

Legal Presumption of Death

When a person has been missing for several years, his or her family is left in limbo. Depending upon the circumstances of the person's disappearance, it may be time to face the possibility that the person is deceased. As noted in chapter 6, "Celeste's Sister Sara: Found Alive in Mexico," after years of searching for her sister's remains, Celeste stated, "At some point I had to stop and just admit that maybe Sara was in Mexico and fell off a cliff." Celeste was, in fact, in the process of obtaining the final document she needed for her sister's legal Presumption of Death when she received word that Sara had been found alive. Also see chapter 6 for more on guardianship of the mentally ill.

A medical examiner/coroner must issue a death certificate for the long-term missing person in order for his or her family to collect on life insurance policies, to remarry, and to settle legal issues such as disposition of property. The certificate will not be issued without a Presumptive Death being established first by a formal legal proceeding which can only be commenced after a period of years that varies from state to state. This proceeding requires submission of evidence to a court of all efforts to locate the missing person.⁵

Another advantage of the court order and the death certificate is the ability for family members to file for survivors' benefits with the Social Security Administration. According to Administration policy, families are urged to file a claim shortly before a person has been missing for seven years. The Social Security Administration's requirements for Legal Presumption of Death state that:

- the evidence establishes that the missing person has been absent from his or her residence and has not been heard from for seven years.
- the presumption arises without regard to the reason for the absence. (In some cases, however, such as proof that the missing person is a fugitive, presumption of death can be rebutted in court.)⁶

To open a presumptive death case, a formal legal proceeding must be brought before a court with jurisdiction over probate matters, that is, the segment of the judicial system primarily charged with handling wills, estates, conservatorships, and guardianships. In an interview with the author, Denver probate attorney Joseph K. Reynolds stated, "The objective in a presumptive death case is to present the court with sufficient evidence that all reasonable efforts have been made to find the missing person." He added that families do not need to engage an attorney, but, if they do, having an attorney can help to assure a judge that a thorough and reasonable search has been conducted.⁷

One of the first tasks in the search is to identify and contact all of the missing person's next of kin, friends, and acquaintances. Other contacts to be made include previous employers, co-employees, landlords, health care providers, and law enforcement, as well as county coroners/medical examiners. This is where people-searching skills come into play, as the names and current contact information of all of these people, as well as the information they may, or may not, have, needs to be documented.⁸

Obviously, filing a missing person report with law enforcement helps to satisfy the court that the missing person "cannot be located by diligent search and inquiry." It also documents that the missing person's absence was continuous and without explanation, and that those most likely to hear from the missing person have heard nothing during the time he or she has been missing. Once the process is complete, the missing person's estate can then be distributed as if the person was deceased.⁹ Specific laws on inheritance and remarriage, however, vary from state to state.

"Imminent peril," such as a plane crash in which all on board are presumed dead (as in the September 11, 2001, attacks on the World Trade Center in New York City), expedites the issuance of death certificates for those whose remains have not been found. What happens, though, if the missing person is declared dead and then returns? It does not occur often. But, as noted in "Voluntary Disappearances," in chapter 2, "Categories of Long-Term Missing Adults," after the requisite number of years the husband of Brenda Heist had her declared dead, then he collected on her life insurance, moved on with his life and remarried. His remarriage likely is valid, but initial news reports were unclear as to whether or not the insurance company will sue (or has sued) to collect the life insurance money from Brenda.

There are other documented cases that do illustrate the complexities of a missing person declared dead who then returns. One was John Burney, a Helena, Arkansas, man on the brink of financial collapse. He was involved in a head-on collision on a bridge. Without anyone seeing him, he slipped over the bridge railing, climbed down a piling, and swam downstream. Then he walked into the state of Mississippi and took a bus to Florida where he assumed a new identity, remarried, and had a child. His first wife and his company collected on a large amount of life insurance.¹⁰

After a stated amount of time had elapsed, Burney returned to Arkansas to visit his father. According to the *Straight Dope Science Advisory Board's* article "What Happens When Someone 'Legally Dead' Shows Up Alive?" the court found that the man's beneficiaries did not have to return the money. But, Burney himself was not so fortunate. The court ruled his actions were fraudulent and entered judgment against him for \$470,000.¹¹ Some well-known people who have been declared dead include trade union leader Jim-mie Hoffa who has been missing since 1975 and American teenager Natalee Holloway, missing in Aruba since 2005.

In some cases, family members may have reasons to believe that their long-term missing persons are still alive, even though they are nowhere to be found. In those cases, and if the persons left behind estates, conservators can take legal actions to manage the missing persons' properties.¹²

Sometimes the lengthy court proceedings can bring resolution to family members, but they can also be emotional letdowns. A few years ago, after the finalization of a declaration of death for a woman who was missing for eleven years, a victim advocate related that the victim's mother and sister broke down sobbing in the courtroom.¹³