

Decedents' Estates “**Common Form**” Probate

What Does a Clerk Do in the Beginning



[September 2021]

Suggestions of Kay Solomon Armstrong, J.D.

Greene County Clerk & Master

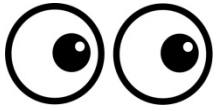
Tennessee's State Court Clerks have many ways to get to the same end! 📖

These are suggestions and some thought provoking questions to obtain a version of “Best Practices”.



Consider what happened on
May 10, 2019...





Look at Public Chapter 332

signed by the Governor May 10, 2019

~~Amended Two Separate Statutes~~

- *Amends TCA §30-1-117*

to provide that the ‘verified’ petition in the decedents’ estates *shall* include the name, age, mailing address, relationship of the proposed personal representative to the decedent, a statement of felony or misdemeanor convictions and a statement of any sentence of imprisonment in a penitentiary.

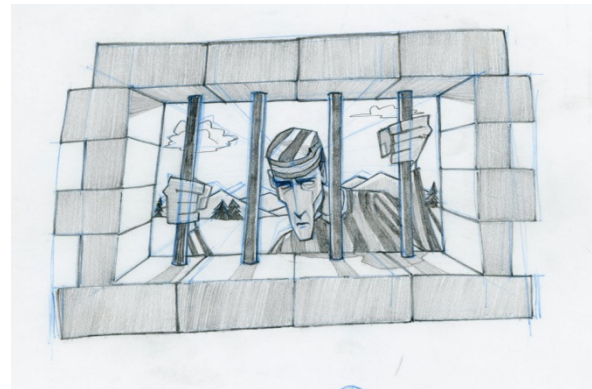
- *Amends TCA §30-1-111*


requiring particular language in the Personal Representative’s Oath.

...that all statements in the petition about the representative are true and accurate and the personal representative is not disqualified from serving because of having been sentenced to imprisonment in a penitentiary as set forth in TCA §40-20-115 or otherwise.....

Look for **6** things in the lead 'verified' petition.

- Name
- Age
- Mailing Address
- Relationship of the proposed personal representative to the decedent
- Statement of any felony or misdemeanor convictions and
- Statement of any sentence of imprisonment in a penitentiary



Before delivering the LETTERS to the
Personal Representative,
look for an OATH that states  things:

- Proper / faithful performance by the representative
- All statements in the PETITION about the personal representative are true and accurate
- “representative is not disqualified from serving because of having been sentenced to imprisonment in a penitentiary as set forth in §40-20-115 or otherwise”.

What does “or otherwise” in
TCA §30-1-111
mean?



What does the P.R. Disqualification Statute, TCA §40-20-115, mean to a clerk ??



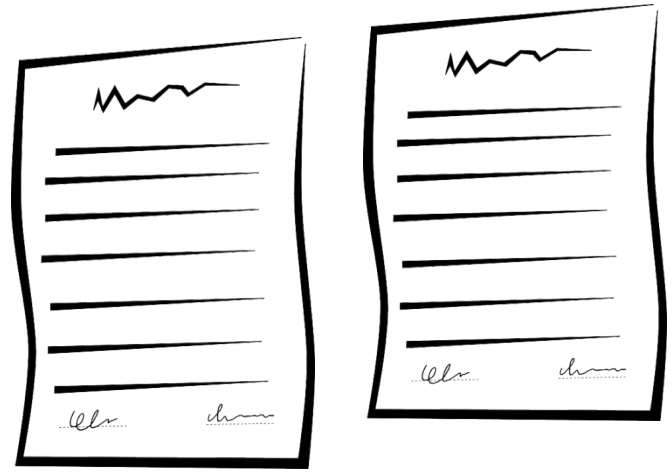
“The effect of a sentence of imprisonment in the penitentiary is to put an end to the right of the inmate to execute the office of executor, administrator or guardian, fiduciary or conservator, and operates as a removal from office.”



Does this mean only a *current* inmate in the pen or does it mean disqualification if one has even been sentenced to the pen



What type of Letters should be issued by the clerk?



- Letters Testamentary (under a WILL)
- Letters of Administration (no WILL)

F.Y.I.

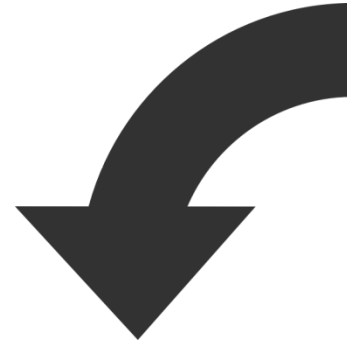
~There is no such thing as a Letter of Testamentary~

Who should get Letters of Administration?

TCA §30-1-106

Preferences for Personal Representative for Letters of Administration (no WILL)

- Spouse
- Next-of-Kin
- Creditor




“When any person dies intestate in this state, administration shall be granted to the spouse of that person, if the spouse makes application for administration. For want of application for administration upon the part of the spouse, the administration shall be granted to the next-of-kin, if such next-of-kin apply for it. If neither the spouse nor next-of-kin make application for administration, then administration shall be granted to a creditor proving the decedent’s debt on oath before the probate court; provided, that when there is more than one next-of-kin, the probate court may decide which of the kin shall be entitled to the administration.”

When shall Letters of Administration be issued by the clerk?

- Once all elements, required in the petition are filed
- Once the proper oath is taken and filed
- Once the proper bond has been made and proof filed, unless bond is waived (in WILL or via bond waivers filed) and so ordered by the court.
- Not for six months, unless personal representative is preferred under TCA §30-1-106 (i.e.: spouse, next-of-kin)



See TCA 30-1-301

LETTERS *may not* 
be issued to a third party
until **6** months from death!!

- “the chancery court of the county in which any person resided at the time of the decedent’s death, or in which the decedent’s estate, goods, and chattels or effects were at the time of the decedent’s death may appoint an administrator when six months have elapsed from the death and no person will apply or can be pronounced to administer on the decedent’s estate.”

When shall *special LETTERS* be issued by the clerk?

- When the Court orders
- When special circumstances require and the Court orders i.e., cause of action in another Court (car wreck/personal injury case in Circuit Court)



See TCA §30-1-109

Administrator Ad Litem Appointment

“(a) In all proceedings in the probate or chancery courts or any other court having chancery jurisdiction, where the estate of a deceased person must be represented, and there is no executor or administrator of the estate or the executor or administrator of the estate is interested adversely to the estate, it shall be the duty of the judge or chancellor of the court, in which the proceeding is held, to appoint an administrator ad litem of the estate for the particular proceeding and without requiring a bond of the administrator ad litem, except in a case where it becomes necessary for the administrator ad litem to take control and custody of property or assets of the intestate’s estate, when the administrator ad litem shall execute a bond, with good security, as other administrators are required to give, in such amounts as the chancellor or judge may order, before taking control of the property or assets.

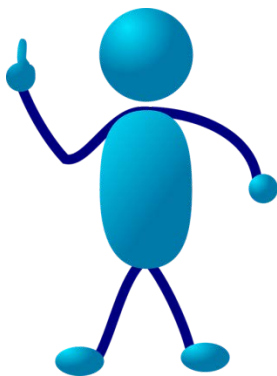
Administrator Ad Litem continued...

(b) This appointment shall be made whenever the facts rendering it necessary appear in the record of such a case or shall be made known to the court by the affidavit of any person interested in the case and, in such proceedings in the chancery court, the chancellor at chambers or clerk and master on a rule day shall have authority to make an appointment in vacation.”

- **Does the last part of TCA §30-1-109 mean the clerk should not sign the *ORDER APPOINTING ADMINISTRATOR AD LITEM FOR CAUSE OF ACTION ONLY*, on a day the Chancellor/Judge is present in the County?**



EXTRA THOUGHTS



Regarding
WILL or
CODICIL
execution:

Look for testator's signature and 2 sets of witness signatures:

See TCA §32-1-104 and

IN RE ESTATE OF STEWART 545 S.W.3rd 458 (Tenn. Ct. App. 2017)

IN RE ESTATE OF MORRIS 2015 WL 557970

The execution of a will, other than a holographic or nuncupative will, must be by the signature of the testator and at least two witnesses.

**Legislative fix for WILLS & CODICILS executed prior to
July 1, 2016.**

TCA §32-1-104 allows borrowing the signatures from the self-proving affidavit to save the WILL or CODICIL. However, **another affidavit to prove the will or codicil is necessary to be filed.**

TCA §32-1-104(b)(2) reads as follows: "If, pursuant to this subsection (b), witness signatures on the affidavit are treated as signatures on the will, the affidavit shall **not** also serve as a self-proving affidavit under §32-2-110."

TCA §32-1-110 states: "Any or all of the attesting witnesses to any will may, at the request of the testator or after the testator's death, at the request of the executor or any person interested under the will, make and sign an affidavit before any officer authorized to administer oaths in or out of this state, stating the facts to which they would be required to testify in court to prove the will, which affidavit shall be written on the will or, if that is impracticable, on some paper attached to the will, and the sworn statement of any such witness so taken shall be accepted by the court of probate when the will is not contested as if it had been taken before the court."

Granny's Memo or List...

prepared before or after execution, **referenced in a WILL or CODICIL**, can dispose of property.

- TCA §32-3-115 reads: “a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidence of indebtedness, documents of title, securities and property used in a trade or business.”



Granny's memo or list continued...

TCA §32-3-115 further reads:

“(2) To be admissible under this section as evidence of the intended disposition, the writing:



- (A) Must:
 - i. Be either in the handwriting of the testator or signed by the testator;
 - ii. Be dated; and
 - iii. Describe the items and the devisees within reasonable certainty;
- (B) May be prepared before or after the execution of the will;
- (C) May be altered by the testator after its preparation, provided that the testator signs and dates the alteration;
- (D) May be a writing that has no significance apart from its effect upon the dispositions made by the will.”

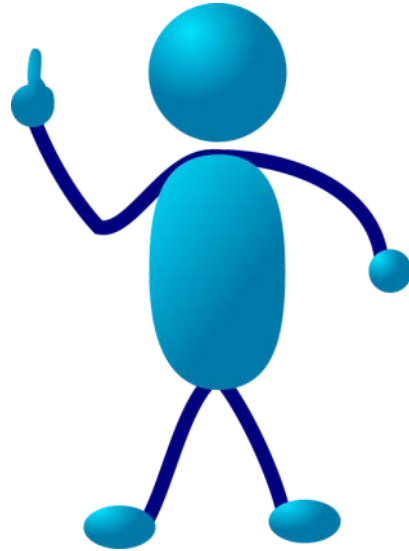
What Does a Clerk Do in the Beginning...Now You Know!



Kay Solomon Armstrong, J.D.
Greene County Clerk & Master

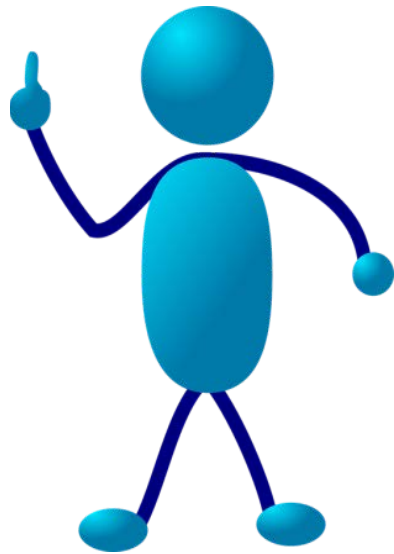


423-798-1742



EXTRA EXTRA
THOUGHT:

TCA 30-2-310 (amended April 7, 2021) gives TN Bureau of TennCare a 48-month statute of limitations, regarding TennCare CLAIMS.



EXTRA EXTRA EXTRA THOUGHT:



DO YOU EVER GET THE FOLLOWING PHONE CALLS?

My loved one just died, do we have to probate the WILL? This could lead to a CRIME.



WILL DESTRUCTION / CONCEALMENT, with intent, is a Class E felony. See TCA 39-14-131



Judicial Sales in Probate Court

Katherine Jones-Terry

Clerk & Master

Hamblen County Chancery & Probate Courts



Judicial Sales in Probate Court

- Order appointing Special Commissioner
 - Requirements
 - Title opinion – Reference to the Master
 - Legal notice – TCA §35-5-101, 102, 104, 109
 - Optional:
 - Displays ads
 - Clean –up
 - Signs
 - Flyers
 - Auctioneer TCA §35-5-112



Judicial Sales in Probate Court

- Sales Agreement
- Master's Report of Sale
- Hearing for Order to Confirm
- Paying Sales Costs
- Preparing Deed and Closing Sale
- Order to Distribute Proceeds



Judicial Sales in Probate Court

- **Weird stuff and War Stories!**
 - Reopening Bid
 - Gibson's 18.14-18.18 and TCA §35-5-110
 - Writ of Possession
 - Gibson's 19.10 and TCA §26-1-203 thru 207
 - No Bid
 - No Sale = No Commission!
 - Fire or Other Disaster
 - Gibson's 18.12 (6)



Judicial Sales in Probate Court

REFERENCES

- Gibson's Suits in Chancery, Ch. 18 & 19
- TCA §35-5-1014 et seq
- TCA §26-1-203 thru 209

Katherine Jones-Terry - 423-586-9112

~ ~ ~ OTHER STUFF ~ ~ ~

Hardin County Clerk & Master

~ ~ Martha Smith ~ ~

731-925-8166

~~~ *OTHER STUFF* ~~~

I *Muniment of Title*

- A Real and personal property
- B No letters
- C No notice to creditors
- D Attorney can be petitioner
- E Hearing
- F Closes for case reporting immediately
- G TennCare release required in some districts

~~~ *OTHER STUFF* ~~~

II *Muniment of Title with Foreign Will*

- A Exemplified (Acts of Congress) documents
- B No testimony / hearing necessary
- C No letters, notice to creditors
- D Closes for case reporting immediately

~~~ ***OTHER STUFF*** ~~~

III *Ancillary Probate*

- A Exemplified copies needed
- B Proceed as regular probate

~~~ ***OTHER STUFF*** ~~~

**IV** *Nonresident fiduciaries*

Appointment of Secretary of State as  
Registered Agent before letters issued



# ~~~ *OTHER STUFF* ~~~

## **V** *Small Estates – For Now*

- A Affiant only; no personal representative
- B No letters or notice to creditors
- C If will produced, file only, not probated
- D \$50,000 limit on *personal* property
- E Closes in 1 year, if not closed sooner
- F Closes for case reporting immediately (?)

~~~ ***OTHER STUFF*** ~~~

VI *Lodging Wills*

VII *Looking in Lock Boxes for Wills*

VIII *Lost Wills*

IX *Title 45 Alternatives to Probate for Bank
Accounts and Checks*

~~~~ ***OTHER STUFF*** ~~~~

**X**     *Clerk's Resources*

- A    TCA
- B    Pritchard's
- C    Probate manual
- D    Each other

**XI**    *War Stories*