

Order

Michigan Supreme Court
Lansing, Michigan

February 1, 2012

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2011-30

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Proposed Amendment of
Rules 5.801, 7.102, 7.103,
7.108, and Rule 7.109 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 5.801, 7.102, 7.103, 7.108 and Rule 7.109 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is indicated in strikeover. The amendments in this proposal would amend the version of the rules adopted by the order of December 8, 2011, in ADM File No. 2010-19. The amendments adopted by that order become effective May 1, 2012.]

Rule 5.801 Appeals ~~to Other Courts~~ From the Probate Court

- (A) ~~Right to Appeal. An interested person~~ General Provisions. A party to a civil action or an interested person in a proceeding aggrieved by an order of the probate court may appeal as provided by this rule.
- (B) ~~Orders Appealable to Court of Appeals~~ Right to Appeal. ~~Orders appealable of right to the Court of Appeals are defined as and limited to the following:~~
- (1) a final order affecting the rights or interests of a party to a civil action

- (2) ~~a final order affecting the rights or interests of an interested person in a proceeding in the probate court is appealable as a matter of right to the Court of Appeals. A probate court order is “final” if it qualifies as a final order under MCR 7.202(6)(a), or if it affects with finality the rights or interests of a party or an interested person in the subject matter, involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:~~
- ~~(a) appointing or removing a personal representative, conservator, trustee, or trust protector as referred to in MCL 700.7103(n), or denying such an appointment or removal;~~
 - ~~(b) admitting or denying to probate of a will, codicil, or other testamentary instrument;~~
 - ~~(c) determining the validity of a governing instrument;~~
 - ~~(d) interpreting or construing a testamentary instrument or inter vivos trust;~~
 - ~~(e) approving or denying a settlement relating to a governing instrument;~~
 - ~~(f) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;~~
 - ~~(g) granting or denying a petition to consolidate or divide trusts;~~
 - ~~(h) discharging or denying the discharge of a surety on a bond from further liability;~~
 - ~~(i) allowing, disallowing, or denying a claim;~~
 - ~~(j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;~~
 - ~~(k) authorizing or denying the continuation of a business;~~

- (l) ~~determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;~~
- (m) ~~authorizing or denying rights of election;~~
- (n) ~~determining heirs, devisees, or beneficiaries;~~
- (o) ~~determining title to or rights or interests in property;~~
- (p) ~~authorizing or denying partition of property;~~
- (q) ~~authorizing or denying specific performance;~~
- (r) ~~ascertaining survivorship of parties;~~
- (s) ~~granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;~~
- (t) ~~granting or denying a petition to determine *cy pres*;~~
- (u) ~~directing or denying the making or repayment of distributions;~~
- (v) ~~determining or denying a constructive trust;~~
- (w) ~~determining or denying an oral contract relating to a will;~~
- (x) ~~allowing or disallowing an account, fees, or administration expenses;~~
- (y) ~~surecharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);~~
- (z) ~~determining or directing payment or apportionment of taxes;~~
- (aa) ~~distributing proceeds recovered for wrongful death under MCL 600.2922;~~
- (bb) ~~assigning residue;~~
- (cc) ~~granting or denying a petition for instructions;~~
- (dd) ~~authorizing disclaimers.~~

- (ee) ~~allowing or disallowing a trustee to change the principal place of a trust's administration;~~
- (3) ~~other appeals as may be hereafter provided by statute.~~
- (C) ~~Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:~~
 - (1) ~~a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding;~~
 - (2) ~~a final order affecting the rights or interests of a person under the Mental Health Code, except for a final order affecting the rights or interests of a person in the estate of an individual with developmental disabilities.~~
- (D) ~~Interlocutory Orders. An interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit court Court of Appeals and only by leave of that court. The circuit court Court of Appeals shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.~~
- (E) ~~Transfer of Appeals From Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.~~
- (F) ~~Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.~~

For purposes of this subchapter:

(1)-(8)[Unchanged.]

(9) “trial court” means the district, ~~probate~~, or municipal court from which the “appeal” is taken.

Rule 7.103 Appellate Jurisdiction of the Circuit Court

(A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere;

~~(2) a final order of a probate court under MCR 5.801(C);~~

~~(3)~~(2) a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 *et seq.*; and

~~(4)~~(3) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.

(B) [Unchanged.]

Rule 7.108 Stay of Proceedings; Bond; Review

(A)-(D)[Unchanged.]

~~(E) Probate Actions.~~

~~(1) The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.~~

~~(2) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).~~

Rule 7.109 Record on Appeal

(A) [Unchanged.]

(B) Transcript.

(1) *Appellant's Duties; Orders; Stipulations.*

- (a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Unless otherwise provided by circuit court order or this subrule, the appellant shall order the full transcript of testimony and other proceedings in the trial court or agency. Under MCR 7.104(D)(2), a party must serve a copy of any request for transcript preparation on the opposing party and file a copy with the circuit court.
- (b) ~~In an appeal from probate court, only that portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.~~
- (e) On the appellant's motion, with notice to the appellee, the trial court or agency may order that no transcript or some portion less than the full transcript be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant.
- ~~(d)~~(c) The parties may stipulate that no transcript or some portion less than the full transcript be filed.
- ~~(e)~~(d) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or agency and sent as the record of testimony in the action.

(2)-(3)[Unchanged.]

(C)-(I)[Unchanged.]

Staff Comment: The proposed amendments were submitted to this Court by the State Bar of Michigan Probate and Estate Planning Section in conjunction with the Michigan Judges Association, Michigan Probate Judges Association, and the Michigan Court of Appeals. The proposed changes would direct that all appeals from probate court be considered by the Court of Appeals instead of some orders being appealed to the Court of Appeals and other orders being appealed to the circuit court.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2011-30. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 1, 2012

Corbin R. Davis

Clerk