

PROPOSED AMENDMENTS TO RULE 5.125 OF THE MICHIGAN COURT RULES

Issue

Should the Representative Assembly support amendments to Rule 5.125(C)(23) of the Michigan Court Rules to accommodate the service of minor guardianship reports?

Rule 5.125 Interested Person Defined

(A) – (B) – Unchanged

(C) Specific Proceedings.

(1) – (22) - Unchanged

(23) The persons interested in receiving a copy of the report of a guardian of a minor, or of a legally incapacitated individual, on the condition of the ward are:

(a) the ward, if 14 years of age or older;

(b) the person who has principal care and custody of the ward, if other than the guardian;

(c) for an adult guardianship, the spouse and adult children or, if no adult children are living, the presumptive heirs of the individual;

(d) for a minor guardianship, the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor.

(24) – (33) - Unchanged

Synopsis

This proposal comes from the Civil Procedure & Courts Committee, which discussed the proposal at its January 2016 meeting. Guardians of adults and minors are statutorily required to send copies of their reports to interested persons regarding the condition of the ward. The Court Rule governing service of these reports only addresses service of reports for adult wards; it fails to clearly specify the people who are to receive reports regarding minor wards. A glaring omission is that, as presently drafted, neither the parents nor the grandparents of the minor ward are to receive copies of the guardian's reports. The proposed additions to MCR 5.125(C)(23) are intended to address this omission and clearly identify required recipients of reports for both adult and minor wards.

Background

The Probate Court appoints guardians for minors and for legally incapacitated adults. Both types of guardians must file and serve annual reports on the condition of the ward.

Reporting:

Reporting requirements are required by statute. Reporting requirements for guardians of adults are found at MCL 700.5314(g):

The guardian shall report the condition of the ward and the ward's estate that is subject to the guardian's possessions or control, as required by the court, but not less often than annually.

Reporting requirements for guardians of minors are found at MCL 700.5215(f). The guardian for a minor:

...must report on the condition of the ward and of the ward's estate that is subject to the guardian's possession or control as ordered by the court on petition of a person interested in the minor's welfare or as required by court.

Clarification that minor guardians must report annually (and confirmation that adult guardians must do the same) is found in court rule at MCR 5.409(A):

A guardian shall file a written report annually within 56 days after the anniversary of appointment and at other times as the court may order. Reports must be substantially in the form approved by the state court administrator.

This is further confirmed in the Supreme Court-approved forms for adult and minor guardians (PC634 and PC654) – both cite MCR 5.409(A) and both are entitled “annual” reports.

Service

MCL 700.5314(g) clearly provides for the service of the adult guardian's report on interested persons:

The guardian shall also serve the report required under this subdivision on the ward and interested persons as specified in the Michigan court rules.

The statute is silent regarding the service requirements for minor guardian's reports, but service is required at MCR 5.409(A), the court rule provision covering reports by both adult and minor guardians:

The guardian must serve the report on the persons listed in MCR 5.125(C)(23).

The Problem.

MCR 5.409(A) mandates that the guardian serve his or her report on the persons listed in MCR 5.125(23). When one turns to MCR 5.125(C)(23), one finds a list of the persons interested in receiving a copy of the report of a guardian of a legally incapacitated individual on the condition of a ward. However, the list only addresses adult wards. There is no listing of persons entitled to receive a copy of reports concerning minor wards.

Pursuant to MCR 5.125(C)(23), the people to receive the report are

- (a) The ward
- (b) The person who has principal care and custody of the ward, and
- (c) The spouse and adult children or, if no adult children are living, the presumptive heirs of the individual.

Hence, if one is a guardian of a minor, you are directed to MCR 5.409(A) for clarification that you must file your report on the condition of your ward annually, but then are told you must serve the report on a list of individuals clearly designed only for adult guardianships.. For instance, MCR 5.125(C)(23), as currently drafted, does not include the minor ward's parents as persons who are entitled to service of the report.

The simplest way to address this omission is to leave MCR 5.409(A) the way it is and change MCR 5.125(C)(23) to accommodate the service of minor guardianship reports.

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on April 30, 2016

Should the Representative Assembly support amendments to Rule 5.125(C)(23) of the Michigan Court Rules to accommodate the service of minor guardianship reports?

(a) Yes

or

(b) No