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Fla. Prob. R. 5.230

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As amended through August 29, 2019

Rule 5.230 - Commission to Prove Will

(a) **Petition.** On petition the court may appoint a commissioner to take the oath of any person qualified to prove the will under Florida law. The petition must set forth the date of the will and the place where it was executed, if known; the names of the witnesses and address of the witness whose oath is to be taken; and the name, title, and address of the proposed commissioner.

(b) **Commission.** The commission must be directed to a person who is authorized to administer an oath by the laws of Florida, the United States of America, or the state or country where the witness may be found, and it shall empower the commissioner to take the oath of the witness to prove the will and shall direct the commissioner to certify the oath and file the executed commission, copy of the will, oath of the witness, and certificate of commissioner. An oath of the commissioner is not required.

(c) **Mailing or Delivery.** The petitioner or the petitioner's attorney must cause the commission, together with a copy of the will, the oath, and the certificate of commissioner, to be mailed or delivered to the commissioner.

(d) **Filing.** The executed commission, copy of the will, oath of the witness, and certificate of commissioner must be filed.

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Code to be a commissioner as well as those authorized by the state or country where the witness resides. The rule now provides that the petitioner or his attorney shall forward the commission to the commissioner. The rule also contemplates that a Florida notary may be appointed as commissioner to take the proof of a witness outside the State of Florida. Committee notes revised and expanded. 1988 Revision: Editorial and substantive changes. Change in (a) to provide that the commissioner may take the oath of not only the attesting witness to the will but also the oath of any other person qualified to prove the will; change in (c) to permit copies other than photographic copies to be furnished to the commissioner, and to permit delivery of documents in a manner other than by mailing; change in (d) to require the filing of documents with the court. Committee notes revised. Citation form changes in rule and committee notes. 1992 Revision: Editorial change. Committee notes revised. Citation form changes in committee notes. 2003 Revision: Committee notes revised. 2013 Revision: Subdivision (e) deleted because it duplicates subdivision (d) in Rule 5.240. Committee notes revised. Editorial changes to conform to the court's guidelines for rules submissions as set forth in AOSCo6-14. Statutory References § 92.50, Fla. Stat. Oaths, affidavits, and acknowledgments; who may take or administer; requirements. § 733.101, Fla. Stat. Venue of probate proceedings. § 733.201, Fla. Stat. Proof of wills. § 22 U.S.C. § 4215 Notarial acts, oaths, affirmations, affidavits, and depositions; fees. Rule References Fla. Prob. R. 5.050 Transfer of proceedings. Fla. R. Civ. P. 1.060 Transfers of actions. .

[Previous Section](#)[Rule 5.216 - Will Written in Foreign Language](#)

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