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Supplementary Local Rules

For

The Circuit Court of the State of Oregon

for Multnomah County

The Fourth Judicial District

Out-of- Cycle Adoption
Pursuant to Chief Justice Order No. 16025
Effective July 2016

9.025 HOW MATTERS FOR PROBATE ARE TO BE PRESENTED; CONFERENCE; HEARING; EMERGENCIES

(1) Probate matters requiring authorization, approval, or signature of the Chief Judge or designee shall first be presented to the Probate Section of the Civil Division for review. If the matter is assigned to a judge other than the Chief Judge, the party presenting it shall so advise the Probate Section's staff.

(2) If the matter cannot be approved without an appearance, the party will be so advised and the matter will be set for conference, or hearing.

(3) Hearings may be scheduled by request to the Probate Section. Before requesting a hearing, counsel should confer with other counsel and/or self-represented litigants and advise the Probate Section staff of the estimated time required. (Refer to SLR 8.012 and 8.015 for "trial/assignment" process.)

(4) Probate short docket matters, items that will take no more than 10 minutes, are heard Monday through Friday at 8:45 am, and must be prearranged with the Probate section.

9.045 RESIGNATION OF COUNSEL; NOTIFICATION REQUIREMENTS

(1) If a bond has been posted, the insurer must be notified of the resignation and substitution of counsel.

(2) Resigning counsel must also certify their compliance with the requirements of UTCR 3.140, ORS 9.380 and 9.390.

(3) Withdrawing or resigning attorneys must educate their fiduciary clients on their duties and due dates for reports and accountings. A statement that this has been done must be included in the motion to withdraw.

9.055 SETTLEMENT OF PERSONAL INJURY OR WRONGFUL DEATH CLAIMS: REQUIREMENTS WHEN MINOR CHILD OR INCAPACITATED PERSON APPEARS BY GUARDIAN AD LITEM

(1) Except as permitted by ORS 126.725 for a minor child, a petition for approval of a settlement of a personal injury or wrongful death claim on behalf of a minor child, incapacitated person or decedent shall be accompanied by an affidavit which sets forth the following:

(a) A description of the incident causing the injury or death;

(b) A description of the injuries;

(c) The amount of the prayer and settlement. (If a structured settlement is requested, the present value of the future payments should be indicated);

(d) The amount of the attorney fees and costs;

(e) The proposed disposition of the settlement proceeds;

(f) A concise statement explaining the reasons for the settlement and the efforts to maximize recovery;

(g) A statement explaining that the attorney has independently evaluated the interests of the injured party;

(h) A statement explaining that the attorney has examined every medical record; and

(i) A statement explaining why it is necessary and proper to settle the case at the present time.

(2) The Chief Probate Judge, or designee, shall approve any settlement in a civil action which has been filed in this circuit court on behalf of a minor child.

(a) For personal injury, the original petition and affidavit must be filed in the civil action. The order shall be directed to the Probate Department by the Civil Department.

(b) For wrongful death, the petition and affidavit shall be filed in the Probate case.

(3) A conservatorship on behalf of the minor child or incapacitated person generally will be required for any case where personal injury or wrongful death settlement proceeds are at issue in excess of the amount allowed in ORS 126.725.

(a) Bond and standard annual accounting requirements may be waived if the funds are restricted until the minor attains the age of majority. In lieu of such accountings the court will require copies of the first and last bank statements for each standard accounting period to be filed with the court.

(b) Restricted accounts on behalf of a minor child or incapacitated person must be confirmed by a signed acknowledgment from the bank or

brokerage firm which discloses the account number, type and account balance as required by UTCR 9.050 and 9.080. Exceptions for diminutive amounts may be requested.

(c) Approval of damage settlement amounts for the benefit of a minor child or incapacitated person appearing by a guardian ad litem in a lawsuit, except those cases assigned for trial to a trial department, are a basic responsibility of the Probate Court. The allocation of funds and the structuring of such funds is likewise the Court's responsibility. Minors and incapacitated persons should be provided with independent counsel for such issues and most commonly when a minor's funds are proposed to be withheld from them after age18.

(4) A fiduciary appointed by the Probate Court is required to comply with paragraph (1) of this rule and must file a motion for an order approving a settlement of a personal injury or wrongful death claim on behalf of a protected person. The motion must be supported by an affidavit setting out the required information.

9.075 GUARDIANSHIPS

(1) A Petition for Guardianship shall designate, in the caption, that it is for guardianship of an adult, whether it is for a temporary or indefinite time (or both), and whether a conservatorship is also being requested. The deposit for the visitor's investigation fee shall be paid with the filing of the Petition.

(2) Upon the issuance of an order appointing Court Visitor, the attorney for petitioning party shall provide copies of the petition, marked "VISITOR'S COPY" with supporting documentation and copies of proposed notices and the ORS 125.070 (4) respondent's objection (the blue form) to the designated court visitor via e-mail.

(3) Petitions for Appointment of a Temporary Guardian should be accompanied by appropriate affidavits and medical reports. The Petition should be filed with the Probate Section of the Civil Division and presented to the Chief Judge at a probate short docket hearing, scheduled per SLR 9.025 (4).

(4) Within 30 days after each anniversary of appointment, a Guardian shall file with the court a written report. Copies of the Guardian's Report must be given to those persons specified in ORS 125.060 (3). The report shall be in the form prescribed by the court. (See Guardianship Report Forms, Pages 127-130, Appendix of Forms.)

9.076 NON-PROFESSIONAL FIDUCIARY EDUCATION PROGRAM

(1) The following court appointed non-professional fiduciaries are subject to this rule:

(a) Any guardian or conservator appointed pursuant to ORS Chapter 125 on or after July 15, 2014.

(b) Any personal representative appointed pursuant to ORS Chapter 113 on or after Feb. 2, 2015.

(c) Any trustee appointed pursuant to ORS Chapter 130 on or after Feb. 2, 2015.

(d) Any non-professional fiduciary cited for a deficiency in the handling of fiduciary duties pursuant to the show cause process.

(2) All non-professional fiduciaries involved in a case described under subsection (1) above, shall:

(a) Successfully complete an education class for non-professional fiduciaries with a curriculum as prescribed by the Presiding Judge of Multnomah County within 60 days of appointment as a fiduciary by the Court; and

(b) Register for the program no later than fifteen (15) days of appointment as a fiduciary by the Court.

(3) A professional fiduciary, for purposes of this Rule, is defined in ORS 125.240(5). Professional fiduciaries are exempt from this Rule.

(4) The Court will send notice and instructions of this requirement will be sent to the non-professional fiduciary at the time of appointment as guardian, conservator or personal representative. The attorney representing a trustee shall provide notice and instructions to the trustee of this requirement.

(5) Fees for the court-required class shall be considered a cost of administration of the protective proceeding, estate or trust. The fee for the court-required class may be waived or deferred in the Court's discretion, in keeping with the Court's policy on fee waiver and deferrals.

(6) Upon successful completion of the court-required class, the non-professional fiduciary shall file a certificate of completion with the Probate Department stating the date and time the class was taken as well as the provider of the class.

(7) Upon a showing of good cause, a non-professional fiduciary may request a waiver of the requirements of this Rule. The request must be made by motion, supported by affidavit, and filed within fifteen (15) days of receipt of notice.

(8) The Court may, in its discretion, require a non-professional fiduciary to retake the class.

(9) Failure to timely comply with this Rule may result in removal of the non-professional fiduciary by the Court.

9.095 ATTORNEY FEES AND CORPORATE FIDUCIARY FEES APPROVAL

(1) Attorney fee expenses under ORS 116.183 and 125.095 must be approved by the court.

(a) Such requests must be accompanied by a statement for attorney fees, filed in the form required by UTCR 5.080, showing the number of hours expended, the hourly rate charged, and a designation of title for each person performing work.

(b) In addition to the information required by UTCR 5.080 for a civil action, under this rule the statement also must include a description of normal attorney tasks with hours expended. For extraordinary activities, the statement must also concisely address the following issues to be resolved and the process and time spent on each:

(i) For establishing and funding trusts, a brief narrative must identify complexities involved;

(ii) For tax planning, describe objectives and activities required;

(iii) For tax returns, indicate the number filed and the nature of the returns;

(iv) For tax audits and hearings, describe the issues addressed;

(v) For disclaimers, describe the circumstances and complexities;

(vi) For real estate management problems, include issues regarding compliance with local, state and federal authorities;

(vii) Discuss sales of real property;

(viii) Discuss operation or sale of business interests;

(ix) Discuss management of family-owned corporation or closely held stock;

(x) For contested matters, indicate whether they were of benefit to or in defense of the estate;

(xi) Discuss election of spouse/marital share;

(xii) Discuss disputed creditor's claims;

(xiii) For any other occurrence or issue which contributes to the reasonable costs of administration;

(xiv) The factors listed in ORS 125.098.

(c) If tasks performed appear to be the duties of a personal representative, the Court will question and possibly reduce attorney fee payments for such activities.

(2) Consent by the parties to the attorney fee requests shall not waive the requirements of this rule.

Corporate Fiduciary Fees

(3) Any request for approval of corporate fiduciary fees in addition to the basic percentage fee allowed pursuant to applicable statute, must be accompanied by an affidavit in compliance with 9.095(1)(A), above.

Private Fiduciary Fees

(4) All requests for fiduciary fees (except those from a Personal Representative) shall be supported by an affidavit which details the services provided, the purpose of the services rendered, the results (if applicable), the hourly rate charged by the fiduciary and the reasons that hourly rate is deemed fair and reasonable.



CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL.

DATED: June 10, 2016

CLERK OF THE COURT