

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

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ESTATE OF ██████████ SWAMP

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) Case. No.: 16-CIV-00017  
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**ORDER APPOINTING THE  
COURT AS ADMINISTRATOR**

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**STATEMENT OF FACTS AND PROCEDURE**

This case came before the Court with the filing of a probate petition by ██████████ Swamp on December 1, 2016.<sup>1</sup> ██████████ Swamp sought to be named the Administrator of the Estate of ██████████ Swamp, his father.<sup>2</sup> On December 7, 2016, ██████████ Swamp filed a request to withdraw his petition.<sup>3</sup>

On March 30, 2017, the Court appointed ██████████ Swamp as the Administrator of the Estate of ██████████ Swamp.<sup>4</sup> As the Administrator, ██████████ Swamp completed and filed with the Court an inventory list of the known assets and interests of the Estate. Pursuant to the Inventory list, filed by ██████████ Swamp, the Estate consists of the following: a house, land ("Lot # ██████████"), household contents, tractor, boat, personal belongings, pension, and insurance policy.<sup>5</sup> On September 23, 2017, the Court determined the home and lot listed in filed inventory were wrongfully included in the Estate.<sup>6</sup>

On November 7, 2017, a status conference was held and attended by ██████████ Swamp. ██████████ Swamp received notice, but was not present. During the status conference, ██████████ Swamp testified under oath that the Administrator, ██████████ Swamp, had withdrawn \$ ██████████ from the decedent's bank account at SeaComm Federal Credit Union and that ██████████ Swamp gave him his share in the amount of \$ ██████████. Moreover, ██████████ Swamp testified that ██████████ Swamp told him that he has spent the remaining portion, including ██████████ Swamp's share of the funds.

On November 9, 2017, the Court determined that ██████████ Swamp had failed to manage the Estate and distribute the funds in accordance with tribal law and removed him as the

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<sup>1</sup> See generally, *Estate of ██████████ Swamp*, 16-CIV-00017 (June 1, 2017).

<sup>2</sup> The Court notes the decedent died intestate; therefore the property passes to the heirs in accordance to tribal law.

<sup>3</sup> See *Estate of ██████████ Swamp*, 16-CIV-00017, 1 (June 1, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> Inventory of the Estate of ██████████ Swamp (filed by ██████████ Swamp, the acting Administrator, received March 30, 2017).

<sup>6</sup> *Estate of ██████████ Swamp Final Decision on Akwesasne Housing Authority Motion to Reconsider*, 16-CIV-00017, 9 (Sept. 22, 2017).

Administrator of the Estate of ██████ Swamp. Further, the Court determined that none of the decedent's heirs are fit or appropriate to be appointed as an Administrator or Co-Administrators of the Estate of ██████ Swamp. Moreover, the Court subpoenaed SeaComm Federal Credit Union to produce all documentation and records of bank accounts that are related to the Estate of ██████ Swamp and held ██████ Swamp in contempt of Court.

On November 28, 2017, ██████ Swamp appeared for a show cause hearing to provide an explanation to the Court as to why he should not be held in contempt of Court for breach of his fiduciary obligations and responsibilities as the Administrator of the decedent's estate. At the hearing, ██████ Swamp testified that he gave his brother, ██████ Swamp, his portion of the money and did not give ██████ Swamp his portion.

### **DISCUSSION**

The Court's November 9, 2017 Order and Decision has left the Estate of ██████ Swamp without an Administrator. In the more usual case, the remaining heir/heirs of the Estate could file an application with the Court to be appointed as the Administrator. However, in the instant case, the Court has determined that the remaining heirs of the Estate, ██████ Swamp and ██████ Swamp, are not appropriate to be an Administrator or Co-Administrators of the Estate.

In regards to the instant case, the Estate's probate assets are limited to personal belongings and money funds. By definition this is a small estate, therefore, it does not require a vast amount of management by an Administrator.<sup>7</sup> In different circumstances, a small estate may be probated without the appointment of an Administrator.<sup>8</sup> However, the actions taken by the heirs clearly demonstrate an Administrator is necessary to ensure the remaining assets are properly managed.<sup>9</sup>

In order to expeditiously probate the Estate of ██████ Swamp, the Court shall serve as the Administrator. As the Administrator, the Court is responsible for the management of the Estate.

### **ORDER**

#### **THEREFORE IT IS ORDERED, DECREED, AND ADJUDGED:**

1. The Court shall serve as Administrator of the Estate of ██████ Swamp.
2. Any objection made by ██████ Swamp in regards to the appointment of the Court as the Administrator must be raised at the status conference on January 2, 2017.
3. ██████ Swamp shall be allowed to ask the Court to include other assets to be included in the inventory. ██████ Swamp have until January 9, 2017 to file a written request with the Court.

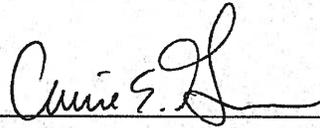
<sup>7</sup> "Small Estate" is defined as a "... [E]state whose value is less than \$20,000 and which does not include any interest in real property ..." SRMT Probate Law Chapter 2. § 2.1 (c) (1).

<sup>8</sup> SRMT Probate Law Chapter 2. § 2.1 (c) (5).

<sup>9</sup> ██████ Swamp Order to Remove Administrator and Order of Contempt, 16-CIV-00017, 3 – 6 (Nov. 9, 2017).

4. [REDACTED] Swamp are ordered to file with the Court any and all documentation they have in their possession related to the Estate of [REDACTED] Swamp.
5. [REDACTED] Swamp are prohibited from distributing, selling, changing, destroying, or giving away any of the property in the [REDACTED] swamp Estate.

Signed by my hand this 2nd day of January, 2018.



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Carrie E. Garrow, Chief Judge  
Saint Regis Mohawk Tribal Court

***The Parties have thirty (30) days from entry of this Order to file an appeal with the Saint Regis Mohawk Appellate Court.***