



**Michigan Supreme Court  
State Court Administrative Office  
Trial Court Services Division**  
Michigan Hall of Justice  
P.O. Box 30048  
Lansing, MI 48909

September 16, 2014 (Amended September 22, 2014)

TO: Michigan Court Forms Committee, Guardianship, Conservatorship, and Protective Proceedings Work Group

FROM: Colin F. Boes, Forms and Manuals Analyst

RE: Agenda and Materials for **September 24, 2014 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

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Below is the agenda for the September 24, 2014 meeting of the Michigan Court Forms Committee, Guardianship, Conservatorship, and Protective Proceedings Work Group. The meeting starts at 9:30 a.m. and ends at approximately 3:30 p.m. 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 in Lansing. A map and directions are provided.

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.

1. **Minor Correction**

Last year, PC 650, Petition for Appointment of Limited Guardian of Minor, was modified. However, item 3, the third line, should have the state/zip labels under the line, not the line below it. This will be corrected.

2. **Are Any Modifications Necessary to Guardianship Forms With Respect to the Hague Convention**

A referee has inquired whether any changes would be made to guardianship forms

relating to minor children to reference that the guardian should not take the children to a country that is not a party to the Hague convention on the civil aspects of international child abduction. It was noted that similar changes have been made to domestic relations forms. MCL 722.27a(9) provides in relevant part, ““Except as provided in this subsection, a parenting time order shall contain a prohibition on exercising parenting time in a country that is not a party to the Hague convention on the civil aspects of international child abduction.” Where a guardian is appointed for a minor, “[a] minor’s guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent’s minor and unemancipated child.” MCL 700.5215. A guardian must also report to the court within 14 days when the minor’s address has changed. MCL 700.5215(g). Nothing in here specifically requires a parenting time order or a restriction on travel relating to Hague Convention countries. Would there be circumstances (such as a limited guardianship of a minor under MCL 700.5205) where the court, when entering an orders relating to the guardianship of a minor, would also be entering a parenting time order such that it would require the Hague Convention language?

### 3. **PC 626, Notice of Rights to Alleged Incapacitated Individual**

A probate court administrator has suggested that one of the changes recently made to this form, specifically the change relating to a do-not-resuscitate bracelet, should be reevaluated. The form currently indicates: “The guardian ad litem must inform you that a guardian has the power to execute a do-not-resuscitate order on your behalf and to place a do-not-resuscitate identification bracelet on you unless you oppose medical treatment on religious grounds. The guardian ad litem must also inform you that you may ask the court to review a do-not-resuscitate order that has been executed on your behalf.” The portion that has been bolded is the provision in question.

MCL 700.5305 outlines the duties of a guardian ad litem and MCL 700.5305(1)(c)(ii) requires the guardian ad litem to inform the ward that the guardian has the power to execute a do-not-resuscitate order on behalf of the ward. MCL 333.1053a provides that a guardian may execute a do-not-resuscitate order on behalf of a ward if the guardian has the power to do so under MCL 700.5314. MCL 700.5314 provides that a guardian may execute, reaffirm, or revoke a do-not-resuscitate on behalf of the ward. However, the way this provision is worded makes it sound as though the only basis for an objection to a do-not-resuscitate bracelet would be on religious grounds, which is not accurate.

Should the phrase “unless you oppose medical treatment on religious grounds” be removed from the form?

### 4. **PC 633, Letters of Guardianship**

A probate register has suggested that the letters of guardianship should be modified to specifically provide whether or not the guardian is authorized to execute a do-not-resuscitate (DNR) order on behalf of the ward, in light of the passage of the Michigan Do-Not-Resuscitate Procedure Act (DNRPA), MCL 333.1051 *et seq.*

Pursuant to MCL 333.1053a(1), “A guardian with the power to execute a do-not-resuscitate order under section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314, may execute a do-not-resuscitate order on behalf of a ward after complying with section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314.”

MCL 700.5314 provides the powers and duties of a guardian, “to the extent granted by court order” and lists a number of things in subprovisions (a)-(h). One of these, added at the same time the DNRPA was passed, is that the guardian has the power to enter a DNR order, provided certain conditions are met. Should the authority to execute a DNR order be specifically provided for on all letters of guardianship?

**Comment:** The probate register and deputy register from a county both commented that they felt this change was appropriate.

5. **PC 634, Annual Report of Guardian on Condition of Legally Incapacitated Individual**

It has been suggested that, in light of the passage of the do-not-resuscitate procedure act (DNRPA), MCL 333.1051 et seq., item 9 on this form should be modified. The suggestion is that item 9, after the phrase, “During the past year, I consulted with the adult before making the following decisions” a parenthetical should be added with “e.g. a decision on a do-not-resuscitate order).” Should this example be added to the form as an option to remind the guardian of the duties relating to consultation?

**Comment:** The probate register and deputy register from a county both commented that they felt this change was appropriate.

6. **PC 646, Petition Regarding Real Estate/Dwelling**

A judge has suggested that item 2 on this form should be modified to have the section of item 2 asking for the state equalized value (SEV) to be part of a separate paragraph. Many times, this section is not properly completed because of the layout. Additionally, item 2 should be reworded to make it clearer what is being asked for in this portion of the form. As it is currently written, it is unclear whether the amount being asked for is the SEV or the current value (SEV x2). The judge suggests that the form simply ask for the SEV and the SEV printout.

MCR 5.207(A)(4) requires that the petition to approve the sale of real estate must include: “an appended copy of the most recent assessor statement or tax statement

showing the state equalized value of the property. If the court is not satisfied that the evidence provides the fair market value, a written appraisal may be ordered.”

Should the form be modified as suggested?

7. **PC 647, Order Regarding Real Estate/Dwelling**

- A. A judge has suggested that PC 647 should not include item 9. Item 9 on this form refers to a written appraisal being required to be provided within a certain amount of days. Instead, it has been suggested that PC 646 should include an order requiring this. MCR 5.207(A)(4) provides that the petition must include: “an appended copy of the most recent assessor statement or tax statement showing the state equalized value of the property. If the court is not satisfied that the evidence provides the fair market value, a written appraisal may be ordered.” As it stands right now, PC 647 has a checkbox that may be used to order the appraisal. However, there may be items on this form that the court would not want to include if only ordering an appraisal, such as item 4. Should PC 647 or PC 646 be modified in any way in order to better address this issue?
- B. A judge has suggested that PC 647 should include a line to list the sale price and should not merely refer back to the petition. Should item 7 be modified to list the sale price, instead of referring back to the petition?

8. **PC 666/PC 666a, What You Need to Know before Filing a Petition to Appoint a Guardian for an Incapacitated Adult**

- A. Last year, several committee members were asked to attempt a plain language version of this form. Below, please find a draft plain language version of this form for consideration.
- B. It has been suggested that PC 666a may not be necessary any longer. This is a large print version of PC 666. There is no requirement that a large print version of this form be maintained and it is one of the only forms maintained in both a normal and large print version. Should this form be deleted?

**Comment:** The probate register and deputy register from a county both commented that they felt this change was appropriate.

9. **PC 669, Proof of Restricted Account and Annual Verification of Funds on Deposit (Conservatorship of Minor)**

It has been suggested that the form is problematic, in that it contains certain requirements/assumptions regarding verification that must be made by the financial institution. One of these is that the financial institution will be liable for funds released or withdrawn without written order of the court. An administrator of a 529 plan (named for 26 USC 529 of the Internal Revenue Code, a tax-advantaged investment vehicle) objected to that certification language. There is nothing in MCR 5.409 that requires this verification.

MCR 5.409(C)(4) provides: “Exception, Conservatorship of Minor. Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. If the assets are ordered to be placed in a restricted account, proof of the restricted account must be filed with the court within 28 days of the conservator's qualification or as otherwise ordered by the court. The conservator must file with the court an annual verification of funds on deposit with a copy of the corresponding financial institution statement attached.”

Should the form be modified to remove the certifications that are currently required on the form?

10. **PC 674, Inventory (Conservatorship)**

A probate register has suggested that this form be modified so that it is clear it can also be used by guardians in some cases. MCR 5.409(B)(1) provides that: “Guardian. At the time of appointing a guardian, the court shall determine whether there would be sufficient assets under the control of the guardian to require the guardian to file an inventory. If the court determines that there are sufficient assets, the court shall order the guardian to file an inventory.”

It does not appear there is any other form for use in this area and it appears, but for the references only to conservators, that PC 674 could be used as an inventory by the guardian, if ordered by the court. Should the form be modified so that it can be used by both conservators and guardians?

11. **PC 683, Application and Order for Appointment of Out-of-State Conservator**

It has been suggested that the citations at the bottom of this form should be modified. First, it has been suggested that a citation to MCL 700.1106(v), which defines the term “protected individual,” should be added to the bottom of the form.

Additionally, it has been suggested that the citation at the bottom of the form to MCL 700.5313, which pertains to appointment of a guardian, should be removed from the bottom of the form.

Should either of these changes be made to the citations at the bottom of the form?

12. **PC 684, Application and Order for Appointment of Out-of-State Guardian of a Minor**

It has been suggested that a citation to MCL 700.1106(c), which contains the definition of a minor, be added to the bottom of this form. Is this necessary in the citations at the bottom of the form?

13. **New Guardianship Forms for Use in Cases Involving Indian Children**

Based on the recommendation of the workgroup formed to address the Michigan Indian family preservation act, 712B.1 *et seq.*, a number of new forms are being proposed for use in guardianship cases that involve an Indian child. The proposed forms are:

- i. Consent to voluntary guardianship (Indian Child)
- ii. Withdraw of consent and demand and Order Terminating Voluntary Guardianship (Indian Child)
- iii. Petition for Appointment of Limited Guardian of Indian Child (Voluntary Guardianship)
- iv. Petition for Appointment of Guardian of Minor Indian Child (Voluntary Guardianship)
- v. Petition for Appointment of Guardian of Minor Indian Child (Involuntary Guardianship)
- vi. Notice of Guardianship Proceedings Concerning Indian Child
- vii. Order Regarding Appointment of Guardian/Limited Guardian of a Minor Indian Child

Drafts of the proposed forms have been included with your materials.