



Macomb County Probate Court

Probate Judges:

JOHN C. FOSTER, *Acting Chief Judge*

CARL J. MARLINGA

KATHRYN A. GEORGE*

**Probate Judge assigned to Family Division*

Deputy Court Administrator/Register

JOHN D. BRENNAN

BOB SZALKA:

GAL 2015 TRAINING OUTLINE

I. POLICY AND PROCEDURES:

A. GAL/ATTORNEY APPOINTMENT LIST:

1. REQUIREMENTS TO GET APPOINTMENTS:

- a. ATTEND ANNUAL TRAINING AND SUBMIT 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 FOR THOSE WHO DO NOT ATTEND SEMINAR WITHOUT EXCUSED ABSENCE, OR WERE FORMERLY ON GAL LIST AND WISH TO RETURN;
- e. MAKE-UP EXAM FOR THOSE WHO CANNOT ATTEND AND PRESENT A VALID DOCUMENTED EXCUSE (VALIDITY TO BE DETERMINED ON A CASE BY CASE BASIS BY MACOMB COUNTY PROBATE COURT)

2. REQUIREMENTS ONCE ON LIST:

- a. BE AVAILABLE WHEN CALLED; APPOINTMENTS DONE ON ROTATIONAL BASIS;
WHEN CALLED IF AVAILABLE RECEIVE 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 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.
- 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. STATEMENTS OF GALS/ATTORNEYS WITH NOTATION “IF ESTATE IS WITHOUT ASSETS AND/OR INCOME SUFFICIENT TO PAY THIS FEE, PLEASE RETURN THIS INVOICE WITH A WRITTEN NOTATION THEREON THAT “THE ESTATE IS WITHOUT FUNDS TO PAY THIS INVOICE” DATE AND SIGN SAME **IS NO LONGER REQUIRED WITH CURRENT INVOICE PROCEDURE. IF THERE ARE ASSETS ESTATE/PETITIONER/FIDUCIARY ARE RESPONSIBLE FOR PAYMENT;**
- q. **GALS ARE NOT REQUIRED TO APPEAR AT COURT HEARINGS UNLESS INDICATED ON ORDER APPOINTING GAL; GALS APPEARING AT HEARINGS WITHOUT BEING ORDERED TO APPEAR WILL NOT BE COMPENSATED FOR SUCH APPEARANCE;**

- r. FEE FOR GUARDIAN REVIEW REMAINS \$100.00 (ASSETS/INCOME ONLY A FACTOR AS TO WHO PAYS THAT FEE);
- s. FEE FOR APPOINTMENTS AS COURT APPOINTED ATTORNEY REMAIN AT \$175.00 (INCOME/ASSETS ONLY A FACTOR AS TO WHO PAYS THAT FEE);
- t. IF ASSIGNED GAL IN BOTH CONSERVATOR AND GUARDIAN FILE YOU MUST PRESENT A COPY OF REPORT FOR EACH FILE.

3. ACTIONS WHICH WILL AFFECT YOUR CONTINUATION ON LIST:

- a. FAILURE TO SUBMIT REPORT ON TIME;
- b. CALLING COURT AND ASKING QUESTIONS SUCH AS “WHAT SHOULD I PUT IN REPORT, WHEN IS MY REPORT DUE, HOW DO I BILL, WHAT IS THE FINANCIAL REVIEW CHECKLIST;
- c. CONTINUED REFUSALS TO ACCEPT APPOINTMENTS WHEN REQUESTED;
- d. **POORLY PREPARED REPORTS** (i.e. FAILING TO DO FACTUAL INVESTIGATION, **FAILING TO MAKE RECOMMENDATION**, REQUESTING COURT TO APPOINT ATTORNEY BUT INDICATING NO FACTUAL REASONS FOR SUCH REQUEST, **FAILING TO DO ANY ANALYSIS OF SITUATION**);
- e. **LACK OF PREPARATION OR POOR PREPARATION IN ACTING AS COURT APPOINTED ATTORNEY;**
- f. THREATEN PETITION TO REMOVE FIDUCIARY IF THEY DO NOT PAY YOUR INVOICE;
- g. FAILING TO PRESENT SELF IN PROFESSIONAL MANNER IN CONDUCTING INVESTIGATION AND/OR APPEARING AT COURT HEARING IF REQUIRED;
- h. **LENGTHENING YOUR REPORT WITH A DISSERTATION ON WHAT GAL RESPONSIBILITIES ARE IN THE BODY OF THE REPORT;**
- i. FAILURE TO FOLLOW RECOMMENDED FEE SCHEDULE ADOPTED IN 12/2014;

4. MISCELLANEOUS COURT PROCEDURES PUT IN PLACE IN 2015:

- a. **11/17/14:** Court began using a yellow information sheet where trust involved (different from yellow order form attorneys prepare) which is completed in courtroom by Judge’s clerk/attorney (Heather Lawson for the most part) to notify Deputy Registers up front of follow up work to be done after hearing (i.e., continued supervision, notice to file acceptance of appointment, inventory, account, etc.) If you notice this has not been done please bring to deputy registers attention when file is called at counter);
- b. **1/28/15:** Motions and Orders to Show Cause filed by attorneys or individuals are reviewed by Probate Court Attorneys who will obtain a hearing date from the Judge’s schedule book and place notice and time requirements on service of Show Cause;

- c. **2/10/15:** Court no longer checks box 2 (requiring accounts) on Letters of Conservatorship for minors. Proof of Restricted Account and Annual Verification of Funds on Deposit (PC 669) along with copy of bank statement to be filed annually. Notice of Deficiency still refers to filing Account but court now only requires above underlined docs in Minor conservatorships;
- d. **7/30/15:** When new petitions are filed in any matter presented to court staff, staff now inquire whether petitioner is corporate entity (corporation, LLC.) If so, petition or new filing document must be signed by an attorney on behalf of the entity along with entity signature (or entity representative's signature) as petitioner. Hence if SCAO form has signature line for attorney, attorney must sign. This means Public Guardians who are incorporated must have an attorney sign their filed petitions and appear in court hearings on their behalf. This is in accord with State Bar requirements and MCR 5.114;
- e. **11/1/15:** Effective this date Court Attorney Julie Strawn is handling the entire minor guardianship docket. Any minor guardianship filings and/or telephone questions will be directed to Ms. Strawn. She will be scheduling the hearings in those matters. Questions in this area will be directed to her. In conjunction with this change Chuck Semarjian and Debra Lux-Roland will share the walk in duties on other matters on a scheduled basis and will continue to do all other court matters which need to go before an attorney. This change will be reviewed and reevaluated 3-4 months after 11/1/15;
- f. Website changes ongoing;

5. ESTABLISHED PROCEDURES ON WHICH ATTORNEYS NEED TO BE REMINDED:

- a. Judge's secretary (Kim Tatum) is only court personnel authorized to adjourn matters set before Judge. Request must be made directly to her office;
- b. Attorney Conferences for failure to file necessary inventory, account, receipt, allow guardian review are **not** adjourned;
- c. Parties who want extra copies of order tried or entered must present those copies of Order and/or present self-addressed stamped envelope for their return (if they do not obtain on date of hearing)

- d. If want stamped copy of documents being filed, copy must be presented to court, or copying fee will be charged;
- e. **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”
- f. Where Estate Administratively closed applicant/petitioner must file PC 607 Application/Petition to Reopen Estate and pay \$150.00 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 \$150.00 filing fee and \$100.00 penalty fee if appropriate;
- g. Chuck Semarjian continues to handle the Case Evaluation docket in setting up the Case Evaluation dates, scheduling the Panels and the files set for evaluation on such dates
- h. 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;
- i. Per CJM request if party is filing courtesy copy for Judge of document greater than 10 pages and/or a brief they are to be sent electronically to probatebriefs@macombgov.org

6. SOME KEY STATUTES, LEGISLATION, COURT RULE UPDATES, and/or LEGAL OPINIONS SINCE LAST TRAINING;

- a. KWIECINSKI OPINION AND ORDER OF COURT 6/2/15 MCPC 2013-209927-TV
- b. BITTNER COA OPINION NO. 32068, 9/8/15 FOR PUBLICATION
- c. MARDIGIAN COA OPINION NO. 319023, 10/8/15 FOR PUBLICATION
- d. BROWN COA OPINION NO. 322401, 10/20/15 FOR PUBLICATION
- e. JAJUGA COA OPINION NO. 322522, 10/20/15 FOR PUBLICATION

ROBERT SZALKA
Director of Legal Services, Macomb County Probate Court
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11/6/15

**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 COULD TRIGGER ADJOURNMENT OF SCHEDULED HEARING.
5. BE PREPARED FOR WHATEVER MATTER YOU HAVE BEFORE THE COURT.
6. 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.
7. KNOW YOUR RELATIONSHIP WITH GAL IF YOU REPRESENT THE PETITIONER OR INTERESTED PERSON IN MATTER. GAL IS EYES AND EARS OF COURT.
8. 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.

9. USE COURT STAFF IF NECESSARY FOR QUESTIONS ON COURT PROCEDURE.

10. 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 SENT INTO COURT FOR HEARING.

11. 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).

12. WHEN NECESSARY GIVE NOTICE BY PUBLICATION IN LEGAL NEWSPAPER.

13. 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).

14. PEOPLE WITH EQUAL OR PRIOR PRIORITY MUST ALWAYS BE LISTED ON APPLICATION (NO. 9 ON APPLICATION)/PETITION (NO. 12 ON PETITION).

15. MUST SERVE SURETY COMPANY AND INSURANCE COMPANY ON ACCOUNTS (SEE MCR 5.125(C)(6)(J)).