

Forensic Genealogy News

Council for the Advancement of Forensic Genealogy

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Welcome Mentor Program Enrollees

Liesa Healey-Miller

CAFG is excited to have Liesa Healy-Miller join the Mentoring Program. She is a practicing genealogist and founder of the firm "Unsolved Histories". She is a 2010 graduate of the Boston University Genealogical Studies Program; she has also attended IGHR at Samford (Irish Studies). Liesa is Vice President of the Mass. Genealogical Council, which seeks to preserve public access to vital records at the state level and beyond.

In her spare time, she enjoys using her forensic genealogy skills on a pro bono basis - solving historical mysteries, assisting police departments, and reuniting orphaned heirlooms with their owners. For the past 12 years, she has served as an auxiliary police officer in two different MA towns, and has received a presidential VIPS Award (Volunteers in Police Service).

Welcome New Members

Barbara Smallwood Stock, CGsm

Barbara is the current president of the Georgia Chapter of APG. She received her Certification in 2000 from the Board for Certification of Genealogists. She has completed eleven courses at Samford University's IGHR and attended the Regional Institute for Genealogical Studies (RIGS).

Past projects include compliance support for Georgia's Abandoned or Disturbed Cemetery Law and kinship determination for estates and abandoned property.

Among her more interesting projects were research for three seasons of *Who Do You Think You Are* (Spike Lee, Lionel Richie, and Paula Deen segments).

Forensic Genealogy Institute

Council for the Advancement of Forensic Genealogy announces the Forensic Genealogy Institute, October 25 - 27, 2012 in Dallas, Texas.

The Forensic Genealogy Institute offers twenty hours of significant hands-on instruction with real-world work examples, resources, sample forms and work materials. The embedded practicum offers actual forensic case studies that will be covered from start to finish. Those who satisfactorily complete the course will receive a Forensic Genealogy Institute Certificate of Completion.

For more information <http://www.forensicgenealogists.com/forensic-genealogy-institute.html>

Certified Genealogist (CG) is a service mark (sm) of the Board for Certification of Genealogists®, conferred to associates who consistently meet ethical and competency standards in accord with peer-reviewed evaluations every five years; the board name is registered in the US Patent & Trademark Office.

Save Public Access to SSDI

Several bills are currently pending that would severely limit, or entirely eliminate, public access to the *Death Master File, Social Security Death Index (SSDI)*. The House Ways and Means Committee had a hearing February 2 and is accepting written testimony through Tuesday, February 16, 2012. <http://www.forensicgenealogists.com/Resources.html>

CAFG actively networked with more than fifty bar associations, twenty-nine landmen associations, fifteen title company associations, and numerous attorneys in an effort to encourage more professionals to voice their concerns.

feature article

The challenges and rewards of reviewing international heir finders' proofs of heirship

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Background

The business of taking heirship cases on speculation for a percentage of the heir's share in the estate was aptly described by a relatively recent decision:

The business or profession known as "heir-hunting" or "heir-chasing" has a checkered and interesting history, having long been established on an international and local basis as a lucrative means of livelihood. "Probate searchers" usually operate by investigating probate or surrogate court records to uncover estates of substantial wealth whose probate or administration has been delayed because of inability to contact one or more of the missing heirs. An investigator, usually unknown to the estate, locates the missing heir through cooperation with foreign agents in the same business. The missing person is hastily informed that he has a valid claim as an heir against an unsettled estate. He is promised genealogical charts and other information with which he can establish his heirship if he will assign a portion of his inheritance to the probate researcher.¹

Probate courts are wary of heir finders or heirs who claim a share in a missing or unknown heir case. As one court stated more than one hundred years ago:

The whole claim bears strong marks of having been manufactured after [decedent's] death, when the buzzards began to gather over an estate which seemed about to pass to the commonwealth for want of real heirs.

....

... it behooves us always in cases of this class to remember that the idea of succession to the fortune of a hitherto unknown relative, exercises over even honest minds a fascination only to be compared to the gambler's desire to throw dice to get something for nothing, and hence it is the duty of courts and juries to scrutinize all such evidence with keen and incredulous eyes.²

¹ *Nelson v. McGoldrick*, 127 Wn.2d 124, 129, 896 P.2d 1258, 1260-1261 (1995). [For an article on fees charged in these cases, see Michael S. Ramage, "Fees and Forensic Genealogy," *Forensic Genealogy News* 1 (December 2011), 2 (http://www.forensicgenealogists.org/Newsletters/CAFG_Vol_1_Issue_2.pdf : last accessed 12 January 2012).

² *Estate of Bryant*, 176 Pa. 309, 321-322, 35 A. 571 (1896), mod. on other grounds, 180 Pa. 192, 36 A. 738 (1897). See also Helen Hinchliff, *Estate Fraud and Spurious Pedigrees*, 19 *Genealogical Journal* 22 (Numbers 1 & 2, 1991).

Forensic genealogists as reviewers of heir finders' work

Forensic genealogists³ are often called upon by estate attorneys or personal representatives to review the probate-related “proofs” of so-called “heir finders.”⁴

This is often a rewarding but challenging task as most heir finders only provide records (usually without source citations) without a written report or affidavit of due diligence. It is unknown whether or not other found records exist that provide conflicting information as to such heirship claims. To further complicate some of these assignments it is well known in the international arena of missing and unknown heir researchers that problems have existed in many former Soviet republics relating to fraudulent claims of purported heirs who have made claims to U.S. estate assets.⁵ In addition, U.S. immigrants' names often change due to Americanization, ease of pronunciation or a desire to assimilate creating apparent conflicts in the foreign and U.S. created documents. Those conflicts must be resolved to meet genealogical standards.⁶

Here follow excerpts from an opinion letter⁷ to estate counsel that delineate some of the typical problems with international heir finders' proofs:

Dear Attorney:

As requested, I am providing you my report and opinion relating to the Eastern European research into the paternal ancestry of John Smithzak (Jr.), Deceased, (1928 - 1989) [hereinafter “Decedent”]. This report necessarily examines the records of Decedent's father, John Smithzak [Sr.], (1897 - 1965) [hereinafter “John Sr.”], insofar as they reveal John Sr.'s parents or other paternal ancestors.

Based upon the Eastern European documents that the Eastern European claimants' counsel provided to you and the Administrator, my opinion based upon a reasonable degree of genealogical certainty is that the Eastern European researchers have not adequately shown that their research or their documentation meets generally accepted genealogical standards.

Therefore, it is my opinion, based upon a reasonable degree of genealogical certainty, that the Eastern European claimants' have not proven their claims that they are paternal intestate heirs to Decedent by a reasonable degree of genealogical certainty nor have they met the generally accepted Genealogical Proof Standard in this regard.

The Board for Certification of Genealogists® has set forth the generally accepted genealogical standards that are widely accepted in the field of genealogy in *The BCG® Genealogical Standards Manual* (Washington, D.C.: Board for Certification of Genealogists, 2000). I am setting forth here some of those standards that the Eastern European claimants have failed to show adherence to:

I. Research Standards:

A. Genealogical Proof Standard: The Genealogical Proof Standard (“GPS”) is used to measure the credibility of statements genealogists make about such things as ancestral identities and

³ “Forensic Genealogy Definition: Forensic genealogy is research, analysis, and reporting in cases with legal implications.” *Council for the Advancement of Forensic Genealogy* (<http://www.forensicgenealogists.org/> : last accessed 12 January 2012).

⁴ Probate courts have consistently imposed a duty upon personal representatives or their counsel to perform (or have performed) a reasonable investigation (called “due diligence”) for missing and unknown heirs and to report the results of the investigation to the court. *In re Estate of Rosen*, 2003 Pa. Super. 96, 819 A.2d 585 (2003); *Annotation, Duty and Liability of Executor with Respect To Locating and Noticing Legatees, Devisees, or Heirs*, 10 A.L. R.3d 547 § 2 (1966).

⁵ This author is well acquainted with a past resident of the Republic of Estonia who worked there as a post-USSR land reparation claims examiner; she stated that fraudulent claims of this type were rampant in the post-Soviet republics.

⁶ *The BCG® Genealogical Standards Manual* (Washington, D.C.: Board for Certification of Genealogists, 2000), 1-2 & 13 (Standard 34).

⁷ The names of the parties and years have been changed to protect the confidentiality of the estate litigants.

relationships. The GPS requires (1) a reasonably exhaustive search, (2) complete, accurate source citations for data used, (3) analysis and correlation of the data to assess the quality of the evidence, (4) resolving evidentiary conflicts, and (5) a soundly reasoned, coherently written conclusion. *The BCG® Genealogical Standards Manual*, 1-2.

Evidence is derived from appropriate, effective data analysis and correlation, which are defined as

- *analysis*: the process of scrutinizing each information item to determine its details, meaning, nature, context, and impact on the research project.
- *correlation*: the process of comparing information items to identify connections and contradictions.

.....

The sum of the evidence is the deciding factor in arriving at a conclusion that will be expressed as an assertion (statement of “fact”), regardless of whether that assertion concerns a person’s identity or relationships, an event or its details, or peripheral situations and circumstances. *Ibid.* at 8 & 11.

There has been no showing by the Eastern European claimants that they have met any of the elements of the GPS. Not one of the five elements of the GPS has been demonstrated by the Eastern European claimants.

B. Data-Collection Standards:

7. Information is collected dispassionately by

- *setting aside* any bias, preference, or preconception that might color what is collected from the record; and
- *suspending judgment* about the information’s effect on the research questions until after it has been collected from the record, analyzed, and correlated with other findings.

Ibid. at 3.

In this case, in addition to the Eastern European claimants themselves (who may not be viewed as unbiased), it appears from the records that two international heir search firms have conducted genealogical research relating to Decedent’s paternal ancestry in Eastern Europe. The two known international heir search firms involved in this matter on behalf of the Eastern European claimants are EU Heir Finders LLC and EU Heir Searchers LLP. Both of these international heir search firms are of the type that primarily enters into contingency fee arrangements with their clients as opposed to hourly or flat rate fees.

Unless evidence is presented as to how these two international heir search firms were retained and on what fee basis, it cannot be ruled out that the two firms are biased as a result of being paid only if they successfully “prove” that their clients prevail in establishing the requisite relationship to Decedent. In addition, most of these international heir search firms hire and pay for the law firms that represent the claimants. Thus, unless it is shown otherwise, there is no evidence that these firms acted without bias, preference, or preconception that might color what is collected from the record, or that they suspended judgment on the records until all records were collected and analyzed. Furthermore, in my experience, these types of firms only look for and report on records that support their clients’ positions and thus do not give the whole genealogical information that is required to provide an independent report or opinion in heirship matters.

8. Information’s source is scrupulously acknowledged, regardless of its form or the method we use to collect the data (handwritten notes, photocopies, microfilm printouts, scanned images,

e-mail, Internet downloads, and so on). Source acknowledgement (its “citation”) [footnote omitted] includes:

- *recording all pertinent details about the specific record* being examined, whether or not it is the “best” or most authoritative source. Such details might include the following kinds of data, depending on the nature and location of the record:
 - a) its form (original document; official record-book; published abstract; summary, or compilation; CD; online transmission; oral interview; and so forth);
 - b) who created it and, if applicable, who edited, abstracted, compiled, or otherwise manipulated or rearranged the information. If an interview, the name of the person who spoke *and* of the person to whom he or she was speaking are included;
 - c) when it was created (or the interview given) and, if applicable, when the data were edited, abstracted, or compiled; and
 - d) where it was created (or the interview given) and, if applicable, where the edition, abstract, summary, or compilation was created or published.
- *recording the record’s present location* (identified by full titles), including
 - a) the volume, and if applicable, the series of which the volume is a part; or
 - b) the folder or bundle of papers, as well as (1) the record group of which the folder or bundle is a part, (2) the collection of which the record group is part, and (3) the institution or private residence (identified by address) where the collection is housed.
- *recording the specific location* within the record from which an item of information was taken. EXAMPLES: page number in the book, page and line or family-and-dwelling numbers on a census schedule, item number on a list, and so forth; and
- *attaching the record’s source citation* on every item of information collected from it. The citation may immediately precede or follow the item or be connected to it as a footnote or endnote. *The BCG® Genealogical Standards Manual*, 3-4.

For the most part, the records produced by and on behalf of the Eastern European claimants have not followed these research standards, or, at best, have not yet provided the necessary information as to whether or not they have been met.

II. Evidence-Evaluation Standards:

19. Reasonably extensive research is prerequisite---regardless of whether the problem is simple or complex---and includes appropriately broadening the search beyond the person, family, event, or record of most-direct impact on the project. The search effort extends to discovery of information that does or might illuminate (or conflict with) the other items of collected data. *Ibid.* at 8.

In this case, there has been no showing that reasonably extensive research was conducted by and on behalf of the Eastern European claimants. This is a crucial starting point in the field of genealogy. Thus, they have not followed these evidence-evaluation standards, or, at best, they have not yet provided sufficient information that they have done so. For example, no mention is made as to the mandatory (after World War II through 1990) male army draft papers and “Red passports” that were well known to have existed throughout this region until the fall of Communism (if they were in the possession of family members they should have been produced as additional relevant genealogical information; if they were not in the possession of family members it should be noted if they were sought from other sources). No mention is made as to whether or not research was conducted in an effort to identify all children of the purported paternal grandparents of Decedent which is necessary to reconstruct the family and determine the relationships of the family members. No mention was made as to whether or not the Eastern European claimants or their research agents made any efforts to locate

emigration, immigration or naturalization records of the descendants of the purported paternal grandparents of Decedent that would ordinarily be researched in attempts to locate intestate heirs. And as a follow-up to the last-mentioned record types, if it were discovered that any of the descendants of Decedent's purported paternal grandparents did leave the Ukraine, were the naturalization and vital records of the new country researched in attempt to construct their genealogical identities? None of this has been answered by or on behalf of the Eastern European claimants and thus they have failed to demonstrate that they have followed this generally accepted evidence-evaluation standard (that is also a requirement of the GPS).

22. Data analysis includes distinguishing between primary and secondary information, which are defined as

- *primary information:* data contributed by a knowledgeable eyewitness to or participant in the event that is the subject of the record or by an official whose duties included making a full, accurate record of it. ...
- *secondary information:* data supplied by a person who recorded it after hearing of the event or its details from someone else. It is judged according to (a) the probable number of times the story was passed along orally before it was written down, (b) the reputation of the secondary informant for reliability, and (c) the existence of any potential for bias on the part of the secondary informant. [Footnote omitted.] *The BCG® Genealogical Standards Manual, 22.*

In this case, there has been no showing that the Eastern European claimants or their agents distinguished between primary and secondary information. For example, the Eastern European claimants and their agents have not distinguished the 2 July 2010 written statement of the Mayor of Kiev relating to the birth, marriage and children of Bertha (Jonezak) Smithzak, as secondary information (nor is any background given as to where the Mayor obtained this information nor why the actual civil or church records were not sought as primary information).

Conclusion

In other cases, the forensic genealogist may resolve the apparent contradictions in the heir finders proofs through the expensive completion or repetition of foreign research or by way of genetic testing (DNA). For example, in one case, the U.S. and Romanian records conflicted as to the given names of Decedent's maternal grandparents. The forensic genealogist independently obtained the Romanian marriage record that resolved the apparent conflict. In another case, the mere threat of putting the purported Eastern European heirs through genetic testing resulted in a prompt, inexpensive settlement of the questionable claims.

Despite these challenges, these international heirship cases may be rewarding from both a financial and satisfaction standpoint. The fact that unraveling the inadequate or unexplained research of the international heir finder is time consuming results in significant hourly fees. The cases are satisfying if the forensic genealogist is successful in properly putting the pieces of the genealogical puzzle together, and truth and justice are served. Thus, forensic genealogists should seriously consider accepting assignments to review international heir finders' proofs as the challenges create the opportunities for the rewards.