

Respondent denies that he is a contributing factor in the accidental death of his wife. Further, there has been no evidentiary hearing in any court that has determined that he was a contributing factor. However, if a court determines that Respondent is a contributing factor, that fact alone does not disqualify him from serving as the Personal Representative (PR). It does, however, create a conflict wherein he cannot bring a lawsuit against himself on behalf of the estate.

The Probate Court made a proper finding in law that it is not an automatic disqualification or cause for automatic removal of a PR if the PR is unable to bring a civil action or settlement against himself and that a Special Administrator can be named for that sole and specific purpose and the PR retain all other rights and responsibilities as the PR to the estate. In such a situation of conflict between PR and estate, the Probate Code provides a remedy in Section 62-3-614, which states a Special Administrator may be appointed where there are “*circumstances where a general personal representative cannot or should not act.*” Further, in the case, Fisher on behalf of the Estate of Shaw-Baker v. Huckabee, 422 S.C. 234, 811 S.E.2d 739 (S.C. 2018), which states in pertinent part, “*When the personal representative cannot or should not bring a lawsuit on behalf of a deceased person, a special administrator should be appointed.*”

The Probate Court also noted the Reporter comment in S.C. Code Section 62-3-614 to bolster its ruling which states, “*appointment of a special administrator would enable the estate to participate in a transaction which the general personal representative could not, or should not, handle because of conflict of interest.*” The Reporter’s comment in the Code backs up the Court when it states a conflict of interest in a lawsuit by the PR is not cause, by itself, for automatic disqualification or removal of a duly appointed personal representative. The court did not err in

denying Appellant's request to remove the duly appointed personal representative based on a potential conflict of interest where a remedy is provided by the Probate Code and case law.

---

Since the decedent died intestate, pursuant to the Probate Code Section 62-3-203(a) regarding the priority of appointments, the Respondent has a superior position for appointment above Appellant as her surviving spouse. As such, unless cause to be removed is proven by the Appellant then he should not be removed.

Pursuant to Probate Code Section 62-3-611(a), "*a person interested in the estate may petition for the **removal** of personal representative **for cause** at any time.*" (emphasis added) Further, pursuant to Section 62-3-611(b) **cause for removal** exists when:

- a) Removal would be in the best interests of the estate; or
- b) If it is shown that a personal representative intentionally misrepresented material facts in the proceedings leading to his appointment; or
- c) That the personal representative has disregarded an order of the court; or
- d) Has become incapable of discharging the duties of his office; or
- e) Has mismanaged the estate or failed to perform any duty pertaining to the office.