

Probate Court Rules

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It is not uncommon for attorneys whose usual practice is general civil litigation to find themselves in probate court. 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 provides 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, significant differences between the probate and the general civil court rules. Not paying attention to some of these differences could mean that documents must be rejected for filing by the probate staff.

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

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. A receipt for assets must be signed by the person entitled to the assets. These documents will not be accepted for filing without the proper signatures. If an attorney represents a person 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.” This statement is different than the verification pursuant to 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. More importantly, 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. (It should also be noted that 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 court rules that we often see tripping up filers. The best advice? Always check the court rules first. (And remember: no praecipes in probate and the court must assign a hearing date.)