

STATE OF MINNESOTA

IN SUPREME COURT

C3-84-146

**ORDER PROMULGATING
MINNESOTA PROBATE RULES**

WHEREAS, the Supreme Court Advisory Committee on Probate Rules has proposed the Minnesota Probate Rules and has submitted the rules to the Supreme Court, and

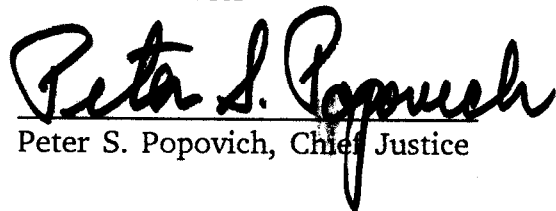
WHEREAS, advance notice was published of a hearing before the Court on January 18, 1989 at 9:00 a.m. for the purpose of hearing proponents and opponents of the proposed rules, and

WHEREAS, after such hearing the Court has given due consideration to such rules, and is fully advised in the premises,

IT IS HEREBY ORDERED that the attached rules be, and the same are, adopted, prescribed and promulgated to be effective on July 1, 1989, for the regulation of the practice and procedure of probate in the District Courts of the State of Minnesota. The inclusion of Advisory Committee notes, if any, is made for convenience and does not reflect court approval of the comments made therein.

Dated: April 13, 1989

BY THE COURT


Peter S. Popovich, Chief Justice

OFFICE OF
APPELLATE COURTS

APR 13 1989

FILED

C3-84-146

PROBATE COURT RULES

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a creditor or a pleading signed by the attorney for a party in accordance with the Rules of Civil Procedure for the district courts.

Committee Comment

The court will accept photocopies of forms if the copies are made by a process that is permanent, on hard stock paper, are free of smudges and otherwise clearly legible and have been reproduced in the same length as the original form and prescribed type size. In using photocopies of forms in courts that are not utilizing a flat file system, the case heading and nomenclature must appear on the outside of the form when folded appropriately for permanent filing.

RULE 2. NOTICE IN FORMAL PROCEEDINGS

(1) General Notice Requirements - In all formal proceedings notice of a hearing on any petition shall be given as provided in the code after the court issues the order for hearing. Where mailed notice is required, proof of mailing the notice of hearing shall be filed with the court administrator before any formal order will issue. Mailed notice shall be given to any interested person as defined by the code or to the person's attorney. Where notice by personal service or publication is required by the code, proof of personal service or publication shall be filed with the court administrator before the formal order will issue.

(2) Notice of Proceedings for Determination of Testacy and Appointment of Personal Representative - In proceedings which adjudicate testacy, notice of the hearing on the petition shall be given after the court administrator issues the order for hearing. Proof of publication of the order for hearing, in accordance with the code, shall be filed with the court administrator before the order will issue. In proceedings for the formal appointment of a personal representative, the same notice requirements shall pertain except notice by publication shall not be required if testacy has been previously determined. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for formal probate and all interested persons as defined by the code or ordered by the court and shall include in appropriate cases the attorney general, foreign consul and attorneys representing the interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

- (a) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

MINNESOTA PROBATE RULES

DEFINITIONS

- (1) Formal Proceedings - A formal proceeding is a hearing conducted before the court with notice to interested persons. Formal proceedings seek a judicial determination.
- (2) Informal Proceedings - An informal proceeding is conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative. Informal proceedings seek an administrative determination and not a judicial determination and are granted without prior notice and hearing.
- (3) Supervised Administration - Supervised administration is a single, continuous, in rem proceeding commenced by a formal proceeding.
- (4) Code - The code is the Uniform Probate Code as adopted by the State of Minnesota.

RULE 1. DOCUMENTS

- (1) Preparation of Original Documents - It shall be the responsibility of attorneys and others appearing before the court or registrar to prepare for review and execution appropriate orders, decrees, statements, applications, petitions, notices and related documents, complete and properly drafted, to address the subject matter and relief requested.
- (2) Official Forms - The official forms adopted by the Minnesota District Judges' Association or promulgated by the Commissioner of Securities shall be used.
- (3) Documents and Files - The court shall make its files and records available for inspection and copying.
No file, or any part thereof, shall be taken from the custody of the court, except the original court order required to be displayed to an individual or entity when the order is served. A document or exhibit which has been filed or submitted in any proceeding can thereafter be withdrawn only with the permission of the court. Any document which is written in a language other than English shall be accompanied by a verified translation into the English language.
- (4) Verification of Filed Documents - Every document filed with the court must be verified as required by the code, except a written statement of claim filed with the court administrator by

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- (b) The right to receive maintenance payments during administration of the estate as provided in the code or by law.
- (c) The right to take an elective share of one-third of the augmented estate as provided in the code and the homestead as provided in the code or by law.

(3) Waiver of Notice in Formal Proceedings - Except in proceedings governed by Rule 2(2), an interested person may waive notice of any formal proceeding in accordance with the code. The written waiver shall evidence the person's consent to the order sought in the proceeding.

Committee Comment

Publication required by this notice must be completed prior to the hearing date.

RULE 3. INTERIM ORDERS

(1) Interim Orders Available from Court Only - The court has no power to intervene in any unsupervised administration unless a formal petition invoking the court's authority is filed by an interested person.

The court or registrar does not have authority to issue ex parte interim orders in unsupervised proceedings except that the registrar may issue the certificate of discharge provided for in the code.

In supervised administration, the court may issue ex parte orders only for strong and compelling reasons.

Committee Comment

Determinations by the registrar are informal and do not bring the estate or interested persons under the supervisory authority of the court. A personal representative appointed in informal proceedings may petition the court for a formal determination as to any matter within the jurisdiction of the court. It may also be necessary to seek the formal determination of the court as to the admissibility of a will, determination of heirship, or other matters as a condition precedent to obtaining the requested relief.

RULE 4. UNCONTESTED FORMAL PROCEEDINGS

(1) Uncontested Formal Proceedings; Hearings and Proof - The court shall call the calendar in open court for all hearings set for a designated time. If a petition in a formal proceeding is unopposed, the court will enter in the record the fact that there

was no appearance in opposition to the petition and that no objection has been filed with the court. Thereupon, the court shall:

- (a) Make its determination after conducting a hearing in open court, requiring appearance of petitioner and testimony or other proof of the matters necessary to support the order sought; or
- (b) Make its determination on the strength of the pleadings without requiring the appearance of petitioner or of petitioner's attorney and without requiring testimony or proof other than the verified pleadings; or
- (c) Make its determination based on such combination of (a) and (b) above as the court in its discretion deems proper.

In any uncontested formal proceeding, the court shall determine that (i) the time required for any notice has expired; (ii) any required notice has been given; (iii) the court has jurisdiction of the subject matter; (iv) venue is proper; and (v) the proceeding was commenced within the time limitations prescribed by the code as a prerequisite to determining other issues presented to the court for determination in the proceeding. The court shall be satisfied that the pleadings and any other proof presented support the order sought in any uncontested formal proceeding.

RULE 5. APPOINTMENT

- (1) Nomination and Renunciation - When two or more persons have equal or higher priority to appointment as personal representative, those who do not renounce must concur in writing in nominating another to act for them, or in applying for appointment. In formal appointment proceedings, concurrence by persons who have equal or higher priority is presumed after notice has been given unless a written objection is filed.
- (2) Nonresident Personal Representatives - The court or registrar may appoint a nonresident personal representative.

RULE 6. INFORMAL PROCEEDINGS

- (1) Contents of the Application - Application for informal probate or appointment proceedings shall contain information required by the code and the approximate value of the following categories of assets:

Probate Assets	
Homestead	\$ _____
Other Real Estate	\$ _____
Cash	\$ _____
Securities	\$ _____
Other	\$ _____
Non-Probate Assets	
Joint Tenancy	\$ _____
Insurance	\$ _____
Other	\$ _____
Approximate Indebtedness	\$ _____

In all estate proceedings, whether testate or intestate, the application must contain a statement that specifically eliminates all heirs or devisees other than those listed in the application.

Committee Comment

Examples

(These are not intended to be exhaustive)

The statements will necessarily vary, depending upon who survives the decedent, and must close out any class affected:

(1) Where only the spouse survives, the application should state "That decedent left no surviving issue, natural or adopted, legitimate or illegitimate."

(2) Where only children survive, the application should state "That the decedent left surviving no spouse; no children, natural or adopted, legitimate or illegitimate, other than herein named; and no issue of any deceased children."

(3) Where the spouse and children survive, the application should state "That the decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children."

(4) Where only brothers or sisters of decedent survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters other than

herein named; and no issue of deceased brothers or sisters."

(5) Where only first cousins survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters or issue thereof, grandparents; aunts or uncles; and no first cousins other than herein named."

(6) In all cases, the application should state either:

(a) That all the heirs-at-law survived the decedent for 120 hours or more; or

(b) that all the heirs-at-law survived the decedent for 120 hours or more except the following: (name or names).

(7) In all cases where a spouse and children survive, the application should state either:

(a) That all of the issue of the decedent are also issue of the surviving spouse; or

(b) That one or more of the issue of the decedent are not also issue of the surviving spouse.

(2) Will Testimony - The registrar shall not require any affidavit or testimony with respect to execution of a will prior to informal probate if it is a self-proved will or appears to have been validly executed.

Committee Comment

Applicants for informal probate of a will which is not self-proved are encouraged to preserve evidence concerning the execution of the will if a formal testacy proceeding may later be required or desired.

(3) Appearances - The applicant is required to appear before the registrar unless represented by counsel. The registrar may also waive appearance by counsel.

(4) Informal Proceedings: Notice of Informal Probate of Will and Informal Appointment of Personal Representative - In informal proceedings, notice of appointment of a personal representative shall be given after the registrar issues the order appointing the personal representative. Proof of placement for publication shall be filed with the court administrator before letters will issue. Where mailed notice is required, an affidavit of mailing of the order appointing the personal representative shall be filed with

the court administrator before letters will issue. If the informal proceedings include the informal probate of a will, the notice shall include notice of the issuance of the statement of informal probate of the will. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for informal probate and all interested persons as defined by the code and shall include in appropriate cases the attorney general, foreign consul and attorneys representing interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(a) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

(b) The right to receive maintenance payments during administration of the estate as provided in the code or by law.

(c) The right to take an elective share of one-third of the augmented estate as provided in the code and the homestead as provided in the code or by law.

RULE 7. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

(1) Contents of Petition - A petition in formal testacy and appointment proceedings shall contain the information required by the code and the information concerning the approximate value of assets required by Rule 6(1). In all estate proceedings, whether testate or intestate, the petition must contain an allegation that specifically eliminates all heirs or devisees other than as listed in the petition.

(2) Conversion to Supervised Administration - Any estate which has been commenced as an informal proceeding or as an unsupervised formal proceeding may be converted at any time to a supervised administration upon petition. The court shall enter an order for hearing on said petition. Notice of hearing shall be given in accordance with Rule 2(1). If testacy has not been adjudicated in a prior formal proceeding, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided by Rule 2(2) including notice by publication.

RULE 8. TRANSFER OF REAL ESTATE

(1) Transfers of Real Estate in Supervised and Unsupervised Administration; Transfer by Personal Representative of Real Property for Value; Documents Required - A personal representative shall provide a transferee of real property for value with the following documents:

(1) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative);

(2) A certified copy of the will; and

(3) A personal representative's deed or other instrument transferring any interest in real property which shall contain the marital status of the decedent and the consent of spouse, if any.

(2) Distribution of Real Property; Documents Required; - A personal representative shall provide a distributee of real property with the following documents:

(a) When distribution is made by decree, a certified copy of the decree of distribution assigning any interest in real property to the distributee.

(b) When distribution is made by deed from a personal representative in unsupervised administration:

(i) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative);

(ii) A certified copy of the will; and

(iii) A personal representative's deed of distribution of any interest in real property to the distributee which shall contain the marital status of the decedent and consent of spouse, if any.

(c) When distribution is made by deed from the personal representative in supervised administration:

(i) A certified copy of unrestricted letters;

(ii) A certified copy of an order of distribution which authorizes the distribution of any interest in real property to the distributee;

(iii) A certified copy of the will; and

(iv) A personal representative's deed of distribution of any interest in real property to the distributee.

RULE 9. CLOSING ESTATES

(1) Notice of Formal Proceedings for Complete Settlement under Minn. Stat. §524.3-1001 - If testacy has been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. §524.3-1001 must meet the requirements of Rule 2.01, but notice by publication specifically provided for in Minn. Stat. §524.3-403 is not required. If testacy has not been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. §524.3-1001, must meet the specific notice requirements for formal

testacy proceedings provided in Minn. Stat. §524.3-403, including notice by publication.

(2) Notice of Formal Proceedings for Settlement of Estate under Minn. Stat. §524.3-1002 - If an estate is administered under an informally probated will and there has been no adjudication of testacy in a prior formal proceeding, the court may make a final determination of rights between the devisees under the will and against the personal representative under Minn. Stat. §524.3-1002, if no part of the estate is intestate. The court will not adjudicate the testacy status of the decedent. Notice of hearing on a petition must meet the requirements of Minn. Stat. §524.1-401. Notice by publication specifically provided for in Minn. Stat. §524.3-403 is not required.

RULE 10. FEES, VOUCHERS, AND TAX RETURNS

(1) Fees - The court may require documentation or it may appoint counsel to determine the reasonableness of the fees charged by the attorney and the personal representative. The court may order the fees of the appointed counsel to be paid out of the estate.

(2) Vouchers - Unless otherwise ordered by the court, vouchers for final and interim accounts need not be filed.

(3) Tax Returns - Unless ordered by the court, copies of the United States Estate Tax closing letter and the Minnesota notification of audit results need not be filed.

RULE 11. SUBSEQUENT PROCEEDINGS

(1) Authority of Personal Representative During One Year Period After Filing Closing Statement - For one year from the date of filing the closing statement authorized by the code, the personal representative shall have full and complete authority to execute further transfers of property; to complete transactions; to complete distributions; to correct misdescriptions or improper identification of assets; or to transfer or distribute omitted property. During this period, the personal representative shall ascertain any matters of unfinished administration which must be completed prior to the termination of the representative's authority.

(2) Authority of Personal Representative to Transfer or Distribute Omitted Property During One Year Period After Filing Closing Statement - In the case of omitted property discovered after the filing of the closing statement authorized by the code, but before termination of the personal representative's authority, the personal representative must, as required by the code, file a supplementary inventory with the court and mail a copy to any

surviving spouse, other distributees, and other interested persons, including creditors whose claims are unpaid and not barred. Proof of service by mail must be filed with the court prior to any transfer of the omitted property by the personal representative.

(3) Notice of Proceedings for Subsequent Administration After Termination of Personal Representative's Authority - Appointment of a personal representative in subsequent administration may only be secured in formal proceeding. If testacy has been adjudicated in a formal proceeding, notice of hearing must meet the requirements of Rule 2(1), but the notice by publication specifically provided for in Minn. Stat. §524.3-403 is not required. If testacy has not been adjudicated previously and only appointment of a personal representative is sought, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided in Minn. Stat. §524.3-403, but notice by publication is not required. In the case of subsequent administration involving omitted property, the personal representative must comply with the inventory, mailing and filing requirements of Rule 11(2).

(4) Proof Required for Formal Settlement or Distribution in Subsequent Administration - During a subsequent administration, when an order of settlement of the estate and decree or order of distribution is sought, the court must be satisfied with the pleadings and any other proof (including accounting for all assets, disbursements, and distributions made during the prior administration) before issuing its order.

RULE 12. FIDUCIARIES

(1) Attorney Serving as a Fiduciary - If the attorney for the estate, a partner, associate or employee is the personal representative of the estate, the administration shall be supervised. In such a case, both the attorney for the estate and the personal representative must keep separate time records and differentiate the charges for their duties in each capacity. The attorney should only serve as fiduciary at the unsolicited suggestion of the client and the attorney must realize that there are legal, ethical and practical problems that must be overcome in order to perform the duties of a fiduciary and attorney.

RULE 13. REGISTRAR

(1) Authority - The functions of the registrar may be performed either by a judge of the court or by a person designated by the court in a written order filed and recorded in the office of the court, subject to the following:

(a) Each judge of the court may at any time perform the functions of registrar regardless of whether the court has designated other persons to perform those functions.

(b) The functions and powers of the registrar are limited to the acts and orders specified by the code and these rules.

(c) Any person designated registrar by the court shall be subject to the authority granted by and the continuing direction of the court.

(d) The registrar is not empowered to intervene or issue orders resolving conflicts related to the administration of the estate.

(2) Registrar Has No Continuing Authority - The registrar does not have any continuing authority over an estate after the informal probate is granted or denied and shall not require the filing of any additional documents other than are required by the code (law) and these rules.

RULE 14. GUARDIANSHIPS AND CONSERVATORSHIPS

(1) Responsibility of Attorney - Upon the appointment of a conservator or guardian of the estate, the appointee shall nominate an attorney of record for that conservatorship or guardianship, or shall advise the court that he or she shall act pro se. The named attorney shall be the attorney of record until terminated by the conservator or guardian, or, with the consent of the court, by withdrawal of the attorney. If the attorney is terminated by the conservator or guardian, written notice of substitution or pro se representation shall be given to the court (by the conservator or guardian, or by the attorney who has received oral or written notice of termination), and until such notice, the former attorney shall be recognized.

(2) Visitors in Guardianship and Conservatorship Proceedings -

A visitor, as defined by law, may be appointed in every general guardianship or conservatorship proceeding.

Every visitor shall have training and experience in law, health care or social work, as the case may be, depending upon the circumstances of the proposed ward or conservatee.

The visitor shall be an officer of the court and shall be disinterested in the guardianship or conservatorship proceedings. If the court at any time determines that the visitor, or the firm or agency by which he or she is employed, has or had, at the time of hearing, a conflict of interest, the court shall immediately appoint a new visitor and may, if necessary, require a hearing de novo.

The visitor shall, (a) without outside interferences, meet with the proposed ward or conservatee, either once or more than once as the visitor deems necessary, (b) observe his or her appearance, lucidity and surroundings, (c) serve, read aloud, if

requested, and explain the petition and notice of hearing, (d) assist, if requested, in obtaining a private or court appointed attorney, (e) advise the proposed ward or conservatee that a report will be filed at least five (5) days before the hearing and that the report is available to the proposed ward or conservatee or the ward's or conservatee's attorney, (f) prepare a written report to the court setting forth all matters the visitor deems relevant in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of powers, (g) file the original report with the court and, (h) serve a copy upon the petitioner or petitioner's attorney at least five (5) days prior to the hearing, (i) appear, testify and submit to cross examination at the hearing concerning his or her observations and recommendations, unless such appearance is excused by the court.

(3) Voluntary Petition - If an adult voluntarily petitions or consents to the appointment of a guardian or conservator of the estate as set forth in the law, then it is not necessary for such adult to be an "incapacitated person" as defined by the law.

(4) Amount of Bond - The court may, at any time, require the filing of a bond in such amount as the court deems necessary and the court, either on request of an interested party, or on its own motion, may increase or decrease the amount of the bond. The court, in requiring a bond, if any, or in determining the amount thereof, shall take into account not only the nature and value of the assets, but also the qualifications of the guardian or conservator.

(5) Effect of Allowance of Accounts - The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the court's approval of the account.

(6) Required Periodic Settlement of Accounts - No order settling and allowing an annual or final account shall be issued by the court except on a hearing with notice to interested parties. A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the court or any interested party. A hearing shall be held for such purpose in each guardianship or conservatorship of the estate at least once every five years upon notice as set forth in the law, and the rules pursuant thereto. However, in estates of the value of \$20,000 or less, the five year hearing requirement may be waived by the court in its discretion. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account and the court administrator shall notify such guardian or conservator, the guardian's or conservator's attorney and the court if the hearing is not held within the 150 day period.

(7) Notice of Hearing on Account - Notice of time and place for hearing on the petition for final settlement and allowance of any account shall be given to the ward or conservatee, to the guardian or conservator if such person was not the petitioner for settlement of the accounts, to the spouse, adult children and such other interested persons as the court may direct. Whenever any funds have been received by the estate from the Veterans Administration during the period of accounting, notice by mail shall be given to the regional office. The notice may be served in person or by depositing a copy in the U.S. mail to the last known address of the person or entity being served. When a ward or conservatee is restored to capacity, that person is the only interested person. When a ward or conservatee dies, the personal representative of the estate is the only interested person.

(8) Appearance on Petition for Adjudication of Accounts - When a verified annual or final account is filed in accord with the law and an adjudication is sought, and notice given as required by the law or waived as provided below, and the court determines that the account should be allowed, the account may be allowed upon the pleadings without appearance of the guardian or conservator. If the ward, conservatee or any interested person shall object to the account, or demand the appearance of the guardian or conservator for hearing on the account, at any time up to and including the date set for the hearing, the court will continue the hearing, if necessary, to a later date and require the appearance of the guardian/conservator for examination. Notice of hearing may be waived with the consent of all interested persons.

(9) Successor Guardian; Notice to Ward or Conservatee - The notice required by law shall include the right of the ward or conservatee to nominate and instruct the successor.