



2.) She recommended to the Executor that he obtain appraisals of the real and personal property of the decedent. The Executor, pursuant to Atty \*\*\*\*\*'s direction and guidance, did obtain appraisals of the decedent's real estate and of the decedent's machinery and equipment (see **Exhibit B**), copies of which were mailed to all legatees.

3.) Atty \*\*\*\*\* filed a highly detailed Inventory on \*\*\*\*\* \*, 2008. (See **Exhibit C**).

**The Moving Parties Failed to Make the Allegations They Now Make Back in June of 2007, When The \*\*\*\*\* Police Department Investigated**

The decedent passed away in the early hours of \*\*\*\*\* \*, 2007 at the \*\*\*\*\* Hospital in \*\*\*\*\* , MA.

The Executor arrived at the decedent's home at approximately 11:00 the next morning, to find many of the moving parties already at the house, rummaging through the decedent's effects. (See **Exhibit D**, Affidavit of \*\*\*\*\* , Executor).

On \*\*\*\*\* \*, 2007, the Executor reported to the \*\*\*\*\* Police Department his fear that these family members had taken cash and jewelry from the decedent's home prior to his arrival. A true and accurate copy of the \*\*\*\*\* Police Department report is appended hereto as **Exhibit E**.

The \*\*\*\*\* Police Department undertook an investigation, but suspended same for lack of evidence.

Moving party \*\*\* \*\*\*\*\* (please see paragraph 4 of his Affidavit) now avers that on \*\*\*\*\* \*, 2007 he and \*\*\*\*\* counted out over \$150,000.00 in cash from the decedent's safe and that he, Mr. \*\*\*\*\* estimated that there still remained over 1.5 million in cash in the safe.

Yet, two months later, in June of 2007, when the \*\*\*\*\* Police Department was investigating the goings-on at the decedent's home and leaving telephone messages for Mr. \*\*\*\*\* , this allegation was not advanced by him.

Similarly, although the investigating officer spoke, again in June of 2007, to the would-be replacement Executor, \*\*\* \*\*\*\*\* , she, too, did not advance the claim now made, to wit: that \*\*\*\*\* had spirited off bags full of cash.

As well, \*\*\* \*\*\*\*\* , now avers, in paragraph 3 of her Affidavit, that the decedent "said there was 1.2 million in the safe," but in June of 2007, when speaking to the investigating police officer stated that "no one knows how much [the decedent] had..."

**Argument and Citations to Authority:**

The moving parties are actually challenging the accuracy and completeness of the Inventory. There is no need to delay the administration of the estate by removing and replacing the Executor, when the moving parties are free to undertake discovery to attempt to prove their

allegations. The deposition and discovery provisions of Mass. R. Civ. P. 26 through 37 are applicable to all probate matters. Prob. Ct. R. 27A, 27B.

\*\*\*\*\* was nominated by the decedent to be executor. The power to remove a fiduciary will not be exercised by the court lightly, particularly in cases in which such fiduciary has been nominated by the testator. A fiduciary so nominated, if suitable, is entitled to be appointed and to serve. Grossman v. Grossman, 343 Mass. 565, 568 (1962); Lindsey v. Odgen, 10 Mass. App. Ct. 142, 146 (1980).

The failure of the moving parties, \*\*\* and the would-be replacement Executor, \*\*\*, to air their allegations against the Executor way back in June of 2007, when speaking to the investigating officer from the \*\*\*\*\* Police Department, strongly suggests that the allegations against the Executor are a recent contrivance. Commonwealth v. Nickerson, 386 Mass. 54 (1982) (appropriate to impeach a witness by showing that he or she was silent in circumstances in which a person would have naturally been expected to deny or assert a fact).

\*\*\*\*\* promptly retained highly competent counsel and has complied with all procedural and substantive requirements of the law. There is no legal presumption that a fiduciary intends anything inconsistent with his or her duty. Drake v. Green, 92 Mass. (10 Allen), 126.

WHEREFORE:

The Executor, \*\*\*\*\*, asks the Honorable Court:

- 1.) to deny the Motion to Remove him as Executor;
- 2.) to set a discovery deadline; and
- 3.) to grant such other relief as it deems meet and just.

Respectfully submitted,  
the Executor, \*\*\*\*\*,  
by his attorney:

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