



MTC: New Court Forms and Rules

By Marlaine C. Teaban

Passage of the Michigan Trust Code (MTC) precipitated an update of State Court Administrative Office (SCAO) forms and Michigan Court Rules (MCRs). April 1, 2010 was the effective date of both the MTC and updated rules.

The MTC is a comprehensive trust code based on the Uniform Trust Code (UTC) that incorporates Michigan's statutory and common law to preserve longstanding principles, practices, and procedures of Michigan trust law. The drafters¹ of the MTC preserved Michigan law absent a compelling public policy reason for change. This approach was adopted by the Forms and Rules Committee of the Probate and Estate Planning Section Council.

SCAO Forms

Background

"A trust is not subject to continuing judicial supervision unless ordered by the court;"² therefore, the development of SCAO forms for trusts under the MTC was deemed unnecessary. Attorneys should develop their own forms and pleadings as needed.

Form Updates

PC 610, Registration of Trust, remains the only SCAO trust form. This form was updated to conform to the MTC.³ The MTC did not alter Michigan's law that registration of a trust is permissive, not mandatory.

Conforming changes were made to the Estates and Protected Individuals Code (EPIC) when the MTC was enacted. SCAO's Probate Forms Committee will meet in September to consider whether the conforming changes require updates to SCAO's general probate and estate forms.

Fast Facts:

Enactment of the Michigan Trust Code (MTC) required the amendment of several Michigan Court Rules and one SCAO court form.

A broad range of SCAO court forms will not be created for the MTC since courts do not routinely supervise trusts. Attorneys should create their own forms and pleadings as needed.



Michigan Court Rules

Background

Language in the MTC conflicted with many rules in Chapter 5 of the Michigan Court Rules. To resolve the inconsistencies, the Probate and Estate Planning Section Council and the Michigan Probate Judges Association jointly submitted proposed rule changes to the Supreme Court in October 2009.

On December 15, 2009, the Supreme Court issued ADM File No. 2009-26 setting forth proposed rule changes for Chapter 5. The Supreme Court approved the rule changes at a January 27, 2010 public hearing to take effect on April 1.

Rule Changes

The MCRs that were amended are 5.105, 5.125, 5.201, 5.501, 5.801, and 5.802. MCR 5.208 is new; MCRs 5.306 and 5.503 were deleted. Some rule changes are only conforming changes to the MTC.⁴ A few of the more significant changes include:

- MCR 5.105(B)(4) adds e-mail as a manner of service in probate court. Parties to a civil action or interested persons to a proceeding may agree to service by e-mail as provided in MCR 2.107(C)(4).
- MCR 5.125(C)(6)(f–h) adds the settlor of a revocable trust, those persons listed in MCL 700.7603(2),⁵ and the current trustee to the list of interested persons in a proceeding for examination of an account of a fiduciary. Subrules MCR 5.125(C)(6)(f and g) were renumbered to MCR 5.125(C)(6)(i and j).
- MCR 5.125(C)(32) is new; former MCR 5.125(C)(32) was renumbered as MCR 5.125(C)(33). Subject to the representation provisions contained in Part 3 of Article VII of EPIC, this subrule identifies persons interested in the modification or termination of a noncharitable irrevocable trust.⁶
- MCR 5.125(C)(33) was renumbered from MCR 5.125(C)(32) to (C)(33). Subject to the representation provisions contained in Part 3 of Article VII of EPIC, this subrule was expanded to include all persons who should get notice of proceedings affecting a trust, other than already covered by (C)(6), (C)(28), and (C)(32). Former MCR 5.125(C)(32)(d) was deleted. If “other persons” that are not listed in MCR 5.125(C)(33) should receive notice, a court may direct notice to others under MCR 5.125(E).
- MCR 5.208 is a new rule for notice to creditors for estates and trusts that replaces MCR 5.306 and MCR 5.503.
- MCR 5.801(B)(1) was added and MCR 5.801(B)(2) was modified to clarify that both forms of actions, civil actions and proceedings (MCR 5.101(A)), are final orders that can be appealed as a matter of right.
- MCR 5.801(B)(2) lists final orders that can be appealed of right to the Court of Appeals; the list was expanded.

This article was written after the MCRs were approved by the Court but before the end of the public comment period on April 1. It is possible that additional changes will be made to the rules before publication of this article. With the passage of time, it is anticipated that additional amendments to the MTC court rules will be needed. The author welcomes suggestions for new or amended MCRs to be considered by the Forms and Rules Committee of the Probate and Estate Planning Section Council. ■



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FOOTNOTES

1. In the fall of 2003, the MTC Drafting Committee was formed by the State Bar of Michigan Probate and Estate Planning Section Council.
2. MCL 700.7201(2).
3. MCL 700.7209 and 700.7210.
4. In drafting the MCR modifications, rules were not added whenever an MTC section discussed a power of the court if the section clearly delineated court procedures.
5. MCL 700.7603(2) lists additional persons who are interested if the trustee reasonably believes the settlor is an incapacitated individual.
6. MCL 700.7411.

