

Assisting Clients in Probate Matters: The Importance of Asking the Right Questions

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Presentation for Marquette Legal Clinic Volunteers
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Who/what is Milwaukee County Probate?

- The Probate office handles filings for informal and formal probate cases, guardianships, and mental health commitment cases, located in Room 207 of the courthouse.
- The Probate office consists of the Register in Probate Robert Rondini, Deputy Register in Probate, the Probate Court Commissioner Patrice Baker (all three lawyers), and office staff.
- The probate office cannot give legal advice, but will assist pro se filers with procedural questions on informal cases.
- Currently, the presiding Probate judge is Hon. Cynthia Davis.
- Hon. David Borowski shares the Mental Health calendar with Judge Davis and takes probate/guardianship cases as needed.



The Importance of Asking the Right Questions

- Setting realistic expectations for your clients - they understand what to anticipate and what will be required of them from the court throughout the process.
- Issue spotting upfront – what process is most appropriate? Can this be done informally or is formal more appropriate?
- Being able to provide options based upon their needs that will work for them and be efficient in time and cost.



Initial Interview

- Is Milwaukee County the proper jx and venue?
- Does the petitioner have standing?
- Why initiate a probate?
- What assets did the deceased person have? Estimated value?
- Was there a will?
- What family did the decedent have? Any pre or post-deceased? Dates of death?
- Will a bond be needed and is the proposed personal representative bondable?
- Are they prepared to meet all requirements?



Is Milwaukee County the appropriate jurisdiction and venue?

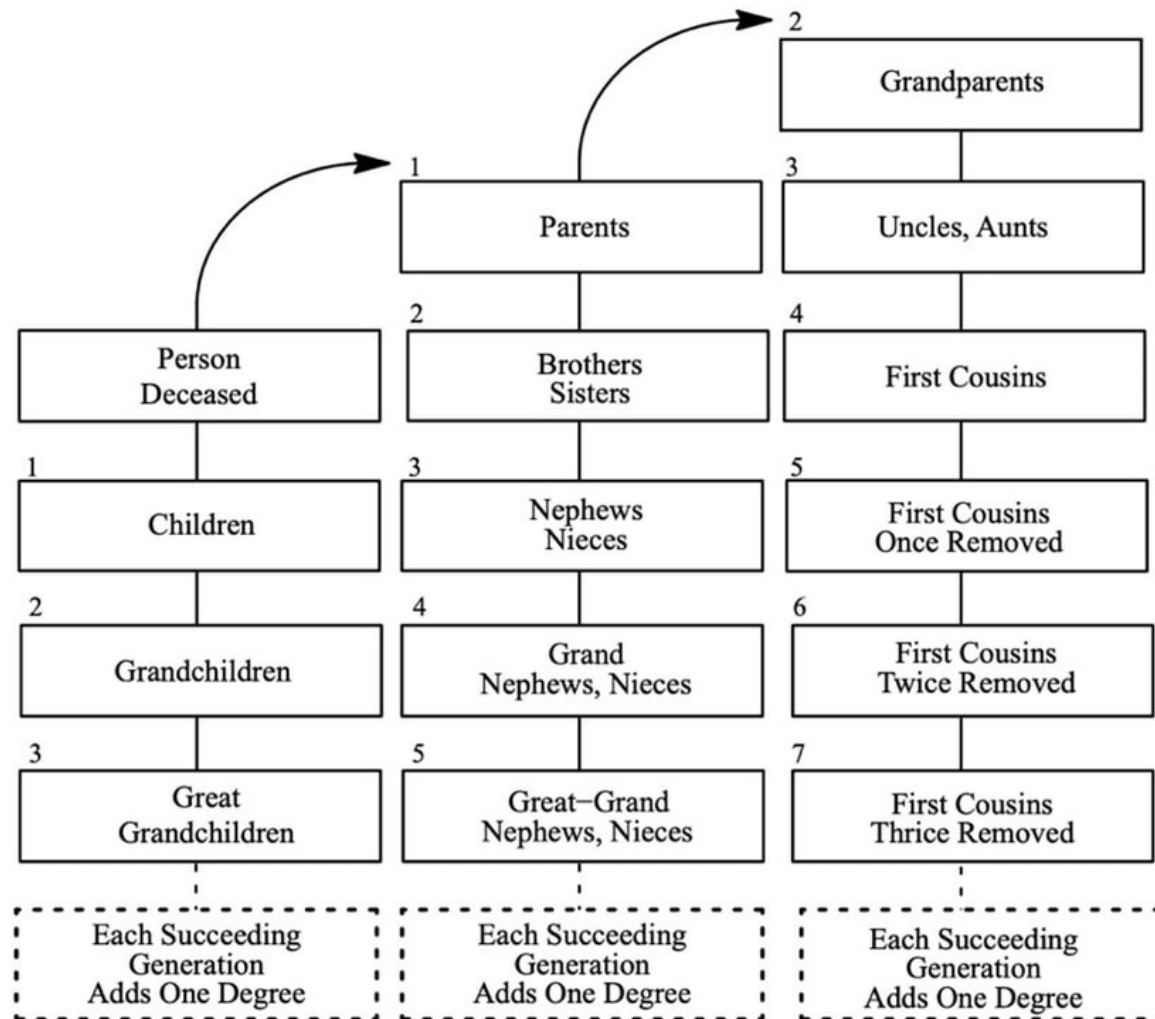
- Did the decedent reside in Milwaukee County at the time of their death? If not the probate should be initiated in the County they resided. Wis. Stat. § 856.01(1).
- If they lived in another state, did they own property in Milwaukee County? Wis. Stat. § 856.01(2).
- Did the client bring a death certificate? Not required to be filed, but helpful because it will have much of the information needed to complete the forms (address, date of birth, date of death, legal name, etc.).



Does the Petitioner have standing? Wis. Stat. § 856.07

- Is there a will? If so, are they the named PR? Beneficiary?
- If there is not a will, are they an heir at law? Wis. Stat. § 851.09. Surviving spouse or domestic partner (as defined in 770.01)?
- If it is at least 30 days after the decedent's death, are they a creditor? If going this route, make sure they file a claim with their pleadings. Wis. Stat. § 856.07(2). This statute also allows for guardians of the decedent prior to their death to petition, or someone with a cause of action against the decedent.





If the petitioner is not an interested party, the case must initiate as a formal administration, with the petitioner represented by counsel and must be accompanied by a petition to be named as an interested party.

Wis. Stat. § 879.15 (2).



Why initiate a probate?

- Family home/foreclosure
- Gather financial information
- Marshall assets
- Civil lawsuit
- Other options that may be appropriate:
 - [Special Administration](#) – the Swiss Army Knife of probate procedures
 - [Transfer by Affidavit](#) – is your client confident the total gross assets are less than \$50,000? This is NOT a probate form and is NOT filed in our office. This form is maintained by the State Bar.



What assets did the decedent have?

- Were there TOD/PODs? Beneficiary designations? If so, those assets do NOT pass through probate.
- If there is a house and/or vehicle, is it encumbered?
- Register of Deeds office is a great resource if there's any real property involved.
- Did the decedent receive needs-based aid?
 - DHS Estate Recovery – (608) 264-7739
 - A DHS claim does not reduce the estate for purposes of the \$50,000 minimum, but clients should go in eyes open.



Did the decedent have a will?

- Anyone in possession of an original will must file it with the probate court within 30 days after the decedent's death, regardless of whether a probate is being pursued. Wis. Stat. §856.05.
- If there is a will, was it signed by two disinterested parties?
- If the client is not sure whether there is an original will, check CCAP to see if there is a will filed for safekeeping (will appear as a "WL" case code).
- If the client only has a copy of the will they want admitted and no original can be located, the estate must start as a Formal Administration with an attorney.
- Keep in mind: **NO WILL, NO WAIVERS, NO WAY** (that the case can start as informal).



Informal Administration vs. Formal Administration

- In order for an estate to open informally, the following criteria must be met:
 - There is an original will. If all interested parties (heirs at law and beneficiaries under the will) sign Waivers and Consents, no hearing is necessary. If not all parties have signed waivers, a hearing will need to be set and publication must occur and notice must be given to all parties.
 - OR the decedent died intestate, but all interested parties have signed Waivers and Consents.
 - Even if these criteria are met, the probate registrar can deny the Application for Informal Administration for failure to comply with Wis. Stat. §§ 856.23 (PR is disqualified), 865.02, 865.06 (application), or “for any other reason.” Wis. Stat. § 865.08(3).
- Formal Administration commences with a Petition and a hearing before the Commissioner or Judge. Because it involves a court appearance, a personal representative **MUST** be represented by an attorney in a formal proceeding. Wis. Stat. § 879.15(2).
 - Even if a case commences as an informal, it can be converted to a formal at any time by filing a Demand for Formal. Any interested party or court official can file the demand. If the PR is unrepresented, they will need to retain an attorney or face removal.



What family did the decedent have?

- At the date of death, any heir at law or beneficiary then living needs to be listed as an interested party on the Application for Informal Administration.
- Post-deceased heirs' estates become an interested party. If there is not an estate open for the heir, no one is authorized to waive on the estate's behalf. If there is a will, could proceed informally on notice. If intestate, **must proceed formally with an attorney.**
- If there are minor/incompetent heirs, a GAL is likely needed. See Wis. Stat. § 879.23.
- If there is not already a guardianship of the estate for a minor/incompetent heir, the client should seriously consider retaining an attorney.



STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY
IN THE MATTER OF THE ESTATE OF _____ ☐ Amended
Name _____
Application for
Informal Administration
Case No. _____

UNDER OATH, I STATE:

- The decedent, with date of birth _____ and date of death _____, was domiciled in _____ County, State of _____, with a mailing address of _____.
- I am interested as _____.
- Other proceedings concerning the estate of the decedent ☐ are ☐ are not pending in this state or elsewhere. Explain: _____.
- The estimated net value of decedent's property requiring administration is \$ _____.
- The decedent
☐ did ☐ did not receive Medical Assistance/Medicaid.
☐ did ☐ did not receive Family Care and/or Partnership benefits (through a Managed Care Organization – MCO/CMO).
☐ did ☐ did not receive benefits from the Community Options Program (COP).
☐ did ☐ did not receive benefits from Wisconsin Chronic Disease Program.
☐ was ☐ was not a patient or inmate of a state or county hospital or institution, or responsible for any person owing an obligation to the state or county.
Explain: _____
☐ I lack information to complete this section.
- If the decedent was ever married, complete the following: (If more than one spouse ☐ See attached.)
Name of spouse (☐ living or ☐ deceased) _____
☐ Married to decedent ☐ Divorced from decedent at time of decedent's death.
The spouse ☐ did ☐ did not receive benefits from the Community Options Program (COP).
The spouse ☐ did ☐ did not receive benefits from the Wisconsin Chronic Disease Program.
☐ I lack information to complete this section.

(Complete question 7 OR 8 below, whichever is applicable.)

- ☐ 7. The decedent died leaving a ☐ will, dated _____,
☐ codicil(s) (if any), dated _____.

I believe these documents were executed properly and are valid. I made diligent inquiry and am unaware of any revocation by decedent.

- The original will, including any codicil(s),
☐ is in the possession of the court. Case number _____, if known.
☐ accompanies this application.
☐ was probated elsewhere and an authenticated copy accompanies this application.
☐ is en route to the court by mail or personal delivery (for eFilers only).

The personal representative(s) named by the decedent in the will and/or any codicil is:
Name(s) _____

I nominate _____ to serve as personal representative(s).

The trustee(s) named by the decedent in the will and/or codicil is:
Name(s) _____

I nominate _____ to serve as trustee(s).

- ☐ 8. I made diligent inquiry and am unaware of any unrevoked will of the decedent and believe that the decedent died leaving no will.
I nominate _____ to serve as personal representative(s).

9. The names and mailing addresses of all interested persons are:
(For any person with disabilities, also list any guardian of estate; for any person in the military, also list attorney or attorney in fact; and for any minor, list date of birth.) ☐ See attached

Name	Relationship (e.g. Heir, Beneficiary, Fiduciary)	Mailing Address (Street, City, State, Zip)	If Minor, Date of Birth

- ☐ 10. Other: _____

I REQUEST:

- A statement of informal administration be issued.
- The will, including any codicil(s), be admitted to informal administration.
- Domiciliary letters be issued to _____.
- Letters of trust be issued to _____
for the following trust: _____
Letters of trust be issued to _____
for the following trust: _____
- Other: _____

State of _____
County of _____
Subscribed and sworn to before me on _____

Notary Public/Court Official

Name Printed or Typed

My commission/term expires: _____
☐ This notarial act involved the use of communication technology.

Applicant

Name Printed or Typed

Address

Email Address Telephone Number

Date State Bar No. (if any)

Form completed by: (Name)	
Address	
Email Address	
Telephone Number	State Bar Number (if any)

Proof of Heirship – PR-1806

- This is a sworn statement as to the decedent's next of kin.
- For each deceased child, all of their issue must be listed in 3.B. If any of those children are deceased, you must list their children. If there are no issue of a deceased child, please say that.
- If there is a surviving spouse and children, please make sure to answer question 4. This is key in determining interested parties.
- If there are living people in questions 2 or 3, skip to question 8.



STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE ESTATE OF

☐ Amended

Name _____

Proof of Heirship

☐ Informal Administration

☐ Formal Administration

Case No. _____

UNDER OATH, I ANSWER THE FOLLOWING QUESTIONS:

1. What is your name, mailing address and relationship to the decedent?

Name	Mailing Address	Relationship

2. Was the decedent survived by a spouse or domestic partner?

☐ Yes ☐ No

If YES, give name: _____

3. A. Did the decedent have any children? (Living or deceased; natural or adopted.)

☐ Yes ☐ No

If YES, list all names. (If deceased, indicate date of death.)

☐ See attached

Name of Decedent's Children	If Deceased, Date of Death

- B. For each deceased child listed in 3A., list his or her name and the names of his or her children (Living or deceased; natural or adopted). If any of his or her children are deceased, indicate the date of death of that child and the names of his or her descendants. (Living or deceased; natural or adopted.)

☐ See attached

Name of Deceased Child in (3A)	Name of Deceased Child's Child(ren)	Date of Death

4. If there is a surviving spouse or domestic partner, are all of the decedent's children listed in 3A., also the children of the surviving spouse or domestic partner?

☐ Yes ☐ No

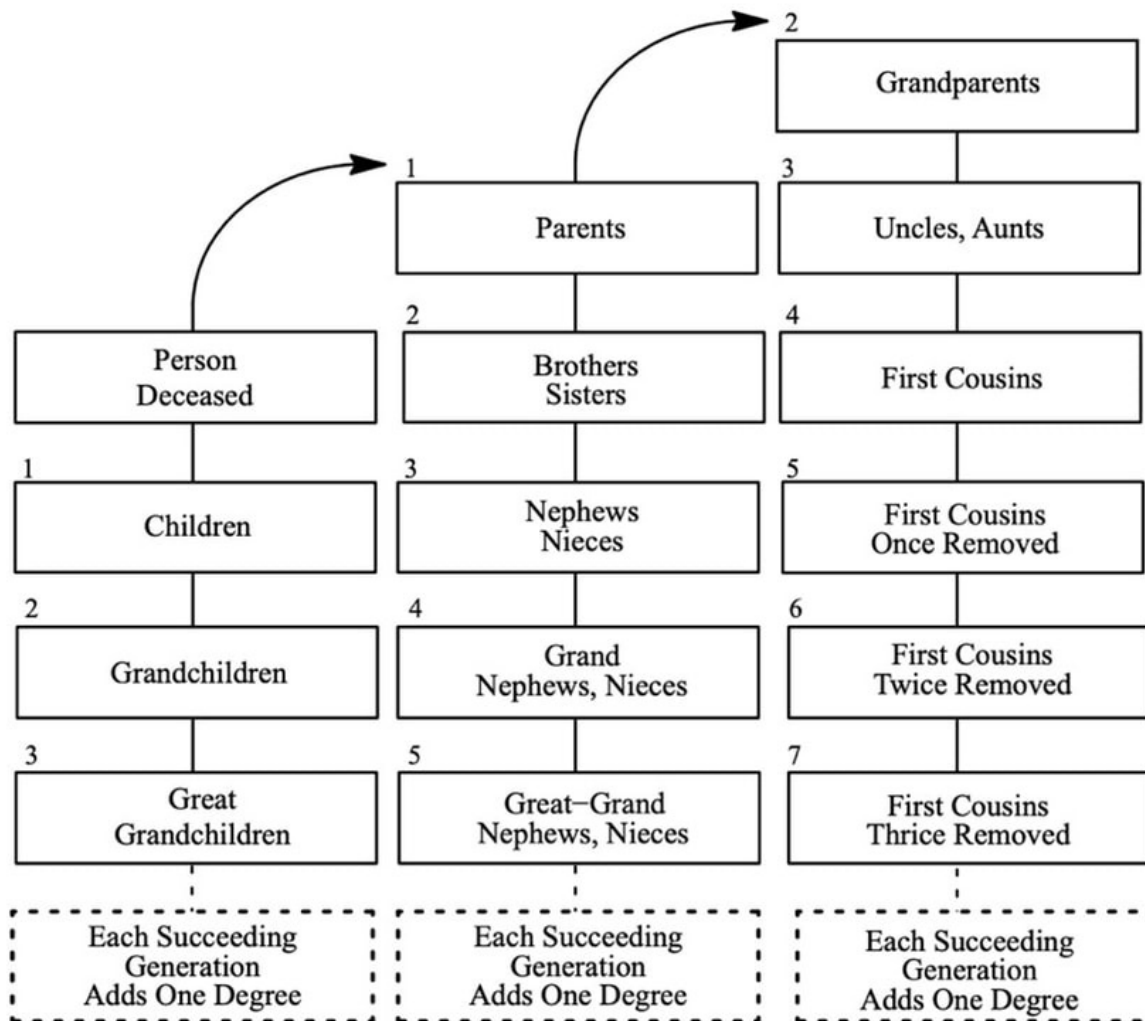
If NO, give details: _____

Instructions:

Are there living persons listed in answers to questions 2. through 4.?

- If Yes, skip to question 8.
- If No, continue with question 5.





Wis. Stat.
§990.001(16)

How far do we go?

- If there is not a surviving spouse, no children, no surviving parents, no siblings/niblings – go as far back as grandparents. If there is no one surviving in that line, and there is no will, the estate escheats to the school fund.
- Half-siblings are treated the same as full siblings and must be disclosed. Wis. Stat. § 854.21(4).
- If the heirs are unknown, a GAL is appointed to find and represent their best interests. If there is no will, must go formal. If there is a will, must go on notice. A GAL for unknowns CANNOT waive. See Wis. Stat. § 879.09.



Forms required to open an informal probate

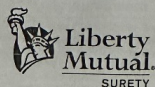
- Application for Informal Administration – PR-1801
- Proof of Heirship – PR-1806
- Consent to Serve – PR-1807
- Waivers and consents from all interested parties – PR-1803
- Proposed orders – Notice to Creditors PR-1804, Statement of Informal Administration PR-1808, Domiciliary Letters PR-1810
- If there is a valid will, but not all parties waive*, Notice Setting Time to Hear Application and Deadline for Filing Claims will be needed, PR-1805
- *If this is the case, depending upon the circumstances, the matter may not be appropriate for informal proceedings.



Bond and other requirements

- What is a bond? Governed by Ch. 878, Wis. Stat. § 856.25. Surety bond acts as an insurance policy that the PR will follow through, complete the case, and properly distribute funds to claimants and beneficiaries.
- Bond is ultimately in the discretion of the court official, even if the will says no bond. Wis. Stat. § 856.25(4).
- Milwaukee County's policy is that the starting point for a pro se filer is a full bond. Minimum bond is \$50,000.
- If shares are pledged on the waivers, this may reduce bond, but is not determinative.





Probate and Fiduciary Surety Application and Indemnity Agreement

Liberty Mutual Insurance Company
Ohio Casualty Insurance Company
West American Insurance Company

Applicant's Full Name: _____ SSN or FEIN: _____
Address: _____ Driver's License No: _____
Are you a U.S. Citizen? Yes ☒ No ☐ If No, what is your residency status? _____
Occupation: _____ Years in business: _____ Annual Income: _____

Only complete this section when there are Co-Applicants

Applicant's Full Name: _____ SSN or FEIN: _____
Address: _____ Driver's License No: _____
Are you a U.S. Citizen? Yes ☐ No ☐ If No, what is your residency status? _____
Occupation: _____ Years in business: _____ Annual Income: _____

Bond Amount: _____ Court where filed: _____
Date of appointment: _____ Case/Docket Number: _____
Estimated Assets: _____ Personal: _____ Realty: _____ Debts: _____
Name of Attorney: _____
Attorney Address: _____

Will the attorney remain involved throughout the duration of the case? Yes ☐ No ☐

If the answer to any of the following questions is yes, complete Application Supplement — LMS-7465

- 1) Has the applicant for this bond been declined by another Surety? Yes ☐ No ☐
- 2) Is the bond applied for intended to replace the bond of a prior Surety? Yes ☐ No ☐
- 3) Is the applicant replacing a prior Fiduciary? Yes ☐ No ☐
- 4) Is the applicant indebted to the estate? Yes ☐ No ☐
- 5) Is the bond being requested on the demand of an interested third party? Yes ☐ No ☐
- 6) Does the deceased/incompetent's estate include a business? Yes ☐ No ☐
- 7) Has the applicant ever been bankrupt or insolvent? Yes ☐ No ☐
- 8) Does the applicant have any outstanding lawsuits, judgment, or liens? Yes ☐ No ☐

Administrator or Executor Bonds

Type of Bond Required: ☐ Administrator ☐ Executor ☐ Personal Representative ☐ Other: _____
Name of Deceased: _____ Date of Death: _____
Applicant's Relationship to Deceased: _____ Number of Heirs: _____
Are there any disputes among the heirs? Yes ☐ No ☐
Did Decedent execute a Last Will and Testament? Yes ☐ No ☐

Guardian, Conservator or Trustee Bonds

Type of Bond: ☐ Guardian of Minor ☐ Guardian of Incompetent ☐ Conservator ☐ Trustee (attach a copy of trust)
Name of Ward: _____ Date of Birth: _____
Applicant's Relationship to Ward or Minor(s): _____
Will joint control be exercised? Yes ☐ No ☐
Will a Supplemental Needs Trust be created? (If so, attach copy of the Trust) Yes ☐ No ☐



13,000	75.00	57,000	288.00	110,000	500.00	425,000	1425.00
13,500	78.00	58,000	292.00	115,000	520.00	430,000	1435.00
14,000	80.00	59,000	296.00	120,000	540.00	440,000	1460.00
15,000	85.00	60,000	300.00	125,000	560.00	450,000	1485.00
16,000	90.00	61,000	304.00	130,000	580.00	460,000	1510.00
17,000	95.00	62,000	308.00	135,000	600.00	470,000	1535.00
18,000	100.00	63,000	312.00	140,000	620.00	475,000	1548.00
19,000	105.00	64,000	316.00	145,000	640.00	480,000	1560.00
20,000	110.00	65,000	320.00	150,000	660.00	490,000	1585.00
21,000	115.00	66,000	324.00	155,000	680.00	500,000	1610.00
22,000	120.00	67,000	328.00	160,000	700.00	550,000	1660.00
23,000	125.00	68,000	332.00	165,000	720.00	600,000	1710.00
24,000	130.00	69,000	336.00	170,000	740.00	650,000	1760.00
25,000	135.00	70,000	340.00	175,000	760.00	700,000	1810.00
26,000	140.00	71,000	344.00	180,000	780.00	750,000	1860.00
27,000	145.00	72,000	348.00	185,000	800.00	800,000	1910.00
28,000	150.00	73,000	352.00	190,000	820.00	850,000	1960.00
29,000	155.00	74,000	356.00	195,000	840.00	900,000	2010.00
30,000	160.00	75,000	360.00	200,000	860.00	950,000	2060.00
31,000	165.00	76,000	364.00	210,000	885.00	\$1 mil	2110.00
32,000	170.00	77,000	368.00	220,000	910.00	\$1.5 mil	2360.00
33,000	175.00	78,000	372.00	225,000	925.00		
34,000	180.00	79,000	376.00	230,000	935.00	(over \$1 million - .50/hc	
35,000	185.00	80,000	380.00	240,000	960.00		
36,000	190.00	81,000	384.00	250,000	985.00		
37,000	195.00	82,000	388.00	260,000	1010.00		
38,000	200.00	83,000	392.00	270,000	1035.00		
39,000	205.00	84,000	396.00	275,000	1048.00		
40,000	210.00	85,000	400.00	280,000	1060.00		
41,000	215.00	86,000	404.00	290,000	1085.00	Coring Bonding & Insurance	
42,000	220.00	87,000	408.00	300,000	1110.00	PO Box 177	
43,000	225.00	88,000	412.00	310,000	1135.00	Milwaukee, WI 53201-0177	
44,000	230.00	89,000	416.00	320,000	1160.00		
45,000	235.00	90,000	420.00	325,000	1173.00		
46,000	240.00	91,000	424.00	330,000	1185.00		
47,000	245.00	92,000	428.00	340,000	1210.00		
48,000	250.00	93,000	432.00	350,000	1235.00		
49,000	255.00	94,000	436.00	360,000	1260.00		
50,000	260.00	95,000	440.00	370,000	1285.00		
51,000	264.00	96,000	444.00	375,000	1298.00	Estates \$25,000	
52,000	268.00	97,000	448.00	380,000	1310.00	tenn premiums**	
53,000	272.00	98,000	452.00	390,000	1335.00		
54,000	276.00	99,000	456.00	400,000	1360.00		
55,000	280.00	100,000	460.00	410,000	1385.00		
56,000	284.00	105,000	480.00	420,000	1410.00		



Bond and other requirements (cont.)

- The proposed PR may use any bonding agency, but we typically suggest Heather Coning 414-331-3349 or Bob Dwyer 414-272-1084. If the PR is not bondable, it is not likely that they will be appointed.
- If the PR is appointed and then fails to perform, the bond could be surcharged, meaning the bonding company will pay out and go after the PR for reimbursement. Charges could include the legal fees of an attorney appointed to complete the estate, misused funds, making the beneficiaries whole, etc.
- Check or money order for \$157.50 for publication of the Notice to Creditors. We cannot waive this, as it is not our fee.



Preparing your client for what comes next

- Having the application granted and domiciliary letters issued is just the beginning.
- Personal Representatives are fiduciaries! See Ch. 857.
- Inventory due within 6 months with filing fee of 0.2%
- Obtaining the Closing Certificate from the Wisconsin DOR.
- Claims – must be paid, objected to, or withdrawn/compromised. Must be paid in accordance with priority of claims in Wis. Stat. § 859.25.
- Estate Account must be completed and distributed to interested parties (does not need to be filed in informals).
- Property distributed – PR is responsible, our office does not transfer property.
- Estate Receipts must be signed and filed by all beneficiaries.
- Personal Representative's Statement to Close PR-1816 – sworn statement that the PR fulfilled their fiduciary duties. Must be completed within 18 months.



Helpful resources

- CCAP
- Wills in Safekeeping – these will appear with the case code “WL”
- Is there an estate already opened? e.g. Special Administration, will previously filed, etc.
- Google the decedent’s obituary
- [A Personal Representative’s Guide to Informal Estate Administration in Wisconsin](#) – please direct clients to use this!
- Register of Deeds office – to determine title, liens/mortgages



Bonus content – Special Administration 867.07-867.21

- Same jx and interested person analysis as probate → 856.07. See Wis. Stat. § 867.09.
- Wis. Stat. § 867.07 Grounds – no estate to be administered by an act needs to be performed, to conserve assets prior to dom. letters being issued, service of process, “other circumstances exist” within discretion of the court.
- Milwaukee County practice – Specials for very limited purposes, typically will NOT grant all the powers of a PR. May or may not need a hearing.
- “No assets shall be received or disbursed without further order of the Court.” – Standard language included in letters/orders.
- Forms – PR-1850, 1806, 1807, 1846, 1851, 1852, 1853



Bonus content – Inventories Ch. 858

- PR-1811 - Due within 6 months after appointment
- “All property subject to administration” must be included, along with an “encumbrance, lien, or other charge upon each item.”
Wis. Stat. § 858.07. Think secured debts, NOT administrative expenses.
- Appraisals are not needed if the value is readily ascertainable.
Wis. Stat. § 858.15.
- Inventories can be amended as needed as new assets/liens are discovered.



Thank you for your time and attention!

Questions?

Jennifer Hemmer – Jennifer.hemmer@wicourts.gov, 414-278-4516





**MILWAUKEE
COUNTY**