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PLEASE REPLY TO:
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June 20, 2006

Mr. Peter A. Sachs
P.O. Box 3475
West Palm Beach 33402

Dear Mr. Sachs:

I am writing to you in connection with the proposed amendments to the probate rules. I have the following comments:

1. I oppose the use of magistrates in probate. We elect judges to decide our cases. We do not elect magistrates. I do not know what some of our judges do, but they refer everything of any consequence to magistrates and thus evade the purpose of electing them. We have no idea about the qualifications of magistrates in larger counties. This is a backward step.

2. Rule 5.490. Delete "at the option of the personal representative" in subdivision (f) and substitute "may" for "shall" as the second word in that sentence.

3. Rule 5.496. I object to requiring service of an objection to claim by formal notice. There have not been any problems with informal notice. Formal notice is required to obtain jurisdiction over the person being served. That is not necessary when serving a claimant. The claimant submits to jurisdiction by filing the claim. Again, this is a backward step. It is likely to create confusion about jurisdiction over claimants.

4. Rule 55.499. The language "as to be paid" is confusing. If you delete "as," the confusion disappears. The same confusion appears in subdivision (d). I do not understand the predilection of the Committee for "prior to" when "before" will suffice. In subdivision (e) I have the same objection to formal notice as mentioned in connection with Rule 5.496.

5. Rule 5.530. The reason given for the change in this rule is both ridiculous and irrelevant. A summary administration is not a formal administration. I do not know which pedant inserted "signed and" in subdivision (a), but a pleading cannot be verified if it is not signed. The phrase "as required by law" is also unnecessary. It seems the Committee wants to make every probate proceeding as complex as possible. The primary reason for summary administration is to eliminate complexities and unnecessary statements. The following items are not necessary for a summary administration:

(a) The name and office address of the petitioners' attorneys.

(b) Either subparagraph (a)(2) or (4), but not both.

(c) Subdivisions (5) and (6) are not necessary. Neither of them will effect summary administration. The will itself will show whether or not it directs administration.

(d) So far as the statement of the value of the estate is concerned, why ask for it in both (7) and (8)

(e) Subdivision (b) as proposed may well eliminate the desirability of summary administration in many cases by the last sentence. It is in direct conflict with the first sentence so far as the beneficiary is concerned. I oppose this unnecessary complication for summary administration.

I hope the Committee will review and revise the proposals.

Yours very truly,

Henry P. Trawick, Jr.

HPT/jab

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July 6, 2006

Henry P. Trawick, Jr., Esq.
Henry P. Trawick, P.A.
P.O. Box 4009
Sarasota, Florida 34230

Re: Proposed Amendments to Probate Rules

Dear Mr. Trawick:

Thank you for your letter of June 20, 2006. Although I was not Chair of the Probate Rules Committee when the proposed Rules referenced in your letter were approved by the Committee, I am sufficiently familiar with them to respond to your comments. I will address them in the order that you raise them in your letter.

1. Rule 5.095. The request for a rule on magistrates was made by numerous judges throughout the state who have been overwhelmed in probate and guardianship cases. The Committee debated many hours and went through a number of draft responses before finally settling on a rule which tracks Fla. R. Civ. P. 1.490. The need for magistrates was deemed by judges throughout the state to be so acute that in 2005, the United Judicial Conference of the Florida Conference of Circuit Judges unanimously approved a proposal seeking amendment of the Florida Probate Rules to include a procedure permitting the use of magistrates similar to that set out in Fla. R. Civ. P. 1.490. Your concern about the referral of matters to magistrates was considered by the Committee, and it therefore included that portion of Fla. R. Civ. P. 1.490 which requires that no referral shall be made to a magistrate without the consent of all parties. See Rule 5.095(c).
2. Rule 5.490. Your comments are stylistic and, as you probably know, all proposed Rules first go through a Style Committee. I defer to our Style Committee on its choice of words; however, I am bringing your comments to the attention of the Style Committee in the event that we need to revise the language as a consequence of your comments.

3. Rule 5.496. The Committee spent a considerable amount of time debating the type of service required for an objection. Please note that formal notice is not required. Rather, service "in the manner provided for service of formal notice" is required. This means certified mail, return receipt requested or any commercial service which requires a signed receipt. The Committee felt that this form of service was necessary to preclude disputes as to the computation of time to file an independent action.
4. Rule 5.499. Once again, your comments are properly directed to the Style Committee, and I will forward them to the Chair of that subcommittee. Please see my comments above regarding service "in the manner provided for service of formal notice."
5. Rule 5.530. You raise a number of points which I will address with the Committee as well as the subcommittee initially assigned to review this Rule.

Thank you for your input.

Very truly yours,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

By _____


Peter A. Sachs

PAS/lsm

cc: Mr. J. Craig Shaw – Florida Bar (w/enclosure)

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