

# The Michigan Court Rules and Probate Practice

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Many attorneys who appear at the probate counter do not practice probate law on a regular basis. Occasionally, this leads to some frustration and confusion on procedures where the court rules for probate matters diverge from those covering general civil actions in the circuit or district courts. MCR 5.001 states that procedure in probate court is governed by the rules applicable to other civil proceedings, except as modified by the rules in Subchapter 5.000. There are, in fact, some significant differences between the probate and the general civil court rules. (Despite what people say, they aren't just procedures we made up to torture attorneys.)

Listed below are a few hints regarding some of the most common areas of confusion we see at our probate counter.

## **MCR 5.101 – Form and Commencement of Action**

MCR 5.101 provides that there are two forms of action in probate court: a "proceeding" and a "civil action."

A "proceeding" is commenced by filing either a petition or an application. For example, relative to decedents' estates, an informal proceeding is initiated through the filing of an *application*. A *petition* is required to commence a formal testacy proceeding.

A "civil action" may also be filed in probate court, but only under very specific circumstances. A civil action is the appropriate form only for any action against another filed by a fiduciary and for any action filed by a claimant after notice that their claim has been disallowed. The procedures for civil actions in probate court are governed by the rules applicable to civil actions in circuit court.

## **MCR 5.108 – Time of Service**

For attorneys who don't regularly practice in probate court, the issue of time of service can cause some unwelcome surprises. Under MCR 5.108, *personal* service of a *petition* or a *motion* must be made *seven* days before the hearing unless a different period is provided or permitted by court rule. 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.

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

Generally, MCR 2.114 applies to the signing of papers in probate proceedings, except as modified by MCR 5.114. Of particular note is 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. 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.

Another possible cause for confusion is the authentication requirement under MCR 5.114(B). (We commonly call this the "penalties of perjury statement.") 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 confusion comes in because this statement is different than the verification required under MCR 2.114, which does not require the "under penalties of perjury" phrase. The listed documents will not be accepted for filing without the required statement or verification.

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

MCR 5.125 provides a very detailed list of types of proceedings that take place in probate court. The rule also provides a detailed list of who the interested parties are for each proceeding. Whenever beginning any type of proceeding in probate, it is a good idea to consult MCR 5.125 to be certain the necessary parties are served. [In addition, MCR 5.113(B) requires that any petition filed must include a list of the interested parties or a reference to a previously filed list with any changes set forth in the incorporating petition.]

The above rules are just a quick sample of some of the procedures for which the probate court rules have specific requirements that differ somewhat from those for circuit and district court. The best advice? Always check the court rules first. (And remember that you don't need a praecipe for probate court motions.)