

### **Executor Removal: Supreme Court Speaks**

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Stephen M. Spitzer

Probate Litigation Shareholder

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 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 Probate 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 that 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 to choose their executor.

*Kappus v. Kappus*, 284 S.W.3d 831 (Tex. 2009).



**Stephen M. Spitzer, Shareholder**  
[sspitzer@rameyflock.com](mailto:sspitzer@rameyflock.com)