



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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September 6, 2019
Amended November 14, 2019

MICHIGAN COURT FORMS COMMITTEE
Estates and Protected Individuals Code Forms Workgroup
Minutes of September 5, 2019 Meeting

Present: Amy Billmire, Michigan Legal Help
Susan Chalgian, Chalgian & Tripp Law Offices
Mary Haskamp, Kalamazoo County Probate Court
Steve Marchlewicz, Ingham County MDHHS
April Maycock, Wayne County Probate Court
Mike McClory, Wayne County Probate Court
Honorable David Murkowski, Chief Judge, Kent County Probate
Melisa Mysliwicz, Fraser Trebilcock Davis & Dunlap PC
Nathan Piwowarski, McCurdy Wotila & Porteous, PC
Valerie Robbins, Mecosta County Probate Court
Cindy Rude, Calhoun County Probate Court
Melissa Brand-Orweller, Judicial Information Services (Staff)
Noah Bradow, Trial Court Services (Staff)
Sheryl Doud, Trial Court Services (Staff)
Rebecca Schnelz, Trial Court Services (Staff)
Matthew Walker, Trial Court Services (Staff)

Absent: Maureen Nagy, Advent House
Honorable Kathleen Ryan, Oakland County Probate Court
Tim Schalk, Judicial Information Services (Staff)

1. Minor Change

[PC 686, Consent by Parent/Indian Custodian to Guardianship of Indian Child](#)

The committee corrected item 2 under the certification by judge to properly capitalize the beginning of the last sentence.

The form was approved as revised.

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

The committee considered a suggestion that the changes made in June of 2017 to accommodate statutory changes to dower rights under 2016 PA 489 and 2016 PA 490 were premature. (MCL 558.30, MCL 700.1303, MCL 700.2202, MCL 700.2205 and MCL 700.3807)

The committee also considered a suggestion to return the dower option to the form because it still applies to estates where the decedent died before the statutory amendments were effective.

The committee noted that the form is rarely used to select the dower option and that the best course of action would be to retain the changes made as the likelihood of dower rights being selected will continue to diminish due to the statutory changes.

The form was not revised.

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

The committee reviewed a suggestion to reorder the options under item 3 of the Petition 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 committee approved the suggestion 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 \$_____.”

The form was approved as revised.

STAFF NOTE: During typesetting, “Circuit Court-Family Division” was removed from the masthead in keeping with a previous decision by the committee regarding format.

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

The committee reviewed a suggestion to modify item 9 of the form to include the language, “and bond, if any, is cancelled.” The suggestor stated that this change would make the process of closing the conservatorship easier when the ward has passed away.

Members of the committee were in agreement with adding the option, but noted that there are occasions when the fiduciary may be discharged, but the court does not want to dismiss the bond at the same time, such as where there is an action for surcharge.

The committee decided to mirror item 6 on PC 585a, Petition to Allow Account(s), and revised item 9 on PC 585b by adding, “[] Bond is cancelled.”

The form was approved as revised.

5. [PC 619, Notice of Ancillary Administration Filing](#)

The committee reviewed a suggestion that the name of this form should be revised to *Notice of Foreign Administration Filing* because the current name is misleading and confusing. The suggestor stated that a foreign administration and an ancillary administration are two distinctly different estate administrations proceedings and that both the form and MCL 700.4203 refer to “foreign personal representative” throughout, except for the form’s title.

The committee reviewed the statute and agreed that the form title should be modified to “Notice of Foreign Administration Filing.”

The form was approved as revised.

6. [PC 621, Receipt of Property from Conservator](#)

A probate register 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. An alternative suggestion was to add an “other” option to item 2. A comment was received requesting the form be modified to include options for situations where the ward has not died and the conservatorship has been terminated.

The committee recognized that the form was developed and designed for use specifically in decedent estates. It was also noted that joint assets transfer by operation of law and that a transfer of a joint asset from a conservator is not necessary. The committee agreed, however, that some form of a receipt is needed in situations where the ward is alive and the conservatorship is terminated. This would include situations where the ward no longer needs a conservator or a successor conservator is appointed.

Members noted the existence of PC 649, Receipt of Ward and Discharge, however agreed this form is intended for use in minor conservatorship cases.

Following discussion, the committee decided that this form should be modified to include options applying to conservatorships. SCAO staff noted that, due to timing issues, it may not be possible to produce a revised form this year and it may need to be presented at the 2020 forms workgroup meeting.

The form was not revised.

7. [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 had 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.

The committee agreed that a guardian only has the authority to give consent for inpatient treatment of the ward if the court expressly grants that power and that an option to order that power should be added to the forms. Discussion was also held regarding the ability of an incapacitated individual to object to certain powers being awarded and the necessity of including an option where those powers could be withheld within what would otherwise be a full guardianship.

[PC 631, Order Regarding Appointment of Guardian of Incapacitated Individual](#)

Extensive discussion was held in regard to the current layout of the form and the best way to incorporate the new information in a way that organized the assigned duties, bond and other details of the appointment in a logical and easy to follow manner.

After discussion, the committee agreed on the following:

- a. The statements regarding the guardian not having authority to act until letters are issued, and requiring the guardian to comply with relevant law, were removed from item 10 and made into separate item 11 because they apply to all guardianships
- b. Item 12, which provides space for detailing the limited guardian's powers, was moved to item 10 so that it is included together with all powers and limitations.
- c. Item 10 was modified to include all appointment options in one location, i.e., options for full and limited appointments, limitations for limited guardianships, the option to hold back powers from a full guardian (such as DNR and POST orders), and an option to provide the guardian with mental health treatment authority as follows:
 - a. The guardian shall have the following powers:
 - full guardian with all authority and responsibilities granted and imposed by law.
 - except as follows:
 - limited guardian with only the following powers: _____
 - _____
 - In addition, guardian has the authority to execute a written consent for formal voluntary mental health treatment, unless objected to by the incapacitated individual.
 - b. Bond of \$_____ must be filed.

The form was approved as revised.

STAFF NOTE: During typesetting, additional space was added to the writing space in item 15 to improve usability.

[PC 632, Order Regarding Appointment of Temporary Guardian of Incapacitated Individual](#)

The committee determined that relevant changes were also necessary on PC 632 and that the changes should mirror those made to PC 631. Following discussion, the committee made the following changes:

- a. Item 10, which provided space for detailing the temporary limited guardian's powers, was moved to item 9 so that it is included together with all powers and limitation.
- b. The statement regarding the temporary guardian not having authority to act was removed from item 9 and made into separate item 10.
- c. Item 9 was modified to include options to grant all authority allowed under the law, place some limitations on the powers, or grant only specific powers, as well as an option to provide the guardian with mental health treatment authority as follows:
 - a. The temporary guardian shall have the following powers:
 - all authority and responsibilities granted and imposed by law.
 - except as follows:
 - the following powers only: _____
 - In addition, the temporary guardian has the authority to execute a written consent for formal voluntary mental health treatment, unless objected to by the incapacitated individual.
 - b. Bond of \$_____ must be filed.

The form was approved as revised.

STAFF NOTE: During typesetting, additional space was added to the writing space in item 12 to improve usability.

[PC 633, Letters of Guardianship](#)

The committee discussed updating the form with language that would replicate the revised language and structure that is to be put in place on PC 631 and PC 632. Committee members noted that the form is also used in minor guardianship cases and that the language that needed to be added for adults did not apply to minors, which could make the form confusing and likely to cause errors in completion. Following discussion, it was recommended that a new form be created for adult guardianships that will incorporate the

language drafted for PC 631 and PC 632. PC 633 will be relabeled for use in minor guardianships only. No other changes are to be made at this time.

The form was approved as revised. SCAO staff will draft a new form based on PC 633 for use specifically in adult guardianships. The form will be assigned a new form number.

STAFF NOTE: The modifications to this form and the development of a new form have been placed on hold for further development.

[PC 638a, Order Regarding Termination/Modification of Guardian for Minor/LII/Conservator](#)

The committee agreed that wording should be added to the form so that the court can address the guardian's authority to approve mental health treatment. Committee members noted that the form is a multipurpose form for use in conservatorships, as well as minor and adult guardianships. Committee members agreed that the item 11 should be reworked to make separate options for minors and adults, and the new language from PC 631 should be used for the adult option. SCAO will rework the form to incorporate the changes.

The committee also noted that future consideration should be given to separating conservatorships out of this form and into a new form.

The form was approved as revised.

STAFF NOTE: During typesetting, SCAO staff made the following changes to accommodate the committee's recommendation and to ensure consistency of language throughout the form:

- a. Current item 11a was changed to 11b. The word "individual" was replaced with "minor child." The sentence regarding bond was revised to read, "Bond of \$___ must be filed."
- b. The sub-item designations in item 11 were updated to accommodate the addition of new sub-item a.
- c. Current item 11c was modified to a checkbox item under new item 11b.
- d. In current item 11c, the sentence regarding bond, was revised to read, "Bond of \$___ must be filed."
- e. New item 11a was added as follows:
 - a. successor guardian of the incapacitated individual and qualifies by filing an

- acceptance of appointment. The guardian shall have the following powers:
- full guardian with all authority and responsibilities granted and imposed by law.
 - except as follows:
 - limited guardian with only the following powers: _____
 - temporary guardian and shall serve until _____ with the following powers: _____
 - In addition, guardian has the authority to execute a written consent for formal voluntary mental health treatment, unless objected to by the incapacitated individual.
 - Bond of \$_____ must be filed.

The guardian is not permitted to act until letters of guardianship are issued. After qualification, the guardian shall comply with all relevant requirements under the law.

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...

The committee noted item 4 of the form includes a finding that the individual is incapacitated and therefore did not think the title of the form is inappropriate. A committee member noted that, because a finding can also be made on the form that the individual is not incapacitated, the word "alleged" should be added to item 2 regarding notice of hearing because that item applies in all cases.

The committee agreed and modified item 2 to read, “Notice of hearing was given to the alleged incapacitated individual.”

The form was approved as revised.

9. PC 633, Letters of Guardianship

The committee reviewed a suggestion to add language to this form directing guardians to 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.

During discussion, the original suggestion was reviewed and the committee determined that the suggestion was based on the mistaken premise that a guardian can never have authority to access a ward’s funds. The committee discussed the variety of situations that can occur as to whether a guardian has authority to access funds or not and whether the situation may change over time. The committee determined that, because of the variety of situations that may exist, adding any type of language regarding the guardian’s authority to access money was not a workable solution. The committee decided not to add language to the form.

The committee noted that the citation on the form to specific subparts MCL 700.5314(a) and (e) is incorrect and agreed the citation should cite statute as a whole.

The form was approved as revised.

STAFF NOTE: This form is on hold for further development under agenda item 7. The statutory citation change will be made as part of that process.

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

The committee discussed changes that are necessary to this form due to Public Act 594 of 2018. The act 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. Additionally, the statute was modified to require a guardian to include information in their annual report regarding any mental health treatment the ward received and whether a nonopioid directive was executed, reaffirmed or revoked on behalf of the individual.

The committee discussed a submitted comment that stated guardians find items 5 and 6 (regarding DNRs and POST orders) extremely confusing. The commenter also suggested that “revoked” should not be an option under 5b or 6b because a guardian could revoke these documents without consulting with the ward or their doctor. In addition, the commenter suggested adding the language “to the extent he or she was able” after “consult” in items 5b and 6b to track the statute.

Committee members agreed the language in items 5 or 6 should not be modified because it reflects what is called for in the statute.

The committee approved the following changes to incorporate the new statutory requirements:

- a. The statutory citation in item 6 will be modified to MCL 700.5314(g) to reflect the change in the statute.
- b. A new item 7 will be added:
 7. Nonopioid Directive
 - a. I did not execute, reaffirm, or revoke a nonopioid directive.
 - b. I executed reaffirmed revoked a nonopioid directive for the adult under MCL 700.5314(f).
- c. Current items 7 through 15 will be renumbered as 8 through 16.
- d. In new item 8, sub (c) will be modified to read, “During the past year the adult received the following mental health treatment:” A table matching the table in item 4c will be added for listing the mental health treatment received.

The form was approved as revised.

STAFF NOTE: During typesetting, the subsections were removed from the citation to MCL 700.5314 because there are now multiple additional subsections that apply. In addition, the use note regarding family court was removed in keeping with a previous decision by the committee regarding format.

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

The committee considered a suggestion from a probate judge to add 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 estates and protected individuals by preventing a sale until bond is appropriately filed.

During discussion some committee members expressed a preference of ordering bond prior to hearing using the option to order bond that is currently on the relevant petition forms. (PC 646, Petition Regarding Real Estate/Dwelling and PC 681, Petition for Approval of Sale of Real Estate [Decedent Estate]). Other members noted that, in some counties, the judge does not see the petition form when it is filed and therefore the issue is not addressed until the hearing. Consideration was given to having language regarding ordering bond on both the petition and the order. The committee also discussed options for electronic document routing that could assist in the process by routing petitions to the probate register for setting bond.

Committee members noted the practice of some courts to not distribute an order approving sale that includes a bond order until the court receives the bond from the party. The committee discussed concerns about the procedure of requiring something in an order, but not releasing the order until that requirement was already completed.

The committee also noted that MCR 5.207(3) specifies that a court may require a bond **before** approving the sale of real estate.

Following discussion, the committee determined that no language should be added to the forms due to the wording of the court rule and the availability to order bond immediately upon the filing of the petition, which provides protection to the estate or ward.

The forms were not revised.

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

The committee reviewed a suggestion 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.

The committee recognized that this form is frequently completed by the bank, often when the fiduciary goes to the bank to request it. Members also noted that the form currently includes an instruction that the statement must be dated within 30 days after the end of the accounting period. The committee agreed that a line for a specific date was not necessary.

The form was not revised.

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

The committee reviewed drafts of the petition and order forms that would allow a conservator to petition for authority to exercise a personal representative's powers pursuant to MCL 700.5426(4). The forms were created by SCAO at the committee's request following the 2018 meeting.

Committee members discussed continued concerns with the wording of the statute and how to manage estates created by this process. Members noted that this option is being used more frequently, both for small sized estates and very large ones as well.

Discussion was held regarding the notice required by the statute and when that notice should be sent. There was no consensus among members regarding how the variety of possible situations would be handled under the statute, such as when the conservator is aware of a will but does not know where it is. In addition, some members of the committee interpreted the statute to be applicable only where the decedent had a will. Other members thought the statute could also be used when the decedent died intestate.

Committee members representing the SBM Probate and Estate Planning Section stated they would be making a recommendation for the section to review the statute. Given that there was no consensus as to the intent of the statute, or how a form should be drafted, the committee decided to table the forms until the next meeting for further review and the possibility of legislative action.

The forms were not approved.

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

The committee reviewed two forms that were drafted by SCAO pursuant to the recommendation of the committee at its 2018 meeting. The intent of the forms was to provide a mechanism for guardians to request authority to consent to the adoption of their ward pursuant to MCL 710.43. During drafting, SCAO staff noted that MCL 710.28 provides for the alternative situation of a guardian seeking to release a child for adoption. The option to release the child for adoption was therefore included on both the petition and the order.

The committee discussed the difference between a guardian releasing the child for adoption by someone else or consenting to the adoption. The committee also discussed a comment that had been received that the forms need to address situations where the parent of the child has a guardian and must consent. This includes situations where the parent is a minor child.

Following discussion, SCAO staff withdrew the forms from consideration to allow additional time for drafting based on the comment received and the committee's discussion. The forms will be presented to the committee at a future meeting.

The forms were not approved.

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

The committee reviewed drafts of two forms that were created pursuant to their request at the 2018 meeting. The forms are intended for use by a state or county public administrator (PA) when complying with the notice provisions of MCL 700.3414(5).

Notice of Hearing to Heirs and Right to Object

The committee discussed the notice to the heirs form that is intended to provide information regarding the hearing to appoint a PR and their options if they object to the PA's appointment. Committee members noted the statute's narrow focus on instances where a public administrator is seeking appointment as PR and the estate includes real estate that has delinquent property taxes and/or is subject to foreclosure.

To clarify the intent of the form, the committee modified the introductory section to read, "I am a public administrator. I have filed a petition for appointment as personal representative of the estate of the above named individual and the decedent's real property has delinquent property taxes and/or is subject to mortgage foreclosure."

In addition, the committee agreed that the name of the form should be modified to indicate more explicitly that it is for specific use regarding objecting to the appointment of a public administrator. The committee agreed upon adding “TO APPOINTMENT OF PUBLIC ADMINISTRATOR” to the end of the title.

Discussion was held as to whether the form should include information regarding publication. Committee members agreed that the currently available publication forms are sufficient and nothing needed to be added to the form.

Objection to the Appointment of Public Administrator

The committee discussed the wording of MCL 700.3414(5) and what is meant by the reference to “the state court administrative office form to challenge the petition.” Committee members remarked that a competing petition could be the appropriate response, however it was noted that at the 2018 committee meeting, a member who was present during discussion on the legislation said that the drafters’ intent was that the form to be posted would specifically be an objection.

Committee members recommended that the new generic objection form that they agreed to create pursuant to agenda item 16 should be used for the purposes of this statute and that a specific form need not be created. The committee members did not think a specific form should be developed for the same reason they declined to create the specific objection to a minor guardianship form and elected to create a generic form, i.e., it is unnecessary and would be burdensome to try and create forms for every situation.

SCAO staff will seek the input of the Michigan Supreme Court’s Administrative Counsel on the issue of whether a specific objection form is needed under this statute. If not, the general objection form, when created, would be the objection form to be used under the statute. If a dedicated form is necessary, the committee approved the draft of the form as presented with the addition of an attorney signature line.

The forms were approved.

STAFF NOTE: SCAO staff consulted with Administrative Counsel regarding the objection form. After review of the statute and further discussion with SCAO staff, it was determined that a specific objection form for the stated purpose should be created. The draft objection form, as approved with changes by the committee, will therefore be published. During typesetting, SCAO modified the format of the form to include boxes for the name of objector and their attorney in keeping with updated formatting standards. Minor grammatical corrections were made. The Notice of Hearing form was assigned form number PC 689 and the Objection form was assigned form number 690.

16. New Form, Objection to Petition for Minor Guardianship

The committee considered a suggestion for the creation of a parental objection to the appointment of a guardian for their child. The suggestor thought that such a form would help provide equal access to court resources for self-represented respondents.

The committee noted that 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.

The committee also took notice that no general objection form currently exists. Committee members agreed that if a form was to be created, it should be a general form so that it could be used in all situations, not just one isolated area.

A committee member expressed concern that a generic form would not provide sufficient assistance to self-represented litigants. Discussion was held regarding the difficulty of creating a form that could include all possible objections. Conversely, there was general agreement that unique objection forms for all situations would be unnecessary and burdensome. The committee concluded that instructions should be added to the generic form that would assist self-represented litigants in understanding what the objection should include, such as direction to specifically describe the nature of their objection.

The committee requested SCAO to develop a generic objection form for presentation at a future meeting. Members noted that the form should be generic, include a line for indicating the person's interest in the matter, and require the person objecting to specify his or her particular objections.

A new form will be drafted.