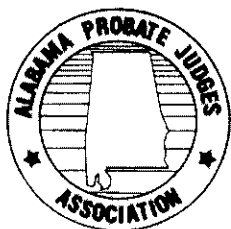


The Rule of Law

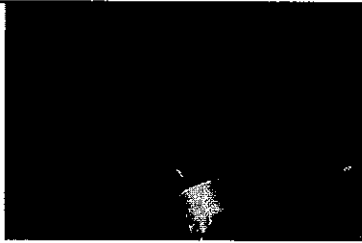
Honorable Ben Bowden

Circuit Judge, 22nd Judicial Circuit



Probate Training Conference
September 13-14, 2018
University of Alabama School of Law
Tuscaloosa, Alabama





The Rule of Law...

**JUDGE BEN BOWDEN
CIRCUIT JUDGE
22ND JUDICIAL CIRCUIT (THE GREAT STATE OF COVINGTON)**

MY REAL VIEW



What is it like being a Circuit Judge?

"The county seat was the town of Sterling. Brunswick and two adjoining counties comprised Florida's Twenty-Fourth Judicial District. Of the two circuit judges, Claudia McDover was the only one headquartered in Sterling; thus, she pretty much ruled the courthouse. She had seniority and clout and all county employees walked softly around her. Her spacious office was on the third floor, where she enjoyed a pleasant view and some sunlight from one of the few windows. . . After a quiet day at her desk, she informed her secretary that she would be leaving at four, an early exit for her. Her timid and well-trained secretary absorbed this information but asked no questions. **No one asked [Judge] Claudia McDover why she did anything.**"

John Grisham – The Whistler

The Rule of Law

First, the rule of law should protect against anarchy and the Hobbesian war of all against all. Second, the rule of law should allow people to plan their affairs with reasonable confidence that they can know in advance the legal consequences of various actions. Third, the rule of law should guarantee against at least some type of official arbitrariness. --Professor Richard Fallon

Probate Court – Limited Jurisdiction

“A probate court cannot take jurisdiction of a cause or administer remedies except as provided by statute.”

K.L.R. v. K.G.S., 2018 WL 12231447

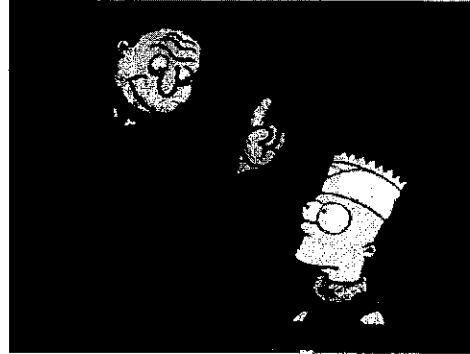
Translated by me

Finding a way to do something that is grounded in the clear wording of the law.

“Yes, if...” rather than “No, because...”

Examples

1. HUMAN REMAINS
2. SAFE DEPOSIT BOXES
3. SMALL DEPOSITS
4. BONDS



Dead Bodies

**THERE ARE FIFTY WAYS TO LEAVE YOUR LOVER
BUT ONLY TWO LEGAL WAYS IN TEXAS:
UPDATING TEXAS HEALTH AND SAFETY CODE
SECTION 711.002 TO PROTECT DISPOSITION OF
FAMILY MEMBERS**

Elizabeth Nanez

8 Est. Plan. & Community Prop. L.J. 343

Dead Bodies

If, upon being in possession of disputed human remains, a licensed funeral director shall immediately contact the judge of probate of the county in which the remains are located for authorization to dispose of the remains. Upon being so contacted, the probate judge shall forthwith issue a written order directing the disposition of remains, if practical to do so. In circumstances not allowing for sufficient time to render a written order, the judge of probate shall issue verbal orders directing the disposition of the remains.

Ala. Code §34-13-11(a)

Dead Bodies

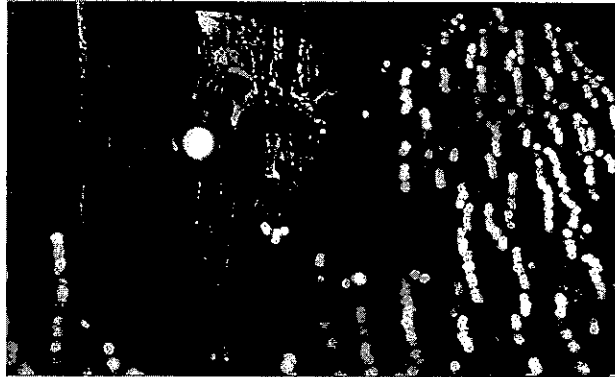
The statute contains a list of persons, in the absence of a directive, who has the authority to dispose of remains:

Spouse, children, grandchildren...

(13) Any other person willing to assume the responsibility of acting on and arranging the final disposition of the remains of the decedent, **including the funeral director** that has custody of the body, in the absence of any person specified in subdivisions (1) to (12), inclusive. The person shall attest in writing that good faith efforts to contact the persons specified in subdivisions (1) to (12), inclusive, have been unsuccessful.

Ala. Code §34-13-11(a)

Safe Deposit Boxes



Always a little mysterious...



The Solution...

(a) The judge of probate may, in any contest respecting the validity of a will, **or for the purpose of collecting the goods of a deceased**, or in any other case in which it is necessary, appoint a special administrator, authorizing the collection and preservation by him of the goods of the deceased until letters testamentary or of administration have been duly issued.

Ala. Code § 43-2-47

IN THE PROBATE COURT OF COVINGTON COUNTY, ALABAMA

IN RE: THE ESTATE OF

BOBBY RAY KNIGHT,

DECEASED

)
)
)
)
)
)

CASE NO: PC-2014-267

SPECIAL LETTERS OF ADMINISTRATION

Special Letters of Administration *Ad Colligendum* on the Estate of Bobby Ray Knight, deceased, are hereby granted to Joseph Scott Knight, pursuant to Alabama Code § 43-2-47, for the sole purpose of entering any safe deposit box of the deceased, obtaining the Last Will and Testament, if in said box, and inventorying the contents of said box. Other than the said Will, the contents shall be returned to the safe deposit box, pending further orders of a court of competent jurisdiction.

Witness my hand and seal dated this 25th Day of November, 2014

Benjamin M. Bowden
Probate Judge

Small Deposits

- Nursing Home Accounts
- Bank Accounts with No POD
- Jail Accounts
- Utility Company
- Insurance Policies

Drive By Probate Service...



Hodge Podge – Bank Deposits

Whenever a person shall die leaving deposits in a bank **not exceeding \$5,000.00** in the aggregate, the bank may in its discretion discharge itself from liability thereafter by paying the deposits to the surviving spouse of the deceased or, if there is none, to the adult children and to the person having the actual custody and control of the minor child or children of the deceased; ...or, if there is no surviving spouse or child or children, to the person or persons who, under the laws of Alabama, are the next of kin and inherit the personal property of the deceased. The bank shall be fully protected by requiring an affidavit by some reputable citizen as to the facts specified.

Ala. Code § 5-5A-38

Summary Distribution...

(a) The surviving spouse, if there is one, otherwise the distributees of an estate of personal property only, may initiate a proceeding for summary distribution of the estate by filing a verified petition in the office of the judge of probate of the county in which the decedent was domiciled at death alleging the conditions provided in subsection (b). The petition shall include a description of the estate of the decedent. No bond shall be required to be filed with the petition.

Ala. Code § 43-2-692

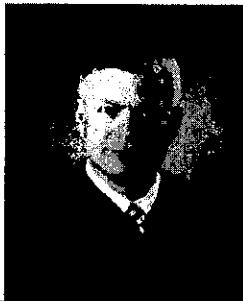
Other Options

Exemptions and Allowances

Heirship Affidavit

????

Bonds



Estate Bonds

When a party is required to give a bond and is not otherwise exempt from giving a bond, the judge of probate is liable for any wanton, fraudulent, or intentional misconduct for not requiring a bond or for taking an insufficient bond from any personal representative, fiduciary, or someone serving in a similar capacity. Any person injured thereby may maintain an action against the judge and his or her sureties and recover for the injury proved.

Ala. Code § 43-2-82

(letters can be voided)

Conservator Bonds

(a) The court must require a conservator to furnish a bond payable to the judge of probate conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, pursuant to Section 26-2A-152(d), lacks power to sell or convey without court authorization. The court, in lieu of sureties on a bond, may accept other collateral for the performance of the bond, including a pledge of securities or any other assets or a mortgage of land.

Ala. Code § 26-2A-141

Alternatives

- Property Bond
- Cash Bond
- Limited Letters
- Other Collateral
- Guarantor???

Rule of Law

“No man is above the law and no man is below it; nor do we ask any man’s permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.”

Theodore Roosevelt, State of the Union Address, December 7, 1903

QUESTIONS???

Judge Benjamin M. Bowden
22nd Judicial Circuit
Covington County, Alabama
Benjamin.Bowden@outlook.com

