

RULE 9
ESTATES AND TRUSTS

**PROCEEDINGS BY OR AGAINST EXECUTOR,
ADMINISTRATOR OR TRUSTEE**

General Rule

- 9.01** (1) A proceeding may be brought by or against an executor, administrator or trustee as representing an estate or trust and its beneficiaries without joining the beneficiaries as parties.

Exceptions

- (2) Subrule (1) does not apply to a proceeding,
- (a) to establish or contest the validity of a will;
 - (b) to remove or replace an executor, administrator or trustee;
 - (c) against an executor, administrator or trustee for fraud or misconduct; or
 - (d) for the administration of an estate or the execution of a trust by the court.

Executor, Administrator or Trustee Refusing to be Joined

- (3) Where a proceeding is commenced by executors, administrators or trustees, any executor, administrator or trustee who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

Beneficiaries and Others Added by Order

- (4) The court may order that any beneficiary, creditor or other interested person be made a party to a proceeding by or against an executor, administrator or trustee.

**PROCEEDING AGAINST ESTATE THAT HAS NO EXECUTOR OR
ADMINISTRATOR**

- 9.02** (1) Where it is sought to commence or continue a proceeding against the estate of deceased person who has no executor or administrator, the

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court on motion may appoint a litigation administrator to represent the estate for the purposes of the proceeding.

- (2) An order in a proceeding to which a litigation administrator is a party binds or benefits the estate of the deceased person, but has no effect on the litigation administrator in his or her personal capacity, unless a judge orders otherwise.

REMEDIAL PROVISIONS

Proceeding Commenced before Probate or Administration

- 9.03** (1) Where a proceeding is commenced by or against a person as executor or administrator before a grant of probate or administration has been made and the person subsequently receives a grant of probate or administration, the proceeding shall be deemed to have been properly constituted from its commencement.

Proceeding Brought by or Against Estate

- (2) A proceeding commenced by or against the estate of a deceased person,
 - (a) by naming "the estate of A.B., deceased", "the personal representative of A.B., deceased" or any similar designation; or
 - (b) in which the wrong person is named as the personal representative,

shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the proper executor or administrator of the deceased or against a litigation administrator appointed for the purpose of the proceeding, and the title of the proceeding shall be amended accordingly.

Proceeding Commenced in the Name of or Against a Deceased Person

- (3) A proceeding commenced in the name of or against a person who has died before its commencement shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the executor or administrator or a litigation administrator

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appointed for the purpose of the proceeding, and the title of the proceeding shall be amended accordingly.

Where There is an Executor or Administrator and a Litigation Administrator has been Appointed

- (4) Where it appears that a deceased person for whom a litigation administrator has been appointed had an executor or administrator at the time of the appointment, the proceeding shall not be treated as a nullity, but the court may order that the proceeding be continued against the executor or administrator and the title of the proceeding shall be amended accordingly.

General Power

- (5) A proceeding by or against a deceased person or an estate shall not be treated as a nullity because it was not properly constituted, but the court may order that the proceeding be reconstituted by analogy to the provisions of this rule.

Stay of Proceeding until Properly Constituted

- (6) No further step in a proceeding referred to in subrule (2), (3), (4) or (5) shall be taken until it is properly constituted and, unless it is properly constituted within a reasonable time, the court may dismiss the proceeding or make such other order as is just.

Terms May be Imposed

- (7) On making an order under this rule, the court may impose such terms as are just, including a term that an executor or an administrator shall not be personally liable in respect of any part of the estate of a deceased person that he or she has distributed or otherwise dealt with in good faith while not aware that a proceeding had been commenced against the deceased person or the estate.