

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO.: SC15-**

**FLORIDA PROBATE RULES COMMITTEE  
FAST TRACK REPORT**

Matthew Triggs, 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 Florida Rule of Judicial Administration 2.140(e). All rule amendments have been approved by the full Committee and, as required by Rule 2.140, approved by The Florida Bar Board of Governors. The voting records of the Committee and the Board of Governors are attached as Appendix A.

The amendments were not published as the Committee wished to address the legislation as soon as possible. The Committee proposes amendments to the following rules: Rule 5.340 Notice of Administration; Rule 5.310 Disqualification of Personal Representative; Notification; Rule 5.648 Emergency Temporary Guardian; Rule 5.695 Annual Guardianship Report; and Rule 5.705 Petition for Interim Judicial Review.

The rule amendments are proposed for the following reasons:

**RULE 5.240. NOTICE OF ADMINISTRATION**

The Committee recommends amending subdivisions (a)(3), (b)(3), and (d) of Florida Probate Rule 5.240 to conform to statutory changes to section 733.212, Florida Statutes, as amended by section 2, Chapter 2015-27, Laws of Florida. The effective date of Chapter 2015-27, Laws of Florida, is July 1, 2015.

The proposed amendments to subdivision (a)(3) are for consistency only and add a comma and “, Florida Statutes,” to sentence.

The statutory changes include additional requirements with respect to the contents of a notice of administration. The Committee proposes amendments that

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track the statutory language required for notices of administration. In particular the Committee proposes amending subdivision (b)(3) to add that any interested person “must file, on or before the date which is 3 months after the date of service of the notice of administration on that interested person any objection.” The Committee suggests the removal of the following language in the same sentence “the qualification of the person representative [ ] must file any objections with the court in the manner provided in the Florida Probate Rules within the time required by law” as it now conflicts with the statute.

Additionally, the Committee recommends adding the following statement to the end of subdivision (b)(3) to conform to the statutory amendments of the notice requirement.

The 3-month time period may only be extended for estoppel based upon a misstatement by the personal representative regarding the time period within which an objection is filed. The time period may not be extended for any other reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. Unless sooner barred by section 733.212(3), Florida Statutes, all objections to the validity of a will, venue, or the jurisdiction of the court must be filed no later than the earlier of the entry of an order of final discharge of the personal representative, or 1 year after service of the notice of administration[ ].

The amendments in section 2, Chapter 2015-27, Laws of Florida, also require conforming amendments to subdivision (d). The statutory changes delete the requirement that an interested person object to the qualifications of the personal representative within 3 months after service of the notice of administration. The Committee recommends removing the second sentence of subdivision (d) “[o]bjections to the qualifications of the personal representative shall follow the form and procedure set forth in these rules pertaining to removal of a personal representative” to conform to the legislation.

The Committee proposes revising the committee notes to reflect these amendments.

**RULE 5.310. DISQUALIFICATION OF PERSONAL REPRESENTATIVE; NOTIFICATION**

The Committee proposes amending Florida Probate Rule 5.310 to address statutory changes to section 733.3101, Florida Statutes, as amended by section 4, Chapter 2015-27, Laws of Florida. The effective date of Chapter 2015-27, Laws of Florida, is July 1, 2015. The statutory amendments modify the substance and procedure for disqualification of a personal representative. The statutory changes require the immediate resignation of a “personal representative [who] knows he or she is not qualified to act at the time of appointment.” The statutory amendments require that a personal representative who was qualified at the time of appointment, but later becomes unqualified, provide notice to interested persons of their right to file a petition seeking the removal of the personal representative and further require that the personal representative inform interested persons that they have 30 days to file such a petition. To address this legislative amendment, the Committee proposes amending the first paragraph to delete “or who would not be qualified for appointment if application for appointment were then made shall immediately file and serve on all interested persons” and in its place add the following “knows that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve all interested persons.”

The Committee proposes deleting the contents of current subdivision (a) and dividing up existing subdivision (b) into new subdivisions (a) and (b). The Committee suggests deleting “the reason the personal representative was not qualified at the time of appointment or” because the new legislation requires that a personal representative immediately resign if he or she was not qualified at the time of appointment. In its place, the Committee suggests moving part of existing subdivision (b) to new subdivision (a) and making grammatical changes.

The remainder of the rule would now become new subdivision (b). The Committee proposes deleting “[t]he personal representative’s notice shall state” as it is now duplicative. The Committee proposes including the timeframe to file a petition by adding “within 30 days after the date on which such notice is served.”

The Committee proposes clarifying the specific section of 733.3101, Florida Statutes, in the first sentence of the committee note, updating the rule references to include Florida Probate Rule 5.041 (Service of Pleadings and Documents), and updating the committee notes to reflect the conforming amendments.

**RULE 5.648. EMERGENCY TEMPORARY GUARDIAN**

The Committee proposes amending subdivision (b) of Florida Probate Rule 5.648 to conform to statutory changes in section 744.3031, Florida Statutes, as amended by section 6, Chapter 2015-83, Laws of Florida. The effective date of Chapter 2015-83, Laws of Florida, is July 1, 2015. The statutory amendments require notice to be served on the alleged incapacitated person at least 24 hours before a hearing on a petition for emergency temporary guardian. Subdivision (b) is amended to reflect the new time frame for service in section 6, Chapter 2015-83, Laws of Florida. The Committee suggests removing “[u]nless the court orders otherwise,” from the beginning of the subdivision, changing “shall” to “must,” deleting “before the hearing on the petition,” and then adding “at least 24 hours before the hearing on the petition is commenced, unless the petitioner demonstrates that substantial harm to the alleged incapacitated person would occur if the 24-hour notice is given” to the end of the subdivision.

The Committee suggests revising the committee note to reflect these amendments.

#### **RULE 5.695. ANNUAL GUARDIANSHIP REPORT**

The Committee believes that the statutory changes in section 744.367(a), Florida Statutes, as amended by section 16, Chapter 2015-83, Laws of Florida, are procedural in nature and violate section 2 of the Florida Constitution. The effective date of Chapter 2015-83, Laws of Florida, is July 1, 2015. Additionally, the Committee feels that the new language and time frames are confusing for the reader and for the filer of such a report. (*See Appendix F-5-F-6.*)

Should the Court determine that the statutory changes are substantive in nature, the Committee has included language amending subdivision (a) to conform to statutory changes in section 744.361, Florida Statutes, as amended by section 16, Chapter 2015-83, Laws of Florida. The statutory amendments set out additional duties which guardians owe to wards, and make clear that a guardian is a fiduciary. As amended, subdivision (a)(1) would read as follows:

**Guardian of the Person.** Unless the court requires reporting on a calendar year basis, the guardian of the person shall file an annual guardianship plan at least 60 days, but no more than 90 days, before the last day of the anniversary month in which the letters of guardianship were signed. The plan must cover the coming fiscal year ending, on the last day of such anniversary month. If the court requires calendar-year

reporting, the guardianship plan for the forthcoming year must be filed on or after September 1, but no later than December 1, of the current year.

If the Court adopts the amendment, the Committee suggests revising the committee notes accordingly.

#### **RULE 5.705. PETITION FOR INTERIM JUDICIAL REVIEW**

The Committee proposes amending Florida Probate Rule 5.705 to conform to the statutory amendments to section 744.3715, Florida Statutes, as amended by section 18, Chapter 2015-83, Laws of Florida. The effective date of Chapter 2015-83, Laws of Florida, is July 1, 2015. The statutory changes set out additional duties that guardians owe to wards, and the statute makes clear that a guardian is a fiduciary. The Committee is of the view that, in light of the amendments in section 744.3715, Florida Statutes, which create refers to section 744.361, Florida Statutes, Rule 5.705(a) should be revised to reflect that a petition seeking interim judicial review should include, as grounds for review, that the guardian is acting in a manner contrary to the statutory requirements of section 744.361, Florida Statutes. Specifically, the Committee proposes amending subdivision (a) to add “or state that the guardian is acting in a manner contrary to section 744.361, Florida Statutes,” towards the end of the sentence. Additionally, the Committee suggests adding “or conduct” to the last line of subdivision (a).

The Committee proposes including references to sections 744.361 and 744.3715, Florida Statutes, in the statutory references, updating the statutory references to include section 744.361, Florida Statutes, and updating the committee note to reflect these amendments.

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

Respectfully submitted on August 19, 2015.

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**CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against *West's Florida Rules of Court—State* (2015 Edition).

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

/s/ Heather Savage Telfer  
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