



*Every month I summarize the most important probate cases in Michigan. Now I publish my summaries as a service to colleagues and friends. I hope you find these summaries useful and I am always interested in hearing thoughts and opinions on these cases.*

## PROBATE LAW CASE SUMMARY

**BY:** Alan A. May Alan May is a shareholder who is sought after for his experience in guardianships, conservatorships, trusts, wills, forensic probate issues and probate. He has written, published and lectured extensively on these topics.



He was selected for inclusion in the 2007-2017 issues of *Michigan Super Lawyers* magazine featuring the top 5% of attorneys in Michigan and has been called by courts as an expert witness on issues of fees and by both plaintiffs and defendants as an expert witness in the area of probate and trust law. Mr. May maintains an “AV” peer review rating with Martindale-Hubbell Law Directory, the highest peer review rating for attorneys and he is listed in the area of Probate Law among Martindale-Hubbell’s Preeminent Lawyers. He has also been selected by his peers for inclusion in *The Best Lawyers in America*® 2019 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2018 by Woodward/White, Inc., of SC). He has been included in the Best Lawyers listing since 2011. Additionally, Mr. May was selected by a vote of his peers to be included in *DBusiness* magazine’s list of 2017 Top Lawyers in the practice area of Trusts and Estates. Kemp Klein is a member of LEGUS a global network of prominent law firms.

He is a member of the Society of American Baseball Research (SABR).

For those interested in viewing previous Probate Law Case Summaries, go online to: <http://kkue.com/resources/probate-law-case-summaries/>.

He is the published author of “Article XII: A Political Thriller” and “Sons of Adam,” an International Terror Mystery.

**DT:** April 2, 2019

**RE:** March 20, 2019 Review of Supreme Court Order Amending Court Rules.  
STATE OF MICHIGAN SUPREME COURT

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**“Alan, you cannot write about baseball all your life”**

- Mrs. Pollinger
- 12<sup>th</sup> Grade English Comp
- Mumford High - 1959

**BASEBALL**

On April 7, 2019, I will celebrate my 77<sup>th</sup> birthday; 53 years of the practice of law going strong.

Just a reminder as to what great things happened on April 7<sup>th</sup> in the world of baseball.

In 1958, the Los Angeles Dodgers were playing in the Los Angeles Coliseum. The left field line was 250 feet away from home plate and anyone who pulled the ball could get a homerun. On April 7<sup>th</sup> they erected a 42-foot fence, similar to the green monster in Boston. This cut down substantially on homeruns. Playing 77 games at home, the Dodgers left fielder and center fielder learned how to play the wall and that helped to hold base runners.

In 1970, the Seattle Pilots moved to Milwaukee and they opened their season by losing to the Los Angeles Angels.

In 1971, the Court of Appeals confirmed Curt Flood's loss on challenging the reserve fund.

In 1973, the Cleveland Indians set opening day record for attendance with 74,420.

In 1977, the Toronto Blue Jays commenced their first game in Toronto.

In 1979 and 1984 on April 7<sup>th</sup>, saw two no-hitters, one by Ken Forsch of the Houston Astros over Atlanta and one by Detroit's own Jack Morris pitching against the White Sox.

What happened on your birthday?

**Caveat: MCR 2.119, MCR 7.212 and  
7.215 take effect May 1, 2016 on  
propriety of citing unpublished cases**

**REVIEW OF CASE:**

**RE:** March 20, 2019 Review of Supreme Court Order Amending Court Rules.

I'm sure you have all received your copy of the Amended Rules.

The purpose of this review is a short summary of those Rules related to Probate.

I'm not going to review all of them. Some are quite similar.

There are a few areas where the Rules have become less formalistic and use more simple language. For instance, in MCR 5.104(B)(2)(b) the word “declaration” is changed to “statement”. Likewise, the word “papers” has been changed to “documents” and the word “execute” has been changed to “sign and file”.

Many of the changes deal with electronic filing and there are constant references back to complying with MCR 1.109 and those included.

Some other more specific highlights are as follows:

MCR 5.104 regarding Proof of Service now requires a Proof of Service on a document that doesn’t have to be filed. This would certainly include an Inventory.

A written statement relative to electronic services is now required under subrule (A)(2) of MCR 5.104.

Regarding an unopposed Petition in subsection (C) of MCR 5.104, the word “sworn” is struck from the phrase “sworn testimony” and there is a conjunction “or” allowing a SCAO form to be used in lieu.

In MCR 5.105(A)(3) the word “showing” has been changed to “asserting”. This is probably to do away with some inference of quantum of proof.

One of my peeves with many of the Courts is that the form used only had to be substantially similar to the SCAO form. Despite this, the Courts have rejected my substantially similar form. In a few sections, for instance 5.113(A), the word “substantially” has been dropped and you have to use a SCAO form. Now we don’t have a choice, we must use the form.

I do not understand why the requirement of the attorney’s address and telephone is struck from the Notice of Appearance under MCR 5.117(B).

Under the Mental Health Code, the interested persons are now delineated with more specificity.

In a Petition for Emancipation, all the interested parties are struck.

There is an in pari materia reference to the Records Reproduction Act, MCL 24.401 as to how copies of a Will are introduced and the MCR section is no longer relevant.

A notarization is stricken from MCR 5.308(B)(a) and only Testimony is required and need not be sworn.

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–continued–

Regarding Inventories, the filing of Inventories in both a Supervised and Unsupervised estate are now the same and there's no distinction under MCR 5.309(C)(1).

Under MCR 5.313, once again, the word “substantially” is stricken and the form must be approved by the SCAO form.

Regarding Guardianship of a Minor, a social history now must be included with the filing. It is now mandatory and not precatory.

Under MCR 5.405, the words “substantially” again has been struck.

Under MCR 5.409, in the Accounting section, subsection (C), the mandatory reference to a financial institution statement has been stricken and you only have to provide a Verification of Funds. I don't suggest doing this if the assets are substantial.

Once again, this is just a short summary and I urge you to review all of this yourself.