

INTESTATE ESTATE CHECKLIST

Estate of _____

CAUSE NO. _____

_____ Uniform Chancery Court Rules:

- 6.02—Fiduciary must be represented by attorney licensed to practice in Mississippi UNLESS fiduciary is Mississippi licensed attorney.
- 6.03—“Every fiduciary and attorney must be diligent in the performance of their duties.”

_____ PRACTICE NOTE: Make sure to get your attorneys’ fees approved by Court on the front-end. See *Obert Law Group, P.A. v. Holt*, 328 So. 3d 622 (Miss. 2021).

_____ Appointment of Administrator/Administratrix:

- MCA §91-7-63; see also MCA §91-9-9.
- Decedent’s surviving spouse has legal right (for 30 days from Decedent’s date of death) to be appointed Administrator/Administratrix unless disqualified or incompetent.
- Affidavit language to adjudicate heirs (see MRCP 4).

_____ Judgment entered appointing Administrator/Administratrix.

_____ Letters of Administration issued by Clerk to Administrator/Administratrix (MCA §91-7-63).

_____ Oath (MCA §91-7-41) and Bond (MCA §91-7-67).

_____ Inventory of Estate (MCA §91-7-93):

- Admin MUST file within 90 days of grant of Letters unless further time allowed by Court.
- HOWEVER: Court/Chancellor may waive inventory requirement upon Admin petition to the Court.

_____ Notice to Creditors (MCA §91-7-145)

- Known Creditors:
 - Admin must make reasonably diligent efforts to identify creditors having claim against Estate AND must mail to them actual notice of 90-day time period within which to file claim.
 - Admin must then file affidavit of known creditors, attesting to having served actual notice on the known creditors, if any (NOTE: must be filed *before* publication for creditors).
 - The publication statute is not a substitute for the requirement that creditors must be notified by mail. See *In re Estate of Ladner*, 911 So. 2d 673 (Miss. Ct. App. 2005) Otherwise, publication is void. See *Matter of Estate of Petrick*, 635 So. 2d 1389 (Miss. 1994).
- Unknown Creditors:
 - Following affidavit of known creditors, Admin must publish notice to creditors in local newspaper (newspaper of general circulation in the county) notifying them that they have 90 days *from date of first publication* within which to file claim against Estate. This notice must run three (3) times (once per week for three (3) consecutive weeks) AND notice must include Estate name and court file number.
 - If no local newspaper (newspaper of general circulation in the county), then notice may be posted at courthouse door and three (3) other public places in county (but see MCA §91-7-147—if value of estate is not more than \$500, then posting may be done in place of newspaper publication).
 - Admin must file proof of publication with the Court.

_____ Determination of Heirs:

- Heirs of Decedent determined at the moment of death.
- An action to determine heirs MUST be brought before Estate may be closed.
- MCA §91-1-27: “...any heir at law of such deceased person, or anyone interested in any of the property as to which he shall have died intestate, may petition the

chancery court...praying that the person named in said petition be recognized and decreed to be the heir at law of said deceased.”

- Classes of Heirs (MCA §91-1-3 and MCA §91-1-7):
 - Class I: spouse and child/children.
 - Class II: siblings and parents.
 - Class III: grandparents and uncles and aunts.
 - Class IV: equal parts to next of kin in equal degree, computing by rules of civil law.
- Wholesies v. Halvesies (MCA §91-1-5)
 - “[K]indred of the whole-blood, in equal degree, shall be preferred to the kindred of the half-blood in the same degree.”
- Publication process to unknown heirs must be made pursuant to MRCP 81(d)(1). (determination of heirship requires 30 days’ notice to a date certain so that the unknown heirs can be called in open court).

TESTATE ESTATE CHECKLIST

Estate of _____

Cause No. _____

- _____ Complaint to Probate Will with a copy of the will attached. UCCR 6.15. When filing, include a letter with original Will to the Chancery Clerk for keeping. UCCR 9.03.

- _____ Under Mississippi law, there are two (2) different types of probate proceedings: common form and solemn form
 - Probate in Common Form is prima facie evidence of a valid will MCA §91-7-7; §91-7-27 and *In Re Will of Winding*, 783 So. 2d 707 (Miss. 2001). Interested parties may contest the will at any time within two years after probate. MCA §91-7-23
 - Probate in Solemn Form requires a MRCP Rule 81 summons and makes all interested persons parties to the petition for probate. MCA §91-7-19.

- _____ Judgment opening the Estate or admitting will to probate is filed appointing Executor/Executrix.

- _____ Oath of Executor/Executrix (signed, dated, and filed after Judgment is entered).

- _____ The Executor has properly filed bond, or it was waived by the will or by sworn petition of all heirs with entry of a court order authorizing the waiver.

- _____ Letters Testamentary issued by Clerk

- _____ Inventory and Appraisement is still required by Statute MCA §91-7-93; *Brown v. Franklin*, 127 So. 561 (Miss. 1930). Chancellor suggestion to initially, “require no bond at this time.”

- _____ Affidavit of Creditors and Letters to all known Creditors. This Affidavit MUST be filed before publication of creditors and properly executed by the Executor. MCA §91-7-145; “The publication statute is not a substitute for the

requirement that creditors must be notified by mail.” *In re Estate of Ladner*, 911 So. 2d 673 (Miss. Ct. App. 2005). OTHERWISE, your publication is void. *See Vann v. MS. Neurosurgery, P.A.*, 635 So. 2d 1389 (Miss. 1994).

_____ Notice to Creditors issued by Clerk and sent to newspaper

_____ Publication of Notice to Creditors must be made in some newspaper in the county per MCA §13-3-31, for three consecutive weeks, then allow 90 days to pass after first publication.

_____ Complaint to Adjudicate Heirs of Decedent by process returnable to a date certain. MRCP Rule 81, MRCP Rule 4 and *In Re Richardson*, 695 So. 2d 587 (Miss. 1997).

- An heirship is required in all probated estates under *Richardson*, and the Final Account Statutes MCA §91-7-291, MCA §91-7-293, MCA §91-7-295, and MCA §91-7-297.
- These statutes refer to “interested parties,” “any person interested,” and “all parties interested.”
- A Record of this hearing must be made under *Richardson*.
- Also consider Adopted Children and Illegitimates:
 - Adoptions: MCA §11-7-13 and MCA §93-17-13
 - Illegitimates: MCA §91-1-15.

_____ Affidavit regarding Unknown Heirs. See MRCP 4(c)(4)(D). This language can be in a pleading, e.g. original complaint, suit for heirship, etc.

_____ Summons to Unknown Heirs to a day certain issued by Clerk and sent to newspaper. See MRCP 81. See also *In re Estate of Robinson*.

_____ Letter to all Known Heirs with copy of complaint, judgment, and letters testamentary and waiver of process for all purposes.

_____ Judgment Adjudicating Heirs of Decedent.

_____ Complaint for Sale of Real/Personal Property with appraisal.

- Note the Bond requirement when selling Estate Real Property. If the sale price is reasonable, no bond is required. MCA §91-7-205.

- Court may set bond if publication (90 days) has not run or waive bond and deposit funds into Court Registry; have all heirs join if the heirship Judgment has been entered. MCA §91-7-205; and *Sharpley v. Plant*, 28 So. 799 (Miss. 1900).

_____ Check that all accountings timely filed and approved by court order, or waived by the will, or excused by the Court.

_____ Check that all interested parties have been served with the petition to close and all other closing documents, including final accounting, and they have joined in the petition or have been duly served with a MRCP Rule 81 Summons, and there is a proper return or properly executed waiver or joinder for each interested party.

_____ All probated claims have been paid and evidence of such payment is in the court file, or probated claims will be paid in the course of closing the Estate, and a final report will be filed evidencing payment.

_____ The attorneys' fees and expenses, as well as those of the Executor/Administrator have been disclosed to all interested persons, and they have no objection. *See Obert Law Group v. Estates of Holt*, 328 So. 3d 622 (Miss. 2021) for payment of reasonable attorneys' fees.

_____ Final Account, must file checks and receipts with the Annual and Final Accounting. Attach vouchers and checks. UCCR 6.01 et seq. "All interested parties" must be served with process or waive process. MCA §91-7-295.

NOTABLE UCCR Rule Changes Effective 4/18/2024:

Rule 1.08 WITHDRAWAL OF COUNSEL

To withdraw from representation of a client, the attorney must now: (1) have client sign off and agree to withdrawal; (2) have client join in the motion to withdraw; **OR** (3) serve client with a Rule 81 summons for hearing on the motion.

Rule 1.09 NOTIFICATION OF RELEVANT PENDING CASES AND REASSIGNMENT

When a case is filed and assigned to a chancellor, any subsequent filing involving **THE SAME SUBJECT MATTER** shall be assigned to the same chancellor.

Rule 1.13 SANCTIONS

Anyone who violates these rules may be subject to sanctions, contempt proceedings, or other disciplinary actions imposed or initiated by the court.

Rule 3.05 COPY OF EXHIBITS

Unless excused **PRIOR TO TRIAL**, it is the duty of the attorney to distribute copies of any exhibits to the court and opposing counsel when offered.

Rule 4.01 FINDINGS BY THE COURT

A request for findings of fact pursuant to MRCP 52 must be made in writing and filed **BEFORE** the court begins rendering its bench opinion, judgment, order, or ruling, and **BEFORE** the court issues its written opinion, judgment, order or ruling.

Rule 5.01 CONTENTS AND FORM (OF JUDGMENTS)

Every judgment **SHALL** state the facts showing the Court has proper jurisdiction and venue.

Rule 5.04 PRESENTATION OF COURT FILE

An attorney presenting a judgment or order must include in the judgment or order an itemization of the MEC-numbered documents affected by the judgment or order.

Rule 6.14 COURT COSTS – DELETED

Fiduciaries no longer required to annually pay all accrued court costs and present the clerk's receipt as a voucher on accountings.

POP QUIZ

Estates and Wrongful Death

1. Can I sell the Decedent's property?
 - a. When?
2. Who can sue for the Decedent?
3. Do I have to determine the heirs-at-law?
 - a. When?
4. Should I probate the Decedent's Will in solemn or common form?
5. Do half-bloods take under Mississippi law for a Decedent's death?
6. Are heirs-at-law the same as Wrongful Death beneficiaries?
7. Does the Mississippi Wrongful Death Statute identify the beneficiaries and their respective claims?

Uniform Chancery Court Rules

1. If I need to withdraw as counsel, how do I go about doing that?
2. What do I do if the Chancellor entered a Judgment and I need findings of fact?
3. What must be included in a proposed Order or Judgment when I submit it to the Chancellor?
4. Did you read Justice Griffis Dissent to the En Banc Order changing the UCCR Rules?

11 Correct Answers = Genius

5-10 Correct Answers = You get to keep your license

1-4 Correct Answers = Sign up for another CLE immediately

BONUS QUESTION: In what case did Charles get a bride?