



Report on Public Policy Position

Name of Section:

Probate & Estate Planning

Contact Person:

Henry M. Grix

Email:

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Proposed Court Rule:

File No. 2003-60 - Proposed Amendment of 5.125 of the Michigan Court Rules

Date position was adopted:

January 17, 2004

Process used to take the ideological position:

Discussion at Council meeting and recommendation of subcommittee on Court Rules and Administration of Justice

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

20 in favor; none opposed

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

See attached letter

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

N/A

February 6, 2004

Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

**Re: ADM File No. 2003-60
Proposed Amendment of MCR 5.125**

Dear Clerk of the Supreme Court:

I am writing on behalf of the Probate and Estate Planning Council, the governing body of the Probate and Estate Planning Section of the State Bar of Michigan. At the January 17, 2004 meeting of the Probate and Estate Planning Council, the Council directed me to convey our comment upon the proposed addition of a subsection (f) to Michigan Court Rule 5.125(C)(6). The Council proposes the following subsection (f) in complete substitution of the published language:

(f) *sureties whose interests are adversely affected by the relief requested.*

The Council believes that sureties on bonds (a more accurate term than "insurers") should be notified of an account when their interests could be adversely affected because the account is being challenged or a surcharge of the fiduciary is being requested. In cases where an account is uncontested, however, the allowance of the account relieves the surety of liability. Thus, we propose that the rule be limited to those situations where the interest of a surety may be adversely affected. The staff comment to the rule change could be revised as follows:

MCR 5.125 has been amended to add sureties as interested persons who must receive notice of a proceeding for an examination of an account of a fiduciary if the surety would be adversely affected by the relief sought.

Thank you for your attention to this comment.

Very truly yours,

Henry M. Grix
Chairperson
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cc: Hon. Phillip E. Harter
Hon. John R. Monaghan
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