

NORTH CAROLINA ESTATE LITIGATION

PART 2

“In our second discussion on estate litigation in North Carolina, we are going to look more closely at some of the details surrounding estate litigation cases.”



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It's important to note that even though many people associate litigation with the idea of a trial, most estate litigation cases get resolved before a trial ever takes place. Understanding how the litigation process works and what your options are throughout it is something you can only do after speaking to an attorney.

INITIATING LITIGATION

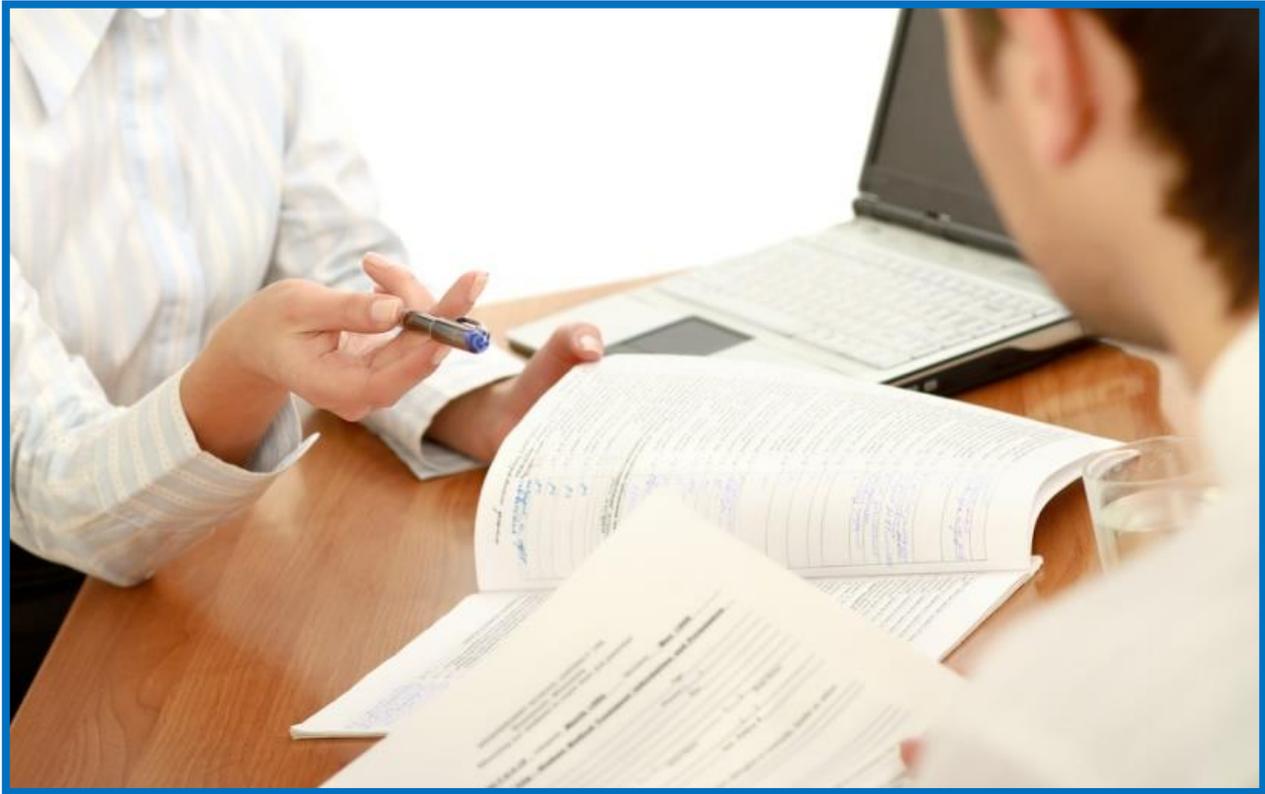
Estate litigation doesn't begin until someone files a lawsuit in an appropriate North Carolina court. Lawsuits have to follow some specific rules, contain specific information, and be filed in a timely fashion.



For example, an estate litigation lawsuit has to state the reasons why the person filing the lawsuit (the plaintiff) is asking the court to get involved. The plaintiff must also include in the lawsuit a statement of the specific actions he or she is

asking the court to take.

So, for example, if you file a lawsuit over your sibling's actions as guardian over your incapacitated elderly parent, you might state that you believe



your sibling is not acting in the best interests of your parent, and that you want the court to name someone else as guardian.

As we mentioned before, the Clerk of the District Court in each county in North Carolina is responsible for serving as the judicial official in any estate litigation case. This means that the clerk will serve as the officiant in any estate litigation case, and will often be referred to as either the clerk, the court, or as the judge.

DISCOVERY

Once someone has begun an estate litigation case, there are a number of specific steps that follow. The first of these steps is what is known as

discovery. In the discovery process each litigant will go about trying to determine the facts of the case. They might use different tools in order to uncover these facts, and will do so for as long as it takes.

For example, one common discovery tool is the interrogatory. An interrogatory is a list of questions that one party asks another, or asks of a witness. The witness is responsible for answering the questions in the interrogatory as well as possible, and those questions will then become part of the case record.



Another tool commonly used in the discovery process is the deposition. A deposition is very much like questioning a witness at trial, but it doesn't take place in the courtroom. Instead, in a deposition an attorney asks questions of a witness after that witness has taken an oath to be truthful and honest. A court reporter records the

testimony, and the witness is obligated to answer. Just as with testimony given at trial, the testimony given in a deposition is considered admissible evidence.

TRIAL

An estate litigation trial is very much like any other kind of trial, though there are some significant differences. For example, most estate litigation trials do not take place in front of a jury. Instead, the court will serve as both the trier of fact and the trier of law. This means that it is up to the courts to both make rulings on legal questions that arise during the trial, as well as determine what the facts are in the case by listening to the evidence presented.

Further, the court in an estate litigation case has an obligation to protect those at the center of the case. For example, if the litigation case involves a question about who should serve as the guardian of an incapacitated person, the court has the responsibility to make sure that that incapacitated person's interests are protected. This is because the litigants themselves may not directly represent the incapacitated person, so the court is there to serve as that person's protector.

PREPARING FOR LITIGATION

The prospect of facing estate litigation without the advice and guidance of an experienced attorney is not something you should have to worry about. Whether you are considering initiating an estate lawsuit, believe you might have to defend against one, or simply have questions about the litigation process, you should always speak to an attorney about your concerns. Litigation can be incredibly complicated, and unless you have the

background and education that is required to understand all facets of the process, you will be woefully unprepared for what is to come.

If you need any kind of help or assistance with an estate litigation problem, contact us as soon as possible. While we can offer you the advice you need, we cannot help you until you make the decision to reach out for assistance.

ABOUT THE AUTHOR



Cheryl David is a graduate of UNC-Chapel Hill, the University of Baltimore School of Law, and the prestigious Trial Lawyer's College presided over by Gerry Spence. A former Administrative Judge, Cheryl is certified as an Estate Planning Law Specialist by the ABA accredited Estate Law Specialists Board, Inc. She is also a member of the American Academy of Estate Planning Attorneys, Medicaid Practice Systems and the National Academy of Elder Law Attorneys.

In 2008, Cheryl received the honor of becoming a Fellow with the American Academy of Estate Planning Attorneys. The Fellow program recognizes Academy Members who demonstrate advanced expertise and significant practical experience in the total estate planning, trust, tax planning, guardianship, probate and estate administration fields. In order to maintain this advanced expertise, Cheryl takes over 36 hours of continuing education in Estate Planning, Elder Law, and Taxation each year. Also a Financial Planner, she holds the Series 7 and 66 Investment Licenses in addition to both Insurance and Long Term Care/Medicare designations.

Her professional capabilities, together with over 25 years in practice, have combined to bring positive change to the lives of over 4500 clients and their families.

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