

III. Marriages and Marriage Licenses

A. Unpublicized Licenses

§12.8 When a person wants to keep the exact date of his or her marriage a secret, the probate judge may issue a marriage license without publicity if

- É the person makes an application under oath and
- É the probate judge determines that a good and sufficient reason is expressed in the application.

MCL 551.201(1). The application must be in the usual form and must be accompanied by a \$3 fee, \$2 of which the probate judge keeps for services rendered, and \$1 of which the probate judge forwards to the state registrar for deposit in the state general fund. MCL 551.202.

The probate judge performs the marriage ceremony unless the applicant or either of the parties to the marriage wants to have the marriage ceremony performed by another person competent to do so. If the probate judge performs the ceremony, the probate court collects a \$10 fee, which may be waived if the parties are indigent. MCL 600.874. If a party to the marriage designates someone else, the probate judge issues a written permit to the designated person directing that that person perform the marriage ceremony. The designated person performs the marriage ceremony, but no record is made of the marriage, except the record made by the probate judge. After the marriage ceremony, the person who performed it returns the marriage certificate to the probate judge, who attaches the license and certificate to the application. The marriage papers must be executed in duplicate, and the person performing the marriage ceremony must also deliver a marriage certificate to the parties. MCL 551.202.

The probate judge must file a complete set of all papers in each case in a private file, and, within 10 days after the marriage, forward a duplicate to the registrar appointed by the state director of public health. The state director of public health must file the duplicate in a private file and record the filing in a private register. The file in the probate court, and the duplicate and record in the state department of public health, are open to inspection only on the written request and proper proof of identification of one or both of the partners to the marriage, or on the written order of a Michigan circuit court judge, and only for the use designated in the order. An order may be made only on the written request of a partner to the marriage or if necessary for the protection of property rights affected by the marriage. MCL 551.203.

All knowledge of facts related to a secret marriage that comes to the probate judge, state registrar or an agent or employee of the state registrar, the physician endorsing the application, or a witness to the marriage are privileged communications. A violation of confidence is a misdemeanor, punishable by a fine of \$25 to \$100, plus the costs of prosecution, and, in default of payment, imprisonment for up to three months. An editor, publisher, or proprietor of a newspaper or other publication in Michigan who gives publicity to an unpublicized license or secret marriage performed is also guilty of a misdemeanor punishable by a fine of \$50 to \$100, plus the costs of prosecution, and, in default of the payment, imprisonment for up to 30 days. In addition, the editor, publisher, or proprietor is liable in a libel action to the parties married under the license. If the probate judge performing the marriage ceremony under an unpublicized license neglects to make proper return, the judge will be fined, in addition to the penalties prescribed by law, up to \$50. MCL 551.204.

Practice Tip

Some judges require that one of the parties requesting a secret marriage be a resident of the county. However, since MCL 551.101 authorizes issuance of a marriage license to nonresidents by the county in which nonresidents are to be married the court should also have authority to authorize the secret marriage of nonresidents who will be married in the county.

B. Persons Under Marriageable Age

§12.9 Marriageable age is age 18 or age 16 with parental consent. MCL 551.103; *see also* MCL 551.51. The probate judge may marry persons under marriageable age without publicity if the application for the license is accompanied by one of the following:

- É if both parties are under age, the written request of their biological or adopting living parents, and their guardian or guardians if either or both of the parties' parents are dead
- É if only one party is under age, the written request of the parents or guardians of the party under marriageable age

MCL 551.201(2). If the noncustodial parent has been given notice of the request for consent by personal service or registered mail at his or her last known address and does not object within 5 days after receipt of notice, then only the custodial parent must consent.

Practice Tip

A limited guardian may not give consent to his or her ward's marriage. MCL

700.5206(4). Consent is not required of a parent

- É confined under sentence in a state or federal penal institution;
- É confined in a mental hospital under adjudication of legal incapacity; or
- É on the return of process by the sheriff of the county in which the parent was last known to reside made not less than 5 or more than 14 days after issuance of the process certifying that after diligent search the parent cannot be found within the county.

MCL 555.201(3).

The application, fee, and other requirements applicable to secret marriages, discussed in §12.8, also apply to marriages of persons under marriageable age.

C. Solemnizing Marriages

§12.10 A probate judge may solemnize marriages in the county or probate court district in which the judge serves. MCL 551.7(1)(d).

No particular form of solemnization is required, except

- É that the parties must solemnly declare, in the presence of the person solemnizing the marriage and the attending witnesses, that they take each other as husband and wife; and
- É that there must be at least two witnesses, besides the person solemnizing the marriage, present at the ceremony.

MCL 551.9. The probate court collects a \$ 10 fee for performing a marriage ceremony, which may be waived if the parties are indigent. MCL 600.874. The probate judge may not receive a fee other than the fee expressly authorized by law. MCL 600.879(2).

A probate judge who officiates at a marriage is responsible for typing or legibly printing the time and place of the marriage and the names and residences of two witnesses on the marriage certificate and must sign it in certification that he or she performed the marriage. The judge must separate the duplicate license and certificate, and deliver the half part designated duplicate to one of the parties to the marriage and, within 10 days, return the original to the county clerk that issued the license. The probate judge must also keep an accurate record of all marriages solemnized in a book used expressly for that purpose. MCL 551.10