

“When Should a Trustee Go to Court?”

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I. Introduction/Overview

- **Overview of topics to be covered**
 - Modification (including in the context of other relief)
 - Resignation/Appointment of Trustees
 - Reformation
 - “Pitch and Catch” Petitions
 - Petitions for Instruction or Construction
- **General Principles**
 - No advisory opinions
 - “Case or controversy” – do not ask the court to grant relief that can easily be accomplished under the provisions of the trust or by statute

Polling Question #1

II. Judicial Trust Modifications

- **History of Court's involvement**
 - Chancery Court Rules 100-104
 - Peierls cases
 - Flint case
- **Increase in available nonjudicial tools**
 - Decanting
 - Merger
 - Nonjudicial settlement agreements (12 Del. C. § 3338)
 - Modifications by Consent While Trustor is Living (12 Del. C. § 3342)

II. Judicial Trust Modifications

- **What if virtual representation is unavailable under 12 Del. C. § 3547 for minor or unborn beneficiaries due to a possible “material conflict”?**
 - Decanting and merger could technically still be utilized
 - If parties wish to modify by agreement, would Court accept the case and agree to appoint a guardian *ad litem* to represent interests of minor or unborn beneficiaries?
- **Trustee’s View**
- **Court’s View**

III. Resignation/Removal/Appointment of Trustees

- **Court involvement in the resignation and appointment of Trustees**
 - 12 Del. C. § 3326(a)(3)
 - Effect of NJSA statute – does this prevent access to the Court?
 - 12 Del. C. § 3332(d)(4) – NJSA can specifically cover resignation/appointment
 - What if trust provides that the Court shall appoint successor?
 - Recent case decided by Court
 - Release of Trustee?
- **Trustee's View**
- **Court's View**

Polling Question #2

III. Resignation/Removal/Appointment of Trustees

- **Court involvement in the succession of Trustees**
 - Standard for removal – 12 Del. C. § 3327
 - What if Trustee wants to resign or be removed, but authorized parties will not appoint a successor?
- **Trustee's View**
- **Court's View**

Polling Question #3

IV. Trust Reformation

- **Use of other methods?**
- **Basis for Court's jurisdiction**
 - Reformation is an equitable remedy (90 C.J.S. Trust § 92)
 - Roos v. Roos (Del. Ch. 1964)
 - Unilateral mistake of the settlor
- **Compliance with Court Rules 100-104?**
- **Recent cases decided by Court**
 - Evidence to meet standard – Affidavits

V. “Pitch and Catch” Petitions

- **Description**

- Proceeding in the court of the jurisdiction in which the trust was originally created to transfer/release jurisdiction over the trust (the “pitch”)
- Proceeding in the Delaware Chancery Court to accept jurisdiction over the trust (the “catch”).

- **Court’s historical involvement**

- Peierls Testamentary Trusts case

V. “Pitch and Catch” Petitions

- **When to file**
 - Court in other state has specifically retained jurisdiction
 - Prior court action involving trust
 - Testamentary trusts
 - No mechanism in trust to appoint Delaware Trustee
- **Current statutory law (12 Del. C. §§ 3332(b) & 3340) – “pitch and catch” still relevant?**
 - Situs/governing law issues
 - Jurisdictional issues

Polling Question #4

V. “Pitch and Catch” Petitions

- **Mechanics**

- Logistics of filing in both courts
- Special case – NY testamentary trusts/NY Surrogate’s Court
- Suggested language

- **Trustee’s View**

- **Court’s View**

VI. Trust Modification in Connection with Other Relief

- **Examples**

- Petition to appoint a successor Trustee where no mechanism is in place to appoint. In addition, Court is asked to approve a modification to add a mechanism for future succession of Trustees
- In connection with a “pitch and catch”
- Both the NJSA statute (12 Del. C. § 3338) and the modification by consent statute (12 Del. C. § 3342) include the ability of any party to involve the Court in some manner

- **Trustee’s View**

- **Court’s View**

VII. Petitions for Instruction or Construction

- **Declaratory Judgments**

- 12 Del. C. § 6504 - “Any person interested as or through a ... trustee, guardian or fiduciary, ... in the administration of a trust, ... may have a declaration of rights or legal relations in respect thereto: (3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings”

- **Examples**

- **Trustee’s View**

- **Court’s View**