

Civil Litigation in Probate Court

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Did you know that there are certain actions that must be titled “civil actions” and are commenced by filing a complaint, not a petition, in the Probate Court? MCR 5.101 sets forth the very limited circumstances by which a party must title their pleadings as a complaint. Those actions are governed by the same rules applicable to civil actions in Circuit Court.

The court rule defines that “any action against another filed by a fiduciary, and any action filed by a claimant after notice that the claim has been disallowed” must be commenced by filing a complaint. A summons and a filing fee of \$100 must accompany the complaint, as specified in Supreme Court Administrative Order 1995-2. If a demand for a jury is made, there will be an additional \$30 filing fee.

Just as certain actions must be commenced by filing a complaint, we often have parties attempt to file actions improperly as complaints. Matters such as wrongful death actions, tort actions, landlord/tenant disputes, or any actions by a creditor of an heir, devisee or beneficiary cannot be filed as “Complaints” in Probate Court. The court rule clearly limits those actions that can be commenced as civil actions.

The same types of pleadings and motions are accepted on civil files, but note that the form of the pleadings must comply with MCR 2.113; 5.113, to-wit: the pleadings must be legibly typewritten or printed in English, the name of the court and parties must be included, etc.

A common mistake that attorneys make is filing what they title “petitions” in civil actions. Commonly no filing fee is presented with the petition. The argument seems to

be that it is not a motion and accordingly there is no filing fee for it. As referenced above, the Supreme Court has issued an administrative order which sets our fees and specifically states that a petition, motion or objection, no matter how titled, that “requests relief or requires a hearing or ruling of the court” shall be accompanied by a \$15 filing fee. Copies of this administrative order are available through my office upon request.

I would suggest that once you have filed a civil action in the Probate Court, you contact the Probate judge assigned to the case to determine their pretrial procedures. Some of the judges conduct a pretrial or schedule a conference and require the parties to file and meet specific filing deadlines. The clerks for the judge will be able to identify and specify what procedures those judges will require.

The court may also submit the case to mediation, case evaluation, or other alternative dispute resolution processes for these matters. On those cases where the relief sought is primarily money damages or division of property, case evaluation (formerly mediation) is often used. The same procedures would be followed as those in Circuit Court. The Case Evaluation Office located on the second floor of the west wing will be the filing point for those evaluation statements.

If you have any specific questions regarding whether your action would fall under a “proceeding” or “civil action” in Probate Court, please contact either myself or Chief of Estates, Jill Koney Daly. Recognition is given to Jill Koney Daly for her research and organization of the above materials. Stay tuned!