



How to Probate an Estate (2022FTINE-1C)

**Thursday, April 28, 2022
10:15 a.m. to 11:15 a.m.**

**St. Clements Castle
Portland, CT
And Virtual**

CT Bar Institute, Inc.

CT: 1.0 CLE Credits (General)
NY: 1.0 CLE Credits (AOP)

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LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer's conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

Faculty Biography

Paul J. Knierim

Paul Knierim, a retired probate judge, Czepiga Daly Pope & Perri, LLC, brings unparalleled problem-solving strategies to bear on even the most complex of issues. Paul handles probate and elder law cases in both Probate Court and Superior Court. He also serves as a mediator and arbitrator to help families to resolve disputes outside of court.

Paul's experience includes more than two decades of service in the judiciary. After 10 years as judge of the Simsbury Probate Court, the Chief Justice appointed Paul to lead the state's Probate Courts as Probate Court Administrator, a role he served from 2008 to 2019.

Paul's experience as a lawyer and judge is enormously valuable to his clients, but he adds even more value with his ability to bring a sense of calm to tense situations and his skill in facilitating creative solutions. A problem solver with deep knowledge of probate law and keen insight into family dynamics, Paul provides objective and practical guidance to help families resolve their conflicts quickly, cost effectively, and with as little drama as possible.

During his 11 years as head of the Probate Court system, Paul was responsible for policy leadership and operation of all 54 of the state's Probate Courts. Among his many accomplishments, he

- Resolved decades-long debate over court reform by building consensus among judges, executive branch officials, legislators and municipal leaders
- Enacted stronger judicial ethics codes, expanded continuing education for judges and court staff, won passage of legislation to modernize probate law and overhauled the rules of procedure that govern probate cases
- Established better support and oversight for conservators through free online training, legally-binding standards of practice and random audits
- Launched numerous initiatives to strengthen the professionalism of the Probate Courts, streamline court procedures and improve the customer experience

Prior to his role as Probate Court Administrator:

- He served as Simsbury probate judge for 10 years
- He practiced law in the areas of estate planning, probate, and family business at two Greater Hartford firms
- He served 3 terms as State Representative in the General Assembly, where he was assistant minority leader and ranking member of the Education Committee

Paul and his husband, Greg, have been together 26 years and have 10 nieces and nephews and 4 great nieces and nephews. Outside of work, they enjoy time at the Connecticut shoreline where their favorite thing to do is boating . . . be it by sail, power, or paddle. Paul has worked on classic boat restorations and claims to be a pretty good woodworker. He is an avid runner and likes to hike Connecticut trails with Greg and their rescue dog.

Agenda

How to Probate an Estate

Federal Tax Institute of New England

April 28, 2022

St. Clements Castle, Portland, CT

10:15 a.m. to 11:15 a.m.

Paul J. Knierim, Czepiga Daly Pope & Perri LLC, Simsbury

10:15 a.m. - 10:25 a.m.: Terminology and types of decedents' estates

10:25 a.m. - 10:35 a.m.: Tax purposes only estates and the small estates procedure

10:35 a.m. - 11:05 a.m.: Steps to administer a full estate

11:05 a.m. - 11:15 a.m.: Special situations and practice tips

Federal Tax Institute of New England

April 28, 2022

Estate Administration Basics

Paul J. Knierim



CZEPIGA DALY POPE & PERRI

Estate Planning | Elder Law | Special Needs | Litigation | Probate

Why Do We Have Probate?

- Validate the Last Will and Testament
- Appoint an executor or administrator
- Supervise the fiduciary
- Protect the interests of
 - Creditors
 - Tax collectors
 - Heirs and beneficiaries
- Give stakeholders a forum for questions/objections
- Retitle assets

Terminology

- Testate and intestate
- Executor and administrator
- Beneficiary and heir
- Claim and expense
- Real property and personal property
 - Tangible and intangible personal property
- Bequest and devise
- Domicile and residency

Probate Court Procedures

- eFiling is mandatory for attorneys
- Forms are available at ctprobate.gov for most procedures
- Streamline notice procedure obviates most hearings
- Probate Court Rules of Procedure
 - Rule 30: Decedents' Estates
 - Rule 31: Estate Tax Returns
 - Rules 36-38 Accounting

Probate and Non-Probate Assets

- A ***probate asset*** is a solely-owned asset that has no built-in mechanism to be transferred to a successor owner
- Probate assets need to be ***“probated”*** = legally taken through a formalized Probate Court process to transfer title to the heirs or beneficiaries

Non-Probate Assets

EXAMPLES:

- Joint tenants with rights of survivorship
(vs. tenants in common)
- Beneficiary designation
- Payable on death (POD)
- Transfer on death (TOD)
- Assets held in trust



Types of Probate

Full Estate	Small Estate	Tax Purposes Only
<ul style="list-style-type: none">• Required when:<ul style="list-style-type: none">• > \$40K in probate assets; or• Any solely-owned real estate; or• The estate needs a fiduciary	<ul style="list-style-type: none">• No fiduciary is appointed• Probate Court orders distribution of assets to pay or reimburse funeral, expenses and claims• Court may order distribution to heirs or beneficiaries if assets exceed liabilities	<ul style="list-style-type: none">• If no probate assets, then no estate settlement is needed• But, an estate tax return is required for every decedent• Probate Court will release inchoate estate tax and probate fee liens on real property

Original Will

Affidavit for Filing Will

- Custodian of original Last Will and Testament must file with Probate Court or deliver to the nominated executor within 30 days of death
- Required even if probate is not needed
- Use PC-211 Affidavit for Filing Will Not for Probate

Tax Purposes Only

- A Connecticut estate tax return required for ALL decedents
- Tax return is the ONLY filing if there are no probate assets
- Facilitates DRS collection of estate tax, when applicable
- Enables Probate Court to collect statutory probate fee
- After payment of probate fee and estate tax, Probate Court issues release of liens on real property
- Record the release of lien on the land records

Estate Tax Return

CT-706 NT or CT-706/709

- As of 2022, CT has a \$9.1M exemption from estate tax
- Use CT-706 NT (“no tax”) if taxable estate is less than exemption
 - File with Probate Court (and not DRS)
- Use CT-706/709 if taxable estate is over exemption
 - File with DRS and send copy to Probate Court
- Gross estate includes all assets (probate and non-probate)
- Due 6 months from date of death
- portal.ct.gov/DRS/DRS-Forms/Forms/Gift-and-Estate-Tax-Forms

Small Estate Procedure

Affidavit in Lieu of Administration

- Procedure to retitle probate assets without full administration
- Petitioner files PC-212 Affidavit in Lieu of Administration and PC-212CI
 - Lists probate assets, funeral, administration expenses and claims
 - Requests reimbursement/payment/liquidation
- If assets exceed liabilities, petitioner files PC-212A Request for Order of Distribution
 - Identifies heirs and beneficiaries
 - If there is a Will, all heirs or beneficiaries must sign off

Small Estate Procedure

Affidavit in Lieu of Administration

- Tips:
 - Read the instructions on the form
 - Attach paid funeral home receipt
 - Prepare client for 30 day waiting period
- Limitations:
 - No fiduciary is appointed
 - Cannot be used if there is real property
 - Banks may balk

Full Estates

1. Petition for Probate

- Petitioner files PC-200 in Probate Court where decedent was domiciled
 - If intestate, petition seeks appointment of administrator
 - If testate, petition seeks admission of Will/Codicils and appointment of executor
- Required attachments:
 - Death certificate
 - Last Will and Testament
 - eFile and mail or deliver the attachments
- Petitioner must send copies to heirs and beneficiaries
- Other forms to file:
 - PC-200CI
 - PC-183 Appearance of Attorney
 - PC-482 Appointment of Judge as Agent for Service (if applicable)

Full Estates

1. Petition for Probate

- Tips:
 - Read the instructions on the form
 - Be thorough in completing section on heirs
 - Provide a family tree when there are no close relatives
 - Seek waivers of notice from the heirs
 - For intestate estates, is a bond waiver possible? Use PC-280
- Probate Court issues:
 - Decree
 - Fiduciary Probate Certificates
 - Notice for land records

Full Estates

2. Marshal the Assets

- Obtain EIN from the IRS
- Open an estate checking account
- Close decedent's bank accounts and deposit the proceeds into the estate account
- Secure real and tangible property
- Get control of the mail
- Determine if the estate has claims against third parties
- Develop a plan to liquidate and/or invest assets

Full Estates

3. File Inventory

- File PC- 2407 Inventory (newly updated form)
- Due 2 months from appointment
- List ONLY probate assets
 - Do not include out-of-state real property
- Use fair market value as of date of death
- Fiduciary must send a copy to each heir or beneficiary

Full Estates

4. Review and Pay Expenses

- Funeral and burial expenses
- Administration expenses
 - Attorney
 - Accountant
 - Investment advisor
 - Insurance, storage, shipping
 - Maintenance and utilities for real property
 - Fiduciary fee

Full Estates

5. File Returns and Pay Estate Taxes

- File CT-706 NT or CT-706/709
 - Due 6 months from date of death
- File federal 706 if gross estate tax exceeds \$12.06M (2022 decedents)
 - Due 9 months from date of death
- Estate tax returns are confidential in Probate Court records
- File release of lien on land records

Full Estates

6. File Returns and Pay Income Taxes

- File returns and pay income taxes (or collect refunds)
 - Forms 1040 and CT-1040 individual income tax returns for the decedent for income received through date of death
 - Forms 1041 and CT-1041 fiduciary income tax returns for income received by the estate

Full Estates

7. Review and Pay Claims

- Executor/Administrator has fiduciary duty to creditors
- Allow or reject claims
 - Creditors have option of Probate or Superior Court for rejected claims
- File PC-237 Return of Claims
- Claims period runs 150 days from appointment
 - Provides immunity for fiduciary for claims not presented within claims period and not known to the fiduciary
 - Creditors may still have recourse against estate and beneficiaries

Full Estates

8. File Financial Report

- A financial report (or “final account”) summarizes how the fiduciary managed the estate and tells the heirs or beneficiaries how the assets will be distributed
 - Include a reserve if there are anticipated expenses
- Court approval provides the fiduciary with immunity for items disclosed in the report
- Use PC-442 Decedent Estate Financial Report
- Due 12 months from date of appointment
 - If administration not done in 12 months, file PC-286 Status Update Report
- Fiduciary must send a copy to each heir or beneficiary

Full Estates

9. Distribute the Assets

- Upon approval of the financial report, the fiduciary distributes the assets to the heirs and beneficiaries in accordance with the proposed distribution
- If there is real property, the Court will issue a certificate of devise, which the fiduciary records on the land records
- Pay any remaining administration expenses

Full Estates

10. File Affidavit of Closing

- If the financial report included a proposed distribution and/or reserve, the fiduciary must file PC-213 Affidavit of Closing of Estate
 - Confirms that distribution was made
 - Shows all receipts and disbursements from the reserve
- Fiduciary must send a copy to each heir or beneficiary

Special Situations

- Selling real property
- Ancillary administration for real property
- Settling claims against or on behalf of the estate
- Insolvency
- Spousal and family allowances

Representing Fiduciaries

Practice Tips

- Always have an engagement letter to:
 - Specify that the fiduciary is the client
 - Describe the scope of your representation
 - Clarify the division of labor between attorney and client
 - Identify responsibilities that are outside your scope
 - Explain how your fees will be calculated

Representing Fiduciaries

Practice Tips

- Educate the fiduciary about fiduciary core principles and duties:
 - Segregate estate and personal assets
 - Maintain records as required by Rule 36.13
 - Develop a plan to determine whether assets should be liquidated, reinvested and/or distributed in-kind
 - Obtain professional investment advice
 - Communicate with the beneficiaries to keep them abreast of the progress of the estate
 - Consider seeking advance Probate Court approval for unusual or disputed issues
 - Keep a journal of time and tasks

Resources

- PC Forms – Read the instructions!
- Probate Court Rules of Procedure
- ctprobate.gov
- User guides
- Court clerks
- Treatises



CZEPIGA DALY POPE & PERRI

Estate Planning | Elder Law | Special Needs | Litigation | Probate

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DISCLAIMER: This outline is a resource of general information, which is intended, but not promised or guaranteed, to be correct, complete and up-to-date. However, this outline is not intended to be a source of advertising, solicitation, or legal advice; thus the reader should not consider this information to be an invitation for an attorney-client relationship, should not rely on information provided herein and should always seek the advice of competent counsel.