

The State of South Carolina



Office of the Attorney General

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October 21, 1987

The Honorable Geneva Dean
Judge of Probate, Orangeburg County
Post Office Drawer 1000
Orangeburg, South Carolina 29116

Dear Judge Dean:

You have advised that, notwithstanding the complete repeal of Chapter 23 of Title 21 of the Code of Laws of South Carolina (1976) by the new South Carolina Probate Code, you have "inherited" from your predecessor a number of cases begun before the new Probate Code took effect in which you are to serve as public guardian. Due to the number of appointments and the amount of assets which you are handling in that capacity, you have asked whether you should continue to so serve under the new Probate Code.

When Sections 21-23-10 et seq. were repealed, no similar statutory scheme for public guardianship was substituted. Thus, there is no guidance to be found in the new Probate Code. In such a case, it is the opinion of this Office that you should continue to serve as public guardian, to protect the assets of the estates which you manage, until you are relieved of that appointment in any or all cases by order of the circuit court.

The discharge of the judge of probate as public guardian is found in former Section 21-23-90 of the Code, as follows:

All orders of discharge of a judge of probate as public guardian shall be granted by the presiding judge or the judge of the circuit in which such judge of probate resides, it being made satisfactorily to appear that a full and fair accounting has been had with the parties entitled to the estates received by him as such guardian.

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Because you cannot remove or relieve yourself as public guardian, due to your appointment by the circuit court, such appointment would continue until further order of the court having jurisdiction over the matter. Until you are properly discharged, you would continue to fulfill your duties and responsibilities as public guardian for those appointments made before the effective date of the new Probate Code.

Because this situation may have been overlooked by the drafters of the new Probate Code, you may wish to bring this situation to the attention of the Orangeburg County Legislative Delegation, to obtain legislative clarification or direction in these matters. You may also wish to apprise the circuit court of the current state of the law with respect to public guardianship.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
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