

Civil Actions and Miscellaneous

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Probate Court Administrator



It is not an unusual occurrence for the Probate staff at the service counter to have to turn away individuals attempting to file a civil lawsuit in the probate court because the particular case does not belong in this court.

A common misconception, even among practitioners, is that if one of the parties to a civil lawsuit is a decedent's estate or trust, or perhaps because a conservator is involved, that the matter automatically belongs in probate court. MCR 5.101, however, is very specific on this issue:

(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 fiduciary, and
- (2) Any action filed by a claimant after notice that the claim has been disallowed.

Examples of a civil action properly before the probate court might include an attempt by a fiduciary to bring a particular asset into the estate, or a suit filed by a care facility seeking payment of monies owed by the decedent but only after the personal representative has denied the facility's claim in the decedent estate.

It is also important to note the specificity of MCR 5.101(C). For civil actions filed in probate court, the proper court rules to adhere to are those applicable to civil actions in circuit court. This means that a civil suit in probate is started with a summons and complaint, which must be served on the defendants according to MCR 2.105. Following the filing of an answer with the probate court, the matter will be set for a pre-trial hearing before the assigned judge and will proceed according to a scheduling order determined by the judge. The general civil rules continue to apply, including MCR 2.102 (dismissal as to defendant not served) and 2.502 (dismissal for lack of progress).

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.

Misc. Items

Be sure to check the probate court Web site at www.oakgov.com/probate for the most current court forms. One recent change to remember is that the *Petition to Terminate* for guardianships, conservatorships, and developmentally disabled persons cases was recently divided into separate petition forms based on case type.

We've also modified our in-house *Statement of Services* form for probate appointments. There are now two distinct forms. When requesting payment for an appointment as a GAL or as an attorney on a non-mental health probate matter, you must use the form entitled *Statement of Services and Order for Payment – General Probate*. A separate *Statement of Services* form should be submitted for each case. For payment on a mental health appointment, including attorney of the week, please use the *Statement of Services and Order for Payment – Mental Health*. The forms may be found at the probate Web site given above.

Also, don't forget that there are a number of court rule changes that took effect on May 1, 2009. You can find a link to those changes at <http://courts.michigan.gov/index.htm>.

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