

# Practice Tips

by *Lisa Langton*  
**Family Division Administrator -  
 Probate/Juvenile Register**



This is Part III of the highlights from my presentation at the 45<sup>th</sup> Annual Probate and Estate Planning Institute Conference in June.

## **COLA Update**

Under EPIC, exemptions, allowances, small estates, and small estate affidavit and intestate succession amounts are adjusted yearly for inflation, rounded to the nearest \$1,000 (MCL 700.1210). Make sure you utilize the correct amount based upon the decedent's date of death. Currently, the amounts to be used in 2005 are:

Intestate (Surviving Spouses' share)	\$177,000
Intestate (Surviving Spouse's share – no children w/ decedent)	\$118,000
Small Estate	\$ 18,000
Small Estate Affidavit Procedure	\$ 18,000
Homestead Allowance	\$ 18,000
Exempt Property Allowance	\$ 12,000
Family Allowance *	\$ 21,000

\* Amount that a personal representative can determine automatically without prior court approval.

## **Petition for Use of Funds – Minor Conservatorship**

It is recommended that during the administration of a minor conservatorship the conservator keep track of any petitions for *Use of Funds*. The Oakland County Probate Court compiles a history of the use of funds for the judge's review. This is a good way to work with your conservators in the use of funds to preserve the maximum amount of assets for the minor.

## **Trusts**

The Probate Court has jurisdiction over trusts. However, practitioners oftentimes file summons and complaints in the Probate Court when there are disputes that arise in a trust. The proper method to file actions against a trust is to file a petition, not a summons and complaint. MCR

5.101(C) defines what civil actions are proper in the Probate Court. They include:

- a. any action against another file by a fiduciary, and
- b. any action filed by a claimant after notice that the claim has been disallowed.

Accordingly, to file a complaint against a trust you can either file a petition in the trust's file (or open one) or sue the trustee through a civil action in Circuit or District Court, depending upon the amount in dispute.

## **Inventories**

Unsupervised Estates – No inventories are required to be filed in Probate Court for unsupervised estates. Inventories must be "presented," however, so that the court may determine the gross estate fee. Oakland County requires that the inventory be presented on the approved State Court Administrative Office form.

Best practice also supports not writing a check for the inventory fee until you are at the Probate counter presenting your inventory. People call the court to get a dollar amount that, due to changes in the inventory, may change between the time you call the court and appear at the counter. Another change for us is that our cash-receiving system no longer permits accepting a check that is not in the exact amount of the inventory fee. Special attention should be given when you are filing your inventory through the mail.

## **Interested Persons**

MCR 5.125 defines "interested persons" according to the specific proceedings you are filing. One of the most common mistakes that practitioners make is failing to serve the necessary interested persons and to file the required proof of service prior to hearings.

Did you know that where there are no known heirs on decedents estates, conservatorships and trusts, the Attorney General is an interested person for the entire time the proceeding is open? The AG continues to be an interested

## Probate Court

person irrespective of whether they file an appearance or appear at any of the proceedings. In order to serve the Attorney General in Oakland County, please serve them at: Office of John M. Cahill, State Public Administrator, 1500 Abbott Rd., Suite 300, East Lansing, MI 48823.

### **Fees**

As a result of an amendment to MCR.2.119 and the rescission of Administrative Order 1995-2, the Probate Court's fee collection has changed. The court will no longer charge an additional \$20 fee when a request for appointment of a special personal representative, temporary guardian or temporary conservator is made on the same application or petitions. The initiating fee of \$150 is still applicable. Multiple motions or petitions filed at the same time during a pending action will cost a total of \$20

rather than \$20 per petition. The court will no longer be providing free certified copies of *Letters of Authority* or *Letters of Guardianship* to the fiduciary. Each certified copy will now cost \$10.

### **Altered Wills**

If you present an altered will, Oakland County will require a hearing for the admission of that will, even if full waivers and consents are filed. Always remember to check the Probate Court to determine if they have an original will on file for safekeeping. If the decedent had a prior residence in a different county, you should also check with that county to see if a previous will had been filed with them.

Please feel free to contact me regarding further information on these items. Stay tuned!



## *Racing against time*

*to make the courthouse  
filing deadline?*

### *Use the OCBA File-by-Fax Service!*

Circuit Court Mediation Summaries • Praecipes • Acceptances/Rejections • Witness Lists  
Appearances • Briefs • Motions • Civil Actions • Driver's Restoration • *AND MUCH MORE!*

**Phone: (248) 858-1585 – Fax: (248) 338-9540**

Copies only 10 cents/page • Fax services discounted for OCBA members • We bill you for copies & faxes