

State Court Administrative Office  
Field Services

# **Best Practices: Administrative Closing and Deficient Fiduciary Rates**

December 2022

## **Introduction**

In 2019, the State Court Administrative Office, upon recommendation of the Trial Court Performance Measures Committee, adopted the administrative closing rate and deficient fiduciary rate as new performance measures. The purpose of this manual is to assist probate courts in using these performance measures to review specific cases and improve court management of these cases, which will protect vulnerable individuals.

The probate court handles, among other cases, estates, trusts, conservatorships, and guardianships. Due to the vulnerability of the individuals in conservatorship and guardianship cases—and to protect the living and last wishes of individuals in estates and trusts cases—probate judges and probate staff seek ways to improve court management while also maintaining the high standards of the probate court process.

A conservator, guardian, or personal representative are court appointed fiduciaries that are required to operate in the ward's best interest. Once appointed by a probate court, a fiduciary is required to file specific documents as required by statute.

**Decedent Estate:** If the court appointed personal representative is unable to close the estate within one year after the original appointment, the personal representative must file a notice that the estate remains under administration.<sup>1</sup>

**Conservatorship:** A court appointed conservator has broad powers to handle all assets held on behalf of the protected individual and to make payments from the assets for the health, benefit, and welfare of the protected individual, including all the powers of a trustee.<sup>2</sup> A conservator must file an annual account unless otherwise ordered by the court, upon resignation or removal and at other times as the court directs.<sup>3</sup>

**Guardianship:** A court-appointed full guardian of a legally incapacitated individual is responsible for the care, custody, and control of the ward.<sup>4</sup> The guardian must report to the court at least annually on the condition of the ward and of the portion of the estate that is subject to the guardian's possession or control.<sup>5</sup>

Probate courts can assess performance by monitoring the rates of deficiencies<sup>6</sup> and administrative closings.<sup>7</sup> The probate court's deficient fiduciary rates reflect the percent of cases in which a deficiency exists and the administrative closing rates reflect the percent of cases that are administratively closed pursuant to statute and court rule. These rates are only an indication of the practices performed by courts. By collecting and analyzing these rates, courts can determine if a further and more detailed review is required for specific cases or specific court processes.

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<sup>1</sup> MCL 700.3951

<sup>2</sup> MCL 700.5423(1)

<sup>3</sup> MCL 700.5418

<sup>4</sup> MCL 700.5314

<sup>5</sup> MCL 700.5314(j)

<sup>6</sup> MCR 5.203

<sup>7</sup> MCL 700.3951, MCR 5.144, MCR 5.203, and MCR 5.206

## **Discussion of High Rates of Deficiencies and Administrative Closings**

High rates of deficiencies and high rates of administratively closed cases, particularly when both occur, are an *indication* that vulnerable adults are not being fully protected. These rates are not conclusive and there may be valid (or explainable) reasons for high rates. For example, one explanation for a court that has both a high rate of deficiencies and a high rate of administrative closings could be data entry issues.

## **Best Practices for Improving Deficiency Rates**

Deficiency rates measure the volume of cases where a fiduciary owes the court a document as required by statute and has not provided it in a timely manner. It is important because the court relies on the timely filing of documents to ensure that guardians and conservators are acting in the ward's best interest. A notice of deficiency may be provided by the probate court pursuant to MCR 5.203 when a court-appointed fiduciary has failed to file the required documents noted above.

If a court is experiencing high deficiency rates, the court should individually consider the following actions and options.

### **All Cases:**

- Extend the time for the performance of required duties.
- Schedule a status conference or review hearing in order for the fiduciary to provide the required reporting documents to the court.
- Place expiration dates on letters of authority. This will provide further incentive for the fiduciary to file the required documents (e.g. accounts, inventories, and reports). If the fiduciary fails to file the required documents in a timely manner, the letters of authority will expire and the fiduciary will no longer be allowed to legally act on behalf of the ward.

### **Guardianships:**

- Suspend the guardian's authority.
- Independently investigate the well-being of the vulnerable individual by appointing a Guardian Ad Litem (GAL) or visitor.
- Contact Adult Protective Services (APS) or Child Protective Services (CPS) if abuse or neglect is suspected.
- If the ward's location is unknown, contact law enforcement for a welfare check.

### **Conservatorships:**

- Suspend the conservator's powers and appoint a special fiduciary or successor.
- Freeze the assets and suspend the powers of the conservator.

## **Best Practices for Improving Administrative Closing Rates**

Administrative closing rates for guardianships, conservatorships, estates, and trusts are an indicator of how a probate court manages case deficiencies. A court may administratively close a file for the following reasons:<sup>8</sup>

- 1) For failing to file a notice of continuing administration;
- 2) If the fiduciary fails to perform the duties required within the time allowed;
- 3) Upon finding good cause, after notice and a hearing.
- 4) In a conservatorship, when there are insufficient assets in the estate to employ a successor or special fiduciary.

Higher administrative closings may be a result of the court not exhausting all remedies available to them prior to closing a case. For example, rather than scheduling a hearing, the court administratively closes the case. The administrative closure of cases when a vulnerable individual is still in need of protection does not solve the problem of a deficient fiduciary. Instead, courts should implement procedures to more actively manage deficient cases before administratively closing the file.

### **Guardianships:**

Administrative closings are concerning with guardianships because the absence of a legal authority who can make decisions to protect the individual and their property may result in further harm to the vulnerable individual. Guardianship cases should not be administratively closed simply because the fiduciary is deficient. The safety and well-being of the vulnerable individual remains the priority.

### **Conservatorships:**

Administrative closings are concerning with conservatorships because the court needs to be aware of the disposition of assets in the estate. The court should protect the assets of the vulnerable individual. Further, the court should ensure that proof of insufficient funds to continue the conservatorship has been received and that there are no concerns regarding the administration of those funds.

If a court is experiencing high administrative closing rates, the court should individually consider the following actions and options.

### **Guardianship or Conservatorship:**

- Appoint a GAL or visitor to conduct an investigation.
- Confirm whether the individual still needs protection. This is usually a finding after a hearing on a petition to modify or terminate.
- Send a report or notice to APS or CPS before closing a file.

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<sup>8</sup> MCR 5.144 and MCR 5.203

**Conservatorship:**

- Hold a hearing for an accounting from the fiduciary.
- Hold a final account hearing to ensure there are insufficient assets in the estate to employ a successor of special fiduciary.

## Appendix

In accordance with MCL 700.3951, MCR 5.144, MCR 5.203, and MCR 5.206, a probate court may administratively close a probate file.

### MCL 700.3951 Notice of continued administration.

(1) If the personal representative does not complete estate administration within 1 year after the original appointment by petitioning for a settlement order under section 3952 or 3953 or by filing a sworn statement under section 3954, the personal representative shall file with the court and send to all interested persons a notice that the estate remains under administration and specifying the reason for continuation of administration. This notice of continued administration must be filed not later than 28 days after the anniversary of the personal representative's appointment and, if administration remains incomplete, not later than 28 days after each subsequent anniversary of the appointment.

(2) If the notice described in subsection (1) is not filed, an interested person may petition the court for a hearing on the necessity for continued administration or petition for a settlement order under either section 3952 or 3953. In response to such a petition, the court may issue appropriate orders to assure prompt estate settlement.

(3) If the notice described in subsection (1) is not filed and an interested person's petition is not pending, the court may notify the personal representative and all interested persons that the court will close the estate administration and terminate the personal representative's authority within 63 days unless within that time period any of the following occur:

- (a) The personal representative files a notice under subsection (1), a petition for settlement under either section 3952 or 3953, or a sworn statement under section 3954.
- (b) An interested person files a petition requesting a hearing on the necessity for continued administration or a petition for an order of settlement under either section 3952 or 3953. 3

### Rule 5.144 Administratively Closed File

(A) Administrative Closing. The court may administratively close a file

(1) for failure to file a notice of continuing administration as provided by MCL 700.3951(3) or

(2) for other reasons as provided by MCR 5.203(D) or, after notice and hearing, upon a finding of good cause.

In a conservatorship, the court may administratively close a file only when there are insufficient assets in the estate to employ a successor or special fiduciary, or after notice and hearing upon a finding of good cause. If the court administratively closes the conservatorship, the court shall provide notice to the state court administrative office of the closure.

(B) Reopening Administratively Closed Estate. Upon petition by an interested person, with or without notice as the court directs, the court may order an administratively closed estate reopened. The court may appoint the previously appointed fiduciary, a successor fiduciary, a special fiduciary, or a special personal representative, or the court may order completion of the

administration without appointing a fiduciary. In a decedent estate, the court may order supervised administration if it finds that supervised administration is necessary under the circumstances.

### **Rule 5.203 Follow-Up Procedures**

Except in the instance of a personal representative who fails to timely comply with the requirements of MCL 700.3951(1), if it appears to the court that the fiduciary is not properly administering the estate, the court shall proceed as follows:

(A) Notice of Deficiency. The court must notify the fiduciary, the attorney for the fiduciary, if any, and each of the sureties for the fiduciary of the nature of the deficiency, together with a notice to correct the deficiency within 28 days, or, in the alternative, to appear before the court or an officer designated by it at a time specified within 28 days for a conference concerning the deficiency. Service is complete on mailing to the last known address of the fiduciary.

(B) Conference, Memorandum. If a conference is held, the court must prepare a written memorandum setting forth the date of the conference, the persons present, and any steps required to be taken to correct the deficiency. The steps must be taken within the time set by the court but not to exceed 28 days from the date of the conference. A copy of the memorandum must be given to those present at the conference and, if the fiduciary is not present at the conference, mailed to the fiduciary at the last known address.

(C) Extension of Time. For good cause, the court may extend the time for performance of required duties for a further reasonable period or periods, but any extended period may not exceed 28 days and shall only be extended to a day certain. The total period as extended may not exceed 56 days.

(D) Suspension of Fiduciary, Appointment of Special Fiduciary. If the fiduciary fails to perform the duties required within the time allowed, the court may do any of the following: suspend the powers of the dilatory fiduciary, appoint a special fiduciary, and close the estate administration. If the court suspends the powers of the dilatory fiduciary or closes the estate administration, the court must notify the dilatory fiduciary, the attorney of record for the dilatory fiduciary, the sureties on any bond of the dilatory fiduciary that has been filed, any financial institution listed on the most recent inventory or account where the fiduciary has deposited funds, any currently serving guardian ad litem, and the interested persons at their addresses shown in the court file. This rule does not preclude contempt proceedings as provided by law.

(E) Reports on the Status of Estates. The chief judge of each probate court must file with the state court administrator, on forms provided by the state court administrative office, any reports on the status of estates required by the state court administrator.

### **Rule 5.206 Duty to Complete Administration**

A fiduciary and an attorney for a fiduciary must take all actions reasonably necessary to regularly administer and estate and close administration of an estate. If the fiduciary or the attorney fails to take such actions, the court may act to regularly close the estate and assess costs against the fiduciary or attorney personally.

**Court Forms**

Form [PC 600](#) is used to notify individuals of deficiencies.

Form [PC 599](#) is used to administratively close a file.

Form [PC 587](#) is used to provide notice of continued administration.