

Proposed rule

Reasons for change

RULE 5.040. NOTICE

(a) Formal Notice.

(1) When formal notice is given, a copy of the pleading or motion shall be served on interested persons, together with a notice requiring the person served to serve written defenses on the person giving notice within 20 days after service of the notice, exclusive of the day of service, and to file the original of the written defenses with the clerk of the court either before service or immediately thereafter, and notifying the person served that failure to serve written defenses as required may result in a judgment or order for the relief demanded in the pleading or motion, without further notice.

(2) After service of formal notice, informal notice of any hearing on the pleading or motion shall be served on interested persons, provided that if no written defense is served within 20 days after service of formal notice on an interested person, the pleading or motion may be considered ex parte as to that person, unless the court orders otherwise.

(3) Formal notice shall be served:

(A) by sending a copy by any commercial delivery service requiring a signed receipt

Subdivision (a)(3)(A) amended to delete requirement that the chief judge of the circuit approve the commercial delivery services used for formal notice, because of lack of uniformity

~~approved by the chief judge of the judicial circuit in which the proceeding is pending~~ or by any form of mail requiring a signed receipt as follows:

(i) to the attorney representing an interested person; or

(ii) to an interested person who has filed a request for notice at the address given in the request for notice; or

(iii) to an incapacitated person to the person's usual place of abode and to the person's legal guardian, if any, at the guardian's usual place of abode or regular place of business; or, if there is no legal guardian, to the incapacitated person at the person's usual place of abode and on the person, if any, having care or custody of the incapacitated person at the usual place of abode or regular place of business of such custodian; or

(iv) on any other individual to the individual's usual place of abode or to the place where the individual regularly conducts business; or

(v) on a corporation or other business entity to its registered office in Florida or its principal business office in Florida or, if neither is known after reasonable inquiry, to its last known address; or

(B) as provided in the Florida Rules of Civil Procedure for service of process; or

among circuits as to which services may be used, and wide availability of reliable service providers.

(C) as otherwise provided by Florida law for service of process.

(4) Service of formal notice pursuant to subdivision (3)(A) shall be complete on receipt of the notice. Proof of service shall be by verified statement of the person giving the notice; and there shall be attached to the verified statement the signed receipt or other evidence satisfactory to the court that delivery was made to the addressee or the addressee's agent.

(5) If service of process is made pursuant to Florida law, proof of service shall be made as provided therein.

(b) **Informal Notice.** [NO CHANGE]

(c) **"Notice" Defined.** [NO CHANGE]

(d) **Formal Notice Optional.** [NO CHANGE]

Proposed rule

Reasons for change

RULE 5.041. SERVICE OF PLEADINGS AND PAPERS

(a) **Service; When Required.** [NO CHANGE]

(b) **Service; How Made.** When service is required or permitted to be made on an interested person represented by an attorney, service shall be made on the attorney unless service on the interested person is ordered by the court. Except when serving formal notice, or when serving a motion, pleading, or other paper in the manner provided for service of formal notice, service shall be made by delivering or mailing a copy of the motion, pleading, or other paper to the attorney or interested person at the last known address or, if no address is known, leaving it with the clerk of the court. Service by mail shall be complete upon mailing ~~except where~~when serving formal notice or when making service in the manner of formal notice. Delivery of a copy within this rule shall be complete upon

(1) handing it to the attorney or to the interested person; or

(2) leaving it at the attorney's or interested person's office with a clerk or other person in charge thereof; or

Subdivisions (b) and (f) amended to specifically refer to service "in the manner provided for service of formal notice" to incorporate this concept into the rules that address the procedural application of service, notice, and time calculations, and to reflect the fact that many attorneys opt to provide notice in the same manner as formal notice in situations in which formal notice is not required.

(3) if there is no one in charge, leaving it in a conspicuous place therein; or

(4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing that person of the contents; or

(5) transmitting it by facsimile to the attorney's or interested person's office with a cover sheet containing the sender's name, firm, address, telephone number, facsimile number, and the number of pages transmitted. When delivery is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile delivery occurs when transmission is complete.

Service by delivery after 4:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(c) **Service; Numerous Interested Persons.** [NO CHANGE]

(d) **Filing.** [NO CHANGE]

(e) **Filing With ~~the~~ Court Defined.** The filing of papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may permit the papers to be filed with the judge in which event the judge

Editorial changes.

shall note the filing date and transmit ~~them~~the papers to the clerk. The date of filing is that shown on the face of ~~the~~each paper by the judge's notation or the clerk's time stamp, whichever is earlier.

(f) **Certificate of Service.** When any attorney shall certify in substance:

"I certify that a copy hereof has been ~~furnished~~
~~to~~served on (here insert name or names) by
(delivery) (mail) (fax) on (date).

Attorney"

the certificate shall be taken as prima facie proof of service in compliance with these rules except in case of formal notice or service in the manner of formal notice. A person not represented by an attorney shall certify in the same manner, but the certificate must be verified.

(g) **Service of Orders.** [NO CHANGE]

Editorial changes, and addition of phrase "or service in the manner of formal notice" for reasons set out in (b) above.

Proposed rule

Reasons for change

RULE 5.042. TIME

- (a) **Computation.** [NO CHANGE]
- (b) **Enlargement.** [NO CHANGE]
- (c) **Service for Hearings.** [NO CHANGE]

(d) **Additional Time After Service by Mail.**

Except ~~for~~when serving formal notice ~~and notice of administration,~~ or when serving a motion, pleading, or other paper in the manner provided for service of formal notice, when an interested person has the right or is required to act within a prescribed period after the service of notice or other paper on the interested person and the notice or paper is served by mail, 5 days shall be added to the prescribed period.

Subdivision (d) amended to clarify that when a paper is served in the manner provided for service of formal notice, the date of delivery is the date of receipt. See explanation of change to subdivision (b) in rule 5.041.

Proposed rule

Reasons for change

RULE 5.240. NOTICE OF ADMINISTRATION

(a) **Service.** The personal representative shall promptly serve a copy of the notice of administration on the following persons who are known to the personal representative and who were not previously served under section 733.2123, Florida Statutes:

(1) the decedent's surviving spouse;

(2) all beneficiaries;

(3) a trustee of any trust described in section 733.707(3), Florida Statutes and each beneficiary of the trust as defined in s. 737.303(4)(b), if each trustee is also a personal representative of the estate; and

(4) persons who may be entitled to exempt property

in the manner provided for service of formal notice. The personal representative may similarly serve a copy of the notice on any devisee under ~~a known~~ another will or heirs or others who claim or may claim an interest in the estate.

(b) **Contents.** The notice shall state:

Subdivision (a)(3) amended to comply with 2003 statutory change, adding same language added to section 733.212(1)(c), Florida Statutes. Also, editorial change in (a).

Subdivision (b) amended to add new (5), requiring notice of

(1) the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, whether the estate is testate or intestate, and, if testate, the date of the will and any codicils;

(2) the name and address of the personal representative and of the personal representative's attorney;

(3) that any interested person on whom the notice is served who challenges the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of the court is required to file any objections with the court in the manner provided in the Florida Probate Rules within the time required by law or those objections are forever barred;~~and~~

(4) that any person entitled to exempt property is required to file a petition for determination of exempt property within the time provided by law or the right to exempt property is deemed waived; and

(5) that a surviving spouse seeking an elective share must file an election to take elective share within the time provided by law.

(c) **Copy of Will.** [NO CHANGE]

(d) **Objections.** [NO CHANGE]

administration to place surviving spouse on notice of the limited period of time allowed to exercise a right of election to take elective share.

Proposed rule

Reasons for change

RULE 5.270. REVOCATION OF PROBATE

(a) **Petition and Contents.** [NO CHANGE]

(b) **Continued Administration.** Pending the determination of any issue for revocation of probate, the personal representative shall proceed with the administration of the estate as if no revocation proceeding had been commenced, except that no distribution may be made to ~~devisees~~ beneficiaries in contravention of the rights of those who, but for the will, would be entitled to the property disposed of.

Subdivision (b) amended to change “devisees” to “beneficiaries” to conform to term generally adopted in the Florida Probate Code in the 2001 revisions to the Code. See § 733.109(2), Fla. Stat.

Proposed rule

Reasons for change

**RULE 5.345. ACCOUNTINGS OTHER THAN
PERSONAL REPRESENTATIVES' FINAL
ACCOUNTINGS**

- (a) **Applicability and Accounting Periods.** [NO CHANGE]
- (b) **Notice of Filing.** [NO CHANGE]
- (c) **Objection.** [NO CHANGE]
- (d) **Service of Objections.** [NO CHANGE]
- (e) **Disposition of Objections and Approval of Accountings.** [NO CHANGE]
- (f) **Substantiating Papers.** [NO CHANGE]
- (g) **Supplemental Accountings.** [NO CHANGE]
- (h) **Verification.** All accountings shall be verified by the fiduciary filing the accounting.

Subdivision (h) added to require verification of accounts. See Fla. Prob. R. 5.020.

Proposed rule

Reasons for change

RULE 5.346. FIDUCIARY ACCOUNTING

- (a) **Contents.** [NO CHANGE]
- (b) **Accounting Standards.** [NO CHANGE]
- (c) **Accounting Format.** [NO CHANGE]

(d) **Verification.** All accountings shall be verified by the fiduciary filing the accounting.

Subdivision (d) added to require verification of accounts. See Fla. Prob. R. 5.020.

Proposed rule

Reasons for change

RULE 5.360. ELECTIVE SHARE

(a) **Election.** An election to take the elective share may be filed by the surviving spouse, or on behalf of the surviving spouse by an attorney-in-fact or guardian of the property of the surviving spouse.

Subdivisions (a)(1) and (a)(2)(C) amended to provide for service in the manner provided for service of formal notice, to conform to the contemporaneous changes made in rules 5.041, 5.042, and 5.241.

(1) **Election by Surviving Spouse.** An electing surviving spouse shall file the election within the time required by law and promptly serve a copy of the election on the personal representative in the manner provided for service of formal notice.

(2) **Election by Attorney-in-Fact or Guardian of the Property of Surviving Spouse.**

(A) **Petition for Approval.** Before filing the election, the attorney-in-fact or guardian of the property of the surviving spouse shall petition the court having jurisdiction of the probate proceeding for approval to make the election. The petition for approval shall allege the authority to act on behalf of the surviving spouse and facts supporting the election.

(B) **Notice of Petition.** Upon receipt of the petition, the personal representative shall promptly serve a copy of the petition by formal notice on all interested

persons.

(C) **Filing the Election.** Upon entry of an order authorizing the filing of an election, the attorney-in-fact or guardian of the property shall file the election within the later of the time provided by law or 30 days from service of the order and promptly serve a copy of the election on the personal representative in the manner provided for service of formal notice.

(b) **Procedure for Election.**

(1) **Extension.** Within the period provided by law to make the election, the surviving spouse or an attorney-in-fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election or for approval to make the election. After notice and hearing the court for good cause shown may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(2) **Withdrawal of Election.** The surviving spouse, an attorney-in-fact, a guardian of the property of the surviving spouse, or the personal representative of the surviving spouse's estate may withdraw the election within the time provided by law.

(3) **Service of Notice of Election.** Upon receipt of an election the personal representative shall promptly serve a notice of election within 20 days following service of the election, together with a copy of the election, on all

Subdivision (b)(3) amended to provide specific time period in which the personal representative must serve a notice of election on interested persons, and editorial change made in title.

interested persons in the manner provided for service of formal notice. The notice of election shall indicate the names and addresses of the attorneys for the surviving spouse and the personal representative and shall state that:

(A) persons receiving a notice of election may be required to contribute toward the satisfaction of the elective share;

(B) objections to the election must be served within 20 days after service of the copy of the notice of election; and

(C) if no objection to the election is timely served, an order determining the surviving spouse's entitlement to the elective share may be granted without further notice.

(4) **Objection to Election.** Within 20 days after service of the notice of election, an interested person may serve an objection to the election which shall state with particularity the grounds on which the objection is based. The objecting party shall serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative shall promptly serve a copy of the objection on all other interested persons who have not previously been served with a copy of the objection.

(c) **Determination of Entitlement.** [NO CHANGE]

(d) Procedure to Determine Amount of Elective Share and Contribution.

(1) Petition by Personal Representative.

After entry of the order determining the surviving spouse's entitlement to the elective share, the personal representative shall file and serve a petition to determine the amount of the elective share. The petition shall

(A) give the name and address of each direct recipient known to the personal representative;

(B) describe the proposed distribution of assets to satisfy the elective share, and the time and manner of distribution; and

(C) identify those direct recipients, if any, from whom a specified contribution will be required and state the amount of contribution sought from each.

(2) Service of Inventory. The inventory of the elective estate required by rule 5.340 ~~shall be served,~~ together with the petition, shall be served within 60 days after entry of the order determining entitlement to the elective share on all interested persons in the manner provided for service of formal notice.

(3) Petition by Spouse. If the personal representative does not file the petition to determine the

Subdivision (d) amended to provide specific time period in which the personal representative must serve an inventory and petition on interested persons and to provide for same method of service as provided in subdivision (a).

amount of the elective share within 90 days from rendition of the order of entitlement, the electing spouse or the attorney-in-fact or the guardian of the property or personal representative of the electing spouse may file the petition specifying as particularly as is known the value of the elective share.

(4) Objection to Amount of Elective

Share. Within 20 days after service of the petition to determine the amount of the elective share, an interested person may serve an objection to the amount of or distribution of assets to satisfy the elective share. The objection shall state with particularity the grounds on which the objection is based. The objecting party shall serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative shall promptly serve a copy of the objection on all interested persons who have not previously been served.

(5) Determination of Amount of Elective Share and Contribution.

(A) No Objection Served. If no objection is timely served to the petition to determine the amount of the elective share, the court shall enter an order on the petition.

(B) Objection Served. If an objection is timely served to the petition to determine the amount of the elective share, the court shall determine the amount of the elective share and contribution after notice and

hearing.

(6) **Order Determining Amount of Elective Share and Contribution.** The order shall:

(A) set forth the amount of the elective share;

(B) identify the assets to be distributed to the surviving spouse in satisfaction of the elective share; and

(C) if contribution is necessary, specify the amount of contribution for which each direct recipient is liable.

(e) **Relief from Duty to Enforce Contribution.**
[NO CHANGE]

Proposed rule

Reasons for change

RULE 5.400. DISTRIBUTION AND DISCHARGE

- (a) **Petition for Discharge; Final Accounting.**
[NO CHANGE]
- (b) **Contents.** [NO CHANGE]
- (c) **Closing Estate; Extension.** [NO CHANGE]
- (d) **Distribution.** [NO CHANGE]
- (e) **Discharge.** [NO CHANGE]
- ~~(f) **Waiver.** The final accounting, any portion of the petition for discharge, or the time for filing objections may be waived by all interested persons.~~

Subdivision (f) deleted to avoid duplication with rule 5.180(a)(1)(E).

Proposed rule

Reasons for change

RULE 5.402. NOTICE OF LIEN ON PROTECTED HOMESTEAD

(a) **Filing.** If the personal representative has recorded a notice of lien on protected homestead, the personal representative shall file a copy of the recorded notice in the probate proceeding.

(b) **Contents.** The notice of lien shall contain:

(1) the name and address of the personal representative and the personal representative's attorney;

(2) the legal description of the real property;

(3) to the extent known, the name and address of each person appearing to have an interest in the property; and

(4) a statement that the personal representative has expended or is obligated to expend funds to preserve, maintain, insure, or protect the property and that the lien stands as security for recovery of those expenditures and obligations incurred, including fees and costs.

(c) **Service.** A copy of the recorded notice of lien shall be

New rule, intended as a companion rule to proposed new rule 5.403 (Proceedings to Determine Amount of Lien on Protected Homestead) and existing rule 5.404 (Notice of Taking Possession of Protected Homestead). Section 733.608, Florida Statutes, provides that the personal representative is entitled to a lien for funds expended to preserve, maintain, or insure protected homestead, and sets forth the requirements for a recorded notice of lien and for filing the lien in the probate proceeding. This rule is intended to create the method by which the personal representative complies with the probate filing requirement. The contents of the notice set forth in subdivision (b) of the rule are the same as those set forth in subsection (4) of the statute.

served on interested persons in the manner provided for service of formal notice.

Committee Notes

Rule History

2005 Revision: New rule.

Statutory References

§ 733.608, Fla. Stat. General power of the personal representative.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and papers.

Fla. Prob. R. 5.403 Proceedings to determine amount of lien on protected homestead.

Fla. Prob. R. 5.404 Notice of taking possession of protected homestead.

Fla. Prob. R. 5.405 Proceedings to determine protected homestead real property.

Proposed rule

Reasons for change

**RULE 5.403. PROCEEDINGS TO DETERMINE
AMOUNT OF LIEN ON PROTECTED
HOMESTEAD**

(a) **Petition.** A personal representative or interested person may file a petition to determine the amount of any lien on protected homestead.

(b) **Contents.** The petition shall be verified by the petitioner and shall state:

(1) the name and address of the personal representative and the personal representative's attorney;

(2) the interest of the petitioner;

(3) the legal description of the real property;

(4) to the extent known, the name and address of each person appearing to have an interest in the property; and

(5) to the extent known, the amounts paid or obligated to be paid by the personal representative to preserve, maintain, insure, or protect the protected homestead, including fees and costs.

New rule, intended as a companion rule to proposed new rule 5.402 (Notice of Lien on Protected Homestead) and existing rule 5.404 (Notice of Taking Possession of Protected Homestead). Section 733.608(3)(a), Florida Statutes, provides that any interested person may petition the court to determine the amount of the debt owed to the personal representative for funds expended to preserve or insure protected homestead. This rule creates the procedure for this petition.

(c) Service. The petition shall be served on interested persons by formal notice.

Committee Notes

Rule History

2005 Revision: New rule.

Statutory References

§ 733.608, Fla. Stat. General power of the personal representative.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and papers.

Fla. Prob. R. 5.403 Notice of lien on protected homestead.

Fla. Prob. R. 5.404 Notice of taking possession of protected homestead.

Fla. Prob. R. 5.405 Proceedings to determine protected homestead real property.

Proposed rule

Reasons for change

RULE 5.404. NOTICE OF TAKING POSSESSION OF PROTECTED HOMESTEAD

(a) **Filing of Notice.** [NO CHANGE]

(b) **Contents of Notice.** The notice shall contain:

(1) a legal description of the property;

(2) a statement of the limited purpose for preserving, insuring, and protecting it for the heirs or ~~beneficiaries~~ devisees pending a determination of the homestead status;

(3) the name and address of the personal representative and the personal representative's attorney;

(4) if known, the location, date, and time the petition to determine homestead status will be heard, and

(5) if the personal representative is in possession when the notice is filed, the date the personal representative took possession.

(c) **Service of Notice.** [NO CHANGE]

Subdivision (b) amended to substitute the term “devisees” for “beneficiaries” to more accurately reflect the status of persons interested in protected homestead. See § 733.608(2), Florida Statutes (“heir or devisee”).

Proposed rule

Reasons for change

RULE 5.475. ANCILLARY ADMINISTRATION, SHORT FORM

(a) **Filing Requirements.** ~~An~~The foreign personal representative of a testate estate which that meets the requirements of section 734.1025, Florida Statutes, may file with the clerk in the county where any property is located; an authenticated copy of so much of the transcript of the ~~domiciliary~~foreign proceedings as will show:

(1) ~~in a testate estate,~~ the probated will and all probated codicils of the decedent;

(2) the order admitting them to probate;

(3) the letters or their equivalent; and

(4) the part of the record showing the names of the ~~devisees and heirs~~beneficiaries of the ~~decedent~~estate or an affidavit of the ~~domiciliary~~foreign personal representative reciting that the names are not shown or not fully disclosed by the ~~domiciliary~~foreign record and specifying the names.

On presentation of the foregoing, the court shall admit the will and any codicils to probate if they comply with section 732.502(1) or section 732.502(2), Florida Statutes;

Subdivision (a) amended to remove all references to intestate estates, to reflect 2001 revisions to the Florida Probate Code restricting the operation of this statute to testate estates only. Also, editorial changes.

~~(2) in an intestate estate, the petition for administration; order appointing personal representative; and an authenticated copy of letters of administration, or their equivalent, with the part of the record showing the names of the heirs of the decedent or an affidavit of the domiciliary personal representative supplying the names, as provided in subdivision (1). On presentation of the foregoing, the court shall order them recorded.~~

(b) **Notice to Creditors.** After complying with the foregoing requirements, the ~~domiciliaryforeign~~ personal representative ~~shall~~may cause a notice to creditors to be published as required by these rules.

Subdivision (b) amended to make publication of notice to creditors permissive rather than mandatory, to conform to subsection (2) of 734.1025, Florida Statutes. Also, editorial change.

(c) **Claims Procedure.** [NO CHANGE]

(d) **Order.** [NO CHANGE]

(e) **Notification of Claims Filed.** If any claim is filed against the estate within the time allowed, the ~~court~~clerk shall send to the ~~domiciliaryforeign~~ personal representative a copy of the claim and a notice setting a date for a hearing to appoint an ancillary personal representative. At the hearing, the court shall appoint an ancillary personal representative according to the preferences as provided by law.

Editorial changes.

(f) **Objections to Claims.** If an ancillary personal representative is appointed pursuant to this rule, the procedure for filing, objecting to, and suing on claims shall be the same

Editorial change.

as for other estates, except that the ancillary personal representative appointed shall have not ~~fewer~~less than 30 days from the date of appointment within which to object to any claim filed.

Proposed rule

Reasons for change

RULE 5.496. FORM AND MANNER OF OBJECTING TO CLAIM

(a) **Filing.** An objection to a claim, other than a personal representative's proof of claim, shall be in writing and shall be filed ~~within 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 the claim, whichever occurs later.

~~(b) — **Objection to Proof of Claim.** An objection to a personal representative's proof of claim shall identify the particular item or items of the claim to which objection is made.~~

~~(e)~~ **Service.** A personal representative or other interested person who files an objection to the claim shall serve a copy ~~by registered or certified mail or by delivery of the objection on the claimant or claimant's attorney of record within 10 days after the filing of the objection, and also on the personal representative if.~~ If the objection is filed by an interested person other than the personal representative, a copy of the objection shall also be served on the personal representative within 10 days after the filing of the objection.

~~(d)~~ **Notice to Claimant.** An objection shall contain

Subdivision (a) is amended to clarify that the rule is not intended to apply to objections to a personal representative's proof of claim, and subdivision (b) is deleted for the same reason. The procedure governing such objections are incorporated into proposed new rules 5.498 and 5.499.

Former subdivisions (c) and (d) are relettered as (b) and (c). Relettered (b) is amended to remove references to service by mail or delivery and to service on the claimant's attorney. These matters are adequately addressed by rules 5.040 and 5.041. Also, editorial changes.

a statement that the claimant is limited to a period of 30 days from the date of service of an objection within which to bring an action as provided by law.

Proposed rule

Reasons for change

RULE 5.498. PERSONAL REPRESENTATIVE'S PROOF OF CLAIM

New rule, created to implement section 733.702(3), Florida Statutes.

(a) Contents. A personal representative's proof of claim shall state:

- (1) the basis for each claim;
- (2) the amount claimed;
- (3) the name and address of the claimant;
- (4) the security for the claim, if any;

(5) whether the claim is matured, unmatured, contingent, or unliquidated;

(6) whether the claim has been paid or is to be paid; and

(7) that any objection to a claim listed as to be paid shall be filed no later than 4 months from first publication of the notice to creditors or 30 days from the date of the filing of the proof of claim, whichever occurs later.

(b)Service. The proof of claim shall be served on all

interested persons and all claimants listed in the proof of claim at the time of filing, or immediately thereafter.

Committee Notes

This rule represents an implementation of the procedure found in section 733.703(2), Florida Statutes, with respect to a proof of claim filed by the personal representative.

Rule History

2005 Revision: New rule.

Statutory References

§ 733.703(2), Fla. Stat. Form and manner of presenting claim.

§ 733.705, Fla. Stat. Payment of and objection to claims.

Rule References

Fla. Prob. R. 5.041 Service of pleadings and papers.

Fla. Prob. R. 5.499 Form and manner of objecting to personal representative's proof of claim.

Proposed rule

Reasons for change

RULE 5.499. FORM AND MANNER OF OBJECTING TO PERSONAL REPRESENTATIVE'S PROOF OF CLAIM

(a) **Filing.** An objection to a personal representative's proof of claim shall be in writing and shall be filed on or before the expiration of 4 months from the first publication of notice to creditors or within 30 days from the timely filing of the proof of claim, whichever occurs later.

(b) **Contents.** The objection shall identify the particular claim or claims listed as to be paid to which objection is made.

(c) **Service.** The objector shall serve a copy of the objection on the personal representative and on each claimant to which the objection relates within 10 days after the filing of the objection.

(d) **Notice to Claimant.** An objection shall contain a statement that the claimant is limited to a period of 30 days from the date of service of an objection within which to bring an action as provided by law. If the claim objected to is paid prior to the objection being filed, the claim shall be treated as if it were listed on the proof of claim as paid.

New rule, created as companion rule to proposed new rule 5.498, and intended to implement the procedure found in section 733.705(4), Florida Statutes, for objecting to a personal representative's proof of claim. The Committee Note discusses the different treatment accorded objections to items paid and items to be paid, consistent with subsection (4) of the statute.

Committee Notes

If the claim to which the person objects is listed on the proof of claim as paid or is deemed to have been listed as paid (because the claim had been listed as to be paid, but was in fact paid subsequent to the filing of the proof of claim but prior to the filing of an objection to the claim), it shall not be necessary for the claimant to file an independent action on that claim on account of the objection. Issues of liability as between the estate and the personal representative individually for that claim shall be determined in the estate administration, in a proceeding for accounting or surcharge, or in another appropriate proceeding.

Rule History

2005 Revision: New rule.

Statutory Reference

§ 733.705, Fla. Stat. Payment of and objection to claims.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and papers.

Fla. Prob. R. 5.496 Form and manner of objecting to claim.

Fla. Prob. R. 5.498 Personal representative's proof of claim.

Proposed rule

Reasons for change

RULE 5.530. SUMMARY ADMINISTRATION

(a) **Petition.** The petition shall be verified and shall contain the statements required by law and the following:

(1) Facts showing that the petitioners are entitled to summary administration.

(2) A schedule of all assets required by law to be listed and the estimated value of each, separately designating protected homestead and exempt property.

(3) One of the following shall be included:

(A) A statement that the estate is not indebted.

(B) A statement that all creditors' claims are barred.

(C) A statement that the petitioners have made diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, the~~The~~ name of each creditor, the nature of the debt, the amount of the debt and whether the amount is estimated or exact, and when the debt is due. If provision for payment of the debt has been made other

Subdivision (a)(3)(C) amended to include requirements of section 735.206(2), Florida Statutes, regarding the need for a diligent search for creditors.

than in the proposed order of distribution, the following information shall be shown:

(i) The name of the person who will pay the debt.

(ii) The creditor's written consent for substitution or assumption of the debt by another person.

(iii) The amount to be paid if the debt has been compromised.

(iv) If the debt is to be paid in other than 1 lump sum or as directed by court order, the time and method of payment.

(4) A schedule of proposed distribution of all probate assets and the person to whom each asset is to be distributed.

(b) **Testate Estate.** [NO CHANGE]

(c) **Order.** [NO CHANGE]

Proposed rule

Reasons for change

RULE 5.620. INVENTORY

(a) **Inventory.** [NO CHANGE]

(b) **Amended or Supplemental Inventory.** [NO CHANGE]

(c) **Substantiating Papers.** [NO CHANGE]

(d) **Safe-Deposit Box Inventory.** If the ward has a safe-deposit box, a copy of the safe-deposit box inventory shall be filed as part of the verified inventory.

Editorial changes in (d), to conform style to rule 5.342.

Proposed rule

Reasons for change

**RULE 5.625. NOTICE OF COMPLETION OF
GUARDIAN EDUCATION
REQUIREMENTS**

(a) **Filing.** Unless the guardian education requirement is waived by the court, each guardian, other than a professional guardian, shall file with the court within 1 year after the issuance of letters of guardianship a notice of completion of guardian education requirements.

(b) **Content.** The notice shall state:

(1) that the guardian has completed the required number of hours of course instruction and training covering the legal duties and responsibilities of a guardian, the rights of a ward, the availability of local resources to aid a ward, and the preparation of habilitation plans and annual guardianship reports, including accountings;

(2) the date the course was completed;

(3) the name of the course completed; and

(4) the name of the entity or instructor that taught the course.

(c) **Verification.** The notice shall be verified by the guardian.

New rule, to implement the requirements of section 744.3145, Florida Statutes, which requires guardians (other than professional guardians and a parent who is the guardian of the property of a minor child) to complete a guardian education instructional course, but which lacks a provision for notification to the court that the instruction has been completed.

Committee Notes

Rule History

2005 Revision: New rule.

Statutory Reference

§ 744.3145, Fla. Stat. Guardian education requirements.

