



# Probate In Common Form

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## STREAMLINING PROCESSES

### Rule 403

The Probate/Mental Health Division, like most businesses and organizations in today's economic climate, has undertaken a review of its practices and procedures to maximize both efficiency and effectiveness. This includes an examination of our core functions and responsibilities under the statutes and the rules.

As a result, a number of changes have already occurred and more will be forthcoming as we endeavor to meet the needs of the residents of Hennepin County through some streamlining of case processing. The Court will make every effort to communicate these changes to you in a timely manner utilizing the e-mail distribution list that is used to distribute this newsletter.

#### Minnesota Trust and Probate Court Rules

**Rule 403 DOCUMENTS** (a) ". . . It shall be the responsibility of lawyers 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."



#### Notice preparation and publication

The first change adopted was to let go of the responsibility for notice preparation and publication that court staff had taken on some years ago and to put this responsibility back on the attorney/petitioner/applicant for all **Estate** matters.

While this has long been the responsibility of the filing party per statute, the Court took this on to facilitate the calendaring of these matters. However, in returning to our focus on core and essential functions of the Court this was not sustainable. As a result, the attorney/petitioner/applicant is now required to prepare any and all notices for publication, notices and orders for hearing and to ensure that publication of the notice takes place as required by statute.

## STREAMLINING PROCESSES

The Registrar’s office began this process with informal probates in November 2008 and it was expanded to include all formal estate matters as of February 1<sup>st</sup>, 2009.

### COMMON ERRORS

The intervening time has allowed the Court an opportunity to identify some of those areas where we are seeing parties repeat the same or similar errors. This includes:

- **Wrong file number**
- **Failure to include the name of the District Court Administrator**
- **Missing date of Hearing on the notice**
- **Failure to get notice to publisher in time to comply with notice requirements for hearing**

- **Not sending a copy of the notice to the court for the file**

Neither the Registrar nor the court staff will review your notice **prior** to publication or mailing.

A common misconception is that:

**A Registrar or Judge needs to sign the Notice and Order**

Not true! The name of the Registrar or Judge is to be **typed** on the Notice and Order. There is not a requirement for them to sign it.

### FORMAL PETITIONS

#### Review of Estate petitions

**Initial review** - counter staff will review incoming petitions for the following four items:

- Correct caption/heading
- Date of death missing
- Original signature of petitioner (s)
- Correct filing fees submitted

If any of these four items is incorrect or missing, the petition and accompanying documents will be returned. The Court will not hold documents.

The implementation of this limited review process will enable the Court to contact the attorney/petitioner with a file number and discuss the scheduling of a hearing date within 48 hours of the filing of the petition.

**Incorrect fees will prompt a return of the filing to the sender.**

Many of the attorneys have come to rely on the Probate/

## E-mail Addresses

**NOTE:** Make sure that I have your correct e-mail address to send you a copy of the order/decree as soon as I scan it into the computer. Check with your computer expert to ensure that you can view documents ending with “tif”.

At this time, I am not able to fax from my computer to your office.



## STREAMLINING PROCESSES

Mental Health staff (and their individual expertise) to catch errors and omissions in filings. Please be aware that this initial limited review process will eliminate that safety net for the attorney/petitioner and their staff.

**Second review** – by courtroom clerks (commencing petitions and miscellaneous petitions) will be for compliance with regard to notice requirements only:

- Affidavits of Mailing
- Affidavit of Publication

**Third review** – by the assigned Referee/Judge will now be the in-depth review of the petition, testamentary documents, supplemental filings, etc.

As you can see from the review steps outlined, complete and accurate preparation of petitions and accompanying documents will be essential to ensuring your matter is able to be calendared and move forward in a timely manner.

The Court will not be notifying the attorney/petitioner of any errors or omissions prior to the scheduled hearing .

Any submissions ordered by a judicial officer will be due to the Court within 2 weeks, unless otherwise specified by the judicial officer. Failure to

provide the required submissions in a timely manner may result in the dismissal of the petition.

### **Final account review, Decedent/Summary Petitions**

At this time, Alonna Warns reviews the petitions for settlement and distribution, decrees of descent and summary assignments. The audit/review of the file is usually done a week to 10 days prior to the hearing.

There may be occasions when she will contact you about missing items prior to the hearing. Please bring these items directly to the hearing, rather than sending them in to the Court. At the time of the audit the file is in motion and it will be difficult if not impossible to ensure that your filing reaches the file and the assigned judicial officer in time to be considered.

For the petitions identified above, be sure that the following items have been filed prior to the audit in order for a complete and thorough review:

- Affidavit (s) of mailing
- Affidavit of publication
- Testimony of subscribing witness
- Medical Assistance Clearance
- Vouchers (must be categorized and matched to a figure on the account)
- Proposed orders:
  - Order Allowing the Account

(separate order in Hennepin County)

- Decree of Distribution
- Order Formal Probate of will
- Decree of Descent
- Decree of Summary Assignment

Most, if not all of these orders, have been previously distributed with other issues.

Many of you have taken advantage of the option to bring your final documents into Alonna for review prior to signing by the client. In many complex cases this has made all the difference, when appearing in the courtroom with your client, to a smooth and successful conclusion to the case. To arrange for an appointment call the calendar desk at 612-348-3249.

### Deficiencies

**What holds up the issuance of orders, decrees and letters?**

- Missing affidavits of mailing
- Missing spousal & children notice
- Missing persons or entities on affidavits of mailing
- Compare the petition's interested party list with affidavit of mailing

## STREAMLINING PROCESSES

- **Missing nominations**
- **Missing renunciations**
- **Missing bond waivers**
- **Failure to obtain preapproval for a bond when a demand for bond is on file**
- **Medical Assistance Clearance**
- **Attachments missing from Affidavit of Mailing**
- **Missing notary stamp/ signature not notarized**
- **No proposed order (s)**

### Monitoring

#### Monitoring for closing documents.

The Court monitors Formal, Supervised Estates and strives to ensure these matters close within the 18 month time frame set out in statute. Compliance with the statutory timeline is monitored by the State Courts.

This is important and the Court is very serious about getting the supervised files closed. If you are not able to close in the 18 month time frame, you **MUST** file a petition and order to extend the timelines. Please do not submit letters requesting informal extensions of time

or call the Court with this type of request. You must file a formal petition with the Court for an extension.

#### Helpful hints:

1. Receipts for final distributions and the petition for discharge are to be dated **after** the date on the decree.
2. Do not file your final accounting documents in a piecemeal fashion. In a supervised administration complete documentation is necessary.
3. There will be no distribution of residue without a court order in a formal supervised administration.
4. The Registrar cannot release a bond in a formal unsupervised administration.

### Paperless Process: An Update

If you are coming to the court to look for a current file, keep in mind that Informal Estates, descents, summaries, special and disclaimers are all paperless processes. Your access to the documents is through the computer in the file room. We anticipate further moves to paperless processes for other case types in the coming months.

We thought it might be helpful to assist your office in document preparation as well as

## SAVE THE TREES!

filing, to provide some reminders regarding basic filing requirements in **Hennepin County** for the various estate case types. The Court continues to receive numerous unnecessary filings on a daily basis. Please review the following:

#### Informal Estates

Once the letters in an informal probate issue, the only document we are looking for is the Unsupervised Personal Representative's Statement to Close the Estate. Any other documents the personal representative is required by statute to prepare are for the benefit of the interested parties and need to be given to the interested parties but are not required to be filed with the Court.

#### Unsupervised Estates

Formal, Unsupervised Estates with no decree are handled as set forth above for Informal Estates. The change in filing requirements occurs when the personal representative petitions the court for settlement of the estate and a decree of distribution. Prior to the issuance of the decree, I review the file as though the administration had been supervised from the beginning.

A petition for an interim order in an unsupervised administration does **not** trigger the filing of all the closing documents.

## SAVE THE TREES!!

For instance, a petition for an interim order directing a partial distribution can be handled on an “in and out” basis.

### Supervised estates

Formal, Supervised estates require the filing of all estate documents so that there is a comprehensive record for the court to base its decree upon.

Formal administration closing documents when a decree is to be issued:

- **Inventory**
- **Final Account**
- **Vouchers**
- **Consents to the final account**
- **Receipts for specific bequests**
- **Receipts for court ordered distributions**
- **Receipts for maintenance and statutory selection**
- **Real estate closing statements**
- **Satisfaction of claim**
- **Withdrawals of demands for notice**
- **Petition for settlement and distribution**
- **Petition for discharge**

### ● **Distributive share receipts**

**It is unusual for a petition for discharge to go on for hearing.**



### Helpful hints:

If the only asset you have on hand for distribution is real estate, no receipts will be required for discharge. You may file your petition for discharge and proposed order discharging the personal representative at the time you file the petition for settlement and distribution. This will expedite the closing of the estate.

Petitions for protective orders for the distribution of residue to minors will not be considered until the decree has issued. The petitions and proposed orders are handled by the clerk at the Estate Desk. The phone number is 612-348-3244.



**When does the court consider a case closed?**

**Informal probates**– when the Letters issue

**Formal, Unsupervised Es-**

**tates**– when the Letters issue

**Formal, Supervised Estates** – when the Order Discharging the Personal Representative issues

**Descents**– when the decree of descent issues

**Summary Assignments**– when the decree of summary assignment issues

**Special Administrations**– when the Order Discharging the Special Administrator issues

**Notice of Intent of Foreign PR to Act**– when the Affidavit of Publication is filed

**Death of an Absentee**– when the order determining death issues



### Helpful hint:

Termination of the authority of a special administrator is not sufficient to close a file. The special administrator has to be discharged. Many times the Referee will write in a “termination of authority date” on the Letters of the Special Administrator. When this date has gone by either file a petition for extension of the authority or file your closing documents.

HENNEPIN COUNTY DISTRICT COURT  
FOURTH JUDICIAL DISTRICT



Probate/Mental Health Division  
Hennepin County Government Center  
300 South 6th Street, C400  
Minneapolis, Minnesota 55487-0340  
Phone: 612-348-3244  
Fax: 612-348-2130

TO:



C-3 to C-4

**MOVING AGAIN !!**

**We will be moving on March 4th and will be open for business on C-4 as of March 5, 2009. We look forward to welcoming you to our new offices. We thank you for your cooperation during our temporary stay on C-3. Please remember to update any templates, mailing labels, etc. with our new address.**

