

Supreme Court of Florida

No. SC19-2071

IN RE: AMENDMENTS TO THE FLORIDA PROBATE RULES—2019 FAST-TRACK REPORT.

January 16, 2020

PER CURIAM.

The Florida Bar’s Probate Rules Committee (Committee) has filed a “fast-track” out-of-cycle report proposing amendments to the Florida Probate Rules in response to recent legislation. *See* Fla. R. Jud. Admin. 2.140(e)(1). We have jurisdiction¹ and adopt the amendments as proposed.

The Committee proposes amendments to the following rules: 5.015 (General Definitions); 5.043 (Deposit of Wills and Codicils); 5.120 (Administrator Ad Litem and Guardian Ad Litem); 5.200 (Petition for Administration); 5.210 (Probate of Wills Without Administration); 5.215 (Authenticated Copy of Will); and 5.230 (Commission to Prove Will).

1. *See* art. V, § 2(a), Fla. Const.

The Executive Committee of the Board of Governors of The Florida Bar unanimously approved the Committee's proposals. The Committee did not publish the proposals before filing them with the Court. After considering the Committee's proposals and the relevant legislation, we amend the Florida Probate Rules as proposed by the Committee. The more significant amendments are discussed below.

First, pertaining to rule 5.015, subdivision (b)(1) is amended to add "whether in paper or electronic form," after "original" to make it clear that a "certified copy" can apply to electronic wills. *See* ch. 2019-71, § 37, Laws of Fla. (enacting § 732.526, Fla. Stat. (2019)). As amended, subdivision (b)(1) provides:

" '[C]ertified copy' means a copy of a document signed and verified as a true copy by the officer to whose custody the original, whether in paper or electronic form, is entrusted."

Second, rule 5.043 is amended to add language requiring that electronic wills, in addition to paper wills, be maintained in their original format for twenty years after submission. *See* ch. 2019-71, § 37, Laws of Fla. (enacting § 732.526, Fla. Stat. (2019)). Specifically, "including but not limited to an electronic will," is added after "executed will or codicil." As amended, the sentence reads:

"Notwithstanding any rule to the contrary, and unless the court orders otherwise,

any original executed will or codicil, including but not limited to an electronic will, deposited with the court . . . must be retained”

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 take effect immediately upon the release of this opinion. Because the amendments were not published for comment prior to their adoption, interested persons shall have seventy-five days from the date of this opinion in which to file comments with the Court.²

2. All comments must be filed with the Court on or before March 31, 2020, with a certificate of service verifying that a copy has been served on the Committee Chair, Jeffrey Scott Goethe, Barnes Walker, Goethe, Perron & Shea, PLLC, 3119 Manatee Avenue West, Bradenton, FL, 34205-3350, and on the Bar Staff Liaison to the Committee, Krys Godwin, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, kgodwin@floridabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until April 21, 2020, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Comments filed via the Portal must be submitted in Microsoft Word 97 or higher. *See In re Electronic Filing in the Florida Supreme Court*, Fla. Admin. Order No. AOSC17-27 (May 9, 2017). Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ.,
concur.

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

Original Proceeding – The Florida Probate Rules Committee

Jeffrey Scott Goethe, Chair, Florida Probate Rules Committee, Bradenton, Florida,
Joshua E. Doyle, Executive Director, and Krys Godwin, Staff Liaison, The Florida
Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 5.015. GENERAL DEFINITIONS

(a) [No Changes]

(b) **Specific Definitions.** When used in these rules

(1) “certified copy” means a copy of a document signed and verified as a true copy by the officer to whose custody the original, whether in paper or electronic form, is entrusted;

(2)-(7) [No Changes]

Committee Notes

Rule History

1977-2008 Revision: [No Changes]

2020: Revision: Subdivision (b)(1) amended to reference electronic original documents consistent with section 732.526, Florida Statutes. Committee notes revised.

Statutory References

§ 1.01, Fla. Stat. Definitions.

§ 393.063, Fla. Stat. Definitions.

§ 393.12, Fla. Stat. Capacity; appointment of guardian advocate.

§ 731.201, Fla. Stat. General definitions.

§ 732.526, Fla. Stat. Probate.

§ 736.0103, Fla. Stat. Definitions.

§ 738.102, Fla. Stat. Definitions.

§ 739.102, Fla. Stat. Definitions.

§ 744.102, Fla. Stat. Definitions.

RULE 5.043. DEPOSIT OF WILLS AND CODICILS

Notwithstanding any rule to the contrary, and unless the court orders otherwise, any original executed will or codicil, including but not limited to an electronic will, deposited with the court must be retained by the clerk in its original form and must not be destroyed or disposed of by the clerk for 20 years after submission regardless of whether the will or codicil has been permanently recorded as defined by Florida Rule of Judicial Administration 2.430.

Committee Notes

2012 Adoption. [No Changes]

Rule History

2012 Revision: New Rule.

2020 Revision: Added reference to deposit of electronic wills consistent with section 732.526, Florida Statutes. Committee notes revised.

Statutory References

§ 731.201(16), (40), Fla. Stat. General definitions.

§ 732.526, Fla. Stat. Probate.

§ 732.901, Fla. Stat. Production of wills.

Rule References

Fla. R. Jud. Admin. 2.430 Retention of court records.

Fla. R. Jud. Admin. 2.525 Electronic filing.

RULE 5.120. ADMINISTRATOR AD LITEM AND GUARDIAN AD LITEM

(a)-(g) [No Changes]

Committee Notes

Rule History

1977-2012 Revision: [No Changes]

2014 Revision: Amends subdivision (b)(1) to conform to ~~Fla. R. Jud. Admin.~~ Florida Rule of Judicial Administration 2.425. Committee notes revised.

2020 Revision: Committee notes revised. Citation form changes in committee notes.

Statutory References

§ 393.12, Fla. Stat. Capacity; appointment of guardian advocate.

§ 731.303, Fla. Stat. Representation.

§ 733.308, Fla. Stat. Administrator ad litem.

§ 733.708, Fla. Stat. Compromise.

§ 744.3025, Fla. Stat. Claims of minors.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.391, Fla. Stat. Actions by and against guardian or ward.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

§ 985.43, Fla. Stat. Predisposition reports; other evaluations.

§ 985.441, Fla. Stat. Commitment.

§ 985.455, Fla. Stat. Other dispositional issues.

Rule References

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

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.200. PETITION FOR ADMINISTRATION

The petition for administration shall be verified by the petitioner and shall contain:

(a)-(j) [No Changes]

Committee Notes

Rule History

1977-2012 Revision: [No Changes]

2014 Revision: Subdivision (c) amended to conform to ~~Fla. R. Jud. Admin.~~ Florida Rule of Judicial Administration 2.425. Committee notes revised.

2020 Revision: Committee notes revised. Citation form changes in committee notes.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 732.522, Fla. Stat. Method and place of execution.

§ 732.526, Fla. Stat. Probate.

§ 733.202, Fla. Stat. Petition.

§ 733.301, Fla. Stat. Preference in appointment of personal representative.

§ 733.302, Fla. Stat. Who may be appointed personal representative.

§ 733.303, Fla. Stat. Persons not qualified.

§ 733.304, Fla. Stat. Nonresidents.

§ 733.305, Fla. Stat. Trust companies and other corporations and associations.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.201 Notice of petition for administration.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.210. PROBATE OF WILLS WITHOUT ADMINISTRATION

(a)-(d) [No Changes]

Committee Notes

Examples illustrating when a will might be admitted to probate are when an instrument (such as a will or trust agreement) gives the decedent a power exercisable by will, such as the power to appoint a successor trustee or a testamentary power of appointment. In each instance, the will of the person holding the power has no legal significance until admitted to probate. There may be no assets, creditors' issues, or other need for a probate beyond admitting the will to establish the exercise or non-exercise of such powers.

Rule History

1975-2011 Revision: [No Changes]

2014 Revision: Subdivision (a)(3) amended to conform to ~~Fla. R. Jud. Admin.~~ Florida Rule of Judicial Administration 2.425. Committee notes revised.

2020 Revision: Committee notes revised. Citation form changes in committee notes.

Statutory References

§ 731.201, Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 732.502, Fla. Stat. Execution of wills.

§ 732.503, Fla. Stat. Self-proof of will.

§ 732.523, Fla. Stat. Self-proof of electronic will.

§ 732.526, Fla. Stat. Probate.

§ 733.103, Fla. Stat. Effect of probate.

§ 733.201, Fla. Stat. Proof of wills.

§ 733.202, Fla. Stat. Petition.

§ 733.204, Fla. Stat. Probate of a will written in a foreign language.

§ 733.205, Fla. Stat. Probate of notarial will.

§ 733.206, Fla. Stat. Probate of will of resident after foreign probate.

§ 733.207, Fla. Stat. Establishment and probate of lost or destroyed will.

§ 734.104, Fla. Stat. Foreign wills; admission to record; effect on title.

Rule References

Fla. Prob. R. 5.015 General definitions.

Fla. Prob. R. 5.020 Pleadings, verification; motions.

Fla. Prob. R. 5.205(a)(7) Filing evidence of death.

Fla. Prob. R. 5.215 Authenticated copy of will.

Fla. Prob. R. 5.216 Will written in foreign language.

Fla. Prob. R. 5.230 Commission to prove will.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.270 Revocation of probate.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.215. AUTHENTICATED COPY OF WILL

An authenticated copy of a will may be admitted to probate if the original could be admitted to probate in Florida.

Committee Notes

Rule History

2002-2003 Revision: [No Changes]

2020 Revision. Committee notes revised.

Statutory References

§ 732.523, Fla. Stat. Self-proof of electronic will.

§ 732.526, Fla. Stat. Probate.

§ 733.205, Fla. Stat. Probate of notarial will.

§ 733.206, Fla. Stat. Probate of will of resident after foreign probate.

§ 734.102, Fla. Stat. Ancillary administration.

§ 734.1025, Fla. Stat. Nonresident decedent's testate estate with property not exceeding \$50,000 in this state; determination of claims.

§ 734.104, Fla. Stat. Foreign wills; admission to record; effect on title.

Rule References

Fla. Prob. R. 5.200 Petition for administration.

Fla. Prob. R. 5.210 Probate of wills without administration.

Fla. Prob. R. 5.470 Ancillary administration.

Fla. Prob. R. 5.475 Ancillary administration, short form.

RULE 5.230. COMMISSION TO PROVE WILL

(a)-(d) [No Changes]

Committee Notes

Rule History

1975-2013 Revision: [No Changes]

2020 Revision: Committee notes revised.

Statutory References

§ 92.50, Fla. Stat. Oaths, affidavits, and acknowledgments; who may take or administer; requirements.

§ 117.215, Fla. Stat. Relation to other laws.

§ 733.101, Fla. Stat. Venue of probate proceedings.

§ 732.522, Fla. Stat. Method and place of execution.

§ 732.523, Fla. Stat. Self-proof of electronic will.

§ 733.201, Fla. Stat. Proof of wills.

§ 22 U.S.C. § 4215 Notarial acts, oaths, affirmations, affidavits, and depositions; fees.

Rule References

Fla. Prob. R. 5.050 Transfer of proceedings.

Fla. R. Civ. P. 1.060 Transfers of actions.