

SUPREME COURT OF FLORIDA

**IN RE: REPORT AND RECOMMENDATIONS
OF THE WORKGROUP ON IMPROVED RESOLUTION
OF CIVIL CASES**

CASE NO. SC22-122

FLORIDA PROBATE RULES COMMITTEE COMMENT

Cady L. Huss, Chair of the Florida Probate Rules Committee, and Joshua E. Doyle, Executive Director of The Florida Bar, hereby submit the following comments regarding the Workgroup on Improved Resolution of Civil Cases (“Workgroup”) final report dated November 15, 2021.

The Probate Rules Committee (“PRC”) commends the efforts of the Workgroup and their proposals (“the proposals”) to ensure the fair and timely resolution of all cases and to manage resources and promote accountability. The PRC, by a vote of 24-0, adopts the comments of the Real Property, Probate, and Trust Law Section of the Florida Bar (“RPPTL”) and comments on the proposals in relation to probate and guardianship proceedings.

I. PRC Plan for Proposals

The PRC is concerned about the application of the proposals to probate and guardianship proceedings. The consensus among the committee is that the proposals will likely result in delays and increased expense that will be passed to heirs, beneficiaries, and wards. If the proposals are adopted, the PRC intends to expand the Florida Probate Rules to address the procedure for adversary proceedings and otherwise remove reference to the Rules of Civil Procedure for actions governed by the Florida Probate Rules. The PRC will need time to review, modify, and prepare new rules to address adversary proceedings. The PRC requests a two-year delay in the implementation of the proposals so that new rules may be drafted.

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If the Court does not intend to delay implementation, the PRC requests an exemption from proposed Rule 1.200(b) for all proceedings initiated pursuant to Chapters 415, 731-735, 738, and 744, and for §§393.12 and §825.1035, Florida Statutes, which are governed by the Florida Probate Rules. This exemption will ensure that probate and guardianship proceedings are not assigned to a case-management track and are excluded from the initial disclosure requirements of Rule 1.280(a)(2).

II. Probate and Guardianship Proceedings

a. Case-Track Assignment and Initial Disclosures

Probate and guardianship proceedings are generally excluded from the Florida Rules of Civil Procedure. Rule 1.010 notes that the civil rules apply to all actions of a civil nature, except those to which the “Florida Probate Rules, the Florida Family Law Rules of Procedure, or the Small Claims Rules apply.” Similarly, Probate Rule 5.010 notes that the “Florida Rules of Civil Procedure apply only as provided [within the Florida Probate Rules].” Rule 5.080 addresses the Rules of Civil Procedure that apply to probate and guardianship proceedings, which are often not adversary proceedings.

Adversary proceedings, addressed in Rule 5.025, are governed by the Florida Rules of Civil Procedure (except for Rule 1.525)¹. Historically, the application of the Rules of Civil Procedure to adversary probate and guardianship proceedings has assisted the Court with judicial management and allowed practitioners to utilize the civil rules, such as pleading allegations and defenses. Certain proceedings are automatically “adversary proceedings” and others may be declared adversary by an interested person.² While designated as “adversary” under the rule, the proceedings are not always genuinely adversarial, contested proceedings requiring a case management order, deadlines for discovery and pre-trial

¹ See Rule 5.025(d)(2).

² See Fla. Prob. R. 5.025(a)–(b).

motions, the disclosure of witnesses, or a trial date as contemplated in the proposals.

For example, the probate of a lost or destroyed will or a later-discovered will is designated an adversary proceeding but may not, in fact, be genuinely adversarial. Similarly, there are many petitions to construe a will, reform a will, or to partition property for the purposes of distribution that require no discovery and only one final hearing yet are designated as specific adversary proceedings.³ For these reasons, probate and guardianship judges are given broad discretion in the Probate Rules to limit the scope and manner of discovery in order to conserve the assets of the estate of the decedent or the estate of the ward.⁴

The proposals as written are unclear in their application to adversary probate and guardianship proceedings. Incapacity proceedings in guardianship require expedited resolution in order to protect the alleged incapacitated person. If a Petition to Determine Incapacity is brought pursuant to Section 744.331⁵ and an interested person declares the petition adversarial as permitted under the Probate Rules, do proposed Rules 1.200(b)(13) and 1.280(a)(2) exempt the incapacity proceeding from the required case management, pretrial procedures, and mandatory initial discovery disclosures? If not, the result of the adversary declaration would be to delay a proceeding involving a vulnerable or disabled adult.

Virtually all probate and guardianship adversary proceedings would conceivably constitute “streamlined” proceedings (as defined by proposed Rule 1.200(c)(2)) because these proceedings involve well-established legal issues and often have limited discovery needs. The proposals require the issuance of a case-management order for

³ See Fla. Prob. R. 5.025(a).

⁴ See Fla. Prob. R. 5.080(b).

⁵ Fla. Stat. § 744.331(5) requires the adjudicatory hearing to be conducted at least 10 days, but no more than 30 days, after the last filed examining committee report unless good cause is shown.

streamlined proceedings within “120 days after the case is filed or 30 days after service on the first defendant.”⁶ The issuance of a case-management order in probate and guardianship proceedings, adversary or not, would be counterproductive to the objectives identified in Rule 1.200(a)⁷.

The Probate Rules provide a framework for the resolution of all probate and guardianship proceedings and include protections for Florida’s most vulnerable adults and minors. They include deadlines for the filing of inventories, initial guardianship reports, and accountings, and the resolution of creditor claims and elective share disputes, among others. Many circuits enter orders at the outset of the probate administration proceeding that require the estate to be closed within 12 months absent good cause shown. Most probate and guardianship proceedings are already streamlined and providing a case management order with additional, sometimes conflicting, deadlines would prove cumbersome for practitioners and the judiciary.⁸

The initial disclosures required by proposed Rule 1.280(a) are also unworkable in most probate and guardianship proceedings. The Probate Rules specifically adopt the provisions of Rule 1.280 to all probate and guardianship proceedings in Rule 5.080. Yet requiring petitioners and respondents to provide copies of all documents, electronically stored information, a computation of damages, etc. “to the other parties” when filing a petition for administration or a petition to determine incapacity is unnecessary,

⁶ Proposed Rule 1.200(e)(2).

⁷ “to secure the just, speedy, and inexpensive determination of every action.”

⁸ For example, Rule 5.620 requires the guardian to file a guardianship inventory within 60 days of issuance of letters yet Rule 1.280 requires initial disclosures of all documents relevant to the subject matter of the action within 45 days after service of the complaint. The guardianship inventory is certain to include the same or similar information as the initial disclosures.

burdensome, expensive, and wasteful. The expense of these disclosures will be borne by the heirs, beneficiaries, or ward who are often in court involuntarily. Furthermore, adversarial proceedings in probate and guardianship court often involve sensitive medical and financial information of the deceased or the ward which may be unsuitable and inappropriate for initial disclosures.

For purposes of service of pleadings and documents in probate and guardianship proceedings, an interested person shall be deemed a party pursuant to Rule 2.516⁹. An interested person is defined as “any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved” and “[t]he meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.”¹⁰ Sometimes, interested persons may be unknown or unclear at the beginning of a proceeding and, as a result, it may be impossible to comply with the proposed Rule 1.280.

Additionally, counsel appointed by the court to represent an alleged incapacitated person, developmentally disabled adult, or vulnerable adult, could be subject to sanctions since their client may not know or have access to the information required for mandatory disclosure. There is already a dearth of attorneys willing to be on the registry to represent respondents in these sensitive guardianship matters, though respondents are required by statute to be represented by counsel. The proposals will reduce the number of attorneys willing to serve in this important role and limit access to courts and counsel for Florida’s most vulnerable adults.

b. Motion Practice and Meet and Confer

The PRC is concerned about the application of proposed rules 1.160, 1.161, and 1.275 to adversarial probate and guardianship

⁹ See Fla. Prob. R. 5.041.

¹⁰ Fla. Stat. § 731.201(23).

proceedings. As stated above, probate proceedings involve “interested persons” defined as “any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved.”¹¹ This can include family members, beneficiaries, nonprofit organizations, business entities, trusts, and creditors. The number of interested persons is often extensive. Interested persons are not always represented by counsel and may not take a position of advocacy in the proceeding. Practitioners often notify interested persons of the case status via electronic or regular mail.

The obligation to meet and confer in Rule 1.160(c) will prove time-consuming, expensive, and unnecessary in the majority of estate and guardianship proceedings. Petitioners, fiduciaries, or interested persons that need to file a simple petition, perhaps for the court to resolve a question¹² in the otherwise routine administration of the estate or guardianship, or for authority to act¹³ will be obligated to confer, via phone conference, videoconference, or in person, with all “parties” which is not defined in the proposals nor in the Rules of Civil Procedure. If an interested person is deemed a party for purpose of the proposals, the impact on estate and guardianship proceedings will be extensive. If a party or attorney doesn’t meet these obligations, they face sanctions for that failure pursuant to the proposals.

These requirements are particularly troublesome in guardianship proceedings. For example, in guardianships involving an Emergency Temporary Guardian (“ETG”), the ETG is often required to seek court authority to take time-sensitive action on behalf of the ward or to preserve the ward’s estate. To impose the proposed meet and confer requirements on the ETG would be impractical in the early days of the emergency guardianship when all interested persons (e.g., all next of kin), and their contact information, may still be unknown or uncertain to the ETG.

¹¹ Fla. Stat. § 731.201(23).

¹² Fla. Stat. § 733.603.

¹³ Fla. Stat. § 744.441.

To avoid unnecessary delay and expense, the PRC encourages that the Workgroup include electronic or regular mail correspondence as an option to satisfy the requirements of 1.160(c)(3).

III. Trust Proceedings

Many members of the PRC also practice trust administration and trust litigation. While trust proceedings are outside the purview of the Florida Probate Rules, the PRC comments only to note the similarity in contested (whether genuinely adversarial or not) trust proceedings to probate proceedings. Most trust proceedings also involve in rem or quasi in rem actions, multiple inactive parties, and only one final hearing. Many trust proceedings do not require extensive discovery, pre-trial deadlines, or a trial date. The PRC agrees with the RPPTL Section that these proposals are not a good fit for most trust proceedings.

IV. Conclusion

The PRC greatly appreciates the Workgroup and Supreme Court's consideration of its comments and request for a two-year delay in implementation to develop rules for adversary probate and guardianship proceedings. The PRC members are willing to assist with any edits or rule modifications addressed herein.

Respectfully submitted on this 27th day of May 2022.

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