



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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MICHIGAN COURT FORMS COMMITTEE Estates and Protected Individuals Code Forms Workgroup Minutes of September 6, 2018 Meeting

- Present:** Honorable Curtis Bell, Kalamazoo County Probate Court
Susan Chalgian, Chalgian & Tripp Law Offices
April Maycock, Wayne County Probate Court
Mike McClory, Wayne County Probate Court
Melisa Mysliwicz, Fraser Trebilcock Davis & Dunlap PC
Maureen Nagy, Advent House Ministries
Valerie Robbins, Mecosta County Probate Court
Cindy Rude, Calhoun County Probate Court
Honorable Kathleen A. Ryan, Oakland County Probate Court
George Strander, Ingham County Probate Court
Carol Rochester, Judicial Information Services (Staff)
Tim Schalk, Judicial Information Services (Staff)
Sheryl Doud, Trial Court Services (Staff)
Robin Eagleson, Trial Court Services (Staff)
Rebecca Schnelz, Trial Court Services (Staff)
Matthew Walker, Trial Court Services (Staff)
- Absent:** Amy Billmire, Michigan Legal Help
Steve Marchlewicz, Ingham County MDHHS
LaDierdre McKinney, Michigan Legal Help
Noah Bradow, Trial Court Services (Staff)

1. Minor Changes

PC 566, Supplemental Testimony to Identify Nonheir Devisees, Testate Estate

A suggestion was made to remove the word “Witness” from “Witness signature” beneath the signature line on page 2 because the word “witness” tends to confuse users as to who should sign the form. The committee agreed and removed “Witness” from the line caption.

The form was approved as revised.

STAFF NOTE: MCR 5.302, which sets forth the requirement for a testimony form, was added to the citation list in the footer.

PC 626, Notice of Rights to Alleged Incapacitated Individual

The committee considered revising the form to include the rights listed in MCL 700.5306a(1)(a) and (ff). The committee agreed to include the rights so that the form accurately reflects the statute.

The committee also considered reducing the font size on this form. SCAO staff pointed out that a 12 point font size was used on this form for readability. However, the inclusion of the additional language would make the form three pages in length if the larger font was retained. The committee preferred the form at two pages and agreed to decrease the font size to 10 point.

The form was approved as revised.

PC 640, Order Regarding Appointment of Conservator

The committee corrected the misspelling of “disability” and “management” in paragraph 4.

The form was approved as revised.

PC 662, Letters of Guardianship of Individual with Developmental Disability

The committee corrected the misspelling of “statute” in the first paragraph.

The form was approved as revised.

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

The committee considered and agreed with a suggestion to add the word “Standby” in front of the word “Guardian” under the signature line for the standby guardian at the bottom of the form to clarify who should sign.

The form was approved as revised.

PC 684, Application and Order for Appointment of Out-of-State Guardian of Minor

The committee corrected the form to insert, “*Also list persons who had principal care and custody of the minor during the 63 days before filing this form.” above the interested persons grid. The explanation had mistakenly been left off the form.

The committee also considered removing the footer citation MCR 3.206 because it does not apply to probate pursuant to MCR 3.201. The committee agreed with the change and removed the citation.

The form was approved as revised.

2. MC 70, Request for Reasonable Accommodations and Response **MC 70a, Review of Request for Reasonable Accommodations and Response**

The committee considered adding a note to MC 70 and MC 70a to clarify that these forms are used to request a sign language interpreter. The committee agreed that the note would be beneficial because individuals often mistakenly believe sign language interpreters equate with foreign language interpreters. The committee added the following to both forms in the area above the applicant information grid: “Note: For foreign language interpreters (except sign language) use form MC 81.”

The committee also considered removing the parenthetical from item 3 on both forms that specifies examples of sign language that can be requested. SCAO staff noted that the parenthetical is helpful in that it gives the requester ideas of available options. However, sign language technology changes frequently, so the parenthetical may not always reflect appropriate options. Under the ADA, the requester must know and request the specific accommodation he or she needs. Therefore, the committee agreed that it is not necessary to include a list of examples for sign language, especially when examples are not included for other disabilities. The committee removed the language in question from both forms.

The committee also discussed the general formatting and usability of MC 70a as a request for review because it essentially replicates MC 70. SCAO staff noted that the particular

questions included on the form always need to be asked, whether it is an initial request or a review. After further discussion, the committee requested that SCAO revise the form so that it clearly indicates whether MC 70 had been filed previously and that the purpose of the form was to request a review of a decision regarding an accommodation.

The committee noted that a review of a request is available not only for a denial, but also when a request is granted but altered from what was originally requested. At the committee's request, SCAO staff will review the language of both forms to ensure it is clear that a review can be requested not only for a denial, but if the request for accommodation is altered.

The committee considered draft language on MC 70a to modify the title of the order section by adding the words "To Review" at the end. The committee agreed that the modification helped to clarify that the decision reflected in the order portion was following a review and accepted the change.

SCAO staff explained that the committee's suggestions and feedback would be used to further review the forms with the other committees.

3. MC 81, Request and Order for Interpreter
MC 81a, Review of Request for Interpreter and Order

The committee considered a suggestion to insert the words "Foreign Language" before "Interpreter" in the title and section headers of each form to clarify that the forms are only for requesting foreign language interpreters and not sign language interpreters. The committee approved the suggestion as well as adding a use note to both forms to clarify that individuals needing a sign language interpreter should utilize form MC 70.

The committee also considered modifying both forms at item 1 to clarify the time period for which the interpreter is appointed under MCR 1.111(B)(1). Under the court rule, an interpreter may be appointed for various individuals for various hearings, and the form does not specify the time period of the appointment. SCAO staff noted that there have been issues with courts requiring parties to file a request prior to every hearing, which creates additional obstacles for those individuals. The committee agreed that clarifying the length of appointment would be helpful. The committee approved the draft language and added an additional option of "[] from _____ to _____".

The committee also discussed the opening instructions on MC 81a. SCAO staff noted that the first sentence was structured similarly to the opening line of MC 70a, which the committee had found confusing during its discussion of that form. MC 81a is for use in requesting a review of a denial of interpreter. The explanation given in the first line is confusing because it informs the user that they can request a review, however, if they are

using the form they are already requesting the review. The committee agreed that the line was confusing and requested that SCAO rewrite the first sentence of the instructions so that it is not conditional and provides clear instructions.

SCAO staff explained that the committee's suggestions and feedback would be used to further review the form with the other committees.

4. PC 557, Notice of Intent to Request Informal Appointment of Personal Representative

The committee reviewed a suggestion to remove the second bullet point from the form, which reads, "Upon paying a filing fee, filing an application for informal appointment of yourself as personal representative provided you have a higher priority to be appointed." The suggestor stated that the direction is incorrect and that the appropriate response would be the filing of a petition because a register would not be able to decide between two applications.

The committee was divided in its opinion as to whether a probate register has the statutory authority to make a choice between two competing petitions, even where one is filed by a person with a higher priority per statute. Concern was expressed that, in this situation, the parties could list different individuals as interested parties and it would therefore raise the issue of whom the interested parties really are, which could only be resolved by the judge. As a result, some members felt that the proper response was to reject both applications.

Other members felt that EPIC was written to clearly allow a register to determine from the face of a document who the person with the highest priority is and issue a register's statement because EPIC allows someone who disagrees with the informal appointment to file a petition to suspend the informal appointment pending a hearing.

Still other members thought rejecting the applications simply complicated the process for the parties and that the competing petitions could simply be set for hearing in front of a judge. The committee was not able to reach a consensus on the appropriate way to handle dual applications and could therefore not agree that the instruction on the notice form was incorrect.

Following the discussion, the majority of the committee agreed not to revise the form.

The form was not revised.

5. PC 564, Proof of Service

The committee considered a suggestion to modify the layout of the form in order to expand the available lines for names in item 2 by removing writing space from item 4.

The committee questioned whether the proposed changes would provide the space. SCAO staff commented that it is unlikely the proposal would yield sufficient additional space in item 2 to accommodate more than one more name. It was generally noted that a second page could be used for additional names when necessary. The committee also felt that the current number of lines in item 4 were needed to provide sufficient space for users to write appropriately.

No changes were made to the form.

6. PC 572, Letters of Authority for Personal Representative

The committee reviewed suggested modifications to remove the language, “these letters expire _____ (date).” The suggested reasons for removal were that there is inconsistency between courts as to whether they include an expiration date, and that there would be no reason for the letters to expire unless the PR was suspended. In addition, it was suggested that once EPIC was put into place, letters were not supposed to expire.

SCAO staff noted that setting an expiration date is optional on the letters because EPIC does not require one in all estates. However, MCR 5.202(A) provides a judge with the option to set an expiration date on letters of authority. Therefore, the expiration date language is available as a checkbox option on the form. In addition, MCR 5.312(A) requires an expiration date on letters of authority when an estate is reopened. The committee agreed that the expiration date should not be removed.

Discussion was held as to whether any changes should be made to the form to make it clear that lack of an expiration date does not invalidate the letters. Several options were discussed including check boxes or a use note for courts to add N/A if there is no date. Members stated that the proposed changes would not provide enough clarification to warrant revision.

The form was not revised.

**7. PC 625, Petition to Appoint Guardian of Alleged Incapacitated Individual
PC 675, Petition to Terminate/Modify Guardianship
PC 685, Application and Order for Appointment of Out-of-State Guardian of a Legally Incapacitated Individual**

The committee considered updating these forms to reflect ADM 2016-19 and ADM 2016-28 which revised MCR 5.125(C)(22) to clarify that minor children are presumptive heirs of the alleged incapacitated individual and are considered interested persons under MCR 5.125(C)(22)(e).

Committee members agreed with the suggestion and discussion was held on how to best incorporate explanatory language. Because the format of each form is slightly different, the committee decided that the forms should be updated in a way appropriate to the individual form.

On PC 625, committee members discussed various options including adding an asterisk and note explaining that “presumptive heirs” includes minor children. Because there are instructions for this form, the committee determined that it would be best to include explanatory language in an appropriate instruction. The committee approved adding the word “adult” in front of the word “children” in the fourth checkbox under item 10 and adding the language, “Presumptive heirs includes minor children, if any,” into the instruction L-M.

For PC 675, the committee members agreed that the form should be modified by adding the word “adult” in front of the word “children” in the fourth checkbox option under item 3. An asterisk will be added by the words “presumptive heirs,” and explanatory language added under the grid where the current Attorney General note is located.

On PC 685, the committee members agreed that the form should be modified by adding the word “adult” in front of the word “children” in the fourth checkbox option under item 4. The parenthetical note regarding notifying the Attorney General will be modified to an asterisk and an additional asterisk will be added by the words “presumptive heirs” with explanatory language in the same location as the note on the Attorney General.

STAFF NOTE: The second page header was added to the top of page 2 of PC 625. The citation to MCR 3.206 was removed from PC 625 and PC 685 because it does not apply to probate cases.

On PC 675, the asterisk on page 1 was modified to a single asterisk. The asterisk in the third checkbox option relating to the Attorney General was modified to a triple asterisk in order to accommodate the addition of the double asterisk regarding presumptive heirs in the second checkbox option.

On PC 685, asterisks were added to item 4 to reference certain information. Double asterisks were added to accommodate the information regarding presumptive heirs. A triple asterisk was added to indicate the attorney general’s address when needed.

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

The committee considered revising this form to specifically include the right to object to do-not-resuscitate (DNR) orders and physician orders for scope of treatment (POST) forms. The form currently includes information about placing limits on the guardian, but is not specifically relative to DNR and POST orders.

Concern was expressed that including the information in 4a would interfere with courts that use that item as an easy reference as to whether an attorney needs to be appointed because an LII is not entitled to an attorney if they object to the guardian having power to sign a DNR or POST form. The committee reviewed MCL 700.5305 and determined that an attorney should be appointed in these situations because under MCL 700.5305(3), an attorney is to be appointed if the individual wishes to have any limitations placed on a guardian's powers, and DNR or POST form are included as possible limitations under MCL 700.5305(1)(c)(ii). The committee agreed that if the language is to be included, placement under 4a would be appropriate.

The committee noted that under MCL 700.5305, there are two different issues to which the individual can object concerning a DNR and POST form. MCL 700.5305(1)(c)(ii) allows an objection to the limitation of the guardian's powers, including executing a DNR or POST form. However, MCL 700.5305(d) and (e) allow the individual to object to the actual execution of the form. While the two issues sound the same, the committee agreed that there is a distinction.

The committee determined that because the individual rights to objection were specifically called out in the statute, they should be called out on the form as well. The committee approved modifying item 4a of the report to include three additional checkboxes nested under the first checkbox regarding limits on the guardian's powers. The additions will be "[] do-not-resuscitate order [] POST form [] other".

The committee requested SCAO staff to work on the language of the Duties of Guardian Ad Litem to add appropriate language regarding the DNR and POST form in conformity with the rights as listed in MCL 700.5305(1)(c)(ii), (d) and (e) to item 4.

During discussion of MCL 700.5303, committee members noted that the language on the form regarding a GAL's duties did not include two of the items GALs are required to report on. The committee decided that, pursuant to MCL 700.5305(h)(vi) and (vii), a new subsection should be added under item 7 of the duties with the following language, "d. whether the individual alleged to be incapacitated objects to having a do-not-resuscitate order and/or physician orders for scope of treatment form (POST) executed on his or her behalf." The subsequent subsections will be renumbered as necessary.

The form was approved as revised.

STAFF NOTE: During typesetting, page 2 (the “Duties of Guardian Ad Litem” section) was further revised. A new item 4 was added to accommodate MCL 700.5305(d), which requires the GAL to inform the individual that the guardian may have the power to execute a DNR or POST form on the individual’s behalf. This requirement is distinct from the GAL’s responsibility in subsection (c) to explain the hearing procedure and right to request limits on the guardian’s powers. Subsequent items were renumbered.

9. PC 638a, Order Regarding Termination/Modification of Guardian

- A. The committee considered a suggestion to modify the form to include a specific area for a judge to order or redirect child support. Inclusion of the language would be applicable in instances where judges modify a guardianship and need to address support. SCAO staff noted that this option is already included on PC 653, Order Regarding Appointment of Guardian/Limited Guardian of a Minor.

The committee agreed that the option would be useful and approved the draft language. A new sub-item b was added to the form under item 11 stating “Child support shall be paid: as stated in the placement plan.
 _____.”
The subsequent items will be renumbered as necessary.

- B. The committee considered a suggestion to include an option for dismissal of the petition under the findings section. The form currently provides a “dismissal/withdrawn” option in the order portion of the form, but not in the findings section. The findings section currently only provides for granting or denial of the petition.

The committee agreed with the draft language. The option “[] dismissed” will be added at the end of item 3. The phrase “withdrawn” will not be included in the section because the findings relate to what the court had decided should be done with the petition and the court would not be deciding it should be withdrawn.

The form was approved as revised.

STAFF NOTE: The standard second page header was added to this form.

10. PC 650, Petition for Appointment of Limited Guardian of a Minor
PC 650i, Petition for Appointment of Limited Guardian of Minor Indian Child
(Voluntary Guardianship)
PC 651, Petition for Appointment of Guardian of a Minor
PC 651ia, Petition for Appointment of Guardian of Minor Indian Child (Voluntary
Guardianship)
PC 651ib, Petition for Appointment of Guardian of Minor Indian Child (Involuntary
Guardianship)

The committee considered a suggestion to modify these forms to include a field for listing any former names of the guardian. The purpose of gathering the information would be to help ensure that a complete background check on the guardian is obtained through MDHHS.

Counties are currently collecting the information in a variety of ways including locally created forms and MDHHS form 1929. Counties are also delivering the information to MDHHS for a clearance in different ways including e-mails for each case, running a report of the names to check, hand delivery, and requiring the party to deliver a form to MDHHS themselves. The prior name information is also entered in the CMS by some counties to assist in identifying aliases or to run a report for MDHHS. Counties also utilize ICHAT reports as part of the background check.

SCAO staff noted that PC 670, Minor Guardianship Social History, gathers the previous name information plus additional information that could more accurately identify an individual. SCAO staff also noted that, pursuant to court rule, PC 670 is a confidential document.

Because there are a variety of systems in place and a general consensus that the Social History provided an appropriate alternative, the committee determined not to make any changes to the form at this time.

The form was not revised.

11. PC 658, Petition for Appointment of Guardian, Individual with Alleged Developmental Disability
PC 679, Order Appointing Emergency Temporary Guardian for Person with Alleged Developmental Disability

A. The committee considered a suggestion to add checkboxes to these forms indicating whether the temporary guardianship is partial or plenary because the options are not currently on the form.

MCL 330.1607 provides authority for the appointment of a temporary guardian of individual with an alleged developmental disability. The committee discussed the statute and determined that the statute does not provide for appointing a partial or plenary guardian because it is only a temporary appointment in order to address urgent issues. Therefore, the suggested checkboxes were not necessary.

The committee did not agree with the suggested change.

- B. A suggestion was made that PC 679 should include language regarding bond for situations where a professional guardian is appointed because bonds are required by statute for professional guardians. The current form provides no specific place to address bond. MCL 700.5106 requires all professional guardians or conservators to furnish bond and includes guardians appointed under the mental health code in that requirement.

The committee agreed bond language should be added to the form to accommodate the statutory requirement and approved the draft language. The option of “[] Bond at \$_____ must be filed” was added to item 8 on the form.

The form was approved as revised.

12. PC 676, Petition to Terminate/Modify Conservatorship

The committee considered a suggestion to include space for the last four digits of the protected individual’s Social Security number on the form pursuant to MCR 5.125(C)(24)(e) and (25)(a).

SCAO staff explained that there were reports that the Social Security Administration has been returning the Petition to Modify and Notice of Hearing and indicating that without the SSN they cannot locate the protected individual. The petitions are returned too late to give proper notice and hearings are being adjourned in order to achieve service. The committee agreed that having the information on the form would be helpful and appropriate.

The committee approved the draft language to add the last four digits of the protected individuals Social Security number in the case entitlement line.

The form was approved as revised.

13. New Form: Petition to Exercise Personal Representative's Powers
New Form: Order to Exercise Personal Representative's Powers

The committee considered the creation of two forms that would allow a conservator to petition 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 forms were needed for this procedure, but recognized that there are concerns in regards to implementation that are unrelated to the forms themselves.

Of specific concern was that JIS and other case management systems do not have the necessary programming to track personal representative duties in a conservatorship. Courts have currently figured out manual work-arounds to monitor the cases. There was concern that forms would create increased usage of the PR option and create additional work for the courts.

It was noted by committee members that the option is already starting to be used regularly and the committee concluded that it would be better to have forms that assisted in clarifying the process than to not have anything. JIS staff in attendance noted the concerns regarding programming. SCAO noted that MPJA or SBM Probate section could follow-up on any court rule changes that may be necessary to address potential issues in applying the statute.

The committee agreed that SCAO should develop forms based on the Kalamazoo County sample, but in the SCAO standard formatting.

SCAO will draft a petition and an order for the committee's review.

14. New Form: Petition for Authority to Consent to Adoption
New Form: Order Regarding Request to Consent to Adoption

The committee considered a suggestion to create forms for a guardian to use to request permission to consent to adoption of their ward pursuant to MCL 710.43.

SCAO staff noted that the form is especially needed based on revisions made to adoption forms by the adoption workgroup.

Two committee members noted that they created local forms for this purpose. Wayne County provided a copy of their form.

The committee agreed that the forms should be created.

STAFF NOTE: These forms will be presented for at the 2019 workgroup meeting due to time restrictions.

15. New Form: Notice of Public Administrator's Intent to Seek Appointment as Personal Representative

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).

The committee discussed the language of the statute and whether it requires the creation of a form or forms. A committee member who participated in the editing of the statute noted that the original drafters definitely anticipated the creation of a SCAO form. The committee's consensus was that a form or forms should be created. SCAO staff members noted that the decision of whether the statute requires a form would need to be determined by Supreme Court Counsel and Administrative Counsel.

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.

A committee member proposed that if a form is developed, a possible title would be Notice of Estate Proceeding Involving Real Property. SCAO staff will seek the input of local Public Administrators for possible samples as well as the State Public Administrator if a form is drafted.

It was decided that SCAO staff would relay the committee's recommendation to create a form to the Supreme Court Counsel and Administrative Counsel and seek their input regarding interpreting the statute.

16. New Form: Petition to Resolve Disagreement Regarding Funeral Arrangements/Disposition of Decedent
New Form: Order Regarding Funeral Arrangements/Disposition of Decedent

The committee considered a suggestion to create forms that would assist funeral directors with requesting the court to resolve a disagreement regarding the funeral arrangements and/or disposition of a deceased individual's remains pursuant to MCL 700.3207.

The committee declined to create specific forms for this narrow purpose because PC 586 is appropriate for petitioning in this situation.

No form was created.

17. New Form: Petition to Unseal Secret Marriage
New Form: Order Regarding Petition to Unseal Secret Marriage

A suggestion to create forms for use by individuals seeking to have a secret marriage unsealed pursuant to MCL 551.203 was considered by the committee.

The committee declined to create specific forms for this narrow purpose because PC 586 is appropriate for petitioning in this situation.

18. New Form: Testimony Regarding Interested Persons in a
Guardianship/Conservatorship

The committee discussed a suggestion to create a testimony form to identify interested parties for guardianship and conservatorship cases similar to what is used in decedent estates.

The committee decided that the current petition form is adequate and that no separate testimony form is necessary.

No form was created.