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PROBATE TIPS & TRICKS

When and How to Contact the Court with Questions?

Generally Speaking: Judge Joyce is available to answer questions that attorneys have about PR, GC and/or AD cases.

When and How to Contact the Court with Questions?

- Expectation #1: Attorney will have conducted research/investigation and seeking assistance
- Expectation #2: Attorney staff members have discussed situation with attorney before contacting Division 15's AA
- Contact Ms. Gonzalez and ask to set up conference call or in person conference
 - *We will try and fit you in as soon as possible*
- Welcome to stop by, but Judge Joyce may not be available if visit not scheduled

When and How to Contact the Court with Questions?

- Court does not give legal advice; neither does AA
 - *So general question about “How do I do something” will likely not be answered*
 - *Questions on pending cases where there is other counsel, not appropriate*
- Please be able to demonstrate you have fulfilled Expectation #1
 - *You have conducted research/investigation and seeking assistance*
- Walk-ins are acceptable, subject to Judge’s availability



PROBATE TIPS

For Particular Probate Situations



Simplified Administration

K.S.A. 59-3201, *et. seq.*

- Eliminates court supervision over *most, but not all*, administrative acts and duties
- Does not eliminate required notice to sell, lease or mortgage real property, KSA 59-3203(d)
- Administrative expenses, including legal fees and expenses, are paid pursuant to KSA 59-1717 and require Court's approval
 - *Not paid pursuant to K.S.A. 59-3204*
- After 6 months, Court can administratively close

Informal Administration

K.S.A. 59-3301, *et. seq.*

- PURPOSE: this is effectively a one-court appearance procedure
 - *Appoint an “informal administrator” to pay debts that arise and distribute*
 - *There is no administration*
 - No sale of real estate; no cashing of stocks and bonds
 - *JUST distribution upon posting of redelivery bond when creditor claim period not yet expired*
- Can be used with or without admission of Last Will and Testament

Informal Administration

K.S.A. 59-3304(b)

- 2 types of bond in Informal Administration
- Type #1: bond for the “Informal Administrator” 59-3304(b)(1)
 - *This bond can be waived*
 - By the Will or by all interested parties

Informal Administration

K.S.A. 59-3304(b)

- Type #2: Bond to be posted by the DISTRIBUTEES (59-3304(b)(2))
 - *CANNOT BE WAIVED*
 - *Designed to protect any creditors that may come forward*
- Must be posted before distribution to any distributee
- This bond in the amount of the distribution
- Bond valid until after expiration of claim period

When Appoint a Special Administrator?

- K.S.A. 59-710 states
 - *One can be appointed **pending** appointment of the executor/administrator*

Why Appoint a Special Administrator?

- Why appoint after filing of petition to open estate but before date of hearing?
 - *Need to secure real estate*
 - *Gather other assets that might be subject to depletion/removal/theft*
 - *Others?*

Can SA be Appointed Without Filing a Petition to Open the Probate Estate?

- YES
- See *Estate of Morgans*, 188 Kan. 50, 59 (1961)
 - “*Pending*” intended to mean the time period between the date of death and “*during or until the appointment of an executor or administrator.*”

Why Appoint SA without Opening the Probate Estate?

- *When there are no other assets to administer and seeking appointment solely for purposes of litigation; gathering records, etc.*
 - *No need to open the Probate Estate*
 - *Enables you to avoid the need to seek extensions every 9 months, per K.S.A. 59-1501*

Statutory Allowance - K.S.A. 59-403(b)

- Not an automatic entitlement to the surviving spouse like K.S.A. 59-6a215
- Allowance can be awarded “*up to \$50,000*”
- Determination requires a hearing

Statutory Allowance - K.S.A. 59-403(b) (cont'd)

- Amount of this allowance is determined by the Court
 - *“after taking into account the condition of the estate of the decedent”*
- Be prepared to present evidence on the following:
 - *Assets in the Estate*
 - *Assets distributed to Surviving Spouse outside Probate*
 - i.e., life insurance, real estate, retirement account, bank accounts, etc.

Statutory Allowance - K.S.A. 59-403(b) (cont'd)

- Allowance can be paid “in full or part” by:
 - *Money*
 - *Other personal property*
 - *Real property at its appraised value*

Individual Surety – S. Ct. Rule 114(b)

- Individual Surety = Personal Bond
- Ac/ to Rule - Personal bonds must contain:
 - *a financial statement*
- Court is willing to accept, as an alternative to the filing of a financial statement, a pledge of security in form of an affidavit

Individual Surety – S. Ct. Rule 114(b)

- Affidavit can be part of or attached to the bond form approved by the KJC
- Affidavit must identify, at least partially, the account(s) being used to secure the bond
- Affidavit must state that the account(s) used contain an amount equal to or above the amount of the distribution
- Attach the affidavit to the back of the bond statement

Interests in Real Estate and Valid Settlement Agreements (VSA)

- Situation: when heirs and/or devisees wish to “give away” their interest in real estate in VSA
 - *Situation: children want their mother to have 100% interest in family home*
- Spouses of each adult child have a marital interest in the real estate
 - *They MUST also execute the VSA, which eliminates their interest in the real estate*
- Conservator of heir that is a minor must sign (get approval before signing)

Decree or Journal Entry When Real Estate is Assigned

- If you plan to take the Decree or Journal Entry over to the Johnson County Records & Tax Administration
 - *Please leave a couple of inches of space at the top of the first page of the Decree or Journal Entry*

When Last Will and Testament is NOT Self-proving

- K.S.A. 59-2224 requires a hearing and testimony or affidavits from at least two of the subscribing witnesses
 - *Notary Public is NOT a subscribing witness*
- Court can waive this requirement
- Consent of all interested parties may be sufficient to eliminate this requirement
 - *Situation and circumstances dependent*

What happens when you DO NOT HAVE original of the last will and testament?

- Entries, waivers and consents to admit Will NOT ENOUGH
- Unable to locate original last will and testament creates a *presumption of revocation* that must be rebutted
- Hearing must be held to rebut this presumption
- See *Matter of Estate of Kasper*, 20 Kan. App. 2d 309, 887 P.2d 702 (1994).

Identifying Heirs at Law in Petition

- Identify whether spouse survived and all children, even if deceased
 - *See KJC Probate Forms 3d, form#503*
- SAMPLE (another way): when identifying heirs at law, state:
 - *No surviving spouse*
 - *Three children:*
 - Janie
 - Joey
 - Johnny – predeceased
 - *List Johnny’s surviving spouse and children*

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E-FILING TIPS

Supreme Court Rule 111

- Please be mindful of Supreme Court Rule 111's requirements:
 - *Double spacing.*
 - ***At least a 1" margin all around each document filed.***
- When the margin is less than 1", particularly on the bottom of the page, the electronic file stamp will likely be placed over the content of the filing and make the writing illegible.
- Please keep this in mind when drafting Wills, other documents that might get filed into court.

Filing Last Will and Testament

- Please efile the last will and testament as a separate document
 - *NOT as an attachment and as part of the petition*
 - *Okay to reference the will as an exhibit to petition, just file it in as a separate document*
- Court cannot consider Petition to Admit Will **unless and until** the original of the Will has been presented to the Clerk of the Court
 - *If you do not have the original, you must set a hearing to present evidence on the admissibility of the copy*

Submitting Proposed Orders/JEs/Decrees

- Always submit in MSWord format, NOT in pdf format
- Submit in advance of hearing, NO EARLIER than 1 business day before date of hearing
 - *Submitting a day early gives Judge a chance to review the proposed order/JE/Decree in advance, so that questions raised can be discussed at hearing*
- If a formal hearing scheduled, include date of hearing on page 1
- If not planning to appear, state there are no appearances

Submitting Proposed Orders/JEs/Decrees

- Please do not leave only the judge's signature line; OR
- "IT IS SO ORDERED." and judge's signature line on the last page.
 - *Please reformat to avoid these circumstances.*
- Also, please **paginate** every proposed Order/JE/ Decree submitted
- This should go for any document signed by any party, i.e., signature should not be only thing on the page

Submitting “Amended” Order/JE/Decree

- Please do not simply submit an “Amended” Order/JE/Decree for the Judge’s signature
- Please provide the Court with an explanation as to why the amended Order/JE/Decree is being submitted
 - *A petition may not always be required*
 - *Please send an email to Division 15 explaining the purpose for submitting the amended Order/JE/Decree.*
 - *The Court will advise if a petition is required*
- Please note difference between an amended order and an order nunc pro tunc

Tips OR Tricks?

- Supreme Court Rule 144: When may a party use the Chapter 60 discovery procedures?
 - K.S.A. 60-226 – 60-237
 - *When a factual issue has been raised by a written defense*
 - Objection raised by SRL will usually be treated as raising a factual issue
 - *No factual issue means cannot use civil discovery tools*

Tips OR Tricks? (*cont'd*)

- Realtors and Johnson County Appraisal Office staff are not appraisers for purposes of complying with K.S.A. 59-2307
 - *Need to obtain **specific waivers** by all interested parties to avoid 59-2307 requirements*
- Court's calendar is set when Order for Hearing is signed by Court
 - *Make sure you submit a proposed Order for Hearing after calling Division 15 and getting a date and time for your hearing*
 - Goes for PR, GC and AD cases

Tips OR Tricks? (*cont'd*)

- Setting a hearing when other parties are represented by counsel
 - *ALL counsel should be included when setting the date for a hearing*
 - *When all counsel agree on date, all counsel should sign off on the submitted Order for Hearing*
 - *When you have an ACTIVE SRL, they too should be included in setting the date for a hearing*

Tips OR Tricks? (*cont'd*)

- When Order for Hearing references K.S.A. 59-2210, what is required?
 - *59-2210 = Form of Notice*
 - *Notice of “ANY” hearing must be in substantial compliance with KJC form*
 - *Need to file into court’s record the notice used*
- K.S.A. 59-2247: if real estate is being assigned, you must set a hearing and publish notice

Due Process and Transparency

- Entries, Waivers and Consents designed to waive and consent to ALL HEARINGS during administration
 - *NOT FAVORED by the Court*
- If you choose to use: the document must be very clear as to what the signee is agreeing to
 - *Any ambiguity will be treated by Court against the waiver and consent*

Due Process and Transparency

- At time of Final Settlement
 - *Administrator has a duty to account. See Probate Local Rule 1.E*
 - ***This duty cannot be waived***
 - *Notice is being given to all interested parties of all amounts to be paid before distributions are made*
 - Including administrative expenses, which includes:
 - *Administrator's compensation and expenses*
 - *Administrator's Legal fees and expenses*

Due Process and Transparency

- At time of Final Settlement (cont'd): Legal Fees and Expenses
 - *If amount sought in the petition is greater than the amount in the billing statements submitted, the maximum amount that will be approved is the amount in the billing statement*
 - *In Contrast, if amount listed in petition is less than amount in billing statement submitted, the maximum amount that will be approved is the amount in the petition.*

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ATTORNEY FEES

Case Law and Judge's Policy

- *In re Alig*
- *In re Holmes*
- *In Matter of Crandall*
- NOTE: Administrative Policies and Procedures in Judge's Page
- administrative expenses are examined
 - *Administrator's compensation and expense reimbursement*
 - Including reimbursement to family members and friends
 - *Administrator's attorney fees and expenses*

What's expected?

- Detailed and Itemized Statements need to be submitted before PFS will be ruled upon
 - *True for administrators, conservators and guardians*
 - *REMEMBER filing into PR case = public record*
- You may submit statements by filing into case file or emailing to chambers

What's expected?

- Fees are to be reviewed and approved by Court before paid
- Fees should be not paid in advance and then the payment sought to be ratified

Possible Ethical Violation

- Billing for clerical duties, may be an ethical violation, and will not be approved

See In Matter of Crandall, 430 P.2d 902 (Kan. 2018).

“Crandall's staff billed for clerical duties, such as mailing the contract and fee schedule to A.L. While necessary steps, these are not the type of legal work that warrants charging the client.”



ANY QUESTIONS?

Thank you for attending