

**PROPOSED REVISIONS TO THE PROBATE COURT RULES AND FORMS
PROPOSAL 2021-010**

March 17, 2021

The Rules of Civil Procedure for State Courts Committee has recommended amendments to Rule 1B-102 NMRA and Forms 4B-801 and 4B-802 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 16, 2021, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

1B-102. Probate definitions.

A. **General.** The following is a list of simplified definitions of certain legal terms that you, as the personal representative, may need to understand in your probate action. Under certain circumstances, you may need to understand more than the simplified definitions listed below. In those cases, you may need to consult a lawyer or review [the] New Mexico law to more fully understand the terms listed below. Section 45-1-201 NMSA 1978 also includes definitions of terms used in the Uniform Probate Code (Probate Code).

"NMSA 1978" refers to the New Mexico Statutes Annotated 1978, which is the official compilation of New Mexico statutory law. The first number listed is the chapter, the second number listed is the article, and the third number is the specific section of law enacted by the Legislature. The Probate Code is published in the NMSA 1978 as Chapter 45 NMSA 1978. "NMRA" refers to the New Mexico Rules Annotated, which contains rules, forms, and jury instructions of the New Mexico courts. Probate forms are included in the NMRA and are also available electronically through the New Mexico Supreme Court website. Additional information may be obtained from your county probate court.

B. **Definitions.** As used in the Probate Court Rules, Rules 1B-101 to 1B-701 NMRA, and the Probate Court Forms, Forms 4B-101 to 4B-1001 NMRA

(1) "accounting" means any written statement that sets forth accurately the

assets of an estate, the liabilities of an estate, and the receipts and disbursements for an estate;

(2) “administration of an estate” means to go through the process of managing and settling the estate of a decedent. This usually involves the following four steps:

- (a) collecting and valuing the assets of an estate;
- (b) paying the family and personal property allowances;
- (c) paying the costs and expenses of administration and the valid debts of the estate, including all taxes; and
- (d) distributing the remainder of the estate to those who are entitled to it;

(3) “applicant” means a person who makes a written request to the probate court for an informal probate or appointment;

(4) “application” means a written request to the probate court for an informal probate or appointment. If you need more information on an application, *see* Section 45-1-201(A)(2) NMSA 1978;

(5) “beneficiary” is a person who is given a gift (devise) by a will. The Probate Code uses a different word, “devisee,” to mean the same thing. The forms use the word “devisee” rather than “beneficiary” because the Probate Code uses “devisee.” If you need more information on a beneficiary, *see* Section 45-1-201(A)(4) NMSA 1978;

(6) “bond” means a financial security provided to the court by the personal representative and a bonding company to ensure that the personal representative of the estate faithfully does the job of personal representative. A bond is usually not required in an informal probate proceeding. However, a bond may be required if the will requires it, or if a person with an interest in the estate requests the court to require it and the court orders that a bond be posted. If you need more information on bonds, *see* Sections 45-3-601 and 45-3-603 to 45-3-606 NMSA 1978;

(7) “claim” means a debt of the decedent that [~~can~~] may arise before or after the death of the decedent, including the last medical bills and funeral costs;

(8) “claimant,” also called “creditor,” means a person who is making a claim;

(9) “creditor” means a person to whom a debt is owed. The debt might be owed by the decedent or the estate, also called the “debtor.” In order to collect against an estate, the creditor files a “claim”;

(10) “decedent” means the person who has died and whose will is being probated or whose estate is being administered;

(11) “descendant” means all of the children, grandchildren, great-grandchildren, etc., of a decedent. If you need more information on a descendant, *see* Section 45-1-201(A)(9) NMSA 1978;

(12) “demand for notice” means a written document filed in the district court where a probate is or should be filed requesting notice of any order or filing pertaining to a decedent’s estate. The document must state the name of the decedent, the nature of the filing person’s interest in the decedent’s estate, and the filing person’s address or the address of the filing person’s lawyer. You, as the personal representative, filing an action in probate court, must contact the district court clerk in the county where the decedent was domiciled and ask if any person has filed a demand for notice relating to the decedent’s estate. If someone has filed a demand for notice, you must send a copy of everything you file and [~~every~~] each order the judge signs to the person who has demanded notice. If you need more information on a demand for notice, *see* Section 45-

3-204 NMSA 1978;

(13) “devise,” if used as a noun, means a gift of land (also called “real property”) or other assets (also called “personal property”) given by a will. If used as a verb, “devise” means to give a gift by a will of land or other assets. If you need more information on a devise, *see* Section 45-1-201(A)(10) NMSA 1978;

(14) “devisee” means a person listed in a will to receive assets from an estate. A common word for “devisee” is “beneficiary.” The forms use the word “devisee” rather than “beneficiary” because the Probate Code uses “devisee.” If you need more information on a devisee, *see* Section 45-1-201(A)(11) NMSA 1978;

(15) “distributee” means any person who receives property from a decedent who is not a creditor or purchaser. If you need more information on a distributee, *see* Section 45-1-201(A)(12) NMSA 1978;

(16) “domicile” means the last place the decedent had a true, fixed home, in a permanent establishment to which the decedent intended to return after an absence, and it is the place where the decedent voluntarily fixed his or her home with the intention of making it permanent;

(17) “estate” means all property of the decedent that is subject to the Probate Code. For [the] purposes of probate, an estate generally does not include property that passes automatically to a listed beneficiary, such as land held as joint tenants, land subject to transfer on death deeds, life insurance proceeds, payable on death accounts, transfer on death accounts, or retirement benefits that have a beneficiary designation. If you need more information on an estate, *see* Section 45-1-201(A)(15) NMSA 1978;

(18) “family allowance” means an allowance of thirty thousand dollars (\$30,000) from the decedent’s estate to which the decedent’s surviving spouse is entitled. If [~~there is~~] the decedent has no surviving spouse, then the family allowance is payable to the decedent’s minor and dependent children. This allowance is exempt from, and has priority over, all claims against the estate. The family allowance must be paid if the estate has sufficient assets. *See* Section 45-2-402 NMSA 1978;

(19) “fiduciary” includes a person serving as a personal representative, who acts primarily for another person’s benefit in matters connected with that role. A fiduciary is held to the highest degree of good faith in performing the duties of the fiduciary. A personal representative is a fiduciary. *See* Section 45-1-201(A)(17) NMSA 1978 for the definition of “fiduciary”;

(20) “formal proceeding” means a proceeding that must be conducted before a district court judge with notice to interested persons;

(21) “heirs” means those persons who are entitled to the property of the decedent if the decedent dies intestate. The priority of the people who are entitled to the property is listed in Sections 45-2-101 to 45-2-107 NMSA 1978;

(22) “informal proceeding” means a proceeding commenced before the probate court without prior notice to interested persons for probate of a will or appointment of a personal representative, except as provided in Section 45-3-306 NMSA 1978;

(23) “intestate” means to die

- (a) without leaving a will;
- (b) without leaving a valid will; or
- (c) with an incomplete will;

(24) “notice” or “giving notice” means the process of sending written

information to people interested in the estate telling them about events occurring that relate to the estate or administration of the estate. *See also* the specific requirements for notice to creditors in ~~[Paragraph]~~ Subparagraph (B)(25) below. The courts operate under a principle that people are entitled to “notice and an opportunity to be heard.” This means that people are entitled to know what is happening in a case and are then given an opportunity to tell a judge what that person wants the judge to know about a case. When you complete the notice requirements in a case, you have told people about the important events happening in a case. You will meet your notice obligations if you mail a copy of everything that is filed with the court on the same day the document is filed with the court to the correct address for the following:

- (a) all the heirs or devisees of an estate;
- (b) persons who have or may have an interest in the estate of the decedent;
- (c) anyone who asks for notice; and
- (d) anyone who has filed a demand for notice.

See Sections 45-3-705, 45-3-306, and 45-3-310 NMSA 1978;

(25) “notice to creditors” or “giving notice to creditors” means notifying creditors that you are in the process of probating the estate. If you choose to give notice to creditors, you may publish notice in the newspaper, deliver written notice by mail or other delivery, or both. *See* Section 45-3-801 NMSA 1978;

(26) “personal representative” means the person appointed by the court to administer the estate as defined in ~~[Paragraph]~~ Subparagraph (B)(2) above. ~~[This person]~~ A personal representative may be called an “executor,” an “executrix,” or an “administrator” in a will;

(27) “personal property” means property that is not land, real estate, or real property. Examples of personal property include bank accounts, stocks, bonds, insurance policies, pension plans, jewelry, furniture, and motor vehicles. Some personal property may have a designation ~~[regarding]~~ about who receives the property after death (a “beneficiary designation”) and is not governed by a statute of distribution or by a will. A common example is an ~~[IRA]~~ individual retirement account (IRA) or pension plan;

(28) “personal property allowance” means an allowance valued at fifteen thousand dollars (\$15,000) or less from the decedent’s estate in household furniture, automobiles, furnishings, appliances, and personal effects, to which the decedent’s surviving spouse is entitled. If the value of ~~[such]~~ the items is less than the personal property allowance of fifteen thousand dollars (\$15,000), the value of the personal property allowance shall be paid from other assets to make up any deficiency. If ~~[there is]~~ the decedent has no surviving spouse, then the personal property allowance is payable to the decedent’s children who are devisees under the will or who are entitled to a share of the estate under Section 45-2-302 NMSA 1978, or if ~~[there is]~~ the decedent has no will, the allowance is payable to the decedent’s intestate heirs. This allowance is payable in all events, if the estate has sufficient assets remaining after the family allowance has been paid. *See* Section 45-2-403 NMSA 1978;

(29) “probate” technically means the court procedure by which a will is proved to be valid or invalid. Common usage of this term now means all matters relating to the administration of an estate;

(30) “probate case” means a court case originally commenced for one or more of the following purposes:

(a) to informally administer a decedent's estate;
(b) to informally appoint a personal representative or special administrator; or

(c) to provide for proof of authority for a domiciliary foreign personal representative, which includes a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs;

(31) "Probate Code" means the Uniform Probate Code, Chapter 45 NMSA 1978;

(32) "real property" includes land, houses, farms, ranches, leases, minerals, water rights, and timber rights;

(33) "revoked," when used with these forms, means a will or other document that the decedent has canceled. If a will is revoked, it has no effect;

(34) "testate" means to die leaving a valid will;

(35) "testator" means someone who has made a will or someone who dies leaving a valid will. A "testatrix" is a female testator, although this term is no longer used in the Probate Code;

(36) "unrevoked," when used in these forms, means a will or other document that the decedent has not canceled;

(37) "venue" means the place where the case should be filed. Generally, the case should be filed in either the probate court or the district court in the county where the decedent was domiciled at the time of death, or, if the decedent did not live in New Mexico, the probate court or the district court in the county where the decedent owned real property. If you need more information on venue, *see* Section 45-3-201 NMSA 1978; and

(38) "will" means a document prepared and executed according to certain formalities that usually describes the distribution of the decedent's probate assets ~~upon~~ on death. A will also typically designates a personal representative and may appoint a guardian for minor children. A will is sometimes referred to as "last will and testament." If you need more information on a will, *see* Section 45-1-201(A)(57) NMSA 1978.

[Approved, effective September 15, 2000; 4B-002 recompiled and amended as 1B-102 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — In 2021, the Supreme Court approved an amendment to Rule 1B-102(B)(30)(c) NMRA to clarify that "domiciliary foreign personal representative" includes a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs.

[As amended by Supreme Court Order No. _____, effective _____.]

4B-801. Proof of authority.

[For use with Rule 1B-201 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
PROBATE COURT

IN THE MATTER OF THE ESTATE OF

_____, DECEASED No. _____

PROOF OF AUTHORITY

I, _____, domiciliary personal representative of the estate of the decedent (including a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs), make the following statements and filings with the court so that I, as the personal representative, may exercise all the powers of a local personal representative for the estate of the decedent, as provided in Section 45-4-205 NMSA 1978, over assets located in _____ County, State of New Mexico.

1. _____, deceased, was domiciled in _____ County, State of _____, at the time of death on _____.

2. The decedent died (*choose one*) [testate] [intestate].

3. By its order dated _____, the court in _____ County, State of _____, opened the estate of the decedent in Case No. _____ and appointed me [~~personal representative~~] (*choose one*) [~~personal representative~~] [tribal court appointee] of the estate of the decedent. An authenticated copy of the [~~order~~] (*choose one*) [order] [tribal appointment] appointing me as [~~personal representative~~] (*choose one*) [personal representative] [tribal court appointee] is filed with this Proof of Authority.

4. I, the domiciliary foreign personal representative, was appointed and served (*choose one*) [with] [without] bond as [~~personal representative~~] (*choose one*) [~~personal representative~~] [tribal court appointee] of the estate of the decedent. An authenticated copy of the bond (if applicable) is filed with this Proof of Authority.

5. (*Choose one*) [Letters of Administration] [Letters Testamentary] [equivalent indicia of authority from a tribal court or the Bureau of Indian Affairs] was/were issued on _____. An authenticated copy of the (*choose one*) [Letters of Administration] [Letters Testamentary] [equivalent indicia of authority from a tribal court or the Bureau of Indian Affairs] is filed with this Proof of Authority.

6. My address is _____.

7. No local administration [of] or application or petition for a local administration is pending in the State of New Mexico.

I affirm under penalty of perjury under the laws of the State of New Mexico that all of the above statements are true and correct.

Domiciled foreign personal representative (including a tribal court appointee)
(signature)

Printed name

Date

Address

City, state, and ZIP Code

Telephone number (optional)

Email address (optional)

[Adopted by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]

4B-802. Certificate acknowledging receipt of documents related to proof of authority.

[For use with Rule 1B-201 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
PROBATE COURT

IN THE MATTER OF THE ESTATE OF _____ No. _____
_____, DECEASED.

**CERTIFICATE ACKNOWLEDGING RECEIPT OF DOCUMENTS
RELATED TO PROOF OF AUTHORITY**

I, _____, Probate Judge of _____ County, acknowledge receipt of the following documents related to proof of authority under Section [45-2-204] 45-4-204 NMSA 1978, in the above-captioned cause:

1. Authenticated copies of documents related to the appointment of the domiciliary foreign personal representative (including a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs), and [~~of~~] any official bond [~~given, if any~~] given; and

2. A statement of the domiciliary foreign personal representative's address.

In accordance with Section 45-4-205 NMSA 1978, a domiciliary foreign personal representative (including a tribal court appointee) who has complied with Section 45-4-204 NMSA 1978 [~~may exercise as to~~] may, for assets in New Mexico, exercise all powers of a local personal representative and may maintain actions and proceedings in New Mexico subject to any conditions imposed [~~upon~~] on nonresident parties generally.

Witness my hand and seal of the Probate Court on _____, _____.

County Probate Judge

(Seal)

[Adopted by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]