



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

October 6, 2014

**MICHIGAN COURT FORMS COMMITTEE**  
Guardianship, Conservatorship, and Protective Proceedings Committee  
Minutes of September 24, 2014 Meeting

Present: Jane A. Bassett, Bassett & Associates PLLC  
Honorable Curtis Bell, Kalamazoo County Probate Court  
Constance L. Brigman, Law Office of Constance L. Brigman PC  
Talaina Cummins, Ingham County DHS  
April Maycock, Wayne County Probate Court  
Mike McClory, Wayne County Probate Court  
Rebecca Schnelz, Oakland County Probate Court  
Colin Boes, State Court Administrative Office (staff)  
Robin Eagleson, State Court Administrative Office (staff)  
Amy Garoushi, State Court Administrative Office (staff)

Absent: Penni DeWitt, Ottawa County Probate Court  
Dr. Sukvender Nijjer, CEI-CMH  
Honorable Diane Rappleye  
Kimberly Nowak, Benzie County Probate Court  
Angela Tripp, Michigan Poverty Law Program  
Jonie Mitts, Judicial Information Systems (staff)

1. **Minor Correction**

The committee was informed that when PC 650 (Petition for Appointment of Limited Guardian of Minor) was modified last year, item 3 was inadvertently modified. Item 3, the third line, should have the state/zip labels under the line, not the line below it. The committee agreed that this correction was appropriate.

The form was approved as revised.

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

The committee considered a suggestion from a referee regarding whether any changes should be made to guardianship forms relating to parenting time 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.” However, the committee discussed the fact that MCL 722.27a(9) is a part of the Child Custody Act and no similar provision relating to the Hague Convention appears to apply directly to guardianships. Further, some on the committee noted that they have not found this to be an issue. Additionally, many courts require prior court approval for the guardian to take the minor anywhere out of the state, let alone a country that does not participate in the Hague Convention. After some discussion, the committee questioned whether this provision applies to guardianships situations and concluded that it appears it does not. The committee concluded no change was necessary and, to the extent a court believed it was necessary or proper to include such language, it could be added in that particular case.

No change was made with respect to this suggestion.

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

The committee considered a suggestion from a probate court administrator that one of the changes recently made to this form, specifically the change relating to a do-not-resuscitate bracelet, should be reevaluated. The committee discussed the language that currently appears on the form that 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 committee specifically addressed whether the phrase “unless you oppose medical treatment on religious grounds” could be misleading.

The committee discussed MCL 700.5305, which outlines the duties of a guardian ad litem and MCL 700.5305(1)(c)(ii), which 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. It was noted that 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 committee noted that the way this provision on the form is currently 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. The committee determined the phrase “oppose medical treatment

on religious grounds” should be removed and replaced with the with the word “object” so that it is clear there is a right to object and it may be on grounds other than religious grounds.

Further, as the committee considered this provision, they determined that the wording should be modified in the first line of the same provision. Currently it indicates the guardian “has” the power to execute a do-not-resuscitate order, which may not always be true. The committee determined the word “has” should be replaced with the words “may have” in order to more closely track the language of MCL 700.5314, which provides that the guardian may have certain power, but does not necessarily have every power listed in all cases.

The committee also considered whether to leave the language relating to the do-not-resuscitate bracelet on the form, but after some discussion determined it should be left as the form as it provides information that may be useful.

The form was approved as revised.

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

The committee considered a suggestion from a probate register 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.*

The committee discussed MCL 333.1053a(1), which provides that: “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.”

The committee went on to discuss the fact that 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). The committee noted that the power to execute a DNR order was only one of these powers, provided certain conditions are met. After discussing this issue, the committee concluded that the DNR provision should not be singled out for inclusion when none of the other options are listed. Further, there were concerns regarding this authority specifically being asked for on the letters of guardianship when the authority to execute a DNR order may change. Ultimately, the committee concluded that no specific language in this regarding should be added to the order.

The form was not modified.

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

The committee considered a suggestion that, in light of the passage of the do-not-resuscitate procedure act, 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.” Initially, there was some hesitancy to add this specific item and single it out from the rest of the things that the guardian needs to consult with the individual on, but after further discussion regarding the specific statutory language, the committee determined something should be added to the form. The committee noted that the use of PC 634 is different than PC 633 and on this form it would be helpful to the court. It was noted it would help to have an item indicating whether the requirements relating to do-not-resuscitate orders had been met for those circumstances where yearly consultation is required.

The committee also discussed the fact that the statute only requires consultation where a do-not-resuscitate order has been executed. The committee ultimately concluded that the form must force the guardian to specifically indicate whether or not a do-not-resuscitate order was executed, reaffirmed, or revoked in the past year, pursuant to MCL 700.5314(g)(vi). If the guardian states that none of those apply, no further information would be required. If one of those options had occurred, the guardian would need to indicate whether or not, in doing so, the guardian consulted with the adult ward and the attending physician of the ward, as required by MCL 700.5314(d) and (e). The committee also considered whether it would be appropriate to require a statement regarding whether the guardian consulted with the ward about the possibility of a do-not-resuscitate order but ultimately concluded this is not what the statute requires. Instead, the statute only requires consultation where a do-not-resuscitate order has been executed, reaffirmed, or revoked.

The committee considered various ways of structuring this item on the form and ultimately settled on creating a new item 5 that would provide:

**5. Do-Not-Resuscitate Order**

- I did not execute, reaffirm, or revoke a do-not-resuscitate order.
- I       executed    reaffirmed    revoked

a do-not-resuscitate order on behalf of the adult in compliance with MCL 700.5314(d). In doing so, I  did  did not consult with the adult and his/her attending physician.

The committee also determined that a citation to MCL 700.5314(g) should be added to the citations at the bottom of the form.

Further, because of the modifications made to the form, it will become three pages. Due to the extra space this will create, certain items on the form that ask for more information will be expanded to allow for more space on the form. Those items that were identified as needing more space, depending on available space during typesetting, were: item 3.e. (add 2 lines), item 3.g. (add 2 lines), item 4.c. (add 5 lines), item 8 (add 2 lines), item 9 (add 2 lines).

Additionally, items 5-13 will be renumbered due to the addition of new item 5, noted above.

In reviewing this form, the committee also noted there are frequently issues with guardians who try to use this form to request termination of the guardianship, instead of properly asking for that separately. The committee concluded that some brief language should be added to indicate: “**Note:** If you no longer wish to serve as the guardian, you must file a petition to remove yourself.” The committee decided this note should be added under item 11, so that the individual does not check should not be continued in lieu of filing the proper form to request an end to the guardianship.

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

The committee considered a suggestion from a judge that item 2 on this form should be modified to have the section of item 2 asking for the state equalized value (SEV) as a separate paragraph. After reviewing the form, the committee members agreed that this portion of the form, beginning with the word “Attached,” should be made into its own item for purposes of clarity and ease of use. This will now be item 3, with the later items renumbered.

Additionally, the committee considered a suggestion from a judge that the following language, currently in item 2, should be reworded: “Attached is a copy of the most recent assessor’s statement or tax statement showing the state equalized value of the property or documentation showing the current value of the titled property, which is \$ \_\_\_\_\_.” The committee discussed what information the form should be seeking and what the proper process is under the court rule. The committee noted that while MCL 700.5423(3)

(applicable to conservatorships) requires “evidence of the value of the property” before the court may approve a sale, the court rule, MCR 5.207, is more specific. The committee noted that MCR 5.207(A)(4) requires “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.” The committee determined that this was what the form should be asking for and that the form, as it is currently worded, makes it appear as though something other than the SEV is appropriate. The committee noted that if the SEV does not give an accurate picture of the value of the property, the court may require other evidence of the fair market value, but initially, only the SEV is required by rule.

Ultimately, the committee concluded that this item, which will now be a separate item 3 as noted above, should be reworded to more closely track the court rule and say: “The current state equalized value of the titled property is \$ \_\_\_\_\_. Attached is a copy of the most recent assessor’s statement or tax statement.”

The form was approved as revised.

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

A. The committee considered a suggestion from a judge 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 was suggested that PC 646 should include an order requiring this. The committee discussed MCR 5.207(A)(4), which 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.” The committee noted that, as it stands right now, PC 647 has a checkbox that may be used to order the appraisal. However, the committee discussed the use of the form and noted there may be items on this form that the court would not want to include if only ordering an appraisal, such as item 4. The committee determined the order should not be added to PC 646, which currently does have an order as part of the form.

Instead, the committee determined that PC 647 should be modified to allow it to more easily be used to order additional evidence to be provided of the fair market value. To this end, item 4 will be modified. Part 4.a. will contain what is currently item 4, for use when the court is finding the property should be disposed of in some way. Item 4.b. would allow the court to make the following finding, “The evidence does not provide the fair market value.” When this finding is made, item 9 would be used to

order an appraisal, and a second PC 647 could be used later in the proceeding to approve the sale or deny the petition. This structure will allow the court to avoid making the findings in what is currently item 4 until the court is satisfied with the evidence of the property value.

- B. The committee also discussed a suggestion from a judge that PC 647 should include a line to list the sale price and should not merely refer back to the petition. The committee agreed that the order should reference the sale price and not merely refer back to the petition. The committee noted that there may be circumstances where the sale price is different than the sale price listed in the petition. The committee also noted that it was a big assumption on the form to assume that the terms and conditions remain the same and have not changed. Some on the committee noted that when there are significant changes to the terms and conditions, an additional filing is required by the court to specify those terms and conditions. However, where there are only a few changes, the committee noted it would be helpful to have the ability on this order to indicate those changes without requiring an additional document.

The committee concluded that the line stating “the property described above under the terms and conditions in the petition” should be modified to provide “the property described above for \$ \_\_\_\_\_,” which will be followed by two checkbox options: “ under the terms and conditions state in the petition  under the following terms and conditions: (followed by two blank lines).” It was determined two lines would be enough to allow minor changes to the terms and conditions, but if it required a greater amount of space it would likely require a supplemental order outlining the terms and conditions. Further, it was determined helpful to leave as an option that the terms and conditions remain the same, so as to avoid retyping everything from the petition in circumstances where no changes were made.

The committee also briefly discussed the court use only space at the bottom. The committee discussed the space and, even though it is smaller than the standard court use space, it was deemed sufficient so long as no additional lines were removed in making the changes to the form. In order to create more space, the committee agreed to restructuring item 7 so that it is a series of checkboxes followed by only one line for a name, as opposed to the current more lengthy format.

The form was approved as revised.

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

- A. The committee considered a plain language version of this form drafted by some on the committee. The committee noted that the current version of PC 666 goes beyond what is required by MCL 700.5303(2), which provides:

Before a petition is filed under this section, the court shall provide the person intending to file the petition with written information that sets forth alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

While the statute says the options are not limited to those listed, committee members commented that going beyond those listed may create more confusion and because every county has its own variance in practice, it may cause other issues in certain counties. The committee was informed that the draft plain language version was reviewed by the Committee for Special Projects of the Probate and Estate Planning Section of the State Bar. The committee agreed that the plain language version was a significant improvement and made the options more readily understandable. It was noted by the committee that the form was redesigned with a goal of only providing a very general overview of the options, not to explain how to complete one of the alternatives.

The committee spent a significant amount of time considering the language on the proposed plain language version of the form. Generally, the committee merely modified language for clarity or consistency, finding the draft version was easily readable and covered the statutory requirements without going too far into options that are not required to be covered. Additionally, where changes to language were made, an effort was made to keep the language as simple and understandable as possible.

The committee determined some changes to substance were appropriate. Among these, was an addition to the title of the document to make it clear it pertains to an adult guardianship, not a minor guardianship. It was also determined that the headings for each section should be in bold and that the heading relating to the durable power of attorney should be spelled out, not abbreviated. The committee also determined that the phrase “legally competent” should be replaced with “of sound mind” in both the durable power of attorney section and the do-not-resuscitate order section because this is a more accurate description of what is required. See MCL 333.1053(1), (3)

(noting a person must be “of sound mind” to execute a do-not-resuscitate order); *Persinger v Holst*, 248 Mich App 499, 504-505; 639 NW2d 594 (2001) (noting that both the principle and agent for a durable power of attorney must be mentally competent to the extent they can consent). Further, the committee determined that it was not necessary under the durable power of attorney section to indicate that this was not a conservatorship and that the court was not involved. The committee noted this was in line with the goal of keeping it as simple as possible while conveying the necessary information. Similarly, the committee determined it was not necessary to explain how to execute a do-not-resuscitate order under that section of the form. Instead, much like the other sections, it should be limited, to the extent possible, to what the option is, not how to accomplish the option.

The committee also considered whether other options should be included, extending beyond those listed in the statute. The committee discussed whether the nature of a representative payee should be included, but ultimately determined it went beyond what was required by the statute and should not be included.

The form was approved as revised.

- B. The committee also considered a suggestion that PC 666a may not be necessary any longer. This is a large print version of PC 666. The committee discussed that 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. After some discussion, the committee concluded the form should be deleted. The committee noted that with modern technology it is easier, if necessary to enlarge text.

PC 666 was approved as revised. PC 666a was recommended for deletion.

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

The committee considered a comment 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. It was noted that there is nothing specific 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.”

Initially, it was discussed whether the certification should be removed. Some on the committee initially thought it should be removed because the court rule did not specifically require it. However, after further discussion, a number of committee members noted that it is the court’s obligation to make sure that the funds placed in a restricted account are properly handled. Moreover, committee members noted previous problems with banks and others who have restricted funds not providing proper protection of the restricted funds. Some of those on the committee noted that even if the form did not include the certification, the court may require it to ensure the funds are properly protected.

The committee discussed whether this language was something that would be better on an order, but ultimately determined it should remain on this form. The committee noted that this language is based on the duty of the court to ensure the funds are properly restricted and to require a bank or party holding the funds to make certain certifications to assure the court that this obligation will be fulfilled.

The form was not changed.

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

The committee next considered a suggestion from a probate register 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.” The committee noted that while this is a possibility, PC 674 may be used if necessary for purposes of an inventory of a guardian. The committee discussed whether any reference to guardian should be added to the form, but ultimately concluded it was sufficient for guardians needing an inventory form to be directed to PC 674 and make whatever modifications necessary. Committee members also noted that adding “guardian” to the form could create more confusion, as there are only limited circumstances where this would be necessary.

The form was not changed.

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

The committee considered a suggestion that the citations at the bottom of this form should be modified. First, it was suggested that a citation to MCL 700.1106(v), which defines the term “protected individual,” should be added to the bottom of the form. The committee discussed this and determined it was not necessary as it is not the legal basis for the form and, generally, citations to definition are not usually added to the form. The committee concluded that this citation should not be added to the form.

Additionally, the committee considered a suggestion 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. The committee agreed this should be removed, as it does not relate to conservators.

The form was approved as revised.

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

The committee also considered a suggestion that a citation to MCL 700.1106(c), which contains the definition of a minor, be added to the bottom of this form. The committee discussed this and determined it was not necessary as it is not the legal basis for the form and, generally, citations to definition are not usually added to the form. The committee concluded this citation should not be added to 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 were 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

Due to time constraints, the committee did not consider these forms yet. The committee agreed a second meeting should be scheduled specifically to address these forms.

Respectfully submitted,

Colin F. Boes