

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA PROBATE RULES**

CASE NO. SC10-

**2010 TRIENNIAL REPORT OF THE
FLORIDA PROBATE RULES COMMITTEE**

Frank T. Pilotte, Chair of the Florida Probate Rules Committee (“Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this triennial cycle report of the Committee, pursuant to *Fla. R. Jud. Admin.* 2.140(b).

The Committee proposes amendments to the rules as shown on the attached table of contents. The voting record for the Committee for each amendment is shown in the table of contents. As required by *Fla. R. Jud. Admin.* 2.140(b), the Board of Governors of The Florida Bar has reviewed the proposed amendments. The Board’s vote on each amendment is also shown in the table of contents.

Notice of the amendments was published in *The Florida Bar News* on July 15, 2009, and also posted on The Florida Bar website (*see* Appendix D). No comments were received in response to the publication.

The following attachments are included with this report:

- Appendix A: Table of contents.
- Appendix B: Rules in legislative format.
- Appendix C: Rules in two-column format.
- Appendix D: Copy of publication notice for *Florida Bar News* and Florida Bar website.

A discussion of each proposed rule change and the reasons for it follows.

RULE 5.020 PLEADINGS; VERIFICATIONS; MOTIONS

The Committee Notes are amended to correct a statutory reference.

RULE 5.030 ATTORNEYS

Subdivision (b) deals with limiting an attorney’s appearance in a probate or guardianship proceeding when no court order is involved. The title of the subdivision is amended to add “without Court Order” to clarify the scope of the subdivision, and a sentence is added to specify the procedure for an attorney to follow to terminate the attorney’s appearance in a proceeding or matter. Editorial changes in subdivision (c) clarify when a court order is required for a withdrawal or limited appearance.

RULE 5.040 NOTICE

Subdivision (d) is amended to provide that the optional use of formal notice when only informal notice is required does not modify any time period otherwise specified by statute or rule. In some cases, an attorney will send a pleading to interested persons with “formal notice” as the method of notice, utilizing a form that requires a 20-day response time, which response time is often shorter than that prescribed by rule or statute. For instance, there is a 30-day time limit to object to items disclosed in a petition for discharge or a final accounting. *Fla. Prob. R. 5.401(a)*. The amendment is intended to clarify that when a pleading is served and formal notice is given, the response time remains as originally mandated in the applicable rule or statute. The Committee Notes are amended to provide a clarifying reference to the phrase “the manner provided for service of formal notice.”

RULE 5.041 SERVICE OF PLEADINGS AND PAPERS

The Committee Notes are amended to correct a statutory reference.

RULE 5.060 REQUESTS FOR NOTICE AND COPIES OF PLEADINGS

The Committee Notes are amended to correct a statutory reference.

RULE 5.110 ADDRESS DESIGNATION FOR PERSONAL REPRESENTATIVE OR GUARDIAN; DESIGNATION OF RESIDENT AGENT AND ACCEPTANCE

Subdivision (a) is amended to add a requirement that a personal

representative or guardian must notify the court of any change of address within 20 days in order to ensure that the court and interested persons are kept aware of any changes so that there is no untimely delay in communication.

RULE 5.200 PETITION FOR ADMINISTRATION

An editorial change is made in subdivision (e) to clarify that the term “code,” which is not a defined term in the rules, refers to the Florida Probate Code.

RULE 5.205 FILING EVIDENCE OF DEATH

The Committee Notes have been revised to add a suggestion that a short form certificate of death should be filed, and to add relevant statutory references.

RULE 5.210 PROBATE OF WILLS WITHOUT ADMINISTRATION

The amendment to subdivision (b) provides specifically that one who petitions to admit a will to probate without administration is to serve notice on those persons entitled to notice in rule 5.240, rather than to merely “comply with” the rule regarding service of a copy of the petition. Rule 5.240, in subdivisions (a)(1) through (a)(4), identifies the persons who must be served with a copy of the notice of administration by formal notice in a formal administration. That rule permits service a copy of the notice on any devisee under another will or intestate heirs or others who may have an interest in the estate. The amendment to 5.210(b) is intended to eliminate possible confusion about the need to serve a notice of administration, which is not required in a proceeding to admit a will without administration, and probably not authorized because a personal representative is not appointed. Subdivision (d) has been added to clarify that, upon a finding that the will meets the requirements of Florida law, the will is admitted to probate. The order contains no provision for the appointment of a personal representative as is the case with a petition for administration. The Committee Notes have been revised to add relevant statutory and rule references.

RULE 5.235 ISSUANCE OF LETTERS, BOND

The Committee Notes are amended to correct a statutory reference.

RULE 5.260 CAVEAT; PROCEEDINGS

Subdivision (c) is amended to clarify that a state agency filing a caveat need not designate an agent for service of notice, and to provide that a caveator who is not a resident of the county where the caveat is filed must designate either a resident of that county or an attorney licensed and residing in Florida as the agent for service of notice. These changes are proposed to conform to section 731.110(2) of the Florida Statutes, which provides in part as follows:

A caveat shall contain . . . the name and specific residence address of the caveator, and, if the caveator, other than a state agency, is a nonresident of the county, the additional name and specific residence address of some person residing in the county, or office address of a member of The Florida Bar residing in Florida, designated as the agent of the caveator, upon whom service may be made.

In addition, editorial changes are made to subdivisions (d) and (e) of the rule.

RULE 5.330 EXECUTION BY PERSONAL REPRESENTATIVE

The Committee Notes are amended to correct a statutory reference.

RULE 5.340 INVENTORY

Subdivision (d) is amended to delete the requirement to serve inventories on the Florida Department of Revenue (DOR). Because the Florida estate tax was effectively repealed for decedents dying after December 31, 2004, the DOR no longer requires the filing of inventories. The sentence referring to the DOR in (relettered) subdivision (g) is deleted for the same reason. Subdivision (e) is amended, and new (f) is created, to provide more specificity concerning what a personal representative must provide to a particular beneficiary who requests additional information beyond that which is disclosed in the inventory. Subdivision (f) provides added clarity with respect to the personal representative's duties to non-residuary beneficiaries regarding information concerning inventory values. Subsequent subdivisions are relettered. Editorial changes are made to (a), (e), and (g). The Committee Notes are revised to amend relevant statutory references.

RULE 5.346 FIDUCIARY ACCOUNTING

The Committee Notes are amended to revise references in schedules A, B, and C of Appendix A, to correct references to the Florida Uniform Principal and Income Act. The reference to section 736.08135, Florida Statutes, in the Notes is deleted because the Trust Code has its own specific provision as to trust accountings (which do not require verification).

RULE 5.360 ELECTIVE SHARE

The Committee Notes are amended to correct a statutory reference.

RULE 5.405 PROCEEDINGS TO DETERMINE HOMESTEAD REAL PROPERTY

The Committee Notes are amended to correct a statutory reference.

RULE 5.406 PROCEEDINGS TO DETERMINE EXEMPT PROPERTY

Subdivision (c) is amended to add the following underlined phrase to clarify the requirements of the rule: “The court shall determine each item of exempt property and its value, if necessary to determine its exempt status, and order the surrender of that property to the persons entitled to it.” In some instances, the value of property claimed as exempt does not need to be stated in the order.

RULE 5.440 PROCEEDINGS FOR REMOVAL

The title of the rule is amended to add the underlined phrase “Proceedings for Removal of Personal Representative” to clarify the scope of the rule and to make the title parallel to rule 5.660, titled “Proceedings for Removal of Guardian.”

RULE 5.470 ANCILLARY ADMINISTRATION

The Committee Notes are amended to correct a rule reference.

RULE 5.496 FORM AND MANNER OF OBJECTING TO CLAIM

Subdivision (b) is amended to delete the requirement that an objection to a

claim must be served on the claimant (and on the personal representative if the objection is filed by an interested person) within 10 days after filing. There is no authority in the Florida Probate Code for this deadline. Regardless of when the claimant is served with the objection, subdivision (c) provides notice to the claimant of the 30-day period within which the claimant must bring an action as provided by law after being served with the objection. The requirement in (b) to include a certificate of service in the objection is moved to the end of the subdivision to improve readability.

RULE 5.696 ANNUAL ACCOUNTING

The last sentence of subdivision (b) (“Substantiating papers need not be filed with the court unless so ordered”) is deleted as redundant, because the first sentence of that subdivision already provides that “the guardian need not file the papers substantiating the annual accounting” unless the court so orders.

RULE 5.710 REPORTS OF PUBLIC GUARDIAN

There is an editorial change in subdivision (e) to improve readability.

RULE 5.725 EMERGENCY COURT MONITOR

There is an editorial change in subdivision (c) to delete unnecessary language.

WHEREFORE, the Florida Probate Rules Committee respectfully requests that the Court amend the Florida Probate Rules as outlined in this report.

Respectfully submitted on January 28, 2010.

/s/ Frank T. Pilotte
Frank T. Pilotte, Chair
Florida Probate Rules Committee
11300 U.S. Highway 1, Ste 401
Palm Beach Gardens, FL 33408
561/355-8800
Florida Bar No. 239801

/s/ John F. Harkness, Jr.
John F. Harkness, Jr.
Executive Director
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5600
Florida Bar No. 123390

CERTIFICATIONS

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

I certify that these rules were read against *West's Florida Rules of Court – State (2009)*.

/s/ J. Craig Shaw

J. Craig Shaw

Bar Staff Liaison, Florida Probate Rules Committee

Florida Bar No. 253235