

SAINT REGIS MOHAWK TRIBAL COURT
IN AND FOR THE SAINT REGIS MOHAWK TRIBE

IN THE MATTER OF THE ESTATE OF

Case No.: 16-CIV-00012

██████████ SWAMP

Deceased.

DECISION AND ORDER

On October 5, 2016, ██████████ Swamp and ██████████ Swamp, daughter and son of the above decedent, filed a request for appointment/acknowledgment as administrator/executor of estate, seeking to be appointed "co-administrators acting together" with regard to their father's estate. They also filed consents for appointment of administrator signed by themselves, ██████████ Swamp and ██████████ Swamp, as well as ██████████ Swamp, son of decedent and ██████████ Swamp, daughter of decedent. Each of those documents was signed July 18, 2016. ██████████ Swamp, ██████████ Swamp, Chadwick Swamp and Venus Swamp are listed as the only survivors of decedent. Also filed on October 5, 2016, was a document purported to be the Last Will and Testament of decedent, ██████████ Swamp, executed June 28, 2016, together with affidavits of subscribing witnesses to said Last Will and Testament. Said Last Will and Testament designated ██████████ Swamp to act as executor thereof.

Also, on October 5, 2016, a "complaint" was filed by ██████████ Swamp, daughter of the above decedent, seeking an order appointing this Court as executor of the above-

named estate. [REDACTED] Swamp also sought other relief, including money damages and a "cease and desist" order

A notice of appearance on behalf of [REDACTED] Swamp and [REDACTED] Swamp was filed on October 5, 2016, by Peter J. Herne, Esq.

A notice of appearance on behalf of [REDACTED] Swamp was filed on October 17, 2016, by Thomas B. Wheeler, Esq.

On October 24, 2016, [REDACTED] Swamp, by his attorney, filed an answer and motion with affidavit in response to the "complaint" of [REDACTED] Swamp, and requested that he, [REDACTED] Swamp, be appointed "administrator" of the estate of the above decedent. In his affidavit, [REDACTED] Swamp not only denied the allegations of [REDACTED] Swamp in her complaint but also alleged that his father, the decedent, was not competent to execute the purported Last Will and Testament. There is also an allegation contained in an attorney affirmation filed by Attorney Herne on October 24, 2016, that decedent is not the rightful owner of the property devised in his said Last Will and Testament. An attorney affirmation was also filed October 24, 2016, by Attorney Herne.

On November 8, 2016, [REDACTED] Swamp filed an affidavit seeking the appointment of an "impartial Administrator" of her decedent father's estate.

The Court conferenced the matter with counsel on January 6, 2017. Complainant/petitioner, [REDACTED] Swamp, was given until January 26, 2017, to file any further instruments with the Court, and petitioner, [REDACTED] Swamp, was given until February 13, 2017, to file any responses thereto.

██████████ Swamp, by her attorney, Thomas B. Wheeler, Esq., filed on January 26, 2017, a petition requesting, among other things, the appointment of an executor (other than ██████████ Swamp who has renounced such appointment) of the decedent's Last Will and Testament.

██████████ Swamp and ██████████ Swamp, by their attorney Peter J. Herne, Esq., filed an answer to said petition, seeking to have the Last Will and Testament of decedent declared a nullity and again arguing that decedent did not own the land devised by such Last Will and Testament.

Attorney Herne states in his affirmation of October 24, 2016, and again in said answer filed February 13, 2017, that there is currently no Saint Regis Mohawk Tribe (hereinafter SRMT) probate code, and the Court has, in the past, relied upon a conglomerate of SRMT laws to settle estate questions presented to it. Despite the fact that there is no SRMT probate code in effect at this time, two requests by the parties here are easily determined: (1) this Court is without authority to act as executor or administrator of any estate; and (2) ██████████ Swamp's request to be appointed executor of his father's Last Will and Testament, while at the same time challenging his father's competency to make such instrument and also challenging his father's ownership of the property devised by such instrument, is inconsistent with the fiduciary duty of an executor to carry out the directives of a Last Will and Testament. Such positions by ██████████ Swamp create a conflict of interest which disqualifies him from serving as such executor.

██████████ Swamp, who was named as executor in decedent's Last Will and Testament, has renounced her right to act as such.

Whether decedent was competent to make such Last Will and Testament, and whether decedent held title to the property purportedly devised by such Last Will and Testament cannot be determined without a evidentiary hearings.

NOW, THEREFORE, upon the foregoing, it is

ORDERED AND DECREED that temporary Letters of Testamentary be issued to SRMT Chief Financial Officer, Michael Garrow; and it is further

ORDERED AND DECREED that said executor shall marshal and preserve the assets of, and debts against, said estate without authority, until further order of this court, to distribute such assets; and it is further

ORDERED AND DECREED that this Court shall conduct an evidentiary hearing as to the validity of said purported Last Will and Testament of decedent on **May 3, 2017, at 10:00 AM**. The parties are directed to be present and ready for such hearing at that time.

Dated: March 3, 2017

Barbara R. Potter

Hon. Barbara R. Potter
SRMT Associate Judge