

COMMISSIONS TO TAKE TESTIMONY

-An Oakland County Probate Court Model

A Probate Register may be called upon to take the "Oath" or "Testimony" of someone residing in their county, but who is involved with a decedent estate in another state.

These matters usually emanate from the few states with this archaic requirement such as Pennsylvania, Florida, Georgia and New Jersey. As we know, Michigan does not have such a requirement; a personal representative appointed in Michigan but living in another state does NOT have to go to local authorities to sign any documents.

Statutory Reference: Although there is no specific statute on point, Sec. 834 of the Revised Judicature Act (MCL 600.834) authorizes the Probate Register to administer oaths and take testimony.

Filing Fee: MCL 600.874(1)(b) is not exactly clear because it requires the court to charge a \$7 fee "for issuance of a commission to take testimony." Technically we are not issuing the commission; we are taking the testimony. Nevertheless this is used to justify the fee; (\$3.33 to county general fund; \$3.67 to state general fund). *See* also MCL 600.877 for the split, which is currently 47.5/52.5%.

Procedure

- 1) Receive correspondence from the other state. It should come directly from the court or attorney's office; sometimes a party will hand-deliver.
- 2) Review the correspondence. Some sort of "Commission" from an official of the other state to the local Probate Register is required to take the oath or testimony of a resident of the local county.
 - Usually it involves a nominated personal representative. Sometimes the oath maker was a witness to a will.
 - Examples of documents to be signed and witnessed may be an Oath of Personal Representative, Executor's Oath, Proof of Will, Petition for Probate and Grant of Letters, Oath of Non-subscribing Witness or Unavailable Witness Affidavit.
- 3) Call the local party to set up a 5-minute appointment with the Register. Tell them to bring ID and \$7 for the fee.
- 4) Read the out-of-state instructions carefully and be familiar with the documents prior to the appointment. (You will find that some courts go a little overboard with sticky notes, arrows and signing directions to make sure we get it right!)
- 5) At the appointment, verify the identity of the party. Some courts may keep a copy of the ID. Have them raise their right hand as you read the oath, and have them sign where indicated on the forms. Sign as Probate Register where indicated, add "Probate Register, _____ County, Michigan" and seal.
- 6) Collect the \$7 fee from the party. Give the party copies of the documents and their receipt.
- 7) OCPC does not set up a file. The fee is receipted to one fake file number for that year (for instance 2014-000,000 CT). The Probate Register keeps a file with copies of all paperwork.
- 8) Mail the original paperwork with cover letter to the out-of-state court.

Prepared by:

Jill Koney Daly, J.D.

Probate Register, Oakland County Probate Court 5/14



State of Georgia
Probate Court
of
Forsyth County

Wynwood A. Jordan, Jr.
JUDGE

TELEPHONE (770) 781-2140
FACSIMILE (770) 886-2839

February 19, 2016

Grand Traverse County Probate Court
280 Washington Street, Suite 223
Traverse City, MI 49684

Dear Clerk:

RE: ESTATE OF JOYCE M. HARLOW A/K/A JOYCE MAE HARLOW, Deceased
DOCKET NUMBER: 2015-ES-0519

A Petition to Probate Will in Solemn Form has been granted by this Court to appoint James Douglas Harlow as personal representative of the decedent's estate. The personal representative is present in your jurisdiction and has requested to be allowed to take his/her oath in your Court.

Enclosed is a certified copy of the Commission to Administer Oath, the oath, Order Appointing Personal Representative, and a certified copy of the Will. The executor/executrix has been instructed to contact your office and make arrangements to come in to take the oath. Please **administer the oath, affix your seal, and return all documents as well as the executed oath** to our office in the enclosed, return envelope. The contact information for the executor/executrix is:

Mr. James Douglas Harlow
4836 N. Indian Lake Drive
Traverse City, MI 49696
864-247-7973

If you have any questions, please call. Thank you so much for your assistance in this matter.

Elizabeth Land, Deputy Clerk
Forsyth County Probate Court

IN THE PROBATE COURT OF FORSYTH COUNTY

FILED

llh

STATE OF GEORGIA

2016 FEB 19 PM 2:58

IN RE: ESTATE OF)
JOYCE MAE HARLOW,)
DECEASED)

FORSYTH COUNTY, GEORGIA
PROBATE COURT

ESTATE NO. 2015-ES-0519

COMMISSION TO ADMINISTER OATH

To: Any Judge or Clerk of Any Court of Record of the State of Michigan:

JAMES DOUGLAS HARLOW has been appointed by this Court as Personal Representative of the estate of JOYCE MAE HARLOW, deceased, and has requested to take the required oath or affirmation in your state. Pursuant to O.C.G.A. §§ 29-2-24, 29-3-24, 29-4-25, 29-5-25, 53-6-16, or 53-6-24, I hereby commission you to administer the attached oath or affirmation to said fiduciary. Please return the completed oath and attestation to this Court together with your statement of costs, if any.

SO ORDERED this 19th day of February, 2015. ~~2014~~

[Signature]

Judge of the Probate Court
Forsyth County, Georgia

STATE OF GEORGIA
FORSYTH COUNTY

I, THE UNDERSIGNED, Deputy Clerk of the Probate Court of Forsyth County, Georgia, DO HEREBY CERTIFY that the within and foregoing is a true and correct copy of the original as it appears on the record of the Probate Court of Forsyth County, Georgia.

Witness my hand and the seal of the Probate Court of Forsyth County, Georgia this 19th day of February, 2016
[Signature]

Deputy Clerk, Probate Court of Forsyth County, Georgia

GRAND TRAVERSE CO.
PROBATE COURT

2016 FEB 24 AM 11:18

IN THE PROBATE COURT
COUNTY OF FORSYTH
STATE OF GEORGIA

IN RE: ESTATE OF

JOYCE M. HARLOW,
A/K/A JOYCE MAE HARLOW,
DECEASED

)
)
)
)
)

ESTATE NO. 2015-ES-0519

OATH OF EXECUTOR

I do solemnly swear or affirm that this writing being presented to this Court dated October 18, 1995, is the true Last Will and Testament of Joyce M. Harlow a/k/a Joyce Mae Harlow, deceased so far as I know or believe, and that I will well and truly execute the same in accordance with the laws of Georgia. So help me God.

Sworn to and subscribed before
me this 26th day of February, 2016.

Annaliese Owens, Probate Registrar
CLERK OF PROBATE COURT,
Grand Traverse County

James Douglas Harlow
Signature of Executor

James Douglas Harlow
Printed Name of Executor

Sworn to and subscribed before
me this _____ day of _____, 20____.

CLERK OF PROBATE COURT

Signature of Executor

Printed Name of Executor

GRAND TRAVERSE CO.
PROBATE COURT

2016 FEB 24 AM 11:18

IN THE PROBATE COURT
COUNTY OF FORSYTH
STATE OF GEORGIA

FILED 

2016 FEB 19 PM 2:58

FORSYTH COUNTY, GEORGIA
PROBATE COURT

IN RE: ESTATE OF)
)
JOYCE M. HARLOW)
a/k/a JOYCE MAE HARLOW,)
DECEASED)

ESTATE NO. 2015-ES-0519

ORDER ADMITTING WILL TO PROBATE IN SOLEMN FORM

An alleged Last Will and Testament dated October 18, 1995 was propounded. Mr. James Douglas Harlow was nominated Personal Representative by the Testator. The Court finds that the Decedent died domiciled within, or domiciled outside the state of Georgia but owning property within, the above County. The Court further finds that all of the heirs at law were served or acknowledged service. The Court further finds that no objection has been filed, and all requirements of law have been fulfilled. The Court further finds that the propounded Will has been proved by one or more witnesses.

ACCORDINGLY, IT IS ORDERED that the Will dated October 18, 1995 is established as the Last Will and Testament of the Decedent ("the Decedent's Will"); that the Will be admitted to record as proven in Solemn Form; and, that the nominated Executor named above has/have leave to qualify as Personal Representative by taking the required oath, after which Letters Testamentary shall issue. The Clerk shall serve the Personal Representative with copies of this Order and the Letters upon qualification.

IT IS FURTHER ORDERED that the Personal Representative shall disburse all property according to the terms of the Decedent's Will and shall maintain all records of income and disbursements until discharged by Order of this Court.

IT IS FURTHER ORDERED that *[initial if applicable]*

- (a) An inventory shall be filed.
- (b) Annual returns shall be filed.
- (c) Letters of Testamentary Conservatorship shall issue to

SO ORDERED this 19th day of February, 2016.



Judge of the Probate Court

GRAND TRAVERSE CO.
PROBATE COURT

2016 FEB 24 AM 11:18

FILED

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Last Will and Testament

FORBES COUNTY, GEORGIA
PROBATE COURT

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE NAME OF GOD, AMEN!

I, JOYCE M. HARLOW, of Oconee County, South Carolina, do hereby make, ordain, publish and declare this as and for my Last Will and Testament, hereby revoking all wills and instruments of a testamentary nature heretofore made by me.

ITEM I

It is my will and I so direct that my Personal Representative, hereinafter named, shall pay all of my just and valid debts, including the expenses of my last illness and funeral, as soon as practicable.

ITEM II

I will, devise and bequeath all the rest, residue and remainder of my property and estate, real, personal and mixed, wheresoever situate, whether acquired before or after the execution of this Will, unto my beloved husband, JAMES W. HARLOW, absolutely and in fee simple.

GRAND TRAVERSE CO.
PROBATE COURT

INITIALS: JMH
DATE: OCTOBER 18, 1995
PAGE 1 OF 5 PAGES

2016 FEB 24 AM 11:18

2015-ES-0519
WILLSUB
Will Submitted for Probate
993491



ITEM III

In the event that my husband, JAMES W. HARLOW, should predecease me, I give, devise and bequeath the Antique Bed known in the family as the "Harlow Bed" to my son, JAMES DOUGLAS HARLOW.

ITEM IV

In the event that my husband, JAMES W. HARLOW, should predecease me or we should die as a result of a common disaster or calamity under conditions by which it is not readily determinable which of us survived the other, or the provisions hereof which affect my said husband should be made null and void for any reason, then, and in any such event, I will, devise and bequeath all the rest, residue and remainder of my property and estate, real, personal and mixed, wheresoever situate, whether acquired before or after the execution of this Will, unto my children, JOYCE MACHELLE HARLOW and JAMES DOUGLAS HARLOW, in equal portions, share and share alike, absolutely and in fee simple, the child, children or issue, living at the time of my death, of a deceased child, shall take, *per stirpes*, the share to which such child would have been entitled. If or in the event either of my said children should predecease me and my husband, without issue, then, in that event, said child's share shall go to the survivor of them.

ITEM V

I hereby nominate, constitute and appoint my husband, JAMES W.

INITIALS: JWH
DATE: OCTOBER 18, 1995
PAGE 2 OF 5 PAGES

HARLOW, as Personal Representative of this, my LAST WILL AND TESTAMENT, and direct that he serve without bond or surety. In the event my husband, JAMES W. HARLOW, should predecease me or fail to qualify for any reason, then I hereby nominate, constitute and appoint my son, JAMES DOUGLAS HARLOW, as alternate Personal Representative, and direct that he serve without bond or surety.

During the administration of my estate, my Personal Representative, or alternate Personal Representative, shall have, as fully as if set at length herein, all powers, duties, authority and discretion I have hereinabove enumerated for my Trustee, including, but not limited to, full power to allot, assign, buy, care for, collect, contract with respect to or continue any business of mine; to mortgage, pledge or otherwise encumber; to enter into leases including the power to enter into leases which may extend beyond the term of office of my fiduciary; or to sell or dispose of any of my property of estate, real or personal, at a public or a private sale and apply the proceeds of such sales or other transactions as I have hereinabove directed.

In general, my Personal Representative shall exercise all powers in the administration of my estate which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as my Personal Representative deems best, and may execute and deliver all instruments and do all acts deemed proper or necessary to carry out

INITIALS: JmH
DATE: OCTOBER 18, 1995
PAGE 3 OF 5 PAGES

the purposes of this Will, without being limited by the specific powers herein enumerated, and without necessity of court order.

IN WITNESS WHEREOF, I, JOYCE M. HARLOW, sign my name to this instrument this eighteenth day of October, 1995, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my **LAST WILL AND TESTAMENT** and that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Joyce M. Harlow
JOYCE M. HARLOW

We, the undersigned witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her **LAST WILL AND TESTAMENT** and that she signs it willingly, and that each of us, in the presence and hearing of the Testatrix, hereby sign this Will as witnesses to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

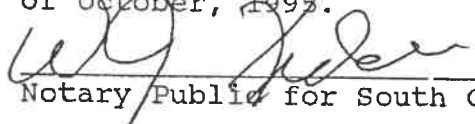
WJ Kade
Jane M. White

INITIALS: JMH
DATE: OCTOBER 18, 1995
PAGE 4 OF 5 PAGES

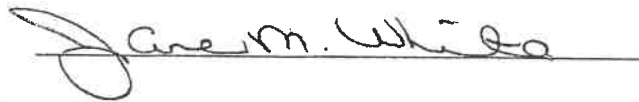
STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Subscribed, sworn to and acknowledged before me by the said Testatrix, JOYCE M. HARLOW, and subscribed and sworn to before me by Jane M. White and W.J. Fedder, as witnesses, this eighteenth day of October, 1995.

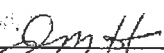
 (SEAL)
Notary Public for South Carolina.

My Commission Expires: 10/21/98



APPROVED AND FORWARDED:
Y.

Notary Public for South Carolina
My Commission Expires: 10/21/98

INITIALS: 
DATE: OCTOBER 18, 1995
PAGE 5 OF 5 PAGES

Notary Public for South Carolina
My Commission Expires: 10/21/98

STATE OF GEORGIA
FORSYTH COUNTY

I, THE UNDERSIGNED, Deputy Clerk of the Probate Court of Forsyth County, Georgia, DO HEREBY CERTIFY that the within and foregoing is a true and correct copy of the original as it appears on the record of the Probate Court of Forsyth County, Georgia.

Witness my hand and the seal of the Probate Court of Forsyth County, Georgia this 19th day of February, 2016
Elizabeth Land
Deputy Clerk, Probate Court of Forsyth County, Georgia

CERTIFICATE OF MAILING

I hereby certify that I have this day mailed via first class mail, the Instruction Letter, a certified copy of the Commission to Administer Oath, the Oath, Order Appointing Personal Representative, and a certified copy of the Will to:

Grand Traverse County Probate Court
280 Washington Street, Suite 223
Traverse City, MI 49684

I further certify I have also this day mailed a copy of the Order to:

Mr. Alan H. Meincke, Esquire
309 Pirkle Ferry Road
Suite C-400
Cumming, GA 30040

This 19th day of February, 2016.



Elizabeth Land, Probate Clerk

Estate Name: Joyce M. Harlow a/k/a Joyce Mae Harlow

Docket No.: 2015-ES-0519

GRAND TRAVERSE CO.
PROBATE COURT

2016 FEB 24 AM 11:18