

**1-105. Notice to statutory beneficiaries in wrongful death cases.**

A. **Scope.** This rule pertains to statutory beneficiaries of wrongful death estates as they are defined in Section 41-2-3 NMSA 1978 of the Wrongful Death Act, Sections 41-2-1 to -4 NMSA 1978.

B. **Required notice; timing.** Upon entry of an order appointing a personal representative under the Wrongful Death Act, the personal representative shall provide notice under Rule 1-004 NMRA to all known or reasonably ascertainable statutory beneficiaries of the information set forth in Paragraph C of this rule.

C. **Contents of notice.** The notice required by this rule shall contain the following information:

- (1) the name of the personal representative of the estate and the name, address, telephone number, and email address of the personal representative's lawyer;
- (2) a statement that the personal representative understands the legal requirement that the personal representative must act only in the best interests of all statutory beneficiaries of the decedent's estate;
- (3) instruction to the statutory beneficiaries that they shall provide the personal representative or the personal representative's lawyer with current contact information so that they may be notified of matters in the pending action;
- (4) a statement that all statutory beneficiaries will be timely notified of any and all trial settings, dismissals, settlements, and verdicts obtained on behalf of the decedent's estate;
- (5) a statement that all statutory beneficiaries will be specifically advised of any proposed distribution of proceeds under the Wrongful Death Act prior to any distribution of the proceeds; and
- (6) a statement that, prior to the distribution of any proceeds of a wrongful death estate, if any controversy exists or arises concerning distribution that requires a court hearing, all statutory beneficiaries will be notified of the hearing and will be entitled to attend.

D. **Subsequent notices.** Notifications provided to statutory beneficiaries after the initial notice required by Paragraph B shall comply with Rule 1-005 NMRA.

[Adopted by Supreme Court Order No. 17-8300-027, effective December 31, 2017.]

**Committee commentary. —**

The Wrongful Death Act, NMSA 1978, §§ 41-2-1 to -4, creates statutory rights for the estate of a deceased person at civil law that are not governed by the Uniform Probate Code. The Court of Appeals has ruled that the personal representative referenced in Section 41-2-3 is distinguishable from the personal representative of the estate of the deceased as defined in the Probate Code. *See In re Estate of Sumler*, 2003-NMCA-030, ¶ 8, 133 N.M. 319, 62 P.3d 776 (“[I]t is improper to equate a personal representative under the Wrongful Death Act with a personal representative as defined by the Probate Code.”). *See also* Rule 1-017(B) NMRA (providing that a wrongful death action may only be brought by a personal representative appointed by the district court for that purpose).

Notice to known and reasonably ascertainable statutory beneficiaries is to be made under Rule 1-004 NMRA. When the statutory beneficiaries are known to the personal representative, service shall be made in compliance with Paragraph F (Process; personal service upon an individual) or Paragraph I (Process; service upon minor, incompetent person, guardian, or fiduciary) if possible. When Rule 1-004(F) or (I) NMRA service cannot be made on a known

statutory beneficiary, the personal representative shall petition the court under Rule 1-004(J) NMRA for an order providing an alternative method of service.

There may be occasions where a potential statutory beneficiary is not known to the personal representative but could be identified with reasonable effort. For example, the deceased may have no living spouse or living child but potentially may have living grandchildren who would be statutory beneficiaries, *see* NMSA 1978, Section 41-2-3(C), but whose existence or identity are not known to the personal representative. The personal representative must make reasonable efforts to learn of the existence and identity of such grandchildren, and those whose identity are learned must be given notice under Rule 1-004(F), (I), or (J) NMRA.

In rare cases, there may be statutory beneficiaries who are not known to the personal representative and whose identities are not reasonably ascertainable. Paragraph B of this rule does not compel the personal representative to provide some form of notice to such beneficiaries. *Compare* NMSA 1978, Section 45-1-401(A)(3) (requiring publication notice of hearings to persons having an interest in any hearing whose “address or identity . . . is not known and cannot be ascertained with reasonable diligence”). The mere theoretical possibility that such beneficiaries might exist does not justify the burden and cost of imposing a mandatory publication notice requirement on the personal representative. If the personal representative concludes that such beneficiaries might exist, the personal representative may petition the court under Rule 1-004(J) NMRA to fashion a form of notice, such as publication, to provide them with notice.

Rule 1-105(C)(3) NMRA requires statutory beneficiaries to keep the personal representative apprised of current contact information. Non-compliance may result in the failure of the statutory beneficiary to receive notice of the information set forth in Paragraphs (C)(4), (C)(5), and (C)(6), but shall not constitute a waiver of rights granted by the Wrongful Death Act. *See* NMSA 1978, §§ 41-2-3, -4.

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