

Supreme Court of Florida

No. SC2024-1057

IN RE: AMENDMENTS TO FLORIDA PROBATE RULES – 2024 LEGISLATION.

February 27, 2025

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to Florida Probate Rules 5.240 (Notice of Administration), 5.241 (Notice to Creditors), and 5.550 (Petition to Determine Incapacity).¹ Previously, The Florida Bar’s Probate Rules Committee filed a report proposing amendments to Florida Probate Rules 5.240, 5.241, 5.550, and others in response to recent legislation. *See* chs. 2024-238, 2024-242, Laws of Fla. On September 5, 2024, the Court amended the Florida Probate Rules as proposed by the Committee, but revised the proposed amendments to rules 5.240 and 5.241 to state that a personal

1. We have jurisdiction. *See* art. V, § 2(a), Fla. Const.; *see also* Fla. R. Gen. Prac. & Jud. Admin. 2.140(e).

representative or curator has no duty to discover whether property held by the decedent or the decedent's surviving spouse at the time of the decedent's death is property to which the Florida Uniform Disposition of Community Property Rights at Death Act applies unless a written demand is "made." *See In re Amends. to Fla. Prob. Rules, – 2024 Legis.*, 393 So. 3d 178, 179 (Fla. 2024). The Court used the term "made" as found in the applicable statute as opposed to "filed" as proposed by the Committee.

Because the amendments were not published for comment prior to their adoption, the Court invited all interested persons to file comments on the new amendments by November 19, 2024, and for the Committee to file a response, if any, by December 10, 2024. No comments were filed in this Court during the comment period. However, on December 11, 2024, the Committee filed a late comment proposing that the Court further amend rules 5.240(b)(7) and 5.241(b)(2) to clarify that a written demand to the personal representative or curator under the rules must be filed with the clerk. Additionally, based on a comment the Committee received after it filed its original report with the Court but before the Court's opinion issued, the Committee suggests rescinding some of the

amendments to rule 5.550 proposed by the Committee and subsequently adopted in this Court's September 5, 2024, opinion. Specifically, the Committee proposes amending subdivision (a)(8) of rule 5.550 to remove the recently added term "supported decisionmaking agreements" from the list of alternatives to guardianship, as supported decisionmaking agreements cannot serve as alternatives to guardianship.

Having considered the Committee's comment, the Court hereby further amends rules 5.240, 5.241, and 5.550. First, subdivision (b)(7) of rule 5.240 and subdivision (b)(2) of rule 5.241 are amended to clarify that a written demand to the personal representative or curator regarding whether property held by the decedent or the surviving spouse at the time of the decedent's death is property to which the Florida Uniform Disposition of Community Property Rights at Death Act applies must be filed with the clerk. The new amendments are consistent with the requirements of section 732.2211, Florida Statutes (2024), and will avoid confusion regarding what constitutes a "written demand" under the rules. In addition, rule 5.550 is amended to remove "supported decisionmaking agreements" from the list of alternatives to

guardianship in subdivision (a)(8) and to remove the word “agreement” after “supported decisionmaking” in subdivision (a)(9) to avoid confusion and for consistency with the statutory language.

Accordingly, the Florida Probate Rules are amended as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective immediately.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Probate Rules

Erin Farrington Finlen, Co-Chair, Probate Rules Committee, Fort Lauderdale, Florida, Zackary T. Zuroweste, Co-Chair, Probate Rules Committee, Clearwater, Florida, Joshua E. Doyle, Executive Director, The Florida Bar, Tallahassee, Florida, and Heather Savage Telfer, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 5.240. NOTICE OF ADMINISTRATION

(a) Service. The personal representative must promptly serve 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)-(2) [No Change]

(3) a trustee of any trust described in section 733.707(3), Florida Statutes, and each qualified beneficiary of the trust as defined in section 736.0103(16), Florida Statutes, if each trustee is also a personal representative of the estate; and

(4) [No Change]

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

(b) Contents. The notice must state:

(1)-(6) [No Change]

(7) that the personal representative or curator has no duty to discover whether any property held at the time of the decedent's death by the decedent or the decedent's surviving spouse is property to which the Florida Uniform Disposition of Community Property Rights at Death Act as described in sections 732.216-732.228, Florida Statutes, applies, or may apply, unless a written demand is made by the surviving spouse or a beneficiary as specified under section 732.2211, Florida Statutes. The written demand must be filed with the clerk.

(c)-(e) [No Change]

Committee Notes

[No Change]

Rule History

[No Change]

Statutory References

[No Change]

Rule References

[No Change]

RULE 5.241. NOTICE TO CREDITORS

(a) [No Change]

(b) **Contents.**

(1) [No Change]

(2) The notice must state that the personal representative or curator has no duty to discover whether any property held at the time of the decedent's death by the decedent or the decedent's surviving spouse is property to which the Florida Uniform Disposition of Community Property Rights at Death Act as described in sections 732.216-732.228, Florida Statutes, applies, or may apply, unless a written demand is made by a creditor as specified under section 732.2211, Florida Statutes. The written demand must be filed with the clerk.

(c)-(e) [No Change]

Committee Notes

[No Change]

Rule History

[No Change]

Statutory References

[No Change]

Rule References

[No Change]

RULE 5.550. PETITION TO DETERMINE INCAPACITY

(a) Contents. The petition to determine incapacity must be verified by the petitioner and must state:

(1)-(7) [No Change]

(8) whether there are possible alternatives to guardianship known to the petitioner, including, but not limited to, trust agreements, powers of attorney, designations of health care surrogates, other advance directives, ~~or supported decisionmaking agreements~~, and if the petitioner is seeking a guardianship, an explanation as to why the alternatives are insufficient to meet the needs of the alleged incapacitated person; and

(9) whether the alleged incapacitated person uses assistance to exercise the person's rights, including, but not limited to, supported decisionmaking ~~agreements~~, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights.

(b)-(f) [No Change]

Committee Notes

[No Change]

Rule History

1980 Revision–2020 Revision [No Change]

2024 Revision: Subdivision (b)(2) amended to conform to section 744.331(1), Florida Statutes. Committee notes revised.

2024 Revision: ~~Subdivision (a)(8) amended and n~~New subdivision (a)(9) adopted to conform to section 744.3201(2)(d), Florida Statutes. Committee notes revised.

Statutory References

[No Change]

Rule References

[No Change]