

§ 30.227

§ 30.227 What evidence is admissible at a probate hearing?

(a) A judge conducting probate proceedings under this part may admit any written, oral, documentary, or demonstrative evidence that is:

- (1) Relevant, reliable, and probative;
- (2) Not privileged under Federal law; and
- (3) Not unduly repetitious or cumulative.

(b) The judge may exclude evidence if its probative value is substantially outweighed by the risk of undue confusion of the issues or delay.

(c) Hearsay evidence is admissible. The judge may consider the fact that evidence is hearsay when determining its probative value.

(d) A judge may admit a copy of a document into evidence or may require the admission of the original document. After examining the original document, the judge may substitute a copy of the original document and return the original.

(e) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the judge and the parties in interpreting and applying the provisions of this section.

(f) The judge may take official notice of any public record of the Department and of any matter of which federal courts may take judicial notice.

(g) The judge will determine the weight given to any evidence admitted.

(h) Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

(i) There is no privilege under this part for any communication that:

- (1) Occurred between a decedent and any attorney advising a decedent; and
- (2) Pertained to a matter relevant to an issue between parties, all of whom claim through the decedent.

§ 30.228 Is testimony required for self-proved wills, codicils, or revocations?

The judge may approve a self-proved will, codicil, or revocation, if uncontested, and order distribution, with or without the testimony of any attesting witness.

43 CFR Subtitle A (10-1-24 Edition)

§ 30.229 When will testimony be required for approval of a will, codicil, or revocation?

(a) The judge will require testimony if someone contests the approval of a self-proved will, codicil, or revocation, or submits a non-self-proved will for approval. In any of these cases, the attesting witnesses who are in the reasonable vicinity of the place of hearing must appear and be examined, unless they are unable to appear and testify because of physical or mental infirmity.

(b) If an attesting witness is not in the reasonable vicinity of the place of hearing or is unable to appear and testify because of physical or mental infirmity, the judge may:

(1) Order the deposition of the attesting witness at a location reasonably near the residence of the witness;

(2) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and

(3) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

§ 30.230 Who pays witnesses' costs?

Interested parties who desire a witness to testify at a hearing must make their own financial and other arrangements for the witness.

§ 30.231 May a judge schedule a supplemental hearing?

Yes. A judge may schedule a supplemental hearing if he or she deems it necessary.

§ 30.232 What will the official record of the probate case contain?

The official record of the probate case will contain:

(a) A copy of the posted public notice of hearing showing the posting certifications;

(b) A copy of each notice served on interested parties with proof of mailing;

(c) The record of the evidence received at the hearing, including any transcript made of the testimony;

(d) Claims filed against the estate;

(e) Any wills, codicils, and revocations;