

SML:2/14/2005

Probate Procedures and Practice Tips

1. Informal Probate procedures are covered under Ch. 865 of the WI Statutes. These cases are assigned to the Probate Registrar and are filed in the Register in Probate Office. We require the filing of the following forms:

- Application for Informal Administration PR-1801 (10/03)
- *Notice to Interested Persons and Limiting Time for Filing Claims
PR-1805 (10/00)
- OR**
- *Notice to Creditors PR-1804 (06/00)
- *Waiver and Consent PR-1803 (10/00)

- Proof of Heirship PR-1806 (10/00)
- Consent to Serve PR-1807 (07/01)
- Statement of Informal Administration PR-1808 (05/02)
- Domiciliary Letters PR-1810 (10/00)
- Inventory PR-1811 (10/03)
- Affidavit of Mailing PR-1817 (10/00)
- Final Account PR-1814 (12/04)
- Estate Receipt PR-1815 (07/01)
- Personal Representative's Statement to Close Estate PR-1816 (05/02)

2. Formal Probate procedures are covered under Ch. 851 - 879 of the WI Statutes. These are assigned to the probate judge and are filed in the Register in Probate Office. We require the filing of the following forms:

a. Formal Probate (Formal Proceeding - Judge):

- Petition for Administration PR-1901 (10/00)
- *Order Setting Time to Hear Petition for Administration and Heirship and Notice
to Creditors PR-1903 (12/01)
- OR**
- *Order Limiting Time for Filing Claims and Determination of Heirship
PR-1904 (10/00)
- *Waiver, Consent and Approval PR-1902 (05/02)

- Proof of Heirship PR-1806 (10/00) To be sworn before a court official
- Consent to Serve PR-1807 (07/01)
- Order for Formal Administration PR-1905 (12/04)
- Domiciliary Letters PR-1906 (10/00)
- Inventory PR-1811 (10/03)

- Affidavit of Mailing PR-1817 (10/00)
- Judgment on Claims PR-1909 (07/01)
- Petition for Approval of Final Account and Final Judgment PR-1910 (05/02)

- *Order and Notice for Hearing Final Account and Final Judgment
PR-1911 (12/01)

OR

- *Waiver, Consent and Approval PR-1902 (05/02)

- Final Account PR-1814 (12/04)

- Final Judgment PR-1912 (10/00)
- Abridgment of Final Judgment PR-1913 (10/00)
- Proof of Recording PR-1914 (10/00)
- Estate Receipt PR-1815 (07/01)
- Order of Discharge of Personal Representative PR-1915 (10/00)

b. Summary Settlement (Formal Proceeding - Judge):

- Summary Settlement Petition PR-1835 (10/03)
- Proof of Heirship PR-1806 (10/00) To be sworn before a court official

- *Summary Settlement - Order for Hearing and Notice PR-1836 (06/00)

OR

- *Waiver and Consent PR-1846 (05/02)

- Summary Settlement - Findings and Order PR-1837 (06/00)
- Estate Receipt PR-1815 (07/01)

c. Summary Assignment (Formal Proceeding - Judge):

- Summary Assignment - Petition PR-1840 (12/04)
- Summary Assignment - Affidavit PR-1841 (06/00)
- Proof of Heirship PR-1806 (10/00) To be sworn before a court official

- *Summary Assignment - Order for Hearing and Notice PR-1843 (10/00)

OR

- *Summary Assignment - Notice to Creditors PR-1842 (12/04)
- *Waiver and Consent PR-1846 (05/02)

- Proof of Will PR-1845 (10/00)
- Summary Assignment - Findings and Order PR-1844 (10/00)
- Estate Receipt PR-1815 (07/01)

d. Special Administration (Formal Proceeding - Judge)

- Special Administration - Petition PR-1850 (10/00)
- *Special Administration - Order Setting Time to Hear Petition PR-1851 (10/00)
- OR**
- *Waiver and Consent PR-1846 (05/02)
- Proof of Heirship PR-1806 (10/00) To be sworn before a court official
- Consent to Serve PR-1807 (07/01)
- Special Administration - Order Appointing Special Administrator PR-1852 (10/00)
- Letters of Special Administration PR-1853 (10/00)
- Special Administration - Petition for Discharge PR-1854 (10/00)
- Estate Receipt PR-1815 (07/01)
- Special Administration - Order of Discharge PR-1855 (10/00)

If the petitioner feels that obtaining waivers and consents or holding a hearing would create an unnecessary burden, he/she may, in writing, request the court to waive these requirements. The case will then go to the probate judge for a decision on the matter.

Only specific powers will be granted to the special administrator unless a hearing is held before a judge or court commissioner. At least the minimum fee of \$20 will be collected at the time of filing the petition. Additional fees may be collected at the time of filing the Form PR-1854 if assets are larger than those stated in the initial paperwork.

Once letters are issued, the probate office will set the case for a review in six months as to its status.

3. Transfer by Affidavit is covered under Ch. 867.03 and 867.035 of the WI Statutes. It is not to be filed with the Register in Probate at all.

- Transfer by Affidavit (\$20,000 and under) PR-1831 (10/03)
- Instructions with form explain where the form is to be filed or presented.

4. Other petitions to the court are filed in the Register in Probate Office. We require the filing of the following forms:

- Petition stating requested action
- Demand for Formal Proceedings PR-1813 (06/00) if petition relates to an informal proceeding
- *Notice of Hearing GF-101 (05/01)
- OR**
- *Waiver and Consent PR-1846 (05/02)

-Proposed Order

5. Procedure to obtain a waiver from one person who represents multiple interests in an estate proceeding:

Where one person is interested in a probate proceeding in several capacities (an example would be a person who is a beneficiary under the will, nominated personal representative and nominated trustee under the will) he/she may sign one waiver and consent to cover all those capacities, if each capacity is indicated under his/her signature on the form. For the example given, the waiver and consent form would read something like this:

John Doe, individually, as nominated personal representative and nominated trustee

Otherwise, a separate waiver and consent should be signed by the person for each capacity that he/she is waiving the hearing and consenting to the granting of the petition.

6. Procedure to schedule a hearing:

The Register in Probate and two deputies all independently have the authority to schedule all probate matters for hearing before the Probate Registrar, court commissioners and probate judges. The appropriate state model form must be presented to the office before a date will be assigned to a matter. If no specific model form exists for the matter, Form GF-101 should be used to obtain a hearing date.

No hearing dates will be given over the telephone. Dates will be given within 24 hours whenever possible, but where a judge's calendar is full, a short delay may occur while probate consults with the judge's calendar clerk for alternate dates for the probate proceeding.

When requesting a hearing, PLEASE indicate the amount of time required for the hearing to assist the probate office in setting an appropriate date and time for the hearing.

7. Procedure to convert probate proceeding opened on notice to one opened on waiver:

Where a petitioner has opened a probate proceeding and has requested a hearing because waivers from all interested persons have not yet been received, if all the waivers from interested persons are received before the hearing date, the petitioner can request the hearing be cancelled. He/she can then proceed with the probate based on the signed waivers from all interested persons. To do this, the petitioner needs to advise all the interested parties that the hearing is being cancelled so that those parties do not take time off to attend a cancelled hearing. Notice can be accomplished by verbal or written means. The petitioner should confirm that the interested parties were informed of the

hearing cancellation when they contact the Register in Probate to cancel the hearing and to proceed with the matter on waiver.

A suggestion for attorneys: advise the parties in a cover letter that returning the waiver and consent will cancel the hearing and permit the proceeding to go forward without the hearing.

8. Procedure to clarify unclear or confusing information in a will or in a petition:

If a will or petition contains unclear or confusing information, the probate office will request an affidavit from the petitioner or other interested person to clarify the information. The will and/or initial petition will be filed along with all initial paperwork. Petitions should always use the exact name shown in a will or codicil and then clearly show any changes to that name. The probate office reserves the right to withhold the issuance of letters until the affidavit clarifying unclear or confusing information has been filed with the court.

Examples of unclear information are:

- a. Jane Doe listed on the petition; no heir or beneficiary has that name so it is unclear why Jane is listed as an interested party to the proceeding.
- b. Will provision says, "I give \$1,000 to all my grandchildren." An affidavit listing all the names of all grandchildren of the decedent on the date of his/her death will be required.
- c. Jane Smith is listed on the petition as daughter of decedent; proof of heirship shows Jane Jones as daughter of decedent. The petition needs to explain why there is a difference in the name of the daughter if Jane Smith and Jane Jones are indeed the same person. Often the reason for the change is a marriage or a divorce. A notation of an "also known as" (aka) "now known as" (nka) or "formerly known as" (fka) on the petition will address this problem.

9. Procedure for executing a Proof of Heirship:

Per Ch. 863.23 of WI Statutes, "In every administration of an estate in which notice to creditors is required, except in proceedings under ch. 865, the persons who are the heirs of the decedent shall be determined by the court after hearing."

For informal administration, we require proof of heirship, sworn before a notary, to be filed in every administration.

For formal administration, special administration, summary settlement, and summary assignment, proof of heirship must be sworn before a court official at a hearing, or if the hearing is waived, before a court official in the probate office.

NOTE: The state model form, PR-1806 specifically indicates who can witness the statement.

10. Procedure for executing a Proof of Will:

A sworn and signed proof of will is required in all Summary Assignments under Ch. 867.02(1)(g) of the WI Statutes. A will, executed under the provisions of ch. 853.03 is not automatically self-proving unless the original will contains a self-proving statement that is in substantially the same language and form as shown in ch. 853.04(1) or (2) of the WI Statutes. If the language and attestations are not substantially the same, the separate proof of will (state model form PR-1845) is required to be sworn before a court official at the probate office or at a hearing. NOTE: the approved form for a self-proving will requires the signature of the testator and 2 witnesses AND notarization of all three signatures.

11. Procedure to handle inventories where the front page totals do not match the detailed schedules attached:

Probate staff will call the personal representative/attorney for the estate to determine which number is to be used for the inventory total - either the front page totals or the detail totals. The personal representative can also have the inventory returned to him/her for review and correction. Significant discrepancies between the front page totals and detailed page totals will require correction.

12. Procedure regarding estate receipts:

Estate receipts should state the dollar amount received by the beneficiary /heir from the estate, using the estate's basis. If possible, the probate office would also like to see a description of the asset received if not cash or check.

13. Procedure where a will leaves a small cash bequest to a beneficiary or heir who refuses to sign a receipt:

Where the bequest has been received and the beneficiary or heir refuses to sign a receipt, the personal representative can send proof of the receipt of the funds (cancelled check) to the court with a letter, file a Demand for Formal Proceedings (Form PR-1813) if the case is not already under formal administration, and file a proposed order to allow the filing of the cancelled check in lieu of the signed receipt. A copy of the letter should be sent to the beneficiary/heir under the 5-day rule as described in Waukesha County Probate Court Local Rules. If the beneficiary/heir does not contest the order within the designated time frame, the court will sign the order and accept the cancelled check in lieu of the signed receipt.

For funds not accepted by a beneficiary/heir, the personal representative will need to escheat those funds to the state per Wisconsin Statutes.

For personal property, the personal representative should petition the court for permission to sell the asset or distribute that asset in some alternate manner.

14. Procedure to request an extension of time:

a. Informal Administration, Formal Administration, Special Administration: Complete state model form PR-1833: Petition for Extension of Time and PR-1834: Order for Extension of Time and submit to the Register in Probate Office for review.

b. Summary Settlement, Summary Assignment, Other Estate or Trust Matters, Guardianships, Civil Commitments, Adult Adoptions: Prepare a letter detailing reason for the need to extend time and submit it to the Register in Probate Office for review.

For all requests, submit paperwork to the Register in Probate Office at least 48 hours before the deadline. If a judge is scheduled to hear the matter, the request will be forwarded to him/her for review and a decision on the request. If a court commissioner or probate registrar is scheduled to hear the matter, the request will be forwarded to the probate registrar or deputies for review and a decision on the request.

15. Procedure to obtain domiciliary letters after the estate has closed.

For informal estates, domiciliary letters can be obtained within 6 months of the date of filing of the Personal Representative's Statement to Close Estate. The person requesting the letters should provide the Register in Probate Office with information regarding why letters are needed after the close of the estate so that the office can determine if any other documents will need to be filed in the estate to complete the proceeding. An example would be for a newly discovered asset, which would require the filing of an amended final account, receipts and an amended Personal Representative's Statement to Close Estate.

For formal estates or informal estates that have been closed over 6 months, a special administration should be commenced to handle the outstanding matter.

16. Procedure regarding overdue notices:

Specific due dates are set by statute or local rules for the filing of inventories and the completion of estates. The probate office will send out notices regarding delinquencies on the day after the due date for the specific action.

17. Useful Websites:

a. For local rules for counties in Wisconsin;

Go to: wisbar.org
-Legal research
-Wisconsin
-Wisconsin courts

- Wisconsin circuit courts
- Circuit court rules by county

Or: www.wisbar.org/AM/Template.cfm?Section=Circuit_court_rules2

b. For policies and procedures for Waukesha County Probate Court:

Go to: <http://circuitcourts.waukeshacounty.gov>
-Probate Court

Or: <http://circuitcourts.waukeshacounty.gov/default.asp?pcontent=probate>

c. For current state model forms:

Go to: <http://wicourts.gov>
-forms
-Circuit Court

Or: <http://www.wicourts.gov/forms1/index.htm>

d. For case information:

Go to: <http://wicourts.gov>
-case search
-Circuit Courts

Or: <http://wcca.wicourts.gov/index.xsl>

e. For GAL - Adult CLE credit information:

Go to: <http://wicourts.gov>
-court services
-for attorneys
-Continuing legal education

Or: <http://wicourts.gov/services/attorney/edu.htm>