

hotel failed to make such allocation and pay the tax due, then the department may make an estimate of the amount charged for meals pursuant to the procedures of the above-quoted statutes.

073-353—September 19, 1973

PROBATE AND GUARDIANSHIP

FEES TO BE COLLECTED UNDER TRANSITION RULE 14

To: *W. Gray Dunlap, Pinellas County Attorney, Clearwater*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTIONS:

1. What filing fee must be collected by the clerk for entry of orders of dismissal pursuant to the provisions of Transition Rule 14 in probate and guardianship cases?
2. What fees should be collected by the clerk in probate and guardianship cases filed prior to October 1, 1972, which are closed by proceedings other than by order of dismissal under the provisions of Transition Rule 14?

SUMMARY:

Under the Florida Supreme Court's Transition Rule 14, probate and guardianship estates that have been inactive for more than one, three, or ten years (depending upon the value of the estate) as of July 18, 1973, may be dismissed, after notice, unless good cause is shown for the proceedings to remain pending. The order of dismissal must be entered by the clerk without charge. If not dismissed, upon good cause shown, the fees for further proceedings in such inactive cases shall be those prescribed by the old county judges' fee schedule, §36.17, F. S. 1971.

AS TO QUESTION 1:

Under revised Art. V, State Const., and §26.012, F. S. [Ch. 72-404, Laws of Florida], jurisdiction over probate and guardianship proceedings formerly adjudicated by the county judge is now vested in the circuit court. In order to effect an orderly transition of these matters to the circuit courts of this state and to secure a true inventory of the case load of such courts, the Supreme Court adopted Transition Rule 14, providing for the dismissal, after notice, of probate and guardianship estate proceedings in which no action has been taken for one year, three years, or ten years, depending upon the value of the estate (less than two thousand five hundred dollars, between two thousand five hundred dollars and ten thousand dollars, and over ten thousand dollars, respectively), unless a party shows good cause in writing at least five days before the hearing why the proceeding should remain pending. When such proceedings have been pending without action for twenty years or more, they may be terminated without notice, other than posting a list of such estates in the courthouse.

The provision of the rule relating to fees reads as follows:

- (e) No further filing fees shall be required or collected by the Clerk for the entry of orders of dismissals pursuant to this rule. *These estates* shall be closed in accordance with the fee schedule in effect on January 1, 1972. (Emphasis supplied.)

There is no ambiguity in the rule with respect to the filing fee chargeable for the entry of an order of dismissal of an inactive case. The rule says in plain and simple terms that no filing fee shall be collected by the clerk for such an order.

AS TO QUESTION 2:

The second sentence of paragraph (e), *supra*, seems equally clear. It requires the inactive cases described in the rule to be closed "in accordance with the fee schedule in effect on January 1, 1972." Thus, if an interested party, upon notice and hearing, is able to persuade the trial judge that good cause exists for the inactive proceeding to remain pending, the fees for the documents necessary to close out the estate will be those prescribed by the former county judges' fee schedule, §36.17, F. S. 1971 (revised and renumbered as §28.2401 by Ch. 72-397, Laws of Florida).

I have heretofore ruled, in AGO 072-327, that the new fee schedule adopted in 1972, §28.2401, *supra*, for probate and guardianship estates would be applicable to estates pending on October 1, 1972, the effective date of the new fee schedule. The Supreme Court's Transition Rule 14 was adopted on July 18, 1973, and presumably became effective on that date. Thus, estates that had been inactive for more than one, three, or ten years (depending upon their value) as of that date, but which were not dismissed, for good cause shown, should be closed out under the old county judges' fee schedule, §36.17, *supra*; and my former opinion in AGO 072-327 is hereby modified to the extent of any inconsistency with this provision of Transition Rule 14.

073-354—September 19, 1973

ARRESTS

ISSUANCE OF NOTICE TO APPEAR FOR MISDEMEANORS
AND VIOLATIONS OF MUNICIPAL AND COUNTY
ORDINANCES—FORMS AND PROCEDURES

To: William R. Heidtman, Palm Beach County Sheriff, West Palm Beach

Prepared by: Richard W. Prospect, Assistant Attorney General

QUESTIONS:

1. May a "Florida Uniform Traffic Citation" be issued for a nontraffic misdemeanor *not* committed in the officer's presence but which he has probable cause and supporting evidence to believe an individual committed?
2. May the above citation be issued for *any degree* of misdemeanor?
3. Does the issuing of the above citation constitute an arrest?
4. Does the terminology "officers or booking sergeants" include deputy sheriffs?
5. Is it necessary to file a formal affidavit in the event the cited person failed to appear and it became necessary to secure a warrant?

SUMMARY:

A notice to appear as provided for in Ch. 73-27, Laws of Florida, should be in a distinctive form. It may be issued in lieu of physical arrest for any degree of misdemeanor and its issuance does not constitute an arrest. A deputy sheriff may act as a booking officer. The execution of a formal affidavit is not necessary to secure a warrant for the arrest of a person failing to appear.

Although the gist of the first question is whether a Florida Uniform Traffic Citation may suffice as a notice to appear in nontraffic situations, an initial observation must be made clear. Nothing in Ch. 73-27, Laws of Florida [§§901.27-901.32, F. S.], legislation admittedly designed for practicality and convenience, authorizes nonobservance of the existing Florida law of arrest.