

IN THE SUPREME COURT OF THE STATE OF FLORIDA

IN RE: AMENDMENTS TO) CASE NO. SC11-1575
THE FLORIDA PROBATE RULES)

**COMMENT OF CAROL KAYL FREEMAN ON
PROPOSED AMENDMENTS TO
RULES 5.025 AND 5.240, FLORIDA PROBATE RULES**

Carol Kayl Freeman, the undersigned, states that she is a member in good standing of The Florida Bar and files these comments on The Florida Bar’s Probate Rules Committee’s proposed amendments to rules 5.025 (Adversary Proceedings) and 5.240 (Notice of Administration), stating as follows:

1. Proposed Amendment to Rule 5.025

The undersigned mainly agrees with the proposed changes and its effective date, except respectfully requests that the Committee and this Court add that the amendment to subdivision (d)(2) of rule 5.025 be made to apply to all cases currently open or reopened as of the effective date or later if reopened after the effective date, not just to cases opened on or after the effective date. If necessary, a retroactive or grandfathering treatment should be considered to achieve this result. “Subdivision (d)(2) of rule 5.025 is amended to exclude Rule of Civil Procedure 1.525 (Motion for Costs and

Attorney Fees) from the requirement that the Rules of Civil Procedure govern adversary probate and guardianship proceedings.” *In re Amendments to the Florida Probate Rules (Fla. 2011) at page 2.*

The undersigned believes that it is in the best interests of all that all open cases be treated the same, whether they are open or reopened as of the effective date or opened or reopened on or after the effective date. This may be the intent of the committee and this Court with the proposed amendment and its effective date, but that result is not clear. Such a clarification will help avoid confusion and litigation, in addition to different interpretations, applications, and results by different Florida courts.

2. Proposed Amendment to Rule 5.240

The undersigned agrees with the proposed changes to rule 5.240 and its effective date.

In conclusion, the undersigned respectfully requests that rule 5.025 be amended to exclude Rule of Civil Procedure 1.525 from the requirement that the Rules of Civil Procedure govern adversary probate and guardianship proceedings and that it be made applicable to all cases open or reopened as of the effective date or opened or reopened on or after the effective date, and that rule 5.240 be amended as proposed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail to the committee co-chairs John Christopher Moran, Gunster Yoakley & Stewart P.A., 777 South Flagler Drive, Suite 500 E, West Palm Beach, Florida 33401-6121, and Tasha K. Pepper-Dickinson, Jones Foster Johnston & Stubbs, P.A., 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401-5950 on November 26, 2011.

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