

NOTICE

COURT OF QUEEN'S BENCH OF MANITOBA

RE: AMENDMENTS TO COURT OF QUEEN'S BENCH RULES

The following amendment to Rule 74.13 is now in force.

Subrules 74.13(1) and (2), which provided for the deposit of wills with the Registrar, are repealed as no wills have been deposited with the Registrar for safekeeping for a number of years.

The following amendments to Rules 74.12 and 74.14 will come into force on July 1, 2017:

Rule 74.12 is amended to:

- provide that the procedures and forms are to be used for passing of various accounts other than committee accounts, including details of the accounts that must be set out in the affidavit of the personal representative;
- update the language to conform with the language used in the other parts of Rule 74;
- add Rule 74.12(13) to set out the factors to be considered in fixing the fees of a lawyer for a personal representative on an assessment;
- delete from Forms 74V to 74Z all references to the occupation of the deceased and personal representative; and
- change the schedules in the forms to make it clearer how to account for transactions relating to estate assets.

The full text of these amendments can be located at:
<http://web2.gov.mb.ca/laws/regs/annual/2016/160.pdf>

Rule 74.14 is amended in a number of respects:

Subrule 74.14(4) is amended to clarify the service provisions regarding Form 74AA. If a beneficiary is a minor, Form 74AA must be served in accordance with subrule (21)(a) and if a beneficiary is mentally incompetent, Form 74AA must be served in accordance with subrule (22)(a). Under these subrules, the Public Guardian and Trustee need not be served with Form 74AA. Also note that Form 74AA itself has been significantly amended.

Subrule 74.14(6) is amended to include the term “basic estate services” to clarify what services are prescribed by subrule (8) as being subject to the allowable fees set out in subrules (6) and (7).

Subrule 74.14(10) is amended to provide that the lawyer for a personal representative is entitled to be paid fees and disbursements provided all beneficiaries are adults and they consent in writing. Previously, the lawyer was entitled to fees and disbursements on consent only upon completion of an estate; with the amendment, the lawyer is also entitled to interim fees and disbursements.

Subrule 74.14(10.1) has been added to make it clear that subrule (10) applies to both basic estate services under subrule (8) and additional services under subrule (9).

Subrule 74.14(11) is amended to provide that a lawyer for a personal representative is entitled to be paid interim fees and disbursements for basic estate services under subrule (8) that do not exceed the allowable fees set out in subrules (6) or (7) provided certain documents are served on all beneficiaries and the personal representative consents. With the amendment, this rule applies to all beneficiaries and not just adult beneficiaries. If the interim fees exceed the allowable fees set out in subrules (6) and (7), a passing of accounts under Rule 74.12 is required.

Subrule 74.14(11.1) is new and provides that where a beneficiary referred to in subrule (11) is a minor, he or she is to be served in accordance with subrule (21)(a) and where the beneficiary is mentally incompetent, he or she is to be served in accordance with subrule (22)(a).

Subrule 74.14(15) is amended to reflect the existing practice that an assessment of the fees of a lawyer of a personal representative is to be commenced by way of a “notice of appointment”.

Subrule 74.14(15.1) is new and provides that the documents to be served pursuant to a notice of appointment under subrule (15) are, for minors and mentally incompetent persons, to be served in accordance with subrules 21(b) and 22(b) respectively.

Subrule 74.14(20) is new and confirms existing practice that the general service requirements prescribed by Rule 16 apply with respect to service of documents under Rule 74. Note that Rule 16.02(1) is amended to add “except where these rules specifically provide otherwise” which means that Rule 16 will apply with respect to service of Rule 74 documents on an adult who is mentally competent. Subrules (21) and (22) specifically set out the manners of service for documents on persons who are minors or who are mentally incompetent.

Subrule 74.14(21) is new and provides that if a beneficiary who is a minor must be served with a document, the following applies:

- (a) if the document to be served is Form 74AA under subrule (4), or relates to paying interim fees within the allowable amount to the lawyer for the personal representative under subrule(11),
 - (i) the guardian of the minor's estate appointed under *The Infants' Estates Act* must be served, or
 - (ii) if no guardian of the minor's estate has been appointed, the minor's parent or guardian must be served;
- (b) if the document to be served relates to an assessment of final fees and disbursements referred to in subrule (13),
 - (i) the guardian of the minor's estate appointed under *The Infants' Estates Act* must be served, or
 - (ii) if no guardian of the minor's estate has been appointed, the Public Guardian and Trustee must be served.

Subrule 74.14(22) is new and provides that if a beneficiary who is mentally incompetent must be served with a document, the following applies:

- (a) if the document to be served is Form 74AA under subrule (4), or relates to paying interim fees within the allowable amount to the lawyer for the personal representative under subrule (11), the document must be served in accordance with Rule 16.02(1)(i) or (j) as the case may be;
- (b) if the document to be served relates to an assessment of final fees and disbursements payable to the lawyer for the personal representative referred to subrule (13),
 - (i) the person's committee under *The Mental Health Act* must be served,
 - (ii) the person's substitute decision maker for property under *The Vulnerable Persons Living with a Mental Disability Act* must be served, or
 - (iii) if there is no person authorized under subclause (i) or (ii), the Public Guardian and Trustee must be served.

The full text of these amendments can be located at:
<http://web2.gov.mb.ca/laws/regs/annual/2016/162.pdf>

ISSUED BY:

Original signed by

**The Honourable Justice Karen I. Simonsen
Chair, Queen's Bench Rules Committee
(Manitoba)**

DATE: JANUARY 13, 2017