



Michigan Supreme Court

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Anne Boomer
Administrative Counsel

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Thomas F. Coleman
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Dear Mr. Coleman:

Thank you for your recent letter to the Michigan Supreme Court in which you urge the Court to adopt a rule mandating the appointment of counsel for respondents in all guardianship cases, and to adopt other procedural changes to ensure that the rights of individuals subject to a guardianship are protected. We believe the current statutory and rule framework provide that protection.

Contrary to your assertion that "Michigan does not require appointment of counsel in guardianship cases," in cases in which the respondent has a developmental disability, MCL 330.1615 (part of Michigan's Mental Health Code that specifically addresses guardianships for those with a developmental disability) requires that an attorney be appointed for the subject of the petition no later than 48 hours after the petition and materials are filed with the court unless private counsel has already filed an appearance. In fact, the developmentally disabled person has the right to request another preferred attorney in place of the initial appointed counsel. In addition, MCL 330.1616 requires the court to appoint a guardian ad litem "[i]f, after a petition has been filed, the court determines that the respondent requires a person to represent his or her best interests and to assist legal counsel."

For cases that involve guardianships for legally incapacitated individuals, the court must appoint a guardian ad litem. See MCL 700.5303(3). The guardian ad litem has specific duties, including informing the respondent of the right to counsel. MCL

700.5305(1)(c)(v). In addition, “[i]f the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated.” MCL 700.5305(3). Further, separately, “[i]f the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel.” MCL 700.5305(4). Thus, if the person alleged to be incapacitated desires to have counsel or the guardian ad litem believes it is in the person's best interest, counsel shall be provided. The rights of alleged legally incapacitated individuals are explicitly set out in statute at MCL 700.5306a, and provided in every case by court form.¹ Similar rights for those individuals who receive mental health services are specifically listed in Michigan's Mental Health Code at MCL 330.1700-330.1758, and provided (in multiple languages) in a helpful brochure.²

During the guardianship, counsel is frequently available. For example, under MCL 700.5309, guardianships must be reviewed within one year after appointment of the guardian, and every three years thereafter. MCR 5.408 provides additional requirements for completing these reviews, including appointment of a third person to investigate the guardianship and report to the court as part of the periodic review. If the court does anything other than continue the guardianship, it must appoint an attorney to represent the legally incapacitated individual. In addition, under MCR 5.408(B)(1), if the legally incapacitated individual submits a petition for modification or even an informal written request for modification and the person does not have an attorney, the court must immediately appoint an attorney.

A similar structure is in place for adults who are the subject of a petition for a conservatorship. State law requires that “[u]nless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding.” MCL 700.5406(2).

¹ The court form is linked here:


<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/guardian-conservator/pc626.pdf>.

² *Your Rights When Receiving Mental Health Services in Michigan* (brochure is linked here: http://www.michigan.gov/documents/mdch/RR_Book_02_2013_507952_7.pdf).

In addition to these specific legal rights, persons receiving mental health services are routinely advised not only about their general rights but also about their right to file a complaint or grievance, and the way to do so. This information is included in the brochure listed above (linked in footnote 2).

Thank you, too, for the proposed standards for attorneys who represent individuals in guardianship proceedings. The structure you recommend, with adoption of new standards and a monitoring system to evaluate the quality of trainings and the performance of these guardianship attorneys, would require a significant infusion of time and money. As you note in your letter, the Michigan Supreme Court recently adopted Administrative Order No. 2015-5 that reflects the Court's commitment to adherence with the requirements of the Americans with Disabilities Act. That commitment continues with helpful tools for courts and counsel. In fact, court staff is currently working on a "best practices" manual for guardianship and disability proceedings that will include specific information on the expectations for appointed counsel in these types of cases. I will forward your materials to that division for review.

Sincerely,



Anne Boomer

cc: Chief Justice Robert P. Young, Jr.
Justice Stephen J. Markman
Justice Brian K. Zahra
Justice Bridget M. McCormack
Justice David F. Viviano
Justice Richard H. Bernstein
Justice Joan L. Larsen