

Fact Pattern- Primary Players

- Decedent **DONNA**
- Husband/Ex of Decedent **HARRY**
- Adult Son **ANDY**
- Adult Daughter **DEBRA**
- Minor Daughter **MARY**
- Second Spouse of Decedent **SUE**

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Fact Pattern- Secondary Players

- Child of Decedent but not Spouse
(spouse's step child) **SANDRA-DEE**
- Child of Spouse but not Decedent
(decedent's step child) **SHANE-SCOTT**
- Brother of Decedent **BOB**

General Assumption

Donna died domiciled in Massachusetts on
January 2, 2012 and it is now March 1, 2012.

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SPECIAL ADMINISTRATION



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SPECIAL ADMINISTRATION

- A special personal representative (SPR) is most similar to a temporary executor or a Special Administrator.
- Any suitable person may be appointed a SPR.
- The rules governing priority of appointment do not apply.
- The appointment of a SPR may be for up to 90 days unless otherwise ordered or extended by the Court.

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SPECIAL PERSONAL REPRESENTATIVE

The appointment of a SPR by the Court may be necessary in order to:

- Preserve an estate;
- Secure its proper administration; or
- Perform an act that an appointed PR cannot or should not perform because of a conflict of interest.

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SPECIAL PERSONAL REPRESENTATIVE

A petition for appointment of a SPR cannot be filed unless a PR has already been appointed or there is an underlying informal or formal proceeding pending, with one exception:

A SPR may be appointed without an underlying probate petition for the limited purpose of obtaining access to a decedent's safe deposit box to conduct a will search.

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SPECIAL PERSONAL REPRESENTATIVE
HOW IS IT REQUESTED

(1) Formal Petition:

- request in formal petition under "other"
- include a motion for SPR
- may also be requested ex-parte or with a short order of notice, if emergency

(2) SPR Petition:

- used for will search
- used when PR already appointed and SPR needed for limited purpose

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SPECIAL PERSONAL REPRESENTATIVE

The filing of a SPR petition STAYS any pending informal petition.

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SPECIAL PERSONAL REPRESENTATIVE
Hearing/Notice/Duration

- A hearing is required for the appointment of a SPR.
- Prior (motion) notice is required unless waived or shortened by the Court upon finding that an emergency exists.
- A Bond with sureties is required unless excepted.
- The appointment is for up to 90 days unless otherwise ordered by the Court for extraordinary circumstances.
- During the duration of the SPR's appointment, the powers and duties of any previously appointed PR are suspended.

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**SPECIAL PERSONAL
REPRESENTATIVE**

Powers

- **A SPR has many, but not all, of the powers granted to a PR.**
- **These powers, in general, are limited to collecting and preserving assets of the estate, but include the authority to continue any unincorporated business or entity and to pay debts.**
- **Powers related to selling and distributing assets are specifically excluded by statute.**
- **A SPR's powers may be expanded by will, or by court order in a formal proceeding.**

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**SPECIAL PERSONAL
REPRESENTATIVE**

- **A SPR proceeding is a formal proceeding as long as the SPR continues to serve.**
- **Upon termination of the SPR's appointment, the proceeding will be informal, formal or supervised, depending on the nature of the prior proceeding.**

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**SPECIAL PR
Fact Pattern 1**

Donna dies with a will leaving as part of her estate an unincorporated bakery which she owned and operated prior to her death. Donna is survived by her spouse, Harry, and their two children, Andy and Debra. The will nominated Harry as PR and Andy as the alternate and states the nominated PR may also serve as a temporary. Harry needs to attend to the business operations immediately.

What are Harry's options?

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SPECIAL PR
Answer to Fact Pattern 1

Harry is nominated in the will and therefore may file a Petition for Informal Probate of Will and Appointment of a PR giving pre- and post-filing notice to Andy and Debra as early as 7 days after Donna's death. This is one of the fastest ways Harry will gain authority to handle the business, as a PR.

If Harry needs to be appointment earlier than 7 days from Donna's death, Harry should file a Petition for Formal Determination of Testacy and Appointment of PR with a motion seeking an emergency appointment as SPR.

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SPECIAL PR
Fact Pattern 2

CHANGE FACT PATTERN 1:

Harry, overcome by grief, is unable to take action regarding the estate and will neither file a Petition nor a Renouncement and/or Nomination.

What are Andy and Debra's options?

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SPECIAL PR
Answer to Fact Pattern 2

Andy, as alternate PR, or Debra, as Harry's child, could file a Petition for Formal Determination of Testacy and Appointment of PR seeking their own appointment stating that Harry has failed or refused to act and seeking their own appointment as SPR.

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**SPECIAL PR
Fact Pattern 3**

CHANGE FACT PATTERN 1:

Donna dies survived by her spouse Harry and their only son Andy. Donna owned the bakery with her brother, Bob. After Donna's death, Harry and Andy have both told Bob that Harry intends to file to be appointed PR but after almost 2 weeks time this hasn't happened.

What are Bob's options?

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**SPECIAL PR
Answer to Fact Pattern 3**

Bob is not an heir, devisee nor does he have priority for appointment as a PR. But, Bob is an interested person and has standing as co-owner of the bakery to file a Formal Petition seeking the appointment as PR and SPR to run the business.

Bob must give Harry and Andy prior (motion) notice of his request and his appointment will be for 90 days (or longer if the Court finds extraordinary circumstances exist for a longer appointment).

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