

BOB SZALKA: GAL 2017 TRAINING OUTLINE

GAL PROCEDURES AND POLICIES

I. ABC'S OF GAL APPOINTMENTS:

- A: ALWAYS SUBMIT YOUR REPORT ON TIME!!! (AT LEAST 7 DAYS BEFORE HEARING);
- B: BE DILIGENT IN OBTAINING ALL PERTINENT FACTUAL INFORMATION;
- C: CCOURTEOUS, NOT CURT WITH PROPOSED WARD, PETITIONER, AND OTHERS IN CONDUCTING YOUR INVESTIGATION;
- D: DETAILED AND DESCRIPTIVE IN COMPLETING REPORT;
- E: EYES AND EARS OF COURT, EXTREMELY RELEVANT INFORMATION IS YOUR GOAL (I.E. FINANCIAL INFO. SHEET);
- F: FOREGO THE RECITATION OF YOUR STATUTORY REQUIREMENTS IN YOUR REPORT; FOLLOW THE FEE SCHEDULE IN YOUR BILLINGS;
- G: GREAT REPORTS GO A LONG WAY IN ASSISTING THE COURT IN MAKING DECISIONS;
- H: HEARING ATTENDANCE IS NOT REQUIRED;
- I: INVESTIGATE, INTERPRET, INFORM: 3 I'S OF GOOD REPORTS;
- J: JUST DO IT, DON'T COMPLAIN, REMEMBER YOU ARE HERE TO DO A SERVICE FOR COURT AND PROPOSED WARD, COMPLETE THAT JOB AND MOVE ON;
- K: KEEP YOUR PERSONAL OPINIONS TO YOURSELF; AS SGT. JOE FRIDAY (OF DRAGNET) USE TO SAY "JUST THE FACTS MAM";

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- L: LACK OF PREPARATION OR POORLY PREPARED REPORTS WILL NOT BE AN ACCEPTABLE PRACTICE IN THIS COURT;
- M: MASTER THE ART OF THE INTERVIEW: BE BRIEF YET CONCISE, DETAILED YET DIRECT, USE CHECKLISTS TO COVER THE NECESSARY AREAS;
- N: NEVER CALL THE COURT TO ASK QUESTIONS LIKE THESE:
WHEN IS MY REPORT DUE? WHAT SHOULD I PUT IN MY REPORT? HOW DO I BILL? WHAT IS A FINANCIAL REVIEW?
- O: ONLY BILL ACCORDING TO COURT GAL FEE SCHEDULE;
- P: PRESENT REPORT TO COURT AND PETITIONER IN APPROPRIATE TIME FRAME (7 DAYS BEFORE HEARING); POLICY LIMITS MUST BE VERIFIED ON SETTLEMENT MATTERS;
- Q: QUICKLY BECOME ACQUAINTED WITH FILE, AND IF NECESSARY, VISIT COURT TO REVIEW FILINGS IN COURT FILE;
- R: REVIEWS ON GUARDIAN REVIEWS ARE DUE 28 DAYS AFTER RECEIPT OF DOCUMENTS: KEEP TO THAT DEADLINE;
- S: STATEMENTS FOR FEES MUST ACCOMPANY REPORT (PROBATE COURT INVOICE);
- T: THREATS TO REQUEST REMOVAL OF FIDUCIARY FOR NONPAYMENT OF GAL FEE ARE NOT PROPER/ PETITION AND ORDER FOR PAYMENT SET FOR HEARING ALONG WITH FOLLOW UP SHOW CAUSE HEARING PROCEDURE TO FOLLOW;
- U: UNDERSTAND YOUR ROLE AND FUNCTION AS GAL, KNOW EPIC GAL PROVISIONS;
- V: VERIFY YOUR FINANCIAL INFORMATION IF POSSIBLE ALONG WITH INJURY INFORMATION IF SETTLEMENT MATTER IS BASIS FOR YOUR APPOINTMENT;
- W: WHEN PROCEDURAL ISSUES ARISE ON APPOINTMENT FIRST CONTACT MY OFFICE FOR DIRECTION;
- X: XTRA EFFORT IN PERFORMING YOUR ROLE IN THIE APPOINTED MATTER;
- Y: YOUR WORK AS A GAL PRESENTS A PICTURE OF YOU TO THE WARD, PETITIONER, INTERESTED PERSONS AND MOST IMPORTANTLY THE COURT; KEEP THAT IN MIND IN PERFORMING YOUR GAL ROLE;
- Z: ZERO ROOM FOR ERROR ON THESE FACTUAL INVESTIGATIONS WHICH IMPACT THE LIVES OF ADULTS AND MINORS IN THE PROBATE COURT SYSTEM;

II. REQUIREMENTS TO GET APPOINTMENTS:

- a. REVIEW EMAIL/ONLINE TRAINING LETTER AND SUBMIT SIGNED ATTORNEY REGISTRATION/PROFILE SHEET;
- b. PROVIDE EVIDENCE OF MALPRACTICE COVERAGE;
- c. ONE LIST, AND REQUIRED TO BE AVAILABLE FOR ALL KINDS OF APPOINTMENTS;
- d. WAITING LIST KEPT FOR THOSE WHO ARE NOT ON CURRENT LIST OF GAL/ATTORNEYS AND HAVE NOT ATTENDED TRAINING;

III. REQUIREMENTS ONCE ON LIST:

- a. BE AVAILABLE WHEN CALLED/EMAILED; APPOINTMENTS DONE ON ROTATIONAL BASIS;
WHEN CALLED/EMAILED, IF AVAILABLE RECEIVE/ACCEPT APPOINTMENT, IF NOT COURT MOVES ON TO NEXT ONE ON LIST;
- b. **FOLLOW PROPER PROCEDURE WHEN DOING GAL INVESTIGATION;**
- c. **SUBMIT REPORTS ON TIME;**
- d. SUBMIT FINANCIAL REVIEW CHECKLIST WITH REPORT (NOTE THERE IS A SPECIAL FINANCIAL REVIEW CHECKLIST FOR DD MATTERS ALSO);
- e. SUBMIT PROBATE COURT INVOICE WITH REPORT;
- f. INVOICE MUST BE ADDRESSED TO CORRECT PARTY (COURT: IF NO ASSETS SITUATION; ESTATE/PETITIONER/FIDUCIARY IF ASSETS);** SEND YOUR PREPARED STATEMENT OF SERVICES RENDERED TO ESTATE/PETITIONER/FIDUCIARY IF THEY ARE TO PAY FOR YOUR SERVICES: DO NOT SEND PROBATE COURT INVOICE TO THEM FOR PAYMENT. (SUCH PRACTICE IN PAST HAS RESULTED IN PROBATE COURT RECEIVING PAYMENT AND BEING REQUIRED TO SEND IT BACK);
- g. COPY OF INVOICE MUST ALWAYS BE PRESENTED TO COURT IRREGARDLESS AS TO WHOM IS BEING BILLED AND CASE NO. AND DATE OF SERVICE MUST BE INCLUDED ON INVOICE;
- h. CALL COURT AND SPEAK TO ME IF ISSUES ON PROCEDURE CONCERNING INVESTIGATION—DO NOT CALL COURT STAFF AND ASK WHAT SHOULD BE PUT IN REPORT, ETC.;

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- i. FOLLOW MACOMB COUNTY PROBATE COURT FEE SCHEDULE FOR GAL APPOINTMENTS WHICH BECAME EFFECTIVE 12/1/14.(ATTACHED)
- j. MUST SUBMIT COPY OF REPORT TO PETITIONER WHEN SUBMITTING ORIGINAL TO COURT;
- k. USE THE ACCEPTANCE OF TRUST AND REPORT OF GAL COVER SHEET WHEN DOING GAL REPORT AND ANSWER ALL STATEMENTS ON FRONT;
- l. USE PROPER GUARDIANSHIP REVIEW REPORT FORM WHICH MACOMB ADOPTED IN 6/2013;
- m. AS GENERAL RULE: REPORTS OF GALS MUST BE BROUGHT IN OR MAILED IN, NOT FAXED, NOT EMAILED;
- n. REPORTS DUE IN COURT **SEVEN DAYS** BEFORE HEARING. **COURT WILL CONTINUE EVALUATING GALS ON COMPLIANCE WITH THIS STANDARD;**
- o. INVOICES MUST BE SUBMITTED WITH GAL REPORTS, OR WITHIN 60 DAYS OF COMPLETION OF APPOINTMENT AS COURT APPOINTED ATTORNEY **AND ABSOLUTELY NO LATER THAN 60 DAYS AFTER END OF CALENDAR YEAR, NO EXCEPTIONS; BILLINGS SUBMITTED BEYOND THAT DEADLINE WILL NOT BE HONORED;**
- p. IF ASSIGNED GAL IN BOTH CONSERVATOR AND GUARDIAN FILE YOU MUST PRESENT AN ORIGINAL REPORT FOR EACH FILE.

PROBATE COURT PROCEDURES REVIEW AND
MENTAL HEALTH LAW UPDATE

I. POLICY AND PROCEDURES:

A. FILING DOCUMENTS FOR MATTERS ALREADY SET FOR HEARING:

1. ALL FILINGS OF PROBATE DOCUMENTS AS A GENERAL RULE ARE TO BE FILED AT 21850 DUNHAM RD., MT. CLEMENS, MI.
2. DOCUMENTS PRESENTED ON DAY OF HEARING FOR THE MATTER TO BE HEARD CAN BE PRESENTED AND FILED WITH COURT ANALYST WHO CHECKS IN PARTIES FOR HEARING (I.E. PROOFS OF SERVICE, ORDERS, APPEARANCES, OBJECTIONS, AND RESPONSES); THIS PROCEDURE IS ALLOWED BUT IS NOT SUGGESTED. **COURT PREFERS TO HAVE ALL DOCUMENTS ASSOCIATED WITH HEARING FILED AT LEAST THE DAY BEFORE THE HEARING.**
3. ACCOUNTS WHICH ARE BEING FILED WILL BE SET FOR HEARING BY ANALYSTS. THESE ACCOUNTS NEED TO BE **AUDITED PRIOR** TO THE DAY OF HEARING. AUDITING PROCESS REQUIRES SUPPORTING DOCUMENTATION OF INCOME AND EXPENSES. ACCOUNT HEARING DAYS AS A GENERAL RULE ARE TUESDAYS A.M., AND THURSDAYS A.M. AND P.M.
4. REQUEST FOR ADJOURNMENTS OF HEARINGS SET BEFORE THE RESPECTIVE JUDGES REQUIRE APPROVAL OF RESPECTIVE JUDGE'S SECRETARY (GAIL FOR JUDGE GEORGE AND MARSHA FOR JUDGE HARRISON) AND AN ORDER FOR ADJOURNMENT; (EXCEPTION ACCOUNT HEARINGS WHICH REQUIRE ORDER FOR ADJOURNMENT SENT TO COURT ANALYST);

B. FILING NEW MATTERS (GUARDIANSHIPS, CONSERVATORSHIPS, DECEDENT'S ESTATES, CIVIL MATTERS, TRUST FILES, PROTECTIVE ORDERS):

1. ALL SUCH NEW FILINGS ARE DONE AT THE COUNTER AT THE 21850 DUNHAM ROAD ADDRESS;
2. DEPUTY REGISTERS TAKING IN SUCH FILINGS WILL SET HEARING DATE AND RETURN ONE SET OF FILED DOCUMENTS TO PARTY FILING NEW MATTER;
3. PETITIONER IS RESPONSIBLE FOR SERVING INTERESTED PERSONS AS DETERMINED BY COURT RULE (M.C.R. 5.125) AND PROVIDING PROPER PROOF OF SERVICE TO COURT;

4. Attorney Conferences: set by Court with Bob Szalka for failure to file necessary inventory, account, receipt, proof of deposit, restricted account agreement, failure to allow guardian review; This procedure is used in lieu of setting Show Causes. After Conference Court may extend time base on facts of case, may suspend, may administratively close. Attorney conferences are not adjourned. Conferences which are held result in Memorandum of Conference to Correct Deficiency prepared by Court;
5. EMAILING AND FAXING OF PLEADINGS IS NOT YET ALLOWED IN PROBATE COURT AS THE GENERAL RULE;
6. PETITIONER AND/OR THEIR ATTORNEY ARE RESPONSIBLE FOR PRESENTING PROPOSED ORDER ON DATE OF HEARING. COMPUTERS ARE AVAILABLE FOR PREPARATION OF YELLOW ORDERS IF NECESSARY ON DATE OF HEARING;
7. **PC 1033 Notice of Pre-Trial Conference has following statement now:**
"Please bring with you a statement of issues involved, stating concisely and without repetition the issues to be decided in the trial or evidentiary hearing followed by your answers to each issue. The Court will attach this statement to your pre-trial summary at the conclusion of the conference"; Note: on Judge George pretrials summaries you will get a contested hearing/Bench Trial/Jury Trial Procedural Order with summary.
8. Where Estate Administratively closed applicant/petitioner must file PC 607 Application/Petition to Reopen Estate and pay \$175.00 filing fee and or \$100.00 penalty fee if appropriate; In guardianship or conservatorship which is administratively closed a new petition to appoint guardian or conservator must be filed with \$175.00 filing fee and \$100.00 penalty fee if appropriate;
9. Written Notice of Death of ward **must** be provided to court within 14 days of death of ward. (See MCR 5.409(F)) and if accounts required account **must** be filed within 56 days of date of death;
10. Briefs being filed can be filed in court file and electronically at probatebriefs@macombgov.org

II. MENTAL HEALTH LAW UPDATE:

A. 2017 CHANGES TO LAW

1. EFFECTIVE 2/14/17 (320 PUBLIC ACT 216);
2. HIGHLIGHTS:

- a. DEFINITION OF EMERGENCY SITUATION:

(MCL 330.1100a (29)(c):

Individual has mental illness that has impaired his or her judgment so that the individual is unable to understand his or her need for treatment, and that impaired judgment, on the basis of competent clinical opinion, presents a substantial risk of significant physical or mental harm to the individual in the near future or presents a substantial risk of significant physical harm to others in the near future.

- b. DEFINITION OF PERSON REQUIRING TREATMENT:

(MCL 330.1401)

- i. MCL 330.1401 (C) adopts above definition found for emergency situation for individual who has mental illness;

- ii. MCL 330.1401 (d) An individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to voluntarily participate in or adhere to treatment that has been determined necessary to prevent a relapse or harmful deterioration of his or her condition, and whose noncompliance with treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least 2 times within the last 48 months or whose noncompliance with treatment has been a factor in the individuals committing 1 or more acts, attempts, or threats of serious violent behavior within the last 48 months. **Under this section the individual is only eligible for assisted outpatient treatment.**

- c. SCAO WAS REQUIRED TO PREPARE FORMS FOR USE WITH NEW LAW;

- d. ASSISTED OUTPATIENT TREATMENT A POSSIBLE COURT ALTERNATIVE AND CAN BE COMBINED WITH HOSPITALIZATION;

- e. HEARING TIME FRAMES MCL 330.1452: 7 DAYS IF HOSPITALIZED , 28 DAYS IF AOT AND PATIENT NOT HOSPITALIZED;

- f. SUBJECT OF PETITION CAN STIPULATE TO TREATMENT AFTER CONSULTATION WITH COUNSEL MCL 330.1455;

- g. **TESTIMONY NECESSARY AND CLINICAL CERTIFICATES DIFFERENT DEPENDING ON WHETHER 401 (a),(b), (c) vs. 401 (d);**

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- h. DURATION OF AOT ORDERS LENGTHENED (INITIAL ORDER ON AOT MUST NOT EXCEED 180 DAYS; COMBINED HOSPITALIZATION AND AOT MUST NOT EXCEED 180 DAYS WITH HOSPITALIZATION PORTION NO GREATER THAN 60 DAYS;
- i. SECOND AOT ORDER NOT OVER 1 YEAR; SECOND COMBINED HOSPITALIZATION AND AOT ORDER NOT GREATER THAN 1 YEAR WITH HOSPITALIZATION PERIOD NOT EXCEEDING 90 DAYS;
- j. CONTINUING ORDER OF AOT NOT TO BE GREATER THAN ONE YEAR; COMBINED CONTINUING ORDER OF HOSPITALIZATION AND AOT NOT TO BE GREATER THAN ONE YEAR WITH HOSPITALIZATION PERIOD NOT EXCEEDING 90 DAYS; AND COURT MUST CONTINUE TO ISSUE CONSECUTIVE 1 YEAR CONTINUING ORDERS UNTIL A CONTINUING ORDER EXPIRES WITHOUT A PETITION BEING FILED;
- k. SCAO HAS CREATED NEW FORMS FOR THIS MENTAL HEALTH LAW CHANGE.

SOME OF THE MOST IMPORTANT FORMS:

- PCM 201** PETITION FOR MENTAL HEALTH TREATMENT
- PCM 209a** SUPPLEMENT TO PETITION FOR MENTAL HEALTH TREATMENT AND ORDER
- PCM 212** NOTICE OF HEARING AND ADVICE OF RIGHTS
- PCM 214** INITIAL ORDER AFTER HEARING ON PETITION FOR MENTAL HEALTH TREATMENT
- PCM 216** ORDER AND REPORT ON ALTERNATIVE MENTAL HEALTH TREATMENT
- PCM 218** PETITION FOR SECOND, CONTINUING MENTAL HEALTH TREATMENT ORDER
- PCM 219** SECOND, CONTINUING ORDER FOR MENTAL HEALTH TREATMENT

**STEPS TO FOLLOW TO KEEP FROM GETTING INTO HOT WATER
WITH THE MACOMB COUNTY PROBATE COURT**

1. BE RESPECTFUL TO OPPOSING COUNSEL, THE JUDGE, YOUR CLIENTS, WITNESSES AND MOST OF ALL COURT STAFF. IT NOT ONLY MAKES FOR A BETTER COURT EXPERIENCE, IT MAY PUT A SMILE ON SOMEONE'S FACE.
2. ACKNOWLEDGE GOOD QUALITY SERVICE BY COURT STAFF AND CONVERSELY INFORM COURT MANAGEMENT OF POOR OR DISCOURTEOUS SERVICE.
3. KNOW THE PROBATE LAW AND KNOW WHO INTERESTED PERSONS ARE IN PROBATE PROCEEDINGS. MCR 5.125, 700.1105.
4. SUBMIT PROPER PROOFS OF SERVICE. IMPROPERLY FILED PROOFS OR INCOMPLETE PROOFS WILL TRIGGER ADJOURNMENT OF SCHEDULED HEARING.
5. KNOW HOW TO CALCULATE THE PROPER INVENTORY FEE IN A DECEDENT'S ESTATE. KNOW THAT A LIEN ON REAL PROPERTY CAN BE DEDUCTED FROM REAL PROPERTY VALUE FOR DOD AFTER 3/28/13 THROUGH 1/1/18.
6. USE A GOOD DIARY SYSTEM (ELECTRONIC OR MANUAL). DO NOT RELY ON COURT STAFF TO SEND YOU NOTICE OF DEFICIENCY OR NOTICE OF ATTORNEY CONFERENCE TO TRIGGER SOME ACTION BY YOUR OFFICE.
7. USE COURT STAFF IF NECESSARY FOR QUESTIONS ON COURT PROCEDURE BUT LAWYERS SHOULD REVIEW PROBATE COURT RULES AND EPIC (ESTATES AND PROTECTED INDIVIDUALS CODE M.C.L.A 700.1100 ET SEQ.) TO SEE WHERE ANSWERS CAN EASILY BE RETRIEVED BEFORE CALLING WITH QUESTIONS;
8. ARRIVE EARLY FOR SCHEDULED HEARINGS. KNOW OUR PROCEDURE:
 - A. EVERYONE ON A FILE SIGNS IN;
 - B. PROOF OF SERVICE NEEDS TO BE CHECKED BY ANALYSTS;
 - C. PROPOSED ORDER NEEDS TO BE PLACED IN FILE;
 - D. OBJECTIONS FILED ON DAY OF HEARING REQUIRE FILING FEE TO BE PAID AT CASHIER'S OFFICE AND OBJECTIONS GIVEN TO ANALYST;

AFTER ALL ABOVE ARE COMPLETED FILE WILL BE SENT INTO RESPECTIVE COURTROOM FOR HEARING.

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9. NEED ADVICE ON A PROBATE MATTER, ASK AN EXPERIENCED ATTORNEY WHO DOES PROBATE WORK (I.E. AN ATTORNEY MEMBER OF MACOMB COUNTY PROBATE BAR ASSOCIATION). PROBATE COURT STAFF PROHIBITED BY LAW FROM GIVING ADVICE;
10. WHEN NECESSARY GIVE NOTICE BY PUBLICATION IN COUNTY LEGAL NEWSPAPER.
11. KNOW THAT TESTIMONY TO ID HEIRS (PC 565) IS ALWAYS NECESSARY TO OPEN DECEDENT'S ESTATE AND SUPPLEMENTAL TESTIMONY TO ID NON HEIR DEVISEES IS ONLY NECESSARY IN TESTATE ESTATES (PC 566).
12. PEOPLE WITH EQUAL OR PRIOR PRIORITY MUST ALWAYS BE LISTED ON APPLICATION (NO. 9 ON APPLICATION)/PETITION (NO. 12 ON PETITION).
13. MUST SERVE SURETY COMPANY AND INSURANCE COMPANY ON ACCOUNTS (SEE MCR 5.125(C) (6)(J)).

ROBERT SZALKA,
Director of Legal Services, Macomb County Probate Court 11/8/17

STATE OF MICHIGAN
IN THE MACOMB COUNTY PROBATE COURT

Order regarding Guardian ad Litem
fees for the Probate Court

Hon. John C. Foster, Chief Judge

ORDER

Attorney Guardian ad Litem fees for timely and properly filed GAL reports shall be paid according to the following schedule:

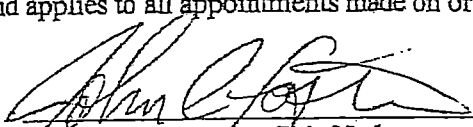
- a. For estates having liquid assets less than \$5,000, the fee will be \$150 payable by Macomb County;
- b. For estates having liquid assets equal to or greater than \$5,000 but less than \$10,000 the fee will be \$200 payable by the estate;
- c. For estates having liquid assets equal to or greater than \$10,000 but less than \$100,000 the fee will be \$450 payable by the estate;
- d. For estates having liquid assets equal to or greater than \$100,000 but less than \$300,000 the fee will be \$650 payable by the estate;
- e. For estates having liquid assets equal to or greater than \$300,000 the fee will be either \$650 or actual reasonable time and charges of the guardian ad litem (at the option of the guardian ad litem) payable by the estate. If actual time and charges are submitted, the fees shall be in line with the 2014 Michigan State Bar Survey of the Economics Practice of Law.

Guardians ad litem shall submit their billings to the court for approval in all cases.

If the guardian ad litem believes that a departure from the above fee schedule is appropriate, he or she may file a motion showing good cause for such departure. Similarly, the court may order an upward or downward departure based on the circumstances of any given case.

The term "liquid assets" is defined as cash, stocks, bonds, CD's, or money market checking or savings accounts.

The order is effective December 1, 2014 and applies to all appointments made on or after December 1, 2014.


Hon. John C. Foster, Chief Judge

November 30, 2014