

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

**November 17, 2012  
Lansing, Michigan**

**Agenda**

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

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.	Mielock, Douglas A.
McClory, Michael S.	

**E. Others in attendance:**

Lorraine New  
Michael Lichterman  
Loukas Kalliantasis  
Nina Dodge Abrams  
Amy Peterman  
Carol M. Hogan  
Kevin DuComb  
Neal Nusholtz  
Kathleen Goetsch

Paul Renzo  
John Dresser  
Nazneen Syed  
Navjyot Francis  
Kurt A. Olson  
Daniel Cogan  
Joe Viviano  
Rick Mills

**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 Amny 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 SBM 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 *Madison* 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 relating to excepted creditors and IRC 2036 issues. Nancy L Welber commented on the possible impact of differences between the Restatement 2<sup>nd</sup> and Restatement 3<sup>rd</sup> (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 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.

8. Michigan Probate Judges Association Liaison – Hon. Judge David M. Murkowski/Hon. Darlene O'Brien

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.

STATUTORY/ LEGISLATIVE INITIATIVES	COURT RULES, PROCEEDINGS AND PRACTICES	COUNCIL ORGANIZATION AND INTERNAL PROCEDURES	PROFESSIONAL RESPONSIBILITY	EDUCATION AND SERVICE TO THE PUBLIC
AP Decanting Trusts (SB 978-980)		AP Amicus Brief Fund		
AP Insurable Interest (SB1102-1103)				
P1 Asset Protection	P1 Probate Appeals	P1 Operational Plan	P1 Specialization	P1 Communications with Members (Social Media and websites)
P1 Statute of Repose (SB 1296)	P1 SCAO Meetings	P1 Bylaw Update Committee Organization and Mission Statements		
P1 ILIT Trustee Liability Protection		P1 Manuals for Council Members		
P1 Guardian DNR				
P2 EPIC/ MTC Updates	P2 Guardianship Hearings		P2 Inventory Lawyer	P2 Opportunities with ICLE
P2 Digital Assets Legislation				P2 Digital/ Printed Journal
P2 Tenancy by Entireties Trusts				
P2 ADR Revision				
P2 Property tax on trust property				
P2 Estate Admin Fee (SB 192)				
TBD Directed Investment Trusts				
TBD Dignified Death (Family Consent) Act				
TBD Neglect Legislation				
TBD Foreign Guardians				
TBD Inheritance Tax				
TBD Estate Recovery (SB 404-406)				
TBD Principal Residence Exempt (SB 907)				
TBD Hearings before age 18 (SB1338)				
TBD Garnishment exempt. (HB 5427)				

AP = Action Pending and little work required  
P1 = Priority items in year 1  
P2 = Secondary Priority  
TBD = Priority to be determined in future

## ETHICS COMMITTEE RECOMMENDATION

### INVENTORY ATTORNEY

On September 20, 2012 the Master Lawyers Section suggested a revision to Rule 2 of the State Bar of Michigan which would require an Inventory Attorney. The inventory attorney's duties begin upon the death, disability or disappearance of any attorney. The inventory attorney takes action as is appropriate to protect the interests of the clients, including but not limited to notifying clients of the changed status of the reporting member, returning files and papers as appropriate, and retaining files as appropriate. In certain circumstances where Court assistance might be necessary, the proposed amendment places the proceedings in the Circuit Court where receiverships are managed.

At the September 22, 2012 meeting of the Council, Attorney Linda Pohly provided a letter recommending that if Court proceedings were necessary for the duties of the inventory attorney, that those proceedings be in the Probate Court because that Court has jurisdiction over the estates of deceased and disabled persons.

**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.**

The Ethics Committee recognizes that there are many issues connected with the concept of an inventory attorney. The Ethics Committee recommends that these important matters be left to the wisdom of the Representative Assembly and that those wishing to address issues connected with the Inventory Attorney present their concerns to the Representative Assembly.

The recommended change to proposal for Rule 2 is attached.

## Rule 2, Rules Concerning the State Bar of Michigan

Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan, subject to the provisions of these rules. Law students may become law student section members of the State Bar. None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each member, upon admission to the State Bar and in the annual dues statement, must provide the State Bar with the member's correct name and address, and such other information as may be required. If the address provided by the member is a mailing address only, the member also must provide a street or building address for the member's building or residence. No member shall practice law in this state until such information has been provided. Members shall notify the State Bar promptly in writing of any change of name or address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office. Every member who represents any client other than a governmental agency, public body, or political subdivision, in the annual dues statement must identify and certify the name of an active member who has agreed to serve as inventory attorney in the event of the death, disability or disappearance of the reporting member. In the event the reporting member learns of the unavailability, incompetence or death of the inventory attorney, the reporting member shall identify to the State Bar within thirty days an active member of the State Bar who has agreed to serve as inventory attorney. The reporting member should maintain this information, together with instructions directing that the inventory attorney and the State Bar of Michigan be contacted upon the death, disability or disappearance of the reporting member. Upon receipt of such notification, the inventory attorney shall take such action as is appropriate to protect the interests of the clients, including but not limited to notifying clients of the changed status of the reporting member, returning files and papers as appropriate, and retaining files as appropriate. The Attorney Grievance Commission may assist the inventory attorney as co-counsel in this process. In the event the inventory attorney is unable or unwilling to act and if MCR 9.121 does not apply, proceedings shall be in the Probate Court utilizing the provisions of MCR 9.119(G) shall apply and shall be coordinated with any proceedings in the Probate Court pertaining to the attorney. Every active member shall annually provide a certification as to whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds. The certification shall be placed on the face of the annual dues notice and shall require the member's signature or electronic signature.

## INVENTORY ATTORNEY

### Additional Considerations Not Being Addressed by the Ethics Committee

1. Conflict checks before the inventory attorney acts? If there is a conflict, how will that be handled? This is statistically unlikely, but could happen. In this circumstance, Probate Court may not be best. . A member of the Ethics Committee raises the following hypothetical. There is litigation in another court. The inventory attorney represents a client who is in conflict with a client of the nominating attorney. The client of the nominating attorney needs to have something done quickly but the inventory attorney has duties to her client. The judge in charge of the tribunal is the most proper one to address those matters, not a probate judge. Does a probate judge have a better sense of the capacity of a lawyer to practice patent law? It may be better if the probate court were the default court but recognize that some matters might be handled better elsewhere.
2. Who bears the costs? Is the inventory attorney stuck with the fee arrangements of the nominating attorney? Or could the inventory attorney charge more? What if the client objects that he had a contract?
3. Does the nominating attorney have a duty to find inventory attorneys that can handle each case? Attorneys practice in different areas.
4. In general, would a requirement expose a nominating attorney (or her estate) to a greater risk of malpractice? Does this raise the standards for negligence in other words? How much of a duty does the nominating attorney have in choosing an inventory attorney?
5. Can the inventory attorney simply decline to take on the cases when the time comes? What consequences to the nominating attorney?
6. What are the consequences for client confidentiality if the disciplinary rules are not changed? Does this mean that every engagement of an attorney must be in writing, must disclose the inventory attorney and must address client confidentiality.
7. If the inventory attorney becomes disabled or dies before the engaged attorney, what then?

8. If the Rules of Professional Conduct are not changed, will anyone agree to be an inventory attorney.

## 53<sup>rd</sup> Annual Probate and Estate Planning Institute

Thursday – Saturday, May 9 – 11, 2013  
Grand Traverse Resort and Spa, Acme

Friday – Saturday, June 14 – 15, 2013  
The Inn at St. John's, Plymouth

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

<b>Session 1</b> <b>Acme, Thursday, May 9, 2013 PM</b> <b>Plymouth, Friday, June 14, 2013 AM</b>		
<i>Acme Time</i>	<i>Plenary Sessions</i> Amy N. Morrissey Westerman & Morrissey PC Ann Arbor	<i>Plymouth Time</i>
<i>Continental Breakfast (Plymouth Only)</i>		7:30 a.m. – 8:30 a.m.
12:00 p.m. – 12:45 pm	<b>Making the Most of Your ICLE Resources</b> <ul style="list-style-type: none"><li>• How to get around within the resources</li><li>• Resources explained including specific features</li><li>• Tips to find what you need quickly</li><li>• Overview of your primary law research tool</li><li>• Using the ICLE Community</li><li>• ICLE resources on your mobile device</li><li>• What's coming soon</li><li>• Your questions answered</li></ul> Demonstration by ICLE Staff	7:30 a.m. – 8:15 a.m.
1:00 p.m. – 1:30 p.m.	<b>Welcoming Remarks and Announcements</b>	8:30 a.m. – 8:50 a.m.

	<p>Mark K. Harder Chair, Probate &amp; Estate Planning Section of the State Bar of Michigan Warner Norcross &amp; Judd LLP Holland</p> <p>Bruce A. Courtade (<i>Acme Only</i>) President, State Bar of Michigan Rhoades McKee PC Grand Rapids</p>		
1:30 p.m. – 1:55 p.m.	<p><b>Probate and Trust Law Cases</b></p> <p>Phillip E. Harter Chalgian &amp; Tripp Law Offices PLLC Battle Creek</p>		8:50 a.m. – 9:15 a.m.
1:55 p.m. – 3:00 p.m.	<p><b>The Future of the Practice of Law</b></p> <ul style="list-style-type: none"> <li>• How has the practice of law evolved over the past 40 years?</li> <li>• What changes will impact legal practice over the next decade?</li> <li>• How can lawyers prepare for the future?</li> <li>• What are the consequences of not evolving?</li> <li>• How will future changes affect the delivery and cost of legal services?</li> </ul> <p>Jonathan Blattmachr Eagle River Advisors New York, NY</p>		9:15 a.m. – 10:20 a.m.
3:00 p.m. – 3:15 p.m.	<i>Networking Break</i>		10:20 a.m. – 10:35 a.m.
<i>Acme Time</i>	<p><b><i>Advanced Planning Track</i></b> Moderator: Amy N. Morrissey</p>	<p><b><i>Core Concepts Track</i></b> Moderator: Douglas A. Mielock</p>	<i>Plymouth Time</i>
3:15 p.m. – 3:45 p.m.	<p><b>The Critical Importance of Powers of Appointment</b></p> <ul style="list-style-type: none"> <li>• Tax and non—tax reasons for “modifying” trusts by “decanting”</li> <li>• What are powers of appointment and why</li> </ul>	<p><b>The Top Ten “Super Powers” in Your Durable Power of Attorney</b></p> <ul style="list-style-type: none"> <li>• Lifetime transfers</li> <li>• Applications and benefits management</li> <li>• Estate planning</li> </ul>	10:35 a.m. – 11:05 a.m.

	<p>are they critically important?</p> <ul style="list-style-type: none"> <li>• The dangers and opportunities that arise with powers of appointments</li> <li>• How powers of appointment can increase or decrease estate and income taxes</li> </ul> <p>Jonathan Blattmachr Eagle River Advisors New York, NY</p>	<ul style="list-style-type: none"> <li>• Fiduciary powers, rights and obligations</li> </ul> <p>Michele C. Marquardt DeMent and Marquardt PLC Kalamazoo</p>	
3:45 p.m. – 4:15 p.m.	<p><b>Tax Update: 2013 and Beyond</b></p> <ul style="list-style-type: none"> <li>• Estate and gift tax updates 2013</li> <li>• Charitable tax updates</li> </ul> <p>Jonathan Blattmachr Eagle River Advisors New York, NY</p>	<p><b>Fundamentals of Funding Trusts</b></p> <ul style="list-style-type: none"> <li>• Real property issues</li> <li>• Retirement plan assets</li> <li>• Transfer on death security registration</li> <li>• “Dry” trusts</li> </ul> <p>Douglas A. Mielock Foster Swift Collins &amp; Smith PC Lansing</p>	11:10 a.m. – 11:40 a.m.
4:15 p.m. – 4:45 p.m.	<p><b>Planting the Gift Annuities Garden</b></p> <ul style="list-style-type: none"> <li>• How gift annuities work: a “fruitful” demonstration</li> <li>• Legal and tax rules</li> <li>• Planning opportunities</li> <li>• Gift annuity administration considerations</li> </ul> <p>Robin D. Ferriby Community Foundation for Southeast Michigan Detroit</p>	<p><b>Filling Out the Medicaid Application: A Step-By-Step Guide</b></p> <ul style="list-style-type: none"> <li>• When to complete the application</li> <li>• Line-by-line steps</li> <li>• Your complete timeline</li> </ul> <p>Amy Rombyer Tripp Chalgian &amp; Tripp Law Offices PLLC Jackson</p> <p>Douglas G. Chalgian Chalgian &amp; Tripp Law Offices PLLC East Lansing</p>	11:45 a.m. – 12:15 p.m.
4:45 p.m. – 5:00 p.m.	<p><b>Questions and Answers</b></p>	<p><b>Questions and Answers</b></p>	12:15 p.m. – 12:30 p.m.

6:30 p.m. – 8:00 p.m.	<i>Reception (Acme Only)</i>	
<i>Roundtable Lunch on Premises (Plymouth Only)</i>		12:30 p.m. – 1:45 p.m.
<i>END SESSION 1</i>		
<b>Session 2</b> <b>Acme, Friday, May 10, 2013 AM</b> <b>Plymouth, Friday, June 14, 2013 PM</b>		
<i>Acme Time</i>	<b>Plenary Sessions</b> Moderator: Amy N. Morrissey Westerman & Morrissey PC Ann Arbor	<i>Plymouth Time</i>
7:30 a.m. – 8:30 a.m.	<i>Continental Breakfast (Acme Only)</i>	
8:15 a.m. – 8:30 a.m.	<b>Remarks from the State Bar Executive Director (Acme Only)</b>  Janet K. Welch Executive Director State Bar of Michigan Lansing	
8:30 a.m. – 8:50 a.m.	<b>The Landscape in Lansing and Recent Legislation for Probate and Estate Planners</b>  Harold Schuitmaker Schuitmaker Cooper Schuitmaker Cypher & Knotek PC Paw Paw	1:45 p.m. – 2:05 p.m.
8:50 a.m. – 9:35 a.m.	<b>This Land is Your Land, This Land is My Land: Estate Planning For Noncitizens and Nonresident Aliens</b> <ul style="list-style-type: none"> <li>• Residency for estate tax and applicable transfer tax laws</li> <li>• Know your country: common law vs. civil law</li> </ul>	2:05 p.m. – 2:50 p.m.

	<ul style="list-style-type: none"> <li>• Treaty application and analysis</li> <li>• Noncitizen spouse: marital deduction and planning alternatives</li> <li>• Foreign trusts: planning and pitfalls</li> </ul> <p>Raj A. Malviya Miller Johnson Grand Rapids</p>		
9:35 a.m. – 10:20 a.m.	<b>Joint Revocable Trusts: Better Than Sliced Bread? When to Use (And When Not to Use)</b> <ul style="list-style-type: none"> <li>• Why a joint trust rather than an individual trust</li> <li>• Tax and marital planning with the joint trust</li> <li>• Funding the joint trust</li> <li>• Trustees and their powers</li> <li>• Other drafting tips</li> </ul> <p>Louis S. Harrison Harrison &amp; Held, LLP Chicago, IL</p>		2:50 p.m. – 3:35 p.m.
10:20 a.m. – 10:35 a.m.	<i>Networking Break</i>		3:35 p.m. – 3:50 p.m.
<i>Acme Time</i>	<b><i>Law Practice Management &amp; Technology Track</i></b> Moderator: John D. Mabley	<b><i>Estate Profiling Track</i></b> Moderator: Amy N. Morrissey	<i>Plymouth Time</i>
10:35 a.m. – 11:20 a.m.	<b>Pixar for Estate Planners: Animating Your Practice through Social Media: The Dos and Don'ts and How Tos of New Communication Channels</b> <ul style="list-style-type: none"> <li>• Social media that estate planners should tune into</li> <li>• Use social media productively in your practice</li> <li>• Manage the ever-evolving social media landscape</li> </ul> <p>Louis S. Harrison</p>	<b>Estate Planning for the Young Family</b> <ul style="list-style-type: none"> <li>• Married and unmarried parents</li> <li>• Naming a guardian and conservator for minor children</li> <li>• Asset considerations for the house and 401(k)s</li> <li>• Advising young families on life insurance</li> <li>• Wills vs. trusts</li> </ul> <p>Diane Kuhn Huff Scott &amp; Huff PC</p>	3:50 p.m. – 4:35 p.m.

	Harrison & Held, LLP Chicago, IL	Traverse City	
11:20 a.m. – 11:50 a.m.	<b>Running Your Estate Planning Practice on an iPad</b> <ul style="list-style-type: none"> <li>• Client meetings, files, and communications with an iPad</li> <li>• Document production in the iPad environment</li> <li>• Billing and collection techniques with an iPad</li> <li>• Ethical issues to consider</li> </ul> <p>John D. Mabley Smith &amp; Mabley PLC Farmington Hills</p>	<b>Estate Planning for Remarrying Seniors: Will You Still Marry Me When I'm 64?</b> <ul style="list-style-type: none"> <li>• Pre- and post-nuptial agreements</li> <li>• Social Security and retirement account planning</li> <li>• Elective share and Allowances</li> <li>• Medicaid benefits</li> <li>• Medical and financial decision making</li> <li>• Portability and other tax issues</li> </ul> <p>George F. Bearup Smith Haughey Rice &amp; Roegge Traverse City</p>	4:40 p.m. – 5:10 p.m.
11:50 a.m. – 12:20 p.m.	<b>Marketing and Serving Your Clients Online</b> <ul style="list-style-type: none"> <li>• Tips for improving your law firm's online presence</li> <li>• Online marketing strategy: what works and what doesn't</li> <li>• New revenue and client service opportunities</li> </ul> <p>Brendan B. Chard The Modern Firm LLC Ann Arbor</p>	<b>Estate Planning for the Farm-Owning Family</b> <ul style="list-style-type: none"> <li>• Knowing your client's business and assets</li> <li>• Special Michigan real property rules</li> <li>• Dealing with cash poor, land rich estates</li> <li>• Fairness versus equality in distributions</li> </ul> <p>Todd W. Hoppe Foster Swift Collins &amp; Smith PC Grand Rapids</p>	5:15 p.m. – 5:45 p.m.
12:20 p.m. – 12:30 p.m.	<b>Questions and Answers</b>	<b>Questions and Answers</b>	5:45 p.m. – 6:00 p.m.
12:30 p.m. – 1:30 p.m.	<i>Roundtable Lunch on Premises (Acme Only)</i>		
1:30 p.m. – 3:30 p.m.	<b>SPECIAL ADVANCED SESSION: Tax Aspects of the Rule Against Perpetuities (Acme Only)</b> <ul style="list-style-type: none"> <li>• Vesting and possession distinguished for planning purposes</li> <li>• The Delaware tax trap</li> </ul>		

	<ul style="list-style-type: none"><li>• The GST tax effective date regulations</li><li>• Perpetuities reform legislation</li></ul> <p>James P. Spica Dickinson Wright PLLC Detroit</p>	
1:30 p.m. – 3:30 p.m.	<p><i>SPECIAL BASIC SESSION: New Lawyers: You Have the Floor! (Acme Only)</i></p> <ul style="list-style-type: none"><li>• Ask your practice management and substantive questions in this open forum</li></ul> <p>Sarah Ostahowski Sarah L. Ostahowski PLLC Shepherd</p> <p>Michele C. Marquardt DeMent and Marquardt PLC Kalamazoo</p> <p>David L. Skidmore Warner Norcross &amp; Judd LLP Grand Rapids</p>	
<i>Reception (Plymouth Only)</i>		
	6:00 p.m. – 7:15 p.m.	
	<i>END SESSION 2</i>	
<div>Session 3</div> <div>Acme, Saturday, May 11, 2013 AM</div> <div>Plymouth, Saturday, June 15, 2013 AM</div>		
<i>Acme Time</i>	<p><i>Plenary Sessions</i></p> <p>Moderator: Amy N. Morrissey Westerman &amp; Morrissey PC</p>	<i>Plymouth Time</i>

	Ann Arbor	
7:30 a.m. – 8:30 a.m.	<i>Continental Breakfast</i>	7:30 a.m. – 8:30 a.m.
7:30 a.m. – 8:15 a.m.	<b>Making the Most of Your ICLE Resources</b> <ul style="list-style-type: none"> <li>• How to get around within the resources</li> <li>• Resources explained including specific features</li> <li>• Tips to find what you need quickly</li> <li>• Overview of your primary law research tool</li> <li>• Using the ICLE Community</li> <li>• ICLE resources on your mobile device</li> <li>• What's coming soon</li> <li>• Your questions answered</li> </ul> Demonstration by ICLE Staff	7:30 a.m. – 8:15 a.m.
8:30 a.m. – 9:10 a.m.	<b>Administration of Estates and Trusts with Unique Assets: The Sequel</b> <ul style="list-style-type: none"> <li>• Review of more unique assets, including timeshares and guns</li> <li>• Completely updated and expanded unique asset chart</li> </ul> William M. Wright Wright Penning & Beamer Caledonia	8:30 a.m. – 9:10 a.m.
9:10 a.m. – 9:50 a.m.	<b>Medicaid and Medicare Update 2013</b> <ul style="list-style-type: none"> <li>• Latest Michigan and federal developments</li> <li>• Status of estate recovery legislation and enforcement</li> <li>• Update on basic and not so basic planning techniques</li> <li>• Tips to protect your clients from impoverishment</li> <li>• Responding to increased audit/documentation requirements</li> </ul> Laurretta K. Murphy Miller Johnson Grand Rapids	9:10 a.m. – 9:50 a.m.

9:50 a.m. – 10:30 a.m.	<b>The Ethics of Estate Planning and Elder Law - An Interactive Session</b> <ul style="list-style-type: none"> <li>• Real-world examples of common ethical problems with audience participation</li> <li>• Discussion, review and maybe resolution on how to proceed</li> </ul> <p>Robert B. Fleming Fleming &amp; Curti PLC Tucson, AZ</p>		9:50 a.m. – 10:30 a.m.
10:30 a.m. – 10:45 a.m.	<i>Networking Break</i>		10:30 a.m. – 10:45 a.m.
<i>Acme Time</i>	<b><i>Trust and Estate Administration Track</i></b> Moderator: Wendy Zimmer Linehan	<b><i>Disability Planning Track</i></b> Moderator: Constance L. Brigman	
10:45 a.m. – 11:15 a.m.	<b>View from the Register's Counter</b> <ul style="list-style-type: none"> <li>• How the courts handle common scenarios</li> <li>• Court rules, forms, and more</li> <li>• Administrative and procedural updates</li> </ul> <p>Michael J. McClory Chief Deputy Probate Register Wayne County Probate Court Detroit</p> <p>Susan B. Flakne Probate Register Kent County Probate Court Grand Rapids</p>	<b>Dealing with the Aging Client</b> <ul style="list-style-type: none"> <li>• Clients with diminished capacity</li> <li>• Ethical requirements and ER 1.14</li> <li>• Practical considerations and tips</li> </ul> <p>Robert B. Fleming Fleming &amp; Curti PLC Tucson, AZ</p>	
11:15 a.m. – 11:45 a.m.	<b>Administration of Joint Trusts</b> <ul style="list-style-type: none"> <li>• Division of assets at the first death</li> <li>• Tax issues: potential problems and pitfalls</li> <li>• The case of the rogue surviving spouse</li> </ul> <p>Wendy Zimmer Linehan Greenleaf Trust Birmingham</p>	<b>The Final Breath: Assisting Clients with End-of-Life Decisions</b> <ul style="list-style-type: none"> <li>• Family consent statute</li> <li>• Why clients need the medical POA and what should be in it</li> <li>• Hierarchy of the medical decision-making process</li> </ul>	

		Constance L. Brigman Law Office of Constance L. Brigman PC Wyoming	
11:45 a.m. – 12:15 p.m.	<b>Trust Administration: Discretionary Distributions</b> <ul style="list-style-type: none"> <li>• Common discretionary standards and limitations</li> <li>• Ambiguous and empty phrasings</li> <li>• Process and documentation</li> <li>• Protections available to trustee</li> </ul> <p>Todd W. Simpson Warner Norcross &amp; Judd LLP Grand Rapids</p>	<b>The Non-Tax Reasons for Decanting</b> <ul style="list-style-type: none"> <li>• Decanting availability and limitations</li> <li>• Fixing flawed special needs trusts</li> <li>• Avoiding unnecessary marital trusts</li> <li>• Protecting beneficiaries and trustees</li> </ul> <p>Robert B. Fleming Fleming &amp; Curti PLC Tucson, AZ</p>	
	<b>Litigation Track</b> Moderator: Joseph P. Buttiglieri	<b>Disability Planning Track</b> Moderator: Constance L. Brigman	<i>Plymouth Time</i>
	<b>What You Can Learn from Celebrity Estate Battles</b> <ul style="list-style-type: none"> <li>• Was Jimmy Hendrix’s legacy controlled by undue influence?</li> <li>• Whitney Houston’s battle over life insurance</li> <li>• Anna Nicole Smith: from strip club to the U.S. Supreme Court</li> </ul> <p>Andrew W. Mayoras Barron Rosenberg Mayoras &amp; Mayoras PC Troy</p>	<b>Dealing with the Aging Client</b> <ul style="list-style-type: none"> <li>• Clients with diminished capacity</li> <li>• Ethical requirements and ER 1.14</li> <li>• Practical considerations and tips</li> </ul> <p>Robert B. Fleming Fleming &amp; Curti PLC Tucson, AZ</p>	10:45 a.m. – 11:15 a.m.
	<b>The Keys to Successful Discovery in Probate Matters</b> <ul style="list-style-type: none"> <li>• E-discovery</li> <li>• Scope of discovery in probate proceedings</li> <li>• Timing discovery</li> </ul>	<b>The Final Breath: Assisting Clients with End-of-Life Decisions</b> <ul style="list-style-type: none"> <li>• Family consent statute</li> <li>• Why clients need the medical POA and what should be in it</li> </ul>	11:20 a.m. – 11:50 p.m.

	<ul style="list-style-type: none"> <li>What discovery to avoid and why</li> </ul> <p>Joseph P. Buttiglieri Kemp Klein Law Firm Troy</p>	<ul style="list-style-type: none"> <li>Hierarchy of the medical decision-making process</li> </ul> <p>Constance L. Brigman Law Office of Constance L. Brigman PC Wyoming</p>	
	<p><b>The Final Word: Judge Mack Tackles Probate Litigation</b></p> <ul style="list-style-type: none"> <li>The long arm of probate jurisdiction: The right case? The right party?</li> <li>Key court rules</li> <li>Mediation-early and often</li> <li>On to trial</li> </ul> <p>Hon. Milton L. Mack, Jr. Wayne County Probate Court Detroit</p>	<p><b>The Non-Tax Reasons for Decanting</b></p> <ul style="list-style-type: none"> <li>Decanting availability and limitations</li> <li>Fixing flawed special needs trusts</li> <li>Avoiding unnecessary marital trusts</li> <li>Protecting beneficiaries and trustees</li> </ul> <p>Robert B. Fleming Fleming &amp; Curti PLC Tucson, AZ</p>	11:55 a.m. – 12:25 p.m.
12:15 p.m. – 12:30 p.m.	<b>Questions and Answers</b>	<b>Questions and Answers</b>	12:25 p.m. – 12:40 p.m.
<i>Adjourn</i>			

**STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF**

**LETTERS OF GUARDIANSHIP**

**FILE NO.**

In the matter of \_\_\_\_\_

TO:

Name and address

Guardian's telephone no.

1. You have been appointed ☐ by will or other witnessed writing ☐ by the court as \_\_\_\_\_  
guardian of the individual named above. Type of guardian (full, limited, temporary, etc.)

2. Having filed an acceptance of appointment, you have the care, custody, and control of that individual:

☐ a. together with all authority and responsibilities granted and imposed by law.

☐ b. except as follows:

☐ c. as to the following powers and responsibilities only:

☐ 3. These letters of guardianship expire on \_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge Bar no.

\_\_\_\_\_  
Attorney name (type or print) Bar no.

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, state, zip Telephone no.

**SEE NOTICE OF DUTIES ON SECOND PAGE**

I certify that I have compared this copy with the original on file and that it is a correct copy of the whole of such original, and on this date, these letters are in full force and effect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy probate register/clerk

**USE NOTE:** If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

## NOTICE OF DUTY TO VISIT

**You are required** by law to visit the individual for whom you are guardian at least once every three months.

## NOTICE OF REPORTING DUTIES

**You are required** by law to file with this court a written report on the indicated form(s) and at the indicated times. Forms are available at the court.

**CHANGE IN PLACE OF RESIDENCE:** You are required to promptly inform the court of any change in the ward's residence within 14 days of the change. You are also required to keep the court and interested persons informed in writing within 7 days of any change in your address.

### **ANNUAL REPORT:**

Your annual report on condition of ward is due on \_\_\_\_\_ of each year. (Use form PC 634 or PC 654.)  
Date

In addition, you must serve the report on the ward and interested persons as specified in the Michigan Court Rules and file proof of service with the court.

☐ **ACCOUNTS:** You must file with this court once a year, either on the anniversary date of your letters of authority or on another date you choose (you must notify the court of this date) or more often if the court directs, a complete itemized accounting of your administration of the estate. On termination of the individual's disability, you shall account to the court or to the individual or that individual's successors. **The accounts must be served on the required persons at the same time they are filed with the court, along with proof of service.** (Use form PC 583 or PC 584: "Account.")

**ONGOING DUTY TO REPORT:** Pursuant to MCL 700.5319(2), if a conservator has not been appointed for the ward's estate and you determine that there is more cash or property that is readily convertible into cash in the ward's estate than was estimated by the guardian ad litem and reported to the court, you must report the amount of the additional cash or property to the court.

**DEATH OF WARD:** If the ward dies during the guardianship, you must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 56 days of the date of death.

**DELEGATION OF DUTIES:** You are required by law to notify the court when you delegate duties under a durable power of attorney.

**ATTENTION:** The above provisions are reporting duties only and are not the only duties required of you. These mandatory provisions are specified in court rules adopted by the Michigan Supreme Court. Your failure to comply may require the court to appoint a special fiduciary in your place and to suspend your powers. This may result in your removal as fiduciary. The court is prohibited by statute from giving you legal advice.

**KEEP THIS NOTICE FOR FUTURE REFERENCE**

STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF \_\_\_\_\_

ORDER APPOINTING  
GUARDIAN AD LITEM / ATTORNEY /  
LAWYER-GUARDIAN AD LITEM

FILE NO. \_\_\_\_\_

In the matter of \_\_\_\_\_

1. It appears to the court that ☐ a guardian ad litem ☐ a lawyer-guardian ad litem ☐ an attorney should be appointed in this proceeding for the individual(s) named or described below.

**IT IS ORDERED:**

2. \_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, state, zip

\_\_\_\_\_  
Telephone no.

is appointed ☐ guardian ad litem ☐ lawyer-guardian ad litem ☐ attorney

for the following individual(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

in respect to the following proceedings:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ 3. The guardian ad litem shall meet with the individual before the hearing and, to the extent that the person can comprehend, explain the nature of the proceedings. In addition, if the matter involves a petition to appoint a guardian for a legally incapacitated individual, the guardian ad litem shall give the individual form PC 626, Notice of Rights to Alleged Incapacitated Individual, as required by MCL 700.5306a(2).
- ☐ 4. A written report with recommendations shall be filed with the court ☐ at least 24 hours before the hearing.  
☐ \_\_\_\_\_  
Specify other time frame
- ☐ 5. The guardian ad litem shall be present at the time of hearing.
6. The guardian ad litem shall have access to all records, including but not limited to, medical records, psychological and psychiatric records, any protective service reports/contacts, and other materials or documents which he or she shall request regarding this matter. The guardian ad litem shall keep all information confidential, except upon further order of the court.
7. The lawyer-guardian ad litem must comply with the provisions of MCL 712A.17d or MCL 722.24.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Bar no.

Do not write below this line - For court use only

<b>STATE OF MICHIGAN</b> <b>PROBATE COURT</b> <b>COUNTY</b> <b>CIRCUIT COURT - FAMILY DIVISION</b>	<b>ORDER</b> <input type="checkbox"/> <b>APPOINTING SPECIAL FIDUCIARY</b> <input type="checkbox"/> <b>SUSPENDING POWERS OF FIDUCIARY</b>	<b>FILE NO.</b>
-------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------	-----------------

In the matter of \_\_\_\_\_

1. Date of entry: \_\_\_\_\_ Judge: \_\_\_\_\_ Bar no. \_\_\_\_\_

**THE COURT FINDS:**

2. \_\_\_\_\_, fiduciary in this matter, has:  
 Name \_\_\_\_\_

- ☐ failed to file an inventory;  
☐ failed to file an account;  
☐ failed to file a report of guardian on condition of ward;  
☐ failed to file a notice of continued administration or a paper required to close the estate;  
☐ \_\_\_\_\_

☐ 3. Prompt and proper administration of the estate requires the appointment of a special fiduciary because:

\_\_\_\_\_

☐ 4. There is no qualified, suitable individual willing to act as special fiduciary and the appointment of a professional guardian/conservator as special fiduciary is in the best interest of the ward. A bond must be filed.

**IT IS ORDERED:**

☐ 5. The powers of the fiduciary are suspended.

☐ 6. \_\_\_\_\_, whose address and telephone number are:  
 Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone no. \_\_\_\_\_

is appointed special fiduciary and shall ☐ give bond in the amount of \$ \_\_\_\_\_ . The duties of the special  
☐ file an acceptance of appointment.

fiduciary are: \_\_\_\_\_

☐ A petition to remove the fiduciary has not been filed. The special fiduciary must file this petition.

☐ 7. There is no person available to act as fiduciary so the powers of \_\_\_\_\_  
 Name \_\_\_\_\_

as \_\_\_\_\_ are suspended until further order of this court. Interested persons may petition  
 Title \_\_\_\_\_ for removal of the fiduciary and appointment of a successor. ☐ The estate administration is closed.

☐ 8. Within 28 days the suspended fiduciary shall file an account with this court and serve it on the interested persons.

\_\_\_\_\_  
 Judge

Do not write below this line - For court use only

Copies mailed to:

Fiduciary  
 Attorney of record  
 All interested persons of record  
 Sureties

Date \_\_\_\_\_

By \_\_\_\_\_

**STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF**

**ORDER REGARDING  
REAL ESTATE/DWELLING**

**FILE NO.**

Estate of \_\_\_\_\_

1. Date of hearing: \_\_\_\_\_ Judge: \_\_\_\_\_ Bar no. \_\_\_\_\_

2. A petition was filed in this matter on \_\_\_\_\_ for court approval to ☐ sell ☐ dispose of ☐ mortgage  
Date

☐ pledge ☐ place a lien on the protected individual's principal dwelling, real property, or interest in real property.

**THE COURT FINDS:**

3. Notice of the hearing was given to or waived by all interested persons.

4. It is in the protected individual's best interest to ☐ sell ☐ dispose of ☐ mortgage ☐ pledge ☐ place a lien on  
the protected individual's principal dwelling, real property, or interest in real property.

☐ 5. Bond was filed and approved by the court.

6. The legal description of the property or VIN number of the titled property is:

**IT IS ORDERED:**

☐ 7. The petition is granted. \_\_\_\_\_ is authorized to:  
Name

☐ a. sell to \_\_\_\_\_  
Name

☐ b. dispose of to \_\_\_\_\_  
Name

☐ c. mortgage to \_\_\_\_\_  
Name

☐ d. pledge to \_\_\_\_\_  
Name

☐ e. place a lien in favor of \_\_\_\_\_ on  
Name

the property described above under the terms and conditions in the petition.

☐ 8. This order shall be recorded with the register of deeds for the county in which the property is located because it involves real property or an interest in real property.

☐ 9. A written appraisal of the property must be provided to the court within \_\_\_\_\_ days.

☐ 10. The petition is denied.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Attorney name (type or print) Bar no.

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, state, zip

\_\_\_\_\_  
Telephone no.

Do not write below this line - For court use only

**STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF**

**PETITION REGARDING  
REAL ESTATE/DWELLING**

**FILE NO.**

**NOTE:** Do not use this form in decedent's estates.

Estate of \_\_\_\_\_

1. I am the \_\_\_\_\_ of this estate.

Specify conservator or guardian

2. I intend to ☐ sell ☐ dispose of ☐ mortgage ☐ pledge ☐ cause a lien to be placed on the protected individual's principal dwelling, real property, or interest in real property described as follows (provide legal description or VIN number of titled property):

\_\_\_\_\_

for the purpose of \_\_\_\_\_

to \_\_\_\_\_ for \$ \_\_\_\_\_ on the following  
Name (type or print)

terms and conditions: \_\_\_\_\_

\_\_\_\_\_. Attached is a copy of the most recent assessor's statement or tax statement showing the state equalized value of the property or documentation showing the current value of the titled property, which is \$ \_\_\_\_\_.

3. It is in the protected individual's best interests to grant this petition for the following reasons: \_\_\_\_\_

4. The value of the remaining personal property is \$ \_\_\_\_\_ and the real property is \$ \_\_\_\_\_.

The amount of unpaid debts and taxes is \$ \_\_\_\_\_. The fiduciary is currently bonded for a total amount of \$ \_\_\_\_\_.

5. The protected individual's monthly income is \$ \_\_\_\_\_ and monthly expenses are \$ \_\_\_\_\_.

6. The interested parties, their addresses, and their representatives are identical to those appearing on the initial petition except as follows: (For each person whose address changed, list the name and new address; attach separate sheet if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(PLEASE SEE OTHER SIDE)

**USE NOTE:** If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

☐ Bond is set at \$ \_\_\_\_\_.

Date: \_\_\_\_\_

Authorized signature: \_\_\_\_\_

7. I **request** that the court approve this ☐ sale of ☐ disposal of ☐ mortgage on ☐ pledge of ☐ placement of lien on the property described above and determine whether a bond needs to be filed.

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

\_\_\_\_\_  
Attorney signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney name (type or print) Bar no.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, state, zip Telephone no.

\_\_\_\_\_  
City, state, zip Telephone no.

## WHAT YOU NEED TO KNOW BEFORE FILING A PETITION TO APPOINT A GUARDIAN FOR AN INCAPACITATED ADULT

### »» What is a guardian?

A guardian is a person appointed by a probate court and given power and responsibility to make certain decisions about the care of another individual. These decisions might include treatment decisions or where the individual should live. If the individual has a reduced life expectancy because of advanced illness, the guardian may have the power to make an informed decision on behalf of the individual regarding receiving, continuing, discontinuing, or refusing medical treatment. The duties of a guardian are listed in statute.

A **full guardian** can make all decisions for the individual. A **limited guardian** can only make decisions for the individual that the court allows.

### »» When can the court appoint a guardian?

The court can appoint a guardian when it finds the person is a legally incapacitated individual and determines that a guardian is necessary.

### »» What is a "legally incapacitated individual"?

A legally incapacitated individual is an adult the court finds to be so impaired by mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, that the individual lacks the understanding or capacity to make or communicate informed decisions.

### »» Is a guardian needed for an individual who may be legally incapacitated?

A guardian might not be necessary if someone already has legal authority to make decisions for the individual and there are no problems with the decisions being made.

### »» How is a proceeding for a guardian started?

Any person interested in the individual's welfare may complete a *Petition for Appointment of Guardian of Incapacitated Individual* (form PC 625) and file it, along with the filing fee, with the probate court where the individual resides or is presently located.

### »» Is a lawyer necessary?

No, but a lawyer can be helpful, especially if someone objects to the appointment of a guardian, the authority being given, or the person you are asking to be appointed as the guardian.

### »» Can mediation be used for disagreements about a guardianship?

Certain disagreements about a request for a guardian may be mediated outside the court if all parties agree to attend mediation or if a judge orders parties to attend mediation. The court clerk can tell you if mediation services are available in your court.

### »» What happens when the court accepts a petition for filing?

After the petition is accepted for filing, the court will appoint a person called a guardian ad litem to visit the individual to explain the guardianship proceedings and to make recommendations to the court as a result of the visit.

It is important for you to cooperate with the guardian ad litem. The guardian ad litem does not have the authority to make decisions for the individual. The individual may have to pay for the guardian ad litem.

If necessary, the court may also order the individual to be examined by a physician or a mental health professional.

### »» What will the guardian ad litem do?

The guardian ad litem will personally visit the individual and explain to the individual the nature, purpose, and legal effects of the appointment of a guardian. The guardian ad litem will:

- 1) give the individual form PC 626, *Notice of Rights to Alleged Incapacitated Individual*, that explains the individual's rights as outlined in MCL700.5306a(1);
- 2) explain the hearing procedure to the individual and explain the individual's rights during the hearing;
- 3) inform the individual of the name of anyone seeking appointment as guardian; and
- 4) inform the court of the guardian ad litem's determinations about the individual's wishes.

### »» Can the individual get a guardian immediately in an emergency?

If an emergency exists, the judge may appoint a temporary guardian to serve until a hearing on the petition can be held.

## ALTERNATIVES TO A FULL GUARDIAN

The following five alternatives must be planned by the individual before the individual becomes mentally incapable of making the decisions.

### 1. Health Care Power of Attorney

Also called a *patient advocate designation* or a *durable power of attorney for health care*. This document enables an individual to name an agent (called a *patient advocate*) to make health care decisions for the individual when he or she is not capable or not competent to do so. The document may cover any type of health care decision including guidance to the agent about the type and extent of health care desired. It can also include authority to withhold or to withdraw life support services.

### 2. Do-Not-Resuscitate Order

A do-not-resuscitate order is a document directing that the patient named in the order not be resuscitated if the patient's spontaneous respiration and circulation stop in a setting outside a nursing home, hospital, or mental health facility owned or operated by

the Department of Community Health. The patient must sign the document in the presence of the individual's attending physician and two adult witnesses.

If the patient is an adherent of a religious denomination or a church whose members depend upon spiritual means through prayer alone for healing, the adult patient may sign a do-not-resuscitate order that meets special statutory requirements and does not require the signature of an attending physician.

### 3. Power of Attorney

A power of attorney is a document signed by a competent person giving another person the power to manage some or all of the individual's affairs. The document must be signed by a notary in the presence of at least one witness.

A power of attorney is durable if it remains valid even if the maker of the power of attorney later becomes disabled or incapacitated. A durable power of attorney is the means for a mentally competent adult to grant a person (called an *agent*) authority to act for the individual if incapacity occurs. It usually affects property decision-making but may affect health care decisions. See the Health Care Power of Attorney (described in item 1).

### 4. Trust

A trust may be a substitute for a conservator and a will. The trust expresses the desires of the maker (called a *settlor*) about the management of the individual's assets during his or her lifetime and when physically or mentally unable to manage the assets.

Under a trust, assets are owned by the trust and managed by the trustee for the benefit of the person(s) to be protected. The trust also names the individuals to whom the assets will go upon the settlor's death. A trustee usually is the maker of the trust at first and frequently

names a relative to be the successor. Professional trustees often serve in this highly responsible position.

### 5. Joint Ownership

Joint ownership provides that certain assets are held by two or more persons and may entitle any of the owners to have control and management of the assets.

Some of the assets that can be held in joint ownership are real estate, bank accounts, corporate stocks, and mutual funds. A joint owner can apply the funds of an account for the disabled co-owner without court action. This can involve the loss of sole control over the funds by the disabled person and can result in dishonest use of funds by the co-owner.

The following five alternatives do not need to be planned by the individual before the individual becomes mentally incapable of making the decisions.

#### 1. Limited Guardian

A guardian who makes only those decisions for the individual that the court allows.

#### 2. Conservator

A conservator is a person appointed by probate court and given power and responsibility for the estate (financial assets and property) of an adult (called a *protected individual*).

If an individual has property such as real estate, large bank accounts, or stock that the individual can no longer manage, it may be appropriate to file a petition for a conservator. See separate instructions on **Conservatorship Proceedings**.

#### 3. Protective Order

When only a single transaction affecting the property of a disabled person is required, the probate court may enter a protective order for this one-time matter.

At a hearing, the court may authorize, direct, or ratify any contract, trust, or other transaction relating to that person's financial affairs or estate without appointing a conservator or a guardian.

### 4. Representative Payee

A representative payee is appointed by a government agency to receive, manage, and spend government benefits for a beneficiary. This is most often done for Social Security benefits. The beneficiary may request a representative payee, but usually the agency requires one when the beneficiary is no longer able to manage benefits.

A payee is approved by the agency and there is no court involvement. The representative payee's authority is limited to the government funds for which he or she is the payee.

### 5. Special Services for the Aging

Many communities provide voluntary services available upon request to help the aging with their financial affairs. Services may include depositing and writing checks, balancing checkbooks, paying bills, preparing insurance claims, preparing tax information and counseling, and applying for public benefits and counseling.

The Office of Services to the Aging and the Department of Human Services, as well as church organizations, provide these services in many communities. A person capable of asking for or accepting the services must request the services be provided in order to receive them.

**STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF**

**NOTICE OF RIGHTS  
TO ALLEGED INCAPACITATED  
INDIVIDUAL**

**FILE NO.**

Court address

Court telephone no.

**Notice that a Petition for a Guardian has been Filed:** A petition has been filed in this court asking that a guardian be appointed to help you make personal decisions for you that you now make for yourself.

- If a guardian is appointed for you, the guardian will make decisions for you, such as what medical care you receive and where you live.
- A guardian will be responsible to get services for you that will help you return to managing your own affairs as soon as possible.
- This notice states all of your rights as to this matter. A guardian ad litem may be appointed by the court to more fully explain these rights to you. A guardian ad litem will give you this notice and do the following.
  - The guardian ad litem must visit you in person.
  - The guardian ad litem must explain the nature, purpose, and legal effects of the appointment of a guardian.
  - The guardian ad litem must explain your rights about the guardianship hearing.
  - The guardian ad litem must inform you that you can object to the petition, request limits on the guardian's powers, object to a particular person being appointed as your guardian, come to the hearing, and be represented by an attorney and, if you cannot afford an attorney, to have one appointed at public expense.

**You have certain rights before and at the court hearing on the petition to appoint a guardian for you.**

- You have the right to have the guardianship case started and conducted where you reside or are present, or if you have been admitted to an institution by a court, in the county in which that court is located.
- You have the right to file a petition on your own behalf to have a guardian appointed for you.
- You have the right to be represented by an attorney. If you cannot afford an attorney, you can ask the court to appoint one for you at public expense.
- You have the right to have a guardian ad litem appointed to represent you if you are not represented by an attorney.
- You have the right to get an independent evaluation of your condition at your own expense. If you cannot afford to pay for the evaluation, the court will approve reasonable costs at public expense.
- You have the right to be present at the hearing. If you wish to be present at the hearing, all practical steps must be taken to ensure your presence, including moving the site of the hearing.
- You have the right to see and hear all the evidence presented during the hearing.
- You have the right to present evidence and cross-examine witnesses at the hearing.
- You have the right to a trial by jury.

**See other side for more rights**

- You have the right to request that the hearing be closed to the public.
- You have the right to be personally visited by the guardian ad litem, if one is appointed.
- You have the right to be informed of the name of each person asking to become your guardian. If a guardian ad litem is appointed, you have the right to be informed of these names by the guardian ad litem.
- You have the right to be given written notice of the nature, purpose, and legal effects of the appointment of a guardian.
- You have the right to choose the guardian you would like the court to consider appointing, if that person is suitable and willing to serve.
- You have the right to have your incapacity and the need for a guardian proven by clear and convincing evidence.

**Rights When a Guardian is Appointed:** You have certain rights after a guardian is appointed.

- You have the right have the guardian's powers and the time period of the guardianship be limited to only the amount and time necessary.
- You have the right to have a guardianship that encourages the development of your maximum self-reliance and independence.
- You have the right to prevent a guardian from having powers that are already held by a valid patient advocate.
- You have the right to have a periodic review of your guardianship by the court. You have the right to a hearing and to have an attorney appointed if issues are discovered during the review.
- You have the right to send an informal letter to the judge asking that your guardianship be modified or ended.
- You have the right to have a hearing within 28 days of requesting a review, modification, or termination of your guardianship.
- If a petition to modify or terminate your guardianship is filed, you have the same rights as those on the petition to appoint a guardian, including appointment of a guardian ad litem.
- You have the right to get personal notice of a petition to appoint or remove a guardian.
- You have the right to consult with the guardian about major decisions affecting you, if meaningful conversation is possible.
- You have the right to be visited by your guardian at least once every three months.
- You have the right to have the guardian notify the court within 14 days of a change in your residence.
- You have the right to have the guardian secure services to restore you to the best possible state of mental and physical well-being so you can return at the earliest possible time to managing your own affairs.

**Contact the court if you have any questions.**

**STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF**

**ACCEPTANCE OF APPOINTMENT AND  
REPORT OF GUARDIAN AD LITEM OF  
ALLEGED INCAPACITATED INDIVIDUAL**

**FILE NO.**

In the matter of \_\_\_\_\_, alleged incapacitated individual

1. I have been appointed by the court as guardian ad litem, and I accept this appointment.

2. I have performed the duties required by statute (see reverse side for list of duties).

3. I visited the alleged incapacitated individual on \_\_\_\_\_ at \_\_\_\_\_  
Date Location

and, to the extent that the individual could comprehend, explained the nature, purpose, and legal effects of a guardian's appointment and otherwise complied with each provision of MCL 700.5305(1).

4. I report to the court as follows:

☐ a. the alleged incapacitated individual wishes to:

- ☐ have limits placed on the guardian's powers. ☐ object to the appointment of the nominated guardian.  
☐ contest the petition. ☐ have an attorney appointed.

☐ b. There is a disagreement or dispute related to the guardianship, namely \_\_\_\_\_

I believe it ☐ might ☐ will not be resolved through court-ordered mediation.

☐ c. There is one or more appropriate alternative to a full guardianship, namely:

☐ 1) appointment of a limited guardian with the following powers: \_\_\_\_\_

☐ 2) appointment of a conservator or a written protective order.

☐ 3) the alleged legally incapacitated individual executing one of the following:

- ☐ a patient advocate designation ☐ a do-not-resuscitate declaration  
☐ a durable power of attorney

☐ d. The alleged incapacitated individual wishes to be present at the hearing.

☐ e. I believe it is in the best interests of the individual to have legal counsel because \_\_\_\_\_

☐ The individual will retain legal counsel. ☐ I recommend the court appoint legal counsel.

5. ☐ One or more of the items in item 4a above is demanded. (no further report or recommendation is required)

**OR**

☐ None of the items in item 4a above is demanded. My report to the court and recommendations are attached.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
City, state, zip

\_\_\_\_\_  
Telephone no.

**SEE SECOND PAGE FOR DUTIES OF GUARDIAN AD LITEM**

**USE NOTE:** If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

## DUTIES OF GUARDIAN AD LITEM

Your duties as guardian ad litem include all the following:

1. Visit the individual alleged to be incapacitated.
  2. Explain to the individual the nature, purpose, and legal effects of the appointment of a guardian.
  3. Give the individual form PC 626 that outlines the rights in MCL 700.5306a(1).
  4. Explain to the individual the hearing procedure and the individual's rights in the hearing procedure, including but not limited to:
    - a. the right to contest the petition.
    - b. the right to request limits on the guardian's powers.
    - c. the right to object to a particular person being appointed guardian.
    - d. the right to be present at the hearing.
    - e. the right to be represented by legal counsel and that legal counsel will be appointed for the person if s/he is unable to afford legal counsel.
  5. Inform the individual of the name of any person known to be seeking appointment as guardian.
  6. Ask the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.
  7. Make determinations and inform the court of those determinations, on all the following:
    - a. whether the individual alleged to be incapacitated wishes to be present at the hearing.
    - b. whether the individual alleged to be incapacitated wishes to contest the petition.
    - c. whether the individual alleged to be incapacitated wishes limits be placed on the guardian's powers.
    - d. whether the individual alleged to be incapacitated objects to a particular person being appointed guardian.
    - e. whether there is one or more appropriate alternatives to the appointment of a full guardian or whether other action should be taken in addition to the appointment of a guardian after considering:
      - i. appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.
      - ii. appointment of a conservator or another protective order under 700.5401 *et seq.*
      - iii. execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or duration.
      - iv. available support from family members. Family members may often take responsibility for the care of an individual. Also, if the individual should be diagnosed as having a reduced life expectancy because of an advanced illness, state law allows a member of the individual's immediate family or next of kin to make informed decisions regarding the individual receiving, continuing, discontinuing and refusing medical treatment and may choose palliative treatment and adequate and appropriate pain and symptom management.
- In the report informing the court of the determinations, include an estimate of the amount of cash and property readily convertible that is in the individual's estate.
- f. whether a disagreement or dispute related to the guardianship petition might be resolved through court-ordered mediation.

**WHAT YOU NEED TO KNOW BEFORE FILING  
A PETITION TO APPOINT A GUARDIAN FOR  
AN INCAPACITATED ADULT**

**»» What is a guardian?**

A guardian is a person appointed by a probate court and given power and responsibility to make certain decisions about the care of another individual. These decisions might include treatment decisions or where the individual should live. If the individual has a reduced life expectancy due to advanced illness, the guardian may have power to make an informed decision on behalf of the individual regarding receiving, continuing, discontinuing, or refusing medical treatment. The duties of a guardian are listed in statute.

A **full guardian** can make all decisions for the individual. A **limited guardian**, can only make the decisions for the individual that the court allows.

**»» When can the court appoint a guardian?**

The court can appoint a guardian when it finds the person is a legally incapacitated individual and determines that a guardian is necessary.

**»» What is a "legally incapacitated individual"?**

A legally incapacitated individual is an adult the court finds to be so impaired by mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, that he or she lacks the understanding or capacity to make or communicate informed decisions.

**»» Is a guardian needed for an individual who may be legally incapacitated?**

A guardian might not be necessary if someone else already has legal authority to make decisions for the person and there are no problems with the decisions they are making.

**»» How is a proceeding for a guardian started?**

Any person interested in the individual's welfare may complete a *Petition for Appointment of Guardian of Incapacitated Individual* (form PC 625) and file it, along with the filing fee, with the probate court where the individual resides or is presently located.

**»» Is a lawyer necessary?**

No, but a lawyer can be helpful, especially if someone objects to the appointment of a guardian, the authority you are asking to be given, or the person you are asking to be appointed guardian.

**»» Can mediation be used for disagreements about a guardianship?**

Certain disagreements about a request for a guardian may be mediated outside the court if all parties agree to attend mediation or if a judge orders parties to attend mediation. The court clerk can tell you if mediation services are available in your court.

**»» What happens when the court accepts a petition for filing?**

After the petition is accepted for filing, the court will appoint a *guardian ad litem* to visit the individual to explain the guardianship proceedings and to make recommendations to the court as a result of the visit.

It is important for you to cooperate with the guardian ad litem. The guardian ad litem does not have the authority to make decisions for the individual. The individual may have to pay for the guardian ad litem. If necessary, the court may also order the individual to be examined by a physician or a mental health professional.

**»» What will the guardian ad litem do?**

The guardian ad litem will personally visit the individual and explain to the individual the nature, purpose, and legal effects of the appointment of a guardian.

The guardian ad litem will:

- 1) give the individual form PC 626, *Notice of Rights to Alleged Incapacitated Individual*, that explains the individual's rights as outlined in MCL 700.5306a(1);
- 2) explain the hearing procedure and the individual's rights during the hearing;

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- 4) inform the court of his or her determinations about the individual's wishes.

**»» Can the individual get a guardian immediately in an emergency?**

If an emergency exists, the judge may appoint a temporary guardian to serve until a hearing on the petition can be held.

## **Alternatives to a Full Guardian**

The following five alternatives must be planned by the individual before he or she becomes mentally incapable of making the decisions.

### **1. Health Care Power of Attorney**

Also called a *patient advocate designation* or a *durable power of attorney for health care*. This document enables a person to name an agent (called a *patient advocate*) to make his or her health care decisions when not capable or not competent to do so. The document may cover any type of health care decision including guidance to the agent about the type and extent of health care desired. It can also include authority to withhold or to withdraw life support services.

### **2. Do-Not-Resuscitate Order**

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resuscitated if the patient's spontaneous respiration and circulation stop in a setting outside a nursing home, hospital, or mental health facility owned or operated by the Department of Community Health. The patient must sign the document in the presence of his or her attending physician and two adult witnesses.

If the patient is an adherent of a religious denomination or a church whose members depend upon spiritual means through prayer alone for healing, the adult patient may sign a do-not-resuscitate order that meets special statutory requirements and does not require the signature of an attending physician.

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A power of attorney is durable if it remains valid even if the maker of the power of attorney later becomes disabled or incapacitated. A durable power of attorney is the means for a mentally competent adult to grant a person (called *an agent*) authority to act for him/her if incapacity occurs. It usually affects property decision-making but may affect health care decisions. See the Health Care Power of Attorney stated in item 1.

### **4. Trust**

A trust may be a substitute for a conservator and a will. The trust expresses the desires of the maker

(called a *settlor*) about the management of his or her assets during his or her lifetime and when physically or mentally unable to manage the assets.

Under a trust, assets are owned by the trust and managed by the trustee for the benefit of the persons to be protected. The trust also names the individuals to whom the assets will go upon the settlor's death. A trustee usually is the maker of the trust at first and frequently names a relative to be the successor. Professional trustees often serve in this highly responsible position.

### **5. Joint Ownership**

Joint ownership involves certain assets to be held by two or more persons and may entitle any of the owners to have control and management of the assets.

Some of the assets that can be held in joint ownership are real estate, bank accounts, corporate stocks, and mutual funds. A joint owner can apply the funds of an account for the disabled co-owner without court action. This can involve the loss of sole control over the funds by the disabled person and can result in dishonest use of funds by the co-owner.

The following five alternatives do not need to be planned by the individual before he or she becomes mentally incapable of making the decisions.

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A guardian who makes only those decisions for the individual that the court allows.

**2. Conservator**

A conservator is a person appointed by probate court and given power and responsibility for the estate (financial assets and property) of an adult (called a *protected individual*).

If an individual has property such as real estate, large bank accounts, or stock that he or she can no longer manage, it may be appropriate to file a petition for a conservator. See separate instructions on **Conservatorship Proceedings**.

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A payee is approved by the agency and there is no court involvement. The representative payee's authority is limited to the government funds for which he or she is the payee.

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The Office of Services to the Aging and the Department of Human Services provide these services in many communities as well as church organizations. A person capable of asking for or accepting the services must request the services to receive them.

PROPOSED LETTER -- November 8, 2012

Hon. Elwood Brown  
President,  
Michigan Probate Judges Association  
St. Clair County Probate Court  
201 McMorran Blvd., Rm. 220  
Port Huron, Mich. 48060

Re: 2012 PA 173 – Powers of Full Guardian\  
Guardianship Orders

Dear Judge Brown:

On behalf of the Probate and Estate Planning Section of the Michigan State Bar, please allow me to provide some information regarding the issue of whether, pursuant to 2012 PA 173, the specific powers given to a full adult guardian should be listed on the order appointing guardian or on the letters of guardianship. Our review of this legislation, along with the conclusion reached by SCAO's Guardianship, Conservatorship and Protective Proceedings Forms Committee, is that no specific powers need to be listed on either the order or the letters.

Several reasons support this conclusion. First, the proposed change to MCL 700.5306 which would have required that these powers be listed was not adopted. Thus, there is no mandate to delineate the authority provided. If the court makes a finding, pursuant to MCL 700.5306(4) that a guardian is unable to care for themselves and that a full guardianship is required, it is unnecessary to list the specific powers since the fiduciary receives all powers by virtue of his or her appointment as a full guardian. This is the rationale that the Guardianship, Conservatorship and Protective Proceedings Forms Committee adopted in reaching their determination to make no change to the order appointing guardian or the letters of guardianship forms. SCAO believes that if a full guardian is appointed, it is implied that they have all the powers pursuant to statute, and it is not necessary to spell them out on an order, letter of guardianship, or any other form.

Finally, uniformity of practice considerations weigh heavily in favor of a standard position not to list the specific powers of the adult guardian. If powers were specified without standardization among the Courts, a significant risk would be created that a full guardianship would be extremely specific and detailed in one county but not in the other. This result would cause significant confusion for practitioners and guardians throughout the state.

Judge Brown, if you have any questions or desire to discuss this matter further please do not hesitate to contact me at (616) 396-3225 or [mharder@wnj.com](mailto:mharder@wnj.com).

Sincerely,

Mark K. Harder  
Chairperson,  
Probate and Estate Planning Section