



## Mesmer & Deleault, PLLC

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Memorial Day

# “Tip of the Month”

## Probate Litigation

Probate litigation is much like other civil litigation, but with some distinguishing factors mixed into what is already a difficult process. Litigation is the process by which people bring their disputes and claims to court. The probate court has been given the same level of jurisdiction and authority as the superior court holds over civil trials. As a result, the probate judge can now preside over complicated controversies and rule on motions and evidentiary questions all the way through trial in the probate court.

The probate estate will usually be opened for regular administration of property belonging to the person who died (the decedent). Sometimes questions will arise as to whether the decedent’s testamentary wishes were followed, whether the decedent had testamentary capacity, or whether the decedent was subjected to undue influence to favor one family member over another for property distribution. Sometimes, creditors make claims on the estate to collect unpaid debts of the decedent.

All of these questions can arise whether or not the decedent died with a will. Whether the case involves a will contest, a dispute about trust administration, or a question of property values, the probate court will follow litigation procedure like the superior court would in a civil case. This starts with the filing of a Complaint, followed by an Answer, and then a Structuring Conference to set up the schedule for discovery, mediation and trial. In many instances, the case can be settled in mediation without trial.

Very often, probate litigation involves family members. These relationships can enhance the strong emotions that are common to civil disputes. All the feelings that have built up over years and sometimes generations can come to a boil in the probate arena. For this reason, people in the process need to be sensitive to the distinction between the legal and the practical. They also need to avoid, if possible, making statements that unnecessarily antagonize the emotions of others involved in the case. Ultimately, the goal is to resolve the dispute, not make it worse.

Where litigation is naturally antagonistic because of the adversarial process, mediation can be particularly effective in probate court. A good mediator can help the parties find common ground for compromise, putting their troubles to rest. As in any civil case, the cost of probate litigation is not just in legal fees, but also in the aggravation of waiting for things to happen in the slow court process. Sometimes the uncertainty of court and concern for the unknown are good reasons to settle probate litigation through mediation instead of trial.

If you need help with a question or dispute related to estate administration or probate, please feel free to give us a call at 603-668-1971 or contact us by email at [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com). We are happy to help.

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