

The BROWARD BARRISTER

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Executive Offices, 735 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

PROBATE DIVISION NOTICE

New forms are now available in the Probate Division,
Room 230, Courthouse.

USE THE NEW FORMS

The proper style for this court is:

IN THE CIRCUIT COURT FOR
BROWARD COUNTY, FLORIDA
(Probate Division)

No. _____

USE THIS STYLE

If you must use old forms, please correct them to show
the proper style and necessary allegations. This will
help the court and the clerks to give you better service.

All testamentary trusts are being qualified and administered
in the Probate Division.

READ THE NEW RULES

Paul M. Marko III
Gene Fischer

Leroy H. Moe
Clyde L. Heath

provided immediately at no charge.

(2) If the defendant requests counsel or advises the officer he cannot afford counsel, said officer shall immediately and effectively place said defendant in communication with the (office of) Public Defender of the circuit in which the arrest was made.

(3) If the defendant indicates he has an attorney or is able to retain an attorney, the office shall immediately and effectively place said defendant in communication with this attorney or the Lawyer Referral Service of the local bar association."

The Executive Committee of Broward County Bar Association held a meeting to determine a method for handling any cases that may come through the Referral Service. It was decided that an answering service must be obtained for the Referral Service for the hours when the office is not open. A list of all attorneys on the Referral Panel who have indicated that they will handle criminal cases has been prepared and plans are underway to establish a rotating panel with someone on call at nights and week-ends.

Any member of the bar association who is not a member of the Referral Panel and who would like to participate in this program is urged to become a member. For information please call 764-8040.

The Public Defender has provided a method to handle the indigent cases.

Your help and cooperation will be needed. You are urged to become familiar with the new rules.

Criminal Rules of Procedure

Effective February 1, 1973

RULE 3.111.

PROVIDING COUNSEL
TO INDIGENTS.

"(c) Duty of Booking Officer:

In addition to any other duty, the officer who commits a defendant to custody has the following duties:

(1) He shall immediately advise the defendant:

(i) of his right to counsel;

(ii) that if the defendant is unable to pay a lawyer, one will be

Young Lawyers' Section Meeting

THURSDAY, FEBRUARY 22, 1973

12:00 NOON

See Enclosed Notice For Further
Information.

Have You Moved?

There have been many moves of offices in the past two months. If you have *not* notified the following of your correct address and telephone number PLEASE DO SO NOW.

Broward County Bar Association
The Florida Bar
American Bar Association
Clerk of The Circuit Court

Broward County Bar Association
200 S.E. 6th Street
Fort Lauderdale, Florida 33301
525-7236

OFFICERS

President L. Fred Austin
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Questions You've Always Wanted Answered About The Flat Fee Filing Law in The Probate Court But Never Got Around To Asking

By Judge LeRoy H. Moe

(Continued from December Barrister)

Question: Will an additional fee be charged in the following circumstances?

(a) A curatorship is terminated and "Letters Testamentary," are issued in the same estate.

(b) A will is filed for Probate in an

intestate estate already being probated.

(c) A will in a testate estate is revoked and "Letters of Administration" are issued.

Answer: No new fee will be charged in any of the above circumstances.

Question: What fee will be charged when a Petition to Probate a Will is filed with the intention of filing a Petition for Order of Administration Unnecessary, and no request is made for the issuance of Letters Testamentary?

Answer: Subsection (1) (a) the Statute sets a fee of \$10.00 for "opening of any estate of one document or more but not to include issuance of letters or orders of no administration." A petition for the probate of a will contemplates the distribution of the estate of the decedent — either by issuing letters testamentary or by an Order of Administration Unnecessary. Thus, Subsection (1) (a) by its terms is not applicable when a will is filed for probate, and the charge for opening the estate in this situation is \$60.00 or \$75.00 (depending upon the inventory value of the estate) or \$25.00, if the estate qualifies for an Order of Administration Unnecessary or No Further Administration Required.

Question: Does the new filing fee apply to guardianships under the Veterans Guardianship Law?

Answer: No.

Question: What is the fee to open a guardianship of the person only?

Answer: \$10.0.

Question: When a fee of \$25.00 has been paid for the purpose of getting an Order of Administration Unnecessary, and it is later determined (either before or after the Order is entered) that the estate must be probated, will I receive a credit of \$25.00 towards the \$60.00 or \$75.00 filing fee?

Answer: Yes.

Question: May a creditor file a claim in an estate pending on October 1, 1972 even though the Personal Representative has not paid the balance due on the new filing fee?

Answer: Yes.

Question: Must the full amount of the Flat Filing Fee be paid to re-open an estate to list and distribute additional assets after the Personal Representative has been discharged or after an Order of Administration Unnecessary has been entered in an estate of less than \$10,000.00, when the additional assets will not exceed that amount.

Answer: That latest word is that the Uniform Flat Filing Fee must be paid to re-open an estate, but you will receive credit for whatever was previously paid.

Question: How do we pay for certified copies of documents filed in your court?

Answer: 1. Cash is still acceptable.

2. Pay in additional money when you pay your Flat Filing Fee. We will refund any excess payments when the case is closed.

3. Setup a Trust Account in your name and authorize us to make withdrawals to pay for certified copies.

4. Master Charge is still not acceptable.

Question: How can I get more information about the Uniform Flat Filing Fee in your court?

Answer: Ask one of my clerks.

Court Directory

The Broward County Court Directory enclosed with the Barrister is for your use and convenience. It has been furnished by The Broward Review.

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WELCOME NEW MEMBERS

ALLMAN, ROY WAYNE, a native of Washington, D.C. received his law degree from Samford University. He is sharing office space with Donald Noland, Fort Lauderdale, Florida.

BEAMISH, RICHARD J. III, a native of Philadelphia, Pa., received his law degree from Vanderbilt and practices law in Hollywood, Florida.

BRAVERMAN, MORTON S., a native of Chicago, Illinois, received his law degree from the University of Miami, and practices law in North Miami, Florida.

BURKET, RICHARD C., is a native of Vineland, New Jersey and received his law degree from the University of Miami. He practices alone in Fort Lauderdale, Florida.

COHEN, MARTIN H., a native of New York, received his law degree from the University of Florida. He is associated with Gaylord A. Wood, Jr., Fort Lauderdale, Florida.

EGNER, THEODORE KARL, a native of Lansing, Michigan, received his law degree from Wayne State University. He is associated with Geiger, O'Neal & Booth, Fort Lauderdale, Florida.

FRANK, EDMOND W., a native of New York, received his law degree from Washington College of Law. He is associated with Zimmerman, Haywood & Portley, Pompano Beach, Florida.

GARFINKEL, BERNHARD, a native of Brooklyn, New York, received his law degree from St. John's University School of Law. He is a partner of the firm Garfinkel and Friedman, Hollywood, Florida.

GOFF, CHARLES A., a native of Winter Haven, Florida, received his law degree from the University of Florida. He is associated with Carl W. Turner, Fort Lauderdale, Florida.

GOORLAND, BRUCE D., a native of Atlantic City, New Jersey, received his law degree from the University of Miami. He is associated with Ruden, Barnett, McClosky, Schuster and Schmerer, Fort Lauderdale, Florida.

GUTMACHER, JON H., a native of Brooklyn, New York, received his law degree from New York Law School. He is associated with William Gundlach, Fort Lauderdale, Florida.

KNOX, CHRISTOPHER B., a native of Fort Lauderdale, Florida, received his law degree from the University of Florida. He practices alone in Fort Lauderdale, Florida.

LESSER, SAUL, a native of Newark, New Jersey, received his law degrees from New York University. He practices alone in Fort Lauderdale, Florida.

LUCAS, ELLIOTT HEYWOOD, a native of New York, received his law degree from the University of Florida. He is associated with Richard L. Hennekam, Fort Lauderdale, Florida.

MORIARTY, ESTELLA MAY, a native of Chicago, Illinois, received her law degree from Georgetown University. She practices alone in Fort Lauderdale, Florida.

PETRIE, CARLTON DANIEL, JR., a native of Buffalo, New York, received his law degree from the University of Florida. He is associated with the firm of Fleming, O'Bryan & Fleming, Fort Lauderdale, Florida.

PETZOLD, LEWIS MICHAEL, a native of Evansville, Indiana, received his law degree from Harvard Law School. He is associated with the firm of Fleming, O'Bryan & Fleming, Fort Lauderdale, Florida.

RUSSELL, RAYMOND W., a native of Jersey City, New Jersey, received his law degree from the University of North Carolina. He is associated with Sandstrom & Hodge, Fort Lauderdale, Florida.

WHEELER, CHRISTOPHER C., a native of Buffalo, New York, received his law degree from Cornell University Law School. He is associated with the firm of Fleming, O'Bryan & Fleming, Fort Lauderdale, Florida.

WHITE, H. TAYLOR, a native of Red Ash, Virginia, received his law degree from the University of Florida. He is associated with the firm of Thomas E. Byrd & Associates, Fort Lauderdale, Florida.

Civil Rules of Procedure

By Henry J. Prominski

There is an amendment to Rule 1.035 that again makes it discriminatory with the Court to report uncontested proceedings. It is now necessary before submitting an order to the Court to state that this proposed order was submitted to opposing counsel. Although not required specifically, it would be recommended that the date the proposed order was submitted to opposing counsel be included.

It is also necessary to plead avoidance to affirmative defenses. Also defenses may be raised one time only, that is, the same defense cannot be raised by motion and again by responsive pleadings.

It is also permissible to include the notice of hearing with the motion filed. The proper way to attack lack of jurisdiction is not by motion to dismiss but by a motion to abate. A demand for jury trial need not be filed with the Complaint but must be received no later than ten days after the pleadings are complete.

Rule 1.500, Subparagraph C, is a new provision that states a party in default may not file any papers except a motion to remove the default decree. All other

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attempts at filing will be returned by the clerk. If the Court moves to dismiss for lack of prosecution, the party must show cause in writing five days prior to the day of hearing on such motion.

There is a new provision for settlement offers similar to Rule 68 of the Federal Courts. No later than ten days prior to trial, a party may serve an offer of settlement upon the other side. There is no criteria for limiting settlement offers to personal injury cases and it is presumed that this rule would apply equally in equity as well as law.

If the settlement offer is refused and the subsequent award is less than the offer of settlement, the party refusing the offer must pay all costs incurred after the offer was tendered.

The settlement offer is not filed with the Court but served upon the other party. Subsequent settlements, of course, are made part of the Court file. The intention of this provision is to encourage settlement, however, it would appear at first glance that the rule would act to the detriment of the plaintiff with a small claim. He may well be forced to refuse a settlement offer made immediately after the case is filed before he has had a chance to evaluate damages and subsequently incur more costs than his claim merits and thus be put in a position of not being fully compensated for his damages. This rule should be studied most carefully by all attorneys.

Under Rule 1.170 one no longer needs a Court order to bring in a third party as long as the third party would not deprive the Court of jurisdiction.



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Civil Rules of Procedure

By Henry J. Prominski

Further changes in the new discovery procedures effective January 1, 1973, find that interrogatories now may be served with the complaint. (Rule 1.310) The answers are required within thirty days except that if the interrogatories were served with the complaint, the Defendant has 45 days in which to answer them. If there is an objection to any interrogatory the discovering party must move to compel and if he fails the objection stands.

The form of interrogatories has also changed. Now the space for the answer is left after the question. The original and a copy are served on the party to whom the interrogatories are delivered and a copy filed with the court. The person answering the questions must do so on the original and file that with the court and forward a copy to the party asking the questions.

Rule 1.350 makes production of documents self executed. If there are no objections, the party upon whom the request is served produces the document without court order. If objections are made without good cause, the court may impose sanctions. Again the documents sought should be designated on the notice including the time and place for copying.

There is also a new provision that permits an independent action against a non-party for production of documents. To request a court appointed physical or mental examination, one still has to show good cause. The rule for making available reports of examining physicians has been expanded and clarified, permitting a more complete written report.

Rule 1.370 on admissions expands the scope of requests to include all matters of discovery including opinions.

Mixed questions of law and fact can also be asked and before an objection can be validly made to a request for admission, there must be an allegation that everything possible has been done to obtain the necessary information.

To preserve an objection, one must file a motion for protective order before time for answering the request for admissions has elapsed. The objection to request for admissions must be moved by the party requesting the admissions. An objection that the admission presents an issue for trial is no longer acceptable.

Rule 1.380 now grants sanctions for failure to make discovery. A motion may be made to compel discovery and once admissions are filed they cannot be

changed. If they are not answered, the requesting party may assume the admissions are answered to his best advantage. The previous sanctions of striking the pleadings are still available. Further, an evasive or incomplete answer is treated as a failure to answer. A motion for taxing attorneys fees and costs may also be made for failure to answer admissions.

If a document is requested to be admitted and was not acquiesced to and later found by the court to be admissible, the court is compelled to impose sanctions, or to explain why such sanctions were not imposed.

The use of depositions for trial in Rule 1.330 has been significantly changed in that a deposition is used as if the witness were there to testify. The use of depositions is sought to liberalize against technical hearsay objections not based on the content but on the absence of the witness from court.

Rule 1.560 is revised to provide for all discovery procedures for aid of executions in a judgment of decree.

Change of Address

The Broward County Bar Association office has been moved to

735 N.E. Third Avenue
Fort Lauderdale, Florida 33304

The telephone numbers are as follows:
Broward Co. Bar Association 764-8040
Legal Aid 764-8110
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