

(H.B. 580)

(No. 123)

(Approved July 19, 2006)

AN ACT

To amend Section 561 of the Code of Civil Procedure of 1933 so that the summons to actions regarding the judicial administration of the estate of a decedent are served according to the provisions of the Rules of Civil Procedure.

STATEMENT OF MOTIVES

The Special Legal Procedures Act establishes the institution of the judicial administrator of the estate of a decedent. In order to appoint a judicial administrator a petition is filed with the Court of First Instance of Puerto Rico claiming the following: (1) the death of the decedent; (2) that the latter did not leave a valid will, according to the information and belief of the petitioner, specifying the sources and grounds for such information and belief; (3) the interest and cause of action of the petitioner; (4) the names and respective residences of all other persons entitled to inherit in the estate of the decedent; and (5) that the decedent left property subject to distribution, stating the amount and nature of such property. *Ab Intestato Balzac Vélez*, 109 D.P.R. 670, 679 (1980).

The Supreme Court of Puerto Rico, in the case *Planellas v. Pastrana*, 63 D.P.R. 285, 290 (1944), stated that the object of the appointment of a judicial administrator of the property of a decedent is to seize said property

and safeguard and defend it so that it may be distributed later among those persons who may be entitled to receive said property as heirs.

Sections 559, 560, 561 and 562 of the Special Legal Procedures Act govern those matters relative to the summons of the executor or executrix, the surviving spouse, all other heirs and legatees as well as the creditors of the estate directing them to appear at the action for appointing the judicial administrator of the estate of the decedent. The procedure established in these sections substantially meet the requirements of due process of law and is very similar to the procedure provided in the Rules of Civil Procedure of 1979 for serving summons. However, there are certain differences between both statutes which should be harmonized so that the procedure for serving summons is faster and more efficient, economical and uniform, subject to the provisions of Rule 4 of the Rules of Civil Procedure of 1979.

As is well known, these rules apply to all civil procedure except in cases of evident incompatibility with special legislation. *Ortiz González v. Secretario de Justicia*, 115 D.P.R. 55 (1984). The approval of this measure harmonizes the norms set forth in the Special Legal Procedure Act regarding summons in the procedures for appointment of judicial administrators of the estate of the decedent, with what is provided in Rule 4 of the Civil Procedure of 1979 for other actions of civil nature.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-Section 561 of the Code of Civil Procedure is hereby amended to read as follows:

“Section 561.-Service of summons.-Summons shall be served personally to the parties whose residence is known or who can be found. Summons shall be served pursuant to the provisions of Rule 4.4 of the Rules of Civil Procedure for the personal service of summons. The parties whose

residence or whereabouts are unknown shall be summoned by publication according to the provisions of Rule 4.5 of the Rules of Civil procedure for the summons by publication.”

Section 2.-The Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 123 (H.B. 580) of the 3rd Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Section 561 of the Code of Civil Procedure of 1933 so that the summons to actions regarding the judicial administration of the estate of a decedent are served according to the provisions of the Rules of Civil Procedure,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 3rd of October of 2006.

Francisco J. Domenech
Director