

ORIGINAL

IN THE SUPREME COURT OF OHIO

WILLIAM MOHAT, <i>et al.</i> ,)	Case No. 2010-0951
)	
Plaintiffs-Respondents,)	On Review of Certified Question from
)	The United States District Court for the Northern
v.)	District of Ohio, Eastern Division
)	
MENTOR EXEMPTED VILLAGE)	U.S. District Court Case No. 1:09 CV 688
SCHOOL DISTRICT BOARD OF)	
EDUCATION, <i>et al.</i> ,)	
)	
Defendants-Petitioners.)	

**DEFENDANTS' MEMORANDUM ADDRESSING
CERTIFIED QUESTION OF LAW**

David Kane Smith (0016208)
 Krista Keim (0067144)
 Lindsay Ferg Gingo (0083607)
 BRITTON SMITH PETERS
 & KALAIL CO., L.P.A.
 3 Summit Park Drive, Suite 400
 Cleveland, OH 44131
 Telephone: (216) 503-5055
 Facsimile: (216) 503-5065
 Email: dsmith@ohioedlaw.com
 kkeim@ohioedlaw.com
 lgingo@ohioedlaw.com

Kenneth D. Myers (005365)
 Law Offices of Kenneth D. Myers
 6100 Oak Tree Blvd, Suite 200
 Cleveland, Ohio 44131
 Telephone: 216-241-3900
 Facsimile: 216-986-2730
 Email: kdmy@aol.com

**COUNSEL FOR PLAINTIFFS-
RESPONDENTS**

**COUNSEL FOR DEFENDANTS-
PETITIONERS**

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I. INTRODUCTION

On January 29, 2010, Judge Donald C. Nugent, United States District Court Judge for the Northern District of Ohio, Eastern Division, issued an order in Case No. 1:09 CV 688, *William Mohat, et al., v. Mentor Exempted Village School Dist. Bd. of Educ., et al.*, certifying the following question to this Court:

Whether, under Ohio law a wrongful death action filed on behalf of a decedent before an estate is legally established by someone who is not a legally appointed administrator or personal representative (i.e., is without legal standing to sue on the decedent's behalf), are barred by the statute of limitations if later, after the running of the statute of limitations but before resolution of the claims, an estate is legally established and an administrator or personal representative is duly appointed and named in the Complaint – or whether the formation of the estate and the appointment of the administrator relates back to the original filing of the claims

Defendants Mentor Exempted Village School District Board of Education (“Board”), Jacqueline A. Hoynes, Joseph Spiccia, and Thomas M. Horvath (collectively “Defendants”), designated as the moving party by Judge Nugent, request that this Court accept the federal court’s certified question, with the following changes, highlighted in bold:

Whether, under Ohio law **an action** filed on behalf of a decedent before an estate is legally established by someone who is not a legally appointed administrator or personal representative (i.e., is without **the capacity** to sue on the decedent's behalf), are barred by the statute of limitations if later, after the running of the statute of limitations but before resolution of the claims, an estate is legally established and an administrator or personal representative is duly appointed and named in the Complaint – or whether the formation of the estate and the appointment of the administrator relates back to the original filing of the claims

This Court should answer this modified certified question by holding that an estate’s claims are time-barred, where suit is brought under the guise that an individual has been named personal representative of an estate that was not, in truth, established until after the applicable

statutes of limitations expired. To hold otherwise would allow for the indefinite extension of an estate's claims' statutes of limitations, thereby gutting the requirement that the proper party must file suit within the allotted statutory time period.

II. STATEMENT OF FACTS

Plaintiffs and non-moving parties William and Janis Mohat ("Plaintiff Parents") allege that their son Eric Mohat ("Eric") was bullied by fellow students at Mentor High School in the form of "constant name calling, teasing and verbal intimidation in one particular class, and constant pushing, shoving, and hitting both in class and in hallways" Am. Compl. ¶¶ 9-10.

Plaintiffs allege all Defendants "knew or should have known" about the harassment. Am. Compl. ¶ 12. Plaintiffs further claim Defendants were deliberately indifferent to Eric's rights, as two other students in Eric's class allegedly committed suicide, in part, because of "issues stemming from bullying and harassment received in school." Am. Compl. ¶ 16. As such, Plaintiffs allege Defendants' "actions and omissions" caused Eric to become so depressed that he committed suicide on March 29, 2007. Am. Compl. ¶¶ 8, 20.

On March 26, 2009, Plaintiffs filed suit, alleging that all Defendants: (1) violated the substantive and procedural due process clauses of the Fourteenth Amendment of the United States Constitution via 42 U.S.C. § 1983; (2) violated Title IX, 20 U.S.C. § 1681; (3) committed negligence and/or gross negligence; and (4) violated R.C. 2744.02(A)(6) by committing wanton and reckless acts with malicious purpose and in bad faith.¹ Plaintiffs Parents filed these claims on their own behalf, and Janis Mohat also filed "as Administratrix of the Estate of Eric Mohat

¹ In their Response to Defendants' Motion for Judgment on the Pleadings, Plaintiffs concede that many of their claims lack merit, including: (1) their procedural due process claim; (2) their Title IX claim against Defendant Board; (3) the Title IX claim filed on behalf of William and Janis Mohat individually; and (4) Plaintiffs' state claims against Defendant Board.

on behalf of the Estate.” Compl. at caption. On the date of filing, however, Janis Mohat had not been named administratrix of Eric’s estate, nor had anyone else. The estate did not exist.

On May 18, 2009, Defendants filed their Answer, explaining that Eric’s estate did not exist and, therefore, neither William nor Janis Mohat had been named personal representative of that estate. On June 18, 2009, the parties attended a case management conference with Judge Nugent, and only then did Plaintiffs admit to their failure to create an estate.

In an effort to rectify Janis Mohat misrepresenting her status as administratrix, Plaintiffs attempted to establish Eric’s estate more than two years after his death—on June 25, 2009—by filing to create an estate in Cuyahoga County Probate Court. Cuyahoga County Probate Court named Janis Mohat personal representative of the estate on that day. Eric, however, did not reside in Cuyahoga County; his address was 8623 Hilltop Drive, Mentor, Ohio, located in Lake County, Ohio. Plaintiffs, therefore, did not establish the estate in the court with legal authority to create the estate when they filed in Cuyahoga County Probate Court.

On September 16, 2009, Defendants filed their Motion for Judgment on the Pleadings, arguing the federal court could dismiss all of Eric’s estate’s claims, because the estate was never established in the court with subject-matter jurisdiction over Eric’s estate and because, even if Cuyahoga County had been the proper court, the estate’s claims were time-barred. On November 1, 2009, Plaintiffs filed their Response to Defendants’ Motion for Judgment on the Pleadings. On November 27, 2009, Plaintiffs also filed a Supplement to their Response Brief, explaining that on November 9, 2009, Plaintiffs filed to create Eric’s estate for a second time, this time in the court with subject-matter jurisdiction over the estate: Lake County Probate Court.

On January 28, 2010, Judge Nugent issued an Order Certifying Question of State Law to the Ohio Supreme Court. Specifically, Judge Nugent asks this Court to decide whether Eric’s

estate's claims are time-barred, as Janis Mohat filed suit on behalf of his estate as "administratrix," even though she was not named administratrix of the estate until after the estate's claims' statutes of limitations expired.

III. ARGUMENT

Under Ohio Supreme Court Rule XVIII, "[t]he Supreme Court may answer a question of law certified to it by a court of the United States. This rule may be invoked when the certifying court, in a proceeding before it, issues a certification order finding there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court." Here, the Northern District of Ohio certified a question to this Court that will determine whether Eric Mohat's estate's claims are time-barred and dismissed, because the estate was established after the applicable statutes of limitations expired. There is no controlling Ohio Supreme Court precedent answering this question and it is, therefore, ripe for review with two substantive changes to the federal court's certified question. Specifically, this Court should hold that a personal representative lacks the capacity to sue on behalf of an estate, regardless of the estate's claims, where that estate was established after the claims' statutes of limitations expired, and, therefore, the estate's claims are time-barred and do not relate back to the original filing date.

A. THIS COURT SHOULD MAKE TWO SUBSTANTIVE CHANGES TO THE FEDERAL COURT'S CERTIFIED QUESTION IN ORDER TO FULLY ADDRESS THE ISSUE "DETERMINATIVE OF THE PROCEEDING."

The federal court's certified question asks whether "**a wrongful death action** filed on behalf of a decedent before an estate is legally established by someone who is not a legally appointed administrator or personal representative (i.e., is without **legal standing** to sue on the decedent's behalf), are barred by the statute of limitations . . ." (emphasis added). Plaintiff Janis

Mohat, on behalf of Eric's estate, however, has not filed a wrongful death claim against Defendants and, instead, has sued under Title IX and 42 U.S.C. § 1983, among other claims.² All Ohio cases addressing whether an estate's claims are time-barred if the estate was established after the statutes of limitations ran were decided in the context of wrongful death suits. These cases still apply here, however, because whether an individual can properly sue on behalf of an estate is an issue of capacity, not standing.

As the Second District Court of Appeals stated in *Wanamaker v. Davis*, when examining who can properly sue on behalf of an estate, courts sometimes use the terms capacity, standing, and real party in interest interchangeably, although they are not the same legal theories. 2nd Dist. No. 2005-CA-151, 2007-Ohio-4340, ¶ 39. A real party in interest is "one who has a real interest in the subject matter of the litigation and not merely an interest in the action itself." *Id.* at ¶ 41. Courts examine "who would be entitled to damages" for a particular claim to determine whether an individual is a real party in interest entitled to maintain an action. *Id.*; Federal Practice and Procedure, Wright-Miller-Kane, Volume 6A, Section 1543, p. 338. Standing refers to the notion that a party must be injured by the alleged act and that the injury must be redressable by the requested relief. *Friends of Tims Ford v. Tennessee Valley Authority* (C.A. 6, 2009) 585 F.3d 955, 962.

Defendants do not argue that Janis Mohat, in her capacity as the individual eventually appointed personal representative of Eric's estate, is not the individual who would be entitled to damages based on the substantive law of each particular claim filed on behalf of the estate. *See Toledo Bar Assn. v. Rust*, 124 Ohio St. 3d 305, 2010-Ohio-170, ¶ 29, 921 N.E.2d 1056 (explaining that an estate's personal representative is a nominal party and the beneficiaries are

² Plaintiffs acknowledge they have not filed a wrongful death claim. Plaintiffs' Response to Defendants' Motion for Judgment on the Pleadings, p. 5.

the real parties in interest). Instead, Defendants argue Janis Mohat cannot bring *any* claim on behalf of the estate, because she was not timely appointed personal representative of the estate. The issue before the Court, therefore, is not whether Janis Mohat is the “real party in interest.” Moreover, Defendants do not argue that Janis Mohat as personal representative was not the party injured or that her injury is not redressable. The issue before the Court is, therefore, also not whether Janis lacks standing to sue. Instead, the issue “determinative of the proceeding” is whether Janis Mohat lacks the capacity to sue on behalf of Eric’s estate.

Capacity relates to a party’s personal or official right to litigate the issues presented in the pleadings. Federal Practice and Procedure, Wright-Miller-Kane, Volume 6A, Section 1542, p. 327. Lack of capacity to sue deprives a party of the right to come into court, and it is determined *without consideration of the plaintiff’s causes of action. Id.*

Whether an estate is a proper party with the capacity to sue in federal court is governed by “the law of the state where the court is located.” *See* Fed. R. Civ. P. 17(b)(3) (governing the “capacity to sue or be sued” in federal court); *Medlen v. Estate of Meyers* (C.A. 6, 2008) 273 Fed.Appx. 464, 470 (holding that “[t]o determine whether the Estate was a proper party with the capacity to be sued, we must look to Ohio law because it is ‘the law of the State in which the district court is held....’ Fed.R.Civ.P. 17(b) (2005).”); *See Wanamaker*, 2007-Ohio-4340 at ¶ 42 (explaining that capacity “refers to the eligibility of a person to commence an action” and is generally determined without regard to the claims being asserted). Clearly, Ohio law governs capacity issues in the United States District Court, Northern District of Ohio.

Although Ohio courts have addressed whether an estate’s personal representative has the capacity to sue in the context of wrongful death suits under R.C. 2125.02(C), those cases still apply here because capacity is determined without consideration of the estate’s particular claims.

Capacity examines whether the personal representative had the right to state any cause of action—wrongful death, a civil rights claim, or otherwise. In fact, a federal court recently considered Ohio wrongful death case law when analyzing whether a decedent’s family member could sue under 42 U.S.C. § 1983, among other statutes, despite the family member establishing the estate after the statute of limitations expired. *Fine v. Huff’s Invest. Co.* (S.D. Ohio Apr. 18, 2006), No. 3:05-CV-294, 2006 U.S. Dist. LEXIS 21020, *4-9.³

Here, like in *Fine*, whether Janis Mohat has the right to sue on behalf of Eric’s estate is a capacity issue that must be analyzed under Ohio case law, regardless of the claims asserted in those cases. This Court should, therefore, answer the federal court’s certified question with two substantive changes. First, this Court should answer whether any action filed on behalf of a decedent’s estate is time-barred, not just whether a wrongful death action is time-barred. Second, this Court should address whether a non-administrator has the capacity to sue, not whether he or she has standing to sue. With these changes, the certified question would read as follows:

“[w]hether, under Ohio law **an action** filed on behalf of a decedent before an estate is legally established by someone who is not a legally appointed administrator or personal representative (i.e., is without **the capacity** to sue on the decedent’s behalf), are barred by the statute of limitations . . .”

³ The *Fine* court did not decide whether the subsequent filing of an estate would relate back, as the plaintiffs never attempted to amend their complaint to identify the estate’s representative. *Id.* at *9.

B. THIS COURT SHOULD HOLD THAT JANIS MOHAT LACKS THE CAPACITY TO SUE ON BEHALF OF ERIC'S ESTATE, BARRING THE ESTATE'S CLAIMS FROM GOING FORWARD, WHERE SHE MISREPRESENTED THAT SHE WAS NAMED ADMINISTRATRIX OF ERIC'S ESTATE AND WAS NOT, IN TRUTH, APPOINTED TO THAT POSITION UNTIL AFTER THE ESTATE'S CLAIMS' STATUTES OF LIMITATIONS EXPIRED.

A personal representative lacks the capacity to sue on behalf of an estate, where that estate was established after the estate's claims' statutes of limitations expire. The filing of an estate does not relate back to any earlier date. *Wanamaker*, 2007-Ohio-4340 at ¶ 10 (discussed below); *Gottke et al. v. Diebold, Inc.* (Aug. 9, 1990), 5th Dist. No. CA-3484, 1990 Ohio App. Lexis 3564, *6 (discussed below); *See Ramsey v. Neiman* (1994), 69 Ohio St.3d 508, 634 N.E.2d 211, 214 (lead opinion declining to decide whether subsequent filing of estate relates back after statute of limitations runs, but rejecting prior cases as support for relation back argument); *Fine*, 2006 U.S. Dist. LEXIS 21020 at *4-9 (considering Ohio law when analyzing whether the appointment of a personal representative would relate back to the filing of the complaint); *But See Douglas v. Daniels Bros. Coal Co.* (1939), 135 Ohio St. 641, 15 O.O. 12, 22 N.E.2d 195 (discussed below).

Although numerous Ohio courts have examined issues similar to the one presented here, *Wanamaker* is the case that is most directly on point. In that case, the appeals court rejected the personal representative's argument that re-opening an estate after the statute of limitations ran relates back to the estate's original filing date. *Wanamaker*, 2007-Ohio-4340 at ¶ 10. The plaintiff was appointed personal representative of her father's estate, the estate closed, the plaintiff filed a malpractice suit on behalf of the estate, and then the statute of limitations ran. *Id.* at ¶ 5. Apparently realizing her mistake, the plaintiff convinced the probate court to re-open the estate and back-date her appointment to the original filing date. *Id.* at ¶ 6. The plaintiff argued

that the re-opening related back to the original filing date and, therefore, she had the capacity to sue on behalf of the estate. *Id.* at ¶ 8. The court of appeals rejected the plaintiff's relation back argument, explaining that the plaintiff lacked the capacity to sue when she filed the original complaint and that the subsequent re-opening of the estate did not relate back to a time before the statute of limitations ran. *Id.* at ¶¶ 9-11.

The court distinguished *Douglas*, where a widow thought she was appointed personal representative of her deceased husband's estate, although she was not, and filed suit on behalf of that *open estate*. *Id.* at ¶ 27. Under those circumstances, this Court held the widow's subsequent appointment related back to the day she filed the original complaint—a day before the statute of limitations ran. *Id.* In *Wanamaker*, however, the appeals court explained that there was no mistake regarding appointment, and the estate was not open when the plaintiff filed her complaint. *Id.* at ¶¶ 8-11. Thus, the subsequent appointment did not relate back, and the plaintiff lacked the capacity to sue on behalf of the estate. *Id.* at ¶¶ 10-11.

Moreover, in *Gottke*, the plaintiff filed suit “individually, and as the personal representative of” the decedent's estate. 1990 Ohio App. Lexis 3564 at *1-2. The plaintiff, however, misrepresented her status to the court, as the decedent's husband was the estate's administrator. *Id.* at *2. The trial court granted the defendant's motion to dismiss the claim, as the plaintiff lacked standing to file the action. *Id.* at *3. The appeals court affirmed the trial court's decision, holding that “[w]e conclude that an action for wrongful death must be brought in the name of the personal representative.” *Id.* at *6. Moreover, “the doctrine of relation back does not apply where the plaintiff misrepresents his/her capacity, and fails to procure appointment within the time prescribed by the appropriate statute of limitations, or file ‘in the name of’ the personal representative.” *Id.*

Here, each of Eric's estate's claims has a two-year statute of limitations. *See Cooney v. Strickland* (C.A. 6, 2007), 479 F.3d 412 (42 U.S.C. § 1983); *Giffin v. Case Western Reserve Univ.* (C.A. 6, 1999), 181 F. 3d 100 (Title IX); R.C. 2305.10(A) (negligence). Like in *Wanamaker* and *Gottke*, Plaintiff Janis Mohat filed suit on behalf of Eric's estate, the estate's claims' two-year statutes of limitations ran, and then Janis was appointed personal representative of the estate. Specifically, Plaintiffs filed the original Complaint on March 26, 2009, and the statutes ran two years after Eric's death, on March 29, 2009. Janis Mohat was not appointed personal representative of Eric's estate by the court with subject-matter jurisdiction over the estate, Lake County Probate Court, until November 9, 2009, more than seven months after the statutes expired. Like in *Wanamaker*, the subsequent filing of the estate does not relate back, as the estate was not open before the statutes ran. That is especially true here, where Janis Mohat misrepresented her status to the federal court by stating she was administratrix when she was, in fact, neither administratrix nor even attempting to be administratrix when she filed suit on behalf of the estate. Thus, unlike in *Douglas*, Janis Mohat cannot allege she mistakenly thought she was appointed personal representative of an existing estate. Having not even established the estate until well over two years after Eric's death, the claims are untimely and must be barred.

Plaintiffs may attempt rely on a number of Ohio cases in support of their position that the subsequent appointment of Janis Mohat relates back to the complaint's original filing date. Those cases, however, are distinguishable. In *Ramsey*, a father sued for wrongful death on behalf of his deceased daughter and grandchildren. 634 N.E.2d 211, 213. The father claimed in his complaint to be the personal representative of his daughter's estate, even though he was never appointed representative. *Id.* The lower court granted the defendants' motion to dismiss and the appeals court and this Court affirmed, with the lead opinion holding an estate's cause of action

must be brought by and in the name of its court-appointed personal representative. *Id.* at 211, 214 (holding in context of wrongful death suit).⁴ In addition, the father argued that if he were appointed the estate’s representative, then that appointment should relate back to the date he filed the complaint, even though the statute of limitations had run on the estate’s claim. *Id.* at 214. The court refused to address this, stating “we cannot decide the question whether [the father’s] appointment will relate back to the date he filed his complaint because the question is based on an assumed set of facts,” since the father was not named the estate’s representative at any time during the pendency of the case. *Id.* Thus, the court “decline[d] to hold that appellant’s future appointment as personal representative of the decedent’s estate—should such an appointment ever occur—will relate back to the date he filed his complaint.” *Id.* The *Ramsey* court specifically declined to answer the question at issue in this case and, therefore, does not apply.

Plaintiff may also rely on *Kyes v. Pennsylvania RR. Co.*, a 1952 case that the *Ramsey* court identified and, in dicta, rejected as support for the father’s argument that his subsequent appointment should relate back to the complaint’s filing date. *Id.* at 214, citing *Kyes v. Pennsylvania RR. Co.* (1952), 158 Ohio St. 362, 49 O.O. 239, 109 N.E.2d 503. In *Kyes*, an ancillary personal representative filed suit on behalf of the decedent’s estate before the wrongful death claim’s statute of limitations expired. *Id.* at 504. *The estate, therefore, was open before the complaint was filed.* The representative’s appointment was vacated after the time limit ran, and the proper individual was substituted as personal representative of the estate. *Id.* The lower

⁴ The concurring opinion, joined by three justices, disagreed with the lead opinion that the personal representative must be appointed before a suit is properly filed. *Id.* at 214-215. The concurring justices stated, in dicta, that an individual must be named personal representative before the case is settled or judgment is entered, but not necessarily before that time. *Id.* at 215.

courts held that the substitution was proper, and this Court affirmed, explaining that the cause of action remained the same and the representative was not the real party in interest. *Id.* at 505.

Here, *Kyes* does not apply. Unlike in *Kyes*, neither Janis nor William Mohat were appointed Eric's estate's representative before filing their complaint. They were also not appointed representative before the statutes of limitations expired on the estate's claims. Moreover, the *Ramsey* court in dicta recognized that *Kyes* should be limited to its facts, explaining that "*Kyes* addressed the substitution of one appointed plaintiff for another" *Ramsey*, 634 N.E.2d at 214. There is, likewise, no justification for this Court to expand the decision beyond its facts.

Plaintiffs may also cite to *Stone v. Phillips*, where a mother sued on behalf of her deceased children's estate, erroneously claiming she was the estate's administrator. (Aug. 11, 1993), 9th Dist. No. 15908, 1993 Ohio App. LEXIS 3989, *2. The trial court granted the mother leave to amend the case caption by substituting the name of her attorney as administrator of the estate. *Id.* It is unclear from the court's opinion whether the substitution occurred after the estate's claim's statute of limitations expired, as the court did not analyze the issue in depth. The court compared *Stone* to *Ramsey*, explaining that *Ramsey* did not apply because the *Ramsey* plaintiff never took "steps to be appointed as personal representative, so there would have been nothing to relate back." *Id.* at *9. (*Ramsey*, of course, does not apply here, as the court specifically declined to answer the question at issue in this case.). The *Stone* court, therefore, analyzed whether a caption change would relate back to the complaint's original filing date as opposed to answering the more substantive question of whether a court should disregard the statute of limitations when an estate is filed after the limitations period expired.

Assuming the trial court in *Stone* allowed a caption change after the statute of limitations expired, this Court should note that no Ohio court has relied on *Stone* for that issue since it was decided in 1993. Other courts have, instead, re-affirmed that the statute of limitations' purpose is fairness to both sides. "Once a plaintiff knows of an injury and the cause of the injury, the law gives the plaintiff a reasonable time to file suit." *Pingue v. Pingue*, 5th Dist. No. 10-0077, 2007-Ohio-4814, ¶ 45. Here, Plaintiffs had two years to file suit on behalf of Eric's open estate, which they failed to do. Plaintiffs will likely argue that this Court should ignore that fact, because Defendants will not be prejudiced by this failure. Plaintiffs cannot, however, avoid the effect of a statute of limitations by showing that a defendant in a particular case is not affected by the inability to defend itself against stale claims. *Theobald v. Univ. of Cincinnati*, 10th Dist. No. 09AP-269, 2009-Ohio-5204, ¶ 19. Plaintiffs should not be rewarded for repeatedly failing to create an estate within the statutes of limitations.

Finally, Plaintiffs may rely on this Court's recent decision in *Toledo Bar Assoc. v. Rust*, where the Board of Commissioners on Grievances and Discipline recommended that this Court suspend an attorney's license, but stay the suspension on conditions, because the attorney filed a wrongful death action on behalf of the estate's administrator without obtaining the administrator's authority to file suit. 124 Ohio St.3d 305, 2010-Ohio-170, ¶ 1, 921 N.E.2d 1056. The attorney filed suit without this authority because the wrongful death statute of limitations was set to expire in one week or ten days. *Id.* at ¶ 6. Although the attorney attempted to have himself appointed as administrator and named as plaintiff in the lawsuit after the statute of limitations expired, the common pleas court dismissed the wrongful death action. *Id.* at ¶¶ 7-12.

This Court held that the attorney had at least "an arguable basis in law and fact that was not frivolous for filing the claim," because precedent "at least arguably permitted [the attorney]

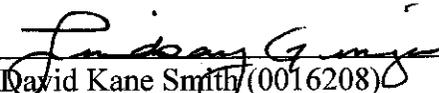
to file the action to avoid the statute of limitations for wrongful-death actions and to then obtain his client's appointment under the statute as the administrator" *Id.* at ¶¶ 2, 13. In making this decision, this Court examined most of the cases discussed above to determine whether wrongful death suits need only be brought "in the name of" the personal representative, as opposed to "by" the personal representative.

Here, unlike in *Toledo Bar Assn.*, suit was not brought "in the name of" the administrator nor by the administrator, as no administrator existed on the day Plaintiffs filed suit. Moreover, this Court did not decide the issue addressed in this case, but, instead, examined whether an attorney accused of misconduct had some cognizable argument for filing suit on behalf of an administrator who objected to the suit. It is certainly telling, however, that the Board of Commissioners on Grievances and Discipline went so far as recommending that the *Toledo Bar* attorney's license be suspended for filing suit on behalf of an estate without authority to avoid the statute of limitations. *Toledo Bar Assn.* is applicable here to the extent it shows that the issue before this Court is one that it should decide.

IV. CONCLUSION

For the foregoing reasons, this Court should answer the federal court's certified question, with the two substantive changes Defendants proffered, by holding that an estate's claims are time-barred, where suit is brought under the guise that an individual has been named personal representative of an estate that was not, in truth, established until after the applicable statutes of limitations expired.

Respectfully submitted,



David Kane Smith (0016208)

Krista Keim (0067144)

Lindsay Ferg Gingo (0083607)

BRITTON SMITH PETERS

& KALAIL CO., L.P.A.

3 Summit Park Drive, Suite 400

Cleveland, OH 44131

Telephone: (216) 503-5055

Facsimile: (216) 503-5065

Email: dsmith@ohioedlaw.com

kkeim@ohioedlaw.com

lgingo@ohioedlaw.com

Attorneys for Defendants-Petitioners

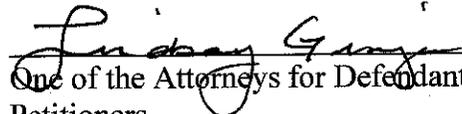
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Defendants' Memorandum Addressing Certified Question of Law* was sent this 16th day of June, 2010, by electronic transmission and regular U.S.

Mail to the following:

Kenneth D. Myers
Law Offices of Kenneth D. Myers
6100 Oak Tree Blvd, Suite 200
Cleveland, Ohio 44131
Email: kdmy@aol.com

Attorney for Plaintiffs-Respondents



One of the Attorneys for Defendants-
Petitioners