

Supreme Court of Florida

ORIGINAL

No. 79,616

IN RE: AMENDMENTS TO
THE FLORIDA PROBATE RULES

[September 24, 1992]

PER CURIAM.

The Florida Probate Rules Committee petitions this Court to approve its quadrennial report of proposed changes to the Florida Probate Rules. We have jurisdiction under article V, section 2(a) of the Florida Constitution.

In its report, the rules committee proposes changes to each of the existing rules, with the exception of rules 5.610 and 5.705. The great majority of changes in the rules are stylistic. Pursuant to Florida Rule of Judicial Administration 2.130(c), the

proposed amendments were submitted to The Board of Governors of The Florida Bar. The Board unanimously recommended approval. The proposed amendments were published for comment, and only one comment was filed.

At oral argument, it was pointed out that certain 1992 amendments to the Florida Probate Code and the Florida Guardianship Law conflicted with some of the proposed rules. Those conflicts, although minimal, could mislead practitioners and the public. Therefore, this Court requested that the committee make additional changes to the rules in order to harmonize them with the 1992 legislation. These changes were encompassed in an amended report filed by the committee. Rules 5.120, 5.200, 5.260, 5.690, and 5.695 were amended to conform to 1992 legislation. The committee also revisited rule 5.900 and proposed clarifying amendments. As with the proposed rules contained in the original report, the amended rules were presented to and unanimously approved by The Board of Governors.

The only comment filed in this case suggests that the requirement that the decedent's social security number be placed on petitions for administration and on caveats violates the Federal Privacy Act. This requirement was added to rules 5.200 and 5.260 to conform to sections 733.202(2)(b) and 731.110(2) of the Florida Statutes (1991), as amended by chapter 92-200, Laws of Florida. Because the rules refer only to the social security number of the decedent, we conclude that the rules do not violate federal law.

Having examined the committee's report of proposed changes and the supplemental petition, and having heard oral argument on the matter, we approve the appended amendments to the Florida Probate Rules. While most of the changes are editorial, the amendments do include the following substantive changes.

In rule 5.200, the explanatory statement contained in subdivision (g), which requires a statement of the approximate value and nature of the assets of the estate, is deleted, since there is no longer a sliding scale of filing fees based upon the value of the estate. Section 733.202, Florida Statutes (1991), already explains that a statement of the value and nature of the assets is necessary so the court can determine the amount of any bond.

In rule 5.240, subdivision (e), which was deleted effective October 1, 1991, is reinstated. The committee reconsidered the advisability of requiring a statement regarding creditors and determined that reinstatement is appropriate to emphasize the need for the personal representative to determine all known or reasonably ascertainable creditors. The committee note explains that the statement is intended to provide evidence of satisfaction (or lack thereof) of the notice requirements set forth in Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478 (1988).

Rule 5.346 now makes mandatory, on and after January 1, 1994, the fiduciary accounting standards that were suggested, but not made mandatory, when rule 5.346 was adopted in 1988. The

committee note at that time stated it was the intention of the committee to recommend that the accounting standards become effective on January 1, 1993, at the end of the current four-year rules cycle. Since many of the committee members observed that the recommended model formats still were not generally in use, it was deemed appropriate to adopt the accounting standards on a mandatory basis at this time, but allow one additional year for the bench and bar to prepare for implementation of the forms.

In rule 5.400, subdivision (b)(5)(D) is added, recognizing that the personal representative in most instances needs to reserve funds to cover distribution costs and the final expenses of terminating the estate.

In rule 5.470, subdivision (b)(1) is added, requiring notice or waiver from all persons whose entitlement to preference in appointment as ancillary personal representative is equal to or greater than the petitioner's. This provision is consistent with the provisions of rule 5.201.

Rule 5.496 is a new rule which implements the procedure found in section 733.705, Florida Statutes (1991), for objecting to a claim. Subdivision (d) requires that the objection contain a statement that the claimant is limited to a period of thirty days from service of the objection within which to bring an action on the claim.

Rule 5.636 is a new rule which establishes procedures for settlement of minors' claims. This rule delineates the contents of the petition, to whom notice is to be given, the appointment

of a guardian ad litem under certain circumstances, and the report of the guardian ad litem.

Rule 5.900 is amended to clarify that a petition for expedited judicial intervention concerning medical treatment should include an allegation that the patient lacks the capacity to make the requisite medical treatment decision, and to require that the patient receive notice of the petition and hearing.

New language is indicated by underscoring; deletions are indicated by struck-through type. The committee notes are offered for explanation and guidance only and are not adopted as an official part of the rules. The amendments shall become effective January 1, 1993, at 12:01 a.m.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

Original Proceeding - Florida Probate Rules

Benjamin H. Hill, III, President, Tampa, Florida; Alan T. Dimond, President-elect, Miami, Florida; John F. Harkness, Jr., Executive Director, Tallahassee, Florida, of The Florida Bar; and Robert W. Goldman, Chair, West Palm Beach, Florida; H. Laurence Cooper, Jr., Co-Chair, West Palm Beach, Florida, and Samuel S. Smith, Co-Chair, Miami, Florida, of the Florida Probate Rules Committee of The Florida Bar,

for Petitioner