



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

August 31, 2016

TO: Michigan Court Forms Committee, Estates and Protected Individuals Work Group

FROM: Matthew Walker, Forms and Manuals Analyst

RE: Agenda and Materials for **September 8, 2016 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, Lansing, MI 48915

Below is the agenda for the September 8, 2016 meeting of the Michigan Court Forms Committee, Estates and Protected Individuals Work Group. The meeting starts at 9:30 a.m. and ends at approximately 3:30 p.m. The meeting will be held in room 5N-58. Lunch reservations have been made for you. **If you cannot attend, please contact me at least two days before the meeting.** Please note that our office is located at 925 W. Ottawa St., Lansing, MI 48915.

Please bring these agenda materials to the meeting. Although documentation is provided with the agenda, it would also be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

A. General Forms

1. Minor Corrections

a. PC 680, Notice of Ancillary Administration Filing (Foreign Conservator)

This form will be deleted because it has been replaced by PC 683, Application and Order for Appointment of Out-of-State Conservator. PC 683 was developed in 2013 in conjunction with other forms to comply with MCL 700.5202a, MCL 700.5301a, MCL 700.5313, and MCL 700.5433.

b. PC 685, Application and Order for Appointment of Out-of-State Guardian

A Court ORI field will be added as a LEIN field.

2. Discussion of Future Forms Redesign

We will have a brief discussion about a future redesign of forms for electronic documents and e-filing. This discussion will be an overview of the following:

- Handling personal, identifying information
- Providing space for time stamps, seals, and other recorded information
- Barcodes
- Redesign of the masthead
- Review of design standards

SCAO will perform the majority of this work, but will consult the Michigan Court Forms Committee for input.

Public Comments:

- As Michigan law requires notaries to print their names, county, and commission expiration dates near their signatures (MCL 55.287 (2)), please provide a space to do so on forms requiring a notarized signature.

Thank you for your consideration.

Paul Brewster

3. Review of Estates, Trusts, Guardianship, and Conservatorship Forms

SCAO suggests that the workgroup review all the estates, trusts, guardianship, and conservatorship forms. This suggestion is made periodically for each bank of forms to ensure that each form is still legally accurate and is appropriate for current processes. SCAO suggests dividing the bank of forms among the committee members and publishing any suggested revisions for 2017. SCAO also suggests considering the following for the bank of probate forms:

- Modifying all forms that are multiple pages to contain header information on each page. Many SCAO-approved probate forms do not contain header information on each separate page because they were designed to be duplex printed. But, because of changes in technology, many forms are printed from internet sources and are

not duplex printed when they are received by the court. This may require many forms to become three pages instead of two. A sample is provided.

- Modifying probate forms to accommodate same-sex relationships where appropriate.
- Modifying the case title line to include a caption “First, middle, and last name.” This suggestion was made to help courts distinguish between parties with similar names. A sample is provided.

4. New Form Request: Petition and Order to Appoint Special Fiduciary to Oversee Disposition of Decedent’s Body

It has been suggested that a new form be created for use under MCL 700.3206(8) as amended by 2016 PA 57. The 2016 amendment to MCL 700.3206 allows a special fiduciary to be appointed to dispose of a decedent’s body if there is no other individual available. The committee considered this form in 2010, 2011, and 2012; however, the form was not created because the statute did not allow a special fiduciary to be appointed to make body-disposition decisions. 2016 PA 57 corrects this issue.

Draft provided.

Public Comments:

- Item 4 of the proposed new form (Petition and Order to Appoint Special Fiduciary to Oversee Disposition of Decedent’s Body) lists the individual died intestate. Considering the disposition of a body should happen rather quickly after a person’s passing, it may be more appropriate to phrase this as listed in item 6a of the Application for Informal Probate (PC 558) and item 10a of the Petition for Probate (PC559): “The decedent died intestate and after exercising reasonable diligence, I am unaware of any unrevoked testamentary instrument....”.

I think it is unreasonable to ascertain after such a quick time if the individual definitively “died intestate and/or it is unnecessary to administer an estate”. A modification should be made regarding item 4 of the proposed Petition and Order to Appoint Special Fiduciary to Oversee Disposition of Decedent’s Body.

Thank you for your consideration.

Valerie Robbins
Probate Register & Domestic Relations Assignment Clerk
18th Probate Court District
Mecosta County

- Line 2 C – remove the “and/or” and just use “or”

James Carolan
MBT Wealth Management Group
Monroe Bank & Trust

5. MC 20, Waiver/Suspension of Fees and Costs (Affidavit and Order)

- a. It has been suggested that federal supplemental security income (SSI) be included in item 1a as a type of public assistance under MCR 2.002. In 2012, a workgroup established under the Solutions on Self-Help Taskforce revised this form to make it user friendly and raise awareness with courts about MCR 2.002(C). There was significant discussion about the meaning of the “any form of public assistance”. Except for MDHHS cases, the workgroup decided to leave this decision to the discretion of the court. Item 1a was designed to streamline processing when a petitioner is clearly receiving public assistance in the form of MDHHS benefits. However, item 1a does not accommodate additional forms of public assistance.

Are there other forms of public assistance that should be included in item 1a?
Should another item be added to accommodate additional forms of public assistance?

- b. It has been suggested that the instructions on page two be modified to clarify when the petitioner should check box 1a and 1b.
- c. It has been suggested that the following be added to item 1 in the order section to assist probate courts:

c. The fees or costs of publication are to be paid by the county or funding unit in which the action is pending pursuant to MCR 2.002(F).

d. The service fees for an official process server are to be paid by the county or funding unit in which the action is pending pursuant to MCR 2.002(F).

Because probate cases often require publication of the notice of hearing, the addition of these checkboxes would streamline the service cost waiver process for probate cases by allowing the judge to only sign one order.

Should this suggestion be adopted? Please consider the following:

In probate cases, would MC 20 satisfy the “ex parte affidavit showing the necessity for that type of service of process” requirement of MCR 2.002(F) or is

the ex parte affidavit in MCR 2.002(F) only available after the petitioner has attempted service under MCR 5.105(A)(3)?

Draft provided.

Public Comments:

- Agree with changes to MC 20

Marietta Appner, Register
Gogebic County Probate Court

- I would like to supply two comments.

- References to DHS should be DHHS to reflect the merger of the departments.
- It would be helpful if we could include some check box for SSI as a qualification for the indigency. I don’t know if it would be advisable to include a line for the SSI “account number” as I am unsure whether that would be the filer’s social security number.

Best Regards,
Ryan J. Buck
Chief Deputy Clerk
Ingham County Circuit Court Clerk’s Office

6. PC 646, Petition Regarding Real Estate/Dwelling

It has been suggested that a sentence indicating the current unpaid mortgage and unpaid taxes be added to item 3 to aid judges in determining if a property should be sold. This statement was previously on the form, but it was inadvertently removed in 2012 when the

form was revised to accommodate 2012 PA 173 amendments to MCL 700.5423.

Draft provided.

B. Estate Forms

7. PC 565, Testimony to Identify Heirs

It has been suggested that the caption “Witness signature” on page two be modified. The suggester thought that the words “Witness signature” were confusing because it is unclear who should sign the form—a third person or the person filling out the form.

In addition, the extra word “the” will be removed from item 8.

Draft provided.

Public Comments:

- This definitely needs to be changed. Everyone is confused about where they are supposed to sign the form. Most of the people I deal with are the general public and they don’t understand this form.

Jennifer L. Michael
Senior Deputy Register
Genesee County Probate Court

- I am 100% in agreement with the suggested revision to remove the word “witness” from the signature line of PC 565, Testimony to Identify Heirs. We have many clients who are confused where to sign, even when I specifically tell them where to sign by pointing to that line in person. We have also had multiple clients forget to sign that document when mailing the forms to them.

The person signing the form does not think of themselves as “witnessing” the statements, and I believe the actual confusion outweighs any legal benefit.

Thanks,
Adam Zuwerink
WEST MICHIGAN LAW, P.C.

- I just ran across something that might require a tweak on PC 565.

As you are probably aware, the application and petition to start a decedent estate

requires that the applicant/petitioner identify the interested parties on the main table on the first page. Should one of those parties suffer from a “legal disability,” his/her name is also be recorded on a smaller table just below. Being under a guardianship or conservatorship would be a legal disability, as would being a minor. Additionally, should an interested person post-decease the decedent but survive the decedent by over 120 hours, that post-deceased person’s estate’s status vests – in other words, the estate of the post-deceased individual is an heir, for example – and is also listed in the area for legal disability.

When one turns to the Testimony form, though, at 12 and 13 the form appears to count post-decease as something other than a legal disability, which is a conflict in what the applicant/petitioner must do on the application/petition. My thought is that the problem could be avoided by simply tweaking 12 to say “The following heirs listed above are under legal disability and currently living.”

Mr. George Strander
Probate Register
Ingham County Probate Court

8. PC 577, Inventory

- a. It has been suggested that the phrases “*For real property only” and “For personal property” in the description on page one be bolded. Many practitioners incorrectly deduct the lien amount from personal property. While the instructions on page 1 and page 2 are clear, the suggester thinks that bolding these phrases may reduce errors.
- b. It has been suggested that prepaid burial contacts and life insurance be removed from the item 3a in the instructions page. The suggester stated that these items should not be listed because once a person dies these items are no longer an asset.

Highlight version provided.

Public Comments:

- Very much agree to changes “Inventory PC577” Additionally bold “Lien Amount” within body of Inventory in horizontal column concerning “Real

Estate”. Also agree with suggestions regarding burial/life insurance being omitted.

Marietta Appner, Register
Gogebic County Probate Court

C. Guardianship and Conservatorship Forms

9. Discussion of MCR 5.402(E)(5) and new ICWA Regulations

The 2015 amendment of MCR 5.402(E)(5) requires forms to be developed. The court rule applies to situations where a court discovers a child may be an Indian child after a guardianship is ordered. SCAO would like to have a discussion of this rule, the required form, and the new regulations. The discussion will center around the following:

- Does the phrase “discover” in MCR 5.402(E)(5) mean the court has reason to think the child is Indian under 25 CFR 23.107?
- If an investigation is ordered, who should receive the report?
- Does this court rule require modification to accommodate the new regulations?

10. PC 603, Petition and Order for Reinstatement (Estate Not Closed)

It has been suggested that this form be expanded for use in guardianship cases. The current form is designed for use in decedent estates and conservatorships. However, many courts manually alter this form for use in guardianship cases when needed. In addition, MCL 700.1104(e) defines a guardian as a fiduciary and MCR 5.203(D) applies to fiduciaries. The suggester proposes adding checkboxes for annual reporting requirements and changing “estate” to “case” throughout the form.

If the form is modified, the reference to Circuit Court – Family Division will be removed from the masthead and a use note added in accordance with standards.

Draft provided.

Public Comments:

- Also add Report of Guardian on Condition of Person with Development Disability.

Jennifer L. Michael
Senior Deputy Register
Genesee County Probate Court

11. PC 625, Petition for Appointment of Guardian of Incapacitated Individual

It has been suggested a new item be added to this form that would allow the petitioner to inform the court about the finances, income, assets, etc. of the alleged incapacitated individual. The suggester states that the additional information would allow the court to appoint a guardian over financial decisions more easily when there are insufficient assets to warrant a conservatorship.

Public Comments:

- Add first middle and last to where they list the name of the alleged individual. The State Police need the full name so they can properly put them on lien.

Jennifer L. Michael
Senior Deputy Register
Genesee County Probate Court

12. PC 627, Acceptance of Appointment and Report of Guardian Ad Litem of Alleged Incapacitated Individual

It has been suggested that the parenthetical in item 5, which states “(no further report or recommendation is required),” be removed or modified because it misleads the reader into thinking they should not file a report.

This provision has been on the form since 1992. In 2006, members discussed this provision and whether a report should be filed once the individual requested any of the rights in 4a. At that time, the GAL on the committee said that she still prepares a report, but the judges on the committee indicated that they would not review the reports if an attorney was appointed. The committee decided to leave the decision to file a report up to the GAL.

It has been suggested that this parenthetical be removed or modified because there are a number of reasons a guardian ad litem would still file a report if a box in item 4a is checked. The suggester thinks the parenthetical misleads the reader into thinking that should not file a report because it isn't required.

If the form is modified, the citation to MCL 700.5306a(2) in the footer will be corrected.

**13. PC 634, Annual Report of Guardian on Condition
PC 654, Annual Report of Guardian on Condition of Minor
PC 663, Report of Guardian on Condition of Individual with Developmental
Disability**

It has been suggested that a checkbox to indicate a new address be added to these forms for the ward and the guardian. Courts must know the addresses for the ward and guardian to provide notice of any proceedings. The suggester states that new address checkboxes would improve court efficiency when processing these forms and updating addresses.

In addition, an extra parenthesis will be removed from the citation to MCL 700.5215(f) in the footer of PC 654.

Drafts provided.

14. PC 639, Petition for Appointment of Conservator

- a. It has been suggested that this form be modified to include a statement by the petitioner as to whether the proposed conservator has had any legal convictions or has any pending legal charges. While there is no statutory requirement for this information, the court has discretion to select the person best qualified to serve as conservator, despite a higher priority. See MCL 700.5409(2).

Should this suggestion be adopted? If so, how should the suggestion be implemented? Should there be a checkbox for this clause or should the petitioner write in the convictions or charges? Please also consider that this additional clause may cause the form to become three pages.

- b. It has been suggested that this form be revised to clarify item 8. The suggester stated that the field for MDHHS is often misunderstood as to whether the line is for cash assistance or Medicaid. The suggester would like to add a caption to "Other" stating, "e.g. Medicaid" to clarify that "Other" should include Medicaid. The suggester believes this will solve the issues with the MDHHS field.

In addition, the reference to MDHS will be corrected to MDHHS.

- c. It has been suggested that the options item 8 be rearranged so that "claimant number" for VA benefits is not under "Social Security." The suggester indicated

that many people incorrectly assume that this line is for a person's social security number.

Draft provided.

15. PC 651, Petition for Appointment of Guardian of Minor

It has been suggested that item 6b be revised for clarity. The sentence currently states that "...the parent(s) do/does not provide...." The suggester commented that this structure creates confusion for readers because it is unclear if the sentence intends "do not" and "does not" or if the sentence intends "do" and "does not". The statutory language in MCL 700.5204(2)(b) states, "the parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents with the petition is filed.

Draft provided.