FILED
JAN 14 2016
JUDGE DIXIE PARK
STARK COUNTY PROBATE COURT

IN THE COURT OF COMMON PLEAS
FOR STARK COUNTY, OHIO
PROBATE DIVISION

IN RE: KATHLEEN B. CONLEY TESTAMENTARY TRUST : CASE NO. 195704

: JUDGE: Hon. Dixie Park

MOTION TO STRIKE

Now comes Trustee Joan E. Collier ("Collier"), by and through counsel, and hereby respectfully requests, for the reasons set forth in the following Memorandum, that the January 6, 2016 "filing" (a handwritten letter to the herein presiding Judge dated January 6, 2015 [sic]; "Letter"), made herein by Trust Beneficiary James M. Conley, be stricken and (retroactively) disregarded by this Court.

MEMORANDUM

At the outset, it is noteworthy that James M. Conley is and has been an attorney-at-law admitted in Ohio since 1977 and that he has been and remains a Court-appointed Mediator for the Massillon Municipal Court; and, it is further noteworthy that James M. Conley is still herein represented by counsel of record.

It is also noteworthy that James M. Conley, although apparently acting *pro se*, added his Ohio Bar Registration Number at the bottom of the Letter under his signature.

Notwithstanding the plain requirements of Civ R 5(D) and notwithstanding James M. Conley's long-time status as an attorney-at-law (who certainly should have known better), no proof of

service is endorsed on the Letter and no proof of service of the Letter has herein been separately filed; and, a copy of the Letter was not served upon or otherwise provided to Collier's counsel (or to any other parties or their counsel).

Indeed, the undersigned only became aware of the Letter upon his review the date of this filing of this Court's electronic docket.

It is well-established under Civ R 5(D) that "Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed". (*Parker v. EMC Mortgage Group* (5th Dist.), 2009-Ohio-4758; emphasis supplied.)

Therefore, this Court could not have properly considered the Letter, which is *de jure* non-existent. (*Parker, supra,* at ¶ 12.)

Nonetheless, this Court did in fact inexplicably consider and act upon the Letter, noting that the first sentence of its resultant January 13, 2016 Judgment Entry herein reads, in pertinent part, "This matter came before the Court on the January 6, 2016 request of trust beneficiary James M. Conley that the Trustee be ordered to file a Final Account".

Additionally, the plain and well-established requirements of Civ R 5(D) aside, the Letter is an *ex parte* communication with this Court plainly prohibited under Rule of Professional Conduct 3.5(a)(3)(i) and under Code of Judicial Conduct Rule 2.9(A). (See also, *inter alia*, Rule of Professional Conduct 8.4(a) and Code of

Judicial Conduct Rules 1.1 and 1.2.)

Accordingly, the Letter should be forthwith stricken and (retroactively) disregarded by this Court; and, this Court should forthwith direct James M. Conley to henceforth refrain from conduct herein violative of the aforesaid Rules of Court.

Respectfully submitted,

CRAIG T. CONLEY (#0021585)
Counsel for Trustee
604 Huntington Plaza
220 Market Avenue South
Canton, Ohio 44702
330/453-1900
330/453-2170 [Fax]

PROOF OF SERVICE

A copy of the foregoing Motion was served, by regular U.S. Mail this 14th day of January, 2016, upon all contingent beneficiaries of the Trust and/or upon their counsel.

CRAIG T. CONLEY
Counsel for Trustee