



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

(850) 561-5600  
www.FLORIDABAR.org

## VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

- This worksheet is for voluntary bar groups (VBGs) to gather and share information before submitting an official request for approval of legislative or political activity, whether new or rollover.
- Political activity is defined in SBP 9.11 as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- VBGs must advise TFB of proposed legislative or political activity and identify all groups the proposal has been submitted to. If comments have been received, they should be attached; if they have not been received, the proposal may still be submitted to the Legislation Committee. *See* SBP 9.50(d).
  - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
  - If expedited review is requested, the Executive Committee may review the proposal.
  - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

### General Information

**Submitted by:** *(name of VBG or individual)* Probate Law and Procedure Committee of the Real Property, Probate and Trust Law Section

**Address:** *(address and phone #)* c/o M. Travis Hayes, 5551 Ridgewood Drive, Suite 501, Naples, FL 34108, ph. 239-514-1000

**Position Level:** *(name of VBG)* RPPTL Section, Probate Law and Procedure Committee

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**Proposed Advocacy**

Complete #1 below if the issue is legislative, #2 if the issue is political; #3 must be completed.

**1. Proposed Wording of Legislative Position for Official Publication**

Proposed amendments to section 733.705(5) (Payment of and objection to claims) to codify existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for the mandatory arbitration relating to the claim, or arbitration is required by the decedent's will or trust.

**2. Political Proposal**

NA

**3. Reasons For Proposed Advocacy**

- a. Is the proposal consistent with *Keller v. State Bar of California*, 496 US 1 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1989)? YES
- b. Which goal or objective of the Bar's strategic plan is advanced by the proposal?  
Objective II -- Enhance the Legal Profession and the Public's Trust and Confidence in Attorneys and the Justice System
- c. The proposal: (*see SBP 9.50(a) - check all that apply*)

  X   is within the group's subject matter jurisdiction as described in the group's bylaws;

       is beyond the scope of the bar's permissible legislative or political activity, or within the bar's permissible scope of legislative or political activity and consistent with an official bar position on that issue; and

       does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

d. Additional Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Referrals to Other Voluntary Bar Groups

The VBG must provide copies of the proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. *See* SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The submission may be made before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

NA

## Contacts

### **Board & Legislation Committee Appearance** *(list name, address and phone #)*

Lawrence J. Miller, Legislative Co-Chair of the RPPTL Section, Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A., Suite 107, 2101 NW Corporate Blvd., Boca Raton, FL 33431, Ph. 561-998-7847

### **Appearances before Legislators** *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar & Martha Edenfield, Dean, Mead and Dunbar, P.A., 215 S. Monroe St., Suite 815, Tallahassee, FL 32301, Ph. 850-999-4100

### **Meetings with Legislators/staff** *(list name and phone # of those having direct contact with legislators)*

Peter M. Dunbar & Martha Edenfield, Dean, Mead and Dunbar, P.A., 215 S. Monroe St., Suite 815, Tallahassee, FL 32301, Ph. 850-999-4100

1 A bill to be entitled

2 An act relating the requirement to bring an  
3 independent action on a creditor claim in a probate  
4 proceeding; allowing a motion and order to substitute  
5 the fiduciary in a pending action; and establishing an  
6 effective date.

7 Be It Enacted by the Legislature of the State of  
8 Florida:

9 Section 1. Section 733.705(5), Florida Statutes, is  
10 amended to read:

11 **733.705 Payment of and objection to claims.—**

12 (5) The claimant is limited to a period of 30 days  
13 from the date of service of an objection within which  
14 to bring an independent action upon the claim, or a  
15 declaratory action to establish the validity and  
16 amount of an unmatured claim which is not yet due but  
17 which is certain to become due in the future, or a  
18 declaratory action to establish the validity of a  
19 contingent claim upon which no cause of action has  
20 accrued on the date of service of an objection and  
21 that may or may not become due in the future, unless an  
22 extension of this time is agreed to by the personal  
23 representative in writing before it expires.

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25           (a) For good cause, the court may extend the time  
26           for filing an action or proceeding after objection is  
27           filed. No action or proceeding on the claim may be  
28           brought against the personal representative after the  
29           time limited above, and the claim is barred without  
30           court order.

31           (b) If an action or proceeding by the claimant is  
32           pending against the decedent at the time of the  
33           decedent's death, and a timely statement of claim  
34           based on the pending action or proceeding is filed by  
35           the claimant, the requirement to bring an independent  
36           action is satisfied if, within 30 days of the filing  
37           of an objection to the claim, (1) a motion to  
38           substitute the personal representative is filed in the  
39           pending action; or (2) an order substituting the the  
40           personal representative is entered in the pending  
41           action; or (3) such other procedure as may exist is  
42           initiated to substitute the personal representative in  
43           the pending action. The filing of a motion for  
44           substitution must also comply with any applicable rule  
45           of procedure requiring substitution within a certain  
46           time from the filing of a suggestion of death.

47           (c) If the decedent entered into an agreement  
48           during lifetime which provides for mandatory

49 arbitration relating to the claim, or arbitration is  
50 required by the decedent's will or trust, then the  
51 timely filing of an arbitration satisfies the  
52 requirement for commencement of an independent action  
53 under this section. If the arbitration was commenced  
54 prior to the decedent's death, and a timely statement  
55 of the claim is filed by the claimant, then the  
56 claimant's requirement for commencement of an  
57 independent action shall be satisfied by a motion for  
58 substitution of the personal representative, the  
59 personal representative's voluntary substitution in  
60 the arbitration, or compliance with such other  
61 procedure necessary to substitute the personal  
62 representative of the estate in the proceeding as may  
63 be required, within 30 days of the filing of an  
64 objection to the claim.

65 (d) If an objection is filed to the claim of any  
66 ~~creditor~~ claimant and the ~~creditor~~ claimant brings an  
67 action to establish the claim, a judgment establishing  
68 the claim shall give it no priority over claims of the  
69 same class to which it belongs.

70 Section 2. This act shall take effect on July 1, 2022.

**REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR  
WHITE PAPER ON PROPOSED AMENDMENTS TO  
F.S. SECTION 733.705(5)**

**I. SUMMARY**

Section 733.705(5) of the Florida Probate Code provides that when an objection is served to a creditor's Statement of Claim, the creditor has 30 days within which to bring an independent action in furtherance of the claim. However, neither the statute nor the Probate Rules currently provides a mechanism for when there is already a pending action on the creditor's claim pending at the decedent's death.

By way of example, John Doe is sued for breach of contract in Circuit Civil court. John Doe dies during the pendency of the action. The plaintiff in the lawsuit files a statement of claim in John Doe's estate, and the personal representative of John Doe's estate serves and files an objection. Under such a circumstance, the creditor/plaintiff believes that the pending action is an "independent action" on the statement of claim, and indeed would be precluded from bringing a new, duplicative lawsuit.

Under the present Code and Rules, there is no clear mechanism by which the creditor can obtain confirmation that the pending lawsuit or legal proceeding shall be deemed the "independent action" such that it satisfies the creditor's requirement to bring an independent action within 30 days of an objection to a statement of claim.

A number of Florida cases seem to establish that a pending action against a decedent at the time of death is deemed an "independent action," under section 733.705(5), when a motion for substitution (or a voluntary substitution) of the Personal Representative or other fiduciary of the decedent's estate is filed in the pending lawsuit. *See, e.g., Lewsadder v. Estate of Lewsadder*, 755 So. 2d 1221 (Fla. 4th DCA 2000); *Shessel v. Estate of Calhoun*, 573 So. 2d 962 (Fla. 3d DCA 1991); *In re Estate of Brown*, 421 So. 2d 752 (Fla. 4th DCA 1982); *Cloer v. Shawver*, 177 So. 2d 691 (Fla. 1st DCA 1965).

These proposed changes intend to codify this existing procedure.

**II. CURRENT STATUS OF FLORIDA LAW**

When an objection is served to a creditor's Statement of Claim, the creditor has 30 days within which to bring an independent action in furtherance of the claim under section 733.705(5). However, neither the statute nor the Probate Rules currently provides a mechanism for establishing whether or how an action already pending at the time of death is or will become the contemplated "independent action." That said, a number of Florida cases seem to establish that a pending action against a decedent at the time of death is deemed an "independent action," under section 733.705(5), when a motion for substitution (or a voluntary substitution) of the Personal Representative or other fiduciary of the decedent's estate is filed in the pending lawsuit.

### **III. EFFECT OF PROPOSED CHANGES GENERALLY**

The proposed legislation codifies existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for mandatory arbitration relating to the claim, or arbitration is required by the decedent's will or trust.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have a fiscal impact on state and local governments.

### **V. DIRECT IMPACT ON PRIVATE SECTOR**

The proposal does not have a direct economic impact on the private sector.

### **VI. CONSTITUTIONAL ISSUES**

It is not anticipated that this legislation will raise constitutional issues.

### **VIII. OTHER INTERESTED PARTIES**

The Florida Civil Procedure Rules Committee may have an interest in this proposal.