

PROBATE POTPOURI

Ref. Dean Maus
November 17, 2009



NEW LEGISLATION

- ◆ 2009 Session Laws
 - Chap 30
 - Chap 46
 - Chap 58
 - Chap 67
 - Chap 117
 - Chap 139
 - Chap 150

Probate Chap. 30

- ◆ Actions to enforce a medical assistance lien or claim against real property described in a transfer on death deed and any matter raised in connection with enforcement shall be determined in the probate division.
(Effective retroactive to all claims filed on or after 8/1/08)

Probate

Chap 117

- ◆ Affidavits of Collection (Effective 8/1/09)
 - Limit increased to \$50,000 of personal property.
 - No need to supply the affidavit in duplicate.

Guardians & Conservators

Chap. 150

- ◆ Creates a statewide guardian and conservator registration system to be funded by registration fees. (Effective 7/1/13)
- ◆ Counsel for ward must disclose concurrent proceedings involving the attorney and guardian and state whether a conflict exists. (Effective 8/1/09)

Guardians & Conservators

Chap. 150

- ◆ Guardians must provide the ward and other interested persons of record a copy of the Personal Well Being Report that is filed with the court each year. (Effective 8/1/09)
- ◆ Guardians and Conservators must send the Annual Notice of Right to Restoration to the ward/protected person and to persons of record with the court. (Effective 8/1/09)

**Guardians & Conservators
Chap. 150**

- ◆ An Informational Statement is required to be filed annually by guardians and conservators. (Effective 8/1/09)
- ◆ If an annual report is not filed within 60 days of the due date the court shall issue an order to show cause. (Effective 8/1/09)

**Guardians & Conservators
Chap. 150**

- ◆ If the value of personal property is \$10,000 or more, the court shall require the conservator to file a bond. (Effective 8/1/09)
- ◆ Bill of Rights for Wards and Protected Persons. (Effective 8/1/09)

**WEB BASED
CONSERVATOR REPORTING
UPDATE**



Submitting Supporting Documents

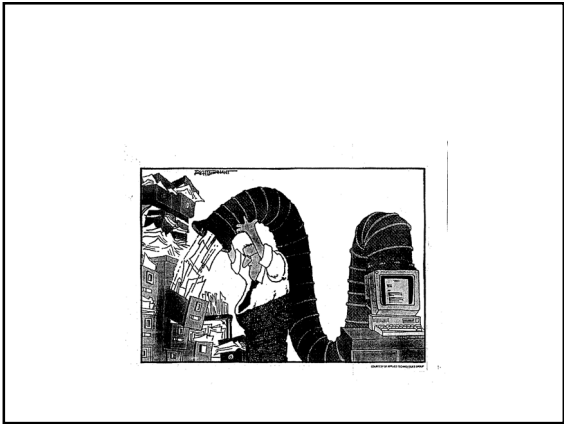
- ◆ Supporting Documents are not submitted with the account (Ramsey & Hennepin)
- ◆ The Conservator must retain supporting documentation:
 - Cancelled Checks
 - Bank Statements
 - Verification of funds on deposit
 - All other financial documentation

Court Audits

- ◆ All Conservators will be periodically audited
- ◆ The Auditor will ask for supporting documentation
- ◆ Questionable practices, and inadequate supporting documentation will be referred to the Court

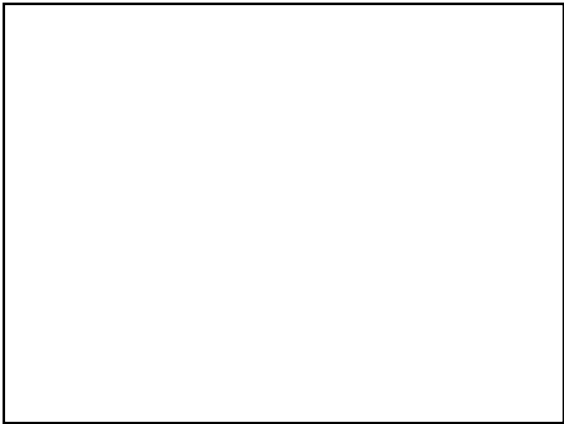
State Wide Rollout

- ◆ Target Date: July 1, 2010
 - Web based reporting will be mandatory
- ◆ Centralized Audits
 - Standardized Practices
 - Regular Audits



Probate Court Policy Highlights

- ◆ Documentation of Financial Transactions
- ◆ Minor Conservatorships
- ◆ Estates
 - Heirs-at-law
 - Bonds
 - Minor Children as Beneficiaries
 - Decree of Descent & MA Waivers
- ◆ Signing Orders
- ◆ Filings on computer disc



**RAMSEY COUNTY DISTRICT COURT
PROBATE COURT POLICIES**

GUARDIANSHIPS & CONSERVATORSHIPS

1. Commencement Hearings

When a hearing on a petition for appointment of guardian or conservator is held, the petitioner is required to appear and testify in support of the petition. It is also the duty and responsibility of the petitioner to provide for the transportation and appearance of the proposed ward or conservatee to the hearing, unless:

- a. The proposed ward/conservatee waived his or her right to appear in writing at the time of service by the Court Visitor; or
- b. A physician's statement has been filed indicating that the proposed ward/conservatee is physically unable to attend the hearing; or
- c. Any deviation from this practice has been approved by the Court before the hearing.

2. Notice Requirements.

All parties must strictly adhere to statutory notice requirements.

3. Bond Requirements.

All persons appointed as conservators of the estate will be required to file a bond with the Court. The amount of bond shall be at least 80% percent (80 %) of the total amount of estate personal property or a minimum bond of \$5,000.00. The Court will consider alternatives to large bonds, such as restricting access to assets by Court order.

4. Criminal Background Checks

Statutory requirements for criminal background checks shall be followed in all cases.

Professional conservators with current background studies on file, must file an affidavit of compliance for each new appointment.

The existence of a criminal record will not necessarily exclude anyone from serving, but the Court will take the information received into consideration along with all other evidence presented when it makes its determination as to the suitability and qualification of the proposed guardian/conservator.

5. Account Hearings.

Commencing March 1, 2004, all first annual accounts are required to be placed on for hearing, and thereafter, annual accounts will be heard at three-year intervals. When the Veteran's Administration has an interest, the conservator's annual account must be heard every year.

The conservator is required to appear at the hearing and prove up the accounts.

Final Accounts - If an adult protected person is living, and is not restored to capacity, the final account must be placed on for hearing.

If consents and waivers of notice of hearing to the allowance of the account are obtained from all interested parties, a hearing on the final account is not required where the protected person is:

- a. Deceased; or
- b. Restored to capacity; or
- c. A minor who has reached the age of 18; or
- d. A minor whose funds have all been deposited with the Court pursuant to a protective order.

6. Account Vouchers.

All disbursements listed on the account of the conservator must be substantiated by acceptable vouchers which are:

- a. Original cancelled checks; or
- b. Photocopies of the front and back of each cancelled check. (Carbon copies of checks are not acceptable vouchers.); or
- c. Receipts bearing the original signature of the payee.

REIMBURSEMENT CHECKS ARE NOT PROPER VOUCHERS.

Exceptions may be made for corporate trust companies and banks who provide appropriate business records to substantiate disbursements.

7. Sales of Real Estate.

If the real estate to be sold is the homestead of the protected person, a physician's statement regarding the protected person's inability to return home must also be filed before issuance of the order directing sale.

8. Personal Property

The Probate Division is concerned about situations in which guardians and conservators take physical possession of personal property belonging to a ward or protected person for storage and safety and the difficulty of accounting for those items. Consequently, the following policy is being implemented by the Court:

When a professional guardian or conservator takes personal (individual) possession of items of personalty of the ward or protected person for purposes of storage, an inventory of the items so stored must be made, signed by the conservator or guardian and filed with the Court. Any changes in the personal property inventory must be filed annually along with the annual account. This policy is specifically intended to include any items placed in the guardian's or conservator's house for storage or a safe-deposit box.

In these situations, it would be prudent to have an independent witness also sign the personal property listing to eliminate any future questions regarding its accuracy or

completeness.

9. Special Guardianships/Conservatorships
Hearings for Special Guardianships/Conservatorships, are to be scheduled through the Court Administrator's office.

All documents must be filed with the Court Administrator's office, and the filing fee paid, or *in forma pauperis* order obtained, prior to the hearing. No Exceptions.

A 48 hour notice requirement will be followed in all but the most extreme emergency situations. If an attorney feels that there is a reason to waive the notice, the attorney should contact the Probate Judge or Referee and explain the situation to the judge or referee.

If notice is waived, Letters of Special Guardianship/Conservatorship will not be signed until after a copy of the order is personally served on the ward/protected person.

Extensions of Special Guardianships/Conservatorships will be granted only if one of follow conditions are met:

- a. A petition for a general guardianship/conservatorship is filed within the effective period of the special guardianship/conservatorship, and a petition for extension of the special guardianship/conservatorship is filed.; or
- b. A hearing is held on the petition for extension.

10. Minor Conservatorships
Funds will be restricted, allowing no withdrawal until age 18. It is the parents' responsibility to provide for the support of the children. The children's funds should not be used for their own support, except in unusual situations. If funds are requested for the children's support, all household income, including the children's SSI income, if any, along with all household expenses, and other relevant factors will be reviewed in consideration of the request.

11. Special Needs & Supplemental Needs Trusts
A petition for establishment of a Special/Supplemental Needs Trust must be filed with the Trust division of the Probate Court, and the appropriate filing fee paid. See the section on Trust Policies for further information.

ESTATES

1. Service
Petitioners must strictly adhere to statutory service requirements:
Testate: Require service on all beneficiaries of will and all heirs at law
Intestate: Require service on all heirs at law
NOTE: Notice to foreign consul is required if decedent was born in another country. Notice must be given to anyone filing a Demand for Notice.

2. Heirs at Law
Petitioner must establish, on the record, the heirs of the decedent in all cases, including testate proceedings. (RE: See service requirements above.)
3. Wills
Following is the Minimum Evidence to be Provided at the Hearing:
 - Will was properly executed
 - Will was not revoked
 - Self Proved Affidavit attached; or
Testimony of Subscribing Witness Filed; or
Witness Must Authenticate Testator's Signature through Testimony
 - Interlineations: Evidence of valid execution (i.e. initialed by testator and two witnesses), or valid partial revocation must be presented or the will is admitted as originally drafted.
4. Bonds
A bond will be set for all formal estates (usually amount of assets, less portion to be distributed to the Personal Representative)
EXCEPTIONS:
 - a. the Bond is waived in the Will (must be waived for the person who is being appointed); or
 - b. Waivers are filed by all interested persons
5. Minor Children
The requirement of Minn. Stat. §524.3-915 will be strictly followed. This statute requires all distributions over \$2,000 to minor children to be deposited in a restricted FDIC insured account & certificate deposited with the Court. Distribution cannot be made to a custodian or trustee, unless the will provides for distribution to a custodian or trustee.
6. Decree of Descent
Minn. Stat. §525.313 is interpreted to require a Medical Assistance Waiver in all cases (i.e. including those cases in which the decedent died prior to the effective date of the statute) before the Court signs the Decree.
7. Final Accounts
Receipts (cancelled checks or other signed receipt) are required only for
 - Distributions to heirs/beneficiaries; and
 - Proof of payment of filed claims.See District Court Rule 412(b).

TRUSTS

1. Notice Requirements.
All parties must strictly adhere to statutory notice requirements.

2. **Bond Requirements.**
The Court reserves the right to set a bond for individual trustees in all cases.
3. **Criminal Background Checks**
The Court reserves the right to conduct a criminal background check in all cases. The existence of a criminal record will not necessarily exclude anyone from serving as trustee, but the Court will take the information received into consideration along with all other evidence presented when it makes its determination as to the suitability and qualification of the proposed trustee.
4. **Account Hearings.**
A hearing, as required by law, must be held at least every 5 years for the allowance of annual accounts.

The trustee is required to appear at the hearing and prove up the accounts.

5. **Account Vouchers.**
All disbursements listed on the account of the trustee must be substantiated by acceptable vouchers which are:
 - a. Original cancelled checks; or
 - b. Photocopies of the front and back of each cancelled check. (Carbon copies of checks are not acceptable vouchers.); or
 - c. Receipts bearing the original signature of the payee.Exceptions may be made for corporate trustees who provide appropriate business records to substantiate disbursements.

6. **Special Needs & Supplemental Needs Trusts**
All requests for approval of a Special/Supplemental Needs Trust must be made by petition to the Trust Division of the District Court for approval of the trust and confirmation of the trustee. The appropriate filing fee must be paid. The petition is to be heard by a judicial officer of the Probate/Trust division, and should not be combined with another civil case file.

All Special/Supplemental Needs Trusts shall be subject to the provisions of Minn. Stat. Chap. 501B.

All Special/Supplemental Needs Trusts must remain subject to Court supervision. The trustees shall follow the same requirements as guardians/conservators for filing annual accounts and holding regular hearings to review and allow the accounts.

All trustees of Special/Supplemental Needs Trusts must be bonded, following the Court's policy on bonding of guardians/conservators.

EXPENDITURES FROM SPECIAL/SUPPLEMENTAL NEEDS TRUSTS

The law allows the income and corpus of these trusts to be used to provide extra benefits to a disabled person, beyond the primary support funded by government assistance. Examples of extra benefits may include the following: educational or vocational programs, social or recreational opportunities, art or music lessons, travel, transportation, housing, private room in a care facility, computers, television, medical and dental costs, rehabilitation costs, special equipment. However, **the trustee is cautioned** that the Court makes the final determination whether an expenditure is reasonable and appropriate under the circumstances. **In the event the Court finds that an expenditure was not reasonable and appropriate, it will order the trustee to reimburse the trust for the expenditure.** In making its determination on whether an expenditure is reasonable and appropriate under the circumstances, the Court will consider, among other factors, the nature of the disability, the amount of trust assets, and the life expectancy of the disabled person.

It is strongly recommended that large or extraordinary expenditures be reviewed by the Court prior to making the expenditure. This will help the trustee in his or her decision making, and protect the trustee from becoming personally liable for such expenditures in the event they are not court-approved. The Court encourages trustees who wish to pre-approve any large or extraordinary expenditure, to contact the Court for its approval before making the expenditure. This may be done only in a written petition, filed with the Ramsey County Probate Office. The trustee may request that the petition be considered *ex parte*. In the event the Court determines that further information, or a hearing is needed, the trustee and/or his attorney will be contacted.

GENERAL

1. Transfer of Venue
At the judge's discretion, a request for transfer of venue may be granted *ex parte*.
2. Contested Matters
Contested matters will be set for a scheduling/settlement conference. The conference is to be attended by the attorneys of record and any interested *pro se* parties. An attorney's client need not attend the conference, but must be available by telephone, or the attorney must have complete authority to settle the case. Discovery deadlines and hearing dates will be set at the time of the scheduling conference.

Unless a continuance is granted, scheduling conferences will take place at the time set for the initial default hearing. Contested cases may be heard at the time set for the initial default hearing at the discretion of the presiding judge or referee, and with the agreement of the parties.

3. Citations
Citations for failure to file documents may be issued after two (2) written notices have been sent. The citation shall state that failure to file the required documents may be reason for a finding of contempt of court.

If a citation hearing is scheduled, the party and his/her attorney must appear at the hearing, even if the documents are filed prior to the hearing. Only the judge or referee scheduled to preside at the citation hearing may excuse the party and strike the hearing.

The citation hearing may consist of an initial meeting with the Probate Court Manager (or other designated staff person) which is held in the Probate Clerk's office. Any issues not resolved at this meeting will be referred to either the Probate Referee or the Probate Judge.

If a party does not appear at the citation hearing, a finding of contempt of court may be made and that a writ of attachment may issue for the person's arrest.

4. Assignment of Cases

All probate/trust cases shall be heard by the probate judge, probate referee, or other judge assigned by the chief judge of the district. Other judges shall refrain from hearing probate/trust matters, unless assigned.

5. Signing Orders

All probate/trust orders, and other probate/trust documents requiring a judge's signature, shall be signed by the probate judge, or another judge specifically designated by the probate judge or chief judge of the district. Other judges shall refrain from signing probate/trust orders, unless assigned.

Orders, and other documents, requiring a judge's or referee's signature, are generally referred to the probate staff for review as to proper form and content before signing by the judge or referee.

6. Filings in Excess of 25 Pages

All pleadings exceeding 25 pages in length, including attached exhibits, must be filed on a computer disk. The clerk's office may be contacted for information on file format, and for a copy of the order directing filing on computer disk.