

MCR 5.203

by **Rebecca A. Schnelz**
Probate Court Administrator



A very important function of the Probate Court involves monitoring whether fiduciaries have complied with certain responsibilities set by statute and court rule. In Oakland County, we call the unit that handles this function “203.” [This is a very clever way to remember that MCR 5.203 is the court rule that governs this process.]

The Oakland County Probate Court’s docketing system tracks the due dates for the various reports, inventories, etc. for individual cases. Each day, a list is printed that details which fiduciaries have become delinquent in filing required documents. With one exception, a *Notice of Deficiency* is generated for each delinquent item and sent to the delinquent fiduciary. Fiduciaries are given 28 days from the date of the notice to correct the deficiency. The exception is on decedent estates, where if the delinquent document is a *Notice of Continued Administration*, a *Notice of Intent to Close* is sent and the estate is closed if the document is not received within 63 days.

In cases where a *Notice of Deficiency* was sent, if the required document is not filed within 28 days, the fiduciary’s name will again show up on a daily list. The delinquent fiduciary is usually given an automatic 28-day extension in which to correct the deficiency.

If there is a reason that the fiduciary cannot correct the deficiency within the time of the automatic extension, a second 28-day extension may be requested in writing. Oakland County Probate Court Form 1063, *Request for Extension of Time for Compliance*, must be used for this purpose.

If the fiduciary has failed to correct the deficiency at the end of the automatic or requested extension period, the court will suspend the powers of the fiduciary. Suspension of powers does exactly what it sounds like – takes away the fiduciary’s power to act.

Once suspended, a fiduciary’s powers cannot be reinstated until these requirements are completed:

- The fiduciary must cure the deficiency by filing all missing documents.

- The fiduciary must file a *Petition for Reinstatement* (PC603). The petition will be set for hearing unless a full *Waiver and Consent* (PC 561) is received from all interested persons and submitted prior to the hearing date.
- All required filing fees must be paid at the time the delinquent documents are filed. There is a \$20.00 fee for the reinstatement petition.

If the fiduciary fails to perform the required duties within the appropriate time frame, in addition to suspending the powers of the fiduciary, the court may choose to appoint a special fiduciary or close the estate administration. If the estate is closed, the only way to reopen the case is by petition at the cost of \$150.00.

Practice Tips:

- If you or a client are a fiduciary and receive a *Notice of Deficiency* in the mail, make sure the form is reviewed carefully to determine whether it is the original notice or an extension, what paperwork is delinquent, and when the notice period expires. Every attempt should be made to cure the deficiency within 28 days of the first notice.
- If the delinquent documents are something that can be mailed in, please remember that it takes time for documents to be processed through the mail and entered on the computer. In addition, all necessary fees must be included with the forms or the documents will be returned.
- Of course, it is always better to avoid going through the “203” process. As you can imagine, processing the extra paperwork caused by delinquent fiduciaries can be a huge drain on the court’s resources. During 2007, the court had to send more than 9,000 *Notices of Deficiency* to fiduciaries who had not filed their paperwork. That doesn’t include more than 4,800 extensions that were processed and more than 1,800 fiduciaries who were eventually suspended – all of which required multiple mailings, scanning, filing and monitoring. If you have a client who is a fiduciary, please make a point to stress

the due dates they will need to meet and the necessity of getting paperwork in before the deadline.

Please note that if you were the attorney of record at some point on the file and have not withdrawn, you will continue to receive any deficiency notices generated until you have withdrawn.

Copies of the necessary forms may be obtained through the Probate Court's Web site at www.oakgov.com/probate.

A Word of Recognition

I just wanted to take an extra moment to recognize the Oakland County Probate Court staff. We have an incredible group of people who work here. I am constantly

amazed at how much information they must remember and apply correctly.

Between the constant stream of papers to be processed and the lines at the counter that must be served, there is little time for the general staff to take a breath. The same can be said for the judges' staffs, who, among other things, must tackle the job of organizing the process in the courtrooms, processing orders, and managing the large number of attorneys and parties they come into contact with each week.

So if you have an extra minute, please join me in saying "thank you" to the many amazing people who help keep the Oakland County Probate Court moving.



Racing against time

***to make the courthouse
filing deadline?***

Use the OCBA File-by-Fax Service!

Circuit Court Mediation Summaries • Praecipes • Acceptances/Rejections • Witness Lists
Appearances • Briefs • Motions • Civil Actions • Driver's Restoration • ***AND MUCH MORE!***

Phone: (248) 858-1585 – Fax: (248) 338-9540

Copies only 10 cents/page • Fax services discounted for OCBA members • We bill you for copies & faxes