

2012-01-31-03

The Supreme Court of South Carolina

RE: Amendments to South Carolina Rules of Probate Court

O R D E R

Pursuant to Article V, § 4, of the South Carolina Constitution, the South Carolina Rules of Probate Court are hereby amended as provided in the attachment to this order. These amendments shall be submitted to the General Assembly as provided by Art. V, § 4A of the South Carolina Constitution.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

Columbia, South Carolina
January 31, 2012

**Probate Court Rule 5
MEDIATION**

(a) Intent and Application of Rule. The purpose of mediation is to provide parties with an alternative to litigation. This rule shall apply to all cases referred to mediation in the Probate Courts of this State and shall be uniform for all counties.

(b) Referral to Mediation

- (1) All contested litigation within the jurisdiction of the Probate Court shall be eligible for referral to mediation.
- (2) Actions may be referred to mediation in the following manner:
 - (A) by court order after the filing of a motion by a party;
 - (B) by written stipulation of all parties; or
 - (C) upon the court's own motion with notice to all parties.
- (3) Within ten (10) days after receipt of a motion requesting mediation, any party opposing mediation must file a written objection with the court setting forth specific reasons why mediation is not appropriate. If a written objection is filed, the court may hold a hearing at which time the objecting party must provide good cause demonstrating why mediation is not appropriate.

(c) Assignment of Mediator

- (1) By agreement, the parties may select any person to serve as mediator who in the opinion of all parties is qualified by training or experience to mediate all or some of the issues in the matter. The parties shall file a signed stipulation indicating the name of the mediator within twenty (20) days after the matter has been referred to mediation. When the parties select the mediator, the parties and the mediator shall agree upon the mediator's compensation.
- (2) If the parties have not agreed upon a mediator within twenty (20) days of the referral to mediation, the court shall appoint a primary and alternate mediator from the list of certified Circuit Court or Family Court mediators maintained by the South Carolina Bar under Rule 19, S.C. Court-Annexed ADR Rules, and shall give notice to all parties.
- (3) Unless otherwise agreed by the parties or ordered by the court, fees and expenses for the mediation conference shall be paid in equal shares per party. However, upon motion of any party, the Probate Court may order reimbursement of mediator fees and expenses from an estate upon a showing that the mediation process significantly benefitted the estate. A party may also move before the court to be declared indigent and exempted from payment of mediator fees and expenses. A party may also move before the court to allow mediation to be conducted by a community mediation center due to the modest value of the estate.

(d) The Mediation Conference

- (1) The mediation conference is to be held in the county where the case is pending, unless otherwise agreed by the parties and the mediator.
- (2) Consistent with Rule 6(b), S.C. Court-Annexed ADR Rules, physical attendance at the mediation conference shall be required for all non-defaulting parties who are affected by the litigation.
- (3) The mediation conference shall be held within sixty (60) days of referral to mediation. Failure to complete mediation in a timely manner may result in sanctions from the court.

(4) Within ten (10) days after the conclusion of the mediation process, the mediator shall file with the court a Proof of Mediation on a form approved by the Supreme Court or its designee.

(5) If a full or partial agreement is reached during the mediation conference, the agreement shall be reduced to writing signed by the parties. Within thirty (30) days of the conclusion of the mediation conference, the parties shall pursue court approval of the terms of the settlement through either the submission of a consent order or motion filed with the court.

(e) Confidentiality. Communications during the mediation conference shall be confidential to the same extent and in the same manner as set forth in Rule 8, S.C. Court-Annexed ADR Rules.

(f) Applicability of Other Rules. In addition, the following S.C. Court-Annexed ADR Rules approved by the Supreme Court shall apply to every matter referred to mediation in the Probate Courts of this State: Rule 5(a) – (d); Rule 6(a) – (e); Rule 7(a) – (e); Rule 7(g); Rule 8; Rule 9(a) – (c); and Rule 10(b).