§ 2108. Proceeding by fiduciary for continuation of a business

A fiduciary may petition for the continuation of a business other than a profession, of which decedent or the person whose estate is being administered was sole owner and it is desired to continue it for the best interests of the estate; provided, however, that a fiduciary may petition for the continuation of a deceased dentist's practice for a period not to exceed eight months, if such practice is continued by a person licensed to practice dentistry in this state. In such proceeding:

1. If the petition be entertained the court may make an intermediate order without notice authorizing continuance of the business pending the return of process and final decree.

2. Any respondent may serve and file an answer within 8 days after the return of process or such further time as the court directs. After inquiring into the facts and hearing the parties, if the court is satisfied the best interests of the estate require the continuation of the business, it may make a decree accordingly.

3. The decree may provide such restrictions, conditions or requirements and such incidental relief, including a direction or permission for incorporation of the business, as the court may order.

4. Whenever a fiduciary shall be authorized under this section to continue a business in other than corporate form the decree shall provide for the extent of the liability of the assets of the business and the assets of the estate apart from the assets of the business for debts and other liabilities arising out of its continuance. The court may make such directions in this regard as it deems advisable in the circumstances. The decree shall further provide for the period of time for continuance.

5. If under a decree granted under this section a fiduciary shall continue and carry on a business other than in corporate form he shall file a certificate of doing business under an assumed name pursuant to the provisions of section one hundred thirty of the general business

law. The certificate shall include in addition to the other matters required by that section a statement showing the fiduciary capacity in which he is conducting and carrying on the business and the extent to which the debts and other liabilities incurred in the continuance are to be chargeable to the assets of the estate as provided in the decree. The fiduciary shall be relieved of personal liability if acting within the authority granted and having filed the certificate above provided, but shall be liable only in a fiduciary capacity. Any person having a claim, demand or cause of action arising out of or in connection with the conduct of the business after the filing of the certificate above provided shall thereafter be limited in the payment or satisfaction of such claim, demand or cause of action to such assets as are made available for the payment or satisfaction of debts and liabilities in the decree, provided, however, that nothing herein contained shall relieve the fiduciary from personal liability for the consequences of his own wrongful act or negligence in the continuance of the business and provided further that nothing herein contained shall render ineffectual any provision in a will or other instrument directing or permitting the continuance of a business.

6. Unless otherwise provided in the decree all funds collected and received in continuing and carrying on the business of a decedent shall at all times be kept separate and apart from the funds in the hands of the fiduciary forming part of the general assets of the estate as a whole.

7. Notwithstanding the foregoing provisions, any creditor or person interested may at any time apply to the court for an order requiring the fiduciary to discontinue and wind up the business and the court may thereupon make such order as to it appears for the best interests of the estate, the creditors and all persons interested.