

NOTICE TO ALL COUNSEL HANDLING PROBATE CASES

I. Withdrawal/Removal

I thank you for the prompt responses many of you have provided to the "Estate Closure Notices" the Clerk and Master's Office has forwarded relating to older probate cases. I also understand the difficulties and obstacles that may arise which may prompt your filing motions to withdraw as counsel in certain of these matters. However, the withdrawal of counsel has resulted in a considerable increase in the number of cases being assigned to the public administrator or other counsel. This process is time consuming and expensive for the estate and, potentially, for you.

Therefore, effective immediately please note that the following language (or language substantially similar) will need to be included in any Order concerning your withdrawal:

"Ordered that [name of counsel] shall be permitted to withdraw as counsel for the estate, subject to the further provisions of this Order. It is further,

ORDERED that the [executor/ administrator] shall have twenty-eight (28) days within which to obtain new counsel. If the [executor/ administrator] does not obtain new counsel and file an Order of Substitution of Counsel within this period, [names of withdrawing attorney and administrator/ executor] shall both appear on the ____ day of _____, 20__ and show cause why the public administrator or other qualified attorney should not be appointed as successor administrator. The withdrawing attorney and [administrator/ executor] shall bring with them all items in their possession pertaining to the Estate, including but not limited to records, information and assets for immediate delivery to the successor administrator at the hearing. It is further,

ORDERED that failure to comply with the provisions of this order may result in sanctions being imposed to include those provided by T.R.C.P. 37.02 and/or contempt pursuant to T.C.A. §29-9-104. It is further,

ORDERED that in the event the public administrator or other qualified attorney shall be obligated to appear at the hearing noted above, the fees and expenses attributable to that appearance shall be taxed as costs against the executor/administrator and/or surety, not the estate. It is further,

ORDERED that pursuant to L.R.C.P. 3.01, the surety for costs shall not be released from further obligation until there is a substitute surety."

In the event substitute counsel is not promptly obtained, I would strongly recommend your contacting the public administrator directly prior to the scheduled hearing so as to avoid the appearance fee being taxed to you. In addition, when you appear with your file materials to convey to the successor administrator, I would recommend that you prepare a Notice that you and the successor executor should sign confirming your conveyance of your file materials in compliance with the Order noted above. The clerk will accept and file the Notice.

II. Fee Applications

As a result of apparent oversight, many applications for fees have failed to reflect the receipt by counsel of a retainer toward services rendered to Administrators/Executors of estates. The result has been the entry of Orders granting fees that do not accurately reflect the amount due to counsel for their services.

Therefore, effective immediately, Affidavits of Counsel shall be required in support of all Motions for Fees and Expenses and said Affidavit shall contain a separate paragraph stating, essentially, the following:

"Affiant affirms that the amount requested in its Motion for Fees and Expenses, as reflected in the itemization attached and which supports Affiant's request for Fees and Expenses, accurately reflects the amount due and owing, after giving appropriate credit for all payments made unto Affiant, including any retainers received."

Failure to include language essentially similar to the above may result in the fee application being denied in whole or in part.

Thank you for your patience and assistance.

Sincerely,
Jeffrey M. Atherton
Chancellor, Part 2

*Revised January 19, 2012
Form 239P*