

# This and That, Part II

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Below are more highlights from the recent ICLE Probate and Estate Planning Seminar:

**A. Acknowledgment of Paternity**

The Probate courts no longer file acknowledgements of paternity (or Affidavit of Parentage). The courts maintain records prior to June 1, 1997, and they are found in the county of the mother’s residence. Acknowledgments of paternity are now filed in Lansing at the Department of Community Health.

**B. Proof of Death**

The Probate Court may not always need a Death Certificate as a proof of death. If the information is reliable or a guardian puts information in writing on the last Annual Report, that should be sufficient notice to close out the file.

**C. Medical Records**

Opening a small estate will not allow you to obtain medical records. A small estate assigns an asset. It does not give any individual authority to act as a Personal Representative. Medical records are not considered an “asset” and most medical establishments would want an individual Letters of Authority to request and obtain medical records.

**D. Declaration of Inquiry (PC 617)**

If an individual wants to serve by publication, this form must be completed. The form requires the person, under penalty of perjury, to describe the efforts that have been made

to locate the person to establish the necessity of publication. This form became effective in September 2005.

**Practice Tips**

**A. Signing Forms on Behalf of Clients**

1. **MCR 5.114** sets forth the papers an attorney can sign on their client’s behalf.
2. The court rule specifically prohibits the attorney from signing on behalf of the client for Inventories, Accounts, Sworn Closing Statements, Acceptances of Appointment, and Receipts.
3. A lawyer also cannot sign a bond on behalf of a fiduciary.

**B. Watch Your COLA**

1. Under EPIC, exemptions, allowances, small estate, small estate affidavit and intestate succession amounts are adjusted yearly for inflation, rounded to the nearest \$1,000. **MCL 700.1210.**
2. Make sure you utilize the correct amount based on the decedent’s date of death.

Pursuant to the cost-of-living adjustment provision in EPIC (**MCL 700.1210**), the table below shows the amounts to be used for decedents who die in the years indicated:

	<u>4/1-12/31</u> <u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Intestate (Surviving Spouse’s share)	\$150,000	\$161,000	\$165,000	\$168,000	\$172,000	\$177,000	\$183,000
Intestate (Surviving Spouse’s share – no children w/ decedent)	100,000	107,000	110,000	112,000	115,000	118,000	122,000
Small Estate	15,000	16,000	17,000	17,000	17,000	18,000	18,000
Small Estate Affidavit Procedure	15,000	16,000	17,000	17,000	17,000	18,000	18,000
Homestead Allowance	15,000	16,000	17,000	17,000	17,000	18,000	18,000
Exempt Property Allowance	10,000	11,000	11,000	11,000	11,000	12,000	12,000
Family Allowance*	18,000	19,000	20,000	20,000	21,000	21,000	22,000

\* Amount that a personal representative can determine automatically without prior approval.

## C. Prior Approval Always Required for Sale or Mortgage of Real Estate in a Conservatorship

1. **Remember-** A conservator is prohibited from selling\otherwise disposing of a protected individual's real property\ interest in real property without court approval. Approval can only be obtained after a hearing (with notice to interested persons as specified in court rules) at which the court considers evidence of the property's value or interest in property and otherwise determines sale\ disposal is in the best interest of the protected individual. **MCL 700.5423(3).**

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

2. **Practice Pointer:** A conservator or personal representative does not need approval from the court to list property for sale. They would not use PC 646 (Petition for Sale of Real Estate) to put the house on the market or list it. The form is very specific and is only used when you know the terms of the proposed sale.

## D. Interested Persons - MCR 5.125

Remember to review this court rule when filing your petitions. Example: Do you know who the interested persons are in a minor guardianship if both parents are deceased? Answer: Any grandparents and the adult presumptive heirs. Another common question is whether a devisee who has been "paid off" remains an interested person in the closing of the estate. The answer is no. If the devisee has been paid off (and they are not heirs to the estate) they would no

longer be considered an interested person with respect to the filing of documents in the closing of the estate.

## E. Fee Schedule Changes

Make sure to check with your local Probate Court regarding filing fees, certification fees, etc. While the law allows a Probate Court to charge a \$5.00 inventory fee on a zero-balance account, many courts do not charge any inventory fee. Further, the Fee Schedule states that there is a \$10.00 certification fee, plus a \$1.00-per-side copy fee. Accordingly, a certified two-sided document may cost \$12.00. There is, however, disparity among the courts with respect to what they charge for these types of documents. Some charge \$10.00 and others \$11.00. Oakland County charges \$12.00.

Finally, as of February 1, 2006, inventory fees are now "rounded" to the nearest dollar. If the inventory fee ends in 50 cents, it is rounded up; 49 cents is rounded down.

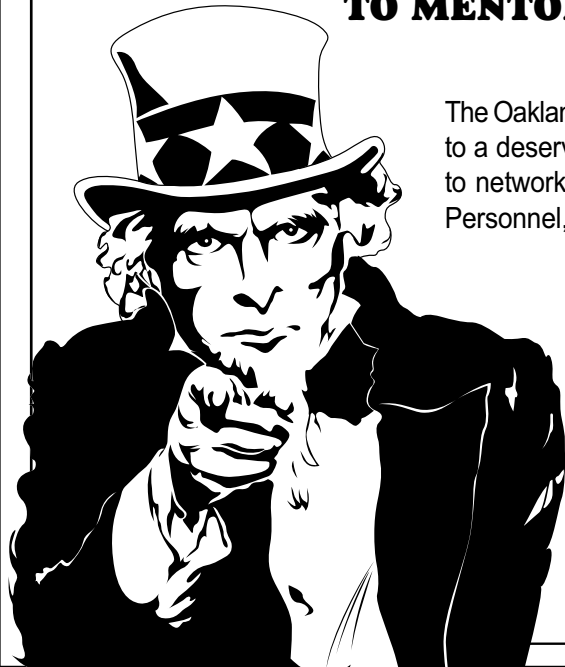
## F. Friend of the Court Notification by Personal Representative

Effective October 1, 2005, the Personal Representative has a duty to notify the Friend of the Court of all the interested parties in an estate. The Friend of the Court then does a cross-reference to see if any of these interested parties are owed money. While there is no State Court Administrative Office-approved form, Oakland County has created a form that can be found on its Web site or by contacting either Oakland County Friend of the Court or Probate Court.

Thank you to Jill Koney Daly, Chief of Estates and Mental Health, for her detailed minutes of staff meetings! Stay tuned!

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