

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ORDER

By action of the Board of Judges of this Court and pursuant to D.C. Code § 11-946, it is this 14th day of September, 2004:

ORDERED that Superior Court Rules of the Probate Division 212 and 213 are promulgated as set forth below; and it is

FURTHER ORDERED that Superior Court Rules of the Probate Division 305, 410, 425(c) and 426 are amended as set forth below; and it is

FURTHER ORDERED that Superior Court Criminal Rule of Procedure 120 is promulgated as set forth below; and it is

FURTHER ORDERED that paragraph (c) (procedures for mental examination) of Superior Court Rule of Criminal Procedure 109 is deleted; and it is

FURTHER ORDERED that the above-enumerated rules shall take effect October 18, 2004 and govern all proceedings hereinafter commenced and, insofar is just and practicable, all pending proceedings.

SCR PROBATE 212

NOTICE OF EXISTENCE OF REVOCABLE TRUST

(a) Publication of Notice. The Notice which may be published by the trustee of a trust of which a decedent was the settlor, pursuant to D.C. Code §§ 19-1305.05(d) and 19-1306.04(a)(3), shall be in the following form. The word trustee includes trustees, and where there are more than two trustees, includes the majority of trustees, pursuant to D.C. Code § 19-1307.03(a):

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

Trust No. _____

Name of Deceased Settlor

NOTICE OF EXISTENCE OF REVOCABLE TRUST

_____ (name and address of deceased settlor) created a revocable trust on _____ which remained in existence on the date of his/her death on _____. _____ and _____ whose address(es) is/are _____ is/are all the currently acting trustee(s), hereinafter the Trustee. Communications to the Trust should be mailed or directed to the following name _____ and address: _____

The Trust is subject to claims of the deceased settlor's creditors, costs of administration of the settlor's estate, the expenses of the deceased settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the deceased settlor's residuary probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

Claims of the deceased settlor's creditors are barred as against the Trustee and the trust property unless presented to the Trustee at the address provided herein on or before _____.

(6 months after the date of the first publication of this notice.)

An action to contest the validity of this trust must be commenced by the *earliest* of

(1) _____,

(One year from date of death of deceased settlor)

(2) _____, or

(6 months from the date of first publication of this notice)

(3) ninety days after the Trustee sends the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the Trustee's name and address, and of the time allowed for commencing a proceeding.

The Trustee may proceed to distribute the trust property in accordance with the terms of the trust before the expiration of the time within which an action must be commenced unless the Trustee knows of a pending judicial proceeding contesting the validity of the trust or the Trustee has received notice from a potential contestant who thereafter commences a judicial proceeding within sixty days after notification.

This Notice must be mailed postmarked within 15 days of its first publication to each heir and qualified beneficiary of the trust and any other person who would be an interested person within the meaning of D.C. Code § 20-101(d).

Date of First Publication:

Signature of Trustee

Name of newspapers

TRUE TEST COPY

(b) Submission of Notice to Register of Wills. The Notice which may be published pursuant to D.C. Code §§ 19-1305.05(d) and 19-1306.04(a)(3) as set forth in paragraph (a) of this Rule, shall be submitted, with the original and three copies, to the Register of Wills completed in all respects

except as to the date of first publication. The Register of Wills shall fix the date of first publication and provide copies of the Notice to the designated newspapers or periodicals.

(c) Contemporaneous with the filing of the notice prescribed in paragraph (a) of this Rule, the trustee shall file a Certification of Trust, as prescribed by D.C. Code § 19-1310.13.

(d) Within 15 days of the date of first publication of the Notice of Existence of Revocable Trust the trustee shall cause to be mailed, by first class mail, a copy of the Notice to each qualified beneficiary of the trust, heir of the decedent and to all creditors whose identities are known or whose identities are ascertainable by reasonably diligent effort.

(e) Within 90 days of the date of first publication of the Notice the trustee may file with the Register of Wills proofs of publication and a certification specifying the date of mailing of the Notice and the names and addresses of the persons to whom the Notice was mailed. The trustee shall include a statement including the names or description of each qualified beneficiary of the trust, heir of the decedent and all creditors to whom no Notice has been sent. The certification of Notice shall be in the following form:

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

Trust No. _____

Name of Deceased Settlor

**VERIFICATION AND CERTIFICATE OF NOTICE OF EXISTENCE OF REVOCABLE
TRUST**

I do solemnly declare and affirm that I have mailed or caused to be mailed a copy of the Notice of Existence of Revocable Trust as permitted by D.C. Code §§ 19-1305.05(d) and 19-1306.04(a)(3) on the ____ day of _____ 200_, to the following persons:

| Name | Address | Qualified Beneficiary of the Trust /Heir/Creditor |
|------|---------|--|
|------|---------|--|

(Attach list of names and addresses of all qualified beneficiaries of the trust, heirs of the decedent and creditors.)

Statement of Non-mailing

I do further solemnly declare and affirm that no Notice has been sent to the following qualified beneficiaries of the trust, heirs of the deceased settlor and to creditors whose identities or locations are not known or ascertainable by reasonably diligent effort:

I do further solemnly declare and affirm that I have previously filed or file herewith proofs of publication of the Notice of Existence of Revocable Trust as permitted by D.C. Code §§ 19-1305.05(d) and 19-1306.04(a)(3).

Date: _____

Trustee or Attorney for Trustee

SCR PROBATE 213

THE ASSERTION OF CLAIMS AGAINST A REVOCABLE TRUST

(a) The assertion of the claim may be made on the following form:

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

Estate of
Trust of

Adm. No.
TR. No.

CLAIM AGAINST DECEDENT’S ESTATE and/or REVOCABLE TRUST

The claimant named below certifies that (check the applicable box[es])

- The claimant makes claim for _____.
- The claimant makes claim for costs of administration of the settlor decedent’s estate in the amount of _____ for _____.
- The claimant makes claim for the expenses of the settlor decedent’s funeral and disposal of remains in the amount of _____.
- The claimant makes claim for the homestead allowance, or a portion thereof in the amount of _____, as provided by D.C. Code § 19-101.02.
- The claimant makes claim for the exempt property allowance, or a portion thereof in the amount of _____, as provided by D.C. Code § 19-101.03.
- The claimant makes claim for the family allowance, or a portion thereof in the amount of _____, as provided by D. C. Code § 19-101.04.

On behalf of the claimant named below, 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 and belief.

Decedent died on _____ and was a resident of _____.

Name of Claimant

Signature of claimant or person
authorized to make verification on
behalf of Claimant

Address

All claims presented to the Register of Wills must be accompanied by check or money order in the amount of \$ 5.00.

I hereby certify that I have delivered or mailed, return receipt requested, a copy hereof to the personal representative of the estate of _____ and/or _____ trustee of the revocable trust of _____ this _____ day of _____, 200__.

Claimant

For Register of Wills Use Only
Date Filed:

By _____
Deputy Register of Wills

(b) The Notice of Action on Claim may be in the following form which should be delivered to the claimant and a copy filed with the Register of Wills:

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

Trust of

Settlor decedent

Tr. No. _____

Notice of Action Taken on Claim

To: _____
Claimant

You are hereby notified that your claim in the amount of \$ _____ for _____ against the above-entitled trust is: (check appropriate box)

- Allowed in the stated amount.
- Allowed in the amount of \$ _____ and disallowed as to the balance.
- Disallowed.

The Trustee does not know whether the residuary probate estate is insufficient to pay the claim and therefore the claim is disallowed without prejudice.

Trustee

Date mailed or delivered _____

NOTICE

If your claim has been disallowed in whole or in part, with or without prejudice, the claim will be barred to the extent of its disallowance unless you file a Petition For Payment From Trust not later than 60 days after the mailing of this notice or such shorter period as might be allowed by the applicable statute of limitations.

(c) If the trustee takes no action on the claim, or having allowed the claim fails to pay it within a reasonable time after allowing it, the claimant may file a Petition For Payment From Trust. The failure of the trustee to respond shall in no way suspend the operation of any statute of limitations.

(d) Unless otherwise provided by the terms of the trust, the property of the trust may not be subjected to the reach of the personal representative, or if none by claimants, unless it is required for the purpose of paying the charges set forth in D.C. Code § 19-1305.05(a)(3) and, except where consents have been filed with the court as hereinafter provided, until the personal representative, or if none, the claimant demonstrates the deficiency of the probate residuary estate to pay them.

(e) Upon a proper showing by the personal representative of the settlor's estate, or if none the claimant, that the residuary probate estate is insufficient to meet all or a part of the charges set forth in D.C. Code § 19-1305.05(a)(3) and, that the property of the trust must be acquired to pay all or a part of said charges, the court may order the trustee to pay from the trust to the personal representative, or if none to the claimant, so much as may be necessary to pay all or a part of said charges, provided all persons whose interest in the trust would be affected by the sought payment shall have filed with the court their consents or their representative's consents to the payment.

(f) In the absence of consents the personal representative or claimant may file a Petition For Payment From Trust and for a determination of the insufficiency of the probate residuary estate to honor the claim. If the trustee disputes the validity of the claim, as distinguished from the issue of the adequacy of the residuary estate to pay it, the petitioner may convert the Petition For Payment From Trust into a complaint, provided the petitioner pays the complaint filing fee. The Court then may set a status conference and enter such other orders therein pertaining to interested persons and indispensable parties as are just in accordance with SCR-PD 208.

SCR PROBATE 305

DUTIES OF COUNSEL FOR THE SUBJECT OF AN INTERVENTION PROCEEDING

(a) *Duties of Counsel.* Upon being retained by or appointed to represent the subject of an intervention proceeding, counsel shall:

(1) Ascertain whether the subject of the proceeding has received notice in accordance with D.C. Code §§ 21-2031, 21-2042 or 21-2053, as appropriate. An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence.

(2) File a notice of appearance (Form FD) in accordance with the provisions of SCR-PD 321(d) or 341(c), as appropriate.

(3) Conduct personal interviews with the subject of the proceeding or supervise the conduct of such interviews by another attorney. Unless by virtue of a language barrier or physical incapacity, the services of a translator or communicator are required, all interviews shall be conducted in private.

(4) Determine whether appointment of a guardian ad litem should be sought. If counsel determines that the subject of the proceeding cannot determine his or her own legitimate interests and has no guardian, counsel may apply for appointment of a guardian ad litem.

(5) Explain fully the nature of the proceeding for which the petition was filed and provide all information required pursuant to D.C. Code § 21-2033(b)(2).

(6) Represent the subject at any hearing pursuant to D.C. Code §§ 21-2041(h) or 21-2054(e). To the maximum extent possible the subject of the proceeding shall remain responsible for determining his or her legitimate interest. In cases where a guardian ad litem has been appointed because the subject is unconscious or otherwise wholly incapable of determining his or her interests, even with assistance, counsel shall follow the guardian ad litem's determination of the subject's interests. In all other cases, counsel shall to the maximum extent possible ascertain directly the subject's determination of his or her legitimate interest.

(7) No later than five days prior to the initial hearing/status conference, file on behalf of the subject responsive pleadings to the petition. Responsive pleadings shall include with specificity facts upon which they are based. Responsive pleadings shall be served on petitioner, petitioner's counsel, all parties, those entitled to participate, those who filed an effective request for notice and other interested persons entitled to notice under D.C. Code §§ 21-2042 and 21-2053 by regular mail and shall have a certificate of service.

(8) Communicate with parties or their counsel to determine if a joint stipulation can be reached, or, absent stipulation, file with a responsive pleading the statements required by SCR-PD 321(f)(2).

(9) For any hearing other than the initial status conference, secure and present evidence to the Court concerning whether the petition should be granted and the terms, if any, on which orders should be entered; the nature of powers to be granted, modified or curtailed; and possible conflicts that may arise.

(10) File, as needed to represent the legitimate interests of the subject, petitions or motions pursuant to D.C. Code §§ 21-2044(c), 21-2046, 21-2047(c), 21-2049, 21-2055 and 21-2062. Notice shall be provided to the parties supported by the protected individual's estate in the manner prescribed by D.C. Code §§ 21-2042 and 21-2053.

* * *

SCR PROBATE 410

CLAIMS AGAINST ESTATE

(a) *Petition.* Petitions for order directing payment of claims prescribed by D.C. Code § 20-909(a) shall be in substantially the following format:

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

Estate of _____
Deceased.

Administration No. _____

**PETITION FOR ORDER DIRECTING PAYMENT OF CLAIM
PURSUANT TO D.C. CODE § 20-909(a)**

The undersigned claimant hereby petitions the Court for an order directing payment of a claim against the above-entitled estate.

1. Name of claimant:
2. Address of claimant:
3. Date of mailing or delivery of claim to Register of Wills or personal representative:
4. Amount of claim:
5. Basis of claim (check appropriate lien)
 - _____ Funeral expenses, not exceeding \$1,500.
 - _____ Fiduciary and attorney’s fees, not exceeding \$1,000.
 - _____ Homestead allowance, not exceeding \$15,000.
 - _____ Family allowance, not exceeding ~~\$10,000~~ \$15,000.
 - _____ Exempt property, not exceeding \$10,000.
 - _____ Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent.
 - _____ Rent in arrears for which an attachment might be levied by law.
 - _____ Judgments and decrees of courts in the District of Columbia.
 - _____ Other just claims.
6. The petition is being filed because the claim has not been rejected but has not been paid within 8 months from the date of first publication of the Notice of Appointment, Notice to Creditors, and Notice to Unknown Heirs.
7. The time for presentation of claims has expired.

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

Claimant

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Order Directing Payment of Claim Against Estate Pursuant to D.C. Code § 20-909(a) was this ___ day of _____, 19 2____, mailed by class mail, postage prepaid, (or delivered) to

(personal representative or attorney for the personal representative)

(Signature of Claimant or Claimant's Attorney)

SCR PROBATE 425(c)

COURT COSTS

(The following miscellaneous charges should be added)

| | |
|--|--------------|
| <u>For filing a Notice of Existence of Revocable Trust</u> | <u>\$ 25</u> |
| <u>For filing a Petition For Payment From Trust</u> | <u>\$ 20</u> |
| <u>For filing a Claim against a trust</u> | <u>\$ 5</u> |

COMMENT: The probate estate administration proceeding to which reference is made in SCR-PD 213(b) and 213(d)(1) does not include a Foreign Estate proceeding.

SCR PROBATE 426

CERTIFICATE OF COMPLETION

A Certificate of Completion as provided in D.C. Code §20-735, if filed by the personal representative, shall be in substantially the following format and signed by the personal representative(s).

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

Estate of: _____ Administration No. _____

Deceased.

CERTIFICATE OF COMPLETION

(I)(We), _____, personal representative(s) of the estate of the above captioned decedent's estate, do hereby certify that:

- 1. The time for the presentation of creditors' claims has expired;
2. All interested persons have been sent a copy of the final account and a notice (a copy of which notice is attached hereto) of each one's right to object within 60 days after such account was sent, and that all claims of that interested person against the personal representative shall be barred unless such an objection is made;
3. Either each interested person has consented in writing to the account as stated, or there was no written objection within the 60-day period described above;
4. Distribution has been made in accordance with such account;
5. All known claims of creditors which are not barred have been fully satisfied or otherwise settled; or if any claim remains undischarged, attach a description of each such claim (including the name and address of the creditor, and the nature and amount of the claim), and indicate for each that either:

- (a) The personal representative has distributed the estate subject to possible liability on the part of the distributees with the agreement of those distributees; or
(b) Other arrangements have been made to accommodate all such outstanding liabilities, as set forth in the following detailed explanation:

6. All statutory allowances and exemptions authorized by the probate order entered in this matter, if applicable, have been paid in full:

- ? Homestead Allowance
? Family Allowance
? Exempt Property
? None required

7. The personal representative has satisfied all administration expenses and other obligations of the estate incurred or authorized by the personal representative, and has otherwise fully administered the estate; and

8. Federal and D.C. estate tax return is:

- (a) ? Not required to be filed; or
(b) ? Required and has been filed, and:
? No tax is due; or
? the tax shown on that return, including all applicable interest,
either:
? No such taxes are not due; or
? It has been paid in full;

and the Internal Revenue Service closing letter:

? has ? has not been received; and

and the Certificate of D.C. Department of Finance and Revenue:

? has ? has not been received and;

D.C. estate tax return is:

(a) ? Not required to be filed; or

(b) ? Required and has been filed, and:

? No tax is due; or

? the tax shown on that return, including all applicable interest, has been paid in full; and a Certificate of Inheritance and Estate Taxes has been issued by the D.C. Office of Tax and Revenue stating that the estate tax assessed has been paid in full:

? has ? has not been received.

9. The following persons or entities listed in the Petition for Probate as Interested Persons are not served with this Certificate because they were not required to be served with a copy of the final account:

(I) (We) (do) (do not) hereby request termination of (my) (our) appointment as personal representative(s) of said decedent's estate pursuant to D.C. Code §20-1301(b).

(I)(We) do solemnly declare and affirm under penalty of law that the contents of the foregoing Certificate of Completion are true and correct to the best of (my) (our) knowledge, information, and belief.

Personal Representative

Dated: _____

CERTIFICATE OF SERVICE

I, _____, (a) personal representative of the estate of _____, deceased, do hereby certify that I have caused to be mailed, postage prepaid, to each of the persons and entities listed below, on _____, 19 2_____, a copy of the final account and the corresponding notice described above, as well as a copy of this Certificate of Completion on _____, 19 2_____.

_____ [listed names and address]

Personal Representative

Dated: _____

SCR-CRIMINAL 120

PROCEDURES FOR MENTAL EXAMINATION OF DEFENDANTS

(1) When a motion for mental examination is made or if the Court is of the view that such an examination may be appropriate, the Court may order a mental competence screening examination to be conducted by the Department of Mental Health, Legal Services Division (LSD), at the courthouse or on an outpatient basis. In the case of a courthouse screening, if the examination report is not returned the same day it is ordered, the Court shall address the issue of detention or release pursuant to the Bail Reform Act, D.C. Code §§ 23-1321, et seq.

(2) The Court shall determine, based on the report of any screening examination and on any other relevant information, whether to order a full competence examination pursuant to D.C. Code § 24-501(a) and whether any such examination shall be done in an inpatient hospital setting or on an outpatient basis. If the Court commits a defendant to the Department of Mental Health as an inpatient for mental observation, a return date shall be set no sooner than thirty (30) nor more than forty-five (45) days from the date the examination is ordered. If a defendant is ordered so committed, and the Department of Mental Health has on the day of the order of commitment sufficient available bed space to accommodate the defendant, the Court shall defer setting conditions of release until after it has received the report of the Department of Mental Health. If bed space is not available on the day of the order of commitment, the Court shall address the issue of detention or release pursuant to the D.C. Code § 23-1321 et seq. If the screening report recommends emergency hospitalization, and the Court determines that it is warranted, the Court may order the defendant's emergency hospitalization pursuant to D.C. Code § 24-501(a). If the Court orders an outpatient examination for a defendant who is detained at the D.C. Jail, the Court shall set a return date not more than thirty (30) days from the date of the examination order. If the Court orders an outpatient examination for a defendant who is released pending trial, it shall set a return date not more than forty-five (45) days from the date of the order.

(3) As soon as the Department of Mental Health reaches a determination regarding the defendant's competence to stand trial, it shall forward its report to the Court and counsel. For defendants being held at the D.C. Jail or at a hospital, if the Clerk's Office of the Criminal Division receives a written report from the Department of Mental Health more than one court day prior to the scheduled return date, and if the report states that the defendant is competent to stand trial, the Clerk shall cause the defendant to be brought before the appropriate judge on the court day next following receipt of the report. A new Pre-trial Services Agency report shall also be made available. If the report received by the Clerk's Office states that the defendant is

incompetent to stand trial, the Clerk shall cause the defendant to be brought before the appropriate judge within seven days from receipt of the report or on the original return date, whichever is earlier. In any case, the report shall be sufficient for the Court to make a finding as to whether the defendant is competent to stand trial, unless either party objects, in which case the Court shall hold a prompt hearing. The Court may grant a continuance of the hearing if requested in order to permit examination by an independent expert. If, based upon the report or testimony at the hearing, the Court determines the defendant is competent, it shall determine the defendant's eligibility for release pursuant to D.C. Code §23-1321 et. seq., if it has not done so previously. If the Court determines that the defendant is incompetent for trial, the Court shall remand the defendant to the Department of Mental Health for care and treatment and further examination, in accordance with D.C. Code § 24-501, and shall set an appropriate return date, not to exceed sixty (60) days.

COMMENT

In making any determination pursuant to this rule or considering any other course of action with respect to pre-trial mental examination of a criminal defendant, the Court shall be guided by all administrative orders in effect bearing on this subject including "Court Procedures for Mental Examinations of Criminal Defendants" as approved by the Board of Judges. These procedures were developed, and are periodically updated, by the Superior Court's Committee on Pre-trial Mental Examinations.

By the Court:

Date: September 14, 2004

/s/ Rufus G. King, III

Rufus G. King, III

Chief Judge