

STATE OF MAINE
SUPREME JUDICIAL COURT
PROPOSED AMENDMENT TO
MAINE RULES OF PROBATE PROCEDURE

1. Rule 12(a)(2) of the Maine Rules of Probate Procedure is amended to read as follows:

(2) *Formal Testacy, Appointment Proceedings and Change of Name Proceedings.* In formal probate proceedings for the determination of testacy, the appointment of a personal representative, guardian or conservator, or a change of name, the notice of hearing shall set a date for hearing ~~which that~~ shall be at least 14 days after the first publication of notice under Rule 4(e)(1) or at least 14 days after the completion of service upon all persons to be served by other means, whichever is later. Any ~~interested person may at or before the hearing file a written reply stating objections to the action or order sought in the petition or stating any other matter which the person wishes to raise, or the person may state such objections or other matter in an oral reply at the hearing~~ interested person to a formal proceeding who opposes the probate of a will for any reason shall state in that person's pleadings that person's objections to probate of the will. If a party who opposes the probate of a will for any reason makes an oral reply stating the party's objections thereto, the party shall file a written reply setting forth those objections within such time after the hearing as the court ~~may~~ shall order. If a party states any other objections or matter in an oral reply, the court may order the party to file a written reply specifically stating such objections or matter within such time after the hearing as may be just. If a written reply is filed at any time, the hearing may be continued as to all issues involved in the objections or other matter there stated for a period sufficient to allow all parties fairly to be heard on those issues.

Advisory Committee Note - ____ 2018

This Amendment makes a minor grammatical correction and seeks to provide additional clarity with respect to Title 18-A M.R.S. §3-404 and the opposition to probate of a will. Any "interested person" (as defined in 18-A M.R.S. §1-201) who opposes the probate of a will must do so in writing in that party's pleadings either before hearing or after a hearing pursuant to a court order.

2. Rule 92.2 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.2. DEFINITIONS

(a) Document. A “Document” is a writing or other paper filed or served under the Electronic Filing System that is stored in an electronic or other medium and is retrievable.

(b) Electronic Case File. An “Electronic Case File” is an assemblage of the items pertaining to a single case or matter under a single docket number electronically stored by the Probate Court.

(c) Electronic Filing System. The “Electronic Filing System” is that system approved by the Maine Supreme Judicial Court for filing and service of pleadings, motions and other documents via the Internet through the Probate Court authorized service provider.

(d) Electronic Filing. “Electronic Filing” is the process of transmitting a document from a Registered Filer’s computer, using the court’s Internet-based electronic filing system, to file the document in the court’s Electronic Case File.

(e) Electronic Service. “Electronic Service” is the transmission of documents to any party in a case via the Electronic-Filing System. Registered Filers have agreed to receive service via the Electronic-Filing System.

(f) Electronic Means. “Electronic means” is any method of direct electronic transmission of a document from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(g) Nonelectronic Case File. A “Nonelectronic Case File” is an assemblage of the items pertaining to a single case or matter under a single docket number physically stored by the court.

(h) Nonelectronic Means. “Nonelectronic means” is any method of transmitting a document or filing or service by any means other than by direct electronic transmission from the sender’s computer or electronic filing system to the recipient’s computer or electronic filing system.

(i) Filer. A “Filer” is a petitioner, movant, applicant, plaintiff, or interested person as defined under 18-A M.R.S.A. § 1-201(20).

(j) Registered Filer. A “Registered Filer” is any person who is permitted or required under Rule 92.3 to file documents electronically, ~~or a self-represented party who elects or is ordered under Rule 92.3(c)(3) to file electronically~~ and has registered through the electronic filing system website as provided in Rule 92.4. ~~The term includes any other person authorized to file documents electronically under Rule 92.4.~~

(k) S/Name. An “S/Name” is a symbol representing the signature of the person whose name follows the “S/” on the electronically or otherwise signed form of the electronically-filed or electronically-served documents.

(l) Unrepresented Party. An “Unrepresented Party” is an interested person as defined under 18-A M.R.S. §1-201(20), who has entered an appearance with the Court.

(m) Testamentary Document. A “Testamentary Document” shall include only the Last Will and Testament of the decedent and any Codicils thereto.

Advisory Committee Note – _____ 2018

E-filing permits filing of legal papers by electronic means. Rule 92.2 recognizes that the terminology used in e-filing is not presently used in the Probate Courts and contains the definitions for the terms used in e-filing. This Amendment seeks to provide additional clarity between “Registered Filers” and “Unrepresented Parties” and limit the definition of “Testamentary Document” to Wills and Codicils.

3. Rule 92.3 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.3 WHO MUST FILE ELECTRONICALLY; EXCEPTIONS

(a) Required electronic filing. Except as hereinafter provided in (b) and (c), and other provisions of these rules, all parties, and others required or permitted to file, in all civil actions and probate proceedings, entered in the

Probate Court, on or after the filing dates provided by Rule 92.1(a) and (b), must electronically file all documents required by the applicable rules of procedure to be filed in court. All documents generated by the court, guardians ad litem, visitors, psychologists, physicians and mediators required to file a report under the applicable rules of procedure in all civil actions and probate proceedings, on or after the required filing dates provided by Rule 92.1(a) and (b), will be filed electronically or, if filed nonelectronically, shall be scanned by court staff.

(b) Exceptions to electronic filing. Nonelectronic filing may occur as follows:

(1) ~~A self-represented party~~ An Unrepresented Party who is not a Registered Filer may file nonelectronically.

(2) A filer in a particular case is excused from electronic filing in that case by the court when exceptional circumstances make electronic filing unfeasible.

(3) Nonelectronic filing of a particular document or information is permitted by the court to protect confidentiality or for other good cause.

(4) Nonelectronic filing is permitted when expressly permitted by these rules or an applicable rule of procedure.

~~(5) Nonelectronic filing is permitted in a case commenced prior to the mandatory filing date in the applicable county unless the court orders that documents filed on or after the mandatory electronic filing date in that case be filed electronically.~~

(65) Nonelectronic filing is permitted when a document cannot reasonably be scanned and filed electronically because of its dimensions, shape, or condition.

(c) Required nonelectronic filing. A document must be filed by nonelectronic means when:

(1) It is an original testamentary document;

(2) Nonelectronic filing is expressly required by these rules or an applicable rule of procedure; or

(3) The court orders a filer to file by nonelectronic means upon a finding that the filer has abused the system by repeated filing of irrelevant, abusive, or duplicative documents or information.

(d) Consequence of filing by improper method. If a document that is required to be filed electronically is filed nonelectronically, it will not be accepted and will not be scanned. The filer may resubmit the document electronically pursuant to these rules, and the date and time of filing will be the date and time that the original filing was submitted.

(e) Service. A party who filed a nonelectronic document must serve notice of the filing and a copy of the document on all parties and the Probate Court in any manner appropriate under the applicable rules of procedure, except for documents filed ex parte.

Advisory Committee Note - _____ 2018

The elimination of subparagraph (b)(5) from Rule 92.2 is intended to ensure that all attorneys are required to file electronically regardless of when the matter commenced or by whom.

4. Rule 92.4(b) of the Maine Rules of Probate Procedure is amended to read as follows:

(b) Method of registration by attorneys and ~~self-represented parties~~ Unrepresented Parties. An attorney in good standing in the State of Maine, any other person who is permitted to file documents electronically, or a ~~self-represented party~~ an Unrepresented Party who elects to do so, may register on the electronic filing system website by submitting all information required by the Probate Court on the registration screens displayed on the website, including: (1) his or her mailing address; (2) his or her Bar number; (3) his or her billing information; and (4) up to three e-mail addresses, one of which is an e-mail account currently maintained by the attorney. The addresses provided shall be listed on the probate website and are the addresses to which all service, notice, or other communication submitted must be sent. Once an attorney has become a Registered Filer pursuant to this subdivision in any

matter, he or she shall remain a Registered Filer for all matters in the Probate Court until he or she terminates his or her registration pursuant to Rule 92.4(h).

Advisory Committee Note - _____ 2018

The term “Unrepresented Party” replaces the term “self-represented party” in Rule 92.4(b).

5. Rule 92.9 of the Maine Rules of Probate Procedure is amended to read as follows:

RULE 92.9. PAYMENT OF FEES AND COSTS

(a) Fees required. No electronically or nonelectronically filed document will be accepted under Rule 92.5 or 92.6 until any and all fees and costs attributable to the filing are paid.

(b) Method of payment; waiver of fees. Fees and costs for electronically filed documents ~~may~~ shall be paid electronically by Registered Filers when filed, but ~~or~~ may be paid directly over the counter at the office of the clerk by cash, check, or money order by Unrepresented Parties. A person who wishes to proceed in forma pauperis must comply with the provisions of the applicable rules of procedure.

Advisory Committee Note - _____ 2018

Rule 92.9 deals generally with the payment of fees and costs for electronically and nonelectronically filed documents. Payment for electronic filing by Registered Filers must be accomplished in any of several ways as may be selected by the filer at the time of filing including: PayPal, electronic funds transfer (EFT), automated clearing house (ACH), and approved credit card. Only Unrepresented Parties may pay for their filings by cash, check, or money order at the courthouse.

6. Every reference to “M.R.S.A.” in the Maine Rules of Probate Procedure is removed and replaced with “M.R.S.”