

PART 9. PROBATE PROCEEDINGS

Rule 9.1 Probate Act. As used in Part 9 of these Rules, “Act” shall mean and refer to the Probate Act of 1975, 755 ILCS 5/1-1 *et seq.*

Rule 9.2 Admission of Will to Probate When Holographic or in Language Other Than English

(a) **Holographic Will.** When seeking to probate a handwritten will and/or codicil, the petitioner shall file a typewritten copy of the will and/or codicil with the petition and an affidavit of the petitioner or other person typing the will and/or codicil that the typewritten copy is true and correct to the best of his or her knowledge.

(b) **Will in Language Other Than English.** When seeking to probate a will and/or codicil that is written in a language other than English, the petitioner shall file a typewritten copy of the will and/or codicil in English with the petition and a certification by a qualified translator that the translation is true and correct.

Rule 9.3 Deposition of Witness to Will or Codicil. A person seeking admission of a will or codicil to probate and desiring to take the deposition of a witness to a will or codicil as provided in section 6-5 of the Act shall file a petition for issuance of a commission stating the name and address of the witness, the reason the witness is unable to attend court, and the name and address of the officer to whom the commission is directed. A copy of the proposed written interrogatories shall be attached to the petition. Unless notice is waived, notice of the petition shall be given not less than 14 days before the hearing on the petition for admission of the will or codicil to probate to each heir or legatee whose name and address is stated in the petition. Before the hearing, any interested person may propose written cross-interrogatories.

Rule 9.4 Supplemental Proceedings

(a) **Scope of Rule.** Supplemental proceedings within the meaning of this Rule shall include, but are not limited to, will contests, contracts to make wills, constructions of wills, and appointment of testamentary trustees.

(b) **Invoking Jurisdiction.** Supplemental proceedings shall be invoked by filing a petition in the probate proceeding and serving process as in other civil cases, except that jurisdiction over claims for personal injury, wrongful death, or other torts shall be invoked as provided by Rule 9.14. The petition shall designate the type of proceeding and shall employ the same case number as the estate to which it relates with suffix “A,” “B,” “C,” *etc.* The required fee shall be paid when the petition is filed.

Rule 9.5 Safety Deposit Box. Generally, court approval is not necessary for a representative or guardian to access the safety deposit box of an estate or ward. On the motion of the surety on a bond of a representative or guardian or other interested party or on the Court’s own motion, the Court may require the Court’s written approval to access a

safety deposit box containing assets of the estate or ward and/or require the representative or guardian to initially open the safety deposit box in the presence of the surety or a representative of the depository and prepare an itemized inventory of the box's contents. All representatives and guardians shall timely file with the Clerk a sworn inventory of a safety deposit box's contents.

Rule 9.6. Investment by Guardian

(a) **Requirements of Petition.** A petition of a guardian to invest the ward's property shall identify the category of the proposed investment pursuant to section 21-2 of the Act and certify that the proposed investment complies with the limitations applicable in that category. If the proposed investment is to be purchased directly or indirectly from the guardian or from any firm of which he or she is an officer or director, the petition shall so state.

(b) **Retaining Investments.** If a guardian desires to retain an investment (including a life, endowment, or annuity policy) or any increase in that investment that is not authorized by section 21-2 of the Act, the guardian shall petition the Court for approval to retain the investment or increase.

(c) **Material Changes.** Before making any material change to the terms of any life, endowment, or annuity policy purchased pursuant to section 21-2 of the Act, the guardian shall petition the Court for approval.

Rule 9.7 Expenditures from Ward's Estate. A petition of a guardian or conservator to apply any part of the ward's estate for the support, comfort, or education of the ward or other person entitled to support from the ward's estate shall state the present value of the estate, the annual income available to the ward, and the purpose of the proposed expenditure. The petition shall further list all payments being received by the ward or the petitioner either individually or as guardian or conservator on behalf of the ward, including Social Security payments, disability benefit payments from the Veteran's Administration or other governmental agency or department, relief or other assistance from a charitable or relief organization, payments from a trust, and payments from one having an obligation to support the ward.

Rule 9.8 Required Inventory Descriptions. In all cases under supervised administration, the following shall apply:

(a) **Real Estate.** Descriptions of real estate shall include the legal description and address, if any, of the property. If a beneficial interest in real estate is an asset of the estate, the name and address of the trustee and other identifying information shall be stated.

(b) **Stocks, Bonds, Notes.** Descriptions of stock shall include the number of shares, class of stock, exact corporate title, and state of incorporation if the state is necessary to identify the stock. A description of a bond shall include the total face value, name of the obligor, kind of bond, rate of interest, date of maturity, interest dates, coupons

attached or date to which interest is paid, and endorsements. A description of a note owed to the decedent or ward shall include the face amount and unpaid balance, date of the note, date of maturity, name of the matter, interest dates, rate of interest, date to which interest is paid, endorsements, and, if secured, a description of the security.

(c) **Partnership Interests.** A description of a partnership interest shall include the partnership name and address and the approximate value and interest of the estate, if known.

(d) **Causes of Action.** A description of a cause of action shall include the name of the defendant(s) or potential defendant(s), its nature, and, if suit has been instituted, the title, case number, and court in which it is pending.

(e) **Filing of Inventory Required.** Unless excused by the Court, each inventory and amended or supplemental inventory shall be filed with the Clerk. The first inventory shall be filed within 60 days after the Clerk issues letters of office.

(f) **Amended or Supplemental Inventory.** An amended or supplemental inventory shall be filed with the Clerk if real or personal property has been erroneously described in a previous inventory, assets have been improperly included or excluded from a previous inventory, or additional assets have been received by the representative or have come to his or her knowledge. A supplemental inventory or an amendment to an inventory need not include assets correctly described in a previous inventory.

(g) **Contents of Inventory.** Each inventory shall list, as of the date of death of the decedent or the date of appointment of the guardian, the real and personal property that has come to the knowledge of the representative and any cause of action on which the representative has a right to sue. The inventory in a decedent's estate under supervised administration or in the estate of a minor or disabled person shall be verified.

Rule 9.9 Procedure for Disposition of Claims

(a) **Presentment to the Estate.** The claimant shall mail or deliver a claim to the legal representative of the estate and to the attorney of record, if any, unless the legal representative or attorney in writing waives the mailing or delivery of the claim or consents to the allowance of the claim.

(b) **Filing Proof with Clerk.** The claimant shall file with the Clerk proof of mailing or delivery of the claim, or a waiver thereof, within 10 days after filing the claim.

(c) **Setting Claim for Hearing.** The Court, or if the Court so designates, the Clerk, may set the claim for hearing. If mailing or delivery of the claim is waived and the claim is consented to in writing, the Clerk shall notify the Court and enter judgment for the amount claimed.

(d) **Contesting Claim.** The legal representative or any other person whose right may be affected by the allowance of the claim may file an answer contesting the claim.

(e) **Hearing.** If an objection to a claim has been filed, the Court on the return date set under Rule 9.9(c) will schedule the claim for hearing and order the legal representative, the attorney for the estate, or the Clerk to give the claimant at least 10 days' notice of the hearing by regular mail. If a counterclaim has been filed, it shall be heard on the date set for hearing the contested claim.

Rule 9.10 Inaction in Probate Estates

(a) **Inactive Status of Probate Matters.** Whenever the Court determines that a decedent's estate or guardianship has remained inactive for a considerable time, the Court may direct the Clerk to place the case on a docket call, and the Clerk shall give notice, as directed by the Court, to the last known attorney of record or personal representative or both of the time and place of the docket call. If the Court determines at the docket call that the case cannot be conveniently terminated, the Court may enter an order directing the Clerk to transfer the case to an inactive docket, and the case file shall be filed with the closed probate files. A case may be removed from the inactive docket to the active docket on motion and order.

(b) **Removal of Personal Representative; Dismissal.** If there has been no action of record without good cause for a period of two years in any probate case, the Court may remove the personal representative pursuant to section 23-2 of the Act or dismiss and strike the case for want of action.

(c) **Notice of Dismissal.** On dismissal of the case, the Clerk shall send notice by regular mail to the last known address of the personal representative and the attorney of record specifying that the case, for good cause shown, may be reinstated within 30 days after the date of the notice.

(d) **Procedure on Dismissal.** On dismissal of a case, claims shall be barred in accordance with section 18-12 of the Act. If no assets remain in the estate, costs may be waived, and other fees and expenses unpaid may be barred pursuant to section 15 of the Act. If assets remain, they should be used to pay the costs of administration, and the balance shall be deposited with the treasurer of the county in which the estate was opened.

Rule 9.11 Account of Disbursements

(a) **When Summary Accounting Accepted.** The Court may accept a summary accounting of an unincorporated business, real estate, or beneficial interest in real estate in the representative's possession.

(b) **When Guardian's Accounting Required.** Each guardian shall present an account of his or her administration within 30 days after the expiration of one year after the issuance of the letters of office and, unless otherwise ordered, at least annually

thereafter. If the guardian is a bank or trust company, it shall not be required to file an account (after filing its first account) more often than once every three years, unless specifically required by the Court. All accountings shall include a listing of all disbursements from the estate.

(c) Executor's and Administrator's Accounting. Each executor and administrator shall account for his or her administration as required by section 24-1 of the Act.

(d) Notice of Accounting. Unless waived by the person(s) entitled to notice, notice of the hearing on a final account or an account intended to be binding pursuant to section 24-2 or section 24-11(b) of the Act shall be given as follows:

(1) On an account of a guardian or guardian to collect: to the ward; to each claimant whose claim is filed and remains undetermined or unpaid; and to other persons entitled to notice. If a person entitled to notice other than the ward is represented by an attorney whose appearance is on file, notice shall be sent to the attorney not less than 10 days before the hearing.

(2) Notice to all other persons entitled to notice shall be given as follows: (a) notice, accompanied by a copy of the account, shall be given in person or sent by regular mail to the last known address not less than 10 days before the hearing, except if the address of the person is outside the United States or Canada, in which case the notice shall be sent not less than 14 days before the hearing; (b) if the name or present post office address of the person is not known to the representative or his or her attorney, notice shall be given by one publication in a newspaper of general circulation in the county of the hearing not less than 14 days before the hearing, unless waived by the Court; (c) the notice shall contain the time, date, place, and nature of the hearing in substantially the following sentence: "If the account is approved by the judge, in the absence of fraud, accident, or mistake, the account as approved is binding on all persons to whom this notice is given."

(e) Estate Tax Receipts. The Court shall not discharge a representative unless the representative has filed with the Clerk appropriate documentation that all estate taxes have been paid or that the estate is not subject to estate taxes.

(f) Contents of Guardian's Report. A report of a guardian or a guardian to collect shall disclose the physical location of the ward, the ward's physical and mental condition, and the ward's attendance in school or occupation.

(g) Final Account of Ward's Estate. On the final settlement of a ward's estate, if the person entitled to the estate is the ward, the guardian will not be discharged unless the ward appears in Court and acknowledges the settlement. The personal attendance of the ward or the ward's acknowledgment of the settlement may be waived if the Court is satisfied, by affidavit of the ward or by other evidence, that the settlement is correct, that the ward possesses all his or her estate, and the personal attendance of the ward is impracticable.

(h) **Death of Distributee.** If the distributee of a decedent's estate dies after the decedent's death but before the receipt of his or her entire distributive estate, the representative of the estate shall present to the Court evidence of the distributee's death and any other documents as may be required for entry of an order of distribution.

Rule 9.12 Periodic Accounts. In all cases under supervised administration:

(a) **When Required from Executors and Administrators.** Every executor and administrator shall present the account required by section 24-1 of the Act within 60 days after the date that is six months after the Clerk issued letters of office, annually after the date of the first account, and at other times as the Court requires.

(b) **When Required from Guardians.** Every guardian shall present the account required by section 24-11 of the Act within 30 days after the date that is one year after the Clerk issued letters of office, annually after the date of the first account, within 30 days after the termination of the guardian's office, and at other times as the Court requires.

(c) **Requests for Extension of Time.** If a representative seeks an extension of time to a definite date or an order allowing accountings less frequently than required by these Rules, the representative shall file a verified petition specifying the reasons for the request. If the Court grants a petition for extension, it shall set a definite date for the representative to file the next accounting.

(d) **Notice and Citation if Periodic Accounting not Filed.** In any case in which an account has not been filed as required by this Rule or by a date set by the Court:

(1) The Clerk shall mail to the representative and any attorney of record a notice that the account is due;

(2) If the account is not presented within 60 days after the Clerk's notice, the Clerk shall issue a citation directing the representative to account as required by a date certain or appear on that date to show cause why he or she should not do so;

(3) If the representative fails to account or appear as directed, or if, having appeared, he or she fails or refuses to account as required or to show cause why he or she should not do so, his or her letters may be revoked and he or she may be subject to contempt of court; and

(4) When issuing a citation required by this Rule, the Clerk shall mail notices of the pendency of the citation proceeding and return date to all persons interested in the administration of the estate, including unpaid creditors.

Rule 9.13 Jury Demand. A petitioner or claimant desirous of a jury trial under the Act must file a jury demand with the Clerk and pay the required fee when the petition or claim is filed. A representative or other party in interest opposing the petition or claim that

desires a jury trial must file a jury demand and pay the fee when filing the answer or other responsive pleading. If the petitioner or claimant files a jury demand and later waives a jury trial, the opposing party will be granted a jury trial on demand made within 30 days of being advised of the waiver and payment of the fee. Otherwise, the party waives a jury trial. The jury fee, once paid, shall not be reimbursed on a subsequent waiver of jury.

Rule 9.14 Settlement of Personal Injury or Death Action in Decedent's Estate

(a) **Petition.** To settle a cause of action for personal injuries or death or any other action in which a decedent's estate will receive any or all the settlement proceeds, the executor or administrator shall execute and file a verified petition setting forth:

- (1) A description of the occurrence giving rise to the cause of action;
- (2) The name and address of the person or entity against whom the cause of action has accrued;
- (3) The name and address of the liability insurance carrier, if any, affording coverage to the person or entity against whom the cause of action has accrued, and the monetary limits of the applicable liability insurance policy;
- (4) A brief description of the injuries sustained by the decedent and a list of hospital and medical expenses incurred by the decedent as a result of the occurrence;
- (5) A statement by the petitioner or the attorney for the petitioner as to the fairness of the proposed settlement and the basis for the petitioner's or attorney's recommendation that the proposed settlement be approved; and
- (6) The amount of attorney's fees and costs, if any, that would be paid from the proceeds of the proposed settlement and the bases for these amounts.

(b) **Judge Assigned if Injury or Death Action is Pending.** When the proposed settlement relates to a pending case for personal injury or wrongful death, the verified petition shall be heard by the judge assigned to the case.

(c) **Judge Assigned if No Injury or Death Action is Pending.** When the proposed settlement does not relate to a pending case for personal injury or wrongful death, the verified petition shall be heard by the judge assigned to the estate.

(d) **Notice.** Before a party may present a petition to the Court, the party must send a notice of hearing, a copy of the petition, and any exhibits to the petition to those persons entitled to notice under the Act at least 10 days before the date of the hearing. A party entitled to notice may waive notice by written consent. The Court may excuse notice on a showing of good cause. The Court shall appoint a guardian *ad litem* for any minor or disabled adult next of kin, unless an appointment is not deemed necessary to protect that person or his or her estate. If the decedent left no surviving spouse or next of kin entitled

to recover, notice shall be given by the representative or his or her attorney to the persons named in paragraphs (a), (b), and (c) of section 2 of the Act, including persons furnishing hospital, medical, or funeral services to the decedent, unless payment for the services is shown.

(e) **Appointment of Guardian *ad Litem*.** In any case, the Court may appoint an attorney as guardian *ad litem* to investigate the merits of the proposed settlement and to report his or her findings and recommendations. The Court shall fix an appropriate fee for the guardian *ad litem* to be taxed as costs in the estate.

(f) **Expenses and Attorney's Fees.** When approving a settlement, the Court shall determine the expenses, including attorney's fees, to be deducted from the settlement and shall determine the net amount distributable to estate. The Court shall not allow attorney's fees in excess of 33 1/3% of the gross settlement amount unless the attorney representing the estate in a sworn affidavit recites the work and hours involved or other special circumstances that justify a higher attorney's fee to compensate the attorney fairly for the work performed; provided, however, that if an appeal is perfected and the case disposed of by the reviewing court, the attorney's fee shall not in any event exceed 50% of the recovery.

Rule 9.15 Withdrawal of Funds Deposited with Treasurer. Before a petition is presented for an order directing the country treasurer to pay money deposited by order of the Court, notice shall be given to the state's attorney, the former representative and his or her attorney, and all other persons entitled to notice under any order entered in the proceeding. If the state's attorney or the former representative fails or refuses to answer the petition, the Court may appoint a special administrator to defend.

Rule 9.16 Withdrawal of Ward's Money

(a) **Petition to Withdraw.** A petition to withdraw funds deposited or invested, as provided in section 24-21 of the Act or pursuant to this Rule shall be presented in person by the parent, spouse, person standing *in loco parentis*, or person having custody of the ward, unless the Court waives personal presentation. The Court may require the petitioner to furnish evidence that the sums to be withdrawn are necessary for the ward's comfort, education, or other benefit to the ward or his or her dependents. Unless excused from doing so, within 30 days after the Court authorizes the withdrawal, the petitioner shall file receipts for all sums expended. All unexpended funds shall be redeposited in accordance with section 22-21 of the Act.

(b) **When Minor Beneficiary of Decedent's Estate.** If a minor is entitled to a distributive share of a decedent's estate and the share consists entirely of money and no guardian has been appointed for his or her estate, the Court on a showing under oath that it is in the minor's best interest may direct that the distributive share be deposited and paid in accordance with section 22-21 of the Act. The receipt of the bank or other financial institution is a voucher for accounting purposes.

(c) **When Value of Ward's Estate Less Than Small Estate.** If the value of a ward's estate is or becomes less than the small estate amount specified in section 25-2 of the Act and no part of the estate consists of real estate or a pending cause of action for personal injuries, a petition may be filed requesting the distribution of the estate without further administration. In the case of a disabled adult, application shall be made by his or her guardian or spouse, or if he or she has no spouse, by a relative having responsibility for his or her support. In the case of a minor, application shall be made by the guardian, a parent, or a person standing *in loco parentis*. If it appears there is no unpaid creditor and that it is in the best interest of the estate and ward, the Court may order the guardian to file a final account and make distribution as the Court directs.

Rule 9.17 Assignment of Interest. Each assignment of interest or power of attorney with respect to a distributee's interest in a decedent's estate shall be presented to the Court for filing and approval. The petition for approval shall be verified and, in the case of an assignment, state the names and addresses of the assignor and assignee, the nature and value of the interest involved, the consideration paid to or to be paid to the assignor, and the fees and expenses charged or to be charged, and, in the case of a power of attorney, the fees and expenses charged or to be charged by the attorney-in-fact and his agents and representatives. If the Court finds the consideration paid or to be paid by the assignor is inadequate or the fees or expenses charged or to be charged are excessive, or for other good cause shown, it may refuse to permit the assignment of interest or power of attorney to be filed, or may approve filing on terms it deems just and equitable.

Rule 9.18 Payment of Distributive Share to Citizen and Resident of Foreign Country. The distributive share of a citizen and resident of a foreign country may be paid to the official representative of the foreign country, attorney-in-fact, or assignee of a distributee if the foreign representative, attorney-in-fact, or assignee is a *bona fide* resident of Illinois, in accordance with this Rule.

(a) **Entitlement to Receive Share.** The foreign representative, attorney-in-fact, or assignee shall present satisfactory evidence that the principal is the person entitled to receive the distributive share. Each power of attorney or assignment shall be signed by the distributee and be properly authenticated and acknowledged before an American consul, unless the Court is satisfied with other evidence of the authenticity of the power of attorney or assignment.

(b) **Petition.** The foreign representative, attorney-in-fact, or assignee shall present a petition for leave to receive the share in a form acceptable to the Court.

(c) **Bond.** Unless waived by the Court, the foreign representative, attorney-in-fact, or assignee shall furnish a bond with surety in an amount set and in a form acceptable to the Court and conditioned on the payment and delivery of the distributive share to the distributee.

(d) **Receipt.** The foreign representative, attorney-in-fact, or assignee shall acknowledge receipt in writing of the distributive share received from the representative

and certify in the receipt that the authority to receive the distributive share has not been revoked. The representative shall file the receipt and certificate with vouchers.

(e) **Report of Compliance.** Within 90 days after entry of the order or within further time as the Court allows, the foreign representative, attorney-in-fact, or assignee shall present to the Court a report of compliance, with the receipt of the distributee evidencing payment and delivery of the distributive share.

(f) **Deposit with County Treasurer.** If the foreign representative, attorney-in-fact, or assignee fails, refuses, or is unable to pay and deliver the distributive share to the distributee within the 90-day period or within further time as the Court allows, the distributive share shall be deposited with the county treasurer subject to further order. On presentation of the receipt of the county treasurer evidencing the deposit, the foreign representative, attorney-in-fact, or assignee will be discharged from further duty.

(g) **Attorney's Affidavit.** If the attorney representing the attorney-in-fact is not the attorney for the estate, he or she shall file an affidavit stating he or she will properly supervise the distribution of funds held by the attorney-in-fact.

Rule 9.19 Fees. In all cases under supervised administration:

(a) **Allowance of Fees.** Unless waived by or approved by all parties, no fees in any estate proceeding shall be allowed without approval by the Court.

(b) **Petition.** A petition for fees shall be accompanied by a statement briefly setting forth the gross value of the estate, a summary of the work completed and to be completed in the future, including time expended, the amount of fee requested, and the expenses advanced for which reimbursement is requested.

(c) **Fees in Estates of Disabled Persons and Minors.** Fees shall be allowed in estates of disabled persons and minors only when current or final reports are presented for approval, unless all interested persons are competent and approve allowance of fees at another time.

(d) **Notice.** Written petitions, reports, or accounts requesting the allowance of fees shall be served on all interested heirs, legatees, devisees, incompetents, minors, and creditors whose claims remain unsatisfied, along with a notice of the time, date, and place of hearing on the request. Notice shall be in accordance with Rule 5.1(b).

(e) **Appearances.** Entries of appearances will be accepted in lieu of any required notice if the appearance indicates on its face that the person executing the appearance has read the petition, account, or report and approves the fees requested.