

## **Amendments to Florida Probate Rules 5.025 (Adversary Proceedings), 5.340 (Inventory), and 5.405 (Proceedings to Determine Protected Homestead)**

The Florida Probate Rules Committee proposed amendments to Florida Probate Rule 5.025 (Adversary Proceedings) to include “challenging the validity of a will” to the list of specific adversary proceedings. The Committee proposes amending Florida Probate Rules 5.340 (Inventory) to require that the inventory must value the elective estate assets as required by law. The Committee proposes amending Florida Probate Rules 5.405 (Proceedings to Determine Protected Homestead) to address a domicile in a municipality that is not occupied by a member of the decedent’s family. Additionally, the Committee proposes amendments to specify that the petition must be served on interested persons by formal notice. Further amendments are proposed to conform to *In re: Guidelines for Rules Submissions*, AOSC 22-78 (Fla. 2022). The full text of the proposal is below and available at [www.floridabar.org/news/news-journal](http://www.floridabar.org/news/news-journal) under the Notices tab.

Interested parties have until August 31, 2023, to submit comments electronically to Alexandra V. Rieman, Chair of the Florida Probate Rules Committee, and Heather Savage Telfer, The Florida Bar Attorney Liaison for the Committee, at [rules@floridabar.org](mailto:rules@floridabar.org).

### **RULE 5.025. ADVERSARY PROCEEDINGS**

**(a) Specific Adversary Proceedings.** The following proceedings are adversary proceedings unless otherwise ordered by the court:

(1) proceedings to remove a personal representative, or surcharge a personal representative;

(2) to remove a guardian, or surcharge a guardian;

(3) to obtain an injunction or temporary injunction pursuant to section 825.1035, Florida Statutes;

(4) to probate a lost or destroyed will, or later-discovered will;

(5) to determine beneficiaries;

(6) to contest the validity of a will;

(7) for revocation of probate of a will;

(8) to construe, reform, or modify a will, ~~reform a will, modify a will;~~

(9) to cancel a devise;

(10) to partition property for the purposes of distribution;

(11) to determine pretermitted status, or determine pretermitted share;

(12) to determine amount of elective share; and

(13) to determine elective share contribution, ~~and for revocation of probate of a will.~~

**(b) Declared Adversary Proceedings.** Other proceedings may be declared adversary by service on interested persons of a separate declaration that the proceeding is adversary.

(1) If served by the petitioner, the declaration must be served with the petition to which it relates.

(2) If served by the respondent, the declaration and a written response to the petition must be served at the earlier of:

(A) within 20 days after service of the petition, or

(B) ~~prior to~~ before the hearing date on the petition.

(3) When the declaration is served by a respondent, the petitioner must promptly serve formal notice on all other interested persons.

**(c) Adversary Status by Order.** The court may determine any proceeding to be an adversary proceeding at any time.

**(d) Notice and Procedure in Adversary Proceedings.**

(1) Petitioner must serve formal notice, except as provided in proceedings pursuant to under section 825.1035, Florida Statutes.

(2) After service of formal notice, the proceedings, as nearly as practicable, must be conducted similar to suits of a civil nature, including entry of defaults. The Florida Rules of Civil Procedure govern, except for rule 1.525.

(3) The court on its motion or on motion of any interested person may enter orders to avoid undue delay in the main administration.

(4) If a proceeding is already commenced when an order is entered determining the proceeding to be adversary, it must thereafter be conducted as an adversary proceeding. The order must require interested persons to serve written defenses, if any, within 20 days from the date of the order. It is not necessary to re-serve the petition except as ordered by the court.

(5) When the proceedings are adversary, the caption of subsequent pleadings, as an extension of the probate caption, must include the name of the first petitioner and the name of the first respondent.

### **Committee Notes**

The court on its initiative or on motion of any party may order any proceeding to be adversary or nonadversary or enter any order that will avoid undue delay. The personal representative would be an interested person in all adversary proceedings. A prescribed form

for the caption is provided that will facilitate the clerk's and the court's ability to segregate such adversary proceeding from other adversary proceedings and from the main probate file:

Court  
Case #

In Re Estate of John B. Jones )  
Julia Jones, )  
Petitioner, )  
v. )  
Harold Jones, as Personal )  
Representative, et al., )  
Respondents. )

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### **Rule History**

1975 Revision: New rule. 324 So. 2d 38.

1977 Revision: Editorial changes to (a)(1).

1984 Revision: Extensive changes, committee notes revised and expanded.

1988 Revision: Changes in (a) add proceedings to remove a guardian and to surcharge a guardian to the list of specific adversary proceedings and delete proceedings to determine and award the elective share from the list. Change in (b)(4) clarifies on whom the petitioner must serve formal notice. Editorial change in (d)(2) and (d)(5). Committee notes revised. Citation form changes in committee notes.

1992 Revision: Deletion of (b)(3) as unnecessary. Former (b)(4) renumbered as new (b)(3). Committee notes revised. Citation form changes in committee notes.

2001 Revision: Change in (a) to add determination of amount of elective share and contribution as specific adversary proceedings. Committee notes revised.

2003 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2011 Revision: Subdivision (a) revised to add “reform a will, modify a will” and “determine pretermitted status.” Subdivision (d)(2) modified to insure that an award of attorneys’ fees in a probate or guardianship proceeding follows the law and procedures established for such proceedings, rather than the law and procedures for civil proceedings. See Amendments to the Florida Family Law Rules of Procedure (Rule 12.525), 897 So. 2d 467 (Fla. 2005). Editorial changes to conform to the court’s guidelines for rules submissions as set forth in Administrative Order AOSC06-14. Committee notes revised.

2018 Revision: Subdivisions (a) and (d)(1) amended to reference section 825.1035, Florida Statutes. Committee notes revised.

202 Revision: Subdivision (a) amended to create new subdivisions (a)(1)–(a)(13) and to include in the list of specific adversary proceedings those proceedings that contest the validity of a will. Committee notes revised.

### **Statutory References**

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

§§ 732.201–732.2155, Fla. Stat. Elective share of surviving spouse.

§ 732.301, Fla. Stat. Pretermitted spouse.

§ 732.302, Fla. Stat. Pretermitted children.

§ 732.507, Fla. Stat. Effect of subsequent marriage, birth, adoption, or dissolution of marriage.

§§ 732.6005–732.611, Fla. Stat. Rules of construction.

§ 732.615, Fla. Stat. Reformation to correct mistakes.

§ 732.616, Fla. Stat. Modification to achieve testator's tax objectives.

§ 733.105, Fla. Stat. Determination of beneficiaries.

§ 733.107, Fla. Stat. Burden of proof in contests; presumption of undue influence.

§ 733.109, Fla. Stat. Revocation of probate.

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

§ 733.208, Fla. Stat. Discovery of later will.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.504, Fla. Stat. Removal of personal representative; causes for removal.

§ 733.505, Fla. Stat. Jurisdiction in removal proceedings.

§ 733.506, Fla. Stat. Proceedings for removal.

§ 733.5061, Fla. Stat. Appointment of successor upon removal.

§ 733.603, Fla. Stat. Personal representative to proceed without court order.

§ 733.609, Fla. Stat. Improper exercise of power; breach of fiduciary duty.

§ 733.619(2), (4), Fla. Stat. Individual liability of personal representative.

§ 733.814, Fla. Stat. Partition for purpose of distribution.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.474, Fla. Stat. Reasons for removal of guardian.

§ 744.477, Fla. Stat. Proceedings for removal of a guardian.

§ 825.1035, Fla. Stat. Injunction for protection against exploitation of a vulnerable adult.

### **Rule References**

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.270 Revocation of probate.

Fla. Prob. R. 5.360 Elective share.

Fla. Prob. R. 5.365 Petition for dower.

Fla. Prob. R. 5.440 Proceedings for removal.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.660 Proceedings for removal of guardian.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Civ. P. 1.140 Defenses.

Fla. R. Civ. P. 1.160 Motions.

Fla. R. Civ. P. 1.200 Pretrial procedure.

Fla. R. Civ. P. 1.280 General provisions governing discovery.

Fla. R. Civ. P. 1.290 Depositions before action or pending appeal.

Fla. R. Civ. P. 1.310 Depositions upon oral examination.

Fla. R. Civ. P. 1.340 Interrogatories to parties.

Fla. R. Civ. P. 1.380 Failure to make discovery; sanctions.

## **RULE 5.340. INVENTORY**

**(a) Contents and Filing.** Unless an inventory has been previously filed, the personal representative ~~shall~~must file an inventory of the estate within 60 days after issuance of letters. The inventory ~~shall~~must contain notice of the beneficiaries' rights under subdivision (e), list the estate with reasonable detail, and include for each listed item (excluding real property appearing to be protected homestead property) its estimated fair market value at the date of the decedent's death. Real property appearing to be protected homestead property ~~shall~~must be listed and so designated.

**(b) Extension.** On petition the time for filing the inventory may be extended by the court for cause shown without notice, except that the personal representative ~~shall~~must serve copies of the petition and order on the persons described in subdivision (d).

**(c) Amendments.** A supplementary or amended inventory containing the information required by subdivision (a) as to each affected item ~~shall~~must be filed and served by the personal representative if:

(1) the personal representative learns of property not included in the original inventory; or

(2) the personal representative learns that the estimated value or description indicated in the original inventory for any item is erroneous or misleading; or

(3) the personal representative determines the estimated fair market value of an item whose value was described as unknown in the original inventory.

**(d) Service.** The personal representative ~~shall~~must serve a copy of the inventory and all supplemental and amended



inventories on the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it in writing

**(e) Information.** On request in writing, the personal representative ~~shall~~must provide the following:

(1) To the requesting residuary beneficiary or heir in an intestate estate, a written explanation of how the inventory value for an asset was determined or, if an appraisal was obtained, a copy of the appraisal.

(2) To any other requesting beneficiary, a written explanation of how the inventory value for each asset distributed or proposed to be distributed to that beneficiary was determined or, if an appraisal of that asset was obtained, a copy of the appraisal.

**(f) Notice to Nonresiduary Beneficiaries.** The personal representative ~~shall~~must provide to each nonresiduary beneficiary written notice of that beneficiary's right to receive a written explanation of how the inventory value for each asset distributed or proposed to be distributed to that beneficiary was determined or a copy of an appraisal, if any, of the asset.

**(g) Elective Share Proceedings.** ~~Upon~~After entry of an order determining the surviving spouse's entitlement to the elective share, the personal representative ~~shall~~must file an inventory of the property entering into the elective estate which ~~shall~~must value the elective estate assets as required by law and identify the direct recipient, if any, of that property. The personal representative ~~shall~~must serve the inventory of the elective estate as provided in rule 5.360. On request in writing, the personal representative ~~shall~~must provide an interested person with a written explanation of how the inventory value for an asset was determined and ~~shall~~must permit an interested person to examine appraisals on which the inventory values are based.

**(h) Verification.** All inventories ~~shall~~must be verified by the personal representative.

## Committee Notes

~~Inventories of the elective estate under subdivision (f) shall be afforded the same confidentiality as probate inventories. § 733.604(1) and (2), Fla. Stat.~~

Inventories are still required to be filed. Once filed, however, they are subject to the confidentiality provisions found in sections 733.604(1) and (2), Florida Statutes.

Inventories of the elective estate under subdivision (g) must be afforded the same confidentiality as probate inventories. See sections 733.604(1) and (2), Florida Statutes.

Constitutional protected homestead real property is not necessarily a probatable asset. Disclosure on the inventory of real property appearing to be constitutional protected homestead property informs interested persons of the homestead issue.

Interested persons are entitled to reasonable information about estate proceedings on proper request, including a copy of the inventory, an opportunity to examine appraisals, and other information pertinent to their interests in the estate. The rights of beneficiaries to information contained in estate inventories is limited by section 733.604(3), Florida Statutes. Inventories of the elective estate under subdivision ~~(f)~~(g) affects a broader class of interested persons who may obtain information regarding the assets disclosed therein subject to control by the court and the confidentiality afforded such inventories under sections 733.604(1) and (2), Florida Statutes.

### Rule History

1980 Revision: Eliminated the time limit in requesting a copy of the inventory by an interested person or in furnishing it by the personal representative.

1984 (First) Revision: Extensive changes. Committee notes revised.

1984 (Second) Revision: Subdivision (a) modified to clarify or re-insert continued filing requirement for inventory.

1988 Revision: Editorial changes in (b) and (d). Committee notes revised. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2001 Revision: Subdivision (a) amended to conform to statutory changes. Subdivision (d) amended to add requirement of filing of proof of service. Subdivision (e) amended to clarify personal representative's duty to furnish explanation of how inventory values were determined. Subdivision (f) added to require personal representative to file inventory of property entering into elective share. Subdivision (g) added to require verification of inventories. Committee notes revised.

2002 Revision: Subdivision (e) amended to conform to section 733.604(3), Florida Statutes. Subdivision (f) amended to establish procedures for interested persons to obtain information about assets and values listed in the inventory of the elective estate. Committee notes revised.

2003 Revision: Committee notes revised.

2010 Revision: Subdivisions (d) and (g) (former (f)) amended to delete the requirement to serve a copy of the inventory on the Department of Revenue. Subdivision (e) amended, and new (f) created, to limit the kind of information available to nonresiduary beneficiaries, and subsequent subdivisions relettered. Editorial changes in (a), (e), and (g). Committee notes revised.

2012 Revision: The last sentence of subdivision (d) is deleted to remove duplicative requirement of filing a proof of service for a document which includes a certificate of service as provided in Fla. R. Gen. Prac. & Jud. Admin. 2.516. If service of the inventory is by service in the manner provided for service of formal notice, then proof of service should be filed as provided in rule 5.040(a)(5). Committee notes revised.

202\_ Revision: Amended subdivision (g) to require that the inventory must value the elective estate assets as required by law. Committee notes revised.

### **Constitutional Reference**

Art. X, § 4, Fla. Const.

### **Statutory References**

§ 732.2035, Fla. Stat. Property entering into elective estate.

§ 732.2045, Fla. Stat. Exclusions and overlapping application.

§ 732.2055, Fla. Stat. Valuation of the elective estate.

§ 732.401, Fla. Stat. Descent of homestead.

§ 732.4015, Fla. Stat. Devise of homestead.

§ 733.604, Fla. Stat. Inventories and accounting; public records exemptions.

### **Rule References**

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.360 Elective share.

Fla. Prob. R. 5.405 Proceedings to determine homestead status of real property.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service of pleadings and documents.

**RULE 5.405. PROCEEDINGS TO DETERMINE PROTECTED HOMESTEAD STATUS OF REAL PROPERTY**

**(a) Petition.** An interested person may file a petition to determine the protected homestead status of real property owned by the decedent or owned by the trustee of a trust described in section 733.707(3), Florida Statutes, of which the deceased settlor was treated as the owner of the real property ~~pursuant to~~under section 732.4015, Florida Statutes.

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

- (1) the date of the decedent's death;
- (2) the county of the decedent's domicile at the time of death;
- (3) the name of the decedent's surviving spouse and the names of surviving descendants, and a statement as to whether the decedent had any minor children as of the date of death. If so, they should be identified with name and year of birth;
- (4) a legal description of the property owned by the decedent on which ~~the decedent resided~~protected homestead is claimed;
- (5) whether the property was the domicile of the decedent, or it not, whether the property was located within a municipality and was the domicile of a member of the decedent's family;
- (6) how the real property was owned at the time of the decedent's death; and
- ~~(6)~~(7) any other facts in support of the petition.

**(c) Service of Notice.** The petition must be served on interested persons by formal notice.

**(d) Order.** The court's order on the petition ~~shall~~must describe the real property and determine whether any of the real property constituted the protected homestead of the decedent. If the court determines that any of the real property was the protected homestead of the decedent, the order ~~shall~~must identify by name the person or persons entitled to the protected homestead real property and define the interest of each.

### **Committee Notes**

This rule establishes the procedure by which the personal representative or any interested person may petition the court for a determination that certain real property constituted the decedent's protected homestead property, in accordance with article X, section 4 of the Florida Constitution. The jurisdiction of the court to determine constitutional protected homestead property was established by *In re Noble's Estate*, 73 So. 2d 873 (Fla. 1954).

### **Rule History**

1984 Revision: New rule.

1988 Revision: Editorial change in (a). Subdivision (b)(4) amended to conform to constitutional change. Committee notes revised. Citation form change in committee notes.

1992 Revision: Editorial change. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (c) amended to require description of real property that is the subject of the petition, description of any homestead property, and definition of specific interests of persons entitled to homestead real property.

2002 Revision: Replaces "homestead" with "protected homestead" throughout to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2014 Revision: Amends subdivisions (b)(3) and (c) to conform to Fla. R. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

2021 Revision: Amends subdivisions (a) and (b)(5) to include real property owned by a trust. Committee notes revised.

202 Revision: New subdivision (b)(5) created to include a domicile in a municipality not occupied by a member of the decedent's family. Contents of former subdivisions (b)(5) and (b)(6) moved to subdivisions (b)(6) and (b)(7) accordingly. New subdivision (d) created and the contents of former subdivision (c) moved to subdivision (d). Subdivision (c) created to clarify notice under the rule. Committee notes revised.

### **Constitutional Reference**

Art. X, § 4, Fla. Const.

### **Statutory References**

§ 731.104, Fla. Stat. Verification of documents.

§ 731.201(33), Fla. Stat. General definitions.

§ 732.401, Fla. Stat. Descent of homestead.

§ 732.4015, Fla. Stat. Devise of homestead.

§ 733.607, Fla. Stat. Possession of estate.

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

§ 733.707(3), Fla. Stat. Order of payment of expenses and obligations.

§ 736.0201(7), Fla. Stat. Role of court in trust proceedings.

§ 736.1109, Fla. Stat. Testamentary and revocable trusts; homestead protections.

§ 736.151, Fla. Stat. Homestead property.

**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. 5.205(a)(6) Filing evidence of death.

Fla. Prob. R. 5.340 Inventory.

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

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service of pleadings and documents.

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