

STATE OF MINNESOTA
IN SUPREME COURT

C3-84-146

In Re Proposed Minnesota
Probate Rules

ORDER FOR PUBLIC HEARING

WHEREAS, on July 28, 1988, the Minnesota Supreme Court Probate Rules Committee filed with this court the proposed Minnesota Probate Rules,

NOW, THEREFORE, it is further ordered that a hearing be held in the Supreme Court Chambers at the State Capitol in St. Paul at 9:00 a.m. on Wednesday, January 18, 1989 to consider the proposed Minnesota Probate Rules.

IT IS FURTHER ORDERED that any person wishing to obtain a copy of the rules write to the Clerk of the Appellate Court, 230 State Capitol, St. Paul, Minnesota, 55155.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 10 copies of such statement with the Clerk of Appellate Courts, 230 State Capitol, St. Paul, Minnesota, 55155, on or before January 6, 1989, and
2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so 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 January 6, 1989.


Dated: November 10, 1988

BY THE COURT

OFFICE OF
APPELLATE COURTS

NOV 10 1988

FILED


Douglas K. Amdahl
Chief Justice

MINNESOTA PROBATE RULES

FILED

DEFINITIONS

- (1) Formal Proceedings - A formal proceeding is a hearing conducted before the Court with notice to interested persons. Formal proceedings seek a judicial determination.
- (2) Informal Proceedings - An informal proceeding is conducted by the Judge, the Registrar, or the person or persons designated by the Judge for probate of a will or appointment of a personal representative. Informal proceedings seek an administrative determination and not a judicial determination and are granted without prior notice and hearing.
- (3) Supervised Administration - Supervised administration is a single, continuous, in rem proceeding commenced by a formal proceeding.
- (4) Code - The Code is the Uniform Probate Code as adopted by the State of Minnesota.

RULE 1. DOCUMENTS

- (1) Preparation of Original Documents - It shall be the responsibility of attorneys and other appearing before the Court or Registrar to prepare for review and execution appropriate orders, decrees, statements, applications, petitions, notices and related documents, complete and properly drafted, to address the subject matter and relief requested.
- (2) Official Forms - The official forms adopted by the Minnesota District Judges' Association or promulgated by the Commissioner of Securities shall be used.
- (3) Documents and Files - The Court being responsible for its files and records shall have and make them available for inspection and copying.
No file, or any part thereof, shall be taken from the custody of the Court, except the original court order required to be displayed to an individual or entity when the order is served. A document or exhibit which has been filed or submitted in any proceeding can thereafter be withdrawn only with the permission of the Court. Any document which is written in a language other than English shall be accompanied by a verified translation into the English language.
- (4) Verification of Filed Documents - Every document filed with the Court must be verified as required by the Code, except a

written statement of claim filed with the Court Administrator by a creditor or a pleading signed by the attorney for a party in accordance with the Rules of Civil Procedure for the District Courts.

Committee Comment

The Court will accept photocopies of forms if the copies are made by a process that is permanent, on hard stock paper, are free of smudges and otherwise clearly legible and have been reproduced in the same length as the original form and prescribed type size. In using photocopies of forms in Courts that are not utilizing a flat file system, the case heading and nomenclature must appear on the outside of the form when folded appropriately for permanent filing.

RULE 2. NOTICE IN FORMAL PROCEEDINGS

(1) General Notice Requirements - In all formal proceedings notice of a hearing on any petition shall be given as provided in the Code after the Court issues the order for hearing. Where mailed notice is required, proof of mailing the notice of hearing shall be filed with the Court Administrator before any formal order will issue. Mailed notice shall be given to any person as required by the Code or to the person's attorney. Where notice by personal service or publication is required by the Code, proof of personal service or publication shall be filed with the Court Administrator before the formal order will issue.

(2) Notice of Proceedings for Determination of Testacy and Appointment of Personal Representative - In proceedings which adjudicate testacy, notice of the hearing on the petition shall be given after the Court administrator issues the order for hearing. Proof of publication of the order for hearing, in accordance with the Code, shall be filed with the Court Administrator before the order will issue. In proceedings for the formal appointment of a personal representative, the same notice requirements shall pertain except notice by publication shall not be required if testacy has been previously determined. Where creditors' claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for formal probate and to all persons as required by the Code or ordered by the Court and shall include in appropriate cases the Attorney General, foreign consul and attorneys representing the interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

- (a) The right to receive the decedent's wearing

apparel, furniture and household goods and other personal property as provided in the Code or by law.

(b) The right to receive maintenance payments during administration of the estate as provided in the Code or by law.

(c) The right to take an elective share of one-third of the augmented estate as provided in the Code and the homestead as provided in the Code or by law.

(3) Waiver of Notice in Formal Proceedings - Except in proceedings governed by subd. b, an interested person may waive notice of any formal proceeding in accordance with the Code. The written waiver shall evidence the person's consent to the order sought in the proceeding.

Committee Comment

Publication required by this notice must be completed prior to the hearing date.

RULE 3. INTERIM ORDERS

(1) Interim Orders Available from Court Only - The Court has no power to intervene in any unsupervised administration unless a formal petition invoking the Court's authority is filed by an interested person.

The Court or Registrar does not have authority to issue ex parte interim orders in unsupervised proceedings except that the Registrar may issue the Certificate of Discharge provided for in the Code.

In supervised administration, the court may issue ex parte orders only for strong and compelling reasons.

Committee Comment

Determinations by the Registrar are informal and do not bring the estate or interested persons under the supervisory authority of the Court. A personal representative appointed in informal proceedings may petition the Court for a formal determination as to any matter within the jurisdiction of the Court. It may also be necessary to seek the formal determination of the Court as to the admissibility of a will, determination of heirship, or other matters as a condition precedent to obtaining the requested relief.

RULE 4. UNCONTESTED FORMAL PROCEEDINGS

(1) Uncontested Formal Proceedings; Hearings and Proof - The Court shall call the calendar in open court for all hearings set

for a designated time. If a petition in a formal proceeding is unopposed, the Court will enter in the record the fact that there was no appearance in opposition to the petition and that no objection has been filed with the Court. Thereupon, the Court shall:

- (a) Make its determination after conducting a hearing in open court, requiring appearance of petitioner and testimony or other proof of the matters necessary to support the order sought; or
- (b) Make its determination on the strength of the pleadings without requiring the appearance of petitioner or of petitioner's attorney and without requiring testimony or proof other than the verified pleadings; or
- (c) Make its determination based on such combination of (a) and (b) above as the Court in its discretion deems proper.

In any uncontested formal proceeding, the Court shall determine that (i) the time required for any notice has expired; (ii) any required notice has been given; (iii) the Court has jurisdiction of the subject matter; (iv) venue is proper; and (v) the proceeding was commenced within the time limitations prescribed by the Code as a prerequisite to determining other issues presented to the Court for determination in the proceeding. The Court shall be satisfied that the pleadings and any other proof presented support the order sought in any uncontested formal proceeding.

RULE 5. APPOINTMENT

(1) Nomination and Renunciation - When two or more persons have equal or higher priority to appointment as personal representative, those who do not renounce must concur in writing in nominating another to act for them, or in applying for appointment, except in formal appointment proceedings, concurrence by persons who have equal or higher priority is presumed after notice has been given unless a written objection is filed.

(2) Nonresident Personal Representatives - The Court or Registrar may appoint a nonresident personal representative.

RULE 6. INFORMAL PROCEEDINGS

(1) Contents of the Application - Application for informal probate or appointment proceedings shall contain information required by the Code and the approximate value of the following categories of assets:

Probate Assets	
Homestead	\$ _____
Other Real Estate	\$ _____
Cash	\$ _____
Securities	\$ _____
Other	\$ _____

Non-Probate Assets	
Joint Tenancy	\$ _____
Insurance	\$ _____
Other	\$ _____

Approximate Indebtedness	\$ _____
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In all estate proceedings, whether testate or intestate, the application must contain a statement that specifically eliminates all heirs other than those listed in the application.

Committee Comment

Examples

(These are not intended to be exhaustive)

The statements will necessarily vary, depending upon who survives the decedent, and must close out any class affected:

(1) Where only the spouse survives, the application should state "That decedent left no surviving issue, natural or adopted, legitimate or illegitimate."

(2) Where only children survive, the application should state "That the decedent left surviving no spouse; no children, natural or adopted, legitimate or illegitimate, other than the herein named; and no issue of any deceased children."

(3) Where the spouse and children survive, the application should state "That the decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children."

(4) Where only brothers or sister of decedent survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters

other than herein named; and no issue of deceased brothers or sisters."

(5) Where only first cousins survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters or issue thereof, grandparents; aunts or uncles; and no first cousins other than herein named."

(6) In all cases, the application should state either:

(a) That all the heirs-at-law survived the decedent for 120 hours or more; or

(b) that all the heirs-at-law survived the decedent for 120 hours or more except the following: (name or names).

(7) In all cases where a spouse and children survive, the application should state either:

(a) That all of the issue of the decedent are also issue of the surviving spouse; or

(b) That one or more of the issue of the decedent are not also issue of the surviving spouse.

(2) Will Testimony - The Registrar shall not require any affidavit or testimony with respect to execution of a will prior to informal probate if it is a self-proved will or appears to have been validly executed.

Committee Comment

Applicants for informal probate of a will which is not self-proved are encouraged to preserve evidence concerning the execution of the will if a formal testacy proceeding may later be required or desired.

(3) Appearances - The applicant is required to appear before the Registrar unless represented by counsel. The Registrar may also waive appearance by counsel.

(4) Informal Proceedings: Notice of Informal Probate of Will and Informal Appointment of Personal Representative - In informal proceedings, notice of appointment of a personal representative shall be given after the Registrar issues the order appointing the personal representative. Proof of placement for publication shall be filed with the Court Administrator before Letters will issue. Where mailed notice is required, an affidavit of mailing

of the notice appointing the personal representative shall be filed with the Court Administrator before Letters will issue. If the informal proceedings include the informal probate of a will, the notice shall include notice of the issuance of the statement of informal probate of the will. Where creditors' claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for informal probate and all interested persons as defined by the Code and shall include in appropriate cases the Attorney General, foreign consul and attorneys representing interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(a) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the Code or by law.

(b) The right to take an elective share of one-third of the augmented estate as provided in the Code and the homestead as provided in the Code or by law.

(c) The right to take an elective share of one-third of the augmented estate as provided in the Code and the homestead as provided in the Code or by law.

RULE 7. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

(1) Contents of Petition - A petition in formal testacy and appointment proceedings shall contain the information required by the Code and the information concerning the approximate value of assets required by Rule 6(1). In all estate proceedings, whether testate or intestate, the petition must contain an allegation that specifically eliminates all heirs other than as listed in the petition.

(2) Conversion to Supervised Administration - Any estate which has been commended as an informal proceeding or as an unsupervised formal proceeding may be converted at any time to a supervised administration upon petition. The Court shall enter an order for hearing on said petition. Notice of hearing shall be given in accordance with Rule 2(1). If testacy has not been adjudicated in a prior formal proceeding, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided by Rule 2(2), including notice by publication.

RULE 8. TRANSFER OF REAL ESTATE

(1) Transfers of Real Estate in Supervised and Unsupervised Administration; Transfer by Personal Representative of Real Property for Value; Documents Required; Protection of

Transferee - A personal representative shall provide a transferee of real property for value with the following documents:

- (1) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative).
- (2) A personal representative's deed or other instrument transferring any interest in real property which shall contain the marital status of the decedent and the consent of spouse, if any.

When the personal representative provides the above documents to a good faith transferee for value, the transferee is protected as if the representative properly exercised his power to make the transfer. No provision in any will which purports to limit the power of a personal representative is effective except as to a transferee with actual knowledge of the provision of the will, but absent such actual knowledge, the transferee need not inquire into the provisions of any will. This protection extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value.

Where registered land is concerned, the personal representative shall also meet any additional requirements imposed by law.

(2) Distribution of Real Property; Documents Required; Protection of Transferee from Distributee - A personal representative shall provide a distributee of real property with the following documents:

- (a) When distribution is made by decree, a certified copy of the decree of distribution assigning any interest in real property to the distributee.
- (b) When distribution is made by deed from a personal representative in unsupervised administration:
 - (i) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative).
 - (ii) A personal representative's deed of distribution of any interest in real property to the distributee which shall contain the marital status of the decedent and consent of spouse, if any.
- (c) When distribution is made by deed from the personal representative in supervised administration:
 - (i) A certified copy of unrestricted letters.
 - (ii) A certified copy of an order of distribution which authorizes the distribution of any interest in real property to the distributee.
 - (iii) A personal representative's deed of distribution

of any interest in real property to the distributee.

When the personal representative provides the above documents to a distributee of any interest in real property, a good faith transferee for value from said distributee is protected and said transferee takes title to said real property 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. No provision in any will which purports to dispose of said real property is effective except as to a transferee with actual knowledge of the provisions of the will but, absent such actual knowledge, the transferee need not inquire into the provisions of any will. This protection extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value.

RULE 9. CLOSING ESTATES

(1) Notice of Formal Proceedings for Complete Settlement under Minn. Stat. §524.3-1001 - If testacy has been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. §524.3-1001 must meet the requirements of Rule 2(1), but notice by publication specifically provided for in Minn. Stat. §524.3-403 is not required. If testacy has not been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. §524.3-1001, must meet the specific notice requirements for formal testacy proceedings provided in Minn. Stat. §524.3-403, including notice by publication.

(2) Notice of Formal Proceedings for Settlement of Estate under Minn. Stat. §524.3-1002 - If an estate is administered under an informally probated will and there has been no adjudication of testacy in a prior formal proceeding, the Court may make a final determination of rights between the devisees under the will and against the personal representative under Minn. Stat. 524.3-1002, if no part of the estate is intestate. The Court will not adjudicate the testacy status of the decedent. Notice of hearing on a petition must meet the requirements of Minn. Stat. §524.1-401. Notice by publication specifically provided for in Minn. Stat. 524.3-403 is not required.

RULE 10. FEES, VOUCHERS, AND TAX RETURNS

(1) Fees - The Court may require documentation to establish, or appoint counsel to examine, the reasonableness of the fees charged by the attorney and the personal representative. The

Closing Statement - In the case of omitted property discovered after the filing of the closing statement authorized by the Code, but before termination of the personal representative's authority, the personal representative must, as required by the Code, file a supplementary inventory with the Court and mail a copy to any surviving spouse, other distributees, and other interested persons, including creditors whose claims are unpaid and not barred. Proof of service by mail must be filed with the Court prior to any transfer of the omitted property by the personal representative.

(3) Notice of Proceedings for Subsequent Administration After Termination of Personal Representative's Authority - Appointment of a personal representative in subsequent administration may only be secured in formal proceeding. If testacy has been adjudicated in a formal proceeding, notice of hearing must meet the requirements of Rule 2(1), but the notice by publication specifically provided for in Minn. Stat.3-403 is not required. If testacy has not been adjudicated previously and only appointment of a personal representative is sought, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided in Minn. Stat. §524.3-403, but notice by publication is not required. In the case of subsequent administration involving omitted property, the personal representative must comply with the inventory, mailing and filing requirements of Rule 11(2).

(4) Proof Required for Formal Settlement or Distribution in Subsequent Administration - During a subsequent administration, when an order of settlement of the estate and decree or order of distribution is sought, the Court must be satisfied with the pleadings and any other proof (including accounting for all assets, disbursements, and distributions made during the prior administration) before issuing its order.

RULE 12. FIDUCIARIES

(1) Attorney Serving as a Fiduciary - If the attorney for the estate, a partner, associate or employee is the personal representative of the estate, the administration shall be supervised. In such a case, both the attorney for the estate and the personal representative must keep separate time records and differentiate the charges for their duties in each capacity. The attorney should only serve as fiduciary at the unsolicited suggestion of the client and the attorney must realize that there are legal, ethical and practical problems that must be overcome in order to perform the duties of a fiduciary and attorney.

RULE 13. REGISTRAR

(1) Authority - The acts and orders of the Registrar may be performed either by a Judge of the Court or by a person

designated by the Court by a written order filed recorded in the office of the Court, subject to the following:

(a) Each Judge of the Court may at any time perform the functions of Registrar regardless of whether the Court has designated other persons to perform those functions.

(b) The functions and powers of the Registrar are limited to the acts and orders specified by the Code and these Rules.

(c) Any person designated Registrar by the Court shall be subject to the authority granted by and the continuing direction of the Court.

(d) The Registrar is not empowered to intervene or issue orders resolving conflicts related to the administration of the estate.

(2) Registrar Has No Continuing Authority - The Registrar does not have any continuing authority over an estate after the informal probate is granted or denied and shall not require the filing of any additional documents other than are required by the Code (law) and these rules.

RULE 14. GUARDIANSHIPS AND CONSERVATORSHIPS

(1) Responsibility of Attorney - Upon the appointment of a conservator or guardian of the estate, the appointee shall nominate an attorney of record for that conservatorship or guardianship, or shall advise the Court that he or she shall act pro se. The named attorney shall be the attorney of record until terminated by the conservator or guardian, or, with the consent of the Court, by withdrawal of the attorney. If the attorney is terminated by the conservator or guardian, written notice of substitution or pro se representation shall be given to the Court (by the conservator or guardian, or by the attorney who has received oral or written notice of termination), and until such notice, the former attorney shall be recognized.

(2) Visitors in Guardianship and Conservatorship Proceedings - A visitor, as defined by law, may be appointed in every general guardianship or conservatorship proceeding.

Every visitor shall have training and experience in law, health care or social work, as the case may be, depending upon the circumstances of the proposed ward or conservatee.

The visitor shall be an officer of the Court and shall be disinterested in the guardianship or conservatorship proceedings. If the Court at any time determines that the visitor, or the firm or agency by which he or she is employed, has or had, at the time of hearing, a conflict of interest, the Court shall immediately appoint a new visitor and may, if necessary, require a hearing de novo.

The visitor shall, (a) without outside interferences, meet with the proposed ward or conservatee, either once or more than once as the visitor deems necessary, (b) observe his or her appearance, lucidity and surroundings, (c) serve, read aloud, if

requested, and explain the petition and notice of hearing, (d) assist, if requested, in obtaining a private or Court appointed attorney, (e) advise the proposed ward or conservatee that a report will be filed at least five (5) days before the hearing and that the report is available to the proposed ward or conservatee or his attorney, (f) prepare a written report to the Court setting forth all matters the visitor deems relevant in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of powers, (g) file the original report with the Court and, (h) serve a copy upon the Petitioner or his attorney at least five (5) days prior to the hearing, (i) appear, testify and submit to cross examination at the hearing concerning his or her observations and recommendations, unless such appearance is excused by the Court.

(3) Voluntary Petition - If an adult voluntarily petitions or consents to the appointment of a guardian or conservator of the estate as set forth in the law, then it is not necessary for such adult to be an "incapacitated person" as defined by the law.

(4) Amount of Bond - The Court may, at any time, require the filing of a Bond in such amount as the Court deems necessary and the Court, either on request of an interested party, or on its own motion, may increase or decrease the amount of the Bond. The Court, in requiring a Bond, if any, or in determining the amount thereof, shall take into account not only the nature and value of the assets, but also the qualifications of the guardian or conservator.

(5) Effect of Allowance of Accounts - The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the Court's approval of the account.

(6) Required Periodic Settlement of Accounts - No order settling and allowing an annual or final account shall be issued by the Court except on a hearing with notice to interested parties. A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the Court or any interested party. A hearing shall be held for such purpose in each guardianship or conservatorship of the estate at least once every five years upon notice as set forth in the law, and the rules pursuant thereto. However, in estates of the value of \$20,000 or less, the five year hearing requirement may be waived by the Court in its discretion. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account and the Court Administrator shall notify such guardian or conservator, his attorney and the Court if the hearing is not held within the 150 day period.

(7) Notice of Hearing on Account - Notice of time and place for hearing on the petition for final settlement and allowance of any account shall be given to the ward or conservatee, to the guardian or conservator if such person was not the petitioner for

settlement of the accounts, to the spouse, adult children and such other interested persons as the Court may direct. Whenever any funds have been received by the estate from the Veterans Administration during the period of accounting, notice by mail shall be given to the regional office. The notice may be served in person or by depositing a copy in the U.S. mail to the last known address of the person or entity being served. When a ward or conservatee is restored to capacity, that person is the only interested person. When a ward or conservatee dies, the personal representative of the estate is the only interested person.

(8) Appearance on Petition for Adjudication of Accounts - When a verified annual or final account is filed in accord with the law and an adjudication is sought, and notice given as required by the law or waived as provided below, and the Court determines that the account should be allowed, the account may be allowed upon the pleadings without appearance of the guardian or conservator. If the ward, conservatee or any interested person shall object to the account, or demand the appearance of the guardian or conservator for hearing on the account, at any time up to and including the date set for the hearing, the Court will continue the hearing, if necessary, to a later date and require the appearance of the guardian/conservator for examination. Notice of hearing may be waived with the consent of all interested persons.

(9) Successor Guardian; Notice to Ward or Conservatee - The notice required by law shall include the right of the ward or conservatee to nominate a successor and charge him with instructions.

JOHN C. CONNELLY
ATTORNEY AT LAW
6416 MILDRED AVENUE
EDINA, MINNESOTA 55435
612.941.2041

1-3-89

December 31, 1988

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

IN RE: STATE OF MINNESOTA
IN SUPREME COURT
CASE #C3-84-146
MINNESOTA PROBATE RULES

Dear Sir:

Enclosed herewith for filing in your office are:

10 copies of Request to make an oral presentation, together with
10 copies of the material to be so presented,
at the Public Hearing in the above entitled matter on January 18,
1989 to consider proposed Minnesota Probate Rules.

These documents are filed in compliance with Order of the
Supreme Court dated November 10, 1988 issued in conjunction with
its order for Public Hearing.

Very truly yours,

John C. Connelly

OFFICE OF
APPELLATE COURTS

JAN 3 1989

FILED

STATE OF MINNESOTA

IN SUPREME COURT

C3-84-146

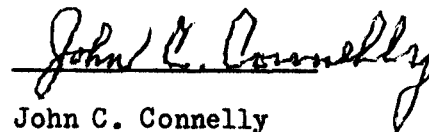
In Re Proposed Minnesota
Probate Rules

Request to make an oral presentation
at the hearing on January 18, 1989

John C. Connelly, the undersigned, a member of the Probate Rules Committee appointed by the above named Court, hereby requests permission to make an oral presentation at the hearing scheduled on Wednesday, January 18, 1989 in the Supreme Court Chambers to consider the proposed Minnesota Probate Rules.

The material intended to be presented at said hearing will have specific reference to proposed RULE 8 TRANSFER OF REAL ESTATE, as adopted by the majority vote of the Probate Rules Committee.

Respectfully submitted this 29th day of December, 1988.


John C. Connelly

STATE OF MINNESOTA

IN SUPREME COURT

C3-84-146

IN RE: PROPOSED MINNESOTA PROBATE RULES.

WRITTEN STATEMENT FILED BY JOHN C. CONNELLY IN CONJUNCTION
WITH REQUEST TO MAKE AN ORAL PRESENTATION AT THE HEARING
ON JANUARY 18, 1989 TO CONSIDER PROPOSED PROBATE RULES.

This statement is made for the purpose of asserting objection to the approval of Proposed Rule 8 as adopted by majority vote of the Probate Rules Committee. The matter of Proposed Probate Rules has heretofore been the subject of a hearing before this Court on July 30, 1986. Following that hearing the Court determined that the proposed Rules contained much substantive law and language which was statutory, and returned the Rules to the Committee for additional redrafting with a mandate to exclude substantive law and language which was statutory. Simply stated, the instructions were: if it appears in the statutes do not put it in the Rules.

Prior to the aforesaid hearing, and with the permission of the Committee Chairman and this Court, I filed a Dissent, which was rather detailed, objecting to the adoption of Rules 42 and 43 as then submitted. With the Court's permission, I also made an oral presentation at said hearing. My objection to Rules 42 and 43 pertained essentially to the omission of the Rules to provide for a certified copy of Will to be furnished among the documents required where transfer is made by a Personal Representative in Testate proceedings.

In the revision of the Rules by the Committee former Rules 42 and 43 have been incorporated into Rule 8 of the Rules now being considered by this Court. Rule 42 appears as Subd (1) and Rule 43 as Subd (2) of said Rule 8. The only change made in Subd. (1) was the Caveat at the end of Rule 42 was converted into a sentence and the citation of the statute was stricken and in its place the words "imposed by law" was substituted; and in Subd. (2) the citation of the statute was omitted. Otherwise the carry over was identical except for a change of 3 words with no change in meaning.

I call attention to the fact that both Subd. (1) and (2) of Rule 8 contain a paragraph dealing with protection of a good faith purchaser for value without actual knowledge which consists of language which is statutory. In Subd. (1) the statutory language is taken from MSA 524.3-714, and in Subd. (2) the statutory language is taken from MSA 524.3-714 and 524.3-910. While the language used is not a direct copy verbatim from the statute it is nevertheless language in substance which is statutory.

There is a further reason for objection to that portion of Subd. (2) of Rule 8 which deals with the transfer of real estate by a distributee to a third party transferee who was a stranger to the probate proceeding. In 1977 this Court rendered its opinion in the case of Leslie v Minneapolis Society of Fine Arts et al 259 NW² -898 which was subsequent to the enactment of the Uniform Probate Code. Although the issue in the case is not in point here and the case may be considered dicta, the Court nevertheless in its opinion did make a number of comments and observations concerning the functions and jurisdiction of the probate Court both under prior law and presently. One of those comments reads thus: "Probate Courts have no jurisdiction to consider issues that are unrelated to the administration, settlement, or distribution of a decedent's estate. As we have frequently held, Probate Courts have no independent jurisdiction in equity or at law over controversies between the representatives of

the estate, or those claiming under it, with strangers claiming adversely, (or) of collateral actions." Based upon the foregoing comment it is my conclusion that a transfer of real estate by a distributee, subsequent to distribution and possibly after the estate has been closed, to a purchaser who was a stranger to the probate proceeding, is not a proper subject for a rule of practice and procedure in Probate Court.

It is my intention not to burden this Court by reiterating all that I said in my oral presentation at the July 1986 hearing, although the same subject matter still applies to current Rule 8, but rather make reference to the dissent which I filed at that time and which is on file. Instead I will attempt to summarize as best I can what I deem to be the most significant point to be considered by the Court, and that is the omission of the Rule to provide for a certified copy of Will to be furnished among the documents required where transfer is made by a personal representative in Testate proceedings. Among extensive amendments to the Uniform Probate Code enacted by the Legislature by Chap 347 Laws 1975, this act also included amendments to two sections of Chap 508 of Minnesota Statutes pertaining to Registered land, commonly known as the Torrens system. MSA 508.68 as amended provides that a personal representative may sell, convey or mortgage registered land but he shall first file with the registrar a certified copy of any will of the decedent and a certified copy of his letters. MSA 508.69 as amended provides that no certificate shall be issued pursuant to the provisions of this section or of section 508.68 except upon the written certification of the examiner of titles as to the legal sufficiency of the documents presented for filing for the purpose of issuance of a new certificate or upon the order of the District Court directing the issuance thereof. Therefore the filing of a certified copy of the Will is obligatory where land registered under the Torrens system

is concerned.

Activity in the sale and transfer of land under the Torrens system may not be of great significance in some rural areas but it is very substantial in the Twin Cities metropolitan area and in St. Louis County in Duluth and on the iron range. A recent check of the total number of documents filed in the land records in Hennepin and Ramsey counties for the period commencing January 2, 1988 until the middle of December reveals that in Hennepin county 38.5% of such total number are filed under the Torrens system and in Ramsey county the percentage is 34.5%. It is my judgment that any rule that ignores the Torrens system except for a general sentence at the end of a rule which specifies documents to be furnished in the first paragraph and excludes the Will is not only inadequate but also misleading.

Concerning documents required to transfer real estate there is no essential difference whether the land is registered or unregistered. The same form of instruments are used and every instrument which would affect title to unregistered land if filed with the county recorder in like manner affects the title to registered land if filed with the registrar of titles.

Real property is certainly an important function of probate administration, and in the interest of uniformity it may be advisable that there be a rule of Probate Court which deals with the transfer of real estate titles. I am not sure however that a rule specifying documents to be furnished is an absolute necessity, but if such a rule is to be adopted it is also important to recognize the two systems of filing which exist in this state and that the rule be specific. I might also add that Rule 8 as now drafted is in conflict with established real estate practice as recommended by the Real Property Section of the Minnesota State Bar Association as set forth in the probate section of the so-called "White Pages" which is found as an Appendix to the

Book of Minnesota Title Standards.

Persons dealing with real estate are charged with notice not only of rights and interests disclosed by instruments of record but also by recitals in instruments of record of possible rights and interests contained in other instruments which may not be of record. In such case then there is the duty to make further examination and inquiry. It is apparent from the face of a certified copy of letters whether or not there is a will. Since title examiners are charged with such notice they are not inclined to disregard the duty to make inquiry. Furthermore it is not in the nature of title examination to make assumptions that a transferee does not have actual knowledge or that he qualifies as a good faith purchaser for value without actual knowledge. In most cases the title examiner does not even know the purchaser nor does he have any personal information about him. In the final analysis the ultimate goal and objective of the transferee, his attorney, the lender, the title examiner, and the Torrens examiner of titles is to obtain the documents which are legally sufficient to establish a marketable title in the land records and to avoid exposure to risk and the hazard of litigation whether filing be under the Torrens system or the County Recorder system.



MINNESOTA STATE COURTS
JUDICIAL ADVISORY SERVICE
1745 UNIVERSITY AVE., SUITE 302
ST. PAUL, MINNESOTA 55104

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OFFICE OF
APPELLATE COURTS

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612-649-5939

January 4, 1989

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

Re: Proposed Minnesota Probate Rules

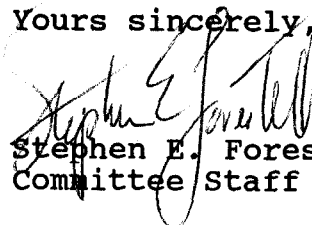
Dear Mr. Grittner;

Please find enclosed ten (10) copies of this letter to request that the Hon. Melvin J. Peterson, chair of the Supreme Court Advisory Committee on Probate Rules, be allowed to orally present the rules as submitted to the Supreme Court, as required by Order dated November 10, 1988.

Mr. Gerald Thoreen has also requested the opportunity to present oral testimony supporting Proposed Probate Rule 8, Transfer of Real Estate. I have not received written materials from him for submission.

I have also enclosed covers and indexes for the use of the Court in considering the Proposed Rules and copies of the Proposed Rules which correct some clerical errors.

Yours sincerely,


Stephen E. Forestell
Committee Staff

C3-84-146

PROPOSED PROBATE COURT RULES

As submitted by the

Minnesota Supreme Court Advisory Committee

On Probate Rules

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MINNESOTA PROBATE RULES

DEFINITIONS

- (1) **Formal Proceedings** - A formal proceeding is a hearing conducted before the Court with notice to interested persons. Formal proceedings seek a judicial determination.
- (2) **Informal Proceedings** - An informal proceeding is conducted by the Judge, the Registrar, or the person or persons designated by the Judge for probate of a will or appointment of a personal representative. Informal proceedings seek an administrative determination and not a judicial determination and are granted without prior notice and hearing.
- (3) **Supervised Administration** - Supervised administration is a single, continuous, in rem proceeding commenced by a formal proceeding.
- (4) **Code** - The Code is the Uniform Probate Code as adopted by the State of Minnesota.

RULE 1. DOCUMENTS

- (1) **Preparation of Original Documents** - It shall be the responsibility of attorneys and others appearing before the Court or Registrar to prepare for review and execution appropriate orders, decrees, statements, applications, petitions, notices and related documents, complete and properly drafted, to address the subject matter and relief requested.
- (2) **Official Forms** - The official forms adopted by the Minnesota District Judges' Association or promulgated by the Commissioner of Securities shall be used.
- (3) **Documents and Files** - The Court being responsible for its files and records shall have and make them available for inspection and copying.
No file, or any part thereof, shall be taken from the custody of the Court, except the original court order required to be displayed to an individual or entity when the order is served. A document or exhibit which has been filed or submitted in any proceeding can thereafter be withdrawn only with the permission of the Court. Any document which is written in a language other than English shall be accompanied by a verified translation into the English language.
- (4) **Verification of Filed Documents** - Every document filed with the Court must be verified as required by the Code, except a

written statement of claim filed with the Court Administrator by a creditor or a pleading signed by the attorney for a party in accordance with the Rules of Civil Procedure for the District Courts.

Committee Comment

The Court will accept photocopies of forms if the copies are made by a process that is permanent, on hard stock paper, are free of smudges and otherwise clearly legible and have been reproduced in the same length as the original form and prescribed type size. In using photocopies of forms in Courts that are not utilizing a flat file system, the case heading and nomenclature must appear on the outside of the form when folded appropriately for permanent filing.

RULE 2. NOTICE IN FORMAL PROCEEDINGS

(1) General Notice Requirements - In all formal proceedings notice of a hearing on any petition shall be given as provided in the Code after the Court issues the order for hearing. Where mailed notice is required, proof of mailing the notice of hearing shall be filed with the Court Administrator before any formal order will issue. Mailed notice shall be given to any interested person as defined by the Code or the person's attorney. Where notice by personal service or publication is required by the Code, proof of personal service or publication shall be filed with the Court Administrator before the formal order will issue.

(2) Notice of Proceedings for Determination of Testacy and Appointment of Personal Representative - In proceedings which adjudicate testacy, notice of the hearing on the petition shall be given after the Court Administrator issues the order for hearing. Proof of publication of the order for hearing, in accordance with the Code, shall be filed with the Court Administrator before the order will issue. In proceedings for the formal appointment of a personal representative, the same notice requirements shall pertain except notice by publication shall not be required if testacy has been previously determined. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for formal probate and all interested persons as defined by the Code or ordered by the Court and shall include in appropriate cases the Attorney General, foreign consul and attorneys representing the interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(a) The right to receive the decedent's wearing

apparel, furniture and household goods and other personal property as provided in the Code or by law.

(b) The right to receive maintenance payments during administration of the estate as provided in the Code or by law.

(c) The right to take an elective share of one-third of the augmented estate as provided in the Code and the homestead as provided in the Code or by law.

(3) Waiver of Notice in Formal Proceedings - Except in proceedings governed by subd. b, an interested person may waive notice of any formal proceeding in accordance with the Code. The written waiver shall evidence the person's consent to the order sought in the proceeding.

Committee Comment

Publication required by this notice must be completed prior to the hearing date.

RULE 3. INTERIM ORDERS

(1) Interim Orders Available from Court Only - The Court has no power to intervene in any unsupervised administration unless a formal petition invoking the Court's authority is filed by an interested person.

The Court or Registrar does not have authority to issue ex parte interim orders in unsupervised proceedings except that the Registrar may issue the Certificate of Discharge provided for in the Code.

In supervised administration, the court may issue ex parte orders only for strong and compelling reasons.

Committee Comment

Determinations by the Registrar are informal and do not bring the estate or interested persons under the supervisory authority of the Court. A personal representative appointed in informal proceedings may petition the Court for a formal determination as to any matter within the jurisdiction of the Court. It may also be necessary to seek the formal determination of the Court as to the admissibility of a will, determination of heirship, or other matters as a condition precedent to obtaining the requested relief.

RULE 4. UNCONTESTED FORMAL PROCEEDINGS

(1) Uncontested Formal Proceedings; Hearings and Proof - The Court shall call the calendar in open court for all hearings set

for a designated time. If a petition in a formal proceeding is unopposed, the Court will enter in the record the fact that there was no appearance in opposition to the petition and that no objection has been filed with the Court. Thereupon, the Court shall:

(a) Make its determination after conducting a hearing in open court, requiring appearance of petitioner and testimony or other proof of the matters necessary to support the order sought; or

(b) Make its determination on the strength of the pleadings without requiring the appearance of petitioner or of petitioner's attorney and without requiring testimony or proof other than the verified pleadings; or

(c) Make its determination based on such combination of (a) and (b) above as the Court in its discretion deems proper.

In any uncontested formal proceeding, the Court shall determine that (i) the time required for any notice has expired; (ii) any required notice has been given; (iii) the Court has jurisdiction of the subject matter; (iv) venue is proper; and (v) the proceeding was commenced within the time limitations prescribed by the Code as a prerequisite to determining other issues presented to the Court for determination in the proceeding. The Court shall be satisfied that the pleadings and any other proof presented support the order sought in any uncontested formal proceeding.

RULE 5. APPOINTMENT

(1) Nomination and Renunciation - When two or more persons have equal or higher priority to appointment as personal representative, those who do not renounce must concur in writing in nominating another to act for them, or in applying for appointment, except in formal appointment proceedings, concurrence by persons who have equal or higher priority is presumed after notice has been given unless a written objection is filed.

(2) Nonresident Personal Representatives - The Court or Registrar may appoint a nonresident personal representative.

RULE 6. INFORMAL PROCEEDINGS

(1) Contents of the Application - Application for informal probate or appointment proceedings shall contain information required by the Code and the approximate value of the following categories of assets:

Probate Assets	
Homestead	\$ _____
Other Real Estate	\$ _____
Cash	\$ _____
Securities	\$ _____
Other	\$ _____
Non-Probate Assets	
Joint Tenancy	\$ _____
Insurance	\$ _____
Other	\$ _____
Approximate Indebtedness	\$ _____

In all estate proceedings, whether testate or intestate, the application must contain a statement that specifically eliminates all heirs or devisees other than those listed in the application.

Committee Comment

Examples

(These are not intended to be exhaustive)

The statements will necessarily vary, depending upon who survives the decedent, and must close out any class affected:

- (1) Where only the spouse survives, the application should state "That decedent left no surviving issue, natural or adopted, legitimate or illegitimate."
- (2) Where only children survive, the application should state "That the decedent left surviving no spouse; no children, natural or adopted, legitimate or illegitimate, other than herein named; and no issue of any deceased children."
- (3) Where the spouse and children survive, the application should state "That the decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children."
- (4) Where only brothers or sisters of decedent survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters other than herein named; and no issue of deceased brothers or sisters."

(5) Where only first cousins survive, the application should state "That the decedent left surviving no spouse; issue; parents; brothers or sisters or issue thereof, grandparents; aunts or uncles; and no first cousins other than herein named."

(6) In all cases, the application should state either:

(a) That all the heirs-at-law survived the decedent for 120 hours or more; or

(b) that all the heirs-at-law survived the decedent for 120 hours or more except the following: (name or names).

(7) In all cases where a spouse and children survive, the application should state either:

(a) That all of the issue of the decedent are also issue of the surviving spouse; or

(b) That one or more of the issue of the decedent are not also issue of the surviving spouse.

(2) Will Testimony - The Registrar shall not require any affidavit or testimony with respect to execution of a will prior to informal probate if it is a self-proved will or appears to have been validly executed.

Committee Comment

Applicants for informal probate of a will which is not self-proved are encouraged to preserve evidence concerning the execution of the will if a formal testacy proceeding may later be required or desired.

(3) Appearances - The applicant is required to appear before the Registrar unless represented by counsel. The Registrar may also waive appearance by counsel.

(4) Informal Proceedings: Notice of Informal Probate of Will and Informal Appointment of Personal Representative - In informal proceedings, notice of appointment of a personal representative shall be given after the Registrar issues the order appointing the personal representative. Proof of placement for publication shall be filed with the Court Administrator before Letters will issue. Where mailed notice is required, an affidavit of mailing of the order appointing the personal representative shall be filed with the Court Administrator before Letters will issue. If the informal proceedings include the informal probate of a will, the notice shall include notice of the issuance of the statement

of informal probate of the will. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for informal probate and all interested persons as defined by the Code and shall include in appropriate cases the Attorney General, foreign consul and attorneys representing interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(a) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the Code or by law.

(b) The right to receive maintenance payments during administration of the estate as provided in the Code or by law.

(c) The right to take an elective share of one-third of the augmented estate as provided in the Code and the homestead as provided in the Code or by law.

RULE 7. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

(1) Contents of Petition - A petition in formal testacy and appointment proceedings shall contain the information required by the Code and the information concerning the approximate value of assets required by Rule 6(1). In all estate proceedings, whether testate or intestate, the petition must contain an allegation that specifically eliminates all heirs or devisees other than as listed in the petition.

(2) Conversion to Supervised Administration - Any estate which has been commenced as an informal proceeding or as an unsupervised formal proceeding may be converted at any time to a supervised administration upon petition. The Court shall enter an order for hearing on said petition. Notice of hearing shall be given in accordance with Rule 2(1). If testacy has not been adjudicated in a prior formal proceeding, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided by Rule 2(2), including notice by publication.

RULE 8. TRANSFER OF REAL ESTATE

(1) Transfers of Real Estate in Supervised and Unsupervised Administration; Transfer by Personal Representative of Real Property for Value; Documents Required; Protection of Transferee - A personal representative shall provide a transferee of real property for value with the following documents:

(1) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative).

- (2) A personal representative's deed or other instrument transferring any interest in real property which shall contain the marital status of the decedent and the consent of spouse, if any.

When the personal representative provides the above documents to a good faith transferee for value, the transferee is protected as if the representative properly exercised his power to make the transfer. No provision in any will which purports to limit the power of a personal representative is effective except as to a transferee with actual knowledge of the provision of the will, but absent such actual knowledge, the transferee need not inquire into the provisions of any will. This protection extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value.

Where registered land is concerned, the personal representative shall also meet any additional requirements imposed by law.

(2) Distribution of Real Property; Documents Required; Protection of Transferee from Distributee - A personal representative shall provide a distributee of real property with the following documents:

- (a) When distribution is made by decree, a certified copy of the decree of distribution assigning any interest in real property to the distributee.
- (b) When distribution is made by deed from a personal representative in unsupervised administration:
 - (i) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative).
 - (ii) A personal representative's deed of distribution of any interest in real property to the distributee which shall contain the marital status of the decedent and consent of spouse, if any.
- (c) When distribution is made by deed from the personal representative in supervised administration:
 - (i) A certified copy of unrestricted letters.
 - (ii) A certified copy of an order of distribution which authorizes the distribution of any interest in real property to the distributee.
 - (iii) A personal representative's deed of distribution of any interest in real property to the distributee.

When the personal representative provides the above documents to a distributee of any interest in real property, a good faith transferee for value from said distributee is protected and said transferee takes title to said real property 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.

No provision in any will which purports to dispose of said real property is effective except as to a transferee with actual knowledge of the provisions of the will but, absent such actual knowledge, the transferee need not inquire into the provisions of any will. This protection extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value.

RULE 9. CLOSING ESTATES

(1) Notice of Formal Proceedings for Complete Settlement under Minn. Stat. §524.3-1001 - If testacy has been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. §524.3-1001 must meet the requirements of Rule 2(1), but notice by publication specifically provided for in Minn. Stat. §524.3-403 is not required. If testacy has not been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under Minn. Stat. §524.3-1001, must meet the specific notice requirements for formal testacy proceedings provided in Minn. Stat. §524.3-403, including notice by publication.

(2) Notice of Formal Proceedings for Settlement of Estate under Minn. Stat. §524.3-1002 - If an estate is administered under an informally probated will and there has been no adjudication of testacy in a prior formal proceeding, the Court may make a final determination of rights between the devisees under the will and against the personal representative under Minn. Stat. 524.3-1002, if no part of the estate is intestate. The Court will not adjudicate the testacy status of the decedent. Notice of hearing on a petition must meet the requirements of Minn. Stat. §524.1-401. Notice by publication specifically provided for in Minn. Stat. 524.3-403 is not required.

RULE 10. FEES, VOUCHERS, AND TAX RETURNS

(1) Fees - The Court may require documentation to establish, or appoint counsel to examine, the reasonableness of the fees charged by the attorney and the personal representative. The court may order the fees of the appointed counsel to be paid out of the estate.

(2) Vouchers - Unless otherwise ordered by the Court, vouchers for final and interim accounts need not be filed.

(3) Tax Returns - Unless ordered by the Court, copies of the United States Estate Tax closing letter and the Minnesota notification of audit results need not be filed.

RULE 11. SUBSEQUENT PROCEEDINGS

(1) Authority of Personal Representative During One Year Period After Filing Closing Statement - For one year from the date of filing the closing statement authorized by the Code, the personal representative shall have full and complete authority to execute further transfers of property; to complete transactions; to complete distributions; to correct misdescriptions or improper identification of assets; or to transfer or distribute omitted property. During this period, the personal representative shall ascertain any matters of unfinished administration which must be completed prior to the termination of the representative's authority.

(2) Authority of Personal Representative to Transfer or Distribute Omitted Property During One Year Period after Filing Closing Statement - In the case of omitted property discovered after the filing of the closing statement authorized by the Code, but before termination of the personal representative's authority, the personal representative must, as required by the Code, file a supplementary inventory with the Court and mail a copy to any surviving spouse, other distributees, and other interested persons, including creditors whose claims are unpaid and not barred. Proof of service by mail must be filed with the Court prior to any transfer of the omitted property by the personal representative.

(3) Notice of Proceedings for Subsequent Administration After Termination of Personal Representative's Authority - Appointment of a personal representative in subsequent administration may only be secured in formal proceeding. If testacy has been adjudicated in a formal proceeding, notice of hearing must meet the requirements of Rule 2(1), but the notice by publication specifically provided for in Minn. Stat. 3-403 is not required. If testacy has not been adjudicated previously and only appointment of a personal representative is sought, notice of hearing must meet the specific notice requirements for formal testacy proceedings provided in Minn. Stat. §524.3-403, but notice by publication is not required. In the case of subsequent administration involving omitted property, the personal representative must comply with the inventory, mailing and filing requirements of Rule 11(2).

(4) Proof Required for Formal Settlement or Distribution in Subsequent Administration - During a subsequent administration, when an order of settlement of the estate and decree or order of distribution is sought, the Court must be satisfied with the pleadings and any other proof (including accounting for all assets, disbursements, and distributions made during the prior administration) before issuing its order.

RULE 12. FIDUCIARIES

(1) Attorney Serving as a Fiduciary - If the attorney for the estate, a partner, associate or employee is the personal representative of the estate, the administration shall be supervised. In such a case, both the attorney for the estate and the personal representative must keep separate time records and differentiate the charges for their duties in each capacity. The attorney should only serve as fiduciary at the unsolicited suggestion of the client and the attorney must realize that there are legal, ethical and practical problems that must be overcome in order to perform the duties of a fiduciary and attorney.

RULE 13. REGISTRAR

(1) Authority - The acts and orders of the Registrar may be performed either by a Judge of the Court or by a person designated by the Court by a written order filed recorded in the office of the Court, subject to the following:

(a) Each Judge of the Court may at any time perform the functions of Registrar regardless of whether the Court has designated other persons to perform those functions.

(b) The functions and powers of the Registrar are limited to the acts and orders specified by the Code and these Rules.

(c) Any person designated Registrar by the Court shall be subject to the authority granted by and the continuing direction of the Court.

(d) The Registrar is not empowered to intervene or issue orders resolving conflicts related to the administration of the estate.

(2) Registrar Has No Continuing Authority - The Registrar does not have any continuing authority over an estate after the informal probate is granted or denied and shall not require the filing of any additional documents other than are required by the Code (law) and these rules.

RULE 14. GUARDIANSHIPS AND CONSERVATORSHIPS

(1) Responsibility of Attorney - Upon the appointment of a conservator or guardian of the estate, the appointee shall nominate an attorney of record for that conservatorship or guardianship, or shall advise the Court that he or she shall act pro se. The named attorney shall be the attorney of record until terminated by the conservator or guardian, or, with the consent of the Court, by withdrawal of the attorney. If the attorney is terminated by the conservator or guardian, written notice of substitution or pro se representation shall be given to the Court (by the conservator or guardian, or by the attorney who has

received oral or written notice of termination), and until such notice, the former attorney shall be recognized.

(2) Visitors in Guardianship and Conservatorship Proceedings

- A visitor, as defined by law, may be appointed in every general guardianship or conservatorship proceeding.

Every visitor shall have training and experience in law, health care or social work, as the case may be, depending upon the circumstances of the proposed ward or conservatee.

The visitor shall be an officer of the Court and shall be disinterested in the guardianship or conservatorship proceedings. If the Court at any time determines that the visitor, or the firm or agency by which he or she is employed, has or had, at the time of hearing, a conflict of interest, the Court shall immediately appoint a new visitor and may, if necessary, require a hearing de novo.

The visitor shall, (a) without outside interferences, meet with the proposed ward or conservatee, either once or more than once as the visitor deems necessary, (b) observe his or her appearance, lucidity and surroundings, (c) serve, read aloud, if requested, and explain the petition and notice of hearing, (d) assist, if requested, in obtaining a private or Court appointed attorney, (e) advise the proposed ward or conservatee that a report will be filed at least five (5) days before the hearing and that the report is available to the proposed ward or conservatee or his attorney, (f) prepare a written report to the Court setting forth all matters the visitor deems relevant in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of powers, (g) file the original report with the Court and, (h) serve a copy upon the Petitioner or his attorney at least five (5) days prior to the hearing, (i) appear, testify and submit to cross examination at the hearing concerning his or her observations and recommendations, unless such appearance is excused by the Court.

(3) Voluntary Petition - If an adult voluntarily petitions or consents to the appointment of a guardian or conservator of the estate as set forth in the law, then it is not necessary for such adult to be an "incapacitated person" as defined by the law.

(4) Amount of Bond - The Court may, at any time, require the filing of a Bond in such amount as the Court deems necessary and the Court, either on request of an interested party, or on its own motion, may increase or decrease the amount of the Bond. The Court, in requiring a Bond, if any, or in determining the amount thereof, shall take into account not only the nature and value of the assets, but also the qualifications of the guardian or conservator.

(5) Effect of Allowance of Accounts - The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the Court's approval of the account.

(6) Required Periodic Settlement of Accounts - No order settling and allowing an annual or final account shall be issued by the Court except on a hearing with notice to interested parties. A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the Court or any interested party. A hearing shall be held for such purpose in each guardianship or conservatorship of the estate at least once every five years upon notice as set forth in the law, and the rules pursuant thereto. However, in estates of the value of \$20,000 or less, the five year hearing requirement may be waived by the Court in its discretion. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account and the Court Administrator shall notify such guardian or conservator, his attorney and the Court if the hearing is not held within the 150 day period.

(7) Notice of Hearing on Account - Notice of time and place for hearing on the petition for final settlement and allowance of any account shall be given to the ward or conservatee, to the guardian or conservator if such person was not the petitioner for settlement of the accounts, to the spouse, adult children and such other interested persons as the Court may direct. Whenever any funds have been received by the estate from the Veterans Administration during the period of accounting, notice by mail shall be given to the regional office. The notice may be served in person or by depositing a copy in the U.S. mail to the last known address of the person or entity being served. When a ward or conservatee is restored to capacity, that person is the only interested person. When a ward or conservatee dies, the personal representative of the estate is the only interested person.

(8) Appearance on Petition for Adjudication of Accounts - When a verified annual or final account is filed in accord with the law and an adjudication is sought, and notice given as required by the law or waived as provided below, and the Court determines that the account should be allowed, the account may be allowed upon the pleadings without appearance of the guardian or conservator. If the ward, conservatee or any interested person shall object to the account, or demand the appearance of the guardian or conservator for hearing on the account, at any time up to and including the date set for the hearing, the Court will continue the hearing, if necessary, to a later date and require the appearance of the guardian/conservator for examination. Notice of hearing may be waived with the consent of all interested persons.

(9) Successor Guardian; Notice to Ward or Conservatee - The notice required by law shall include the right of the ward or conservatee to nominate a successor and charge him with instructions.

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT



CHAMBERS OF
JUDGE MELVIN J. PETERSON
PROBATE DIVISION OF THE DISTRICT COURT
4TH FLOOR COURTS TOWER
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
TELEPHONE: 348-3248

July 28, 1988

OFFICE OF
APPELLATE COURTS

AUG 19 1988

FILED

C 3-84-146

Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol Building
Aurora Avenue & Park
St. Paul, Minnesota 55155

IN RE: Probate Rules Committee

As Chairman of the Probate Rules Committee, which I have been heretofore appointed by you, to study and submit recommendations for rules governing Probate matters, I'm here-with submitting fourteen (14) copies of the report of the Committee, two of which are unstapled. If further copies are needed, kindly advise.

As you recall, this matter has been on for hearing before the Supreme Court previously and was referred back to the Committee for further work. In that connection, statutory authority had to be made more definite and certain as to the authority of the Supreme Court to issue such rules. This legislation was enacted and at this time I would request that the Court set a hearing on these rules. These are submitted for adoption.

Again at any such hearing there will be a minority dissent. John C. Connelly and Elizabeth Drake reiterate their minority report previously filed with the Court. I believe Committee member John C. Connelly would like to present argument to the Court. I also believe there will be some member of the Bar who will request time to present argument objecting to the rules providing for the authority of a personal representative to transfer real estate as provided in Rule 8 title, "Transfer of Real Estate."

One of our Committee members, Attorney Steve A. Brand, has served as secretary to the Committee and has made minutes of the meetings and has worked many extra hours getting the rules in order. Steve Forestall, Judicial Advisory Service Director, has attended all meetings to the adoption of the received rules and has been of much assistance to the Committee. A copy of the rules is sent to him.

From the Court of Appeals, the Honorable Donald Wozniak, Chief Judge, has reviewed the Rules and concurs herein. A copy of this letter together with a copy of these rules is likewise sent to him.

STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
FOURTH JUDICIAL DISTRICT



CHAMBERS OF
JUDGE MELVIN J. PETERSON
PROBATE DIVISION OF THE DISTRICT COURT
4TH FLOOR COURTS TOWER
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
TELEPHONE: 348-3248

If there is anything further that you need to supplement this request for hearing on the proposed Rules, kindly advise so that I may comply.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Melvin J. Peterson".

Melvin J. Peterson
Chairman - Probate Rules Committee

MJP/sto

Enclosures

cc: Donald Wozniak
Steve Forestall

12-27-88

2607 West 55th Street
Minneapolis, Minnesota 55410
24 December 1988

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

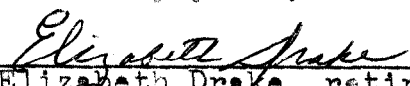
Re: Minnesota Supreme Court
Probate Rules

Dear Sir:

Pursuant to the Order for Public Hearing issued by Chief Justice Amdahl under date of November 10, 1988, as a person desiring to present a written statement concerning the Probate rules, I herewith enclose 10 copies of my statement (designated by me as a member of the Rules Committee as a Dissent).

Although I intend to be present at the Hearing on January 18, 1989, I am not requesting to make an oral presentation.

Sincerely yours,


Elizabeth Drake, retired attorney

ED:d

MINNESOTA PROBATE RULES COMMITTEE
OF THE SUPREME COURT
C3-84-146

OFFICE OF
APPELLATE COURTS
DEC 27 1988
FILED

DISSENT:

The undersigned, a member of the above named Committee, a former Chairperson of the Real Property Section, and a former Chairperson of the Committee appointed by the Section to prepare the White Pages in the back of the Title Standards Book, hereby submits a dissent to rules 8 and 13 filed by the Probate Rules Committee on July 28, 1988.

On April 15, 1986, the Probate Rules Committee filed its proposed Minnesota Probate Rules with this Court. About the same time the undersigned, and others, filed written dissents to rules 42 and 43 which pertained to real property, and to rule 15 which pertained to the duties and powers of the Registrar. Thereafter a hearing was held by this Court on the proposed rules, at which time several distinguished members of the Real Property Section objected to the rules. The rules were sent back to the committee by this Court for further study.

Rules 42 and 43 filed on April 15, 1986, are now combined into one rule which is numbered 8, and is now before this Court. The new proposed rule 8 is the same as the rules 42 and 43 previously submitted to the Court, except for one or two very minor changes in wording and the omission of statutory citations. Rule 15 filed on April 15, 1986, had been amended and is now rule 13.

Inasmuch as the rules re transfer of real property in Probate Proceedings submitted to the Court on April 15, 1986,

and on July 2, 1988 are the same, the dissent heretofore submitted by the undersigned to this Court on or about April 15, 1986, is hereby incorporated and made a part of this dissent. Therefor, the undersigned is herein merely summarizing some of the objections to Rule 8 and Rule 13 as now before the Court. (Page references at the end of each summary statement are to the pages of the Dissent filed by the undersigned on or about April 15, 1986.

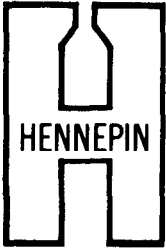
1. The rules are in conflict with the established practices and procedure of title examiners since the passage of the Uniform Probate Code in 1974. Page 1.
2. Rule 8 is not a rule of procedure, but rather one of substantive law. Page 2.
3. Rule 8 is confusing and misleading because with the filing of letters testamentary, an examiner does have notice and knowledge of a Will, and therefore has the duty to examine the terms of the Will to be sure the intent and will of testator is followed. Pages 2, 3.
4. Although the rule refers to a "good faith transferee", an examiner has no way to determine from the record who is a good faith transferee. Therefore the Will must be a part of the record.
5. If property is Registered, the statute requires the filing of the Will with the Registrar of Titles. How many personal representatives in informal proceedings without benefit or advice of attorneys will know whether or not the property is registered? There should not be two Standards here, one for registered property and one for abstract property. Pages 3, 4.

6. Minnesota law has favored vesting of real property in the devisee at the time of death. This proposed rule could change that concept. Page 5.
7. The Probate Registrar does have the right to determine if the application is complete. The law requires in the application a determination or listing of heirs. Pages 7 - 11.

In conclusion, the undersigned prays for an order striking Rule 8 from the Probate Court rules, or, in the alternative, a Rule 8 which would be acceptable to and workable by the members of the Real Property Section. Rule 13 should be amended to require the Registrar to list the heirs in the findings.

Respectfully submitted this 23rd day of December, 1988.


Elizabeth Drake



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

348-3191

December 30, 1988

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

In re: Proposed Minnesota Probate Rules
C3-84-146

Dear Sir:

Pursuant to the Order for Public Hearing issued on November 10, 1988, by Chief Justice Douglas Amdahl, regarding the January 18, 1989, hearing on the proposed Minnesota Probate Rules, I enclose herewith the original and 10 copies of my written statement concerning this matter.

Yours truly,

Richard W. Edblom
Examiner of Titles

RWE:ga

Encl.

HENNEPIN COUNTY

an equal opportunity employer

STATE OF MINNESOTA
IN SUPREME COURT
C3-84-146

3 1980
FILED

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 part of proposed Rule 8 for probate administration in the State of Minnesota:

DISCUSSION OF PROPOSED RULE 8

As Examiner of Titles for Hennepin County, I object to that part of proposed Probate Court Rule 8 which specifies the documents that a personal representative should provide for a transfer of real estate to either a transferee or to a distributee. My objection is triggered by the intentional omission of the present requirement of all real estate attorneys in Minnesota that a certified copy of the will be among the documents furnished for such a transaction. A certified copy of the will has always been considered one of the documents that must be furnished and recorded in order to establish a complete record of all documents which an attorney examining for a future buyer or mortgagee must consider in order to render his opinion as to whether the seller has a good title. For reasons that are set forth in the following paragraphs, it is the position of real estate attorneys that a determination as to whether a seller has a good title cannot be made if a certified copy of a will has not been recorded and therefore is not part of the abstract which is examined.

In view of the concern of real estate attorneys about this issue, it may be appropriate to question at the outset whether the Court should interject itself into this controversy by promulgating a Court rule which does not deal with the operation of the probate Court, but rather with the question of which documents should be recorded with the County Recorder or Registrar of Titles to create a good record title in real estate.

Real estate attorneys require that the decedent's will be included among the supporting documents for a personal representative's deed because of the statutory and case law in Minnesota which state that 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 of Appeals decision, In re Estate of Fitzgerald, 370 N.W.2d 683 (Minn. App. 1985) where the Court stated at page 686 that:

"In general, the law favors vesting, In re Estate of Freeman, 151 Minn. 446, 449, 187 N.W. 411, 412 (1922), and the rule is that, subject to administration, real property will pass to a devisee at the time of death. In re Estate of Breole, 298 Minn. 116, 120, 212 N.W.2d 894, 896 (1973)."

Because of the Minnesota statutory and case law on the vesting of title to real estate in devisees, real estate attorneys do not believe they can ignore the contents of a will when they represent clients who are purchasing from either a personal representative or a party who acquired title by deed from a personal representative. The attorney's primary interest is making sure that his clients acquire good title and are not subjected to the possibility of a lawsuit by a devisee who claims title to real estate given him in a will.

The Examiner of Titles has the same concern about good title as attorneys in private practice who represent purchasers of abstract land. Minnesota Statutes Section 508.68 requires that a certified copy of the will must be filed with the Registrar of Titles for a sale or distribution by a personal representative of registered land. The Examiner under Section 508.69 then reviews all documents before certifying as to their sufficiency for the issuance of a new Certificate of Title. In reviewing these documents it is not uncommon to reject the proposed transfer by a personal representative. The written statement by the undersigned submitted in 1986 when the proposed rules were first considered by the Court reflected the experience of the Examiner of Titles office in Hennepin County in

reviewing and certifying probate deeds. In that statement I said that over a 2-year period this office was unable to certify 17 probate deeds presented for the issuance of a new Certificate of Title because either they were contrary to the will or the will was ambiguous and needed construction to ensure that the transfers were authorized by it. These 17 rejected transfers fell into 3 categories:

1. The personal representative's deed of distribution was contrary to the will, i.e., the grantees were not the parties the will named as devisees: 3 transfers.
2. The personal representative's deed of sale was contrary to the will, i.e., the will provided that the land should go to specified parties, but the personal representative's deed of sale ran in favor of different parties: 6 transfers, including 3 in which the personal representative was selling to himself.
3. The will did not specifically identify either the land or the devisees and hence it could not be determined whether the personal representative's deed of distribution was in accord with the will: 8 transfers.

If the Examiner's office had certified any of the above transfers, a party who was awarded title to the land by 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 approximately 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 records of the Hennepin County Examiner of Titles office are not sufficiently complete to state the total number of probate transfers rejected in 1987 and 1988 because they were not in agreement with a will. However, from the rejection statements still in the possession of this office for these two years, it is apparent that we have been unable to certify approximately the same number of probate deeds for the reasons set forth above.

Proposed Probate Court Rule 8 contains the following statement after the section on transfers of real estate by a personal representative for value, namely: "No provision in any will which purports to limit the power of a personal representative is effective except as to a transferee with actual knowledge of the provision of the will, but absent such actual knowledge, the transferee need not inquire into the provisions of any will." Proposed Probate Court Rule 8 contains the following statement in regard to a distribution by the personal representative of real property, namely: "No provision in any

will which purports to dispose of said real property is effective except as to a transferee with actual knowledge of the provisions of the will but, absent such actual knowledge, the transferee need not inquire into the provisions of any will." No authority is given for either of these quoted sentences. However, in the probate court rules proposed in 1986 the committee members then cited as authority for these statements Minnesota Statutes §§524.3-714 and 523.3-910.

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: (emphasis added)

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

Real estate attorneys believe that there is a legitimate basis for questioning whether Minnesota Statutes §§524.3-714 and 523.3-910 would protect a purchaser who acquired title through a personal representative's deed if the decedent had devised the real estate to a different person. Therefore they require 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 the personal representative. The question of whether the precautions taken by real estate attorneys are necessary could be resolved if legislation were secured which would state that a person, to whom a tract of land was devised, had no standing to challenge a different disposition of the land by a personal representative. The question also could be resolved by a court decision. However, it is submitted that the matter should await either legislation or the appeal of an appropriate case, rather than be determined by a court rule.

Dated: December 28, 1988

Richard W. Edblom

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

KUEPPERS AND KUEPPERS

ATTORNEYS AT LAW

SUITE 1350

386 NORTH WABASHA AT SIXTH STREET

SAINT PAUL, MINNESOTA 55102

(612) 228-1104

FRED A. KUEPPERS
FRED A. KUEPPERS, JR.
JOAN M. HACKEL
JOSEPH F. KUEPPERS

OFFICE OF
APPELLATE COURTS

January 4, 1989

JAN 4 1989

FILED

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

Re: Proposed Minnesota Probate Rules

Dear Sir:

In accordance with the order entered by Chief Justice Douglas K. Amdahl under date of November 10, 1988, I am enclosing herewith ten copies of a written statement concerning the subject of the hearing scheduled for January 18, 1989.

It will be appreciated if you will bring the statement to the attention of the several members of the Supreme Court.

Thank you for your anticipated attention to this request.

Very truly yours,

By- *Fred A. Kueppers*

FAK/law

KUEPPERS AND KUEPPERS

ATTORNEYS AT LAW

SUITE 1350
386 NORTH WABASHA AT SIXTH STREET
SAINT PAUL, MINNESOTA 55102

(612) 228-1104

FRED A. KUEPPERS
FRED A. KUEPPERS, JR.
JOAN M. HACKEL
JOSEPH F. KUEPPERS

OFFICE OF
APPELLATE COURTS

JAN 4 1989

FILED

January 4, 1989

The Honorable Judges of
the Supreme Court
State Capitol
St. Paul, MN 55155

Re: Proposed Minnesota Probate Rules

Honorable Judges:

As a member of the Bar of this State, who has been and still is interested in the practice of the law in the field of real estate titles, I respectfully submit that the proposed Rule 8 relating to the transfer of real estate, either in formal or informal probate proceedings, should be amended to include a provision requiring the furnishing and recording or registration of a certified copy of the decedent's Will, if any, together with a certified copy of the order admitting the Will to probate or of the statement of admission.

It is urged that the failure of a personal representative to furnish and record or register such certified copies will expose a purchaser to possible litigation in which he or she will be compelled to establish his or her claim of innocent purchaser.

It is urged further that a similar requirement be made to apply in those cases in which title to real estate is transferred by court decree and even more importantly in those cases in which title is transferred by a deed of distribution executed by a personal representative. There should be no possible room for doubt or question as to either a court decree or a personal representative's deed of distribution being consistent with the provisions of the Will of a deceased testator.

For the reasons stated, it is urged that the proposed Rule 8 be amended.

The Honorable Judges of
the Supreme Court
January 4, 1989
Page Two

It is not my intention to make an oral presentation at the
hearing scheduled for January 18, 1989.

Respectfully submitted

By- *Fred A. Kueffer*

FAK/law

STATE OF MINNESOTA
DISTRICT COURT
SECOND JUDICIAL DISTRICT
EXAMINER OF TITLES
Ramsey County, Minnesota



ROBERT BEUTEL
Examiner of Titles

January 6, 1989

920 Lowry Medical Building
St. Paul, Minnesota 55102
(612) 298-4371

OFFICE OF
APPELLATE COURTS

JAN 5 1989

FILED

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

RE: Proposed Probate Rules

Ladies and Gentlemen:

Enclosed are 10 copies of a statement opposing a part of proposed Rule 8,
Minnesota Probate Rules.

Sincerely,

A handwritten signature in cursive script that reads "Robert Beutel".

Robert Beutel
Examiner of Titles

RB/vc

STATE OF MINNESOTA

OFFICE OF
APPELLATE COURTS

IN SUPREME COURT

JAN 5 1989

C3-84-146

FILED

IN RE PROPOSED MINNESOTA
PROBATE RULES

STATEMENT IN OPPOSITION TO RULE 8

Robert Beutel, Examiner of Titles, Second Judicial District (Ramsey County), makes the following statement in opposition to proposed Rule 8, Minnesota Probate Rules. The proposed rule creates two problems for anyone examining title to real estate: 1) The impossibility of determining from the public record (and from abstracts based thereon) whether a transferee had actual knowledge of provisions in a Will limiting the power of a personal representative or of specific devises. 2) Whether a Court Rule can effectively divest a right created in a Will.

1. ACTUAL KNOWLEDGE

An examiner has no way of knowing whether a transferee had actual knowledge of provisions in a Will. In the first place, the proposed rule is contrary to the trend of virtually every other rule, decision, statute and regulation, which hold that everyone in the world has constructive knowledge of everything on the public record. See for example State v. Schnieder-Kurth 395 NW 2d 136 (Minn. App. 1986) which held that a purchaser of real estate was required to search not only land records, but also municipal records and records of the State Department of Transportation to determine questions of access to the property. Second, there is no way to determine that a transferee did not "peek" at the Will prior to purchase. Therefore, the prudent examiner must assume that all transferees did look at the public record, the probate file, and are aware of any restrictive provisions in a Will.

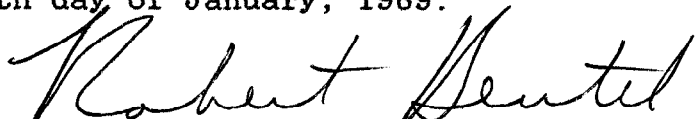
2. DIVESTITURE OF DEVISE BY RULE

Of even more critical concern to the prudent examiner is the force of such a rule and its validity in divesting a devisee of an interest in real estate granted by a Will. A fairly common example is the grant of a right of first refusal to purchase the historic family farm on favorable financing terms. Another example is shown on the attached two paragraphs excerpted from a Will on file in Ramsey County Probate Court. Every prudent examiner would object any title transferred contrary to these Will provisions. There is no adequate remedy at law for an heir or devisee harmed by a personal representative's contrary act. Equity generally requires specific performance under contracts for real estate on the rationale that each parcel of real estate is unique and that general damages are not adequate compensation.

How much more appealing are devises of family homesteads and century farms. Under such compelling facts, the likelihood of a transfer contrary to the Will being voided is too high for the prudent examiner to accept such a title. Therefore, the prudent examiner will require that a certified copy of the Will be examined for any such restrictions or special devises, that the devisees consent to any transfer contrary to the Will, and that the certified copy of the Will be filed with the County Recorder or Registrar of Titles.

THEREFORE, I request that the Court strike from proposed Rule 8 the sentence in (1) which reads "no provision in any Will which purports to limit the power of a personal representative is effective except as to a transferee with actual knowledge of the provision of the Will, but absent such actual knowledge the transferee need not inquire into the provisions of any Will." and the sentence in (2) which reads "no provision in any Will which purports to dispose of said real property is effective except as to a transferee with actual knowledge of the provisions of the Will but, absent such actual knowledge, the transferee need not inquire into the provisions of any Will."

Respectfully submitted this 5th day of January, 1989.



ROBERT BEUTEL, EXAMINER OF TITLES
SECOND JUDICIAL DISTRICT

II.

I give, devise and bequeath to my children, TRUDY M. HOELZEL, STEVEN H. HOELZEL, PAUL W. HOELZEL and DALE E. HOELZEL, each the sum of \$10,000.00.

III.

I give, devise and bequeath my homestead legally described as:

That part of the North 125 feet of the West 100 feet of Lot 38, Cottage Homes, which lies West of the following described line:

Commencing at a point in the North line of Lot 38 which point is 44.52 feet East of the Northwest corner thereof, thence Southerly to a point on the South line of the North 125 feet of said Lot 38 which point is 47.93 feet East of the West line of said Lot 38.

together with all of the furnishings therein to my son, DALE E. HOELZEL, upon the condition that within six months of my death he shall have paid and satisfied the bequests set out in paragraph II.

In the event my son, DALE E. HOELZEL, does not comply with the foregoing paragraph within six months of the date of my death, this devise and bequest shall lapse and my homestead and the furnishings shall become part of the residue of my estate.

LAW OFFICES
BRIGGS AND MORGAN
PROFESSIONAL ASSOCIATION

2200 FIRST NATIONAL BANK BUILDING
SAINT PAUL, MINNESOTA 55101

TELEPHONE (612) 291-1215
TELECOPIER (612) 222-4071

INCLUDING THE FORMER FIRM OF
LEVITT, PALMER, BOWEN, ROTMAN & SHARE

January 12, 1989

VIA MESSENGER

OFFICE OF
APPELLATE COURTS

JAN 13 1989

FILED

Mr. Fred Grittner
Clerk of Appellate Courts
230 State Capital
St. Paul, Minnesota 55155

Re: **Proposed Probate Court Rules**

Dear Mr. Grittner:

It it has recently come to my attention that there is a public hearing on the above matter scheduled for Wednesday, January 18th and it is possible that the Court will not have before it the enclosed Resolution of the Real Property Section of the Minnesota State Bar Association. The Section has gone on record as opposing the adoption of Proposed Rule 8 of the Probate Court Rules.

Although these written materials are being submitted after January 6, 1989, I request, on behalf of the Real Property Section, that these written materials be presented to the Court.

Thank you for your consideration of this matter.

Sincerely yours,



Daniel J. Cole, Jr.
Chairperson
Real Property Section
Minnesota State Bar Association

DJC:sjc
10/010
cc: Real Estate Council Members

REAL PROPERTY SECTION OF
THE MINNESOTA STATE BAR ASSOCIATION

RESOLUTION

It is hereby Resolved that the Real Property Section of the Minnesota State Bar Association opposes the adoption of proposed Rule 8, Probate Court Rules. (A copy of the proposed rule is attached to this Resolution.)

Adopted: June 17, 1988

RULE 8. TRANSFER OF REAL ESTATE

(1) Transfers of Real Estate in Supervised and Unsupervised Administration; Transfer by Personal Representative of Real Property for Value; Documents Required; Protection of Transferee — A personal representative shall provide a transferee of real property for value with the following documents:

- (1) A certified copy of unrestricted letters (30 days must have elapsed since the date of issuance of letters to an informally appointed personal representative).
- (2) A personal representative's deed or other instrument transferring any interest in real property which shall contain the marital status of the decedent and the consent of spouse, if any.

When the personal representative provides the above documents to a good faith transferee for value, the transferee is protected as if the representative properly exercised his power to make the transfer. No provision in any will which purports to limit the power of a personal representative is effective except as to a transferee with actual knowledge of the provision of the will, but absent such actual knowledge, the transferee need not inquire into the provisions of any will. This protection extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value.

Where registered land is concerned, the personal representative shall also meet any additional requirements imposed by law.

(2) Distribution of Real Property; Documents Required; Protection of Transferee from Distributee — A personal representative shall provide a distributee of real property with the following documents:

- (a) When distribution is made by decree, a certified copy of the decree of distribution assigning any interest in real property to the distributee.
- (b) When distribution is made by deed from a personal representative in unsupervised administration:
 - (i) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative).
 - (ii) A personal representative's deed of distribution of any interest in real property to the distributee which shall contain the marital status of the decedent and consent of the spouse, if any.
- (c) When distribution is made by deed from the personal representative in supervised administration:
 - (i) A certified copy of unrestricted letters.
 - (ii) A certified copy of an order of distribution which authorizes the distribution of any interest in real property to the distributee.
 - (iii) A personal representative's deed of distribution of any interest in real property to the distributee.

When the personal representative provides the above documents to a distributee of any interest in real property, a good faith transferee for value from said distributee is protected and said transferee takes title to said real property 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. No provision in any will which purports to dispose of said real property is effective except as to a transferee with actual knowledge of the provisions of the will but, absent such actual knowledge, the transferee need not inquire into the provisions of any will. This protection extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value.

