

OVERVIEW OF PROBATE COURT JURISDICTION

By

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I. INTRODUCTION

The Materials address the following topics:

- A. Basis of Probate Court's exclusive and concurrent jurisdiction.
- B. Review of various scenarios to determine if the Probate Court would have jurisdiction.
- C. Discussion of **MCR 5.101** and its impact on Probate jurisdiction and Probate procedure.
- D. Awareness of the scope of Probate Court jurisdiction will enable you to evaluate whether a proceeding can be brought in Probate Court.

II. JURISDICTION: SOME DEFINITIONS

JURISDICTION GENERALLY IS THE COURT'S POWER TO DECIDE A CASE OR ISSUE A DECREE.

- A. Subject matter jurisdiction is defined as jurisdiction over the nature of the case and the type of relief sought.
- B. Exclusive Jurisdiction is a Court's power to adjudicate an action or class of actions to the exclusion of other Courts.
- C. Concurrent Jurisdiction is jurisdiction which may 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.
- D. Equitable Jurisdiction is the power to hear and resolve a case according to equitable rules.
- E. Venue – The proper or a possible place for the filing of an action/proceeding.

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)**.

III. 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. 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. Many lawyers thought this rule transformed the probate court into a "junior circuit court" which 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. Probate Court jurisdiction although still considered limited is quite expansive and includes both legal and equitable authority.

Note: Under the Estates and Protected Individuals Code (EPIC, Michigan's 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. Now jurisdiction includes exclusive jurisdiction to settle the accounts of all trustees.

EXCLUSIVE JURISDICTION

The Probate Court's exclusive subject matter jurisdiction is enunciated in **MCL 700.1302**:

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

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 (i.e., with a will) or intestate (i.e., without a will), 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. **See MCL 700.1302(a)**
2. Examples:
 - a. Decedent lived in Wayne County at time of his death. Wayne County Probate Court has jurisdiction over her estate.
 - b. Decedent was a West Virginia resident at the time of his death, but owned property in Detroit. Wayne County Probate Court has jurisdiction over his estate.
 - c. Decedent lived in California and died in his sleep while visiting his mother in Dearborn. Wayne County Probate Court does not have jurisdiction over his estate.
 - d. Decedent lived in Arizona and was killed in a plane crash at Metro Airport. Wayne 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)**

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 - items 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. 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.

Practice Pointer: The personal representative is your client, **not the estate.**

- c. **MCR 5.117(A)** provides that an attorney who files an appearance on behalf of a fiduciary represents the fiduciary, not the estate. Confusion caused by the recent Michigan Court of Appeals decision in **Calvin v Graves, 2009 WL 4725753 (Mich. App #286674, December 3, 2009)**, contradicting **MCR 5.117(A)** on this point of law was avoided when this opinion was ultimately unpublished by the

Michigan Court of Appeals.

- d. Heirs or devisees to an estate will often think that as the lawyer for the personal representative, you are actually working for them and will do whatever they ask.
- e. 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.
- f. Remember as an attorney for the Personal Representative you might have to withdraw from a matter if there is a breakdown in your relationship with the Personal Representative. 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. See **MCR 5.206**

C. TRUSTS

1. 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)**.
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.

See also MCL 700.7202- Jurisdiction over trustee and beneficiary

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**

700.7204. See also MCL 700.7209.

4. Please note that while the adoption of the Michigan Trust Code in 2010 made significant changes to the procedure for drafting and to the administration of Trusts in Michigan, it did not change the Probate Court's jurisdiction over Trusts.

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. **MCL 700.1104(i)**
3. It includes a limited guardian, but not a guardian ad litem. See also **MCL 700.1104(i).**
4. Types of Guardianships: Adult (i.e. legally incapacitated individual, or LII, (**MCL 700.5303, MCL 700.5306**) and minor (two types: **full (MCL 700. 5204)** and **limited minor guardianship (MCL 700.5205).**
5. Please note that according to **MCL 700.5206(4)** 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 or the adoption of the minor or to the release of the minor ward for adoption.

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 700.5211 (minor guardianships), MCL 700.5302 (adult guardianships).**

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.** These are "one shot deals" where a conservatorship is not required.

Example: A parent or guardian wants to obtain Probate Court approval to accept a lawsuit settlement on behalf of a minor.

Note: In some situations, both a protective order and conservatorship must be filed.

Example: A protective order must be obtained in order to receive approval for the sale of real estate in which a minor has an interest. A minor conservatorship must be established to hold and manage the proceeds until the ward reaches age 18.

4. Venue- Proper venue in a Conservatorship proceeding is where the protected individual resides or 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 all 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.

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

1. 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**
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. Hear and decide 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. **MCL 330.1100 et. seq.**
2. **Civil Admission and Discharge Proceedings (Chapter 4)-MI**

Petitions of this type are filed in probate court. **MCL 330.1401(1)** defines a “person requiring treatment” under Mental Health Code. The amended Mental Health Code now focuses on capacity more than conduct. The traditional standard was immediate risk of harm to self or others. (suicide or violence). Now the standard has been expanded or broadened to include “substantial risk of harm due to impaired judgment”. **MCL 330.1401(1)(c)**

3. **Intellectual Disability Treatment (Chapter 5)-JA**

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. See **MCL 330.1515**

Note: If a person meets the criteria for both an involuntary treatment order under Chapter 4 or intellectual disability treatment under Chapter 5 a petitioner has the option of filing either of these petitions.

4. **Guardianships for Individuals with Developmental Disabilities (DDs) MCL 330.1600(b) (Chapter 6)-DD or DDT**
 - 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 (21)** as follows:

“Developmental disability” means either of the following:

- (a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:
- (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
 - (ii) Is manifested before the individual is 22 years old.
 - (iii) Is likely to continue indefinitely.
 - (iv) Results in substantial functional limitations or 3 or more of the following areas of major life activity:
 - (a) Self-care.
 - (b) Receptive and expressive language.
 - (c) Learning
 - (d) Mobility.
 - (e) Self-Direction.
 - (f) Capacity for independent living.
 - (g) Economic self-sufficiency.
 - (v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
- (b) If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided.
- c. There are two types of DD guardianship: plenary/full and partial. They are described as follows:
- “Plenary Guardian” means 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)**
 - “Partial Guardian” means a guardian who possesses 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)**
- d. Guardian as Fiduciary- – Whenever the Court appoints a plenary guardian of the estate or partial guardian with powers and duties respecting real and personal property, that guardian shall be considered a fiduciary for the purposes of the Estates and Protected Individuals Code (EPIC). **MCL 330.1632.**

Practice Pointer: Please note as a Plenary Guardian of the Estate or Partial Guardian with powers respecting real or personal property, one is also subject to the same responsibilities as other “Fiduciaries” in EPIC (i.e. filing accounts, annual reports on condition of the ward, etc.)

4. 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).**

IV. 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. 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. 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** (the precursor to **MCL 700.1303**) 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)** (the precursor to **MCL 700.1302**), 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)**.
6. The difference between **York** and **Manning** is that **York** deals with an estate proceeding and **Manning** involves a trust. The following portion of **Moss v. UAW Legal Services, 2006 WL 375304**, Michigan Court of Appeals Docket #270,641 (rel'd 12/21/06), analyzes the jurisdictional provision for estates in contrast with trust proceedings:

"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)

As further explained in the recent decision ***Schaaf v. Forbes*, 338 Mich. App. 1, 11–15, 979 N.W.2d 358, 364–66 (2021), appeal granted, 509 Mich. 881, 970 N.W.2d 887 (2022), vacated, 982 N.W.2d 374 (Mich. 2022), and appeal denied, 982 N.W.2d 374 (Mich. 2022):**

...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). “[. 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.

A party cannot avoid the dismissal of a cause of action based on artful pleading. *Maiden v. Rozwood*, 461 Mich. 109, 135; 597 NW2d 817 (1999). The gravamen of a plaintiff's action is determined by examining the entire claim. *Id.* The courts must look beyond the procedural labels in the complaint and determine the exact nature of the claim. *MacDonald v. Barbarotto*, 161 Mich. App 542, 547; 411 NW2d 747 (1987). *Adell Broad. Corp. v. Ehrlich*, No. 299061, 2012 WL 468258, at p. 4 (Mich. Ct. App. Feb. 14, 2012).

Bottom line:

Deceased Estate: Exclusive jurisdiction must directly relate to the settlement and distribution of a deceased individual’s estate.

Trust: 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.

7. See also the Michigan Court of Appeals unpublished decision of **Was vs. Plante and OLHSA**, Michigan Court of Appeals docket number **265270** and **266244 (June 22, 2006)**, wherein the Michigan Court of Appeals citing **Manning** held a probate court had subject matter jurisdiction over tort claims which clearly arose out of inappropriate conduct of the fiduciaries as court appointed guardians/conservators. The complaint in this case alleged breach of fiduciary duty, tortious interference with a contract and intentional infliction of emotional distress. **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.**

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 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.
3. 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.
4. **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.

C. USE OF SUBPOENA BY PERSONAL REPRESENTATIVE TO CONDUCT PRELAWSUIT 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 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:

(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.

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

1. 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.
2. The scope of permissible discovery in purely probate proceedings has not changed. **MCR 5.131(B)(3)**.
3. Mandatory initial disclosures in probate proceedings are required only if by time of first hearing on petition initiating proceeding either:
 - a. Non-petitioner interested person files demand and properly serves all interested persons or
 - b. 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.

MCR 5.131(B)(2)(a).

Observation: Allows Judge, in most circumstances, to determine whether to require mandatory initial disclosures. Court rule recognizes unique dynamics of probate proceedings vs. other civil cases.

4. Court Order. On own interested person\own motion, court can require mandatory disclosures from designated interested person(s) or require additional interested persons to make disclosures. **MCR 5.131(B)(2)(b).**

5. Time Requirements.

- a. Petitioner must serve initial disclosures within 14 days after first hearing on petition subject to demand\objection.
- b. Demandant\objector must serve initial disclosures within later of 14 days after petitioner's disclosure due date or 28 days after demand\objection filed.
- c. 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.

MCR 5.131(B)(2)(c).

E. 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. 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."
3. Please remember however there is a distinction between trying title (ownership) and possession to property.
 - a. 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.
 - b. 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.**
4. **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)** where the 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).
5. **In re Estate of Anderson, 292036, 2010 WL 3718885 (Mich. Ct. App. Sept. 23, 2010)**, where the 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.

6. **In re Estate of Waller**, No. 315950, 2015 WL 340120 (Mich. Ct. App. Jan. 27, 2015) - 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.

F. 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. In this regard, please note MCR 3.101(F) was recently amended to now extend the period of a writ of garnishment to 182 days. **MCR 3.101(F)(1)**.

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.
8. 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.

V. **MCR 5.101-CIVIL ACTIONS IN PROBATE COURT**

RULE 5.101 - FORM AND COMMENCEMENT OF ACTION

- 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:
 - (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 fiduciary¹, and
 - (2) Any action 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

¹ A current fiduciary's action versus a prior fiduciary is not a "civil action" (i.e., it is a Petition to Surcharge).

rules applicable to other civil proceedings, except as modified by the probate rules.

C. Examples:

1. A successor personal representative discovers that the prior personal representative has taken money from the estate. He would file a petition in probate court to recover these funds. A petition to surcharge may be warranted.
2. A contractor files a claim with an estate. He 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.
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 to determine title to the bank account.
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.
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.

Note: Remember that for civil actions filed in probate court, the circuit court procedural rules from Chapter 2 of the Michigan Court Rules apply (i.e., complaint, answer, default judgment provisions, time requirements, etc.). **See MCR 5.101(C) and MCR 5.001(A)**

VI. 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.