

APPELLATE PRACTICE SECTION  
Respectfully submits the following position on:

\*  
ADM File No. 2011-30

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The Appellate Practice 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 Appellate Practice 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 Appellate Practice Section is 667.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 20. The number who voted in favor to this position was 17. The number who voted opposed to this position was 0. The number who abstained from voting was 1.

**Report on Public Policy Position****Name of section:**

Appellate Practice Section

**Contact person:**

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**Proposed Court Rule or Administrative Order Number:**

[2011-30 Proposed Amendment of Rules 5.801, 7.102, 7.103, 7.108, and Rule 7.109 of the Michigan Court Rules](#)

The proposed amendments were submitted to this Court by the State Bar of Michigan Probate and Estate Planning Section in conjunction with the Michigan Judges Association, Michigan Probate Judges Association, and the Michigan Court of Appeals. The proposed changes would direct that all appeals from probate court be considered by the Court of Appeals instead of some orders being appealed to the Court of Appeals and other orders being appealed to the circuit court.

**Date position was adopted:**

April 20, 2012

**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:**

20

**Number who voted in favor and opposed to the position:**

17 Voted for position

0 Voted against position

1 Abstained from vote

2 Did not vote

**Position:**

Support and Amend

**Explanation of the position, including any recommended amendments:**

ADM 2011-30 represents a significant improvement to appeals in the probate arena. This Court's promulgation into court rule of the proposed amendment contained in ADM 2011-30, along with the revisions proposed by the Appellate Practice Section, will improve the administration of justice and eliminate the confusion that exists under the current rules which directs appeals from the probate court to both the circuit court and the Court of Appeals. The current rules also create the problem where a single order results in two separate appeals to two different

courts. For example, in a guardianship-conservatorship file, there would be an appeal by right to the Court of Appeals on the conservatorship issues and an appeal by right to the Circuit Court on the guardianship issues.

The Section's proposed revisions to ADM 2011-30 do not alter the intent of ADM 2011-30, but instead address concerns raised regarding jurisdiction and clarify the intent of the final order rule.

The Section approved three main changes to ADM 2011-30: (1) adding language to MCR 5.801(A) to clarify that the rule does not apply to probate court decisions under the Drain Code and Public Health Code, and (2) retaining the laundry list of appeals by right contained in the current version of MCR 5.801(B)(1)(a)-(ee), and changing the rule so that list will no longer be an exclusive list, and (3) adding language to the laundry list in MCR 5.801(B)(1) to include guardianship appeals and appeals from involuntary commitment proceedings.

Taking into account both the proposed amendment in ADM 2011-30 and the Section's proposed revisions of ADM 2011-30, the modified court rule would read as follows:

(A) General Provisions. A party to a civil action or an interested person in a proceeding aggrieved by an order of the probate court may appeal as provided by this rule, except for those appeals of an order of the probate court under the Drain Code of 1956, MCL 280.1 et seq and the Public Health Code, MCL 333.1101 et seq.

(B) Right to Appeal. A final order affecting the rights or interests of a party to a civil action or of 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:

- (a) appointing or removing a personal representative, conservator, trustee, or trust protector as referred to 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;
- (d) interpreting or construing a testamentary instrument or inter vivos trust;
- (e) approving or denying a settlement relating to a governing instrument;
- (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) affecting the rights and interests of an adult or minor in a guardianship proceeding under the Estates and Protected Individuals Code, MCL 700.1101 et seq., or the Mental Health Code, MCL 330.1600 et seq.;

(gg) affecting the rights or interests of a person in a proceeding that may result 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.

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

[http://courts.michigan.gov/supremecourt/Resources/Administrative/2011-30\\_2012-02-01\\_order.pdf](http://courts.michigan.gov/supremecourt/Resources/Administrative/2011-30_2012-02-01_order.pdf)