

1

PRELIMINARY CONSIDERATIONS

- I. [§1.1] ROLE OF THE ATTORNEY
- II. IMMEDIATE PRACTICAL PROBLEMS
 - A. Rights To The Body And To Control Burial
 - 1. [§1.2] In General
 - 2. [§1.3] Control By Decedent
 - 3. [§1.4] Burial And Removal Permits
And Death Certificates
 - 4. [§1.5] Selection Of Casket And Burial Plot
 - 5. [§1.6] Donation Of Body Or Parts Of Body
 - 6. [§1.7] Autopsies
 - 7. [§1.8] Authorization For Cremation
 - 8. [§1.9] Duties Of Medical Examiner
 - 9. [§1.10] Burial Insurance And Contracts
 - B. Funeral Expenses
 - 1. Amount Allowable
 - a. [§1.11] Test Of Reasonableness
 - b. [§1.12] Limit On Priority Of Payment
 - c. [§1.13] Property Not Subject To Claims
 - d. [§1.14] Federal Estate Tax Deduction
 - 2. [§1.15] Expense Of Shipping Body To Foreign
Burial Plot When No Provision In Will

*J.D., 1977, Stetson University; LL.M. in Taxation, 1978, University of Florida. Mr. Allison is a member of The Florida Bar and the St. Petersburg Bar Association. He is Associate Dean at the Stetson University College of Law in St. Petersburg.

**J.D., 2000, Stetson University. Ms. Griffin is a member of The Florida Bar and the American and Hillsborough County bar associations. She practices with Holland & Knight LLP in Tampa. Ms. Griffin co-authored the update of this chapter for the fourth edition of this manual.

***J.D., 1990, University of Miami. Ms. Goodall is a member of The Florida Bar and has also been admitted to practice in Connecticut and New York. She is senior counsel with Holland & Knight LLP in Fort Lauderdale. Ms. Goodall co-authored the update of this chapter for the fourth edition of this manual.

3. [§1.16] Necessity Of Written Claim; Reimbursement Of Amounts Paid
- C. Domicile
1. [§1.17] In General
 2. [§1.18] Checklist For Use In Determining Residence
- D. The Will
1. [§1.19] Locating Will
 2. [§1.20] Involuntary Production
 3. [§1.21] More Than One Will
 4. [§1.22] Lost Or Destroyed Will
 5. [§1.23] Specific Instructions In Will About Burial
 6. [§1.24] Specific Instructions In Will About Bond Requirements
 7. [§1.25] Designation And Qualification Of Personal Representative
 8. [§1.26] Selection Of Personal Representative If No Will
- E. Estate Assets And Related Problems
1. [§1.27] Identifying Probate Property
 2. Preliminary Inventory And Property Problems
 - a. Securing Information About The Estate
 - (1) [§1.28] Meetings With Family
 - (2) [§1.29] Preliminary Determination Of Beneficiaries
 - (3) [§1.30] What Information To Gather
 - (4) [§1.31] Estate Information Checklist And Information Sheet
 - (5) [§1.32] Checklist Of Possible Problems In Opening The Estate
 - b. [§1.33] Securing Access To Safe-Deposit Box
 3. [§1.34] Right Of Surviving Tenant To Funds In Joint Account
 4. Insurance Matters
 - a. [§1.35] Property Damage And Public Liability Insurance
 - b. Life Insurance
 - (1) [§1.36] Payable To Named Beneficiary
 - (2) [§1.37] Payable To Estate
 5. [§1.38] Mortgage Payments
 6. [§1.39] Automobile Held Under Joint Title
 7. [§1.40] Telephone And Utility Bills
 8. [§1.41] Veterans' Survivors' Benefits

- 9. [§1.42] Social Security Benefits And Claims
- 10. Rights Of Surviving Spouse
 - a. [§1.43] Should Attorney Advise Surviving Spouse Of His Or Her Rights?
 - b. [§1.44] Checklist Of Rights Of Surviving Spouse As To Real Or Personal Property
- 11. [§1.45] Checklist Of Duties Concerning Nonprobate Assets
- 12. [§1.46] Continuing Decedent's Business
- F. [§1.47] Administration Of Smaller Estates
- G. Caveat Proceedings
 - 1. [§1.48] In General
 - 2. [§1.49] Effect Of Caveat On Right Of Potential Beneficiary To Contest Will
- H. [§1.50] Necessity For Curatorship

III. THE PERSONAL REPRESENTATIVE

- A. [§1.51] In General
- B. Specific Problems
 - 1. [§1.52] Minor As Named Personal Representative
 - 2. [§1.53] Other Disqualification, Death, Or Failure Of Will To Name Personal Representative
 - 3. [§1.54] Renunciation Or Resignation By Named Personal Representative
 - 4. [§1.55] Discussion With Beneficiaries Of Decedent Of Matters Concerning Personal Representative
- C. Conferences With Personal Representative
 - 1. Initial Conference
 - a. [§1.56] In General
 - b. Caution Against Paying Debts Of Decedent
 - (1) [§1.57] During The Five-Month Period
 - (2) [§1.58] Without Properly Filed Claim
 - c. [§1.59] Outlining Responsibilities Of Attorney To Client
 - d. [§1.60] Checklist Of Subjects Of Initial Conference
 - 2. [§1.61] Keeping Client Informed
 - 3. [§1.62] Discussion Of Fees And Costs With Personal Representative

I. [§1.1] ROLE OF THE ATTORNEY

The primary purpose of this manual is to treat the subject of estate administration from the perspective of the personal representative and the personal representative's attorney. On occasion, however, the lawyer may be asked for advice immediately after the death of the decedent, sometimes from a person who does not have the right to act as personal representative. Therefore, this chapter also covers problems and rights of others before the estate administration begins.

II. IMMEDIATE PRACTICAL PROBLEMS

A. Rights To The Body And To Control Burial

1. [§1.2] In General

In the absence of testamentary disposition to the contrary, a surviving spouse or next of kin has "a legitimate claim of entitlement" to possession of the body of a deceased person for the purpose of burial, sepulture, or other legal disposition as the surviving spouse or next of kin may see fit. *Crocker v. Pleasant*, 778 So.2d 978, 985 (Fla. 2001). In *Andrews v. McGowan*, 739 So.2d 132 (Fla. 5th DCA 1999), the court ruled that a judicially separated spouse had the right to determine disposition of his deceased spouse's remains over the objection of the decedent's son and daughter.

The unlawful withholding of the body is an actionable wrong for which damages may be recovered. *Kirksey v. Jernigan*, 45 So.2d 188 (Fla. 1950), 17 A.L.R.2d 766. Tortious interference with the disposition of a body may give rise to a cause of action. *Donigan v. Nevins*, 785 So.2d 573 (Fla. 4th DCA 2001). An action may also be brought under 42 U.S.C. §1983 for deprivation under the Due Process Clause. *Crocker*.

If the next of kin refuses to claim the body and is not legally responsible for burial, the county is responsible for burying the decedent. Att'y Gen. Op. 91-33. *F.S.* Chapter 406 authorizes the anatomical board located at the University of Florida Health Science Center to receive dead bodies that are unclaimed or are to be buried at public expense. *F.S.* 406.50. The bodies then may be used for medical science. *F.S.* 406.57.