



PROBATE & ESTATE PLANNING SECTION

Attachments for

Friday, February 16, 2024

Committee on Special Projects

and

Meeting of the Council of the Probate and Estate Planning Section

at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

Or *via* Zoom

**Probate & Estate Planning Section of the
State Bar of Michigan**

You are invited to the February meetings of the Committee on Special Projects (CSP) and
the Council of the Probate & Estate Planning Section:

Friday, February 16, beginning at 9 AM
at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

Remote participation by Zoom will be available. So, you are also invited . . .

to a Zoom meeting.

When: Feb 16, 2023, 09:00 AM Eastern Time (US and Canada)

Register in advance for this meeting:

https://us02web.zoom.us/meeting/register/tZwodOihqTwsHdbdcDFs_2V6i7sxYCvoMqfH

After registering, you will receive a confirmation email containing information about joining the meeting.

If you are calling in by phone, email your name and phone number to Angela Hentkowski

ahentkowski@stewardsheridan.com, *we will put your name in a zoom user list that*

will identify you by name when you call in.

Please note that the Zoom feature of these meetings entails that they will be recorded.

This will be a regular in-person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

Richard C. Mills
Section Secretary

SMITH HAUGHEY RICE & ROEGGE
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Ann Arbor, MI 48104
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**Officers of the Council
for 2023-2024 Term**

Office	Officer
Chairperson	James P. Spica
Chairperson Elect	Katie Lynwood
Vice Chairperson	Nathan R. Piwowarski
Secretary	Richard C. Mills
Treasurer	Christine M. Savage

**Council Members
for 2023-2024 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Glazier, Sandra D.	2021 (1 st term)	2024	Yes
Hentkowski, Angela M.	2021 (2 nd term)	2024	No
Mysliwiec, Melisa M. W.	2021 (2 nd term)	2024	No
Nusholtz, Neal	2021 (2 nd term)	2024	No
Sprague, David	2021 (1 st term)	2024	Yes
Wrock, Rebecca K.	2021 (1 st term)	2024	Yes
Mayoras, Andrew W.	2022 (2 nd term)	2025	No
Silver, Kenneth	2022 (2 nd term)	2025	No
Dunnings, Hon. Shauna L.	2022 (1 st term)	2025	Yes
Chalgian, Susan L.	2022 (1 st term)	2025	Yes
Shelton, Michael D.	2022 (1 st term)	2025	Yes
Borst, Daniel W.	2022 (1 st term)	2025	Yes
Augustin, Ernschie	2023 (1 st term)	2026	Yes
Mallory, Alexander S.	2023 (1 st term)	2026	Yes
Anderton V, James F.	2023 (2 nd term)	2026	No
David, Georgette E.	2023 (2 nd term)	2026	No
Hilker, Daniel	2023 (2 nd term)	2026	No
Krueger III, Warren H.	2023 (2 nd term)	2026	No

Ex Officio Members of the Council

Christopher Ballard; Robert D. Brower, Jr.; Douglas G. Chalgian; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Shaheen I. Imami; Robert B. Joslyn; Mark E. Kellogg; Kenneth E. Konop; Marguerite Munson Lentz; Nancy L. Little; James H. LoPrete; Richard C. Lowe; David P. Lucas; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; John A. Scott; David L.J.M. Skidmore; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Marlaine C. Teahan; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack

State Bar of Michigan
Probate and Estate Planning Section

2023–24 Standing Committees

Standing Committee	Mission	Chairperson	Members
Amicus Curiae	Review litigants’ applications and Courts’ requests for the Section to sponsor amicus curiae briefs in pending appeals cases relating to probate, and estate and trust planning, and oversee the work of legal counsel retained to prepare and file amicus briefs	Andrew W. Mayoras	Ryan P. Bourjaily Patricia Davis Angela Hentkowski Scott Kraemer Neil J. Marchand Kurt A. Olson David L.J.M. Skidmore Trevor J. Weston Timothy White
Annual meeting	Plan the Section’s Annual Meeting	James P. Spica [as Chair]	[Chair only]
Awards	Periodically make recommendations regarding recipients of the Michael Irish Award, and consult with ICLE regarding periodic induction of members in the George A. Cooney Society	Mark E. Kellogg [as immediate past Chair]	David L.J.M. Skidmore David Lucas [as 2nd and 3rd most recent past Chairs]
Budget	Develop the Section’s annual budget	Richard C. Mills [as immediate past Treasurer]	Christine M. Savage Nathan R. Piwowarski [as incoming Treasurer and immediate past Secretary]
Bylaws	Review the Section’s Bylaws, to ensure compliance with State Bar requirements, to include best practices for State Bar Sections, and to assure conformity to current practices and procedures of the Section and the Council, and make recommendations to the Council regarding such matters	David Lucas	Christopher A. Ballard John Roy Castillo Nancy H. Welber
Charitable and Exempt Organizations	Consider federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations, and make recommendations to the Council regarding such matters	Rebecca K. Wrock	Celeste E. Arduino Robin Ferriby Brian Heckman Richard C. Mills John McFarland Kate L. Ringler Matt Wiebe
Citizens Outreach	Provide opportunities for education of the public on matters relating to probate, and estate and trust planning	Kathleen M. Goetsch	Ernschie Augustin Kathleen Cieslik David Lucas Hon. Michael J. McClory Neal Nusholtz

State Bar of Michigan
 Probate and Estate Planning Section
 2023–24 Standing Committees

Committee on Special Projects	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Melisa M.W. Mysliwicz	[Committee of the whole]
Court Rules, Forms, & Proceedings	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Georgette E. David	JV Anderton Susan L. Chalgian Hon. Michael L. Jaconette Andrew W. Mayoras Hon. Michael J. McClory Dawn Santamarina Marlaine C. Teahan
Electronic Communications	Oversee all matters relating to electronic and virtual communication matters, and make recommendations to the Council regarding such matters	Angela Hentkowski	Michael G. Lichterman Richard C. Mills [as Secretary]
Ethics & Unauthorized Practice of Law	Consider matters relating to ethics and the unauthorized practice of law with respect to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Alex Mallory	William J. Ard Raymond A. Harris J. David Kerr Neil J. Marchand Robert M. Taylor Amy Rombyer Tripp
Guardianship, Conservatorship, & End of Life Committee	Consider matters relating to Guardianships and Conservatorships, and make recommendations to the Council regarding such matters	Sandra Glazier	William J. Ard Michael W. Bartnik Kimberly Browning Kathleen A. Cieslik Georgette E. David Kathleen M. Goetsch Elizabeth Sue Graziano Raymond A. Harris Hon. Michael L. Jaconette Hon. Michael J. McClory Hon. David M. Murkowski Kurt A. Olson Nathan R. Piwowarski Katie Lynn Ringler Hon. Avery Rose Dawn Santamarina David L.J.M. Skidmore James B. Steward Paul S. Vaidya Karen S. Willard

State Bar of Michigan
 Probate and Estate Planning Section
 2023–24 Standing Committees

Legislation Development and Drafting	Consider matters with respect to statutes relating to probate, and estate and trust legislation, consider the provisions of introduced legislation and legislation anticipated to be introduced with respect to probate, and estate and trust planning, draft proposals for legislation relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Robert P. Tiplady and Richard C. Mills	Aaron A. Bartell Howard H. Collens Georgette David Stephen Dunn Kathleen M. Goetsch Daniel S. Hilker Michael G. Lichterman David P. Lucas Katie Lynwood Alex Mallory Nathan Piwowarski Christine M. Savage James P. Spica David Sprague
Legislation Monitoring & Analysis	Monitor the status of introduced legislation, and legislation anticipated to be introduced, regarding probate, and estate and trust planning, and communicate with the Council and the Legislation Development and Drafting Committee regarding such matters	Michael D. Shelton	Stephen Dunn Brian K. Elder Elizabeth Graziano Daniel S. Hilker Katie Lynwood David Sprague
Legislative Testimony	As requested and as available, the Members of the Section will give testimony to the Legislature regarding legislation relating to probate, and estate and trust planning	Melisa M.W. Mysliwicz [as CSP Chair]	[Various Section Members]
Membership	Strengthen relations with Section members, encourage new membership, and promote awareness of, and participation in, Section activities	Angela Hentkowski	Ernschie Augustin Susan L. Chalgian Kate L. Ringler
Nominating	Nominate candidates to stand for election as the officers of the Section and the members of the Council	David P. Lucas [as most senior immediate past Chair]	David L.J.M Skidmore Mark E. Kellogg [as 1st and 2nd most recent past Chairs]
Planning	Periodically review and update the Section’s Plan of Work	James P. Spica [as Chair]	Katie Lynwood Nathan Piwowarski Richard C. Mills Christine M. Savage Mark E. Kellogg [as Officers and immediate past Chair]

State Bar of Michigan
 Probate and Estate Planning Section
 2023–24 Standing Committees

Probate Institute	Work with ICLE to plan the ICLE Probate and Estate Planning Institute	Nathan Piwowski [as Vice Chair]	[Chair only]
Real Estate	Consider real estate matters relating to probate, and estates and trusts, and make recommendations to the Council regarding such matters	Angela Hentkowski	Carlos Alvarado-Jorquera Jeffrey S. Ammon JV Anderton William J. Ard Leslie A. Butler Patricia Davis J. David Kerr Angela Hentkowski Michael G. Lichterman Melisa M.W. Mysliwec Michael D. Shelton David Sprague James B. Steward
State Bar & Section Journals	Oversee the publication of the Section’s Journal, and assist in the preparation of periodic theme issues of the State Bar Journal that are dedicated to probate, and estates and trusts	Melisa M.W. Mysliwec, Managing Editor	Diane Kuhn Huff Nancy L. Little Neil J. Marchand Richard C. Mills Kurt A. Olson Molly P. Petitjean Rebecca K. Wrock
Tax	Consider matters relating to taxation as taxation relates to probate, and estates and trusts, and make recommendations to the Council regarding such matters	JV Anderton	Daniel Borst Jonathan Beer Mark DeLuca Stephen Dunn Robert Labe John McFarland Neal Nusholtz Christine M. Savage

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Standing Committee.

State Bar of Michigan
Probate and Estate Planning Section

2023–24 Ad Hoc Committees

Ad Hoc Committee	Mission	Chairperson	Members
Assisted Reproductive Technology	Review the 2008 Uniform Probate Code Amendment for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction, and make recommendations to the Council regarding such matters	Nancy H. Welber	Christopher A. Ballard Edward Goldman Nazneen Hasan Christina Lejowski James P. Spica Lawrence W. Waggoner
Electronic Wills	Review proposals for electronic wills, including the Uniform Law Commission’s draft of a Uniform Law, and make recommendations to the Council regarding such matters	Kathleen Cieslik	Kimberly Browning Georgette David Sandra Glazier Douglas A. Mielock Neal Nusholtz Christine M. Savage James P. Spica
Fiduciary Exception to the Attorney-Client Privilege	Consider whether there should be some exception to the rule that beneficiaries of an estate or trust are entitled to production of documents regarding the advice given by an attorney to the fiduciary, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	Aaron A. Bartell Ryan P. Bourjaily
Nonbanking Entity Trust Powers	Consider whether there should be legislation granting trust powers to nonbanking entities, and make recommendations to the Council regarding such matters	James P. Spica and Robert P. Tiplady	JV Anderton Laura L. Brownfield Kathleen Cieslik Elise J. McGee Mark K. Harder Richard C. Mills Carol A. Sewell Joe Viviano
Premarital Agreements	Consider whether there should be legislation regarding marital property agreements, and	Christine M. Savage	Daniel W. Borst Georgette David Stephen Dunn Sandra Glazier Angela Hentkowski David Sprague
Uniform Community Property Disposition at Death Act	Consider the Uniform Community Property Disposition at Death Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Kathleen Cieslik Richard C. Mills Christine M. Savage David Sprague Rebecca Wrock

Undue Influence	Consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Sandra Glazier Hon. Michael L. Jaconette Warren H. Krueger, III John Mabley Andrew W. Mayoras Hon. David Murkowski Kurt A. Olson David L.J.M. Skidmore
Uniform Fiduciary Income & Principal Act	Consider the Uniform Fiduciary Income and Principal Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	James P. Spica	Anthony Belloli Kathleen Cieslik Marguerite Munson Lentz Richard C. Mills Robert P. Tiplady Joe Viviano
Uniform Partition of Heirs Property Act	Consider the Uniform Partition of Heirs Property Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Marguerite Munson Lentz Alex Mallory Elizabeth McLachlan Christine Savage David Sprague Rebecca Wrock
Various Issues Involving Death and Divorce	Should EPIC be changed so that a pending divorce affects priority to serve in a fiduciary position; Should Council explore whether EPIC should be changed so that a pending divorce affects intestacy, elective share, exemptions and allowances, etc. Should “affinity” be defined to prevent elimination of stepchildren’s gifts by operation of law after divorce or, instead, should there be an exception allowing gifts to stepchildren on a showing of, Perhaps, clear and convincing evidence demonstrating that the Settlor would not have intended the omission of the stepchild?	Daniel Borst Sean Blume	Georgette David Hon. Shauna Dunning Katie Lynwood Andy Mayoras Elizabeth Siefker

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Ad Hoc Committee.

State Bar of Michigan
 Probate and Estate Planning Section

2023–24 Liaisons

Association	Liaison
Alternative Dispute Resolution Section	John Hohman
Business Law Section	Mark E. Kellogg
Elder Law and Disability Right Section	Angela Hentkowski
Family Law Section	Anthea E. Papista
Institute of Continuing Legal Education	Lindsey DiCesare and Rachael Sedlacek
Law Schools	Savina Mucci
Michigan Bankers Association	David Sprague
Michigan Legal Help/Michigan Bar Foundation	Kathleen Goetsch
Michigan Probate Judges Association	Hon. Shauna Dunnings
Probate Registers	Ryan J. Buck
Real Property Law Section	Angela Hentkowski
Supreme Court Administrative Office	Georgette E. David
State Bar	Jennifer Hatter
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

The mission of each Liaison is to develop and maintain bilateral communication between his or her association and the Probate and Estate Planning Section of the State Bar of Michigan on matters of mutual interest and concern.

CSP Materials

**MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE
COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**

**The Committee on Special Projects, or CSP, is our Section’s
“committee of the whole.” The CSP flexibly studies, in depth, a
limited number of topics and makes recommendations to Council.
All Section members are welcome to participate and are able to vote.**

AGENDA

Friday, February 16, 2024

9:00 – 10:00 AM

In person meeting at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

Remote participation by Zoom is available. Register in advance at:
https://us02web.zoom.us/meeting/register/tZwodOihqTwsHdbdcDFs_2V6i7sxYCvoMqfH

After registering, you will receive a confirmation email containing information about joining the meeting. If you are calling in by phone, please email your name and phone number to Angela Hentkowski at ahentkowski@stewardsheridan.com. We will put your name in a Zoom user list that will identify you by name when you call in.

**Sandra D. Glazier – Guardianship, Conservatorship & End of Life
Committee – 45 minutes**

Re: Report related to the Guardianship Task Force Legislation (House Bills 4909 H-3; 4910 H-3; 4911 H-3; 4912 H-3; and 5047 H-3)

The Committee has been working diligently with our lobbyists and legislators to advocate for our Section with respect to the Guardianship Task Force Legislation (House Bills 4909 H-3; 4910 H-3; 4911 H-3; 4912 H-3; and 5047 H-3) and will provide a report of what has transpired since our last Council meeting. The Committee’s written report is attached as Ex 1A. Ex 1B (referenced as Exhibit “A” in the Report) reflects recommended changes to the Bills proposed by Hon. Avery Rose, Kent County Probate Court. Ex 1C (referenced as Exhibit “B” in the Report) is the Committee’s work product, which attempts to incorporate concerns expressed by the committee as a whole, as well as Judge Rose’s suggestions.

EXHIBIT 1A

Guardianship, Conservatorship & End of Life Committee

Committee Report

To: Probate Council/CSP Committee, James Spica, Katie Lynwood, Melisa Mysliwicz
And Members of the Guardianship, Conservatorship & End of Life Committee (the "Committee")

From: Sandra D. Glazier

Re: Guardianship Task Force Legislation (House Bills 4909 H-3; 4910 H-3; 4911 H-3, 4912 H-3 and 5047 H 3)

Dated: February 5, 2024

On January 22, 2024, Judges Mack and McClory, Katie Lynwood, Nathan Piwowarski, Kathleen Cieslik, our lobbyists, and I were able to meet via Zoom with Senator Chang and her aide, Ellen Heintz. The Senator requested specific language (redline/strikeout with comments) to the proposed Guardianship Task Force Legislation (the corresponding House Bill numbers are referenced above) which are now being considered in the Senate.

Since she requested a short turnaround of two weeks, we took advantage of the shorter Council meeting agenda on January 19, 2024, and conducted a meeting of the committee via zoom immediately following the Council meeting.

Present for that meeting were: Hon. Avery Rose, Hon. Michael McClory, Hon. David Murkowski, Karen Willard, Kathleen Cieslik, James Steward, Elizabeth Graziano, Ponce D. Clay, Nathan Piwowarski and Sandra Glazier. Judge Mack had verbally communicated some comments to Sandy in advance of the meeting. Judge Rose shared a markup of his recommended changes, a copy of which are attached to this report as Exhibit "A". Given the time constraints of January 19, 2024 and the short turn around requested by Senator Chang, most of the time on January 19th was dedicated to discussing specific language edit suggestions relative to HB 5047 (the bill relating to the Office of State Guardian). A more general discussion of how to address the other four bills also took place. Sandy and Nathan agreed to take comments from prior meetings of the committee together with those expressed during the January 19th meeting and attempt to address them in a redline strike-out versions of the proposed legislation, which would then be circulated to the committee as a whole for further input.

Nathan and Sandy met on January 22, 25 and 26, and worked on drafting language between meetings in an attempt to incorporate concerns expressed by the committee as a whole. They also considered the changes contained in Judge Rose's markup of the legislation that had not been fully discussed by the committee. The resulting product (Exhibit "B"), was then circulated to all the members of the committee for further input and comment – no further input or feedback was received. As a result, Nathan was asked to share Exhibit "B" with Becky so that she could share with Ellen Heintz, communicating that:

- Despite the suggested edits contained in the appended draft adoption of those changes does not guarantee that the Probate Council will modify its public policy position. Rather the edit suggestions were proffered in an attempt to provide concrete language to address broader concerns relating to the proposed legislation, particularly the general concern that additional requirements may have an adverse impact on the ability to obtain persons willing to serve in

these important fiduciary roles, may add costs and burdens to estates with resources as well as to the court. In addition, the following is generally true:

- The issues experienced under the current statutes represent breaches in application as opposed to problems with the statute. Therefore, we believe a mechanism for prompt and efficient appellate review would address many of the issues without the need for statutory reform.
- To the extent that changes are deemed necessary, they should be limited in scope to contested matters to eliminate additional burdens in matters where no issues exist. It remains important to understand that less than 20% of matters are contested and the vast majority of matters relate to persons who suffer from mental health issues as opposed to elderly segments of our population.
- While many support the concept of a public guardian and a central repository to identify fiduciaries found to have breached their duties, concerns regarding funding of an office of guardianship, funding GALs, appointed attorneys and evaluators for indigent individuals need to be adequately addressed before licensure and implementation may be effectuated.

EXHIBIT 1B

Guardianship, Conservatorship & End of Life Committee

Judge Rose's Proposed Amendments to Guardianship Task Force Legislation

EXHIBIT "A"

SUBSTITUTE FOR
HOUSE BILL NO. 4909

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5104, 5106, 5310, 5313, and 5409 (MCL 700.5104, 700.5106, 700.5310, 700.5313, and 700.5409), section 5106 as amended by 2017 PA 136, section 5310 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, and section 5409 as amended by 2000 PA 463, and by adding section 5106a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5104. (1) An interested person who desires to be notified
2 before an order is made in a guardianship proceeding, including a
3 proceeding subsequent to the appointment of a guardian under
4 section 5312, **or 5312a**, or in a protective proceeding under section
5 5401 must file a request for notice with the register of the court

1 in which the proceeding is pending and with the attorney of record
 2 of the guardian or conservator or, if none, with the guardian or
 3 conservator, if any. A request is not effective unless it contains
 4 a statement showing the interest of the person making it and the
 5 address of that person or an attorney to whom notice is to be
 6 given. The request is effective only as to a proceeding that occurs
 7 after the filing. If a guardianship or protective proceeding is not
 8 pending at the time a person files a request for notice as
 9 authorized by this subsection, the person shall pay a fee for
 10 filing the request, which fee ~~shall~~**must** be in the same amount as,
 11 but is separate from, the fee required to commence such a
 12 proceeding.

13 (2) A governmental agency paying benefits to the individual to
 14 be protected or before whom an application for benefits is pending
 15 is an interested person in a protective proceeding.

16 Sec. 5106. (1) Subject to subsections (2) and (3) **and part 5A**
 17 **of this article**, the court may appoint or approve a professional
 18 guardian or professional conservator, as appropriate, as a guardian
 19 or conservator under this act, or as a plenary guardian or partial
 20 guardian as those terms are defined in section 600 of the mental
 21 health code, 1974 PA 258, MCL 330.1600.

22 (2) The court shall only appoint a professional guardian or
 23 professional conservator as authorized under subsection (1) if the
 24 court finds on the record all of the following:

25 (a) The appointment of the professional guardian or
 26 professional conservator is in the ward's, developmentally disabled
 27 individual's, incapacitated individual's, or protected individual's
 28 best interests.

29 (b) There is no other person that is competent, suitable, and

1 willing to serve in that fiduciary capacity in accordance with
2 section 5212, **5312a**, 5313, or 5409.

3 (3) ~~The~~ **Subject to section 5106a**, the court shall not appoint
4 a **person as a** professional guardian or professional conservator as
5 authorized under subsection (1) unless the professional guardian or
6 professional conservator files a bond in an amount and with the
7 conditions as determined by the court. For a professional
8 conservator, the sureties and liabilities of the bond are subject
9 to sections 5410 and 5411.

10 (4) A professional guardian or professional conservator
11 appointed under this section shall not receive as a result of that
12 appointment a benefit beyond compensation specifically authorized
13 for that type of fiduciary by this act, **including, to the extent**
14 **applicable, the fee limitations imposed under part 5A of this**
15 **article, or, to the extent applicable,** the mental health code, 1974
16 PA 258, MCL 330.1001 to 330.2106. This subsection does not prevent
17 a person from providing compensation or other benefits, from a
18 source other than the estate of the ward, developmentally disabled
19 individual, incapacitated individual, or protected individual, to a
20 professional guardian or professional conservator appointed or
21 approved under this section. If a professional guardian or
22 professional conservator appointed or approved under this section
23 receives or is to receive compensation or other benefits as a
24 result of that appointment from a person other than this state, a
25 political subdivision of this state, or a trust created under
26 section 5407(2), the professional guardian or professional
27 conservator shall file with the appointing or approving court a
28 written statement of the compensation or other benefit received or
29 to be received, including the source of the compensation or other

1 benefit, in a form and in a manner prescribed by the Michigan court
 2 rules. The professional guardian or professional conservator shall
 3 serve a copy of the form described in this subsection to the ward,
 4 developmentally disabled individual, incapacitated individual, or
 5 protected individual and to interested persons.

6 ~~(5) A professional guardian appointed under this section shall~~
 7 ~~establish and maintain a schedule of visitation so that an~~
 8 ~~individual associated with the professional guardian who is~~
 9 ~~responsible for the ward's care visits the ward within 3 months~~
 10 ~~after the professional guardian's appointment and not less than~~
 11 ~~once within 3 months after each previous visit.~~

12 (5) ~~(6)~~ A professional guardian appointed under this section
 13 shall ensure that there are a sufficient number of employees
 14 assigned to the care of wards for the purpose of performing the
 15 necessary duties associated with ensuring that proper and
 16 appropriate care is provided.

17 (6) A professional guardian or professional conservator may
 18 use support staff and other professionals, under the professional
 19 guardian's or professional conservator's active and direct
 20 supervision, to perform office functions and client services.
 21 Support staff and professionals may be used to gather and provide
 22 necessary information to the professional guardian or professional
 23 conservator regarding a ward or protected individual and to make
 24 recommendations to the professional guardian or professional
 25 conservator based on their knowledge and expertise. The
 26 professional guardian or professional conservator shall not
 27 delegate decision-making authority to support staff, a ^{OK}
 28 ~~professional, or another person~~ regarding financial decisions or
 29 decisions requiring informed consent, including, but not limited

1 to, medical, mental health, placement, or care planning decisions
 2 unless the support staff, professional, or other person holds a
 3 license issued under part 5A of this article.

4 (7) For the purposes of the statutory authorization required
 5 by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL
 6 487.11105, to act as a fiduciary in this state, if the court
 7 appoints a for-profit or nonprofit, nonbanking corporation
 8 organized under the laws of this state to serve in a fiduciary
 9 capacity that is listed in subsection (1), the nonbanking
 10 corporation is authorized to act in that fiduciary capacity. The
 11 authorization under this subsection confers the fiduciary capacity
 12 only to the extent necessary in the particular matter of each
 13 appointment and is not a general grant of fiduciary authority. A
 14 nonbanking corporation is not authorized to act in any other
 15 fiduciary capacity.

16 Sec. 5106a. (1) Beginning October 1, 2025, ^{to soon} the court shall not
 17 appoint a person as a professional guardian of a legally
 18 incapacitated individual or professional conservator of a protected
 19 individual who is not a minor, or both, under this article unless
 20 the person holds a license issued under part 5A of this article.

21 (2) This section does not apply to a financial institution
 22 appointed as a professional conservator.

23 Sec. 5310. (1) On petition of the guardian and subject to the
 24 filing and approval of a report prepared as required by section
 25 5314, the court shall accept the guardian's resignation and make
 26 any other order that is appropriate.

27 (2) The ward or a person interested in the ward's welfare may
 28 petition for an order removing the guardian, appointing a successor
 29 guardian, modifying the guardianship's terms, or terminating the

1 guardianship. A request for this order may be made by informal
2 letter to the court or judge. A person who knowingly interferes
3 with the transmission of this kind of request to the court or judge
4 is subject to a finding of contempt of court. ~~A petition for an~~
5 ~~order appointing a successor guardian under this subsection is~~ X
6 ~~subject to the priority of appointment under section 5313.~~

7 (3) Except as otherwise provided in the order finding
8 incapacity **or as provided by court rule**, ~~upon~~ on receiving a
9 petition or request under this section, the court shall set a date
10 for a hearing to be held ~~within~~ **not later than** 28 days after the
11 receipt of the petition or request. ~~An order finding incapacity may~~
12 ~~specify a minimum period, not exceeding 182 days, during which a~~
13 ~~petition or request for a finding that a ward is no longer an~~
14 ~~incapacitated individual, or for an order removing the guardian,~~
15 ~~modifying the guardianship's terms, or terminating the~~
16 ~~guardianship, shall not be filed without special leave of the~~
17 ~~court.~~

X
remove
strike
through

18 (4) Before removing a guardian, appointing a successor
19 guardian, modifying the guardianship's terms, or terminating a
20 guardianship, and following the same procedures to safeguard the
21 ward's rights as apply to a petition for a guardian's appointment,
22 the court may send a visitor to the present guardian's residence
23 and to the place where the ward resides or is detained to observe
24 conditions and report in writing to the court.

25 Sec. 5313. (1) ~~The~~ **Subject to sections 5106 and 5106a and part**
26 **5A of this article, the** court may appoint a competent person as
27 guardian of a legally incapacitated individual. The court shall not
28 appoint as a guardian an agency, public or private, that
29 financially benefits from ~~directly~~ providing housing, medical,

1 mental health, **caregiving**, or social services to the legally
2 incapacitated individual. If the court determines that the ward's
3 property needs protection, the court shall order the guardian to
4 furnish a bond or shall include restrictions in the letters of
5 guardianship as necessary to protect the property.

6 (2) In appointing a guardian under this section, the court
7 shall appoint a person, if suitable **under subsection (5)** and
8 willing to serve, in the following order of priority:

9 (a) A person previously appointed, qualified, and serving in
10 good standing as guardian for the legally incapacitated individual
11 in another state.

12 (b) A person the individual subject to the petition chooses to
13 serve as guardian.

14 (c) A person nominated as guardian in a durable power of
15 attorney or other writing by the individual subject to the
16 petition.

17 (d) A person named by the individual as a patient advocate or
18 attorney in fact in a durable power of attorney.

19 (3) If there is no person chosen, nominated, or named under
20 subsection (2), or if none of the persons listed in subsection (2)
21 are suitable **under subsection (5)** or willing to serve, the court
22 may appoint as a guardian an individual who is related to the
23 individual who is the subject of the petition in the following
24 order of preference:

25 (a) The legally incapacitated individual's spouse. This
26 subdivision ~~shall~~**must** be considered to include a person nominated
27 by will or other writing signed by a deceased spouse.

28 (b) An adult child of the legally incapacitated individual.

29 (c) A parent of the legally incapacitated individual. This

1 subdivision shall ~~must~~ be considered to include a person nominated
2 by will or other writing signed by a deceased parent.

3 (d) A relative of the legally incapacitated individual with
4 whom the individual has resided for more than 6 months before the
5 filing of the petition.

6 (e) A person nominated by a person who is caring for the
7 legally incapacitated individual or paying benefits to the legally
8 incapacitated individual.

9 (4) If none of the persons as designated or listed in
10 subsection (2) or (3) are suitable **under subsection (5)** or willing
11 to serve, the court may appoint any competent person who is
12 suitable **under subsection (5)** and willing to serve, including a
13 professional guardian as provided in section 5106. **If the court**
14 **appoints a professional guardian that employs 2 or more employees**
15 **who hold a license issued under part 5A of this article, the**
16 **professional guardian shall designate a licensed employee who must**
17 **be the decision maker for the ward. The professional guardian shall**
18 **notify the ward and interested persons in writing of the name and**
19 **contact information of the designated decision maker not later than**
20 **7 days after the court appoints the professional guardian and, if**
21 **there is a permanent change in the designated decision maker, not**
22 **later than 7 days after the permanent change. The professional**
23 **guardian shall make the name and contact information of the**
24 **designated decision maker available on request to the court, the**
25 **ward's caregivers, medical and service providers, advocates, law**
26 **enforcement, and any other person who requests the name and contact**
27 **information to address a concern regarding the ward's health,**
28 **safety, or welfare.**

29 (5) The court shall appoint a person with priority guardian of

1 a legally incapacitated individual unless specific findings on the
2 record indicate that the person is not suitable ~~as set forth in~~ X

3 this subsection or is not willing to serve. A person is suitable to
4 serve on a determination of specific findings of the court,
5 including, but not limited to, all of the following factors:

6 (a) The preference of the individual subject to the
7 guardianship, including who should serve and not serve as guardian.

8 (b) The person's availability to the individual subject to the
9 guardianship.

10 (c) The person's history and relationship with the individual
11 subject to the guardianship.

12 (d) The person's criminal history that is relevant to the
13 care, custody, and control of the individual subject to the
14 guardianship.

15 (e) The person's personal history, including, but not limited
16 to, employment, training, skills, and stability, that will
17 facilitate fulfillment of duties.

18 (f) The person's ability to fulfill duties regardless of
19 interpersonal disputes between interested persons or others with an
20 interest in the welfare of the individual subject to guardianship.
21 Interpersonal disputes alone must not be the basis for finding a
22 person with priority, under subsection (2) or (3), is unsuitable
23 unless the court finds by clear and convincing evidence that no
24 other person is able to fulfill the duties.

25 (g) The person's ability to meet the requirements of section
26 5410, if applicable.

27 (h) The person's ability to advocate appropriately for the
28 best interests of the individual subject to the guardianship with
29 health care and service providers.

1 (6) In deciding between 2 persons with equal priority under
 2 subsection (2), the court shall weigh the factors in subsection (5)
 3 with specific findings on the record. The court may appoint 2
 4 persons to serve as coguardians. Unless the order of appointment
 5 and letters of guardianship otherwise state, coguardians must act
 6 jointly. However, a coguardian may delegate the coguardian's
 7 authority to the other coguardian under section 5103.

8 (7) Letters of guardianship must expire not later than 15
 9 months after the date of appointment. The expiration date must be
 10 printed on the letters of guardianship. Letters of guardianship
 11 must not be reissued to a guardian that fails to report the
 12 condition of the ward and the ward's estate that is subject to the
 13 guardian's possession or control, as required by the court, under
 14 section 5314. The probate register may reissue letters of
 15 guardianship under this subsection without a hearing.

16 Sec. 5409. (1) The court may appoint an individual, a
 17 corporation authorized to exercise fiduciary powers, or a
 18 professional conservator described in section 5106 to serve as
 19 conservator of a protected individual's estate. The following are
 20 entitled to consideration for appointment in the following order of
 21 priority:

22 (a) A conservator, guardian of property, or similar fiduciary
 23 appointed or recognized by the appropriate court of another
 24 jurisdiction in which the protected individual resides.

25 (b) ~~An individual or corporation~~ **A person** nominated by the
 26 protected individual if he or she is 14 years of age or older and
 27 of sufficient mental capacity to make an intelligent choice,
 28 including a nomination made in a durable power of attorney.

29 (c) The protected individual's spouse.

1 (d) An adult child of the protected individual.

2 (e) A parent of the protected individual or a person nominated
3 by the will of a deceased parent.

4 (f) A relative of the protected individual with whom he or she
5 has resided for more than 6 months before the petition is filed.

6 (g) A person nominated by the person who is caring for or
7 paying benefits to the protected individual.

8 (h) If none of the persons listed in subdivisions (a) to (g)
9 are suitable **under subsection (3)** and willing to serve, any person
10 that the court determines is suitable **under subsection (3)** and
11 willing to serve.

12 (2) A person named in subsection (1) (a), (c), (d), (e), or (f)
13 may designate in writing a substitute to serve instead, and that
14 designation transfers the priority to the substitute. ~~If persons
15 have equal priority, the court shall select the person the court
16 considers best qualified to serve. Acting in the protected
17 individual's best interest, the court may pass over a person having
18 priority and appoint a person having a lower priority or no
19 priority.~~

20 (3) The court shall appoint a person with priority to serve as
21 conservator of a protected individual's estate unless specific
22 findings on the record indicate the person is not suitable as set
23 forth in this subsection or is not willing to serve. A person is
24 suitable to serve on a determination of specific findings by the
25 court, including, but not limited to, all of the following factors:

26 (a) Preference of the individual subject to the
27 conservatorship, including who should serve and not serve as
28 conservator.

29 (b) Availability to the individual subject to the

1 conservatorship.

2 (c) History and relationship with the individual subject to
3 the conservatorship.

4 (d) Criminal history that is relevant to the role of a
5 conservator.

6 (e) Personal history, including, but not limited to,
7 employment, training, skills, and stability that will facilitate
8 fulfillment of duties.

9 (f) Ability to fulfill duties regardless of interpersonal
10 disputes between interested persons or others with an interest in
11 the welfare of the individual subject to conservatorship.

12 Interpersonal disputes alone must not be the basis for finding a
13 person with priority is unsuitable unless the court finds by clear
14 and convincing evidence that no person with priority can fulfill
15 the duties.

16 (g) Ability to meet the requirements of section 5410.

17 (4) In deciding between 2 persons with equal priority, the
18 court shall weigh the factors in subsection (3) with specific
19 findings on the record. The court may appoint not more than 2
20 persons to serve as coconservators. Unless the order of appointment
21 and letters of conservatorship otherwise state, coconservators must
22 act jointly.

23 (5) Letters of conservatorship must expire not later than 15
24 months after the date of appointment. The expiration date must be
25 printed on the letters of conservatorship. Letters of
26 conservatorship must not be reissued to a conservator that fails to
27 account to the court as required under section 5418. The probate
28 register may reissue letters of conservatorship under this
29 subsection without a hearing.

1 Enacting section 1. This amendatory act takes effect January
2 1, 2025.

3 Enacting section 2. This amendatory act does not take effect
4 unless all of the following bills of the 102nd Legislature are
5 enacted into law:

- 6 (a) House Bill No. 4910.
- 7 (b) House Bill No. 4911.
- 8 (c) House Bill No. 4912.
- 9 (d) House Bill No. 5047.

SUBSTITUTE FOR
HOUSE BILL NO. 4910

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5305, 5314, 5406, 5417, and 5418 (MCL 700.5305, 700.5314, 700.5406, 700.5417, and 700.5418), section 5305 as amended by 2017 PA 155, section 5314 as amended by 2018 PA 594, section 5406 as amended by 2000 PA 464, and sections 5417 and 5418 as amended by 2000 PA 312, and by adding section 5314a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5305. (1) ~~The~~ **Subject to subsection (2),** the duties of a
2 guardian ad litem appointed ~~for~~ **when** an individual **is** alleged to be
3 incapacitated include all of the following:

- 4 ~~(a) Personally visiting the individual.~~
5 ~~(b) Explaining to the individual the nature, purpose, and~~

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1 ~~legal effects of a guardian's appointment.~~

2 ~~(c) Explaining to the individual the hearing procedure and the~~
3 ~~individual's rights in the hearing procedure, including, but not~~
4 ~~limited to, all of the following:~~

5 ~~(i) The right to contest the petition.~~

6 ~~(ii) The right to request limits on the guardian's powers,~~
7 ~~including a limitation on the guardian's power to execute on behalf~~
8 ~~of the ward either of the following:~~

9 ~~(A) A do-not-resuscitate order.~~

10 ~~(B) A physician orders for scope of treatment form.~~

11 ~~(iii) The right to object to a particular person being appointed~~
12 ~~guardian.~~

13 ~~(iv) The right to be present at the hearing.~~

14 ~~(v) The right to be represented by legal counsel.~~

15 ~~(vi) The right to have legal counsel appointed for the~~
16 ~~individual if he or she is unable to afford legal counsel.~~

17 ~~(d) Informing the individual that if a guardian is appointed,~~
18 ~~the guardian may have the power to execute a do-not-resuscitate~~
19 ~~order on behalf of the individual and, if meaningful communication~~
20 ~~is possible, discern if the individual objects to having a do-not-~~
21 ~~resuscitate order executed on his or her behalf.~~

22 ~~(e) Informing the individual that if a guardian is appointed,~~
23 ~~the guardian may have the power to execute a physician orders for~~
24 ~~scope of treatment form on behalf of the individual and, if~~
25 ~~meaningful communication is possible, discern if the individual~~
26 ~~objects to having a physician orders for scope of treatment form~~
27 ~~executed on his or her behalf.~~

28 ~~(f) Informing the individual of the name of each person known~~
29 ~~to be seeking appointment as guardian.~~

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~~(g) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.~~

~~(h) Making determinations, and informing the court of those determinations, on all of the following:~~

~~(i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following as alternatives or additional actions:~~

~~(A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.~~

~~(B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the guardian ad litem shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.~~

~~(C) Execution of a patient advocate designation, do-not-resuscitate order, physician orders for scope of treatment form, or durable power of attorney with or without limitations on purpose, authority, or duration.~~

~~(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.~~

~~(iii) Whether the individual wishes to be present at the hearing.~~

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~~(iv) Whether the individual wishes to contest the petition.~~

~~(v) Whether the individual wishes limits placed on the guardian's powers.~~

~~(vi) Whether the individual objects to having a do-not-resuscitate order executed on his or her behalf.~~

~~(vii) Whether the individual objects to having a physician orders for scope of treatment form executed on his or her behalf.~~

~~(viii) Whether the individual objects to a particular person being appointed guardian.~~

~~(2) The court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).~~

~~(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, this state shall bear the expense of legal counsel.~~

~~(4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, this state shall bear the expense of legal counsel.~~

~~(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.~~

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