

# WHAT IS THE PROBATE COURT

## Probate Court Judge

There is a probate court in each Michigan county with the exception of ten counties which have consolidated to form five probate court districts. Each district has one judge, and each of the remaining counties has one or more judges depending in large part on the population and caseload within the county.

Probate judges are elected for terms of six years in non-partisan elections. A candidate must be a qualified elector, a resident of the probate district or county, a lawyer who has been licensed to practice law for at least five years and under 70 years of age. Salaries for probate judges are set by the legislature.

## Duties of the Probate Court

When most people think of probate court, they think about the probate of the estates of decedents. Probate court does include that function, but it is also a lot more. Probate court can be divided into five major areas: (1) the probate of estates and the supervision of trusts; (2) guardianships and conservatorships; (3) commitment of the mentally ill; (4) juvenile delinquency; (5) and neglect and abuse. The Eaton County Probate Court also serves as a Family Court, handling approximately one third of the domestic relations cases such as divorce, custody, child support, and parenting time issues.

When someone dies and is either a resident of a Michigan county or owns property in that county and is not a resident of Michigan, the probate court for the county in which they resided at the time of death is the proper venue to file a decedent's estate, if necessary. This means that the court appoints a personal representative for the estate and admits the will of the decedent, if any.

The personal representative must then gather the assets, pay the bills and distribute the residue of the estate to the parties entitled to it either as devisees under the will or heirs if there is no will. When the probate court supervises a trust, it makes sure that the terms of the trust are carried out. It also decides any disputes concerning the trust.

The probate court has exclusive jurisdiction over guardianships and conservatorships. The probate court may appoint a guardian or conservator of a minor or a guardian or conservator of an adult. A guardian is a fiduciary who makes personal decisions for a protected individual. A conservator is a fiduciary who makes financial decisions for a protected individual. The probate court must determine whether a guardianship or conservatorship is legally appropriate and who should serve as the guardian or conservator.

The probate court may also appoint a guardian for a developmentally disabled person under the Michigan Mental Health Code. If a person is developmentally disabled any guardianship must be pursuant to the Mental Health Code and not the Probate Code. A guardian of the person or guardian of the person and estate may be appointed for a developmentally disabled person. The guardian of the person is similar to a guardian of an adult under the Probate Code and a guardian of the estate is similar to a conservator under the Probate Code.

The probate court is responsible for the involuntary commitment of the mentally ill. It has jurisdiction over any person who is a resident of the court's county or who is found in that county. It must determine if the person is mentally ill and if that person also meets the additional requirement that the person is either dangerous to himself or herself, dangerous to others or unable to take care of basic physical needs. After the probate court determines that an individual is a person requiring treatment, it must determine the duration and kind of treatment within the statutory requirements.

## Circuit Court Family Division

In 1998 the "Family Division of the Circuit Court" was created by statutory enactment, effectively combining aspects of the Probate Court (juvenile delinquency matters, child protection proceedings, and adoptions) with aspects of the Circuit Court (domestic relations and personal protection orders) under the theory of "one judge-one family." With the establishment of the Family Division, and under a system of combined administration, the Circuit and Probate Courts work in tandem, sharing dockets and administration, and covering for each other in times of absence.

The Probate Court has one judge, Judge Thomas K. Byerley, who also sits by assignment in the Family Division of the Circuit Court. Among other matters, the Probate Court has jurisdiction over wills and estates, guardianships, and mental health commitment petitions. While juvenile matters, child protection proceedings, and adoptions that were formerly under the jurisdiction of the Probate Court have been transferred to the Family Division of the Circuit Court, Judge Byerley, except for rare instances, maintains these entire dockets while sharing in the domestic relations docket in equal proportion with the Circuit Court bench.