

# This and That

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**M**any of you attended the recent annual Probate and Estate Seminars held in Grand Traverse and Troy. Mike McClory from Wayne County, Sue Darling from Kalamazoo County and I worked together to prepare an outline of practical information. Below please find some highlights from those materials:

## **Probate Court Fees:**

- 2003 PA 138 increased filing fees for most filings in Probate Court. However, there continue to be no fees for Mental Health proceedings; MCR 2.002 sets forth the ability to waive fees due to indigency.

## **Pleadings/Fax Filing:**

- Pleadings filed in Probate Court must be on good quality paper not exceeding 8-1/2 inches wide by 11 inches long with print no smaller than 12-point type (MCR 1.109). This rule will not impact Probate forms prepared by word processing programs and/or filled out by hand.
- MCR 2.406 permits the filing of pleadings, motions, affidavits, opinions, orders or other documents via fax. Previously, Oakland County had a Local Court Rule 2.402, which was rescinded January 1, 2004. Oakland County now follows MCR 2.406.

## **On-Line Resources:**

- Oakland County Probate Court has developed and maintained a Web site that can be found at [www.co.oakland.mi.us/probate](http://www.co.oakland.mi.us/probate). This Web site will link to court forms and also provides you with links to local forms that can assist you in your practice and contains frequently asked questions, procedures and court office operation information. Court forms are also available on the Web at [www.courts.michigan.gov/scao/courtforms](http://www.courts.michigan.gov/scao/courtforms).
- Judge Harter from Calhoun County maintains a Web site that contains more than 500 EPIC questions and answers, short articles on Probate procedures and Probate Court case summaries. The Web site can be found at <http://courts.co.calhoun.mi.us>.

## **Interested Persons - Defined:**

- MCR 5.125 defines Interested Persons and sets forth who needs to be served for specific proceedings. One

of the most commonly made mistakes is failing to serve the correct interested persons, which slows down the processing and scheduling of hearings. Also remember that you need to file a *Proof of Service* on all matters and that files are not brought in to court on Wednesday morning unless all interested persons have been served and a proper *Proof of Service* has been filed.

## **Parental Appointment of a Guardian for Minor:**

- MCL 700.5202 permits the parent of an unmarried minor to appoint a guardian for a minor by will or other "writing" signed by the parent and witness.
- Subject to the right of a minor to object, if both parents are deceased, have been adjudicated to be legally incapacitated or the surviving parent has been adjudicated to be legally incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the court. If both parents are deceased, an effective appointment by the parent who died earlier has priority.
- Upon acceptance of appointment, the guardian must give written notice of acceptance to the minor and to the persons having the minor's care or the minor's nearest adult relative.

## **Appointment of Guardian for Incapacitated Individual by Will or Other Writing (700.5301):**

- A parent serving as a guardian for an unmarried legally incapacitated individual (LII) may also appoint by will or other writing.
- This section provides for other circumstances where an appointment may be made by will or in writing. The appointment becomes effective when, after giving seven days prior written notice of intent to do so, the guardian files acceptance of appointment at the Probate Court. The notice must state that the appointment may be terminated by filing a written objection.

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## **Death of Ward:**

- MCR 5.409(F) requires that the guardian or conservator give written notification to the court within 14 days of the ward's death. If accounts are required to be filed, a final account must be filed within 56 days of the date of death.

## **New Notary Public Act:**

- PA 238 of 2003 provides for a significant revision of Michigan's notary statute.
- Our outline provides a specified comparison of the provisions under the prior act and can be obtained by calling my office.
- In general, a notary may reside in, move to or perform notary acts anywhere in this state. The initial appointment for the notary is now 6-7 years, compared to 4-5 years under the previous law.
- The act no longer requires that an applicant be endorsed by a legislator or a judge, as was required by the previous law.

## **Settlement and Judgments for Minors and Legally Incapacitated Individuals:**

- MCR 2.420 sets forth provisions that apply to settlements for minors. It indicates that if a settlement or a judgment requires payment of more than \$5,000 to a minor immediately or payable in installments in any single year

during minority, a conservator must be appointed in the Probate Court before entry of the judgment or dismissal. Likewise, if the settlement or judgment does not require payment of \$5,000 in a single year, the money may be paid without a conservator appointment.

- If a guardian or conservator for a minor has been appointed by the Probate Court, the settlement may be approved by the court in which the action is pending upon a finding that the payment arrangement is in the best interest of the minor, but no judgment or dismissal may be entered until the court receives written verification from the Probate Court that it has passed on the sufficiency of the bond. (If there is a bond, the bond must have been filed with the Probate Court.) (Practice Tip: There is no specified Probate Court form for this.)
- If a settlement or judgment creates a trust for the minor, the trust may not be funded without the Probate Court's approval of the trust with notice to all interested persons.

## **Do Not Resuscitate Procedure Act:**

- MCL 333.1059 permits a person interested in the welfare of the declarant who has reason to believe that an order has been executed contrary to the wishes of the declarant, to petition a Probate Court to have the order and the conditions of its execution reviewed.

More highlights next month. Stay tuned!



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***to make the courthouse  
filing deadline?***

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