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1.1 Appointment of Conservator/Issuance of Protective Order

"In Michigan, laws concerning the affairs of protected individuals and legally incapacitated individuals are set forth in [the Estates & Protected Individuals Code (EPIC), MCL 700.1101 *et seq*.]. See MCL 700.1201(a). In particular, Article V of EPIC, MCL 700.1501 *et seq.*, contains statutes governing the protection of individuals under a disability." *In re Vansach Estate*, 324 Mich App 371, 382-383 (2018). For purposes of EPIC, "'[d]isability' means cause for a protective order as described in [MCL 700.5401]." MCL 700.1103(o).

A. Petition Requirements

"If the court determines that financial protection is required for the ward, it may order the guardian to petition for the appointment of a conservator or for another protective order under [MCL 700.5401 *et seq*.] in relation to the ward's estate." MCL 700.5319(1). Alternatively, the following individuals may also petition, on their own, for the appointment of a conservator or protective order: (1) the individual to be protected; (2) a person interested in the individual's estate, affairs, or welfare, such as a parent, guardian, or custodian; or (3) anyone "who would be adversely affected by lack of effective management of the individual's property and business affairs[.]" MCL 700.5404(1).

"The petition must set forth to the extent known[:]

- the petitioner's interest;
- the name, age, residence, and address of the individual to be protected;
- the name and address of the guardian, if any;
- the name and address of the nearest relative known to the petitioner;
- a general statement of the individual's property with an estimate of the value of the property, including compensation, insurance, a pension, or an allowance to which the individual is entitled; and
- the reason why a conservator's appointment or another protective order is necessary." MCL 700.5404(2) (bullets added).

Additionally, if the petition requests appointment of a conservator, it must also contain "the name and address of the person whose

appointment is sought and the basis of the claim to priority for appointment." MCL 700.5404(2).

B. Procedural Matters

1. Jurisdiction

a. Jurisdiction over Protective Proceedings

"After the service of notice in a proceeding seeking a conservator's appointment or other protective order and until the proceeding's termination, the court in which the petition is filed has the following jurisdiction:

> (a) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated.
>
> (b) Exclusive jurisdiction to determine how the protected individual's estate that is subject to the laws of this state is managed, expended, or distributed to or for the use of the protected individual or any of the protected individual's dependents or other claimants.
>
> (c) Concurrent jurisdiction to determine the validity of a claim against the protected individual or the protected individual's estate, and questions of title concerning estate property." MCL 700.5402.

Under MCL 700.5402(a) and MCL 700.5402(b)"the probate courts clearly have subject-matter jurisdiction to enter a protective order directing the distribution of a protected individual's income 'to or for the use of . . . any of the protected individual's dependents or other claimants,'" and this authority "extends to entering support orders under EPIC[.]" *In re Vansach Estate*, 324 Mich App 371, 389, 389 n 9 (2018). Specifically, "a probate court has the authority to enter a protective order providing support for a community spouse whose institutionalized spouse is receiving Medicaid benefits."[1] *Id*. at 376, 389 n 9 ("the practical Medicaid implications of

[1] "Title XIX of the Social Security Act, 42 USC 1396 *et seq*., is commonly referred to as the Medicaid act. In the Medicaid context, and as used in th[e *Vansach*] opinion, the term 'community spouse' refers to a spouse living at home, while the term 'institutionalized spouse' refers to a spouse who has been institutionalized, usually in a nursing home." *Vansach*, 324 Mich App at 376 n 2 (internal citations omitted).

entering a support order under EPIC in favor of a community spouse do not divest a probate court of jurisdiction to consider a request for a protective support order under MCL 700.5402[; rather, the Medicare Catastrophic Coverage Act of 1988 (MCCA), 42 USC 1396r-5(d)(5),] . . . contemplates the use of court support orders for calculation of the [community spouse monthly income allowances (CSMIA)]," but "the probate court cannot actually alter the CSMIA or modify Medicaid patient-pay amounts.").[2]

b. Connection of Individual to State

"The court has jurisdiction over the appointment of a conservator or the issuance of a protective order in relation to an individual's estate and affairs under [MCL 700.5401 *et seq*.] if any of the following apply:

> (a) The individual for whom a conservator or protective order is sought resides in this state.
>
> (b) The individual for whom a conservator or protective order is sought is present in this state and has a significant connection to this state." MCL 700.5402a(1).

"In determining if the individual for whom a conservator or protective order is sought has a significant connection to this state under [MCL 700.5402a(1)(b)], the court shall consider all of the following factors:

> (a) The wishes of the individual.
>
> (b) The location of the individual's family and other interested persons.
>
> (c) The length and time the individual was present in this state and the duration of any absence.
>
> (d) The location of the individual's property.
>
> (e) The extent to which the individual has ties to this state, such as voting registration, state tax return filing, vehicle registration, driver

[2] "Although . . . the probate courts have the authority under EPIC to enter orders to provide support for community spouses whose spouses are institutionalized and receiving Medicaid benefits, that authority is constrained by the standards in EPIC." *Vansach*, 324 Mich App at 392. For a list of prerequisites that must be established under MCL 700.5401, see Section 1.1(C).

license, social relationship, and receipt of services.

(f) Any other factor the court considers relevant." MCL 700.5402a(2).

2. Venue

"Venue for a proceeding under [MCL 700.5401 *et seq*.] is as follows:

(a) In the court at the place in this state where the individual to be protected resides whether or not a guardian has been appointed in another place.

(b) If the individual to be protected does not reside in this state, in the court at a place where property of the individual is located." MCL 700.5403.

3. Notice

Upon receipt of a petition for a conservator's appointment or another protective order, the court must set a date for hearing. MCL 700.5406(1)-(2).

"On a petition for a conservator's appointment or another protective order,[3] the requirements for notice described in [MCL 700.5311[4]] apply, subject to the following:

(a) If the individual to be protected has disappeared or is otherwise situated so as to make personal service of notice impracticable, notice to the individual must be given by mail or publication as provided in [MCL 700.1401].

(b) If the individual to be protected is a minor, [MCL 700.5213(1)[5]] also applies. MCL 700.5405(1).

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[3]See *In re Hernandez Supplemental Needs Trust*, ___ Mich App ___, ___ (2024) (holding that the protective proceeding on a petition to authorize a special needs trust for an incapacitated individual was improper due to the lack of notice to the incapacitated individual's adult children before the proceeding). "When MCL 700.5405 and MCL 700.5311(1)(a) are read together, it is plain that notice of a proceeding for a protective order must be given to the incapacitated individual's 'spouse, parents, and adult children.'" *Hernandez*, ___ Mich App at ___. In short, the incapacitated individual's "adult children were entitled to notice not because [the incapacitated individual] was a protected individual, but because [the] petition for funding and approval of the trust was a 'protective proceeding' under MCL 700.5401 and MCL 700.5408." *Id*. at ___.

[4]See Section 1.2(G)(4) for the notice requirements of MCL 700.5311.

"The persons interested in an application for appointment of a conservator for a protected individual by a conservator appointed in another state or for the petition for the appointment of a conservator or protective order are:

> (a) the individual to be protected if 14 years of age or older,
>
> (b) the presumptive heirs of the individual to be protected,
>
> (c) if known, a person named as attorney in fact under a durable power of attorney,
>
> (d) the nominated conservator,
>
> (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending, and
>
> (f) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to manage the protected individual's finances." MCR 5.125(C)(25).[6]

"Notice of a hearing on a petition for an order *after* a conservator's appointment or another protective order must be given to the protected individual, a conservator of the protected individual's estate, and any other person as ordered by the court or as provided by court rule." MCL 700.5405(2) (emphasis added).

4. Attorney/Guardian Ad Litem

If, at any time during a proceeding for a conservator's appointment or another protective order *because of* minority, "the court determines that the minor's interests are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the minor's choice if 14 years of age or older." MCL 700.5406(1). "An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem." *Id*.

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[5]Requiring notice be provided to the minor, if at least 14 years old, the person who had principal care/ custody during the 63 days prior to the date of the petition, and each living parent or the adult nearest kin, if neither parent is alive. MCL 700.5213(1).

[6]"The persons interested in a petition by a conservator for instructions or approval of sale of real estate or other assets are[:] (a) the protected individual and (b) those persons listed in [MCR 5.125(C)(25)] who will be affected by the instructions or order." MCR 5.125(C)(27).

In a proceeding for a petition for a conservator's appointment or another protective order *for a reason other than minority*, "[u]nless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding." MCL 700.5406(2).

5. Examination, Evaluation, or Interview of Individual Alleged to Need Protection[7]

"If the alleg.ed disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained." MCL 700.5406(2).

"The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense." MCL 700.5406(2).

"The court may send a visitor to interview the individual to be protected." MCL 700.5406(2). "The visitor may be a guardian ad litem or a court officer or employee." *Id*.

"The court may utilize, as an additional visitor, the service of a public or charitable agency to evaluate the condition of the individual to be protected and make appropriate recommendations to the court." MCL 700.5406(3).

"A guardian ad litem, physician, mental health professional, or visitor appointed under [MCL 700.5406] who meets with, examines, or evaluates an individual who is the subject of a petition in a protective proceeding shall do all of the following:

> (a) Consider whether there is an appropriate alternative to a conservatorship.
>
> (b) If a conservatorship is appropriate, consider the desirability of limiting the scope and duration of the conservator's authority.
>
> (c) Report to the court based on the considerations required in [MCL 700.5406(4)(a) and MCL 700.5406(4)(b)]." MCL 700.5406(4).

[7] Not applicable to proceedings involving a petition based on minority. See MCL 700.5406(1)-(2).

6. Videoconferencing Technology

"Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under this chapter in accordance with MCR 2.407." MCR 5.140(A). "The use of videoconferencing technology under [Chapter 5, Probate Court] must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court." MCR 5.140(D).

"In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present." MCR 5.140(C).A minor has the right to be present at a minor guardianship hearing concerning him or her if the minor is age 14 or older. *Id*.

Notwithstanding MCR 2.407(B)(5) and an individual's right to be present at a hearing on a petition when he or she is the subject of the petition, "the use of videoconferencing technology is presumed in all uncontested petitions or motions in guardianship, conservatorship, protected individual and decedent estates." MCR 5.140(C).

7. Hearing

"The individual to be protected is entitled to be present at the hearing in person." MCL 700.5406(5). "If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence including, if necessary, moving the site of the hearing." *Id*.

"The individual is entitled to be represented by counsel, to present evidence, to cross-examine witnesses including a court-appointed physician or other qualified person and a visitor, and to trial by jury." MCL 700.5406(5).

"The issue may be determined at a closed hearing or without a jury if the individual to be protected or counsel for the individual so requests." MCL 700.5406(5).

"Any person may request for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the individual to be protected will be served by granting the request." MCL 700.5406(6). "The court may attach appropriate conditions to the permission." *Id*.

C. Decision by Court

Upon petition and after notice and hearing in accordance with [MCL 700.5401 *et seq*.], the court may appoint a conservator or make another protective order for cause as provided in [MCL 700.5401]." MCL 700.5401(1). The court must "carefully and thoughtfully consider whether arrangements less intrusive than a conservatorship will adequately protect an individual's property as well as his or her autonomy." *In re Bittner Conservatorship*, 312 Mich App 227, 242-243 (2015).

"The court may appoint a conservator or make another protective order in relation to a minor's estate and affairs if the court determines that the minor owns money or property that requires management or protection that cannot otherwise be provided, has or may have business affairs that 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).

"The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

> (a) 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.
>
> (b) The individual has property that will be wasted or dissipated unless proper management is provided,[8] 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).[9]

"The[] prerequisites [listed under MCL 700.5401(3)] must be established by clear and convincing evidence. MCL 700.5406(7) . . . . Clear and convincing proof 'produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the

[8] "[T]he Legislature's use of the word 'will' to modify the phrase 'be wasted or dissipated unless proper management is provided' in MCL 700.5401(3)(b) supports the probate court's decision to focus on the likelihood that assets would be prospectively wasted or dissipated if a conservator [were] not appointed." *In re Brody Conservatorship*, 321 Mich App 332, 343 (2017) (finding that "[t]he probate court properly concluded that it was unnecessary to find that any waste or dissipation had already occurred" before appointing a conservator where the ward's "disability made her unable to manage her property and business affairs effectively").

[9] See, e.g., *In re G M Guardianship*, ___ Mich App ___, ___ (2025).

allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" *In re Brody Conservatorship*, 321 Mich App 332, 337 (2017), quoting *In re Martin*, 450 Mich 204, 227 (1995) (third and fourth alteration in original); see also *In re G M Guardianship*, ___ Mich App ___, ___ (2025) ("[T]he clear-and-convincing-evidence standard is the most demanding standard applied in civil cases . . . .") (quotation marks and citation omitted). "Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact that it has been contradicted." *Id*. at ___ (quotation marks and citation omitted). "If the prerequisites for a protective order are established by clear and convincing evidence, the standards applicable to the trial court in fashioning an order and exercising authority over the individual's property are set forth in MCL 700.5407 and MCL 700.5408."[10] *In re Vansach Estate*, 324 Mich App 371, 384 (2018).

The DHHS did not offer clear and convincing evidence to support a finding of incapacitation under MCL 700.5401(3)(a) when the individual's "two psychological assessments resulted in findings that [her] cognitive functions were either average or above average," and the individual's diagnosis of a hoarding disorder was "based entirely on the statements of [the individual's son]." *G M*, ___ Mich App at ___. The trial court abused its discretion by ordering a guardian and conservator for the individual on the basis of "two unsupported diagnoses" from one doctor and by disregarding a second evaluator's opinion that incapacitation was not established and that a power of attorney and counseling would adequately address the individual's needs. *Id*. at ___. The Court noted that even if the doctor's assessment was unrefuted, the cognitive tests the doctor conducted showed average-to-above-average cognitive functioning, and the doctor's "diagnoses [fell] short of the of the clear-and-convincing standard [and did not leave the Court with a] firm belief or conviction as to the truth of the allegations sought to be established." *Id*. at ___ (cleaned up).

Allegations contained in the petition and statements made by the GAL (guardian ad litem), who was not a medical professional, about the individual's medical condition, did not qualify as evidence in support of the petitioner's burden of proof. *In re Schroeder Estate*, 335 Mich App 107, 119 (2020). To properly review the probate court's decision, the Court of Appeals must receive any medical reports referenced by the probate court when that court decided whether the petitioner had presented clear and convincing evidence showing that the individual allegedly needing a conservatorship "was unable to

[10] For a discussion on MCL 700.5407 and MCL 700.5408, see Section 1.1(F) and Section 1.1(G).

manage his property and business affairs effectively for reasons such as physical illness or disability." *Id*. at 118.

The probate court did not err in finding that clear and convincing evidence "indicated that [the individual] was unable to effectively handle his financial affairs due to his health issues," where a physician's report supported the GAL's conclusion and the Department of Health and Human Services (DHHS) did not refute any of the information in the report nor did it challenge the GAL's evaluation, both of which supported the court's finding. *Schroeder*, 335 Mich App at 120.

"In the context of a petition for a protective order under MCL 700.5401(3)(b), it follows that a finding that money is needed for a spouse entitled to support from the protected individual requires consideration of the requesting spouse's needs and resources as well as the protected individual's needs and circumstances. The spouse requesting support must make a showing of need—not merely a desire to maintain a current standard of living without regard to the other spouse's circumstances. Whether the community spouse is 'entitled' to 'support' will depend on all the facts and circumstances, including the incapacitated individual's financial means and ability to provide assistance." *Vansach*, 324 Mich App at 395-396. "[W]hen a community spouse's institutionalized spouse receives Medicaid benefits and has a patient-pay amount, the community spouse seeking a support order under EPIC must show, by clear and convincing evidence that he or she needs money and is entitled to the institutionalized spouse's support *despite* the [community spouse monthly income allowances (CSMIA)] provided under Medicaid and the institutionalized individual's patient-pay amount under Medicaid.[11] *Id*. at 377, 398-399, 402 ("vacat[ing] both [protective] support orders and remand[ing] for reconsideration of [the community spouses'] need for support under the proper framework" where the probate courts abused their discretion by "disregard[ing] the patient-pay amounts and impoverish[ing] the institutionalized spouses so that the community spouses could maintain their standard of living").

"[W]hen a probate court acts to transfer property upon satisfaction of the prerequisites in MCL 700.5401 relative to need, it is imperative for the court to identify the interests being transferred and the value of those interests." *Schroeder*, 335 Mich App at 125. When a court examines the financial needs of an individual and orders assets

[11] "Title XIX of the Social Security Act, 42 USC 1396 *et seq*., is commonly referred to as the Medicaid act. In the Medicaid context, and as used in th[e *Vansach*] opinion, the term 'community spouse' refers to a spouse living at home, while the term 'institutionalized spouse' refers to a spouse who has been institutionalized, usually in a nursing home." *Vansach*, 324 Mich App at 376 n 2 (internal citations omitted).

transferred according to the court's assessment of those needs, "a valuation of the assets or interests [involved] is an inescapable and necessary component of the analysis" even though EPIC does not require such information. *Id*.

> **Note:** "[T]he probate court's jurisdiction under EPIC does not extend to actually modifying the CSMIA or changing the patient-pay amount under Medicaid. . . . When entering an order under EPIC, the probate court is bound by the existing Medicaid calculations, and the question before the probate court is whether—despite the existing circumstances, including the institutionalized spouse's patient-pay amount—money is 'needed' to provide the community spouse with additional income to which he or she is 'entitled' for 'support.'" *Vansach*, 324 Mich App at 397 n 15.

Estimated patient-pay amounts can be calculated before a Medicaid application has been submitted and before eligibility has been determined, but the court may not "assess[] the 'need' for money for a person's support and care under MCL 700.5401(3)(b) on the basis of Medicaid-related circumstances," unless those determinations have *actually been made*. *Schroeder*, 335 Mich App at 123. In *Schroeder*, the Court reversed the probate court's assessment of an individual's need because the individual was not receiving Medicaid benefits and had not yet received a determination of eligibility. *Id*.

"Difficulties with math and memory [that] plague many elderly (and not so elderly) individuals []. . . [are] irksome attendants to the aging process [and] are not necessarily disabling. Poor subtraction skills and relatively low cognitive-ability testing scores hardly render a person mentally ill or mentally deficient, or even incapable of making rational decisions regarding one's bounty. . . . [C]lear and convincing evidence that a person 'is unable to manage property and business affairs effectively' requires more than low marks on arithmetic or memory tests, or inconsistent ineptitude in balancing a checkbook.'" *Bittner*, 312 Mich App at 239, quoting MCL 700.5401(3)(a). In *Bittner*, 312 Mich App at 240-241, "th[e] record demonstrate[d] that the necessary prerequisites for a conservatorship ha[d] not been fulfilled[] where "the probate court erred by finding that clear and convincing evidence satisfied MCL 700.5401(3)(a)" when the evidence supported that the individual at issue paid her bills in a timely manner, lived within her means, adequately managed her household, and, according to both her attorney/guardian ad litem and psychologist, "maintain[ed] an adequate ability to make responsible decisions[,]" and where the probate court "made no findings regarding MCL 700.5401(3)(b), which addresses whether [the

individual's] property 'will be wasted or dissipated unless proper management is provided.'"

"[T]he appointment of a conservator for an individual may be appropriate even if the individual does not suffer from one of the conditions listed in MCL 700.5401(3)(a)." *In re Townsend Conservatorship*, 293 Mich App 182, 188 (2011). "But not any condition suffered by an individual will justify the appointment of a conservator." *Id*. "[A]ny circumstance not listed in MCL 700.5401(3)(a) that prohibits an individual from effectively managing his or her property and business affairs must be of a similar nature and quality as the eight conditions listed in the statute to justify the appointment of a conservator." *In re Townsend Conservatorship*, 293 Mich App at 189.

When determining for purposes of MCL 700.5401(3)(b) whether an individual "'has property that will be wasted or dissipated unless proper management is provided,'" the court may consider both individually-held assets and jointly-held assets. *Brody*, 332 Mich App at 337, 340 ("[t]he probate court did not err when it considered whether the jointly held assets would be subject to waste or dissipation in satisfaction of MCL 700.5401(3)(b)").

"The court may appoint a conservator in relation to the estate and affairs of 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 a conservator's appointment." MCL 700.5401(4).

D. Appointment of Conservator/Entry of Protective Order

"After the hearing, upon finding that a basis for a conservator's appointment or another protective order is established by clear and convincing evidence, the court shall make the appointment or other appropriate protective order." MCL 700.5406(7). The court should remain mindful that "[t]he clear and convincing evidence standard is 'the most demanding standard applied in civil cases.'" *In re Bittner Conservatorship*, 312 Mich App 227, 237 (2015), quoting *In re Martin*, 450 Mich 204, 227 (1995). For example, a finding that an individual's "cognitive impairments give rise to problems consistently being able to initiate and carry out the tasks necessary to effectively manage [his or] her financial affairs[,] . . . standing alone, does not clearly and convincingly evidence a need for a conservatorship." *Bittner*, 312 Mich App at 238 (internal quotation omitted).

"The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator described in [MCL 700.5106] to serve as conservator of a protected individual's estate." MCL 700.5409(1). "[B]efore appointing a professional

guardian or a professional conservator, [MCL 700.5106(2) requires] a probate court [to] find that the appointment of a professional fiduciary is in the incapacitated person's best interests *and* that there is no other person who is competent, suitable, and willing to serve in that fiduciary capacity in accordance with, as relevant here, MCL 700.5313 or MCL 700.5409." *In re Guardianship/Conservatorship of Harold William Gerstler*, 324 Mich App 494, 511, 513-514 (2018) (where "the probate court failed to make any determination of whether [the protected person's daughter] was competent, suitable, and willing to serve as [his] guardian and conservator," "the court abused its discretion by appointing a professional fiduciary in lieu of appointing [the daughter] who held the position of statutory priority or preference for appointment"). "[T]o depart from the statutory priority provisions [under MCL 700.5313 and MCL 700.5409] and appoint a public guardian and public conservator, the probate court [is] tasked with finding by a preponderance of the evidence that [no persons designated or listed under the statutory priority provisions are] competent and suitable to serve in that fiduciary capacity." See *Gerstler*, 324 Mich App at 513.

Under MCL 700.5409(1) "[t]he following are entitled to consideration for appointment in the following order of priority:

> (a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.
>
> (b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.
>
> (c) The protected individual's spouse.
>
> (d) An adult child of the protected individual.
>
> (e) A parent of the protected individual or a person nominated by the will of a deceased parent.
>
> (f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.
>
> (g) A person nominated by the person who is caring for or paying benefits to the protected individual.

> (h) If none of the persons listed in [MCL 700.5409(1)(a)-(g)] are suitable and willing to serve, any person that the court determines is suitable and willing to serve."

"A person named in [MCL 700.5409(1)(a), MCL 700.5409(1)(c), MCL 700.5409(1)(d), MCL 700.5409(1)(e), or MCL 700.5409(1)(f)] may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute." MCL 700.5409(2). "If persons have equal priority, the court shall select the person the court considers best qualified to serve." *Id.* "Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority." *Id*.

"The existence of a [durable power of attorney (DPOA)] does not prohibit the appointment of a conservator, see MCL 700.5503(1)[12] (stating the powers of a conservator appointed after execution of a DPOA, including the same power as the principal to revoke the power of attorney), and selection of an individual to be appointed as an incapacitated person's conservator is a matter committed largely to the discretion of the probate court. The statute governing appointment of conservator, MCL 700.5409(1), allows a court to determine if the individuals who fall within the statutory priority guidelines are 'suitable[,]' [and] . . . MCL 700.5409(2)[] grants the probate court authority to pass over 'a person having priority and appoint a person having less priority or no priority' for the role of conservator if good cause exists. The statute's priority classifications are merely a guide for the probate court's exercise of discretion." *In re Brody Conservatorship*, 321 Mich App 332, 341-342, 344 (2017) (finding that "the probate court acted within its discretion in appointing a conservator under MCL 700.5401[,]" where there was clear and convincing evidence that the ward's "property would be wasted or dissipated without proper management[;]" the ward's 91-year-old husband, although holding a DPOA over the ward's estate, "had abdicated his responsibilities under the DPOA and failed to act on [the ward's] behalf to protect her estate assets[;]" and although the ward's husband "was an individual entitled to priority consideration[under MCL 700.5409(1),] . . . [he] was not entitled to consideration unless the probate court considered an independent fiduciary and found him or her unsuitable[, and the appointed conservator], as trustee and independent fiduciary, had statutory priority over [the husband under MCL 700.5409(1)], despite [his] marriage to [the ward][]").

[12] MCL 700.5503 was repealed by the Uniform Power of Attorney Act, 2023 PA 187, effective July 1, 2024. The content of MCL 556.208 in the Uniform Power of Attorney Act is substantially similar to the content that appeared in MCL 700.5503.

1. Bond

"The court may require a conservator to furnish a bond." MCL 700.5410. "In all conservatorships in which there are unrestricted assets, the court may require a bond in the amount the court finds necessary to protect the estate or as required by statute." MCR 5.411. "No bond shall be required of trust companies organized under the laws of Michigan or of banks with trust powers unless the court orders that a bond be required." *Id*.

"If the court determines that the value of cash and property that is readily convertible into cash in the estate and in the conservator's control exceeds the limit for administering a decedent's estate under [MCL 700.3982], adjusted in the manner provided under [MCL 700.1210] for the year in which the conservator is appointed, the court shall require the conservator to furnish a bond, unless 1 or more of the following apply:

> (a) The estate contains no property readily convertible to cash and the cash is in a restricted account with a financial institution.
>
> (b) The conservator has been granted trust powers under . . . MCL 487.14401.
>
> (c) The court determines that requiring a bond would impose a financial hardship on the estate.
>
> (d) The court states on the record the reasons why a bond is not necessary." MCL 700.5410(1).

"A bond furnished under [MCL 700.5410] shall be conditioned upon faithful discharge of all duties of the conservator's trust according to law, with sureties as the court specifies." MCL 700.5410(2). "Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the estate property in the conservator's control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring a court order for their removal and the value of land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization." *Id.* "Instead of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land." *Id.* See MCL 700.5411 for the terms and requirements of bonds.

2. Qualifications

"Before receiving letters, a conservator must qualify by filing with the appointing court a required bond and a statement of acceptance of the duties of the office." MCL 700.5412(1). In filing the statement of acceptance, the conservator may exclude from the scope of his or her responsibility certain property under specific circumstances. MCL 700.5412(2)-(3). In that instance, the court may appoint a special conservator or direct administration of the excluded property by judicial order. MCL 700.5412(4).

"By accepting appointment, a conservator submits personally to the court's jurisdiction in a proceeding relating to the estate that may be instituted by an interested person." MCL 700.5412(5). "Notice of a proceeding shall be delivered to the conservator or mailed by registered or certified mail to the address listed in the petition for appointment or as reported to the court after appointment and to the address as then known to the petitioner." *Id*.

3. Compensation

"If not otherwise compensated for services rendered, a visitor, guardian ad litem, attorney, physician, conservator, or special conservator appointed in a protective proceeding, is entitled to reasonable compensation from the estate." MCL 700.5413.

4. Petitions for Orders Subsequent to Appointment

"A person interested in the welfare of an individual for whom a conservator is appointed may file a petition in the appointing court for an order to do any of the following:

> (a) Require bond or security or additional bond or security, or reduce bond.
>
> (b) Require an accounting for the administration of the trust.
>
> (c) Direct distribution.
>
> (d) Remove the conservator and appoint a temporary or successor conservator.
>
> (e) Grant other appropriate relief." MCL 700.5415(1).

"A conservator may petition the appointing court for instructions concerning fiduciary responsibility." MCL

700.5415(2). "Upon notice and hearing, the court may give appropriate instructions or make an appropriate order." *Id.*

5. Inventory and Records

"Within 56 days after appointment or within another time period specified by court rule, a conservator shall prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate so far as information permits." MCL 700.5417(1).

"The conservator shall provide a copy of the inventory to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules." MCL 700.5417(1). "The conservator must keep suitable records of the administration and exhibit those records on the request of an interested person." MCL 700.5417(2).

"The persons interested in receiving a copy of an inventory . . . of a conservator . . . are:

> (a) the protected individual or ward, if he or she is 14 years of age or older,
>
> (b) the presumptive heirs of the protected individual or ward,
>
> (c) the claimants,
>
> (d) the guardian ad litem, and
>
> (e) the personal representative, if any." MCR 5.125(C)(28).

6. Accounts

A conservator must file an annual account unless otherwise ordered by the court, upon resignation or removal and at other times as the court directs. MCL 700.5418(1); MCR 5.409(C)(1). The court rules apply to any account that is filed with the court, even if the account was not court ordered. MCR 5.409(C)(1). "The account must be served on interested persons, and proof of service must be filed with the court. The copy of the account served on interested persons must include a notice that any objections to the account should be filed with the court and noticed for hearing. When required, an accounting must be filed within 56 days after the end of the accounting period." *Id*.

"On termination of the protected individual's minority or disability, a conservator shall account to the court or to the formerly protected individual or that individual's successors." MCL 700.5418(1). "Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the accounts, and an order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship." *Id*. "In connection with any account, the court may require a conservator to submit to a physical check of the estate to be made in any manner the court specifies." *Id*.

"The conservator shall provide a copy of an account to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules." MCL 700.5418(2).

"The accounting period ends on the anniversary date of the issuance of the letters of authority, unless the conservator selects another accounting period or unless the court orders otherwise. If the conservator selects another accounting period, notice of that selection shall be filed with the court. The accounting period may be a calendar year or a fiscal year ending on the last day of a month. The conservator may use the same accounting period as that used for income tax reporting, and the first accounting period may be less than a year but not longer than a year." MCR 5.409(C)(2). "On filing, the account may be set for hearing or the hearing may be deferred to a later time." MCR 5.409(C)(3).

"Unless otherwise ordered by the court, no accounting is required in a minor conservatorship where the assets are restricted or in a conservatorship where no assets have been received by the conservator. If the assets are ordered to be placed in a restricted account, proof of the restricted account must be filed within 28 days of the conservator's qualification or as otherwise ordered by the court. The conservator must file with the court an annual verification of funds on deposit with a copy of the corresponding financial institution statement attached." MCR 5.409(C)(4).

"The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and [MCR 5.310(C)(2)(d)], except that references to a personal representative shall be to a conservator. A copy of the corresponding financial institution statement or a verification of funds on deposit must be filed with the court,

either of which must reflect the value of all liquid assets held by a financial institution dated within 30 days after the end of the accounting period, unless waived by the court for good cause." MCR 5.409(C)(5).

"The court shall either review or allow accounts annually, unless no account is required under MCR 5.409(C)(1) or [MCR 5.409(C)(4)]. Accounts shall be set for hearing to determine whether they will be allowed at least once every three years." MCR 5.409(C)(6).

"A copy of the account must be served on the interested persons as provided by [the court] rules. Notice of hearing to approve the account must be served on interested persons as set out in subchapter 5.100 of these rules." MCR 5.409(D).

"The persons interested in receiving a copy of an . . . account of a conservator . . . are:

> (a) the protected individual or ward, if he or she is 14 years of age or older,
>
> (b) the presumptive heirs of the protected individual or ward,
>
> (c) the claimants,
>
> (d) the guardian ad litem, and
>
> (e) the personal representative, if any." MCR 5.125(C)(28).

"The procedures set out in MCR 5.203, [MCR] 5.204, and [MCR] 5.310(E) apply to . . . conservatorship proceedings, except that references to a personal representative shall be to a . . . conservator, as the situation dictates." MCR 5.409(E).

"If an individual who is subject to a . . . conservatorship dies, the . . . conservator must give written notification to the court within 14 days of the individual's date of death." MCR 5.409(F). "If accounts are required to be filed with the court, a final account must be filed within 56 days of the date of death." *Id*.

7. Settlement

"A conservator may not enter into a settlement in any court on behalf of the protected person if the conservator will share in the settlement unless a guardian ad litem has been appointed to represent the protected person's interest and has consented

to such settlement in writing or on the record or the court approves the settlement over any objection." MCR 5.407.

8. Expansion/Limitation of Powers of Conservator

"Subject to the restrictions in [MCL 700.5407(3)],[13] at the time of appointment or later, the court may confer on a conservator, in addition to the powers conferred by [MCL 700.5423–MCL 700.5426], any power that the court itself could exercise under [MCL 700.5407(2)(b)-(c)]." MCL 700.5427. "At the time of appointment or later, the court may limit the powers of a conservator otherwise conferred by [MCL 700.5423–MCL 700.5426] or previously conferred by the court, and may at any time remove or modify a limitation." MCL 700.5427. If the court limits a power conferred on the conservator by [MCL 700.5423–MCL 700.5426] or specifies, as provided in [MCL 700.5419(1)], that title to some, but not all, of the protected individual's property vests in the conservator, the limitation or specification of property subject to the conservatorship shall be endorsed upon the letters of appointment." MCL 700.5427.

9. Termination of Conservatorship

"The court may remove a conservator for good cause, upon notice and hearing, or accept a conservator's resignation." MCL 700.5414. "Upon the conservator's death, resignation, or removal, the court may appoint another conservator." *Id*. "A conservator so appointed succeeds to the title and powers of the predecessor." *Id*.

"The protected individual, conservator, or another interested person may petition the court to terminate the conservatorship." MCL 700.5431. "A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order." *Id*. "Upon determining, after notice and hearing, that the minority or disability of the protected individual has ceased, the court shall terminate the conservatorship." *Id*. "Upon termination, title to the estate property passes to the formerly protected individual or to successors subject to the provision in the order for expenses of administration and to directions for the conservator to execute appropriate instruments to evidence the transfer." *Id*.

[13] MCL 700.5407(3) requires the court to be satisfied that directing the exercise of certain powers "is in the protected individual's best interests and that the individual is incapable of consenting or has consented to the proposed exercise of the power[.]"

The persons interested in a petition for the termination of a conservatorship or removal of a conservator are the persons interested in a petition for appointment under MCR 5.125(C)(25) and the conservator. MCR 5.125(C)(26).

E. Temporary Conservator

"If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary conservator in this state on filing with a court in this state an application for appointment, an authenticated copy of letters of appointment in the other state, and an acceptance of appointment." MCL 700.5433(1). "Letters of conservatorship for the temporary conservator expire 28 days after the date of appointment." *Id.*

"Within 14 days after appointment as temporary conservator under [MCL 700.5433(1)], the conservator shall give notice to all interested persons of his or her appointment and the right to object to the appointment." MCL 700.5433(2). "On filing proof of service of the notice with the court, the temporary conservator shall be appointed full conservator and the court shall issue letters of conservatorship accordingly." *Id*.

"If an objection is filed to a conservatorship under [MCL 700.5433], the conservatorship continues unless a court in this state enters an order removing a conservator." MCL 700.5433(3).

F. Powers and Duties of Court

"The court shall exercise the authority conferred in [MCL 700.5401 *et seq*.] to encourage the development of maximum self-reliance and independence of a protected individual and shall make protective orders only to the extent necessitated by the protected individual's mental and adaptive limitations and other conditions warranting the procedure." MCL 700.5407(1). "Accordingly, the court may authorize a protected individual to function without the consent or supervision of the individual's conservator in handling part of his or her money or property, including authorizing the individual to maintain an account with a financial institution." *Id*.

"[W]hen considering a petition for conservatorship, a probate court should approach the task from a perspective of respect for [an] individual's right to acquire, enjoy, and dispose of his or her property as the individual sees fit." *In re Bittner Conservatorship*, 312 Mich App 227, 242 (2015). "Any restrictions on this fundamental right must be narrowly tailored to the individual's specific capabilities and

incapacities, bearing in mind the heightened evidentiary threshold for judicial interference." *Id*. at 242.

"To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent." MCL 700.5407(1).

"The court has the following powers that may be exercised directly or through a conservator in respect to a protected individual's estate and business affairs:

> (a) While a petition for a conservator's appointment or another protective order is pending and after preliminary hearing and without notice to others, the court has the power to preserve and apply property of the individual to be protected as may be required for the support of the individual or the individual's dependents.
>
> (b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the minor's estate and business affairs that are or may be necessary for the best interests of the minor and members of the minor's immediate family.
>
> (c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual for a reason other than minority, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will. Those powers include, but are not limited to, all of the following:
>
> > (*i*) To make gifts.
> >
> > (*ii*) To convey or release a contingent or expectant interest in property including marital property rights and a right of survivorship incident to joint tenancy by the entirety.
> >
> > (*iii*) To exercise or release a power held by the protected individual as personal representative, custodian for a minor, conservator, or donee of a power of appointment.

> (*iv*) To enter into a contract.
>
> (*v*) To create a revocable or irrevocable trust of estate property that may extend beyond the disability or life of the protected individual.
>
> (*vi*) To exercise an option of the protected individual to purchase securities or other property.
>
> (*vii*) To exercise a right to elect an option and change a beneficiary under an insurance or annuity policy and to surrender the policy for its cash value.
>
> (*viii*) To exercise a right to an elective share in the estate of the individual's deceased spouse.
>
> (*ix*) To renounce or disclaim an interest by testate or intestate succession or by inter vivos transfer." MCL 700.5407(2).

"The court may exercise or direct the exercise of the following powers only if satisfied, after the notice and hearing, that it is in the protected individual's best interests and that the individual is either incapable of consenting or has consented to the proposed exercise of power:

> (a) To exercise or release a power of appointment of which the protected individual is donee.
>
> (b) To renounce or disclaim an interest.
>
> (c) To make a gift in trust or otherwise exceeding 20% of a year's income of the estate.
>
> (d) To change a beneficiary under an insurance and annuity policy." MCL 700.5407(3).

"A determination that a basis for a conservator's appointment or another protective order exists has no effect on the protected individual's capacity." MCL 700.5407(4).

G. Protective Arrangements

"If it is established in a proper proceeding that a basis exists as described in [MCL 700.5401] for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a transaction necessary or desirable to achieve a security, service, or care arrangement meeting the protected individual's foreseeable needs." MCL 700.5408(1).

"Protective arrangements include, but are not limited to[:]

- payment, delivery, deposit, or retention of money or property;
- sale, mortgage, lease or other transfer of property;
- entry into an annuity contract, contract for life care, deposit contract, or contract for training and education; or
- an addition to or establishment of a suitable trust." MCL 700.5408(1) (bullets added).

MCL 700.5408(1) "provides a probate court with tools for crafting orders that balance personal rights with demonstrated needs for protection." *In re Bittner Conservatorship*, 312 Mich App 227, 242 (2015). The court must "carefully and thoughtfully consider whether arrangements less intrusive than a conservatorship will adequately protect an individual's property as well as his or her autonomy." *Id*. at 243.

"If it is established in a proper proceeding that a basis exists as described in [MCL 700.5401] for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the protected individual's best interests." MCL 700.5408(2).

"Before approving a protective arrangement or other transaction under [MCL 700.5408], the court shall consider the interests of the protected individual's creditors and dependents and, in view of the disability, whether the protected individual needs the continuing protection of a conservator." MCL 700.5408(3).

"The court may appoint a special conservator to assist in the accomplishment of a protective arrangement or other transaction authorized under [MCL 700.5408]." MCL 700.5408(3). "The special conservator has the authority conferred by the order and serves until discharged by order after reporting to the court on all matters done under the appointment order." *Id*.

Court forms to use:

What You Need to Know before Filing a Petition to Appoint a Conservator, PC 667

Notice on Petition for Conservator or Protective Order, PC 668

Petition for Appointment of Conservator and/or Protective Order, PC 639

Order Regarding Petition for Protective Order, PC 644

1.2 Appointment of Guardian of Incapacitated Individual

"In Michigan, laws concerning the affairs of protected individuals and legally incapacitated individuals are set forth in [the Estates & Protected Individuals Code (EPIC), MCL 700.1101 *et seq*.]. See MCL 700.1201(a)." *In re Estate of Vansach*, 324 Mich App 371, 382 (2018). In particular, Article V of EPIC contains statutes governing guardians of incapacitated individuals. For purposes of EPIC, "'[i]ncapacitated individual' means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions." MCL 700.1105(a); see, e.g., *In re G M Guardianship*, ___ Mich App ___, ___ (2025).

A. Appointment by Court

1. Petition Requirements

"An individual in the individual's own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian or designation of a standby guardian. The petition must contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment." MCL 700.5303(1).

"Before a petition is filed under [MCL 700.5303], the court shall provide the person intending to file the petition with written information that sets forth alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, physician orders for scope of treatment form,[14] or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative." MCL 700.5303(2).

A petition for the appointment of a guardian may contain multiple prayers for relief. MCR 5.402(A).

[14] MCL 700.1106(r) defines *physician orders for scope of treatment form* (POST form) as "that term as defined in . . . the public health code, 1978 PA 368, MCL 333.5674." Under MCL 333.5674(7), this term "means the standardized POST form described in [MCL 333.5676]. A POST form is not an advance health care directive."

"On the filing of a petition under [MCL 700.5303(1)], the court shall set a date for hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of the individual's own choice, the court shall appoint a guardian ad litem to represent the individual in the proceeding." MCL 700.5303(3).

2. Jurisdiction

a. Jurisdiction Over Guardianship Proceedings

"The court in the county where the ward resides has concurrent jurisdiction over resignation, removal, accounting, and other proceedings relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental or spousal appointment was filed." MCL 700.5317(1).

"If the court in the county where the ward resides is not the court in which acceptance of appointment is filed, the court in which a proceeding is commenced after the appointment in appropriate cases must notify the other court, in this state or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever is in the best interests of the ward." MCL 700.5317(2).

b. Connection of Individual to State

"The court has jurisdiction over the appointment of a guardian under [MCL 700.5301 *et seq*.] if any of the following apply:

> (a) The individual for whom a guardian is sought resides in this state.
>
> (b) The individual for whom a guardian is sought is present in this state and has a significant connection to this state." MCL 700.5301b(1).

"In determining if the individual for whom a guardian is sought has a significant connection to this state under [MCL 700.5301b(1)(b)], the court shall consider all of the following factors:

> (a) The wishes of the individual.

> (b) The location of the individual's family and other interested persons.
>
> (c) The length and time the individual was present in this state and the duration of any absence.
>
> (d) The location of the individual's property.
>
> (e) The extent to which the individual has ties to this state, such as voting registration, state tax return filing, vehicle registration, driver license, social relationship, and receipt of services.
>
> (f) Any other factor the court considers relevant." MCL 700.5301b(2).

3. Venue

"The venue for a guardianship proceeding for an incapacitated individual is in the place where the incapacitated individual resides or is present." MCL 700.5302. "If the incapacitated individual is admitted to an institution by order of a court of competent jurisdiction, venue is also in the county in which that court is located." *Id*.

4. Notice

"In a proceeding for the appointment . . . of an incapacitated individual's guardian, other than the appointment of a temporary guardian . . . , or to designate a standby guardian . . . , notice of hearing must be given [by the petitioner] to each of the following:

> (a) The ward or the individual alleged to be incapacitated and that individual's spouse, parents, and adult children.
>
> (b) A person who is serving as the guardian or conservator or who has the individual's care and custody.
>
> (c) If known, a person named as attorney in fact under a durable power of attorney.
>
> (d) The standby guardian or the person nominated to be designated as standby guardian.

> (e) If no other person is notified under [MCL 700.5311(1)(a)-(d)], at least 1 of the individual's closest adult relatives, if any can be found." MCL 700.5311(1). See also MCR 5.402(C).

"Notice must be served personally on the alleged incapacitated individual." MCL 700.5311(2). "Notice to all other persons must be given as prescribed by court rule." *Id*. See also MCR 5.402(C), which provides, in part, that "[r]egardless of statutory provisions, an interested person may be served the notice by mail, personal service, or when necessary, publication. However, if the person who is the subject of the petition is 14 years of age or older, notice of the initial hearing must be served on the person personally unless another method of service is specifically permitted in the circumstances."

"The persons interested in an application for appointment of a guardian of an incapacitated individual by a guardian appointed in another state or in a petition for appointment of a guardian of an alleged incapacitated individual are

> (a) the alleged incapacitated individual or the incapacitated individual,
>
> (b) if known, a person named as attorney in fact under a durable power of attorney,
>
> (c) the alleged incapacitated individual's spouse or the incapacitated individual's spouse,
>
> (d) the alleged incapacitated individual's adult children and the individual's parents or the incapacitated individual's adult children and parents,
>
> (e) if no spouse, adult child, or parent is living, the presumptive heirs of the individual,
>
> (f) the person who has the care and custody of the alleged incapacitated individual or of the incapacitated individual,
>
> (g) the nominated guardian, and
>
> (h) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to have care and control of the incapacitated individual." MCR 5.125(C)(23).

"In a proceeding for a guardian's appointment under [MCL 700.5303] and [MCL 700.5304], a copy of the petition must be attached to the hearing notice, and the notice to the alleged incapacitated individual must contain all of the following information:

> (a) The nature, purpose, and legal effects of the appointment of a guardian.
>
> (b) The alleged incapacitated individual's rights in the proceeding, including the right to appointed legal counsel." MCL 700.5311(3).

"Waiver of notice by the individual alleged to be incapacitated is not effective unless the individual attends the hearing . . . ." MCL 700.5311(2).

5. Court-Ordered Examination of Alleged Incapacitated Individual

The court may order an individual be examined by a court-appointed physician or mental health professional. MCL 700.5304(1). The physician or mental health professional must submit a written report to the court at least five days before the hearing set under MCL 700.5303. MCL 700.5304(1); MCR 5.405(A)(1). The physician or mental health professional must also promptly inform the parties that the report has been filed and is available. MCR 5.405(A)(1). The court may issue on its own initiative, or any party may secure, a subpoena to compel the preparer of the report to testify. MCR 5.405(A)(1).

"A report prepared as provided in [MCL 700.5304(1)] must not be made a part of the proceeding's public record, but must be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual, to the petitioner, to their respective legal counsels, and to other persons as the court directs." MCL 700.5304(1). "The report may be used as provided in the Michigan rules of evidence." *Id*.

"The court may receive into evidence without testimony a written report of a physician or mental health professional who examined an individual alleged to be incapacitated, provided that a copy of the report is filed with the court five days before the hearing and that the report is on the form required by the state court administrator." MCR 5.405(A)(1).

A court-ordered report may be used in guardianship proceedings regardless of privilege. MCR 5.405(A)(2).

"As a condition of receiving payment, the physician or mental health professional must submit an itemized statement of services and expenses for approval." MCR 5.405(A)(3). "In reviewing a statement, the court must consider the time required for examination, evaluation, preparation of reports and court appearances; the examiner's experience and training; and the local fee for similar services." *Id*.

"A report prepared under [MCL 700.5304] shall contain all of the following:

> (a) A detailed description of the individual's physical or psychological infirmities.
>
> (b) An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.
>
> (c) A listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has on the individual's behavior.
>
> (d) A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.
>
> (e) The signatures of all individuals who performed the evaluations on which the report is based." MCL 700.5304(3).

6. Independent Examination of Alleged Incapacitated Individual

"The alleged incapacitated individual has the right to secure an independent evaluation, at the individual's own expense or, if indigent, at the expense of the state." MCL 700.5304(2). "Compensation for an independent evaluation at public expense shall be in an amount that, based upon time and expense, the court approves as reasonable." *Id*. See also MCR 5.405(A)(3).

"Any privilege regarding a report made as part of an independent evaluation at the request of a respondent is waived if the respondent seeks to have the report considered in the proceedings." MCR 5.405(A)(2).

7. Videoconferencing Technology

"Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under [Chapter 5, Probate Court] in accordance with MCR 2.407." MCR 5.140(A). "The use of videoconferencing under this chapter must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court." MCR 5.140(D).

"In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present." MCR 5.140(C).

8. Hearing

On the filing of a petition under MCL 700.5303(1), the court must schedule a hearing on the issue of incapacity. MCL 700.5303(3). "The issue of incapacity may be determined at a closed hearing without a jury if requested by the individual alleged to be incapacitated or that individual's legal counsel." MCL 700.5304(6).

"The individual alleged to be incapacitated is entitled to be present at the hearing to appoint a guardian or designate a standby guardian in person, and to see or hear all evidence bearing on the individual's condition." MCL 700.5304(4). "If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence, including, if necessary, moving the hearing site." *Id*. "When hearings are not held in the courtroom where the court ordinarily sits, the court shall ensure a quiet and dignified setting that permits an undisturbed proceeding and inspires the participants' confidence in the integrity of the judicial process." MCR 5.405(B).

"The individual is entitled to be represented by legal counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or mental health professional and the visitor, and to trial by jury." MCL 700.5304(5).

9. Guardian Qualifications and Appointment Priority

A guardian must be competent and cannot be an agency that financially benefits from providing services to the legally

incapacitated individual. MCL 700.5313(1). In addition, the guardian must be "suitable and willing to serve[.]" MCL 700.5313(2). "[A] 'suitable' guardian is one who is qualified and able to provide for the ward's care, custody, and control." *In re Redd Guardianship*, 321 Mich App 398, 408 (2017). "[The] probate court must use the preponderance-of-the-evidence standard when determining whether a person is 'suitable' to serve as a ward's guardian under MCL 700.5313(2)." *Redd*, 321 Mich App at 410 (noting that under the EPIC, "one standard—clear and convincing evidence—applies to whether a person should become a ward, but a different standard—preponderance of the evidence—applies to whether a particular person is suitable to be the ward's guardian[]").

"In appointing a guardian under [MCL 700.5313], the court shall appoint a person . . . in the following order of priority:

> (a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in this state or another state.
>
> (b) A person the individual subject to the petition chooses to serve as guardian.
>
> (c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.
>
> (d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.
>
> (e) A person appointed by a parent or spouse of a legally incapacitated individual by will or other writing under [MCL 700.5301]." MCL 700.5313(2).

"If there is no person chosen, nominated, or named under [MCL 700.5313(2)], or if none of the persons listed in [MCL 700.5313(2)] are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

> (a) The legally incapacitated individual's spouse. [MCL 700.5313(3)(a)] is considered to include a person nominated by will or other writing signed by a deceased spouse.

> (b) An adult child of the legally incapacitated individual.
>
> (c) A parent of the legally incapacitated individual. [MCL 700.5313(3)(c)] is considered to include a person nominated by will or other writing signed by a deceased parent.
>
> (d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.
>
> (e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual." MCL 700.5313(3).

"If none of the persons as designated or listed in [MCL 700.5313(2)] or [MCL 700.5313(3)] are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in [MCL 700.5106]." MCL 700.5313(4). "[B]efore appointing a professional guardian or a professional conservator, [MCL 700.5106(2) requires] a probate court [to] find that the appointment of a professional fiduciary is in the incapacitated person's best interests *and* that there is no other person who is competent, suitable, and willing to serve in that fiduciary capacity in accordance with, as relevant here, MCL 700.5313 or MCL 700.5409." *In re Guardianship/Conservatorship of Harold William Gerstler*, 324 Mich App 494, 511, 513-514 (2018) (where "the probate court failed to make any determination of whether [the protected person's daughter] was competent, suitable, and willing to serve as [his] guardian and conservator," "the court abused its discretion by appointing a professional fiduciary in lieu of appointing [the daughter] who held the position of statutory priority or preference for appointment"). "[T]o depart from the statutory priority provisions [under MCL 700.5313 and MCL 700.5409] and appoint a public guardian and public conservator, the probate court [is] tasked with finding by a preponderance of the evidence that [no persons designated or listed under the statutory priority provisions are] competent and suitable to serve in that fiduciary capacity." See *Gerstler*, 324 Mich App at 513.

B. Decision by Court

"The court may appoint a guardian if [it] finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record." MCL 700.5306(1). "Alternately, the court may dismiss the proceeding or enter another appropriate order." *Id.*

"If the court finds by clear and convincing evidence that the individual is incapacitated and is totally without capacity to care for himself or herself, the court shall specify that finding of fact in an order and may appoint a full guardian." MCL 700.5306(4). However, "[i]f the court finds by clear and convincing evidence that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself, the court may appoint a limited guardian to provide guardianship services to the individual, but the court shall not appoint a full guardian." MCL 700.5306(3).

"[T]he clear-and-convincing-evidence standard is the most demanding standard applied in civil cases . . . ." *In re G M Guardianship*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). "Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact that it has been contradicted." *Id.* at ___ (quotation marks and citation omitted). When the allegedly incapacitated individual's cognitive tests showed average-to-above-average intelligence, the clear-and-convincing-evidence standard was not met to show incapacity under MCL 700.1105(a), and the trial court abused its discretion by appointing a guardian and a conservator. *G M*, ___ Mich App at ___ ("To be sure, [the individual] appears to have had lifelong difficulty properly caring for herself, both physically and financially, and [the Court did] not minimize the deplorable conditions that were observed inside [her] home. But the evidence presented thus far was insufficient to show that [she] was so incapable as to warrant either a guardianship or a conservatorship.").

C. Effect of Guardianship

"By accepting appointment, a guardian personally submits to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person." MCL 700.5307. "Notice of a proceeding must be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address as listed in the court records and to his or her address as then known to the petitioner." *Id.*

D. Powers and Duties of Guardian

"The court shall grant a guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual." MCL 700.5306(2).

"The court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual." MCL 700.5306(2).

"A court order establishing a guardianship shall specify any limitations on the guardian's powers and any time limits on the guardianship." MCL 700.5306(2).

"The court shall not grant the guardian the authority to change the incapacitated individual's residence except as provided in [MCL 700.5306b]." MCL 700.5306(2). "A legally incapacitated individual has the right, if possible, to remain in the individual's own surroundings, or, if not possible, in the least restrictive environment suitable to the individual's unique needs, abilities, and resources." MCL 700.5306b(1). "Except as otherwise provided in [MCL 700.5306b], before moving a legally incapacitated individual from the individual's permanent residence, a guardian must file a petition that includes all the [information required by MCL 700.5306b(2)(a)-(g)] on a form created by the state court administrative office or in a substantially similar form . . . ." MCL 700.5306b(2). For purposes of MCL 700.5306b, "'individual's permanent residence' means the individual's true, fixed, and permanent home to which, whenever absent, the individual intends to return." MCL 700.5306b(13). A guardian may move a legally incapacitated individual before filing a petition under the circumstances described in MCL 700.5306b(7). However, in that event, "the guardian must take all reasonable steps to preserve the individual's permanent residence," MCL 700.5306b(8), and "the guardian shall notify the court not later than 14 days after the move of the ward's temporary place of residence," MCL 700.5306b(9). "If a guardian determines that following a temporary absence from the permanent residence . . . the legally incapacitated individual will not return to their permanent residence, the guardian must file a petition under [MCL 700.5306b(2)]." MCL 700.5306b(10). The guardian must file a petition if any of the circumstances listed in MCL 700.5306b(12)(a)-(e) exist. MCL 700.5306b(12).

"If the court is aware that an individual has executed a patient advocate designation under [MCL 700.5506], the court shall not grant a guardian any of the same powers that are held by the patient advocate." MCL 700.5306(2). In addition, "[i]f an individual executed a patient advocate designation under [MCL 700.5506] before the time the court determines that the individual became a legally incapacitated individual, a guardian does not have and must not

exercise the power or duty of making medical or mental health treatment decisions that the patient advocate is designated to make." MCL 700.5306(5).

However, "[i]f . . . a petition for guardianship or for modification under [MCL 700.5310] alleges and the court finds that the patient advocate designation was not executed in compliance with [MCL 700.5506], that the patient advocate is not complying with the terms of the designation or with the applicable provisions of [MCL 700.5506 to MCL 700.5515], or that the patient advocate is not acting consistent with the ward's best interests, the court may modify the guardianship's terms to the guardian." MCL 700.5306(5).

A professional guardian of an incapacitated individual may not lawfully delegate to employees "the authority to make any final decision to exercise a guardianship 'power' that is explicitly listed in MCL 700.5314," or "any other final decision that would alter or impair an incapacitated individual's rights, duties, liabilities, or legal relations" without first executing a power of attorney that complies with MCL 700.5314. *In re Malloy*, 513 Mich 148, 154 (2024). However, a power of attorney is not required for employees to perform "any other guardianship task or duty on the guardian's behalf," or "to *assist* in exercising a guardianship power or to *assist* in deciding how to exercise these powers without complying with MCL 700.5103." *Id*. "A professional guardian who lawfully uses employees nonetheless retains the ultimate legal responsibility for ensuring that all statutory and fiduciary duties owed to an incapacitated individual are fulfilled and that they receive proper care." *Id*. at 154-155.

E. Appointment of Temporary Guardian

"If an individual does not have a guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, the court shall provide notice to the individual alleged to be incapacitated and shall hold a hearing." MCL 700.5312(1). "Upon a showing that the individual is an incapacitated individual, the court may exercise the power of a guardian, or appoint a temporary guardian with only the powers and for the period of time as ordered by the court." *Id*. "A hearing with notice as provided in [MCL 700.5311, concerning notice of hearing for appointment or removal of guardian] shall be held within 28 days after the court has acted under [MCL 700.5312(1)]." MCL 700.5312(1).

"If an appointed guardian is not effectively performing the guardian's duties and the court further finds that the legally incapacitated individual's welfare requires immediate action, the court may appoint, with or without notice, a temporary guardian for the legally

incapacitated individual for a specified period not to exceed six months." MCL 700.5312(2).

"A temporary guardian is entitled to the care and custody of the ward, and the authority of a permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority." MCL 700.5312(3). "A temporary guardian may be removed at any time . . . [and] shall make reports as the court requires." *Id*. "In other respects, the provisions of this act concerning guardians apply to temporary guardians." *Id*.

F. Mandatory Review of Guardianship

The court must review a guardianship no later than one year after the guardian's appointment and no later than every three years after each review. MCL 700.5309; MCR 5.408(A)(1).

The court must appoint a person to investigate the guardianship and report to the court by a date set by the court. MCR 5.408(A)(2). The person appointed must visit the legally incapacitated individual or explain in the report why a visit was not practical. MCR 5.408(A)(2). The report must recommend whether the guardianship should be modified. MCR 5.408(A)(2).

"After informal review of the report, the court shall enter an order continuing the guardianship, or enter an order appointing an attorney to represent the legally incapacitated individual for the purpose of filing a petition for modification of guardianship." MCR 5.408(A)(3). "In either case, the court shall send a copy of the report and the order to the legally incapacitated individual and the guardian." MCR 5.408(A)(3). See also MCR 5.125(C)(24), which provides that "[t]he persons interested in receiving a copy of the report of a guardian of a minor, or of a legally incapacitated individual on the condition of a ward are: (a) the ward, if 14 years of age or older; (b) the person who has principal care and custody of the ward, if other than the guardian; (c) for an adult guardianship, the spouse and adult children or, if no adult children are living, the presumptive heirs of the individual; and (d) for a minor guardianship, the parents of the minor, or if neither of them is living, any grandparents and the adult presumptive heirs of the minor."

"If an attorney is appointed under MCR 5.408(A)(3), the attorney shall file the proper pleadings with the court within 14 days of the date of appointment." MCR 5.408(A)(4).

G. Termination of Guardian's Duties[15] by Resignation or Removal, Appointing Successor Guardian, Modifying Guardianship, and Termination of Guardianship

"The guardian's authority and responsibility for a legally incapacitated individual terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in [MCL 700.5310]." MCL 700.5308.

1. Concurrent Jurisdiction

"The court in the county where the ward resides has concurrent jurisdiction over resignation, removal, accounting, and other proceedings relating to the guardianship with the court that appointed the guardian . . . ." MCL 700.5317(1).

"If the court in the county where the ward resides is not the court in which acceptance of appointment is filed, the court in which a proceeding is commenced after the appointment in appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever is in the best interests of the ward. After this determination is made, the court accepting a resignation or removing a guardian shall direct this fiduciary to prepare and submit a final report to both courts. A copy of an order accepting a resignation or removing a guardian and a copy of the final report must be sent to the court in which acceptance of appointment is filed. The court entering this order may permit closing of the guardianship in the court in which acceptance of appointment is filed, without notice to interested persons." MCL 700.5317(2).

2. Resignation

"On petition of the guardian and subject to the filing and approval of a report prepared as required by [MCL 700.5314], the court shall accept the guardian's resignation and make any other order that is appropriate." MCL 700.5310(1).

[15] Note that this is different than terminating the guardianship itself. If the guardian dies, resigns, or is removed, the guardianship may still exist and a successor guardian should be appointed.

3. Petition for Removal, Appointing Successor Guardian, Modification, or Termination

"The ward, a person appointed guardian in a will or other writing by a parent or spouse under [MCL 700.5301], or any other person interested in the ward's welfare may petition for an order removing the guardian, changing the designated standby guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship." MCL 700.5310(2). "A request for this order may be made by informal letter to the court or judge." *Id*. "If a request under [MCL 700.5310] is made by the person appointed by will or other writing under [MCL 700.5301], the person shall also present proof of the person's appointment by will or other writing." MCL 700.5310(2).

The same procedures a court must follow to determine whether to appoint a guardian also apply when a court determines whether to terminate a guardianship. *In re Gordon Guardianship*, 337 Mich App 316, 319-320 (2021). See MCL 700.5310(4). Accordingly, when deciding on a ward's petition to terminate the guardianship, "the trial court must find that the ward remains incapacitated and that the appointment remains necessary as a means of providing continuing care and supervision for the ward." *Gordon Guardianship*, 337 Mich App at 320; MCL 700.5306(1).

"A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court." MCL 700.5310(2).

"An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or request for a finding that a ward is no longer an incapacitated individual, or for an order removing the guardian, modifying the guardianship's terms, or terminating the guardianship, must not be filed without special leave of the court." MCL 700.5310(3).

4. Discretion to Order Observation of Conditions

"Before removing a guardian, appointing a successor guardian, changing the designated standby guardian, modifying the guardianship's terms, or terminating a guardianship, and following the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides

or is detained to observe conditions and report in writing to the court." MCL 700.5310(4).

5. Notice Requirements for Removal Proceedings

"In a proceeding for the . . . removal of an incapacitated individual's guardian, other than the . . . temporary suspension of a guardian, or to . . . change the designated standby guardian, notice of hearing must be given [by the petitioner] to each of the following:

> (a) The ward or the individual alleged to be incapacitated and that individual's spouse, parents, and adult children.
>
> (b) A person who is serving as the guardian or conservator or who has the individual's care and custody.
>
> (c) If known, a person named as attorney in fact under a durable power of attorney.
>
> (d) The standby guardian or the person nominated to be designated as standby guardian.
>
> (e) If no other person is notified under [MCL 700.5311(1)(a)-(d)], at least 1 of the individual's closest adult relatives, if any can be found." MCL 700.5311(1). See also MCR 5.402(C).

"Notice must be served personally on the alleged incapacitated individual." MCL 700.5311(2). "Notice to all other persons must be given as prescribed by court rule." *Id*. The persons interested in a petition for the modification of a guardianship, termination of a guardianship, or removal of a guardian are the persons interested in a petition for appointment under MCR 5.125(C)(23) and the guardian. MCR 5.125(C)(26). See also MCR 5.402(C), which provides, in part, that "[r]egardless of statutory provisions, an interested person may be served the notice by mail, personal service, or when necessary, publication. However, if the person who is the subject of the petition is 14 years of age or older, notice of the initial hearing must be served on the person personally unless another method of service is specifically permitted in the circumstances."

"Waiver of notice by the individual alleged to be incapacitated is not effective unless the individual attends the hearing or a waiver of notice is confirmed in an interview with the visitor." MCL 700.5311(2).

6. Hearing on Petition

"Except as otherwise provided in the order finding incapacity, on receiving a petition or request under [MCL 700.5310], the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request." MCL 700.5310(3).

"[T]o remove a guardian under MCL 700.5310, the probate court must find that the guardian is no longer suitable and willing to serve[;]" "a 'suitable' guardian is one who is qualified and able to provide for the ward's care, custody, and control[, and w]ith respect to whether an existing guardian remains suitable, it logically follows that particularly relevant evidence would include (1) evidence on whether the guardian was still qualified and able, and (2) evidence on whether the guardian did, in fact, satisfactorily provide for the ward's care, custody, and control in the past." *In re Redd Guardianship*, 321 Mich App 398, 407, 408 (2017). "When a preponderance of the evidence weighs against the suitability of the ward's current choice for guardian, the probate court must remove that person as guardian." *Redd*, 321 Mich App at 414 (noting that under the EPIC, "one standard—clear and convincing evidence—applies to whether a person should become a ward, but a different standard—preponderance of the evidence—applies to whether a particular person is suitable to be the ward's guardian[]").

"[T]he probate court's determination [of a guardian's] suitability [is] a question of fact[,]" and the burden of proof falls on the moving party. *Redd*, 321 Mich App at 411-412 ("the probate court did not clearly err with respect to its factual findings and did not abuse its discretion by removing [the ward's choice for] guardian and replacing him with [a successor guardian] under MCL 700.5310 and [MCL] 700.5313[]").

7. Videoconferencing Technology

"Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under this chapter in accordance with MCR 2.407." MCR 5.140(A). "The use of videoconferencing technology under [Chapter 5, Probate Court] must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court." MCR 5.140(D).

> "In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present." MCR 5.140(C).

Court form to use:

Order Regarding Appointment of Guardian of Incapacitated Individual, PC 631

1.3 Appointment of Guardian of Individual with Developmental Disability

A. Conditions for Appointment

"Guardianship for individuals with a developmental disability shall be utilized only as is necessary to promote and protect the well-being of the individual, including protection from neglect, exploitation, and abuse; shall take into account the individual's abilities; shall be designed to encourage the development of maximum self-reliance and independence in the individual; and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations." MCL 330.1602(1).

Guardianships "established for developmentally disabled persons must be substantially and specifically limited in scope only to the extent necessitated by the individual's actual mental and adaptive limitations." *In re Neal*, 230 Mich App 723, 729 n 5 (1998).

"If the court determines that some form of guardianship is necessary, partial guardianship is the preferred form of guardianship for an individual with a developmental disability." MCL 330.1602(2).

B. Petition Requirements

"A petition for the appointment of a guardian for an individual who is developmentally disabled may be filed by an interested person or entity or by the individual." MCL 330.1609(1).

"The petition shall set forth the following:

> (a) The relationship and interest of the petitioner.
>
> (b) The name, date of birth, and place of residence of the respondent.
>
> (c) The facts and reasons for the need for guardianship.

> (d) The names and addresses of the individual's current guardian, and the respondent's presumptive heirs.
>
> (e) The name and address of the person with whom, or the facility in which, the respondent is residing.
>
> (f) A description and approximation of the value of the respondent's estate including an estimate of the individual's anticipated yearly income and the source of the income.
>
> (g) The name, address, and age of the proposed guardian and if the proposed guardian is a current provider of services to the developmentally disabled.
>
> (h) A factual description of the nature and extent of the respondent's developmental disability. *Id*.

"The petition for the appointment of a guardian for an individual who has a developmental disability shall be accompanied by a report that contains all of the following:[16]

> (a) A description of the nature and type of the respondent's developmental disability.
>
> (b) Current evaluations of the respondent's mental, physical, social, and educational condition, adaptive behavior, and social skills. These evaluations shall take into account the individual's abilities.
>
> (c) An opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and a specific statement of the reasons for the guardianship.
>
> (d) A recommendation as to the most appropriate rehabilitation plan and living arrangement for the individual and the reasons for the recommendation.
>
> (e) The signatures of all individuals who performed the evaluations upon which the report is based. One of the individuals shall be a physician or psychologist[17] who, by training or experience, is competent in evaluating individuals with developmental disabilities.

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[16] "If a report does not accompany the petition, the court shall order appropriate evaluations to be performed by qualified individuals who may be employees of the state, the county, the community mental health services program, or the court." MCL 330.1612(3). Payment for these evaluations is governed by MCL 330.1612(3).

[17] "Psychological tests upon which an evaluation of the respondent's mental condition have been based may be performed up to one year before the petition is filed." MCL 330.1612(2).

> (f) A listing of all psychotropic medications, plus all other medications the respondent is receiving on a continuous basis, the dosage of the medications, and a description of the impact upon the respondent's mental, physical and educational conditions, adaptive behavior, and social skills." MCL 330.1612(1).

See *In re Neal*, 230 Mich App at 729 n 5 ("the Mental Health Code requires that a petition for guardianship for a developmentally disabled person must be accompanied by a report that contains [the information set out in MCL 330.1612]").

"A report prepared under [MCL 330.1612] shall not be made part of the public record of the proceedings but shall be available to the court or an appellate court to which the proceedings may be appealed, to the respondent, the petitioner, their attorneys, and to other individuals the court directs." MCL 330.1612(4).

C. Court May Act as Guardian or Appoint Temporary Guardian

"A court, upon filing of a petition for guardianship under [MCL 330.1600 *et seq*.] and before the appointment of a plenary or partial guardian, or pending an appeal or action in relation to the appointment, under emergency circumstances and if necessary for the welfare or protection of an individual with a developmental disability, may temporarily exercise the powers of a guardian over an individual with a developmental disability, or may appoint a temporary guardian whose powers and duties shall be specifically enumerated by court order." MCL 330.1607(1).

"If the court, under [MCL 330.1607(1)], exercises the powers of a guardian or appoints a temporary guardian before the appointment of a plenary or partial guardian, a hearing on the petition for guardianship shall be held within 14 days, or at a time fixed under [MCL 330.1614], whichever is earlier." MCL 330.1607(2).

"If the court exercises the powers of a guardian or appoints a temporary guardian pending an appeal or action in relation to the appointment of a guardian under [MCL 330.1600 *et seq*.], a hearing shall be held within 14 days to determine whether the individual is in need of the services of a guardian for the individual's welfare or protection during the pendency of the appeal or action." MCL 330.1607(3). "If the court determines by clear and convincing evidence that a need exists, the court may appoint a temporary guardian whose powers and duties shall be specifically enumerated by court order and whose authority shall expire upon resolution of the appeal or action." *Id*.

"At a hearing held under [MCL 330.1607(2) or MCL 330.1607(3)], a respondent shall have all of the rights and privileges otherwise available to an individual subject to proceedings under [MCL 330.1600 *et seq*]." MCL 330.1607(4).

D. Procedural Matters

1. Jurisdiction

The probate court[18] in the individual's county of residence (or where the individual was found, if no residence can be determined) has jurisdiction over guardianship proceedings involving developmentally disabled persons. MCL 330.1604(1); MCL 330.1600(b).

"An appointment of a guardian for a developmentally disabled person shall be made only under [MCL 330.1600 *et seq*.], except that a guardian may be appointed for a minor where appropriate under . . . MCL 700.5201 to [MCL] 700.5219." MCL 330.1604(2). "[T]he mandate of MCL 330.1604(2) is clear and unambiguous: '[a]n appointment of a guardian for a developmentally disabled person shall be made only pursuant to [the Mental Health Code].'" *In re Neal*, 230 Mich App at 729. "The word 'shall' indicates a mandatory, nondiscretionary provision." *Id*. "Consequently, the appointment of a guardian for a developmentally disabled person under the Revised Probate Code[19] would directly contradict the Legislature's clear mandate that such proceedings must be conducted pursuant to the Mental Health Code." *Id*.

2. Venue

"Hearings may be held either within or without the county in which the court has its principal office, and in quarters as the court directs, including a facility or other convenient place." MCL 330.1614(2).

3. Notice

The court must schedule a hearing on the petition within 30 days after the date of filing. MCL 330.1614(1). The following individuals are entitled to a notice of hearing:

[18] Alternatively, jurisdiction lies with the court that has responsibility related to mental health services.

[19] Though the Revised Probate Code was repealed, see 1998 PA 386 (effective April 1, 2000), the discussion in *Neal* related to the provisions of the Mental Health Code is still applicable.

- the petitioner,
- the respondent,
- the respondent's presumptive heirs,
- the preparer of the report or another appropriate person who performed an evaluation,
- the director of any facility in which the respondent may be residing,
- the respondent's guardian ad litem if one has been appointed
- the respondent's legal counsel, and
- any other person that the court identifies. MCL 330.1614(3); MCR 5.125(C)(19).

4. Attorney/Guardian Ad Litem

"A respondent is entitled to be represented by legal counsel." MCL 330.1615(1). "Unless an appearance has been entered on behalf of the respondent, the court, within 48 hours of its receipt of a petition together with the other documents required by [MCL 330.1612], shall appoint counsel to represent the respondent." MCL 330.1615(2). "Counsel may be appointed from a system or organization that provides legal counsel to indigents, or that has been established for the purpose of providing representation in the proceedings governed by [MCL 330.1600 *et seq*]." MCL 330.1615(2). "If the respondent prefers counsel other than the counsel appointed, if preferred counsel agrees to accept the appointment, and the court is notified of the preference by the respondent or preferred counsel, the court shall replace the initially appointed counsel with preferred counsel." MCL 330.1615(3). "If the respondent is indigent, the court shall compensate appointed counsel from court funds in an amount which is reasonable and based upon time and expenses." MCL 330.1615(4).

"If, after a petition has been filed, the court determines that the respondent requires a person to represent his or her best interests and to assist legal counsel, the court shall appoint an interested person or entity to act as guardian ad litem for the respondent." MCL 330.1616.

5. Respondent's Rights

In addition to the right to be represented by legal counsel, MCL 300.1615(1), a respondent in a guardianship proceeding conducted under MCL 330.1600 *et seq*. has the following additional rights:

- to have a six-person jury decide any issue(s) of fact. MCL 330.1617(1).
- to be present at all proceedings. MCL 330.1617(4).
- to present evidence. MCL 330.1617(2).
- to confront all witnesses. MCL 330.1617(2).
- to cross-examine all witnesses. MCL 330.1617(2).
- to have the person who prepared the report (or at least one of the persons who performed an evaluation serving in part as basis for the report) testify in person in court. MCL 330.1617(5).
- to secure an independent evaluation (at his/her own expense, or at the expense of the state if he/she is indigent). MCL 330.1617(6).

Further, the following requests *may* also be granted:

- to have the hearing closed to the public on the request of the respondent or his/her attorney. MCL 330.1617(3).
- to have his/her presence excused by the court on a showing (supported by an affidavit signed by a physician or psychologist who has recently examined him/her) that his/her attendance would subject him/her to serious risk of physical or emotional harm. MCL 330.1617(4).

6. Videoconferencing Technology

"Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under this chapter in accordance with MCR 2.407." MCR 5.140(A). "The use of videoconferencing technology under [Chapter 5, Probate Court] must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court." MCR 5.140(D).

"In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present." MCR 5.140(C).

7. Hearing and Decision by Court

"The court, at a hearing convened under [MCL 330.1600 *et seq*.] for the appointment of a guardian, shall do all of the following:

> (a) Inquire into the nature and extent of the general intellectual functioning of the respondent asserted to need a guardian.
>
> (b) Determine the extent of the impairment in the respondent's adaptive behavior.
>
> (c) Determine the respondent's capacity to care for himself or herself by making and communicating responsible decisions concerning his or her person.
>
> (d) Determine the capacity of the respondent to manage his or her estate and financial affairs.
>
> (e) Determine the appropriateness of the proposed living arrangements of the respondent and determine whether or not it is the least restrictive setting suited to the respondent's condition.
>
> (f) If the respondent is residing in a facility, the court shall specifically determine the appropriateness of the living arrangement and determine whether or not it is the least restrictive suited to the respondent's condition." MCL 330.1618(1).

The court must make findings of fact on the record regarding the above-listed matters. MCL 330.1618(2). See *In re Neal*, 230 Mich App at 729 n 5 ("[w]hen appointing a guardian pursuant to the Mental Health Code, the probate court is required to make specific findings on the record with regard to the nature and extent of the person's impairment, the person's capacity to care for himself [or herself], the person's ability to manage his [or her] financial affairs, and the appropriateness of the proposed living arrangement").

Committee Tip:

When appointing a guardian for a developmentally disabled individual, if the alleged ward is close to his/her 18th birthday, a hearing to appoint a guardian may be held before the developmentally disabled individual's 18th birthday, but the letters of authority do not become effective until the developmentally disabled individual officially reaches 18 years of age.

Dismiss petition. "If it is determined that the respondent possesses the capacity to care for himself or herself and his or her estate, the court shall dismiss the petition." MCL 330.1618(3).

Appoint partial guardian. "If it is found by clear and convincing evidence that the respondent is developmentally disabled and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or his or her estate, the court may appoint a partial guardian to provide guardianship services to the respondent, but shall not appoint a plenary guardian." MCL 330.1618(4). "The appointment of a partial guardian . . . does not constitute a finding of legal incompetence or incapacity except in those areas specified by the court." MCL 330.1620(3).

"A court order establishing partial guardianship shall contain findings of fact, shall define the powers and duties of the partial guardian so as to permit the individual with a developmental disability to care for himself or herself and his or her property commensurate with his or her ability to do so, and shall specify all legal disabilities to which the individual is subject." MCL 330.1620(1).

"An individual with a developmental disability for whom a partial guardian has been appointed retains all legal and civil rights except those that have by court order been designated as legal disabilities or that have been specifically granted to the partial guardian by the court." MCL 330.1620(2).

Appoint plenary guardian. "If it is found by clear and convincing evidence that the respondent is developmentally disabled and is totally without capacity to care for himself or herself or his or her estate, the court shall specify that finding

of fact in any order and may appoint a plenary guardian of the person or of the estate or both for the respondent." MCL 330.1618(5). See *In re Middleton*, 198 Mich App 197, 199 (1993), quoting MCL 330.1618(5) ("[u]nder the Mental Health Code, a developmentally disabled person cannot have a plenary guardian appointed unless the probate court finds 'by clear and convincing evidence that the respondent is developmentally disabled and is *totally without capacity to care for himself or herself* or the respondent's estate'").

8. Placement in Facility

A guardian (plenary or partial) appointed under MCL 330.1600 *et seq*., does not have the power to place an individual with a developmental disability in a facility unless specified by court order. MCL 330.1623(1).

"If placement in a facility of an individual with a developmental disability has not been authorized or if permission is sought for authorization to place the individual in a more restrictive setting than previously ordered, a guardian of the individual must petition the court for authorization to place the individual in a facility or in a more restricted setting." MCR 5.746(A).

"Notice of hearing on a petition for authorization to place an individual must be given to those persons required to be served with notice of hearing for the appointment of a guardian." MCR 5.746(C).

"Before authorizing the placement of a respondent in a facility, the court shall inquire into and determine the appropriateness of the placement." MCL 330.1623(2).

"Before authorizing a guardian to apply to place an individual with a developmental disability in a facility, the court shall determine, in conjunction with the appropriate community mental health services program, whether the placement offers appropriate treatment and residential programs to meet the needs of the respondent and whether there is a less restrictive treatment and residential program available." MCL 330.1623(3). "In ordering a placement, the court shall give preference to an available less restrictive treatment and residential program provided that it is adequate and appropriate to meet the respondent's needs." *Id*. "The court or counsel may request reports from public agencies on the suitability of a particular placement for a respondent." *Id*.

"If the court grants the petition for authorization, it may order that:

> (1) the guardian may execute an application for the individual's administrative admission to a specific center;
>
> (2) the guardian may request the individual's temporary admission to a center for a period not to exceed 30 days for each admission; or
>
> (3) the guardian may place the individual in a specific facility or class of facility as defined in MCL 330.1600." MCR 5.746(B).

9. Duration

Before the appointment of a guardian, the court must consider the duration of the term of guardianship, and indicate the duration of the term in a court order. MCL 330.1626(1).

A partial guardian must not be appointed for longer than five years. MCL 330.1626(2).

"At the expiration of the term of guardianship a new petition for guardianship may be filed under [MCL 330.1600 *et seq*]." MCL 330.1626(3).

E. Qualifications/Duties of Guardian

"The court may appoint as guardian of an individual with a developmental disability any suitable individual or agency, public or private, including a private association capable of conducting an active guardianship program for an individual with a developmental disability." MCL 330.1628(1).

"The court shall not appoint the department of mental health as guardian or any other agency, public or private, that is directly providing services to the individual, unless no other suitable individual or agency can be identified." MCL 330.1628(1). "In such instances, guardianship by the provider shall only continue until such time as a more suitable individual or agency can be appointed." *Id*.

"Before the appointment, the court shall make a reasonable effort to question the individual concerning his or her preference regarding the person to be appointed guardian, and any preference indicated shall be given due consideration." MCL 330.1628(2). "[T]he probate court need only give 'due consideration' to the developmentally

disabled person's preference regarding the person to be appointed guardian." *In re Neal*, 230 Mich App at 729 n 5.

To the extent ordered by the court, the plenary guardian of the person *must*, and a partial guardian of the person *may*, have the following duties (among others):

> "(a) Custody of the ward.
>
> (b) The duty to make provision from the ward's estate or other sources, for the ward's care, comfort, and maintenance.
>
> (c) The duty to make a reasonable effort to secure for the ward training, education, medical, and psychological services, and social and vocational opportunity as are appropriate and as will assist the ward in the development of maximum self-reliance and independence." MCL 330.1631(1). See *In re Wirsing*, 456 Mich 467, 474 (1998) ("[t]he duties of a plenary guardian are defined by MCL 330.1631").

The guardian of the person (plenary or partial) must file with the court at intervals indicated by the court (but at least once each year) a report containing statements indicating:

> "(a) The individual's current mental, physical, and social condition.
>
> (b) The individual's present living arrangement and a description and the address of every residence where the individual lived during the reporting period and the length of stay at each residence.
>
> (c) An assessment of the adequacy and appropriateness for the ward of treatment and residential programs in the ward's current residence and a statement on whether the ward will continue to live at the current residence or whether the guardian recommends a more suitable alternative residence.
>
> (d) A summary of the medical, educational, vocational, and other professional services given to the individual.
>
> (e) A resume of the guardian's visits with and activities on behalf of the individual.
>
> (f) A recommendation as to the need for continued guardianship.

> (g) A statement signed by the standby guardian, if any have been appointed, that the standby guardian continues to be willing to serve in the event of the death, incapacity, or resignation of the guardian.
>
> (h) An accounting of all financial transactions made by the guardian involving the ward's estate.
>
> (i) Other information requested by the court or useful in the opinion of the guardian."MCL 330.1631(2).

"For the purpose of filing this report pursuant to [MCL 330.1631(2)], the guardian shall be given access to information, reports and records from facilities, a community mental health board or agency, court staff, a public or private entity or agency, or a suitable person that are necessary for the guardian to perform his or her duties." MCL 330.1631(3).

"The court shall review the report required in [MCL 330.1631(2)] and take whatever action it considers necessary."MCL 330.1631(4).

"Whenever the court appoints a plenary guardian of the estate or a partial guardian with powers or duties respecting real or personal property, that guardian shall be considered a fiduciary for the purposes of the estates and protected individuals code, . . . MCL 700.1101 to [MCL] 700.8102." MCL 330.1632.

"At the time of the appointment of a guardian, the court shall make a reasonable effort to verbally inform the individual of the individual's right pursuant to [MCL 330.1637] to request at a later date his or her guardian's dismissal or a modification of the guardianship order, and a written statement shall be served upon the ward indicating his or her rights pursuant to [MCL 330.1637] and specifying the procedures to be followed in petitioning the court." MCL 330.1634.

1. Standby Guardian

> "At a hearing convened pursuant to [MCL 330.1600 *et seq.*,] the court may designate 1 or more standby guardians whose appointment becomes effective without further proceedings immediately upon the death, incapacity, or resignation of the initially appointed guardian." MCL 330.1640(1). "The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian." *Id.*
>
> "The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian." MCL 330.1640(2).

"Upon assuming office, the standby guardian shall notify the court." *Id*.

"In an emergency situation and in the absence and unavailability of the initially appointed guardian, the standby guardian may temporarily assume the powers and duties of the initially appointed guardian." MCL 330.1640(3).

2. Testamentary Guardian

"The surviving parent of a minor with a developmental disability for whom a guardian has not been appointed may by will appoint a testamentary guardian." MCL 330.1642(1). "The testamentary appointment becomes effective without, but subject to, probate immediately upon the death of the parent." *Id*.

"A testamentary guardian possesses the powers of a parent, and shall serve subject to the court's power to reduce the scope of guardianship authority or to dismiss a guardian." *Id*. "The appointment shall terminate when the minor attains 18 years of age, or the guardian is dismissed, whichever occurs first." *Id*. "Upon assuming office, the testamentary guardian shall notify the court in which the decedent's will is to be probated." *Id*.

"A parent who has been appointed guardian of his or her minor or adult child with a developmental disability may by will, except in the event that a standby guardian has been designated, appoint a testamentary guardian." MCL 330.1642(2). "The testamentary appointment becomes effective without, but subject to, probate immediately upon the death of the initially appointed guardian." *Id*. "The testamentary guardian possesses the powers of the initially appointed guardian, shall be entitled to receive upon request a copy of a court order creating or modifying the initial guardianship, and shall serve subject to the power of the court that appointed the initial guardian to reduce the scope of guardianship authority or to dismiss a guardian." *Id*. "In the event that the court probating [the] decedent's will does not have jurisdiction over the testamentary guardian except if the court finds the will to be invalid, the appointment shall be nullified." *Id*. "Upon assuming office, the testamentary guardian shall notify the probate court that appointed the initial guardian and the probate court in which the will is subject to probate." *Id*.

F. Discharge/Modification of Guardianship of Individual with Developmental Disability

The court may discharge or modify the duties of a guardian appointed for an individual with a developmental disability "when the individual's capacity to perform the tasks necessary for the care of his or her person or the management of his or her estate have changed so as to warrant modification or discharge." MCL 330.1637(1). The individual, his or her guardian, or any interested person on the individual's behalf may petition the court for a discharge or modification order. *Id*.

A request for discharge or modification, "if made by the individual with a developmental disability, may be communicated to the court by any means, including oral communication or informal letter." MCL 330.1637(2). "Upon receipt of the communication the court shall appoint a suitable person who may, but need not be, an employee of the state, county, community mental health services program, or court, to prepare and file with the court a petition reflecting the communication." *Id*.

Upon receipt of a petition filed under MCL 330.1637, the court must conduct a hearing. MCL 330.1637(3). At the hearing, the individual has all of the rights set out in MCL 330.1615 and MCL 330.1617. MCL 330.1637(3). "At the conclusion of the hearing, the court shall enter a written order setting forth the factual basis for its findings and may do any of the following:

> (a) Dismiss the petition.
>
> (b) Remove the guardian and dissolve the guardianship order.
>
> (c) Remove the guardian and appoint a successor.
>
> (d) Modify the original guardianship order.
>
> (e) Make any other order that the court considers appropriate and in the interests of the individual with a developmental disability." MCL 330.1637(4).

G. Termination of Guardian of Individual with Developmental Disability

"Upon termination of a guardianship, the developmentally disabled person regains all legal and civil rights that had been designated as legal disabilities or specifically granted to the guardian." MCL 330.1644. "[MCL 330.1644] applies to termination by expiration of the term of a guardianship and termination by court order under [MCL

330.1637(4)(b) (after hearing, court must enter a written order setting out the factual basis for its findings and may remove the guardian and dissolve the guardianship order)]." MCL 330.1644.

Court forms to use:

Order Appointing Guardian for Individual with Developmental Disability, PC 660

Notice of Right to Request Dismissal of Guardian or Modification of Guardianship Order, PC 661

Letters of Guardianship of Individual with Developmental Disability, PC 662

Order for Placement of Individual with Developmental Disability, PC 665

Order Appointing Emergency Temporary Guardian for Individual with Alleged Developmental Disability, PC 679

Order Regarding Termination/Modification of Guardian for Individual with Developmental Disability, PC 638b

1.4 Appointment of Guardian of Minor

A. Conditions for Appointment

A person interested in the welfare of a minor, the minor if 14 years or older, or the limited guardian[20] may petition the court for appointment of a guardian. MCL 700.5204(1); MCL 700.5204(3).

The court may order the DHHS or court employee to investigate and file a written report. MCL 700.5204(1).

The court may appoint a guardian for an unmarried minor, if any of the following exist:

- parental rights of both parents are terminated or suspended by prior court order, judgment of divorce or separate maintenance, death, judicial determination of mental incompetency, disappearance, or confinement. MCL 700.5204(2)(a).
- parent(s) permit minor to reside with another person and do not provide the other person with legal authority

[20] If limited guardian is petitioning, petition must not be based upon suspension of parental rights by the order that appointed the limited guardian. MCL 700.5204(3).

for the minor's care and maintenance, and the minor is not residing with the parent(s) when the petition is filed. MCL 700.5204(2)(b). See *Deschaine v St. Germain*, 256 Mich App 665, 669-670 (2003) ("if parents permit their child to permanently reside with someone else when the guardianship issue arises, the court may appoint a guardian for the child[]").

- all of the following:
  - biological parents were never married to each other;
  - custodial parent dies or is missing and other parent not granted legal custody by court order; and
  - proposed guardian is related to the minor within fifth degree by marriage, blood, or adoption. MCL 700.5204(2)(c).

"MCL 700.5204(2)(b) is constitutional and does not infringe on a parent's constitutional right to the care, custody, and management of his or her children." *In re Versalle Guardianship*, 334 Mich App 173, 186 (2020).

A guardian appointed by will (MCL 700.5202) and not prevented or nullified by a minor at least 14 years of age (MCL 700.5203[21]) has priority. The court may proceed with appointment if a guardian appointed by will fails to accept appointment within 28 days after notice of guardianship proceeding. MCL 700.5204(4).

If a guardian has not been appointed in Michigan and a petition for the appointment of a guardian is not pending in Michigan, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in Michigan after filing an application for appointment in Michigan, an authenticated copy of his/her appointment in the other state, and an acceptance of appointment. MCL 700.5202a(1). Letters of guardianship for the temporary guardian expire 28 days after the date of appointment. *Id*. Within 14 days after appointment as a temporary guardian, the guardian must give notice to all interested persons of his/her appointment and the right to object to the appointment. MCL 700.5202a(2). On filing proof of service of the notice with the court, the temporary guardian must be appointed full guardian and the court must issue letters of guardianship accordingly. *Id*. If an objection to

[21] MCL 700.5203 provides that "[a] minor 14 years of age or older who is the subject of a parental appointment may prevent an appointment or cause it to terminate by filing with the court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within 28 days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the parental nominee or another suitable person."

the guardianship is filed, the guardianship continues unless a court in Michigan enters an order removing the guardian. MCL 700.5202a(3).

The court may order parents to pay reasonable support and may order reasonable parenting time and contact. MCL 700.5204(5).

"Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of [MCL 700.5204 or of MCL 700.5205 and MCL 700.5206] are satisfied, and the minor's welfare will be served by the requested appointment, the court shall make the appointment." MCL 700.5213(2). "In other cases, the court may dismiss the proceeding or make another disposition of the matter that will serve the minor's welfare." *Id*.

Committee Tip:

It is important to determine whether a guardianship will truly serve a child's welfare, because it is often more difficult to modify/ terminate a guardianship than to not grant one in the first instance. When looking at a new minor guardianship case, it may be advisable to ask the proposed guardian and parents who suggested the guardianship. If DHHS suggested the guardianship, proceed with caution: it is important to consider whether you are doing a child or parents a disservice by granting a guardianship in cases in which DHHS would otherwise have been involved to provide services. The court may want to consider having DHHS attend the guardianship hearing and, if it was their idea, explain what they envision as the long-term solution. This conversation is helpful for all involved, so that expectations concerning the guardianship are clear. If the court clarifies expectations early in the proceedings, the probability of multiple petitions to modify/ terminate the guardianship decreases.

B. Procedural Matters

1. Jurisdiction

a. Concurrent Jurisdiction

The court at the place where the ward resides has concurrent jurisdiction over resignation, removal, accounting, or another proceeding relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental appointment was filed. MCL 700.5218(1).

If the court located where the ward resides is neither the appointing court nor the court in which acceptance of appointment is filed, the court in which a proceeding subsequent to appointment is commenced in all appropriate cases must notify the other court (in this or another state), and after consultation with that court, must determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever will serve the ward's welfare. MCL 700.5218(2). A copy of an order accepting a resignation or removing a guardian must be sent to the appointing court or the court in which acceptance of appointment is filed. *Id*.

b. Interstate Cases

This sub-subsubsection provides a general overview as to when a Michigan court may exercise jurisdiction in a child custody dispute under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*. For additional information on the UCCJEA, see MCL 722.1101–MCL 722.1406.

The UCCJEA applies to minor guardianship proceedings. See MCL 722.1102(d), which defines *child-custody proceeding* to include guardianships among others. The UCCJEA prescribes the court's powers and duties in a child-custody proceeding that involves this state and a proceeding or party outside of this state.[22] For information on when a court of this state has jurisdiction, see MCL 722.1201 (initial child-custody determination), MCL 722.1202 (continuing jurisdiction), MCL 722.1203

[22] The UCCJEA contains provisions regarding filing and registering a state's custody decrees, judgments, and orders; communication between courts of different states; petition requirements; notice and service of process; evidence; and enforcement of another state's decree, judgment, or order.

(modifying out-of-state child custody determination); and MCL 722.1204 (temporary emergency jurisdiction).

MCL 722.1209(1) sets out certain information that must be included in the first pleading of a child custody case or in an attached sworn statement. "If the information required by [MCL 722.1209(1)] is not furnished, upon motion of a party or its own motion, the court may stay the proceeding until the information is furnished." MCL 722.1209(2). The parties have a continuing duty to keep the court informed of any proceedings "in this or another state that could affect the current child-custody proceeding." MCL 722.1209(4).

"A court of this state shall accord full faith and credit to an order issued by another state and consistent with this act that enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under article 2." MCL 722.1312.

Subchapter 3.200 of the Michigan Court Rules, which governs domestic relations actions, applies to actions for custody or parenting time under the UCCJEA; the subchapter also applies to an expedited proceeding to register a foreign judgment or order under the UCCJEA, and to any ancillary or subsequent proceedings related to custody, parenting time, or support. MCR 3.201(A).

2. Venue

The venue for a guardianship proceeding for a minor is in the place where the minor resides or is present at the time the proceeding is commenced. MCL 700.5211.

3. Notice

"The petitioner shall give notice of the time and place of hearing of a petition for the appointment of a minor's guardian to each of the following:

(a) [t]he minor, if 14 years of age or older.

(b) [t]he person who had the principal care and custody of the minor during the 63 days preceding the date of the petition.

> (c) [e]ach living parent of the minor or, if neither of them is living, the adult nearest of kin to the minor." MCL 700.5213(1).

"A guardian, conservator, or guardian ad litem of a person must be served with notice of proceedings as to which the represented person is an interested person, except as provided by MCR 5.105(D)(1)." MCR 5.125(A)(4).

"The persons interested in an application for appointment of a guardian of a minor by a guardian appointed in another state and in a petition for appointment of a guardian of a minor are

> (a) the minor, if 14 years of age or older;
>
> (b) if known by the petitioner or applicant, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition or application;
>
> (c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor;
>
> (d) the nominated guardian, and
>
> (e) if known by the petitioner or applicant, a guardian or conservator appointed by the court in another state to make decisions regarding the person of a minor."MCR 5.125(C)(20).

"The persons interested in the acceptance of parental appointment of the guardian of a minor under MCL 700.5202 are

> (a) the minor, if 14 years of age or older,
>
> (b) the person having the minor's care, and
>
> (c) each grandparent and the adult presumptive heirs of the minor."MCR 5.125(C)(21).

4. Evidence

At any hearing concerning a guardianship of a minor, all relevant and material evidence (including written reports) may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the rules of evidence. MCR 5.404(F)(2).

Interested persons must be given an opportunity to examine and controvert written reports received by the court and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available. MCR 5.404(F)(3).

No assertion of an evidentiary privilege (other than attorney-client privilege) will prevent the receipt and use of materials prepared under a court-ordered examination, interview, or course of treatment. MCR 5.404(F)(4).

5. Lawyer-Guardian Ad Litem

"A lawyer-guardian ad litem [(LGAL)] appointed under [MCL 700.5201 *et seq*.,] represents the child and has powers and duties in relation to that representation as set forth in . . . MCL 712A.17d[.]" MCL 700.5213(5).

All provisions of MCL 712A.17d apply to a[n] [LGAL] appointed under MCL 700.5201 *et seq*. MCL 700.5213(5). In addition, the following apply to an LGAL appointed under MCL 700.5201 *et seq*.:

- In a proceeding in which an LGAL represents a child, he/she may file a written report and recommendation. MCL 700.5213(5)(a).
  - The court must not admit the report and recommendation into evidence unless all parties stipulate to the admission. MCL 700.5213(5)(a).
  - The parties may use the report and recommendation for purposes of a settlement conference. MCL 700.5213(5)(a).
- "After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of a[n] [LGAL] against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under . . . MCL 551.103." MCL 700.5213(5)(b). An LGAL must not be paid a fee unless the court reviews and approves it first. *Id*.

"To assist the court in determining a child's best interest, the court may appoint a guardian ad litem for a child involved in a proceeding under [MCL 700.5213]." MCL 700.5213(6).

6. Videoconferencing Technology

"Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under this chapter in accordance with MCR 2.407." MCR 5.140(A). "The use of videoconferencing technology under [Chapter 5, Probate Court] must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court." MCR 5.140(D).

"In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present. The right to be physically present for the subject of a minor guardianship applies only to a minor 14 years of age or older." MCR 5.140(C).

C. Effect of Guardianship

"By accepting a . . . court appointment as guardian, a guardian submits personally to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person." MCL 700.5214.

D. Powers and Duties of Guardian

"A minor's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide for the ward from the guardian's own money and is not liable to third persons because of the parental relationship for the ward's acts." MCL 700.5215.

A guardian has all of the powers and duties set out in MCL 700.5215(a)-(g).

"A guardianship order . . . suspends a parent's parental rights and grants those rights in the child, including a right to physical and legal custody, to the guardian under MCL 700.5215." *Hunter v Hunter*, 484 Mich 247, 277 (2009).

E. Review of Guardianship for Minor

1. Periodic Review

The court must conduct a review of a guardianship of a minor annually in each case where the minor is under six years of age as of the anniversary of the qualification of the guardian. MCR 5.404(G)(1). The review must be commenced within 63 days after the anniversary date of the qualification of the guardian. *Id*. See also MCL 700.5207(1).

In addition, the court *may* conduct a review of a guardianship at any time it deems necessary. MCR 5.404(G)(1). See also MCL 700.5207(1).

2. Investigation

The court must appoint the DHHS or any other person to conduct an investigation of the guardianship of a minor. MCR 5.404(G)(2). The investigator must file a written report with the court within 28 days after being appointed. *Id*. The report must include a recommendation regarding whether the guardianship should be continued or modified and whether a hearing should be scheduled. *Id*. The report must state the nature of the modification if one is recommended. *Id*. See also MCL 700.5207(2).

3. Judicial Action

After informally reviewing the report, the court must enter an order continuing the guardianship or set a date for a hearing to be held within 28 days. MCR 5.404(G)(3). If a hearing is set, the court may appoint an attorney to represent the minor. *Id*. See also MCL 700.5207(3) ("[u]pon completion of a guardianship review, the court may do either of the following: (a) [c]ontinue the guardianship[; or] (b) [s]chedule and conduct a hearing on the guardianship's status and [take other action as set out in MCL 700.5207(3)(b)]").

F. Termination of Guardianship of Minor

A guardianship may terminate without a court order upon the minor's death, adoption, marriage, attainment of majority, or voluntary consent to termination of guardianship of an Indian child. MCR 5.404(H)(1). "No full . . . guardianship shall otherwise terminate without an order of the court." *Id*.

The persons interested in a petition for the termination of a guardianship or removal of a guardian are the persons interested in a petition for appointment under MCR 5.125(C)(20) and the guardian. MCR 5.125(C)(26).

1. Petition Filed by Parent(s): Investigation and Report

If the guardianship was established under MCL 700.5204, a minor's parent(s) may petition the court to terminate the minor guardianship. MCL 700.5208(1)(b).

"If a petition is filed to terminate a guardianship under [MCL 700.5208(1)], the court may do 1 or more of the following:

> (a) Order the [DHHS] or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the best interests of the minor or give testimony concerning the investigation.
>
> (b) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the best interests of the minor and consider their recommendations for the disposition of the petition.
>
> (c) Appoint a guardian ad litem or attorney to represent the minor.
>
> (d) Take any other action considered necessary in a particular case." MCL 700.5208(2).

"At any hearing concerning a guardianship of a minor, all relevant and material evidence, including written reports, may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence." MCR 5.404(F)(2).

If a petition is not filed with the family division, the court must take further action, but may not continue the guardianship for more than one year after the hearing on the petition to terminate. MCR 5.404(H)(3)(a). If a petition is filed with the family division, the guardianship must terminate when the family division authorizes the petition under MCL 712A.11, unless the family division determines that continuing the guardianship pending disposition is necessary for the child's well-being. MCR 5.404(H)(3)(b).

If a petition for termination is filed by a party other than a parent, the court may proceed under MCL 700.5209. MCR 5.404(H)(5).

2. Court Action on Petition

After notice and hearing, the court may do any of the following:

- Terminate the guardianship if doing so is in the best interests of the minor, and do any of the following:
  - Enter orders to facilitate the minor's reintegration into the parent's home for up to six months before the termination. MCL 700.5209(2)(a)(*i*).
  - Order the DHHS to supervise the transition period when the minor is being reintegrated into his or her parent's home. MCL 700.5209(2)(a)(*ii*).
  - Order the DHHS to provide services to facilitate the minor's reintegration into his or her parent's home. MCL 700.5209(2)(a)(*iii*).
- Continue the guardianship for not more than one year after the hearing date if doing so is in the best interests of the minor, and do any of the following:
  - Order the parent(s) to follow a court-structured plan that enables the minor to return to the home of his or her parent(s). MCL 700.5209(2)(b)(*ii*).
  - Schedule and conduct a hearing to review the guardianship before expiration of the time the guardianship is continued, and either terminate the guardianship or proceed under MCL 700.5209(2)(c)-(d). MCL 700.5209(2)(b)(*iii*).
- If the minor resides with the guardian for not less than one year and the court finds that the minor's parent(s) have failed to provide the minor with parental care, love, guidance, and attention appropriate to the child's age and individual needs resulting in a substantial disruption of the parent-child relationship, continue the guardianship as if it is established by clear and convincing evidence that the continuation would serve the best interests of the minor. MCL 700.5209(2)(c).
- Appoint an attorney to represent the minor or refer the matter to the DHHS. MCL 700.5209(2)(d). The attorney or the DHHS may file a complaint on the

minor's behalf requesting the family division of the circuit court to take jurisdiction of the minor under MCL 712A.2(b). MCL 700.5209(2)(d).

Court form to use:

Order Regarding Appointment of Guardian/Limited Guardian of Minor, PC 653

1.5 Appointment of Guardian of Minor Indian Child

If an Indian child[23] is the subject of a guardianship proceeding, the definitions in MCR 3.002 control. MCR 5.402(E)(1).

A. Procedural Matters

1. Jurisdiction

a. Exclusive Jurisdiction

If an Indian child is the subject of a petition to establish guardianship of a minor and an Indian tribe has exclusive jurisdiction,[24] the matter must be dismissed. MCR 5.402(E)(2).

b. Concurrent Jurisdiction

A state court has concurrent jurisdiction over an Indian child-custody proceeding where the Indian child is domiciled or resides off an Indian reservation and is not a ward of the Tribal court. 25 USC 1911(b); MCL 712B.7(3). See 25 USC 1903(1), MCL 712B.3(b), and MCR 3.002, which define *child-custody proceeding* to include guardianship placements.

If either parent, the Indian custodian, or the Indian child's Tribe requests that the proceeding be transferred to the Tribal court, the court must transfer the case to the Tribal court unless either parent objects, the court finds good

[23] *Indian child* means "an unmarried person who is under the age of 18 and is either of the following: (*i*) [a] member of an Indian tribe[; or] (*ii*) [e]ligible for membership in an Indian tribe as determined by that Indian tribe." MCL 712B.3(k).

[24] *Exclusive jurisdiction* means "that an Indian tribe has jurisdiction exclusive as to any state over any child custody proceeding . . . involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile or subsequent change in his or her residence or domicile." MCR 3.002(6).

cause not to transfer the case to the Tribal court, or the Tribal court declines the transfer. 25 USC 1911(b); MCL 712B.7(3); 25 CFR 23.117.

c. Interstate Cases

This sub-subsubsection provides a general overview as to when a Michigan court may exercise jurisdiction in a child custody dispute under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*. For additional information on the UCCJEA, see MCL 722.1101–MCL 722.1406.

An interstate proceeding involving an Indian child is governed by the Indian Child Welfare Act (ICWA) and the Michigan Indian Family Preservation Act (MIFPA). MCL 722.1104(1). However, Indian tribes are treated as states for purposes of the UCCJEA. See MCL 722.1104(2). An Indian tribe's custody determination must be recognized and enforced under the UCCJEA if it was made in substantial conformity with the UCCJEA. MCL 722.1104(3).

> **Note:** Subject to its provisions, MCR 2.615 recognizes tribal court judgments as having the same effect as other judicial acts in any other Michigan court. MCR 2.615(A). However, MCR 2.615(D) provides that "[MCR 2.615] does not apply to judgments or orders that federal law requires be given full faith and credit." MCR 2.615(D).

The UCCJEA applies to minor guardianship proceedings. See MCL 722.1102(d), which defines *child-custody proceeding* to include guardianships among others. The UCCJEA prescribes the court's powers and duties in a child-custody proceeding that involves this state and a proceeding or party outside of this state.[25] For information on when a court of this state has jurisdiction, see MCL 722.1201 (initial child-custody determination), MCL 722.1202 (continuing jurisdiction), MCL 722.1203 (modifying out-of-state child custody determination); and MCL 722.1204 (temporary emergency jurisdiction).

[25] The UCCJEA contains provisions regarding filing and registering a state's custody decrees, judgments, and orders; communication between courts of different states; petition requirements; notice and service of process; evidence; and enforcement of another state's decree, judgment, or order.

MCL 722.1209(1) sets out certain information that must be included in the first pleading of a child custody case or in an attached sworn statement. "If the information required by [MCL 722.1209(1)] is not furnished, upon motion of a party or its own motion, the court may stay the proceeding until the information is furnished." MCL 722.1209(2). The parties have a continuing duty to keep the court informed of any proceedings "in this or another state that could affect the current child-custody proceeding." MCL 722.1209(4).

"A court of this state shall accord full faith and credit to an order issued by another state and consistent with this act that enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under article 2." MCL 722.1312.

2. Notice

If an Indian child is the subject of a petition to establish guardianship of a minor and an Indian tribe does not have exclusive jurisdiction, the court must ensure that the petitioner has given notice of the proceedings to the persons set out in MCR 5.125(A)(8)[26] and MCR 5.125(C)(20)[27] in accordance with MCR 5.109(1).[28] MCR 5.402(E)(3).

If the court discovers a child may be an Indian child after a guardianship is ordered, the court must provide notice of the guardianship and the potential applicability of the Indian Child Welfare Act (ICWA) and the Michigan Indian Family Preservation Act (MIFPA) on a form approved by SCAO to the persons set out in MCR 5.125(A)(8), MCR 5.125(C)(20), and MCR 5.125(C)(26) in accordance with MCR 5.109(1). MCR

[26] MCR 5.125(A)(8) provides that the following persons must be served: "[i]n a guardianship proceeding for a minor, if the minor is an Indian child as defined by the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq*., the minor's tribe and the Indian custodian, if any, and, if the Indian child's parent or Indian custodian or tribe is unknown, the Secretary of the Interior." See the Tribal Directory, for more specific information on where to send notice. If the tribe is not known, send notice to the Midwest Region Office, Bureau of Indian Affairs.

[27] MCR 5.125(C)(20) provides that notice must be given to: "[t]he persons interested in an application for appointment of a guardian of a minor by a guardian appointed in another state and in a petition for appointment of a guardian of a minor are (a) the minor, if 14 years of age or older; (b) if known by the petitioner or applicant, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition or application; (c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor; (d) the nominated guardian, and (e) if known by the petitioner or applicant, a guardian or conservator appointed by a court in another state to make decisions regarding the person of a minor."

5.402(E)(5). A copy of the notice must be served on the guardian. MCR 5.402(E)(5).

Special procedures for involuntary proceedings. Once the court knows or has reason to know that an Indian child is involved in a child custody proceeding,[29] the child's parent or Indian custodian and the Indian child's tribe[30] must be notified. 25 USC 1912(a); 25 CFR 23.11(a); MCL 712B.9(1). A copy of the notice must be sent to the Secretary of the Interior's Regional Director, which for Michigan is the Midwest Regional Director. 25 CFR 23.11(a); 25 CFR 23.11(b)(2).

When the identity or location of the Indian parent(s) or Indian custodian(s), and the tribe cannot be determined, notice of the pending proceeding must be sent by registered mail with return receipt requested to the Secretary of the Interior's Regional Director, which for Michigan is the Midwest Regional Director.[31] 25 USC 1912(a); 25 CFR 23.111(e); MCL 712B.9(1). See 25 CFR 23.111(d) and MCL 712B.9 for additional notice requirements.

"[T]he [notice] requirements of [involuntary ICWA proceedings] apply only when 'the court knows or has reason to know that an Indian child is involved[.]'" *In re Morris*, 491 Mich 81, 104 (2012), quoting 25 USC 1912(a). "[S]ufficiently reliable information of virtually any criteria on which membership might be based is adequate to trigger the notice requirement[.]" *In re Morris*, 491 Mich at 108. "Once sufficient indicia of Indian heritage are presented to give the court a reason to believe the child is or may be an Indian child, resolution of the child's and parent's tribal status requires notice to the tribe or, when the appropriate tribe cannot be determined, to the Secretary of the Interior." *Id*. "If there must

[28] MCR 5.109(1) provides that "in addition to any other service requirements, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by personal service or by registered mail with return receipt requested and delivery restricted to the addressee, of the pending proceedings on a petition to establish guardianship over the Indian child and of their right of intervention on a form approved by the State Court Administrative Office. If the identity or location of the parent or Indian custodian, or of the Indian child's tribe, cannot be determined, notice shall be given to the Secretary of the Interior by registered mail with return receipt requested. If a petition is filed with the court that subsequently identifies the minor as an Indian child after a guardianship has been established, notice of that petition must be served in accordance with this subrule."

[29] For purposes of MIFPA, *child custody proceedings* includes, among other things, "[a]ny action removing an Indian child from his or her parent or Indian custodian, and where the parent or Indian custodian cannot have the Indian child returned upon demand but parental right have not been terminated, for temporary placement in, and not limited to, . . . [t]he home of a guardian or a limited guardian under . . . the estates and protected individuals code, . . . MCL 700.5201 to [MCL] 700.5219." MCL 712B.3(b)(*i*)(B).

[30] Notice must be sent to "[e]ach Tribe where the child may be a member (or eligible for membership if a biological parent is a member)[.]" 25 CFR 23.111(b)(1). See 25 CFR 23.105 for additional information on providing notice to the Tribes.

be error in determining whether tribal notice is required, let it be on the side of caution." *Id*.

"[T]rial courts have a duty to ensure that the record includes, at minimum, (1) the original or a copy of each actual notice personally served or sent via registered mail pursuant to 25 USC 1912(a), and (2) the original or a legible copy of the return receipt or other proof of service showing delivery of the notice." *In re Morris*, 491 Mich at 114. "In addition, it would be helpful—especially for appellate purposes—for the record to include any additional correspondence between the petitioner, the court, and the Indian tribe or other person or entity entitled to notice under 25 USC 1912(a)." *In re Morris*, 491 Mich at 114.

3. Transfer

If either parent or the Indian custodian or the Indian child's tribe petitions the court to transfer the proceeding to the tribal court, the court must transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. MCR 5.402(E)(3)(a). When the court makes a good-cause determination under MCL 712B.7,[32] adequacy of the tribe, tribal court, or tribal social services must not be considered. MCR 5.402(E)(3)(a).

A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:

- the Indian tribe does not have a tribal court. MCR 5.402(E)(3)(a)(*i*).
- the requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship

[31] "[N]otice [to the Secretary of the Interior] only becomes obligatory when 'the identity or location of the parent or Indian custodian and the tribe cannot be determined.'" *In re Jones*, 316 Mich App 110, 117-118 (2016) (conditionally reversing the trial court's order terminating the respondent-mother's parental rights due to ICWA and MIFPA noncompliance and remanding to the trial court where the court failed to send notice to the Cherokee tribe after "the DHHS and the trial court had information that at least suggested the possibility of Cherokee heritage[;] although notice was sent to the Secretary of the Interior, "such notice only becomes obligatory when 'the identity or location of the parent or Indian custodian and the tribe cannot be determined[]'").

[32] MCL 712B.7(3) provides that "[i]n any state court child custody proceeding, for an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the Indian tribe's jurisdiction, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe, provided that the transfer is subject to declination by the tribal court of the Indian tribe."

to those parties or witnesses that the Indian tribe is unable to mitigate. MCR 5.402(E)(3)(a)(*ii*).

For involuntary guardianship proceedings, 25 CFR 23.118(c)(5) provides a list of conditions the court *cannot* consider when determining whether good cause exists. The court must not dismiss the matter until the transfer has been accepted by the tribal court. MCR 5.402(E)(3)(b). If the tribal court declines transfer, the Michigan Indian Family Preservation Act (MIFPA) applies, as do the provisions of these rules that pertain to an Indian child. MCR 5.402(E)(3)(c). A petition to transfer may be made at any time in accordance with MCL 712B.7(3). MCR 5.402(E)(3)(d).

4. Intervention

The Indian custodian of the child, the Indian child's tribe, and the Indian child have a right to intervene at any point in the proceeding under MCL 712B.7(6). MCR 5.402(E)(4). "Official tribal representatives have the right to participate in any proceeding that is subject to [ICWA] and [MCL 712B.1 *et seq*.]" MCL 712B.7(7). The court should be aware that it may not be an attorney that participates; some tribes do not have the funds to have an attorney intervene in all child welfare cases, so "official tribal representative" may be a social worker, for example.

B. Voluntary Consent to Guardianship of an Indian Child

If the petition involves an Indian child and both parents intend to execute a consent to a petition for guardianship under MCL 712B.13 and the court rules, the court must proceed under MCR 5.404(B). MCR 5.404(A)(3).

A voluntary consent to guardianship of an Indian child must be executed by both parents or the Indian custodian. MCR 5.404(B).

To be valid, the consent must contain:

- The Indian child's name and date of birth. MCL 712B.13(2)(a).
- The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any. MCL 712B.13(2)(b).
- The name and address of the consenting parent or Indian custodian. MCL 712B.13(2)(c).

- A sworn statement from the translator, if any, attesting to the accuracy of the translation. MCL 712B.13(2)(d).

- The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate the voluntary placement or consent at any time. MCL 712B.13(2)(e).

- For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement as well as the name and address of the prospective foster care parents if known at the time. MCL 712B.13(2)(f).

- For consent to termination of parental rights or adoption of an Indian child, in addition to the information in MCL 712B.13(2)(a)-(f), the name and address of the person or entity that will arrange the preadoptive or adoptive placement. MCL 712B.13(2)(g).

The consent must also be executed on a form approved by SCAO, in writing, recorded before a judge of a court of competent jurisdiction, and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. MCR 5.404(B)(1). The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, the birth of the Indian child is not valid. *Id.* "The court may use videoconferencing technology for the guardianship consent hearing required to be held under MCL 712B.13(1) and this subrule." MCR 5.404(B)(1).

Committee Tip:

Sometimes a consent is filed with the petition, and then the individual(s) giving consent do(es) not appear at the hearing. It is important to be aware that the individual(s) giving consent must do so in the presence of a judge of competent jurisdiction.

The court must conduct a hearing on a petition for voluntary guardianship of an Indian child in accordance with MCR 5.404 before

the court may enter an order appointing a guardian. MCR 5.404(B)(2). Notice of the hearing on the petition must be sent to the persons set out in MCR 5.125(A)(8) and MCR 5.125(C)(20) in compliance with MCR 5.109(1). MCR 5.404(B)(2).[33] At the hearing on the petition, the court must determine:

- if the tribe has exclusive jurisdiction.[34] The court must comply with MCR 5.402(E)(2).[35] MCR 5.404(B)(2)(a).
- that a valid consent to a petition for guardianship has been executed by both parents or the Indian custodian as required by MCL 712B.13 and MCR 5.404(B). MCR 5.404(B)(2)(b).
- if it is in the Indian child's best interest to appoint a guardian. MCR 5.404(B)(2)(c).
- if a lawyer-guardian ad litem should be appointed to represent the Indian child. MCR 5.404(B)(2)(d).

A consent may be withdrawn at any time by sending written notice to the court substantially in compliance with a form approved by SCAO. MCL 712B.25(4); MCR 5.404(B)(3). Upon receipt of the notice, the court must immediately enter an ex parte order terminating the guardianship and returning the Indian child to the parent or Indian custodian except, if both parents executed a consent, both parents must withdraw their consent or the court must conduct a hearing within 21 days to determine whether to terminate the guardianship. MCR 5.404(B)(3). See also MCL 712B.25(5), which provides that "[t]he voluntary guardianship is terminated when the court receives from a parent or Indian custodian notice to withdraw consent to the guardianship, and the Indian child shall be immediately returned to the parent or Indian custodian."

1.6 Involuntary Guardianship of an Indian Child

If the petition involves an Indian child and a consent will not be executed under MCL 712B.13 and the court rules, the petitioner must state in the petition what active efforts were made to provide remedial services and

[33] For additional notice requirements that must be met, see Section 1.5(F)(2).

[34] *Exclusive jurisdiction* means "that an Indian tribe has jurisdiction exclusive as to any state over any child custody proceeding . . . involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile or subsequent change in his or her residence or domicile." MCR 3.002(6).

[35] MCR 5.402(E)(2) provides that "[i]f an Indian child is the subject of a petition to establish guardianship of a minor and an Indian tribe has exclusive jurisdiction as defined in MCR 3.002(6), the matter shall be dismissed."

rehabilitative programs designed to prevent the breakup of the Indian family. MCR 5.404(A)(3). See also MCL 712B.25(3). The court must proceed under MCR 5.404(C). MCR 5.404(A)(3).

The court must conduct a hearing on a petition for involuntary guardianship of an Indian child in accordance with MCR 5.404 before the court may enter an order appointing a guardian. MCR 5.404(C)(1). Notice of the hearing must be sent to the persons set out in MCR 5.125(A)(8) and MCR 5.125(C)(20) in compliance with MCR 5.109(1). MCR 5.404(C)(1).[36]

"Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the individual the use of videoconferencing technology under this chapter in accordance with MCR 2.407."[37] MCR 5.140(A). "[I]f the subject of the petition wants to be physically present, the court must allow the individual to be present."[38] MCR 5.140(C).

At the hearing on the petition, the court must determine:

- if the tribe has exclusive jurisdiction.[39] The court must comply with MCR 5.402(E)(2).[40] MCR 5.404(C)(1)(a).
- if the placement with the guardian meets the placement requirements in MCR 5.404(C)(2) and MCR 5.404(C)(3). MCR 5.404(C)(1)(b).
- if it is in the Indian child's best interest to appoint a guardian. MCR 5.404(C)(1)(c).
- if a lawyer-guardian ad litem should be appointed to represent the Indian child. MCR 5.404(C)(1)(d).
- whether or not each parent wants to consent to the guardianship if consents were not filed with the petition.

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[36] For additional notice requirements that must be met, see Section 1.5(F)(2).

[37] If videoconferencing technology is used, it must be "in accordance with the standards established by the State Court Administrative Office[,]" and the proceeding "must be recorded verbatim by the court." MCR 5.140(D).

[38] "The right to be physically present for the subject of a minor guardianship applies only to a minor 14 years of age or older." MCR 5.140(C).

[39] *Exclusive jurisdiction* means "that an Indian tribe has jurisdiction exclusive as to any state over any child custody proceeding . . . involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile or subsequent change in his or her residence or domicile." MCR 3.002(6).

[40] MCR 5.402(E)(2) provides that "[i]f an Indian child is the subject of a petition to establish guardianship of a minor and an Indian tribe has exclusive jurisdiction as defined in MCR 3.002(6), the matter shall be dismissed."

MCR 5.404(C)(1)(e). If each parent wants to consent to the guardianship, the court must proceed in accordance with MCR 5.404(B). MCR 5.404(C)(1)(e).

An Indian child must be placed in the least restrictive setting that most approximates a family and in which his/her special needs (if any) may be met. MCR 5.404(C)(2).

- The child must be placed within reasonable proximity to his/her home, taking into account any special needs of the child. MCR 5.404(C)(2). Absent good cause to the contrary, the placement of an Indian child must be in descending order of preference with:
- a member of the child's extended family. MCR 5.404(C)(2)(a).
- a foster home licensed, approved, or specified by the child's tribe. MCR 5.404(C)(2)(b).
- an Indian foster family licensed or approved by the DHHS. MCR 5.404(C)(2)(c).
- an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs. MCR 5.404(C)(2)(d).

The standards to be applied in meeting the preference requirements must be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. MCR 5.404(C)(2).

The court may order another placement for good cause shown in accordance with MCL 712B.23(3)-(5) and 25 USC 1915(c). MCR 5.404(C)(3). If the Indian child's tribe has established a different order of preference than the order prescribed in MCR 5.404(C)(2), placement must follow that tribe's order of preference as long as the placement is the least restrictive setting appropriate to the particular needs of the child, as set out in MCL 712B.23(16). MCR 5.404(C)(3). Where appropriate, the preference of the Indian child or parent must be considered. *Id*.

If the petition for guardianship of a minor does not indicate that the minor is an Indian child,[41] the court must inquire if the child or either parent is a member of an Indian tribe. MCR 5.404(D). If the child is a

[41]MCR 3.002(12) defines *Indian child* as "any unmarried person who is under age 18 and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe as determined by that Indian tribe."

member or if a parent is a member and the child is eligible for membership in the tribe, the court must either dismiss the petition or allow the petitioner to comply with MCR 5.404(A)(1). MCR 5.404(D).

If a petition for guardianship involves an Indian child and the petition was not accompanied by a consent executed under MCL 712B.13 and the court rules, the court may remove the Indian child from a parent or Indian custodian and place that child with a guardian only upon clear and convincing evidence that:

- active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. MCR 5.404(F)(1)(a).
- these efforts have proved unsuccessful. MCR 5.404(F)(1)(b).
- continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. MCR 5.404(F)(1)(c).

For purposes of MIFPA, *active efforts* means "actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family. Active efforts include reasonable efforts as required by title IV-E of the social security act, 42 USC 670 to [42 USC] 679c, and also include, but are not limited to, doing or addressing all of the following:

> (*i*) Engaging the Indian child, child's parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Indian tribes and Indian social services agencies.
>
> (*ii*) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.
>
> (*iii*) Conducting or causing to be conducted a diligent search for extended family members for placement.
>
> (*iv*) Requesting representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of the Indian child's family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.

(*v*) Completing a comprehensive assessment of the situation of the Indian child's family, including a determination of the likelihood of protecting the Indian child's health, safety, and welfare effectively in the Indian child's home.

(*vi*) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe's advice throughout the proceeding.

(*vii*) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.

(*viii*) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.

(*ix*) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child's tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's tribe.

(*x*) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs, and providing information about those resources to the Indian child's family, and actively assisting the Indian child's family or offering active assistance in accessing those resources.

(*xi*) Monitoring client progress and client participation in services.

(*xii*) Providing a consideration of alternative ways of addressing the needs of the Indian child's family, if services do not exist or if existing services are not available to the family." MCL 712B.3(a).[42] See also MCR 3.002(1).

[42] See also 25 CFR 23.2, which defines the term *active efforts* for purposes of ICWA.

The evidence must include the testimony of at least one qualified expert witness,[43] who has knowledge about the child-rearing practices of the Indian child's tribe, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. MCL 712B.15(2); MCR 5.404(F)(1). The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. MCL 712B.15(2); MCR 5.404(F)(1). If the petitioner cannot show active efforts have been made, the court must dismiss the petition and may refer the petitioner to the DHHS for child protective services or to the tribe for services. MCR 5.404(F)(1).

The guardianship of an Indian child established under MCR 5.404(C) must be terminated in accordance with MCR 5.404(B)(3). MCR 5.404(H)(6).

1.7 Appointment of Limited Guardian of Minor

A. Conditions for Appointment

The court may appoint a limited guardian for an unmarried minor upon the petition of the minor's parent(s) if all of the following requirements are met:

- The parents with custody of the minor consent or, in the case of only one parent having custody of the minor, the sole parent consents to the appointment of a limited guardian. MCL 700.5205(1)(a).
- The parent(s) voluntarily consent to the suspension of their parental rights. MCL 700.5205(1)(b).
- The court approves a limited guardianship placement plan agreed to by both of the following parties:
  - The parents with custody of the minor or, in the case of only one parent having custody of the minor, the sole parent who has custody of the minor. MCL 700.5205(1)(c)(*i*).

[43] "If the testimony of a qualified expert witness is required, the court shall accept either of the following in the following order of preference: (a) [a] member of the Indian child's tribe, or witness approved by the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices[;] (b) [a] person with knowledge, skill, experience, training, or education and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices." MCL 712B.17(1).

- The person(s) whom the court will appoint as the minor's limited guardian. MCL 700.5205(1)(c)(*ii*).

If the minor's parent is an unemancipated minor, appoint a guardian ad litem to represent the minor parent. MCR 5.404(A)(5).

B. Limited Guardianship Placement Plan

A minor's parent(s) who desire to have the court appoint a limited guardian for that minor and the person(s) who desire to be appointed limited guardian for that minor must develop a limited guardianship placement plan. MCL 700.5205(2). "By design, limited guardianships give parents the opportunity to correct whatever conditions led them to give up custody of their children and to regain custody upon proof of compliance with a limited guardianship placement plan." *Hunter v Hunter*, 484 Mich 247, 282 n 2 (2009) (CORRIGAN, J., concurring in part and dissenting in part).

The parties must use a limited guardianship placement plan form prescribed by SCAO (*Limited Guardianship Placement Plan*, PC 652). MCL 700.5205(2).

A limited guardianship placement plan form must include a notice that informs a parent who is a party to the plan that substantial failure to comply with the plan without good cause may result in the termination of the parent's parental rights under the Juvenile Code, MCL 712A.1 *et seq*. MCL 700.5205(2).

The proposed limited guardianship placement plan must be attached to the petition requesting the court to appoint a limited guardian. MCL 700.5205(2).

The limited guardianship placement plan must include provisions concerning:

- The reason the parent(s) are requesting the court to appoint a limited guardian for the minor. MCL 700.5205(2)(a); MCR 5.404(E)(1)(d).

- Parenting time and contact with the minor by his/her parent(s) sufficient to maintain a parent/child relationship. MCL 700.5205(2)(b); MCR 5.404(E)(1)(a).

- The duration of the limited guardianship. MCL 700.5205(2)(c); MCR 5.404(E)(1)(b).

- Financial support for the minor. MCL 700.5205(2)(d); MCR 5.404(E)(1)(c).

- Any other provisions that the parties agree to include in the plan, such as a schedule of services to be followed by the parent(s), child, and guardian, and any other provisions that the court deems necessary for the welfare of the child. MCL 700.5205(2)(e); MCR 5.404(E)(2).

The court must review a proposed limited guardianship placement plan filed with the court under MCL 700.5205 and do one of the following:

- Approve the proposed plan. MCL 700.5206(1)(a).
- Disapprove the proposed plan. MCL 700.5206(1)(b).
- On its own motion, modify the proposed plan and approve it as modified, if the parties agree to the modification. MCL 700.5206(1)(c). A modified limited guardianship placement plan must be filed with the court. *Id*.

A limited guardianship placement plan that has been approved by the court may also be modified if the parties agree and the court approves.[44] MCL 700.5206(2). A modified limited guardianship placement plan must be filed with the court. *Id*.

The court must examine the proposed modification plan and take further action under MCR 5.404(E)(3)(c) and MCR 5.404(E)(3)(d) within 14 days after the filing of the proposed modified plan. MCR 5.404(E)(3)(b).

If the court approves the proposed modified plan, the court must endorse the modified plan and notify the interested persons of its approval. MCR 5.404(E)(3)(c).

If the court does not approve the modification, the court must either set the proposed modification plan for a hearing or notify the parties of the objections of the court and that they may schedule a hearing or submit another proposed modification plan. MCR 5.404(E)(3)(d).

C. Powers and Duties of Limited Guardian

A limited guardian appointed under MCL 700.5206 has all of the powers and duties enumerated in MCL 700.5215 (setting out the powers and duties of a minor's guardian) except that a minor's

[44] The parties to a limited guardianship placement plan may file a proposed modification of the plan without filing a petition, and the proposed modification must be in the form substantially approved by SCAO. MCR 5.404(E)(3)(a).

limited guardian must not consent to adoption of the minor ward or to the release of the minor ward for adoption. MCL 700.5206(4).

The appointment of a limited guardian under MCL 700.5206(3) is a continuing appointment. MCL 700.5206(3).

The voluntary suspension of parental rights under MCL 700.5205 does not prevent the parent(s) from filing a petition to terminate the limited guardianship at any time as provided in MCL 700.5208. MCL 700.5206(3).

D. Review of Limited Guardianship

1. Timing

The court may review a guardianship for a minor as it considers necessary and must review a guardianship annually if the minor is under six years of age. MCL 700.5207(1); MCR 5.404(G)(1).

The review must be commenced within 63 days after the anniversary date of the qualification of the guardian. MCR 5.404(G)(1).

2. Investigation and Report

The court must appoint the DHHS or any other person to conduct an investigation of the guardianship of a minor, and the investigator must file a written report with the court within 28 days after the appointment. MCR 5.404(G)(2). MCR 5.404(G)(2); MCL 700.5207(2). The report must include a recommendation regarding whether the guardianship should be continued or modified and whether a hearing should be scheduled. MCR 5.404(G)(2). If the report recommends modification, the report must state the nature of the modification. *Id*.

"At any hearing concerning a guardianship of a minor, all relevant and material evidence, including written reports, may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence." MCR 5.404(H)(2).

3. Judicial Action

After informally reviewing the report, the court must enter an order continuing the guardianship or set a date for a hearing to

be held within 28 days. MCR 5.404(G)(3). See also MCL 700.5207(3). If a hearing is set, the court may appoint an attorney to represent the minor. MCR 5.404(G)(3). The court may continue the limited guardianship or order the parties to modify the limited guardianship placement plan as a condition to continuing the limited guardianship. MCL 700.5207(3)(b)(*i*).

E. Termination of Limited Guardianship

A limited guardianship may be terminated upon request by the minor's parents or the sole parent with custodial rights to the minor, or by the limited guardian's resignation. MCL 700.5208(1); MCL 700.5217; MCR 5.404(H)(4). "A petition by a limited guardian to resign shall be treated as a petition for termination of the limited guardianship. The parents or the sole parent with the right to custody may file a petition for a new limited guardianship. If the court does not approve the new limited guardianship or if no petition is filed, the court may proceed in the manner for termination of a guardianship under . . . MCL 700.5209 or MCL 700.5219." MCR 5.404(H)(4). See *Hunter v Hunter*, 484 Mich 247, 282 n 2 (2009) (CORRIGAN, J., concurring in part and dissenting in part) ("[a] parent has the right to petition to terminate the limited guardianship under MCL 700.5208 and, if the parent has 'substantially complied' with the placement plan, the court must terminate the guardianship[]").

In addition, a limited guardianship terminates if the limited guardian is awarded custody of the child under MCL 722.26b, or if the family division authorizes a petition to take jurisdiction of the minor and does not determine that continuation of the limited guardianship is necessary for the well-being of the child. See MCL 700.5209(2)(d); MCL 700.5210; MCR 5.404(H)(3)(b).

Finally, a limited guardianship terminates automatically upon the minor's death, adoption, marriage, attainment of majority, or in accordance with MCR 5.404(H)(6). MCL 700.5217; MCR 5.404(H)(1). This section focuses on court-ordered termination.

1. Petition Filed by Parent(s): Investigation and Report

"If a petition is filed to terminate a [limited] guardianship under [MCL 700.5208(1)], the court may do 1 or more of the following:

> (a) Order the [DHHS] or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the best interests of the minor or give testimony concerning the investigation.

(b) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the best interests of the minor and consider their recommendations for the disposition of the petition.

(c) Appoint a guardian ad litem or attorney to represent the minor.

(d) Take any other action considered necessary in a particular case." MCL 700.5208(2).

"At any hearing concerning a guardianship of a minor, all relevant and material evidence, including written reports, may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence." MCR 5.404(H)(2).

2. Court Action on Petition

These proceedings apply when a petition to terminate has been filed by either the parent(s) under MCL 700.5208 or when a petition to resign has been filed by the limited guardian. See MCR 5.404(H)(4).

Petition to Terminate. After notice and hearing on a petition to terminate a limited guardianship, the court must "terminate the limited guardianship if it determines that the minor's parent or parents have substantially complied with the limited guardianship placement plan." MCL 700.5209(1). To assist with the transition back into a parent's home, "[t]he court may enter orders to facilitate the minor's reintegration into the home of the parent or parents for a period of up to 6 months before the termination." *Id.*

If the court determines that there has not been substantial compliance with the limited guardianship placement plan, it may do any of the following:

- Terminate the limited guardianship if it would be in the minor's best interests,[45] MCL 700.5209(2)(a);

[45] If the court terminates the limited guardianship, it may "[e]nter orders to facilitate the minor's reintegration into the parent's home for a period of up to 6 months before the termination[,] . . . [o]rder [DHHS] to supervise the transition period when the minor is being reintegrated into his or her parent's home[,] . . . [and/or o]rder [DHHS] to provide services to facilitate the minor's reintegration into his or her parent's home." MCL 700.5209(2)(a)(*i*)-(*iii*).

- Continue the limited guardianship for up to one year after the termination hearing if it would be in the minor's best interests,[46] MCL 700.5209(2)(b);

- "If the minor resides with the guardian or limited guardian for not less than 1 year and if the court finds that the minor's parent or parents have failed to provide the minor with parental care, love, guidance, and attention appropriate to the child's age and individual needs resulting in a substantial disruption of the parent-child relationship, continue the guardianship if it is established by clear and convincing evidence that the continuation would serve the best interests of the minor[,]" MCL 700.5209(2)(c); or

- Appoint an attorney for the minor and refer the matter to DHHS, MCL 700.5209(2)(d).[47]

Petition to Resign. The petition to resign may include a request for the appointment of a successor limited guardian. MCL 700.5219(1). After notice and a hearing on the petition, "the court may terminate the [limited] guardianship and make further order that may be appropriate." MCL 700.5219(3).

At any time during the proceeding, the court may appoint a lawyer-guardian ad litem for the minor if the minor's interest appears to be inadequately represented. MCL 700.5219(4). The court must give consideration to the minor's preference if he or she is at least 14 years old. *Id*.

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[46] If the court continues the limited guardianship, it may order the parent(s) to comply with the limited guardianship or court-modified limited guardianship placement plan and/or "schedule and conduct a hearing to review the guardianship before the expiration of the period of time that the guardianship is continued and either terminate the . . . limited guardianship or proceed under [MCL 700.5209(2)(c) or MCL 700.5209(2)(d)]." MCL 700.5209(2)(b)(*i*); MCL 700.5209(2)(b)(*iii*). "When a court has continued a guardianship for a period not exceeding one year, the court must hold the final hearing not less than 28 days before the expiration of the period of continuance." MCR 5.404(H)(2).

[47] "If the court appoints an attorney or the [DHHS] to investigate whether to file a petition with the family division of circuit court to take jurisdiction of the minor, the attorney or [the DHHS] shall, within 21 days, report to the court that a petition has been filed or why a petition has not been filed." MCR 5.404(H)(3).

"If a petition is not filed with the family division, the court must take such further action as is warranted, except the guardianship may not be continued for more than one year after the hearing on the petition to terminate." MCR 5.404(H)(3)(a).

"If a petition is filed with the family division, the guardianship must terminate when the family division authorizes the petition under MCL 712A.11, unless the family division determines that continuation of such guardianship pending disposition is necessary for the well-being of the child." MCR 5.404(H)(3)(b).

F. Videoconferencing Technology

"Except as otherwise prescribed by this rule, upon request of any participant or sua sponte, the court may allow the use of videoconferencing technology under this chapter in accordance with MCR 2.407." MCR 5.140(A). "The use of videoconferencing technology under [Chapter 5, Probate Court] must be in accordance with the standards established by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court." MCR 5.140(D).

"In a proceeding concerning a conservatorship, guardianship, or protected individual, if the subject of the petition wants to be physically present, the court must allow the individual to be present. The right to be physically present for the subject of a minor guardianship applies only to a minor 14 years of age or older." MCR 5.140(C).

Court form to use:

Order Regarding Appointment of Guardian/Limited Guardian of a Minor, PC 653