

The Estates and Protected Individuals Code (EPIC), Michigan's new probate code, took effect April 1, 2000. As a service to members of the State Bar of Michigan, selected questions and answers regarding EPIC will be published in this column over the next several months. These items are taken from the more than 400 inquiries and responses contained on the EPIC Question and Answer website at <http://courts.co.calhoun.mi.us>.

You can submit questions regarding EPIC via e-mail to pharter@internet1.net. They will be answered by a panel of experts consisting of probate attorneys, judges, probate registers, and other court staff.

Question

May a personal representative carry out written burial instructions? May a personal representative make burial arrangements absent written instructions?

Answer

The Occupational Code of Mortuary Science at MCL 339.1810(n) states "If kin is found, the person's authority and direction shall govern the disposal of the remains of the decedent."

MCL 700.3701 provides in part as follows:

... Before or after appointment, a person named as personal representative in a will may carry out the decedent's written instructions relating to the decedent's body, funeral, and burial arrangements....

The Reporter's comment to section 3701 provides in part:

... The reference to "body, funeral, and burial arrangements" is intended to encompass instructions for cremation, preference for memorial service, and other similar directives to take place at death....

MCL 700.3701 provides that if a decedent has written burial instructions, including cremation, a personal representative or a person named as a personal representative may carry out such instructions. The importance of the provision is to allow the personal representative to carry out the instructions even before appointment since the burial would often occur before appointment.

It does not appear that the Estates and Protected Individuals Code (EPIC) specifically deals with burial arrangements beyond this provision contained in MCL 700.3701. Therefore, in the absence of written burial instructions, the next of kin pursuant to MCL 339.1810(n) would make the burial arrangements. It would appear that a personal representative would have no authority to make such a decision or to decide a dispute between the next of kin.

Question

When is a claim properly presented to an estate by a creditor?

1. If a personal representative sends a Notice to Known Creditors form to a creditor and the creditor does not file a Statement and Proof of Claim with the court, and does not respond at all to the personal representative, must the personal representative pay the outstanding bill that is due?
2. If a personal representative sends a Notice to Known Creditors form to a creditor and the creditor does not file a Statement and Proof of Claim with the court, but simply photocopies the Notice to Known Creditors form and attaches a statement of account (as a doctor's office or creditor card company would do on a past due bill,) and forwards it back to the personal representative, must the personal representative treat it as a claim?

Answer

MCL 700.3804(1) provides in part as follows:

(1) A claimant must present a claim against a decedent's estate in either of the following ways:

- (a) By delivering or mailing a written statement to the personal representative or proposed personal representative indicating the claim's basis, the claimant's name and address, and the amount claimed, or by filing with the court a written statement of the claim in the form prescribed by supreme court rule and delivering or mailing a copy of the statement to the personal representative or proposed personal representative... (Emphasis added.)*
- (b) By commencing a proceeding to obtain payment of a claim against the estate in a court in which the personal representative may be subjected to jurisdiction....*

MCL 700.3803 generally provides that a claim that is not presented within the four-month time limit is barred against the estate unless barred earlier by other statute.

In instance #1, assuming that the creditor has been given proper notice and the claims period has run, the claim would be barred.

In instance #2, it would appear that this would be a valid claim under MCL 3804 (1)(a). This section allows a claim to be presented to the personal representative or in the alternative to be presented to the court and the personal representative. If the required information has been given to the personal representative, the claim has been validly presented. There is no specific court form since nothing need be filed with the court. If there is a question as to whether the claim has been properly presented, the personal representative may ask the court for an instruction as to whether the claim has been properly presented. ♦

Hon. Phillip E. Harter is a judge in the Calhoun County Probate Court and vice-chairperson of the Probate and Estate Planning Section of the State Bar of Michigan. Judge Harter is a frequent lecturer for ICLE on probate topics and the editor of ICLE's Michigan Guardianship and Conservatorship Handbook.