

Order

Michigan Supreme Court
Lansing, Michigan

December 15, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2009-26

Michael F. Cavanagh
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Robert P. Young, Jr.
Stephen J. Markman
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Justices

Proposed Amendments of Rules 5.105, 5.125, 5.201, 5.501, 5.801, and 5.802 of the Michigan Court Rules and Proposed Adoption of New Rule 5.208 of the Michigan Court Rules (to Replace Rules 5.306 and 5.503)

On order of the Court, this is to advise that the Court is considering amendments of Rules 5.105, 5.125, 5.201, 5.501, 5.801, and 5.802 of the Michigan Court Rules and considering adoption of new Rule 5.208 (to replace Rules 5.306 and 5.503) 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.

Because the statutory changes that gave rise to many of these proposed rule amendments will take effect April 1, 2010, and because the Court desires whenever it is possible to coordinate the effective dates of new statutory language with corresponding court rule changes, the Court is deviating slightly from its typical publication and adoption schedule in this matter. The period for public comment remains three full months following the month in which the order is published for comment. Thus, the public comment period will expire April 1, 2010. However, the proposed rules will also be considered by the Court at its next scheduled public administrative hearing (set for January 27, 2010) so that it may consider whether to preliminarily adopt the rules to enable practitioners and judges to become familiar with them before the proposed effective date of April 1, 2010. The Court will then have the option to consider any changes that may be suggested during the public comment period at a subsequent administrative conference. This procedure maximizes the opportunity for commenters to submit comments, provides as much notice as possible to those who will be using the revised rules, and affords the Court sufficient flexibility to ensure that the final rules are adopted as timely as possible and with the full benefit of a standard public comment period.

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 are indicated by underlining and deletions are indicated by strikeover.]

Rule 5.105 Manner and Method of Service

(A) [Unchanged.]

(B) Method of Service.

(1)-(3)[Unchanged.]

(4) E-mail. Unless otherwise limited or provided by this court rule, parties to a civil action or interested persons to a proceeding may agree to service by e-mail in the manner provided in and governed by MCR 2.107(C)(4).

(C) **Petitioner, Service Not Required.** For service of notice of hearing on a petition, the petitioner, although otherwise an interested person, is presumed to have waived notice and consented to the petition, unless the petition expressly indicates that the petitioner does not waive notice and does not consent to the granting of the requested prayers without a hearing. Although a petitioner or a fiduciary may in fact be an interested person, the petitioner need not indicate, either by written waiver or proof of service, that the petitioner has received a copy of any paper required by these rules to be served on interested persons.

(D) **Service on Persons Under Legal Disability or Otherwise Legally Represented.** In a guardianship or conservatorship proceeding, a petition or notice of hearing asking for an order that affects the ward or protected individual must be served on that ward or protected individual if he or she is 14 years of age or older. In all other circumstances, service on an interested person under legal disability or otherwise legally represented must be made on the following:

(1) The guardian of an adult, conservator, or guardian ad litem of a minor or other legally incapacitated individual, except with respect to:

(a) a petition for commitment or

(b) a petition, account, inventory, or report made as the guardian, conservator, or guardian ad litem.

(2) The trustee of a trust with respect to a beneficiary of the trust, except that the trustee may not be served on behalf of the beneficiary on petitions,

accounts, or reports made by the trustee as trustee or as personal representative of the settlor's estate.

- (3) The guardian ad litem of any ~~unascertained or unborn~~ person, including an unascertained or unborn person, except as otherwise provided in subrule (D)(1).

(4)-(6)[Unchanged.]

For purposes of service, an emancipated minor without a guardian or conservator is not deemed to be under legal disability.

- (E) [Unchanged.]

Rule 5.125 Interested Persons Defined

- (A) [Unchanged.]

- (B) Special Conditions for Interested Persons.

(1)-(2)[Unchanged.]

- (3) Trust as Devisee. If either a trust or a trustee is a devisee, the trustee is the interested person. If no trustee has qualified, the interested persons are the ~~current-qualified~~ trust beneficiaries described in MCL 700.7103(g)(i) and the nominated trustee, if any.

(4)-(5)[Unchanged.]

- (C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

- (1) The persons interested in an application or a petition to probate a will are the
- (a) devisees,
 - (b) nominated trustee and ~~current-qualified~~ trust beneficiaries described in MCL 700.7103(g)(i) of a trust created under the will,

- (c) heirs,
 - (d) nominated personal representative, and
 - (e) trustee of a revocable trust described in MCL ~~700.7501(1)~~700.7605(1).
- (2) The persons interested in an application or a petition to appoint a personal representative, other than a special personal representative, of an intestate estate are the
- (a) heirs,
 - (b) nominated personal representative, and
 - (c) trustee of a revocable trust described in MCL ~~700.7501(1)~~700.7605(1).
- (3) The persons interested in a petition to determine the heirs of a decedent are the presumptive heirs.
- (4) The persons interested in a petition of surety for discharge from further liability are the
- (a) principal on the bond,
 - (b) co-surety,
 - (c) devisees of a testate estate,
 - (d) heirs of an intestate estate,
 - (e) qualified trust beneficiaries, as referred to in MCL 700.7103(g)(i),
 - ~~(e)~~(f) protected person and presumptive heirs of the protected person in a conservatorship, and
 - ~~(f)~~(g) claimants.
- (5) [Unchanged.]
- (6) The persons interested in a proceeding for examination of an account of a fiduciary are the:

- (a) devisees of a testate estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3),
- (b) heirs of an intestate estate,
- (c) protected person and presumptive heirs of the protected person in a conservatorship,
- (d) ward and presumptive heirs of the ward in a guardianship,
- (e) claimants,
- (f) settlor of a revocable trust,
- (g) if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603(2),
- (h) current trustee,
- (~~f~~)(i) current—qualified trust beneficiaries described in MCL 700.7103(g)(i), for ~~in~~ a trust accounting, and
- (~~g~~)(j) other persons whose interests would be adversely affected by the relief requested, including insurers and sureties who might be subject to financial obligations as the result of the approval of the account.

(7)-(31)[Unchanged.]

(32) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in the modification or termination of a noncharitable irrevocable trust are:

- (a) the qualified trust beneficiaries affected by the relief requested,
- (b) the settlor,
- (c) if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, the settlor's representative, as referred to in MCL 700.7411(6);

- (d) the trust protector, if any, as referred to in MCL 700.7103(n),
- (e) the current trustee, and
- (f) any other person named in the terms of the trust to receive notice of such a proceeding.

~~(32)~~(33) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the The persons interested in a proceeding affecting a trust other than those already covered by subrules (C)(6), ~~and (C)(28), and (C)(32)~~ are:

- (a) the qualified trust beneficiaries affected by the relief requested,
- (b) the holder of a power of appointment affected by the relief requested,
- ~~(b)~~(c) the current trustee,
- ~~(e)~~(d) in a proceeding to appoint a trustee, the proposed successor-trustee, if any, and
- ~~(d)~~ other persons whose interests are affected by the relief requested.
- (e) the trust protector, if any, as referred to in MCL 700.7103(n),
- (f) the settlor of a revocable trust, and
- (g) if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603(2).

(D)-(E)[Unchanged.]

Rule 5.201 Applicability

Except for MCR 5.204 and MCR 5.208, which apply in part to trustees and trusts, rules Rules in this subchapter contain requirements applicable to all fiduciaries except trustees and apply to all estates except trusts.

Rule 5.208 Notice to Creditors, Presentment of Claims (this entire proposed rule is new).

- (A) Publication of Notice to Creditors; Contents. Unless the notice has already been given, the personal representative must publish, and a special personal representative may publish, in a newspaper, as defined by MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a nonresident was initiated, a notice to creditors as provided in MCL 700.3801. The notice must include:
- (1) The name, and, if known, last known address, date of death, and date of birth of the decedent;
 - (2) The name and address of the personal representative;
 - (3) The name and address of the court where proceedings are filed; and
 - (4) A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative within 4 months after the publication of the notice.
- (B) Notice to Known Creditors and Trustee. A personal representative who has published notice must cause a copy of the published notice or a similar notice to be served personally or by mail on each known creditor of the estate and to the trustee of a trust of which the decedent is settlor, as defined in MCL 700.7605(1). Notice need not be served on the trustee if the personal representative is the trustee.
- (1) Within the time limits prescribed by law, the personal representative must cause a copy of the published notice or a similar notice to be served personally or by mail on each creditor of the estate whose identity at the time of publication or during the 4 months following publication is known to, or can be reasonably ascertained by, the personal representative.
 - (2) If, at the time of the publication, the address of a creditor is unknown and cannot be ascertained after diligent inquiry, the name of the creditor must be included in the published notice.
- (C) Publication of Notice to Creditors and Known Creditors by Trustee. A notice that must be published under MCL 700.7608 must include:
- (1) The name, and, if known, last known address, date of death, and date of birth of the trust's deceased settlor;
 - (2) The trust's name or other designation;
 - (3) The date the trust was established;

- (4) The name and address of each trustee serving at the time of or as a result of the settlor's death;
 - (5) The name and address of the trustee's attorney, if any
- and must be served on known creditors as provided in subrule (B) above.
- (D) No Notice to Creditors. No notice need be given to creditors in the following situations:
- (1) The decedent or settlor has been dead for more than 3 years;
 - (2) Notice need not be given to a creditor whose claim has been presented or paid;
 - (3) For a personal representative:
 - (a) The estate has no assets;
 - (b) The estate qualifies and is administered under MCL 700.3982, MCL 700.3983, or MCL 700.3987;
 - (c) Notice has previously been given under MCL 700.7608 in the county where the decedent was domiciled in Michigan.
 - (4) For a trustee, the costs of administration equal or exceed the value of the trust estate.
- (E) Presentment of Claims. A claim shall be presented to the personal representative or trustee by mailing or delivering the claim to the personal representative or trustee, or the attorney for the personal representative or trustee, or, in the case of an estate, by filing the claim with the court and mailing or delivering a copy of the claim to the personal representative.
- (F) A claim is considered presented
- (1) on mailing, if addressed to the personal representative or trustee, or the attorney for the personal representative or trustee, or
 - (2) in all other cases, when received by the personal representative, or trustee or the attorney for the personal representative or trustee or in the case of an estate when filed with the court.

For purposes of this subrule (F), personal representative includes a proposed personal representative.

Rule 5.306 Notice to Creditors, Presentment of Claims

- ~~(A) — Publication of Notice to Creditors; Contents. Unless the notice has already been given, the personal representative must publish, and a special personal representative may publish, in a newspaper, as defined by MCR 2.106(F), in a county in which a resident decedent was domiciled or in which the proceeding as to a nonresident was initiated, a notice to creditors as provided in MCL 700.3801. The notice must include:~~
- ~~(1) — The name, and, if known, last known address, date of death, and date of birth of the decedent;~~
 - ~~(2) — The name and address of the personal representative;~~
 - ~~(3) — The name and address of the court where proceedings are filed; and~~
 - ~~(4) — A statement that claims will be forever barred unless presented to the personal representative, or to both the court and the personal representative within 4 months after the publication of the notice.~~
- ~~(B) — Notice to Known Creditors and Trustee. A personal representative who has published notice must cause a copy of the published notice or a similar notice to be served personally or by mail on each known creditor of the estate and to the trustee of a trust of which the decedent is settlor, as defined in MCL 700.7501(1). Notice need not be served on the trustee if the personal representative is the trustee.~~
- ~~(1) — Within the time limits prescribed by law, the personal representative must cause a copy of the published notice or a similar notice to be served personally or by mail on each creditor of the estate whose identity at the time of publication or during the 4 months following publication is known to, or can be reasonably ascertained by, the personal representative.~~
 - ~~(2) — If, at the time of publication, the address of a creditor is unknown and cannot be ascertained after diligent inquiry, the name of the creditor must be included in the published notice.~~
- ~~(C) — No Notice to Creditors. No notice need be given to creditors in the following situations:~~
- ~~(1) — The estate has no assets;~~

- ~~(2) The estate qualifies and is administered under MCL 700.3982, MCL 700.3983, or MCL 700.3987;~~
- ~~(3) The decedent has been dead for more than 3 years;~~
- ~~(4) Notice has previously been given under MCL 700.7504 in the county where the decedent was domiciled in Michigan.~~

~~Notice need not be given to a creditor whose claim has been presented or paid.~~

~~(D) Presentment of Claims. A claim shall be presented to the personal representative by mailing or delivering the claim to the personal representative, or the personal representative's attorney, or by filing the claim with the court and mailing or delivering a copy of the claim to the personal representative.~~

~~(E) A claim is considered presented~~

- ~~(1) on mailing, if addressed to the personal representative or the personal representative's attorney, or~~
- ~~(2) in all other cases, when received by the personal representative or the personal representative's attorney or when filed with the court.~~

~~For purposes of this subrule, personal representative includes a proposed personal representative.~~

Rule 5.501 Trust Proceedings in General

- (A) **Applicability.** This subchapter applies to all trusts as defined in MCL 700.1107(m)700.1107(n), including a trust established under a will and a trust created by court order or a separate document.
- (B) **Unsupervised Administration of Trusts.** Unless an interested person invokes court jurisdiction, the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without court order, approval, or other court action. Neither registration nor a proceeding concerning a trust results in continued supervisory proceedings.
- (C) **Commencement of Trust Proceedings.** A proceeding concerning a trust is commenced by filing a petition in the court where the trust is or could be properly registered. Registration of the trust is not required for filing a petition.

- (D) Appointment of Trustee not Named in Creating Document. An interested person may petition the court for appointment of a trustee when there is a vacancy in a trusteeship. the order, will, or other document creating a trust does not name a trustee or when the person named in the creating document is either not available or cannot be qualified as trustee. The petitioner must give notice of hearing on the petition to the interested persons. The court may issue an order appointing as trustee the person nominated in the petition or another person. The order must state whether the trustee must file a bond or execute an acceptance.
- (E) Qualification of Trustee. A trustee appointed by an order of the court, or nominated as a trustee in a will that has been admitted to probate ~~or nominated as a successor in a document other than a will that created a trust~~ shall qualify by executing an acceptance indicating the nominee's willingness to serve. The trustee must serve the acceptance and order, if any, on the then known ~~current~~ qualified trust beneficiaries described in MCL 700.7103(g)(i) and, in the case of a testamentary trustee, on the personal representative of the decedent estate, if one has been appointed. No letters of trusteeship shall be issued by the court. The trustee or the attorney for the trustee may establish the trustee's incumbency by executing an affidavit to that effect, identifying the trustee and the trust ~~document~~ and indicating that any required bond has been filed with the court and is in force.
- (F) Transitional Rule. A trustee of a trust under the jurisdiction of the court before April 1, 2000, may request an order of the court closing court supervision and the file. On request by the trustee or on its own initiative, the court may order the closing of supervision of the trust and close the file. The trustee must give notice of the order to all current trust beneficiaries. Closing supervision does not preclude any interested trust beneficiary from later petitioning the court for supervision. Without regard to whether the court file is closed, all letters of authority for existing trusts are canceled as of April 1, 2000, and the trustee's incumbency may be established in the manner provided in subrule (E).

~~Rule 5.503 Notice to Creditors by Trustee of Revocable Inter Vivos Trust~~

- ~~(A) Place of Publication, Proof. A notice that must be published under MCL 700.7504 must be published in a newspaper as defined by MCR 2.106(F) in the county in which the settlor was domiciled at the time of death. No proof of publication need be filed in connection with unsupervised administration of a trust.~~
- ~~(B) When Notice is not Required. The trustee of a revocable inter vivos trust is not required to give notice to creditors in the following situations:~~
- ~~(1) The costs of trust administration equal or exceed the value of the trust estate, or~~

~~(2) — The settlor has been dead for more than 3 years.~~

Rule 5.801 Appeals to Other Courts

(A) Right to Appeal. An interested person aggrieved by an order of the probate court may appeal as provided by this rule.

(B) Orders Appealable to Court of Appeals. 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 commenced in the probate court under MCR 5.101(C);

~~(1)~~(2) a final order affecting the rights or interests of an interested person in a proceeding 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 testamentary 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, ~~or~~ 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;

~~(c)~~(d) interpreting or construing a testamentary governing instrument or inter vivos trust;

~~(d)~~(e) approving or denying a settlement of a contest relating to an inter vivos trust or a testamentary 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;

~~(e)~~(h) discharging or denying the discharge of a surety on a bond from further liability;

- (~~f~~)(i) allowing, ~~or rejecting~~ disallowing, or denying a claims;
- (~~g~~)(j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;
- (~~h~~)(k) authorizing or denying the continuation of a business;
- (~~i~~)(l) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance, ~~or right to remain in a dwelling~~;
- (~~j~~)(m) authorizing or denying rights of election;
- (~~k~~)(n) determining heirs, ~~or devisees~~, or beneficiaries;
- (~~l~~)(o) determining title to or claims to ~~rights or interests in~~ property;
- (~~m~~)(p) authorizing or denying partition of property;
- (~~n~~)(q) authorizing or denying specific performance;
- (~~o~~)(r) ascertaining survivorship of parties;
- (~~p~~)(s) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
- (~~q~~)(t) granting or denying a petition to determine *cy pres*;
- (~~r~~)(u) directing or denying the making or repayment of distributions;
- (~~s~~)(v) determining or denying a constructive trust;
- (~~t~~)(w) determining or denying an oral contract relating to a will;
- (~~u~~)(x) allowing or disallowing an account, fees, or administration expenses;
- (~~v~~)(y) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
- (~~w~~)(z) determining or directing payment or authorizing federal estate tax apportionment of taxes;

~~(x)~~(aa) distributing proceeds recovered for wrongful death under MCL 600.2922;

~~(y)~~ determining or directing payment of inheritance taxes;

~~(z)~~(bb) assigning residue;

~~(aacc)~~ granting or denying a petition for instructions;

~~(bbdd)~~ authorizing disclaimers;

(ee) allowing or disallowing a trustee to change the principal place of a trust's administration;

~~(2)~~(3) other appeals as may be hereafter provided by statute.

(C)-(F)[Unchanged.]

Rule 5.802 Appellate Procedure; Stays Pending Appeal

(A) Procedure. Except as modified by this subchapter, chapter 7 of these rules governs appeals from the probate court.

(B) Record.

(1) An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court. ~~The appeal is not de novo.~~

(2) The probate register may transmit certified copies of the necessary documents and papers in the file if the original papers are needed for further proceedings in the probate court. The parties shall not be required to pay for the copies as costs or otherwise.

(C) [Unchanged.]

Staff Comment: These proposed changes, submitted by the Probate and Estate Planning Council of the State Bar of Michigan and the Michigan Probate Judges Association, have been designed so that the rules would conform to recently-enacted statutory changes creating the Michigan Trust Code. The proposed amendments would correct and insert cross-references to the applicable statutory provisions, and make other technical changes. In addition, proposed new MCR 5.208 would incorporate the notice

requirements for both decedent estates and trusts currently contained in MCR 5.306 and MCR 5.503, and would replace those rules.

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 these proposals may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2010, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2009-26. 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.

December 15, 2009

Corbin R. Davis

Clerk