



Can the Executor be Removed? Supreme Court Speaks

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Editor-in-Chief

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How difficult is it to remove an undesirable executor? This summer, the Texas Supreme Court answered that question.

Conflict of Interest May Not Disqualify

In *Kappus v. Kappus*, the Court refused to remove an executor who had a conflict of interest resulting from his personal interest in estate property. The Court stated that a conflict of interest is not among the six reasons for removal of executors listed in the Probate Code. The Court also noted that the Decedent's choice of executor should be given significant deference. The Court indicated that certain conflicts of interest could fall within the permitted reasons for removal stated in the Code, and listed several factors to consider in making that determination.

Best to Challenge Prior to Appointment

The Probate Code allows for a greater ability to challenge an executor pre-appointment by the probate court than it does post-appointment. At the time that the probate court is considering the appointment of the executor, the Probate Code allows the judge to deny the appointment if the proposed executor is "unsuitable," which could be for any number of reasons. Once the appointment takes place, however, the Probate Code has a much more restrictive set of reasons for removal (requiring more serious executor misdeeds such as "embezzlement," "gross misconduct," etc.).

Preference for Decedent's Chosen Executor

The Court recognized that Texas has long honored the right of a person to select the executor of his or her choice. Since as early as 1848, Texans have been able to elect in their wills to have independent administrations of their estates, and have been allowed to choose which executor will conduct their estate administration.

Kappus v. Kappus, No. 08-0136, 2009 Tex. LEXIS 296 (Tex. May 15, 2009).

If you have questions, click [here](#) to contact Steve Spitzer.



Your Probate Litigation Resource

Cowles & Thompson's probate litigation section has a web site at www.TexasEstateDisputes.com. The web site provides current information on disputed probate, heirship and trust issues, including the latest on statutory changes made by the Texas Legislature.

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