FILING NOMINATIONS AND RENUNCIATIONS

MN Statute 524.3-203 (c)

This tip sheet is designed to assist you in filing the correct document(s) to achieve the priority for appointment of the proposed personal representative in the application for informal probate.

Applicant does not have to file a separate nomination of them self to serve as Personal Representative.

Do **NOT** file more documents than what is required to achieve the priority for appointment. Excess documents lead the court to believe that the applicant/attorney is not clear on how to achieve the priority they are seeking to establish for the applicant.

Do not be afraid to alter the standard form to mesh with the facts of the case.

Completing the form requires the signor to state what gives him/her their priority and/or the right to nominate (item#2). This is a legal interest **NOT** a relationship.

Example - . . . because: sister Wrong

. . . because: heir Correct

In the majority of cases, you will want to have the one giving up their priority for appointment to "reserve my priority" (item #4). During the course of the administration there might be a demand for bond and the original personal representative is not bondable. A successor may need to be appointed. The original personal representative may die or want to resign. Only if the signor is absolutely sure they **never** want to serve should you eliminate the language in item #4.

Intestate cases- file nominations/renunciations from **all** those with equal priority for appointment. To put it plainly, everyone but the person whose appointment is sought has "to get out of the way" so the court can appoint the person named in the Wherefore Clause.

Signing a nomination form only tells us that it is okay for the other person(s) to serve and we have to interpret this as they want a co-PR! Usually not the case. The signor should nominate **and** renounce.

Nomination of someone who does not have priority under the statute can only done in a formal probate proceeding.

Example – Child dies, parents survive. Parents want another of their children to serve as personal representative. This appointment canNOT be done informally. The sibling in this instance has no legal interest, other than through the nomination. The appointment of the sibling of the decedent must be handled in a formal proceeding. MN Stat §524.3-203(e)

E-filing tip – each nomination/renunciation has to be e-filed as a separate document. No bunching of all the nominations documents together under one filing code.

Testate cases – the use of the nomination/renunciation becomes more complex. The Court will be looking at the testamentary documents to determine the priority for appointment. A nominee who renounces does **NOT** automatically have the right to nominate a successor. Look to the language of the testamentary document. Does the testator specifically say the first nominated personal representative can nominate an additional or successor? If the answer is NO then the renouncing party does not have the power to nominate. Tailor your document to reflect a Renunciation only.

Only when you have gone through all the nominees in the testamentary documents do you go to the priority for appointment statute for the power to nominate. This is when completing item #2 on the form it is critical to get the language correct.

Example - #1 nominated PR does NOT want to serve. **No power to nominate is stated in the Will.** The nominated alternate personal representative is willing to serve.

#1 PR can only renounce his/her priority. Do NOT have the #1 PR nominate an alternate. He/She does NOT have the power. #1 PR may reserve their priority.

The court will look at the Will for who has the next priority. If the testator nominated an alternate, that is the person with the priority. What anyone else thinks is immaterial unless they want to object. Only when you have exhausted all the nominees in the Will do you go to the priority statute.

Under the priority statute in a testate case look for the following:

- Nominees in the Will
- Spouse who is a devisee
- All devisees

Caution: some Wills have language that is specific to the persons "nominated by my spouse or me". With this language the testator is limiting the persons under the Will who can nominate an additional or successor. Another situation is where the #1 nominated PR has the power to nominate "an additional or successor" but that power is not stated for any alternate named in the Will. Read the priority for appointment paragraph in the testamentary documents very carefully. The nominated persons are the ones the testator trusts to administer their estate.

Time Frames in Wills for Appointment –

In those Wills where there is a time frame within which the appointment must occur for the first nominated personal representative, filings after that date will require the appropriated nominations/renunciations. The date is usually calculated from the testator's date of death. The renunciation of the nominated alternate does not automatically throw the priority back to the first nominated personal representative. Look to see if the nominated alternate is given the power "to nominate an additional or successor". If the power was not granted then move on to the second nominated alternate or go to the priority statute.

Final thought -

Informal Probate applications require the filing of **all** nominations/renunciations. If you cannot obtain all of them you must proceed with a formal probate. Do NOT e-file your application if you do not have all of the documents in hand as we cannot proceed with the telephone conference and approval of your application.