

Information Sheet

Jurisdiction of Ohio Probate Courts

WARNING

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

BACKGROUND

This information sheet deals with the fundamental legal issues regarding the jurisdiction (i.e., the “power”)¹ of an Ohio probate court to (i) handle a variety of issues and disputes arising from a decedent’s estate (e.g., who will receive the probate property of a decedent), (ii) appoint a guardian for an incompetent adult or a minor, and (iii) change a person’s name. An Ohio probate court also has jurisdiction regarding other matters, which are not discussed in this information sheet, such as granting a marriage license, correction of a birth certificate, deciding matters arising from certain powers of attorney, and assisting challenged persons who suffer from mental illness or addictions.

Jurisdiction – Decedent’s Estate. R.C. 2101.24 describes in detail those matters that an Ohio probate court may decide regarding probate property and a decedent’s estate. They include the power:

- To admit Wills to probate;²
- To construe Wills;³
- To resolve a Will contest action;⁴
- To appoint and remove an executor or administrator if the Decedent died without a Will;⁵

¹ See the definition of “jurisdiction” in Black’s Law Dictionary. Essentially, jurisdiction means the power and authority of a court to render a decision in a case brought before the court. The use of the word “jurisdiction” in this information sheet has the same meaning as “subject matter jurisdiction,” which is a phrase often used by judges in their orders or opinions.

² R.C. 2101.24(A)(1)(a)

³ ³ R.C. 2101.24(A)(1)(k)

⁴ R.C. 2101.24(A)(1)(p)

⁵ R.C. 2101.24(A)(1)(b)

- To direct and control the conduct of an Estate Representative, including accounts and the distribution of the estate;⁶
- To determine matters regarding an application to relieve an estate from administration⁷ or for a summary release from administration.⁸

Venue – Decedent’s Estate. If an Ohio probate court has jurisdiction (i.e., the “power”) to hear and determine a matter under R.C. 2101.24, then the next question is what is the Ohio county that should hear and determine those probate estate matters, which are presented to an Ohio probate court. That question involves what judges and attorneys refer to as “Venue” or rather the “venue question.” The venue provisions are different, depending upon whether the decedent died with a valid Will.

- Valid Will. If the decedent dies with a valid Will (which is what judges and attorneys refer to as a decedent who died “testate”), then the county that can admit a Will to probate is determined by R.C. 2107.11, which states:

(A) A will shall be admitted to probate:

*(1) In the county in this state in which the testator was **domiciled** at the time of the testator’s death;*

*(2) In any county of this state where any real property or personal property of the testator is located if, at the time of the testator’s death, the testator **was not domiciled** in this state, and provided that the will has not previously been admitted to probate in this state or in the state of the testator’s domicile;*

(3) In the county of this state in which a court rendered a judgment declaring that the will was valid pursuant to division (A)(1) of section 5817.10 of the Revised Code.

(B) For the purpose of division (A)(2) of this section, intangible personal property is located in the place where the instrument evidencing a debt, obligation, stock, or chose in action is located or if there is no instrument of that nature where the debtor resides.

Note that the word “domiciled” is used twice in that statute. Often, the words “domicile” and “residence” are used interchangeably, but in fact the meaning of those words is different. A person can have more than one residence, but legally a person can only have one domicile. For example, a person may have a home in Ohio, a condo in Florida, and a mobile home in Arizona. That person spends time in the Ohio home and the Florida condo throughout the year, and from time to time, spends time in the Arizona mobile home. Accordingly, that person has three residences. For this statute, the critical question is which of those three states is the decedent’s “domicile.” That is a legal question that the probate court must determine. Factors to be considered include: (1) proclamation in a Will or trust agreement, (2) registration to vote, (3) driver’s license, (4) registration of motor vehicle, (5) tax returns, (6) political activity, (7) location of banks and safe deposit box, etc.

Note that even if the state of domicile is NOT Ohio, an interested person can file an application to probate a will in any county where real or personal property is located; so long as the Will was not admitted to probate in another court in this state or any other state.

⁶ R.C. 2101.24(A)(1)(c) and (m)

⁷ R.C. 2101.24(A)(1)(aa)

⁸ R.C. 2101.24(A)(1)(bb)

Note that an application to be appointed the Executor of a Will must be filed in the Ohio county that admitted the Will to probate.⁹

- **No Valid Will.** If the Decedent died without a valid Will (which is what judges and attorneys refer to as a person who died “intestate”), then R.C. 2113.01 determines what county can appoint the Estate Representative (known as an “Administrator”) for the Decedent’s estate. R.C. 2113.01 states the following:

*Upon the death of a **resident** of this state who dies intestate, letters of administration of the decedent's estate shall be granted by the probate court of the county in which the decedent was a **resident** at the time of death.*

If the will of any person is admitted to probate in this state, letters testamentary or of administration shall be granted by the probate court in which the will was admitted to probate.

Note that, unlike the Decedent dying with a valid Will, if the Decedent died intestate (i.e., without a valid Will) then the focus is on the “residency” of the Decedent rather than the Decedent’s domicile. If the Decedent died intestate, then so long as the Decedent was a resident of Ohio (even if another state is the Decedent’s domicile), then the application to be appointed the Administrator of the estate is an Ohio county where the Decedent was a resident. Residence is a place where a person lives, from time to time, typically a place where the person owns and uses a home, condominium, mobile home, or where that person rents such property, but not necessarily the state of domicile (e.g., the state where the person has a driver’s license, is a registered voter, files state tax returns, etc.).

- **Death Certificate.** The Court requires that, when any initial filing is made to probate a Will or to appoint an Estate Representative, a death certificate is filed with the Court. The primary reason is to provide the Court with evidence of the Decedent’s death. Another purpose is to provide evidence of domicile or residency. The death certificate will show the Decedent’s residence at the time of death. However, that is not dispositive. It is only one piece of evidence. Sometimes the death certificate is inaccurate.
- **Intestacy (No Valid Will).** If the Decedent died without a valid Will and if there is evidence that the Decedent is a resident of Geauga County, then despite the fact that the death certificate reflects a residency in another state, an interested person can apply in this county to be appointed the Administrator. For example, the Decedent may live in a mobile home in Geauga County and travels to visit a relative in New York. Assume that the Decedent dies in New York. The New York death certificate may show a residence in New York. However, there probably is substantial evidence to show that the Decedent is a Geauga County resident. In that case consider preparing and filing the form titled Residency Affidavit (GC PF 4.52).
- **Testacy (Valid Will).** As explained above, the key issue for admitting a Will to probate is whether the Decedent was domiciled in Geauga County, Ohio. Again, the death certificate is merely one piece of evidence regarding domicile. If the death certificate shows a residence outside of Geauga County, or even if it shows a residence in Geauga County, then you should consider preparing and filing the form titled Residency Affidavit (GC PF 4.52) to explain to the Court why the Decedent was domiciled in Geauga County on the date of death.

⁹ See R.C. 2113.01

- **Ancillary Administration.** Even if the Decedent did not reside in Geauga County on the date of death, the law permits a probate estate to be commenced in Geauga County under certain circumstances. That probate proceeding is known as an “ancillary administration” and is set forth in R.C. Chapter 2129. The key statute is R.C. 2129.04, which states:

When a nonresident decedent leaves property in Ohio, ancillary administration proceedings may be had upon application of any interested person in any county in Ohio in which is located property of the decedent, or in which a debtor of such decedent resides. Such applicant may or may not be a creditor of the estate. The ancillary administration first granted shall extend to all the estate of the deceased within the state, and shall exclude the jurisdiction of any other court.

Note that the focus is not on the Decedent’s residency, but rather the location of the probate property. Please read the probate information sheet titled “Ancillary Administration.”

Jurisdiction – Guardianship. In addition to describing probate court jurisdiction for a decedent’s estate, R.C. 2101.24 also describes in detail those matters that an Ohio probate court may decide and resolve regarding a guardianship of an incompetent adult or minor. They include:

- To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;
- To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;
- To direct and control the conduct of fiduciaries and settle their accounts.

Special Jurisdiction Rules for Guardianship. Unlike a decedent, an incompetent adult or a minor is able to move from state to state and may have interested family members located in more than one state. Sometimes that will result in disputes among family members and other interested persons regarding who is best qualified to care for that incompetent adult or minor. In order to deal with those disputes more effectively and to provide cooperation among the states, most states including Ohio have adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which in Ohio is found in R.C. Chapter 2112. Although, as noted above, R.C. 2101.24(A)(1)(e) states that an Ohio probate court has jurisdiction *To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;* the initial question is whether any Ohio probate court has jurisdiction to appoint a guardian for an incompetent adult or a minor under the Ohio version of the Adult Guardianship and Protective Proceedings Jurisdiction Act. The following are some key provisions to consider.

- **Key Definitions.**
 - **Definition of Guardian.** R.C. 2112.01(B) refers to the definition in R.C. 2111.01, which provides that guardian includes both guardian of an incompetent and of a minor, and further includes limited guardianship, interim guardian, or emergency guardian as defined in R.C. 2111.02.
 - **Definition of Home State.** The question of whether Ohio is the Home State is defined in R.C. 2112(I), which states:

“Home state” means the state in which the respondent (i.e., the “Ward”) was physically present, including any period of temporary absence, for at least six consecutive months immediately

before the filing of an application for appointment of a guardian or the issuance of a protective order or, if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the application.

- Definition of “Significant-Connection” State. The question of whether Ohio is a “Significant-Connection State” is defined in R.C. 2112(Q), which states:

“Significant-connection state” means a state, other than the home state, with which a respondent (i.e., the “Ward”) has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

See also R.C. 2112.21(B), which sets forth certain factors that a probate court should consider when determining whether Ohio is a significant-connection state.

- Primary Jurisdiction Rule. R.C. 2112.21 provides the primary requirements to determine whether any Ohio probate court has jurisdiction to appoint a guardian for an incompetent adult or a minor, including an emergency protective order. The circumstances that give an Ohio probate court jurisdiction to appoint a guardian are.

- **First** – If Ohio is the Home State.

- **Second** – If Ohio is not the Home State, but Ohio is a “significant-connection” state, then an Ohio probate has jurisdiction to appoint a guardian under either of two circumstances.

- First - The respondent (i.e., the “Ward”) does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because Ohio is a more appropriate forum.

OR

- Second - The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the probate court makes the appointment or issues the order all of the following apply:

- An application for an appointment or order is not filed in the respondent's home state; AND

- An objection to the probate court's jurisdiction is not filed by a person required to be notified of the proceeding; AND

- An Ohio probate court concludes that it is an appropriate forum under the factors set forth in R.C. 2112.24.

- **Third** - If (i) Ohio does not have jurisdiction under the two provisions set forth above and (ii) the respondent's home state and all significant-connection states have declined to exercise jurisdiction because Ohio is the more appropriate forum, and (iii) jurisdiction in Ohio is consistent with the Ohio constitution and the United States constitution, then Ohio has jurisdiction to appoint a guardian.

- Emergency Jurisdiction Rule (R.C. 2112.22). The fourth circumstance that provides an Ohio probate court with “emergency” jurisdiction to appoint a guardian is set forth in R.C. 2112.22. Even if an Ohio

probate court does not have jurisdiction under the three circumstances explained above in R.C. 2112.21, an Ohio probate court may have such emergency jurisdiction as explained in R.C. 2112.22, which gives an Ohio probate court jurisdiction to appoint a guardian and to do any of the following.

- Appoint a guardian in an emergency for a respondent (i.e., the “Ward”) who is physically present in Ohio;
- Issue a protective order in an emergency with respect to the adult or for the real or tangible personal property located in Ohio;
- Appoint a guardian for a ward or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to R.C. 2112.31.

Please note further that R.C. 2112.22(B) provides that *If an application for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date that the application was filed, the probate court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.*

Other Provisions. R.C. Chapter 2112 has other provisions that could affect a guardianship in an Ohio probate court.

- R.C. 2112.05 – Taking testimony in another state.
- R.C. 2112.24 – Appropriate Forum, which allows an Ohio probate court that has jurisdiction under R.C. 2112.21 or 2112.22 to transfer the case to another state when appropriate.
- R.C. 2112.25 - Decline Jurisdiction, which allows an Ohio probate court that has jurisdiction under R.C. 2112.21 or 2112.22 to decline jurisdiction in certain circumstances.

Venue – Guardianship. If an Ohio probate court has jurisdiction to appoint a guardian of an incompetent adult or minor under R.C. 2101.24 and R.C. Chapter 2112, then the next question is what is the Ohio county that should appoint the guardian and manage all related matters concerning the guardianship. The venue provisions for a guardianship are set forth in R.C. 2111.02. Essentially, an application to be appointed guardian of an incompetent adult or a minor must be filed in the county where the potential Ward resides or has a legal settlement. The key provision is set forth in R.C. 2111.02(A), which states

If found necessary, a probate court on its own motion or on application by any interested party shall appoint, subject to divisions (C) and (D) of this section and to section 2109.21 and division (B) of section 2111.121 of the Revised Code, a guardian of the person, the estate, or both, of a minor or incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county.

Jurisdiction – Name Change. R.C. Chapter 2717 gives Ohio probate courts jurisdiction to order a name change of a person, or to order that the name on certain legal document be changed to conform to a person’s legal name. For more information, please review the probate information sheet titled “Name Change and Conform Legal Name.”

Venue – Name Change. If a person desires to obtain a court order for a name change or to conform documents to that person’s legal name then:

- Name Change. R.C. 2717.02 states: “A person desiring to change the person's name may file an application in the probate court of the county in which the person resides.”
- Conform Legal Name. R.C. 2717.04 states: “A person desiring to conform the person's legal name on an official identity document may file an application in the probate court of the county in which the person resides.”

LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.