Notice of Administration

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Many of my clients often ask why is it necessary to send out a Notice of Administration to everyone who may have an interest in an estate. The reason deals with something called due process. In two recent cases the lack of notice gave a person not named in a Will the right to file a counter lawsuit and revoke probate. When this happens, the administration of an estate could go on for years.

A Notice of Administration fulfills the due process need by informing individuals that a decedent's estate has begun to be administrated either with or without a Will. The Notice gives instructions to persons that they have a limited amount of time to contest a Will or that a person requesting to serve as personal representative of the estate has been appointed.

Florida law provides for two methods to serve notice on interested persons and fulfill the due process requirements. The first method is to send out formal notice prior to the issuance of a court order admitting a Will to probate and appointing a personal representative. In this situation, the amount of time a person has to respond is 20 days (much like the time someone has to answer a complaint). The second method is to send out a Notice of Administration following the admission of a decedent's Will to probate and issuance of Letters of Administration. In this situation, the amount of time a person has to respond and object to the admitted Will to probate or appointment of a Personal Representative is 90 days from receipt of the Notice of Administration.

Failure to respond within the allotted time eliminates a person from being able to object to a Will being admitted to probate or the appointment of the Personal Representative. So who should be noticed? The answer is anyone who might have an interest in the estate proceedings. This includes individuals who may have been named in previous Wills but disinherited in the most recent Will. Although a disinherited individual is no longer a beneficiary, they continue to be interested parties. This is exactly the problem that existed in two cases identified as Winslow v. Deck and Cates v. Fricker.

In Winslow, the facts are that dad died and his daughter filed a petition to have dad's Will dated January 11, 1991, and an October 2, 2008, Codicil admitted to probate. As usual, the court admitted the Will and Codicil to probate. The daughter sent out the required notice of administration but failed to have the decedent's girlfriend noticed. The girlfriend found out about the estate administration and filed the decedent's more recent Will dated November, 2014. Unfortunately, the girlfriend did not request the court to revoke the Will filed by the daughter and substitute the Will filed by the decedent's girlfriend as the Last Will and Testament of the decedent.

The 90 days passed and the daughter requested the court to dismiss the Will filed by the girlfriend because she failed within the 90 day timeline to request it be admitted to probate. The court agreed with the daughter. The girlfriend appealed on the basis that she should have had the

opportunity to amend her pleadings when it came to filing the decedent's 2014 Will and that she was not properly noticed.

The appellant court agreed with the girlfriend and reasoned that once a second Will was provided to the court, the administration became adversarial and subject to the civil procedures under Florida law. Under Florida's civil procedures a litigant is entitled to amend pleadings in the interest of justice. Because the girlfriend did file the 2014 Will within 90 days of the Notice of Administration, she was entitled to revise and file a pleading giving rise to revoking the 1991 Will and 2008 Codicil. The court also reasoned that she was entitled to being noticed and the failure to do so extended the 90 day period giving time to file a pleading countering the daughter's petition for administration.

In the Cates v. Fricker case, the issue involved whether a person was an interested person of an estate. Under Florida law, any person who may have an interest in the outcome of an estate proceeding may be considered an interested person. This includes heirs at law such as step children. The facts of this case involve a child who was disinherited and who filed a complaint after the 90 day limitation of time had passed as outlined in the Notice of Administration. The disinherited child was not served with a notice of administration giving rise to a lack of due process as it pertained to the child.

The child argued that he was an interested party and should have been noticed so that he could object to the Will. The counter argument was that the child was disinherited and not named in the present Will. The Court heard argument from the child stating that he was named in a previous Will and thus an interested party. The issue before the court was whether the child was in fact an interested party subject to being noticed.

The trial court ruled against the child and found that they were not an interested party and the 90 day limitation period prevented him from filing any objection. The child appealed the ruling and the appellant court reversed ruling in favor of the child. The appellant court reasoned that the child was in fact an interested person subject to notice. The court based its decision on a previous Will that had been published by the decedent which named the child. Although the decedent in publishing the more recent Will did revoke all previous Wills, the Court reasoned that a previous will naming the child was enough to make the child an interested person subject to Notice of Administration. What makes this interesting is the fact that the previous Will had never been presented to the probate court but still gave the disinherited child the right to notice.

So what's the message from all of this? If you are aware of a previous Will made by a family member that names persons not currently provided in a present Will admitted to probate, make certain that those previously named persons are noticed to prevent such person from attempting to revoke the probate of the filed Will. The noticing of the adversarial person may not prevent them from filing a complaint, but it does shift the burden to them to act within the 20 or 90 day limitation period. Therefore, if you are concerned that a potentially adverse person may be a problem following the death of a loved one, consult with the attorney of your choice to discuss options and strategies regarding noticing an adverse person. By serving the Notice of

Administration on such persons the limitation clock starts ticking and may prevent future litigation involving an estate.

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