

Hear it From the Judge

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Probate Administration: Disagreement with the Representation

One of the most common Court interactions most citizens have is through a probate proceeding. Fortunately, the Uniform Probate Code and efficiencies implemented by the Judicial Branch have created a system which allows most probate proceedings to be completed without having formal hearings. However, one common problem often experienced by families in probate matters is when there is discord between Personal Representatives or disagreement between what the Personal Representative is doing and what individual family members may request. What does the law indicate should happen in these situations?

It may be helpful to first define the personal representative (PR) and what authority this person possesses. The probate law defines the PR as the person named in the decedent's Will, or if no Will exists – appointed by the Court, to administer the decedent's estate. The PR has the legal right to take possession or control of the decedent's property as the PR believes necessary to administer the estate. The PR is also obligated to pay taxes and other expenses that are due following death. The PR has all the same authority over the estate of the decedent as the decedent did over her or his assets prior to death. The primary legal difference is that the PR exercises these powers in trust for legal heirs (those who will receive assets from the estate) and any creditors of the decedent.

Often the decedent may have named a spouse, children, or other close friend or relative to serve as personal representative. The person named may also be an heir to any assets that are remaining following proper administration of the estate. This latter fact does not prohibit the personal representative from so acting though this fact may lead to concern among other family members as to the abilities of the personal representative to act objectively.

What happens if there is more than one personal representative and they disagree with each other? What role does the attorney who is assisting in the probate proceeding play? What can other family members do in these situations?

If there is more than one personal representative, each is obligated by law to carry out their function and each has signed an oath agreeing to follow the rules for probate administration. Unless the Will or a Court Order indicates otherwise, they will have to act jointly. They will have to agree on how to proceed and may often lead to practical problems if they are unable to agree.

This may be further complicated if there is a perception among family members that one of the personal representatives favors a certain faction in the family or may be acting with self interest.

The attorney who is hired to assist in the probate administration represents the personal representatives. Often it is the situation that interested family members are able to visit with this attorney about concerns with the personal representatives and this is done with consent of the personal representatives and may sometimes include joint family meetings. This may resolve the problem and may include voluntary substitution of a PR or the agreement that someone new serve in that capacity.

If no agreement is reached, the concerned family members may need to consult with their own attorney because the “probate” attorney already represents the personal representatives. This may lead to further informal resolution of the concerns. However, if no informal resolution occurs, this attorney may recommend a formal court proceeding to seek removal of a personal representative and the appointment of a successor.

The primary basis upon which a personal representative may be removed includes the following: misrepresentation, disregard of a court order, incapacity to discharge duties, mismanagement of the estate. If a personal representative is ordered to be removed, the Court may also direct the disposition of the estate assets remaining under the control of the personal representative. The Court may also appoint a successor to the previous personal representative.

As with all legal proceedings, it certainly is a benefit to the parties to attempt to resolve their dispute outside of court. This may be especially true in probate proceedings because the family members are already suffering from the loss of a loved one and amiably settling a potential legal matter may assist the healing.