

BROKEN PROMISES

Final Indignities

AN EDITORIAL INVESTIGATION

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On four consecutive Sundays, beginning Aug. 28, 1994, the St. Petersburg Times published a different kind of editorial. Final Indignities examined the estate system, based on months of research and writing by editorial staff member Jeffrey Good. It appeared on the front page of the Perspective section to convey its importance.

Floridians should be able to face death trusting the legal system to carry out their last wishes. But we found that, too often, the trust is broken. We invite you to educate yourselves and join our call for reform.

Joe Thomas wanted to end his life as he lived it: with quiet dignity. In Florida, that was too much to ask.

For most of his nine decades, Thomas had made do without the help of others. He paid his bills on a parks department salary, saving pennies by sprinkling warm water on his cereal. He lived alone, retiring to a modest boarding hotel where he bothered no one and even made his own funeral plans.

But there was one job Thomas could not do alone: leave a [final gift](#) to 32 beloved grandnieces and grandnephews. He wrote a will asking Florida's probate courts to carry out his wish.

When Thomas died in 1988, he left enough for each beneficiary to inherit about \$8,500. The heirs made earthy plans for Uncle Joe's bequest: help a child through college, put money down on a house in a safer neighborhood, weather a spell of joblessness.

A judge appointed St. Petersburg lawyer Lauren Sill to serve as executor of the Thomas estate. Although she was supposed to begin distributing the inheritances within one year, the courts let her keep the cash for nearly five.

By the time a judge asked Sill what had become of the money, it was too late. She had stolen \$270,000, nearly all the dead man's savings. With help from Florida's probate court, she had stolen something else: Joe Thomas' final dignity.

Each year, more than 140,000 people die in Florida. Many are like Joe Thomas: They work for decades and retire to this place in the sun. As the end nears, they write wills leaving a final gift to friends, family, a favorite charity. Somewhere along the way, a lawyer says, "Don't worry. The courts will take care of your last wish."

We face death believing this promise, trusting that our passing will be marked with a final measure of dignity. Too often, the trust is broken.

Make no mistake: Most estates are administered honestly and well. But these successes come not because the system demands it, but because individual executors, lawyers and court officials choose to do the right thing.

Florida's probate system is designed to be "self-administering," that is, the courts generally don't get involved unless someone raises a red flag. That system works fine when estate administrators are honest, efficient and open about their work.

But in other cases, the system's loose oversight opens the door to wrongdoing. Trusted executors loot estates, while court officials look the other way. Wrongdoers receive light punishments, while victims get an empty promise of repayment. And as the probate horror stories mount, elderly Floridians take refuge in living-trust plans that leave them even more vulnerable to exploitation.

The probate system is not intrinsically evil. Run properly, it is a fine way for people to pass wealth from one generation to the next. Assets are gathered, bills are paid and bequests are passed to the rightful heirs -- all under the court's watchful eye.

But the system is no better than the law that governs it, or the people who run it. Today, in the first of a series of editorials on Florida's estate system, the Times explores how probate court fails the people it is designed to protect.

Too often, the people who take advantage are the ones in whom the courts -- and the public -- place the greatest trust: lawyers.

Broken deadlines

Would you give someone a one-year deadline for distributing \$283,000, then wait five years to ask what had become of the money? That's exactly what Pinellas County judges did with Joe Thomas' life savings.

Florida law gives nearly unchecked power over estates to the executors -- also known as "personal representatives" -- appointed to administer them. In return, executors are supposed to begin distributing inheritances within a year, or provide a good reason why they have not.

That time limit is written into law, but court officials don't always enforce it. As Sill blew off deadline after deadline, the judges granted her extension after extension. Sill celebrated by writing herself fresh checks from Joe Thomas' bank account. After Circuit Judge Helen Hansel gave Sill a 60-day extension in 1992, for instance, Sill stole nearly \$97,000.

Last year, after Sill had enjoyed eleven deadline extensions, Hansel finally called her bluff. Sill was summoned to court and asked: Where is the cash?

"In the bank," Sill replied.

All \$283,000?

"That's correct," said Sill.

Then an amazing thing happened. After five years of lies, someone thought to check up on Sill. Five minutes later, he reported, "Your Honor, I have been advised by the Chase Bank that the balance in the estate account at this time is \$3,611."

Five minutes and a phone call. That's all it took to expose Sill as a thief and a disgrace to the probate system. That's more than the courts had been willing to do -- until it was too late.

Earlier this year, Sill was convicted of stealing money from four estates, including Joe Thomas'. She was sentenced to two and a half years in prison. While the delays in her case were extreme, they are far from unusual.

As of March 31 -- the most recent date for which statistics are available -- nearly half of all Florida estates were open past the one-year limit. The percentage of overdue estates varied widely among counties. For instance, Pinellas had 31 percent over deadline, while Hillsborough had 49 percent and Palm Beach a whopping 86 percent. (These figures are for estates under \$600,000 that don't involve a legal contest; more complicated estates have longer deadlines.)

In recent years, court officials have done a good job sending out warnings on delinquent cases. But they need to do more. They need to demand proof that executors are not delaying estates to drain them.

The system failed when it didn't demand that proof of Lauren Sill. Joe Thomas, 1901-1988, deserved better.

Cozy deals

Overseeing an estate isn't always as simple as calling the bank. Many people die leaving not only cash, but also antiques, art, jewelry and rare stamps.

Florida law gives estate administrators vast power to sell such valuables and distribute the proceeds to heirs. In a logical world, the law would require the administrators to prove they had conducted these sales honestly and in the best interest of the estate.

But this isn't a logical world. It's Florida.

State law does not require executors to obtain objective, professional appraisals. Because of this loophole, the courts don't know if executors are protecting estates -- or looting them.

Consider the case of Margaret Fiala.

Mrs. Fiala was a widow who died in Pasco County, leaving her life's treasures to two grown children. Because the heirs lived out-of-state and could not properly administer the estate, a judge appointed Pasco lawyer David C. Gilmore to carry out Mrs. Fiala's final wishes.

Gilmore needed to sell the estate's stamp collection and distribute the proceeds to Mrs. Fiala's children. While not required by law, an appraisal was important; the untrained eye can't distinguish between a 10-cent stamp and a \$10,000 one. So, Gilmore hired a professional appraiser.

The appraiser, Pasco Coins & Jewelry owner Tim Carr, set the collection's value at nearly \$5,000. Did Gilmore then use that appraisal to guide him as he put the stamps on the market, seeking the highest price? No. Gilmore simply turned around and sold the stamps to Carr for \$5,000 -- without seeking any other bids.

Gilmore and Carr insist that was a fair price. One of the heirs, Diane Fiala, has her doubts. Fiala has obtained professional estimates setting the stamps' value as high as \$100,000 -- 20 times Gilmore's sales price.

Fiala initially approved Carr's hiring. But now she wonders if Gilmore and the appraiser struck a deal to get the stamps cheap and then resell them at a profit, a suspicion both men vehemently deny. What is the truth? That's the \$95,000 question -- one the courts can't answer, because they didn't require Gilmore to prove he had sold the stamps at arm's length. In fact, Gilmore didn't even have to tell court officials who had appraised and purchased the stamps.

Pasco Circuit Judge Lynn Tepper, who oversaw Gilmore's work, refused to answer questions from the Times. But a veteran probate judge not involved in the case said selling property to an appraiser raises serious questions. [Pinellas-Pasco Circuit Judge Thomas E. Penick Jr.](#) said, "That's loose operations."

It's also an insult to a woman who put her faith in the courts. Margaret Fiala, 1911-1985, deserved better.

Protection lost

Diane Fiala might never have known how much the stamps in her mother's estate had sold for, if she had done what too many beneficiaries do: waive her right to a final accounting.

The law requires executors to submit a detailed financial report before closing an estate, unless they get a waiver from the beneficiaries. Many lawyers urge their clients to sign away this important protection, saying, "You can trust me."

Really? Consider the case of the red Mercedes. After Esther Specht died, Tampa lawyer Karl Stevens Jr. administered her estate and asked the beneficiaries to waive a final accounting. Not suspecting any skullduggery, they signed the forms. No longer accountable, Stevens bled the estate, taking a \$16,400 "loan" to treat himself to a Mercedes-Benz convertible. The color: Sunset Red.

Normally, Stevens' cash grab would have gone undetected; a judge would have seen the waivers and closed the estate. Luckily, though, Stevens' secretary had a conscience and tipped off the Florida Bar.

After he was caught, Stevens repaid the money and pleaded guilty to grand theft and related crimes. But his case reveals a serious flaw in the probate system: While beneficiaries expect the court to be protecting them, officials expect beneficiaries to be savvy enough to protect themselves. In the canyon between those expectations, deceit flourishes.

Even in cases where accountings are completed, court officials do little more than stuff the documents in a forgotten file. A survey of court officials in six estate-heavy counties -- Pinellas, Hillsborough, Broward, Palm Beach, Orange and Pasco -- found that none routinely audit accountings.

Said Orange County probate manager Robert Herndon: "If they (beneficiaries) have no objections to how the funds are managed, or mismanaged, then the court has no concern."

Herndon is right, and the system couldn't be more wrong.

In many cases, beneficiaries live out of state, are unfamiliar with [probate law](#), or lack the financial knowledge to police an estate administrator. They count on the courts for that protection.

People facing death have a right to expect that their money will go to chosen beneficiaries, not to a crook in a convertible. Esther Specht, 1909-1987, deserved better.

Uncaring courts

When problems do surface in estates, judges have the power to ask the tough questions and make things right.

Judges can order estate administrators to court and put them under oath. They can demand documentation of bank balances and estate sales. In the worst cases, they can appoint investigators and throw errant administrators off the case or into jail.

Used judiciously, these powers allow judges to ferret out wrongdoers and strike fear in potential villains. Yet, some judges seem ridiculously reluctant to use them.

In the Thomas estate, court officials issued warning after warning to attorney Sill, but didn't back them up until it was too late. In the Fiala estate, the judge seemed more interested in making excuses for attorney Gilmore than in investigating legitimate questions about his work.

Probate is a cozy club. The same judges see the same lawyers every day inside the courtroom, and often outside. When the lawyers say something is so, the judges tend to believe them.

Diane Fiala was like many beneficiaries of Florida estates. She lived a thousand miles away, didn't understand Florida law and could only communicate with the court by letters, phone or an occasional visit.

Gilmore says Fiala has no right to complain now, because she didn't protest the stamp sale when it was done. But court records show that while Diane Fiala did not specifically object to the appraiser buying the stamps for \$5,000, she did tell court officials that a stamp club president said her parents owned "very good stamps, worth over \$25,000." And in a formal objection to Gilmore's financial accounting, Ms. Fiala protested that Gilmore "has failed to properly account for the true value of the personal property of the Decedent."

That objection forced Pasco court officials to address her concerns. But when they did, Ms. Fiala didn't have a friend in the right place.

Probate judges often rely on court clerks to watchdog problem files. In the Fiala case, that job fell to Pasco deputy clerk Lisa A. Peters -- who had worked nearly three years as Gilmore's probate secretary before she began examining his work on the Fiala estate.

Neither Peters, her bosses, nor Judge Tepper would answer questions about how that past relationship affected the court's actions. They don't have to; Peters' conflict-of-interest clearly disqualified her from being an objective overseer.

When Fiala raised questions about Gilmore's actions on the stamps and other estate issues, the judge should have appointed an independent investigator, sometimes known as an administrator ad litem. Instead, Tepper brushed off the protests and closed the estate -- leaving questions that have hounded Fiala and Gilmore through years of legal feuding.

Diane Fiala once trusted Florida's legal system, but now she is justifiably bitter. "The people who are supposed to uphold the trust are more geared to their personal networks," says Fiala. "It isn't a system of checks and balances. It's more like a good ol' boy network."

[We all deserve better.](#)

Series at a glance

This series was based on information gathered from court records, Florida Bar proceedings and interviews with judges, lawyers and the citizens affected by their work. It was researched and written by editorial writer Jeffrey Good, who has worked for the Times since 1983 and written extensively about the probate court's impact on elderly Floridians.

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