

**RULE 9**  
**ESTATES AND TRUSTS**

**PROCEEDINGS BY OR AGAINST EXECUTOR,  
ADMINISTRATOR OR TRUSTEE**

**General Rule**

- 9.01** (1) A proceeding may be brought by or against an executor, administrator or trustee as representing an estate or trust and its beneficiaries without joining the beneficiaries as parties.

**Exceptions**

- (2) Subrule (1) does not apply to a proceeding,
- (a) to establish or contest the validity of a will;
  - (b) for the interpretation of a will;
  - (c) to remove or replace an executor, administrator or trustee;
  - (d) against an executor, administrator or trustee for fraud or misconduct; or
  - (e) for the administration of an estate or the execution of a trust by the court.

**Executor, Administrator or Trustee Refusing to be Joined**

- (3) Where a proceeding is commenced by executors, administrators or trustees, any executor, administrator or trustee who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

**Beneficiaries and Others Added by Order**

- (4) The court may order that any beneficiary, creditor or other interested person be made a party to a proceeding by or against an executor, administrator or trustee.

**PROCEEDING AGAINST ESTATE THAT HAS NO EXECUTOR  
OR ADMINISTRATOR**

- 9.02** (1) Where it is sought to commence or continue a proceeding against the estate of deceased person who has no executor or administrator, the court on motion may appoint a litigation

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administrator to represent the estate for the purposes of the proceeding.

- (2) An order in a proceeding to which a litigation administrator is a party binds or benefits the estate of the deceased person, but has no effect on the litigation administrator in a personal capacity, unless a judge orders otherwise.

### **REMEDIAL PROVISIONS**

#### **Proceeding Commenced before Probate or Administration**

- 9.03** (1) Where a proceeding is commenced by or against a person as executor or administrator before a grant of probate or administration has been made and the person subsequently receives a grant of probate or administration, the proceeding shall be deemed to have been properly constituted from its commencement.

#### **Proceeding Brought by or Against Estate**

- (2) A proceeding commenced by or against the estate of a deceased person,
  - (a) by naming "the estate of A.B., deceased", "the personal representative of A.B., deceased" or any similar designation; or
  - (b) in which the wrong person is named as the personal representative,

shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the proper executor or administrator of the deceased or against a litigation administrator appointed for the purpose of the proceeding, and the title of the proceeding shall be amended accordingly.

#### **Proceeding Commenced in the Name of or Against a Deceased Person**

- (3) A proceeding commenced in the name of or against a person who has died before its commencement shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the executor or administrator or a litigation administrator appointed for the purpose of the proceeding, and the title of the proceeding shall be amended accordingly.

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### **Where There is an Executor or Administrator and a Litigation Administrator has been Appointed**

- (4) Where it appears that a deceased person for whom a litigation administrator has been appointed had an executor or administrator at the time of the appointment, the proceeding shall not be treated as a nullity, but the court may order that the proceeding be continued against the executor or administrator and the title of the proceeding shall be amended accordingly.

### **General Power**

- (5) A proceeding by or against a deceased person or an estate shall not be treated as a nullity because it was not properly constituted, but the court may order that the proceeding be reconstituted by analogy to the provisions of this rule.

### **Stay of Proceeding until Properly Constituted**

- (6) No further step in a proceeding referred to in subrule (2), (3), (4) or (5) shall be taken until it is properly constituted and, unless it is properly constituted within a reasonable time, the court may dismiss the proceeding or make such other order as is just.

### **Terms May be Imposed**

- (7) On making an order under this rule, the court may impose such terms as are just, including a term that an executor or an administrator shall not be personally liable in respect of any part of the estate of a deceased person that the executor or administrator has distributed or otherwise dealt with in good faith while not aware that a proceeding had been commenced against the deceased person or the estate.