The Estate Planning and Probate Section of the Atlanta Bar was pleased to hear from Mandy Moyer, J.D., Staff Attorney and Chief Deputy Clerk to Honorable Lynwood D. Jordan, Jr., Forsyth County Probate Judge. Mandy’s engaging presentation offered valuable tips for practitioners who appear in Forsyth County Probate Court.

Mandy Moyer

Mandy began her talk by reminding us that new Probate Court forms become effective on July 1st each year. She then reviewed several of the most commonly used Probate Court forms, beginning with Form 5 (Petition to Probate Will in Solemn Form). Important takeaways from Mandy’s discussion of this form include the following:

- It is particularly important in Forsyth County to be sure the names on the Notice to or Acknowledgements from all heirs match the names on both the Petition and the Death Certificate.
- Because minor heirs must be represented by a guardian ad litem (O.C.G.A. sec 53-11-12), Mandy recommends that the attorney request that the child’s natural guardian be permitted to serve, assuming there is no conflict of interest.
- Mandy also recommends that, pursuant to O.C.G.A. sec 53-11-3(e), the attorney request that notice of the Petition be given via registered or certified mail (return receipt requested, restricted delivery) in lieu of personal service. This saves your client the time and money of having notice given via personal service.
- It is important to be sure that the decedent’s county of domicile given in the Petition matches the county given on the death certificate. If this is not the case, the Court will issue a Deficiency Order, and there will be a hearing on domicile.
- In order to be sure you have included sufficient factual information for the Court to independently determine the decedent’s heirs, you should use the following language in the Petition: “The decedent had no other children, born or adopted, living or deceased.” This is an exacting standard, but the Court will always need this information.
- If an heir in the Petition is listed as having an unknown address, you should use an Affidavit of Diligent Search to describe your efforts to find such an heir.
- Note that the Forsyth County Court does require you to file a Publisher’s Affidavit after running the Notice to Debtors and Creditors required by O.C.G.A. § 53-7-41.
• Note, finally, that it makes sense to probate the Will in common form, rather than in solemn form, when the decedent owned an interest in an ongoing business operation, there are public health concerns, or the decedent owned property in another country. However, the Court can refuse to accept a petition for common form probate. There is no appeal from the Court’s refusal to accept the petition.

Mandy then discussed Form 3 (Petition for Letters of Administration), highlighting the following key tips:

• As discussed above, minor parties must be represented by a guardian ad litem; you can save your client time and money by requesting that the minor child’s natural guardian be allowed to serve in this role.
• The rule that the decedent’s county of domicile must be the same in the Petition and the death certificate still applies; if the counties are not the same, the Court will issue a Deficiency Order. If there is no response within 30 days, the Court will set a hearing and get testimony regarding the decedent’s place of domicile. The death certificate may need to be corrected.
• It is important to indicate in the Petition whether a divorce or separate maintenance action was pending between the decedent and his/her spouse at the time of the decedent’s death. This information should be included because a pending divorce removes the surviving spouse from the list of fiduciaries who may serve under the Will.
• If the decedent had no assets and you are opening the estate in order to initiate or continue a lawsuit on behalf of the decedent, it is important to state the action on page 7 of the Petition. If the value of the suit has not yet been determined, it is best to say “Chose in action—unknown value.”

Mandy went on to discuss Form 10 (Petition for Year’s Support), and made these important points:

• The Court will not proceed with a Petition for Year’s Support until a PT-61 for each parcel of real property located in Georgia and sought as year’s support has been filed, along with a check for payment to the Clerk of Superior Court and a Certificate of Order of Year’s Support.
• Although you may be able to file for year’s support on property owned in joint tenancy with right of survivorship, note that such property passes by operation of law and is not part of the decedent’s estate. Mandy noted that judges’ opinions differ on this subject—some will disallow a request for property owned in joint tenancy with right of survivorship to be awarded as year’s support; others grant the petition and let the tax assessor make the call.
• After much discussion among members of the audience, the consensus of opinion was that real property located outside the state of Georgia likely cannot be awarded as
year’s support because a local court has no power to dictate what happens to such property.

Due in part to the numerous questions and spirited audience participation that Mandy’s talk generated, time did not permit discussion of the final topic in Mandy’s materials, which was a review of Form 12 (Petition for the Appointment of a Guardian and/or Conservator for a Proposed Ward). However, attendees came away with a clearer insight into the workings and requirements of the Forsyth County Probate Court.

The materials may be viewed on the “CLE Materials” webpage of the Atlanta Bar Association’s Estate Planning & Probate Section here.

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