Specht ignored four notices from the probate court as to Backsman's failure to file probate court documents including a first account, and several notices from the Ohio Department of Taxation that the Ohio state estate tax return was not filed nor was the estate tax paid, and that tax adjustments would be made for such failures.

At each occurrence, Specht called or met with Backsman who would assure her that "things were going fine" without any assurances requested by Specht.

In July 2010, Specht received a call from friends of the decedent who had also hired Backsman as attorney for a family member's estate. The friends warned Specht that Backsman was incompetent, and the family was seeking to have the attorney as co-executor of such estate removed. Specht contacted Backsman and accepted the attorney's representation again that the Escher estate was in good order. At this meeting Blackman asked Specht to sign a "blank paper" to allow the sale of UPS stock. Backsman later told Specht that she had initiated such sale to raise funds to pay the estate tax, which statement was false. In October 2010, when Specht called UPS and learned that Backsman had not initiated the stock sale, that the return had not been filed and the taxes were unpaid, Specht fired Backsman, hired an attorney recommended by the decedent's friend to represent Specht as executor of the Escher estate. Within a month of hiring the new attorney, the estate liquidated the UPS stock for a total of \$8,251,715. The new attorney filed the federal estate tax return and paid the estate tax liability and interest on January 26, 2011.

#### ANALYSIS

In its analysis of this case upon appeal, the Sixth Circuit Appellate Court emphasized that "Congress has charged the executor with an unambiguous, precisely defined duty to file the return within nine months..." The appellate court cited its recent unpublished decision in *Vaughn v. United States*, 635 F. App 216 (6th Cir. 2015) where a former Major League baseball player hired a wealth-management firm and tax accountant to prepare and file his returns and make payments, and instead his financial manager embezzled the player's funds, failed to file returns, or pay the taxes due. The court reiterated its interpretation of reasonable cause to mean "something that is beyond the taxpayer's possible control and oversight, not something that occurs under his authorization and control."

#### CONCLUSION

What does this appellate decision teach a fiduciary and the estate attorney: that the fiduciary has the prime responsibility to ensure that his or her attorney is not committing malpractice in the administration of a decedent's estate, and that neither the good faith of the fiduciary nor reasonable reliance will excuse the nondelegable act of the fiduciary who will be held liable for the late filing of a tax return and the late payment of taxes. Of course, the attorney and the fiduciary are liable to estate beneficiaries for the losses incurred in the unnecessary payment of interest and penalties.