PROBATE COURT

NINETEENTH JUDICIAL CIRCUIT

LAKE COUNTY, ILLINOIS

PREPARED BY

THE JUDGES OF THE

NINETEENTH JUDICIAL CIRCUIT

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FOREWORD

Criminal Court, Divorce Court and Juvenile Court are easily recognized through newspapers, radio and television. However, one does not hear or read about Probate Court unless a friend or family member has died or become disabled.

This booklet was designed to let you, the reader, become more informed about the Probate Court in Lake County, Illinois.

The major functions of Probate Court include the supervision of estates for those who have died, become disabled, and related affairs of a minor. Due to the complexity of laws and procedures in probate, you are encouraged to seek the advice of a lawyer. The Lake County Bar Association, Lawyer Referral Service can be reached at 847-244-3140.

This guide will inform you about the types of cases heard in Probate Court as well as familiarize you with some of the legal terminology often associated with probate cases.

Chief Judge

CONTENTS

I. INTRODUCTION

The purpose of this handbook is to provide an introduction to and a general outline of the Lake County Probate Court for the lay person. Probate law can be specialized and difficult to understand for those without legal training. It is always advisable that an attorney be consulted.

The word "**probate**" is not part of our common vocabulary. It is derived from the Latin words meaning "a thing that is approved" and "to test and find good." In Illinois, a **Probate Court** is a particular court which has power over the administration of the estates of deceased persons, as well as living persons whom the law recognizes as being unable to handle their own affairs.

Generally, three types of matters are handled in Probate Court:

1. The administration of the property of a deceased person ("**decedent's estate**");
2. The administration of personal and financial affairs for any individual suffering from extreme mental and/or physical disabilities ("**disabled's estate**"); and
3. The appointment of a guardian for purposes of education/care and the supervision of the financial affairs of someone under eighteen years of age ("**minor's estate**").

The particular law that applies in any of these cases is written in the form of statutes, which are drafted by the State Legislature and signed into law by the Governor. The complete text of the Probate Act may be found in the Illinois Revised Statutes, Ch. 755. These statutes are applied by courts along with the Appellate decisions which provide interpretations of the statutes to the case before the Judge.

Any citizen can find himself or herself involved in a Probate Court proceeding, either through the death of a relative or the disability of a friend or other family member. The Probate Court in Lake County is a particularly busy one, with nearly 3,000 cases pending at any one time.

II. DECEDENT'S ESTATE

It is often necessary that the property and financial affairs of a deceased person be supervised through a court process. This may be because the deceased person, the "decedent," planned for that to occur, or it may be the result of a failure to use certain legal devices to avoid the necessity of probate.

If one dies with a written and properly executed Will in existence, his estate is known as a "**testate**" estate. This means that there exists a clear statement by the individual concerning how he or she wishes property and financial affairs to pass or be handled. This statement of the decedent's intent is commonly known as that person's "**Will**." Under Illinois law, it is required that any person who possesses the Will of a decedent file it with the Clerk of the Circuit Court of the county in which that individual resided within thirty days after the death of the testator is known to him. If a person intentionally hides the Will for thirty days or longer after learning of the decedent's death, or if he alters or destroys the Will, he is subject to criminal prosecution on a charge of theft.

Following the filing of the Will, any person may file a written petition asking the Court to admit the Will to probate, to name an "**executor**" of the estate, to determine the heirs of the decedent, and to formally open the probate estate. A person who is named in a Will as an executor is required to file that petition within thirty days of learning of such nomination. Failure to do so may result in forfeiture to that appointment.

An "**executor**" is the individual who is listed in the Will as the person whom the decedent wishes to administer property and debts to assure that the Will, or intent, of the decedent is fulfilled. Generally, this means that the executor is required to gather all the necessary assets, documents, and bills to assure that all debts are paid and that the remaining properties go to those person specifically listed in the decedent's Will.

The Court must first determine the heirs of the decedent. The executor is then required to notify the heirs in writing of the admission of the will and the opening of the estate. The executor immediately must publish a written notice in a newspaper within the county of the Probate Court to notify potential creditors of the existence of the estate and the necessity for their filing of written claims against the estate. The law in Illinois provides such creditors six months to file those claims.

The executor is required to protect or preserve the assets, to pay any valid claims, and eventually to distribute the remainder of the estate to those individuals specifically listed in the Will. Because this process can be time-consuming, the law generally requires that the executor file written accounts with the court on an annual basis. The purpose of these accounts is to advise the Court, and the heirs, of the particular financial receipts and disbursements while the estate is being administered.

Once the claims are paid or determined to be non-existent, applicable taxes are paid, and any specific gifts under the Will ("**legacies**") are delivered, the balance of the decedent's property can be delivered according to the individual's intent. Those who receive the property can then be sure that there are no other competing claims against the claim.

Certain individuals, known as "interested persons," have the right to contest the validity of the Will. An "**interested person**' is someone with a direct financial interest which is affected by the probate of the Will. Usually, that person is an heir, or beneficiary under a prior Will, who receives nothing or a smaller distribution under the current Will.

The purpose of filing a "**Will Contest**" is to determine whether the Will really expresses the intent of the decedent. Under the law, a petition to contest the Will must be filed within six months of the date when the Court admits the Will to probate. The parties are entitled to have the case heard by a jury, rather than solely by a judge.

The issues in a Will Contest generally involve the mental competence of the decedent to execute the Will, whether the decedent was forced to execute the Will under duress or the undue influence of others, or whether the Will was executed and witnessed as the law requires. If the party who files the contest prevails, the Will is set aside. The estate is then probated according to the terms of the next most recently executed Will or, if no such Will exists, according to the statutory procedures which are described in the following paragraphs for intestate estates.

If one dies without a Will, he or she dies "**intestate**." Since there is no Will to file, there is no individual specifically identified as an executor. An interested person, usually a family member, files a petition with the Probate Court asking that an "**administrator**' be appointed, that the Court determine the heirs, and that an estate be opened. Notice of the presentation of that petition and the hearing must be given in writing to close relatives. The law dictates that family members have a preference in being named the administrator. Once an administrator is appointed, and the heirship is determined, the estate proceeds in a manner quite similar to that of one who dies with a Will. The administrator gathers the property and assets, determines the debts, publishes a notice for claims, and handles all aspects of property in the estate.

There being no written document directing how the property of the decedent is to be divided, the law provides specific rules concerning which relatives get what proportion of the estate. Generally, these rules result in the closest family members receiving the greater portion of one's property. Unlike the situation of one dying with a Will, in which the individual determines specifically who receives what property, in an intestate estate the distribution of property is determined by a statute.

In both testate and intestate proceedings, the law provides that surviving spouses and dependent children be provided with immediate awards of money so they can support themselves during the several months after an individual's

death. These awards are independent of any specific provision that may appear in a Will.

The advantages of the probate of an estate are that the claims of creditors can be determined with finality and the rights of relatives and others to property of the decedent can be recognized and fulfilled. Disadvantages include the costs of hiring an attorney, court filing fees, and newspaper publication of claims for creditors. In addition, a typical probate estate is open for more than a year before all assets are distributed.

III. A DISABLED'S ESTATE

For those of us who have had relatives or acquaintances suffering from serious mental or physical problems, the law provides the possibility for the appointment of a **guardian** to handle the personal and financial affairs of that individual. A "**disabled**' person is an individual eighteen years of age or older not able to fully manage his personal or financial affairs due to a serious mental and/or physical condition. In addition, the law provides that a person is disabled if he or she creates serious financial problems for the family as a result of the excessive use of drugs or alcohol. The Petitioner must indicate in the Petition for Appointment of Guardian of a Disabled Person whether they are seeking appointment as a Guardian of the Person (medical and residential decisions) or as a Guardian of the Estate (financial matters) or both. It is not necessary to be appointed as a Guardian of the Estate to manage social security benefits only.

A formal written petition must be filed asking that a guardian be appointed stating the specific reasons in support of the request. The individual who is said to be disabled must be served personally with a summons and a copy of the petition. In addition, written notice of the filing of the petition and the hearing date must be provided to family members. Generally, a written report of a qualified professional describing the specific disability is filed together with the petition. This report must be signed by at least one licensed physician. If such a report is not filed with the petition, the Court is required to order that an evaluation be made and such a report filed.

Once the petition is filed, the Court generally appoints a "**guardian ad litem**" to visit the person who is alleged to be disabled, to explain to that person the nature of the proceeding and his or her rights under the law, and to report back to the Court. A guardian ad litem is typically a local attorney with experience in the area of disabled estates. The guardian ad litem reports to the Court his or her opinion of the validity of the petition, the interview with the proposed disabled person, and the position of that person concerning the appointment of a guardian. The guardian ad litem will charge a fee to conduct the interviews, prepare a report and appear in court. These fees are typically

paid from the assets of the disabled person's estate, or if there are no assets, from the Petitioner.

Of course, the individual who is said to be disabled has the right to hire an attorney. The Court may also appoint an attorney if it thinks it is necessary. If the guardian ad litem takes the position that a guardian should be appointed and the individual disagrees, the Court is required to appoint a separate attorney to represent the interests of the individual.

The individual has the right to a trial with a jury and the right to present any and all evidence, including medical experts, on his or her behalf. If the Court finds after a trial that a disability exists, the Court may appoint a guardian for the purpose of making personal decision, for the purpose of managing the financial affairs, or both. In addition, the powers and authority of the guardian can be limited in any manner that the Court feels appropriate. The underlying goal of the statute is to maintain the independence of the individual, while assuring that his or her personal affairs receive adequate attention.

Once an order of disability and the appointment of a guardian is made, the disabled person may at any time ask the Court to reconsider or to set aside its ruling. If the Court receives any such request, even in the form of a very informal note, the Court is required to hold a hearing to determine whether or not the disabled person is still disabled, and whether the order previously entered should be changed in any manner. Further, a Guardian of the estate must post a surety bond with the Court to guarantee that the property and funds of the disabled person will be properly supervised and spent only for the disabled person's benefit.

The Guardian of the Person must file a written **Annual Report** concerning the physical status of the disabled person and the Guardian of the Estate must file a precise **Accounting** of the disabled person's income, assets and disbursements during the accounting period. These filings must be done annually unless the Court orders otherwise.

In the event that there are no appropriate family members or close acquaintances available to act as a guardian, there are public guardians and state guardians available who have experience in handling the personal and financial affairs of the disabled. Those persons must also report to the Court annually.

IV. MINOR'S ESTATE

The law also considers that a minor, defined as any person under the age of eighteen years, is subject to the appointment of a guardian of the person or for the estate. Petitions for the guardianship of a minor usually arise in the following circumstances:

1. The minor's parents are deceased, or, if living, are unable or unwilling to care for the child;
2. The minor's parents wish the child to attend a school in an area where they do not reside; or
3. The minor is to receive a sum of money or other property, usually in the form of an award arising out of a lawsuit or through an inheritance.

When the minor's parents are deceased or are otherwise unwilling or unable to act as custodians, a petition may be brought by an adult seeking to be named guardian of the person. The adult must be: at least eighteen years old; a United States resident; of sound mind and not under legal disability; not convicted of a felony; and capable of providing an active and suitable program of guardianship.

A copy of the petition and a notice of hearing on it must be mailed in advance to the surviving parents and served upon the minor. The process requires at least two (2) court appearances. Petitioners seeking to be appointed Guardian of the Person of a Minor can receive assistance with the completion of the court forms on Friday mornings at the **Probate Help Desk** which is located outside of the Probate courtroom. The proposed Guardian will also be required to consent to a criminal and DCFS background check prior to final approval.

If the Court concludes that the petitioning adult is a fit and proper person to be guardian of the minor, an Order will be entered appointing the petitioning party as guardian of the person. As guardian, that individual generally has the custody of the child and is required under the law to provide for the child's upbringing, including nurture and education. These same responsibilities are applicable to a guardian who is appointed when the request is based upon the desire of the minor and the parents for a residence in a particular school district. It is important to note that an order of appointment of guardian of a minor's person does not terminate the ongoing rights of the natural parents concerning that child.

If a petition is brought for the appointment of a guardian of the estate of a minor, the purpose is generally to allow an adult to receive, invest and spend funds or property that are awarded to the minor. This is necessary because the law does not recognize a minor as one who is able to handle his or her own financial affairs without such supervision. Generally, the guardian of a minor's estate is one or both of the parents. In any case, a guardian of the estate of a minor is required to post a bond to guarantee that the property and funds of the minor will be properly supervised and spent only for the minor's benefit. A guardian of the estate may avoid paying a bond premium by depositing the estate funds in an account to be withdrawn by court order only. A Certificate of Depository form must be filed with the Court in that event.

The guardianship of a minor, whether it be that of the person or the estate, ends when the minor reaches eighteen years of age, provided that proper application is made to the Court.

V. Conclusion

This outline of typical matters handled in a Probate Court is not intended to be all inclusive. The types of cases that have been described do represent the great majority of matters heard, amounting to more than 90% of the cases placed on the Probate Court's docket on any given day. Matters heard less frequently include petitions authorizing emergency surgery and requests that terminally ill patients be removed from life support devices.

The benefits of the Probate Court's requirements and supervision are to assure that the intent of a deceased person concerning the distribution of his or her estate is carried out in an orderly manner and that the personal and property rights of living persons that the law finds to be disabled are protected from waste, abuse or neglect. The rules under which the proceedings are handled are often voluminous and specific.

Again, it is always advisable that anyone with a potential case to be handled by the Probate Court consult an attorney to ensure that the matter is handled both legally and efficiently.

NOTES:

Court Date: _____

Time: _____

Room: _____

Case Number: _____

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Additional Copies of this pamphlet are available on the Nineteenth Judicial Circuit website: www.19thcircuitcourt.state.il.us.