

**WITTMER & LINEHAN**

ATTORNEYS AT LAW

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## Representing Yourself *Don't Try This at Home*

Florida allows its citizens to represent themselves in most legal proceedings. And many life and business transactions do not require an appearance in a courtroom. Buying real estate, entering a business contract, drafting a will, or forming a corporation do not require the blessing of a judge and/or jury. Routine in nature, these transactions lend themselves to pro se representation. Pro se is a Latin phrase meaning, "for one's self."

However, other legal matters do require court appearances and the stakes are much higher - the loss of investment, inheritance, property or personal liberty.

"In such matters, the potential loss far outweighs the cost of consulting an attorney," says Steven T. Wittmer, a board certified civil trial lawyer in Sarasota. "If in doubt, if you're losing sleep over a set of circumstances confronting you, it is advisable to consult with an attorney."

If Floridians exercise their right to act as their own attorney, they must meet the associated requirements and responsibilities. Guided by the Florida Constitution, the Florida Supreme Court has adopted rules and procedures for the operation of the state's courts. The rules are binding on the courts and those who litigate before them.

"The courts require pro se litigants to follow the same rules and procedures that an attorney is required to follow," Wittmer says.

### The Probate Exception

However, Florida higher courts have upheld the rule that prohibits pro se representation in special cases, most notably in a probate case with more than one

interested party. One of the interested parties cannot act pro se, but must be represented by an attorney. With limited exceptions, every guardian and personal representative of an estate must hire a lawyer, the court has ruled.

Florida Rule of Probate Procedure 5.030(a) is clear: Every guardian and every personal representative, unless the personal representative remains the sole interested person, shall be represented by an attorney admitted to practice in Florida.

That's the lesson to be drawn from opinion cited in 2006 by the Florida's Fifth District Court of Appeal in *Benedetto v. Columbia Park Healthcare System*. Marcus Benedetto claimed he was not required to hire legal counsel because he was the "sole interested person" in an estate. However, the court was unable to tell whether Benedetto was the "sole interested person" in the estate. If that was determined, he would qualify for the exception to the general rule requiring attorney representation. But, the court couldn't determine that he was the only interested person, and ruled against his appeal to represent himself in the estate's matters.

"In essence, the court said: "Go hire an attorney," Wittmer explained.

### Professional Protection

"Probate matters can be emotionally charged. Family members and friends lose perspective," Wittmer says. "Reasoned, objective opinions by a qualified lawyer is the best defense of your legal rights."

Guardians and personal representatives of estates need a lawyer because:

- The terms of a will or trust are unclear
- The executor or trustee embezzles money
- The trustee favors one beneficiary over others
- Suspected problems with how the will was signed and witnessed
- A person is owed money that is part of an estate or trust account
- Suspicions that the executor did not properly protect and invest assets

- The executor or trustee has not accounted for all assets
- The trustee refuses to make a justified distribution
- A spouse disinherits their spouse
- Siblings disagree about what parent(s) wanted

The Law Office of Steven T. Wittmer, P.A. deals with the complicated issues of probate and estate administration on a daily basis. "If you, a loved one, or an acquaintance may benefit from our expertise," Wittmer says, "we would be pleased to help."