

DECEDANT'S NEPHEW DENIES INFLUENCE,  
\$830,000 WILL DISTRIBUTED TO REMAINING HEIRS

This case involved a will contest in the Norfolk County Probate and Family Court wherein the decedent, who passed away in 2007, had been a ward under conservatorship since 1980, at which time the decedent was adjudged by the probate court to be incompetent to manage his own financial affairs. The decedent's nephew was his court-appointed conservator during those twenty-seven years, and on May 15, 1994, the decedent allegedly executed a will leaving his entire estate of approximately \$830,000.00 solely to his nephew and conservator, while entirely omitting from inheritance the decedent's five other nieces and nephews.

On or about January 24, 2008, the decedent's nephew and conservator filed a petition for probate of will, requesting that the court allow the will disinheriting all of the decedent's next of kin besides himself. The decedent's other nieces and nephews, represented by Attorney David M. Spillane of Quincy, MA, promptly objected to the alleged will on the grounds that the decedent, who had been under conservatorship for decades and unable to manage his own funds, lacked the testamentary capacity to execute a will as purportedly he did in 1994. Spillane, on behalf of the decedent's next of kin, also objected to the alleged will on the grounds that it had been procured through the undue influence of the nephew and conservator, who stood in a confidential fiduciary relationship to the decedent, especially where the incompetent decedent was susceptible to undue influence. Furthermore, David M. Spillane argued that the nephew and conservator had used the opportunity and the control that he had over the decedent to ensure the creation of the alleged will benefitting solely himself.

In lieu of proceeding to trial on this matter against Spillane and the decedent's heirs at law, the decedent's nephew and conservator agreed to completely nullify the alleged will, and to

instead distribute the estate as if the will had never existed. The result of the nephew and conservator agreeing to disregard the will that he had procured was that the \$830,000 estate was instead split essentially equally amongst the decedent's heirs at law.