

PROBATE & GUARDIANSHIP RULES COMMITTEE
OF THE FLORIDA BAR

AND

PROBATE & GUARDIANSHIP RULES COMMITTEE
REAL PROPERTY, PROBATE & TRUST LAW SECTION
OF THE FLORIDA BAR

FILED

SID J. WHITE

MAR 28 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BRIEF IN SUPPORT OF AND IN EXPLANATION OF
PROPOSED AMENDMENTS AND REVISIONS TO
PROBATE & GUARDIANSHIP RULES FOR
CYCLE ENDING JULY 1, 1984

Dated: March 15, 1984.

Prepared by:

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PREFACE

Throughout this brief the references to the rules and subparagraphs are to the proposed changes unless reference is specifically made to the present rule or present subparagraph.

The Board of Governors of The Florida Bar voted unanimously in favor of the recommendations as did the Executive Council of The Real Property, Probate and Trust Law Section of The Florida Bar.

In the review of the rules, the titles were reviewed and in some cases changed to be more explanatory of the purpose of the rule. In each rule an attempt was made to insure the rules were better formatted for ease in reading and captions added to principal subparagraphs.

The committee attempted to delete from the rules specific references to statutes and rules by number and to make general references in the rules to other rules and statutes. Specific reference is made to a rule and statute by number under a heading Rule Reference and Statutory Reference. Consequently, the rule would not have to be changed in the event of a change to a rule or a statute.

We are submitting the following grouping of rules to assist the court in reviewing those rules that have no changes, are being deleted, are new and those rules being revised.

Group I Rules - No Changes.

- 5.010 Scope
- 5.015 General Definitions
- 5.050 Transfer of Proceedings
- 5.060 Request for Notices and Copies of Pleadings
- 5.070 Subpoena
- 5.100 Right of Appeal
- 5.120 Administrator Ad Litem and Guardian Ad Litem
- 5.190 Definitions
- 5.200 Petition for Administration
- 5.310 Disqualification of Personal Representative;
Notification
- 5.320 Oath of Personal Representative
- 5.330 Execution by Personal Representative
- 5.390 Partition for Purpose of Distribution
- 5.430 Resignation of Personal Representative
- 5.540 Definitions
- 5.590 Disqualification of Guardian; Notification
- 5.610 Execution by Guardian
- 5.630 Petition and Notice for Approval of Acts
- 5.640 Continuance of Business of Ward
- 5.650 Resignation of Guardian and Appointment
of Successor

- 5.680 Termination of Guardianship Upon Removal of Ward's Incapacity, Death or Exhaustion of Assets
- 5.690 Annual Accountings
- 5.700 Objections to Annual Accountings

Group II Rules - Deleted

- 5.280 Probate of Will Written in Foreign Language (now included in 5.210)
- 5.290 Probate of Notarial Will (now included in 5.210)
- 5.410 Exempt Estates
- 5.450 Administration Following Death, Resignation or Removal
- 5.500 Probate of Will of Resident After Foreign Probate (now included in 5.210)
- 5.570 Notice; Adjudication of Incompetent and Appointment of Guardian (now included in 5.210)

Group III Rules - New

- 5.041 Service of Pleadings and Papers
- 5.042 Time
- 5.065 Notice of Civil Action or Ancillary Administration
- 5.395 Notice of Federal Estate Tax Return
- 5.401 Objections to Petition for Discharge or Final Accounting
- 5.405 Proceedings to Determine Homestead Real Property
- 5.406 Proceedings to Determine Exempt Property

Group IV Rules - Revised

- 5.020 Pleadings; verifications; motions
- 5.025 Adversary Proceedings
- 5.030 Attorneys
- 5.040 Notice
- 5.080 Discovery
- 5.110 Resident Agent
- 5.150 Order Requiring Accounting
- 5.160 Production of Assets
- 5.170 Evidence
- 5.180 Notice; Waiver
- 5.205 Filing Evidence of Death
- 5.210 Probate of Wills
- 5.230 Commission to Prove Will
- 5.240 Notice of Administration
- 5.260 Caveat; Proceedings
- 5.270 Revocation of Probate
- 5.340 Inventory
- 5.345 Interim Accountings
- 5.350 Continuance of Unincorporated
Business or Venture
- 5.360 Elective Share and Pre-Existing Dower
- 5.370 Sales of Real Property Where
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- 5.380 Compulsory Payment of Devisees or
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- 5.400 Distribution and Discharge; Notice
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- 5.490 Form and Manner of Presenting Claim
- 5.510 Establishment and Probate of Lost or
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- 5.520 Family Administration
- 5.530 Summary Administration
- 5.550 Petition to Determine Competency
- 5.560 Petition for Appointment of Guardian; Notice
- 5.600 Oath
- 5.620 Inventory; Appraisals
- 5.660 Proceedings for Removal of Guardian
- 5.670 Termination of Guardianship on Change
of Domicile of Resident Ward

ARGUMENT

Rule 5.020 - Pleadings; verification; motions

Minor editorial changes. Title changed by deleting "copies". Paragraph (f) has been deleted as it is now covered under the adversary rule 5.025.

Committee vote: For 16 Against 0

Rule 5.025 - Adversary Proceedings

Substantial editorial and concept changes.

The committee after numerous discussions was divided in its opinion as to whether or not the rule should include designated proceedings as adversary. The statute F.S. 731.107 Adversary Proceedings does not mention any particular proceeding as being adversary nor does it define what is an adversary proceeding. A majority of the committee after several different votes, elected to include certain specific proceedings as being adversary.

The practice in different circuits among clerks varies with respect to filing pleadings in an adversary proceeding. Because of the nature of the administration of an estate and particularly one that may have more than one adversary proceeding and other matters before the court, sorting out what does and what does not pertain to an adversary proceeding seems to be more workable in those circuits where the clerks file the adversary proceeding separately from the main file. Part of the clerk's problem stems from the fact there has been no direction

in the present rule which distinguishes the adversary pleading from any other pleading. Subparagraph (d)(5) now directs an additional caption be placed on the pleading. The committee note includes an example of such a caption. This practice is mandated by rule and prevails with respect to adversary proceedings under the Federal Bankruptcy rules. The list of enumerated adversary proceedings has been increased by adding:

1. Proceedings to remove personal representative
2. Surcharge a personal representative
3. Determine pretermitted shares

The present enumerated adversary proceeding "cancel a charitable bequest" was changed to "cancel a devise" since the committee was of the opinion that cancelling a bequest is an adversary matter whether it relates to a charitable bequest or a bequest to anyone.

Any proceeding may now be declared adversary by a petitioner or a respondent or by the court and the rule sets forth procedural steps to be taken by a party declaring the matter to be adversary.

Committee vote: For 17 Against 0

Rule 5.030 - Attorneys

Minor editorial changes. Captions added to (a), (b) and (c). Reference to Fla. R. Jud. Admin. has been deleted. Subparagraph (c) was added to make it clear that the appearance of an attorney in an estate is a general appearance unless

specifically limited.

Committee vote:

For 18

Against 0

Rule 5.040 - Notice

Substantial editorial changes. Change in title.

A review of the rule indicated a need to separate portions of the existing rule which pertain to service so that 5.040 pertained solely to notice and 5.041 was created to deal solely with service. Subparagraph (a)(1) changes requirement to serve answer within 20 days instead of filing answer with the clerk within 20 days to agree with Rules of Civil Procedure 1.140.

Subparagraph (a)(2) sets forth the procedure after formal notice.

Subparagraph (a)(3) amplifies procedure for effecting service of formal notice on

an interested person who has filed
demand for notice (a)(3)(ii)

an incompetent (a)(3)(iv)

a corporation (a)(3)(v)

The reference in the prior rule to Chapters 48 and 49, Florida Statutes, has been changed to reference to Florida law for service of process.

Subparagraph (a)(5) defines service of formal notice to be complete on receipt or refusal of the notice.

The rule now eliminates the waiver of informal notice by will under present subparagraph (b)(3).

Service of informal notice is now contained in new rule 5.041.

Committee vote: For 21 Against 0

Rule 5.041 - Service of Pleadings and Papers

This is a new rule derived from Fla. R. Civ. P. 1.080, Service of Pleadings and Papers. Subparagraph (c) is the same as paragraph (d) of the present Fla. R.P. & G.P. 5.040, Notice; Method in Time; Proof.

Committee vote: For 18 Against 1

Rule 5.042 - Time

This is a new rule derived from Fla. R. Civ. P. 1.090, Time.

The concept behind 5.040, 5.041 and 5.042 was to parallel the practice under the Florida Rules of Civil Procedure as far as possible.

Committee vote: For 19 Against 1

Rule 5.065 - Notice of Civil Action or Ancillary Administration

This rule is a new rule not founded on any statute or rule. It is intended to provide the Florida domicillary administration or guardianship with information that is not ordinarily found or required in the domicillary estate file.

This rule was initially proposed because of the concern of some attorneys unable to obtain specific information about pending civil actions or ancillary proceedings from the Personal Representative or his attorney without going to some unusual lengths such as discovery. It was felt that this rule would provide someone reviewing the court file with enough information that they could make an independant inquiry regarding the status of another case. This information appearing in the court file would also appraise the court of the other proceedings.

Committee vote: For 16 Against 0

Rule 5.080 - Discovery

Rules 1.290, 1.300, 1.351 and 1.410 of Fla. R. Civ. P. have been added to this rule and the title has been changed.

Subparagraph (b) contains minor editorial changes.

Committee vote: For 17 Against 0

Rule 5.110 - Resident Agent

Minor editorial changes and requires the filing of acceptance as a resident agent at the time of filing the designation of a resident agent. Subparagraph (b) contains a portion of (a) of the present rule. Captions have been added to subparagraphs.

Committee vote: For 10 Against 1

Rule 5.150 - Order Requiring Accounting

Editorial changes. Captions have been added to subparagraphs. The last three sentences of present subparagraph (a) have been deleted as it is unnecessary to set forth the procedure for contempt.

Present subparagraph (b) has been changed to require the order to state a specified time for filing the accounting.

Committee vote: For 18 Against 0

Rule 5.160 - Production of Assets

Minor editorial changes.

Committee vote: For 15 Against 0

Rule 5.170 - Evidence

Change word "law" to read "Florida Probate Code, the Florida Guardianship law, or these rules".

Committee vote: For 15 Against 0

Rule 5.180 - Notice; Waiver

The rule has been changed to extend waivers to include disclosure of compensation and distribution of assets and other matters permitted to be waived by law or these rules.

Subparagraph (b) contains a portion of the present rule.

There was considerable discussion among the committee to the extent that waivers should be permitted and the extent to which you could waive the steps in closing an estate.

The committee was of the opinion that it was affecting the general philosophy of the probate code to permit the use of waivers by making the changes in the rule.

Committee vote: For 20 Against 1

Rule 5.205 - Filing Evidence of Death

Minor editorial changes. Title changed. Captions added to subparagraphs.

Committee vote: For 15 Against 0

Rule 5.210 - Probate of Wills

Substantial changes. Change in title from Proof of Wills to Probate of Wills. Captions added to subparagraphs. The rule has been completely revised to include the procedure for proving all wills except lost or destroyed wills, which is present rule 5.510, and supercedes the present 5.280 Probate of Will Written in Foreign Language, 5.290 Probate of Notarial Will and 5.500 Probate of Will of Resident After Foreign Probate. The rule now specifies the contents of the oath to prove the wills and provides the will must be proved before an order can be entered admitting it to probate.

The committee was of the opinion that this was not a change but set forth by rule the existing practice in an area that is not covered under the present rule.

Committee vote: For 14 Against 1

Rule 5.230 - Commission to Prove Will

Substantial changes. Captions added to subparagraphs. The rule sets forth the procedure to obtain a commission and the contents of the petition and commission.

The rule broadens those that can be appointed commissioners to include those authorized by Florida law, the United States of America or of the State or County where the witness resides.

It requires Petitioner or his attorney to send the commission to commissioner. This requirement was the result of some lack of uniformity among the clerks of the various circuits. In some circuits the clerks would send the commission and in others anyone could do it and some circuits required the attorney to do it. In order to insure that it didn't just sit there and to have uniformity in practice throughout the state, the committee determined that it should address that problem.

The committee was of the opinion that this was not a change but set forth by rule the existing practice in an area that is not covered under the present rule.

Committee vote: For 18 Against 0

Rule 5.240 - Notice of Administration

Editorial and substantive changes. Captions added to subparagraphs. Subparagraph (a) provides for publication and service. Subparagraph (b) contains a portion of present subparagraph (a).

Subparagraph (a) now requires serving a copy of the notice as required by law deleting the reference to FPC 733.2123 and rule 5.040(a) and was contained in present subparagraph (b). The rule adds a new requirement in subparagraph (c) that the proof of publication be filed within 45 days of the first publication. This requirement was intended to avoid misleading any interested person who might inquire about the status of the case including creditors. A substantial number of the committee members were concerned that if the proof were not filed prior to the expiration of the three months, there may be a question that they were misled. The committee note indicates that the timely filing of the proof does not affect time limitation for filing claims or objections.

Subparagraph (d) is new and sets forth the form and procedure for objections to will, to qualification of personal representative, and to the venue or jurisdiction of the court.

Committee vote: For 18 Against 2

Rule 5.260 - Caveat; Proceedings

Minor editorial changes in subparagraphs (a), (b) and (d). Captions added to subparagraphs. Subparagraph (c) eliminates the requirement for a registered agent when the caveator is represented by a Florida attorney who signs the caveat.

Present subparagraph (e) is divided into subparagraphs (e) and (f). Subparagraph (e) applies to creditor and subparagraph (f) applies to interested persons other than a creditor upon whom service of formal notice is required prior to admitting a will or appointing a personal representative.

Committee vote: For 15 Against 0

Rule 5.270 - Revocation of Probate

Captions added to subparagraphs. Extensive changes.

Present subparagraph (b) has been deleted since rule 5.025, Adversary Proceedings, states revocation of probate is an adversary proceeding.

Present subparagraph (c) has been deleted as it is covered under rule 5.025, Adversary Proceedings.

Present subparagraph (d) is subparagraph (b) and the reference to distribution has been deleted as being substantive.

Committee vote: For 18 Against 0

Rule 5.280 - Probate of Will Written in Foreign Language

This rule has been deleted since it is now included in proposed rule 5.210.

Committee vote: For 16 Against 0

Rule 5.290 - Probate of Notarial Will

This rule has been deleted since it is now included in the new proposed 5.210.

Committee vote: For 16 Against 0

Rule 5.340 - Inventory

Extensive changes. Captions added to subparagraphs.

Subparagraph (a) requires the inventory to be filed as required by law in lieu of 60 days after issuance of letters. The requirement to list the estate includes real and personal property.

Subparagraph (b) sets forth the procedure for obtaining an extension of time.

Subparagraph (c) is present subparagraph (d) with addition of requiring an amended inventory when the personal representative learns of property not included in the original inventory and when the personal representative learns the value or description in the original inventory is erroneous or the value of an item that was listed as unknown in the original inventory.

Subparagraph (d) contains present subparagraph (c).

Subparagraph (e) has been added to require the personal representative to provide to interested persons information about the estate upon written request.

The present rule did not provide for a manner in which interested persons could obtain information about the inventory or the assets and the practitioner often found it difficult to get this information. There was no provision for that in the present rule except discovery.

Committee vote: For 12 Against 1

Rule 5.345 - Interim Accountings

Change in title from Election of Fiscal Year; Interim Accountings; Objections to Interim Accountings, to Interim Accountings.

Extensive changes. Captions added to subparagraphs.

Subparagraph (a) includes present subparagraphs (a) and (b) and has been editorially changed.

Subparagraph (b) requires the giving of notice of filing an interim accounting to interested persons.

Subparagraph (c) is present subparagraph (e) with additional requirement to state with particularity the items objected to and the grounds upon which the objections are based.

Subparagraph (d) is new and provides the procedure for service of the objection.

Subparagraph (e) contains a part of present subparagraph (d) and (g) and provides that the interim accounting shall be approved 30 days from the date of service unless an objection is filed.

Subparagraph (f) is present subparagraph (c) with minor editorial changes.

Committee vote: For 20 Against 0

Rule 5.350 - Continuance of Unincorporated Business or Venture

Title of rule has been changed to identify the type of business to which the rule applies.

Subparagraph (a) is present subparagraph (d).

Extensive changes in subparagraph (b) by specifying in subparagraphs (b)(1) through (b)(6) the information required to be contained in the petition to continue the business. Subparagraphs (c)(1) through (c)(3) specify the contents of the order.

Subparagraph (d) is present subparagraph (e) with minor changes.

This rule was substantially rewritten. It is intended to supplement a very vague statutory provision to give the

courts some guidance in authorizing the continuance of an unincorporated business or venture, particularly the form and frequency of the reports that will have to be filed, authority of the personal representative in continuing the business and some procedure where an interested person can get the court to intercede if there has been abuse on the part of the personal representative, hopefully before the business fails completely.

Committee vote: For 24 Against 0

Rule 5.360 - Elective Share and Pre-Existing Dower

Title of rule has been changed. Captions added to subparagraphs. Extensive editorial changes and states the information that the personal representative must include in his petition for elective share.

Subparagraph (a) is present subparagraph (a) and (b) with additional requirements for stating the proposed time and manner of distribution and deleting the requirement to pay the elective share pursuant to an order of court or upon stipulation.

Subparagraph (b) is present subparagraph (c) with editorial changes.

Subparagraph (c) is present subparagraph (d) with editorial changes.

Subparagraph (d) is present subparagraph (e) with editorial changes.

Committee vote: For 15 Against 0

Rule 5.370 - Sales of Real Property Where No Power Conferred

Editorial changes. Captions added to subparagraphs.

5.041(a) requires service on all interested persons on all petitions determining rights of interested persons and the committee was of the opinion this rule would not have to contain a specific requirement for notice or service of the petition and therefore present subparagraph (b) could be deleted. Notice requirements are also contained in 5.040 and 5.180.

Present subparagraph (d) has been deleted as it serves no purpose.

The committee debated the question of whether the statute 733.613 required a hearing on the petition to sell real estate. A majority of the committee concluded that it did not and that only notice of the application was required but not a hearing unless there was an objection.

Committee vote: For 15 Against 0

Rule 5.380 - Compulsory Payment of Devisees or Distributive Interests

Title changed. Captions added to subparagraphs.

Editorial changes.

Proposed subparagraph (a) is substantially the same as present subparagraph (a).

Proposed subparagraph (b) delineates alternatives available for making distribution.

Proposed subparagraph (c) contains present subparagraph (c).

Committee vote: For 18 Against 2

Rule 5.395 - Notice of Federal Estate Tax Return

This is a new rule. This rule requires the personal representative to file a notice that the time for closing the estate has been extended when a Federal estate tax return is required and to serve the notice on interested persons.

Committee vote: For 19 Against 1

Rule 5.400 - Distribution and Discharge; Notice

Title changed. Captions added to subparagraphs.

The present rule has been divided into two rules. The provisions in the present rule for filing objections are now contained in a separate proposed rule, 5.401.

The committee determined that the procedure for objecting to the distribution and discharge should be set forth in a prescribed manner and that the present rule should be divided into two rules, one providing for filing and serving the closing papers and one for the objections, rule 5.401.

Subparagraph (a) contains a portion of present subparagraph (a).

Subparagraph (b) contains a portion of present subparagraph (a) with a change in the format.

Subparagraph (c) contains present subparagraph (c) deleting the 12 month period for filing the final accounting and petition for discharge and substitutes the time required by these rules or law.

Subparagraph (d) contains a portion of present subparagraph (c).

Subparagraph (e) contains a portion of present subparagraph (c).

Subparagraph (f) contains a portion of present subparagraphs (e) and (g).

The provisions for waiver have been broadened to allow waivers of any portions of the petition for discharge as well as the time for filing objections.

Other changes are editorial.

Committee vote: For 12 Against 1

Rule 5.401 - Objections to Petition for Discharge or Final Accounting.

This is a new rule. Specifies the procedure for filing objections to petition for discharge and final accounting. The proposed rule specifies the requirement that the objection be in writing, the contents of the objection, how it is served, upon whom, who may set the hearing, notice required, and the order on any objections.

Committee vote: For 17 Against 1

Rule 5.405 - Proceedings to Determine Homestead Property

This is a new rule. Establishes the procedure to obtain a judicial determination of homestead.

Committee vote: For 18 Against 0

Rule 5.406 - Proceedings to Determine Exempt Property

This is a new rule. Establishes the procedure to obtain a judicial determination of exempt property.

Committee vote: For 21 Against 0

Rule 5.410 - Exempt Estate

This rule is deleted as it is substantive and not procedural.

Committee vote: For 10 Against 4

Rule 5.420 - Disposition of Personal Property Without Administration

Editorial changes. Title changed. Captions added to subparagraphs. Specifies the contents to be contained in the application.

Committee vote: For 16 Against 0

Rule 5.440 - Proceedings for Removal

Editorial changes. Captions added to subparagraphs.

Subparagraph (a) is present subparagraph (a) with minor changes.

Subparagraph (b) is present subparagraph (b) with minor changes.

Subparagraph (c) is present subparagraph (b) with changes.

Subparagraph (d) is present subparagraph (c) deleting the provisions in the present rule for contempt procedure.

Committee vote: For 17 Against 0

Rule 5.450 - Administration Following Death, Resignation or Removal

This rule has been deleted as being substantive rather than procedural.

Committee vote: For 14 Against 2

Rule 5.460 - Subsequent Administration

Substantial changes. Captions added to subparagraphs. The rule now specifies the procedure to reopen an estate and sets forth the contents of the petition.

Committee vote: For 16 Against 0

Rule 5.470 - Ancillary Administration

Minor editorial changes. Captions added to subparagraphs.

Subparagraph (a) is the same as present subparagraph (a) with minor editorial changes.

Subparagraph (b) contains a new requirement that notice be given to all domiciliary representatives who have not waived notice or joined in the petition.

Subparagraph (c) is the same as present subparagraph (b).

Subparagraphs (c) and (d) have been deleted as being substantive.

Committee vote: For 15 Against 0

Rule 5.490 - Form and Manner of Presenting Claim

Editorial changes. Change in format. Captions added to subparagraphs. Clerk is required to forward a copy of the claim to the attorney for the personal representative. F.S. 733.703 (1981) requires the clerk to serve a copy on the personal representative, in the manner provided for service of

informal notice under F.S. 731.301(2)(a).

Committee vote: For 12 Against 1

Rule 5.500 - Probate of Will of Resident After Foreign Probate

This rule has been deleted as it is now a part of proposed Rule 5.210.

Committee vote: For 16 Against 0

Rule 5.510 - Establishment and Probate of Lost or Destroyed Will

Editorial changes. Captions added to subparagraphs. Substantive matters have been deleted.

Committee vote: For 16 Against 0

Rule 5.520 - Family Administration

Editorial changes. Title changed. Captions added to subparagraphs. Sets forth the contents of the petition including a new requirement for the protection of creditors in subparagraph (a)(3)(C) since publication of notice of administration or publication of notice to creditors is not a requirement in family administration.

Committee vote: For 10 Against 0

Rule 5.530 - Summary Administration

Editorial changes. Title changed. Captions added to subparagraphs. Adds requirement for the protection of creditors in subparagraph (a)(3)(C) since publication of notice to creditors is not a requirement in summary administration.

Committee vote: For 13 Against 0

Rule 5.550 - Petition to Determine Competency

Change in title of rule. Editorial changes. Captions added to subparagraphs. Adds a new subparagraph (b) which provides for service of the petition on the alleged incompetent.

Committee vote: For 11 Against 0

Rule 5.560 - Petition for Apointment of Guardian; Notice

Change in title to add "Notice". Captions added to subparagraphs. Editorial changes. Rules 5.560 and 5.570 and eliminates the need for present rule 5.570.

Committee vote: For 8 Against 0

Rule 5.570 - Notice: Adjudication of Incompetency and Appointment of Guardian

This rule has been deleted as it is now covered under new Rule 5.560.

Committee vote: For 19 Against 0

Rule 5.600 - Oath

Minor editorial changes and deletes gender.

Committee vote: For 9 Against 0

Rule 5.620 - Inventory; Appraisals

Editorial changes. Captions added to subparagraphs. Requires inventory to be filed within the time required by law rather than 60 days after appointment.

Committee vote: For 10 Against 0

Rule 5.660 - Proceedings for Removal of Guardian

Change in subparagraph (b) to require a removed guardian to file a final accounting within 20 days to conform to statute F.S. 744.511.

Committee vote: For 16 Against 0

Rule 5.670 - Termination of Guardianship on Change of Domicile of Resident Ward

Editorial changes. Change in format. Captions added to subparagraphs. Adds a 30 day requirement for filing objections.

Committee vote: For 10 Against 0

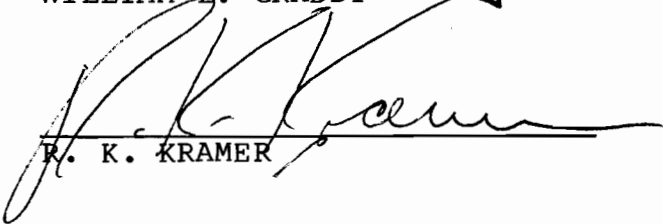
CONCLUSION

It is respectfully prayed that because of the volume of changes to these rules that the court adopt them on a transitorial basis and allow a year or a time certain to discover and correct any obvious errors or problems rather than waiting for the next 4-year cycle.

It is further respectfully requested that the court rule that the committee notes are informal notes of the committee intended to help the practitioner and not an intrinsic part of the rule.

Respectfully submitted,


WILLIAM L. GRADDY


R. K. KRAMER