

STATE OF MINNESOTA

IN SUPREME COURT

C3-84-146

WHEREAS, on January 24, 1984, this court appointed an advisory committee to study and recommend rules pertaining to probate administration in the State of Minnesota, and

WHEREAS, on April 29, 1986, the advisory committee petitioned this court to hold a public hearing on the proposed rules,

NOW, THEREFORE, IT IS HEREBY ORDERED that a public hearing be held on the proposed amendments on July 30, 1986, at 11:00 a.m. in the Supreme Court chambers.

IT IS HEREBY FURTHER ORDERED that interested persons may obtain a copy of the proposed rules by writing to the Clerk of the Appellate Courts, 230 State Capitol, St. Paul, Minnesota, 55155.

IT IS HEREBY FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter at the hearing, but who do not wish to make an oral presentation at the hearing, shall file 10 copies of such statements with the aforementioned Clerk, on or before Tuesday, July 15, 1986, and

2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be presented with the aforesaid Clerk together with 10 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before Tuesday, July 15, 1986.

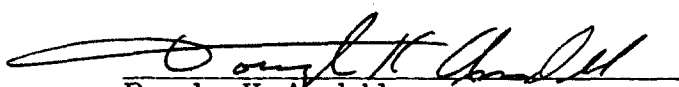
Dated: *MAY 1, 1986*

BY THE COURT

OFFICE OF  
APPELLATE COURTS  
FILED

MAY 01 1986

WAYNE TSCHIMPERLE  
CLERK

  
Douglas K. Amdahl  
Chief Justice



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July 14, 1986

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St. Paul, MN 55155

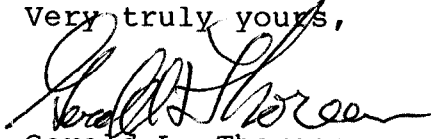
RE: Minnesota Supreme Court, Hearing on Probate Rules

Dear Sir:

I am a member of the Supreme Court's advisory committee on probate rules. The Supreme Court has set a hearing on July 30, 1986, to consider the rules proposed by the committee.

I desire to present written statements concerning the rules at the hearing and enclose 10 copies of each statement. In addition, I request the opportunity to make an oral presentation at the hearing with respect to the enclosed statements.

Very truly yours,



Gerald L. Thoreen

GLT:ds

Enclosures

MINNESOTA SUPREME COURT  
ADVISORY COMMITTEE ON PROBATE RULES

JUL 15 1986

C3-84-146

WAYNE TSCHIMPERLE  
CLERK

Majority Statement on Recommended Rules 42, 43 and 15

Rules 42 and 43 state the documents which the personal representative of a decedent's estate should provide when transferring for value or distributing real property from the estate. The rules are consistent with M.S. 524.3-714 and 524.3-910, which afford protection to transferees for value from personal representatives and distributees. The protection is essential to Minnesota's legal system for the administration of decedents' estates.

Since 1975, settlement of decedents' estates in Minnesota has been carried out within the system for administration established in Article III of Minnesota Statutes, Chapter 524, which consists of the provisions of the Uniform Probate Code enacted in this State. This system for the administration of decedents' estates is discussed in the GENERAL COMMENT at the beginning of Article III of the Uniform Probate Code. Its essential characteristics include:

- (1) After the decedent's death, interested persons may obtain the appointment of a personal representative, who will acquire through appointment the duties and powers attending the office of personal representative.
- (2) Two methods of securing probate of wills are provided: (i) informal probate, which is a non-adjudicative determination, and (ii) formal probate, a judicial determination after notice to all interested persons. Informal probate of a will is not a final adjudication of its validity and the validity of the will may be challenged in a formal testacy proceedings commenced within the latter of twelve months from the informal probate or three years after the decedent's death. If not so challenged, an informally probated will becomes final under a statute of limitations.
- (3) Two methods of securing the appointment of the personal representative are provided: (i) informal appointment, which is appointment without notice and without final adjudication of matters relevant to priority for appointment, and (ii) formal appointment, which is appointment by judicial order after notice to interested persons.
- (4) Personal representatives have statutory powers enabling them to collect, protect, sell, distribute and otherwise handle all steps in administration without further order of the Court except that when supervised administration is sought and ordered the personal representative may be subject to special restrictions on power as endorsed on his letters and he shall not exercise his power to make any

distributions of the estate without the prior order of the Court. No difference in the duties or powers of the personal representative turns on the method of appointment except that in Minnesota a personal representative appointed in an informal proceeding does not secure the power to sell, encumber, lease or distribute real estate until 30 days after the issuance of letters.

- (5) Purchasers from personal representatives and from distributees of personal representatives are protected so that adjudications regarding the testacy status of a decedent or any other question going to the propriety of a sale or distribution are not required in order to protect purchasers. This protection is required in Minnesota's system of estate administration or the possibilities of informal probate and appointment proceedings and distribution of estates without Court supervision are not feasible. It is provided under M.S. 524.3-714 and 524.3-910 and emphasized in Rules 42 and 43.

If a personal representative provides a transferee of real property for value with the documents prescribed in Rule 42, the transferee will be protected under M.S. 524.3-714. The full test of M.S. 524.3-714 and Uniform Probate Code, section 3-714 and Comment, are stated in Exhibit A.

Illustration: If A, a record owner of Blackacre, dies, B is protected as a good faith transferee for value from PR, as personal representative of A's estate, if PR provides C with:

- (a) A certified copy of unrestricted letters issued to PR, as personal representative of A's estate (30 days must have elapsed since the date of issuance of the letters to PR if he was informally appointed personal representative).
- (b) PR's deed or other instrument transferring Blackacre to B (containing a statement of A's marital status and the consent of his spouse, if any).

The fact that B knows he is dealing with PR, as personal representative of A's estate, does not require him to inquire into the existence of PR's power to transfer Blackacre to him or the propriety of its exercise. B is protected as if PR properly exercised his power as personal representative of A's estate. A provision in A's will which prohibits sale of Blackacre by the personal representative of A's estate is not effective as to B unless he had actual knowledge of its terms.

If supervised administration of A's estate is ordered and the prohibition of the sale of Blackacre by PR is endorsed on his

letters, this restriction of PR's power to sell Blackacre will be effective against B and he will not be protected. Interested persons who want to prevent PR from selling Blackacre may seek supervised administration of A's estate and the endorsement of the prohibition on sale on PR's letters.

Rule 42 expands upon the requirements of M.S. 524.3-714 as follows:

- (a) The certified copy of letters provided by the personal representative must be unrestricted. M.S. 524.3-714 provides that restrictions on the powers of a supervised personal representative which are endorsed on his letters as authorized in M.S. 524.3-504 are effective against a transferee. When a Court by order restrains the exercise of powers by an unsupervised personal representative and directs that the existence of the restraining order be endorsed on the personal representative's letters, a transferee provided a certified copy of the endorsed letters has actual knowledge of the restraining order and the order is effective against the transferee.
- (b) The certified copy of letters provided by the personal representative must indicate that 30 days have elapsed since the date of issuance of the letters if the personal representative was appointed in an informal proceeding. A personal representative was appointed in an informal proceeding. A personal representative appointed in an informal proceeding does not have the power to transfer real property until 30 days have passed following the date his letters were issued. M.S. 524.3-711. If the certified copy of letters which a personal representative provides to a transferee indicates that less than 30 days have passed since the letters were issued, the transferee has actual knowledge that the personal representative, if he was appointed in an informal proceeding, has no power to transfer real property and the transferee is not protected under M.S. 524.3-714.
- (c) The personal representative's deed or other instrument of transfer must state the marital status of the decedent and the consent of his spouse, if any. The personal representative does not have the power to sell, mortgage or lease the decedent's homestead when the spouse takes any interest therein unless the written consent of the spouse is obtained. M.S. 524.3-715 (23). This limitation on the power of the personal representative to sell, mortgage or lease the decedent's homestead may not be effective against a transferee of real property because of the protection expressed in M.S. 524.3-714, but requiring the personal representative to obtain the spouse's consent follows current

practice in Minnesota without adversely affecting the administration of decedents' estates.

It is current practice in Minnesota to require the personal representative to provide a transferee for value with a certified copy of any will which has been formally or informally probated and a certified copy of the order which probated the will. Two members of the Committee support the continuation of this practice and dissent from the recommended adoption of Rule 42. Current practice is based on a publication of the Real Property Section of the Minnesota State Bar Association. This publication has been an important service to the public; it has made a significant contribution to the quality of the legal services rendered to the public with respect to real property in this estate. But the practice of requiring the personal representative provide transferees for value with the will and the order probating it is contrary to M.S. 524.3-714 and the essential character of Minnesota's system of estate administration.

The express language and intent of M.S. 524.3-714 is to relieve a transferee for value from the need to inquire into the provisions of the decedent's will. In a learned essay, a wise practitioner once noted that lawyers are in some instances are unwilling to rely on the statutory law of the State until the Supreme Court has recognized the validity and application of the statute. We submit that the Court should recognize the validity and application of M.S. 524.3-714 by adopting Rule 42 and stating the proper practice for transfers by personal representatives.

The Comment to the Uniform Probate Code section on which M.S. 524.3-714 is modeled states:

"This section qualified the effect of a provision in a will which purports to prohibit sale of property by a personal representative."

Rights under will are created by statute and those rights may be qualified by statute. The effect of wills is qualified by numerous statutory provisions including those granting a surviving spouse allowances and the right to an elective share.

Since a transferee for value need not examine the provisions of a will in order to be protected, the personal representative should not incur the cost of providing the transferee with certified documents which do not benefit him or the estate.

Our system of administration should not impose unnecessary requirements which intrude into family affairs. Under the improper practice now followed, the will is recorded in every case where the personal representative makes a transfer for value and the full text of the will is set forth in the abstract of title for every parcel of real property which is transferred by the personal represen-

tative, and in the abstract of title for every subdivision of each such parcel. The privacy of family affairs suffer an unnecessary loss and will provisions concerning sensitive family matters which may have no application to transfer of real property are forever published.

The initial cost of providing the unnecessary documents is a minor cost of the improper practice now followed. The significant cost to the public is incurred because transferees are given actual knowledge of the provisions of wills and thereby lose the protection which M.S. 524.3-714 was intended to afford them, imposing on them the cost of examining the effect of the will on the transfer to them. The loss of protection and cost of examining the will is not just imposed on the transferee from the personal representative but on every subsequent transferee of the property.

The improperly perceived need to examine the entire provisions of the decedent's will was not the practice in Minnesota prior to the enactment of our present system of estate administration. Prior to 1976, a title examiner would rely on an abstract of title which stated that the recorded will gave the personal representative a power of sale but did not require the entire text to the will to be set forth in the abstract and did not consider it necessary to examine every provision of the will in order to determine whether any provision might expressly or by implication restrict the personal representative's power to transfer certain real property. Ironically, now that the need to examine the will for restrictions on the power of the transfer is dispensed with by M.S. 524.3-714, the practice of full text examination has been imposed.

It is essential to our system of estate administration that provisions of the decedent's will which expressly or by implication restrict the power of the personal representative not be effective against a transferee for value. Without the protection of M.S. 524.3-714, a transferee must require that the validity of the will be finally determined in a formal proceeding in order to protect himself against the subsequent adjudication of the validity of another will which prohibits the transfer of the real property in question. The current practice supported by the dissenting members of the Committee is inconsistent in that it argues the need to examine the full text of the will but is willing to rely on an informally probated will which may be superceded in a subsequent adjudication. In addition, a transferee without the protection of M.S. 524.3-714 must require for his protection that the meaning of the will be finally determined in a formal proceeding when necessary to resolve any possible restriction on the power of the personal representative to make a certain transfer of real property properly. Our system of estate administration is intended to leave families to settle estates. The nullification of the protection afforded by M.S. 524.3-714 by current practice intrudes transferees and the Courts into the family's settlement of the estate and imposes the need for adjudicative determinations on a family where not intended or desired.



The members of the Committee who dissent have suggested that there is an inconsistency between sections such as M.S. 524.3-715 which recognize that the power of the personal representative to transfer real property may be restricted by Court order or the decedent's will and M.S. 524.3-714 which provides that such restrictions are not effective against a transferee for value without actual knowledge of the restrictions. There is no inconsistency. As stated in the Comment to Uniform Probate Code section 3-714:

"The provisions of a will may prescribe the duties of a personal representative and subject him to surcharge or other remedies of interested persons if he disregards them. See Section 3-703. But, the will's prohibition is not relevant to the rights of a purchaser unless he had actual knowledge of its terms."

If a personal representative provides a distributee of real property with the documents prescribed in Rule 43, a transferee for value from the distributee will be protected under M.S. 524.3-910. The full text of M.S. 524.3-910 and Uniform Probate Code, section 3-910 and Comment, are stated in Exhibit B. Two members of the Committee dissent.

Rule 43 is needed because the current practice in Minnesota does not place reliance on the protection afforded by M.S. 524.3-910. Instead, personal representatives attempt to comply with practices published by the Real Property Section of the Minnesota State Bar Association; a copy of these provisions are stated in Exhibit C.

Rule 43 indicates that a transferee for value from a distributee may rely on a transfer made by a decree of distribution and in an estate in which supervised administration was ordered, the transferee should require that the distributee be provided with a decree of distribution or a combination of a certified copy of unrestricted letters, a certified copy of an order of distribution which authorizes the distribution of real property to the distributee and the personal representative's deed of distribution to the distributee. In these two situations, current practice would accept the documents required by Rule 43. In all other cases, Rule 43 relies on M.S. 524.3-910 and current practice does not.

Illustration: If A, the record owner of Blackacre, dies and his estate is administered and distributed without an adjudicated settlement, D is protected as a good faith transferee for value from C if PR, as personal representative of A's estate, provided C with:

- (a) A certified copy of unrestricted letters issued to PR, as personal representative of A's estate (30 days must have elapsed since the date of issuance

of the letters to PR if he was informally appointed personal representative).

- (b) PR's deed distributing Blackacre to C (containing a statement of A's marital status and the consent of his spouse, if any).

As a transferee for value from C, D is protected and takes title to Blackacre free of any claims of the estate and any interested person, and incurs no personal liability to them, whether or not the distribution was proper. A provision in A's will which prohibits distribution of Blackacre to C is not effective against D unless he had actual knowledge of the terms of A's will.

Like Rule 42, Rule 43 expands upon the requirements of M.S. 524.3-910 as follows:

- (a) The certified copy of letters provided by the personal representative must be unrestricted.
- (b) The certified copy of letters provided by the personal representative must indicate that 30 days have elapsed since the date of issuance of the letters if the personal representative was appointed in an informal proceeding.
- (c) The personal representative's deed of distribution must state the marital status of the decedent and the consent of his spouse, if any.

In not relying on the protection of M.S. 524.3-910, current practice requires the adjudication of the settlement of an estate when our system of administration intended that it should not be necessary. To reduce the situations in which an adjudicated settlement will be required, current practice also relies on (i) the recording of the decedent's will and order probating the same and (ii) determinations made by the Registrar without notice to interested persons.

We submit that the Court shall recognize the validity and application of M.S. 524.3-910 by adopting Rule 43 and stating the proper practice for distributions of real property by personal representatives.

The dissent finds comfort and reliance on determinations made by the Registrar without notice to interested persons and recommends that Rule 15 be modified to expand the authority of Registrar beyond that contemplated by the statute. The reliance on such determinations is inappropriate, expansion of the Registrar's powers is undesirable and Rule 15 should be adopted as proposed.

Opportunity to make an oral presentation is requested.

Dated: July 14, 1986

Respectfully submitted

By   
Gerald L. Thoreen

## EXHIBIT A

### 524.3-714 PERSONS DEALING WITH PERSONAL REPRESENTATIVE; PROTECTION.

(a) A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters a provided in section 524.3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(b) If property is wrongfully transferred by a person acting as a personal representative to a person who is not in good faith, a subsequent good faith purchaser is protected as if the original transferee dealt in good faith. Any purchaser in good faith is protected as if all prior transfers were made in good faith.

*History: 1974 c 442 art 3 s 524.3-714; 1977 c 156 s 1; 1978 c 525 s 15*

## Section 3-714. [Persons Dealing with Personal Representative; Protection.]

A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in Section 3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

### COMMENT

This section qualifies the effect of a provision in a will which purports to prohibit sale of property by a personal representative. The provisions of a will may prescribe the duties of a personal representative and subject him to surcharge or other remedies of interested persons if he disregards them. See Section 3-703. But, the will's prohibition is not relevant to the rights of a purchaser unless he had actual knowledge of its terms. Interested persons who want to prevent a personal representative from having the power described here must use the procedures described in Sections 3-501 to 3-505. Each state will need to identify the relation between this section and other statutory provisions creating liens on estate assets for inheritance and other taxes. The section cannot control whether a purchaser takes free of the lien of unpaid federal estate taxes. Hence, purchasers from personal representatives appointed pursuant to this Code will have to satisfy themselves concerning whether estate taxes are paid, and if not paid, whether the tax lien follows the property they are acquiring. See Section 6234, In-

ternal Revenue Code [26 U.S.C.A. § 6324].

The impact of formal recording systems beyond the usual probate procedure depends upon the particular statute. In states in which the recording system provides for recording wills as muniments of title, statutory adaptation should be made to provide that recording of wills should be postponed until the validity has been established by probate or limitation. Statutory limitation to this effect should be added to statutes which do not so provide to avoid conflict with power of the personal representative during administration. The purpose of the Code is to make the deed or instrument of distribution the usual muniment of title. See Section 3-907, 3-908, 3-910. However, this is not available when no administration has occurred and in that event reliance upon general recording statutes must be had.

If a state continues to permit wills to be recorded as muniments of title, the above section would need to be qualified to give effect to the notice from recording.

## 524.3-910 PURCHASERS FROM DISTRIBUTEES PROTECTED.

If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and any interested person, and incurs no personal liability to them, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

History: 1974 c 442 art 3 s 524.3-910; 1975 c 347 s 61; 1976 c 161 s 10

**Section 3-910. [Purchasers from Distributees Protected.]**

If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distribution in kind, even if the personal representative and the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was made for value.

**COMMENT**

The words "instrument or deed of distribution" are explained in Section 3-907. The effect of this section may be to make an instrument or deed of distribution a very desirable link in a chain of title involving succession of land. Cf. Section 3-901.

In 1975, the Joint Editorial Board recommended additions that strengthen the protection extend-

ed by this section to bona fide purchasers from distributees. The additional language was derived from recommendations evolved with respect to the Colorado version of the Code by probate and title authorities who agreed on language to relieve title assurers of doubts they had identified in relation to some cases.

EXHIBIT C

F. PROBATE DEEDS.

1. PROBATE UNDER CHAPTER 525. This section applies to all probate proceedings commenced and completed prior to January 1, 1976, the effective date of Chapter 524, known as Uniform Probate Code, or UPC.

a. Deeds from distributee in probate decree, require:

- (1) Certified copy of Decree of Distribution, Decree of Descent, Decree of Omitted or Incorrectly Described Property, or Summary Decree of a Minnesota Court.
- (2) Deed from person or persons who are decreed property, and spouses, if any.

NOTE: Above applies whether decedent died testate or intestate or whether decedent was a resident or nonresident. If land is located in Minnesota, there must be a Minnesota probate proceeding.

b. Deeds as result of sale during period of Probate.

NOTE: If Homestead: MINN. STAT. § 525.63 stated "The homestead of a decedent, when the spouse takes any interest therein, shall not be sold, mortgaged or leased unless the Written consent of the spouse has been filed," i.e. filed in the Probate Court file.

- (1) Executor's deed or Administrator's C.T.A. deed pursuant to power of sale contained in Will, require:
  - (a) Certified copy of Will;
  - (b) Certified copy of Order Admitting Will to probate;
  - (c) Certified copy of letters;
  - (d) Executor's or Administrator C.T.A.'s Deed.

NOTE: If the Will is a foreign Will, the certified copy of order should admit the foreign Will (MINN. STAT. § 525.271), a Minnesota Court must appoint a Minnesota representative, and the deed must be from the Minnesota representative.

- (2) Executor's Deed where Will contains no power of sale, or Administrator's Deed pursuant to Court Order, require:
  - (a) Certified copy of letters testamentary or letters of administration. See Minn. Title Standard No. 39.
  - (b) Certified copy of Order Directing Sale. See MINN. STAT. § 525.641.
  - (c) Certified copy of Order confirming Sale. See MINN. STAT. § 525.662.
  - (d) Executor's or Administrator's Deed. See MINN.

STAT. § 525.662.

- c. Deeds pursuant to a contract for deed of a decedent, require:
- (1) Certified copy of letters.
  - (2) Certified copy of Order for Conveyance pursuant to contract. See MINN. STAT. § 525.69.
  - (3) Executor's or Administrator's deed pursuant to a contract for deed of a decedent.

2. PROBATE UNDER MINNESOTA STATUTES CHAPTER 524. This section applies to all probate proceedings commenced or completed after January 1, 1976, the effective date of Chapter 524, known as Uniform Probate Code, or UPC.

NOTE: An informal probate proceeding without appointment by a Minnesota Court will not be recognized as effective to transfer an interest in real property.

- a. DISTRIBUTION PROCEDURES. (By deed, decree or order, including any interest decedent owned in real property, whether it be a fee interest, individual interest, vendor or vendee's interest under a contract for deed, or a leasehold interest of three years or more).

- (1) Under informal probate proceedings.

CAVEAT: Under all informal proceedings the title examiner must substantiate from evidence available that the notice required by MINN. STAT. § 524.3-310 has been given. If the Probate Court will permit letters to issue without requiring evidence that the notice requirements will be fulfilled, the title examiner must ascertain that such notice requirements will be fulfilled. We recognize that unless the Probate Court requires evidence of the giving of notice be filed, that this requirement places an extremely difficult, if not impossible, burden of substantiation on the examiner.

- (a) Testate Probates:

- (i) If Will identifies real property and is specific in designation of devisee or devisees by name, or where entire estate or residue is given to a devisee or devisees by name, require:

- (aa) Certified copy of unrestricted letters (30 days must have elapsed since date of letters; also certificate must state that no objection to appointment has been filed and/or no formal proceedings have been commenced or title examiner must check



Probate Court file for this information.  
MINN. STAT. § 524.3-310).

- (bb) Certified copy of Will and verification that Will is admitted for probate.
- (cc) Personal representative's deed of distribution to devisee together with consent of surviving spouse if appropriate.
- (dd) Deed from devisee and spouse, if any.

NOTE: It is proper for personal representative to convey to self if the Will meets qualifications of (i) above.

- (ii) If Will describes a class of devisees or the spouse without specific names (for example, I give Blackacre "to my children" or "to my spouse"), in addition to (i) (aa), (bb), (cc), and (dd) above, require certified copy of Registrar's Determination of Heirs, or a court order determining heirs and/or devisees.
  - (iii) If the Will devises "my homestead" without a legal description of said homestead, in addition to (i)(aa), (bb), (cc), and (dd) above, require certified copy of Registrar's Determination stating the legal description of the homestead, or a court order determining the legal description of the homestead.
  - (iv) If Will does not conform to (i), (ii) or (iii) above, then require documents set forth under Supervised Proceedings *infra*.
- (b) Intestate Probates require:
- (i) Certified copy of unrestricted letters (30 days must have elapsed since date of letters; also certificate must state that no objection to appointment has been filed and/or no formal proceedings have been commenced or title examiner must check Probate Court file for this information. MINN. STAT. § 524.3-310).
  - (ii) Certified copy of Registrar's Determination of Heirs of decedent, setting forth the relationship and interest or fractional share of each heir in the property.
  - (iii) Personal representative's deed of distribution in accordance with Registrar's determination.

(iv) Deed from distributee and spouse, if any.

NOTE: If the Registrar determines that the personal representative is an heir then the personal representative may convey to self the interest determined by the Registrar.

NOTE: Even though the proceeding is commenced as an informal probate proceeding, it is possible during the proceeding to petition the Court for an Order Determining Heirs, Order of Distribution, or Decree. If such is the case, require the certified copy of letters as set forth at (i) above, certified copy of the Court's Order or Decree, and a personal representative's deed in accordance with the Order (deed not required if Decree), and a deed from distributee and spouse, if any.

(2) Under Formal (Unsupervised) Testacy and Appointment Proceedings.

NOTE: This procedure may be commenced for the purpose of establishing a Will or determining intestacy. A personal representative appointed under an informal proceeding, after notice, shall refrain from exercising his power to make further distribution during the pendency of the formal proceeding, unless Court confirms appointment.

(a) Testate Probates, require:

- (i) Certified copy of unrestricted letters which are in full force and effect.
- (ii) Certified copy of Order which shall:
  - (aa) establish the will;
  - (bb) identify by name the devisees if not identified by specific names in the will; and
  - (cc) set forth the legal description of homestead, if any, if not described in the will, unless the homestead is devised to the surviving spouse as a part of the residue of the estate.
- (iii) Certified copy of Will.
- (iv) Personal Representative's deed of distribution to persons named in Will or Order Establishing Will.
- (v) Deed from devisees and spouse, if any.

- (b) Intestate Probates.
  - (i) Certified copy of unrestricted letters which are in full force and effect.
  - (ii) Certified copy of Order determining heirs, setting forth the relationship to decedent and interest of each heir in the property.
  - (iii) Personal Representative's deed of distribution to heirs pursuant to Order.
  - (iv) Deed from heirs and spouse, if any.
- (3) Under formal Supervised Proceedings, require:
  - (a) Certified copy of letters.
  - (b) Certified copy of Order of Distribution.
  - (c) Personal Representative's deed of distribution to person named in order.
  - (d) Deed from person named in Order and spouse, if any.OR
  - (a) Certified copy of Decree.
  - (b) Deed from person named in Decree and spouse, if any.
- (4) Deed pursuant to Partition (MINN. STAT. § 524.3-911).
  - (a) Where partition is made without a sale.

Require:

    - (i) Certified copy of order appointing the referees to make partition in same manner as provided by MINN. STAT. § 558.04.
    - (ii) Certified copy of order confirming the partition in same manner as provided by MINN. STAT. §§ 558.06 and 558.07.
    - (iii) Certified copy of final judgment that such partition be effectual in same manner as provided by MINN. STAT. § 558.07.
    - (iv) Deed from distributee and spouse, if any.
  - (b) Where the Court directs the personal representative to sell the property.

Require:

    - (i) Certified copy of letters.

- (ii) Certified copy of Order authorizing sale.
  - (iii) Certified copy of Order confirming sale in same manner as provided by MINN. STAT. § 558.21.
  - (iv) Certified copy of final judgment directing personal representative to execute deed in same manner as provided by MINN. STAT. § 558.21.
  - (v) Deed of personal representative to purchaser.
- (5) Deed from Distributee Determined by Private Agreement MINN. STAT. § 524.3-912.

**Require:**

- (a) Certified copy of unrestricted letters. (If informal proceeding see requirements for letters under informal probate proceedings.)
  - (b) Certified copy of Order determining heirs and interest of each or certified copy of Registrar's Determination of heirs and interest of each or certified copy of Will and Order for probate.
  - (c) Recordable contract executed by all persons affected by its provisions including spouses.
  - (d) Deed of distribution from personal representative to distributee.
  - (e) Deed from distributee and spouse, if any.
- (6) Deed from Distributee Determined by Decree Distributing Omitted or Incorrectly Described Property pursuant to MINN. STAT. § 524.3-413 or MINN. STAT. § 524.3-1008.
- (a) **Require:**
- (i) Certified copy of Decree.
  - (ii) Deed from distributee and spouse, if any.

**b. SALES PROCEDURES.**

**NOTE:** A sale or encumbrance by a personal representative to self, spouse, agent or attorney, or others set forth in MINN. STAT. § 524.3-713 should not be made unless the Will or a contract entered into by the decedent expressly authorizes the transaction, or the Court by Order permits the sale.

**CAVEAT:** Under all informal proceedings the title examiner must substantiate from evidence available that the notice required by MINN. STAT. § 524.3-310 has been given. If the Probate Court will permit letters to issue without requiring evidence that the

notice requirements will be fulfilled, the title examiner must ascertain that such notice requirements will be fulfilled. We recognize that unless the Probate Court requires evidence of the giving of notice be filed, that this requirement places an extremely difficult, if not impossible, burden of substantiation on the examiner.

Under informal, formal or supervised probate,

(1) Testate Probate, require:

- (a) Certified copy of unrestricted letters. (If the proceeding is informal, 30 days must have elapsed since date of letters; also certificate must state that no objections to appointment have been filed and/or no formal proceedings have been commenced or else title examiner must examine the Probate Court file to verify this information. MINN. STAT. § 524.3-310).
- (b) Certified copy of Will and verification that it is admitted for probate.

NOTE: If the proposed sale is in conflict with a specific devise in the Will (for example, proposed sale is to a person other than the named devisee) then require: (1) Court Order to Sell or (2) deed from devisee and spouse, if any, with proper searches. If Will prohibits the sale, then require a Court Order to sell.

- (c) Personal Representative's deed of sale which should contain marital status of decedent, and consent of spouse, if any.

(2) Intestate Probates, require:

- (a) Certified copy of unrestricted letters. (If proceeding is informal, 30 days must have elapsed since date of letters; also certificate must state that no objections to appointment have been filed and/or no formal proceedings have been commenced or else title examiner must examine the Probate Court file to verify this information. MINN. STAT. § 524.3-310.)
- (b) Personal Representative's deed of sale which should contain marital status of decedent, and consent of spouse, if any.

NOTE: In regard to potential Estate Tax Liens, see Minn. Title Standard No. 101.

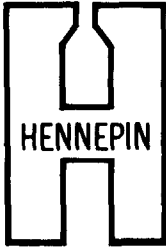
c. **PERSONAL REPRESENTATIVE'S DEED PURSUANT TO CONTRACT FOR DEED OF A DECEDENT.**

Require:

- (1) Certified copy of letters issued to Personal Representative. (If informal proceedings, 30 days must have lapsed since date of the letters.)
- (2) Personal Representative's deed which should contain marital status of decedent, and consent of spouse, if any. If the contract for deed is not of record, then the Personal Representative's deed should contain a statement that the deed is given pursuant to a contract for deed and identify the vendors and vendees in said contract for deed and their assigns, if any, and the date of said contract.

d. **DEED FROM DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE.**

A deed from a domiciliary foreign personal representative acting under the procedure of MINN. STAT. § 524.4-204 creates an unmarketable title; therefore the procedure of appointment of a local personal representative should be followed.



EXAMINER OF TITLES  
A-701 Government Center  
Minneapolis, Minnesota 55487-0071

348-3191

July 9, 1986

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 10 1986

WAYNE TSCHIMPERLE  
CLERK

Clerk of the Appellate Courts  
230 State Capitol  
St. Paul, MN 55155

Re: C3-84-146

Dear Sir:

Pursuant to the Order signed by Chief Justice Douglas K. Amdahl on May 1, 1986, I am enclosing an original and ten copies of my written statement regarding the proposed rules pertaining to probate administration in Minnesota.

I am also enclosing an original and ten copies of my request to make an oral presentation at the hearing to consider these proposed rules for probate administration which hearing is scheduled for 11:00 a.m. on July 30, 1986.

Would you please file these statements and requests as required by the above-mentioned Court Order.

Yours truly,

Richard W. Edblom  
Examiner of Titles

RWE:bms

Enclosures

**HENNEPIN COUNTY**

an equal opportunity employer

STATE OF MINNESOTA  
IN SUPREME COURT  
C3-84-146

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 10 1986

WAYNE TSCHIMPERLE  
CLERK

---

RICHARD W. EDBLOM,  
Examiner of Titles for Hennepin County

**REQUEST TO MAKE ORAL PRESENTATION  
REGARDING PROPOSED RULES FOR  
PROBATE ADMINISTRATION**

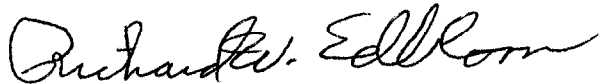
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TO: The Supreme Court of the State of Minnesota

Richard W. Edblom, Examiner of Titles for Hennepin County, respectfully requests the Supreme Court to grant permission to make an oral presentation concerning the proposed rules for probate administration at the public hearing to be held July 30, 1986, at 11:00 a.m. in the Supreme Court Chambers.

This request is made in conjunction with the written statement filed herewith which questions those portions of proposed Rules 42 and 43 which would not require a certified copy of the decedent's will to be presented in a real estate transaction relating to land specifically devised in the will.

Dated: July 9, 1986



Richard W. Edblom, Examiner of Titles  
A-701 Hennepin County Government Center  
Minneapolis, MN 55487  
Telephone: (612) 348-3191



**STATE OF MINNESOTA  
IN SUPREME COURT  
C3-84-146**

**OFFICE OF  
APPELLATE COURTS  
FILED**

JUL 10 1986

**WAYNE TSCHIMPERLE  
CLERK**

---

RICHARD W. EDBLOM,  
Examiner of Titles for Hennepin County

**WRITTEN STATEMENT CONCERNING  
PROPOSED RULES FOR  
PROBATE ADMINISTRATION**

---

TO: The Supreme Court of the State of Minnesota

Richard W. Edblom, Examiner of Titles for Hennepin County, respectfully submits the following written statement regarding parts of proposed Rules 42 and 43 for probate administration in the State of Minnesota:

**ANALYSIS OF PROPOSED RULES 42 and 43**

At issue is a disagreement between probate attorneys and real estate attorneys as to whether a certified copy of a decedent's will is required to support a transfer of title from a personal representative to either a purchaser or a distributee. The members of the committee who drafted the proposed Rules 42 and 43 would not require a certified copy of the will; the real estate attorneys take the opposite position.

The position of the real estate attorneys is based upon both statutory and case law in Minnesota which provides that title to the property of a decedent is vested at death in the parties to whom it is devised in the decedent's will, subject to administration.

Minnesota Statutes Section 524.3-101 states that:

"... Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will . . . , subject to the provisions of sections 525.14 and 525.145, the allowances provided for by section 525.15, to the rights of creditors, elective share of the surviving spouse, and to administration."

Minnesota case law has consistently stated that real property vests in a devisee at the time of death. The most recent expression of this doctrine occurred in a 1985 Court

If the Examiner's office had certified any of the above transfers, a party who should have had title to the land according to the will would have been in a position to bring a lawsuit to recover from the Torrens Assurance Fund on the theory that he was vested with title to the land. Because only 40 to 45 percent of the land in Hennepin County is registered, there undoubtedly were many more instances of attempted transfers of abstract land to which the same objections were made.

The committee members who drafted the proposed Rules 42 and 43 rely on Minnesota Statutes Sections 524.3-714 and 523.3-910 as a basis for not requiring a certified copy of the decedent's will to be presented to a transferee or distributee.

The third sentence of Section 524.3-714(a) is as follows:

Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 524.3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.

Section 524.3-910 is as follows:

If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and any interested person, and incurs no personal liability to them, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

It should be noted that the above-quoted sentence from Section 524.3-714(a) specifies only that "no provision in any will or order of court purporting to limit the power of a personal representative is effective . . ." (emphasis supplied). However, the Minnesota Statutes themselves place a statutory limitation on the power of a personal representative in Section 524.3-715.

The pertinent portions of Section 524.3-715 are as follows:

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 524.3-902, a personal representative, acting reasonably for the benefit of interested persons, may properly:

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit or for part cash and part credit, and with or without security for unpaid balances, provided, however, that the homestead of a decedent when the spouse takes any interest therein shall not be sold, mortgaged or leased until the written consent of the spouse has been obtained;

(27) satisfy and settle claims and distribute the estate as provided in this chapter;

Even if there were no statutory limitation on the powers of a personal representative to sell or distribute land, there still would be a substantial question as to whether Sections 524.3-714 and 524.3-910 would meet the statutory requirements of due process necessary to divest a devisee of the title to a tract of land given to him in a decedent's will. In the leading case in Minnesota on the conclusiveness of a decree of distribution, the Supreme Court held that such a decree of a probate court having jurisdiction was binding and conclusive on all those interested in the estate even if it was erroneous, Bengtson v. Setterberg, 227 Minn. 337, 35 N.W.(2d) 623. Based upon the decision of the Bengtson case and earlier cases, the Minnesota Real Property Section issued Title Standard No. 24 which provides as follows:

A decree of distribution or decree of descent contrary to the terms of an admitted will or statutes of descent makes a title unmarketable during the time allowed for appealing from the decree; but in the absence of an appeal, such title becomes marketable after the time allowed for appeal has expired.

It should be noted that the conclusiveness of a decree of distribution is the product of a court having jurisdiction of the subject matter with notice being given to all interested parties of the hearing and with a period for appeal from the entry of the decree being provided by statute. With all of these safeguards of a judicial proceeding in place, the court correctly felt justified in holding that such a decree of distribution could bar an heir or devisee who was otherwise entitled to an interest in a parcel of land by a will or the laws of descent.

But can the same conclusiveness be attributed to the deed of a personal representative which has not been sanctioned by the court in the face of a provision in a will devising the land to a different party? It would seem that due process would prevent such a devisee from being divested of title by the independent act of a personal representative.

### CONCLUSION

Because of legitimate questions about the conclusiveness of Minnesota Statutes Sections 524.3-714 and 523.3-910, upon which proposed Rules 42 and 43 are based, the real estate attorneys have required that a certified copy of the decedent's will be supplied and recorded. This is seen by them as a prudent and inexpensive precaution to ensure that their clients acquire good title from a personal representative. On the other hand, many probate attorneys do not wish to have the will submitted and made a matter of public record. They believe the above-cited statutes afford adequate protection to purchasers from a personal representative. The undersigned requests that the court await the appeal of an appropriate case to decide the issues discussed above rather than to make a determination by court rule.

Dated: July 9, 1986

Richard W. Edblom

Richard W. Edblom, Examiner of Titles  
A-701 Hennepin County Government Center  
Minneapolis, MN 55487  
Telephone: (612) 348-3191



David K. Porter  
ATTORNEY AT LAW

OFFICE OF  
APPELLATE COURTS  
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5006 34TH AVENUE SOUTH  
MINNEAPOLIS, MN 55417  
612 • 722-1001

JUL 11 1986

WAYNE TSCHENK  
CLERK

July, 1986

C3-84-146

To: The Honorable Members of the Supreme Court  
of the State of Minnesota:

The Court has asked for comment on proposed Probate Court Rules. As an attorney in solo practice for ten years, with a concentration in Probate and Real Estate, I feel qualified to respond.

1) A certified copy of the Will should be required in real estate transactions.

Wills frequently give specific real property to persons other than the executor. The temptation for an executor to disregard the instructions would be increased if no will were required.

Members of the Committee have indicated that there is a preference to keep the contents of the will "private". The will is already on file, available for inspection. In my experience, buyers of probate property have never indicated any interest in the contents of the will. It is just one of the papers handled by the closer. It then ends up buried in another back room at the Courthouse.

Buyers' attorneys will continue to require certified copies of the will to assure themselves that their clients are not buying into lawsuits. The filing of the will at the Probate Court will continue to be regarded as "notice" if anyone needs to sue on behalf of a disregarded devisee.

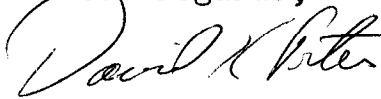
2) Notice of the spousal right to the augmented share of the estate should include some meaningful notice to the spouse of the total known augmented estate. The present format puts the spouse "on notice" but leaves him or her in the dark as to how important that notice is. The numbers should be plainer, mindful of the disorientation and grief that frequently follow the death of a spouse.

Page Two  
July, 1986

3) Notice of the proceedings should include a copy of the application or petition, the will, if any, and a description of what share of the net estate each person entitled to notice will end up receiving. A simple warning that the heirs or devisees cannot count on any specific amount until the estate is fully administered, together with a non-binding idea of how much to expect and when would be a service to the public.

The standard practice of keeping the entitled in darkness while we work our magic generates fear, confusion, and resentment. These simple steps would help convince the public that we are serving them rather than stealing from them.

Kindest regards,

A handwritten signature in cursive script, appearing to read "David K. Porter". The signature is written in dark ink and is positioned above the typed name.

David K. Porter

DKP/cjh

STATE OF MINNESOTA

IN SUPREME COURT

C3-84-146

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 14 1986

WAYNE TSCHIANPERLE  
CLERK

In re: Proposed Rules for Probate Administration  
in Minnesota, to be heard on July 30, 1986.

Request to Make an Oral Presentation

To the above named court:

The undersigned, Robert V. Tarbox, a member of the Bar of this Court, hereby requests permission of this Court to make an oral presentation at the hearing on July 30, 1986, by this Court of the above matter, per this Court's Order dated May 1, 1986, in the above matter. Attached hereto is a Statement Concerning the Above Matter by the undersigned. It is the intention of the undersigned to confine the oral presentation to the major matters in said Statement. They are in Articles IV, VIII, IX, X and XIII of it.

Respectfully submitted,

Dated: July 11, 1986



---

Robert V. Tarbox  
5008 Bruce Avenue  
P.O. Box 24022  
Edina, MN 55424  
(612) 926-1762  
Attorney License No. 108388

STATE OF MINNESOTA  
IN SUPREME COURT

C3-84-146

In re: Proposed Rules for Probate Administration  
in Minnesota, to be heard on July 30, 1986.

Statement Concerning the Above Matter

To the above court:

I.

With all proper respect for the learning, experience, and much hard work of the members of the Court's Advisory Committee (which is fully deserved), I believe my comments hereinafter may be of some assistance to the Court in its consideration of said rules.

II.

I assume the Court has full power to adopt rules and regulate pleadings, practice, procedure and forms in probate proceedings. Minn. Const. Art. III, and Art. VI §§ 11 & 12; M.S. 524.1-304, 487.23 Subd. 1, 487.14, 524.3-105, 480.051. It may well be that there are no longer any Probate Courts, as such, in Minnesota and that the courts exercising jurisdiction in probate proceedings are either divisions of the County Courts or divisions of the District Courts, M.S. 524.1-201(5); Minn. Laws 1982, C.398, §§ 2 & 3, despite M.S. 487.01 Subd. 4 and 484.011. I infer that this Court's order dated April 20, 1973, concerning the County Courts' civil actions within the concurrent jurisdiction of the District Courts was adopted pursuant to M.S. 487.23 Subd. 1, but that it does not apply to purely probate matters. M.S. 524.1-302. The provisions of M.S. 487.38 and 525.06 may no longer be of effect with respect to probate proceedings in all of the counties of the State, and hence it is highly desirable that this Court adopt rules and regulate pleadings, practice, procedure and forms in probate proceedings.

III.

It would appear that there is inconsistency, and possible consequent confusion, in the Proposed Rules' use of the word "Court", sometimes apparently meaning the Court itself and other times meaning a Judge of the Court. This occurs in numerous Proposed Rules, for examples, Rules 2, 4, 6, 10, 11, 13, 14, 15, and 26. Is not the Registrar a part of the Court itself? M.S. 524.1-201(5) and (36).



#### IV.

Proposed Rule 13 requires that "Every document filed or used in any proceeding shall be ". . . on 8 1/2 x 11 paper . . ." (which I assume is intended to mean ". . . 8 1/2 x 11 inch paper . . .", in accordance with this Court's order dated April 16, 1982), but surely it cannot be intended to exclude any will or codicil of a decedent, no matter what size paper or other material it is written upon. M.S. 524.2-502.

#### V.

Proposed Rule 15, sub-paragraph (c), line 4 refers to ". . . ministerial acts specified in M.S. 524.1-307" in discussing the functions and powers of the Registrar. The Registrar's power to ". . . fix and approve bonds . . ." does not seem to me to be ministerial. Is it intended to take that power away from the Registrar? How could a special administrator then be informally appointed? M.S. 524.3-614(1), 524.3-603. Should the said word "ministerial" be stricken?

#### VI.

Proposed Rule 27 should, it would appear, be expanded to cover the case of the Commissioner of Revenue applying (petitioning?) for letters under M.S. 291.21. Taxes are expressly not a "claim". M.S. 524.1-201(4). Perhaps taxes are an "account", but clarification would be welcome.

#### VII.

Proposed Rule 34 should, it would seem, include reference to informal appointment of a personal representative as well as to informal probate of a will. There can obviously be informal appointments in the case of an intestacy. M.S. 524.3-301.

#### VIII.

With regard to both of Proposed Rules 35 and 37 concerning notice to a surviving spouse of rights under M.S. 525.15, it would seem appropriate and consistent if similar notices were required in the event the decedent was survived by any minor (or dependent?) child or children, whether or not a spouse survived the decedent, and that such notices be sent to such child or children. M.S. 525.15, 525.532.

#### IX.

Proposed Rule 41 varies from the provisions of M.S. 524.3-706. The second paragraph of that section seems clear and unambiguous that the personal representative has a duty to mail or

deliver a copy of the inventory to all residuary distributees of the decedent and also to interested persons, [see M.S. 524.1-201(20)] or creditors who request a copy thereof, whether or not there is a surviving spouse of the decedent. The first paragraph of the present statute is unsatisfactory with respect to filing an inventory with the Court. The wording of M.S. 524.3-708 seems to imply that the original inventory need not necessarily be filed, and the additions and deletions to M.S. 524.3-706 made by Minn. Laws 1982, c.529, s.1 lend force to that implication. The last sentence of Proposed Rule 41 makes eminent practical sense because entering an order for, or a decree of, distribution necessitates a determination of what property there is to be decreed or distributed, and that in turn necessitates an accounting by the personal representative, which in turn necessitates an inventory of the decedent's property at the time of his death as the starting point for the accounting. It may well be that the inventory should be filed with the Court in all cases, from the point of view of the public and the Court. It would seem especially so if there is a supervised administration.

X.

With regard to Proposed Rules 42 and 43, I understand that there is a disagreement between a majority of the members of the Court's Advisory Committee and a minority of two of such members and that the Proposed Rules reflect the view of that majority. I respectfully suggest that those two Rules not be in the Rules at all. They seem to be dealing with matters of real estate title and the marketability of the same. It would seem those are private concerns of persons dealing with the real estate and not a concern of this Court in adopting rules and regulating pleadings, practice, procedure and forms in probate proceedings in court. The philosophy of the Uniform Probate Code, as still embodied in the Minnesota version of it in Chapter 524 of Minnesota Statutes, is to make the "probate court" more of an adjudicatory body and less of an administrative or supervisory body than was the situation prior to the effective date of said Chapter 524, except in those particular cases where supervised administration is necessary to protect rights and accomplish justice. M.S. 524.3-502. It leaves to individuals the responsibility to assert or defend their own rights as they may choose, and it gives them ample statutory procedures to so act if they wish to avail themselves of them. Whether this is a sound and just policy in these matters awaits the verdict of time and experience. Minnesota has only had its Uniform Probate Code for about 10 and 1/2 years, which is a comparatively short time in the history of law. The provisions of 524.3-714 and 524.3-910 are broad and sweeping in protecting good faith purchasers and lenders. That is presumably a legislative policy choice.

If a successor, devisee, or heir, M.S. 524.1-201(42), (8), (17), does not want the personal representative to be able to exercise freely all the broad powers given him by M.S. 524.3-715, he can petition the Court for supervised administration, M.S. 524.3-502, and if the court finds his petition just and supervised administration necessary, restrictions on the powers of the personal representative can be endorsed on his letters of appointment, M.S. 524.3-504. That would fulfill the exception requirements of M.S. 524.3-714 as to protecting anyone dealing in good faith with a personal representative. They would then have notice from the letters of appointment of restrictions in the will or court order on the powers of the personal representative. It is not clear that an order granting or denying supervised administration is appealable under M.S. 525.71. Is it then reviewable in the Court of Appeals by certiorari or similar discretionary procedure?

If a will presented to the Registrar with an application for informal probate and appointment contained devises of real estate, or personal property for that matter, of a sort appearing to require restrictions on the powers of the personal representative, the Registrar can refuse the application, M.S. 524.3-305, 524.3-309. If the Registrar grants informal probate and appointment, an interested devisee can petition for supervised administration, supra, and real estate cannot be sold, encumbered, leased, or distributed by an informally appointed personal representative until 30 days have passed from the date of issuance of his letters. M.S. 524.3-711. The devisee, heir, or other interested person gets notice of that, M.S. 524.3-310, and has time to take such action as he chooses, including petitioning for a restraining order under M.S. 524.3-607. Possibly M.S. 524.3-414(a) may be applied to suspend the powers of an informally appointed personal representative. M.S. 524.3-503 seems to give the Court ample powers to suspend the powers of a personal representative pending the hearing of a petition for supervised administration. See also M.S. 524.3-401.

Another provision in proposed Rules 42 and 43 that gives me concern is the requirement of the consent of the decedent's spouse, if any, to any deed by a personal representative, as in (b) of Proposed Rule 42 and in (b)(2) of Proposed Rule 43. The applicable statute, M.S. 524.3-715(23), only requires the spouse's written consent when the real estate in question is the decedent's homestead. Broadening that seems to give a surviving spouse a veto power with respect to all real estate in the estate. I believe the concern of title examiners is whether any particular tract of real estate is or might be homestead. Presumably that is a question of fact and law and would, in many situations, force a personal representative to obtain a Court order by an appropriate petition. That would involve cost and delay. If the administration is supervised, an ex parte order might be obtained under M.S. 524.3-505, although even there a notice and hearing would seem more appropriate and just.

Parenthetically, I note that M.S. 524.3-714 does not provide for an exception for endorsements on Letters of Special Administration even though M.S. 524.3-617 refers to limitations on the powers of a Special Administrator in the Court's order of appointment.

XI.

Proposed Rule 44 appears to have a miscitation in line 6 thereof. I believe that statutory citation should be M.S. 524.3-403 rather than M.S. 524.1-401(3).

XII.


Proposed Rule 50 says that an interested person may petition the Court for an order to show cause why administration of the estate has not been completed if 18 months have elapsed since the appointment of the personal representative. M.S. 525.475(2) pertaining to informal administrations and formal unsupervised administrations does not contain a time limitation; however, M.S. 524.3-1001(a)(1) and 524.3-1002 refer to a one year period from the appointment of the original personal representative for interested persons or devisees to petition for a formal closing. Perhaps the provisions of Proposed Rule 50 do not preclude a petition under M.S. 524.3-1001 or 524.3-1002 in less than the 18 month time referred to in the Proposed Rule 50.

XIII.

Proposed Rules 53 and 54 say that the personal representative must file a supplemental inventory with the Court and mail copies to designated persons, citing M.S. 524.3-708. That statute does not so provide and the Proposed Rules vary from the said statute. It merely provides that the personal representatives shall ". . . file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information." Rules 53 and 54 should be co-ordinated with Rule 41.

Respectfully submitted,

Dated: July 11, 1986

  
\_\_\_\_\_  
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GREGORY J. HELLINGS

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 16 1986

WAYNE TSCHIMPERLE  
CLERK

July 15, 1986

Clerk of the Appellate Courts  
230 State Capitol  
St. Paul, MN 55155

Re: Rules of Probate Administration

Enclosed find the following regarding the above:

1. Ten copies of my written statement regarding the proposed Minnesota Probate Rules.

Very truly yours,



James M. Neilson

JMN:fak

Enclosures

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 16 1986

WAYNE TSCHIMPERLE  
CLERK

STATE OF MINNESOTA  
IN SUPREME COURT

C3-84-146

IN RE PROPOSED MINNESOTA PROBATE RULES

Rule 15 should be expanded to specifically provide that the Registrar in an informal probate proceeding has the power to determine the heirs of the decedent.

Rule 42 and 43 suggest that transfers of real estate should be relied upon merely based upon a certified copy of unrestricted letters and a personal representative's deed. To have this protection there must be a good faith transferee for value. This proposal is much too sweeping. It gives no protection whatsoever to improper transfers. However, to rely on the protection you would have to prove in every transaction that there was in fact a good faith transferee for value.

These two rules provide to an unsupervised personal representative the ultimate power to pass title to real estate even when he did not act properly. This is unreasonable. Some additional minimal protections must be provided, such as those contained in the "white pages" to the title standards of the Real Property Section of the Minnesota State Bar Association, a copy of which is attached as "Exhibit A".

To attempt to determine that the probate proceeding is proper is not an unbearable burden on a transferee. It would clearly give a great deal more protection against improper transfers.

Respectfully submitted,

BABCOCK, LOCHER, NEILSON & MANNELLA

By James M. Neilson  
James M. Neilson  
Attorney I.D. No. 77446  
118 East Main Street  
Anoka, MN 55303  
(612) 421-5151

EXHIBIT A

STAT. § 525.662.

- c. Deeds pursuant to a contract for deed of a decedent, require:
- (1) Certified copy of letters.
  - (2) Certified copy of Order for Conveyance pursuant to contract. See MINN. STAT. § 525.69.
  - (3) Executor's or Administrator's deed pursuant to a contract for deed of a decedent.

2. PROBATE UNDER MINNESOTA STATUTES CHAPTER 524. This section applies to all probate proceedings commenced or completed after January 1, 1976, the effective date of Chapter 524, known as Uniform Probate Code, or UPC.

NOTE: An informal probate proceeding without appointment by a Minnesota Court will not be recognized as effective to transfer an interest in real property.

- a. DISTRIBUTION PROCEDURES. (By deed, decree or order, including any interest decedent owned in real property, whether it be a fee interest, individual interest, vendor or vendee's interest under a contract for deed, or a leasehold interest of three years or more).
- (1) Under informal probate proceedings.

CAVEAT: Under all informal proceedings the title examiner must substantiate from evidence available that the notice required by MINN. STAT. § 524.3-310 has been given. If the Probate Court will permit letters to issue without requiring evidence that the notice requirements will be fulfilled, the title examiner must ascertain that such notice requirements will be fulfilled. We recognize that unless the Probate Court requires evidence of the giving of notice be filed, that this requirement places an extremely difficult, if not impossible, burden of substantiation on the examiner.

(a) Testate Probates:

- (i) If Will identifies real property and is specific in designation of devisee or devisees by name, or where entire estate or residue is given to a devisee or devisees by name, require:
  - (aa) Certified copy of unrestricted letters (30 days must have elapsed since date of letters; also certificate must state that no objection to appointment has been filed and/or no formal proceedings have been commenced or title examiner must check

Probate Court file for this information.  
MINN. STAT. § 524.3-310).

- (bb) Certified copy of Will and verification that Will is admitted for probate.
- (cc) Personal representative's deed of distribution to devisee together with consent of surviving spouse if appropriate.
- (dd) Deed from devisee and spouse, if any.

NOTE: It is proper for personal representative to convey to self if the Will meets qualifications of (i) above.

- (ii) If Will describes a class of devisees or the spouse without specific names (for example, I give Blackacre "to my children" or "to my spouse"), in addition to (i) (aa), (bb), (cc), and (dd) above, require certified copy of Registrar's Determination of Heirs, or a court order determining heirs and/or devisees.
  - (iii) If the Will devises "my homestead" without a legal description of said homestead, in addition to (i)(aa), (bb), (cc), and (dd) above, require certified copy of Registrar's Determination stating the legal description of the homestead, or a court order determining the legal description of the homestead.
  - (iv) If Will does not conform to (i), (ii) or (iii) above, then require documents set forth under Supervised Proceedings *infra*.
- (b) Intestate Probates require:
- (i) Certified copy of unrestricted letters (30 days must have elapsed since date of letters; also certificate must state that no objection to appointment has been filed and/or no formal proceedings have been commenced or title examiner must check Probate Court file for this information. MINN. STAT. § 524.3-310).
  - (ii) Certified copy of Registrar's Determination of Heirs of decedent, setting forth the relationship and interest or fractional share of each heir in the property.
  - (iii) Personal representative's deed of distribution in accordance with Registrar's determination.



(iv) Deed from distributee and spouse, if any.

**NOTE:** If the Registrar determines that the personal representative is an heir then the personal representative may convey to self the interest determined by the Registrar.

**NOTE:** Even though the proceeding is commenced as an informal probate proceeding, it is possible during the proceeding to petition the Court for an Order Determining Heirs, Order of Distribution, or Decree. If such is the case, require the certified copy of letters as set forth at (i) above, certified copy of the Court's Order or Decree, and a personal representative's deed in accordance with the Order (deed not required if Decree), and a deed from distributee and spouse, if any.

(2) Under Formal (Unsupervised) Testacy and Appointment Proceedings.

**NOTE:** This procedure may be commenced for the purpose of establishing a Will or determining intestacy. A personal representative appointed under an informal proceeding, after notice, shall refrain from exercising his power to make further distribution during the pendency of the formal proceeding, unless Court confirms appointment.

(a) Testate Probates, require:

- (i) Certified copy of unrestricted letters which are in full force and effect.
- (ii) Certified copy of Order which shall:
  - (aa) establish the will;
  - (bb) identify by name the devisees if not identified by specific names in the will; and
  - (cc) set forth the legal description of homestead, if any, if not described in the will, unless the homestead is devised to the surviving spouse as a part of the residue of the estate.
- (iii) Certified copy of Will.
- (iv) Personal Representative's deed of distribution to persons named in Will or Order Establishing Will.
- (v) Deed from devisees and spouse, if any.

- (b) Intestate Probates.
  - (i) Certified copy of unrestricted letters which are in full force and effect.
  - (ii) Certified copy of Order determining heirs, setting forth the relationship to decedent and interest of each heir in the property.
  - (iii) Personal Representative's deed of distribution to heirs pursuant to Order.
  - (iv) Deed from heirs and spouse, if any.
- (3) Under formal Supervised Proceedings, require:
  - (a) Certified copy of letters.
  - (b) Certified copy of Order of Distribution.
  - (c) Personal Representative's deed of distribution to person named in order.
  - (d) Deed from person named in Order and spouse, if any.OR
  - (a) Certified copy of Decree.
  - (b) Deed from person named in Decree and spouse, if any.
- (4) Deed pursuant to Partition (MINN. STAT. § 524.3-911).
  - (a) Where partition is made without a sale.

Require:

    - (i) Certified copy of order appointing the referees to make partition in same manner as provided by MINN. STAT. § 558.04.
    - (ii) Certified copy of order confirming the partition in same manner as provided by MINN. STAT. §§ 558.06 and 558.07.
    - (iii) Certified copy of final judgment that such partition be effectual in same manner as provided by MINN. STAT. § 558.07.
    - (iv) Deed from distributee and spouse, if any.
  - (b) Where the Court directs the personal representative to sell the property.

Require:

    - (i) Certified copy of letters.

- (ii) Certified copy of Order authorizing sale.
  - (iii) Certified copy of Order confirming sale in same manner as provided by MINN. STAT. § 558.21.
  - (iv) Certified copy of final judgment directing personal representative to execute deed in same manner as provided by MINN. STAT. § 558.21.
  - (v) Deed of personal representative to purchaser.
- (5) Deed from Distributee Determined by Private Agreement  
MINN. STAT. § 524.3-912.

Require:

- (a) Certified copy of unrestricted letters. (If informal proceeding see requirements for letters under informal probate proceedings.)
  - (b) Certified copy of Order determining heirs and interest of each or certified copy of Registrar's Determination of heirs and interest of each or certified copy of Will and Order for probate.
  - (c) Recordable contract executed by all persons affected by its provisions including spouses.
  - (d) Deed of distribution from personal representative to distributee.
  - (e) Deed from distributee and spouse, if any.
- (6) Deed from Distributee Determined by Decree Distributing Omitted or Incorrectly Described Property pursuant to MINN. STAT. § 524.3-413 or MINN. STAT. § 524.3-1008.
- (a) Require:
    - (i) Certified copy of Decree.
    - (ii) Deed from distributee and spouse, if any.

b. SALES PROCEDURES.

NOTE: A sale or encumbrance by a personal representative to self, spouse, agent or attorney, or others set forth in MINN. STAT. § 524.3-713 should not be made unless the Will or a contract entered into by the decedent expressly authorizes the transaction, or the Court by Order permits the sale.

CAVEAT: Under all informal proceedings the title examiner must substantiate from evidence available that the notice required by MINN. STAT. § 524.3-310 has been given. If the Probate Court will permit letters to issue without requiring evidence that the

notice requirements will be fulfilled, the title examiner must ascertain that such notice requirements will be fulfilled. We recognize that unless the Probate Court requires evidence of the giving of notice be filed, that this requirement places an extremely difficult, if not impossible, burden of substantiation on the examiner.

Under informal, formal or supervised probate,

(1) Testate Probate, require:

- (a) Certified copy of unrestricted letters. (If the proceeding is informal, 30 days must have elapsed since date of letters; also certificate must state that no objections to appointment have been filed and/or no formal proceedings have been commenced or else title examiner must examine the Probate Court file to verify this information. MINN. STAT. § 524.3-310).
- (b) Certified copy of Will and verification that it is admitted for probate.

NOTE: If the proposed sale is in conflict with a specific devise in the Will (for example, proposed sale is to a person other than the named devisee) then require: (1) Court Order to Sell or (2) deed from devisee and spouse, if any, with proper searches. If Will prohibits the sale, then require a Court Order to sell.

- (c) Personal Representative's deed of sale which should contain marital status of decedent, and consent of spouse, if any.

(2) Intestate Probates, require:

- (a) Certified copy of unrestricted letters. (If proceeding is informal, 30 days must have elapsed since date of letters; also certificate must state that no objections to appointment have been filed and/or no formal proceedings have been commenced or else title examiner must examine the Probate Court file to verify this information. MINN. STAT. § 524.3-310.)
- (b) Personal Representative's deed of sale which should contain marital status of decedent, and consent of spouse, if any.

NOTE: In regard to potential Estate Tax Liens, see Minn. Title Standard No. 101.

c. **PERSONAL REPRESENTATIVE'S DEED PURSUANT TO CONTRACT FOR DEED OF A DECEDENT.**

**Require:**

- (1) Certified copy of letters issued to Personal Representative. (If informal proceedings, 30 days must have lapsed since date of the letters.)
- (2) Personal Representative's deed which should contain marital status of decedent, and consent of spouse, if any. If the contract for deed is not of record, then the Personal Representative's deed should contain a statement that the deed is given pursuant to a contract for deed and identify the vendors and vendees in said contract for deed and their assigns, if any, and the date of said contract.

d. **DEED FROM DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE.**

A deed from a domiciliary foreign personal representative acting under the procedure of MINN. STAT. § 524.4-204 creates an unmarketable title; therefore the procedure of appointment of a local personal representative should be followed.

**G. GUARDIAN'S OR CONSERVATOR'S DEED.**

**1. If owner is under guardianship or conservatorship.**

**Require:**

- a. Certified copy of Letters of Guardianship or Conservatorship.
- b. Certified copy of Order Directing Sale. MINN. STAT. § 525.641.
- c. Certified copy of Order Confirming Sale. MINN. STAT. § 525.662.
- d. Guardian's or Conservator's Deed. MINN. STAT. § 507.04.

NOTE: If conservatee retains power to sell real estate, then require deed from conservatee and spouse, if any, in place of above.

NOTE: The marital status of the ward or conservatee should appear on the deed and, if married, the written consent of the spouse should be on the deed.

**2. If both spouses have an interest in the property, other than an inchoate interest, and one spouse is under guardianship or conservatorship.**

**Require:**

- a. Certified copy of Letters of Guardianship or Conservatorship.
- b. Certified copy of Order Directing Sale. MINN. STAT. § 525.641.
- c. Certified copy of Order Confirming Sale. MINN. STAT. § 525.662.
- d. Deed executed by competent spouse and Guardian or Conservatorship.

**3. If spouse of owner is under guardianship.**

**Require:**

- a. Certified copy of Letters of Guardianship.
- b. Certified copy of Order of Probate Court authorizing guardian to consent for the incompetent spouse to the Deed of the owner.
- c. Deed executed by owner and consent executed by the guardian by endorsement thereon.

See MINN. STAT. § 507.04.

**4. If owner is under guardianship or conservatorship and the ward or conservatee is legally bound to make a conveyance.**

**Required:**

- a. Certified copy of Letters of Guardianship or Conservatorship.

- b. Certified copy of Order for Conveyance pursuant to contract.  
MINN. STAT. § 525.69.
- c. Guardian's or Conservator's Deed. If the contract for deed is not of record, then the Guardian or Conservator's Deed should contain a statement that the deed is given pursuant to a contract for deed and identify the vendors and vendees in said contract for deed and their assigns, if any.

NOTE: See Notes under 1.d above.

MACKALL, CROUNSE & MOORE

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MICHAEL J. DWYER  
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THOMAS C. POWER  
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OF COUNSEL  
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JAMES B. HANNAH

HENRY C. MACKALL (1885-1979)  
ROBERT M. CROUNSE (1893-1974)  
PERRY R. MOORE (1894-1969)

July 15, 1986 OFFICE OF  
APPELLATE COURTS  
FILED

JUL 15 1986

WAYNE TSCHIMPERLE  
CLERK

Clerk of the Appellate Courts  
230 State Capital Building  
St. Paul, Minnesota 55155

Re: State of Minnesota  
In Supreme Court  
C3-84-146  
Hearing on Proposed Minnesota  
Probate Rules

Dear Sir:

The undersigned hereby requests the opportunity to make an oral presentation regarding the above-captioned rules at the hearing to be held on July 30, 1986, at 11:00 AM in the Supreme Court Chambers.

My remarks will focus on Rule 42 which pertains to the sale of real property during the period of probate; Rule 43 which pertains to the distribution of real property; and Rule 15 which pertains to the duties and powers of the Registrar.

My concerns will be presented from the standpoint of a real estate practitioner, title examiner, and member of the Minnesota State Bar Association Real Property Section.

Rather than add to the volumes of material already before the Court, an excellent summary of my concerns is set forth in the Dissent to the Proposed Rules filed by Committee Member, Betty Drake, dated March 4, 1986. I offer this dissent in support of the oral remarks which I intend to make.

For ten years, since the adoption of the Minnesota version of the Uniform Probate Code, title examiners throughout the state have been guided by requirements for marketability of title as set forth in the Minnesota Title Standards Book for the transfer of title from the estate of a decedent. These requirements were thoughtfully and carefully proposed and have



MACKALL, CROUNSE & MOORE

Clerk of the Appellate Courts  
July 15, 1986  
Page two

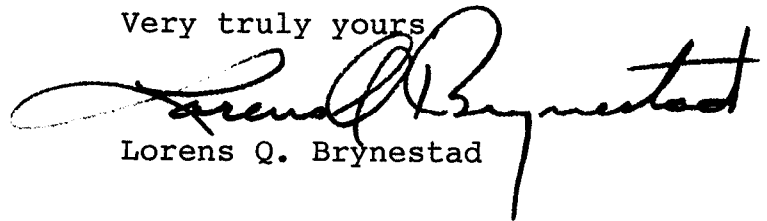
successfully withstood the test of time. They have provided an important element of uniformity of practice throughout the state.

As Ms. Drake recites in her dissent, "the above proposed Rules as drafted are in conflict with established real property practice as set forth in the probate portion of the so-called 'White Pages' approved and used by members of the Real Property Section throughout the state."

No statutory change has been accomplished by the legislature to warrant such a revision in procedures as is contemplated by the proposed Probate Court Rules.

Therefore, in order to avoid a condition of chaos and confusion with the examination of real estate titles acquired from the estate of a decedent, I respectfully request this opportunity to be heard and to support the amendments proposed by Ms. Drake in her dissent.

Very truly yours

A handwritten signature in black ink, appearing to read "Lorens Q. Brynestad", written in a cursive style. The signature is positioned above the printed name.

Lorens Q. Brynestad

LQB/jh

MACKALL, CROUNSE & MOORE  
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July 24, 1986

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 28 1986

WAYNE TSCHIMPERLE  
CLERK

Re: State of Minnesota  
In Supreme Court  
C3-84-146  
Hearing on Proposed Minnesota  
Probate Rules

Dear Mr. Tschimperle:

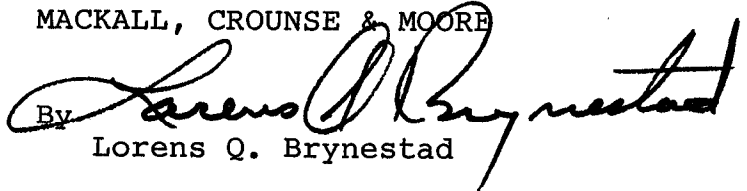
On July 15, 1986, I sent to you a request for permission to make an oral presentation before the Supreme Court regarding the above-captioned rules.

Unfortunately, I now find that I have an unavoidable conflict for that date and will not make an appearance before the Court. Therefore, I am requesting that my letter be included with the written materials to be considered by the Court on or prior to July 30th.

Very truly yours,

MACKALL, CROUNSE & MOORE

By

  
Lorens Q. Brynestad

LQB/jh

FREDERICK L. THORSON  
WINSTON E. MUNSON  
CLAY R. MOORE  
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TELEPHONE  
333-0911

July 15, 1986

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 15 1986

**WAYNE TSCHIMPERLE**  
CLERK

Supreme Court  
State of Minnesota  
State Capitol Building  
St. Paul, Minnesota

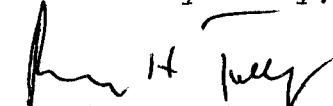
Attn: Clerk of Supreme Court, Wayne Tschimperle

Re: Proposed Probate Court Rules

Dear Mr. Tschimperle:

I hereby request the right to give oral argument relative to the proposed Probate Court Rules. Said argument will be based upon the dissent of Elizabeth Drake.

Yours very truly,

  
Ralph H. Tully

RHT/jl

RIDER, BENNETT, EGAN & ARUNDEL

ATTORNEYS AT LAW

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July 11, 1986

WRITER'S DIRECT DIAL NUMBER

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JOHN P. FLATEN  
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JANE S. WELCH  
LOUISE A. DOVRE  
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JAMES L. FORMAN  
JEFFREY D. CARPENTER  
KENNETH S. GUENTHNER  
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(1926-1983)  
OF COUNSEL  
STUART W. RIDER, JR.  
KENNETH R. JOHNSON  
\*ALSO ADMITTED IN WISCONSIN

Clerk of Appellate Courts  
230 State Capitol  
St. Paul, Minnesota 55155

Re: C3-84-146

Dear Sir:

This correspondence is for the purpose of making a request to make an oral presentation at the hearing on the proposed Probate Court Rules on July 30, 1986, in the Supreme Court Chambers.

Ten copies of this request, together with ten copies of the material to be presented in oral presentation are enclosed herewith.

Sincerely,

  
Rita E. Lukes

REL/kac

Encs.

STATE OF MINNESOTA  
IN SUPREME COURT  
C3-84-146

OFFICE OF  
APPELLATE COURTS  
FILED

JUL 15 1986

RE: Proposed Probate Rules

This Memorandum is submitted to protest proposed Rules 42 and 43 which relate to transfers of real estate in supervised and unsupervised administration.

WAYNE TSCHIBERLE  
CLERK

Rules 42 and 43 specifically exclude the requirement of providing a certified copy of decedent's Will and Order Admitting the Will, in the event of a testate estate, from the documents required to convey title to a transferee or distributee.

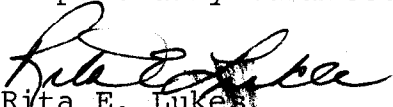
Such a rule, if implemented, would allow for a transfer of property in violation of the wishes of the decedent expressly stated in the Will.

One of the most important reasons for a Will is to insure that the decedent's property is given in accordance with the decedent's wishes. This rule, if implemented, would allow for a complete contravention of the Will of the decedent.

It is neither difficult nor expensive to obtain a certified copy of the decedent's Will which has been admitted to Probate together with the Order of the Court or Registrar's Statement admitting the Will to probate.

The implementation of the proposed Rules 42 and 43 is completely against public policy and defeats one of the most important reasons for which wills are made.

Respectfully submitted,

  
Rita E. Luke  
Attorney at Law  
2500 First Bank Place West  
Minneapolis, Minnesota 55402  
License No. 64993

MORK, H. DARLING, HAGEMANN & KOHLER  
Attorneys at Law

July 14, 1986

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Harris I. Darling  
Andrew E. Hagemann, Jr.  
Kenneth J. Kohler

912 Third Avenue, P.O. Box 607  
Worthington, Minnesota 56187

Telephone (507) 372-2974

Clerk of the Minnesota Supreme Court  
Minnesota State Capitol Building  
St. Paul, Minnesota 55155

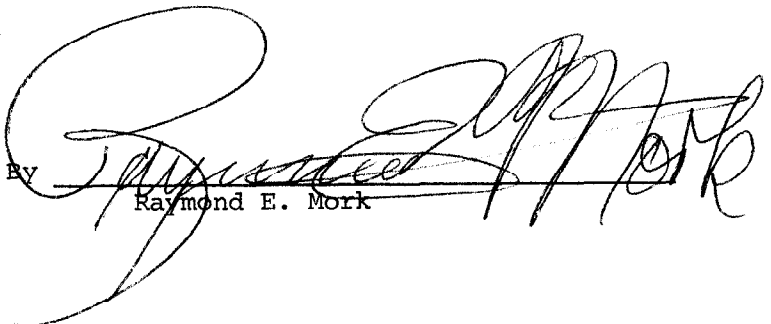
Dear Sir:

Please find enclosed (ten copies) a Dissent to proposed Rules 42, 43 and 15 with regard to Sale of Real Property during probate, Distribution of Real Property, and Duties of a Registrar. I understand this matter will be submitted to the Rules Committee on July 30th.

Should there be any further requirements, please advise.

Sincerely,

MORK, H. DARLING, HAGEMANN & KOHLER

BY   
Raymond E. Mork

REM:jw  
Enclosures

OFFICE OF  
APPELLATE COURTS  
FILED

C3-84-146

JUL 15 1986

MINNESOTA PROBATE RULES COMMITTEE  
OF THE SUPREME COURT

WAYNE TSCHIMPERLE  
CLERK

DISSENT:

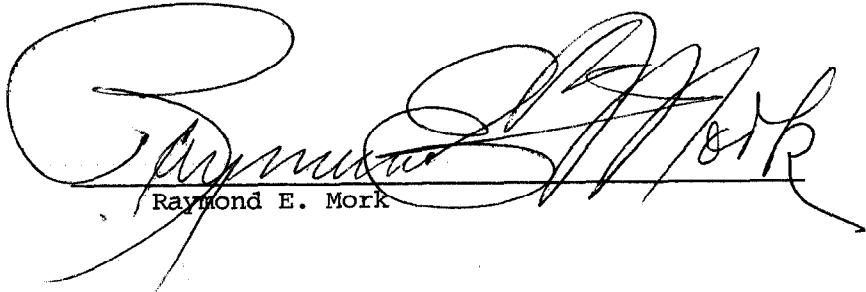
The undersigned, Raymond E. Mork, a licensed and practicing attorney with offices at 912 Third Avenue, Worthington, Minnesota, hereby submits his dissent to the following proposed rules adopted by the Committee:

1. Rule 42 which pertains to the sale of real property during the period of probate.
2. Rule 43 which pertains to the distribution of real property.
3. Rule 15 which pertains to the duties and powers of the registrar.

As a background to the dissent the undersigned states that he was a member of the Minnesota State Bar Association Committee originally working with respect to the adoption of the Minnesota version of the Uniform Probate Code and also for many years was a member of the Title Standards Committee of the Real Estate Section of the Minnesota Bar Association.

That the undersigned adopts and in all things concurs with the dissent of Elizabeth Drake dated March 4, 1986. For the reasons stated in such dissent of Elizabeth Drake the undersigned joins in a request for substitute rules in the forms set forth in Exhibits C and D in such dissent of Elizabeth Drake.

Dated July 14, 1986.

  
Raymond E. Mork

STATE OF MINNESOTA

JUL 15 1986

SUPREME COURT

WAYNE TECHMIPHERLE  
CLERK

C 3 - 84 - 146

In the Matter of:

Proposed Probate Rules

Other Examiners of Title and real estate practioners will comment on the adverse effect of proposed Rules 48 and 49, so we will not repeat those arguments but only indicate our concurrence; we urge that these two rules not be adopted.

Purchasers and lenders rightly demand that the law assure the certitude of their title in real property. That can only be done if all the cards are on the table face up, that is, if all the documents affecting title, including a Will, are recorded. We are unaware of case law or statute forbidding testators to restrict the disposition of their real estate, at least to a reasonable extent, but unless the Will is on record, a purchaser or lender cannot know, for instance, that the children of a testator have a testamentary right of first refusal to purchase the family homestead or farm at a discount price.

In order to provide the necessary assurance, any lawyer examining title will still need to review any Will in a probate transfer. If the Will is not of record and therefore not in an abstract, the attorney will need to view the Will in the probate file, possible in a distant county, or require that a certified copy of be furnished, all at unnecessary additional expense and time to the client.

We understand that one reason behind these proposed rules is the desire for protecting the privacy of family affairs, a laudable goal. This may be balanced against the needs of purchasers and lenders through the frequent practice of abstractors of transcribing only the relevant provisions of a Will, i.e., the nomination of a personal representative, specific devises of the parcel abstracted if any, and general dispositive provisions. A typical abstract entry would read:

"138. Last Will & Testament  
of  
A. B.

Dated \_\_\_\_\_, 19\_\_  
Filed \_\_\_\_\_, 19\_\_  
Doc. No. \_\_\_\_\_  
Probate File No. \_\_\_\_\_  
Certified \_\_\_\_\_, 19\_\_

(Introductory paragraph omitted)

1. I hereby appoint C. D. as my personal representative. She shall serve with no bond. She shall have the power to sell and convey any real property in my estate without further authority of the court.
2. (Personal property provisions omitted)



3. I devise the NW 1/4 SW 1/4 Sec. 8, T. 30, R. 23 to my daughter Mary. (Disposition of lands not in Ramsey County omitted).

4. All the rest and residue of my estate I leave to my daughter Mary and my son John in equal shares. However, my son John may purchase Lot 1, Block 8, Black Acre Addition, Ramsey County, Minnesota from my estate for \$50,000.00 within 90 days of my death.

(Attestation and acknowledgement omitted)"

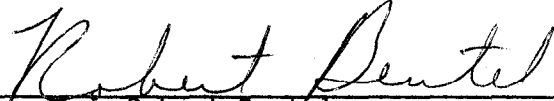
In conclusion we urge that Rules 48 and 49 not be adopted, avoiding conflict with 130+ years of reliance on the public recording acts.

We do not request an oral argument but are available to respond to questions or concerns the court may have.

Respectfully submitted,

ROBERT BEUTEL, EXAMINER OF TITLES  
Second Judicial District

By

  
Robert Beutel

RB/lr