

731.302 Waiver and consent by interested person.—Subsequent to the filing of a petition for administration, an interested person, including a guardian ad litem, administrator ad litem, guardian of the property, personal representative, trustee, or other fiduciary, or a sole holder or all coholders of a power of revocation or a power of appointment, may waive, to the extent of that person’s interest or the interest which that person represents, subject to the provisions of ss. 731.303 and 733.604, any right or notice or the filing of any document, exhibit, or schedule required to be filed and may consent to any action or proceeding which may be required or permitted by this code.

733.705 Payment of and objection to claims.—

(1) The personal representative shall pay all claims within 1 year from the date of first publication of notice to creditors, provided that the time shall be extended with respect to claims in litigation, unmatured claims, and contingent claims for the period necessary to dispose of those claims pursuant to subsections (5), (6), (7), and (8). The court may extend the time for payment of any claim upon a showing of good cause. No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 5 months from the first publication of notice to creditors. If any person brings an action against a personal representative within the 5 months on any claim to which the personal representative has not filed an objection, the plaintiff shall not receive any costs or attorneys’ fees, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice to creditors or within 30 days from the timely filing or amendment of a claim, whichever occurs later, a personal representative or other interested person may file a written objection to a claim. If an objection is filed, the person filing it shall serve a copy of the objection as provided by the Florida Probate Rules. The failure to serve a copy of the objection constitutes an abandonment of the objection. For good cause, the court may extend the time for filing or serving an objection to any claim. Objection to a claim constitutes an objection to an amendment of that claim unless the objection is withdrawn.

(3) If the objection is filed by a person other than the personal representative, the personal representative may apply to the court for an order relieving him or her from the obligation to defend the estate in an independent action or for the appointment of the objector as administrator ad litem to defend the action. Fees for the attorney for the administrator ad litem may be awarded as provided in s. 733.106(3). If costs or attorney’s fees are awarded from or against the estate, the probate court may charge or apportion that award as provided in s. 733.106(4).

(4) An objection by an interested person to a personal representative’s proof of claim shall state the particular item or items to which the interested person objects and shall be filed and served as provided in subsection (2). Issues of liability as between the estate and the personal representative individually for items listed in a personal representative’s proof of claim shall be determined in the estate administration, in a proceeding for accounting or surcharge, or in another appropriate proceeding, whether or not an objection has been filed. If an objection to an item listed as to be paid in a personal representative’s proof of claim is filed and served, and the personal representative has not paid the item, the other subsections of this section shall apply as if a claim for the item had been filed by the claimant; but if the personal representative has paid the claim after

listing it as to be paid, issues of liability as between the estate and the personal representative individually shall be determined in the manner provided for an item listed as paid.

(5) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future, unless an extension of this time is agreed to by the personal representative in writing before it expires. For good cause, the court may extend the time for filing an action or proceeding after objection is filed. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the claim is barred without court order. If an objection is filed to the claim of any creditor and the creditor brings an action to establish the claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(6) A claimant may bring an independent action or declaratory action upon a claim which was not timely filed pursuant to s. 733.702(1) only if the claimant has been granted an extension of time to file the claim pursuant to s. 733.702(3).

(7) If an unmatured claim has not become due before the time for distribution of an estate, the personal representative may prepay the full amount of principal plus accrued interest due on the claim, without discount and without penalty, regardless of any prohibition against prepayment or provision for penalty in any instrument on which the claim is founded. If the claim is not prepaid, no order of discharge may be entered until the creditor and personal representative have filed an agreement disposing of the claim, or in the absence of an agreement until the court provides for payment by one of the following methods:

(a) Requiring the personal representative to reserve such assets as the court determines to be adequate to pay the claim when it becomes due; in fixing the amount to be reserved, the court may determine the value of any security or collateral to which the creditor may resort for payment of the claim and may direct the reservation, if necessary, of sufficient assets to pay the claim or to pay the difference between the value of any security or collateral and the amount necessary to pay the claim. If the estate is insolvent, the court may direct a proportionate amount to be reserved. The court shall direct that the amount reserved be retained by the personal representative until the time that the claim becomes due, and that so much of the reserved amount as is not used for payment be distributed according to law;

(b) Requiring that the claim be adequately secured by a mortgage, pledge, bond, trust, guaranty, or other security, as may be determined by the court, the security to remain in effect until the time the claim becomes due, and so much of the security or collateral as is not needed for payment be distributed according to law; or

(c) Making provisions for the disposition or satisfaction of the claim as are equitable, and in a manner so as not to delay unreasonably the closing of the estate.

(8) If no cause of action has accrued on a contingent claim before the time for distribution of an estate, no order of discharge may be entered until the creditor and the personal representative have filed an agreement disposing of the claim or, in the absence

of an agreement, until:

- (a) The court determines that the claim is adequately secured or that it has no value,
- (b) Three months from the date on which a cause of action accrues upon the claim, provided that no action on the claim is then pending,
- (c) Five years from the date of first publication of notice to creditors, or
- (d) The court provides for payment of the claim upon the happening of the contingency by one of the methods described in paragraph (a), paragraph (b), or paragraph (c) of subsection (7),

whichever occurs first. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the claim is barred without court order. If an objection is filed to the claim of any creditor and the creditor brings an action to establish the claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(9) Interest shall be paid by the personal representative on written obligations of the decedent providing for the payment of interest. On all other claims, interest shall be allowed and paid beginning 5 months from the first publication of the notice to creditors.

(10) The court may determine all issues concerning claims or matters not requiring trial by jury.

(11) An order for extension of time authorized under this section may be entered only in the estate administration proceeding.

744.362 Initial guardianship report.—

(1) Each guardian shall file with the court an initial guardianship report within 60 days after her or his letters of guardianship are signed. The initial guardianship report for a guardian of the property must consist of a verified inventory. The initial report for a guardian of the person must consist of an initial guardianship plan. The initial report shall be served on the ward, unless the ward is a minor under the age of 14 years or is totally incapacitated, and the attorney for the ward. Either the ward or the ward's attorney may request a hearing concerning the adequacy of the report.

(2) Review of the initial guardianship report and representation of the ward during an objection thereto, if any, shall be the appointed attorney's final official action on behalf of the ward. Thereafter, the court-appointed attorney is no longer obligated to represent the ward.

744.367 Duty to file annual guardianship report.—

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after the last day of the anniversary month the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan must be filed on or before April 1 of each year.

(2) Unless the court requires or authorizes filing on a fiscal-year basis, each guardian of the property shall file with the court an annual accounting on or before April 1 of each year. The annual accounting must cover the preceding calendar year. If the court authorizes or directs filing on a fiscal-year basis, the annual accounting must be filed on or before the first day of the fourth month after the end of the fiscal year.

(3) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person must consist of an annual guardianship plan. The annual report shall be served on the ward, unless the ward is a minor or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

(4) Unless the ward is a minor or has been determined to be totally incapacitated, the guardian shall review a copy of the annual report with the ward, to the extent possible. Within 30 days after the annual report has been filed, any interested person, including the ward, may file written objections to any element of the report, specifying the nature of the objection.

(5) If the guardian fails to timely file the annual guardianship report, the judge may impose sanctions which may include contempt, removal of the guardian, or other sanctions provided by law in s. 744.3685.

(6) Notwithstanding any other requirement of this section or unless otherwise directed by the court, the guardian of the property may file the first annual accounting on either a fiscal-year or calendar-year basis. Unless the court directs otherwise, the guardian shall notify the court as to the guardian's filing intention within 30 days from the date the guardian was issued the letter of guardianship. All subsequent annual accountings must be filed on the same accounting period as the first annual accounting unless the court authorizes or directs otherwise. The first accounting period must end within 1 year after the end of the month in which the letters of guardianship were issued to the guardian of the property.

744.708 Reports and standards.—

(1) The public guardian shall keep and maintain proper financial, case control, and statistical records on all matters in which the public guardian serves as guardian.

(2) No report or disclosure of the ward's personal and medical records shall be made, except as authorized by law.

(3) A public guardian shall file an annual report on the operations of the office of public guardian, in writing, by September 1 for the preceding fiscal year with the Statewide Public Guardianship Office which shall have responsibility for supervision of the operations of the office of public guardian.

(4) Within 6 months of his or her appointment as guardian of a ward, the public guardian shall submit to the clerk of the court for placement in the ward's guardianship file and to the executive director of the Statewide Public Guardianship Office a report on his or her efforts to locate a family member or friend, other person, bank, or corporation to act as guardian of the ward and a report on the ward's potential to be restored to capacity.

(5)(a) Each office of public guardian shall undergo an independent audit by a qualified certified public accountant at least once every 2 years. A copy of the audit report shall be submitted to the Statewide Public Guardianship Office.

(b) In addition to regular monitoring activities, the Statewide Public Guardianship Office shall conduct an investigation into the practices of each office of public guardian related to the managing of each ward's personal affairs and property. When feasible, the investigation required under this paragraph shall be conducted in conjunction with the financial audit of each office of public guardian under paragraph (a).

(c) In addition, each office of public guardian shall be subject to audits or examinations by the Auditor General and the Office of Program Policy Analysis and Government Accountability pursuant to law.

(6) A public guardian shall ensure that each of the guardian's wards is personally visited by the public guardian or by one of the guardian's professional staff at least once each calendar quarter. During this personal visit, the public guardian or the professional staff person shall assess:

(a) The ward's physical appearance and condition.

(b) The appropriateness of the ward's current living situation.

(c) The need for any additional services and the necessity for continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct service, health, and personal care needs.

(7) The ratio for professional staff to wards shall be 1 professional to 40 wards. The Statewide Public Guardianship Office may increase or decrease the ratio after consultation with the local public guardian and the chief judge of the circuit court. The basis of the decision to increase or decrease the prescribed ratio shall be reported in the annual report to the Secretary of Elderly Affairs, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

HUGH D. HAYES
CIRCUIT JUDGE
TWENTIETH JUDICIAL CIRCUIT OF FLORIDA

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December 12, 2005

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In Re: Probate Rules Committee

Dear Mr. Kelley:

At the 2005 United Judicial Conference of the Florida Conference of Circuit Judges, I discussed the need for expanded use of general magistrates for all probate and guardianship proceedings with the probate judges in attendance. There was unanimous approval to seek amendment of Florida Probate Rule 5.040 to include Florida Rule of Civil Procedure 1.490. The judges agreed that referral of matters to the general magistrates would alleviate the delays litigants confront when attempting to resolve issues by the trial court. The judges commented that probate and guardianship matters are becoming more litigated and requiring additional judicial attention with the resulting delays affecting alleged incapacitated persons, wards and beneficiaries. The use of general magistrates will reduce the expense of litigation and reduce the possibility of harm to vulnerable adults at risk for exploitation and abuse.

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On behalf of the probate judges I am requesting that the Probate Rules Committee, on an expedited and emergency basis, consider the proposed amendment. To assist the Committee in this endeavor I am enclosing a copy of the Rule as it presently exists, a copy of the proposed revised Rule, and a strikeout copy of the Rule for easy reference of the proposed changes. If you require any additional information or assistance, please feel free to contact me.

Sincerely,

Hugh D. Hayes
Circuit Court Judge

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enclosures