

# OVERVIEW OF PROBATE COURT JURISDICTION

By

Hon. Lawrence J. Paolucci  
Judge,  
Wayne County Probate Court

- 
- I. Jurisdiction: some definitions
  - II. Probate court jurisdiction
    - A. In General
    - B. Exclusive Jurisdiction
      - a. Decedent's Estates
      - b. Trusts
      - c. Guardianships
      - d. Conservatorship and Protective Proceedings
      - e. Fiduciary Accountings
      - f. Concurrent Jurisdiction
      - g. Mental Health Code
      - h. Uniform Power of Attorney Act (UPOAA)
    - C. Concurrent Jurisdiction
  - III. Specific Scenarios - Jurisdictional Analysis
    - A. Trusts v. Estates
    - B. Settlements and Judgments for Wards and Minors
    - C. Wrongful Death Actions
      - a. General Tort Jurisdiction
      - b. Jurisdiction to Open Probate Estate
      - c. Use of Subpoena by Personal Representative to Conduct Pre-Lawsuit Discovery Regarding Potential Wrongful Death Litigation
    - D. Discovery in Probate Proceedings - Mandatory Initial Disclosures
    - E. Civil Actions in Probate
      - a. MCR 5.101
    - F. Landlord/Tenant Disputes
    - G. Garnishments, Executions, and Creditor's Exams
  - IV. Conclusion
- 

## I. JURISDICTION: SOME DEFINITIONS

- A. Jurisdiction, generally, is the court's power to decide a case or issue a decree or order.

1. Subject matter jurisdiction is defined as jurisdiction over the nature (or subject) of the case and the type of relief sought.
  2. Exclusive jurisdiction is a court's power to adjudicate an action or class of actions to the exclusion of other courts.
  3. Concurrent jurisdiction is jurisdiction that can be exercised simultaneously by more than one court over the same subject matter, with the parties having the right to choose the court in which to file the action.
  4. Equitable jurisdiction is the power to hear and resolve a case according to equitable rules.
- B. Venue is the proper or possible place for the filing of an action or proceeding, generally refers to the geographic location.

**Practice Pointer:** Jurisdiction/Venue Distinguished- Jurisdiction relates to the right of this Court to exercise power over a class of cases. **Altman v. Nelson, 197 Mich. App. 467, 472; 495 NW2d 826 (1992)**. Venue conversely relates only to the geographical place of a proceeding or trial, not to a particular case before the Court. **Gross v. GMC, 448 Mich. 147; 528 NW2d 707 (1995)**.

## II. PROBATE COURT JURISDICTION

### A. IN GENERAL

1. The probate court is considered a court of limited jurisdiction. That means historically, probate court jurisdiction has been narrowly defined by Michigan statutes and court rules.
2. Probate court jurisdiction although still considered limited, is quite expansive and includes both legal and equitable authority.
3. **History:**
  - a. 1979 – The Revised Probate Code (RPC) was designed in part to clarify the authority of the probate court to adjudicate matters related to the settlement of an estate.
  - b. 1989 – the legislature amended the RPC and gave the probate court equitable jurisdiction.
  - c. 1992 – MCR 5.101 was amended to provide for the filing of a “civil action” in probate court under certain limited circumstances.
    - i. Many attorneys thought this rule transformed probate court into a “junior circuit court” which offered an alternative forum for the resolution of legal disputes.
    - ii. However, the amendment of this court rule has not expanded the *scope* of probate court jurisdiction.
  - d. 2000 – The Estate and Protected Individuals Code (EPIC) carried over the RPC's probate court jurisdiction with the added change that the probate court has exclusive jurisdiction to settle accounts of all fiduciaries, including trustees.

- i. Prior to this, jurisdiction over some trustee accounts was concurrent with the circuit court.

## B. EXCLUSIVE JURISDICTION

1. The probate court's exclusive subject matter jurisdiction is enunciated in [MCL 700.1302](#).

2. The probate court has exclusive *legal and equitable* jurisdiction of all the following:

### *a. Decedent's Estates*

- i. Probate courts have exclusive legal and equitable jurisdiction over matters relating to the settlement of a deceased person's estate (whether intestate or testate), if at the time of death, the person was domiciled in the county *or* was domiciled out of state and died owning assets within the county to be administered. [MCL 700.1302\(a\)](#).
- ii. 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. [MCL 700.1208](#).
- ii. Venue for an estate proceeding where the decedent was not domiciled in Michigan is in a county where property of the decedent was located at the time of death. [MCL 700.3201\(1\)\(b\)](#).
  - (a) This administration extends to all assets in Michigan, even if some items are located outside of the county where the probate proceedings were commenced.
- iii. Examples:
  - (a) Decedent lived in Wayne County at time of death à Wayne County Probate Court **has** jurisdiction over the estate.
  - (b) Decedent was a West Virginia resident at the time of death, but owned property in Detroit à Wayne County Probate Court **has** jurisdiction over the estate.
  - (c) Decedent lived in California and died while visiting family in Dearborn à Wayne County Probate Court **does not** have jurisdiction over the estate.
- iv. Some Practice Pointers:
  - (a) Only those assets held in the decedent's name *alone* are subject to probate.
  - (b) The personal representative is your client, **not the estate**.

- (i) [MCR 5.117\(A\)](#) provides that an attorney who files an appearance on behalf of a fiduciary represents the *fiduciary*, not the estate.
- (ii) Heirs or devisees to an estate will often think that as the lawyer for the personal representative, you are working for them and will do whatever they ask.
- (iii) Although you are serving the personal representative, you still have an obligation to remind them of their responsibility to perform their fiduciary duties.
- (iv) The attorney and fiduciary have an obligation to regularly administer and efficiently close the administration of an estate. Failure to do so may cause the court to assess costs against the fiduciary or attorney personally. [MCR 5.206](#).

**b. Trusts**

- i. Probate courts have exclusive legal and equitable jurisdiction over proceedings concerning the validity, internal affairs, and settlement of trusts. [MCL 700.1302\(b\)](#) and [MCL 700.7203\(1\)](#).
- ii. Probate courts also have jurisdiction over the administration, distribution, modification, reformation, and termination of trusts. Also, the declaration of rights involving trusts, trustees, and beneficiaries of trusts.
- iii. Probate courts have jurisdiction over the trustee and beneficiaries. [MCL 700.7202](#).
- iv. While the Michigan Trust Code (MTC) made changes to the procedure in the drafting and administration of trusts, it did not change the probate court's jurisdiction over trusts.
- v. 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 construction of a trust, instruct trustees, determine 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 the settlement of an irrevocable trust.
- vi. 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. [MCL 700.7204](#) and [MCL 700.7209](#).

**c. Guardianships**

- i. Probate courts have exclusive jurisdiction over proceedings concerning guardianships. [MCL 700.1302\(c\)](#).
- ii. Exception:
  - (a) Under certain limited circumstance the family division of a circuit court may have *ancillary* jurisdiction over certain guardianship cases. [MCL 600.1021\(2\)](#).
- iii. A guardian or limited guardian is a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental nomination, spousal nomination, or court appointment. [MCL 700.1104\(1\)](#).
- iv. Types of Guardianships under EPIC:
  - (a) Adult: legally incapacitated individual or LII. [MCL 700.5303](#) and [MCL 700.5306](#).
  - (b) Minor: two types, full or limited. [MCL 700.5204](#) and [MCL 700.5205](#).
    - (i) Note: A limited guardian of a minor has the same powers and duties as a full guardian, except that they may not consent to the marriage, adoption, or release for adoption of the minor ward. [MCL 700.5206\(4\)](#).
- v. Venue for guardianship proceedings is where the incapacitated individual or minor resides or is present at the time of initiating the proceeding. If the individual is in an institution, the court in the county where the institution is located is a court of proper venue as well. [MCL 700.5211](#) and [MCL 700.5302](#).

**d. Conservatorships and Protective Proceedings**

- i. Probate courts have exclusive jurisdiction over proceedings concerning conservatorship and protective proceedings. [MCL 1302\(c\)](#).
- ii. A conservator is a person appointed by a court to manage a protected individual's (adult or minor), *estate*. [MCL 700.1103\(h\)](#).
- iii. Exception:
  - (a) Under certain limited circumstances the family division of a circuit court may have *ancillary* jurisdiction over certain conservatorship cases. [MCL 600.1021\(2\)](#).
- iv. Protective Proceedings:
  - (a) Probate courts can enter a *protective order* instead of established a conservatorship. [MCL 700.5408](#).
  - (b) These are "one shot" deals or transactions where a conservatorship is not required.

- v. Examples:
  - (a) A parent or guardian wants to obtain probate court approval to accept a lawsuit settlement of behalf of a minor.
    - (i) In some situations, both a protective order and conservatorship must be filed.
  - (b) A protective order must be obtained to receive approval for sale of real estate in which a minor has an interest.
    - (i) A minor conservatorship must be established to hold and manage the proceeds until the ward reaches age 18.
- vi. Venue for a conservatorship or protective proceeding is where the protected individual (adult or minor) resides. Or, if they are not a resident of Michigan, where the property to be protected is located. [MCL 700.5403](#).

***e. Fiduciary Accountings***

- i. Probate courts have exclusive jurisdiction over proceedings to review and settle all fiduciary accounts. [MCL 700.1302\(d\)](#).
- ii. A person appointed fiduciary by the probate court who manages money (i.e. personal representative, trustee, or conservator), must account each year for these funds.
- iii. All accountings must be served on the interested persons.
- iv. Accountings for conservatorships and supervised estates must also be filed with the probate court and approved by a Judge.
- v. 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.
  - (a) After a hearing on the accounting, the court shall enter an order that agrees with the law and facts of the case. [MCL 700.1308\(2\)](#).

***f. Mental Health Code***

- i. Probate courts have jurisdiction over proceedings under the Mental Health Code. **MCL 330.1100 et seq.**
- ii. Civil Admission and Discharge Proceedings (MI):
  - (a) Located in Chapter 4 of the Mental Health Code.
  - (b) Petitions of this type are filed in the probate court.
    - (i) Includes requests for involuntary treatment and transport/examinations.
  - (c) A person requiring treatment is defined under [MCL 330.1401\(1\)](#).
    - (i) Includes the standard of a "substantial risk of harm due to impaired judgment." **MCL 330.1401(1)(c)**.
- iii. Intellectual Disability Treatment (IA):

- (a) Located in Chapter 5 of the Mental Health Code, also known as a Judicial Admission.
  - (b) The criteria for Intellectual Disability Treatment include a person diagnosed with an intellectual (cognitive/developmental) disability who is also a person requiring treatment under the Mental Health Code. [MCL 330.1515](#).
- iv. If a person meets the criteria for ***both*** an involuntary treatment order under Chapter 4 and intellectual disability under Chapter 5, the petition that best addresses the current need(s) of the Respondent is what should be filed (e.g., if a developmentally disabled adult appears to be requiring mental health treatment for a mental illness, the petition should be filed under Chapter 4 and not Chapter 5).
- v. Guardianships for Individuals with Developmental Disabilities (DD):
  - (a) Located in Chapter 6 of the Mental Health Code.
    - (i) The Mental Health Code, not EPIC, controls the appointment of a guardian for a developmentally disabled person, ***even if*** that person also meets the definition of a legally incapacitated individual under EPIC. *In re Neal*, 230 Mich.App. 723 (1998).
  - (b) Probate courts have jurisdiction over guardianship proceedings for individuals with developmental disabilities. [MCL 330.1604\(1\)](#).
  - (c) Developmental disability is defined under [MCL 330.1100a\(21\)](#).
  - (d) Two types of DD guardianships:
    - (i) Plenary (full): a guardian who possesses the legal rights and powers of a full guardian of the person, or of the estate, or both. [MCL 330.1600\(d\)](#).
    - (ii) Partial (limited): a guardian who possess fewer than all the legal rights and powers of a plenary guardian, and whose rights, powers, and duties have been specifically enumerated by court order. [MCL 330.1600\(e\)](#).
      - 1. This type of guardianship expires after 5 years from the order establishing the guardianship and cannot be extended. A new petition needs to be filed to re-establish guardianship.
  - (e) Guardian as Fiduciary:
    - (i) When a court appoints a plenary guardian of the

estate or a partial guardian with powers and duties related to real and personal property, that guardian is considered a fiduciary for the purposes of EPIC. [MCL 330.1632](#).

**g. *Uniform Power of Attorney Act (UPOAA)***

- i. Effective July 1, 2024, the Uniform Power of Attorney Act ([MCL 556.201](#) *et seq.*), repeals and replaces the durable power of attorney provisions in EPIC (**MCL 700.5501-.5505**).
- ii. The probate court has exclusive jurisdiction over actions brought under the UPOAA. **MCL 556.202(c)**.
  - (a) Principles of common law and equity apply, unless displaced by a provision of the UPOAA. **MCL 556.221**.
  - (b) The UPOAA does not supersede any other law applicable to financial institutions or other regulated entities. The other law controls to the extent it's inconsistent with the UPOAA. **MCL 556.222**.
  - (c) Remedies under the UPOAA are not exclusive and do not abrogate any right or remedy under the law of this state. **MCL 556.223**.
- iii. Who may bring a petition to the court to construe a power of attorney or review the agent's conduct and grant appropriate relief, or in other words who has standing: **MCL 556.216(1)**.
  - (a) The principal or agent.
  - (b) A guardian, conservator, or other fiduciary acting for the principal.
  - (c) A person that, at the time of the petition, is exercising authority to make health care decisions for the principal.
  - (d) An individual who, at the time of the petition, would be an heir of the principal if the principal were to die intestate at that time.
    - (i) Note: the principal is still living at the time the petition is filed.
  - (e) A person named as beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal the trustee of which has a financial interest in the principal's estate.
  - (f) The personal representative of the principal's estate.
  - (g) Adult protective services.
  - (h) A care giver or another person that demonstrates sufficient interest in the principal's welfare.
  - (i) A person asked to accept the power of attorney.
- iv. Dismissal of petitions filed under MCL 556.216(1). **MCL 556.216(2)**.

(a) Upon motion by the principal the court shall dismiss actions brought under subsection (1), unless the court finds the following:

- (i) The principal lacks capacity to revoke the agent's authority or the power of attorney.
- (ii) The motion is the effect of undue influence, fraud, or duress.

v. Judicial relief under the UPOAA has expanded to third parties. The principal, agent, guardian, conservator, or other court appointed fiduciary may petition the court to review the conduct regulated by the UPOAA on the part of a person to whom a power of attorney is presented for acceptance and to grant appropriate relief. **MCL 556.216(3).**

### **C. Concurrent Jurisdiction**

a. Probate courts have concurrent legal and equitable jurisdiction over the following matters involving an estate of a decedent, protected individual, trust, or ward. **MCL 700.1303.**

i. To determine property rights and interests.

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

ii. Hear and decide contract disputes by or against an estate, ward, or trust.

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

iii. Authorize specific performance of a contract in a joint or mutual will or of a contract to leave property by will.

iv. Partition of property.

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

- i. Ascertain survivorship of persons.
- ii. Bar an incapacitated or minor wife from their dower right.
- iii. Determine cy-pres, gifts, grants, bequests, and devises in a trust or otherwise.
- iv. 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.
- v. To impose a constructive trust.
- vi. To hear and decide any claim by or against a fiduciary or trustee for the return of property.

c. If the probate court has concurrent jurisdiction of an action or proceeding that is pending in another court, on a motion of a party and after a finding and order on the jurisdictional issue, the other court may order removal of the

matter to the probate court. [MCL 700.1303\(2\)](#).

- i. The other court shall forward to the probate court the original case file and after the transfer the prior court shall not hear the matter.
- ii. The purpose is to simplify the disposition of matters involving a decedent, protected individual, ward, or trust estate by consolidating the probate and related actions or proceedings in the probate court. [MCL 700.1303\(3\)](#).

### III. Specific Scenarios – Jurisdictional Analysis

#### A. Trusts v. Estates

- i. **Deceased Estate:** Exclusive jurisdiction must *directly* relate to the settlement and distribution of a deceased individual's estate.
- ii. **Trusts:** Exclusive jurisdiction over trust proceedings covers not every issue that might arise from involvement of a trust, but rather to *whole* causes of action fundamentally arising from issues concerning the distribution of trusts or the rights and duties of affected persons, such as trustees and trust beneficiaries.

#### B. Settlements/Judgments for Wards and Minors

- i. [MCR 2.420](#): Governs the procedure for the entry of a consent judgment, settlement, or dismissal in an action brought for a minor or a legally incapacitated individual that was brought by a next friend, guardian, or conservator or where the minor or legally incapacitated individual is to receive distribution from a wrongful death claim.
- ii. The settlement of a claim on behalf of a minor or legally incapacitated individual is governed by EPIC.
- iii. ***Procedure:*** The Judge for whom the action is assigned, the settlement or consent judgment must be brought before them to determine the fairness of the proposal.
  1. If a guardian or conservator has been appointed by the probate court the terms of the proposed settlement or judgment may be approved by the Judge in which the action is in front of, **but** it cannot be entered until the court receives written verification from the probate court that it has passed on the sufficiency of the bond and the bond, if any, has been filed with the probate court.
    - a. **Form Used:** Request for Approval of Bond and Notice ([MC95](#))
  2. If the settlement or judgment provides for the creation of a trust, the circuit court shall determine the amount to be paid in the trust, but the probate court must approve the trust prior to being funded.
  3. ***Provisions specific to minors:*** If the settlement or judgment requires payment of more than \$5,000 to the minor either

immediately or installments that exceed \$5,000 payable in any single year during minority, a conservator must be appointed by the probate court before the entry of the judgment or dismissal.

- a. If the settlement or judgment does not require payment of more than \$50,000 to the minor in any single year the money may be paid in accordance with the provisions of [MCL 700.5102](#).

iv. [MCL 700.5102](#): Payment or delivery

1. This statute applies to more than just settlements or consent judgments from a civil action.
2. The EPIC Omnibus passed in February 2024 increased the amount of money or personal property being delivered to a minor from \$5,000 to \$50,000 and is adjusted for inflation per [MCL 700.1210](#).
3. Money or personal property that does not exceed \$50,000 per year may be delivered to: the minor (if married), an individual having care or custody of the minor with whom the minor resides, a guardian of the minor, or a financial institution in an insured savings account in the sole name of the minor with notice of the deposit to the minor.
4. This does not apply if the person making the delivery or payment knows that a conservator has been appointed or a proceeding for the appointment is pending.

v. **MCR 2.420** and [MCL 700.5102](#)

1. While the amount increased in EPIC, the corresponding court rule has not changed.
2. Remember that the court rules control the procedure, and the compiled laws provide the substance, so you still must follow the procedure before the laws are applied.

a. **Examples:**

- i. Minor is to receive \$4,000 from settlement in one lump sum, a conservator does not need to be appointed under **MCR 2.420(B)(4)(a)** and monies can be directly paid under **MCL 700.5102**. (**MCR 2.420(B)(4)(b)**)
- ii. Minor is to receive \$45,000 spread out throughout the year, a conservator must be appointed under **MCR 2.420(B)(4)(a)**, however the probate court can order that the conservatorship is limited to receipt of the funds and must deliver the funds pursuant to **MCL 700.5102**.

1. It is the probate court's discretion to determine the powers of the conservator and whether they will allow the conservator to make payment or delivery under **MCL 700.5102**.
- iii. Minor is to receive \$75,000 in one lump sum, a conservator must be appointed under **MCR 2.420** and **MLC 700.5102** does not apply.

### C. Wrongful Death

- i. General Tort Jurisdiction - Wrongful death and other general tort actions must be filed in circuit court.
  1. "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. As a result, 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. Some case law:
    - a. *York v. Isabella Bank & Trust*, 146 Mich. App. 1; 379 NW2d 448 (1985)
      - i. The Court of Appeals in *York* ruled that the probate court could not entertain an individual's action alleging intentional infliction of emotional distress because 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.
      - ii. The Court of Appeals examined **MCL 700.22** (the precursor to **MCL 700.1303**) and found that the probate court also lacked concurrent jurisdiction to adjudicate this dispute.
    - b. *Manning v. Amerman*, 229 Mich. App. 608; 582 NW2d 539 (1998)

- i. 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 the probate court has exclusive legal and equitable jurisdiction to determine any question arising in the administration and distribution of any trust.
  - ii. The court stated that *York* was inapplicable, since the issue was whether plaintiff's claim concerns the administration of a trust, not whether it relates to the settlement of an estate.
- c. ***Moss v. UAW Legal Services*, unpublished per curiam opinion of the Court of Appeals, issued December 21, 2006 (Docket No. 270641)**
  - i. The Court of Appeals analyzed the jurisdictional provision for estates in contrast with trust proceedings.
  - ii. "The statutory grant of jurisdiction for matters involving trusts, as interpreted by the court in *Manning*, is significantly broader than the grant of jurisdiction for matters involving estates. In contrast to the grant of exclusive jurisdiction for questions that arise in the administration of trusts, see **MCL 700.1302(b)(v)**, with regard to estates, probate courts only have exclusive jurisdiction over "[a] matter that relates to the settlement of a deceased individual's estate..." **MCL 700.1302(a)**. The use of "relates" indicates an intent to limit the exclusive jurisdiction to matters that actually affect the settlement of an estate. Further, as applied to a decedent's estate, settlement is defined to mean "the full process of administration, distribution, and closing." **MCL 700.1107(d)**. Hence, in order to fall under the exclusive jurisdiction provided by **MCL 700.1302(a)**, the claim at issue must itself relate to the process of administering, distributing or closing the estate. The fact that a particular suit involves an estate or has some tangential connection to the administration or distribution of an estate will not by itself be sufficient

to invoke the probate court's exclusive jurisdiction."  
(Emphasis added)

d. ***Schaaf v. Forbes*, 338 Mich.App. 1; 979 NW2d 358 (2021)**

- i. The Court of Appeal analyzed the legislature's intent regarding probate court exclusive jurisdiction.
- ii. Held that the legislature declined to grant the probate court "exclusive jurisdiction over every cause of action that might incidentally touch on such issues as a settlor's intentions but, instead, confined that grant of exclusive jurisdiction to "[a] proceeding that concerns the ... distribution ... of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary ...." **MCL 700.1302(b)** (emphasis added).
- iii. "The statutory reference to "a proceeding" that "concerns" trust matters suggests that the exclusive jurisdiction of the probate court under **MCL 700.1302(b)(vi)** covers not every issue that might arise from involvement of a trust, but rather to whole causes of action fundamentally arising from issues concerning the distribution of trusts or the rights and duties of affected persons."

e. ***Was v. Plante*, unpublished per curiam opinion of the Court of Appeals, issued June 22, 2006, (Docket No. 265270 and 266224)**

- i. The Court of Appeals held that a probate court had subject matter jurisdiction over tort claims which clearly arose out of inappropriate conduct of fiduciaries as court appointed guardians or conservators.
- ii. Tort claims against guardians and conservators which are "inextricably intertwined" with a fiduciary's duties or appointment as fiduciary are within the exclusive jurisdiction of the probate court.

ii. **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 constitutes an estate adequate to invoke probate court jurisdiction and open an estate 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.

- a. 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 affirmed the circuit court's denial of the superintending control complaint.
- b. *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, either preparatory to filing a lawsuit or simply to negotiate a settlement.

iii. **Use of Subpoena by Personal Representative to Conduct Pre-Lawsuit Discovery Regarding Potential Wrongful Death Litigation**

1. It has been reclarified that a personal representative cannot obtain or issue a subpoena to conduct discovery 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 January 1,

2002. As part of the comprehensive discovery court rule changes, effective January 1, 2020, this provision was relocated to **MCR 5.131(B)(3)**, with no changes to the current language. It continues to read in pertinent part:

- a. (3) 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.
- b. 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. Discovery in Probate Proceedings/Mandatory Initial Disclosures**

- i. The new rule under [MCR 5.131\(A\)](#) clarifies that discovery for civil actions in probate court are governed by the broader **MCR 2.300** discovery rules.
- ii. The scope of permissible discovery in purely probate proceedings has not changed. **MCR 5.131(B)(3)**.
- iii. Mandatory initial disclosures in probate proceedings are required under **MCR 5.131(B)(2)(a)**, only if by time of first hearing on petition initiating proceeding either:
  1. Non-petitioner interested person files demand and properly serves all interested persons or
  2. Interested person verbally or in writing objects/contests petition, properly serves any objection/response on interested persons, and judge determines mandatory initial disclosure appropriate. Except if court provides otherwise, when mandatory initial disclosures required, they must be provided by petitioner and demandant/objecting interested person.
- iv. On a motion by an interested person or the court's own motion, the court can require mandatory disclosures from designated interested person(s) or require additional interested persons to make disclosures. **MCR 5.131(B)(2)(b)**.
- v. **MCR 5.131(B)(2)(c)** sets out the time requirements:
  1. Petitioner must serve initial disclosures within 14 days after first hearing on petition subject to demand/objection.
  2. Demandant/objector must serve initial disclosures within later of 14 days after petitioner's disclosure due date or 28 days after demand/objection filed.
  3. If mandatory disclosures ordered by court per objection by interested person (and determination disclosure appropriate), interested person's disclosures due within 21 days of order.

- vi. These rules allow a Judge, in most circumstances, to determine whether to require mandatory initial disclosures. Court rule recognizes unique dynamics of probate proceedings v. other civil actions.

#### **E. Civil Actions in Probate**

##### **i. MCR 5.101 – Form and Commencement of Action**

- 1. 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:

- a. (A) Form of Action. There are two forms of action, a “proceeding” and a “civil action.”
- b. (B) Commencement of Proceeding. A proceeding is commenced by filing an application or a petition with the court.
- c. (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:
  - i. (1) Any action against another filed by a fiduciary<sup>1</sup>, and
  - ii. (2) Any action filed by a claimant after notice that the claim has been disallowed.

- ii. MCR 5.001(A) provides that procedure in probate court is governed by the rules applicable to other civil actions, except as modified by the probate rules.

- 1. For civil actions filed in probate court, the circuit court procedural rules from Chapter 2 of the Michigan Court Rules apply.
  - a. Just because the action is in probate does not mean that the rules of civil procedure does not apply, it is still a civil action and follows those rules of procedure.
  - b. **YOU MUST FOLLOW THE RULES OF CHAPTER 2 FOR CIVIL CASES, THIS INCLUDES SERVICE RULES, TIME REQUIREMENTS, COMPLAINT, ANSWER, DEFAULT JUDGMENT, MOTION PRACTICE, ETC.**
  - c. If you operate as if you are handling a probate proceeding in a civil action in the probate court, you risk dismissal, default, or other consequences.

##### **iii. Examples:**

- 1. A successor personal representative discovers that that the prior personal representative has taken money from the estate. They

---

<sup>1</sup> A current fiduciary’s action versus a prior fiduciary is not a “civil action” (i.e. Petition to Surcharge).

would file a petition in probate court to recover these funds. A petition to surcharge may be warranted.

a. Proceeding, Chapter 5 of Michigan Court Rules

2. A contractor files a claim with an estate. They had built an addition to the Decedent's home prior to death and has not been paid. The personal representative disallows the claim. The contractor could file a civil action in probate court to attempt to receive payment for the work performed.

a. Action, Chapter 2 of Michigan Court Rules

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 could file a petition in the decedent estate to determine title to the bank account.

a. Proceeding, Chapter 5 of Michigan Court Rules

4. Visa and American Express both file claims against a Decedent's estate for unpaid balances of credit card accounts, which are subsequently disallowed by the personal representative of the estate. The credit card companies must file a civil action commenced with the filing of a summons and complaint in probate or circuit court.

a. Action, Chapter 2 of Michigan Court Rules

5. An insurance company pays ERISA life insurance benefits to an ex-spouse as the named beneficiary on the policy. The estate, through the personal representative, must bring a civil action against the ex-spouse to bring any proceeds of this policy back into the estate.

a. Action, Chapter 2 of Michigan Court Rules

- iv. **Key Takeaway:** Pay attention to whether you are in "Probate Land" (Chapter 5 of Michigan Court Rules) or "Civil Land" (Chapter 2 of Michigan Court Rules) when practicing in the probate court.

#### **F. Landlord/Tenant Disputes**

- i. 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.
- ii. 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."

iii. **Please remember however there is a distinction between trying title (ownership) and possession to property.**

1. The District Court has exclusive jurisdiction under the Summary Proceedings Act (Eviction) as to the question of *possession* where there is a valid lease involving estate property.
2. The Probate Court however has concurrent jurisdiction with the Circuit Court to entertain Complaints and or Petitions to Quiet Title or *ownership interests* to estate property.

iv. **Some case law:**

1. ***In re Hroba Trust*, 2007 WL 2935389 (October 9, 2007) (unpublished), rev'd on other grounds, 480 Mich 1059; 743 NW2d 910 (2008), reconsidered 480 Mich 1191; 747 NW2d 266 (2008), aff'd in part, rev'd in part, and remanded, 2008 WL 4603584 (October 16, 2008)**
  - a. Michigan Court of Appeals concluded that MCL 700.1302(b)(v) did not divest another court, such as the District Court, of the ability to resolve questions of trust construction when necessary to determine a matter within their Court's jurisdiction (an eviction).
2. ***In re Estate of Anderson*, unpublished per curiam opinion of the Court of Appeals, issued September 23, 2010, (Docket No. 292036)**
  - a. Michigan Court of Appeals held that the exclusive subject matter jurisdiction of a Probate Court under MCL 700.1302(c) over a guardianship and conservatorship proceedings encompassed the jurisdiction to order payment of rent and to authorize or to order a fiduciary to take the necessary steps to secure and preserve real property owned by a protected person, including, but not limited to, removing unauthorized persons from the property or authorizing the conservator or guardian to commence formal eviction proceedings in District Court.
3. ***In re Estate of Waller*, unpublished per curiam opinion of the Court of Appeals, issued January 27, 2015, (Docket No. 315950)**
  - a. District Court action for unlawful eviction did not divest the probate court of jurisdiction over personal representative's petition for exclusive occupancy of the premises.

**G. Garnishments, Executions, and Creditor's Exams**

- i. 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.

- ii. The forms used and fees applicable in other trial courts to file post judgment relief requests such as motions to show cause for contempt ([MC 230](#)), bench warrants ([MC 229](#)), subpoenas for a creditor's exam ([MC 11](#)), writs of garnishment ([MC 12-MC 16a](#)), requests to seize personal property ([MC 19](#)) and notices of judgment lien ([MC 94](#)) are to be used in probate court as well for this purpose.

**iii. Garnishments and Executions**

1. Chapter 3 of the Michigan Court rules deals with special proceedings and actions, including garnishments.
  - a. [MCR 3.001](#): "the rules in this chapter apply in circuit court and in other courts as provided by law or by these rules."
2. Probate court has the implicit discretionary authority to order garnishments, executions, and creditor exams to facilitate the enforcement of a party's judgment.
  - a. [MCL 600.847](#): "...the probate court shall have the same powers as the circuit court to hear and determine any matter and make any proper order to fully effectuate to the probate court's jurisdiction and decisions."
    - i. 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.
    - ii. Authorizes the use of garnishments in probate court.
    - iii. Pursuant to [MCR 3.101](#) and [MCR 5.101](#), post judgment garnishments could be ordered by the probate court.
  - b. [MCL 600.6001](#): gives the probate court the ability to utilize executions to enforce its judgments.

**iv. Creditor's Exams**

1. [MCL 600.1455](#): empower the holders of probate court judgments to utilize creditor exams.
2. [MCR 2.621\(B\)\(2\)](#): deals with proceedings supplemental to judgment and provides that a judgment creditor may obtain relief pursuant to [MCL 6.110](#) *supra* (i.e. creditors exams) and further discovery according to [MCR 2.300](#) *et seq.*

## **IV. CONCLUSION**

- A. Hopefully, these materials will provide you with a better understanding of the probate court's exclusive and concurrent jurisdiction.
- B. Before you bring a matter in probate court, be sure to consider carefully whether the court possesses the adjudicative authority to entertain your action.

Rev. 9/29/2025