
WILL CONTESTS & THE PERPETUAL STATE OF LIMBO: WHY THE IOWA PROBATE CODE NEEDS TO EVOLVE

ABSTRACT

The Iowa Probate Code governs the administration of estates in Iowa. What a person leaves behind when they die is controlled by this body of law, but the Probate Code is not keeping up with the procedural laws of Iowa. The Iowa Rules of Civil Procedure and the Iowa Probate Code are directly in conflict on fundamental aspects of will contest litigation: the commencement of an action, the tolling of the statute of limitations, and the proper remedy when parties fail to comply with the rules. The basic principles of judicial economy support uniformity in the law and a need for clarity. The current Probate Code fails to provide this.

Will contests are a key aspect of probate administration and come at a highly emotional time in the parties' lives. They have just lost someone close to them and are now embattled in litigation, making a difficult time even more difficult. Now, add confusion among the courts to the list of issues a party faces. Parties to a will contest should not have to wonder about how the rules are going to apply. It is time for the legislature to amend the Probate Code and make the rules and remedies clear for Iowans.

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I. INTRODUCTION

Picture this: A law requires joinder of parties within 90 days of filing suit. An action is timely commenced and 90 days pass, but said parties have not been joined. What happens? Does the court wait for the plaintiffs to join the required parties until a time convenient for them? Does the court proceed without the parties, thus creating a voidable judgment in the process? Does the court dismiss the action as to those parties? Does the court dismiss the action altogether? In modern-day litigation the answer is clear: The case is dismissed as to those parties.¹ But under the current Iowa Probate Code the answer is fuzzy at best.²

Prior to the enactment of the current Rules of Civil Procedure, an action was commenced, thus tolling the statute of limitations, by service of original notice.³ Now, since service of original notice no longer tolls the statute of limitations, in order to avoid case dismissal, the current Rules of Civil Procedure provide service of original notice must be completed within 90 days of filing of the petition.⁴ When the Iowa Probate Code was enacted, the statute of limitations was tolled when the parties were served with original notice. Today the statute of limitations is tolled by filing the petition with the court.⁵ Thus, under the Probate Code, it was assumed that once an action was commenced the necessary parties had already been served, as the

1. IOWA R. CIV. P. 1.302(5) (stating if notice is not served within 90 days of filing the petition, the court may dismiss as to that defendant).

2. *See* IOWA CODE § 633.312 (2017).

3. IOWA R. CIV. P. 48 (2001) (amended & renumbered 2002).

4. IOWA R. CIV. P. 1.302(5).

5. *Compare* IOWA CODE § 633.2 (1964), *with* IOWA R. CIV. P. 48 (1951) (amended 1974) (amended & renumbered 2002).

Rules of Civil Procedure then required.⁶ However, now the Rules of Civil Procedure have changed, and the Probate Code has not caught up.⁷

When a state or jurisdiction has conflicting statutes regarding a key issue of litigation (i.e. the commencement of the action), there is an increased probability of inconsistencies among courts.⁸ It is of absolute importance that the judicial system runs in a uniform and efficient manner.⁹ This cannot be achieved if persons are unable to determine the proper procedures to follow in the most elementary stages of litigation.

II. IOWA PROBATE LAW

A. Will Contest Procedure

Any person has a right to contest the validity of a will in which they hold an interest.¹⁰ A will contest gives a person the ability to challenge the last will and testament of the decedent without limiting the grounds for doing so.¹¹ If one believed a person signed his or her will under duress, fraud, or lacked the capacity to sign, these would be possible reasons to contest the validity of a will.¹² Will contests filed in Iowa are governed by the Iowa Probate Code.¹³ Unlike most probate proceedings—which are proceedings in equity—¹⁴an action to contest a will is an action at law, and the Rules of Civil Procedure apply.¹⁵

6. See IOWA CODE § 633.34 (“All actions . . . shall be governed by the rules of civil procedure . . .”).

7. IOWA R. CIV. P. 1.301(1) (providing an action is commenced by the filing of the petition with the court); 8 TOM RILEY & PETER C. RILEY, IOWA PRACTICE SERIES: CIVIL LITIGATION HANDBOOK § 42:1 (2018).

8. See *Estate of Borrego v. Firststar Bank Burlington, N.A.*, 490 N.W.2d 833, 837–38 (Iowa 1992); see also IOWA CODE § 633.37 (“All orders entered without notice or appearance are reviewable by the court at any time prior to the entry of the order approving the final report.”).

9. See, e.g., *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 114 F.3d 1513, 1527 (10th Cir. 1997) (discussing the importance of uniformity in judicial decision-making and stating that procedural rules are meant to eliminate inconsistency and unpredictability).

10. IOWA CODE § 633.308.

11. *Id.*

12. See *id.*; *In re Guinn’s Estate*, 47 N.W.2d 243, 244 (Iowa 1951).

13. IOWA CODE § 633.308–.320.

14. *Id.* § 633.33.

15. *Id.* § 633.311 (“An action objecting to the probate of a proffered will, or to set aside a will, is triable in the probate court as an action at law, and the rules of civil procedure governing law actions, including demand for jury trial, shall be applicable

In order to initiate a will contest or an action to set aside a will, the contestant—also referred to as the plaintiff—must file a written petition in the probate court stating the grounds for the contest.¹⁶ Such petition must be filed within the later of “four months from the date of second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will.”¹⁷ Furthermore, all known interested parties to a will who have not joined as contestants to the will shall be joined as proponents, also known as defendants. Such defendants shall be joined by service of original notice pursuant to the Rules of Civil Procedure.¹⁸

A person has a relatively limited period of time to contest a will compared to, for example, tort actions.¹⁹ The short time frame was likely chosen by the legislature to expedite the probate process rather than allowing the probate of a will to drag on and to prevent interested parties from contesting the will at a time so remote from its admission into probate so to render it suspect.²⁰ Whatever its reason, the legislature was clear in its intent to allow a short amount of time to contest a will, as demonstrated in its 1984 amendment to the Probate Code—shortening the time frame to bring a will contest action from six months down to four months.²¹

1. *Changes in Iowa Rules of Civil Procedure*

In 1975, the Iowa Supreme Court proposed a change to the Iowa Rules of Civil Procedure, and the proposal was passed with unanimous consent.²² As a result, the Rules of Civil Procedure changed significantly with regard to the initiation of a civil action.²³ Previously, an action was commenced, thus tolling the statute of limitations, when the defendant was served with original notice.²⁴ Today, under the current Rules of Civil Procedure, an action is

thereto.”).

16. *Id.* § 633.308.

17. *Id.* § 633.309.

18. *Id.* § 633.312.

19. Compare IOWA CODE § 633.309 (establishing a one to four month time period within which to bring an action to contest a will), with IOWA CODE § 614.1(2) (2017) (establishing a two year statute of limitations to bring a tort or contract claim).

20. Act of April 13, 1984, ch. 1080, 1984 Iowa Acts 109.

21. *Id.*

22. S.F. 583, 66th Gen. Assemb., Reg. Sess., at 2057–58 (Iowa 1975) (noting to the senate that the house passed Senate File 583 and the senate’s unanimous vote).

23. 8 RILEY & RILEY, *supra* note 7, § 42:1.

24. IOWA R. CIV. P. 48 (1951) (amended 1974) (amended & renumbered 2002).

commenced and the statute of limitations is tolled by filing a petition with the court.²⁵

2. Probate Code Conflicts with Rules of Civil Procedure

The Probate Code was enacted in 1964—11 years prior to the change in the Rules of Civil Procedure.²⁶ Thus, when the Probate Code was enacted, the legislature was working off the presumption that an action was commenced when the defendant was served.²⁷ Therefore at that time, there was no need for the rules to specifically address time limits to join all parties.

The Probate Code requires all interested parties be joined in an action to contest a will.²⁸ An interested party is one whose “interests are directly affected by a diminution of the [estate] assets.”²⁹ Further, the code requires, “All such defendants shall be brought in by serving them with notice pursuant to the rules of civil procedure.”³⁰ The Probate Code requires joinder of all interested parties in a will contest to prevent multiple actions and inconsistent judgments, as “[a]ll orders entered without notice or appearance are reviewable by the court at any time prior to the entry of the order approving the final report.”³¹ Though it is mandated that all interested parties be joined,³² the Probate Code remains silent on the time limits for doing so. Tools of statutory interpretation may be useful in determining said time limits.

3. Mandatory v. Directory Statutes

When interpreting a statute, it is either mandatory or directory.³³ Both

25. IOWA R. CIV. P. 1.301(1).

26. IOWA CODE § 633.2 (2017); S.F. 583, 66th Gen. Assemb., Reg Sess., at 2057–58 (Iowa 1975).

27. IOWA CODE § 633.34 (“All actions triable in probate shall be governed by the rules of civil procedure, except as otherwise provided in this probate code.”); see IOWA R. CIV. P. 48 (1951) (amended 1974) (renumbered 2002).

28. IOWA CODE § 633.312.

29. *In re Estate of Boyd*, 634 N.W.2d 630, 639 (Iowa 2001) (quoting *In re Estate of Plumb*, 129 N.W.2d 630, 632–33 (Iowa 1964)).

30. IOWA CODE § 633.312.

31. *Id.* § 633.37; see *Grant v. Iowa Dep’t of Human Servs.*, 722 N.W.2d 169, 177 (Iowa 2006) (discussing the purpose of issue preclusion as precluding relitigation of an issue to promote judicial economy by preventing unnecessary litigation of issues previously decided).

32. IOWA CODE § 633.312.

33. *Iowa Supreme Court Disciplinary Bd. v. Attorney Doe No. 819*, 894 N.W.2d 1,

types of statutes impose duties; however, their difference lies in the consequence attached to the statute in failing to perform said duty.³⁴ The Iowa Supreme Court held, “If the prescribed duty is essential to the main objective of the statute, the statute ordinarily is mandatory and a violation will invalidate subsequent proceedings under it.”³⁵ On the other hand, the court held, “If the duty is not essential to accomplishing the principal purpose of the statute but is designed to assure order and promptness in the proceeding, the statute is ordinarily directory and a violation will not invalidate subsequent proceedings unless prejudice is shown.”³⁶

The Probate Code requires joinder of all interested parties under section 633.312, pursuant to the Rules of Civil Procedure.³⁷ The consequence for the failure to comply with section 633.312 thus lies in the Rules of Civil Procedure. Iowa Rule of Civil Procedure 1.302(5) provides for dismissal as to a defendant if not served with original notice within 90 days of the filing of an action.³⁸ The rules explicitly state a plaintiff has 90 days to serve a defendant; otherwise, the case shall be dismissed.³⁹

Iowa Rule of Civil Procedure 1.234 requires joinder of *all* indispensable parties.⁴⁰ A party is indispensable if the party’s interest is not severable; the party’s absence will prevent the court from rendering any judgment between the parties before it; or, notwithstanding the party’s absence, the party’s interest would necessarily be inequitably affected by a judgment rendered between those before the court.⁴¹ Rule 1.234 explicitly considers the possibility of invalidating subsequent proceedings if the court proceeded without all interested parties.⁴² However, Rule 1.234 attempts to provide a remedy to this issue:

If an indispensable party is not before the court, it shall order the party brought in. When persons are not before the court who, although not indispensable, ought to be parties if complete relief is to be accorded between those already parties, and when necessary jurisdiction can be

8 (Iowa 2016); *Taylor v. Dep’t of Transp.*, 260 N.W.2d 521, 522 (Iowa 1977).

34. *Attorney Doe No. 819*, 894 N.W.2d at 8 (citing *Taylor*, 260 N.W.2d at 522–23).

35. *Id.* (quoting *Taylor*, 260 N.W.2d at 522–23).

36. *Id.* (quoting *Taylor*, 260 N.W.2d at 522–23).

37. IOWA CODE § 633.312.

38. IOWA R. CIV. P. 1.302(5).

39. *Id.*

40. IOWA R. CIV. P. 1.234.

41. IOWA R. CIV. P. 1.234(2).

42. *See id.*

obtained by service of original notice in any manner provided by the rules in this chapter or by statute, the court shall order their names added as parties and original notice served upon them. If such jurisdiction cannot be had except by their consent or voluntary appearance, the court may proceed with the hearing and determination of the cause, but the judgment rendered therein shall not affect their rights or liabilities.⁴³

While a reasonable and logical solution, the problem remains unfixed in the context of a will contest.⁴⁴ Even if the court is unable to serve an interested party with original notice and the action is dismissed as to that party, that party nevertheless retains the right to contest the will at a later time.⁴⁵ When an interested party retains such a right, an unreasonable burden is placed on an executor of an estate to defend the validity of the will numerous times, and it encourages inefficiency in judicial administration.⁴⁶

B. Iowa Case Law

Iowa case law remains relatively silent on a resolution to the inconsistency between the Rules of Civil Procedure and the Probate Code.⁴⁷ The only Iowa case on point, *Classon v. Classon*,—decided since the enactment of the Probate Code—is unpublished.⁴⁸ *Classon* is not authoritative, as unpublished decisions are not controlling authority in Iowa.⁴⁹

1. *Classon v. Classon*

In *Classon*, the executor of the will was an interested party and the party who filed a petition to contest the will.⁵⁰ All interested parties were served with original notice except the successor executor.⁵¹ The defendants filed a motion to dismiss on the grounds the successor executor was not properly joined within the applicable statute of limitations.⁵² The trial court

43. IOWA R. CIV. P. 1.234(3).

44. *See id.*

45. *See id.* (“[T]he [dismissal] . . . shall not affect their rights or liabilities.”).

46. *See generally id.*

47. *See infra* Parts II.B–II.C.

48. *Classon v. Classon*, No. 09-1339, 2010 WL 2383432, at *1 (Iowa Ct. App. June 16, 2010).

49. IOWA R. APP. P. 6.904(2).

50. *Classon*, 2010 WL 2383432, at *1.

51. *Id.* at *1–2.

52. *Id.* at *1.

granted the motion on the grounds that a failure to meet the statute of limitations for joining an interested party was fatal to the claim.⁵³ However, the court of appeals disagreed with the trial court's decision.⁵⁴

The court of appeals in *Classon* addressed whether an interested party to a will contest can be brought in after the expiration of the time limit for commencing the action.⁵⁵ Ultimately, the court analyzed Iowa Code § 633.34 and § 633.312 in reaching its decision.⁵⁶ Since the Probate Code provides such a short time frame for commencing a will contest,⁵⁷ the requirement that all interested parties be joined and the lack of a time limit in the Probate Code for doing so,⁵⁸ the court ultimately held additional interested parties can be joined "as long as the probate proceeding is open and the action to set aside . . . the will is pending."⁵⁹

a. *Classon's flaws.* There are two fundamental flaws in the reasoning used in *Classon*. First, the court relied on a case procedurally inapplicable to *Classon*.⁶⁰ Second, the court sways away from long-established rules of statutory construction.⁶¹

First, the court in *Classon* relied on *In re Estate of Ditz* in reaching its conclusion:

[W]hen an interested person "institutes an action by filing his petition and serving any other interested person within the . . . period of limitation, the running of the statute as to all other interested parties is tolled and they may be added later with the same effect as though timely

53. *Id.* at *2.

54. *Id.* at *5–6.

55. *Id.* at *5.

56. *Id.*

57. IOWA CODE § 633.309 (2017).

58. *Id.* § 633.312.

59. *Classon*, 2010 WL 2383432, at *15. In holding interested parties can be joined at any time the action is pending, the court of appeals directly goes against the legislature's decision to shorten the window to contest a will from six months down to four months. Act of April 13, 1984, ch. 1080, 1984 Iowa Acts 109. One could conclude if the legislature did not want to provide contestants with even two additional months, it likely did not want to provide contestants with a perpetual amount of time to join the remaining interested parties. *See id.*

60. *Classon*, 2010 WL 2383432, at *5 (citing *In re Estate of Ditz*, 125 N.W.2d 814, 819 (Iowa 1964)).

61. *See City of Des Moines v. City Dev. Bd. of the State of Iowa*, 633 N.W.2d 305, 311 (Iowa 2001); *Classon*, 2010 WL 2383432, at *5.

action was commenced against all.”⁶²

However, *Classon* was decided under the current Rules of Civil Procedure and under the current Probate Code, whereas *Ditz* was decided under the old Rules of Civil Procedure and prior to the enactment of the current Probate Code.⁶³ Thus, under *Ditz* an action was commenced by serving a party with original notice; but at the time of *Classon*, a suit was commenced simply by filing a petition with the court.⁶⁴ Under *Ditz*, service on one party began the tolling of the statute of limitations; at this point, one party was aware of the proceedings.⁶⁵ *Ditz* and *Classon* were decided under entirely different laws governing joinder and service of original notice. Thus, the court’s holding in *Ditz* is procedurally inapplicable to *Classon*.⁶⁶

Additionally, the rules of statutory construction were improperly applied by the court when comparing Iowa Code § 633.34 and § 633.312.⁶⁷ Iowa Code § 633.34, pertaining to the Probate Code as a whole, provides, “All actions triable in probate shall be governed by the rules of civil procedure, *except as provided otherwise in this probate code*.”⁶⁸ On the other hand, Iowa Code § 633.312, relating to will contests specifically, requires all interested parties be joined pursuant to the Rules of Civil Procedure.⁶⁹ The court strongly held to the line, “except as provided otherwise in this probate code,” when reaching its conclusion to stray from the well-established Rules of Civil Procedure.⁷⁰

The rules of statutory construction are long established: When two statutes conflict and one pertains to a general matter while the other deals with a more minute or specific matter within the same subject area, the more specific statute prevails over the statute which is more general in nature.⁷¹ Since sections 633.34 and 633.312 of the Iowa Code conflict with each other and pertain to the same subject matter, the more specific statute—section

62. *Classon*, 2010 WL 2383432, at *4–5 (emphasis added) (quoting *In re Estate of Ditz*, 125 N.W.2d at 819).

63. See *id.* at *1; *In re Estate of Ditz*, 126 N.W.2d at 818.

64. See *In re Ditz*, 126 N.W.2d at 818; *Classon*, 2010 WL 2383432, at *1.

65. *In re Estate of Ditz*, 126 N.W.2d at 818.

66. See *id.*; *Classon*, 2010 WL 2383432, at *1.

67. IOWA CODE §§ 633.34, 633.312 (2017).

68. *Classon*, 2010 WL 2383432, at *5 (emphasis in original) (quoting IOWA CODE § 633.34).

69. IOWA CODE § 633.312.

70. See *Classon*, 2010 WL 2383432, at *5 (quoting IOWA CODE § 633.34).

71. *City of Des Moines v. City Dev. Bd. of the State of Iowa*, 633 N.W.2d 305, 311 (Iowa 2001) (citing *Goergen v. State Tax Comm’n*, 165 N.W.2d 782, 787 (Iowa 1969)).

633.312—is controlling over the broader statute—section 633.34.⁷²

b. *Doctrine of Absurdity.* Furthermore, even if the reasoning in *Classon* were to prevail, allowing an interested party to be brought in without any time limit, so long as the action is pending, would lead to an absurd result. The Iowa Supreme Court explicitly stated, “[S]tatutory language should be construed in a fashion that produces a reasonable result.”⁷³ The legislature could not have foreseen that (more than a decade after the enactment of the Probate Code) the rules of civil procedure would fundamentally change as to turn the procedural guidelines on their head. The Iowa Supreme Court has also recognized the legislature will not always be able to craft the law in a way that can deal with every possible roadblock.⁷⁴

Allowing interested parties to join at any time would create a catch 22. If a plaintiff is allowed an indefinite amount of time to join interested parties, the will contest could remain pending indefinitely or until the plaintiff finally joins said interested parties, as the court cannot render a final judgment without all necessary parties before the court.⁷⁵ On the other hand, if the court proceeds and issues a final judgment in the will contest without the necessary parties before the court, then the judgment will never be final as it will be voidable and vulnerable to inconsistent judgments if the missing interested parties later appear and contest the courts’ ability to render such judgment without them.⁷⁶ Parties and courts are left with a lose-lose situation.

Construing the rule to allow an interested party to join the contest at any time would allow a plaintiff to strategically fail to serve known interested parties before the final adjudication of the will contest, thus impeding an interested party’s right to join with the contestants⁷⁷ and opening all such actions to inconsistent and voidable judgments.⁷⁸ Furthermore, denying a

72. See *id.*; see also IOWA CODE §§ 633.34, 633.312.

73. *Brakke v. Iowa Dep’t of Nat. Res.*, 897 N.W.2d 522, 534 (Iowa 2017) (citing 2A NORMAN J. SINGER & SHAMBE SINGER, STATUTES & STATUTORY CONSTRUCTION § 45:12, at 104–06 (7th ed. rev. 2014)).

74. *Id.* at 536 (“[A]lthough ‘the plain language interpretation of a statute enjoys a robust presumption in its favor, it is also true that [a legislative body] cannot, in every instance, be counted on to have said what it meant or to have meant what it said.’” (quoting *F.B.I. v. Abramson*, 456 U.S. 615, 638 (1982) (O’Connor, J., dissenting))).

75. IOWA CODE § 633.37.

76. *Id.*

77. See *id.* § 633.313.

78. See *id.* § 633.37.

remedy to a proponent of a will and allowing a will contest to remain in a perpetual state of limbo is contrary to the basic principles of judicial economy.⁷⁹ Allowing a will contest to drag on with no foreseeable stopping point has the ability to directly conflict with the legislature's requirement that an estate be closed within three years of the second publication to creditors unless the court orders otherwise after all interested parties have been given notice.⁸⁰ Litigation is time consuming, and allowing contestants to drag their heels in joining necessary parties without any explicit repercussions is illogical.

C. Lack of Remedy in the Probate Code

In its current form, combined with the lack of relevant case law, the Probate Code leaves the procedural decision-making to the contestants of a will. The executor of a will is left with a duty to defend any will contests arising under the will.⁸¹ Logic would lead one to believe there need only be one contest of any one will; however, the current state of authority governing will contests in Iowa would suggest the contrary. In Iowa, will contests possess the possibility to remain in a perpetual state of limbo, while both the court and the proponent wait at the mercy of the contestant.⁸² Aside from an amendment to the Probate Code addressing this doughnut hole in the law, any possible remedies now available to the parties will vary on a case-by-case basis and fail to provide a clear-cut solution.⁸³

D. Case-by-Case Solutions

There are several possible solutions to this problem. However, they would all be case specific and offer no concrete solution: (1) the court serves the interested parties; (2) requiring the proponent to serve the interested parties; (3) involuntary dismissal; (4) contempt of court; and (5) dismissal of the action.

1. Court Serves All Interested Parties with Original Notice.

The court could opt to serve all interested parties itself. This would ensure parties are properly joined and notice is properly served. However,

79. See *Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998) (implying that unnecessary litigation is contrary to judicial economy).

80. IOWA CODE § 633.473.

81. *In re Estate of Law*, 113 N.W.2d 233, 235 (Iowa 1962).

82. See *id.*

83. See discussion *infra* Parts II.D.1–II.D.5.

if the court begins to do the plaintiff's work for them, it will not only set a dangerous precedent, but the court will surely become bogged down with procedural tasks ordinarily the duties of the parties involved.

2. *Require Proponent to Join Interested Parties*

When faced with difficult plaintiffs unwilling to serve the required notice upon interested parties, the court could require the proponent to serve all interested parties. However, a contestant to a will contest carries the burden of proof in contesting the will,⁸⁴ and it is a basic fact when commencing litigation that the party initiating the action is responsible for serving all parties whom the suit is against with notice of the action pending against them.⁸⁵

3. *Involuntary Dismissal*

The proponent of the will may also move for an involuntary dismissal.⁸⁶ The Rules of Civil Procedure provide: "A party may move for dismissal of any action or claim against the party or for any appropriate order of court, if the party asserting it fails to comply with the rules of this chapter or any order of court."⁸⁷ This would require the defendants to argue the will contest must be dismissed for the proponent's failure to comply with the Rules of Civil Procedure in neglecting to serve all interested parties within the required time frame.⁸⁸

4. *Contempt of Court*

Along the same general lines of an involuntary dismissal, another possible alternative would be a finding of contempt of court. As previously mentioned, these alternatives are fact-specific—this one especially.⁸⁹ In order to be held in contempt of court, the court would need to have previously issued an order requiring plaintiffs to properly serve all interested parties, and then the plaintiffs would have to directly violate that order by not serving the aforementioned interested parties.⁹⁰

84. *In re Guinn's Estate*, 47 N.W.2d 243, 245 (Iowa 1951) (stating the burden of proof in a will contest never shifts to the proponent).

85. IOWA R. CIV. P. 1.302(3).

86. IOWA R. CIV. P. 1.945.

87. *Id.*

88. IOWA R. CIV. P. 1.302(5).

89. *See supra* Part II.D.

90. IOWA CODE § 665.2(3) (2017); *see* *Harvey v. Prall*, 97 N.W.2d 306, 309 (Iowa

If the facts aligned, this remedy would be an effective way of incentivizing a plaintiff to serve interested parties. Nevertheless, it is a fact-specific remedy that should not be considered as a clear solution to the underlying problem.

5. Dismissal of Action

Another possible solution would be a dismissal of the action—specifically for a lack of subject matter jurisdiction.⁹¹ The rules require the interested parties be served within 90 days, and a failure to do so should result in dismissal.⁹² At this point, without all interested parties as required by the Probate Code,⁹³ the court lacks the authority to continue with the matter.⁹⁴

When a court lacks the legal authority to act, it lacks subject matter jurisdiction.⁹⁵ Furthermore, once the issue of a lack of subject matter jurisdiction is raised, the court must promptly address the issue,⁹⁶ and the only appropriate disposition for a lack of subject matter jurisdiction is dismissal of the action.⁹⁷ Dismissal at this point seems clear under Iowa Code § 633.312, as it lacks the necessary subject matter jurisdiction to continue with the will contest. However, *Classon* now provides a roadblock. Under *Classon*, interested parties can be joined at any time,⁹⁸ thus making it unclear when a court should dismiss for lack of jurisdiction. Dismissal then becomes a decision made at the discretion of each trial court.

The end goal for a proponent in this situation is dismissal, but dismissal of the action will likely provide further concerns for courts.⁹⁹ Courts will be presented with two options: (1) allow the contest to proceed, contrary to the Rules of Civil Procedure, or (2) dismiss the case as the rules require. As previously mentioned, the time frame in which a party must commence an

1959).

91. See IOWA CODE § 633.312.

92. IOWA R. CIV. P. 1.302(5).

93. IOWA CODE § 633.312.

94. *Pierce v. Pierce*, 287 N.W.2d 879, 881 (Iowa 1980).

95. *Id.*

96. See *Tigges v. City of Ames*, 356 N.W.2d 503, 510 (Iowa 1984).

97. *Pierce*, 287 N.W.2d at 882 (citing *Lloyd v. State*, 251 N.W.2d 551, 558 (Iowa 1977)).

98. *Classon v. Classon*, No. 09-1339, 2010 WL 2383432, at *5 (Iowa Ct. App. June 16, 2010).

99. Order Denying Motion to Dismiss and Setting Hearing on Motion to Amend at 1-3, *In re Estate of Lukavsky*, No. 05501 ESPR036992 (Iowa Dist. Ct. Sept. 15, 2017).

action to set aside a will is relatively short,¹⁰⁰ and at the point in which the court dismisses the action, interested parties will likely be time barred from refiling the will contest.¹⁰¹ Courts have found in determining whether to dismiss for untimely service the court should consider all the surrounding circumstances, including those that would make dismissal inequitable.¹⁰² Iowa has long held dismissal of an action for failure to timely serve is appropriate when the failure to do so is because of “[i]nadvertance, neglect, misunderstanding, ignorance of the rule or its burden, or half-hearted attempts at service.”¹⁰³ *Classon* allows an interested party to be served at any time while the action is pending and gives no guidelines or requirement of a showing of good cause.¹⁰⁴ Contestants should not be allowed to drag out a will contest due to their willful inattention to the rules.

III. OTHER STATE LAW COMPARISON

A. *Missouri Law*

1. *Statutory*

Missouri’s Probate Code directly addresses the issue Iowa faces in the Probate Code:

In any such action the petitioner shall proceed diligently to secure and complete service of process as provided by law on all parties defendant. If service of process is not secured and completed upon all parties defendant within ninety days after the petition is filed, the petition, on motion of any defendant duly served upon the petitioner or his attorney of record, in the absence of a showing by the petitioner of good cause for failure to secure and complete service, shall be dismissed at the cost of the petitioner.¹⁰⁵

Rather than relying on the Rules of Civil Procedure simply by reference, the Missouri Probate Code directly addresses the issue of joinder, and dismissal is a remedy explicitly set out within the statute.¹⁰⁶ By providing

100. IOWA CODE § 633.309 (2017).

101. *See id.* § 633.313.

102. *Wilson v. Ribbens*, 678 N.W.2d 417, 422–23 (Iowa 2004).

103. *Id.* at 421 (quoting *Henry v. Schober*, 566 N.W.2d 190, 192–93 (Iowa 1997)).

104. *See Classon v. Classon*, No. 09-1339, 2010 WL 2383432, at *5 (Iowa Ct. App. June 16, 2010).

105. MO. ANN. STAT. § 473.083(6) (West 2017).

106. *See id.*

the consequence of noncompliance, confusion is eliminated, and furthermore, plaintiffs are incentivized to pursue their action diligently.¹⁰⁷

2. Case Law

The court in *Burke v. Kehr* stated:

Missouri courts have uniformly construed [joinder of all interested parties] to be jurisdictional and have held that failure of a will contestant to obtain service of process on all necessary parties within the parameters of [the statute] deprives the trial court of jurisdiction over the subject matter of the will contest and mandates a dismissal of the action.¹⁰⁸

In *Langham v. Mann*, the court held there was no right to contest a will at common law. Thus, strict compliance with the statutory rules is required, and a failure to meet the required deadlines would result in a loss of jurisdiction.¹⁰⁹ Furthermore, dismissal for failure to serve all necessary parties within the required time limit could only be overcome by a showing of good cause for the inability to do so.¹¹⁰

B. Mississippi Law

1. Statutory

Mississippi law provides further guidance for the issue arising when all interested parties are not before the court.¹¹¹

The Mississippi statute expressly states, “In any proceeding to contest the validity of a will, all persons interested in such contest shall be made parties.”¹¹² The statutory requirement is mandatory; therefore, joinder of all interested parties is mandatory.¹¹³ Furthermore, though failure to join a necessary party can be waived in certain cases, it cannot be waived in a will

107. *See id.*

108. *Burke v. Kehr*, 826 S.W.2d 855, 862 (Mo. Ct. App. 1992); *see Epperson v. Sheldon*, 729 S.W.2d 46, 49 (Mo. Ct. App. 1987); *Garrett v. Mowry*, 651 S.W.2d 696, 698 (Mo. Ct. App. 1983); *Winkler v. Winkler*, 634 S.W.2d 217, 220 (Mo. Ct. App. 1982).

109. *Langham v. Mann*, 801 S.W.2d 394, 395–96 (Mo. Ct. App. 1990). Three interested parties were not named as parties to the will contest within the 90-day time frame, and the court subsequently lost jurisdiction over the will contest proceedings. *Id.*

110. *Id.* at 396.

111. *See* IOWA CODE § 633.313 (2017).

112. MISS. CODE. ANN. § 91-7-25 (West 2017).

113. *In re Last Will Testament of True*, 220 So. 3d 276, 278 (Miss. Ct. App. 2017).

contest.¹¹⁴

2. Case Law

The Mississippi Court of Appeals has stated there should only be one contest of a will, and absent joinder of all necessary parties, the court lacks jurisdiction over the contest of a will; subsequently, the court cannot move forward without said interested parties.¹¹⁵

Similar to Missouri, the Mississippi courts are clear on the rules governing joinder of necessary parties in a will contest.¹¹⁶ Though Mississippi's statutory authority is not nearly as specific as Missouri's, the courts have a well-established method for handling will contests in which a necessary party is not joined within the required time frame.¹¹⁷

IV. PROPOSAL FOR CHANGE

Despite possible alternatives, the Probate Code remains unclear when read alongside the Rules of Civil Procedure.¹¹⁸ To prevent time-consuming and repetitive litigation, it is vital the Iowa state legislature amend the Probate Code to address necessary remedies not considered prior to the adoption of the current Iowa Rules of Civil Procedure.

With the only relevant case on point in Iowa being unpublished, courts are left with full discretion to follow *Classon* or not.¹¹⁹ Thus, one court may choose to dismiss the action, while another court allows the action to continue absent all necessary parties. A lack of mandatory authority creates a split among the courts in Iowa and causes confusion and frustration for the parties involved.¹²⁰ Furthermore, it creates unpredictable and inconsistent judgments. With no black-letter rule or even generic guidelines for a court

114. *Garrett v. Bohannon*, 621 So. 2d 935, 937 (Miss. 1993); *In re Last Will Testament of True*, 220 So. 3d at 279.

115. *In re Last Will Testament of True*, 220 So. 3d at 278 (citing ROBERT A. WEEMS, WILLS AND ADMINISTRATION OF ESTATES IN MISSISSIPPI § 8-4, at 180 (1988)).

116. *See id.*; MISS. CODE. ANN. § 91-7-25 (West 2017).

117. *See* MISS. CODE. ANN. § 91-7-25 (West 2017); MO. ANN. STAT. § 473.083(6) (West 2017); *Garrett*, 621 So. 2d at 937 (holding a judgment in a will contest proceeding is void absent all necessary parties because “[o]ne of the primary purposes of the statute is the fervent desire to avoid multiple litigation, and the court’s interest in consistent, efficient and final settlement of controversies.”); *In re Last Will Testament of True*, 220 So. 3d at 278.

118. *See* IOWA CODE §§ 633.34, 633.312 (2017); IOWA R. CIV. P. 1.234.

119. IOWA R. APP. P. 6.904(2).

120. *See id.*

to follow, a trial court is being granted full discretion on a matter that requires complete uniformity.

A. Adopt Missouri's Approach

The Missouri legislature has a codified solution to the discrepancy within the Iowa Probate Code and the Iowa Rules of Civil Procedure.¹²¹ Missouri has codified the requirement that the contestant proceed diligently to serve all interested parties, and if service is not secured on all interested parties within 90 days of filing the petition, then absent a showing of good cause for failure to serve all interested parties, the case should be dismissed.¹²²

As expressed above, the Missouri approach directly addresses Iowa's issue.¹²³ A plaintiff is given 90 days from filing the petition to put forth a good-faith effort to complete service of process on all defendants (i.e. all interested parties), or else the plaintiff's will contest will be dismissed.¹²⁴ Contestants are given a reasonable amount of time to secure service on all parties and are given the opportunity to provide good cause when they fail to do so. For the justice system to remain efficient, parties must be given specific guidelines to follow. When a party knows what is expected of them, and the consequences for failing to comply with those expectations, then absent good cause, there is no reason to allow a party to escape the rules required of everyone else.

It is of absolute importance the Iowa legislature amend the Probate Code to provide for a remedy to the current discrepancy with the Iowa Rules of Civil Procedure. Parties to will contests should be able to proceed with the case efficiently and within a reasonable amount of time. As previously discussed, all other possible remedies keep the door open to inconsistent judgments. These elementary stages of litigation require uniformity. As such, the Iowa Probate Code must evolve.

*Alexandria R. Coufal**

121. See MO. ANN. STAT. § 473.083(6).

122. *Id.*

123. See *id.*

124. See *id.*

* B.A., University of Nebraska-Lincoln, 2016; J.D. candidate, Drake University Law School, 2019. The Author would like to thank D. Scott Simpson for his valuable insights in developing this Note.