

This & That, Part 2

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This month I'd like to continue my summary of highlights from the materials presented at the annual Probate and Estate Seminars held in Grand Traverse and Troy.

COLA:

- Remember that under EPIC, exemptions, allowances, small estates, small estate affidavits and intestate succession amounts are annually adjusted for inflation (MCL 700.1210). It is important that you utilize the correct amount based upon the decedent's date of death.

RESIDENCE:

- 700.1302 sets forth the exclusive subject matter jurisdiction for the probate courts. Pursuant to this section, individuals are permitted to open an estate for anyone who died in that county or had property in that county. If, for example, the decedent died in Arizona but left a bank account in Oakland County, they would be allowed to open the estate in Oakland County provided there was no estate opened in a different state.
- Another unusual situation arises with respect to residence of prisoners. For the most part, the residence for filing of a prisoner is in the county in which the inmate was last a resident. If they had been incarcerated for a long period of time, it is possible that the county in which the prison is located may be considered their county of residence. Typically, the county where the prison is located does not take these cases and you may have to establish their prior residence in a different county.

PETITIONS FOR REINSTATEMENT:

- If your client has been suspended, the courts will usually require that you cure the delinquency (i.e. the filing of an overdue inventory, account, etc.) but also file a petition for reinstatement. There is an additional filing fee for this

petition. If the fiduciary presents full waivers and consents, the order is signed without a hearing.

VENUE:

- Guardianship - Venue is proper where the person resides or is present (700.5302).
- Conservatorship - Venue is proper where the person resides only. Example: If a conservatorship is filed in one county and the ward subsequently moves to a different county, technically the second county should take the conservatorship. Most courts are flexible on this (700.5403).
- Developmentally Disabled Persons - Venue is proper where the ward resides, not where the guardian is a resident.

PRACTICE TIPS:

- Filing By Mail, Special Forms - Past practice as well as new budgetary constraints may start to limit the types of documents courts can accept by mail. Remember to check your county to confirm that they will accept all mailed documents for filing. The same is true with respect to special forms. It is always appropriate to check with your county prior to filing something new to make sure there are not any local forms or special forms required for your filing. Oakland County does require some special local forms to be filed and those can be accessed through our Web site.
- Fiduciary Addresses - If your client/fiduciary has changed address, please remember to promptly notify us of this change. Minimally, include the new address on any future filings and advise the court when presenting it that this new address is in effect. The current address of fiduciaries is essential to the court for processing purposes.
- Trust Filing Fees - If you are filing a petition regarding a trust and are also requesting that the trust be registered, the filing fee is not \$150, but is \$150 plus the registration fee of \$25.

- Interested Persons - Remember that the Social Security Administration and Veterans Administration are not interested persons in a conservatorship after the appointment of a guardian. They are only interested persons for purposes of initial appointment and do not need to be served for subsequent petitions, including petitions to terminate, unless they have filed an *Appearance* or *Demand for Notice* in the specific case.
- Petition by Parent of a Minor - The court rule says that any parent with custody may petition on behalf of the minor in a decedent's estate. They do not need to be a conservator to petition. However, a fiduciary can always petition and may file either formal or informal. A parent who is not also fiduciary can only file an application (MCR 5.302(D)).
- Stamped Signatures - Courts may question the original signatures on documents. Given the high quality of copiers

and printers, it is often difficult to determine if the signature is original.

- Stop Payments - Parties always have to pay the filing fee, regardless of the outcome of the cases. We have received requests from clients and attorneys who feel they have not "had their day in court" or who are displeased with the case result. For your information, we will advise you that filing fees are not refundable.

- Satisfaction of Claims - The court will not require a *Satisfaction of Claims* unless it is a supervised estate and you are requesting an *Order of Discharge*. If the estate has been closed, some courts will not accept the filing of a *Satisfaction of Claims* and may instruct the claimant to send their *Satisfaction of Claims* directly to the personal representative. Stay tuned!



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