MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

December 15, 2012
Lansing, Michigan

Minutes

I. Call to Order

The Chair-Elect of the Section, Thomas F. Sweeney, called the meeting to order at 10:33 a.m.

II. Attendance

A. The following officers and members of the Council were in attendance:

Imami, Shaheen I. – Secretary
Morrissey, Amy N. – Vice-Chair
Steward, James B. – Treasurer
Sweeney, Thomas F. – Chair-Elect
Allan, Susan M.
Ballard, Christoper A.
Bearup, George F.
Brigman, Constance L.
Clark-Kreuer, Rhonda M.
Kerr, J. David
Lucas, David P.
Lentz, Marguerite M.
O’Brien, Hon. Darlene
Ouellette, Patricia M.
Skidmore, David L.
Spica, James P.
Teahan, Marlaine C.
Welber, Nancy H.

A total of 18 council members and officers were present representing a quorum.

B. The following officers and members of the Council were absent with excuse:

Harder, Mark K. – Chair
Taylor, Robert M.
Schnelz, Rebecca
Murkowski, Hon. David M.
Ard, W. Josh

C. The following officers and members were absent without excuse:

None.

D. The following ex-officio members of the Council were in attendance:

Douglas A. Mielock
E. Others in attendance:

Geoffrey Vernon  Michael Lichterman
Jill Goodell  Sharri L. Roland Phillips
Nazneen H. Syed  Rick Mills
Robert Tiplady  Mark E. Kellogg
Joe Viviano  Katie Lynwood
Anthea Papista  Kurt Olson
Steve Jones  Jeanne Murphy

III. Minutes of the November 17, 2012, Meeting of the Council

Shaheen I. Imami presented the minutes of the November 17, 2012, meeting and noted the correction of typographical errors. David Kerr moved for approval with support from George Bearup. The motion was approved on a voice-vote with no nays or abstentions.

IV. Treasurer’s Report

James B. Steward presented the Treasurer’s report. Mileage rate for 2013 increased to $.565/mile.

V. Chairperson’s Report – Mark K. Harder

Thomas F. Sweeney, the Chair-Elect, presented the Chairperson’s report in Mark K. Harder’s absence:

- After many years of trying, the statute of repose passed the Legislature. Special thanks were given to Christopher A. Ballard and Rebecca Bechler for last-minute efforts.

- Nazneen H. Syed was added to the Amicus Committee.

VI. Report of the Committee on Special Projects – Marlaine C. Teahan

Marlaine C. Teahan reported that CSP heard from the Domestic Asset Protection Trust (“DAPT”) sub-committee regarding qualified dispositions and whether Medicaid and other special needs trusts need to be integrated into the proposed legislation. Ms. Teahan also discussed the Specialization Committee report regarding the proposed physical location requirement (which is recommended by CSP) and a discussion related to hours/work requirements in the context of part- and full-time practice.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Shaheen I. Imami

No report.
2. **Bylaws** – Nancy H. Welber

   No report.

3. **Awards** – Douglas A. Mielock

   No report.

4. **Planning** – Thomas F. Sweeney

   Thomas F. Sweeney reported the updated table of contents for the newly created Council Members' handbook. Marlaine C. Teahan moved for approval, with support from George F. Bearup, and approved on a Council vote of 18-0, with no abstentions.

5. **Nominating** – Harold G. Schuitmaker

   No report.

6. **Annual Meeting** – Thomas F. Sweeney

   Thomas F. Sweeney reported that the Section’s annual meeting is scheduled for September 21, 2013.

**B. Education and Advocacy Services for Section Members**

1. **Amicus Curiae** – David L. Skidmore

   No report.

2. **Probate Institute** – Amy N. Morrissey

   Jeanne Murphy reported that notices and invitations to the Probate Institute were sent out.

3. **State Bar and Section Journals** – Amy N. Morrissey

   Amy N. Morrissey reported that 537 members have chosen to receive a hard-copy of the Probate Journal. J. David Kerr commented that the request to elect a hard-copy was sent via email to members who may not use email. A general discussion occurred regarding available methods of notifying older section members of the Section’s news.

4. **Citizens Outreach** – Rebecca A. Schnelz

   No report.

5. **Electronic Communications** – William J. Ard

   No report.
C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Christopher A. Ballard reported that the statute of repose, decanting, inventory, and foreign guardianship transfer legislation are waiting for Governor Snyder's signature. Insurable interest legislation did not pass, as it was stuck in committee due to lack of time (it was noted that this affects ILITs). Mr. Ballard will prepare a memo summarizing legislative changes in 2012, including those during the lame-duck session.

2. Updating Michigan Law – Marguerite Munson Lentz

No report.

3. Insurance Committee – Thomas F. Sweeney

Thomas F. Sweeney confirmed that the insurable interest legislation did not pass.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

No report.

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

No report.

3. Specialization and Certification – James B. Steward

No report.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Marlaine C. Teahan

Marlaine C. Teahan reported that the proposed amendment to MCR 2.105 (regarding the imposition of “diligent inquiry”) was not adopted by the MSC.

2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No report.

F. Areas of Practice

1. Real Estate – George F. Bearup

No report.
2. Transfer Tax Committee – Nancy H. Welber

No report

3. Charitable and Exempt Organization – Christopher A. Ballard

Chris Ballard reported that William Blumenfeld, of the Michigan AG’s office, will be joining the committee. Mr. Ballard also mentioned the status of a re-write of charitable trustee's act.

4. Transfer Tax – Thomas F. Sweeney

No report.

5. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman

Constance L. Brigman reported:

- SB 539 passed with a minor change "other jurisdiction" changed to "other state." A change also was made in subsection 2 regarding appointments and priority.

- David L. Skidmore continues working on GAL issues.

- The status of a letter to the MPJA regarding powers of a plenary guardian.

- There are some developments regarding POLST. Specifically, it is expected that some guidelines will be published, but apparently without any of the suggestions from our Section. A discussion occurred regarding a family's ability to consent to end-of-life decisions absent express authority, including existing law regarding the same versus the practice by some to permit such consent. It was noted that Delaware pulled its POLST program because procedures were being used on people who are not terminally ill – and the same concern exists in Michigan, so a perception exists that POLST is a dangerous idea and that any procedure should be based on "principles."

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips

No report.

2. Business Law Section Liaison – John R. Dresser

No report

3. Elder Law Section Liaison – Amy R. Tripp
J. David Kerr reported regarding pending legislation (which may have passed) on posting notice for landlord-tenant disputes.

4. Family Law Section Liaison – Patricia M. Ouellette
No report.

5. ICLE Liaison – Jeanne Murphy
No report.

6. Law Schools Liaison – William J. Ard
No report.

7. Michigan Bankers Association Liaison – Susan Allan
No report.


Judge Darlene O’Brien reported that the MPJA’s executive committee wants her to remain as liaison to the Section despite her transition to the criminal/family law docket. Judge O’Brien commented on SCAO’s performance measures and case-flow guidelines – noting that another committee will be convened by SCAO. There was some discussion related to the passage of time as a component of resolving post-death disputes.

Thomas F. Sweeney noted the revenue implications of the recently-passed inventory legislation (which he discussed with Judge Milton Mack separately). Idea to make-up the short fall resulting from the deduction of liens include an increased and/or an increase in the filing fees by $300.00.

Judge O’Brien will send a copy of the current case-flow guidelines to attach to minutes.

9. Probate Registers Liaison – Rebecca A. Schnelz
No report.

10. SCAO Liaisons – Marlaine C. Teahan

Marlaine C. Teahan reported on whether SCAO should meet more than once per year and suggested that twice per year may be more appropriate. A letter will be sent by Mark K. Harder to SCAO requesting the additional meeting.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz
No report.
12. State Bar Liaison – David R. Brake
   No report.

13. Taxation Section Liaison – Frederick H. Hoops, III
   No report.

VIII. Other Business
   None.

IX. Hot Topics
   None.

X. Adjournment
   Meeting adjourned at 11:20 a.m.
I. Call to Order

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:33 a.m.

II. Attendance

A. The following officers and members of the Council were in attendance:

   - Harder, Mark K. – Chair
   - Imami, Shaheen I. – Secretary
   - Morrissey, Amy N. – Vice-Chair
   - Steward, James B. – Treasurer
   - Sweeney, Thomas F. – Chair-Elect
   - Allan, Susan M.
   - Ard, W. Josh
   - Bearup, George F.
   - Brigman, Constance L.
   - Clark-Kreuer, Rhonda M.
   - Kerr, J. David
   - Lucas, David P.
   - Lentz, Marguerite M.
   - Murkowski, Hon. David M.
   - Ouellette, Patricia M.
   - Schnelz, Rebecca A.
   - Skidmore, David L.
   - Spica, James P.
   - Taylor, Robert M.
   - Teahan, Marlaine C.
   - Welber, Nancy H.

A total of 21 council members and officers were present representing a quorum.

B. The following officers and members of the Council were absent with excuse:

   - Christopher A. Ballard
   - Hon. Darlene O’Brien

C. The following officers and members were absent without excuse:

   None.

D. The following ex-officio members of the Council were in attendance:

   - Gregory, George W.
   -McCloy, Michael S.
   - Mielock, Douglas A.
   - Mielock, Douglas A.
E. Others in attendance:

Lorraine New                Paul Renzo
Michael Lichterman          John Dresser
Loukas Kalliantasis         Nazneen Syed
Nina Dodge Abrams           Navjyot Francis
Amy Peterman                Kurt A. Olson
Carol M. Hogan              Daniel Cogan
Kevin DuComb                Joe Viviano
Neal Nusholtz               Rick Mills
Kathleen Goetsch

III. Minutes of October 27, 2012, Meeting of the Council

Shaheen I. Imami presented the minutes of the October 27, 2012, meeting and discussed minor changes to the version supplied in the materials packet to identify committees in CSP report and some additions to Probate Institute report. The Hon. David J. Murkowski, with support from Amy N. Morrissey, moved for the approval and acceptance of the amended minutes. The motion was approved on a voice-vote with no nays or absentions.

IV. Treasurer’s Report

James B. Steward presented the Treasurer’s report and noted that the 2012-2013 budget was already approved. Mr. Steward also requested personal contributions by council members to the Hearts and Flowers Fund of $35.00.

V. Chairperson’s Report – Mark K. Harder

Mark K. Harder presented the Chairperson’s report:

• Melisa Marie-Werkema Mysliwiec welcomed baby girl – Marlaine C. Teahan will help coordinate an appropriate gift from the Hearts and Flowers Fund.

• SBM invited our participation in its annual meeting (which typically coincides with the Section’s annual meeting).

• Marlaine C. Teahan was appointed to continue as the Section’s representative on the SCAO court forms committee.

• The status of the Statute of Repose was discussed. Mr. Harder indicated that the proposed changes previously adopted by the Council are likely to be accepted. He further stated that it is unclear if the Statute of Repose constitutes a “Keller” issue by the SBM that would allow other sections to chime in separately. Regardless, it is possible that the proposed statute may get a hearing in first half of December 2012. Patricia M. Oullette said that Family Law Section is supportive, but has not taken a formal position. After some discussion it was
suggested that Ms. Oullette get a formal policy position from Family Law Section.

- The operational plan developed by Thomas F. Sweeney was discussed. Amy N. Morrissey moved to accept the proposed operational plan, with support from Marlaine C. Teahan. After some discussion related to insurable interest legislation, the adoption of the operational plan was approved on a Council vote of 21-0 in favor of the motion, with no abstentions.

VI. Report of the Committee on Special Projects – Marlaine C. Teahan

Marlaine C. Teahan reported that CSP recommended to the Council that the inventory issue raised relative to the Michigan Rules of Professional Conduct be addressed via a letter by J. David Kerr consistent with his report to CSP. Specifically, Mr. Kerr recommended to CSP the following language:

The Ethics Committee recommends that if proceedings are necessary that they be in the Probate Court. To implement this recommendation the Ethics Committee recommends, that the proposed amendment to Rule 2 be amended as set forth in the attachment and that the recommendation change be sent to the Representative Assembly for consideration. The Ethics Committee recommends that the recommended change be sent with the statement that the Probate and Estate Planning Council neither supports nor opposes the change to Rule 2, but if the change does take place recommends that proceedings be in the Probate Court.

Ms. Teahan moved for approval of CPS's suggested approach in dealing with the proposed idea of an inventory attorney, which was supported by Mr. Kerr. A discussion occurred about the use of absolute language (i.e., "all") impacting matters pending in courts other than probate court. The proposed solution was to send Mr. Kerr's amended language with a recommendation that such language be adopted. This proposal was considered a friendly amendment and approved on a Council vote of 21-0 in favor of the motion, with no abstentions.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Shaheen I. Imami

No report.

2. Bylaws – Nancy H. Welber

No report.

3. Awards – Douglas A. Mielock

No report.
4. Planning – Thomas F. Sweeney

No report.

5. Nominating – Harold G. Schuitmaker

No report

6. Annual Meeting – Thomas F. Sweeney

No report.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

David L. Skidmore discussed the Mattison case presently pending in the Michigan Supreme Court on question certified from U.S. District Court for the Western District of Michigan in 2007. Mr. Skidmore recommended that no brief be submitted because the case social security survivors benefits for children conceived and born after death (frozen sperm utilized to fertilize post-death) and EPIC was clear on the definition of "heir." After some discussion regarding the perception by Mr. Skidmore and others that the Social Security Administration adequately and correctly briefed the issue, Amy N. Morrissey, with support from James B. Steward, moved that the Council submit an amicus brief adopting the Social Security Administration's argument and conclude that children are not heirs if they are not conceived and in gestation at the time of a decedent's death for a “me too” brief supporting SSA conclusion that kids not heirs. Subsequent Discussion included the distinction between policy position and our interpretation of the applicable statute. The motion failed on a vote of 7-12, with two abstentions.

2. Probate Institute – Amy N. Morrissey

Amy N. Morrissey reported that:

- There will be one headliner each day of the Institute: Jonathan Blattmachr (three topics); Lou Harrison (two topics); and Robert Fleming (three topics).

- Mr. Blattmachr will present an extra, interactive session on Wednesday afternoon for approximately three hours. This session will be for an additional fee, with limited enrollment and advanced topics.

- There will be a heavy emphasis on new lawyers with a “Core Concepts” track, a special “open floor” Q&A on Friday afternoon, plus networking lunches in both locations.

- A track unique to each location (Trust & Estate Administration in Acme and Litigation in Plymouth) will be recorded and posted on the Institute web page so everyone gets access to extra MP3s and materials.
3. State Bar and Section Journals – Amy N. Morrissey

No report.

4. Citizens Outreach – Rebecca A. Schnelz

No report.

5. Electronic Communications – William J. Ard

No report.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Nancy L. Welber reported on U.S. HB 895 (education savings plans) and the proposed exemption of such plans from bankruptcy, along with the possible interaction with Michigan law in light of MCL 600.5451 and exemption amounts.

2. Updating Michigan Law – Marguerite Munson Lentz

Marguerite Munson Lentz reported on the status of the domestic asset protection trust legislation ("DAPT"). Ms. Lentz hopes to get copy of legislation to CSP in December to determine if it should be taken up as a whole or piecemeal. There was some general discussion related to excepted creditors and IRC 2036 issues. Nancy L Welber commented on the possible impact of differences between the Restatement 2nd and Restatement 3rd (creation of a property right, with resulting impact on completed gifts, IRC 2036/2038).

3. Insurance Committee – Thomas F. Sweeney

Thomas F. Sweeney reported about the status of insurable interest legislation.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

No report.

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

Robert M. Taylor reported about the status of trust mills.

3. Specialization and Certification – James B. Steward

No report.
E. Administration of Justice

1. Court Rules, Procedures and Forms – Marlaine C. Teahan

Marlaine C. Teahan reported that new forms should be available on December 1, 2012. Ms. Teahan also reported on the status of proposed revisions to MCR 5.801 and forms for patient advocate registry – she will keep council advised of developments.

Connie Brigman reported about changes to guardianship forms that make old forms obsolete:

- PC 626, Notice to Alleged Incapacitated Individual on Petition to Appoint Guardian
- PC 627, Acceptance of Appointment and Report of Guardian Ad Litem of Alleged Incapacitated Individual
- PC 631, Order Regarding Appointment of Guardian of Incapacitated Individual
- PC 633, Letters of Guardianship
- PC 640, Order Regarding Appointment of Conservator
- PC 642, Order Appointing Guardian Ad Litem/Attorney/Lawyer Guardian Ad Litem
- PC 645, Letters of Conservatorship
- PC 646, Petition for Approval of Sale of Real Estate
- PC 647, Order Regarding Sale of Real Estate
- PC 666, What you Need to Know Before Filing a Petition to Appoint a Guardian for an Incapacitated Adult
- PC 666a, What you Need to Know Before Filing a Petition to Appoint a Guardian for an Incapacitated Adult (Large Print) New Form, Guardian’s Report of Additional Cash/Property in Estate New Pamphlet, Notice of Legally Incapacitated Individual’s Rights

Ms. Brigman noted that these forms were revised/developed pursuant to PA 173, which went into effect October 1, 2012. These forms are available on the SCAO website.

2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No report.

F. Areas of Practice

1. Real Estate – George F. Bearup
No report.

2. Transfer Tax Committee – Nancy H. Welber
No report

3. Charitable and Exempt Organization – Christopher A. Ballard
No report

4. Transfer Tax – Thomas F. Sweeney
No report.

5. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman

Constance L. Brigman reported on:

- Possible revisions to EPIC in the guardianship arena (the Section’s interests are being headed by David Skidmore), such as role of guardians ad litem and legislation related to do-not-resuscitate orders.

- The foreign guardianship bill previously addressed by the Council has been set for hearing (the Hon. Milton L. Mack has been assisting).

- The interpretation of MCL 700.5306 and whether powers are required to be listed for plenary guardianships. Ms. Brigman discussed PA Act 173 (and referenced the proposed letter and materials attached to the CSP agenda). The proposed changes not adopted by SCAO because they were not required by the statute and to do otherwise would create large uniformity issues among counties.

- Guardianships for minors under 18 years of age were discussed (SB 1338).

W. Josh Ard discussed family consent issue and a proposed letter related to the same. Ms. Brigman said the purpose was to work with other stakeholders and suggested that we work through our lobbyist. Mr. Ard believes such an approach will tread lightly and not alarm other stakeholders.

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips
No report.

2. Business Law Section Liaison – John R. Dresser
No report
3. Elder Law Section Liaison – Amy R. Tripp
No report.

4. Family Law Section Liaison – Patricia M. Ouellette
No report.

5. ICLE Liaison – Jeanne Murphy
No report.

6. Law Schools Liaison – William J. Ard
No report.

7. Michigan Bankers Association Liaison – Susan Allan
No report.

No report.

9. Probate Registers Liaison – Rebecca A. Schnelz
No report.

10. SCAO Liaisons – Marlaine C. Teahan
No report.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz
No report.

12. State Bar Liaison – David R. Brake

Amy N. Morrissey reported that she attended one of two focus groups held by the State Bar of Michigan, in which Section leaders were asked to provide feedback on the SBM’s strategic planning initiatives and services to members. She reported that the SBM’s Strategic Planning Workgroup Recommendations for 2011 – 2013 are posted on its website. Some other sections have mentorship programs, including outreach to law students. She reported that an opportunity might exist to learn more about role of the SBM board of commissioners and representative assembly. SBM is focusing on educating public regarding UPL and limits on SBM’s powers for UPL.

13. Taxation Section Liaison – Frederick H. Hoops, III
No report.

VIII. **Other Business**

None.

IX. **Hot Topics**

None.

X. **Adjournment**

Meeting adjourned at 12:02 p.m.
December 3, 2012

Mark K Harder
Chairperson Probate & Estate Planning Session
Warner Norcross & Jude LLP
83 East 8th Street Suite 310
Holland, MI 48923-3528

Re: 2012 PA 173-Powers of Full Guardians/Guardianship Orders

Dear Mr. Harder:

I am in receipt of your letter of November 28, 2012 regarding the above Referenced Public Act.

I will forward your letter to the membership of the Michigan Probate Judges Association. If I receive any responses or questions that are of concern to the membership, I will pass them along to you and discuss the matters with you, or refer that particular judge that has a concern directly to you.

Thank you for the information.

Sincerely,

Elwood L. Brown
President, Michigan Probate Judges Association
Memorandum

TO: Probate and Estate Planning Council

FROM: Marlaine C. Teahan, Chair
       Court Rules, Forms and Procedures Committee

RE: Proposed amendment to MCR 2.105 – not adopted

DATE: December 10, 2012

On December 5, 2012, the Michigan Supreme Court issued the attached Order regarding ADM 2011-14. The Court declined to adopt a proposed amendment to MCR 2.105 that would have required a “diligent inquiry” in support of a request for substituted service to require an online search if party has access to Internet.

The SBM opposed the adoption of this rule change and our section was informally polled by email. We, too, opposed the proposal for a variety of reasons.
Order

December 5, 2012

ADM File No. 2011-14

Proposed Amendment of
Rule 2.105 of the
Michigan Court Rules

On order of the Court, the proposed amendment of Rule 2.105 of the Michigan Court Rules having been published for comment at 491 Mich 1221-1222 (Part 4, 2012), and an opportunity having been provided for comment and at a public hearing, the Court declines to adopt the proposed amendment. This administrative file is closed without further action.

Marilyn Kelly, J., would adopt the proposed amendment.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 5, 2012

Clerk
Meeting Called By: Connie Brigman  
Guardianship, Conservatorship & End of Life  
Present: Connie, Michael Bartnik, Rhonda Clark-Kreuer, David Skidmore, Ellen Sugrue-Hyman, Josh Ard, Kurt Olson, Mike McClory  
Excused: Rebecca Schnelz and Jill Goodell  
Absent: Judge Harter (ret.), Judge Murkowski, Michael Bartnik, Rhonda Clark-Kreuer

### Old Business
**Presenter Name:** Connie Brigman  

**Discussion:** SB 539 (Transfer of Foreign Guardianship) Voted out of House Judiciary 11-29-12

- **Family Consent Letter** (regarding other stakeholders to contact) – Becky Bechler will recommend recipients.
- **PA 173 Letter** (regarding what must be specified in an order for full guardianship) has been delivered to MPJA.
- **SB 1338** Sitting in Senate Judiciary since 10-17-12. Sen. Hildenbrand. (Judge Murkowski & Ellen to follow up.)

**Conclusions:** Family Consent Letter needs recipient. SB 1338 needs a substitute bill.

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<thead>
<tr>
<th>Action Items</th>
<th>Person Responsible</th>
<th>Deadline</th>
</tr>
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<tbody>
<tr>
<td>Make list of recipients to discuss at December PEPC</td>
<td>Josh</td>
<td>12-07-12</td>
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### New Business
**Presenter Name:** David Skidmore  

**Discussion:** MCL 700.5305(1)(f) regarding the duties of a GAL: ‘The GAL must make determinations and inform the court: (1) if there are alternatives to a full guardian and (2) if not, what should be done in addition to appointing a guardian.’

**Discussion:** MCL 700.5306a(1)(e) regarding rights of the ward ‘If not represented by legal counsel, [the ward has a right] to the appointment of a guardian ad litem to represent the individual on the petition to appoint a guardian, as provided in section 5303.’

**Discussion:** MCL 700.5303(3) regarding the term “represent.” (3) … Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court shall appoint a guardian ad litem to represent the person in the proceeding.”

**Discussion:** PC 626 at bullet point 4: “You have the right to have a guardian ad litem appointed to represent you if you are not represented by an attorney.”

**Conclusions:**
(1) See also conservatorships! (2) David asks: (a) I.D. disconnection between the real world (b) List rights and responsibilities to court versus to ward for a GAL versus an attorney (c) Proposed fix that is likely going to incorporate more of the UPC into EPIC.

<table>
<thead>
<tr>
<th>Action Items: Progress reports</th>
<th>Person Responsible</th>
<th>Deadline</th>
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<tbody>
<tr>
<td>Guardian’s area: Where EPIC &amp; Court rules conflict with our real world experience of what a GAL does</td>
<td>Josh Ard</td>
<td>12-6-12</td>
</tr>
<tr>
<td>Mandatory court-appointed attorney – when it does make sense and when it does not</td>
<td>Ellen Sugrue-Hyman</td>
<td>12-6-12</td>
</tr>
<tr>
<td>Practical real world description of GAL vs. atty</td>
<td>Kurt A. Olson</td>
<td>12-6-12</td>
</tr>
<tr>
<td>Conservator’s area: Where EPIC &amp; court rules conflict with our real world experience of what a GAL does</td>
<td>Michael J. McClory</td>
<td>12-6-12</td>
</tr>
</tbody>
</table>
Shaheen,

SB 539, Transfer of Foreign Guardianship/Conservatorship, is progressing to a second reading in the House. There have been two changes, neither of which were substantive, that I was authorized to make on behalf of the Probate and Estate Planning Section. They should be included with the materials for informational purposes only.

Here are the two changes:

(1) We gave the ombudsman back his two subsections and the word "shall" in exchange for allowing us to keep the foreign guardian at the top of the list of priorities.

- Originally, we moved the language from subsection two into subsection three and converted "shall" to "may" for the entire list.
- We placed the foreign guardian or conservator to position one on that list.
- The result was one list of priorities.

(2) Some persons in the House feared that a court might allow a guardian from a different country to transfer their order. Changed foreign jurisdiction to "another state." State is defined in EPIC to be a state or territory of the U.S.

H-1 is attached to this email and it reflects change #1. Also attached to this email are the changes to H-1 that reflect change #2.

Original language of SB 539 as introduced and passed by the Senate. Italicized text is what we struck out. The ALL CAPS is the amended language that we added.

GUARDIANS OF INCAPACITATED INDIVIDUALS

MCL 700.5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward’s property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney-in-fact through a durable power of attorney.

(3) If a person is not designated under subsection (2) or a person designated under
subsection (2) is not suitable or willing to serve. The court may appoint as a
guardian an individual who is related to the individual who is the subject of the petition in
the following order of preference:
(A) A GUARDIAN PREVIOUSLY APPOINTED, QUALIFIED, AND SERVING IN
GOOD STANDING IN ANOTHER JURISDICTION.
(B) A PERSON THE INCAPACITATED INDIVIDUAL NOMINATED TO SERVE AS
THEIR GUARDIAN.
(C) A PERSON THE INCAPACITATED INDIVIDUAL NAMED AS ATTORNEY-INFACT
IN THEIR DURABLE POWER OF ATTORNEY.
(a) (D) The legally incapacitated individual’s spouse. This subdivision shall be
considered to include a person nominated by will or other writing signed by a deceased
spouse.
(b) (E) An adult child of the legally incapacitated individual.
(c) (F) A parent of the legally incapacitated individual. This subdivision shall be
considered to include a person nominated by will or other writing signed by a deceased
parent.
(d) (G) A relative of the legally incapacitated individual with whom the individual has
resided for more than 6 months before the filing of the petition.
(e) (H) A person nominated by a person who is caring for the legally incapacitated
individual or paying benefits to the legally incapacitated individual.
(4) (3) If none of the person as designated or listed in subsection (2) or (3) is suitable or
AND willing to serve, the court may appoint any competent person who is suitable and
willing to serve, including a professional guardian as provided in section 5106

Thank you for your support,

Constance L. Brigman
Law Office of Constance L. Brigman
Grand Rapids, Michigan
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5313 and 5433 (MCL 700.5313 and 700.5433), section 5313 as amended by 2000 PA 463, and by adding sections 5202a and 5301a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 5202A. (1) IF A GUARDIAN HAS NOT BEEN APPOINTED IN THIS STATE AND A PETITION FOR THE APPOINTMENT OF A GUARDIAN IS NOT PENDING IN THIS STATE, A GUARDIAN APPOINTED, QUALIFIED, AND SERVING IN GOOD STANDING IN ANOTHER JURISDICTION MAY BE APPOINTED IMMEDIATELY AS TEMPORARY GUARDIAN IN THIS STATE ON FILING WITH A COURT IN THIS STATE AN APPLICATION FOR APPOINTMENT, AN AUTHENTICATED COPY OF THE GUARDIAN'S APPOINTMENT IN THE OTHER JURISDICTION, AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF
GUARDIANSHIP FOR THE TEMPORARY GUARDIAN EXPIRE 28 DAYS AFTER THE
DATE OF APPOINTMENT.

(2) WITHIN 14 DAYS AFTER APPOINTMENT AS TEMPORARY GUARDIAN
UNDER SUBSECTION (1), THE GUARDIAN SHALL GIVE NOTICE TO ALL
INTERESTED PERSONS OF HIS OR HER APPOINTMENT AND THE RIGHT TO
OBJECT TO THE APPOINTMENT. ON FILING PROOF OF SERVICE OF THE NOTICE
WITH THE COURT, THE TEMPORARY GUARDIAN SHALL BE APPOINTED FULL
GUARDIAN AND THE COURT SHALL ISSUE LETTERS OF GUARDIANSHIP
ACCORDINGLY.

(3) IF AN OBJECTION IS FILED TO A GUARDIANSHIP UNDER THIS
SECTION, THE GUARDIANSHIP CONTINUES UNLESS A COURT IN THIS STATE
ENTERS AN ORDER REMOVING THE GUARDIAN.

SEC. 5301A. (1) IF A GUARDIAN HAS NOT BEEN APPOINTED IN THIS
STATE AND A PETITION FOR THE APPOINTMENT OF A GUARDIAN IS NOT
PENDING IN THIS STATE, A GUARDIAN APPOINTED, QUALIFIED, AND SERVING
IN GOOD STANDING IN ANOTHER JURISDICTION MAY BE APPOINTED
IMMEDIATELY AS TEMPORARY GUARDIAN IN THIS STATE ON FILING WITH A
COURT IN THIS STATE AN APPLICATION FOR APPOINTMENT, AN
AUTHENTICATED COPY OF THE GUARDIAN'S APPOINTMENT IN THE OTHER
JURISDICTION, AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF
GUARDIANSHIP FOR THE TEMPORARY GUARDIAN EXPIRE 28 DAYS AFTER THE
DATE OF APPOINTMENT.

(2) WITHIN 14 DAYS AFTER APPOINTMENT AS TEMPORARY GUARDIAN
UNDER SUBSECTION (1), THE GUARDIAN SHALL GIVE NOTICE TO ALL
INTERESTED PERSONS OF HIS OR HER APPOINTMENT AND THE RIGHT TO
OBJECT TO THE APPOINTMENT. ON FILING PROOF OF SERVICE OF THE NOTICE
WITH THE COURT, THE TEMPORARY GUARDIAN SHALL BE APPOINTED FULL
GUARDIAN AND THE COURT SHALL ISSUE LETTERS OF GUARDIANSHIP
ACCORDINGLY.

(3) IF AN OBJECTION IS FILED TO A GUARDIANSHIP UNDER THIS
SECTION, THE GUARDIANSHIP CONTINUES UNLESS A COURT IN THIS STATE
ENTERS AN ORDER REMOVING THE GUARDIAN.

Sec. 5313. (1) The court may appoint a competent person as
guardian of a legally incapacitated individual. The court shall not
appoint as a guardian an agency, public or private, that
financially benefits from directly providing housing, medical,
mental health, or social services to the legally incapacitated
individual. If the court determines that the ward's property needs
protection, the court shall order the guardian to furnish a bond or
shall include restrictions in the letters of guardianship as
necessary to protect the property.

(2) In appointing a guardian under this section, the court
shall appoint a person, if suitable and willing to serve,
designated by the individual who is the subject of the petition,
including a designation made in a durable power of attorney. If a
specific designation is not made or a person designated is not
suitable or willing to serve, the court may appoint as a guardian a
person named as attorney in fact through a durable power of
attorney. IN THE FOLLOWING ORDER OF PRIORITY:

(A) A PERSON PREVIOUSLY APPOINTED, QUALIFIED, AND SERVING IN
GOOD STANDING AS GUARDIAN FOR THE LEGALLY INCAPACITATED INDIVIDUAL
IN ANOTHER JURISDICTION.

(B) A PERSON THE INDIVIDUAL SUBJECT TO THE PETITION Chooses TO
SERVE AS GUARDIAN.
(C) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.

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

(3) If a person is not designated under subsection (2) or a person designated under subsection (2) is not suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

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

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

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

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

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

(4) If none of the persons as designated or listed in
subsection (2) or (3) are suitable or willing to serve, the
court may appoint any competent person who is suitable and willing
to serve, including a professional guardian as provided in section
5106.

Sec. 5433. (1) If a conservator has not been appointed in this
state and a petition in a protective proceeding is not pending in
this state, a conservator appointed, in the state in which the
protected individual resides may file in a court of this state, in
a county in which property belonging to the protected individual is
located, qualified, and serving in good standing in another
jurisdiction may be appointed immediately as temporary conservator
in this state on filing with a court in this state an application
for appointment, an authenticated copy of letters of appointment
and of any bond. After the filing, the domiciliary foreign
conservator may exercise as to property in this state all the
powers of a conservator appointed in this state and may maintain an
action or proceeding in this state subject to any conditions
imposed upon nonresident parties generally. In the other
jurisdiction, and an acceptance of appointment. Letters of
conservatorship for the temporary conservator expire 28 days after
the date of appointment.

(2) Within 14 days after appointment as temporary conservator
under subsection (1), the conservator shall give notice to all
interested persons of his or her appointment and the right to
object to the appointment. On filing proof of service of the notice
with the court, the temporary conservator shall be appointed full
conservator and the court shall issue letters of conservatorship
1 ACCORDINGLY.
2 (3) IF AN OBJECTION IS FILED TO A CONSERVATORSHIP UNDER THIS
3 SECTION, THE CONSERVATORSHIP CONTINUES UNLESS A COURT IN THIS STATE
4 ENTERS AN ORDER REMOVING THE CONSERVATOR.
Rep. ____________ offered the following amendments to Senate Bill No. 539 (H-1):

1. Amend page 1, line 4, after "ANOTHER" by striking out "JURISDICTION" and inserting "STATE".

2. Amend page 1, line 8, by striking out "JURISDICTION," and inserting "STATE,".

3. Amend page 2, line 16, after "ANOTHER" by striking out "JURISDICTION" and inserting "STATE".

4. Amend page 2, line 20, by striking out "JURISDICTION," and inserting "STATE,".

5. Amend page 3, line 25, after "ANOTHER" by striking out "JURISDICTION" and inserting "STATE".

6. Amend page 5, line 11, by striking out "JURISDICTION" and inserting "STATE".

7. Amend page 5, line 19, by striking out "JURISDICTION," and inserting "STATE,".
Shaheen,

SB 539, Transfer of Foreign Guardianship/Conservatorship, is progressing to a second reading in the House. There have been two changes, neither of which were substantive, that I was authorized to make on behalf of the Probate and Estate Planning Section. They should be included with the materials for informational purposes only.

Here are the two changes:

1. We gave the ombudsman back his two subsections and the word "shall" in exchange for allowing us to keep the foreign guardian at the top of the list of priorities.
   - Originally, we moved the language from subsection two into subsection three and converted "shall" to "may" for the entire list.
   - We placed the foreign guardian or conservator to position one on that list.
   - The result was one list of priorities.

2. Some persons in the House feared that a court might allow a guardian from a different country to transfer their order. Changed foreign jurisdiction to "another state." State is defined in EPIC to be a state or territory of the U.S.

H-1 is attached to this email and it reflects change #1. Also attached to this email are the changes to H-1 that reflect change #2.

Original language of SB 539 as introduced and passed by the Senate. Italicized text is what we struck out. The ALL CAPS is the amended language that we added.

GUARDIANS OF INCAPACITATED INDIVIDUALS

MCL 700.5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward’s property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney-in-fact through a durable power of attorney.

(3) If a person is not designated under subsection (2) or a person designated under
subsection (2) is not suitable or willing to serve, (2) The court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:
(A) A GUARDIAN PREVIOUSLY APPOINTED, QUALIFIED, AND SERVING IN GOOD STANDING IN ANOTHER JURISDICTION.
(B) A PERSON THE INCAPACITATED INDIVIDUAL NOMINATED TO SERVE AS THEIR GUARDIAN.
(C) A PERSON THE INCAPACITATED INDIVIDUAL NAMED AS ATTORNEY-IN-FACT IN THEIR DURABLE POWER OF ATTORNEY.
(a) (D) The legally incapacitated individual’s spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.
(b) (E) An adult child of the legally incapacitated individual.
(c) (F) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.
(d) (G) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.
(e) (H) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.
(4) (3) If none of the person as designated or listed in subsection (2) or (3) is suitable or AND willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106

Thank you for your support,

Constance L. Brigman
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