

# Order

Michigan Supreme Court  
Lansing, Michigan

April 23, 2014

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2013-29

Michael F. Cavanagh  
Stephen J. Markman

Proposed Amendments of Rules  
5.108, 5.125, 5.208, and 5.403  
of the Michigan Court Rules

Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

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On order of the Court, this is to advise that the Court is considering amendments of Rules 5.108, 5.125, 5.208, and 5.403 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 [Administrative Matters & Court Rules page](#).

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 to the text are indicated in underlining and deleted text is shown by strikeover.]

## Rule 5.108 Time of Service

(A) [Unchanged.]

(B) Mail.

(1) Petition or Motion. Service by mail of a petition or motion must be made at least 14 days before the date set for hearing, or an adjourned date.

(2) Application by a Guardian or Conservator Appointed in Another State.

(a) A court may appoint a temporary guardian or conservator without a hearing pursuant to MCL 700.5202a, MCL 700.5301a, or MCL 700.5433.

- (b) If a court appoints a temporary guardian or conservator pursuant to MCL 700.5202a, MCL 700.5301a or MCL 700.5433, the temporary guardian or conservator must, not later than 14 days after the appointment, serve notice of the appointment by mail to all interested persons.

(C)-(E)[Unchanged.]

#### Rule 5.125 Interested Persons Defined

(A) [Unchanged.]

(B) Special Conditions for Interested Persons.

(1) [Unchanged.]

(2) Devisee. Only a devisee whose devise remains unsatisfied, or a trust beneficiary whose beneficial interest remains unsatisfied, need be notified of specific proceedings under subrule (C).

(3)-(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)-(5)[Unchanged.]

(6) The persons interested in a proceeding for examination or approval of an account of a fiduciary ~~are the~~:

(a) for a testate estate, the devisees under the will (and if one of the devisees is a trustee or a trust, and the persons referred to in MCR 5.125[B][3]),

(b) for an intestate estate, the heirs,

(c) for a conservatorship, the protected individual (if he or she is 14 years of age or older and can be located), the presumptive heirs of the protected individual, and the guardian ad litem, if any,

- (d) for a final conservatorship or guardianship account following the death of the protected person, the personal representative, if one has been appointed,
- (e) for a guardianship, the ward (if he or she is 14 years of age or older and can be located), the presumptive heirs of the ward, and the guardian ad litem, if any,
- (f) for a revocable trust, the settlor (and 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]), the current trustee, and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust protector,
- (g) for an irrevocable trust, the current trustee, the qualified trust beneficiaries, as defined in MCL 700.7103(g), and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust protector,
- (h) in all matters described in this subsection (6), claimants, and
- (i) in all matters described in this subsection (6), any person whose interests would be adversely affected by the relief requested, including an insurer or surety who might be subject to financial obligations as the result of the approval of the account, and claimants.
- ~~(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,~~
- ~~(i) qualified trust beneficiaries described in MCL 700.7103(g)(i), for a trust accounting, and~~
- ~~(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)-(18)[Unchanged.]

- (19) The persons interested in an application for appointment of a guardian of a minor by a guardian appointed in another state and in a petition for appointment of a guardian for of a minor are
- (a) the minor, if 14 years of age or older;
  - (b) if known by the petitioner or applicant, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition or application;
  - (c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor, ~~and~~;
  - (d) the nominated guardian, and
  - (e) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to make decisions regarding the person of a minor.

(20)-(21)[Unchanged.]

- (22) The persons interested in an application for appointment of a guardian of an incapacitated individual by a guardian appointed in another state or in a petition for appointment of a guardian of an alleged incapacitated individual are
- (a) the alleged incapacitated individual or the incapacitated individual,

- (b) if known, a person named as attorney in fact under a durable power of attorney,
  - (c) the alleged incapacitated individual's spouse or the incapacitated individual's spouse,
  - (d) the alleged incapacitated individual's adult children and the individual's parents or the incapacitated individual's adult children and parents,
  - (e) if no spouse, child, or parent is living, the presumptive heirs of the individual,
  - (f) the person who has the care and custody of the alleged incapacitated individual or of the incapacitated individual, ~~and~~
  - (g) the nominated guardian, and
  - (h) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to have care and control of the incapacitated individual.
- (23) [Unchanged.]
- (24) The persons interested in an application for appointment of a conservator for a protected individual by a conservator appointed in another state or for the a-petition for the appointment of a conservator or for a protective order are:
- (a) the individual to be protected if 14 years of age or older,
  - (b) the presumptive heirs of the individual to be protected,
  - (c) if known, a person named as attorney in fact under a durable power of attorney,
  - (d) the nominated conservator, ~~and~~
  - (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending, and

- (f) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to manage the protected individual's finances.

(25)-(26)[Unchanged.]

- (27) The persons interested in receiving a copy of an inventory or account of a conservator or of a guardian are:
- (a) the protected individual or ward, if he or she is 14 years of age or older and can be located,
  - (b) the presumptive heirs of the protected individual or ward,
  - (c) the claimants, ~~and~~
  - (d) the guardian ad litem, and
  - (e) the personal representative, if any.

(28)-(33)[Unchanged.]

(D)-(E)[Unchanged.]

#### Rule 5.208 Notice to Creditors, Presentment of Claims

(A)-(B) [Unchanged.]

- (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)-(5)[Unchanged.]

(D)-(F)[Unchanged.]

#### Rule 5.403 Proceedings on Temporary Guardianship

- (A) Limitation. The court may appoint a temporary guardian ~~only~~ in the course of a proceeding for permanent guardianship or pursuant to an application to appoint a guardian serving in another state to serve as guardian in this state.

(B)-(D)[Unchanged.]

*Staff Comment:* These proposed Chapter 5 rule amendments were submitted to the Court by the Probate and Estate Planning Section of the State Bar of Michigan so that the rules would comport to recent legislation regarding guardianships and conservatorships.

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 the proposal may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2014, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2013-29. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, 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.

April 23, 2014

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk