

**New Probate Register  
Orientation  
Webinar Series**

---

**Adult and Minor Conservatorships**

July 14, 2021

Materials presented by:

Michael McClory

*Wayne County Probate Court*



**CONSERVATORSHIPS**

---

Protected Individuals

Minors

New Probate Register Orientation



## LEARNING/TRAINING OBJECTIVES

---

- Conservatorship Basics
- Adult Conservatorship
- Minor Conservatorship
- Special Conservatorship
- Foreign Conservatorship
- Protective Orders



## WHO IS A PROTECTED INDIVIDUAL?

---

- A Protected Individual (PI) is a minor or other person for whom a conservator is appointed or other protective order is made as provided in part 4 of article V. **MCL 700.1106(v)**.
- A conservator can be appointed or make another protective order if the Court determines:



## WHO IS A PROTECTED INDIVIDUAL? (cont'd)

- For a minor, that he/she owns property or money that requires management or protection that cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by minority, or needs money for support and education and that protection is necessary or desirable to obtain or provide money. **MCL 700.5401(2).**
- For an adult, that the individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance and that the individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money. **MCL 700.5401(3).**



## WHO IS A PROTECTED INDIVIDUAL? (cont'd)

- **Note #1:** A conservator can be appointed for an individual who is mentally competent but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests appointment of a conservator. **MCL 700.5401(4).**
- **Note #2:** Conservatorships for individuals with a developmental disability must be brought under the Mental Health Code.



## WHO MAY PETITION? MCL 700.5404(1)

---

- The petition for appointment of a conservator or other protective order may be filed by:
  - The individual to be protected:
  - A person interested in the individual's estate, affairs, or welfare, including the individual's parent, guardian, custodian, or
  - A person who would be adversely affected by lack of effective management of the individual's property and affairs.



## WHERE TO FILE? MCL 700.5403

---

- The court at the place in Michigan where the individual to be protected resides whether or not a guardian has been appointed in another place.
- If the individual to be protected is not a resident of Michigan, in the court at a place where the property of the individual is located.



## INITIAL FILING FEES

---

- \$175 Fee
  - \$150 per **MCL 600.8801(1)**, plus \$25 electronic system filing fee per **MCL 600.1986(1)(a)**.
- OR
- Fee Waiver Request (MC20)
- OR
- \$0 if petition filed by attorney general, department of treasury, family independence agency, state public administrator, United States veterans administration, or agency of county government. **MCL 600.880(4)**.



## POLL 1

---

- Does your court require a criminal background check for nominated conservators?
  - Yes
  - No
  - I don't know
- Does your court require a Central Registry Clearance Request (DHS-1929) check for nominated conservators?
  - Yes
  - No
  - I don't know



## FORM AND CONTENT OF PETITION

- Petition for Appointment of Conservator and/or Protective Order (PC639)

**Note:** If the State Court Administrator has approved a form for a particular purpose, that form must be used when preparing the document for filing with the court. **MCR 5.113(A).**

- The petition must contain specific facts demonstrating the need for a conservator.



## WHO ARE INTERESTED PERSONS?

### MCR 5.401, MCR 5.125(C)(25)

- Individual to be protected (if at least 14 years old)
- Presumptive heirs of individual to be protected.
- If known, person name as attorney in fact under a durable power of attorney.
- Nominated conservator.
- Governmental agency paying benefits to individual to be protected or before which an application for benefits is pending.
- If known, guardian or conservator appointed by court in another state to manage protected individual's finances.



## ADDITIONAL INTERESTED PERSONS

- Attorney General if no known presumptive heirs. **MCR 5.125(A)(1)**.
- Veteran's Administration if alleged protected individual has benefits payable by the VA. **MCR 5.125 (A)(3)**.
- Guardian, Conservator, or Guardian ad Litem if appointed for an interested person. **MCR 5.125(A)(4)**.
- Attorney who filed appearance on behalf of interested person. **MCR 5.125(A)(5)**.
- Special Fiduciary **MCR 5.125(A)(6)**.
- If interested person, other than alleged protected individual, is under a legal disability or is otherwise legally represented, service must be made on the following: guardian of adult, conservator, or guardian ad litem of minor or other legally incapacitated individual. **MCR 5.105(D)(1)**.



## GUARDIAN AD LITEM (GAL)

- For an adult conservatorship petition, the Court will appoint a GAL to represent the proposed protected person unless they have their own counsel or they are mentally competent but aged or physically infirm. **MCL 700.5406(2)**.
- For a minor conservatorship petition, the Court will appoint an attorney for the minor with the powers and duties of GAL only if the Court determines that the minor's interests may be inadequately represented. **MCL 700.5406(1)**.



## GUARDIAN AD LITEM (GAL) (cont'd)

- Order Appointing Guardian ad Litem (PC642)  
**Note:** Court may use as additional visitor any public/private agency to evaluate individual to be protected and make recommendations to court. **MCL 700.5406(3).**
- Guardian ad Litem/additional visitor must meet with individual, consider whether appropriate alternative to conservatorship, if conservatorship appropriate consider desirability of limiting scope/duration of conservator's authority, and report to the court. **MCL 700.5406(4).**
- Acceptance of Appointment and Report of Guardian ad Litem (PC643).



## NOTICE

- Notice of Hearing (PC562) must state time and date, place and nature of hearing. **MCR 5.102.**
- A copy of the Petition for Appointment of Conservator/Protective Order (PC639) must be attached to the Notice of Hearing (PC652) and given to all interested persons. **MCL 700.5311(3); MCL 700.5405(1); MCR 5.107(A).**
- For adult conservatorship proceedings, notice has to be served personally on the person to be protected unless another method of service is specifically permitted in the circumstances. **MCR 5.402(C); MCL 700.5405.**
- If person to be protected is a minor, **MCL 700.5213(1)** also applies (i.e., notice to minor if at least 14, person w/care and custody for last 63 days, each parent or adult nearest next of kin if both parents deceased). **MCL 700.5405(1)(b).**

**Note:** If alleged protected individual is disappeared/personal service impracticable, notice shall be give by mail or publication per **MCL 700.1401. MCL 700.5405(1)(a).**





## NOTICE (cont'd)

---

- Methods of Providing Notice:
  - First Class Mail – At least 14 days prior to the hearing date. **MCR 5.105(A)(2); MCR 5.108(B)(1).**
  - Personal Service – At least 7 days prior to the hearing date. **MCR 5.150(A)(1); MCR 5.108(A).**
  - Electronic Service – At least 7 days prior to the hearing date and in accordance with **MCR 1.109(G)(6)(a), MCR 5.105(A)(2); MCR 5.108(C).** Specific to the electronic filing system (currently only available in a few courts).
- An interested person other than the alleged protected individual may waive the right to receive notice of hearing by a statement on the record at the hearing or in writing. Waiver/Consent (PC561). **MCR 5.104(B)(1).**



## NOTICE (cont'd)

---

- Publication
  - If the address or location of an interested person other than the alleged protected individual is unknown, that person may be served by publication using the Publication of Notice of Hearing (PC563) after Declaration of Intent to Give Notice by Publication (PC617) has been filed with the court.
  - Notice must be published at least 14 days before the hearing. **MCR 5.106(A).**

## NOTICE ON PETITION FOR CONSERVATOR OR PROTECTIVE ORDER (PC 668)

- In addition to the Petition and Notice of Hearing, the individual alleged to need protection must receive the Notice on Petition for Conservator or Protective Order (PC668) which includes the nature, purpose, and legal effects of the appointment of a conservator and the rights of the alleged protected individual, including the right to appointed legal counsel. **MCL 700.5311; MCL 700.5405; MCL 700.5406.**
- The individual alleged to need protection must be personally served a copy of PC668 at least 7 days prior to the hearing. **MCR 5.105(B)(1); MCL 700.5311(2); MCL 700.5405(1).**

**Note:** The individual alleged to need protection has a right to be present at the hearing and all practical steps should be taken to ensure his or her presence. **MCL 700.5406(5).**



## PROOF OF SERVICE

- Proof of Service of the Notice of Hearing must be filed at or before the hearing. **MCR 5.104(A)(1).**
- The Proof of Service must indicate the documents served, date of service, manner and method of service, person(s) served, and authentication under **MCR 1.109(D)(3)(b).**



## POLL 2

---

- If the petitioner is not represented by an attorney, does your court do the notice?
  - Yes
  - No
  - I don't know



## DOCUMENTS FOR HEARING

---

- Order Regarding Appointment of Conservator (PC640)
- Acceptance of Appointment (PC571)
- Letters of Conservatorship (PC645)



**PRELIMINARY PROTECTIVE  
ORDER/SPECIAL CONSERVATOR  
MCL 700.5407(2)(a)**

---

- The petitioner may request a preliminary protective order, and without notice to others, the court may issue a preliminary order to preserve and apply the property of the individual to be protected as may be required for the support of the individual or their dependents. **MCL 700.5407(2)(a).**
- No provision for a temporary conservator exists, but a special conservator could be appointed to carry out the terms of a preliminary protective order. **MCL 700.5407(2)(a).**
- Box 14 of the Petition for Appointment of Conservator/Protective Order (PC639) must be checked and a reason provided.



**FOREIGN CONSERVATOR  
MCL 700.5433; MCR 5.108(B)(2)(a); MCR  
5.125(C)(25)**

---

- A conservator who has been appointed, has qualified and is serving in good standing in another state may be appointed temporary conservator in Michigan if:
  - A conservator has not been appointed in Michigan

AND

- A petition for protective proceeding is not pending in Michigan
- The temporary conservator is appointed upon the filing of:
  - Application and Order for Appointment of Out-of-State Conservator (PC683)
  - An authenticated copy of letters of appointment from the other state
  - An Acceptance of Appointment (PC571)



## FOREIGN CONSERVATOR (cont'd)

- Your Court issues Letters of Temporary Conservatorship (PC645) that expires 28 days after the date of temporary appointment.
- Within 14 days of appointment, the conservator must give notice to the interested persons of the appointment and right to object.
- The temporary conservator will be made full conservator after filing a Proof of Service of notice of the appointment with the right to object on all interested persons.
- If an objection is filed, the conservatorship in Michigan continues until a court in the state enters an order removing the conservator.



## INVENTORY

- The conservator is required to file an Inventory (PC674) of the protected individual's assets and give a copy to all interested persons and the protected individual, if at least 14 years old, within 56 days of appointment. **MCL 700.5417(1); MCR 5.125(C)(28).**
- The inventory must list all joint/commonly owned property and ownership type. **MCL 700.5417(1); MCR 5.409(B)(2).**

**Note:** There is no inventory fee for conservatorships.



## ACCOUNTS

---

- Unless ordered not to by the court, a conservator must file an account annually with the court within 56 days of the anniversary of their appointment. **MCL 700.5418; MCR 5.409(C)(1).**
  - Account of Fiduciary (Long Form) (PC584)
  - Account of Fiduciary (Short Form) (PC583)
- A copy must be given to all interested persons and the protected individual, if at least 14 years old. **MCR 5.125(C)(28).**

**Note #1:** Unless the court orders otherwise, no account is required in a minor conservatorship where either (1) assets restricted or (2) no assets received. **MCR 5.409(C)(4).**

**Note #2:** The court must review or allow account annually unless not required per Note #1 or court ordered no account to be filed. Accounts must be set for hearing to allow/disallow at least once every three years. **MCR 5.409(C)(6).**

## POWERS AND DUTIES OF CONSERVATOR

---

**MCL 700.5423**





## SALE OF REAL ESTATE

- Conservator is prohibited from selling, disposing, mortgaging, pledging, or placing a lien on the protected individual's real property/interest in real property without court approval, which can only be obtained after hearing, with notice to interested persons as specified in court rules, at which court considered evidence of property's value or interest in property and otherwise determines sale, disposal, mortgage, pledge, or placing a lien on the property in best interest of protected individual. **MCL 700.5423(3); MCR 5.125(C)(27).**
  - Petition Regarding Real Estate/Dwelling (PC646)
  - Order Regarding Real Estate/Dwelling (PC647)



## SALE OF REAL ESTATE (cont'd)

**Note #1:** This procedure for sale of real estate can also be used by a guardian if they are appointed "special conservator" per **MCL 700.5215(a) or 700.5314(b).**

**Note #2:** The scope of transactions involving real estate that require court authorization is far greater than that for decedent estates.



## MODIFICATION

- Anyone interested in the protected individual's welfare may petition the court to: require, increase, or reduce bond; require an accounting; direct distribution; remove conservator and appoint temporary or successor conservator; grant other appropriate relief. **MCL 700.5415(1).**
- A conservator can petition the court for instruction. **MCL 700.5415(2).**
  - Petition to Terminate/Modify Conservatorship (Adult/Minor) (PC676)
  - Order Regarding Termination/Modification of Guardian for Minor or LII/Conservator (PC638a)



## TERMINATION MCL 700.5431

- The protected individual, conservator, or other interested person can petition to terminate the conservatorship.
- If the protected individual seeks termination, they are entitled to the same rights and procedures as in an original petition for conservatorship/protective order.
- The conservatorship will be terminated if the court determines minority or other disability has ceased.
- Following the hearing on the petition for termination, the court shall enter an Order Regarding Termination/Modification of Guardian for Minor/LII/Conservator (PC638a)



## PETITION AND ORDER TO USE FUNDS (WARD'S ALLOWANCE)

- Distributions in minor conservatorships cannot be made without prior court approval.
- Some minor conservators will request distributions for the benefit of their minor ward.  
Examples:
  - Tuition for private elementary/high school and/or a tutor
  - An automobile in order to secure employment
  - Personal computer
  - Braces
  - Funds to participate in foreign study program
  - Monthly allowance for support (typically approved for a period of one year) when non-parent has custody of child
  - Special requirements of the minor above normal support needs (i.e., wheelchair, ramp for house, etc.)
- Petition and Order to Use Funds (Conservatorship) (PC673)



## MISCELLANEOUS PROCEEDINGS/NOTES

- A conservator may petition to exercise a personal representative's powers and duties to administer/distribute deceased ward's estate if within 42 days of protected individual's death no personal representative appointed and no application/petition for appointment pending. **MCL 700.5426(4).**
- There is no SCAO form for this procedure.
- The estate of a disappeared person is administered as a conservatorship until their death is established. See **MCL 700.1207** and **700.1208** for the procedures to determine death, including by accident or a disaster victim.



## PROTECTIVE ORDER

- The Court can enter a protective order in addition to and sometimes instead of establishing a conservatorship. **MCL 700.5408**. Under these circumstances, a transaction is approved whether or not a conservatorship is required.
- Examples of Protective Orders for Minors
  - A parent or guardian needs to obtain Court approval to accept a lawsuit settlement on behalf of a minor.
  - Authorize purchase of annuity pursuant to lawsuit/structured settlement.
  - Obtain release of rights to property (oil lease, sale of land, etc.).



## PROTECTIVE ORDER (cont'd)

- Examples of Protective Orders for Adults
  - Purchase annuity.
  - Authorize contract for life care, training, or education.
- Form used: Petition for Appointment of Conservator/Protective Order (PC639)
- Interested persons: Same as for conservatorship petition. **MCL 5.125(C)(25)**.



## \$5,000 DIRECT PAYMENT PROVISION

- A person under a duty to pay money or deliver assets to a minor can give these assets to the minor's parent or guardian instead if the amount is \$5,000 or less per year. **MCL 700.5102.** No conservatorship is required, but if the money is from a lawsuit settlement a protective order must be obtained to authorize the agreement.

**Note:** Settlement approval for a minor is required whether or not the amount exceeds \$5,000 per year.



## RESOURCES

- Michigan Probate Benchbook (ICLE)
- Michigan Probate Sourcebook (ICLE)
- Michigan Guardian and Conservatorship Handbook (ICLE)



---

## QUESTIONS

## MATERIALS PREPARED AND PRESENTED BY

---

Michael J. McClory  
Wayne County Probate Court  
Chief Deputy Probate Register  
Detroit  
(313) 224-5685  
[mmclory@wcpc.us](mailto:mmclory@wcpc.us)

