

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ORDER 06-01

(Modification of L & T and Probate Rules)

WHEREAS, pursuant to D.C. Code § 11-946 the Board of Judges of the Superior Court approved of certain modifications to the Superior Court Rules of Procedure for the Landlord and Tenant Branch and the Superior Court Rules of the Probate Division at its monthly meeting on January 11, 2006; and

WHEREAS, the modifications do not modify the Federal Rules of Civil Procedure;

NOW, THEREFORE, it is hereby,

ORDERED, that the Superior Court Rules of Procedure for the Landlord and Tenant Branch 4 and 15 are amended as set forth below; and it is further

ORDERED that Superior Court Rule of the Probate Division 403 is amended as set forth below; and it is further

ORDERED that Superior Court Rule of the Probate Division 7.1 is promulgated as set forth below; and it is further

ORDERED that the above enumerated rules shall take effect February 20, 2006 and govern all proceedings thereafter commenced and insofar is just and practicable, all pending proceedings.

* * *

SCR LT 4

PROCESS

Service of process shall be made in compliance with D.C. Code § 16-1502 (1981) by any competent person not less than 18 years of age who is not a party to the suit.

If service of process is made by posting pursuant to D.C. Code § 16-1502 (1981), the plaintiff or the plaintiff's agent shall send to the defendant, by first class mail, a copy of the summons and complaint at the address named in the complaint within 3 calendar days of the date of the posting. Proof of the mailing of such notice shall be on a form prescribed by the Court and certified by an attorney or sworn to by a special process server.

The return of service of the complaint shall be made under oath and shall be in the format set forth in SCR-LT Form 3 which is incorporated herein by reference. Proof of

compliance with the mailing of the summons to the defendant within 3 calendar days of posting under D.C. Code § 16-1502 (1981) may be made on SCR-LT Form 3. Costs in excess of ~~\$6.00~~ \$8.50 for service by a special process server, costs in excess of \$2.00 for notarization of the complaint and costs in excess of the actual costs for first-class postage shall be allowed only upon the Court's find of good cause therefore.

SCR LT 15

FEEES AND COSTS

(a) *Fees.* Fees shall be in accordance with the schedule set out in Rule of Civil Procedure 202. (b) *Costs.* Upon entry of judgment, the prevailing party shall be awarded as a matter of course all taxable costs in the action including a maximum fee of ~~\$6.00~~ \$8.50 to cover the costs incurred for service by a special process server. Notwithstanding Rule of Civil Procedure 54(d), fees for any writ of restitution, including alias writs, shall be awarded as cost without further action by the Court. Costs shall be taxed by the Clerk upon the filing of the writ of restitution pursuant to Landlord and Tenant Rule 16(a) and payment of the required fees. The Clerk shall enter on the case jacket the costs so taxed. Other costs may, in the Court's discretion, be awarded to the prevailing party or any other party, as appropriate, and costs may be awarded so as to discourage the filing of frivolous, vexatious, or premature actions or defenses.

SCR PROBATE 7.1

SOLELY OWNED SAFE DEPOSIT BOX

(a) If a decedent owned a safe deposit box titled in the decedent's sole name, and there is reason to believe that the box contains the decedent's will, a petition may be filed by an interested person for the appointment of a special administrator pursuant to D.C. Code § 20-531 to access the box to obtain the will and deliver it to the Court in accordance with this Rule.

(b) A special administrator appointed hereunder shall have only the authority to enter the safe deposit box(es) enumerated in the petition and deliver any testamentary instruments therein found to the Court and shall have no other authority whatsoever.

(c) No bond shall be required.

(d) The petitioner may seek the petitioner's appointment or that of a member of the bar.

(e) The Court may require a representative of the Register of Wills to accompany the special administrator to the opening of the safe deposit box.

(f) No prior Notice to interested persons need be given before the Petition For Appointment of a Special Administrator to Open a Safe Deposit Box may be granted.

(g) The Petition shall not contain a Certificate of Service.

(h) The Order, along with a copy of the Petition, shall be mailed to the interested persons.

(i) If a Will is not found, the Special Administrator shall file a Report of the actions taken to seek the Will.

(j) The appointment of the Special Administrator shall expire at the earlier of the filing of the Will or a Report of the actions taken to seek the Will or thirty days from the entry of the order of appointment.

(k) The Petition for the Appointment of a Special Administrator to Open A Safe Deposit Box shall be in the following format.

PETITION FOR APPOINTMENT OF A SPECIAL ADMINISTRATOR TO OPEN A
SAFE DEPOSIT BOX

Name of Decedent _____

Address of Decedent _____

Date of Death _____

Name of Petitioner _____

Address of Petitioner _____

Does the Petitioner have a copy of the Will, the original of which is sought?

Is the Petitioner named in this copy of the Will? ___and in what capacity? _____

Relationship of Petitioner to Decedent _____

Location of safe deposit box(es) in the District of Columbia sought to be opened _____

Does the Petitioner know of anyone holding a higher priority for appointment pursuant to D.C. Code § 20-303? _____ If so, what actions has Petitioner taken to contact such person(s)? _____

Has or have any such person or persons declined to seek entry into the safe deposit box(es)? _____

Does the Petitioner seek to have a representative from the Register of Wills accompany the special administrator to the opening of the safe deposit box(es)? _____

Does the Petitioner seek to have anyone else accompany the Petitioner to the opening of the safe deposit box(es)? _____

List of Interested Persons

<u>Name</u>	<u>Address</u>	<u>Relationship</u>
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WHEREFORE, Petitioner prays that the Court appoint _____Special Administrator to open the safe deposit box(es)

Petitioner

I do solemnly declare and affirm under penalty of law that the contents of the foregoing document are true and correct to the best of my knowledge, information and belief.

Petitioner

ORDER

Upon consideration of the Petition For Appointment of a Special Administrator To Open A Safe Deposit Box, filed by_____ that seeks the appointment of_____as Special Administrator, and it appearing to the Court that

[] no one holds a higher priority for appointment than the Petitioner, or

[] while other person(s) hold(s) a higher priority for appointment than Petitioner, such persons have not come forward to seek appointment and that good cause exists to vary the priority for appointment, it is by the Court this_____day of_____

ORDERED, That_____be appointment Special Administrator To Open a Safe Deposit Box located at_____

and

[] not to be accompanied by a representative from the Office of the Register of Wills, or

[] the Special Administrator shall be accompanied by a representative from the Office of the Register of Wills when opening the safe deposit box.

[] the Special Administrator shall be accompanied by _____when opening the safe deposit box.

and be it further

ORDERED, That the Special Administrator shall have no other authority than that granted herein and shall have no authority to receive any assets of the decedent and hence shall not be required to post bond, and be it further

[] ORDERED, That the Special Administrator shall forthwith deliver any testamentary documents(s) found in the safe deposit box to the Office of the Register of Wills, or

[] ORDERED, That the representative from the Office of the Register of Wills shall deliver any testamentary document(s) found in the safe deposit box to the Office of the Register of Wills, and be it further

ORDERED, That upon completion of the opening of the safe deposit box(es) and delivery of any testamentary documents to the Office of the Register of Wills, the appointment of the Special Administrator shall thereupon terminate.

Judge

Copies to: Petitioner and Interested Persons

COMMENT

The Court has the discretion to appoint the Petitioner or a member of the bar as Special Administrator. If the Petitioner is not the named Personal Representative or a residuary legatee in a copy of the Will exhibited with the Petition, the Court may appoint a member of the bar.

SCR PROBATE 403

NOTICE

(a) Standard Probate

(1) Form of Notice. The notice required for standard probate pursuant to D.C. Code § 20-323(b) shall be in the following form:

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
PROBATE DIVISION**

In re: Estate of

_____ Administration No. _____
Deceased.

Last Known Address of Decedent: _____

Date of Death of Decedent: _____

Notice is hereby given that a petition has been filed in this Court by _____ for standard probate, including the appointment of one or more personal representatives. Unless a responsive pleading in the form of a complaint or an objection in accordance with ~~Superior Court~~ Probate Division Rule 407 is filed in this Court within 30 days from the date of first publication of this notice, the Court may take the action herein set forth.

(Delete all which do not apply.)

? admit to probate the will dated _____ exhibited with the petition upon proof satisfactory to the Court of due execution by affidavit of witnesses or otherwise;

? order witnesses to the alleged will dated _____ to appear and give testimony regarding its execution;

? order _____ who is alleged to have custody of the will dated _____ to deliver it to the Court;

? order any interested person to show cause why the provisions of the lost or destroyed will dated _____ should not be admitted to probate as expressed in the petition;

? in the absence of a will or proof satisfactory to the Court of due execution, enter an order determining that the decedent died intestate;

? appoint an unsupervised personal representative.

? appoint a supervised personal representative.

? (other) _____

Date of first publication: _____

Name of newspapers: _____

Register of Wills
Clerk of the Probate Division

(2) Filing of Notice. Any person entitled to request standard probate pursuant to D.C. Code §§ 20-321, 322 and 331 shall present to the Register of Wills three copies of the form described in paragraph (a)(1) above. The Register of Wills shall forthwith forward copies thereafter to the designated newspapers in accordance with D.C. Code § 20-323.

(3) Securing the Witnesses. A Petition for Probate which seeks an order directing witnesses to an alleged will to appear and give testimony regarding its execution shall include, or be accompanied by, a memorandum providing the names and addresses of the witnesses and a statement regarding the efforts made to secure affidavits from the witnesses. A copy of the Petition for Probate, the memorandum and Notice of Standard Probate shall be served on the witnesses in accordance with paragraph (a)(7) of this rule.

(4) Securing Custody of the Will. A Petition for Probate which seeks an order requiring any person alleged to have custody of a purported will to deliver it to the court, shall include, or be accompanied by, a memorandum providing the name and address of the person alleged to have custody of the purported will and the efforts made to induce the person to file it with the Register of Wills or to deliver it to the nominated personal representative. A copy of the Petition for Probate, the memorandum and Notice of Standard

Probate shall be served on the person alleged to be in possession of the purported will in accordance with paragraph (a)(7) of this rule.

(5) Admission of Lost or Destroyed Will. A Petition for Probate which seeks an order directing any interested person to show cause why the provisions of a copy of any lost or destroyed will should not be admitted to probate shall include, or be accompanied by, a memorandum containing a concise statement of facts, supported by witness affidavits, that establishes:

(A) That the will was duly executed;

(B) The chain of custody of the original will and whether and why it should or should not be presumed to be revoked;

(C) If the will contains unwitnessed cross outs or interlineations, why the will should not be presumed revoked by physical destruction;

(D) If the will is incomplete or there appear to be missing pages, why the will should not be presumed revoked; and

(E) Any other facts that would show why the will should not be presumed revoked.

The memorandum shall establish the facts sufficient to support the admission of the will to probate. The Petition for Probate, memorandum, accompanying documents and Notice of Standard Probate shall be served on the interested persons in accordance with paragraph (a)(7) of this rule.

(6) Finding Intestacy after a Will has been Filed. A Petition for Probate which seeks a finding of intestacy when there is on file a document purporting to be a will of the decedent shall be accompanied by a memorandum containing a concise statement of facts, supported by appropriate witness affidavits, that establishes:

(A) That the will was not duly executed;

(B) That no original will can be found and only a copy was found in the possession of the decedent;

(C) That the markings on the will establish that the will was revoked by destruction; or

(D) Any other facts which establish that the will has been revoked.

The memorandum shall also establish that the facts support the denial of the will to probate and a finding of intestacy. A copy of the Petition for Probate, memorandum, accompanying documents, and Notice of Standard Probate shall be served in accordance with paragraph (a)(7) of this rule.

(7) (3) Mailing of Notice. Within 10 days from the date of first publication, the person seeking standard probate shall mail a copy of the notice and any other documents required by this rule to all interested persons, the witnesses, if applicable, or the person alleged to be in possession of the purported will, if applicable, by certified or registered mail, return receipt requested, with delivery restricted to the addressee only.

(8) (4) Proof of Publication and Service. The person seeking standard probate or such person's representative shall file proofs of publication and a verified statement evidencing that a copy of the notice was timely mailed to all interested persons, the witnesses, if applicable, or the person alleged to be in possession of the purported will, if applicable. If, after diligent effort, the person seeking standard probate has been unable to ascertain the address of any interested person, that fact shall be made known in the verified statement filed. If unknown heirs at law are interested persons, the current status of their identity and/or whereabouts must be alleged in the verified statement. The Court may schedule a hearing on the petition upon a verified statement by the petitioner that the persons required to have been served by this rule have been served in accordance with this rule.

(9) (5) Actual Notice. In lieu of the notice prescribed by this Rule, proof of actual notice or personal service will suffice.

**United States Attorney's Office
Office of Attorney General
Daily Washington Law Reporter**