

the case creates too much uncertainty around the use of joint accounts.

"Now it verges on malpractice to say, 'put the money in a joint account,'" said St. Paul attorney Daniel Reiff. "What if you get a will contest?"

Family problems

The underlying issue in will contests is always the same: whether the testator was legally capable or was subject to undue influence. But these cases are also highly emotional, said St. Paul attorney Rodney Mason. A person exerts undue influence over a testator by substituting that person's intent for the testator's, and the evidence of that is clearly about the relationship with the testator. The testator's medical history and mental capacity

torney in fact to account for an estate, but that can lead to questions.

"I think you'd simply things if you required more accounting," Ridley said. The statutory short form power of attorney allows the principal to require more accounting, he noted.

Mason recommends disclosure of the estate plan at the earliest opportunity. A family meeting is best, so that everyone hears the same information at the same time.

"If the family member can do it, that's better. If they aren't comfortable, have the lawyer do it," he said.

This disclosure can avoid heirs claiming later that the will doesn't reflect the real intentions of the testator. It also gives

personal representative, which may mean choosing a neutral. The PR must be able to work effectively with the heirs, family members and creditors. A neutral may be more expensive in the short run but can save money in a will contest, Mason said.

When probate is commenced, the family should be fully advised of the process, he said. His office has a standard letter that is sent to PRs and that he encourages the PR to circulate to the rest of the family. It makes clear that the firm only represents the PR and the heirs are free to hire their own lawyers.


Increasing litigation

According to Logstrom Koci, probate litigation has increased 20 percent per

he said. Furthermore, there are more second marriages and second families, which can complicate things, along with a more recent belief that people have a right to an inheritance, he said.

This increasing litigation comes at a time when judicial resources are shrinking. As a result, more attorneys are considering alternative dispute resolution.

"There's a sense that courts don't have the capacity they used to have," said Logstrom Koci. "We're looking at mediation and arbitration to take the burden off courts and provide more efficient resolution."

These kinds of efforts are sorely needed, Ridley said. "Probate litigation is going to get bigger and bigger." 

People & Practices

Michael W. Unger has been reappointed to a second three-year term on the Minnesota Lawyers Professional Responsibility Board. Unger will serve as the board's vice chair. Unger represents plaintiffs in personal injury, wrongful death and medical malpractice matters.



Michael Unger
