

## **PROBATE CORNER**

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ARTICLE: Does Florida Rule of Civil Procedure 1.525 Apply to Probate Proceedings?

Florida Rule of Civil Procedure 1.525 states that “any party seeking a judgment taxing costs, attorneys’ fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.”

In Hays v. Lawrence, 1 So. 3d 1176 (Fla. 5<sup>th</sup> DCA 2009), appellants filed a petition for administration, claiming, in part, that a handwritten document was the last will of the decedent. Appellants’ petition requested that the court admit the handwritten document to probate and appoint them as personal representatives of the estate. On the same day, appellants filed a declaration that the proceeding was adversary. The lower court issued a final order denying Appellants’ petition for administration and refusing to admit the handwritten document to probate.

Appellants’ attorneys filed a petition for order authorizing the payment of attorney’s fees and expenses pursuant to section 733.106(2), Fla. Stat. Appellees moved to strike the petition, arguing, in part, that the petition for fees and costs was untimely because it was filed seven months after the final order was entered instead of within thirty days as required by rule 1.525. The trial court granted the motion to strike. The appellate court, in affirming the lower court, reasoned:

The central issue framed by the parties is whether the rules of civil procedure applied to the proceeding below. The resolution of this issue turns on whether the underlying dispute in probate court was an adversary proceeding. In a probate action, if the case is determined to be an adversary proceeding, it “shall be conducted similar to suits of a civil nature and the Florida Rules of Civil Procedure shall govern, including entry of defaults.” Fla. Prob. R. 5.025(d)(2).

For an excellent discussion on this topic, refer to the following article: Jon Scuderi, Esq. and Rebecca Y. Zung-Clough, Esq., *Does Florida Rule of Civil Procedure 1.525 Apply to Probate and Trust Proceedings?* RPPTL ActionLine Winter 2009