

Silly, Secretive, and Down Right Strange

1

**KELLEY JAMES-JURA, J.D.
PROBATE REGISTER
CASS COUNTY PROBATE COURT**

**AMANDA FLOWERS
PROBATE REGISTER
GRAND TRAVERSE COUNTY PROBATE COURT**

1

Error in File Name

2

- **How do you handle an error in the file name that was recently discovered?**
 - **Open File:**
 - ✦ **Correct with amended pleadings, OR**
 - ✦ **Correct with an affidavit indicating the correct name**
 - **Closed File:**
 - ✦ **Enter an AKA in your case management system**

2

Opening an Estate for an Unborn Child

3

- **Counties have different positions on opening an estate for an unborn child. Please discuss the matter with your Judge.**
- **What is required in order to open an estate for an unborn child?**
 - Courts have accepted different proofs in lieu of a death certificate.
 - ✦ Certificate of Stillbirth
 - ✦ Obituary
 - ✦ Autopsy Report
- **Possible File Name:**
 - Name of Child
 - Baby Boy XXXX
 - Unborn Child XXXX

3

Opening an Estate for an Unborn Child

4

- **Further Reading Regarding this Topic**
 - [MCL 600.2922](#)
 - [MCL 700.3924](#)
 - *Martin v St John Hosp & Med Ctr Corp*, 205 Mich App 486; 517 NW2d 787 (1994),
 - *In Re M.R. Simonetta*, 340 Mich App 700
 - ✦ COA #357909

4

Opening an Estate without a Death Certificate

5

- **What alternative documentation have you allowed in the past?**
 - Obituary
 - Notice from Funeral Home
 - Death Certificate Application
 - Letter from Hospital or Morgue
 - Autopsy Report
 - Documentation from Law Enforcement

5

Determination of Heirs – Separate Proceeding

6

- **MCR 5.308(B)(2) - A person can file PC 553 Petition to Determine Heirs, Separate Proceeding, along with PC 656 Testimony, to commence a formal proceeding to determine heirs of a decedent without the appointment of a PR.**
 - All interested persons must be served notice.
 - GAL may be appointed.
 - If Judge is satisfied, PC 554 Order Determining Heirs, Separate Proceeding could be issued.
- **Example: Proceeding may be commenced when someone is trying to determine paternity for a child whose father died in order to obtain benefits or prove tribal affiliation.**

6

Original Will on File in Different County

7

- How do you proceed if someone needs to open an estate in your county, but the original will is on file in a different county in Michigan?
 - May require written documentation with the request.
 - The sending county should send the original will via registered mail.
 - [MCL 700.2516](#)

7

Petition for Probate – No P.R. Requested

8

- Someone may seek to open an estate and have a will admitted, without having a P.R. appointed
 - Steps in process:
 - ✦ 1. Receive standard paperwork to open the estate
 - ✦ 2. Issue Register's Statement that admits the will
 - Authority: [MCL 700.3301](#)

8

Petition for Probate – No P.R. Requested

9

- **When and how to close the estate?**
 - ✦ Generally, documents to close an estate require the signature of the P.R. In these cases, no P.R. is appointed. So, it does not appear that closing documents are needed.
 - ✦ But, MCL 700.3306 does have a notice requirement.
- **Process**
 - ✦ Enter Registers Statement
 - ✦ Receive [PC 575 - Notice of Informal Probate \(No Personal Representative Appointed\) \(michigan.gov\)](#)
 - ✦ Close the Case
 - Possible Issue with Party (See Next Slide)

9

Petition for Probate – No P.R. Requested

10

- **JIS Issue**
 - Could not close the estate without entering a party
 - Possible solution:
 - ✦ Add a party, but for the description, select NPR, which stands for “No Personal Representative.”
 - ✦ You will still need to add an Acceptance, but you can put the name as “No Personal Representative.”
 - ✦ There is a No PR code (NPR). Enter that on the ____ line
 - ✦ Can’t close with an active party, so select “Case Closed” on Court activity line.

10

Distribution of Assets to Missing Heir

11

- [MCL 700.3916](#)
- This statute addresses circumstances where a distribution to a missing heir, devisee, trust beneficiary, or claimant may be deposited with the County Treasurer.
 - Exception under MCL 700.3916(2) if the funds are for \$250 or less, then it can be distributed as part of the residue of the estate.
 - Other heirs may petition to obtain the funds after three years. MCL 700.3917(3).
 - Note: Your County Treasurer may ask about the funds that are being held.

11

Ex-Spouse as Applicant

12

- Does a former spouse have standing to file an Application?
 - It depends.
 - ✦ Is there a will and when was it executed?
 - [MCL 700.2807](#)
 - Once a divorce is finalized, it revokes each spouse right to act as P.R. It also revokes their ability to receive assets left to them in the will.
 - ✦ Are there Renunciations/Nominations nominating the ex-spouse to serve?
 - If so, you could proceed in accordance with applicable statute.

12

Conservatorship – Remaining Assets

13

- **MCL 700.5426** - *“If a protected individual dies, the conservator shall deliver to the court for safekeeping a will of the deceased protected individual that has come into the conservator’s possession, shall inform the personal representative or a beneficiary named in the will of the delivery, and shall retain the estate for delivery to a duly appointed personal representative of the decedent or another person entitled to delivery.”*
- **OPTIONS**
 - Wait for Proof of Proper Transfer after the Final Account is allowed; OR
 - Discharge after the Final Account is allowed; OR
 - CA becomes PR under MCL 700.5426(4)
 - Other suggestions?

13

Conservator as Personal Representative

14

- **MCL 700.5426(4)**
 - A conservator can petition the court for powers of a personal representative if:
 - ✦ No petition for administration is filed within 42 days of death
 - ✦ No Personal Representative has been appointed.
- **Process**
 - Conservator files a petition in the conservatorship file with a \$20.00 filing fee
 - Hearing is held and interested parties must be noticed.
 - ✦ If no objections, the Court can issue an order granting the conservator’s request for P.R. powers and the Court can issue amended Letters indicating those P.R. powers.

14

Conservator as Personal Representative

15

- **Order Granting Conservator P.R. Powers**
 - The order entered under that section has the effect of an Order of a P.R.'s appointment under MCL 700.3307
- **Duties of Conservator appointed as P.R.**
 - Publish for claims
 - Provide notice to known creditors
 - File and serve notice of duties
 - Inform court of value of estate at date of death
 - Pay inventory fee on value at date of death
 - File annual and/or final account.
 - ✦ (The accounts must be allowed.)
- **This process may require manual tracking of the required filings.**

15

Sovereign Citizens

16

- **Has anyone received a decedent's estate for someone that is still living?**
 - A decedent must be deceased.
 - If someone was in fact declared "legally dead" there would most likely be a death certificate, or in the very rare occasion there could be a court order.
 - ✦ Has anyone experienced this?
 - ✦ Does anyone know the purpose for this?

16

Secret Marriages

17

- **Release of Secret Marriage Record**
 - **MCL 551.203**
 - ✦ Only the bride and/or groom can obtain a copy
 - ✦ Provide proper identification
 - ✦ Written request
- **Example Request Form**

17

APPLICATION FOR SECRET MARRIAGE RECORD

<p>PART 1: APPLICANT'S INFORMATION</p> <p>Applicant's Name: _____</p> <p>State Driver's License Or Identification#: _____</p> <p>Mailing Address: _____</p>	<p>DATE OF MARRIAGE</p> <p>_____</p> <p>Husband's Name Wife's Maiden Name</p> <p>_____</p>
--	---

PART 2: CERTIFICATION OF INFORMATION PROVIDED

Statement of Entitlement: Misstating an identity or assuming the identity of another person is subject to criminal penalties, e.g., Michigan Compiled Laws 333.2094(2) and 333.2099 and federal laws relating to falsification in obtaining a secret marriage record. By signing this application, I state that I am eligible to receive the record as indicated in the Eligibility section of this application.

→ Applicant's Signature: _____ Date: _____

IDENTITY THEFT PROTECTION ACT 445.65(1) and 445.65(1) prohibits anyone from obtaining a vital record by misrepresenting a person's identity or attempting to use another person's identifying information. A person who violates this law is guilty of a felony punishable by imprisonment for up to 5 years or a fine of up to \$25,000 or both.

PART 3: CERTIFICATION OF INFORMATION PROVIDED

Purpose of Requesting the Record: _____

PART 4: Affidavit of Eligibility

Affiant, _____, being first duly sworn on his/her oath, states that (s)he is the husband/wife listed in the secret marriage documentation being requested and has furnished an original identification to the notary.

This instrument was acknowledged before me on _____ by _____

Signature of notary officer _____
 County of _____
 State of _____
 My Commission expires: _____

At least one of the following ID's is required:

- Current driver's license with photo if unexpired, or expired less than one year
- Current state issued photo identification card unexpired, or expired less than one year
- Unexpired U.S. or foreign passport
- U.S. military photo identification or military dependent photo identification with current expiration date

18

LEIN

19

- **MI Hospitalization Order**
 - MUST be entered into LEIN per [MCL 330.1464a](#)
- **LII guardianships:**
 - MUST be sent to LEIN immediately after the order is granted.
[MCL 700.5107](#)
- **Process**
 - Currently, orders are to be emailed to: MSPLEINFSS@michigan.gov

19

Removal from LEIN

20

- **MI Hospitalization Order**
 - They are not removed from LEIN unless the subject has requested and obtained an Order from the Court to remove, or if the subject of the order has passed away.
 - ✦ **Process to Request Removal from Court**
 - Petitioner must file a motion/petition and a hearing should be scheduled.
- **LII guardianships**
 - They are to be removed from LEIN if the individual is later found to no longer be incapacitated. [MCL 700.5107\(2\)](#).
 - Also can be removed from LEIN after the death of the ward.

20

Removal from LEIN

21

- **Process to Remove from LEIN**
 - ✦ If the statutory grounds has been met for removal from LEIN:
 - Use [MC 239](#).
 - Note that MC 239 contains P-PII.
 - ✦ Send to MSP via email: MSPLEINFSS@michigan .gov
 - ✦ MSP will send Certification of Removal back to the Court.

21

Social Security Numbers

22

- **In accordance with the Michigan Social Security Number Privacy Act, MCL 445.81 et seq., clerks shall redact social security numbers on copies of documents filed on or after March 1, 2006.**
 - If the person is deceased, does their social security number need to be redacted from their will and/or death certificate before making copies?
 - ✦ Yes.

22

Redacting Certified Copies?

23

- If a document has P-PII that must be redacted from a copy, do you add language to the certification that the copy has been redacted?

23

Certifying Letters in a Closed File

24

- If someone requests a certified copy of Letters of Authority from a closed estate, how would you respond to that request?
- Do you add language that the Letters are no longer in full force and effect?

24

Certifying Letters in a Closed File

25

- **Options:**
 - Use a certified copy stamp and add language regarding the estate being closed. Examples are below:
 - ✦ Recently Closed: "The estate was closed on _____. The personal representative has full authority to act for one year from the date the Sworn Statement was filed, which is _____."
 - ✦ "The estate was closed _____. Pursuant to MCL 700.3954 and MCL 700.3959, the personal representative had full authority to act for one year after the closing statement was filed."
 - ✦ "The estate was closed on _____. The letters were in full force and effect until _____. (Insert date that is one year from the filing of the Sworn Statement)."
 - MC 202 - Certification of Records/Attestation of Exemplified Copies

25

Certifying Letters in a Closed Estate

26

Authority of the P.R. to continue for one year from the date the closing statement was filed.

- MCL 700.3954
- MCL 700.3959

26

Intent to Claim Paternity

27

- **MCL 710.33(1)** *“Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the court in any county of this state. . . .”*
- There is no filing fee and it does not get entered into JIS.
 - **Intent to Claim Paternity Form**
 - ✦ According to Central Paternity Registry Clerk at Vital Records, the court clerk must sign the form at the bottom and send the original to Central Paternity Registry, P.O. Box 30691, Lansing, MI 48909.
 - ✦ Process – Sign and date where indicated; mail the original to Central Paternity Registry; and retain a copy for Court records.

27

AK Files

28

- Michigan Vital Records holds the Affidavit of Parentage records from June 1, 1997 forward.
- Prior filings may be held by the Probate Court in the county where the mother resided at the time of signing or the county in which the child was born.

28

AK Files

29

- Copies of the Affidavit of Parentage records can only be obtained by certain eligible parties.
- See State of Michigan form.
 - [Application to Obtain Copy of Affidavit of Parentage](#)
 - Courts may want a written request for a copy to verify that the requestor is entitled to copy.
- What about SS#'s on the copies provided?
 - Some courts may redact the SS#.

29

Other Proceedings

30

- How many Probate Courts handle Adoption proceedings?
- How many Probate Courts handle Name Change proceedings?

30

Vital Records – Request for Old Adoption Information

31

- **What do you do if Vital Records of Michigan contacts your Court asking to verify old adoption information?**
 - Old adoptions were processed differently. The original birth record may not have been sealed, so DHHS-Vital Records may need information from an old adoption to update their records.
 - ✦ Requests often come via email.
- **Best Practice:**
 - Call Michigan Vital Records Changes Unit at 517-335-8660 to confirm the request before providing information.
 - Some Courts may require a Petition for Adoption Information before verifying information to Vital Records.
 - ✦ [See MCL 333.2829](#)

31

Delayed Registration of Birth

32

- [MCL 333.2828](#)
- (1) If an applicant does not submit the minimum documentation required by rules for delayed registration of a birth or if the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, the state registrar shall not register the delayed certificate of birth and shall advise the applicant of the reasons for this action and of the applicant's **right of appeal to the probate court of the county of residence or birth.**

32

Delayed Registration of Birth

33

- First step may be for the individual to work with Vital Records
 - ✦ [Changes Unit - FAQ's Delayed Registration of Birth](#)
- What Next?
 - ✦ This information comes from Chippewa County's website.
<https://www.chippewacountymi.gov/pc-delayed-registration>
 - ✦ ML case \$175 filing fee
 - ✦ Paperwork to be received:
 - Petition for Order Establishing a Record of Birth – DCH 0739
 - Application to Establish Delayed Registration of Birth By Court Order – DCH 1031
 - Notice from State Registrar indicating No Birth Record is registered with the State of Michigan
 - Denial of Delayed Registration of Birth Application from State Registrar
 - Supporting documentation

33

Parental Appointment of Guardian

34

- [MCL – 700.5202.](#)
 - Applies when both parents are deceased or legally incapacitated, or
 - ✦ If surviving parent has no parental rights.
 - Appointment becomes effective when the nominated guardian files an Acceptance of Appointment
 - See also MCR 5.125(C)(20) regarding interested parties.
- **Process**
 - Will must be probated in County with proper venue for decedent
 - Nominated guardian files a copy of the will, with the Order/Register's Statement showing that it has been probated, along with an Acceptance of Appointment, and the filing fee.
 - ✦ Some Courts may request a petition, which would be helpful in determining interested parties.
 - Court issues PC 653 Order and PC 633 Letters.
 - ✦ Mark on the Letters that the appointment was via will.

34

Parental Appointment of Guardian

35

- **Venue**
 - The nominated guardian should be filing in the county where the will is probated.
 - ✦ However, if the minor and guardian are in a different county, a Change of Venue can be pursued to move the file to the county where the guardian and minor reside.

35

Minor Guardianship

36

- **Special Immigrant Juvenile Status**
 - Minor Guardianship
 - ✦ There are specific findings that need to be made in a minor guardianship for Special Immigrant Juvenile Status.
 - https://immigrantjustice.org/sites/immigrantjustice.org/files/BestPracticesManual_19.%20MSU%20SIJS%20Memo%20for%20MI%20state%20court.pdf

36

Interested Party Residing in a Foreign Country

37

- **Service on Consulate**
 - [MCL 700.1401\(4\)](#)
 - MCR 5.125 (2)

37

Questions & Comments?

38

38