

**AGENDA FOR
COMMITTEE ON SPECIAL PROJECTS
December 17, 2016**

1. Legislation Development and Drafting Committee

Review and discuss attached plan of work.

2. Legislation Development and Drafting Committee

Review and discuss proposed tenancy by the entirety trust legislation - see proposed MCL 700.7509 attached.

MICHIGAN PROBATE & ESTATE PLANNING SECTION
LEGISLATIVE DEVELOPMENT AND DRAFTING COMMITTEE

PLAN OF WORK

(Updated as of November 11, 2016)

- **November 18:** committee meeting [Sueann Mitchell unavail.]
 - Standby guardians [Nathan Piwowarski]: initial consideration of drafts
- **November 25:** No meeting (holiday)
- **December 2:** committee meeting [Mike Lichterman unavail.]
 - Notice; non-devisee spouse in accounts [Kathleen Geotsch and Ray Harris]: initial consideration of drafts
 - Notice; family allowance petition: [Kathleen Geotsch and Ray Harris]: initial consideration of drafts
 - Follow-up on existing drafts
 - Update EPIC Updates List for submission to CSP
- **December 8:** anticipated deadline for submitting CSP materials
- **December 9:** No meeting
- **December 16:** committee meeting
 - ~~Knowledge of a fact [Raj Malviya]: initial consideration of drafts~~
 - Secret trusts [Rick Mills]: initial consideration of drafts
 - Fees in trust contests [David Skidmore and George Bearup]
 - Follow-up on existing drafts
 - Update EPIC Updates List for submission to CSP
- **December 17, 2016: council meeting**
- **December 23:** No meeting (holiday)
- **December 30:** committee meeting
 - Petition and order of assignment for “trust funding cleanup” [Georgette David and Nathan Piwowarski]
 - Follow-up on existing drafts
 - Assess Plan of Work
 - Update EPIC Updates List for submission to CSP
- **January 5:** anticipated deadline for submitting CSP materials
- **January 6:** committee meeting
 - COLA in EPIC [Kenneth Konop. And Rick Mills]: initial consideration of drafts
 - COLA beyond EPIC [Kenneth Konop. And Rick Mills]: initial consideration of drafts
- **January 13:** committee meeting
 - FADA fix [Howard Collens and Meg Lentz]: initial consideration of drafts
 - Follow-up on existing drafts
- **January 14, 2017: council meeting**
- **January 20:** committee meeting

- Satisfaction of claims using non-probate assets [Susan Chalgian and Katie Lynwood]: initial consideration of drafts
 - Follow-up on existing drafts
- **January 27:** committee meeting
 - Apostille fix [Howard Collens]: initial consideration of drafts
 - Follow-up on existing drafts
 - Assess Plan of Work
- **February 3:** committee meeting
 - MTC Notice Fix [Geoff Vernon]: initial consideration of drafts
 - Update EPIC Updates List for submission to CSP
- **February 9:** anticipated deadline for submitting CSP materials
- **February 10:** committee meeting
 - ~~Party in interest clarification [unassigned]: initial consideration of drafts~~
 - Follow-up on existing drafts
- **February 17:** committee meeting
 - Attorney-in-fact's ability to settle a trust [Kenneth Konop and Rick Mills]: initial consideration of drafts
 - Follow-up on existing drafts
 - Assess Plan of Work
- **February 18, 2017:** council meeting
- **February 24:** No meeting

ARTICLE VII: MICHIGAN TRUST CODE
PART 5: CREDITOR'S CLAIMS: SPENDTHRIFT, SUPPORT, AND DISCRETIONARY TRUSTS
700.7509 TENANCY BY THE ENTIRETY PROPERTY

(1) As used in this section:

(a) "Property" means real or personal property and any interest in real or personal property.

(b) "Proceeds" means:

- (i) Property acquired by a trustee upon the sale, lease, license, exchange, or other disposition of property originally conveyed by spouses as tenants by the entirety to a trustee.
- (ii) Interest, dividends, rents, and other property collected by a trustee on, or distributed on account of, property originally conveyed by spouses as tenants by the entirety to a trustee.
- (iii) Rights arising out of property originally conveyed by spouses as tenants by the entirety to a trustee.
- (iv) Claims and resulting damage awards and settlement proceeds arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, property originally conveyed by spouses as tenants by the entirety to a trustee.
- (v) Insurance proceeds or benefits payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, property originally conveyed by spouses as tenants by the entirety to a trustee.
- (vi) Property held by a trustee that is otherwise traceable to property originally conveyed by spouses as tenants by the entirety to a trustee or the property proceeds described in subsections (i) to (v).

(2) Any property conveyed by the spouses to a trustee of one or more trusts, and the proceeds of that property, shall have the same immunity from the claims of each spouse's separate creditors as would exist if the property or its proceeds were owned by the spouses as tenants by the entirety, so long as all of the following apply:

- (a) The spouses remain married.
- (b) The property or its proceeds continue to be held in trust by a trustee.
- (c) The trust or trusts are revocable by either spouse or both spouses, acting together.

- (d) Each spouse is a distributee or permissible distributee of the trust or trusts.
 - (e) The trust instrument, deed, or other instrument of conveyance provides that this section shall apply to the property or its proceeds.
- (3) Upon the death of the first spouse:
- (a) All property held in trust that, under subsection (2), was immune from the claims of the deceased spouse's creditors immediately prior to his or her death shall continue to have immunity from the claims of the decedent's separate creditors as if both spouses were still alive.
 - (b) To the extent that the surviving spouse remains a distributee or permissible distributee of the trust or trusts and has the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (2), was immune from the claims of the separate creditors of the decedent, the property shall be subject to the claims of the separate creditors of the surviving spouse.
 - (c) If the surviving spouse remains a distributee or permissible distributee of the trust or trusts, but does not have the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (2), was immune from claims of the spouses' separate creditors, that property shall continue to have immunity from the claims of the separate creditors of the surviving spouse.
- (4) The immunity from the claims of separate creditors under subsections (2) and (3) may be waived by the express provisions of a trust instrument, deed, or other instrument of conveyance, or by the written consent of both spouses, as to any specific creditor or any specifically described trust property, including all separate creditors of a spouse or all former tenancy by the entirety property conveyed to a trustee.
- (5) Except as provided in subsection (6), immunity from the claims of separate creditors under subsections (2) and (3) shall be waived if both of the following are true:
- (a) A trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors.
 - (b) The separate creditors claiming that the immunity provided by this section was waived by the spouses detrimentally relied upon the failure of the trustee to disclose (as provided in subsection (5)(a) above) in extending credit to the spouse.

- (6) Immunity is not waived under subsection (5) if the identity of the property that is immune from the claims of separate creditors and evidence of such immunity is otherwise reasonably disclosed by any of the following:
- (a) A publicly recorded deed or other instrument of conveyance by the spouses to the trustee.
 - (b) A written memorandum by the spouses, or by a trustee, that is recorded among the land records or other public records in the county or other jurisdiction where the records of the trust are regularly maintained.
 - (c) The terms of the trust instrument, including any schedule or exhibit attached to the trust instrument, if a copy of the trust instrument is provided with the financial statement.
 - (d) A certificate of trust existence and authority under MCL 565.431 et. seq. or a certificate of trust under MCL 700.7913.
- (7) A waiver under subsection (5) shall be effective only as to:
- (a) The person to whom the financial statement is delivered by a trustee.
 - (b) The particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement.
 - (c) The transaction for which the disclosure was sought.
- (8) In any dispute relating to the immunity of trust property from the claims of either spouse's separate creditor, the creditor has the burden of proving, by clear and convincing evidence, that the trust property is not immune from the creditor's claims.
- (9) In the event that any transfer of property held in tenancy by the entirety to a trustee of a trust as provided under subsection (2) is held invalid by any court of proper jurisdiction, or if the trust is revoked or dissolved by a court decree or operation of law, while both spouses are living, then immediately upon the occurrence of either event, absent a contrary provision in a court decree, all property held in the trust shall be deemed for all purposes to be held by both spouses as tenants by the entirety.
- (10) No transfer by spouses described in subsection (2) shall affect or change either spouse's marital property rights to the transferred property or interest therein immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless both spouses expressly agree otherwise in writing. Upon entry of a judgment of divorce or annulment between the spouses, the immunity from the claims of separate creditors under subsection (2) shall terminate.

- (11) If property is transferred to a trustee of a trust as provided under subsection (2), the trustee may transfer such trust property to the spouses as tenants by the entirety.
- (12) This section may not be construed to affect existing state law with respect to tenancies by the entirety. This section applies only to tenancy by the entirety property conveyed to a trustee on or after _____, 2017.

Subcommittee Probate Court Rules
December 17, 2016
Report by Marlaine C. Teahan

At the last Probate and Estate Planning Council meeting, the Chair requested that I provide a summary of the changes between our public policy positions taken on 9-21-13 and 10-12-13 and the proposed rules that our subcommittee submitted by letter to the Supreme Court on 10-12-16. A Council vote is needed on the changes to MCR 5.801 (see redline below) and the new proposed changes to MCR 7.203 and 7.205 (found in 10-12-16 letter to Supreme Court, attached -- which also submits our 2013 public policy positions).

In October, 2016, additional changes were made after an analyst for the Supreme Court reviewed our proposed rules. See attached email summary of those additional changes (previously provided in Nov. 2016 agenda).

Finally, a copy of the recently released Supreme Court ADM File No. 2016-32 is attached. In the ADM, one can see that additional rule changes were included by the Supreme Court, including changes to MCRs 7.202, 7.212, and 7.213. Public Comments can be made up until March 1, 2017.

Rule 5.801 Appeals to Other Courts

(A) Appeal of Right. Pursuant to ~~Appeal.~~ AMCL 600.308(1), a final order affecting the rights or interests of either a party to a civil action in a probate court or an interested person in a proceeding in the probate court is appealable as a matter of right to the Court of Appeals. A probate court order is "final" if it qualifies as a final order under MCR 7.202(6)(a), or if it affects with finality the rights or interests of a party or an interested person in the subject matter, including, but not limited to, orders:

(a1) appointing or removing a fiduciary, or trust protector as defined in MCL 700.7103(n), or denying such an appointment or removal;

(b2) admitting or denying to probate of a will, codicil, or other testamentary instrument;

(e3) determining the validity of a governing instrument as defined in MCL 700.1104(km);

(e4) interpreting or construing a governing instrument as defined in MCL 700.1104(km);

(e5) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(km);

(f6) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;

(g7) granting or denying a petition to consolidate or divide trusts;

(h8) discharging or denying the discharge of a surety on a bond from further liability;

(i9) allowing, disallowing, or denying a claim;

(~~j~~10) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;

(~~k~~11) authorizing or denying the continuation of a business;

(~~l~~12) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;

(~~m~~13) authorizing or denying rights of election;

(~~n~~14) determining heirs, devisees, or beneficiaries;

(~~o~~15) determining title to or rights or interests in property;

(~~p~~16) authorizing or denying partition of property;

(~~q~~17) authorizing or denying specific performance;

(~~r~~18) ascertaining survivorship of parties;

(~~s~~19) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;

(~~t~~20) granting or denying a petition to determine cy pres;

(~~u~~21) directing or denying the making or repayment of distributions;

(~~v~~22) determining or denying a constructive trust;

(~~w~~23) determining or denying an oral contract relating to a will;

(~~x~~24) allowing or disallowing an account, fees, or administration expenses;

(~~y~~25) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);

(~~z~~26) determining or directing payment or apportionment of taxes;

(~~aa~~27) distributing proceeds recovered for wrongful death under MCL 600.2922;

(~~bb~~28) assigning residue;

(~~ee~~29) granting or denying a petition for instructions;

(~~dd~~30) authorizing disclaimers.

(~~ee~~31) allowing or disallowing a trustee to change the principal place of a trust's administration;

(~~ff~~32) affecting the rights and interests of an adult or a minor in a guardianship proceeding under MCL 700.1101 et seq., or the Mental Health Code, MCL 330.1600 et seq.;

(~~gg~~33) affecting the rights or interests of a person in a proceeding that ~~may~~ resultresults in an individual receiving involuntary mental health treatment under the Mental Health Code, MCL 330.1400 et seq., or judicial admission of an individual with a developmental disability to a center under the Mental Health Code, MCL 330.1500 et seq.

~~(B) Interlocutory Orders. An interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the Court of Appeals and only by leave of that court. The Court of Appeals shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.~~

(B) Appeal by Leave. Any judgment or order of the probate court which is not a final judgment or final order appealable of right may be appealed only to the Court of Appeals and only by leave of that court.

PROBATE AND ESTATE PLANNING SECTION

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October 12, 2016

Larry Royster, Clerk
Michigan Supreme Court
PO Box 30052
Lansing, Michigan 48909

Re: Proposed Amendments to MCR 5.801, 5.802, 7.102, 7.103, 7.108, 7.109,
7.203, 7.205, 7.208, 7.209, and 7.210

Dear Mr. Royster:

On behalf of the Council of the Probate and Estate Planning Section of the Michigan State Bar, please find attached proposed Rule changes to MCR 5.801, 5.802, 7.102, 7.103, 7.108, 7.109, 7.203, 7.205, 7.208, 7.209, and 7.210. Our proposal suggests changes to the Michigan Court Rules so that they are consistent with the following acts:

- Public Act 186 of 2016 which amended MCL 600.308, 600.846, 600.866, and 600.867, and repealed MCL 600.861 and 600.863. Effective 9-27-16.
- Public Act 287 of 2016 which amended MCL 700.1303. Effective 12-26-16.

The Probate and Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest. The positions expressed in this letter and attachments are those of the Probate and Estate Planning Section only and are not the positions of the State Bar of Michigan. In accordance with our procedures when taking public policy positions, please find enclosed two Reports on Public Policy Position relative to our proposed Rule changes.

Please let me know if you require any further information or have any questions.

Very truly yours,



Marlaine C. Teahan, Chair
Sub-committee on Probate Appeals
Litigation, Proceedings, and Forms Committee
Probate and Estate Planning Section

Enclosures: Redlined versions of the proposed MCR changes and Two Reports of Public Policy Position of the Probate Council

Via email to: MSC_Clerk@courts.mi.gov

Memorandum

Date: October 12, 2016
To: Larry Royster, Clerk of the Michigan Supreme Court
From: Probate and Estate Planning Section
Re: Suggested changes to various Rules in Chapters 5 and 7 of the Michigan Court Rules necessitated to conform the Court Rules to recent law changes occasioned by Public Act No.186 of 2016 and Public Act No. 287 of 2016.

Rule 5.801 Appeals to Other Courts

(A) **Right to Appeal of Right.** Pursuant to MCL 600.308(1), a final order affecting the rights or interests of either a party to a civil action in a probate court or aAn interested person in a proceeding aggrieved by an order ofin the probate court ismay appeal as provided by this rule.

(B) ~~Orders Appealable~~ as a matter of right to the Court of Appeals. Orders appealable of right to the Court of Appeals are defined as and A probate court order is "final" if it qualifies as a final order under MCR 7.202(6)(a), or if it affects with finality the rights or interests of a party or an interested person in the subject matter, including, but not limited to, orders the following:

~~(1) a final order affecting the rights or interests of a party to a civil action commenced in probate court under MCR 5.101(C).~~

~~(2) a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:~~

~~(1a) appointing or removing a fiduciarypersonal representative, conservator, trustee, or trust protector as referred todefined in MCL 700.7103(n), or denying such an appointment or removal;~~

~~(2b) admitting or denying to probate of a will, codicil, or other testamentary instrument;~~

~~(3e) determining the validity of a governing instrument as defined in MCL 700.1104(m);~~

~~(4d) interpreting or construing a governingtestamentary instrument or inter vivos trust as defined in MCL 700.1104(m);~~

~~(5e) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(m);~~

~~(6f) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;~~

~~(7g) granting or denying a petition to consolidate or divide trusts;~~

- (8h) discharging or denying the discharge of a surety on a bond from further liability;
- (9i) allowing, disallowing, or denying a claim;
- (10j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;
- (11k) authorizing or denying the continuation of a business;
- (12l) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;
- (13m) authorizing or denying rights of election;
- (14n) determining heirs, devisees, or beneficiaries;
- (15o) determining title to or rights or interests in property;
- (16p) authorizing or denying partition of property;
- (17q) authorizing or denying specific performance;
- (18r) ascertaining survivorship of parties;
- (19s) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
- (20t) granting or denying a petition to determine cy pres;
- (21u) directing or denying the making or repayment of distributions;
- (22v) determining or denying a constructive trust;
- (23w) determining or denying an oral contract relating to a will;
- (24x) allowing or disallowing an account, fees, or administration expenses;
- (25y) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
- (26z) determining or directing payment or apportionment of taxes;
- (27aa) distributing proceeds recovered for wrongful death under MCL 600.2922;
- (28bb) assigning residue;
- (29ee) granting or denying a petition for instructions;
- (30dd) authorizing disclaimers.
- (31ee) allowing or disallowing a trustee to change the principal place of a trust's administration;
- (32)
- ~~(3) other appeals as may be hereafter provided by statute.~~

~~(C) Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:~~

~~(1) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding under MCL 700.1101 et seq., or the Mental Health Code, MCL 330.1600 et seq.;~~

~~(33)~~

~~(2) a final order affecting the rights or interests of a person in a proceeding that results in an individual receiving involuntary mental health treatment under the Mental Health Code, MCL 330.1400 et seq., or judicial admission of an individual with a developmental disability to a center under the Mental Health Code, MCL 330.1500 et seq., except for a final order affecting the rights or interests of a person in the estate of an individual with developmental disabilities.~~

~~(DB) Appeal by Leave/Interlocutory Orders. Any judgment or order of the probate court which is not a final judgment or final order appealable of right, interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit court of appeals and only by leave of that court. The circuit court shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.~~

~~(E) Transfer of Appeals From Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.~~

~~(F) Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.~~

MCR 5.802 Appellate Procedure; Stays Pending Appeal

(A-B) Unchanged.

(C) Stays Pending Appeals. An order removing or appointing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary's bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

Rule 7.102 Definitions

For purposes of this subchapter:

(1-8) Unchanged.

(9) "trial court" means the district, ~~probate~~, or municipal court from which the "appeal" is taken.

Rule 7.103 Appellate Jurisdiction of the Circuit Court

(A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere;

(2) ~~a final order of a probate court under MCR 5.801(C);~~

~~(3)~~ a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 et seq.; and

~~(34)~~ a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.

(B) Unchanged.

Rule 7.108 Stay of Proceedings; Bond; Review

(A-D) Unchanged.

~~(E) Probate Actions:~~

~~(1) The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.~~

~~(2) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).~~

Rule 7.109 Record on Appeal

(A) Unchanged.

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Unless otherwise provided by circuit court order or this subrule, the appellant shall order the full transcript of testimony and other proceedings in the trial court or agency. Under MCR 7.104(D)(2), a party must serve a copy of any request for transcript preparation on the opposing party and file a copy with the circuit court.

~~(b) In an appeal from probate court, only that portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.~~

~~(be)~~ On the appellant's motion, with notice to the appellee, the trial court or agency may order that no transcript or some portion less than the full transcript be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant.

(~~ce~~) The parties may stipulate that no transcript or some portion less than the full transcript be filed.

(~~de~~) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or agency and sent as the record of testimony in the action.

(B)(2-3) Unchanged.

(C-I) Unchanged.

Rule 7.203 Jurisdiction of the Court of Appeals

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) A final judgment or final order of the circuit court, ~~or~~ court of claims, or probate court, as defined in MCR 7.202(6), except a judgment or order of the circuit court

(a) on appeal from any other court or tribunal;

(b) in a criminal case in which the conviction is based on a plea of guilty or nolo contendere;

An appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right.

(2) A judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule;

(B) Appeal by Leave. The court may grant leave to appeal from:

(1) a judgment or order of the circuit court, court of claims, or probate court, that is not a final judgment appealable of right;

(2) a final judgment entered by the circuit court on appeal from any other court;

(3) a final order of an administrative agency or tribunal which by law is appealable to or reviewable by the Court of Appeals or the Supreme Court;

(4) any other judgment or order appealable to the Court of Appeals by law or rule;

(5) any judgment or order when an appeal of right could have been taken but was not timely filed.

(C – G) Unchanged

Rule 7.205 Application for Leave to Appeal

(A) Unchanged

(B)

(1-4) Unchanged

(5) ~~if the appeal is from a probate court order, 5 copies of the probate court's certification of the issue, as required by law;~~

(56) proof that a copy of the filed documents was served on all other parties; and

(67) the entry fee.

(C-H) Unchanged.

MCR 7.208 Authority of Court or Tribunal Appealed From

(A) - (C) Unchanged.

(D) Probate Actions. The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.

Former (D) – (I) renumbered as sections (E) – (J).

(ED) Supervision of Property. When an appeal is filed while property is being held for conservation or management under the order or judgment of the trial court, that court retains jurisdiction over the property pending the outcome of the appeal, except as the Court of Appeals otherwise orders.

(FE) Temporary Orders. A trial court order entered before final judgment concerning custody, control, and management of property; temporary alimony, support or custody of a minor child, or expenses in a domestic relations action; or a preliminary injunction, remains in effect and is enforceable in the trial court, pending interlocutory appeal, except as the trial court or the Court of Appeals may otherwise order.

(GF) Stays and Bonds. The trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders.

(HG) Matters Pertaining to Appointment of Attorney. Throughout the pendency of an appeal involving an indigent person, the trial court retains authority to appoint, remove, or replace an attorney except as the Court of Appeals otherwise orders.

(IH) Acts by Other Judges. Whenever the trial judge who has heard a case dies, resigns, or vacates office, or is unable to perform any act necessary to an appeal of a case within the time prescribed by law or these rules, another judge of the same court, or if another judge of that court is unavailable, another judge assigned by the state court administrator, may perform the acts necessary to the review process. Whenever a case is heard by a judge assigned from another court, the judicial acts necessary in the

preparation of a record for appeal may be performed, with consent of the parties, by a judge of the court in which the case was heard.

(J) Attorney Fees and Costs. The trial court may rule on requests for costs or attorney fees under MCR 2.403, 2.405, 2.625 or other law or court rule, unless the Court of Appeals orders otherwise.

MCR 7.209 Bond; Stay of Proceedings

(A) Effect of Appeal; Prerequisites.

(1) Except for an automatic stay pursuant to MCR 2.614(D) or [MCL 600.867](#), or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court's denial of the party's claim of governmental immunity.

(2) – (3) unchanged.

(B) Responsibility for Setting Amount of Bond in Trial Court.

(1) Civil Actions [and Probate Proceedings](#). Unless determined by law, or as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action or [probate proceeding](#) must be set by the trial court in an amount adequate to protect the opposite party.

(2) Unchanged.

(C) – (E) Unchanged.

(F) Conditions of Stay Bond.

(1) Civil Actions [and Probate Proceedings](#). In a bond filed for stay pending appeal in a civil action or [probate proceeding](#), the appellant shall promise in writing:

(a) – (e) Unchanged.

(2) Unchanged.

(G) Sureties and Filing of Bond; Service of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court that entered the order or judgment to be stayed.

(1) Civil Actions [and Probate Proceedings](#).

(a-f) Unchanged.

(2) Unchanged.

(H) – (I) Unchanged.

Rule 7.210 Record on Appeal

(A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

(1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court ~~in an estate or trust proceeding~~, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

(2) – (4) Unchanged.

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) Unchanged.

(b) In an appeal from probate court ~~in an estate or trust proceeding~~, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript.

(c) – (e) Unchanged.

(C) – (I) Unchanged.

PROBATE & ESTATE PLANNING SECTION

Respectfully submits the following position on:

*

MCR 5.802(C); MCR 7.208; MCR 7.209(A)(1), (B)(1), (F)(1);
(G)(1); MCL 600.867

*

The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 4,128.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 16. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

James B. Steward

E-Mail:

jamessteward@stewardsheridan.com

Regarding:

MCR 5.802(C); MCR 7.208; MCR 7.209(A)(1), (B)(1), (F)(1); (G)(1); MCL 600.867

Date position was adopted:

September 21, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

16 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

The Probate & Estate Planning Section Council supports jurisdiction and procedural changes that would direct all appeals from the Probate Courts to the Court of Appeals, rather than the bifurcated appellate process that currently splits appeals between the Circuit Courts and the Michigan Court of Appeals based on the subject matter. As part of these proposed changes, Probate & Estate Planning Section Council also supports an amendment to MCL 600.867 to provide that an appeal of right would trigger a 21-day automatic stay to permit the appellant to then file a motion for stay with the probate court. The process is analogous to that in circuit courts under MCR 2.614. Also as part of this proposed change, MCR 5.802(C) would be amended to clarify that the automatic-stay provision does not apply to an order that removes or appoints a fiduciary (current version omits "appoints" and some practitioners have taken this to mean that the portion of an order that appoints a fiduciary after removing a prior fiduciary is stayed), while MCR 7.208 would be amended to add new MCR 7.08(D), and MCR 7.209(A)(1), (B)(1), (F)(1); (G)(1) would be amended to be consistent with the other changes.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?mcl-600-867>

<http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter5ProbateCourt.pdf>

<http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter7AppellateRules.pdf>

PROBATE & ESTATE PLANNING SECTION

Respectfully submits the following position on:

*

MCR 5.801, MCR 7.102(9), MCR 7.103(A)(2), MCR 7.108(E)(1
and 2), MCR 7.109(B)(1)(b), MCR 7.210(A)(I) and MCR
7.210(B)(1)(b)

*

The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 4,128.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 19. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

James B. Steward

E-Mail:

jamessteward@stewardsheridan.com

Regarding:

MCR 5.801, MCR 7.102(9), MCR 7.103(A)(2), MCR 7.108(E)(1 and 2), MCR 7.109(B)(1)(b), MCR 7.210(A)(l) and MCR 7.210(B)(1)(b)

Date position was adopted:

October 12, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

19 Voted for position

0 Voted against position

0 Abstained from vote

4 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

Previously, on September 21, 2013, the Probate & Estate Planning Section Council voted to recommend changes as part of the court of appeals jurisdiction and procedural changes that would direct all appeals from the Probate Courts to the Court of Appeals, rather than the bifurcated appellate process that currently splits appeals between the Circuit Courts and the Michigan Court of Appeals based on the subject matter. As part of this appellate jurisdiction change, the Probate & Estate Planning Section Council has now also voted to recommend changes to MCR 5.801, MCR 7.102(9), MCR 7.103(A)(2), MCR 7.108(E)(1 and 2), MCR 7.109(B)(1)(b), MCR 7.210(A)(l) and MCR 7.210 (B)(1)(b) to coordinate with the statutory jurisdiction changes.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter5ProbateCourt.pdf>

<http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter7AppellateRules.pdf>

Marlaine Teahan

From: Marlaine Teahan
Sent: Monday, October 24, 2016 2:19 PM
To: 'Robin Eagleson'
Cc: Murkowski,David (DAVID.MURKOWSKI@KENTCOUNTYMI.GOV); Shaheen Imami (sii@probateprince.com); Gary Chambon; jzimmer@courts.mi.gov; Anne Boomer <BoomerA@courts.mi.gov> (BoomerA@courts.mi.gov); JV Anderton (jfanterton@loomislaw.com); Ispeaker@speakerlaw.com; James Steward (jamessteward@stewardsheridan.com)
Subject: Probate court rules -- proposed amendments to rules

Dear Robin:

Thank you for your time today. I am writing to confirm our conversation in which we discussed the following changes to various Michigan Court Rules:

- The title to Rule 5.801 will be "Appeals to Court of Appeals."
- Rule 5.801, Paragraphs (A) and (B) will be combined, as I originally had it in my original submission. Paragraph (A) will be called "Appeal of Right," and paragraph (B) will be called "Appeal By Leave." There will be no other paragraphs in Rule 5.801.
- In the laundry list of matters that are appealable of right, subparagraph (1) will be retained with subparagraph (2) being crossed out. The new subparagraph two, which was 5.801(B)(a), will be written as previously submitted with fiduciary added and personal representative, conservator, and trustee being deleted, with "referred to" deleted and the word "defined" inserted instead.
- In the laundry list, every time that a governing instrument is referred to, you will put back in the statutory reference, as originally submitted.
- In the laundry list, under your version subparagraphs (33) and (34) were changed. You have indicated you will discuss with Judge Mack your version is against the version we originally submitted for his review and final approval.
- In Rule 7.102(9), you will strike out the word probate, as originally submitted.
- In Rule 7.109, you will add in references to additional paragraphs that remain unchanged, as follows: (C) – (I).
- In Rule 7.202(6)(a)(vi)- (xv) – I have no comments to your additions. I think we will have to wait to see the feedback in the comment period. My committee was sent this language and I received no comments for or against. Also, being appellate practice section also receive this information and it was on their agenda last week. I received no comments for or against these additions; however, it is my understanding that the appellate practice section will review and comment during the comment. It is my understanding that the probate and estate planning section will do likewise.
- Rule 7.212 – while I did not give you any specific reference, I have been advised that if the priority of cases changes, you may wish to look at the brief filing requirements under this rule for any needed changes.
- Rule 7.213, priority of cases on the calendar -- these additions were not our additions. Today, I gave you some suggestions for the wording of your language for (C)(2); however, our committee has not commented on these additions.

If you have any questions about the comments above, please let me know.

Marlaine C. Teahan | Shareholder | Fraser Trebilcock
p: 517.377.0869 f: 517.482.0887
a: 124 W. Allegan Street, Suite 1000 Lansing, MI 48933

Order

Michigan Supreme Court
Lansing, Michigan

November 23, 2016

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2016-32

Stephen J. Markman

Brian K. Zahra

Bridget M. McCormack

David F. Viviano

Richard H. Bernstein

Joan L. Larsen,

Justices

Proposed Amendment of
Rule 5.801, 5.802, 7.102, 7.103,
7.108, 7.109, 7.202, 7.203, 7.205,
7.208, 7.209, 7.210, 7.212, and 7.213 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 5.801, 5.802, 7.102, 7.103, 7.108, 7.109, 7.202, 7.203, 7.205, 7.208, 7.209, 7.210, 7.212, and 7.213 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 5.801 Appeals to ~~Other Courts~~ Court of Appeals

(A) ~~Right to Appeal. An interested person aggrieved by an order of the probate court may appeal as provided by this rule.~~

(AB) ~~Orders Appealable to Court of Appeals~~ Appeal of Right. Orders appealable of right to the Court of Appeals are defined as and limited to the following Pursuant to MCL 600.308(1), a final order affecting the rights or interests of either a party to a civil action in a probate court or an interested person in a proceeding in the probate court is appealable as a matter of right to the Court of Appeals. A probate court order is “final” if it qualifies as a final order under MCR 7.202(6)(a), or if it affects with finality the rights or interests of a party or an interested person in the subject matter, including, but not limited to, the following orders:

- (1) a final order affecting the rights or interests of a party to a civil action commenced in the probate court under MCR 5.101(C);
- ~~(2) a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:~~
 - (2a) appointing or removing a ~~personal representative, conservator, trustee, fiduciary~~ or trust protector as ~~referred to~~ defined in MCL 700.7103(n), or denying such an appointment or removal;
 - (3b) admitting or denying to probate of a will, codicil, or other testamentary instrument;
 - (4e) determining the validity of a governing instrument as defined in MCL 700.1104(m);
 - (5d) interpreting or construing a governing instrument as defined in MCL 700.1104(m);
 - (6e) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(m);
 - (7f) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;
 - (8g) granting or denying a petition to consolidate or divide trusts;
 - (9h) discharging or denying the discharge of a surety on a bond from further liability;
 - (10i) allowing, disallowing, or denying a claim;
 - (11j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;
 - (12k) authorizing or denying the continuation of a business;
 - (13l) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;

- (~~14m~~) authorizing or denying rights of election;
- (~~15n~~) determining heirs, devisees, or beneficiaries;
- (~~16o~~) determining title to or rights or interests in property;
- (~~17p~~) authorizing or denying partition of property;
- (~~18q~~) authorizing or denying specific performance;
- (~~19r~~) ascertaining survivorship of parties;
- (~~20s~~) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
- (~~21t~~) granting or denying a petition to determine *cy pres*;
- (~~22u~~) directing or denying the making or repayment of distributions;
- (~~23v~~) determining or denying a constructive trust;
- (~~24w~~) determining or denying an oral contract relating to a will;
- (~~25x~~) allowing or disallowing an account, fees, or administration expenses;
- (~~26y~~) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
- (~~27z~~) determining or directing payment or apportionment of taxes;
- (~~28aa~~) distributing proceeds recovered for wrongful death under MCL 600.2922;
- (~~29bb~~) assigning residue;
- (~~30cc~~) granting or denying a petition for instructions;
- (~~31dd~~) authorizing disclaimers;
- (~~32ee~~) allowing or disallowing a trustee to change the principal place of a trust's administration;
- (~~33~~) affecting the rights and interests of an adult or a minor in a guardianship proceeding under the Estates and Protected Individuals Code;

- (34) affecting the rights or interests of a person under the Mental Health Code;
- (353) other appeals as may be hereafter provided by statute~~law~~.
- (C) ~~Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:~~
- (1) ~~a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding;~~
 - (2) ~~a final order affecting the rights or interests of a person under the Mental Health Code, except for a final order affecting the rights and interests of a person in the estate of an individual with developmental disabilities.~~
- (BD) Appeal by Leave~~Interlocutory Orders. Any judgment or order of the probate court which is not a final judgment or final order appealable of right~~ interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit court of Appeals and only by leave of that court. The circuit court shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.
- (E) ~~Transfer of Appeals from Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.~~
- (F) ~~Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.~~

Rule 5.802 Appellate Procedure; Stays Pending Appeal

(A)-(B) [Unchanged.]

- (C) Stays Pending Appeals. An order removing or appointing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary's bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

Rule 7.102 Definitions

For purposes of this subchapter:

(1)-(8) [Unchanged.]

- (9) “trial court” means the district,~~probate~~, or municipal court from which the “appeal” is taken.

Rule 7.103 Appellate Jurisdiction of the Circuit Court

- (A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) [Unchanged.]

~~(2) a final order of a probate court under MCR 5.801(C);~~

~~(23)~~ a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 *et seq.*; and

~~(34)~~ a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.

(B) [Unchanged.]

Rule 7.108 Stay of Proceedings; Bond; Review

(A)-(D) [Unchanged.]

~~(E) Probate Actions.~~

- ~~(1) The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.~~
- ~~(2) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).~~

Rule 7.109 Record on Appeal

(A) [Unchanged.]

(B) Transcript.

(1) *Appellant's Duties; Orders; Stipulations.*

(a) [Unchanged.]

~~(b) In an appeal from probate court, only that portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.~~

(c)-(e) [Relettered (b)-(d) but otherwise unchanged.]

(2)-(3) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 7.202 Definitions

For purposes of this subchapter:

(1)-(5) [Unchanged.]

(6) "final judgment" or "final order" means:

(a) In a civil case,

(i)-(v) [Unchanged.]

(vi) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after a reversal of an earlier final judgment or order commenced in the probate court under MCR 5.101(C);

- (vii) a final order, as defined in MCR 5.801(B), affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, an inter vivos trust or a trust created under a will, a guardianship proceeding of an adult or minor under the Estates and Protected Individuals Code, or a mental health proceeding under the Mental Health Code.

(b) [Unchanged.]

Rule 7.203 Jurisdiction of the Court of Appeals

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

- (1) A final judgment or final order of the circuit court, probate court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court

(a)-(b) [Unchanged.]

(2) [Unchanged.]

(B) Appeal by Leave. The court may grant leave to appeal from:

- (1) a judgment or order of the circuit court ~~and~~, probate court, or court of claims that is not a final judgment appealable of right;

(2)-(5) [Unchanged.]

(C)-(G) [Unchanged.]

Rule 7.205 Application for Leave to Appeal

(A) [Unchanged.]

(B) Manner of Filing. To apply for leave to appeal, the appellant shall file with the clerk:

(1)-(4) [Unchanged.]

- ~~(5)~~ ~~if the appeal is from a probate court order, 5 copies of the probate court's certification of the issue, as required by law;~~
- (56) proof that a copy of the filed documents was served on all other parties; and
- (67) the entry fee.

(C)-(H) [Unchanged.]

Rule 7.208 Authority of Court or Tribunal Appealed From

(A)-(C) [Unchanged.]

(D) Probate Actions. The probate court retains continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.

(D)-(I) [Relettered (E)-(J) but otherwise unchanged.]

Rule 7.209 Bond; Stay of Proceedings

(A) Effect of Appeal; Prerequisites.

- (1) Except for an automatic stay pursuant to MCR 2.614 or MCL 600.867, or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court's denial of the party's claim of governmental immunity.

(2)-(3) [Unchanged.]

(B) Responsibility for Setting Amount of Bond in Trial Court.

- (1) Civil Actions and Probate Proceedings. Unless determined by law, or as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action or probate proceeding must be set by the trial court in an amount adequate to protect the opposite party.

(2) [Unchanged.]

(C)-(E) [Unchanged.]

(F) Conditions of Stay Bond.

- (1) Civil Actions and Probate Proceedings. In a bond filed for stay pending appeal in a civil action or probate proceeding, the appellant shall promise in writing:

- (a)-(e) [Unchanged.]

- (2) [Unchanged.]

- (G) Sureties and Filing of Bond; Service of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court that entered the order or judgment to be stayed.

- (1) Civil Actions and Probate Proceedings.

- (a)-(g) [Unchanged.]

- (2) [Unchanged.]

- (H)-(I) [Unchanged.]

Rule 7.210 Record on Appeal

- (A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

- (1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court ~~in an estate or trust proceeding~~, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

- (2)-(4) [Unchanged.]

- (B) Transcript.

- (1) Appellant's Duties; Orders; Stipulations.

- (a) [Unchanged.]

- (b) In an appeal from probate court ~~in an estate or trust proceeding~~, only that portion of the transcript concerning the order appealed from

need be filed. The appellee may file additional portions of the transcript.

(c)-(e) [Unchanged.]

(2)-(3) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 7.212 Briefs

(A) Time for Filing and Service.

(1) *Appellant's Brief.*

(a) Filing. The appellant shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) 28 days after the claim of appeal is filed, the order granting leave is certified, the transcript is filed with the trial court, or a settled statement of facts and certifying order is filed with the trial court or tribunal, whichever is later, in a child custody case, adult or minor guardianship case under the Estates and Protected Individuals Act or under the Mental Health Code, mental illness cases under the Mental Health Code, or an interlocutory criminal appeal. This time may be extended only by the Court of Appeals on motion; or

(ii)-(iii) [Unchanged.]

(b) [Unchanged.]

(2) *Appellee's Brief.*

(a) Filing. The appellee shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) 21 days after the appellant's brief is served on the appellee, in an interlocutory criminal appeal, adult or minor guardianship case under the Estates and Protected Individuals Act or under the Mental Health Code, mental illness cases under the Mental Health Code, or a child custody case. This time may be extended only by the Court of Appeals on motion;

(ii) [Unchanged.]

(3)-(5) [Unchanged.]

(B)-(I) [Unchanged.]

Rule 7.213 Calendar Cases

(A)-(B) [Unchanged.]

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

(1) [Unchanged.]

(2) child custody cases, guardianship cases under the Estates and Protected Individuals Act and under the Mental Health Code, and mental illness cases under the Mental Health Code.

(3)-(7) [Unchanged.]

(D)-(E) [Unchanged.]

Staff Comment: The proposed amendments of Rules 5.801, 5.802, 7.102, 7.103, 7.108, 7.109, 7.202, 7.203, 7.205, 7.208, 7.209, 7.210, 7.212, and 7.213 of the Michigan Court Rules would require all appeals from probate court to be heard in the Court of Appeals, instead of the bifurcated system that previously required some probate appeals to be heard in the Court of Appeals and some to be heard in the local circuit court. The proposal also would establish priority status for appeals in guardianship and mental illness cases, similar to child custody cases.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this 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 March 1, 2017, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-32. 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.

November 23, 2016

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

Clerk