

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

OPINION

PER CURIAM.

Supreme Court of Florida _____ No. SC14-1972 _____ IN RE:
AMENDMENTS TO FLORIDA PROBATE RULE 5.590. [November 6, 2014] PER CURIAM. In response to recent legislation, The Florida Bar's Probate Rules Committee (Committee) has filed an out-of-cycle, fast-track report proposing an amendment to Florida Probate Rule 5.590 (Application for Appointment as Guardian; Disclosure Statement; Filing).

We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(e). The Committee proposes amending subdivision (a)(1)(A) of rule 5.590 to require that an application for appointment as guardian include "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." According to the report, the amendment is intended to conform the rule to recent amendments to section 943.0585(4)(a), Florida Statutes (2013), made by chapter 2014-124, Laws of Florida, which became effective July 1, 2014,¹ as well as to sections 744.309(3) and 943.0583, Florida Statutes (2014).

The Executive Committee of the Board of Governors of The Florida Bar unanimously approved the proposal. After considering the proposed amendment and the relevant legislation, we amend rule 5.590 as proposed and reflected in the appendix to this opinion. New language is underscored.

The committee notes are offered for explanation only and are not adopted as an official part of the rules. The amendments shall become effective immediately upon the release of this opinion. Because the amendments were not published for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments with the Court.² 1.

See ch. 2014-124, §§ 6, 8, Laws of Fla. 2. All comments must be filed with the Court on or before January 6, 2015, with a certificate of service verifying that a copy has been served on the Committee Chair, Mr. Sean W. Kelley, 43 Cincinnati Avenue, Saint Augustine, Florida 32084-3244, sean@kelleyandkelley.com, and on the Bar Staff Liaison to the Committee, Heather Telfer, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, htelfer@flabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case.

The Committee Chair has until January 27, 2015, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Portal in accordance with In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal, Fla. Admin. Order No. AOSC13-7 (Feb.

18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the -2- It is so ordered. LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON, and

PERRY, JJ., concur. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS. Original Proceeding – Florida Probate Rules Committee Sean William Kelley, Chair, Florida Probate Rules Committee, Kelley & Kelley, P.L., St. Augustine, Florida, and John F. Harkness, Jr., Executive Director, and Heather S. Telfer, Bar Staff Liaison, The Florida Bar, Tallahassee, Florida, for Petitioner comment must be electronically filed via e-mail in accordance with In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin.

Order No. AOSC04-84 (Sept. 13, 2004). Electronically filed documents must be submitted in Microsoft Word 97 or higher. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted. -3- APPENDIX RULE 5.590.

APPLICATION FOR APPOINTMENT AS GUARDIAN; DISCLOSURE STATEMENT; FILING (a) Individual Applicants. (1) The application for appointment shall contain: (A) the applicant's qualifications to serve as a guardian, including 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; and (B) [No Change] (2) [No Change] (b) – (d) [No Change] Committee Notes Rule History 1988 Revision - 2014 Revision: [No Change] 2014 Revision: Amends subdivision (a)(1) (A) to conform to sections 744.309(3), 943.0583, and 943.0585, Florida Statutes.

Committee notes revised. Statutory References § 393.063(17), Fla. Stat. Definitions. § 393.12, Fla. Stat. Capacity; appointment of guardian advocate. § 744.102(4), (9), (11), (14), (22) Fla. Stat. Definitions. § 744.3085, Fla. Stat. Guardian advocates. § 744.309, Fla. Stat. Who may be appointed guardian of a resident ward. § 744.3125, Fla. Stat. Application for appointment. § 744.331(1), Fla. Stat. Procedures to determine incapacity. § 744.3371, Fla. Stat. Notice of petition for appointment of guardian and hearing. -4- § 943.0583, Fla. Stat. Human trafficking victim expunction. § 943.0585, Fla. Stat. Court-ordered expunction of criminal history records.

Rule References [No Change] -5-