



## Michigan Supreme Court

State Court Administrative Office

**Trial Court Services Division**

Michigan Hall of Justice

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Jennifer Warner  
Director

August 15, 2019

TO: Michigan Court Forms Committee, EPIC Workgroup

FROM: Rebecca A. Schnelz, Forms and Resources Analyst

RE: Agenda and Materials for **September 5, 2019 Meeting**

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

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Below is the agenda for the September 5, 2019 meeting of the Michigan Court Forms Committee, EPIC Workgroup. The meeting will be held in room 1S-69 and will begin at 9:30 a.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 Street, 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.

NOTE: All SCAO-Approved forms are currently being revised as part of the MiFILE project and to accommodate the removal of protected personal identifying information pursuant to court rule. The new draft version of the relevant form has been provided where available and will be labeled as "Project Draft."

### 1. Minor Change

#### **PC 686, Consent by Parent/Indian Custodian to Guardianship of Indian Child**

A correction will be made to item 2 under the certification by judge to properly capitalize the beginning of the last sentence.

Draft provided.

**2. PC 581, Notice to Spouse of Rights of Election and Allowances, Proof of Service, and Election**

This form was modified in June of 2017 to accommodate statutory changes to dower rights under 2016 PA 489 and 2016 PA 490. (MCL 558.30, MCL 700.1303, MCL 700.2202, MCL 700.2205 and MCL 700.3807)

A suggestion was made to return the dower option to the form because it still applies to estates where the decedent died before the statutory amendments were effective.

MCL 558.30(2) provides that the abolishment of dower does not apply to:

- a) A widow's dower elected by a woman whose husband died before the effective date of the amendatory act that added this section.
- b) If a widow's husband died before the effective date of the amendatory act that added this section, the widow's right to elect dower under section 2202 of the estates and protected individuals code, 1998 PA 386, MCL 700.2202.

In addition, it is suggested that in item 2, the word “spouse” should be returned to the word “husband” because dower is only available to a woman.

Should the modifications be made to the form?

Public Comments:

- Agreed

Terry Beagle  
Saginaw County Probate Court

**3. PC 585a, Petition to Allow Account(s)**

A modification was suggested to reorder the options under item 3 so that they reflect the same order as items 7 and 8 on PC 583, Account, Short Form, and items 6 and 7 on PC 584, Account, Long Form. The suggestion is to change item 3a to “fiduciary fees and expenses in the amount of \$\_\_\_\_\_,” and item 3b to “attorney fees and costs in the amount of \$\_\_\_\_\_.”

Draft provided.

Public Comments:

- Agreed

Terry Beagle  
Saginaw County Probate Court

**4. PC 585b, Order Allowing Accounts(s)**

A probate register has suggested modifications to item 9 of the form to include the language, “and bond, if any, is cancelled.” The suggestor states that this change would make the process of closing the conservatorship easier when the ward has passed away.

Draft provided.

**5. PC 619, Notice of Ancillary Administration Filing**

A suggestion was received to modify the name of this form to *Notice of Foreign Administration Filing* because it is misleading and confusing. The suggestor states that a foreign administration and an ancillary administration are two distinctly different estate administrations proceedings and that both the form and the cited statute refer to “foreign personal representative” throughout.

Should the form title be modified?

Public Comments:

- Agreed

Terry Beagle  
Saginaw County Probate Court

**6. PC 621, Receipt of Property from Conservator**

A probate register has suggested modifications to this form to include an additional checkbox under item 2 for situations where an asset was jointly held and passed to the joint owner automatically upon the death of the protected individual. Alternatively, an “other” option could be added to item 2.

Should an additional option be added to item 2 to accommodate joint property or other situations?

Public Comments:

- I support the change suggested, and would add the following:

Conservatorships sometimes are terminated (not just at death). I would recommend that #1 be changed to reflect that option. For example:

\_\_\_\_\_ was the conservator, and  the conservatorship has been terminated  the ward has died.

Item #2 should then reflect those options:

I am:

- the ward.
- the ward's payee.
- joint owner of the assets described below.
- 3 existing checkboxes
- Other: \_\_\_\_\_.

Thank you for your consideration.

Cindy Rude  
Calhoun County Probate Court Manager/Register

- Agreed

Terry Beagle  
Saginaw County Probate Court

- PC 631, Order Regarding Appointment of Guardian of Incapacitated Individual**  
**PC 632, Order Regarding Appointment of Temporary Guardian of Incapacitated Individual**  
**PC 633, Letters of Guardianship**  
**PC 638a, Order Regarding Termination/Modification of Guardian for Minor/LII/Conservator**

A probate register has suggested modifications to the orders of appointment and the letters of guardianship to include specific findings and orders regarding a guardian's authority to consent to mental health treatment in light of the passage of PA 594 of 2018.

PA 594 of 2018 modified the powers of a guardian under MCL 700.5314 to include explicit authority for consent to voluntary mental health treatment and to sign a nonopioid directive for a legally incapacitated individual.

In regards to mental health treatment, MCL 700.5314 specifically provides:

...a guardian has all of the following powers and duties, to the extent granted by court order...(c) The power to give the consent or approval that is necessary to enable the ward to receive...mental health...or other professional care, counsel, treatment or service. However a guardian does not have and shall not exercise the power to give the consent to or approval for inpatient hospitalization unless the court expressly grants the power in its order.

Should findings and details regarding the authority of a guardian to consent to inpatient hospitalization be specifically provided for on all letters and orders of appointment regarding a legally incapacitated individual?

Public Comments:

- Agreed

Terry Beagle  
Saginaw County Probate Court

- I would agree that this language needs to be added to cover the new mental health/EPIC provisions. My judge has already had us add language to the order and letters. I have attached examples of our PC 631 and PC 633.

Debra K. Willett  
Probate Administrator and Register/ Deputy Family Court Administrator  
Roscommon County Probate Court/ 34<sup>th</sup> Circuit Court Family Division

**8. PC 632, Order Regarding Appointment of Temporary Guardian of Incapacitated Individual**

A probate register suggested that clarification and consistency is needed regarding references to the subject of a petition on this form. The title of the form and item 2 refer to the individual as incapacitated. The caption of the form refers to the individual as allegedly incapacitated.

MCL 700.5312(1) provides:

Upon a showing that the individual is an incapacitated individual, the court may exercise the power of a guardian, or appoint a temporary guardian with only the powers and for the period of time as ordered by the court.

Under MCL 700.5312(2),

[i]f an appointed guardian is not effectively performing the guardian's duties and the court further finds that the legally incapacitated individual's welfare requires immediate action, the court may appoint...a temporary guardian for the legally incapacitated individual...

Should the reference in the caption of the form to the “alleged incapacitated individual” be modified to “incapacitated individual”?

Public Comments:

➤ I believe the caption should be:

ORDER REGARDING APPOINTMENT OF  
A TEMPORARY GUARDIAN OF AN  
\_\_\_\_ ALLEGED INCAPACITATED INDIVIDUAL (incapacitated is not usually  
determined at temporary hearing) #4  
\_\_\_\_ INCAPACITATED INDIVIDUAL (determined prior-) #5

I believe the second sentence in #4 should be removed.  
Terry Beagle  
Saginaw County Probate Court

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

A suggestion was made to add language to the letters of guardianship for a legally incapacitated individual indicating that guardians should bring a copy of any protective order or letters of conservatorship with them to a financial institution if they need access to a ward’s accounts when that authority has not been specifically granted to them under the guardianship.

The suggestion was made to help resolve an issue that financial institutions are having with guardians who are attempting to access a ward’s funds, but the only documentation they provide are letters of guardianship. The intent of the modification is to provide financial institutions with language they can point out to help explain to the guardian what is needed.

Should the form be modified?

Public Comments:

- Haven't had too many issues, however wouldn't hurt.

Terry Beagle  
Saginaw County Probate Court

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

Public Act 594 of 2018 modified the powers of a guardian under MCL 700.5314 to include explicit authority for consent to voluntary mental health treatment and to sign a nonopioid directive for a legally incapacitated individual. The statute also now requires a guardian to include information in their annual report regarding any mental health treatment received and whether a nonopioid directive was executed, reaffirmed or revoked on behalf of the individual. The Annual Report of Guardian must be modified to reflect the new requirements of the statute.

Draft provided.

Public Comments:

- Agreed

Terry Beagle  
Saginaw County Probate Court

- It has been my experience that items 5 and 6 are extremely confusing for guardians. (And will the nonopioid directive portion be the new #7?) About the only time guardians complete 5 or 6 correctly is if they are choosing "a". As to 5b and 5b, I do not think that "revoked" should be an option to check. It was my understanding that they could revoke without consulting with the ward and his or doctor. Further, I would suggest that you add the language "to the extent he or she was able" after "consult" at 5b and 6b to track the statute.

Molly Schikora  
Probate Register/Referee  
Washtenaw County

**11. PC 647, Order Regarding Real Estate/Dwelling**  
**PC 682, Order Regarding Sale of Real Estate (Decedent Estate)**

A probate judge has suggested adding an option to each of these forms that would allow the court to impose a bond for a specified amount and direct that it be filed and approved before the sale of the property can be completed.

The purpose of the suggestion is to provide additional protection to the protected individual in a conservatorship and interested persons in decedent estates by preventing the sale until bond is appropriately filed.

Drafts with the suggested language are attached.

Public Comments:

- Agreed

Terry Beagle  
Saginaw County Probate Court

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

A suggestion was received to add language that would emphasize to the financial institution completing the form that the financial statement it provides has to be dated within 30 days of the end of the conservator's accounting period pursuant to MCR 5.409(C)(5). The suggestor proposed adding a space to insert the date the accounting period ends.

The suggestor stated that fiduciaries frequently go to the financial institution and obtain a current statement only after they have received extensions for filing the verification. This can result in the institution providing statements that are dated months after the accounting period ends and therefore not in compliance with the court rule.

Should the form be modified to include a date for the end of the accounting period?

Public Comments:

- Absolutely, we have this problem continuously, this may have been my request.
- Forgot to state I believe the ending date should also have a hi-lighted box across from Attached is a copy of the corresponding etc.

Terry Beagle

Saginaw County Probate Court

- Agreed.

Deidre K. Robison  
Manistee County Probate Register

**13. New Form: Petition for Authority to Exercise the Powers and Duties of Personal Representative**  
**New Form: Order Authorizing Conservator to Exercise the Powers and Duties of Personal Representative**

At the 2018 meeting, the committee considered the creation of two forms that would allow a conservator to petition for authority to exercise a personal representative's powers pursuant to MCL 700.5426(4). Sample forms from two counties were shared with the committee. The committee agreed that SCAO should develop forms.

Drafts of the new forms are provided.

Public Comments:

- Question  
Case type? CA  
Inventory fee?

My county can't process unless it is a DE case type, if there is an inventory fee due.

Should the petition state, I was appointed conservator at the time of death?

Terry Beagle  
Saginaw County Probate Court

**14. New Form: Petition for Authority to Release for Adoption or Consent to Adoption**  
**New Form: Order Regarding Guardian Authority to Release for Adoption or Consent to Adoption**

At the 2018 meeting, the committee considered a suggestion to create forms for a guardian to request authority to consent to the adoption of their ward pursuant to MCL 710.43. The committee concluded that a new form should be created. In reviewing the relevant statutes, SCAO staff noted that MCL 710.28 allows a guardian to release a child for adoption if

authority is provided by the probate court that appointed the guardian. The option to release the child for adoption was therefore included on both the petition and the order.

Drafts provided.

**15. New Form: Notice of Hearing to Heirs and Right to Object**  
**New Form: Objection to the Appointment of Public Administrator as Personal Representative**

In 2018, the committee discussed the creation of a form for use by state or county public administrators to provide the notice of intent to seek appointment that is required by MCL 700.3414(5).

Discussion was held on the actual meaning of the statute and whether a notice form or objection form should be developed, or both. Members differed in their opinion, though the majority agreed that, at the least, a notice form is necessary. Some felt that current SCAO forms would be utilized for any objections, others members questioned if the wording of the statute required the development of a combined form.

SCAO staff has developed two forms based on the statute. The first form is a notice to the heirs that provides information regarding the hearing and their options if they object. The second form may be used by the heir to object to the appointment of the public administrator.

Drafts provided.

Public Comments:

- Haven't had any issues on this.  
How often would this be used?

Terry Beagle  
Saginaw County Probate Court

**16. New Form, Objection to Petition for Minor Guardianship**

It has been suggested that a new form be developed for a parent to object to the appointment of a guardian for their child. The stated purpose for creating the form would be to provide equal access to court resources for self-represented respondents as is available to petitioners.

MCR 5.119(B) states:

An interested person may object to a pending petition orally at the hearing or by filing and serving a document which conforms with MCR 1.109(D). The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.

Should a new form be created?

Public Comments:

- Why not draft a general objection form to be used in multiple case types (Generic)?

Terry Beagle  
Saginaw County Probate Court