

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO. SC10-**

**FAST TRACK AMENDMENTS REPORT OF THE  
FLORIDA PROBATE RULES COMMITTEE**

Jeffrey S. Goethe, Chair of the Florida Probate Rules Committee (“committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this fast track report under *Fla. R. Jud. Admin.* 2.140(f), reporting rule changes necessitated by statutory amendments passed by the 2010 Florida Legislature. The proposed amendments have been reviewed by the Board of Governors of The Florida Bar through its Executive Committee and passed by a vote of 12 – 0 following the committee’s approval by a vote of 28 – 0.

Because of the emergency nature of this report, the proposals have not been published for comment.

The text of the amendments is attached to this report in both full-page format (Appendix A) and two-column format (Appendix B).

The proposed amendments are the result of Chapter 2010-132 (CS/HB 1237), which was approved by the Governor on May 27, 2010, having an effective date of October 1, 2010 (Appendix C).

The proposed amendments, and explanations of the changes, are as follows:

**Rule 5.201 Notice of Petition for Administration.**

By serving formal notice of the petition for administration in a probate proceeding prior to the issuance of letters of administration, the petitioner could shorten the time for objections to the validity of the will, testacy of the decedent, qualifications of the personal representative, venue, or jurisdiction of the court. An amendment to section 733.2123, Florida Statutes, deleted the sentence, “A copy of the will offered for probate shall be attached to the notice.” Ch. 2001-132, § 14, Laws of Fla.. This sentence was viewed by the Real Property, Probate and Trust Law Section to be procedural and more appropriately addressed in the rules. As a result, rule 5.201 is amended to include the sentence that was deleted from the statute.

## **Rule 5.260 Caveat; Proceedings.**

Section 731.110, Florida Statutes, was amended to permit an interested person who is not a creditor to file a caveat before the death of the purported debtor. Ch. 2010-132, § 3, Laws of Fla. This amendment deleted all of the information that would identify the decedent, including social security number, last known address, and date of birth. The amendment also deleted the requirement of the name and address of the caveator and a statement of the caveator's interest. The proposed rule amendment reflects changes to the statutory requirements for a caveat.

In case number SC08-2443, proposed changes relating to privacy and the Supreme Court's privacy initiative would limit the decedent's social security number to the final four digits in documents such as caveats. The proposed amendment herein is consistent with that pending in SC08-2443.

On September 2, 2010, the court approved the regular-cycle report of proposed amendments, case number SC10-171, which included changes to rule 5.260. After the regular-cycle report was submitted, changes to section 731.110, Florida Statutes, eliminated the need for the changes to subsection (c) of rule 5.260, except for a minor editorial change. Ch. 2010-132, § 3, Laws of Fla. The proposed changes submitted with this report take into account the court's September 2, 2010 opinion in case number SC10-171 and the legislative changes to section 731.110 effective October 1, 2010. The third sentence to 2010 Out-of-Cycle Revision note to clarify this change was added and approved by a 20-1 committee vote.

## **Rule 5.3425 Search of Safe Deposit Box.**

Section 655.935, Florida Statutes, addresses the search of a safe deposit box upon the death of a lessee. There is no current rule addressing the procedure to obtain an order authorizing the search of a decedent's safe deposit box. The amendment to section 655.935, Florida Statutes, requires that copies be made of any documents removed from the box when it is searched, with the copies left in the box. Ch. 2010-132, § 2, Laws of Fla. The statutory amendment further requires a record identifying the person to whom the documents were delivered, the relationship of the decedent to the person to whom the document was delivered, and the date. The proposed new rule addresses the procedural aspects of the search of a safe deposit box upon the death of a lessee.

**Rule 5.360 Elective Share.**

Section 732.2125(2), Florida Statutes, was amended to clarify the requirement that the court find the elective share election to be in the best interests of the surviving spouse when the election is made by a guardian or attorney in fact on behalf of the spouse. HB 1237, Section 6. Currently, rule 5.360(a)(2) requires that the petition to authorize an election by an attorney in fact or guardian state “facts that support the election.” The proposed amendment to rule 5.360 requires a finding that “the election is in the best interests of the surviving spouse during the spouse’s probable lifetime” as set forth in the statute.

The Probate Rules Committee requests that the Court amend the Florida Probate Rules as outlined in this report.

Respectfully submitted on October 8, 2010.

/s/ Jeffrey S. Goethe  
JEFFREY S. GOETHE  
Chair  
Florida Probate Rules Committee  
3119 Manatee Avenue West  
Bradenton, Florida 34205  
(941) 741-8224  
Florida Bar No. 0861420

/s/ John F. Harkness, Jr.  
JOHN F. HARKNESS, JR.  
Executive Director  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300  
(850) 561-5600  
Florida Bar No. 123390

**CERTIFICATIONS**

I certify that these rules were read against *West’s Florida Rules of Court – State* (2010).

I certify that this report was prepared in MS Word using 14 point Times New Roman Font.

/s/ Krys Godwin  
Krys Godwin  
Staff Liaison  
Florida Probate Rules Committee  
The Florida Bar