

# Probate In Common Form

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*Spring is finally here!*



*...and not a moment  
too soon!*

## PAPER WORK REDUCTION

By Alonna Warns

### Unnecessary Documents

In order to reduce the amount of paper that the staff has to process, the court is looking at the documents that are filed to determine whether or not the filing is necessary. One of the documents that appears on a frequent basis in informal filings is a bond waiver.

#### Bond Waivers—Informal

**Minn. Stat. § 524.3-603**

“No bond is required of a personal representative appointed in informal proceedings, except “. . .

- Informal appointment of a special administrator (not done in Hennepin County—need to file as a formal proceeding)
- Testator makes an express re-

quirement of a bond – this case will usually be denied by the Registrar and referred to the court to be filed as a formal estate case.

- Demand for bond under **Minn. Stat. §524.3-605**
- The demand for bond, in 99.9% of cases comes from the Hennepin County Department of Human Services, and bond waivers will not eliminate the bond in those cases.

**Conclusion- Do not file bond waivers in informal probates. Bond waivers presented to the Registrar will be given back to the attorney.**

#### Nominations and Renunciations – Informal Probate

The Registrars can very easily tell by the nominations and renunciations accompanying any particular filing whether or not the attorney

# PAPER WORK REDUCTION

understands **Minn. Stat. § 524.3-203.**; unnecessary documents will not be accepted for filing.

by the testator in the will/codicil?

- Why do we have nominations from the siblings?

Ask the questions:

## Intestate Example

An example we see frequently is as follows:

## Testate Example

- Does the person nominating have the power to nominate?
- Where is the power to nominate derived from?
- Is the nominator an heir? (Intestate files)
- Is the nominator a devisee?
- Has the nominator been given the power to nominate

Child dies, survived by parents and siblings. No Will.

Attorney presents nominations from parents and siblings for the appointment of one of the siblings as decedent's personal representative.

- Who has priority for appointment? **Heirs**
- Who are the heirs? **Parents**

Decedent dies with a will nominating Mary, a sister, as personal representative.

Mary has no power to nominate an alternate or successor. No alternate PR is named in the will.

Mary renounces her right to appointment as personal representative.

## Notices of Disallowance

**In an insolvent estate do not send out Notices of Disallowance just because there are not enough assets to pay all the debts. The proper use of a notice of disallowance is:**

- when the claim filed or the bill sent is for another person, or**
- there are charges in excess of what is deemed reasonable, or**
- the bill is not a legitimate charge**

## PAPERWORK REDUCTION

No spouse, no issue, no parents.

Devises are nieces and nephews (7). Heirs are siblings.

Mary renounces right to appointment and nominates decedent's brother, Joseph.

Attorney presents application signed by Joseph accompanied by renunciation and nomination from Mary.

Registrar will not accept. Why?

**Problem** – Mary is an heir and nominated personal representative. Once she renounces her right to appointment she has no other interest. She was not given the right to nominate by the testator.

Who has the right to be personal representative?

Priority statute says all devisees.

Devises in this case are the seven (7) nieces and

nephews. The family only wants one of the devisees to act as personal representative.

In an informal probate, file nominations from six (6) of the devisee (nieces/nephews) all naming the agreed upon 7th devisee (niece or nephew). No nomination from the nominated PR is needed.

No nominations from the siblings.

**Conclusion – Do not file nominations / renunciations from persons who have no priority for appointment or right to nominate. Any excess nominations / renunciations will be returned to the attorney.**

**Certificates of Representation** – Hennepin County does not require this document to be filed. This certificate is filed in Ramsey but will not be accepted here.

**Conclusion – Certificates of Representation will be**

**returned to the attorney.**



### Confidential Information Forms – Informal Probate

The most frequent case of confidential information forms being filed in informal probates occurs when the social security number is included in the application.

Effective August 1, 2006 **Minn. Stat. § 524.3-301** Informal Probate or Appointment Proceedings; Application; Contents. was changed to eliminate the requirement of the decedent's social security number.

Since the statute no longer requires the filing of this number do not put the social security number on the application; and do not file a confidential information sheet for the social security number.

**PAPERWORK REDUCTION**

**NOTICE INFORMAL PROBATE**

**Conclusion – When information is not required by the court or statute do not file a confidential information sheet with this information. The confidential information sheet will be returned to the attorney.**

**Confidentiality of death certificates – Informal Probates**

Do not file a confidential information sheet for a death certificate. The court makes the death certificate a confidential document on its own motion.

Take a look at the aforementioned items, you will find that preparation of the documents identified above when they are not necessary takes time, money and delays your presentation of the informal application to the Registrar. Assisting the court in its effort to reduce unnecessary filings has these additional benefits for your office and your client. We appreciate your help.

**Notice Informal Probate**

**Minn. Stat. § 524.3-310** states the moving party must give notice as described in **Minn. Stat. §524.1-401** of the intent to seek appointment in the informal process to:

- a demandant pursuant to **Minn. Stat. §524.3-204**, and
- to any person having a prior or equal right to appointment not waived in writing and filed with the court

The moving party in the informal probate process is the applicant. The applicant can have their attorney handle the actual mailing process.

Notice of the appointment of the personal representative is given under the direction of the court administrator by:

- publication, once a week for two consecutive weeks in a legal newspaper in the county where the application is filed, and
- by mailing a copy of the

Registrar’s notice by ordinary first class mail to:

- “. . .all interested persons, **other than creditors.**” . . (emphasis added)
- Foreign consul registered with the Minnesota Secretary of State if decedent was born in a foreign country or left heirs or devisees in a foreign country.

The notice given needs to be in a form prescribed by court rule stating the following:

- . . .”any heir, devisee or other interested person may be entitled to appointment as personal representative or may object to the appointment of the personal representative. . .
- Personal representative will be given the powers to fully administer the estate, including after 30 days from the issuance of letters the power to handle the decedent’s real estate, unless

## NOTICE INFORMAL PROBATE

objections are filed with the court and the court issues an order directing otherwise.

Objections need to be filed pursuant to [Minn. Stat. § 524.3-607](#).

[Minn. Stat. § 524.3-306](#) states that upon the issuance of a written statement by the Registrar under [Minn. Stat. § 524.3-302](#) notice of the fact that an informal probate has been commenced **shall be given** by:

- Publication
- Mailed notice by ordinary first class mail



## HINTS

Helpful hints to expedite issuance of letters:

1. Attach a copy of the notice of informal probate to your affidavit of mailing.
2. Make sure the notary acknowledgment is complete.
3. Check that the file number on the notice is the same as on the affidavit.
4. The affidavit of mailing spousal notice needs to have copies of the statutes attached.
5. Be sure the personal representative is listed as one of the interested parties.
6. Take deceased persons names off the affidavit of mailing.
7. Each affidavit must have its own interested party list.
8. Make a list of persons mailed to in the body of the affidavit or on an attachment.

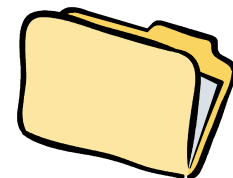
## REGISTRAR'S AUTHORITY

### DECLINATION

The Registrar can deny an application for informal probate for failure to meet the requirements of [Minn. Stat. § 524.3-303](#) or for any other reason. ([Minn. Stat. §§ 524.3-305 and 524.3-309](#))

The decision of the Registrar to decline an application is not appealable.

See Probate In Common Form Volume 1, Issue 6 for a list of case scenarios not acceptable for informal probate. (Dec 2004– Jan 2005)



At the time of the declination, the Registrar will open a file with the proposed application and the order declining the informal probate. A copy of the order will be e-mailed to the attorney.

### REGISTRAR LIMITATIONS

### OMITTED CHILD

#### 524.2-302(c)

**The Registrar cannot resolve conflicts or issue orders resolving conflicts relating to an estate administration. Rule 415 (a) (4) Trust and Probate Court Rules** The Registrar cannot approve any agreement to distribute property contrary to the will or intestacy.

**The Registrar cannot issue ex parte interim orders in unsupervised administrations. Rule 405 Trust and Probate Court Rules** The Registrar cannot approve the sale of real estate to the informally appointed personal representative.

**The determinations made by the Registrar do not bring the estate, personal representative or any interested person under the “supervisory authority of the court.” Rule 405 Trust and Probate Court Rules**

**The Registrar has no continuing authority over the estate once the informal probate has commenced. Rule 415(b) Trust and Probate Court Rules** This

means that the Registrar cannot require the filing of an Inventory, Final Account, Receipts, etc.

**There is no statutory authority that permits the Registrar to draw back letters once they have issued.** The Registrar scrutinizes each application as well as the qualification of the personal representative (s) before issuing letters.

**The Registrar cannot give advice that would constitute the practice of law. Minn. Stat. § 524.1-307**

**The Registrar cannot appoint a personal representative if there is another PR appointed in the same or another county of MN who has not resigned as provided in Minn. Stat. § 524.3-610(c)**

Current practice in Hennepin County, does not provide for the Registrar to appoint a special administrator even though Minnesota Statutes provide for an informally appointed special administrator.

Minn. Stat. 524.2-302(c) child believed to be dead

Case scenario – Client comes in with decedent/testator’s will. Will provides for distribution to decedent’s children, specifically named, child A is not named; or included in devises; or specifically omitted in the will.

First thing you want to do is to look at the date of the will and the date of birth of child A.

Was child A born or adopted at the time of the execution of the will?

The aforementioned statute in sections (a) and (b) pertain to children born after or adopted after the execution of the will.

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This article will focus on the child that is very much alive when the will is executed but the will is “silent” with respect to any devise to that child. This brings us to a re-

## OMITTED CHILD

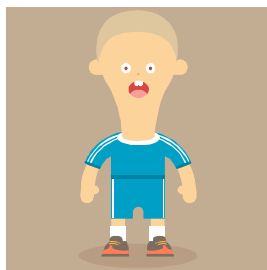
view of section (c).

Inquiries need to be made as to the circumstances of the parent/child relationship at the time of the execution of the will.

Did the decedent/testator believe that child A was dead?

Maybe A is missing in a war, child A left home and failed to communicate in any way such that the decedent/testator believed child A was no longer living.

To everyone's surprise child A arrives for the funeral of decedent/testator.



**Question – What share if any will child A take from decedent's estate?**

**Minn. Stat. § 524.2-302(c) says if the reason for testator leaving child A out of**

**the will was based entirely on the belief that child was dead, then child A receives the share of the estate that he/she would have been entitled to if decedent had died intestate.**

**UNLESS –Here is the exception to child A taking their intestate share.**

Read the will and see who is receiving decedent's estate. Is the other parent of child A surviving the decedent; and is the parent entitled to all or most of decedent's estate?

Answer: Yes

**Question – What share if any will child A take under the exception?**

**Answer: nothing**

However, if the other parent is **not** taking under decedent/testator's will, let's say decedent provided for his spouse, who was child A's parent, but they divorced subsequent to the execution of the will. The divorced spouse would not be entitled to take and therefore,

omitted child A takes his intestate share per section (c).

**Conclusion** – Child A would take his/her intestate share unless the other parent of child A :

- **Is devised all or substantially all of the decedent's estate, and**
- **Survives, and**
- **Is entitled to take**

**Minn. Stat. §524.2-302(b)** Section (c) will not apply if the will shows an intentional omission or if it can be shown by testator's statements or could be reasonably inferred from evidence that the omitted child was not to receive benefits from decedent's estate.

HENNEPIN COUNTY DISTRICT COURT  
FOURTH JUDICIAL DISTRICT



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<http://www.courts.state.mn.us/districts/fourth/>

TO:

### Distributions in Supervised Administrations

**Minn. Stat. § 524.3-504** This statute speaks to the powers of a personal representative in a formal supervised administration. The personal representative has all the powers granted a personal representative under Chapter 524, unless the letters are restricted, but . . . **shall not exercise the power to make any distributions of the estate without a prior order of the court.**”

Hennepin County’s practice is to permit the payment of statutory allowances and specific bequests. The final account submitted for court approval cannot show advance distributions of residue without an interim order. When the court receives a final account showing advance distributions the personal representative will be asked to prepare an amended final account to show the assets on hand and those assets will then be decreed to the appropriate persons.

