

# Practical Notes on the Court Rules

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**M**CR 5.001(A) directs that procedure in the probate court is governed by the court rules applicable to other civil proceedings, except as modified by the rules in Chapter 5, which are specific to probate court. However, during a recent conversation with an experienced attorney, I was reminded that those who do not regularly practice in probate court are frequently unaware that there are specific court rules for probate court matters. This can lead to both frustration and problems when the probate rules require different action than the general civil court rules.

## **MCR 5.101**

One probate court rule that particularly catches people unaware is MCR 5.101 regarding the form and commencement of actions filed in the probate court. MCR 5.101(A) sets out two forms of action in probate court. There can be a “proceeding” or a “civil action.”

A proceeding is commenced by filing an application or a petition.<sup>1</sup> The following types of actions must be titled civil actions (CZ case code) and are commenced through the filing of a complaint:

- (1) Any action against another filed by a fiduciary, and
- (2) Any action filed by a claimant after notice that the claim has been disallowed.<sup>2</sup>

Please note that the rule does not allow simply any lawsuit involving an estate or trust to be filed in probate court. It must be a fiduciary filing an action or the action must be filed by a claimant whose claim has been disallowed. Another distinction that many people miss is that actions entitled civil actions in probate court are governed by the rules applicable to civil actions in circuit court, not the probate court rules.<sup>3</sup>

## **MCR 5.108 – Time of Service**

Time of service is another area where the probate rules have requirements different than found in the general civil rules. Under MCR 5.108, *personal* service of a *petition or motion* must be made at least seven days before the hearing, unless the court rules provide otherwise. However, service of a *petition or motion* by *mail* must be at least 14 days before the hearing. A written response or objection may be served

at any time before the hearing or at a time set by the court. This includes any petition that initiates a case.

## **MCR 5.114 – Signing and Authentication of Papers**

In general, MCR 2.114 applies to the signing of papers in probate proceedings, except as modified by MCR 5.114. It is important to understand that while many filings may be signed by the attorney for a party, an inventory, account, acceptance of appointment and sworn closing statement must be signed by the fiduciary or trustee.<sup>4</sup> These documents will not be accepted for filing without the proper signatures. If a person is represented by an attorney and the filing is on an approved SCAO form, the attorney must sign only if the form includes a place for signature.<sup>5</sup>

One requirement that often causes frustration for practitioners is the authentication requirement (or “penalties of perjury statement”) under MCR 5.114(B). This subrule requires that an application, petition, inventory, accounting, proof of claim or proof of service must either be authenticated by verification under oath by the person making it, or contain the following statement immediately above the date and signature of the maker: “I declare under the penalties of perjury that this \_\_\_\_\_ has been examined by me and that its contents are true to the best of my information, knowledge, and belief.” The inclusion of the “under penalties of perjury” statement makes this requirement different than the verification required by MCR 2.114.

## **MCR 5.125 – Interested Persons Defined**

**Practice Tip:** Don’t forget to consult MCR 5.125 when working on a probate matter. This court rule provides a very detailed list of who must be served based on the particular issue involved. It will also help you sort out whom you need to list as interested parties when filing a petition, as required by MCR 5.113(B).

## **Footnotes**

- 1 MCR 5.101(B).
- 2 MCR 5.101(C).
- 3 MCR 5.101(C).
- 4 MCR 5.114(A)(3).
- 5 MCR 5.114(A)(2).