

I. INTRODUCTION

- A.** Basis of probate court's exclusive and concurrent jurisdiction.
- B.** Review of various scenarios to determine probate court jurisdiction.
- C.** Discussion of **MCR 5.101** and its impact on probate jurisdiction and procedure.

II. PROBATE COURT JURISDICTION

A. IN GENERAL

- 1. Since Probate Court is a statutory Court, historically, probate court jurisdiction has been narrowly proscribed by Michigan jurisprudence. The Revised Probate Code (RPC), which became effective July 1, 1979, was designed in part to clarify the authority of the probate court to adjudicate matters related to the settlement of an estate.
- 2. In 1989, the legislature amended the RPC and gave the probate court equitable jurisdiction.
- 3. In 1992, **MCR 5.101** was amended to provide for the filing of a "civil action" in probate court under certain limited circumstances. This rule offered an alternative forum for the resolution of legal disputes. However, the amendment of MCR 5.101 has not expanded the scope of probate court jurisdiction.
- 4. Note: Under the Estates and Protected Individuals Code (EPIC, Michigan's new Probate Code, which became effective April 1, 2000), probate court jurisdiction was carried over from the RPC with only one minor change: Probate Court has exclusive jurisdiction to settle accounts of all fiduciaries. Under the RPC, there was concurrent jurisdiction with circuit court for accounts of some trustees.

B. DECEDENT'S ESTATES

- 1. Probate courts have exclusive legal and equitable jurisdiction over matters relating to the settlement of a deceased person's estate, whether they died testate or intestate, if, at the time of death, the person was (1) domiciled in the county or (2) was domiciled out of state and died owning assets within the county to be administered.

2. Examples:
 - a. Decedent lived in Macomb County at time of death. Macomb County Probate Court has jurisdiction over the estate.
 - b. Decedent was a West Virginia resident at the time of his death, but owned property in Warren. Macomb County Probate Court has jurisdiction over his estate.
 - c. Decedent lived in California and died in his sleep while visiting his mother in Sterling Heights. Macomb County Probate Court does not have jurisdiction over his estate.
 - d. Decedent lived in Florida and was killed in a plane crash at Selfridge A.N.G. Base. Macomb County Probate Court has jurisdiction to open an estate, based on a wrongful death cause of action.
3. Jurisdiction includes, but is not limited to, the following proceedings:
 - a. Internal affairs of an estate.
 - b. Estate administration, settlement, and distribution.
 - c. Declaration of rights involving estates, devisees, heirs, and fiduciaries.
 - d. Construction of a will.
 - e. Determination of heirs.
 - f. Determination of death of an accident or disaster victim under EPIC section 1208. (**MCL 700.1208**)

MCL 700.1302(a).

Note: Venue for estate proceedings for a decedent not domiciled in Michigan is in a county where property of the decedent was located at the time of death. **MCL 700.3201(1)(b)**. This administration extends to all assets in Michigan, even if some items are located outside the county where probate proceedings were commenced.

4. Remember - Only those assets held in the decedent's name alone are subject to probate.

- a. Examples of assets that must be probated - if owned by the decedent alone:
 1. Real estate.
 2. Bank accounts.
 3. Stocks/bonds.
 4. Personal property (cars, furniture, jewelry, etc.).
 - b. Assets not subject to probate:
 1. Jointly owned real estate.
 2. Joint bank accounts.
 3. Stocks\bonds owned jointly.
 4. Life Insurance, if payable to a named beneficiary. However, if no beneficiary is designated or it is payable to the estate, it is subject to probate.
 5. Retirement Plans (i.e., IRA, pension, etc.), if payable to a named beneficiary. If no beneficiary is designated or it is payable to the estate, it is subject to probate.
5. **Practice Pointer:** The personal representative is your client, **not the estate.**
- a. **MCR 5.117(A)** provides that an attorney who files an appearance on behalf of a fiduciary represents the fiduciary, not the estate.
 - b. Mistakenly, heirs or devisees to an estate often think that as the lawyer for the personal representative, you are actually working for them and will do whatever they ask.
 - c. However, although you are serving the personal representative, you still have an obligation to remind them of their responsibility to perform their fiduciary duties. You must caution the fiduciary against using their position to advance their own personal agenda.

C. TRUSTS

1. Probate courts have exclusive legal and equitable jurisdiction over proceedings concerning the validity, internal affairs, and settlement of trusts.

2. Probate courts also have jurisdiction over the administration, distribution, modification, reformation, and termination of trusts, and the declaration of rights involving trusts, trustees, and beneficiaries of trusts.
3. Jurisdiction includes, but is not limited to, the following proceedings:
 - a. Appoint or remove a trustee.
 - b. Review the fees of a trustee.
 - c. Require, hear, and settle interim or final accounts.
 - d. Ascertain beneficiaries.
 - e. Determine any question arising in the administration or distribution of any trust, including questions of construction of wills and trusts; instruct trustees, and determine relative thereto the existence or nonexistence of an immunity, power, privilege, duty or right.
 - f. Release registration of a trust.
 - g. Determine an action or proceeding involving settlement of an irrevocable trust.

MCL 700.1302(b). See also MCL 700.7201

Practice Pointer: Venue for a Trust proceeding is where the Trust is registered. If the Trust was not registered venue is in the place where it could have been registered. (i.e., where the decedent, original trustee's estate was opened or where the current trustee has a principal place of business or where the records of the Trust are kept). MCL 700.7202. See also MCL 700.7101.

D. GUARDIANSHIPS

1. Probate courts have exclusive jurisdiction over proceedings concerning guardianships. **MCL 700.1302(c).**

Note: Under certain limited circumstances, the family division of a circuit court may have ancillary jurisdiction over certain guardianship cases. See **MCL 600.1021(2).**

2. A guardian is a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or court appointment.

3. The term guardian includes a limited guardian, but not a guardian ad litem. **MCL 700.1104(k).**
4. Types of Guardianships: Adult (legally incapacitated individual, or LII) and minor (full and limited minor guardianship).

Practice Pointer: Venue for a guardianship proceeding is where the incapacitated individual/minor resides or is present. If the individual is in an institution, the Court in the County where the institution is located is a Court of proper venue. MCL 700.5302.

E. CONSERVATORSHIP AND PROTECTIVE PROCEEDINGS

1. Probate courts have exclusive jurisdiction over proceedings concerning conservatorship and protective proceedings. **MCL 700.1302(c).**
2. A conservator is a person appointed by a court to manage a protected individual's estate. **MCL 700.1103(h).**

Note: Under certain limited circumstances, the family division of a circuit court may have ancillary jurisdiction over certain conservatorship cases. See **MCL 600.1021(2).**

3. Protective Proceedings: Probate Court can enter a protective order instead of establishing a conservatorship. **MCL 700.5408.** Protective Orders cover one event where a conservatorship is not required or necessary.

Example: A parent or guardian wants to obtain probate court approval to accept a lawsuit settlement on behalf of a minor and the amount due to the minor is under \$5,000.

4. Venue – Proper venue in a Conservatorship proceeding is where the protected individual resides if he or she is not a resident of Michigan, where the property to be protected is located. **MCL 700.5403.**

F. FIDUCIARY ACCOUNTINGS

1. Probate courts have exclusive jurisdiction over proceedings to review and settle fiduciary accounts. **MCL 700.1302(d).**
2. A person appointed fiduciary by the Probate Court who manages money (i.e., personal representative of a decedent's estate, trustee, or conservator) must account each year for these funds.
3. All accountings must be served on the interested persons.

4. Accountings for conservatorships and supervised estates must also be filed with the probate court and approved by a Judge.

A fiduciary is liable for a loss to an estate that arises from embezzlement by the fiduciary; for a loss through commingling estate money with the fiduciary's money; for negligence in the handling of an estate; for wanton and willful mishandling of an estate; for loss through self-dealing; for failure to account for an estate; for failure to terminate the estate when it is ready for termination; and for misfeasance, malfeasance, nonfeasance, or other breach of duty. **MCL 700.1308(1).**

Note: In response to an interested person's petition or on its own motion, the court may at any time order a fiduciary of an estate under its jurisdiction to file an accounting. After due hearing on the accounting, the court shall enter an order that agrees with the law and the facts of the case. **MCL 700.1308(2).**

G. CONCURRENT JURISDICTION – MCL 700.1303(1)

1. Probate courts have concurrent legal and equitable jurisdiction over the following matters involving an estate of a decedent, protected individual, trust, or ward.

2. To determine property rights and interests.

- a. Example #1: Dispute over a joint bank account owned by a decedent.
- b. Example #2: Dispute over title to real estate owned by a decedent.
- c. Example #3: Dispute over who are the beneficiaries of life insurance owned by a decedent.

3. Contract disputes by or against an estate, ward, or trust.

Example: A company files suit for enforcement of a contract with the decedent to sell them crops from his farm.

4. To authorize specific performance of a contract in a joint or mutual will or of a contract to leave property by will.

5. Partition of property.

6. Other matters over which probate courts have concurrent jurisdiction:

- a. Ascertain survivorship of persons.
- b. Bar an incapacitated or minor wife from her dower right.

- c. Determine cy-pres, gifts, grants, bequests, and devises in trust or otherwise.
- d. Hear and decide an action or proceeding against distributees of an estate fiduciary to enforce liability arising because the estate was liable upon some claim or demand before distribution of the estate.
- e. To require, hear, and settle an accounting of an agent under a power of attorney.
- f. To impose a constructive trust.
- g. To hear and decide any claim by or against a fiduciary or trustee for the return of property.

MCL 700.1303(1).

H. MENTAL HEALTH CODE

- 1. Probate courts have jurisdiction over proceedings under the Mental Health Code.
- 2. Civil Admission and Discharge Proceedings. Petitions of this type are filed in the Mental Division of probate court. **MCL 330.1400(c).**
- 3. Guardianships for Individuals with Developmental Disabilities (DDs)
 - a. Probate courts have jurisdiction over guardianship proceedings for individuals with developmental disabilities. **MCL 330.1604(1).**
 - b. Developmental disability is defined at **MCL 330.1100a(20).**
 - c. There are two types of DD guardianship: partial - responsible for the person and full - responsible for the person and their finances.
 - d. Both types of DD guardians are considered fiduciaries for EPIC purposes, and are subject to the same responsibilities (filing accounts, annual reports on condition of ward, etc.). **MCL 330.1632.**

III. SPECIFIC SCENARIOS - JURISDICTIONAL ANALYSIS

A. WRONGFUL DEATH ACTIONS/GENERAL TORT JURISDICTION

- 1. Wrongful death and other general tort actions must be filed in circuit court. The Revised Judicature Act states:

"Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state."
MCL 600.605.

2. Neither the Michigan Constitution nor EPIC confer jurisdiction on the probate court to entertain wrongful death or general tort actions, therefore, these proceedings cannot be initiated in probate court.
3. **MCL 700.1303(1)(i)** vests the Court with concurrent jurisdiction over contract proceedings by or against an estate, ward or trust. The failure to specifically enumerate tort actions is a clear indication of the legislature's intent to exclude them from the probate court's jurisdiction.
4. Moreover, the Court of Appeals in **York v Isabella Bank & Trust, 146 Mich App 1; 379 NW 2d 448 (1985)** ruled that the probate court could not entertain an individual's action alleging intentional infliction of emotional distress as a result of the personal representative's administration of her deceased husband's estate. The court declared that this allegation was not a matter directly relating to the settlement of the estate. It examined **MCL 700.22** and found that probate court also lacked concurrent jurisdiction to adjudicate this dispute.
5. Contrast **York** with **Manning v Amerman, 229 Mich App 608; 582 NW2d 539 (1998)**, where the Court of Appeals affirmed the dismissal of a circuit court lawsuit brought by trust beneficiaries alleging legal malpractice and emotional distress by a trustee's attorney and the trustee due to lack of subject matter jurisdiction. It noted that pursuant to **MCL 700.21(b)(v)**, probate court has exclusive legal and equitable jurisdiction to determine any question arising in the administration and distribution of any trust. The Court in **Manning** stated that **York** was inapplicable, since the issue was whether plaintiffs' claim concerns the administration of a trust under **MCL 700.21(b)(v)**, not whether it relates to the settlement of an estate under **MCL 700.21(a)**.

B. WRONGFUL DEATH ACTIONS/JURISDICTION TO OPEN PROBATE ESTATE

1. Although wrongful death and other tort actions must be filed in circuit court, a wrongful death cause of action invokes probate court jurisdiction so that an estate must be opened in the county where the cause of action accrued.
2. This was the unanimous ruling by the Court of Appeals in **Haque v Oakland Probate Judge, 237 Mich App 295; 602 NW2d 622 (1999)**. In **Haque**, Decedent's wife filed a petition for commencement of proceedings in Oakland County Probate Court. The document declared the decedent was a resident of Columbus, Indiana and left an estate to be administered in Oakland County consisting of a wrongful death cause of action. The petition for commencement of proceedings was dismissed, with the probate court denying the request for judicial review to accept venue. Petitioner then filed a complaint for superintending control in circuit court, which was denied. Mrs. Haque appealed both actions.

In reversing the probate court, the appellate panel analyzed the language of the Wrongful Death Act, noting that a decedent's cause of action accrues at the date of the wrongful act and that a longstanding tenet of Michigan law has been to consider an accrued cause of action to be a vested property right. The Court of Appeals also affirmed the circuit court's denial of the superintending control complaint.

3. **Haque** reiterates the rule of law in Michigan that a cause of action for wrongful death is a sufficient asset to initiate probate proceedings in the county where the action accrues. It provides attorneys with additional flexibility in determining where to commence probate proceedings, preparatory to filing a lawsuit or in negotiating a settlement.

C. USE OF SUBPOENA BY PERSONAL REPRESENTATIVE TO CONDUCT PRELAW SUIT DISCOVERY REGARDING POTENTIAL WRONGFUL DEATH LITIGATION

1. It has been reclarified that a personal representative cannot obtain or issue a subpoena to conduct discovery in an effort to ascertain whether or not a wrongful death lawsuit should be initiated.
2. In **In re Brown Estate, 229 Mich App 496; 582 NW 2d 530 (1998)**, a panel of the Michigan Court of Appeals unanimously reversed a Probate Judge's assessment of sanctions against the co-personal representative's attorney for issuing a subpoena and obtaining discovery prior to the commencement of a civil action. The appellate panel noted the appellee's objections on policy grounds to permitting discovery in probate proceedings when no contested civil action has been commenced. However, it declared that relief must be sought from the Supreme Court via court rule amendment to address these concerns.
3. In response to **Brown**, the Probate Court Rules Committee promulgated **MCR 5.131(B)**, which became effective April 1, 2000. It provides:

(B) Scope of Discovery in Probate Proceedings. Discovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court. Discovery for civil actions in probate court is governed by subchapter 2.300. (the circuit court discovery rules)

The comment to this subrule states that it "...clarifies that discovery in a probate proceeding is not available for the subject matter of a prospective civil action before the filing of such an action."

D. LANDLORD/TENANT DISPUTES

1. The probate court has no authority to adjudicate summary eviction proceedings or any other variety of landlord/tenant controversy involving either property owned by an estate or disputes in which the estate is a tenant.
2. EPIC's concurrent jurisdiction provision does not explicitly mention or authorize the probate court to adjudicate landlord/tenant proceedings involving an estate asset. Also, **MCR 5.101(C)** does not confer upon a fiduciary an absolute right to bring whatever type of civil action that they desire in probate court. The same rationale for determining that the court cannot entertain wrongful death or general tort actions is applicable to this situation.
3. **MCR 5.101(C)** provides: "The following actions, must be titled civil actions, commenced by filing a complaint and governed by the rules which are applicable to civil actions in circuit court:..." (emphasis added). The provisions of the Court Rules concerning summary proceedings are located in the chapter concerning district court.
4. The legislature has explicitly given jurisdiction over summary proceedings to district and municipal courts. **MCL 600.5704** declares: "The district court, municipal courts and the common pleas court of Detroit have jurisdiction over summary proceedings to recover possession of premises under this chapter."

E. GARNISHMENTS, EXECUTIONS, AND CREDITOR'S EXAMS

1. Probate Court has the implicit discretionary authority to order garnishments, executions and creditor exams to facilitate the enforcement of a party's judgment. **MCL 600.847** provides:

"In the exercise of jurisdiction vested in the Probate court by law, the probate court shall have the same powers as the circuit court to hear and determine any matter and make any proper orders to fully effectuate the probate court's jurisdiction and decisions." (emphasis added)

This statute appears to confer considerable authority upon the Probate court, including the ability to authorize the use of garnishments, executions and creditor exams to enforce its judgments.

2. **MCL 600.6001** apparently gives the Probate court the ability to utilize executions to enforce its judgments:

"Whenever a judgment is rendered in any court, execution to collect the same may be issued to the sheriff, bailiff, or other proper officer of any county, district, court district or municipality of this state."
(emphasis added)

3. Chapter Three of the Michigan Court Rules deals with special proceedings and actions, including garnishments. **MCR 3.001** states: "The rules in this chapter apply in circuit court and in other courts as provided by law or by these rules." (emphasis added)
4. **MCL 600.847** implicitly authorizes the use of garnishments in Probate court. Thus, it appears that pursuant to **MCR 3.101** and **MCR 5.101**, post judgment garnishments could be ordered by the probate court.
5. Creditor's Exams

The following sections of the Revised Judicature Act appear to empower the holders of probate court judgments to utilize creditor's exams:

"The courts of record of this state have the power:

(1) To issue process of subpoena, requiring the attendance of any witness in accordance with court rules, to testify in any matter or cause pending or triable in such courts;

* * *

(3) To devise and make such orders as may be necessary to carry into effect the powers and jurisdiction possessed by them." **MCL 600.1455** (emphasis added).

"Upon an affidavit, showing to the satisfaction of the judge that any person has money or property of the judgment debtor, or is indebted to him, the judge may issue a subpoena requiring the judgment debtor or the person or both to appear at a specified time and place, and be examined on oath, and to produce for examination any books, papers, or records on his or its possession or control which have or may contain information concerning the property or income of the debtor." **MCL 600.6110(1)** (emphasis added).

6. **MCR 2.621(B)(2)**, dealing with proceedings supplemental to judgment, provides that a judgment creditor may obtain relief pursuant to **MCL 600.6110**, supra, (i.e., creditor's examination) and further discovery according to **MCR 2.300 et. seq.**

7. Authorization of probate court judgment creditors to employ garnishment, executions and creditor exams eliminates the necessity of commencing a second proceeding in circuit or district court to enforce their judgments. This permits optimal use of scarce judicial resources and helps hold down the costs of litigation.

F. CREDITOR OF HEIR/DEVISEE/BENEFICIARY SEEKING PROHIBITION OF ESTATE DISTRIBUTION

1. Probate court has no jurisdiction to entertain an action by a creditor of an heir, devisee, trust beneficiary or other interested person to prohibit the distribution of estate assets, regardless of whether they have obtained a judgment against the individual.
2. The creditor has no standing to bring such a request (see **MCR 5.125(B)(1)** and **MCR 5.125(C)**). They have no interest at all in the administration of the estate; the fact that their judgment debtor may be entitled to an inheritance, bequest, or distribution, although possibly fortuitous, is entirely coincidental and does not make them a stakeholder in the probate proceedings.

IV. MCR 5.101

- A. In order to furnish additional guidance on the question of probate court jurisdiction in the wake of EPIC, **MCR 5.101** was amended effective April 1, 2000 to read as follows:

"RULE 5.101 FORM AND COMMENCEMENT OF ACTION

(A) Form of Action. There are two forms of action, a 'proceeding' and a 'civil action.'

(B) Commencement of Proceeding. A proceeding is commenced by filing an application or a petition with the court.

(C) Civil Actions, Commencement, Governing Rules. The following actions, must be titled civil actions, commenced by filing a complaint and governed by the rules which are applicable to civil actions in circuit court:

- (1) Any action against another filed by a fiduciary, and
- (2) A complaint filed by a claimant after notice that the claim has been disallowed."

- B. Note that **MCR 5.001(A)** provides that procedure in probate court is governed by the rules applicable to other civil proceedings, except as modified by the probate rules (i.e., Chapter 5).

C. Examples

1. A successor personal representative discovers that the prior personal representative has taken money from the estate. He would file a civil action in probate court to recover these funds.
2. A contractor files a claim with an estate for building the decedent's new home. The personal representative disallows the claim. The contractor would file a civil action in probate court to attempt to receive payment for the work performed.
3. The daughter of a decedent believes that her brother fraudulently had his name placed on the decedent's bank account, which caused it to pass to him as the surviving joint owner. She would file a petition to determine title to the bank account (a civil action).

Note: Remember that for civil actions, circuit court procedural rules apply (i.e., complaint, answer, default judgment provisions, time requirements, etc.).

V. CONCLUSION

- A. These materials should provide you with a better understanding of the probate court's exclusive and concurrent jurisdiction.
- B. Before bringing a matter in probate court, carefully investigate whether the court possesses the adjudicative authority to entertain your action.