

BASICS OF PROBATE COURT JURISDICTION

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INTRODUCTION

- I. The below 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. Awareness of the scope of Probate Court jurisdiction will enable you to evaluate whether a proceeding can be brought in Probate Court.

JURISDICTION: SOME DEFINITIONS

- I. Jurisdiction, generally, is the court's power to decide a case or issue a decree or order.
 - a. Subject matter jurisdiction is defined as jurisdiction over the nature (or subject) 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 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.
 - d. Equitable jurisdiction is the power to hear and resolve a case according to equitable rules.
- II. Venue is the proper or possible place for the filing of an action or proceeding, generally refers to the geographic location.

PROBATE COURT JURISDICTION

I. Generally, and Historically

- a. 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.
- b. Probate court jurisdiction although still considered limited, is quite expansive and includes both legal and equitable authority.
- c. **History:**
 - i. 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.
 - ii. 1989 – the legislature amended the RPC and gave the probate court equitable jurisdiction.
 - iii. 1992 – MCR 5.101 was amended to provide for the filing of a “civil action” in probate court under certain limited circumstances.
 1. Many attorneys though this rule transformed probate court into a “junior circuit court” which offered an alternative forum for the resolution of legal disputes.
 2. However, the amendment of this court rule has not expanded the *scope* of probate court jurisdiction.
 - iv. 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.
 1. Prior to this, jurisdiction over some trustee accounts was concurrent with the circuit court.

II. Exclusive Jurisdiction

- a. The probate court’s exclusive subject matter jurisdiction is enunciated in **MCL 700.1302**.
- b. The probate court has exclusive *legal and equitable* jurisdiction of all the following:
 - i. ***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 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)**.
 2. 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**.
 3. 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.
 4. Examples:

- a. Decedent lived in Wayne County at time of death → 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 → Wayne County Probate Court **has** jurisdiction over the estate.
- c. Decedent lived in California and died while visiting family in Dearborn → Wayne County Probate Court **does not** have jurisdiction over the estate.

5. **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.**

ii. *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. Also, the declaration of rights involving trusts, trustees, and beneficiaries of trusts.
- 3. Probate courts have jurisdiction over the trustee and beneficiaries. **MCL 700.7202.**
- 4. 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.
- 5. 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.

6. 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.**

iii. *Guardianships*

1. Probate courts have exclusive jurisdiction over proceedings concerning guardianships. **MCL 700.1302(c).**
2. 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).**
3. 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).**
4. 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).**
5. 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.**

iv. *Conservatorships and Protective Proceedings*

1. Probate courts have exclusive jurisdiction over proceedings concerning conservatorship and protective proceedings. **MCL 1302(c).**
2. A conservator is a person appointed by a court to manage a protected individual's (adult or minor), *estate*. **MCL 700.1103(h).**
3. 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).**
4. 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.
5. 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.
 - 6. 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.**
- v. *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, 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.
 - 5. 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).**
- vi. *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 (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).**
 - 3. Intellectual Disability Treatment (JA):
 - 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.**
 - 4. If a person meets the criteria for both an involuntary treatment order under Chapter 4 and intellectual disability under Chapter 5, the petitioner has the option of filing either of these petitions.
 - 5. 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 appointment 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.**

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

- 1. 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**).
- 2. 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.**
- 3. 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.
 - 4. 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.
 - 5. 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**
 - i. 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.**
 - 1. To determine property rights and interests.
 - 2. Hearing and decide contract disputes by or against an estate, ward, or trust.
 - 3. Authorize specific performance of a contract in a joint or mutual will or of a contract to leave property by will.
 - 4. Partition of property.
 - ii. Other matters over which probate courts have concurrent jurisdiction:
 - 1. Ascertain survivorship of persons.
 - 2. Bar an incapacitated or minor wife from their dower right.
 - 3. Determine cy-pres, gifts, grants, bequests, and devises in a trust or otherwise.
 - 4. 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.
 - 5. To impose a constructive trust.
 - 6. To hear and decide any claim by or against a fiduciary or trustee for the return of property.
 - iii. 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).**
 - 1. 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.
 - 2. 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)**

CONCLUSION

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