

## **Section 9 - Wills**

### **9.10 Delivery to Court and Admitting Wills to Probate**

#### **9.10.1 Will Filed**

When a will is brought to the Court for filing only, it may be submitted with a "Statement as to Filing of Instrument in Writing," Form 10051, if no probate is currently requested. No filing fee is required if the will is merely filed.

#### **9.10.2 Will Presented**

If the will is presented for admission to probate, it must be filed and accompanied by a "Statement as to Death and Presentment of Instrument in Writing for Probate," Form 10050. Neither the filing nor the presentment of the will for probate commences the administration of the estate. Administration is commenced by the filing of an application for letters.

References: Form 10050, Form 10051  
§§ 473.013, 473.043, 473.050, 473.087  
Local Court Rule 72.3

### **9.20 Proof of Instrument**

#### **9.20.1 Self-Proving Instruments**

When a will is self-proving, it will be admitted upon the filing of the will and the "Statement as to Death and Presentment of Instrument in Writing for Probate".

A self-proving codicil which republishes prior wills and codicils proves the prior wills and codicils.

Once the last codicil is proved, all prior wills and codicils which are republished by the last codicil are also proved.

References: §§ 473.065, 474.337

#### **9.20.2 When Will is Not Self-Proving**

When a will is not self-proving, it is the duty of the attorney to take necessary steps to prove the will. See Section 9.20.4, *infra*, regarding commissions.

References: §§ 473.053, 474.320, 474.337

#### **9.20.3 Witness Deceased, Incapacitated or Whereabouts Unknown**

If a witness is deceased, incapacitated or his/her whereabouts unknown, follow the procedures in § 473.053.2. This may be accomplished by requesting a commission to prove signature of witness. See Section 9.20.4, *infra*, regarding commissions.

Reference: § 473.053

#### 9.20.4 Commissions

A commission to a notary or other officer authorized to take oaths to certify the attestation of a witness to a will or codicil will be issued upon request. The attorney will receive the commission via electronic notification. The attorney is responsible for electronically filing the properly executed return of commission with the Court.

References: Form 10451  
§§ 473.057, 473.060 (But see also §§ 473.053, 474.310 - 474.360)

#### 9.20.5 Lost Will, Alleged Revocation

The Court will require proof of will in solemn form where a will or any portion thereof is lost, where there is an issue of dependent relative revocation, where there may be partial revocation by a physical act or any other similar circumstances. Admission in solemn form involves giving notice of hearing to all interested persons, including surviving spouse, unmarried minor children, heirs, devisees and lineal descendants of devisees who were relatives of and predeceased the testator.

#### 9.30 Foreign Wills

In order to admit a foreign will, it is necessary to file copies of the foreign will, the order admitting the instrument to probate and the testimony of the witnesses, if available, all authenticated according to the Act of Congress, and the Court's form, "Statement as to Death and Presentment of Instrument for Probate," or a similar pleading.

NOTE: The copies of the foreign will, the order admitting it to probate and the testimony of the witnesses must be authenticated and not certified copies.

References: §§ 474.370, 474.380  
28 U.S.C.A. § 1738

#### 9.40 Disposition of Personal Property by List

##### 9.40.1 Filing

A list which purports to dispose of tangible personal property through a will is a document of independent significance and is not admitted to probate, but should be filed with the will. However, time limits and grounds for challenging a list are the same as for challenging a will. The Court will construe ambiguous lists in the same manner as provided for will constructions.

##### 9.40.2 Limitations on Disposition by List

Pursuant to Missouri Law, money and intangible personal property may not be devised by

list.

#### 9.40.3 Application for Letters

Where a list is involved, applications for letters must include all persons mentioned on the list.

References: § 474.333

#### 9.50 Pour-Over Wills, Copy of Trust Agreement

The Court will not require the filing of the trust instrument unless it is necessary to determine the identity of the beneficiaries, trustee, or for some other purpose.

#### 9.60 Will Construction

The personal representative or any person interested in the will may file a petition to construe a will. The petition shall set forth the provisions of the will to be construed and shall allege any other facts as may be required to frame the issues. The petition shall be set for hearing and all heirs and devisees who could be affected by any possible reasonable construction shall be given notice thereof. If any heir or devisee is a minor or incapacitated person, the appointment of a guardian ad litem may be required. Since the persons to be notified in each case may vary according to the facts and circumstances of the case, if any doubt exists as to the identity of interested persons, it is suggested that the petitioner confer with the Judge or Commissioner with respect to identification of interested persons for purposes of hearing.

References: §§ 472.020, 473.084, 474.430, 474.520

#### 9.70 Will Contests

##### 9.70.1 Where Filed

Will contest actions shall be filed as a civil case in a Circuit Court Division of general jurisdiction. Each case file will continue to bear the civil case file number assigned to it by the Office of Civil Records.

##### 9.70.2 Designation

A will contest is an adversary civil proceeding. See Section 7.50.

##### 9.70.3 Effect of Filing

The timely filing of a will contest action vacates the order admitting the will to probate so that the personal representative has no power or authority pursuant to the provisions of the will. Thus, a testamentary power to sell property is rendered inoperative. Independent administration is converted to supervised. Upon receipt of notice that a will contest action has been filed, the Court is required to appoint an administrator pendente lite and to fix a bond. *State ex rel. Frick v. Frick*, 777 S. W. 2d 653 (Mo. App.1989). In order to implement this

requirement, the Court will issue an order addressed to the devisees of the will and to any other persons named as parties in the will contest action to show cause why the named executor of the will should not be appointed administrator pendente lite under bond. The issue to be determined at the hearing on the order to show cause is whether or not the interest of the named personal representative is sufficiently adverse to the will contest plaintiff(s) to warrant the appointment of a disinterested third person as administrator pendente lite.

References: §§ 473.083, 473.137

#### 9.70.4 Authority of Fiduciary

##### 9.70.4(a) Personal Representative's Authority

*Frick v. Frick* makes it clear that the personal representative's authority is suspended between the time the will contest action is filed and the time the administrator pendente lite is appointed. If an emergency arises pending a hearing on the show cause order referred to in § 9.70.3, *supra*, the personal representative could petition the Court to be appointed administrator ad litem with authority to perform specified acts in the interest of the estate. Since the case mandates that an administrator pendente lite serve with bond, the Court will require the administrator ad litem to file a bond.

##### 9.70.4(b) Administrator Pendente Lite's Authority

Irrespective of whether or not the Court appoints the personal representative as administrator pendente lite or appoints a disinterested person, the authority of the administrator pendente lite is that of a supervised personal representative of an intestate estate.

If a disinterested third person is appointed administrator pendente lite, it will be the duty of the former personal representative to file final settlement of his/her administration. If the personal representative has not filed an inventory or taken charge of any assets a final settlement may not be necessary. It is the duty of the administrator pendente lite to assure that the former personal representative administered the estate properly and he/she should file objections to any transaction perceived by him/her to be improper.

Upon the conclusion of the will contest action, if the persons then interested in the administration of the estate do not object, the administrator pendente lite may complete the administration of the estate in accordance with the judgment entered in the will contest action. Alternatively, the former personal representative who was suspended upon the appointment of the administrator pendente lite may be reinstated or upon motion of an interested person and the filing of an application for letters, letters may issue to some other suitable person.

References: § 473.137

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