

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

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, Â§ 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, Â§ 2.