

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

CHAPTER 8

PROBATE COURTS

600.801 Probate court as court of record; organization.

Sec. 801. The probate court is a court of record and is organized in accordance with this chapter.

History: Add. 1978, Act 543, Eff. July 1, 1979.

Compiler's note: The heading for this chapter has been editorially furnished and is not part of the official enrolled bill.

600.803 Probate court district.

Sec. 803. (1) Except as otherwise provided in this section, each county that is not part of a probate court district created by law has 1 judge of probate.

(2) Each probate court district created by law has 1 judge of probate.

(3) The county of Sanilac has 1 judge of probate. Under section 15 of article VI of the state constitution of 1963, the office of probate judge for the county of Sanilac is combined with the office of judge of the seventy-third-a judicial district.

(4) The county of Huron has the following number of judges of probate:

(a) Beginning April 1, 2012, under section 15 of article VI of the state constitution of 1963, the office of probate judge for the county of Huron is combined with the office of judge of the seventy-third-b judicial district, and the county of Huron shall have 2 judges of probate. The judgeship added under this subdivision must be filled by the incumbent judge of the seventy-third-b judicial district, who shall become a probate judge for the county of Huron for the balance of the term to which the judge was elected.

(b) Beginning the earlier of the following dates, the county of Huron has 1 judge of probate:

(i) The date on which a vacancy occurs in the office of probate judge in this county.

(ii) The beginning date of the term for which an incumbent probate judge in this county no longer seeks election or reelection to that office.

(5) The county of Chippewa has 1 judge of probate. Under section 15 of article VI of the state constitution of 1963, the office of probate judge for the county of Chippewa is combined with the office of judge of the ninety-first judicial district.

(6) The counties of Berrien, Genesee, Ingham, Monroe, Muskegon, Saginaw, St. Clair, and Washtenaw each have 2 judges of probate.

(7) The county of Macomb has 2 judges of probate. Subject to section 805, the county of Macomb may have 1 additional judge of probate beginning January 1, 2025.

(8) The county of Kalamazoo has 3 judges of probate.

(9) The county of Kent has 5 judges of probate.

(10) The county of Oakland has 4 judges of probate.

(11) The county of Wayne has 8 judges of probate.

(12) When 1 or more new judges of probate are authorized in a county under this section, the new judgeship or judgeships must appear on the ballot separate and apart from other judicial offices of the same court in the primary and general election.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1980, Act 129, Imd. Eff. May 22, 1980;—Am. 1998, Act 55, Imd. Eff. Apr. 8, 1998;—Am. 2001, Act 253, Eff. Mar. 22, 2002;—Am. 2002, Act 715, Eff. Mar. 31, 2003;—Am. 2011, Act 300, Imd. Eff. Dec. 22, 2011;—Am. 2012, Act 36, Imd. Eff. Feb. 28, 2012;—Am. 2022, Act 8, Imd. Eff. Feb. 9, 2022;—Am. 2023, Act 310, Imd. Eff. Dec. 14, 2023.

Compiler's note: Sections 2 to 5 of Act 129 of 1980 provide:

“New circuit and district judgeships; appearance on ballot; duty of candidate; petitions; filing fee.

“Section 2. The new circuit and district judgeships authorized by this amendatory act shall appear on the ballot separate and apart from other judicial offices on the ballot in the primary and general election in the respective circuits and district court districts. If another judicial office of the same court is to be filled by election in the same circuit, county, or district, a candidate for a new judgeship authorized in that circuit, county, or district by this amendatory act shall indicate, at the time of filing nominating petitions, whether the candidate is filing for a new judgeship or for 1 of the other judicial offices of the same court to be filled by election in 1980. Petitions for a new judgeship created pursuant to this amendatory act shall bear signatures affixed to the petition after the date by which all counties in the circuit, all district control units in the district, or, in the case of a probate judgeship, the county, have adopted the resolutions required by law to create that office. Notwithstanding any other provision of law, a nonreturnable filing fee of \$250.00 may be paid up to 4 p.m. on June 3, 1980 in lieu of petitions for new judgeships authorized by this 1980 amendatory act which are to be filled by election in 1980.

“Additional circuit judgeship for third judicial circuit; terms.

“Section 3. If the additional circuit judgeship permitted by this amendatory act for the third judicial circuit is created pursuant to law, the candidate receiving the highest number of votes in the 1980 general election shall be elected for a term of 8 years, and the candidate receiving the second highest number of votes shall be elected for a term of 6 years.

“Additional circuit judgeship for sixteenth judicial circuit; term.

“Section 4. If the additional circuit judgeship permitted by this amendatory act for the sixteenth judicial circuit is created pursuant to law, the first term of that judgeship shall be 8 years.

“Change in composition of affected judicial circuits; effective date.

“Section 5. If a new judicial circuit of the circuit court is created pursuant to section 550a, the change in the composition of the affected judicial circuits shall take effect for judicial purposes on January 1, 1981. If the fifty-fourth judicial circuit is created pursuant to this act, the incumbent circuit judge of the fortieth judicial circuit who resides in Tuscola county shall become the judge of the fifty-fourth judicial circuit on January 1, 1981, and shall serve until the term for which he was elected in the fortieth judicial circuit expires.”

600.805 Additional probate judgeship; creation; approval by county; resolution; filing; notice to county clerk; effect of approval; state's obligation; election; first term; exception to resolution requirement.

Sec. 805. (1) The additional judges of probate permitted by section 803 shall not be filled by election unless the county, by resolution adopted by the county board of commissioners, approves the creation of that judgeship and unless the clerk of that county files a copy of the resolution with the state court administrator not later than 4 p.m. of the thirteenth Tuesday preceding the August primary for the election to fill the additional judge of probate. The state court administrator shall immediately notify the county clerk with respect to any new judge of probate authorized for that county under this subsection.

(2) By permitting an additional judgeship, the legislature is not creating that judgeship. If a county, acting through its board of commissioners, approves the creation of an additional judge of probate, that approval constitutes an exercise of the county's option to provide a new activity or service or to increase the level of activity or service offered in the county beyond that required by existing law, as the elements of that option are defined by 1979 PA 101, MCL 21.231 to 21.244, and a voluntary acceptance by the county of all expenses and capital improvements that may result from the creation of the judgeship. However, the exercise of the option does not affect the state's obligation to pay the same portion of the additional judge's salary that is paid by the state to the other judges of probate of the same county, or to appropriate and disburse funds to the county for the necessary costs of state requirements established by a state law that takes effect on or after December 23, 1978.

(3) Each additional judgeship created under subsection (1) shall be filled by election under the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992. The first term of each additional judgeship shall be 6 years unless the law permitting the additional judgeship provides for a term of a different length.

(4) A combination of the office of probate judge with a judicial office of limited jurisdiction within a county under section 15 of article VI of the state constitution of 1963 that does not result in an increase in the total number of trial judgeships in the county does not require a resolution of approval by the county board of commissioners under this section.

History: Add. 1980, Act 129, Imd. Eff. May 22, 1980;—Am. 1988, Act 134, Imd. Eff. May 27, 1988;—Am. 2011, Act 300, Imd. Eff. Dec. 22, 2011.

Compiler's note: Sections 2 to 5 of Act 129 of 1980 provide:

“New circuit and district judgeships; appearance on ballot; duty of candidate; petitions; filing fee.

“Section 2. The new circuit and district judgeships authorized by this amendatory act shall appear on the ballot separate and apart from other judicial offices on the ballot in the primary and general election in the respective circuits and district court districts. If another judicial office of the same court is to be filled by election in the same circuit, county, or district, a candidate for a new judgeship authorized in that circuit, county, or district by this amendatory act shall indicate, at the time of filing nominating petitions, whether the candidate is filing for a new judgeship or for 1 of the other judicial offices of the same court to be filled by election in 1980. Petitions for a new judgeship created pursuant to this amendatory act shall bear signatures affixed to the petition after the date by which all counties in the circuit, all district control units in the district, or, in the case of a probate judgeship, the county, have adopted the resolutions required by law to create that office. Notwithstanding any other provision of law, a nonreturnable filing fee of \$250.00 may be paid up to 4 p.m. on June 3, 1980 in lieu of petitions for new judgeships authorized by this 1980 amendatory act which are to be filled by election in 1980.

“Additional circuit judgeship for third judicial circuit; terms.

“Section 3. If the additional circuit judgeship permitted by this amendatory act for the third judicial circuit is created pursuant to law, the candidate receiving the highest number of votes in the 1980 general election shall be elected for a term of 8 years, and the candidate receiving the second highest number of votes shall be elected for a term of 6 years.

“Additional circuit judgeship for sixteenth judicial circuit; term.

“Section 4. If the additional circuit judgeship permitted by this amendatory act for the sixteenth judicial circuit is created pursuant to law, the first term of that judgeship shall be 8 years.

“Change in composition of affected judicial circuits; effective date.

“Section 5. If a new judicial circuit of the circuit court is created pursuant to section 550a, the change in the composition of the affected judicial circuits shall take effect for judicial purposes on January 1, 1981. If the fifty-fourth judicial circuit is created pursuant to this act, the incumbent circuit judge of the fortieth judicial circuit who resides in Tuscola county shall become the judge of the fifty-fourth judicial circuit on January 1, 1981, and shall serve until the term for which he was elected in the fortieth judicial circuit expires.”

Section 2 of Act 134 of 1988 provides:

“Any additional circuit judgeship to be added by election in 1988 shall not be authorized to be filled by election unless each county in the circuit, by resolution adopted by the county board of commissioners, approves the creation of the judgeship and unless the clerk of each county adopting such a resolution files a copy of the resolution with the state court administrator not later than 4 p.m. of the tenth

Tuesday preceding the August primary for the election to fill the additional circuit judgeship.”

600.807 Probate court districts.

Sec. 807. A probate court district is created in each of the following described districts when a majority of the electors voting on the question in each affected county approves the probate court district. The districts shall consist as follows:

- (a) The first district consists of the counties of Houghton and Keweenaw.
- (b) The fifth district consists of the counties of Schoolcraft and Alger.
- (c) The sixth district consists of the counties of Mackinac and Luce.
- (d) The seventh district consists of the counties of Emmet and Charlevoix.
- (e) The seventeenth district consists of the counties of Clare and Gladwin.
- (f) The eighteenth district consists of the counties of Mecosta and Osceola.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2002, Act 715, Eff. Mar. 31, 2003;—Am. 2003, Act 40, Imd. Eff. July 9, 2003;—Am. 2004, Act 492, Eff. Jan. 2, 2007.

600.808 Question of creation of district; submission to electors; resolution calling for special election; form of question; counting, canvassing, and returning votes; canvassing and certifying results; effect of approval; election of probate judge; reimbursement of costs.

Sec. 808. (1) When each county board of commissioners of a district described in section 807 agrees by resolution to form a district, the question of creation of the district shall be submitted to the electors of the affected counties at the next primary, general, or special election that occurs more than 49 days after the resolution is adopted. A special election for submission of the question may be called by resolution adopted by each county board of commissioners in the proposed district.

(2) The question relative to creating the district shall be in substantially the following form:

"Shall this county join in a probate court district, which will consist of the counties of _____ and _____ if the majority of the electors voting on the question in each affected county approve?

Yes ()

No ()".

(3) The votes on the question shall be counted, canvassed, and returned in the manner provided by law. The results shall be canvassed and certified by the board of state canvassers in the same manner as provided for state propositions under chapter 31 of the Michigan election law, 1954 PA 116, MCL 168.841 to 168.848.

(4) If approved by a majority of the electors voting on the question in each of the counties affected, those counties shall constitute the probate court district corresponding to the appropriate district described in section 807, and that district becomes effective as provided in section 809 or 810, whichever section results in an earlier effective date.

(5) The election of the probate judge for a probate court district created under this section shall be held as provided in section 811.

(6) The state shall reimburse the affected counties for the additional cost of submitting the question of the district to the electors of the affected counties if the question is submitted to the electors at a primary, general, or special election held after January 2, 2007.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2003, Act 40, Imd. Eff. July 9, 2003;—Am. 2004, Act 492, Eff. Jan. 2, 2007.

600.809 Probate court district; effective date; term of incumbent probate judge; election of probate judge.

Sec. 809. (1) Except when the vacancy or vacancies occur after the date established by Act No. 116 of the Public Acts of 1954, as amended, being sections 168.1 to 168.992 of the Michigan Compiled Laws, for nonincumbent candidates to file for the office of probate judge for a full 6-year term or for the unexpired portion of a term, whichever is applicable, a probate court district created under section 808 shall become effective upon the existence of a vacancy in the office of probate judge in all but 1 of the counties comprising that district.

(2) When a probate court district becomes effective pursuant to subsection (1), the remaining incumbent probate judge in the district shall serve as the probate judge of the district until the term for which he was elected or appointed expires. Thereafter the 1 probate judge for the district shall be elected as provided in section 808(5).

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.810 Probate court district; effective date; election of probate judge.

Sec. 810. Except when section 809 results in an earlier effective date, a probate court district created under

section 808 becomes effective upon the beginning date of the term for which an incumbent probate judge in any county in the district no longer seeks reelection to that office that occurs not less than 220 days after the vote on the question. At the general election immediately preceding that date, 1 probate judge for the district shall be elected as provided in section 808(5).

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2005, Act 326, Imd. Eff. Dec. 27, 2005.

600.810a Arenac, Kalkaska, Crawford, Lake, Iron, and Ontonagon counties; jurisdiction, powers, duties, and title of probate judges; additional duties for probate judge.

Sec. 810a. (1) The probate judges in the counties of Arenac, Kalkaska, Crawford, Lake, Iron, and Ontonagon have the jurisdiction, powers, duties, and title of a district judge within their respective counties, in addition to the jurisdiction, powers, duties, and title of a probate judge.

(2) Beginning January 2, 2007, in addition to the probate judges described in subsection (1), the probate judges in the counties of Alcona, Baraga, Benzie, Missaukee, Montmorency, Oscoda, and Presque Isle have the jurisdiction, powers, duties, and title of a district judge within their respective counties, in addition to the jurisdiction, powers, duties, and title of a probate judge.

(3) In counties where the only district judgeship is being eliminated and the section in chapter 81 that governs that district court district provides that this section applies, the probate judge in that county shall have the jurisdiction, powers, duties, and title of a district judge within that county, in addition to the jurisdiction, powers, duties, and title of a probate judge.

History: Add. 2002, Act 92, Eff. Mar. 31, 2003;—Am. 2002, Act 715, Eff. Mar. 31, 2003;—Am. 2004, Act 492, Eff. Mar. 30, 2005;—Am. 2011, Act 300, Imd. Eff. Dec. 22, 2011.

600.811 Election of probate judges; filing nominating petitions and incumbency affidavits of candidacy; term.

Sec. 811. (1) Judges of probate shall be elected in the manner provided in Act No. 116 of the Public Acts of 1954, as amended. For the office of judge of probate in a probate court district created pursuant to law, nominating petitions and incumbency affidavits of candidacy shall be filed with the secretary of state.

(2) An elected judge of probate shall have a term of office of 6 years except as otherwise provided by section 803 or when a vacancy is being filled for the balance of an unexpired term.

(3) The term of a judge of probate shall commence on January 1 following the date of election. If a vacancy is filled by appointment, the term shall commence in accordance with the order of appointment.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.812 Oath.

Sec. 812. A judge of probate after being elected or appointed shall qualify by taking the constitutional oath of office and shall subscribe the same and file it in the office of the county clerk or, in the instance of a probate court district created pursuant to law, file it with the secretary of state.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.813 Construction of chapter.

Sec. 813. (1) This chapter shall not be construed to affect the terms of those judges of probate elected before the effective date of this section or appointed before that date to fill a vacancy in the office of judge of probate.

(2) This chapter shall not be construed to rescind or repeal those probate court districts created before the effective date of this section.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.815 Terms of probate court prohibited; probate court open at all reasonable times; evening and weekend sessions.

Sec. 815. The probate court shall not have terms of court. The probate court shall be open at all reasonable times as fixed by the probate judge or, in counties having more than 1 probate judge, the chief judge. The probate court may hold evening and weekend sessions.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1996, Act 374, Imd. Eff. July 17, 1996.

600.816 Probate judge; court sessions at regional diagnostic and treatment center; court sessions at places designated by county chief probate judge; hearing regarding incapacitated or mentally ill person; site.

Sec. 816. (1) A probate judge shall hold sessions of the probate court at the county seat of each county,

unless an alternative primary location is designated as provided in subsection (3), and may hold sessions of the probate court in a city of the county where sessions of the circuit court are authorized by law to be held. A probate judge may maintain an office at a place where sessions of the probate court are held.

(2) A probate judge may hold sessions of the court at the regional diagnostic and treatment center assigned to his or her court if sessions are approved by the state court administrator. The center shall provide an area for court sessions to which the public has access.

(3) Subject to the approval of the county board of commissioners and the state court administrator, the chief probate judge of a county may designate 1 or more places in the county where regular sessions of probate court may be held. A designation made under this subsection shall be delivered to the county clerk.

(4) Nothing in this section prohibits a judge from holding a hearing regarding an allegedly incapacitated individual or an allegedly mentally ill person at a site considered appropriate by the court as provided by section 5304 of the estates and protected individuals code, 1998 PA 386, MCL 700.5304, or section 456 of the mental health code, 1974 PA 258, MCL 330.1456. Nothing in this section prohibits a judge from holding a hearing regarding an individual alleged to need protection at a site the court considers appropriate as provided by section 5406 of the estates and protected individuals code, 1998 PA 386, MCL 700.5406.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1991, Act 189, Imd. Eff. Dec. 27, 1991;—Am. 1995, Act 14, Imd. Eff. Apr. 12, 1995;—Am. 2000, Act 56, Eff. Apr. 1, 2000.

600.817 Books, printed blanks, and stationery; furniture, equipment, and supplies.

Sec. 817. Each county shall provide all books, printed blanks and other stationery necessary for keeping the records in the office of the judge of probate, and all furniture, equipment, and supplies necessary for equipping and maintaining the office.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.819 Repealed. 2011, Act 217, Imd. Eff. Nov. 10, 2011.

Compiler's note: The repealed section pertained to election of a probate judge at annual convention to serve as state presiding probate judge.

600.821 Probate judges; practice of law; annual salary; county contribution and reimbursement; additional salary.

Sec. 821. (1) Except for the probate judge in Keweenaw County who is not a judge of the first probate district described in section 807, probate judges shall not engage in the practice of law other than as a judge and must receive an annual salary as calculated under this section.

(2) Each probate judge shall receive an annual salary calculated as follows:

(a) A minimum annual salary of the difference between 85% of the salary of a justice of the supreme court as of December 31, 2015 and \$45,724.00.

(b) In addition to the amount calculated under subdivision (a), a salary of \$45,724.00 paid by the county or counties comprising a probate court district. If a probate judge receives a total additional salary of \$45,724.00 from the county or counties comprising a probate court district, and receives neither less than nor more than \$45,724.00, including any cost-of-living allowance, the state shall reimburse the county or counties the amount that the county or counties have paid to the judge.

(c) In addition to the amounts under subdivisions (a) and (b), an amount payable by the state that is equal to the amounts calculated under subdivisions (a) and (b) multiplied by the compounded aggregate percentage pay increases, excluding lump-sum payments, paid to civil service nonexclusively represented employees classified as executives and administrators on or after January 1, 2016. The additional salary under this subdivision takes effect on the same date as the effective date of the pay increase paid to civil service nonexclusively represented employees classified as executives and administrators. The additional salary under this subdivision must not be based on a pay increase paid to civil service nonexclusively represented employees classified as executives and administrators if the effective date of the increase was before January 1, 2016.

(3) Six thousand dollars of the minimum annual salary provided in subsection (2) must be paid by the county or counties comprising a probate court district, and the balance of that minimum annual salary must be paid by the state as a grant to the county or the counties comprising the probate court district. The county or counties comprising the probate court district, shall in turn pay that amount to the probate judge. The state shall annually reimburse the county or counties \$6,000.00 for each probate judge to offset the cost to the county or counties under this section.

(4) The salary calculated under this section is full compensation for all services performed by a probate judge, except as otherwise provided by law. In a probate court district, each county of the district shall

contribute to the salary in the same proportion as the population of the county bears to the population of the district.

(5) An additional salary determined by the county board of commissioners may be increased during a term of office but must not be decreased, except to the extent of a general salary reduction in all other branches of government in the county. In a county where an additional salary is granted, it must be paid at the same rate to all probate judges regularly holding court in the county.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1980, Act 438, Eff. Sept. 1, 1981;—Am. 1990, Act 343, Eff. Jan. 1, 1995;—Am. 1994, Act 138, Imd. Eff. May 26, 1994;—Am. 1994, Act 389, Imd. Eff. Dec. 29, 1994;—Am. 1995, Act 259, Imd. Eff. Jan. 5, 1996;—Am. 1996, Act 374, Eff. Jan. 1, 1997;—Am. 1996, Act 388, Eff. Jan. 1, 1998;—Am. 1998, Act 298, Imd. Eff. July 28, 1998;—Am. 2002, Act 92, Eff. Mar. 31, 2003;—Am. 2003, Act 40, Imd. Eff. July 9, 2003;—Am. 2004, Act 492, Eff. Mar. 30, 2005;—Am. 2016, Act 31, Imd. Eff. Mar. 8, 2016;—Am. 2018, Act 6, Imd. Eff. Jan. 26, 2018.

Compiler's note: Sections 2 and 4 of Act 438 of 1980 provide:

“Conditional effective date; action constituting exercise of option; effect of exercising option.

“Section 2. (1) This amendatory act shall not take effect unless the city of Detroit and the county of Wayne, by resolutions adopted not later than May 1, 1981, by the governing bodies of the city and the county, respectively, agree to assume responsibility for any expenses required of the city or the county by this amendatory act, and the bills listed in enacting section 7 which are enacted and take effect.

“(2) If the city of Detroit and the county of Wayne, acting through their governing bodies, agree to assume responsibility for any expenses required of the city and the county by this amendatory act, and the bills listed in enacting section 7 which are enacted and take effect, that action constitutes an exercise of the city's and the county's option to provide a new activity or service or to increase the level of activity or service offered in the city of Detroit and the county of Wayne beyond that required by existing law, as the elements of that option are defined by Act No. 101 of the Public Acts of 1979, being sections 21.231 to 21.244 of the Michigan Compiled Laws, and a voluntary acceptance by the city and the county of all expenses and capital improvements which may result from establishment of the district court in the thirty-sixth district and the reorganization of the circuit court in the third judicial circuit and the recorder's court of the city of Detroit. However, the exercise of the option does not affect the state's obligation to pay the same portion of each district or circuit judge's salary which is paid by the state to the other district or circuit judges, or to appropriate and disburse funds to the district control units, city, or county, for the necessary costs of state requirements established by a state law, other than this amendatory act or the bills listed in enacting section 7 which becomes effective on or after December 23, 1978.”

The resolutions referred to in Section 2 were adopted by the city council of the city of Detroit on April 29, 1981, and by the board of commissioners of the county of Wayne on April 30, 1981.

“Effective date of certain sections.

“Section 4. Sections 304, 555, 563, 564, 567, 591, 592, 593, 594, 595, 641, 821, 1114, 1123, 1168, 1302, 1303, 1306, 1417, 1471, 1481, 5706, 8202, 8271, 8272, 8273, 8275, 8281, 8283, 8302, 8314, 8322, 8501, 8521, 8525, 8535, 8621, 9924, 9944, and 9947 shall take effect September 1, 1981.”

600.821a Probate judges' federal social security and medicare taxes; reimbursement to counties.

Sec. 821a. In addition to the reimbursement under section 821(2)(b) to a county or to counties for amounts paid for probate judges' salaries, the state shall reimburse the county or counties for amounts paid as the employer's share for probate judges' federal social security and medicare taxes.

History: Add. 1998, Act 100, Imd. Eff. May 28, 1998;—Am. 2002, Act 92, Eff. Mar. 31, 2003.

600.822 Probate judge; annual salary based on population; payment; increase or decrease in salary; representing party in contested proceeding; additional salary; total annual salary; state salary standardization payment; minimum annual salary.

Sec. 822. (1) Except as provided in subsection (6), a probate judge not included in section 821 shall receive a minimum annual salary of \$20,000.00. Six thousand dollars of the minimum annual salary provided by this subsection shall be paid by the county and the balance of the minimum annual salary shall be paid by the state as a grant to the county. The county shall, in turn, pay that amount to the probate judge.

(2) The minimum annual salary provided in subsection (1) may be increased but shall not be decreased during the term for which the probate judge has been elected or appointed. This salary is in full compensation for all services performed by the person as probate judge, except as otherwise provided by law. A probate judge whose minimum annual salary is provided in subsection (1) shall not represent a party in a contested proceeding in the probate court of this state.

(3) In addition to the salary provided in subsection (1), a probate judge may receive from the county in which he or she regularly holds court an additional salary of not more than \$45,724.00, as determined by the county board of commissioners. The additional salary may be increased during a term of office but shall not be decreased except to the extent of a general salary reduction in all other branches of government in the county.

(4) Except as provided in subsection (8), the total annual salary of a probate judge, including the salary provided in subsection (1) and any additional salary granted by the county under subsection (3), shall not exceed \$65,724.00.

(5) From funds appropriated to the judiciary, the state shall pay to a county described in subsection (1) a state salary standardization payment of \$5,750.00 for each probate judge and an additional payment of \$6,000.00 for each probate judge to offset the portion of minimum annual salary paid by the county.

(6) A probate judge described in subsection (1) may receive an additional minimum annual salary, in addition to the \$20,000.00 minimum annual salary described in subsection (1), if all of the following apply:

(a) The county board of commissioners approves payment to the probate judge of an additional salary from the county in the amount of \$45,724.00 as provided in subsection (3).

(b) The county board of commissioners passes a resolution that includes all of the following:

(i) A determination of an amount that the county is willing to reimburse the state as an additional minimum annual salary for the probate judge.

(ii) An agreement to immediately reimburse the state for the additional minimum annual salary authorized under this subsection.

(iii) An agreement that the determination under subparagraph (i) will not be decreased during the term of office of the probate judge.

(iv) An agreement that the amount of reimbursement for the additional minimum annual salary will not be decreased during the term of office of the probate judge.

(c) The probate judge agrees in writing to the following:

(i) To participate in a plan of concurrent jurisdiction as provided in chapter 4.

(ii) To participate in a family court plan as provided in chapter 10.

(iii) To not engage in the practice of law other than as a judge.

(iv) That if he or she becomes included in section 821, any additional minimum annual salary authorized under this subsection would thereafter be considered part of the minimum annual salary described in section 821.

(d) The supreme court or the state court administrative office approves the payment of the additional minimum annual salary authorized under this subsection.

(7) The additional minimum annual salary authorized under subsection (6) shall be paid by the state as a grant to the county, and the county shall in turn pay that amount to the probate judge in the same manner as provided in section 821(3). The county may increase the determination authorized under subsection (6)(b)(i) and its obligation to reimburse the state during the term of office of the probate judge.

(8) The total annual salary paid to a probate judge who receives an additional minimum annual salary under subsection (6), including the minimum annual salary provided in subsection (1), the additional county salary provided in subsection (3), and the additional minimum annual salary provided in subsection (6), shall not exceed 85% of the salary of a justice of the supreme court.

(9) If a probate judge described in subsection (1) becomes included in section 821, any additional minimum annual salary authorized under subsection (6) shall thereafter be considered part of the minimum annual salary described in section 821(2)(a), and the county's obligation to reimburse the state under subsection (6) shall cease.

(10) A probate judge who receives an additional minimum annual salary under subsection (6) shall not engage in the practice of law other than as a judge.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1994, Act 389, Imd. Eff. Dec. 29, 1994;—Am. 1995, Act 259, Imd. Eff. Jan. 5, 1996;—Am. 1996, Act 374, Eff. Jan. 1, 1997;—Am. 1998, Act 298, Imd. Eff. July 28, 1998;—Am. 1998, Act 313, Eff. Jan. 1, 1999;—Am. 2002, Act 92, Eff. Mar. 31, 2003;—Am. 2003, Act 40, Imd. Eff. July 9, 2003.

600.824 Repealed. 2011, Act 217, Imd. Eff. Nov. 10, 2011.

Compiler's note: The repealed section pertained to circuit court judge temporarily serving as probate judge.

600.825 Repealed. 1990, Act 185, Eff. Oct. 1, 1990.

Compiler's note: The repealed section pertained to probate judge serving as probate judge in another county or probate court district.

600.826 Certain probate judges to assist other courts or probate judges for limited periods or specific assignments; legislative intent.

Sec. 826. (1) A probate judge who is elected or appointed for a county in which the salary of that office is or would have been increased by sections 2a, 3, or 4 of chapter 1 of Act No. 288 of the Public Acts of 1939, as those sections were amended by Act No. 147 of the Public Acts of 1976, before their repeal by section 899 of this chapter, and whose judicial activity is less heavy than other probate judges' should be authorized by the supreme court or state court administrator to assist other courts within the same county or probate court district which they serve, to assist probate judges in other counties or districts, and to perform other judicial duties, for limited periods or specific assignments.

(2) This section is not intended as a directive to the judiciary but expresses an expectation in furtherance of full utilization of judicial officers and serves as notice of the expectation and intent of the legislature for incumbents and prospective candidates seeking election to judgeships affected by aforementioned 1976 amendments to sections 2a, 3, or 4 of chapter 1 of Act No. 288 of the Public Acts of 1939, as repealed.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.828 Reimbursement for actual and necessary expenses.

Sec. 828. In a probate court district a probate judge who holds court in a county other than the county of his residence shall be reimbursed for his actual and necessary expenses incurred in so holding court upon his certification of the expenses to the state court administrator and upon approval by the state court administrator. Upon allowance, the sum shall be paid out of the general fund of the state in accordance with the accounting laws of the state.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.829 Probate judge; additional salary and reimbursement for expenses; payment of compensation and expenses; voucher; compensation provided pursuant to MCL 600.225(6).

Sec. 829. (1) When a probate judge of another county or probate court district is performing duties under sections 824 or 825, he or she shall receive an additional salary and reimbursement for expenses as provided in section 225(6).

(2) The county treasurer shall pay the compensation and expenses, upon receipt of a voucher approved by the local probate judge or chief probate judge, out of the general funds of the county. If the local probate judge dies or is incapacitated to act, the voucher shall be subject to approval by the circuit judge of the county.

(3) Compensation provided pursuant to section 225(6) shall be in addition to the salary paid to the acting probate judge by the state or any county pursuant to section 821 or 822.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1987, Act 225, Imd. Eff. Dec. 28, 1987;—Am. 1996, Act 388, Eff. Oct. 1, 1996.

600.831 Powers, duties, and compensation of probate judges of county having 2 or more probate judges; power vested in chief probate judge; selection, powers, and duties of probate judges in counties of 1,000,000 or more.

Sec. 831. (1) The probate judges of a county having 2 or more probate judges shall have equal powers, duties, and compensation except that the power of nomination, appointment, and removal of the several employees as provided by law for the probate court in that county, and of the offices connected therewith and the general direction and control of the business of the court, including the division of the work between the judges, shall be vested in a chief probate judge selected as follows:

(a) If the county has less than 1,000,000 in population, then in the probate judge having served for the longest period continuously, or if 2 or more judges were elected at the same election and served the same number of years continuously, then in the judge receiving the highest vote at the last election.

(b) If the county has 1,000,000 or more in population, then in the probate judge who is chosen by the several probate judges in the county, or if a judge does not receive a majority vote of the probate judges, then in the probate judge of that county selected by the Governor.

(2) The selection provided for in this section in counties of 1,000,000 or more in population shall be made within 15 days after the commencement of each year and the judge so selected shall exercise the duties and powers therein provided for the full calendar year then commencing, until his successor is selected, or is designated by the governor.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.832 Seal, records, books, files, and papers; possession; maintenance.

Sec. 832. The clerk of the probate court shall have possession of the seal, records, books, files, and papers belonging to the probate court in the respective county or probate court district and, in accordance with supreme court rules, shall maintain every record created by or filed with the probate court.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2013, Act 201, Imd. Eff. Dec. 18, 2013.

600.833 Probate register; appointment; salary; oath; bond; term; appointment, compensation, term, powers, and oath of deputy probate registers.

Sec. 833. (1) In each county the probate judge of the county or probate court district, or the chief probate

judge in a county having 2 or more probate judges, may appoint a probate register, at a reasonable salary fixed by the county board of commissioners. The probate register so appointed shall take and subscribe the oath of office prescribed by the state constitution of 1963, and give bond to the probate judge or chief judge in the penal sum of \$1,000.00 to be approved by that judge, which bond and oath shall be filed in the office of the county clerk of the county. The probate register shall hold office until his appointment is terminated by the probate judge or chief judge.

(2) If a county has a probate register, the probate judge or the chief probate judge may appoint 1 or more deputy probate registers, who shall have such compensation as is fixed by the county board of commissioners. The term of office of the deputy probate registers and their powers shall be the same as those prescribed by law for probate registers. They shall take and subscribe the constitutional oath of office, which shall be filed with the county clerk.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.834 Probate register or deputy probate register; powers in uncontested matter or hearing; entry of judgment prohibited; restriction on powers; orders and acts; trial or hearing of issues.

Sec. 834. (1) Except as provided in subsection (2), a probate register or deputy probate register is competent to exercise any of the following powers in an uncontested matter or hearing if authorized by general order of the probate judge or chief probate judge of the county in which the probate register or deputy probate register was appointed:

(a) Determine whether the petitioner or the petitioner's attorney has complied with the requirements of law and supreme court rules.

(b) Take acknowledgments.

(c) Administer oaths.

(d) Set hearings.

(e) Sign notices, citations, and subpoenas.

(f) Take testimony required by law or supreme court rules in all of the following matters:

(i) Appointment of a fiduciary of an estate of a deceased or minor.

(ii) Admission to probate of a will, codicil, or other testamentary instrument.

(iii) Determination of heirs.

(iv) Sale, mortgage, or lease of property.

(v) Assignment of residue of an estate or any part of the residue of an estate.

(vi) Setting and approval of bonds.

(vii) Removal of fiduciaries.

(viii) Issuing of a license to marry, if the issuance of the license is authorized under section 1 of 1897 PA 180, MCL 551.201.

(g) Perform an act or issue an order as specified in the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, if that act authorizes the probate register to do so.

(2) A probate register or deputy probate register shall not enter a judgment. A probate register or deputy probate register shall not exercise any power provided in subsection (1) if the matter or hearing is:

(a) For a commitment to, or incarceration in, an institution or facility.

(b) For appointment of a guardian of a legally incapacitated individual or the appointment of a conservator for a reason other than minority.

(c) For or involves a developmentally disabled person.

(3) An order made by a probate register or deputy probate register shall be made over the name of the probate judge for whom the order is made, and the probate register or deputy probate register shall place his or her signature under the name of the judge. An act done or order made by the probate register or deputy probate register authorized under this section shall have the same validity, force, and effect as though done or made by the judge.

(4) Upon the oral or written request of an interested party made before commencement or during the hearing of the proceeding, the proceeding shall be taken immediately before the judge for trial or hearing of the issues.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1979, Act 69, Imd. Eff. July 25, 1979;—Am. 1996, Act 388, Eff. Jan. 1, 1998;—Am. 2000, Act 67, Eff. Apr. 1, 2000.

600.835 Official court reporters or certified recorders; salary; oath; expenses; order for payment; residence of reporter or recorder.

Sec. 835. (1) The probate judge or chief probate judge of any county or probate court district may appoint,

and in counties having a population of 50,000 or more shall appoint, 1 or more official court reporters or certified recorders of the probate court, at a reasonable salary fixed by the county board of commissioners. The reporters or recorders so appointed shall take and subscribe the constitutional oath of office, which shall be filed with the county clerk of the county.

(2) The reporter or recorder serving in a probate court district shall be entitled to receive, in addition to the salary provided for in this section, the necessary and actual expenses incurred in attending court in the county other than the county in which the reporter or recorder resides. Upon filing with the clerk of the county in which the reporter or recorder attended court a sworn statement that the expenses were incurred by the reporter or recorder and that the expenditures were necessary in performing the services, the clerk shall draw an order for payment and upon presentation of that properly drawn order, the treasurer of the county shall pay the ordered sum to the person entitled to the payment. If the reporter or recorder does not reside within the probate court district in which he or she serves, he or she shall be considered for the purpose of this subsection to reside in the county where the probate judge of that district resides.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1986, Act 308, Eff. Jan. 1, 1987.

600.836 Allocating duties; combining title and powers.

Sec. 836. The probate judge or chief probate judge may allocate the duties of the deputy registers, clerks, and reporters or recorders, and may combine the title and powers in any 1 or more persons.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1986, Act 308, Eff. Jan. 1, 1987.

600.837 Operation of probate court; appropriation; employer; authority; collective bargaining; appointment, supervision, discipline, and dismissal of employees; transfer of employees; effect of existing collective bargaining agreement; control of employees; chief judge as principal administrator; “county-paid employees of the probate court” defined.

Sec. 837. (1) The county board of commissioners in each county shall annually appropriate, by line-item or lump-sum budget, funds for the operation of the probate court in that county. However, before a county board of commissioners may appropriate a lump-sum budget, the chief judge of the probate court in that county or that probate district shall submit to the county board of commissioners a budget request in line-item form with appropriate detail. A court that receives a line-item budget shall not exceed a line-item appropriation or transfer funds between line items without the prior approval of the county board of commissioners. A court that receives a lump-sum budget shall not exceed that budget without the prior approval of the county board of commissioners.

(2) In a county that is not part of a probate district, the county is the employer of the county-paid employees of the probate court in that county. In a probate district, the employer of the county-paid employees of the probate court shall be as follows:

(a) As determined pursuant to a contract entered into by the counties within the probate district under Act No. 8 of the Public Acts of the Extra Session of 1967, being sections 124.531 to 124.536 of the Michigan Compiled Laws.

(b) If the counties within the probate district do not enter into an agreement described in subdivision (a), each county is the employer of the county-paid employees of the probate court who serve in that county or who are designated by agreement of the counties within the probate district as being employed by that county.

(3) The employer of county-paid employees of the probate court designated under subsection (2), in concurrence with the chief judge of the probate court, has the following authority:

(a) To establish personnel policies and procedures, including, but not limited to, policies and procedures relating to compensation, fringe benefits, pensions, holidays, leave, work schedules, discipline, grievances, personnel records, probation, and hiring and termination practices.

(b) To make and enter into collective bargaining agreements with representatives of the county-paid employees of the probate court in that county or in the counties covered by a contract entered into under subsection (2)(a).

(4) If the employer of the county-paid employees of the probate court and the chief judge of the probate court are not able to concur on the exercise of their authority as to any matter described in subsection (3)(a), that authority shall be exercised by either the employer or the chief judge as follows:

(a) The employer has the authority to establish policies and procedures relating to compensation, fringe benefits, pensions, holidays, and leave.

(b) The chief judge has authority to establish policies and procedures relating to work schedules, discipline, grievances, personnel records, probation, hiring and termination practices, and other personnel matters not included in subdivision (a).

(5) The employer of the county-paid employees of the probate court designated under subsection (2) and

the chief judge of the probate court each may appoint an agent for collective bargaining conducted under subsections (3) and (4).

(6) The chief judge of the probate court in the county may elect not to participate in the collective bargaining process for county-paid employees of the probate court.

(7) Except as otherwise provided by law, the chief judge of the probate court in a county or probate court district shall appoint, supervise, discipline, or dismiss the employees of the probate court in that county or probate court district in accordance with personnel policies and procedures developed pursuant to subsection (3) or (4) and any applicable collective bargaining agreement. Compensation of the employees of the probate court shall be paid by the county or, in the case of a probate district, by the counties comprising the probate court district.

(8) If the implementation of the 1996 amendatory act that amended this section requires a transfer of court employees or a change of employers, all employees of the former court employer shall be transferred to, and appointed as employees of, the appropriate employer designated under subsection (2) subject to all rights and benefits they held with the former court employer. An employee who is transferred shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the former court employer. The rights and benefits protected by this subsection may be altered by a future collective bargaining agreement or, for employees not covered by collective bargaining agreements, by benefit plans as established and adopted by the employer designated under subsection (2). An employee who is transferred shall not be made subject to any residency requirements by the employer designated under subsection (2).

(9) The employer designated under subsection (2) shall assume and be bound by any existing collective bargaining agreement held by the former court employer and, except where the existing collective bargaining agreement may otherwise permit, shall retain the employees covered by that collective bargaining agreement. A transfer of court employees shall not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement.

(10) When performing services in a courtroom, employees of the probate court are subject to the control of the judge holding court in the courtroom.

(11) The role of the chief judge under this section is that of the principal administrator of the officers and personnel of the court and is not that of a representative of a source of funding. The state is not a party to the contract. Except as otherwise provided by law, the state is not the employer of court officers or personnel and is not liable for claims arising out of the employment relationship of court officers or personnel or arising out of the conduct of court officers or personnel.

(12) As used in this section, "county-paid employees of the probate court" means persons employed in the probate court in a county who receive any compensation as a direct result of an annual budget appropriation approved by the county board of commissioners of that county, but does not include a judge of the probate court.

History: Add. 1996, Act 374, Eff. Oct. 1, 1996;—Am. 1996, Act 388, Eff. Oct. 1, 1996.

Constitutionality: The Michigan Supreme Court held in Judicial Attorneys Association v Michigan, 459 Mich 291; 597 NW2d 113 (1999), that MCL 600.593a (3)-(10) and parallel provisions of MCL 600.591, 600.837, 600.8271, 600.8273, and 600.8274 violate the separation of powers clause of Const 1963, art 3, § 2 and are unconstitutional.

1996 PA 374 provided that a local council created pursuant to the act or Wayne County became the employer of the employees of the Third Circuit and Recorder's Courts. The Court ruled that because subsections (3)-(10) of MCL 600.593a are not a sufficiently limited exercise by one branch of another branch's power that they impermissibly interfere with the judiciary's inherent authority to manage its internal operations and, therefore, are unconstitutional because they violate the separation of powers clause of Const 1963, art 3, § 2.

600.838 Disqualification of probate judge.

Sec. 838. (1) A probate judge shall not sit in any proceeding:

(a) In which he is a party, or is financially interested.

(b) In which he would be excluded from being a juror by reason of consanguinity or affinity to any of the parties.

(c) In which he is related within the third degree of consanguinity or affinity to any of the attorneys of any party, witness, or representative in the proceeding. This disqualification may be waived by stipulation filed in the proceeding.

(d) Which involves or may involve the validity or interpretation of a will, contract, deed, mortgage, bill of sale, note or other document which he prepared, in the preparation of which he assisted, or to the execution of which he acted as a witness.

(e) Which involves a contested matter concerning which he advised a party to the contest.

(f) In which a probate register or other employee of the probate court in that county or probate court

district, while holding that office or employment, prepared or assisted in the preparation of a will, contract, deed, mortgage, bill of sale, note, or other document involved in the hearing or trial, or acted as a witness to the execution thereof.

(2) A judge of probate shall not decide nor participate in the decision of any question which is argued in the court when he was not present and sitting therein as a judge.

(3) When a probate judge is disqualified within the meaning of subsection (1) or (2), the judge shall be deemed incapacitated for purposes of section 824.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.839 Probate judge, probate register, or employee of probate court; prohibitions.

Sec. 839. (1) A probate judge, probate register, or employee of the probate court shall not be:

(a) A fiduciary or appraiser of an estate under the jurisdiction of the probate court in the county or probate court district in which he is a probate judge, probate register, or employee.

(b) An attorney or counsel in an action or matter which may depend upon, or relate to, a sentence or order made or entered by the probate judge in the county or probate court district in which he is a probate judge, probate register, or employee.

(c) An attorney or counsel for or against a fiduciary appointed under the jurisdiction of the probate court in the county or probate court district in which he is a probate judge, probate register, or employee, in any action or proceeding brought by or against the fiduciary as such or in any action or proceeding relating to the official conduct of that fiduciary.

(2) A probate judge shall not have a partner practicing in the probate court in the county or probate court district in which he is a probate judge. Unless he is a party to the proceeding, a probate judge shall not be directly or indirectly interested in the costs of a proceeding that is brought in the probate court in the county or probate court district in which he is a probate judge.

(3) A clerk or employee of the probate court may not be an appraiser, referee, or divider of an estate which is under the jurisdiction of the probate court in the county or probate court district in which he is a clerk or employee.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.841 Probate court; jurisdiction and power.

Sec. 841. (1) The probate court has jurisdiction and power as follows:

(a) As conferred upon it under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206.

(b) As conferred upon it under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(c) As conferred upon it under this act.

(d) As conferred upon it under another law or compact.

(2) In a judicial circuit in which the probate court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the probate court has concurrent jurisdiction with the circuit court or the district court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

(a) The circuit court has exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by law.

(b) The circuit court has exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1996, Act 388, Eff. Jan. 1, 1998;—Am. 2000, Act 56, Eff. Apr. 1, 2000;—Am. 2002, Act 678, Eff. Apr. 1, 2003;—Am. 2005, Act 326, Imd. Eff. Dec. 27, 2005;—Am. 2012, Act 338, Eff. Jan. 1, 2013;—Am. 2013, Act 164, Imd. Eff. Nov. 12, 2013.

600.843 Contesting jurisdiction based on residence of person or location of person's property.

Sec. 843. Jurisdiction assumed in any case by a judge of probate, so far as it depends on the place of residence of a person, or the location of the person's property, shall not be contested in any other action or proceeding, except in an appeal from the probate court in the original case, or when the want of jurisdiction appears on the face of a petition or from the record.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.845 Concurrent jurisdiction of circuit court.

Sec. 845. The jurisdiction conferred by this chapter shall not be construed to deprive the circuit court in the proper county of concurrent jurisdiction as originally exercised over the same matter.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.846 Removal of action or proceeding to probate court.

Sec. 846. In an action or proceeding pending in any other court of this state of which the probate court and the other court have concurrent jurisdiction, the judge of the other court, upon motion of a party and after a finding and order on the jurisdictional issue, may by order remove the action or proceeding to the probate court. If the action or proceeding is removed to the probate court, the judge of the other court shall forward to the probate court the original of all papers in the action or proceeding and thereafter proceedings shall not be had before the other court.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1989, Act 70, Eff. Sept. 1, 1989;—Am. 2016, Act 186, Eff. Sept. 27, 2016.

600.847 Powers of probate court in exercise of jurisdiction.

Sec. 847. In the exercise of jurisdiction vested in the probate court by law, the probate court shall have the same powers as the circuit court to hear and determine any matter and make any proper orders to fully effectuate the probate court's jurisdiction and decisions.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.848 Rehearings; modifying and setting aside orders, sentences, or judgments; order with respect to original hearing or rehearing of contested matter; exception.

Sec. 848. (1) Upon petition, where justice requires, and after due notice is given to all parties in interest, the probate court may grant rehearings and modify and set aside orders, sentences, or judgments rendered in the court.

(2) The probate court shall make and enter an order with respect to the original hearing or rehearing of a contested matter within 30 days after the termination of the hearing or rehearing.

(3) This section shall not apply to a proceeding under chapter 10 of Act No. 288 of the Public Acts of 1939, as amended.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.849 Validity of order or decree.

Sec. 849. When the validity of any order or sentence of the probate court is in question in any other action or proceeding, everything necessary to have been done or proved to render the order or decree valid, and which might have been proved by parol at the time of making the order or sentence, and was not required to be recorded, shall, after 20 years from such time, be presumed to have been done or proved, unless the contrary appears on the same record.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.851 Administration of oaths; certification.

Sec. 851. Oaths required to be taken by fiduciaries, appraisers, and dividers of estates, or by any other person in relation to any proceeding in the probate court, may be administered by a probate judge, probate register, or notary public, and a certified certificate thereof shall be returned and filed in the probate court.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.852 Petition, inventory, accounting, proof of claim, or proof of service; declaration; false execution and filing; penalties.

Sec. 852. (1) A petition, inventory, accounting, proof of claim or proof of service filed with the probate court need not be verified, acknowledged or made on oath if the person signing the instrument states immediately above the date and his signature: "I declare under the penalties of perjury that this _____ was examined by me and that the contents thereof are true to the best of my information, knowledge and belief." This provision shall not apply to nominations of guardians by minors.

(2) A person who falsely executes and files with the probate court as provided in this section an instrument containing a declaration under the penalty of perjury may be found guilty of contempt of court and punished therefor and shall in addition be subject to the same responsibilities, liabilities, and penalties as he would have been if he had executed the instrument under oath.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.854 Notice governed by supreme court rule.

Sec. 854. Except as otherwise provided by law, any notice required by law shall be governed by supreme court rule.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.855 Form; approval.

Sec. 855. For the purpose of achieving uniformity of forms throughout this state in the probate court, effective July 1, 1979, only forms approved by the supreme court or the state court administrator shall be used.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.856 Change of venue; procedure; contested venue.

Sec. 856. (1) The venue of all proceedings or any portion thereof may be changed for the convenience of the parties and witnesses or when an impartial trial cannot be had, to the probate court in any other county upon petition of an interested party or upon the motion of the probate judge who has or would have jurisdiction. Copies of documents, as specified by the petitioner, which are on file in the court where the proceedings are pending, together, with any original instrument as specified, shall, without payment therefor, thereupon be transmitted by the probate court to the probate court in the county granted venue. After venue is changed, any notice of hearing which is required to be published shall be published in the county from which venue was changed.

(2) In cases of contested venue, proceedings shall be stayed except in the probate court in the county where first filed until final determination there of venue.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.857 Jury trial.

Sec. 857. (1) If a party to a proceeding in the probate court would have had a right before January 1, 1971 to demand a jury to determine a particular issue of fact in the circuit court upon a de novo appeal from that proceeding to the circuit court, that party shall on and after January 1, 1971 have the right to demand a jury to determine that issue of fact in the probate court proceeding.

(2) When a jury is demanded pursuant to law in a proceeding in the probate court, the jury shall be summoned and selected in accordance with sections 1301 to 1354. With respect to jurors any examination, challenge, replacement, oath or other practice which is not governed by the provisions of sections 1301 to 1354 shall be governed by rules adopted by the supreme court.

(3) If a jury trial is demanded in any proceeding by a party having a right to have a jury determine an issue, the demanding party shall pay into court a jury fee in an amount equal to the jury fee required in the circuit court in the same county but not to exceed \$30.00, which fee shall be paid to the county treasurer for deposit in the general fund of the county. A jury fee shall not be required from a party demanding a jury trial in the juvenile division of the probate court or under Act No. 258 of the Public Acts of 1974, as amended, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.858 Security for costs; award of costs in contested case.

Sec. 858. (1) When it appears reasonable and proper, the probate court may require a party to a proceeding before a hearing to give sufficient security for all costs as may be awarded against that party.

(2) In a contested case, the probate court may award costs to either party to be paid by the other party or out of the estate, as justice and equity requires.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.859 Taking testimony; record; keeping index and original notes.

Sec. 859. (1) The following testimony before a probate judge shall be recorded:

- (a) Testimony in contested matters.
 - (b) Testimony in matters pertaining to the admission to a hospital or other facility for mentally ill or developmentally disabled persons.
 - (c) Testimony in matters pertaining to persons having a contagious disease.
 - (d) Testimony in other matters if requested by an interested party.
 - (e) Testimony and other proceedings required by supreme court rule.
- (2) In matters not governed by subsection (1), testimony before a probate judge, probate register, or deputy probate register may be given orally without a record being made of the testimony.
- (3) The court shall keep sufficient index of the testimony and the court shall keep the index and the original notes as prescribed by supreme court rules.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1979, Act 69, Imd. Eff. July 25, 1979;—Am. 1986, Act 308, Eff. Jan. 1, 1987;—Am. 2005, Act 326, Imd. Eff. Dec. 27, 2005;—Am. 2013, Act 201, Imd. Eff. Dec. 18, 2013.

600.861 Repealed. 2016, Act 186, Eff. Sept. 27, 2016.

Compiler's note: The repealed section pertained to appeal of orders as matter of right.

600.863 Repealed. 2016, Act 186, Eff. Sept. 27, 2016.

Compiler's note: The repealed section pertained to appeal to circuit court and court of appeals.

600.866 Appeals to be on record; trial de novo prohibited; notice of appeal; appeals governed by supreme court rule.

Sec. 866. (1) All appeals from the probate court shall be on a written transcript of the record made in the probate court or on a record settled and agreed to by the parties and approved by the probate court. An appeal shall not be tried de novo.

(2) A party appealing from the probate court shall give notice of appeal to all interested parties as provided by supreme court rule.

(3) Except as otherwise provided in this section and section 867, appeals from the probate court are governed by supreme court rule.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2016, Act 186, Eff. Sept. 27, 2016.

600.867 Stay of further proceedings in pursuance of judgment, order, or sentence; exception; application for delayed appeal.

Sec. 867. (1) After an appeal of right from a judgment or order of the probate court is filed with the court of appeals and notice of the appeal is filed with the probate court, all further proceedings in pursuance of the judgment, order, or sentence, appealed from are stayed for a period of 21 days or, if a motion for stay pending appeal is granted, until the appeal is determined, except as otherwise provided in subsection (2), section 65(2) of chapter X of the probate code of 1939, 1939 PA 288, MCL 710.65, or supreme court rule.

(2) The pendency of an appeal from the family division of the circuit court or from an order of the probate court entered under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or sections 5201 to 5319 of the estates and protected individuals code, 1998 PA 386, MCL 700.5201 to 700.5319, does not stay the judgment or order unless the court from which or to which the appeal is taken specifically orders the stay. An application for a delayed appeal from an order of the family division of the circuit court shall be filed within 6 months after entry of the judgment or order.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1979, Act 69, Imd. Eff. July 25, 1979;—Am. 2016, Act 186, Eff. Sept. 27, 2016.

600.871 Decedents' estates; fees; payment; final accounting; receipt.

Sec. 871. (1) In all decedents' estates in which proceedings are instituted for probate, the probate court shall charge and collect the following fees as an expense of administration on the value of all assets, as of the date of death of the decedent, as follows:

(a) In an estate of value of less than \$1,000.00, \$5.00 plus 1% of the amount over \$500.00.

(b) In an estate of value of \$1,000.00 or more, but less than \$3,000.00, \$25.00.

(c) In an estate of value of \$3,000.00 or more but less than \$10,000.00, \$25.00 plus 5/8 of 1% of the amount over \$3,000.00.

(d) In an estate of value of \$10,000.00 or more but less than \$25,000.00, \$68.75 plus 1/2 of 1% of the amount over \$10,000.00.

(e) In an estate of value of \$25,000.00 but less than \$50,000.00, \$143.75 plus 3/8 of 1% of the amount over \$25,000.00.

(f) In an estate of value of \$50,000.00 but less than \$100,000.00, \$237.50 plus 1/4 of 1% of the amount over \$50,000.00.

(g) In an estate of value of \$100,000.00 to \$500,000.00, \$362.50 plus 1/8 of 1% of the amount over \$100,000.00.

(h) For each additional \$100,000.00 value, or larger fraction thereof, over \$500,000.00, \$62.50.

(i) For each additional \$100,000.00 value, or larger fraction thereof, over \$1,000,000.00, \$31.25.

(2) Beginning March 28, 2013, in calculating a fee under subsection (1), if real property that is included in the estate is encumbered by or used as security for an indebtedness, the amount of the indebtedness must be deducted from the value of the real property.

(3) The fees in subsection (1), rounded to the whole dollar, are due and payable to the probate court on or before the closing of the estate or within 1 year after the commencement of probate proceedings, whichever occurs first. The probate court shall not accept a final accounting until the fees are paid in full and shown as part of the final accounting. An official receipt must be issued to the payer when the fees are collected.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2005, Act 326, Imd. Eff. Dec. 27, 2005;—Am. 2012, Act 596, Eff. Mar. 28, 2013;—Am. 2018, Act 33, Imd. Eff. Feb. 21, 2018.

600.872 Repealed. 1996, Act 374, Eff. Oct. 1, 1996.

Compiler's note: The repealed section pertained to exemplifications and certified copies.

600.873 Repealed. 1979, Act 69, Imd. Eff. July 25, 1979.

Compiler's note: The repealed section pertained to certified copy or exemplification of record, paper, or proceeding.

600.874 Probate court; charge and collection of fees; waiver of fee for conduct of marriage ceremony; remittance.

Sec. 874. (1) The probate court shall charge and collect the following fees:

(a) For performing a marriage ceremony, \$10.00.

(b) For issuance of a commission to take testimony, \$7.00.

(c) For taking, certifying, sealing, and forwarding depositions, \$5.00, and 10 cents per page, which fees shall be considered as costs in the case; and for each copy of the deposition furnished, 3 cents per page.

(2) A probate judge may waive the fee for performing a marriage ceremony if the parties to the marriage are indigent.

(3) A fee paid under subsection (1)(a) shall be remitted to the probate court for the county in which the probate judge performing the marriage serves.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2012, Act 266, Imd. Eff. July 3, 2012.

600.875 Charging estate; limitation; conditions.

Sec. 875. If the estate of a respondent, minor, legally incapacitated person, or protected person is sufficient, the probate court may charge the estate of the person an amount approved by the court, but not more than the actual cost of the services, for any of the following:

(a) Guardian ad litem appointed to represent the person.

(b) Counsel appointed to represent the person.

(c) Court ordered examination by a physician or mental health professional.

(d) Independent examination by a physician or mental health professional.

History: Add. 1993, Act 189, Imd. Eff. Oct. 8, 1993.

600.876 Certified copies for which charges or fees prohibited.

Sec. 876. A charge shall not be made nor shall any fee be collected on account of or by reason of the furnishing of certified copies in connection with proceedings for the admission and commitment of persons to mental hospitals or any facility or institution maintained or operated by the state or the federal government for the care of mentally ill or developmentally disabled persons, or for determining inheritance tax.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2014, Act 68, Imd. Eff. Mar. 28, 2014.

600.877 Fees; time of payment.

Sec. 877. All fees received by the probate court during each month under sections 871 to 874 must be paid on or before the tenth day of the succeeding month as follows:

(a) Beginning March 28, 2013, 47.5% of each fee must be paid to the county treasurer and credited to the county general fund.

(b) Beginning March 28, 2013, 52.5% of each fee must be paid to the state treasurer and credited to the state general fund.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 2012, Act 596, Eff. Mar. 28, 2013;—Am. 2018, Act 33, Imd. Eff. Feb. 21, 2018.

600.878 Transcript fees.

Sec. 878. (1) The probate court reporter or recorder may collect for transcripts of testimony requested by any interested party or ordered by the probate judge, other than depositions, the same fees as provided by section 2543 for circuit court reporters or recorders unless a lower rate is agreed upon. The transcript fees so collected shall be paid to the probate court reporter or recorder by the ordering party, or by the county for a transcript ordered by a probate judge, which fees shall accrue to the reporter or recorder as additional compensation.

(2) Fees shall not be charged or collected for transcripts provided under Act No. 243 of the Public Acts of 1919, being section 35.41 of the Michigan Compiled Laws.

History: Add. 1978, Act 543, Eff. July 1, 1979;—Am. 1986, Act 308, Eff. Jan. 1, 1987.

600.879 Prohibited compensation, fees, or costs; violation as malfeasance in office.

Sec. 879. (1) A probate judge, probate register, clerk, or employee of the probate court shall not receive or accept any compensation whatever for collecting from a fiduciary or estate any fees for the publishing of a notice or matter required in a proceeding in the probate court.

(2) A probate judge shall not collect or receive any fee from, or charge any costs to, a person unless the payment of the fee or costs is expressly authorized by law. A person violating this section is guilty of malfeasance in office.

History: Add. 1978, Act 543, Eff. July 1, 1979.

600.880 Filing fees for civil action to probate register; exceptions; disposition.

Sec. 880. (1) Except as otherwise provided in this section and section 880a, at the time of commencing a civil action or proceeding in the probate court, the party commencing the civil action or proceeding shall pay a \$150.00 filing fee to the probate court register.

(2) At the time of commencing a proceeding under section 3982 of the estates and protected individuals code, 1998 PA 386, MCL 700.3982, the party commencing the proceeding shall pay a \$25.00 filing fee to the probate court register.

(3) Except as otherwise provided by law, a fee shall not be charged for commencing a proceeding in probate court under a provision of the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(4) A party is not required to pay a fee under this section if the party is the attorney general, department of treasury, family independence agency, state public administrator, or administrator of veterans affairs of the United States veterans administration, or an agency of county government.

(5) The probate register, on or before the fifth day of the month following the month in which fees are collected under this section, shall transmit to the county treasurer all fees collected under this section during the preceding month. Within 15 days after receiving the fees, the county treasurer shall transmit all fees collected under subsection (1) to the civil filing fee fund created in section 171 and all fees collected under subsection (2) to the state treasurer for deposit in the state court fund created by section 151a.

History: Add. 1992, Act 233, Eff. Mar. 31, 1993;—Am. 1993, Act 189, Eff. Oct. 8, 1993;—Am. 2000, Act 56, Eff. Apr. 1, 2000;—Am. 2003, Act 138, Eff. Oct. 1, 2003.

600.880a Filing fee commencing guardianship to probate register; exception; disposition.

Sec. 880a. (1) Except as otherwise provided in this section and section 880, at the time of commencing a guardianship or limited guardianship proceeding in the probate court, the party commencing the proceeding shall pay a \$150.00 filing fee to the probate register.

(2) A party is not required to pay a fee under this section if the party is the attorney general, department of treasury, family independence agency, state public administrator, or administrator of veterans affairs of the United States veterans administration, or an agency of county government.

(3) The probate register, on or before the fifth day of the month following the month in which any fees are collected under this section, shall transmit to the county treasurer all fees collected under this section during the preceding month. Within 15 days after receiving the fees, the county treasurer shall transmit all fees collected to the state treasurer for deposit in the civil filing fee fund created by section 171.

History: Add. 1993, Act 189, Imd. Eff. Oct. 8, 1993;—Am. 2003, Act 138, Eff. Oct. 1, 2003.

600.880b Fees paid to probate register; exceptions; disposition.

Sec. 880b. (1) Except as otherwise provided by law, after the commencement of a civil action or proceeding in the probate court, a party filing a motion, petition, account, objection, or claim shall pay a \$20.00 motion fee to the probate register.

(2) The probate register shall charge and collect a \$15.00 service fee for each writ of garnishment, attachment, or execution or for each judgment debtor discovery subpoena issued.

(3) A fee shall not be charged under this section in a guardianship or limited guardianship proceeding if the moving party is the subject of the proceeding.

(4) A fee shall not be charged under this section in a conservatorship proceeding if the moving party is the subject of the proceeding or, if the conservatorship is for a minor, for a motion to release restricted funds.

(5) A party is not required to pay a fee under this section if the party is the attorney general, department of treasury, family independence agency, state public administrator, or administrator of veterans affairs of the United States veterans administration, or an agency of county government.

(6) The probate register, on or before the fifth day of the month following the month in which fees are collected under this section, shall transmit to the county treasurer all fees collected under this section during

the preceding month. Within 15 days after receiving the fees, the county treasurer shall transmit 50% of each fee collected to the state treasurer for deposit in the state court fund created by section 151a and shall deposit the remaining 50% of each fee in the county general fund for use exclusively for expenses of the probate court, to be first applied toward expenses in adult guardianship proceedings of the independent evaluations, legal counsel, and periodic review mandated by article 5 of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5520.

History: Add. 1993, Act 189, Imd. Eff. Oct. 8, 1993;—Am. 2000, Act 56, Eff. Apr. 1, 2000;—Am. 2003, Act 138, Eff. Oct. 1, 2003;—Am. 2003, Act 178, Eff. Oct. 1, 2003.

600.880c Fees for bringing appeal, registering trust, or depositing will; disposition.

Sec. 880c. (1) Upon appeal from the probate court to the circuit court or court of appeals, the party bringing the appeal shall pay a \$25.00 fee to the probate court register.

(2) Upon registering a trust or depositing a will for safekeeping, the person registering the trust or depositing the will shall pay a \$25.00 fee to the probate court register.

(3) The probate court register, on or before the fifth day of the month following the month in which fees are collected under this section, shall transmit all fees collected under this section during the previous month to the county treasurer. The county treasurer shall deposit all the fees in the county general fund for use exclusively for expenses of the probate court, to be first applied toward expenses in adult guardianship proceedings of the independent evaluations, legal counsel, and periodic review mandated by article 5 of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5513.

History: Add. 1993, Act 189, Imd. Eff. Oct. 8, 1993;—Am. 2000, Act 56, Eff. Apr. 1, 2000.

600.880d Waiver or suspension of fees.

Sec. 880d. A judge of probate shall order that the payment of any fee required under this chapter be waived or suspended, in whole or in part, upon a showing by affidavit of indigency or inability to pay.

History: Add. 1993, Act 189, Imd. Eff. Oct. 8, 1993.

600.899 Repeal of MCL 701.1 to 701.18a, 701.20 to 701.45d, 701.50 to 701.55, and 712A.22.

Sec. 899. Sections 1 to 18a, 20 to 45d and 50 to 55 of chapter 1 and section 22 of chapter 12A of Act No. 288 of the Public Acts of 1939, as amended, being sections 701.1 to 701.18a, 701.20 to 701.45d, 701.50 to 701.55 and 712A.22 of the Compiled Laws of 1970, are repealed.

History: Add. 1978, Act 543, Eff. July 1, 1979.