

# Civil Litigation in Probate Court

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**M**CR 5.101 sets forth the form and commencement of a civil action for Probate Court. There are two forms of actions, a “proceeding” and a “civil action.” A proceeding is commenced by filing an application or a petition with the court; however, a civil action is commenced by filing a complaint and is governed by the rules applicable to civil actions in Circuit Court. Specifically, the action must be titled “civil action” and must be in the form of a complaint with the accompanying summons.

In Probate Court, there are two circumstances where a civil action is mandated. Those are:

- Any action against another filed by a fiduciary; and
- Any action filed by a claimant after notice that the claim has been disallowed.

Examples would include where a fiduciary is attempting to bring assets into an estate or where there might be life insurance proceeds in dispute.

Matters that are not properly filed as a civil action in Probate Court include wrongful death actions, tort actions, landlord/tenant disputes, etc.

As set forth in the rule, these civil actions filed in Probate Court are governed by the applicable civil court rules of Circuit Court. Specifically, these are commenced by the filing of a complaint and a summons. The complaint must be duly served by a competent adult who is not a party or an officer of the party and a proof of service must be filed with the court supporting the service.

Process may be served on an individual by:

- Delivering a summons and a copy of the complaint to the defendant personally; or
- Sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. (MCR 2.105(A)(1)(2).

MCR 2.102(E) calls for the dismissal of the action for failure to serve.

As with other civil actions, the defendant has the opportunity to answer the complaint as set forth in 2.108. Most judges upon the filing of the answer will set a pretrial hearing to help define the issues of the case, the parties involved, the necessity and time permitted for discovery, as well as to set the next hearing times and trial date.

The forms of the pleadings must also follow the court rules – specifically MCR 2.113, as well as MCR 5.113.

The Probate Court Rules also include methods for alternative dispute resolution. Specifically, the court may submit the case to mediation, case evaluation or other alternative dispute resolutions for any of the contested issues. Further, if a dispute is submitted to Case Evaluation, MCR 2.403 and 2.404 apply to the extent feasible, except that sanctions are not awarded unless the subject matter of the case evaluation involves the division of property or money damages (MCR 5.143).

As with other civil cases, a jury may be requested if the demand for jury trial is made within 28 days after the filing of the answer or timely reply and the requisite jury fee is paid (MCR 2.508). Finally, please recognize that civil cases will have their own separate file, even if they are associated with a probate estate and may be dismissed for lack of progress, directed verdict, default judgment or other order as set forth in the court rules.

The filing fee for filing a civil action in Probate Court is \$150.00 with the check made payable to the Oakland County Probate Court. If you have any questions with respect to the appropriateness of filing civil litigation in Probate Court, please do not hesitate to contact our resident specialist, Jill Koney Daly, Chief of Probate Estates and Mental Health.

Stay tuned!