

Rule 404. Notice in Formal Proceedings

(a) General Notice Requirements. In all formal proceedings notice of a hearing on any petition shall be given as provided in the code after the court issues the order for hearing. Where mailed notice is required, proof of mailing the notice of hearing shall be filed with the court administrator before any formal order will issue. Mailed notice shall be given to any interested person as defined by the code or to the person's lawyer. Where notice by personal service or publication is required by the code, proof of personal service or publication shall be filed with the court administrator before the formal order will issue.

(b) Notice of Proceedings for Determination of Testacy and Appointment of Personal Representative. In proceedings which adjudicate testacy, notice of the hearing on the petition shall be given after the court administrator issues the order for hearing. Proof of publication of the order for hearing, in accordance with the code, shall be filed with the court administrator before the order will issue. In proceedings for the formal appointment of a personal representative, the same notice requirements shall pertain except notice by publication shall not be required if testacy has been previously determined. Where creditors' claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for formal probate and all interested persons as defined by the code or ordered by the court and shall include in appropriate cases the attorney general, foreign counsel and lawyers representing the interested persons.

Mailed notice shall be given to the surviving spouse of the following rights:

(1) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in the code or by law.

(2) The right to receive maintenance payments during administration of the estate as provided in the code or by law.

(3) The right to take an elective share equal to the value of the elective-share percentage of the augmented estate, determined by the length of the marriage, as provided in the code and the homestead as provided in the code or by law.

(c) Waiver of Notice in Formal Proceedings. Except in proceedings governed by subdivision (b) of this rule, an interested person may waive notice of any formal proceeding in accordance with the code. The written waiver shall evidence the person's consent to the order sought in the proceeding.

(Amended effective July 1, 2015.)

Probate Committee Comment*

Publication required by this notice must be completed prior to the hearing date.

**Original Advisory Committee Comment - Not kept current.*