

4B-003. General instructions for probate forms.

A. The different types of probate cases.

(1) **Routine simple cases.** These forms are intended for routine probates. If you run into a problem or the estate you are probating is *not* routine, it is best to seek the advice of an attorney.

(2) **Cases that do not need to be probated.** Certain estates that are worth less than thirty thousand dollars (\$30,000) (forty-five thousand dollars (\$45,000) in some cases) and that have no real property (usually land) may not need to be probated at all and can be done in a less formal way. Also certain estates with a house worth under one-hundred thousand dollars (\$100,000) that will pass to a surviving spouse also may not require a probate. (*See* Section 45-3-1201 NMSA 1978 and following sections.) If you believe that the estate you are working on might not need to be probated, please consult with an attorney. If the estate does not need to be probated, you may still need an attorney's help but may not need these forms.

(3) **Difficult or complex cases.** Certain estates contain difficult or complex issues that should be reviewed by an attorney with probate experience. An example of a difficult or complex case might be one in which there is real property (land) involved and deeds need to be drafted or a large estate that might have to file an estate tax return. It may not be appropriate to file in probate court or the probate action may require more forms than provided here.

B. Use of these forms. The Supreme Court has approved these forms for use in probate court by people who are representing themselves in the process. The forms serve a useful, but *limited* purpose. They will assist you in completing the paperwork necessary to complete most

uncontested probate cases.

These forms are for use by people who are willing and qualified to act as a "personal representative". This is the person who will collect the assets of the estate, pay the debts of the estate and distribute the remaining assets. A personal representative is a fiduciary who has special obligations to the estate. The court holds a personal representative to a high legal standard. If you are willing to undertake this job, you should do it with extreme care, and caution and pay very careful attention to the necessary details. Because of the fiduciary role that you will be undertaking, it is a good idea to get the help you need from a lawyer experienced in probate.

You should fill out the forms carefully. Several of the forms have statements in them that do not require you to fill in a blank. However, before you sign the form or submit it to the judge, you must be sure that the statements are true in your case. If not, change the form as needed. When you sign the forms, you are telling the judge that the information is true.

Please check each form you sign to make sure that it is true.

If you have questions about issues that these forms do not address, you should consult with an attorney. Alternatively, the public libraries often have resource materials that may help you answer your questions. For example, there is a publication entitled *Life Planning in New Mexico* by Merri Rudd that is available in some libraries that may answer some of your questions.

C. **Demand for notice.** Occasionally someone may file a demand for notice. If you know of a demand for notice, you must send a copy of everything you file and every order the judge

signs to the person who has demanded notice.

D. **How to get help.** The court clerks are not attorneys and cannot give you advice on how to fill out the forms or give you advice on the issues that the forms do not address. The court clerks can give you information regarding the process of filing the paperwork. Because each probate court in the state operates differently, you should find out the exact filing procedure from the court staff.

The judge determines key issues in your case, but is not an advocate representing you. The judge cannot and will not give you advice about how to complete the probate. When you act as a self-represented person, you are your own lawyer.

The court has prepared a list of simplified definitions of certain legal terms. It may help you. You may get a copy from the court clerk.

The letters "NMSA" refer 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. You may find it helpful to look at the statutes.

Finally, it may be necessary to consult with an attorney during the process.

GET THE HELP YOU NEED BEFORE YOU SUBMIT THESE FORMS.

[Approved, effective September 15, 2000.]