

**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 a probate proceeding. One common problem experienced by families in probate matters is discord between Personal Representatives (PR). What does the law indicate should happen in these situations?

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 of decedent's property as necessary to administer the estate. The PR is also obligated to pay expenses that are due following death. The PR has the same authority as the decedent did over her or his assets prior to death. The PR exercises these powers in trust for legal heirs (those who will receive assets from the estate) and any creditors of the decedent.

The decedent may have named a spouse, children, or a close friend or relative to serve as PR. The fact that the PR may be an heir does not prohibit the PR from so acting though this may lead to concern among family members as to the abilities of the PR 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?

When there are multiple PRs, each is legally obligated to follow the rules for probate administration and they act jointly. They must agree how to proceed which may lead to problems if they cannot.

The attorney who is hired to assist in the probate administration represents the PRs. Often family members are able to visit with this attorney about concerns with the PRs and this may include joint family meetings. This may resolve the problem and may lead to an agreement that someone new serve as PR.

If no agreement is reached, the concerned family members may need to consult their own attorney because the "probate" attorney represents the PRs. If no informal resolution occurs, this attorney may recommend a court proceeding to seek removal of a PR and the appointment of a successor.

The primary reason a PR may be removed includes the following: misrepresentation, disregard of a court order, incapacity to discharge duties, mismanagement of the estate. If a PR is or-

dered to be removed, the Court may also direct the disposition of the estate assets. The Court may also appoint a successor to the previous PR.

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