

# Supreme Court of Florida

REVISED OPINION

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No. 72,321

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THE FLORIDA BAR

RE: RULES OF PROBATE AND  
GUARDIANSHIP PROCEDURE

[September 29, 1988]

PER CURIAM.

The Probate and Guardianship Rules Committee of The Florida Bar and the Probate and Guardianship Rules Committee of the Real Property, Probate and Trust Law Section, acting as a joint committee, have submitted their quadrennial petition for amendments to the Rules of Probate and Guardianship Procedure. According to the petition, amendments were deemed necessary because of changes in statutory procedures and causes of action, changes brought about by court decisions, and suggestions which were submitted by interested members of the Bar and members of the judiciary.

The committee also points out that pursuant to this Court's direction in The Florida Bar Re Emergency Amendments to Florida Rules of Probate and Guardianship Procedure, 460 So.2d

906 (Fla. 1984), it has endeavored to identify those portions of the Florida Probate Code which contain procedural provisions and to include within the proposed amendments rules incorporating those procedures. Because of its understanding that the legislature proposes a massive revision of the Florida guardianship law, the committee did not undertake the same task except in one instance with respect to the guardianship rules.

The committee suggests that the two most significant changes in its proposed amendments are found in rule 5.346 on the subject of fiduciary accounting and rule 5.360 concerning elective share and preexisting dower.

All of the proposed amendments were unanimously approved by the Board of Governors of The Florida Bar and the Executive Council of the Real Property Section of The Florida Bar. Notice of the proposed amendments has been published in The Florida Bar News. No objections have been filed with this Court.

At oral argument, counsel advised that the recent decision of the United States Supreme Court in Tulsa Professional Collection Services, Inc. v. Pope, 108 S.Ct. 1340 (1988), appeared to have necessitated additional amendments to the rules as they relate to notice to creditors. Therefore, at this Court's request, the committee subsequently submitted a proposed amendment to rule 5.240 and the addition of rule 5.495 to accommodate the requirements of Pope.

The proposed amendments which are attached hereto are hereby approved<sup>1</sup> and shall become effective on January 1, 1989. The committee notes are included for explanation and guidance only and are not adopted as an official part of the rules.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES  
and KOGAN, JJ., Concur

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<sup>1</sup> The committee's proposed amendment to rule 5.230(c) substituted the word "delivery" for "mailing." Because it is apparent that the committee did not intend to eliminate mailing as an option, the Court determined that the rule should refer to both delivery and mailing as alternative methods.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

Original Proceeding - Rules of Probate and Guardianship Procedure

Rutledge R. Liles, President, Jacksonville, Florida; Stephen N. Zack, President-elect, Miami, Florida; Jean C. Coker of Jean C. Coker, P.A., Jacksonville, Florida and Rohan Kelley of Rohan Kelley, P.A., Ft. Lauderdale, Florida, Co-Chairmen of The Probate and Guardianship Rules Committee; and John F. Harkness, Jr., Executive Director, Tallahassee, Florida,

for The Florida Bar, Petitioner