

SUPREME COURT OF FLORIDA

In re Amendments to Florida Probate Rule 5.590

150 So. 3d 1100 (Fla. 2014) · No. SC14-1972 · Decided November 6, 2014

SUMMARY

The Supreme Court of Florida adopted an amendment to Florida Probate Rule 5.590 concerning applications for appointment as guardian. The amendment requires applicants to disclose whether they have ever been arrested or convicted of a felony, subject to an exception for certain human-trafficking-victim expunctions. The amendment became effective immediately upon release of the opinion, with a sixty-day period for filing comments.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Labarga, C.J.; Pariente, J.; Lewis, J.; Quince, J.; Canady, J.; Polston, J.; Perry, J.
JURISDICTION	Florida
DECIDED	November 6, 2014
DOCKET	SC14-1972
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding in which the Florida Probate Rules Committee submitted an out-of-cycle, fast-track proposal to amend Florida Probate Rule 5.590 in response to recent legislation.
PRECEDENTIAL VALUE	Published rulemaking opinion; the adopted amendment is binding as a Florida Probate Rule.

TOPICS

- guardianship procedure
- probate procedure
- guardianships
- appellate procedure

PRACTICE AREAS

- Probate
- Guardianship

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida should amend Florida Probate Rule 5.590(a)(1)(A) to require guardian applicants to disclose prior arrests and felony convictions, including expunged records, subject

to the statutory human-trafficking expunction exception.

2. Whether the proposed rule amendment should become effective immediately while permitting post-adoption comments.

HOLDINGS

1. Florida Probate Rule 5.590(a)(1)(A) is amended to require an application for appointment as guardian to include a statement indicating whether the applicant has ever been arrested or convicted of a felony, even if the record of the arrest or conviction has been expunged, unless the expunction was ordered under section 943.0583, Florida Statutes.
2. The amendments become effective immediately upon release of the opinion, notwithstanding that they were not published for comment before adoption; interested persons are permitted sixty days from the opinion date to submit comments.

KEY QUOTATIONS

“The amendments shall become effective immediately upon the release of this opinion.”

“a statement indicating whether the applicant has ever been (i) arrested or (ii) convicted of a felony, even if the record of such arrest or conviction has been expunged, unless the expunction was ordered pursuant to section 943.0583, Florida Statutes.”

FACTUAL BACKGROUND

The Florida Bar’s Probate Rules Committee filed an out-of-cycle report proposing an amendment to Florida Probate Rule 5.590. The proposal was intended to conform the rule governing applications for appointment as guardian to recent amendments to Florida statutes concerning criminal-history expunctions and eligibility to serve as a guardian.

PROCEDURAL HISTORY

The Florida Probate Rules Committee proposed amending rule 5.590(a)(1)(A) to require guardian applicants to disclose whether they had ever been arrested or convicted of a felony, including matters that had been expunged, subject to an exception for expunctions ordered under section 943.0583, Florida Statutes. The Supreme Court of Florida exercised jurisdiction, approved and adopted the proposed amendment, and made it effective immediately, while allowing interested persons sixty days to file comments.

DISPOSITION

other

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