Proceeding or Civil Action

Take-Away: When filing an action in the probate court to resolve a dispute, be mindful of the difference between filing a *petition* and filing a *complaint.* They may produce different available remedies.

Background: There are two different ways that litigation can be initiated in a Michigan probate court. It is either by filing a ***proceeding*** or a ***civil action***, which can often lead to confusion**.** A ***proceeding*** is commenced with filing either an *application* or a *petition* in the probate court. ***Proceeding*** is defined as an *application* and/or a *petition,* and it may be an action at law or a suit in equity; it may be denominated a *civil action* under the court rules. [MCL 700.1106(u).] A ***civil action*** is commenced by filing a *complaint.* Filing fees and how the *petition* or the *complaint* is served differ under the Michigan Court Rules. In particular, any action that is filed by a fiduciary against another fiduciary is with a *complaint*, and that action is governed by the rules that apply to civil actions in a circuit court. [Michigan Court Rule 5.101(C).] This is a tedious way of saying that remedies will differ depending on whether the litigation was commenced by filing either a *petition* or a *complaint.* This distinction between a *petition* and *complaint* was raised in a recent Michigan Court of Appeals decision and the remedy that was ultimately available to the Successor Personal Representative.

Gallagher v Wallace (In re Estate of Wallace), Michigan Court of Appeals, 2026 LX235687 (May 11, 2026)

Facts: Dan owned many LLCs at the time of his death. Those LLCs owned over 2000 properties! Dan's widow, Tracy, was named as Personal Representative of his estate. Tracy continued to operate the LLCs after Dan's death for over 7 years. Claims were filed against Dan's estate in excess of $4 million. As Personal Representative, Tracy used the proceeds from the LLCs to pay her personal expenses, yet she failed to file tax returns or pay the creditors of Dan's estate. Tracy also failed to disclose assets in the estate's Inventory. Tracy was ultimately removed by the probate court as the Personal Representative of Dan's estate for commingling LLC funds, which resulted in Dan's estate being insolvent. Mr. Gallagher was appointed as the Successor Personal Representative of Dan's estate. After Mr. Gallagher's appointment he conducted an investigation, from which he concluded that of the 2000 properties that were listed on Dan's estate's Inventory all but three were lost due to the nonpayment of taxes or foreclosures while Tracy served as the Personal Representative.

Dispute: Mr. Gallagher filed a ***complaint*** on behalf of Dan's estate and the LLCs against Tracy (and an entity that she had created) that alleged that she had breached her fiduciary duties owed to the estate. This *complaint* alleged that: (i) Tracy had paid nonbusiness expenses from the LLC accounts: (ii) she failed to account for rents received by the LLCs; (iii) she failed to settle creditor claims: and (iv) she filed to file income tax returns. Tracy answered this *complaint* claiming that she did not owe fiduciary duties to the creditors of Dan's estate or the LLCs, and that none of the beneficiaries of Dan's estate (Tracy and her children had the estate been solvent) wanted the Successor Personal Representative to pursue the litigation against Tracy, essentially ignoring the rights of creditors to be paid.

Probate Court: The probate court granted Mr. Gallagher's motion for summary disposition, and it proceeded to conduct an evidentiary hearing on the amount of damages the estate had sustained. The probate court found that Dan's estate was insolvent at the time of his death and that Stacy had breached her fiduciary duties to the creditors of the estate. The probate court concluded that Tracy's misuse of estate funds resulted in a loss of $525,860, in addition to an estimated amount that would be attributable to interest and penalties relative to the unfiled tax returns.

First Appeal: Tracy appealed the probate court's decision. The Court of Appeals found that Tracy breached her fiduciary duties owed to the estate's creditors, and that she was responsible for all damages assessed by the probate court, with the exception of the amount of potential interest and penalties associated with the unfiled tax returns as being 'speculative.' Accordingly, the case was remanded to the probate court with regard to the amount of interest on penalties on the unfiled tax returns. {Apparently during this first appeal Tracy also filed for bankruptcy.]

Probate Court: The probate court reopened proofs, because during the first appeal, income tax returns had been filed. The IRS had assessed interest and penalties of $178,596.86. The State of Michigan had assessed the amount $14,361.22 for its penalties and interest. The probate court then imposed pre-judgment interest in the amount of

$104,016. [MCL 600.6013.] A final judgment for all these amounts was then entered against Tracy. She appealed again on the pre-judgment interest award against her.

Second Appeal: The probate court's decision to assess pre-judgment interest in its damage award against Tracy was sustained on appeal.

Prejudgment Interest: Tracy argued on appeal that the amount of the judgment against her should have been only $398,810 since the probate court could not have imposed any prejudgment statutory interest. The Court disagreed, finding that major creditors were bypassed by Tracy's actions, and the purpose of the judgment and prejudgment interest was to allow for estate creditors to be paid. [MCL 600.6013.] As the probate court noted in its decision: "*Those creditors are the party in interest here for which Mr. Gallagher is representing as the personal representative of the estate. And they're entitled to the interest associated with those actions that has caused them to wait for their claims to be paid that's why the statutory interest should account.*"

Complaint: The Court expressly pointed out that Mr. Gallagher had filed a *complaint* against Tracy to recover damages the estate creditors had sustained caused by her breach of fiduciary duties. Specifically, interest on a money judgment is mandatory in all cases to which MCL 600.6013 applies and *"the purpose of MCL 600.6013 is to compensate the prevailing party for the expenses incurred in bringing an action and for the delay in receiving money damages."*

Fiduciary Duty Owed to Creditors: Mr. Gallagher was merely exercising his powers as successor Personal Representative for the benefit of creditors as well as estate beneficiaries. By awarding pre-judgment interest the probate court addressed the damages suffered by the creditors. The Court expressly disagreed with Tracy's argument that as Personal Representative she had no fiduciary duty to the estate creditors. Mr. Gallagher, as Successor Personal Representative, was carrying out that fiduciary duty by filing his *complaint* against Tracy (and her separate entity.)

Choice of Remedy: Had Mr. Gallagher simply filed a *petition* that sought a probate court order to compel Tracy to return assets to Dan's estate, the money judgment rules that were relied on by the probate court and the Court of Appeals would not have applied, and there would have been a substantially smaller damage recovery from Tracy with which to pay creditors of Dan estate.

Insolvent Estate: When an estate is insolvent, the Personal Representative has fiduciary duties to both the beneficiaries of the estate and to its creditors. Michigan's statute presents a priority of payment for obligations and estate allowances when the decedent's estate is insufficient to pay all creditor claims and allowances in full. [MCL 700.3805.] Briefly, that statutory priority is: (i) costs and expenses of administration; (ii) reasonable funeral and burial expenses; (iii) homestead allowance; (iv) family allowance; (v) exempt property allowance; (vi) debts and taxes with priority under federal law, e.g., 'estate recovery'; (vi) reasonable and necessary medical and hospital expenses of the decedent's last illness; (vii) debts and taxes with priority under the laws of the state; and (viii) all other claims. Consequently, while Tracy and her children would have been entitled to their statutory allowances (after administration, funeral, and burial expenses) to the extent those allowances were exceeded by what Tracy took/misappropriated from the estate, that excess amount should have been available to pay creditor claims.

Revocable Trust: Recall, that if Dan had had a separate revocable trust at the time of his death, as Personal Representative of his estate, Tracy could have certified the amount and nature of the deficiency in Dan's estate to the trustee of his trust and required assets be made available from Dan's trust to address that financial deficiency faced by his estate. [MCL 700.7605(1).]

Conclusion: With the confusion that arises from the distinction between a *petition* and a *complaint* when seeking the assistance of the probate court, considerable thought first needs to be given to the type of remedy that will be available from that probate court litigation.

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