

BY JOAN C. VON HANDORF

# Uniformity of Practice in Probate

One disheartening experience as a probate practitioner occurs when a probate attorney tries to file pleadings with a probate court and is advised that the wrong form was used, or that the attorney does not have all the required forms, or that the attorney has not followed the proper procedure. This results in inefficiency because the attorney often has to redraft the forms or prepare new forms and have them signed by the client. This can also convey to the client the concept that the attorney is incompetent. In an effort to prevent these problems, the Uniformity of Practice Committee of the Probate and Estate Planning Council has surveyed all of the probate courts, asking questions about special forms and procedures. This article disseminates some of the information received by the committee.

## Special Forms

Many probate courts have developed special forms. While courts are prohibited from using special forms by MCLA 600.855, many probate courts use special forms on the grounds that MCR 5.113(A)(1)(c) allows the courts to use forms that are “substantially in the form approved by the State Court Administrator.” Furthermore, the Supreme Court Administrator Office (SCAO) has a policy that the probate courts can use special forms if there is no SCAO-approved form and the court has statutory authority to support the form. The SCAO also allows probate courts to use special forms if the court does not mandate use of that form.

Probate courts often use special forms in order to help the public. These courts deal with non-attorneys who are attempting to handle probate matters without an attorney. Providing the non-attorney with a form is an easy way to help. Most of the special forms are developed for use in minor guardianships, which is a matter that most people try to handle without an attorney.

The probate courts have developed more than 200 special forms. Typically, these special forms consist of Social History for Minor Guardians, which is filed at the time of filing a petition for a guardianship for a minor; Verification of Funds on Deposit or Verification of a Restricted Account, which is filed with the inventory and accounts of a conservatorship; Due Diligence Affidavit, which is filed when the whereabouts of an interested person are unknown; and Verification of Filing Ancillary Administration, which is filed when an ancillary administration is opened. Last year, the SCAO approved a form entitled Report of Physician or Mental Health Professional (PC 630), which is filed with the petition for a conservatorship.

The courts that have not developed special forms are Alcona, Alger, Antrim, Arenac, Baraga, Benzie, Branch, Gogebic, Houghton, Iron, Kalkaska, Keweenaw, Lake, Macomb, Manistee, Mecosta, Montmorency, Ontonagon, Presque Isle, Schoolcraft, Shiawassee, Tuscola, and Wexford. An attorney practicing in any other court should check the court’s website or contact the court to determine what special forms that court uses. If a probate court has a website, the address of the website is listed in the *Michigan Bar Journal* directory issue.

## SPECIAL FORMS

## Decedents' Estates

There are two areas that often differ from county to county with regard to decedents' estates. One area where the courts differ occurs when the estate is opened. The other area where the courts differ occurs when the inventory is presented for calculation of the inventory fee.

### Death Certificates when Estate is Opened

At the time that an estate is opened, a Petition (PC 559) or Application (PC 558) must be filed with Testimony of Interested Persons (PC 565) pursuant to MCR 5.302. However, many courts require attorneys also to file a certified death certificate or a copy of the death certificate at the time of opening the estate. Other probate court registers want to see a copy of the death certificate at the

Branch, Cass, Charlevoix, Chippewa, Crawford, Dickinson, Huron, Kalamazoo, Macomb, Manistee, Montcalm, Saginaw, Shiawassee, Van Buren, and Wayne. Typically these courts request a tax bill, appraisal, or purchase agreement to show the value of real property; blue book value to show the value of vehicles; and appraisals to show the value of other items such as antiques. If you are filing an inventory or presenting an inventory for calculation of the inventory fee in one of these courts, check the court's website or contact the court to determine what additional documentation is required.

### Inventory Fee

A larger problem for many attorneys is the calculation of the inventory fee, which must be paid within 1 year of opening the estate or before the estate is closed, whichever occurs first. MCR 5.307.

The calculation of the inventory fee is governed by MCLA 600.871, which provides in part that the inventory fee is calculated using "the value of all assets, as of the date of death of the decedent." Some courts interpret this to mean that the inventory fee is calculated on the gross value of the estate without a deduction for liens. Other courts have determined that it is unfair to tax estates for values exceeding what the estate would net on the sale of an asset, and thus

allow a deduction for liens in calculating the inventory fee. The majority of courts allow for deductions for liens on the property listed on the inventory.

The courts that do not allow for deductions for liens are Alger, Arenac, Baraga, Calhoun, Cass, Clare, Clinton, Gladwin, Hillsdale, Houghton, Huron, Ionia, Jackson, Manistee, Menominee, Montcalm, Muskegon, Oakland, Ogemaw, Ontonagon, Presque Isle, St. Joseph, Sanilac, Schoolcraft, and Wexford.

Furthermore, some courts allow additional deductions in calculating the inventory fee. Mecosta County allows a deduction for funeral expenses and Wayne County allows a deduction for unpaid property taxes accrued before death. If calculation of the inventory fee is a concern, check the court's website or contact the court.

## Guardianships

### Guardianship of a Minor

Filing petitions for a guardianship for a minor is the area where the courts differ most widely. This is also the area where the courts have developed most of the special forms. In general, a guardianship for a minor is commenced by filing a Petition for Appointment of a Guardian of a Minor (PC 651) or a Petition for Appointment of a Limited Guardian of a Minor (PC 650). When filing a petition for a limited guardianship, one should also file a Limited Guardianship Placement Plan (PC 652). If a court requires special forms or documentation to be filed with a minor guardianship petition, the court usually requires a form called a Minor Social History

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time that the estate is opened. Although filing a death certificate at the time of opening an estate is not required by statute or court rule, an attorney should have a certified death certificate available in the event that the court requires it. Some courts also request that the attorney prepare additional forms, such as the Register's Statement (PC 568) or Order of Formal Proceedings (PC 569), and the Letters of Authority for Personal Representative (PC 572).

### Inventory Valuation

Pursuant to MCLA 700.3706(1), the Inventory (PC 577), which lists all the assets in the probate estate, must be presented for calculation of the inventory fee within 91 days after appointment of the personal representative. The different procedures in the various courts for presenting the inventory for calculation of the inventory fee is an issue that many probate attorneys complain about.

One problem is that some courts require documentation to show how the property listed on the Inventory is valued. MCLA 700.3706(1) states that the personal representative "shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of an encumbrance that may exist with reference to each listed item." Thus there is no requirement that additional documentation be provided showing the values of the property.

The courts that require additional documentation of the value of assets when presenting the inventory are Antrim, Arenac, Baraga,

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and/or a copy of the birth certificate of the minor. Requesting additional information when filing a minor guardianship is allowed because the courts are permitted to appoint someone to investigate the proposed guardianship pursuant to MCLA 700.5204.

The courts that request additional documentation or forms when filing a petition for a guardianship for a minor are Alcona, Barry, Bay, Benzie, Berrien, Charlevoix, Eaton, Emmet, Genesee, Grand Traverse, Ingham, Ionia, Kent, Lapeer, Leelanau, Lenawee, Livingston, Midland, Montcalm, Muskegon, Oakland, Oceana, Saginaw, St. Joseph, and Van Buren. In addition, many courts expect the attorney to prepare additional pleadings, such as an Order Appointing Guardian ad Litem (PC 642), Order Regarding Appointment of Guardian/Limited Guardian of a Minor (PC 653), and Letters of Guardianship (PC 633).

### Guardianship of an Adult

The additional documentation required when commencing a guardianship for an adult is more uniform. To commence a guardianship for an adult, a Petition for Appointment of a Guardian of an Incapacitated Individual (PC 625) should be filed. Courts may order that a physician or mental health professional examine the allegedly incapacitated person with a written report submitted five days before the hearings pursuant to MCLA 700.5304 and MCR 5.405(A). Most courts do require such a report. A new SCAO form entitled Report of Physician or Mental Health Professional (PC 630) can be used to fulfill this requirement. The best practice is to file new form PC 630 when filing a petition for guardianship. Note that the Notice to Alleged Incapacitated Individual on Petition to Appoint Guardian (PC 626) must be attached to the petition that is served on the allegedly legally incapacitated person pursuant to MCLA 700.5311(3). Many courts request that the attorney provide pleadings such as the Order Appointing Guardian ad Litem (PC 642), Letters of Guardianship (PC 633), and Order Appointing Guardian of Incapacitated Individual (PC 631) at the time the petition is filed.

## Conservatorships

### Petition for Conservatorship

Petitions for appointment of a conservator are governed by MCLA 700.5401 and 700.5404, and MCR 5.105(D). These provisions set forth no requirements for additional documentation to be filed with the Petition for Appointment of Conservatorship and/or Protective Order (PC 639). If a court requires additional documentation, it usually consists of the Report of Physician or Mental Health Professional (PC 630) or some variation of that form. The safe practice is to have this form ready for filing. Often

## FAST FACTS

The SCAO has a policy that the probate courts can use special forms if there is no SCAO-approved form and the court has statutory authority to support the form.

The different procedures in the various courts for presenting the inventory for calculation of the inventory fee is an issue that many probate attorneys complain about.

Filing petitions for a guardianship for a minor is the area where the courts differ most widely.

courts request that a Notice of Hearing (PC 562), Order Appointing Conservator (PC 640), and Letters of Conservatorship (PC 645) be filed with the petition.

The courts that require no additional documentation at the time of filing the petition for conservatorship are Allegan, Baraga, Benzie, Berrien, Branch, Calhoun, Cass, Cheboygan, Clinton, Gladwin, Gogebic, Ingham, Ionia, Iosco, Iron, Isabella, Kalamazoo, Kent,

Keweenaw, Lake, Lapeer, Leelanau, Lenawee, Livingston, Luce, Mackinac, Marquette, Mecosta, Missaukee, Montcalm, Newaygo, Oceana, Ontonagon, Otsego, Roscommon, St. Clair, St. Joseph, Schoolcraft, Tuscola, Wayne, and Wexford.

### Conservatorship Inventories

Another area where the procedures and requirements differ from probate court to probate court involves the inventory filed for conservatorships (PC 577). Inventories for conservatorships are governed by MCLA 700.5417 and MCR 5.409, which require no additional documentation when filing the inventory. The majority of probate courts do not require any additional documentation at the time of filing the inventory if the inventory is filed by an attorney. If a court requires additional documentation, it usually requires a copy of the tax bill to show the value of real property.

The courts that require additional documentation to show the value of the assets listed on the inventory are Arenac, Branch, Cass, Clare, Crawford, Dickinson, Huron, Keweenaw, Macomb, Monroe, Montcalm, Montmorency, Ogemaw, Saginaw, Sanilac, Shiawassee, and Van Buren. However, the SCAO has recently recommended that conservators attach documentation showing the value of real property and bank accounts to the inventory. Therefore, the better practice is to attach this documentation for conservatorship inventories, regardless of what county the conservatorship has been filed in.

There are also some variations from court to court as to whether the value of property shown on the inventory can be reduced for liens. As stated above, inventories for conservatorships are governed by MCLA 700.5417, which states in part that the conservator must file a "complete inventory of the estate subject to the conservatorship." This provision does not specifically state whether the value of property listed on the inventory can be reduced by liens. Predictably, the courts are almost evenly divided on this issue.

The probate courts that allow for reductions in value for liens are Bay, Benzie, Berrien, Branch, Charlevoix, Chippewa, Delta, Dickinson, Gladwin, Gogebic, Gratiot, Ingham, Iron, Isabella, Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Lapeer, Leelanau, Lenawee, Livingston, Luce, Mackinac, Macomb, Mason, Mecosta, Missaukee, Monroe, Montmorency, Oceana, Osceola, Oscoda, Otsego, Ottawa, Saginaw, Sanilac, Van Buren, Wayne, and Washtenaw.

## Conservatorship Accountings

Finally, there are variations regarding procedures for filing accounts for adult conservatorships (PC 583 or PC 584). Accounts for adult conservatorships are governed by MCLA 700.5418 and MCR 5.409(C). These provisions do not require the courts to audit accounts, but they do allow the courts to examine and review proofs of income and disbursements. There is almost an even split among the courts regarding this requirement, where some courts require no additional documentation when filing an account and other courts require some documentation. Furthermore, the documentation required differs from court to court. In general, if a court requires additional documentation, it requires canceled checks or receipts, and bank statements.

The probate courts that do not require additional documentation at the time of filing are Allegan, Alpena, Arenac, Baraga, Barry, Benzie, Chippewa, Clinton, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Gratiot, Ingham, Iosco, Isabella, Jackson, Kent, Lake, Leelanau, Livingston, Luce, Mackinac, Manistee, Marquette, Mecosta, Menominee, Midland, Missaukee, Muskegon, Newaygo, Ogemaw, Ontonagon, Otsego, Roscommon, Saginaw, St. Joseph, Schoolcraft, Tuscola, Van Buren, and Wexford. However, the SCAO has recently recommended that conservators attach documentation showing the value of real property and bank accounts to accounts for conservatorships. Therefore, the better practice is to attach this

documentation to accounts for conservatorships regardless of the county in which the conservatorship has been filed.

## Conclusion

In conclusion, the information provided by the survey indicates that there is little uniformity of practice in probate courts with regard to forms and procedures. Fortunately, the probate courts have voluntarily provided a wealth of information about their forms and procedures by completing the survey sent to them by the Uniformity of Practice Committee of the State Bar Probate Council. The cooperation of the probate courts in completing the survey indicates a willingness to try to remedy the lack of uniformity of practice. Hopefully the information provided in this article will not only aid the practitioner, but will also provide the information necessary to continue the process of realizing uniformity of practice in all probate courts. ♦

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