

# CHARLOTTE PROBATE BEST PRACTICES

## MARCH 2021

### PROBATE CHECKLISTS

The Court requires the submission of completed Probate Checklists when submitting most proposed orders in Probate cases in Charlotte County. The checklists are available at:

<https://www.ca.cjis20.org/home/charlotte/checklists.asp?list=probate> . Please **E-File the completed checklist** as the final page(s) of the motion, petition or other document in question. If there is no checklist listed on the above web page that relates to your Petition/Motion, none is required.

#### GENERAL RULES

- 1. VERY IMPORTANT:** Before sending proposed orders to Judge Cupp that will require his review of online documents, before entering the orders **check the Clerk's website to make sure that all required supporting documents are viewable online.** **Please verify the assigned Judge to the case with the Clerk's Office.**
2. Probating a Will: Before asking Judge Cupp to sign an order that requires that the Judge view the will, make certain that the will is viewable on the Clerk's website. This may require that your office contact the probate clerk to request that a will previously deposited in the "WD" (will deposit) file be transferred from the will deposit file to the probate file. This is the attorney's responsibility.
3. **A proposed order or other document that requires Judge Cupp's signature should be sent through the E-Portal. Do not route it through the Clerk.**
4. If Clerk action is needed, send the document/request to the Clerk.
5. Do not send the few original documents that must be filed with the Clerk to Judge Cupp. Instead, send them directly to the Clerk for filing (e.g., wills).
6. A sufficient number of copies and stamped envelopes must accompany proposed orders (if you wish to receive a conformed copy). Judge Cupp's judicial assistant will conform and mail out copies. **If no copies/stamped envelopes or an insufficient number of copies/stamped envelopes are submitted, no additional copies/stamped envelopes will be furnished by the Court.**

7. **SETTING PROBATE HEARINGS:** Please contact Magistrate Robert Koch's Assistant Kristy Sandrock, at 941-637-2213 or email to [ksandrock@ca.cjis20.org](mailto:ksandrock@ca.cjis20.org) to request hearing time. It is your responsibility to schedule sufficient time for a hearing and to properly notice the petition/motion for hearing.

## **THE E-FILING PROCESS AND CLERK ACCEPTANCE OF E-FILED DOCUMENTS**

Remember, when you E-File a document through the E-Filing Portal the document is not viewable to a user of the system (including attorneys, judges and judicial assistants) until several things happen. The attorney's receipt acknowledgment by the E-Filing Portal only confirms that the Portal has received the document and that it is located on their file server. The Portal must transmit the document to the Clerk, and the Clerk must then transfer the file to the internal Clerk case maintenance system and formally accept the document into the clerk's system to make the document viewable to users. The E-Filing rules give clerks three days to complete those steps. Additional days may be required if the document does not comply with the E-Filing rules.

**So, keep in mind that when the E-Filing Portal acknowledges receipt of your E-Filed document, it is not immediately viewable on the Clerk's website.** Consequently, if you E-File a document and simultaneously deliver a proposed order to the judge's office, the judge and judicial assistant will likely not be able to view the document that you just filed. This will prevent the judge from immediately signing your proposed order and will only waste the time of the judge and judicial assistant as they try in vain to review the pleading on which the proposed order is based. This discourages the Court from quickly reviewing proposed orders (very bad). Instead, wait until **YOU can view the recently filed document(s) on the Clerk's website** before you send the proposed order to the judge's office. This way if there is a problem with the filing of the document, your office will learn about it sooner, and the judge and his judicial assistant will not waste time looking for documents that are not yet viewable. Following this procedure will serve to enhance the overall efficiency of the process.

## WHOM TO CONTACT WITH QUESTIONS:

Clerk's Office Civil Courts Manager Marie Hicks will respond to questions regarding the Clerk's E-Filing processes at [marie.hicks@charlotteclerk.com](mailto:marie.hicks@charlotteclerk.com)

Questions regarding Judge Cupp's procedures will be answered by Judge Cupp's Judicial Assistant, Ivelisse, at [imiller@ca.cjis20.org](mailto:imiller@ca.cjis20.org)

**Email is the MUCH PREFERRED METHOD OF COMMUNICATION.....**

## COMMON ISSUES FOR PROBATE CASES

The following lists are taken from the templates used by the Court to notify attorneys of issues that commonly arise. These lists are not the checklists that must be E-filed by the attorneys. If your submission is deficient in some fashion, you will receive an abbreviated version of one of the following two lists.

### PROBATE CASES – COMMON PROBLEMS

**General Admonition: Do not submit proposed orders unless/until ALL the documents upon which the order is based are viewable in the clerk's system. Please verify the assigned Judge to the case.**

Required completed checklist not submitted (go to:

<https://www.ca.cjis20.org/home/charlotte/checklists.asp?list=probate> )

- Decedent's death certificate is not filed.
- Personal Representative named in will or codicil is not included in the proposed Order.
- Assets are not adequately described.
- Will has not been imaged and/or is not viewable in the clerk's electronic file.
- No Statement Regarding Creditors filed
- Failing to file Inventories with the Department of Revenue. Any inventory filed by a fiduciary in an estate proceeding with the Court, must be sent to the Department of Revenue at: Florida Department of Revenue, General Tax Administration Center, Tallahassee Central Service Center, P.O. Box 6417, Tallahassee, Florida 32314-6417
- No proof of service of Notice to Creditors served on AHCA. §733.2121(d), F.S. provides: "If a decedent at the time of death was 55 years of age or older, the personal

- representative shall promptly serve a copy of the notice to creditors and provide a copy of the death certificate on the Agency for Health Care Administration within 3 months after the first publication of the notice to creditors, unless the agency has already filed a statement of claim in the estate proceedings." The website for the Florida Estate Recovery Program specifies the following address for notices: Florida Medicaid Estate Recovery Program, P.O. Box 12188, Tallahassee, FL 32317.
- Will is not self-proved pursuant to F.S. 732.503. Procedure in F.S. 733.201(2) or (3) should be followed. The affidavits submitted do not comply with the requirements of Chapter 733.201(2), F.S.
- Missing affidavit of no estate taxes due or a missing federal tax closing letter.
- Missing or deficient verified petition setting forth the reasons for the sale of real property, a description of the real property sold or proposed to be sold, or the price or terms of the sale. Rule 5.370, Fla. Prob. R.
- Insufficient or missing statement under oath establishing that the attesting witnesses cannot be found or that they have become incapacitated after the execution of the will or their testimony cannot be obtained within a reasonable time. §733.201(3), F.S.
- Order cannot be entered without proper notice to interested parties or without scheduling the appropriate hearing.
- The supporting petition/motion does not set forth sufficient allegations on which the court can grant the requested relief.
- Unless a stipulation signed by all parties is filed, a hearing is required. Please contact
- Magistrate Robert Koch's Assistant Kristy Sandrock, at 941-637-2213 or email to [ksandrock@ca.cjis20.org](mailto:ksandrock@ca.cjis20.org) to request hearing time. It is your responsibility to schedule sufficient time for a hearing and to properly notice the petition/motion for hearing.
- Omitting the attorney's Florida Bar Number
- Omitting the date of death on Petition for Administration
- Omitting consents from both parents if they are not petitioning to be appointed guardian(s) in minor guardianships
- Requesting to waive the investigatory cost in cases where the ward is indigent (the investigatory cost is to be borne by the guardian)
- Incorrect filing fees
- Omission of attorney or personal representative's signature on pleadings

- Filing the incorrect proposed orders for entry by the Court
- Submitting paperwork with the incorrect case numbers
- Failing to redact all but the last four digits of social security numbers on pleadings or papers to be contained in the publicly available file.
- Failure to submit a copy of the relevant foreign law (if in order to probate the will the Court must find that the will is valid under the laws of the state or country where the testator was at the time of execution.

Note in contested cases all pleadings and other matters to be considered by the Court must be filed with the clerk with notice to interested persons. Accordingly, any response in a contested case should be made by a properly filed pleading and not by *ex parte correspondence* to the Court.