

**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           1 ~~(a) Personally visiting the individual.~~

5           ~~(b) Explaining to the individual the nature, purpose, and~~





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.~~





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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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


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



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 Number: 1 Author: Sandy Subject: Highlight Date: 1/24/2024 1:30:09 PM

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 Number: 2 Author: Sandy Subject: Sticky Note Date: 1/24/2024 1:30:33 PM  
Judge Rose wants this language restored and the new language eliminated



1 (a) Impartially gather information as provided by law.

2 (b) Seek information from the individual and, if communication  
3 is possible, communicate in a manner the individual is best able to  
4 understand. If communication is not possible or there is a barrier  
5 to communication, the guardian ad litem must note that in the  
6 report under subsection (3).

7 (c) Interview the individual in person at the individual's  
8 location and out of the presence of any interested person.

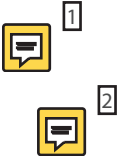
9 (d) Advise the individual that the guardian ad litem does not  
10 represent the individual as an attorney and that no attorney-client  
11 relationship has been created.

12 (e) Identify whether the individual wishes to be present at  
13 the hearing. If the allegedly incapacitated individual does not  
14 wish to be present at the hearing, the guardian ad litem shall  
15 identify the reasons why the individual does not wish to be  
16 present.

17 (f) Identify any barrier to attending hearings at the place  
18 where court is held or otherwise fully participating in the  
19 hearing, including the need for assistive technology,  
20 transportation, or other support. If the allegedly incapacitated  
21 individual wishes to attend, the guardian ad litem must identify  
22 whether the individual has identified a plan for how the individual  
23 will attend.

24 (g) Identify whether the individual plans to retain legal  
25 counsel or wants appointed legal counsel. If the allegedly  
26 incapacitated individual does not plan to retain legal counsel or  
27 request appointed legal counsel, the guardian ad litem must make a  
28 recommendation as to whether legal counsel should be appointed.

29 (h) Identify whether a disagreement or dispute related to the



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:07:35 AM  
Judge Rose suggests removal of (c).

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Number: 2 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:06:31 AM  
The committee expressed concerns over the increased responsibilities being placed upon GAL's without providing a source of funding. This is an issue in both indigent and funded estates, as individual's resent the cost related to such appointment when there is no contest involved and the difficulty finding qualified persons to perform this function on fixed limited compensation scales when public funds are required for payment.

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Number: 3 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:09:22 AM  
should add: and that statements that they make are not privileged and may be communicated to the court or others.

1 petition might be resolved through court-ordered mediation.

2 (2) The duties of a guardian ad litem appointed when an  
3 individual is alleged to be incapacitated or a legally  
4 incapacitated individual include all of the following, as  
5 applicable:

6 (a) Explain to the individual the nature, purpose, and legal  
7 effects of a guardian's appointment.

8 (b) Explain who has filed the petition and who, if anyone, has  
9 been nominated as guardian.

10 (c) Explain to the individual the hearing procedure and the  
11 individual's rights in the hearing procedure, as identified in  
12 section 5306a, including, but not limited to, the following:

13 (i) The right to contest the petition, in whole or in part.

14 (ii) The right to request limits on the guardian's powers.

15 (iii) The right to be present at the hearing. If the individual  
16 is unable to attend the hearing at the location court proceedings  
17 typically are held, the guardian ad litem shall inform the  
18 individual of his or her right for the hearing at another location.

19 (iv) The right to request a reasonable accommodation to allow  
20 the individual to participate as fully as possible at the hearing,  
21 including with assistive technology or other support.


22 (v) The right to be represented by legal counsel of the  
23 individual's choice. If the individual is unable to secure legal  
24 counsel of his or her choice, the right to have legal counsel  
25 appointed by the court.

26 (vi) The right to request an independent medical evaluation.

27 (d) Explain to the individual that if a guardian is appointed,  
28 the guardian may have the power to take certain actions on behalf  
29 of the individual. A guardian ad litem must inform the individual



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 Number: 1      Author: Sandy      Subject: Sticky Note      Date: 1/26/2024 3:19:25 PM  
or through the use of video conferencing technology.

1 that a guardian may have any of the following powers and, if  
 2 meaningful communication is possible, discern if the individual  
 3 objects to a guardian having any of the following powers:


4 (i) Executing a do-not-resuscitate order.

5 (ii) Executing a physician orders for scope of treatment form.

6 (iii) Consenting to any medical treatment.

7 (iv) Consenting to placement decisions, including moving the  
 8 individual to a nursing facility or adult foster care home.

9 (v) Choosing whether the individual can marry or divorce.

10 (vi) Handling any financial and property matters, including the  
 11 sale or disposal of personal property and the maintenance of real  
 12 property.  <sup>1</sup>

13 (e) Identify whether the individual objects to the particular  
 14 person proposed as guardian, if any.

15 (f) If a guardian were to be appointed, identify a list of  
 16 whom the individual would want to serve, in order of preference.

17 (g) If a guardian were to be appointed, identify whom the  
 18 individual would not want to serve.

19 (3) Subject to subsections (4) and (5), a guardian ad litem  
 20 appointed for an individual alleged to be incapacitated or a  
 21 legally incapacitated individual shall file a written report with  
 22 the court and in the form required by the state court  
 23 administrative office.

24 (4) If an individual who is subject to an initial petition  
 25 under this part, petition to terminate under this part, or petition  
 26 to modify under this part contests the petition, the guardian ad  
 27 litem's written report required under subsection (3) must include  
 28 only the following:

29 (a) That the individual contests the petition.



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:13:52 AM  
(vi) The grant of a guardianship may impact the individual's ability to vote.

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Number: 2 Author: Sandy Subject: Sticky Note Date: 1/24/2024 1:35:07 PM  
Judge Rose indicates that there is no reason to limit this section, but I think the idea is that if the person is contesting and represented by retained or appointed counsel, that is when the report should be limited, unless a report is requested as a result of appointment of special GAL.

1 (b) Whether the individual has retained legal counsel or  
2 wishes for legal counsel to be appointed.

3 (c) Whether the individual has any barriers to attending court  
4 at the place where it is usually held.

5 (d) If a guardian were appointed, who the individual would  
6 want to serve in order of preference.

7 (e) If a guardian were appointed, who the individual would not  
8 want to serve.

9 (f) Any other information the guardian ad litem determines  
10 would be helpful to the court in ruling on the petition.

11 (5) If an individual who is subject to an initial petition  
12 under this part, petition to terminate under this part, or petition  
13 to modify under this part does not contest the petition, the  
14 guardian ad litem's report required under subsection (3) must  
15 include only the following:

16 (a) The date and time the guardian ad litem met with the  
17 individual.

18 (b) The length of time the guardian ad litem met with the  
19 individual.


20 (c) The location where the guardian ad litem met with the  
21 individual.

22 (d) Whether the guardian ad litem was able to meaningfully  
23 communicate with the individual and any barriers to communication.

24 (e) Who, if anyone, was present for the interview besides the  
25 individual.

26 (f) Whether the individual wishes to be present at the  
27 hearing. If the individual wishes to be present at the hearing but  
28 has a barrier to fully participating, the guardian ad litem must  
29 include in the written report whether the barrier can be resolved



1 by moving the location of the hearing or using assistive  
 2 technology, or both, or other support. 

3 (g) Whether the individual has identified a plan for how the  
 4 individual will attend.

5 (h) Whether the individual plans to retain legal counsel or  
 6 has requested appointed legal counsel. If the individual has not  
 7 indicated he or she wishes to be represented by legal counsel, the  
 8 guardian ad litem shall include in the written report a  
 9 recommendation as to whether legal counsel should be appointed to  
 10 represent the individual.

11 (i)  <sup>2</sup> Whether the individual has any of the following:

12 (i) A power of attorney with or without limitations on purpose,  
 13 authority, or time period.

14 (ii) A patient advocate designation.

15 (iii) A physician orders for scope of treatment form.

16 (iv) A benefits payee, trustee, or other fiduciary.

17 (j) Whether a disagreement or dispute related to the petition  
 18 might be resolved through court-ordered mediation.

19 (k) Whether the appointment of a visitor with appropriate  
 20 knowledge, training, and education such as a social worker, mental  
 21 health professional, or medical professional could provide the  
 22 court with the information on whether alternatives to guardianship  
 23 or a limited guardianship is appropriate.

24 (l) If a guardian were appointed, who the individual would want  
 25 to serve in order of preference.


26 (m) If a guardian were appointed, who the individual would not  
 27 want to serve.  <sup>3</sup>

28 ~~(n)~~ <sup>4</sup> An estimate of the liquid assets as that term is defined  
 29 in section 5314, income, real property, and a description of







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 Number: 1 Author: Sandy Subject: Sticky Note Date: 1/26/2024 3:41:01 PM  
or use of video conferencing technology,

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 Number: 2 Author: Sandy Subject: Sticky Note Date: 1/24/2024 9:59:59 AM  
To the extent known or alleged,

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 Number: 3 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:20:27 AM  
(n) If a guardian were appointed, any restrictions in the fiduciary powers delegated to the guardian the individual desires.

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 Number: 4 Author: Sandy Subject: Inserted Text Date: 1/24/2024 10:02:27 AM  
(o)

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1 personal property to the extent known after reasonable inquiry.

2 ~~(e)~~ Any other information the guardian ad litem determines  
3 would be helpful to the court in ruling on the petition.

4 (6) If a guardian ad litem is appointed for any purpose other  
5 than an initial petition under this part, petition to terminate  
6 under this part, or petition to modify under this part, the  
7 guardian ad litem must provide a written report to the court that  
8 includes, at a minimum, the information described in subsection (4)  
9 or (5), as applicable, and any other information required by law. A  
10 special limited guardian ad litem appointed under subsection (13)  
11 is not required to provide a written report unless ordered to do so  
12 by the court under subsection (13).

13 (7) A guardian ad litem shall file the report required under  
14 subsection (3) with the court and serve it on all interested  
15 persons at least 5 days before the date of the hearing. The court  
16 may order the report to be filed and served less than 5 days before  
17 the hearing only if the petition is made on an emergency basis  
18 under section 5312.

19 (8) The court may receive into evidence without testimony the  
20 written report of the guardian ad litem required under subsection  
21 (3) if the report is filed with the court and served on all  
22 interested persons not less than 5 days before the hearing. The  
23 guardian ad litem is required to report findings until the date of  
24 the termination of the guardian ad litem. The court may issue on  
25 its own initiative, or any interested person may secure, a subpoena  
26 to compel the preparer of the report to testify. On request of any  
27 interested person, the court shall issue a subpoena to compel the  
28 preparer of the report to testify.


29 (9) The court shall not order compensation of the guardian ad



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 Number: 1 Author: Sandy Subject: Inserted Text Date: 1/24/2024 10:03:36 AM  
(p)

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 Number: 2 Author: Sandy Subject: Sticky Note Date: 1/24/2024 10:08:24 AM  
If the petition is uncontested or the ward is not represented by counsel,

1 litem unless the guardian ad litem states in the guardian ad  
 2 litem's written report that the guardian ad litem complied with  
 3 subsections (2) to (7), as applicable.

4 (10) The court shall not appoint a person that was previously  
 5 appointed as guardian ad litem as legal counsel for the individual  
 6 if the guardian ad litem's report under subsection (3) or  
 7 recommendation to the court conflicts with the wishes of the  
 8 individual.

9 (11) If an individual who is subject to a petition under this  
 10 part has not already secured legal counsel, the court shall appoint  
 11 legal counsel if any of the following apply:

12 (a) The individual requests legal counsel.

13 (b) The individual objects to any part of the petition for  
 14 guardianship or potential authority of a guardian.

15 (c) The guardian ad litem determines it is in the individual's  
 16 best interest to have legal counsel if legal counsel has not been  
 17 secured. If the individual who is subject to the petition is  
 18 indigent, this state shall bear the expense of appointed legal  
 19 counsel under this subsection.

20 (12) If a <sup>1</sup> individual who is subject to a petition under this  
 21 part has legal <sup>2</sup> counsel appointed or retained, the appointment of a  
 22 guardian ad litem terminates. The report of the guardian ad litem  
 23 must not be admitted into evidence after the appearance or  
 24 appointment of legal <sup>2</sup> counsel for the individual who is subject to  
 25 the petition. <sup>2</sup>

26 (13) After appointment or retention of legal counsel for the  
 27 individual who is subject to the petition under this part, the  
 28 court may, for good cause shown, appoint a special limited guardian  
 29 ad litem to provide information on a narrowly defined issue that



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:30:31 AM  
12(a)


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Number: 2 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:35:32 AM

12(b) If a report of a guardian ad litem has been admitted into evidence in a prior hearing, once counsel for the individual appears or is appointed for the individual, the court shall not consider any previously admitted report as evidence thereafter.

Alternatively, consider adding " If a report of a guardian ad litem has been admitted into evidence in a prior hearing, and an attorney appears for or is appointed for an individual who is subject to the petition, the court shall not consider any previously admitted report as evidence thereafter.

1 will likely otherwise be inadequately addressed. A special guardian  
 2 ad litem is exempt from subsections (2) to (6). The court may order  
 3 that a special limited guardian ad litem appointed under this  
 4 subsection provide a written report. The report under this  
 5 subsection must contain the information the court considers  
 6 necessary to adequately address the issue leading to the  
 7 appointment of the special limited guardian ad litem. A special  
 8 limited guardian ad litem shall not communicate directly with the  
 9 individual who is subject to the petition and must instead  
 10 communicate through legal counsel to the individual who is subject  
 11 to the petition, unless legal counsel otherwise gives consent.  1

12 (14) An individual alleged to be incapacitated has the right  
 13 to retain legal counsel of his or her choice at any stage,  
 14 regardless of findings regarding his or her capacity. Retained  2  
 15 legal counsel shall file a substitution of legal counsel or a  
 16 motion to substitute if legal counsel has already been appointed.  
 17 Retained legal counsel is entitled to reasonable attorney fees.

18 Sec. 5314. (1) If meaningful communication is possible, a  
 19 legally incapacitated individual's guardian shall consult with the  
 20 legally incapacitated individual before making a major decision  
 21 affecting the legally incapacitated individual. To the extent a  
 22 guardian of a legally incapacitated individual is granted powers by  
 23 the court under section 5306, the guardian is responsible for the  
 24 ward's care, custody, and control, but is not liable to third  
 25 persons because of that responsibility for the ward's acts. In  
 26 particular and without qualifying the previous sentences, a  
 27 guardian has all of the following powers and duties, to the extent  
 28 granted by court order:

29 (a) ~~The Subject to section 5314a, the~~ custody of the person of



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:45:17 AM  
(14) The report of a special guardian ad litem shall not be admitted into evidence if the individual has counsel or has requested the appointment of counsel.

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Number: 2 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:44:43 AM  
(14) becomes (15)










1 the ward and the power to establish the ward's place of residence  
 2 in or outside this state. ~~The guardian shall visit the ward within~~  
 3 ~~3 months after the guardian's appointment and not less than once~~  
 4 ~~within 3 months after each previous visit. The~~ **Subject to section**  
 5 **5314a, the** guardian shall notify the court ~~within~~ **not later than** 14  
 6 days ~~of~~ **after** a change in the ward's place of residence or a change  
 7 in the guardian's place of residence. **All of the following apply to**  
 8 **the duty of the guardian to visit the ward:**

9 (i) The guardian shall visit the ward in person not later than  
 10 1 month after the guardian's appointment and <sup>1</sup>not less than <sup>2</sup>once  
 11 within 3 months after each in-person visit. <sup>3</sup>The guardian <sup>4</sup>all <sup>5</sup>also  
 12 ~~visit the ward using~~ both audio and video technology, or if that  
 13 technology is not available, only audio means, each month in which  
 14 an in-person visit does not occur. If the ward is unable to  
 15 communicate using audio and visual or <sup>6</sup>audio-only means, the  
 16 guardian shall communicate with the <sup>7</sup>ward's caregivers or any other  
 17 party who is familiar with the ward's circumstances and can apprise  
 18 the guardian of the ward's needs and progress. ~~If the guardian~~  
 19 ~~determines that audio and visual visits or audio-only visits are~~  
 20 ~~not possible or that the ward is unable to communicate through~~  
 21 ~~audiovisual means, the records the guardian must maintain must also~~  
 22 ~~identify the circumstances that required the guardian to rely on an~~  
 23 ~~audio-only visit or that required the guardian to consult with~~  
 24 ~~caregivers or others instead of communicating directly with the~~  
 25 ~~ward.~~ The guardian shall maintain records relating to the date,  
 26 time, duration, and significant information for each <sup>8</sup>required  
 27 visit. The guardian shall make the records available <sup>9</sup>for the  
 28 court's review and for review of interested persons. <sup>10</sup>

29 ~~(ii) If the guardian is a limited guardian, the visitation~~






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-  Number: 1 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:49:39 AM  
and with such additional frequency as may be required to keep the guardian reasonably informed of any changes in the ward's needs.
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-  Number: 2 Author: Sandy Subject: Sticky Note Date: 1/25/2024 11:51:29 AM  
such additional visits may be conducted through the use of both ...
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-  Number: 3 Author: Sandy Subject: Cross-Out Date: 1/25/2024 11:51:35 AM
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-  Number: 4 Author: Sandy Subject: Cross-Out Date: 1/25/2024 11:51:39 AM
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-  Number: 5 Author: Sandy Subject: Sticky Note Date: 1/24/2024 10:11:39 AM  
ward, the
- 
-  Number: 6 Author: Sandy Subject: Cross-Out Date: 1/24/2024 10:13:34 AM
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-  Number: 7 Author: Sandy Subject: Cross-Out Date: 1/24/2024 10:13:48 AM
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-  Number: 8 Author: Sandy Subject: Sticky Note Date: 1/24/2024 10:14:39 AM  
on reasonable request.
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-  Number: 9 Author: Sandy Subject: Cross-Out Date: 1/24/2024 10:15:28 AM
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~~1 duties described in subparagraph (i) apply. However, the limited  
 2 guardian may seek approval from the court to conduct audiovisual or  
 3 audio-only visits less often than monthly in the months in which  
 4 the limited guardian is not visiting in person. The court may grant  
 5 the request if the court finds on the record that monthly  
 6 audiovisual or audio-only visits in the months in which an in-  
 7 person visit is not occurring are not necessary for the  
 8 individual's well-being and best interests and identifies on the  
 9 record the individual's circumstances that led to that finding.~~

10 (iii) ~~2~~ If the guardian is not a professional guardian, the  
 11 guardian may delegate the required in-person visits under  
 12 subparagraph (i) to another person. The guardian shall communicate  
 13 with the person who conducted the in-person visit and maintain  
 14 records regarding the information shared by the person who  
 15 conducted the visit.

16 (iv) If the guardian is a professional guardian ~~3~~ and the  
 17 professional guardian employs 2 or more employees who hold a  
 18 license issued under part 5A of this article, the designated  
 19 decision maker under section 5313(4) shall not delegate the  
 20 required in-person visits under subparagraph (i) to another person.  
 21 The designated decision maker may delegate the required audio-  
 22 visual or audio-only visits under subparagraph (i) to another  
 23 licensed employee only if the designated decision maker is  
 24 unavailable to conduct the audio visual or audio-only visits. If  
 25 the designated decision maker delegates a visit requirement to  
 26 another licensed employee as allowed under this subparagraph, the  
 27 ~~4~~ licensed employee who conducts the visit must prepare and submit a  
 28 written report consistent with the requirements under subparagraph  
 29 (i) to the ~~6~~ designated  ~~5~~ decision maker.





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 Number: 1	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 10:15:34 AM
 Number: 2	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 10:16:20 AM
 Number: 3	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 10:17:18 AM
 Number: 4	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 10:17:33 AM
 Number: 5 principal	Author: Sandy	Subject: Sticky Note	Date: 1/25/2024 11:56:26 AM
 Number: 6	Author: Sandy	Subject: Cross-Out	Date: 1/25/2024 11:56:03 AM

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~~1 (v) If the guardian is an individual professional guardian,  
2 the professional guardian shall not delegate the required in-person  
3 visits under subparagraph (i) to another person.~~

4 (b) If entitled to custody of the ward, the duty to make  
5 provision for the ward's care, comfort, and maintenance and, when  
6 appropriate, arrange for the ward's training and education. The  
7 guardian shall secure services to restore the ward to the best  
8 possible state of mental and physical well-being so that the ward  
9 can return to self-management at the earliest possible time.  The  
10 guardian shall make a reasonable effort to identify a reasonable  
11 number of items of personal or sentimental value, including, but   
12 not limited to, family heirlooms, photo albums, and collections.


~~13 4 Not later than 56 days after appointment, the guardian shall serve  
14 on all interested persons a list of the identified items. The list  
15 must be signed by the guardian and include an attestation that  
16 states, "I represent this list is true and correct to the best of  
17 my knowledge, information, and belief at the time of signing. I  
18 understand that I must handle this property, like all of the ward's  
19 property for which I am responsible, consistent with my fiduciary  
20 duties. This may include sale, disposal, or other actions to meet  
21 my fiduciary duties. I am not responsible for storing any items at  
22 my own expense." Without regard to custodial rights of the ward's  
23 person, the guardian shall take reasonable care of the ward's  
24 clothing, furniture, vehicles, and other personal effects and  
25 commence a protective proceeding if the ward's other property needs  
26 protection. If a guardian commences a protective proceeding because  
27 the guardian believes that it is in the ward's best interest to  
28 sell or otherwise dispose of the ward's real property or interest  
29 in real property, the court may appoint the guardian as special~~




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 Number: 1 Author: Sandy Subject: Cross-Out Date: 1/24/2024 10:17:51 AM

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 Number: 2 Author: Sandy Subject: Sticky Note Date: 1/24/2024 10:20:30 AM  
If a change in the ward's residence is required,

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 Number: 3 Author: Sandy Subject: Sticky Note Date: 1/25/2024 12:04:12 PM  
to be retained by the ward. Before moving the ward, if items of personal or sentimental value will not be retained in the ward's possession following the proposed move, the guardian shall provide written notice to the ward's known heirs at law and persons to whom items may be delegated under the ward's known estate plan which describes in sufficient detail the items of personal property that the guardian intends to dispose of. Should any objection to disposition be made, the guardian shall engage in best efforts to preserve items for which an objection has been expressed pending a hearing with regard to the disposition of the same. The guardian shall not be personally responsible for storing any items at the guardian's own expense.

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 Number: 4 Author: Sandy Subject: Cross-Out Date: 1/24/2024 10:28:13 AM

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1 conservator and authorize the special conservator to proceed under  
 2 section 5423(3). A guardian shall not otherwise sell the ward's  
 3 real property or interest in real property.

4 (c) The power to give the consent or approval that is  
 5 necessary to enable the ward to receive medical, mental health, or  
 6 other professional care, counsel, treatment, or service. However, a  
 7 guardian does not have and shall not exercise the power to give the  
 8 consent to or approval for inpatient hospitalization unless the  
 9 court expressly grants the power in its order. If the ward objects  
 10 or actively refuses mental health treatment, the guardian or any  
 11 other interested person must follow the procedures provided in  
 12 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to  
 13 330.1490, to petition the court for an order to provide involuntary  
 14 mental health treatment. The power of a guardian to execute a do-  
 15 not-resuscitate order under subdivision (d), execute a nonopioid  
 16 directive form under subdivision (f), or execute a physician orders  
 17 for scope of treatment form under subdivision (g) does not affect  
 18 or limit the power of a guardian to consent to a physician's order  
 19 to withhold resuscitative measures in a hospital. As used in this  
 20 subdivision, "involuntary mental health treatment" means that term  
 21 as defined in section 400 of the mental health code, 1974 PA 258,  
 22 MCL 330.1400.

23 (d) The power to execute, reaffirm, and revoke a do-not-  
 24 resuscitate order on behalf of a ward. However, a guardian shall  
 25 not execute a do-not-resuscitate order unless the guardian does all  
 26 of the following:

27 (i) Not more than 14 days before executing the do-not-  
 28 resuscitate order, visits the ward and, if meaningful communication  
 29 is possible, consults with the ward about executing the do-not-



1 resuscitate order.

2 (ii) Consults directly with the ward's attending physician as  
3 to the specific medical indications that warrant the do-not-  
4 resuscitate order.

5 (e) If a guardian executes a do-not-resuscitate order under  
6 subdivision (d), not less than annually after the do-not-  
7 resuscitate order is first executed, the duty to do all of the  
8 following:

9 (i) Visit the ward and, if meaningful communication is  
10 possible, consult with the ward about reaffirming the do-not-  
11 resuscitate order.

12 (ii) Consult directly with the ward's attending physician as to  
13 specific medical indications that may warrant reaffirming the do-  
14 not-resuscitate order.

15 (f) The power to execute, reaffirm, and revoke a nonopioid  
16 directive form on behalf of a ward.

17 (g) The power to execute, reaffirm, and revoke a physician  
18 orders for scope of treatment form on behalf of a ward. However, a  
19 guardian shall not execute a physician orders for scope of  
20 treatment form unless the guardian does all of the following:

21 (i) Not more than 14 days before executing the physician orders  
22 for scope of treatment form, visits the ward and, if meaningful  
23 communication is possible, consults with the ward about executing  
24 the physician orders for scope of treatment form.

25 (ii) Consults directly with the ward's attending physician as  
26 to the specific medical indications that warrant the physician  
27 orders for scope of treatment form.

28 (h) If a guardian executes a physician orders for scope of  
29 treatment form under subdivision ~~(f)~~, **(g)**, not less than annually



1 after the physician orders for scope of treatment is first  
2 executed, the duty to do all of the following:

3 (i) Visit the ward and, if meaningful communication is  
4 possible, consult with the ward about reaffirming the physician  
5 orders for scope of treatment form.

6 (ii) Consult directly with the ward's attending physician as to  
7 specific medical indications that may warrant reaffirming the  
8 physician orders for scope of treatment form.

9 (i) If a conservator for the ward's estate is not appointed,  
10 ~~the power to do any~~ **all** of the following:

11 (i) ~~Institute~~ **The power to institute** a proceeding to compel a  
12 person under a duty to support the ward or to pay money for the  
13 ward's welfare to perform that duty.

14 (ii) ~~Receive~~ **The power to receive** money and tangible property  
15 deliverable to the ward and apply the money and property for the  
16 ward's support, care, and education. The guardian shall not use  
17 money from the ward's estate for room and board that the guardian  
18 or the guardian's spouse, parent, or child have furnished the ward  
19 unless a charge for the service is approved by court order made on  
20 notice to at least 1 of the ward's next of kin, if notice is  
21 possible. The guardian shall exercise care to conserve any excess  
22 for the ward's needs.

23 **(iii) The duty to allow interested persons to review proofs of**  
24 **income and disbursements at a time reasonably convenient to the**  
25 **guardian and interested persons.**

26 (j) The duty to report the condition of the ward and the  
27 ward's estate that is subject to the guardian's possession or  
28 control, as required by the court, but not less often than  
29 annually. The guardian shall also serve the report required under







1 this subdivision on the ward and interested persons as specified in  
 2 the Michigan court rules. A report under this subdivision must  
 3 contain all of the following:

4 (i) The ward's current mental, physical, and social condition.

5 (ii) Improvement or deterioration in the ward's mental,  
 6 physical, and social condition that occurred during the past year.

7 (iii) The ward's present living arrangement and changes in his  
 8 or her living arrangement that occurred during the past year.

9 (iv) Whether the guardian recommends a more suitable living  
 10 arrangement for the ward.

11 (v) Medical treatment, including mental health treatment,  
 12 received by the ward.

13 (vi) Whether the guardian has executed, reaffirmed, or revoked  
 14 a do-not-resuscitate order on behalf of the ward during the past  
 15 year.

16 (vii) Whether the guardian has executed, reaffirmed, or revoked  
 17 a nonopioid directive form on behalf of the ward during the past  
 18 year.

19 (viii) Whether the guardian has executed, reaffirmed, or revoked  
 20 a physician orders for scope of treatment form on behalf of the  
 21 ward during the past year.

22 (ix) Services received by the ward.

23 (x) A list of the guardian's visits with, and activities on  
 24 behalf of, the ward.

25 (xi) A recommendation as to the need for continued  
 26 guardianship.

27 (k) If a conservator is appointed, the duty to pay to the  
 28 conservator, for management as provided in this act, the amount of  
 29 the ward's estate received by the guardian in excess of the amount



1 the guardian expends for the ward's current support, care, and  
 2 education. The guardian shall account to the conservator for the  
 3 amount expended.

4 (2) If a conservator has not been appointed for the ward, and  
 5 if the ward's qualified estate is greater than 400% of the federal  
 6 poverty level, the guardian must file a petition for  
 7 conservatorship under part 4. This subsection does not prevent the  
 8 appointment of a conservator for the ward if the ward's qualified  
 9 estate is less than 400% of the federal poverty level. As used in  
 10 this subsection:

11 (a) "Federal poverty level" means the poverty guidelines  
 12 published annually in the federal register by the United States  
 13 Department of Health and Human Services under its authority to  
 14 revise the poverty line under 42 USC 9902.

15 (b) "Liquid assets" means assets that can easily be converted  
 16 into cash in a short amount of time. Liquid assets includes, but is  
 17 not limited to, cash, checking and savings accounts, money market  
 18 instruments, certificates of deposit, mutual funds held in a  
 19 taxable account, marketable securities, bonds, and the monetary  
 20 value of life or other insurance. A retirement account is  
 21 considered a liquid asset once the individual's circumstances allow  
 22 him or her to withdraw cash without facing any Internal Revenue  
 23 Service early withdrawal penalties.

24 (c) "Ward's qualified estate" means, except as otherwise  
 25 provided in subdivision (d), the ward's liquid assets or income, or  
 26 both, reported by the guardian ad litem under section 5305 or later  
 27 discovered by the guardian.

28 (d) Ward's qualified estate does not include liquid assets or  
 29 income that is subject to some oversight such as a representative



1 payee, durable power of attorney, joint ownership, trust, or other  
2 protection.

3       Sec. 5314a. (1) The guardian shall maintain a legally  
4 incapacitated individual in the legally incapacitated individual's  
5 permanent residence if possible and consistent with the well-being  
6 and preferences of the legally incapacitated individual. If a  
7 legally incapacitated individual is removed from his or her  
8 permanent residence temporarily for any reason, the guardian must  
9 make all reasonable efforts to return the legally incapacitated  
10 individual to his or her permanent residence at the earliest  
11 opportunity consistent with the legally incapacitated individual's  
12 wishes. Temporary removal of the legally incapacitated individual  
13 from his or her permanent residence for the purpose of receiving  
14 health care or supervision, for engaging in family or social  
15 activities, or for other reasons including the well-being or  
16 convenience of the legally incapacitated individual does not  
17 relieve the guardian of the obligations set forth in this section  
18 regarding permanent removal from the permanent residence. A  
19 guardian shall not primarily consider the guardian's own  
20 convenience or benefit when making a decision to remove the legally  
21 incapacitated individual from the legally incapacitated  
22 individual's permanent residence or selecting a new residence for  
23 the legally incapacitated individual.

24       (2) A guardian shall explore reasonably available and  
25 affordable supports and services that could enable the legally  
26 incapacitated individual to remain in his or her permanent  
27 residence.

28       (3) If a guardian proposes to move the legally incapacitated  
29 individual from his or her permanent residence, the guardian must



1 attempt to consult with the legally incapacitated individual and  
 2 honor the legally incapacitated individual's preference to the  
 3 greatest extent possible.

4 (4) In exercising the guardian's power to establish the  
 5 legally incapacitated individual's place of residence, the guardian  
 6 shall do both of the following:


7 (a) Select a residential setting the guardian believes the  
 8 legally incapacitated individual would select if the legally  
 9 incapacitated individual were able. If the guardian does not know  
 10 and cannot reasonably determine what setting the legally  
 11 incapacitated individual would likely select, or the guardian  
 12 reasonably believes the decision the legally incapacitated  
 13 individual would make would unreasonably harm or endanger the  
 14 welfare or personal or financial interests of the legally  
 15 incapacitated individual, the guardian must choose a residential  
 16 setting that is consistent with the legally incapacitated  
 17 individual's best interest.

18 (b) Give priority to a residential setting in a location that  
 19 will allow the legally incapacitated individual to interact with  
 20 persons and participate in activities important to the legally  
 21 incapacitated individual and meet the legally incapacitated  
 22 individual's needs in the least restrictive manner reasonably  
 23 feasible.


24 (5) If a guardian that is not a professional guardian removes  
 25 a legally incapacitated individual from the legally incapacitated  
 26 individual's permanent residence to another location in this state,  
 27 the guardian must notify the court in writing not later than 14  
 28 days after the removal. The notification required under this  
 29 subsection must include the address of the new permanent residence.



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 Number: 1 Author: Sandy Subject: Sticky Note Date: 1/25/2024 12:12:12 PM  
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 Number: 2 Author: Sandy Subject: Sticky Note Date: 1/24/2024 11:29:52 AM  
and all interested persons






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1 (6) A guardian shall not move the legally incapacitated  
 2 individual out of state without order of the court. If the guardian  
 3 petitions to move the legally incapacitated individual out of  
 4 state, a guardian ad litem must be appointed and the court shall  
 5 schedule a hearing ~~regardless of whether the individual files~~  
 6 ~~objections or expresses dissatisfaction with the proposed move.~~<sup>1</sup> If  
 7 the legally incapacitated individual files objections or expresses  
 8 dissatisfaction with the proposed move, the court must appoint  
 9 legal counsel if the legally incapacitated individual is not  
 10 already ~~rep~~<sup>2</sup>resented by legal counsel.

11 (7) ~~Subject to subsections (9) and (10), and except as~~  
 12 otherwise provided in subsection (14), a ~~3~~<sup>3</sup>professional guardian  
 13 shall not permanently remove a legally incapacitated individual  
 14 from the legally incapacitated individual's permanent residence  
 15 unless, subject to subsection (8), the ~~4~~<sup>4</sup>professional guardian files  
 16 a petition under this subsection and the court grants the petition  
 17 under subsection (13). ~~5~~<sup>5</sup> ~~petition under this subsection must be~~  
 18 ~~separate from the petition for a finding of incapacity and~~  
 19 ~~appointment of guardian under section 5303.~~ A petition under this  
 20 subsection must include all of the following information:

- 21 (a) The individual's current permanent residence.  
 22 (b) The proposed new residence.  
 23 (c) The reason for the proposed move.  
 24 (d) Whether the move is to a more or less restrictive setting.  
 25 (e) The efforts made or resources explored to enable the  
 26 individual to remain in his or her current permanent residence.  
 27 (f) Whether the guardian has engaged in meaningful  
 28 communication with the individual about the proposed move.  
 29 (g) Whether the individual objects to or supports the proposed



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-  Number: 1 Author: Sandy Subject: Inserted Text Date: 1/25/2024 12:15:48 PM  
if an interested party files objections or the legally incapacitated individual expresses dissatisfaction with the proposed move.
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-  Number: 2 Author: Sandy Subject: Sticky Note Date: 1/25/2024 12:17:17 PM  
If the legally incapacitated individual or an interested party objects to the legally incapacitated individual being moved,
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-  Number: 3 Author: Sandy Subject: Cross-Out Date: 1/24/2024 11:35:49 AM
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-  Number: 4 Author: Sandy Subject: Cross-Out Date: 1/24/2024 11:36:02 AM
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-  Number: 5 Author: Sandy Subject: Cross-Out Date: 1/24/2024 11:34:53 AM
-



1 move.

2 (8) <sup>1</sup>~~If the person petitioning for guardianship under section~~  
3 ~~5303 proposes or anticipates~~ <sup>2</sup>~~that a professional guardian will be~~  
4 ~~appointed under section 5306, the petitioner or any interested~~  
5 ~~person that believes that it is necessary for the well-being of the~~  
6 ~~alleged incapacitated individual to move the individual permanently~~  
7 ~~from his or her permanent residence may file a petition under~~  
8 ~~subsection (7) seeking authority for a professional guardian, if~~  
9 ~~appointed under section 5306, to permanently remove the alleged~~  
10 ~~incapacitated individual from his or her permanent residence.~~

11 (9) If a <sup>3</sup>~~professional~~ guardian determines that to protect the  
12 health, safety, or welfare of the legally incapacitated individual,  
13 it is necessary to move the legally incapacitated individual from  
14 his or her permanent residence to a another residence the  
15 <sup>4</sup>~~professional~~ guardian intends to be permanent before obtaining  
16 court approval under subsection (13), the <sup>5</sup>~~professional~~ guardian may  
17 move the legally incapacitated individual. Not later than 14 days  
18 after moving the legally incapacitated individual as allowed under  
19 this subsection, the <sup>6</sup>~~professional~~ guardian must file a petition  
20 under subsection <sup>7</sup>~~(7)~~. The petition must include the circumstances  
21 that the <sup>8</sup>~~professional~~ guardian determined were necessary to move  
22 the legally incapacitated individual before filing a petition under  
23 subsection (7).

24 (10) If, after a temporary stay in a health care facility or  
25 at a residence the <sup>9</sup>~~professional~~ guardian initially intended to be  
26 temporary, the <sup>10</sup>~~professional~~ guardian determines that it is  
27 necessary to change to the permanent residence of the legally  
28 incapacitated individual <sup>11</sup>~~the~~ <sup>12</sup>~~professional~~ guardian must, not later  
29 than 14 days after making the determination, file a petition under



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	Number: 1	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:37:34 AM
	Number: 2	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:37:08 AM
	Number: 3	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:37:49 AM
	Number: 4	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:38:04 AM
	Number: 5	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:38:16 AM
	Number: 6	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:38:31 AM
	Number: 7	Author: Sandy	Subject: Sticky Note	Date: 1/25/2024 12:19:41 PM to which the legally incapacitated individual or an interested person objects
	Number: 8	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:38:41 AM
	Number: 9	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:38:58 AM
	Number: 10	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:39:05 AM
	Number: 11	Author: Sandy	Subject: Sticky Note	Date: 1/25/2024 12:19:48 PM and the legally incapacitated individual or an interested party objects,
	Number: 12	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:41:13 AM

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1 subsection (7). The petition must include the circumstances  
 2 underlying the ~~professional~~ guardian's determination.

3 (11) If a petition for removal from the permanent residence  
 4 has been filed under subsection (7), the court shall promptly  
 5 appoint a guardian ad litem and hold the hearing not later than 28  
 6 days after the petition is filed. The guardian ad litem must, in  
 7 addition to the other duties set forth in section 5305, do all of  
 8 the following:

9 (a) Advise the individual that a petition has been filed to  
 10 move the individual from his or her permanent residence to the new  
 11 residence identified in the petition or another location the court  
 12 determines is appropriate.

13 (b) Explain that if the court grants the petition to move the  
 14 individual, the guardian will have the authority to change the  
 15 individual's permanent residence to the location specified in the  
 16 petition or to another location the court determines is  
 17 appropriate.

18 (c) Ascertain, if possible, the wishes of the individual to  
 19 remain in his or her permanent residence.

20 (d) Include a summary of the discussion in the guardian ad  
 21 litem's written report.

22 (12) If the alleged incapacitated individual or legally  
 23 incapacitated individual does not already have legal counsel, the  
 24 court must appoint legal counsel if the individual files an  
 25 objection to the petition for authority to move the individual from  
 26 his or her permanent residence under subsection (7) or if the  
 27 guardian ad litem's report under subsection (11) states that the  
 28 individual objects to being removed from his or her permanent  
 29 residence.






1 (13) The court shall not grant a petition for removal from the  
2 permanent residence under subsection (7) unless the court, after  
3 due consideration and opportunity for testimony on the matter,  
4 determines by clear and convincing evidence that moving the legally  
5 incapacitated individual from the permanent residence to the  
6 residence identified in the petition is 1 or more of the following:







7 (a) Necessary to protect the individual's physical health,  
8 safety, or welfare.

9 (b) Consistent with the individual's wishes.

10 (14) If the legally incapacitated individual must leave the  
11 permanent residence because the residence becomes permanently  
12 unavailable, the <sup>1</sup>~~professional~~ guardian must provide at least 14  
13 days' prior written notice to the legally incapacitated individual <sup>2</sup>  
14 if possible under the circumstances or, if less time is available  
15 before the legally incapacitated individual must move, notice at  
16 the earliest opportunity. The <sup>3</sup>~~professional~~ guardian shall provide  
17 written notice to the court and all interested persons not later  
18 than 14 days after the move under this subsection explaining why  
19 the permanent residence is no longer available, whether the  
20 <sup>4</sup>~~professional~~ guardian attempted to consult with the legally  
21 incapacitated individual about where the legally incapacitated  
22 individual wanted to move, whether the <sup>5</sup>~~professional~~ guardian  
23 honored the legally incapacitated individual's preferences  
24 regarding where he or she wanted to move, the address of the new  
25 residence, the type of residence, and how the new residence will  
26 meet the legally incapacitated individual's needs. If the legally  
27 incapacitated individual's residence becomes permanently  
28 unavailable, the <sup>6</sup>~~professional~~ guardian is not required to file a  
29 petition under subsection (7) and the court is not required to



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 Number: 1	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:43:20 AM
 Number: 2	Author: Sandy	Subject: Sticky Note	Date: 1/24/2024 11:44:14 AM
and interested persons			
 Number: 3	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:44:02 AM
 Number: 4	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:44:53 AM
 Number: 5	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:45:01 AM
 Number: 6	Author: Sandy	Subject: Cross-Out	Date: 1/24/2024 11:45:20 AM

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1 appoint a guardian ad litem or legal counsel or hold a hearing. For  
 2 purposes of this subsection, a residence becomes permanently  
 3 unavailable as a result of a facility closure, removal of the  
 4 property from the rental market, involuntary discharge, notice to  
 5 quit, or eviction that cannot be appropriately resolved by the  
 6 <sup>1</sup>~~professional~~ guardian, irreparable damage to the permanent  
 7 residence, or other circumstances that are not initiated by the  
 8 <sup>2</sup>~~professional~~ guardian but necessitate the permanent removal of the  
 9 legally incapacitated individual from his or her permanent  
 10 residence.

11 (15) If removal from the permanent residence necessitates the  
 12 sale, transfer, or disposal of real property or sentimental  
 13 personal property and if meaningful communication is possible, the  
 14 guardian must consult with the legally incapacitated individual  
 15 before taking any action to dispose of the property. A guardian  
 16 shall make all reasonable efforts to identify and honor the legally  
 17 incapacitated individual's wishes to preserve sentimental personal  
 18 property in the overall context of the legally incapacitated  
 19 individual's <sup>3</sup>~~estate, including items identified in the inventory~~  
 20 ~~under section 5314,~~ and shall take reasonable steps to safeguard  
 21 that personal property. The court may remove a guardian that fails  
 22 to comply with this sub<sup>4</sup>~~section~~.


23 (16) As used in this section, "permanent residence" means any  
 24 of the following:

25 (a) The location the allegedly incapacitated individual or  
 26 legally incapacitated individual uses as a permanent address, in  
 27 which most of the individual's possessions are maintained.

28 (b) The location the allegedly incapacitated individual or  
 29 legally incapacitated individual considers to be his or her home.



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 Number: 1 Author: Sandy Subject: Cross-Out Date: 1/24/2024 11:45:39 AM


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 Number: 2 Author: Sandy Subject: Cross-Out Date: 1/24/2024 11:45:46 AM

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 Number: 3 Author: Sandy Subject: Cross-Out Date: 1/24/2024 11:46:16 AM









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 Number: 4 Author: Sandy Subject: Sticky Note Date: 1/24/2024 11:48:42 AM  
but the guardian shall not be responsible to store personal property at the guardian's personal expense.

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1 Sec. 5406. (1) ~~Upon~~<sup>On</sup> receipt of a petition for a  
2 conservator's appointment or another protective order because of  
3 minority, the court shall set a date for hearing. If, at any time  
4 in the proceeding, the court determines that the minor's interests  
5 are or may be inadequately represented, the court may appoint an  
6 attorney to represent the minor, giving consideration to the  
7 minor's choice if 14 years of age or older. An attorney appointed  
8 by the court to represent a minor has the powers and duties of a  
9 guardian ad litem.

10 (2) ~~Upon~~<sup>On</sup> receipt of a petition for a conservator's  
11 appointment or  other protective order for a reason other than  
12 minority, the court shall set a date for **initial** hearing. Unless  
13 the individual to be protected has ~~chosen~~<sup>chosen</sup>  **legal** counsel, or is  
14 mentally competent but aged or physically infirm, the court shall  
15 appoint a guardian ad litem. ~~to represent the person in the~~  
16 ~~proceeding. If the alleged disability is mental illness, mental~~  
17 ~~deficiency, physical illness or disability, chronic use of drugs,~~ <sup>3</sup>  
18 ~~or chronic intoxication, the court may~~ <sup>4</sup> ~~direct that the individual~~  
19 ~~alleged to need protection be examined by a physician or mental~~  
20 ~~health professional appointed by the court, preferably a physician~~  
21 ~~or mental health professional who is not connected with an~~  
22 ~~institution in which the individual is a patient or is detained.~~  
23 The <sup>6</sup> individual alleged to need protection has the right to secure  
24  independent evaluation at his or her own expense. The <sup>7</sup> court may  
25 send a visitor to interview the individual to be protected. <sup>5</sup> The  
26 visitor may be a guardian ad litem or a court officer or employee.

27 (3) The court may utilize, as an additional visitor, the  
28 service of a public or charitable agency to evaluate the condition  
29 of the individual to be protected and make appropriate



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/26/2024 9:31:23 AM  
(a)

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Number: 2 Author: Sandy Subject: Inserted Text Date: 1/24/2024 11:50:12 AM  
retained

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Number: 3 Author: Sandy Subject: Sticky Note Date: 1/26/2024 9:00:50 AM  
But we should make sure the language here mirrors language re same issue in regards to the appointment of a guardian.

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Number: 4 Author: Sandy Subject: Inserted Text Date: 1/24/2024 11:51:28 AM  
shall

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Number: 5 Author: Sandy Subject: Sticky Note Date: 1/26/2024 9:48:27 AM

(b) At or before a hearing on a petition for a conservator's appointment or another a protective arrangement, on account of alleged mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court shall order a professional evaluation of the individual to be protected if that individual requests the evaluation; or may order in other cases if the court finds it has insufficient information to determine that individual's needs and abilities without the evaluation.

(c) If the court orders an evaluation under subsection (b), the individual to be protected must be examined by a licensed physician or mental health professional appointed by the court who is qualified to evaluate the individual's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 5 days before the hearing set under section 5303. Unless otherwise directed by the court, the report must comply with Section 5304(3).

(d) The individual alleged to be in need of protection may decline to participate in an evaluation ordered under Section 5406(2).

(f) A report prepared as provided in Section 5304 must not be made a part of the proceeding's public record, but must be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual and that individual's counsel and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

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Number: 6 Author: Sandy Subject: Sticky Note Date: 1/26/2024 9:32:21 AM  
(e)

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Number: 7 Author: Sandy Subject: Sticky Note Date: 1/26/2024 9:32:28 AM  
(f)

1 recommendations to the court.

2 (4) A guardian ad litem, physician, mental health  
3 professional, or visitor appointed under this section who meets  
4 with, examines, or evaluates an individual who is the subject of a  
5 petition in a protective proceeding shall do all of the following:

6 (a) Consider whether there is an appropriate alternative to a  
7 conservatorship.

8 (b) If a conservatorship is appropriate, consider the  
9 desirability of limiting the scope and duration of the  
10 conservator's authority.

11 (c) Report to the court based on the considerations required  
12 in subdivisions (a) and (b).


13 (5) Subject to subsection (6), the duties of a guardian ad  
14 litem appointed under subsection (2) for an individual alleged to  
15 need protection include all of the following:

16 (a) Impartially gather information as provided by law.

17 (b) Seek information from the individual and, if communication  
18 is possible, communicate in a manner the individual is best able to  
19 understand. If communication is not possible or there is a barrier  
20 to communication, the guardian ad litem must note that in the  
21 report.


22 (c) Interview the individual in person at the individual's  
23 location and out of the presence of any interested person.

24 (d) Advise the individual that the guardian ad litem does not  
25 represent the individual as an attorney and that no attorney-client  
26 relationship has been created.

27 (e) Identify whether the  individual wishes to be present at  
28 the hearing. If the individual alleged to need protection does not  
29 wish to be present at the hearing, the guardian ad litem shall



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and that statements that the individual makes are not privileged and may be communicated to the court or others.

1 identify the reasons why the individual does not wish to be  
2 present.

3 (f) Identify any barrier to attending hearings at the place  
4 where court is held or otherwise fully participating in the  
5 hearing, including the need for assistive technology,  
6 transportation, or other support. If the individual alleged to need  
7 protection wishes to attend, the guardian ad litem must identify  
8 whether the individual has identified a plan for how the individual  
9 will attend.

10 (g) Identify whether the individual plans to retain legal  
11 counsel or wants appointed legal counsel. If the individual alleged  
12 to need protection does not plan to retain legal counsel or request  
13 appointed legal counsel, the guardian ad litem must make a  
14 recommendation as to whether legal counsel should be appointed.

15 (h) Identify whether a disagreement or dispute related to the  
16 petition might be resolved through court-ordered mediation.

17 (6) The duties of a guardian ad litem appointed for an  
18 individual alleged to need protection or a protected individual  
19 include all of the following, as applicable:

20 (a) Explain to the individual the nature, purpose, and legal  
21 effects of a conservator's appointment or issuance of a protective  
22 order.

23 (b) Explain who has filed the petition and who, if anyone, has  
24 been nominated as conservator, if applicable.


25 (c) Explain to the individual the hearing procedure and the  
26 individual's rights in the hearing procedure, including, but not  
27 limited to, the following:

28 (i) The right to contest the petition, in whole or in part.

29 (ii) The right to request limits on the conservator's powers.



1 (iii) The right to be present at the hearing. If the individual  
 2 is unable to attend the hearing at the location court proceedings  
 3 typically are held, the guardian ad litem shall inform the  
 4 individual of his or her right to have the hearing at another  
 5 location.

6 (iv)  right to request a reasonable accommodation to allow  
 7 the individual to participate as fully as possible at the hearing,  
 8 including with assistive technology or other support.

9 (v) The right to be represented by legal counsel of the  
 10 individual's choice. If the individual is unable to secure legal  
 11 counsel of his or her choice, the guardian ad litem shall explain  
 12 to the individual that he or she has the right to have legal  
 13 counsel appointed by the court.

14 (vi) The right to request an independent medical evaluation.

15 (d) Explain to the individual that if a conservator is  
 16 appointed, the conservator may have the power to take certain  
 17 actions on behalf of the individual. A guardian ad litem must  
 18 inform the individual that a conservator may have any of the powers  
 19 described in section 5407 and, if meaningful communication is  
 20 possible, discern if the individual objects to a conservator having  
 21 any of those powers.

22 (e) Identify whether the individual objects to the particular  
 23 person proposed as conservator, if any.


24 (f) If a conservator were to be appointed, identify a list of  
 25 who the individual would want to serve, in order of preference.

26 (g) If a conservator were to be appointed, identify who the  
 27 individual would not want to serve.

28 (7) A guardian ad litem appointed for an individual alleged to  
 29 need protection or a protected individual shall file a written



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Or through use of video conferencing technology.


1 report with the court in the form required by the state court  
2 administrative office.

3 (8) If an individual who is subject to an initial petition  
4 under this part, petition to terminate under this part, or petition  
5 to modify under this part contests the petition, the guardian ad  
6 litem's written report required under subsection (7) must include  
7 only the following:

8 (a) That the individual contests the petition.

9 (b) Whether the individual has retained legal counsel or  
10 wishes for legal counsel to be appointed.

11 (c) Whether the individual has any barriers to attending court  
12 at the place where it is usually held.

13 (9) If an individual who is subject  an initial petition  
14 under this part, petition to terminate under this part, or petition  
15 to modify under this part does not contest the petition, the  
16 guardian ad litem's written report required under subsection (7)  
17 must include only the following:

18 (a) The date and time the guardian ad litem met with the  
19 individual.

20 (b) The length of time the guardian ad litem met with the  
21 individual.

22 (c) The location where the guardian ad litem met with the  
23 individual.

24 (d) Whether the guardian ad litem was able to meaningfully  
25 communicate with the individual and any barriers to communication.

26 (e) Who, if anyone, was present for the interview besides the  
27 individual.

28 (f) Whether the individual wishes to be present at the  
29 hearing. If the individual wishes to be present at the hearing but






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(d) If a conservator were appointed who the individual would want to serve in order of preference.

(e) If a conservator were appointed who the individual would not want to serve.

(f) Any other information the guardian ad litem determines would be helpful to the court in ruling on the petition.

1 has a barrier to fully participating, the guardian ad litem must  
 2 include in the written report whether the barrier can be resolved  
 3 by moving the location of the hearing or <sup>1</sup> using assistive  
 4 technology, or both, or other support 

5 (g) Whether the individual has identified a plan for how the  
 6 individual will attend.

7 (h) Whether the individual plans to retain legal counsel or  
 8 has requested appointed legal counsel. If the individual has not  
 9 indicated he or she wishes to be represented by legal counsel, the  
 10 guardian ad litem shall include in the written report a  
 11 recommendation as to whether legal counsel should be appointed to  
 12 represent <sup>2</sup> the individual.

13 (i)  Whether the individual has any of the following:

14 (i) A power of attorney with or without limitations on purpose,  
 15 authority, or time period. <sup>3</sup>

16 ~~(ii)~~ <sup>4</sup> A patient advocate  designation.

17 ~~(iii)~~ <sup>5</sup> ~~physician orders for scope of treatment form.~~

18 ~~(iv)~~ <sup>6</sup> A benefits payee, trustee, or other fiduciary.








19 (j) Whether a disagreement or dispute related to the  
 20 conservatorship petition might be resolved through court-ordered  
 21 mediation.

22 (k) Whether the appointment of a visitor with appropriate  
 23 knowledge, training, and education such as a social worker, mental  
 24 health professional, or medical professional could provide the  
 25 court with the information on whether alternatives to  
 26 conservatorship or a limited conservatorship under section 5419(1)  
 27 is appropriate.


28 (l) For an initial petition under this part, if a conservator  
 29 were appointed, who the individual would want to serve in order of



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 Number: 2	Author: Sandy	Subject: Sticky Note	Date: 1/26/2024 3:45:30 PM
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 Number: 3	Author: Sandy	Subject: Sticky Note	Date: 1/24/2024 11:58:09 AM
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 Number: 4	Author: Sandy	Subject: Inserted Text	Date: 1/24/2024 11:58:18 AM
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 Number: 5	Author: Sandy	Subject: Cross-Out	Date: 1/26/2024 3:45:38 PM
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 Number: 6	Author: Sandy	Subject: Inserted Text	Date: 1/24/2024 11:58:29 AM
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 Number: 7	Author: Sandy	Subject: Inserted Text	Date: 1/24/2024 11:58:41 AM
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1 preference.

2 (m) For an initial petition under this part, if a conservator  
3 were appointed, who the individual would not want to serve  <sup>1</sup>

4 (n) An estimate of the ~~liquid~~ <sup>2</sup> assets as that term is defined  
5 in section 5314, income, real property, and a description of  
6 personal property to the extent known after reasonable inquiry.


7 (10) If a guardian ad litem is appointed for any purpose other  
8 than an initial petition under this part, petition to terminate  
9 under this part, or petition to modify under this part, the  
10 guardian ad litem must provide a written report to the court that  
11 includes, at a minimum, the information described in subsection  
12 (5), (6), (8), or (9), as applicable, and any other information  
13 required by law. A special limited guardian ad litem appointed  
14 under subsection (16) is not required to provide a written report  
15 unless ordered <sup>3</sup> to do so by the court.

16  (11) The court may receive into evidence without testimony the  
17 written report of the guardian ad litem required under subsection  
18 (7) if the report is filed with the court and served on all  
19 interested persons not less than 5 days before the hearing. The  
20 guardian ad litem is required to report findings until the date of  
21 the termination of the guardian ad litem. The court may issue on  
22 its own initiative, or any interested person may secure, a subpoena  
23 to compel the preparer of the report to testify. On request of any  
24 interested person, the court must issue a subpoena to compel the  
25 preparer of the report to testify.

26 (12) A guardian ad litem shall file any report required under  
27 this section with the court and serve the report on all interested  
28 persons at least 5 days before the hearing. The court shall not  
29 order compensation of the guardian ad litem unless the guardian ad




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 Number: 1 Author: Sandy Subject: Sticky Note Date: 1/26/2024 3:48:53 PM  
(h) If a conservator were to be appointed, identify any powers which the individual wishes to retain or exclude from the powers that could be awarded to the conservator.

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 Number: 2 Author: Sandy Subject: Inserted Text Date: 1/24/2024 11:59:37 AM  
qualified

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 Number: 3 Author: Sandy Subject: Sticky Note Date: 1/24/2024 12:00:46 PM  
It the petition is not contested,

1 litem states in the guardian ad litem's written report that the  
2 guardian ad litem complied with this subsection.

3 (13) The court shall not appoint a guardian ad litem as legal  
4 counsel for the individual if the guardian ad litem's report under  
5 subsection (7) or recommendation to the court conflicts with the  
6 wishes of the individual.

7 (14) If an individual who is subject to a petition under this  
8 part has not already secured legal counsel, the court shall appoint  
9 legal counsel if any of the following apply:

10 (a) The individual who is subject to the petition requests  
11 legal counsel.

12 (b) The individual who is subject to the petition objects to  
13 any part of the petition for conservatorship or potential authority  
14 of a conservator.


15 (c) The guardian ad litem determines it is in the best  
16 interest of the individual subject to the petition to have legal  
17 counsel and, if legal counsel has not been secured, the court shall  
18 appoint legal counsel. If the individual who is subject to the  
19 petition is indigent, this state shall bear the expense of  
20 appointed legal counsel.

21 (15) If <sup>1</sup>an individual who is subject to a petition under this  
22 part has <sup>1</sup>l<sup>1</sup> counsel appointed or retained, the appointment of a  
23 guardian ad litem terminates. The report of the guardian ad litem  
24 under subsection (7) must not be admitted into evidence ~~after~~ <sup>3</sup>the  
25 appearance or appointment of <sup>4</sup>l<sup>4</sup> legal counsel for the individual who  
26 is subject to the petition. <sup>4</sup>


27 (16) After appointment or retention of legal counsel for the  
28 individual who is subject to the petition under this part, the  
29 court may, for good cause shown, appoint a special limited guardian




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(a)


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 Number: 3 Author: Sandy Subject: Inserted Text Date: 1/24/2024 12:02:35 PM  
if there is an

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 Number: 4 Author: Sandy Subject: Sticky Note Date: 1/26/2024 3:55:19 PM  
15(b) If a report of a guardian ad litem has been admitted into evidence in a prior hearing, once counsel for the individual appears or is appointed for the individual, the court shall not consider any previously admitted report as evidence thereafter.

Alternatively, consider adding " If a report of a guardian ad litem has been admitted into evidence in a prior hearing, and an attorney appears for or is appointed for an individual who is subject to the petition, the court shall not consider any previously admitted report as evidence thereafter.

1 ad litem to provide information on a narrowly defined issue that  
 2 will likely otherwise be inadequately addressed. A special guardian  
 3 ad litem is exempt from subsections (5) to (10). The court may  
 4 order that a special limited guardian ad litem provide a written  
 5 report. The report under this subsection must contain the  
 6 information the court considers necessary to adequately address the  
 7 issue leading to the appointment of the special limited guardian ad  
 8 litem. A special limited guardian ad litem shall not communicate  
 9 directly with the individual who is subject to the petition and  
 10 must instead communicate through legal counsel to the individual  
 11 who is subject to the petition, unless legal counsel otherwise  
 12 gives consent.  <sup>1</sup>

13 (17) ~~(5)~~—The individual to be protected is entitled to be  
 14 present at the hearing in person. If the individual wishes to be  
 15 present at the hearing, all practical steps must be taken to ensure  
 16 the individual's presence including, if necessary, moving the site  
 17 of the hearing. The individual is entitled to be represented by  
 18 **legal** counsel, to present evidence, to cross-examine witnesses,  
 19 including a court-appointed physician or other qualified person and  
 20 a visitor, and to trial by jury. The issue may be determined at a  
 21 closed hearing or without a jury if the individual to be protected  
 22 or **legal** counsel for the individual so requests.

23 (18) ~~(6)~~—Any person may request ~~for~~ permission to participate  
 24 in the proceeding, and the court may grant the request, with or  
 25 without hearing, ~~upon~~**on** determining that the best interest of the  
 26 individual to be protected will be served by granting the request.  
 27 The court may attach appropriate conditions to the permission.

28 (19) ~~(7)~~—After hearing, ~~upon~~**on** finding that a basis for a  
 29 conservator's appointment or another protective order is





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(164) The report of a special guardian ad litem shall not be admitted into evidence if the individual has counsel or has requested the appointment of counsel.

(renumber subsequent paragraphs)

1 established by clear and convincing evidence, the court shall make  
2 the appointment or other appropriate protective order.

3       Sec. 5417. (1) ~~Within~~ **Not later than** 56 days after appointment  
4 or within another time period specified by court rule, a  
5 conservator shall prepare and file with the appointing court a  
6 complete inventory of the estate subject to the conservatorship  
7 together with an oath or affirmation that the inventory is believed  
8 to be complete and accurate so far as information permits. **The**  
9 **conservator shall serve on interested persons, along with the**  
10 **inventory, account statements with account numbers redacted that**  
11 **reflect the value of depository and investment accounts dated not**  
12 **later than 30 days after the inventory's date.**<sup>1</sup> The conservator  
13 shall provide a copy of the inventory to the protected individual  
14 if the individual can be located and is 14 years of age or older  
15 and to interested persons as specified in the Michigan court rules.

16       (2) The conservator must keep suitable records of the  
17 administration and exhibit those records on the request of an  
18 interested person.

19       (3) ~~The conservator must make reasonable efforts to identify~~  
20 ~~on the inventory under subsection (1) a reasonable number of items~~  
21 ~~of special personal or sentimental value, including, but not~~  
22 ~~limited to, family heirlooms, photo albums, or collections. To the~~  
23 ~~extent meaningful conversation permits, the conservator must make~~  
24 ~~an inquiry with the protected individual as to what items the~~  
25 ~~protected individual identifies as having special personal or~~  
26 ~~sentimental value. If the conservator is unable to locate an item~~  
27 ~~identified as having special personal or sentimental value at the~~  
28 ~~time of filing the inventory under subsection (1), the conservator~~  
29 ~~must state that on the inventory. The inventory must be signed by~~



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shall serve the inventory on interested parties and shall make account statements reflecting the value of depository and investment accounts dated not later than 30 days after the inventory's date available for review by the court or an interested person upon reasonable request at a time mutually convenient to the conservator and the interested person.

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<sup>1</sup> ~~the conservator and include an attestation that states, "I~~  
~~represent this list is true and correct to the best of my~~  
~~knowledge, information, and belief at the time of signing. I~~  
~~understand that I must handle this property, like all of the~~  
~~protected individual's property, consistent with my fiduciary~~  
~~duties. This may include sale, disposal, or other actions to meet~~  
~~my fiduciary duties. I am not responsible for storing any items at~~  
~~my expense."~~ A conservator shall make all reasonable efforts to  
<sup>2</sup> ~~identify and~~ honor the protected individual's wishes to preserve  
 items of special personal or sentimental value in the overall  
 context of the protected individual's estate, <sup>3</sup> ~~including items~~  
~~identified in the inventory and annual accounts,~~ and shall take  
 reasonable steps to safeguard the property. <sup>4</sup> ~~The~~ court may remove a  
 conservator that fails to comply with this subsection. <sup>5</sup> ~~This~~  
~~subsection does not apply to a financial institution appointed as a~~  
~~professional conservator.~~


(4) The inventory under subsection (1) must list any  
 merchandise, funeral services, cemetery services, or prepaid  
 contracts for which the protected individual or conservator is the  
 contract buyer or contract beneficiary under the prepaid funeral  
 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235. If the  
 conservatorship estate includes assets described in this  
 subsection, the conservator must file all of the following with the  
 inventory under subsection (1):

(a) A copy of any prepaid contract under the prepaid funeral  
 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(b) Proof that payments made under a prepaid contract are held  
 in escrow or under a trust agreement in compliance with the prepaid  
 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to



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 Number: 1 Author: Sandy Subject: Cross-Out Date: 1/26/2024 4:15:38 PM  
This is covered under the guardianship provisions, pdf page 28, should the ward be moved.


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 Number: 2 Author: Sandy Subject: Cross-Out Date: 1/26/2024 4:16:44 PM

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 Number: 3 Author: Sandy Subject: Cross-Out Date: 1/26/2024 4:17:02 PM

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 Number: 4 Author: Sandy Subject: Sticky Note Date: 1/26/2024 4:17:35 PM  
but shall not be personally liable for the expense of storage.

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1 328.235.

2 (c) The most recent escrow statement issued concerning the  
3 prepaid contract.

4 (d) Proof of any assignments of life policies or annuity  
5 contracts made to purchase merchandise, funeral services, or  
6 cemetery services under the prepaid funeral and cemetery sales act,  
7 1986 PA 255, MCL 328.211 to 328.235, under subsection (1) must list  
8 property with reasonable detail and the type and amount of any  
9 encumbrance.

10 (5) The inventory under subsection (1) must be served on all  
11 interested persons. Any interested person may file an objection to  
12 the inventory with the court and serve the objection on all other  
13 interested persons. The court shall set the matter for hearing.

14 Sec. 5418. (1) A conservator shall account to the court for  
15 administration of the trust not less than annually unless the court  
16 directs otherwise, upon resignation or removal, and at other times  
17 as the court directs. ~~On The conservator shall serve on interested~~  
18 ~~persons, along with the account under this subsection, account~~  
19 ~~statements with account numbers redacted that reflect the value of~~  
20 ~~depository and investment accounts dated not later than 30 days~~  
21 ~~after the inventory's date and receipts, invoices, or other~~  
22 ~~documentation for expenses in excess of \$1,000.00.~~ The account must  
23 be in the form as provided by the state court administrative  
24 office, or substantially similar. The account must detail assets  
25 ~~including those identified in the inventory under section 5417,~~  
26 debts, gross income, and expenses.

27 (2) Not later than 56 days after the termination of the  
28 protected individual's minority or disability, a conservator shall  
29 account to the court or to the formerly protected individual or



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shall serve the account under this subsection on interested persons and must make account statements reflecting the value of depository and investment accounts covering the period of the accounting, as well as receipts, invoices or other documentation for expenses in excess of \$1,000 available for review by the court or an interested person upon reasonable request at a time mutually convenient to the conservator and the interested person.

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1 that individual's successors. Subject to appeal or vacation within  
 2 the time permitted, an order, after notice and hearing, allowing an  
 3 intermediate account of a conservator adjudicates as to liabilities  
 4 concerning the matters considered in connection with the accounts,  
 5 and an order, after notice and hearing, allowing a final account  
 6 adjudicates as to all previously unsettled liabilities of the  
 7 conservator to the protected individual or the protected  
 8 individual's successors relating to the conservatorship. In  
 9 connection with any account, the court may require a conservator to  
 10 submit to a physical check of the estate to be made in any manner  
 11 the court specifies.

12 ~~1) If the conservator has disposed of or sold any of the~~  
 13 ~~items, the conservator must describe on the account under~~  
 14 ~~subsection (1) how the conservator fulfilled the conservator's~~  
 15 ~~duties under section 5417(3).~~

16 (4) If the protected individual's estate includes any  
 17 merchandise, funeral services, cemetery services, or prepaid  
 18 contracts for which the protected individual or conservator is the  
 19 contract buyer or contract beneficiary under the prepaid funeral  
 20 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, the  
 21 conservator must file all of the following with the account:

22 (a) A copy of any prepaid contract under the prepaid funeral  
 23 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

24 (b) Proof that payments made under a prepaid contract are held  
 25 in escrow or under a trust agreement in compliance with the prepaid  
 26 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to  
 27 328.235.

28 (c) The most recent escrow statement issued concerning the  
 29 prepaid contract.







1 (d) Proof of any assignments of life policies or annuity  
 2 contracts made to purchase merchandise, funeral services, or  
 3 cemetery services under the prepaid funeral and cemetery sales act,  
 4 1986 PA 255, MCL 328.211 to 328.235.

5 (5) ~~(2)~~—The conservator shall provide a copy of an account to  
 6 the protected individual if the individual can be located and is 14  
 7 years of age or older and to interested persons as specified in the  
 8 Michigan court rules.

9 (6) If the protected individual objects to an account, the  
 10 court must appoint a guardian ad litem to visit the protected  
 11 individual in the same manner as specified in section 5406. The  
 12 court must appoint legal counsel to represent the protected  
 13 individual if any of the following are met:

14 (a) The protected individual requests legal counsel.

15 (b) The guardian ad litem believes that appointment of legal  
 16 counsel is in the best interest of the protected individual.

17 (c) The court otherwise believes it is necessary to protect  
 18 the interest of the protected individual.

19 Enacting section 1. This amendatory act takes effect January  
 20 1, 2025.

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

24 (a) House Bill No. 4909.

25 (b) House Bill No. 4911.

26 (c) House Bill No. 4912.

27 (d) House Bill No. 5047.



**SUBSTITUTE FOR  
HOUSE BILL NO. 4911**

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5303, 5304, 5306, 5306a, 5312, and 5416 (MCL 700.5303, 700.5304, 700.5306, 700.5306a, 700.5312, and 700.5416), section 5303 as amended by 2017 PA 155, section 5306 as amended by 2019 PA 170, section 5306a as added by 2012 PA 173, and section 5312 as amended by 2000 PA 54.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5303. (1) An individual in his or her own behalf, or any  
2 person interested in the individual's welfare, may petition for a  
3 finding of incapacity and appointment of a guardian. The petition  
4 must contain specific facts about the individual's condition and  
5 specific examples of the individual's recent conduct that



DAW

H01151'23 (H-3)




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Probate and Estate Planning Section  
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1 demonstrate the need for a guardian's appointment.

2 (2) Before a petition is filed under this section, the court  
3 shall provide the person intending to file the petition with  
4 written information that sets forth alternatives to appointment of  
5 a full guardian, including, but not limited to, a limited guardian,  
6 conservator, patient advocate designation, do-not-resuscitate  
7 order, physician orders for scope of treatment form, or durable  
8 power of attorney with or without limitations on purpose,  
9 authority, or time period, and an explanation of each alternative.

10 (3) ~~Upon~~ **On** the filing of a petition under subsection (1), the  
11 court shall set a date for **initial** hearing. ~~on the issue of~~  
12 ~~incapacity.~~ Unless the allegedly incapacitated individual has legal  
13 counsel of his or her own choice, the court shall appoint a  
14 guardian ad litem to <sup>1</sup> ~~represent the person in the proceeding.~~ **for the**  
15 **initial hearing.**  **The court may enter a final order on the petition**  
16 **at the initial hearing if the court does not set a trial date under**  
17 **subsection (4).**

18 (4) At the initial hearing under subsection (3), the court  
19 shall set a trial date at least 7 days after the initial hearing  
20 for the petition under subsection (1) if any of the following  
21 apply:

22 (a) The guardian ad litem requests that the proceeding be set  
23 for trial.

24 (b) The allegedly incapacitated individual or his or her legal  
25 counsel requests the matter be set for trial.

26 (c) Any reason as justice requires.

27 (5) If the court sets a trial date at the initial hearing  
28 under subsection (4), the court shall do both of the following:

29 (a) Enter a scheduling order to the extent necessary.



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If the allegedly incapacitated person has not retained counsel but wishes to be represented, the court shall appoint counsel.

1 (b) Enter an order that provides, to the extent practicable,  
 2 for the attendance of the allegedly incapacitated individual at the  
 3 trial if the allegedly incapacitated individual wishes to attend.  
 4 An order entered under this subdivision may order any interested  
 5 person over whom the court has jurisdiction to facilitate  
 6 attendance or move the hearing site <sup>1</sup> under section 5304.

7 Sec. 5304. (1) <sup>3</sup> ~~If necessary,~~ <sup>2</sup> ~~the court may order that an~~ <sup>4</sup>  
 8 ~~individual alleged to be incapacitated be examined by a physician~~  
 9 ~~or mental health professional appointed by the court who shall~~  
 10 ~~submit a report in writing to the court at least 5 days before the~~  
 11 ~~hearing set under section 5303. A report prepared as provided in~~  
 12 ~~this subsection shall **must** not be made a part of the proceeding's~~  
 13 ~~public record, but shall **must** be available to the court or an~~  
 14 ~~appellate court in which the proceeding is subject to review, to~~  
 15 ~~the alleged incapacitated individual, to the petitioner, to their~~  
 16 ~~respective legal counsels, and to other persons as the court~~  
 17 ~~directs. The report may be used as provided in the Michigan rules~~  
 18 ~~of evidence.~~

19 (2) The alleged incapacitated individual has the right to  
 20 secure an independent evaluation, at his or her own expense or, if  
 21 indigent, at the expense of ~~the~~ **this** state. **An independent**  
 22 **evaluation performed at the expense of this state must be performed**  
 23 **by a physician or mental health professional.** Compensation for an  
 24 independent evaluation at public expense ~~shall~~ **must** be in an amount  
 25 that, based ~~upon~~ **on** time and expense, the court approves as  
 26 reasonable.

27 (3) A report prepared under this section ~~shall~~ **must** contain  
 28 all of the following:

29 (a) A detailed description of the individual's ~~physical~~ **or**



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/24/2024 12:18:48 PM  
requested by the allegedly incapacitated individual,

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Number: 3 Author: Sandy Subject: Cross-Out Date: 1/24/2024 12:18:44 PM

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Number: 4 Author: Sandy Subject: Sticky Note Date: 1/26/2024 9:50:03 AM


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(1) At or before a hearing on a petition for appointment of a guardian, the court shall order a professional evaluation of the allegedly incapacity individual if that individual requests the evaluation; or may order in other cases if the court finds it has insufficient information to determine that individual's needs and abilities without the evaluation.

(2) If the court orders an evaluation under subsection (1), the individual to be protected must be examined by a licensed physician or mental health professional appointed by the court who is qualified to evaluate the individual's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 5 days before the hearing set under section 5304. Unless otherwise directed by the court, the report must comply with Section 5304(3).

(d) The individual alleged to be in need of protection may decline to participate in an evaluation ordered under Section 5404(1).

(e) A report prepared as provided in Section 5304 must not be made a part of the proceeding's public record, but must be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual and that individual's counsel and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

1 ~~psychological infirmities.~~ **cognitive and functional abilities and**  
 2 **limitations**  1

3 (b) An explanation of how and to what extent ~~each infirmity~~  
 4 ~~interferes with the individual's ability to receive or evaluate~~  
 5 ~~information in making decisions.~~ **the individual is able to receive,**  
 6 **understand, participate in, and evaluate information in making**  
 7 **decisions.**

8 (c) ~~A~~ **If the report is being completed by a physician or**  
 9 **mental health professional, a** listing of all medications the  
 10 individual is receiving, the dosage of each medication, and a  
 11 description of the effects each medication has ~~upon~~ **on** the  
 12 individual's behavior.

13 (d) ~~A~~ **If the report is being completed by a physician or**  
 14 **mental health professional, a** prognosis for improvement in the  
 15 individual's condition, **including whether it is a permanent or**  
 16 **temporary condition,** and a recommendation for the most appropriate  
 17 rehabilitation plan.

18 (e) The signatures **and printed names** of all individuals who  
 19 performed the evaluations, ~~upon which the report is based.~~ **where**  
 20 **they are employed, the date of examination on which the report is**  
 21 **based, the length of time they have known the individual, and the**  
 22 **length of time they met with the individual.**

23 (f) Whether the individual has the capacity to assign or  
 24 delegate responsibilities to ensure his or her well-being.


25 (g) Whether the individual has executed a document directing  
 26 care or naming an agent to act on his or her behalf, including, but  
 27 not limited to, a power of attorney, patient advocate designation,  
 28 or do-not-resuscitate order.

29 (h) If the report is being completed by a visitor, it must





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and, if appropriate, educational potential, adaptive behavior, and social skills.

1 also include, at a minimum, an assessment of the existence of  
 2 current formal and informal supports, the ability of supportive  
 3 services and benefits to meet any unmet needs, the identification  
 4 of any existing concerns regarding the individual's well-being, and  
 5 the individual's ability to address those existing concerns.

6 (4) If the court finds that the report prepared under this  
 7 section does not substantially comply with the requirements of this  
 8 section, the court shall not consider the evaluation.

9 (5) ~~(4)~~—The individual alleged to be incapacitated is entitled  
 10 to be present at the hearing in person, and to see or hear all  
 11 evidence bearing ~~upon~~ on the individual's condition. If the  
 12 individual wishes to be present at the hearing, all practical steps  
 13 ~~shall~~ must be taken to ensure his or her presence, including, if  
 14 necessary, moving the hearing site.

15 (6) ~~(5)~~—The individual **alleged to be incapacitated** is entitled  
 16 to be represented by legal counsel, to present evidence, to cross-  
 17 examine witnesses, including the court-appointed physician or  
 18 mental health professional and the visitor, and to trial by jury.

19 (7) ~~(6)~~—The issue of incapacity may be determined at a closed  
 20 hearing without a jury if requested by the individual alleged to be  
 21 incapacitated or that individual's legal counsel.

22 Sec. 5306. (1) The court may appoint a guardian if the court  
 23 finds by clear and convincing evidence both that the individual for  
 24 whom a guardian is sought is an incapacitated individual and that  
 25 the appointment is necessary as a means of providing continuing  
 26 care and supervision of the incapacitated individual, with each  
 27 finding supported separately on the record. ~~Alternately, the court~~  
 28 ~~may dismiss the proceeding or enter another appropriate order.~~

29 (2) **The court shall dismiss the proceeding under subsection**



1 (1) if the court cannot be shown both of the following by clear and  
2 convincing evidence:

3 (a) That the individual for whom a guardian is sought is an  
4 incapacitated individual.

5 (b) That the appointment is necessary as a means of providing  
6 continuing care and supervision of the individual.

7 (3) At any time during the proceedings under subsection (1),  
8 the court may stay the guardianship proceedings for a reasonable  
9 period of time, based on the needs of the individual, to allow the  
10 individual the opportunity to explore the alternatives to  
11 appointment of a guardian. If the individual properly names a  
12 patient advocate under a patient advocate designation, an attorney  
13 in fact under a power of attorney, or a representative payee under  
14 a governmental benefit during the stay under this subsection and  
15 provides evidence of naming the patient advocate, attorney in fact,  
16 or representative payee to the court, the court may dismiss the  
17 petition with or without a hearing. This subsection does not  
18 prevent the court from ordering a temporary guardianship under  
19 section 5312a if the temporary guardianship is limited in scope and  
20 the court explicitly finds that the individual has the capacity to  
21 execute a power of attorney, patient advocate designation, or  
22 designate a representative payee.

23 (4) ~~(2)~~—The court shall grant a guardian only those powers and  
24 only for that period of time as is necessary to provide for the  
25 demonstrated need of the incapacitated individual. The court shall  
26 design the guardianship to encourage the development of maximum  
27 self-reliance and independence in the individual. If the court is  
28 aware that an individual has executed a patient advocate  
29 designation under section 5506, the court shall not grant a



1 guardian any of the same powers that are held by the patient  
 2 advocate. A court order establishing a guardianship shall specify  
 3 any limitations on the guardian's powers and any time limits on the  
 4 guardianship.

5 (5) ~~(3)~~—If the court finds by clear and convincing evidence  
 6 that an individual is incapacitated and lacks the capacity to do  
 7 some, but not all, of the tasks necessary to care for himself or  
 8 herself, the court may appoint a limited guardian to provide  
 9 guardianship services to the individual, but the court shall not  
 10 appoint a full guardian.

11 (6) ~~(4)~~—If the court finds by clear and convincing evidence  
 12 that the individual is incapacitated and is totally without  
 13 capacity to care for himself or herself, the court shall specify  
 14 that finding of fact in an order and may appoint a full guardian.

15 (7) ~~(5)~~—If an individual executed a patient advocate  
 16 designation under section 5506 before the time the court determines  
 17 that he or she became a legally incapacitated individual, a  
 18 guardian does not have and shall not exercise the power or duty of  
 19 making medical or mental health treatment decisions that the  
 20 patient advocate is designated to make. If, however, a petition for  
 21 guardianship or for modification under section 5310 alleges and the  
 22 court finds that the patient advocate designation was not executed  
 23 in compliance with section 5506, that the patient advocate is not  
 24 complying with the terms of the designation or with the applicable  
 25 provisions of sections 5506 to 5515, or that the patient advocate  
 26 is not acting consistent with the ward's best interests, the court  
 27 may modify the guardianship's terms to grant those powers to the  
 28 guardian.

29 (8) ~~(6)~~—If the court finds by clear and convincing evidence



1 that the individual is incapacitated, that the person that has the  
 2 care and custody of the incapacitated individual denied another  
 3 person access to the incapacitated individual, and that the  
 4 incapacitated individual desires contact with the other person or  
 5 that contact with the other person is in the incapacitated  
 6 individual's best interest, the court may appoint a limited  
 7 guardian to supervise access with the other person.

8 Sec. 5306a. (1) An individual for whom a guardian is sought or  
 9 has been appointed under section 5306 has all of the following  
 10 rights:

11 (a) To object to the appointment of a successor guardian by  
 12 will or other writing, as provided in section 5301.

13 (b) To have the guardianship proceeding commenced and  
 14 conducted in the place where the individual resides or is present  
 15 or, if the individual is admitted to an institution by a court, in  
 16 the county in which the court is located, as provided in section  
 17 5302.

18 (c) To petition on his or her own behalf for the appointment  
 19 of a guardian, as provided in section 5303.

20 (d) To have legal counsel of his or her own choice represent  
 21 him or her on ~~the~~ **either of the following:**

22 **(i) The** petition to appoint a guardian, as provided in sections  
 23 5303, 5304, and 5305.

24 **(ii) If applicable, a <sup>1</sup>~~professional~~ guardian's petition to**  
 25 **permanently remove the individual from the individual's permanent**  
 26 **residence, as provided in section 5314a.**

27 (e) If he or she is not represented by legal counsel, to the  
 28 appointment of a guardian ad litem, ~~to represent the individual on~~  
 29 ~~the petition to appoint a guardian,~~ as provided in section 5303.





1 (f) To an independent evaluation of his or her capacity by a  
2 physician or mental health professional, at public expense if he or  
3 she is indigent, as provided in section 5304.

4 (g) To be present at the hearing on the petition to appoint a  
5 guardian and to have all practical steps taken to ensure this,  
6 including, if necessary, moving the hearing site, as provided by  
7 section 5304.

8 (h) To see or hear all the evidence presented in the hearing  
9 on the petition to appoint a guardian, as provided in section 5304.

10 (i) To present evidence and cross-examine witnesses in the  
11 hearing on the petition to appoint a guardian, as provided in  
12 section 5304.

13 (j) To a trial by jury on the petition to appoint a guardian,  
14 as provided in section 5304.

15 (k) To a closed hearing on the petition to appoint a guardian,  
16 as provided in section 5304.

17 (l) If a guardian ad litem is appointed, to be personally  
18 visited by the guardian ad litem, as provided in section 5305.

19 (m) If a guardian ad litem is appointed, to an explanation by  
20 the guardian ad litem of the nature, purpose, and legal effects of  
21 a guardian's appointment, as provided in section 5305.

22 (n) If a guardian ad litem is appointed, to an explanation by  
23 the guardian ad litem of the individual's rights in the hearing  
24 procedure, as provided in section 5305.

25 (o) If a guardian ad litem is appointed, to be informed by the  
26 guardian ad litem of the right to contest the petition, to request  
27 limits on the guardian's powers, to object to a particular person  
28 being appointed guardian, to be present at the hearing, to be  
29 represented by legal counsel, and to have legal counsel appointed



1 if the individual is unable to afford legal counsel, as provided in  
2 section 5305.

3 (p) To be informed of the name of each person known to be  
4 seeking appointment as guardian, including, if a guardian ad litem  
5 is appointed, to be informed of the names by the guardian ad litem  
6 as provided in section 5305.

7 (q) To require that proof of incapacity and the need for a  
8 guardian be proven by clear and convincing evidence, as provided in  
9 section 5306.

10 (r) To the limitation of the powers and period of time of a  
11 guardianship to only the amount and time that is necessary, as  
12 provided in section 5306.

13 (s) To a guardianship designed to encourage the development of  
14 maximum self-reliance and independence as provided in section 5306.

15 (t) To prevent the grant of powers to a guardian if those  
16 powers are already held by a valid patient advocate, as provided in  
17 section 5306.

18 (u) To periodic review of the guardianship by the court,  
19 including the right to a hearing and the appointment of an attorney  
20 if issues arise upon the review of the guardianship, as provided in  
21 section 5309.

22 (v) To, at any time, seek modification or termination of the  
23 guardianship by informal letter to the judge, as provided in  
24 section 5310.

25 (w) To a hearing ~~within~~ **not later than** 28 days ~~of~~ **after**  
26 requesting a review, modification, or termination of the  
27 guardianship, as provided in section 5310.

28 (x) To the same rights on a petition for modification or  
29 termination of the guardianship including the appointment of a





1 visitor as apply to a petition for appointment of a guardian, as  
2 provided in section 5310.

3 (y) To personal notice of a petition for appointment or  
4 removal of a guardian, as provided in section 5311.

5 (z) To written notice of the nature, purpose, and legal  
6 effects of the appointment of a guardian, as provided in section  
7 5311.

8 (aa) To choose the person who will serve as guardian, if the  
9 chosen person is suitable and willing to serve, as provided in  
10 section 5313.

11 (bb) To consult with the guardian about major decisions  
12 affecting the individual, if meaningful conversation is possible,  
13 as provided in section 5314.

14 (cc) To ~~quarterly~~ visits by the guardian, as provided in  
15 section 5314.

16 (dd) ~~To have the guardian notify the court within 14 days of a~~  
17 ~~change in the individual's residence, as provided in section 5314.~~

18 ~~If the guardian is not a professional guardian, to have the~~  
19 ~~guardian notify the court not later than 14 days after a change in~~  
20 ~~the individual's permanent residence, as provided in section 5314a.~~

21 (ee) If the guardian is a professional guardian, to have the  
22 court consider a separate petition, as provided in section 5314a,  
23 if a professional guardian seeks to move the individual to a new  
24 permanent residence.

25 (ff) ~~(ee)~~ To have the guardian secure services to restore the  
26 individual to the best possible state of mental and physical well-  
27 being so that the individual can return to self-management at the  
28 earliest possible time, as provided in section 5314.


29 (gg) ~~(ff)~~ To have the guardian take reasonable care of the



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restore to existing statutory language

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 Number: 3 Author: Sandy Subject: Cross-Out Date: 1/26/2024 4:34:36 PM

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1 individual's clothing, furniture, vehicles, and other personal  
2 effects, as provided in section 5314.

3 (2) A guardian ad litem shall inform the ward in writing of  
4 his or her rights enumerated in this section. The state court  
5 administrative office and the ~~office of services to the aging~~  
6 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~  
7 ~~MCL 400.585, aging and adult services agency created under~~  
8 **Executive Reorganization Order No. 2015-1, MCL 400.227**, shall  
9 promulgate a form to be used to give the written notice under this  
10 section, which ~~shall~~ **must** include space for the court to include  
11 information on how to contact the court or other relevant personnel  
12 with respect to the rights enumerated in this section.

13 Sec. 5312. ~~(1) If an individual does not have a guardian, an~~  
14 ~~emergency exists, and no other person appears to have authority to~~  
15 ~~act in the circumstances, the court shall provide notice to the~~  
16 ~~individual alleged to be incapacitated and shall hold a hearing.~~  
17 ~~Upon a showing that the individual is an incapacitated individual,~~  
18 ~~the court may exercise the power of a guardian, or appoint a~~  
19 ~~temporary guardian with only the powers and for the period of time~~  
20 ~~as ordered by the court. A hearing with notice as provided in~~  
21 ~~section 5311 shall be held within 28 days after the court has acted~~  
22 ~~under this subsection.~~

23 (2) ~~If an appointed guardian is not effectively performing the~~  
24 ~~guardian's duties and the court further finds that the legally~~  
25 ~~incapacitated individual's welfare requires immediate action, the~~  
26 ~~court may appoint, with or without notice, a temporary guardian for~~  
27 ~~the legally incapacitated individual for a specified period not to~~  
28 ~~exceed 6 months.~~

29 (3) ~~A temporary guardian is entitled to the care and custody~~



1 ~~of the ward, and the authority of a permanent guardian previously~~  
 2 ~~appointed by the court is suspended as long as a temporary guardian~~  
 3 ~~has authority. A temporary guardian may be removed at any time. A~~  
 4 ~~temporary guardian shall make reports as the court requires. In~~  
 5 ~~other respects, the provisions of this act concerning guardians~~  
 6 ~~apply to temporary guardians.~~

7 (1) An interested person may file a petition to appoint an  
 8 emergency guardian for an allegedly incapacitated individual under  
 9 this subsection. If a petition is filed under this subsection, the  
 10 petitioner shall give notice, except as otherwise provided in  
 11 subsection (2), as provided by section 5311, and the court shall  
 12 appoint a guardian ad litem under section 5305. The court shall  
 13 conduct a hearing on a petition under this subsection as soon as  
 14 possible and not later than 7 days after the court receives the  
 15 petition. Except as otherwise provided in subsection (2), following  
 16 the hearing under this subsection, the court may appoint an  
 17 emergency guardian if the court finds by a preponderance of the  
 18 evidence that all of the following apply:

19 (a) An emergency exists that is likely to result in  
 20 substantial harm to the allegedly incapacitated individual's  
 21 physical health, safety, or welfare.

22 (b) No other person appears to have authority to act in the  
 23 circumstances.

24 (c) There is a basis that both the individual is an  
 25 incapacitated individual and appointment of an emergency guardian  
 26 is necessary as a means of providing continuing care and  
 27 supervision of the individual.

28 (2) On the filing of a petition to appoint an emergency  
 29 guardian under subsection (1), the court may appoint an emergency



1 guardian for an allegedly incapacitated individual without notice  
2 to the allegedly incapacitated individual only if the court  
3 determines from an affidavit showing, by clear and convincing  
4 evidence, that all of the following apply:

5 (a) An emergency exists that is likely to result in imminent  
6 and substantial harm to the allegedly incapacitated individual's  
7 physical health, safety, or welfare.

8 (b) No other person appears to have authority to act in the  
9 circumstances.

10 (c) There is a basis that both the individual is an  
11 incapacitated individual and appointment of an emergency guardian  
12 is necessary as a means of providing continuing care and  
13 supervision of the individual.

14 (3) If the court appoints an emergency guardian under  
15 subsection (2), the court shall do all of the following:

16 (a) Appoint a guardian ad litem for the allegedly  
17 incapacitated individual under section 5305.

18 (b) Not later than 48 hours after the appointment of an  
19 emergency guardian under this subsection, order the petitioner to  
20 give notice by personal service of the appointment to the allegedly  
21 incapacitated individual and service as required by court rule to  
22 all interested persons.

23 (c) Not later than 7 days after the appointment of an  
24 emergency guardian under this subsection, hold a hearing on whether  
25 the conditions for the appointment of the emergency guardian exist.

26 (4) If the court finds conditions exist for the appointment of  
27 the emergency guardian at a hearing under this section, and the  
28 individual wishes to contest the appointment, the court must set a  
29 date for a hearing and enter an order consistent with section 5306.



1 (5) An order appointing an emergency guardian under this  
 2 section expires 28 days after the appointment. However, the court  
 3 may extend an order appointing an emergency guardian under this  
 4 section once for an additional 28 days if the court finds by a  
 5 preponderance of the evidence, upon an affidavit by the appointed  
 6 emergency guardian or following a hearing set at the discretion of  
 7 the court, that the conditions that led to the appointment of the  
 8 emergency guardian still exist.

9 (6) An emergency guardian may exercise only the powers  
 10 specified by the court.

11 (7) The court may remove an emergency guardian at any time.

12 (8) An appointment of an emergency guardian under this section  
 13 is not a determination that a basis exists for an appointment of a  
 14 guardian under section 5306(1).

15 Sec. 5416. (1) In relation to powers conferred by this part or  
 16 implicit in the title acquired by virtue of the proceeding, a  
 17 conservator shall act as a fiduciary and observe the standard of  
 18 care applicable to a trustee.

19 (2) A conservator for an individual that is subject to a  
 20 conservatorship for a reason other than minority has the duty to  
 21 take all steps within the scope of the conservator's authority to  
 22 ensure the individual attends any hearing concerning the  
 23 individual's conservatorship if the individual wishes to attend the  
 24 hearing in a manner as provided in section 5406.

25 Enacting section 1. This amendatory act takes effect January  
 26 1, 2025.

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



- 1 (a) House Bill No. 4909.
- 2 (b) House Bill No. 4910.
- 3 (c) House Bill No. 4912.
- 4 (d) House Bill No. 5047.



SUBSTITUTE FOR  
HOUSE BILL NO. 4912

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 5414 and 5415 (MCL 700.5414 and 700.5415) and  
by adding section 5312a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 5312a. (1) The court may appoint a temporary guardian  
2 under section 5301a or this section.

3           (2) If a guardian has not been appointed or an appointed  
4 guardian is not effectively performing the guardian's duties and  
5 the court further finds that the alleged incapacitated individual  
6 or ward's welfare requires immediate action, the court may appoint  
7 a temporary guardian under this section for a specified period not  
8 to exceed 6 months. The court shall not appoint a temporary





1 guardian under this subsection unless either of the following  
2 conditions is met:

3 (a) ~~Oral or written~~ notice of the hearing was provided to all  
4 interested persons.

5 (b) If the petitioner has not provided notice of the hearing  
6 to all interested persons, the petitioner submits a written  
7 explanation to the court to detail the efforts, if any, that the  
8 petitioner has made to provide notice and the reason why provided  
9 notice should not be required.

10 (3) A temporary guardian is entitled to the care and custody  
11 of the ward, and the authority of a permanent guardian previously  
12 appointed by the court is suspended while a temporary guardian has  
13 authority. A temporary guardian may be removed at any time. A  
14 temporary guardian shall make reports as the court requires. In  
15 other respects, the provisions of this act concerning guardians  
16 apply to temporary guardians.

17 Sec. 5414. (1) The court may remove a conservator for good  
18 cause, ~~upon~~ on notice and hearing, or accept a conservator's  
19 resignation. ~~Upon~~ On the conservator's death, resignation, or  
20 removal, the court may appoint another conservator. A conservator  
21 ~~so~~ appointed under this subsection succeeds to the title and powers  
22 of the predecessor.

23 (2) The protected individual or a person interested in the  
24 protected individual's welfare may petition for an order removing  
25 the conservator, appointing a successor conservator, modifying the  
26 terms of the conservatorship, or terminating the conservatorship. A  
27 request for this order under this subsection may be made by  
28 informal letter to the court. A person who knowingly interferes  
29 with transmission of a request described in this subsection to the





1 court is subject to a finding of contempt of court. A petition for  
 2 an order appointing a successor conservator under this subsection  
 3 is subject to the priority of appointment under section 5409.

4 Sec. 5415. (1) A person interested in the welfare of an  
 5 individual for whom a conservator is appointed may file a petition  
 6 in the appointing court for an order to do any of the following:

7 (a) Require bond or security or additional bond or security,  
 8 or reduce bond.

9 (b) Require an accounting for the administration of the trust.

10 (c) Direct distribution.

11 (d) Remove the conservator and appoint a temporary or  
 12 successor conservator.

13 (e) Grant other appropriate relief.

14 (2) A conservator may petition the appointing court for  
 15 instructions concerning fiduciary responsibility. ~~Upon~~ On notice  
 16 and hearing, the court may give appropriate instructions or make an  
 17 appropriate order.

18 **(3) A petition for an order appointing a successor conservator**  
 19 **under subsection (1) is subject to the priority of appointment**  
 20 **under section 5409.**

21 Enacting section 1. This amendatory act takes effect January  
 22 1, 2025.

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

26 (a) House Bill No. 4909.

27 (b) House Bill No. 4910.

28 (c) House Bill No. 4911.

29 (d) House Bill No. 5047.



**SUBSTITUTE FOR  
HOUSE BILL NO. 5047**

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
(MCL 700.1101 to 700.8206) by amending the title and by adding part  
5A to article V.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 TITLE  
2 An act to codify, revise, consolidate, and classify aspects of  
3 the law relating to wills and intestacy, relating to the  
4 administration and distribution of estates of certain individuals,  
5 relating to trusts, and relating to the affairs of certain  
6 individuals under legal incapacity; to provide for the powers and  
7 procedures of the court that has jurisdiction over these matters;  
8 to provide for the validity and effect of certain transfers,

1 contracts, and deposits that relate to death; to provide procedures  
2 to facilitate enforcement of certain trusts; **to establish the**  
3 **office of state guardian;** and to repeal acts and parts of acts.

4 ARTICLE V

5 PART 5A

6 OFFICE OF STATE GUARDIAN

7 Sec. 5531. As used in this part:

8 (a) "Adult protective services" means the office, division, or  
9 unit of the department that is charged with investigation of abuse,  
10 neglect, or exploitation of vulnerable individuals under the social  
11 welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

12 (b) "Attorney general" means the department of attorney  
13 general.

14 (c) "Board" means the office of state guardian board created  
15 in section 5532.

16 (d) "Department" means the department of health and human  
17 services.

18 (e) "Executive director" means the executive director of the  
19 board appointed by the governor under section 5532.

20 (f) "Indigent" means an individual who is unable, without  
21 substantial financial hardship to the individual or to the  
22 individual's dependents, to pay a competent, qualified professional  
23 guardian on the individual's own. Substantial financial hardship is  
24 rebuttably presumed if the ward receives personal public  
25 assistance, including under the food assistance program, temporary  
26 assistance for needy families, Medicaid, or disability insurance,  
27 resides in public housing, or earns an income less than 140% of the  
28 federal poverty guideline.

29 Sec. 5532. (1) The office of state guardian board is created

1 as an autonomous entity within the department. The board shall  
 2 exercise its powers, duties, functions, and responsibilities under  
 3 this part independently of the department, except that the  
 4 procurement and related management functions of the board must be  
 5 performed under the direction and supervision of the department

6 (2) The board consists of the following members, appointed by  
 7 the governor:

8 (a) One member from a list of 3 or more individuals  
 9 recommended by the attorney general.

10 ~~(b) One member from a list of 3 or more individuals~~  
 11 ~~recommended by the senate majority leader.~~

12 ~~(c) One member from a list of 3 or more individuals~~  
 13 ~~recommended by the speaker of the house of representatives.~~

14 (d) One member from a list of 3 or more individuals  
 15 recommended by the chief justice of the supreme court.

16 (e) One member from a list of 3 or more individuals  
 17 recommended by the agency that implements and administers the  
 18 program for the protection and advocacy of the rights of persons  
 19 with developmental disabilities under section 931 of the mental  
 20 health code, 1974 PA 258, MCL 330.1931.

21 (f) ~~One member who is a probate judge.~~


22 ~~(g) One member who is a probate court register.~~

23 (h) One member from a list of 3 or more individuals  
 24 recommended by the department's behavioral physical health and  
 25 aging administration representing the interests of vulnerable  
 26 adults as that term is defined in section 145m of the Michigan  
 27 penal code, 1931 PA 328, MCL 750.145m.

28 (i) One member from adult protective services.

29 (j) One member who is a professional guardian.

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 Number: 1      Author: Sandy      Subject: Cross-Out      Date: 1/29/2024 10:01:47 AM


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 Number: 2      Author: Sandy      Subject: Cross-Out      Date: 1/29/2024 10:02:50 AM

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 Number: 3      Author: Sandy      Subject: Inserted Text      Date: 1/29/2024 10:02:34 AM  
Three members who are probate judges.

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 Number: 4      Author: Sandy      Subject: Inserted Text      Date: 1/29/2024 10:03:26 AM  
Three members who are probate court registers.

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1 (k) One member who is a professional conservator.

2 (l) One member who is a licensed master's social worker as that  
3 term is defined in section 18501 of the public health code, 1978 PA  
4 368, MCL 333.18501.



5 (m) One member who is recommended by the state long-term care  
6 ombudsman established under section 6 of the older Michiganians  
7 act, 1981 PA 180, MCL 400.586.

8 (n) One member who is recommended by a community mental health  
9 authority as that term is defined in section 100a of the mental  
10 health code, 1974 PA 258, MCL 330.1100a, to represent the interests  
11 of community mental health services programs as that term is  
12 defined in section 100a of the mental health code, 1974 PA 258, MCL  
13 330.1100a.

14 (3) The governor shall appoint the executive director of the  
15 board to a 4-year term. The executive director is a voting member  
16 of the board. The executive director shall do all of the following:

17 (a) Maintain the records of the board.

18 (b) Employ, supervise, and retain staff, with the approval of  
19 the board.

20 (c) Act as an interested party, on appearance, in any  
21 guardianship or conservatorship matter.



22 (d) Issue licenses under section 54.

23 (e) Supervise investigations and disciplinary proceedings.

24 (f) Coordinate meetings and activities of the board.

25 (g) Other duties as assigned by the board.

26 (4) The governor shall appoint the first members to the board  
27 not later than 180 days after the effective date of the amendatory  
28 act that added this part.

29 (5) Members of the board shall serve for terms of 4 years or



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/29/2024 10:04:21 AM

While someone who serves as a professional guardian may also serve as a professional conservator, the intent would be to have two members on this board who service in one or both of those capacities.

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Number: 2 Author: Sandy Subject: Sticky Note Date: 1/29/2024 10:06:26 AM

in which the appointment, nomination or removal of a licensed professional guardian or conservator is pending.

1 until a successor is appointed, whichever is later, except that of  
2 the members first appointed, the members provided for in subsection  
3 (2)(a) to (e) shall serve for 2 years, the members provided for in  
4 subsection (2)(f) to (j) shall serve for 3 years, and the members  
5 provided for in subsection (2)(k) to (n) shall serve for 4 years.

6 (6) If a vacancy occurs on the board, the governor shall make  
7 an appointment for the unexpired term in the same manner as the  
8 original appointment.

9 (7) The governor may remove a member of the board for  
10 incompetence, dereliction of duty, malfeasance, misfeasance, or  
11 nonfeasance in office, or any other good cause.

12 (8) The executive director shall call the first meeting of the  
13 board. At the first meeting, the board shall elect from among its  
14 members a chairperson and other officers as it considers necessary  
15 or appropriate. After the first meeting, the board shall meet at  
16 least quarterly.

17 (9) A majority of the members of the board constitute a quorum  
18 for the transaction of business at a meeting of the board. A  
19 majority of the members present and serving are required for  
20 official action of the board.

21 (10) The business that the board may perform must be conducted  
22 at a public meeting of the board held in compliance with the open  
23 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

24 (11) A writing prepared, owned, used, in the possession of, or  
25 retained by the board in the performance of an official function is  
26 exempt from disclosure under section 13(1)(d) of the freedom of  
27 information act, 1976 PA 442, MCL 15.243.

28 (12) Members of the board shall serve without compensation.  
29 However, members of the board may be reimbursed for their actual

1 and necessary expenses incurred in the performance of their  
2 official duties as members of the board.

3 Sec. 5533. The board shall do all of the following:

4 (a) Set minimum standards for licensure of professional  
5 guardians and professional conservators.

6 (b) Ensure that professional guardians and professional  
7 conservators maintain compliance with minimum standards of  
8 practice.

9 (c) Adopt a written process for receiving or initiating  
10 complaints against <sup>1</sup>guardians and <sup>2</sup>conservators. The board may  
11 initiate complaints. <sup>3</sup> <sup>4</sup>

12 (d) Adopt a <sup>5</sup>process for receipt of requests for technical  
13 assistance from guardians and conservators.

14 (e) Adopt a process to refer appropriate complaints regarding  
15 ~~guardians and conservators~~ to the attorney general or another <sup>4</sup>  
16 investigatory agency, including, but not limited to, adult  
17 protective services or a law enforcement agency, for investigation.







18 (f) Adopt a process to refer wards or interested persons to an  
19 agency that provides legal representation or advocacy for wards.

20 (g) Promulgate rules concerning the discipline of professional  
21 guardians and professional conservators who fail to meet licensure  
22 standards.

23 (h) Promulgate rules concerning the discipline of ~~guardians~~  
24 ~~and conservators~~, <sup>6</sup>who breach their fiduciary duties or otherwise  
25 engage in misconduct.

26 (i) Adopt a process for the executive director, on behalf of  
27 the board, to contract with professional guardians to provide  
28 guardianship services to eligible indigent wards or prospective  
29 wards and maintain minimum standards for contracting professional

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 Number: 3	Author: Sandy	Subject: Sticky Note	Date: 1/29/2024 10:09:32 AM
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 Number: 4	Author: Sandy	Subject: Sticky Note	Date: 1/29/2024 10:11:26 AM
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 Number: 5	Author: Sandy	Subject: Cross-Out	Date: 1/29/2024 10:10:26 AM
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 Number: 6	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:11:17 AM
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1 guardians.

2 (j) Collect uniform and consistent data regarding service  
3 delivery ~~that must be made available, on a quarterly basis,~~<sup>1</sup> to the  
4 legislature and the supreme court in a format that is not  
5 identifiable by individual ward or protected individual to protect  
6 confidentiality. The data under this subdivision must include all  
7 of the following:

8 (i) The number of wards under a <sup>2</sup>guardianship.

9 (ii) The number of protected individuals under a <sup>3</sup>  
10 conservatorship.

11 (iii) The number of wards under a ~~partial,~~<sup>4</sup> guardianship.

12 (iv) The number of wards under a full <sup>5</sup> guardianship.

13 (v) The number of guardians and conservators licensed under  
14 this part.

15 (vi) For each professional guardian, the number of wards to  
16 whom the professional guardian was appointed.

17 (vii) For each professional conservator, the number of  
18 protected individuals to whom the professional conservator was  
19 appointed.






20 (k) Consult with and assist other public or private agencies  
21 or organizations to implement the intent of this part.

22 (l) Make recommendations to the legislature and the supreme  
23 court on matters relating to the board's responsibilities under  
24 this part.

25 (m) Conduct contested case hearings under the administrative  
26 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as  
27 required to administer licensing and discipline under this part.

28 (n) Modify any minimum requirement under this part with the  
29 approval of the board.

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 Number: 1	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:13:14 AM
by professional guardians and professional conservators that must be made available on an annual basis			
 Number: 2	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:13:27 AM
professional			
 Number: 3	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:13:49 AM
professional			
 Number: 4	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:14:41 AM
limited professional			
 Number: 5	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:15:05 AM
professional			

1 (o) Promulgate any other rules that are necessary and  
2 appropriate to enable the board to fulfill its role and efficiently  
3 administer this part.

4 Sec. 5534. (1) Beginning ~~October 1, 2025~~<sup>1</sup> a person shall not  
5 serve as a professional guardian or professional conservator unless  
6 the person is issued a license under this section by the executive  
7 director.

8 (2) The executive director shall not issue a professional  
9 guardian license or professional conservator license unless the  
10 applicant meets all of the following conditions:

11 (a) The applicant holds a certification from the National  
12 Center for Guardianship Certification<sup>2</sup>

13 (b) The applicant submits a criminal background check to the  
14 department of state police.

15 (c) The applicant has not been found liable in a civil action  
16 that involved fraud, misrepresentation, material omission,  
17 misappropriation, theft, exploitation, abuse, neglect, sexual  
18 assault, or conversion.

19 (3) A professional guardian or professional conservator who is  
20 an individual shall report to the executive director <sup>3</sup>pt later than  
21 30 days after any of the following events have occurred:

22 (a) The professional guardian or professional conservator is  
23 convicted of a felony.


24 (b) The department has classified the professional guardian or  
25 professional conservator as a confirmed case on the central  
26 registry as those terms are defined in section 2 of the child  
27 protection law, 1975 PA 238, MCL 722.622.

28 (c) The professional guardian or professional conservator is  
29 convicted of a misdemeanor related to child abuse or neglect,


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the date determined under Section 5539

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or other certification program offered or recognized by the state.

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 Number: 3      Author: Sandy      Subject: Inserted Text      Date: 1/29/2024 10:20:12 AM  
any probate court that has appointed the professional guardian or professional conservator




1 vulnerable adult abuse or neglect, controlled substances, criminal  
 2 sexual conduct, domestic violence, stalking, embezzlement, or  
 3 crimes of theft or dishonesty.

4 (d) The professional guardian or professional conservator  
 5 files for bankruptcy.

6 (e) A personal protection order is entered against the  
 7 professional guardian or professional conservator.

8 (f) ~~The~~<sup>1</sup> probate court enters an order to surcharge the  
 9 professional guardian's or the professional conservator's bond, or  
 10 any court enters a judgment against the professional guardian or  
 11 professional conservator.

12 (g) ~~The~~<sup>2</sup> probate court finds that the professional guardian or  
 13 professional conservator breached the professional guardian's or  
 14 the professional conservator's fiduciary duties.

15 Sec. 5534a. The executive director shall not  <sup>3</sup> petition for a  
 16 guardianship or conservatorship or accept appointment as a guardian  
 17 or conservator of any individual.

18 Sec. 5535. (1) The executive director shall contract with  
 19 professional guardians to provide guardianship services for an  
 20 indigent ward ~~who is any of the following:~~






21 ~~(a) At significant risk of harm from abuse, neglect,~~  
 22 ~~exploitation, abandonment, self-harm, or self-neglect.~~

23 ~~(b) In imminent danger of loss of, or significant reduction~~  
 24 ~~in, public services that are necessary for the ward to live~~  
 25 ~~successfully in the most integrated and least restrictive~~  
 26 ~~environment that is appropriate in light of the ward's needs and~~  
 27 ~~values.~~

28 ~~(c) Homeless or at risk of homelessness.~~

29 (2) Except as otherwise provided in this subsection, a<sup>5</sup>

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 Number: 3	Author: Sandy	Subject: Sticky Note	Date: 1/29/2024 10:22:30 AM
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Add a new section 4, This Section's requirements do not apply to attorneys licensed by the State of Michigan and in good standing with the State Bar of Michigan.			
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 Number: 5	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:24:14 AM
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an individual			

1 professional guardian that contracts with the executive director  
 2 under this section shall not serve as a professional guardian for  
 3 more than 36<sup>1</sup>wards total, or for a professional guardian that is an  
 4 organization, more than 36<sup>2</sup>wards for each employee who holds a  
 5 license issued under section 5534<sup>4</sup> ~~including those wards for whom~~  
 6 ~~guardianship services are not provided for under a contract in~~  
 7 ~~accordance with this section.~~ The executive director may allow a  
 8 professional guardian to serve as guardian for more than 36<sup>5</sup>wards  
 9 if all of the following conditions are met:

10 (a) The professional guardian requests that a guardianship is  
 11 necessary in an emergency or unusual circumstance.

12 (b) The professional guardian does not serve as guardian for  
 13 more than 3 consecutive months or more than 4 months in 12 months.

14 (3) The executive director shall develop a fee schedule for  
 15 the payment of contracting professional guardians under this  
 16 section. The fee schedule must provide for all of the following:

17 (a) Case-weighting guidelines for greater compensation for the  
 18 first 3 months of a new guardianship.

19 (b) Higher compensation if the case is complex at the time of  
 20 appointment.


21 (c) Adjustment during the guardianship if the complexity of  
 22 the case changes.

23 Sec. 5536. (1) The executive director shall establish  
 24 procedures <sup>16</sup> do all of the following:

25 (a) Review complaints against professional guardians and  
 26 professional conservators to determine whether the professional  
 27 guardian or professional conservator has failed to meet licensure  
 28 standards.

29 (b) Review complaints against guardians and conservators to

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 Number: 1 80	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:24:33 AM
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 Number: 5 80	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:27:20 AM
 Number: 6	Author: Sandy	Subject: Inserted Text	Date: 1/29/2024 10:26:27 AM

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with regard to professional guardians and professional conservators under contract with the Office of State Guardian

1 determine whether the guardian or conservator breached the  
 2 guardian's or conservator's fiduciary duties or otherwise engaged  
 3 in misconduct.

4 (c) Obtain the information necessary to investigate a  
 5 complaint by filing an appearance as an interested party in the  
 6 relevant court proceeding.

7 (d) Respond to complaints, conduct investigations and  
 8 hearings, and take administrative action consistent with this part.

9 (e) Make findings on whether a <sup>1</sup>~~professional~~ guardian or  
 10 <sup>2</sup>~~professional~~ conservator has met licensure standards.

11 (f) Make findings on whether a guardian or conservator has  
 12 ~~breached the guardian's or the conservator's fiduciary duties or~~  
 13 <sup>3</sup>~~otherwise engaged in misconduct.~~







14 (g) Issue appropriate disciplinary orders when there are  
 15 findings of wrongdoing and dismiss complaints without merit.

16 (h) Refer appropriate complaints <sup>4</sup>to the attorney general or  
 17 another law enforcement agency.

<sup>5</sup>~~8 (2) If the executive director determines that a nonpublic  
 19 court file exists and that it is relevant to a pending complaint,  
 20 the executive director may request that the court release the  
 21 nonpublic court file to the executive director. On request of the  
 22 executive director, the court shall release the nonpublic court  
 23 file to the executive director.~~

24 ~~(3)~~ The executive director may request a law enforcement  
 25 officer to provide all available information about a given  
 26 complaint filed against a professional guardian or professional  
 27 conservator after a law enforcement officer has completed an  
 28 investigation regarding that complaint against the professional  
 29 guardian or professional conservator. An investigation is



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-  Number: 1 Author: Sandy Subject: Cross-Out Date: 1/29/2024 10:30:33 AM
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-  Number: 2 Author: Sandy Subject: Cross-Out Date: 1/29/2024 10:30:46 AM
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-  Number: 3 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:31:41 AM  
violated the conditions of licensure.
- 
-  Number: 4 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:33:35 AM  
regarding a current or formerly serving fiduciary
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-  Number: 5 Author: Sandy Subject: Cross-Out Date: 1/29/2024 10:34:08 AM
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-  Number: 6 Author: Sandy Subject: Sticky Note Date: 1/29/2024 10:34:37 AM  
This is overly broad and could encompass judge's notes and individually protected identifying information. Please indicate what information is believed to truly be necessary to the investigation for consideration.

1 considered completed after a prosecutor issues or declines to issue  
 2 charges. A law enforcement officer may redact information if needed  
 3 to protect the safety of witnesses or preserve the integrity of an  
 4 investigation.

5 (4) If the executive director finds that a professional  
 6 guardian or professional conservator fails to meet the conditions  
 7 under section 5534, after an opportunity for a hearing under the  
 8 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
 9 24.328, the executive director shall reduce the findings and  
 10 decision to writing and shall issue and cause to be served on the  
 11 professional guardian or professional conservator charged with the  
 12 failure a copy of the findings and an order requiring the person to  
 13 cease and desist from the violation. In addition, the executive  
 14 director may order any of the following:

15 (a) Revocation of the license of the professional guardian or  
 16 professional conservator.

17 (b) The suspension of the professional guardian or  
 18 professional conservator, subject to the following:

19 (i) The suspension must not be less than 30 days, with  
 20 conditions relevant to the failure to meet the conditions under  
 21 section 5534.

22 (ii) If the suspension exceeds 179 days, the suspension must  
 23 remain until further order of the executive director.

24 (c) Reprimand with conditions relevant to the failure to meet  
 25 the conditions under section 5534.

26 (d) Probation.

27 ~~(e) Restitution.~~

28 (5) If the executive director determines or has reasonable  
 29 cause to suspect that a ward has been or is being abused,





1 neglected, or exploited as a result of a filed complaint or during  
 2 the course of an investigation of a complaint, the executive  
 3 director shall immediately report the determination or suspicion to  
 4 adult protective services.<sup>[1]</sup>

5 (6) The executive director shall develop and distribute  
 6 educational resources. The educational resources may be written  
 7 materials, web materials, videos, in-person trainings, or in  
 8 another form. The education resources must include the following:

9 (a) Training materials for nonprofessional guardians and  
 10 nonprofessional conservators, including the following:

- 11 (i) Training on duties as a guardian.
- 12 (ii) Training on duties as a conservator.
- 13 (iii) Training on maximizing independence and autonomy.
- 14 (iv) Other training.

15 (b) Resources on alternatives to guardianship, including the  
 16 following:

- 17 (i) Supported decision making.
- 18 (ii) Power of attorney.
- 19 (iii) Designations of patient advocate.
- 20 (iv) Representative payees.

21 (c) Resources on supports and services, including, but not  
 22 limited to, the following:

- 23 (i) Home and community-based services.
- 24 (ii) Area agencies on aging.
- 25 (iii) Centers for independent living.
- 26 (iv) Community mental health.
- 27 (v) Other supports and services.
- 28 (d) Resources on caregiver support.




1 (e) Resources on common issues in guardianship and  
2 conservatorship, including the following:

- 3 (i) Dementia.
- 4 (ii) Mental illness.
- 5 (iii) Traumatic brain injury.
- 6 (iv) Developmental disabilities.
- 7 (v) Substance use disorders.
- 8 (vi) Other issues. 1
- 9 (vii) Other resources. 2

10 Sec. 5537. The attorney general may do any of the following:

11 (a) Subpoena documents from any 3 ~~probate court~~, guardian,  
12 conservator, or other fiduciary. 4

13 (b) Intervene on behalf of the public and participate as an  
14 interested party, at any stage of the proceeding, in any guardian,  
15 conservator, or protective proceeding. 5

16 (c) Investigate any complaint referred by the executive  
17 director 6 and make recommendations to the executive director and 7 law  
18 enforcement about the complaint. 8 









19 Sec. 5538. (1) The office of state guardian fund is created  
20 within the state treasury.

21 (2) The state treasurer may receive money or other assets from  
22 any source for deposit into the fund. The state treasurer shall  
23 direct the investment of the fund. The state treasurer shall credit  
24 to the fund interest and earnings from fund investments.

25 (3) Money in the fund at the close of the fiscal year remains  
26 in the fund and does not lapse to the general fund.

27 (4) The department is the administrator of the fund for  
28 auditing purposes.

29 (5) The department shall expend money from the fund, on

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-  Number: 1 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:38:16 AM  
(f) Training materials and educational resources for guardian ad litem appointed in guardianship and conservatorship proceedings, and
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-  Number: 2 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:38:43 AM  
(g)
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-  Number: 3 Author: Sandy Subject: Cross-Out Date: 1/29/2024 10:39:23 AM
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-  Number: 4 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:40:29 AM  
in any proceeding in which the attorney general has filed an appearance.
- 
-  Number: 5 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:42:16 AM  
in which the probate court has made a referral to the attorney general, Department of Human Services or a law enforcement agency.
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-  Number: 6 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:44:01 AM  
or ordered by a probate court
- 
-  Number: 7 Author: Sandy Subject: Sticky Note Date: 1/29/2024 10:43:16 AM  
the probate court,
- 
-  Number: 8 Author: Sandy Subject: Inserted Text Date: 1/29/2024 10:44:23 AM  
and take appropriate action.

1 appropriation, to reimburse the attorney general for expenses  
2 incurred related to investigations under and enforcement of this  
3 part.

4 Enacting section 1. This amendatory act takes effect January  
5 1, 2025.

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

- 9 (a) House Bill No. 4909.
- 10 (b) House Bill No. 4910.
- 11 (c) House Bill No. 4911.
- 12 (d) House Bill No. 4912.



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Number: 1 Author: Sandy Subject: Sticky Note Date: 1/29/2024 10:45:11 AM  
Add new section 5539---- Sections \_\_\_\_, \_\_\_\_, and \_\_\_\_ shall become effective 365 days after the Office of State Guardian has at least \$ \_\_\_\_ appropriated to its use.

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Number: 2 Author: Sandy Subject: Sticky Note Date: 1/29/2024 10:45:45 AM  
Add bill of rights:  
Bill of Rights for Adults Who Have a Guardian

You have the following rights at all times when you have a guardian:

Access to Justice Rights

1. You keep all rights that the court has not granted to your guardian.
2. You have the right to a lawyer who advocates for the outcome you want.
3. You have the right to be present and participate in all court hearings.
4. You have the right to let the court know your concerns or complaints about your guardianship.
5. You have the right to ask the court to review the need for your guardianship to change, continue or end and whether your guardian is right for you.
6. If there is a question about your capacity to exercise a specific right, you have the right to have a qualified person evaluate what you can do and whether to have some or all your rights restored.
7. You have the right to the support and accommodations you need to be able to effectively communicate with the court and to understand the court proceedings.
8. You have the right to have your rights explained to you in your preferred method of communication and in the language you choose.

Core Human Rights

9. You have the right to be treated with dignity and respect.
10. You have the right to be free from abuse, neglect, exploitation, and discrimination.
11. You have the right to remain as independent as you can.
12. You have the right to express and practice your own religious preferences.
13. You have the right to personal privacy.
14. You have the right to humane, safe, and sanitary living, learning, and working environments.
15. You have the right to sexual expression and to have your gender identity respected.

Decision-Making Rights

16. You have the right to a competent guardian who takes into account your goals, needs, and preferences and respects your desires, including medical treatment preferences, cultural practices, and religious beliefs.
17. You have the right to fully participate in all decisions, especially those affecting your care, where you live, your activities, and your social interactions, to the extent you wish to be involved and are able to be.
18. You have the right to receive necessary services and rehabilitation, within available resources, which protect your personal liberty and are provided within the least restrictive conditions.
19. You have a right to have your guardian prudently manage your resources.
20. You have the right to fully participate in decisions about how your property is managed, to the extent you wish to be involved and are able to be.
21. You have the right to keep confidential those matters which you wish to keep confidential unless that information is necessary to obtain services, to prevent abuse, neglect or exploitation, or to modify the guardianship order.

---

Number: 3 Author: Sandy Subject: Sticky Note Date: 1/29/2024 10:46:20 AM  
Consider using notice promulgated under uniform act:  
Notification of Rights  
You are getting this notice because a guardian, conservator, or both have been appointed for you.

It tells you about some important rights you have. It does not tell you about all your rights. If you have questions about your rights, you can ask an attorney or another person, including your guardian or conservator, to help you understand your rights.

General rights:

You have the right to exercise any right the court has not given to your guardian or conservator.

You also have the right to ask the court to:

- end your guardianship, conservatorship, or both;
- increase or decrease the powers granted to your guardian, conservator, or both;
- make other changes that affect what your guardian or conservator can do or how they do it; and
- replace the person that was appointed with someone else.

You also have a right to hire an attorney to help you do any of these things.

Additional rights for persons for whom a guardian has been appointed:

1 appropriation, to reimburse the attorney general for expenses  
2 incurred related to investigations under and enforcement of this  
3 part.

4 Enacting section 1. This amendatory act takes effect January  
5 1, 2025.

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

- 9 (a) House Bill No. 4909.
- 10 (b) House Bill No. 4910.
- 11 (c) House Bill No. 4911.
- 12 (d) House Bill No. 4912.



As an adult subject to guardianship, you have a right to:

- (1) be involved in decisions affecting you, including decisions about your care, where you live, your activities, and your social interactions, to the extent reasonably feasible;
- (2) be involved in decisions about your health care to the extent reasonably feasible, and to have other people help you understand the risks and benefits of health-care options;
- (3) be notified at least 14 days in advance of a change in where you live or a permanent move to a nursing home, mental-health facility, or other facility that places restrictions on your ability to leave or have visitors, unless the guardian has proposed this change in the guardian's plan or the court has expressly authorized it;
- (4) ask the court to prevent your guardian from changing where you live or selling or surrendering your primary dwelling by [insert process for asking the court to prevent such a move];
- (5) vote and get married unless the court order appointing your guardian states that you cannot do so;
- (6) receive a copy of your guardian's report and your guardian's plan; and
- (7) communicate, visit, or interact with other people (this includes the right to have visitors, to make and receive telephone calls, personal mail, or electronic communications) unless:
  - your guardian has been authorized by the court by specific order to restrict these communications, visits, or interactions;
  - a protective order is in effect that limits contact between you and other people; or
  - your guardian has good cause to believe the restriction is needed to protect you from significant physical, psychological, or financial harm and the restriction is for not more than seven business days if the person has a family or pre-existing social relationship with you or not more than 60 days if the person does not have that kind of relationship with you.

Additional rights for persons for whom a conservator has been appointed:

As an adult subject to conservatorship, you have a right to:

- (1) participate in decisions about how your property is managed to the extent feasible; and
- (2) receive a copy of your conservator's inventory, report, and plan.]



# Council Materials

**MEETING OF THE COUNCIL OF THE  
PROBATE & ESTATE PLANNING SECTION OF THE  
STATE BAR OF MICHIGAN**

Friday, February 16, 2024

**Regular Meeting Agenda**

- I. Commencement (Nathan Piwowarski, Acting Chair)
  - A. Call to Order and Welcome
  - B. Zoom Roll Call
  - C. Confirmation of In-Person Attendees
  - D. Excused Absences
  
- II. Monthly Reports
  - A. Lobbyist's Report (Public Affairs Associates)
  - B. Minutes of Prior Council Meetings (Rick Mills) – **Attachment 1**
  - C. Treasurer's Report (Christine Savage) – **Attachment 2**
  
- III. Committee Reports
  - A. Committee on Special Projects (Mysliwicz)
  - B. Amicus Curiae (Mayoras)
  - C. Annual Meeting (Spica)
  - D. Awards (Kellogg) – **Attachment 3**
  - E. Budget (Mills)
  - F. Bylaws (Lucas)
  - G. Charitable and Exempt Organizations (Wrock)
  - H. Citizens Outreach (Goetsch)
  - I. Court Rules, Forms, and Proceedings (David)
  - J. Electronic Communications (Hentkowski)
  - K. Ethics and Unauthorized Practice of Law (Mallory)
  - L. Guardianship, Conservatorship, and End of Life (Glazier)

- M. Legislation Development and Drafting (Tiplady and Mills)
  - N. Legislation Monitoring and Analysis (Shelton)
  - O. Legislative Testimony (Mysliwicz)
  - P. Membership (Hentkowski)
  - Q. Nominating (Lucas)
  - R. Planning (Spica)
  - S. Probate Institute (Piwowarski)
  - T. Real Estate (Hentkowski)
  - U. State Bar and Section Journals (Mysliwicz) – **Attachment 4**
  - V. Tax (Anderton)
  - W. Assisted Reproductive Technology (Welber)
  - X. Electronic Wills (Cieslik)
  - Y. Fiduciary Exception to the Attorney-Client Privilege (Krueger)
  - Z. Nonbanking Entity Trust Powers (Spica and Tiplady)
  - AA. Premarital Agreements (Savage)
  - BB. Uniform Community Property Disposition at Death Act (Spica)
  - CC. Undue Influence (Silver)
  - DD. Uniform Fiduciary Income and Principal Act (Spica)
  - EE. Uniform Partition of Heirs Property Act (Spica)
  - GG. Various Issues Involving Death and Divorce (Borst and Blume)
- IV. Good of the Order
  - V. Adjournment of Regular Meeting

#### **Roundtable (Time Permitting)**

**Reminder:** The next Probate & Estate Planning Council meeting will be Friday, March 15, 2024 at the **University Club of Michigan State University, 3435 Forest Road, Lansing, Michigan 48910**. The Council meeting will begin (almost) immediately after the Committee on Special Projects meeting, which begins at 9:00 AM.

# ATTACHMENT 1

**MEETING OF THE COUNCIL OF THE  
PROBATE & ESTATE PLANNING SECTION OF THE  
STATE BAR OF MICHIGAN**

Friday, January 19, 2024

**Minutes**

I. Commencement (James P. Spica)

A. Call to Order and Welcome

Chairperson Spica called the meeting to order at 9:00 AM noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Council.

B. Zoom Roll Call

James P. Spica, Angela Hentkowski, Christine Savage, Daniel W. Borst, David Sprague, Kathleen Cieslik, Kathleen Goetsch, Sandra Glazier, Melisa M.W. Mysliwicz, Hon. Michael McClory, Michael Lichterman, Michael Shelton, Nicholas A. Reister, Patricia Davis, Ponce Clay, Rachael Sedlacek (ICLE), Alexander S. Mallory, Neal Nusholtz, Rebecca Wrock, Nathan Piwowarski, Rebecca Bechler (Public Affairs Associates), Elizabeth McLachlan, Georgette David, James F. Anderton, V., Ryan Buck, Mark E. Kellogg, Andrew Mayoras, James Steward, Jim Ryan (Public Affairs Associates), and Andrea Neighbors (administrative assistant)

C. Confirmation of In-Person Attendees

Katie Lynwood, Richard C. Mills, Daniel Hilker, Susan L. Chalgian, Ernschie Augustin, and David P. Lucas.

D. Excused Absences

Warren Krueger and Kenneth Silver

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates)

- i. Pete Langley is a new addition to the PAA team.
- ii. Senator Chang has indicated that she will be bringing up the EPIC omnibus package on February 1, 2024.
- iii. The Uniform Power of Attorney package is now law.

- iv. The Powers of Appointment Act/USRAP technical amendments HB 4863 and 4864 are on the House floor. They moved from the second to the third reading. They did not get voted on this week.
- v. Senator Chang and Becky Beckler had a conversation regarding the Guardianship Reform Package.
- B. Minutes of Prior Council Meeting – December (Richard Mills) – **Attachment 1**. Rick Mills motioned, and Katie Lynwood supported accepting the December minutes as drafted. Motion carried.
- C. Chair's Report (Jim Spica) – Mr. Spica reported that on December 21, 2023, the Court of Appeals, in an unpublished opinion, decided on *Scott v Sprague*. Mr. Spica referred the case to the Legislation Development and Drafting Committee.
- D. Treasurer's Report (Christine Savage)  
Ms. Savage reported that the financial reports should be finalized by the State Bar in February.

### III Committee Reports

- A. Committee on Special Projects (Mysliwicz): No report.
- B. Amicus Curiae (Mayoras): No report.
- C. Annual Meeting (Spica): No report.
- D. Awards (Kellogg): No report.
- E. Budget (Mills): No report.
- F. Bylaws (Lucas): Mr. Lucas reported that the Bylaws Committee will be looking at the section pertaining to public policy positions.
- G. Charitable and Exempt Organizations (Wrock). Ms. Wrock reported that the next committee meeting is on January 26<sup>th</sup> at 10:00 AM if anyone would like to join the committee.
- H. Citizens Outreach (Goetsch): Ms. Goetsch reported that the Section's brochures on the Uniform Powers of Attorney Act are being updated.
- I. Court Rules, Forms, and Proceedings (David): No report.
- J. Electronic Communications (Hentkowski): No report.
- K. Ethics and Unauthorized Practice of Law (Mallory): Mr. Mallory invited members to join the committee.

- L. Guardianship, Conservatorship, and End of Life (Glazier): Ms. Glazier reported that the committee met with Senator Chang, Hon. Mack, and Hon. McClory regarding the Guardianship Reform package. The committee will be working on a redline strikeout on HB 4909, 4910, 4911, 4912, and 5047, per Senator Chang's request.
- M. Legislation Development and Drafting (Mills/Tiplady): No report. Andy Mayoras made a referral regarding the statute of limitations on irrevocable trusts and cited *Dive v Zimmerman*.
- N. Legislation Monitoring and Analysis (Shelton). No report. Mr. Spica requested a report from the committee regarding SB 678-681.
- O. Legislative Testimony (Mysliwicz): No report.
- P. Membership (Hentkowski): No report.
- Q. Nominating (Lucas): Mr. Lucas reported that the Nominating Committee will take up its work later in the year. Part of the Nominating Committee's consideration is participation in meetings and committees of the Council.
- R. Planning (Spica). Mr. Spica proposed luncheons either quarterly, monthly, or other. Any opinions should be directed to Mr. Spica or Ms. Lynwood.
- S. Probate Institute (Piwowarski): No report.
- T. Real Estate (Hentkowski): No report.
- U. State Bar and Section Journals (Mysliwicz): Ms. Mysliwicz reported that the Journal has been drafted and will be out soon.
- V. Tax (Anderton): Mr. Nusholtz reported that the report is Attachment 3 of the January meeting materials. He pointed out key paragraphs for powers of attorney.
- W. Assisted Reproductive Technology (Welber): No report.
- X. Electronic Wills (Cieslik): The committee will be meeting on October 16, 2023 at 12:00 PM if anyone would like to attend the meeting.
- Y. Fiduciary Exception to the Attorney-Client Privilege (Krueger): no report
- Z. Nonbanking Entity Trust Powers (Spica): Mr. Spica reported that the office of banking has not yet produced the line-by-line evaluation of the drafted proposal.
- AA. Premarital Agreements (Savage): No report.

- BB. Uniform Community Property Disposition at Death Act (Spica): Mr. Spica reported that the committee met and approved the uniform act for development in the form that is adoptable in Michigan and the committee is waiting for the chair to produce a draft.
  - CC. Undue Influence (Silver): Mr. Mayoras reported that the committee circulated a draft to Judiciary members for feedback based on comments from previous CSP meetings. Once feedback has been received, the committee will either meet again or bring the information straight to CSP.
  - DD. Uniform Fiduciary Income and Principal Act (Spica): The Unitrust Act has been drafted by LSB and developed by the Fiduciary Income and Principal Act Committee.
  - EE. Uniform Partition of Heirs Property Act (Spica): On Wednesday, Mr. Spica testified with Prof. Thomas Mitchell, the ULC reporter for the Uniform Partition of Heirs Property Act in the House Judiciary Committee. House Bill 4924 is being sponsored by Rep. Dievendorf. The Probate and Estate Planning Section took a public policy position on this bill last year.
  - FF. Various Issues Involving Death and Divorce (Borst/Blume): Mr. Borst reported that the committee sent some conclusions to Hon. Dunnings for her to share with a group of judges for their responses.
- III. Good of the Order  
Dan Hilker led a discussion regarding requesting publications of nonpublished court of appeals opinions.
  - IV. Adjournment of Regular Meeting at 10:41 p.m.

Respectfully Submitted,

Richard C. Mills, Secretary

The next Council meeting will be held on Friday, February 16, 2024.



# ATTACHMENT 2

Probate and Estate Planning Section: 2023-2024  
Treasurer's Monthly Activity Report

Carry-Over Fund Balance from 2022-2023		Carry Over Balance
Fund Balance-Probate/Estate Planning Section		\$ 221,440.20

Revenue		December 2023	YTD Revenue (2023-2024)	Budget (2023-2024)
7-141-40080 Probate/Estate Planning Dues		\$ 5,145.00	\$ 109,760.00	
7-141-40085 Probate/Estate Affiliate Dues		\$ -	\$ 560.00	
7-141-42025 Seminar Revenue		\$ -	\$ -	
7-141-42820 Subscription to Newsletter		\$ -	\$ -	
7-141-42175 Hein Publishing Agreement/Royalties		\$ -	\$ -	
7-141-42830 Publications Revenue		\$ -	\$ -	
7-141-42690 Miscellaneous Revenue		\$ -	\$ -	
<b>Total Revenue</b>		<b>\$ 5,145.00</b>	<b>\$ 110,320.00</b>	<b>\$ -</b>

Expenses		December 2023	Cumulative Expenses	Budget (2023-2024)
7-141-67010 Administrative Services		\$ -	\$ 1,156.50	
7-141-67115 Legislative Consulting		\$ 3,000.00	\$ 9,000.00	
7-141-65075 LlstServ		\$ -	\$ -	
7-141-67065 Community Support, Donations & Sponsorships		\$ -	\$ -	
7-141-62315 Meetings		\$ 5,802.52	\$ 6,966.41	
7-141-65420 Seminar Expenses		\$ -	\$ -	
7-141-67140 Networking Events		\$ -	\$ -	
7-141-67020 Annual Meeting		\$ -	\$ -	
7-141-65540 Speaker Expenses		\$ -	\$ -	
7-141-61200 Travel		\$ 659.39	\$ 6,460.42	
7-141-64005 Telephone		\$ -	\$ -	
7-141-64025 Books & Subscriptions		\$ -	\$ -	
7-141-65090 Recognition		\$ -	\$ -	
7-141-67015 Amicus Brief		\$ 13,000.00	\$ 13,000.00	
7-141-64015 Printing & Copying		\$ -	\$ -	
7-141-65460 Newsletter/Publication		\$ -	\$ 4,300.00	
7-141-64010 Postage		\$ -	\$ -	
7-141-64020 Dues		\$ -	\$ -	
7-141-64055 Miscellaneous		\$ -	\$ -	
<b>Total Expenses</b>		<b>\$ 22,461.91</b>	<b>\$ 40,883.33</b>	<b>\$ -</b>

<b>Net Income</b>		<b>\$ (17,316.91)</b>	<b>\$ 69,436.67</b>	<b>\$ -</b>
<b>General Fund plus Net Income (Running Total)</b>		<b>\$ 290,876.87</b>	<b>\$ 290,876.87</b>	<b>\$ -</b>

Hearts and Flowers Fund Carry Over Balance	Carry Over Balance	December 2023		
Beginning Deposit Fund Balance	\$ -			
Revenue				
Withdrawals				
<b>Total Fund</b>				

# ATTACHMENT 3

## Probate and Estate Planning Section Awards

### Current Awards:

*Michael W. Irish Award:* the Michael W. Irish Award honors a lawyer whose contributions to the Probate and Estate Planning Section and whose service to community reflect high standards of professionalism and selflessness. This Award is bestowed by the Probate and Estate Planning Section, by action of the Section's Council. The Section Council's action would typically be based on a recommendation from the Council's Awards Committee; the Awards Committee's recommendation to Council would typically be based on recommendations from Council members and Section members. This Award is bestowed periodically, but no more than one Award has been bestowed in any particular calendar year.

*Cooney Award:* the Cooney Award honors a lawyer by admitting the lawyer to the George A. Cooney Society. Members of the George A. Cooney Society act and reflect high standards of professionalism and selflessness. This Award is bestowed by the Executive Committee of the Probate and Estate Planning Section, based on nominations by the Institute of Continuing Legal Education. Guidelines for nomination and selection are that the lawyer nominated and selected: (i) has made significant CLE contributions to probate and estate planning over a substantial period of time; (ii) has made contributions of outstanding quality; (iii) has made a wide range of contributions (as examples: multiple contributions as a speaker, author, editor, advisory board member, curriculum advisor, and by preparing Top Tips, How-To Kits and other online resources); (iv) has provided generous mentorship and assistance to colleagues with their probate and estate planning career development; and (v) has been actively involved with the Probate & Estate Planning Section of the State Bar of Michigan.

### Proposal for new Award:

*George Gregory Award:* the George Gregory Award would honor a member of the Probate and Estate Planning Section for valuable contributions to the Probate and Estate Planning Section's Council. This Award would be bestowed by the Executive Committee of the Probate and Estate Planning Section, in consultation with the Council's Awards Committee, based on nominations by current and former Council members. This Award would be bestowed periodically, typically once each Section year, and typically for the Awardee's valuable contributions during the prior Section year. Guidelines for nomination and selection are that the individual nominated and selected: (i) provides valuable contributions at, and regularly attends, the Section's Council meetings and meetings of the Council's Committees; (ii) is actively involved in Section leadership and governance, such as service as an Officer of the Council, Chair of a Council Committee, and as Reporter for a Committee's legislation projects. George Gregory's valuable and outstanding service to the Probate and Estate Planning Section and Council exemplify the service for which the George Gregory Award would be bestowed.

# ATTACHMENT 4

**To:** Probate and Estate Planning Council  
**From:** Melisa M. W. Mysliwec, Chair, State Bar and Section Journals Committee  
**RE:** **Report to Council regarding Michigan Probate & Estate Planning Journal  
Publication Agreement with the Institute of Continuing Legal Education**  
**Date:** February 9, 2024

---

The existing Publication Agreement between the Section and the Institute of Continuing Legal Education (“ICLE”) for publication of the Michigan Probate & Estate Planning Journal (the “Journal”) expired December 31, 2023. The Committee received and reviewed ICLE’s proposed 7<sup>th</sup> Renewal of the Agreement, which is attached, and would apply through December 31, 2026. The only change proposed is an increase in cost, in Section IV.b., which ICLE states accounts for rising overhead. Specifically, ICLE is proposing increasing the cost from \$4,300 for each issue of the Journal to the following:

- \$4,300 for the issue of the Journal just published in January 2024;
- \$4,500 for the two additional issues to be produced in 2024;
- \$4,650 for each issue produced in 2025; and
- \$4,800 for each issue produced in 2026.

ICLE also inquired whether the Section would be amenable to paying twice a year instead of paying the above costs at the time each issue is e-blasted to the Section (which occurs three times a year).

The Committee reviewed the 4<sup>th</sup> Renewal, 5<sup>th</sup> Renewal, and 6<sup>th</sup> Renewal, in addition to the proposed 7<sup>th</sup> Renewal of the Agreement. The Committee also reviewed cost of living adjustments since 2012 and confirmed that, even at the increased costs proposed, the Section will be receiving good value for publication of the Journal. The Committee also acknowledged that, while we could seek competing quotes from alternative publishers, we are pleased with the current relationship with ICLE.

The Committee agrees to ICLE’s proposed changes to Section IV.b., but rejects the idea of modifying Section IV.c. to pay twice annually instead of three times each year.

The proposed 7<sup>th</sup> Renewal was then forwarded to the State Bar of Michigan for review by its general counsel, Drew Baker, who has confirmed approval. Finally, the Committee also consulted with the Section’s Treasurer, who confirmed the Section has the resources to support the slight increase in publication costs proposed.

**Recommendation:**

The Committee recommends that the Section (1) approve renewal of the Publishing Agreement between the Section and ICLE, on the terms set forth in the proposed 7<sup>th</sup> Renewal of the Agreement; (2) authorize the Chair of the Section to execute the Agreement; and (3) authorize the Chair of the Section to present the Agreement to the State Bar of Michigan for signature.

Respectfully submitted,



Melisa M. W. Mysliwec  
Chair, State Bar and Section Journals Committee



### **Publishing Agreement for the *Probate Journal* (~~Sixth~~ Seventh Renewal)**

The Regents of the University of Michigan on behalf of its Institute of Continuing Legal Education (“ICLE”) and the Probate and Estate Planning Section of the State Bar of Michigan (the “Section”) agree on the following terms for producing *The Michigan Probate & Estate Planning Journal* (the “*Journal*”).

- I. **Publication.** ICLE will publish 3 evenly spaced issues each year. Publication is scheduled for December, April and August of each year. Each issue is anticipated to be approximately 60 pages, 8½ x 11 inches, emailed to Section members and available in electronic form through the Section’s State Bar web site and through the Section member area on ICLE’s web site.
  
- II. **The Section’s Responsibilities.** The Section shall:
  - a. Appoint a Section contact person (the “Journal Editor”) who will be responsible for planning the contents of the *Journal* and trouble-shooting major issues. The Journal Editor is responsible for promptly providing ICLE with the list of articles, features and authors and for reviewing articles/features and proofs in a timely way.
  - b. Take primary responsibility for determining the theme of each issue, the recurring features, the number of articles, the topics for articles, and the authors of articles and features.
  - c. Cooperate with ICLE staff in determining the schedule for the year and for each issue.
  - d. Be responsible for email distribution of the *Journal* to Section members.
  
- III. **ICLE’s Responsibilities.** ICLE shall:
  - a. Appoint an ICLE editor (the “ICLE Editor”) who is the Section’s primary contact at ICLE for the *Journal*. ICLE will assign the ICLE Editor to devote adequate time to produce the *Journal*.
  - b. Assign an ICLE staff lawyer (the “ICLE Lawyer”) to review each issue of the *Journal* for substantive errors or omissions. If requested by the Journal Editor, the ICLE Lawyer will participate in planning meetings with the Journal Editor and/or an Editorial Board, assist in determining topics for articles, including suggesting existing material submitted to ICLE that might form the basis of an article and suggesting possible authors.
  - c. If requested by the Journal Editor, the ICLE Editor will regularly remind the authors of deadlines and obtain their articles and features. The ICLE Editor will promptly inform



the Journal Editor of any serious problems anticipated in meeting the agreed schedule. The Journal Editor will review articles and features before ICLE begins processing them.

- d. The ICLE Editor will cite-check and lightly copyedit (review for grammatical and stylistic issues) the articles and features. Within two weeks after the last article or feature is received, the ICLE Editor will send a final, typeset proof of the entire issue to the Journal Editor for review and approval.
- e. Handle all typesetting for the *Journal*. If the Section desires a redesign of the Journal, ICLE will oversee the redesign process and recommend, hire and supervise any outside designer.
- f. Provide the Section with electronic files in PDF or other format agreed on by the parties for email distribution and posting on the Section's State Bar web site.
- i. Prepare the articles and features in XML or similar format as needed for posting on the Section member area of the ICLE web site.

**IV. Term; Payment; Relation to Other Projects.**

- a. The term of this Agreement shall begin January 1, ~~2021~~2024 and end December 31, ~~2023~~2026.
- b. ~~The Section will pay ICLE \$4,300 for the issue of the Journal published in January 2024.~~  
~~For each issue of the Journal published during the remaining term of this agreement, beginning with the April 2021 issue and ending with the December 2023 issue the Section will pay:~~
  - i. ~~\$4500 for the two additional issues produced in 2024~~
  - ii. ~~\$4650 for each issue produced in 2025~~
  - iii. ~~\$4800 for each issue produced in 2026~~

~~b. The parties acknowledge that this amount does not compensate ICLE for expected staff and overhead costs. This charge is reduced in light of the value ICLE receives as a result of the Section's strong support and contributions to ICLE's probate seminars and resources, which have yielded strong audience response and income.~~

- c. Payments will be due at the time each issue of the Journal is sent to the Section for email distribution and posting. ICLE will send an invoice to the Treasurer of the Probate Section.

**V. Other Issues.**

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- a. In order to minimize scheduling delays, ICLE and the Journal Editor will agree on the minimum number and type of articles and features that make up an acceptable issue (for example, that every issue must include at least 3 of the 6 regular columns (Chairperson's letter, recent decisions, legislative report, ethics update, EPIC Q&A, and digest of opinions), the list of officers and committees, and 3 substantive articles). If four weeks pass after the submission deadline set for articles, ICLE will prepare and publish the issue as long as it includes the minimum number of articles and features. ICLE will remind the Journal Editor as this deadline approaches and will keep the Journal Editor informed of the status of submissions for each edition.
- b. Producing 3 issues each year will require the cooperative efforts of Section personnel and ICLE. ICLE will use its best efforts to ensure that three issues will be produced each year, but cannot guarantee this if authors or Journal Editors do not meet agreed deadlines for the minimum agreed contents. ICLE does promise to monitor the schedule, vigorously remind contributors and the Journal Editor of deadlines, and alert the Journal Editor and Section Chairperson in a timely way of problems that may have a significant impact on the schedule.
- c. ICLE will be allotted two pages in each issue to advertise ICLE resources of interest to probate and estate planning practitioners. The Section's and Section leaders' participation in creating and making these resources available will be featured.
- d. A regular feature of the *Journal* will be brief articles that explain the ICLE Partnership's probate and estate planning resources, including its most recent additions. The role of the Probate Section and its leaders in creating these resources will be featured.
- e. Either party may terminate this Agreement for the other party's material breach, after notice and a reasonable opportunity to cure the breach.

The foregoing is agreed to by ICLE and the Section.

REGENTS OF THE UNIVERSITY OF  
MICHIGAN ON BEHALF OF  
THE INSTITUTE OF  
CONTINUING LEGAL EDUCATION

THE PROBATE & ESTATE PLANNING SECTION  
OF THE STATE BAR OF MICHIGAN

By \_\_\_\_\_

By \_\_\_\_\_

James P. Spica, Section Chairperson

Date \_\_\_\_\_

Date \_\_\_\_\_