

... MICHIGAN'S PROBATE COURT SYSTEM ...

The Development of Probate Courts in Michigan: What They Are and How They Function

Benjamin Franklin once said that there are only two certainties in life: death and taxes.

These two issues certainly lie at the heart of much of what Michigan probate courts handle every day, whether it's an estate, a conservatorship or guardianship, or another matter.

So how and when did these courts come about?

According to the *Marquette Law Review*, probate courts derive historically from the ecclesiastical courts of England. The *Michigan Manual* (2007-08) described that in 1818, the governor and the Supreme Court established the court of probate in each county. The Revised Statutes of 1838 made the office of Judge of Probate elective for a term of four years. The Constitution of 1850 allowed for there to be a probate court in each county.

In a newsletter published in 2000 by former Calhoun County Probate Judge Phillip Harter, he described that in Michigan, there is a probate court in each county, with the exception of 10 counties that have merged to form five probate court districts. Each district has one judge, and remaining counties

contain one or more judges depending on how large the population is and caseload within the county. Judge Harter also noted that in probate courts, judges are elected for terms of six years in nonpartisan elections. In order to be a candidate, one must be a qualified elector, resident of the probate district or county, have been a lawyer licensed to practice law for at least five years and under 70 years of age.



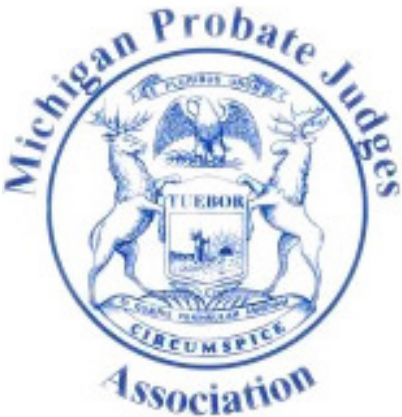
Former Probate Judge Phillip Harter

When the 1963 State Constitution passed, it then provided that a person must be a lawyer in order to become a judge. However, at that time, several Michigan probate judges were not lawyers, and those judges were authorized to remain in office until retirement.

Probate court today has three main focus areas: the probate of estates; supervisions of trust, guardianships, and conservatorships; and the commitment of the mentally ill.

Former Chief Judge of Wayne County Probate Court Milton L. Mack, Jr., who now serves as Michigan's State Court Administrator, described how probate court differs from circuit and district courts.





“The primary difference is that it’s not a plaintiff versus a defendant,” explained Mack. “It’s typically a family with a problem, so it’s not a traditional adversarial setting, like most other courts.”

individual. Also, the court may appoint a guardian or conservator for a developmentally disabled person under the Michigan Mental Health Code.

“Without courts to handle guardianships and conservatorships, vulnerable adults would be at increased risk of exploitation,” said Mack. “Court-appointed guardians and conservators must report to a judge. Children without parents would also be placed at risk. Children without a legal guardian would be at risk of placement in foster care.”

As described by Judge Harter, the probate of estates and supervision of trusts play a big role in the probate court system. The court’s responsibility is to handle an estate when someone dies and to determine whether or not that person’s residence and property lies within the county in order to probate the decedent’s estate.

The probate court is responsible for determining whether or not the guardianship or conservatorship is legally appropriate for the individual, and for determining who should serve in this role.

The court must then appoint a personal representative for the estate and admit the will of the decedent. The person appointed must be responsible for gathering assets, paying the bills, and determine for beneficiaries the remains of the estate entitled to it. When probate courts supervise a trust, it ensures that the terms of the trust are carried out.

In addition, the probate court also handles guardianships and conservatorships, and has exclusive jurisdiction over them. The probate court will either appoint a guardian or conservator of a minor or adult. A guardian is defined as a fiduciary who makes personal decisions for an incapacitated individual. A conservator is defined as a fiduciary who makes the financial decisions for a protected

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One key issue that Judge Harter identifies is that probate court holds responsibility for the commitment of the mentally ill. (See the article about Milt Mack’s policy paper on p. 16.)

Once the court determines that a person is mentally ill, it has the responsibility of also determining whether or not that person could potentially be a danger to anyone and whether or not that individual is able to take care of their physical needs independently. After the probate court reaches a decision that an individual requires

ancillary family matters from the probate court to the circuit court.

“When the family division was created, this divested probate courts of the majority of their jurisdiction. Probate judges were assigned to the family division to continue hearing these cases,” explained Mack. “Probate judges also began hearing divorce and custody cases. Concerns were raised about whether it was constitutional to permanently assign probate judges to the circuit court. That issue was resolved by giving probate



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treatment, it is then responsible for establishing the proper length of necessary treatment following approved requirements.

The role of the probate court changed significantly in 1997, when the Michigan Legislature created the Family Division in the Circuit Court. This moved delinquency, child abuse and neglect, adoptions, name changes, emancipation of minors, waivers of parental consent, and other

courts concurrent jurisdiction to hear family matters.”

Mack says that this had a profound impact on how probate courts operate still today, as many probate judges hear traditional probate and juvenile cases, in addition to a variety of family court cases involving divorce and child custody. ↗

