



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909
Phone: (517) 373-4835

August 22, 2008

TO: Chair: George M. Strander, Ingham County Probate Court
Douglas G. Chalgian, Elder Law Section
Pamela Jarvis, Barry County Probate Court
Hon. R. Terry Maltby, Sanilac County Probate Court
Michael J. McClory, Wayne County Probate Court
Harold G. Schuitmaker, Probate and Estate Planning
Hon. Kenneth Tacoma, Wexford County Probate Court
Marlaine C. Teahan, Probate and Estate Planning
Velma Weston, Kalamazoo County Probate Court

FROM: Amy L. Byrd

RE: Materials for September 4, 2008 Michigan Court Forms Committee Meeting

PLACE: State Court Administrative Office (Conference Room 5N-58), Lansing (map enclosed)

Below is the agenda for the September 4 meeting for the Probate Section of the Michigan Court Forms Committee. The meeting starts at 9:30 a.m. and ends at 3:30 p.m. **Luncheon reservations have been made for you; if you cannot attend, please contact me at least 2 days before the meeting.** Please note that we are located at 925 W. Ottawa. A map has been provided.

Although documentation is provided with the agenda, it would be helpful to bring a copy of the estates and protected individuals code, the mental health code, and the Michigan Court Rules.

A. General and Estate Forms

1. MC 316, Order for Change of Venue

There has been a suggestion to revise this form so that it can be used in the probate court and the family division of circuit court.

2. PC 572, Letters of Authority

A question has been raised whether the date as to the full force and effect of the letters referred to in the certification should refer instead to the date the letters were signed by the judge.

3. **PC 582, Selection of Homestead Allowance and Exempt Property**

Notice is provided that the only JIS code that will remain on the form is FAM.

4. **PC 583 and PC 584, Account of Fiduciary**

A suggestion has been made to add a check box in the title for indicating an amendment.

5. **PC 599, Memorandum of Administrative Closing**

A question has been raised whether this form can be used in situations where both the guardian and the ward have left the state. Is jurisdiction retained pursuant to MCL 700.5307 even when the guardian and ward move? Also, MCL 700.5308 provides the conditions for termination and this situation is not included. See also MCR 5.404(F)(1). Should the court remove the guardian and appoint a special to petition for termination or have the guardian petition for termination because of the move? There does not appear to be any authority under current law or court rule for the court to terminate on its own motion in this situation. The committee is asked to provide its conclusion.

6. **PC 600, Notice of Deficiency**

It has been noted that either the second option requires a revision to the parenthetical statement because of the new inventory for conservatorship form (PC 674) or another option should be added to the form that specifically advises the fiduciary that he/she needs to file PC 674. It is recommended that a separate item be added for the court to check so that the fiduciary doesn't have to decide which form to file.

B. Guardianship and Conservatorship Forms

7. **PC 632, Order Appointing Temporary Guardian of Incapacitated Individual**

A suggestion has been made to add options to the order to indicate specifically that the petition has been granted, denied on the merits, or dismissed/withdrawn. If approved, this would require a change in the title and the addition of a finding that the individual is not in need of a guardian. A draft of the form is provided.

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

A request has been made by a community mental health representative to separate the two references for foster home and boarding home in item 3b.

9. **PC 638, Petition to Terminate or Modify Guardianship/Petition to Terminate or Modify Conservatorship**

A request has been made to split this form into three forms: one for all guardianships except developmentally disabled persons, one for conservatorships, and one for

developmentally disabled persons. It has been suggested that this will assist in processing the different petitions. A question to consider is whether the case-type code is an adequate identifier, and if so, could the one form be retained for use in any guardianship or conservatorship proceeding. Drafts of the three different forms are provided.

Another request is to amend item 2 by requiring the petitioner to list all interested persons and their addresses, not just those that have changed or have been added since the filing of the original petition.

10. **PC 639, Petition for Appointment of Conservator and/or Protective Order**

Reference to MFIA needs to be changed to MDHS in item 8. Also, an amendment to MCR 5.125(C)(22) was made to bring notice requirements for legally incapacitated persons into compliance with MCL 700.5311. Although this rule doesn't apply to conservators and protected persons, MCL 700.5311 does pursuant to MCL 700.5405. In 2007, the committee agreed the court rules should reflect the statute and suggested the forms be changed when the court rule is changed. MCR 5.125(C)(24) was not amended. Should the form be changed anyway?

11. **PC 645, Letters of Conservatorship**

A suggestion has been made to further limit the restrictions regarding real estate by stating that the conservator may not sell, mortgage, or otherwise encumber real property without court approval. MCL 700.5423(3) says that "[a] conservator shall not sell or otherwise dispose of the protected individual's real property or interest in real property without approval of the court. The court shall only approve the sale or other disposal of the real property or interest in real property if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the real property or interest in real property and otherwise determines that the sale or other disposal is in the protected individual's best interest." Should the additional restrictions be stated as an option?

12. **PC 646, Petition for Approval of Sale of Real Estate**

A suggestion has been made to add language to item 4 as follows: "The current bond is \$_____." This helps the court in determining the proper amount of the bond to be set.

13. **PC 653, Order Regarding Appointment of Guardian/Limited Guardian of Minor**

A suggestion has been made to place check boxes in front of items 9 through 13 for situations when the petition is denied or dismissed (item 8).

14. **PC 655, Report for Court Review of Minor Guardianship and PC 656, Order Following Hearing on Status of Minor Guardianship**

Minor revisions were made to these forms in 2007; however, they were placed on hold in

order to discuss a concern about placing the child in the “custody” of the parent. MCL 700.5209 does not refer to custody and the use of the term might imply that a custody order is being entered, which is not the case. See specifically item 4 on PC 655 and item 8 on PC 656. It is suggested that item 8 of PC 656 be revised to coincide with language in item 9.

15. **PC 658, Petition for Appointment of Guardian, Individual with Alleged Developmental Disability**

A suggestion has been made to remove reference to the “person assisting petitioner” in the signature line because it may encourage unauthorized practice of law in contravention of MCL 600.916.

16. **PC 660, Order Appointing Guardian for Individual with Developmental Disability**

A suggestion has been made to revise item 13a because plenary guardians are appointed until further order of the court rather than for a specific term of years. However, see MCL 330.1626. Although not requested, perhaps the address and phone number of the standby guardian should be added (see agenda item 17). MCR 5.205 requires fiduciaries to keep the court informed of address changes.

17. **PC 663, Report of Guardian on Condition of Individual with Developmental Disability**

A suggestion has been made to add lines for the address and phone number of the standby guardian. MCR 5.205 requires fiduciaries to keep the court informed of address changes.

18. **PC 669, Proof of Restricted Account and Annual Verification of Funds on Deposit**

A request has been made to revise this form so that it can also be used for adult conservatorships. A similar request was made last year, but for use with guardianships. The Committee declined to create a statewide form for that purpose.

A suggestion has been made to update the time from 14 days to 28 days pursuant to the amended court rule.

Several requests have been made to add a date range for the form. Apparently, the amount provided by the financial institutions on the form does not match the amount on the statement. Perhaps instructions for proper completion of the form should be added.

Also, another JIS code (VFD) is being added to the form.

19. **Testimony Interested Person, Legally Incapacitated Individual**

A request has been made to develop a new form for use with both a guardianship and a conservatorship petition. It is believed this will help in determining the interested persons. A draft has been provided.

20. Notice of Proceedings Concerning American Indian Child

A request has been made to create a form similar to JC 48 for use with guardianship proceedings pursuant to 25 USC 1903(1)(i) of the Indian Child Welfare Act. No draft has been provided. JC 48 is provided as a sample.

C. Mental Health Forms

21. PCM 220, Petition for Discharge from Treatment and PCM 222, Order Following Hearing on Petition to Discharge

A request has been made to reinstate references to the developmentally disabled person in these forms. Although there are not a lot of judicial admissions, there are some and it is still useful to have forms for these situations. The old versions are included.

22. PCM 233, Notice of Right to Appeal Return and Appeal of Return from Authorized Leave

A minor revision is needed to correct a typographical error in the Notice section of the form.

23. PCM 241, Notice of Right to Object to Hospitalization, Objection and Demand for Hearing

Last year, the committee agreed with a recommendation from SCAO to consider developing a separate form for use with a return pursuant to a psychiatrist's order because the basis for the request is much different than a return based on a court's order. The committee agreed. After reviewing the form, statutes, and court rule more closely, the SCAO decided PCM 241 could be revised without causing confusion between the two different procedures. A draft is provided.

24. New Forms, MCL 330.1519

Last year the committee suggested forms be created pursuant to MCL 330.1519 and asked SCAO to prepare drafts for discussion in 2008. After reviewing the relevant statutes and the current forms, the SCAO has concluded that item 13c of form PCM 214a may be all that is necessary and no new forms need be developed.

Attachments

cc: Steven D. Capps, Director, Trial Court Services
Anne Boomer, Supreme Court
Sally LaCross, Supreme Court
Leslie Sauerbrey, Trial Court Services
Judicial Information Systems
Regional Administrators