

Update on Statutory and Court Rule Changes
Affecting Probate Law Practice
GAL Training Seminar
December 2017

Recent Changes in Probate Laws

1. Qualified Dispositions in Trust Act
2016 PA 330 Effective March 8, 2017
2. Power of Attorney to Care for a Minor
2016 PA 483 Effective March 29, 2017
MCL 700.5103(2)
3. Guardian/Conservator Jurisdiction
2016 PA 498 Effective April 6, 2017
MCL 700.5301b, 700.5402a
4. Dower Repealed
2016 PA 490 Effective April 6, 2017
5. Probate Appeals to Court of Appeals
2016 PA 186 Effective June 21, 2016
2016 PA 287 Effective December 26, 2016
2016 PA 490 Effective April 6, 2017
6. Exceptions to Definition of Surviving Spouse Re: Funeral Representative
2017 PA 20 Effective June 29, 2017
MCL 700.2801
7. Professional Guardian/Conservator Compensation
2017 PA 136 Effective January 24, 2018
8. Guardian Authorization for Fingerprinting/Photographing Adult or Minor with Special Health Care Needs
2017 PA 25 Effective August 2, 2017
2017 PA 24 Effective August 2, 2017
9. Physician Orders for Scope of Treatment Forms, Authorization of Guardians to Sign, Responsibilities of Guardian ad Litem
2017 PA 154
2017 PA 155

Court Rule Changes – Probate Appeals
ADM 2016-32 Effective June 21, 2017
MCR 5.801 – 5.802 – attached

Pending Legislation – List attached

Proposed Court Rule Changes – List attached

SUBCHAPTER 5.800 APPEALS

RULE 5.801 APPEALS TO COURT OF APPEALS

(A) Appeal of Right. A party or an interested person aggrieved by a final order of the probate court may appeal as a matter of right as provided by this rule.

Orders appealable of right to the Court of Appeals are defined as and limited to the following:

- (1) a final order, as defined in MCR 7.202(6)(a), 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:
 - (a) appointing or removing a fiduciary or trust protector as defined in MCL 700.7103(n), or denying such an appointment or removal;
 - (b) admitting or denying to probate of a will, codicil, or other testamentary instrument;
 - (c) determining the validity of a governing instrument as defined in MCL 700.1104(m);
 - (d) interpreting or construing a governing instrument as defined in MCL 700.1104(m);
 - (e) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(m);
 - (f) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;
 - (g) granting or denying a petition to consolidate or divide trusts;
 - (h) discharging or denying the discharge of a surety on a bond from further liability;
 - (i) allowing, disallowing, or denying a claim;
 - (j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;
 - (k) authorizing or denying the continuation of a business;
 - (l) determining special allowances in a decedent's estate such as a homestead allowance, an exempt property allowance, or a family allowance;

- (m) authorizing or denying rights of election;
 - (n) determining heirs, devisees, or beneficiaries;
 - (o) determining title to or rights or interests in property;
 - (p) authorizing or denying partition of property;
 - (q) authorizing or denying specific performance;
 - (r) ascertaining survivorship of parties;
 - (s) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;
 - (t) granting or denying a petition to determine *cy pres*;
 - (u) directing or denying the making or repayment of distributions;
 - (v) determining or denying a constructive trust;
 - (w) determining or denying an oral contract relating to a will;
 - (x) allowing or disallowing an account, fees, or administration expenses;
 - (y) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
 - (z) determining or directing payment or apportionment of taxes;
 - (aa) distributing proceeds recovered for wrongful death under MCL 600.2922;
 - (bb) assigning residue;
 - (cc) granting or denying a petition for instructions;
 - (dd) authorizing disclaimers.
 - (ee) allowing or disallowing a trustee to change the principal place of a trust's administration;
 - (ff) adoption assistance determinations pursuant to MCL 400.115k;
- (3) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding under the Estates and Protected Individuals Code;
- (4) a final order affecting the rights or interests of a person under the Mental Health Code;
- (5) an order entered in a probate proceeding, other than a civil action commenced in a probate court, that otherwise affects with finality the rights or interests of a party or an interested person in the subject matter; or

(6) other appeals as provided by law.

(B) Appeal by Leave. All orders of the probate court not listed in subrule (A) are appealable to the Court of Appeals by leave of that court.

RULE 5.802 APPELLATE PROCEDURE; STAYS PENDING APPEAL

(A) Procedure. Except as modified by this subchapter, chapter 7 of these rules governs appeals from the probate court.

(B) Record.

(1) An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court.

(2) The probate register may transmit certified copies of the necessary documents and papers in the file if the original papers are needed for further proceedings in the probate court. The parties shall not be required to pay for the copies as costs or otherwise.

(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.

Search Results

(12 found)

Search Criteria: Legislative Session = 2017-2018; Full Text (Bill Documents Only) = "Probate"; Full Text = "Probate"

| Document | Type | Description |
|--------------------------------------|-------------|---|
| SB 0049 of 2017 (PA 0136 of 2017) | Senate Bill | Probate; guardians and conservators; provision related to compensation for professional guardian or professional conservator; modify. Amends sec. 5106 of 1998 PA 386 (MCL 700.5106). |
| SB 0598 of 2017 | Senate Bill | Probate; patient advocates; court determination of whether a patient advocate is acting within his or her authority or in a patient's best interest; provide for. Amends secs. 5306, 5311 & 5508 of 1998 PA 386 (MCL 700.5306 et seq.). |
| HB 4171 of 2017 (PA 155 of 2017) | House Bill | Probate; guardians and conservators; physician orders for scope of treatment form; authorize a guardian to sign. Amends secs. 1106, 5303, 5305 & 5314 of 1998 PA 386 (MCL 700.1106 et seq.). |
| HB 4752 of 2017 | House Bill | Probate; wills and estates; fee ratio and reporting requirement; revise, and remove sunset. Amends secs. 871 & 877 of 1961 PA 236 (MCL 600.871 & 600.877). |
| HB 4753 of 2017 | House Bill | Juveniles; criminal procedure; specified juvenile violation definition; modify in probate code of 1939. Amends secs. 2 & 2d, ch. XIIA of 1939 PA 288 (MCL 712A.2 & 712A.2d). |
| HB 4821 of 2017 | House Bill | Probate; wills and estates; appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding; require, and modify powers and duties of public administrators acting as personal representatives. Amends secs. 3203, 3204 & 3414 of 1998 PA 386 (MCL 700.3203 et seq.). TIE BAR WITH: HB 4822'17 |
| HB 4822 of 2017 | House Bill | Probate; wills and estates; appointment of the state or county public administrator as personal representative of a decedent's estate in a formal proceeding; require, and modify powers and duties of public administrators acting as personal representatives. Amends secs. 3705, 3715 & 3721 of 1998 PA 386 (MCL 700.3705 et seq.). TIE BAR WITH: HB 4821'17 |
| HB 4996 of 2017 | House Bill | Probate; guardians and conservators; notification requirements of guardians; expand. Amends secs. 5308, 5310 & 5314 of 1998 PA 386 (MCL 700.5308 et seq.). |
| HB 5037 of 2017 | House Bill | Probate; guardians and conservators; power of guardian to implant a tracking device with a ward; provide for. Amends sec. 5314 of 1998 PA 386 (MCL 700.5314). |
| HB 5075 of 2017 | House Bill | Probate; patient advocates; court determination of whether a patient advocate is acting within his or her authority or in a patient's best interest; provide for. Amends secs. 5306, 5311 & 5508 of 1998 PA 386 (MCL 700.5306 et seq.). |
| HB 5153 of 2017 | House Bill | Probate; guardians and conservators; nonopiod directive form; allow a guardian to execute. Amends secs. 1106 & 5314 of 1998 PA 386 (MCL 700.1106 & 700.5314). TIE BAR WITH: HB 5152'17 |
| HB 5202 of 2017 | House Bill | Courts; probate court; jurisdiction of probate court over individuals less than 18 years of age who commit certain prostitution-related crimes; provide for. Amends sec. 2, ch. XIIA |

of 1939 PA 288 (MCL 712A.2). TIE BAR WITH: HB 5203'17, HB
5204'17, HB 5205'17, HB 5206'17

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Proposed & Recently Adopted Orders on Admin Matters

Chapter 5 Probate Court

2002-37 - PROPOSED RULES RELATED TO E-FILING AND ELECTRONIC RECORDS

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|-----------------------------------|--|
| Proposed Amendment: | Proposed Amendment Rules 1.109, 2.107, 2.113, 2.114, 3.206, 3.901, 3.931, 3.961, 4.302, <u>5.113</u> , <u>5.114</u> , 6.001, 6.101, 8.117, and 8.119 of the Michigan Court Rules |
| Issued: | September 20, 2017 |
| Comment Period Expiration: | January 1, 2018 |
| Public Hearing: | |

Comments:

- Tamara Phillips, Genesee County Prosecutors Office (11/6/17)

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| Adopted or Other Action: | |
| Issued: | |
| Effective: | |

2016-14 - "HOUSEKEEPING" AMENDMENTS OF COURT RULES UPDATE CROSS-REFERENCES AND MAKE VARIOUS NONSUBSTANTIVE REVISIONS

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| Adopted: | Amendments of MCR 2.614, 3.903, 3.923, 3.943, 3.955, 3.979, <u>5.140</u> , 6.445, 7.203, 7.209, 7.312, 8.108, 9.122, and 9.126 |
| Issued: | December 14, 2016 |
| Effective: | Immediately |

2016-32 - PROPOSED AMENDMENTS WOULD DIRECT ALL APPEALS OF PROBATE COURT ORDERS TO THE COURT OF APPEALS

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| Proposed Amendment: | Proposed Amendments of MCR <u>5.801</u> , <u>5.802</u> , 7.102, 7.103, 7.108, 7.109, 7.202, 7.203, 7.205, <u>7.208</u> , <u>7.209</u> , <u>7.210</u> , 7.212, and 7.213 |
| Issued: | November 23, 2016 |
| Comment Period Expiration: | March 1, 2017 |
| Public Hearing: | May 17, 2017 |

Comments:

- Michigan Court of Appeals (Chief Judge Michael J. Talbot) (2/23/17)
- Michigan Department of Health and Human Services (2/28/17)
- State Bar of Michigan Board of Commissioners (2/28/17)
- Probate & Estate Planning Section of the State Bar of Michigan (2/28/17)
- Michigan Probate Judges Association (5/15/17)

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| Adopted or Other Action: | Amendments of Rules <u>5.801</u> , <u>5.802</u> , 7.102, 7.103, 7.108, 7.109, 7.204, 7.205, 7.208, 7.209, 7.210, 7.212, and 7.213 of the Michigan Court Rules |
| Issued: | June 21, 2017 |
| Effective: | Immediately |

2013-18 - PROPOSED AMENDMENTS WOULD PERMIT EXPANSION OF VIDEOCONFERENCING TECHNOLOGY IN MANY COURT PROCEEDINGS

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| Proposed Amendment: | Proposed Amendments of Rules 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, <u>5.119</u> , <u>5.140</u> , <u>5.402</u> , <u>5.404</u> , <u>5.738a</u> , 6.006, and 6.901 |
| Issued: | March 23, 2016 |
| Comment Period Expiration: | July 1, 2016 |
| Public Hearing: | September 14, 2016 |

Comments:

- Bruce A. Timmons (5/25/16)
- The Honorable Thomas P. Boyd, Michigan District Judges Ass'n (6/27/16)
- Dawn Van Hoek, State Appellate Defender Office (6/29/16)
- Rebecca A. Schnelz, Oakland County Probate Court (6/29/16)
- The Honorable James M. Biernat, Macomb County Probate Court (6/30/16)
- The Honorable David M. Murkowski, Michigan Probate Judges Ass'n (6/30/16)
- The Honorable Freddie G. Burton, Jr., Wayne County Probate Court (6/30/16)
- John A. Shea, Co-Chair Rules and Laws Committee, Criminal Defense Attorneys of Michigan (7/5/16)
- Janet K. Welch, Executive Director, State Bar of Michigan, Board of Commissioners (7/25/16)
- Position of the Criminal Law Section of the State Bar of Michigan (8/2/16 received)
- Tom Robertson, Juvenile Court Referee, St. Joseph County (9/8/16)
- Sean Bennett, Civil Rights Advocate (9/12/16)

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| Adopted or Other Action: | Amendment of MCR 2.004, 3.705, 3.708, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, <u>5.140</u> , <u>5.404</u> , <u>5.738a</u> (deleted), 6.006, and 6.901 |
| Issued: | September 21, 2016 |

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| Effective: | January 1, 2017 |
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2016-06 - PROPOSAL WOULD STANDARDIZE THE MANAGEMENT OF COURT RECORDS

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| Proposed Amendment: | Proposed Amendments of MCR 3.925, 8.119, and 8.302 and Proposed New MCR <u>5.133</u> |
| Issued: | February 3, 2016 |
| Comment Period Expiration: | May 1, 2016 |
| Public Hearing: | May 18, 2016 |

Comments:

- The Honorable Laura Baird, President, Michigan Judges Association (2/25/16)
- Janet K. Welch, Executive Director, State Bar of Michigan (Board of Commissioners) (5/2/16)

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| Adopted or Other Action: | Amendments of MCR 3.925, 8.119, and 8.302 and Adoption of New MCR <u>5.133</u> |
| Issued: | May 25, 2016 |
| Effective: | January 1, 2017 |