

SUBSTITUTE FOR
SENATE BILL NO. 955

A bill to amend 1978 PA 642, entitled
"Revised probate code,"
by amending sections 6, 8, 427, and 437 (MCL 700.6, 700.8,
700.427, and 700.437), section 8 as amended by 1988 PA 398 and
sections 427 and 437 as amended by 1990 PA 313, and by adding
section 427a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) "Foreign personal representative" means a per-
2 sonal representative of a jurisdiction other than this state.

3 (2) "Guardian" means a person appointed by the court or des-
4 ignated as ~~such~~ A GUARDIAN in a will as provided in article 4,
5 to exercise powers over the person of a minor or of a legally
6 incapacitated person. Guardian does not include a guardian ad
7 litem.

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1 (3) "Heirs" means those persons, including the surviving
2 spouse, who are entitled to the property of a decedent under the
3 statutes of intestate succession.

4 Sec. 8. (1) "Lease" includes an oil and gas lease or other
5 mineral lease.

6 (2) "LEGAL COUNSEL" HAS A SPECIFIC DEFINITION IN SECTION
7 427A FOR THAT TERM AS USED IN THAT SECTION.

8 (3) ~~(2)~~ "Legally incapacitated person", as used in sec-
9 tions 3 to 12 and in article 4, means a person, other than a
10 minor, who is impaired by reason of mental illness, mental defi-
11 ciency, physical illness or disability, chronic use of drugs,
12 chronic intoxication, or other cause, to the extent that the
13 person lacks sufficient understanding or capacity to make or com-
14 municate informed decisions concerning his or her person. Except
15 as used in sections 3 to 12 and in article 4, "legally incapaci-
16 tated person" means a person, other than a minor, who is a
17 legally incapacitated person as defined for purposes of article 4
18 or who is a protected person.

19 (4) ~~(3)~~ "Limited guardian" means a guardian who possesses
20 fewer than all of the legal rights and powers of a full guardian,
21 and whose rights, powers, and duties have been specifically enu-
22 merated by court order.

23 (5) ~~(4)~~ "Mental health professional" means a person who is
24 trained and experienced in the area of mental illness and who is
25 any of the following:

26 (a) A physician who is licensed to practice ALLOPATHIC
27 medicine or osteopathic medicine in this state.

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1 (b) A psychologist who has been granted a full or limited
2 license to practice in this state.

3 (c) A social worker who is registered as a certified social
4 worker in this state.

5 (d) A registered PROFESSIONAL nurse who is licensed to prac-
6 tice nursing in this state and who is a graduate of a
7 state-approved school of nursing.

8 (6) ~~-(5)-~~ "Minor" means a person who is less than 18 years
9 of age.

10 (7) ~~-(6)-~~ "Net estate" in respect to a decedent's estate,
11 means the property of a decedent exclusive of homestead allow-
12 ance, exempt property, family allowance, enforceable claims, and
13 administration expenses against the estate.

14 (8) ~~-(7)-~~ "Nonresident decedent" means a decedent who was
15 domiciled outside of this state at the time of his or her death.

16 (9) ~~-(8)-~~ "Notice" means notice prescribed by supreme court
17 rule, unless otherwise prescribed by law.

18 Sec. 427. (1) ~~Notice~~ THE PETITIONER SHALL GIVE NOTICE of
19 the time and place of hearing of a petition for the appointment
20 of a guardian of a minor ~~shall be given by the petitioner~~ to
21 each of the following:

22 (a) The minor, if 14 years of age or older.

23 (b) The person who had the principal care and custody of the
24 minor during the 60 days preceding the date of the petition.

25 (c) Each living parent of the minor or, if neither of them
26 is living, the adult nearest of kin to the minor.

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1 (2) Upon hearing OF A PETITION TO APPOINT A GUARDIAN, if the
2 court finds that a qualified person seeks appointment, venue is
3 proper, the required notices have been given, the requirements of
4 section 424 or 424a are satisfied, and the MINOR'S welfare ~~of~~
5 ~~the minor~~ will be served by the requested appointment, ~~it~~ THE
6 COURT shall make the appointment. In other cases, the court may
7 dismiss the proceedings or make any other disposition of the
8 matter that will serve the MINOR'S welfare. ~~of the minor.~~

9 (3) If necessary, the court may appoint a temporary guardian
10 with the status of an ordinary guardian of a minor, but the
11 TEMPORARY GUARDIAN'S authority ~~of a temporary guardian~~ shall
12 not exceed 6 months.

13 (4) If, at any time in the proceeding, the court determines
14 that the MINOR'S interests ~~of the minor~~ are ~~or may be~~ inade-
15 quately represented, the court may appoint ~~an attorney~~ A GUARD-
16 IAN AD LITEM to represent the minor, giving consideration to the
17 MINOR'S preference ~~of the minor~~ if the minor is 14 years of age
18 or older. IN ADDITION TO ANY OTHER POWERS AND DUTIES, A GUARDIAN
19 AD LITEM'S POWERS AND DUTIES INCLUDE THOSE PRESCRIBED IN SECTION
20 427A.

21 SEC. 427A. (1) A GUARDIAN AD LITEM APPOINTED UNDER SECTION
22 427 MUST BE AN ATTORNEY. THE GUARDIAN AD LITEM'S DUTY IS TO THE
23 CHILD, TO REPRESENT THE CHILD AND THE CHILD'S BEST INTERESTS.
24 THE GUARDIAN AD LITEM HAS AT LEAST ALL OF THE FOLLOWING POWERS
25 AND DUTIES:

26 (A) TO SERVE AS THE INDEPENDENT LEGAL REPRESENTATIVE OF THE
27 MINOR'S BEST INTERESTS. THE GUARDIAN AD LITEM IS ENTITLED TO

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1 FULL AND ACTIVE PARTICIPATION IN ALL ASPECTS OF THE PROCEEDING.
2 THE COURT SHALL GRANT THE GUARDIAN AD LITEM ACCESS TO ALL RELE-
3 VANT INFORMATION REGARDING THE MINOR.

4 (B) TO DETERMINE THE FACTS OF THE CASE BY CONDUCTING AN
5 INDEPENDENT INVESTIGATION INCLUDING INTERVIEWING THE CHILD,
6 SOCIAL WORKERS, FAMILY MEMBERS, AND OTHERS AS NECESSARY, AND BY
7 REVIEWING REPORTS AND OTHER INFORMATION.

8 (C) BEFORE EACH STAGE OF THE PROCEEDINGS, TO MEET WITH AND
9 OBSERVE THE MINOR, ASSESS THE MINOR'S NEEDS AND WISHES WITH
10 REGARD TO THE REPRESENTATION AND THE ISSUES IN THE CASE, REVIEW
11 THE AGENCY CASE FILE AND, CONSISTENT WITH THE RULES OF PROFES-
12 SIONAL RESPONSIBILITY, CONSULT WITH THE MINOR'S PARENTS, GUARDI-
13 ANS, AND CASEWORKERS.

14 (D) TO EXPLAIN TO THE MINOR, ACCORDING TO THE MINOR'S ABIL-
15 ITY TO UNDERSTAND THE PROCEEDINGS, THE GUARDIAN AD LITEM'S ROLE.

16 (E) TO FILE ALL NECESSARY PLEADINGS AND PAPERS AND INDEPEN-
17 DENTLY CALL WITNESSES ON THE MINOR'S BEHALF.

18 (F) TO ATTEND ALL HEARINGS AND SUBSTITUTE REPRESENTATION
19 ONLY WITH COURT APPROVAL.

20 (G) TO MAKE A DETERMINATION AS TO THE MINOR'S BEST INTERESTS
21 AND ADVOCATE FOR THE BEST INTERESTS AS THE GUARDIAN AD LITEM SEES
22 THEM, REGARDLESS OF WHETHER THE GUARDIAN AD LITEM'S DETERMINATION
23 REFLECTS THE MINOR'S WISHES. THE MINOR'S WISHES ARE RELEVANT TO
24 THE GUARDIAN AD LITEM'S DETERMINATION OF BEST INTERESTS, AND THE
25 GUARDIAN AD LITEM SHALL WEIGH THE MINOR'S WISHES ACCORDING TO THE
26 MINOR'S COMPETENCE AND MATURITY. CONSISTENT WITH THE LAW

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1 GOVERNING ATTORNEY-CLIENT PRIVILEGE, THE GUARDIAN AD LITEM SHALL
2 INFORM THE COURT AS TO THE MINOR'S WISHES AND PREFERENCES.

3 (H) TO MONITOR THE IMPLEMENTATION OF COURT ORDERS.

4 (I) CONSISTENT WITH THE RULES OF PROFESSIONAL RESPONSIBILITY
5 FOR ATTORNEYS, TO IDENTIFY COMMON INTERESTS AMONG THE PARTIES
6 AND, TO THE EXTENT POSSIBLE, PROMOTE A COOPERATIVE RESOLUTION OF
7 THE MATTER.

(J) TO REQUEST AUTHORIZATION BY THE COURT TO PURSUE ISSUES ON
THE CHILD'S BEHALF THAT DO NOT ARISE SPECIFICALLY FROM THE COURT
APPOINTMENT.

8 (2) IF, AFTER DISCUSSION BETWEEN THE MINOR AND THE GUARDIAN
9 AD LITEM, THE GUARDIAN AD LITEM DETERMINES THAT THE MINOR'S
10 INTERESTS AS IDENTIFIED BY THE MINOR ARE INCONSISTENT WITH THE
11 GUARDIAN AD LITEM'S DETERMINATION OF THE MINOR'S BEST INTERESTS,
12 THE GUARDIAN AD LITEM SHALL COMMUNICATE THE MINOR'S POSITION TO
13 THE COURT [REDACTED] FOR THE

14 MINOR. IF THE COURT CONSIDERS THE APPOINTMENT APPROPRIATE CON-
15 SIDERING THE MINOR'S AGE AND MATURITY AND THE NATURE OF THE
16 INCONSISTENCY BETWEEN THE MINOR'S AND THE GUARDIAN AD LITEM'S
17 IDENTIFICATION OF THE MINOR'S INTERESTS, THE COURT MAY APPOINT
18 LEGAL COUNSEL FOR THE MINOR. A LEGAL COUNSEL APPOINTED UNDER
19 THIS SUBSECTION SERVES IN ADDITION TO THE MINOR'S GUARDIAN AD
20 LITEM.

21 (3) A PARTY TO THE PROCEEDINGS SHALL NOT CALL THE GUARDIAN
22 AD LITEM AS A WITNESS TO TESTIFY IN THE PROCEEDINGS, AND THE FILE
23 OF THE GUARDIAN AD LITEM IS NOT DISCOVERABLE.

24 (4) AFTER A DETERMINATION OF ABILITY TO PAY, THE COURT MAY
25 ASSESS ALL OR PART OF THE COSTS AND REASONABLE FEES OF THE GUARD-
26 IAN AD LITEM AGAINST 1 OR MORE OF THE PARTIES INVOLVED IN THE
27 PROCEEDINGS, OR AGAINST THE MONEY ALLOCATED FROM MARRIAGE LICENSE

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1 FEES FOR FAMILY COUNSELING SERVICES UNDER SECTION 3 OF 1887 PA
2 128, MCL 551.103. A GUARDIAN AD LITEM APPOINTED UNDER SECTION
3 427 SHALL NOT BE PAID A FEE UNLESS THE COURT FIRST RECEIVES AND
4 APPROVES THE FEE.

5 (5) AS USED IN THIS SECTION, "LEGAL COUNSEL" MEANS AN ATTOR-
6 NEY WHO SERVES AS THE CHILD'S LEGAL ADVOCATE IN A TRADITIONAL
7 ATTORNEY-CLIENT RELATIONSHIP WITH THE CHILD, AS GOVERNED BY THE
8 MICHIGAN RULES OF PROFESSIONAL CONDUCT. THE CHILD'S LEGAL COUN-
9 SEL OWES THE SAME DUTIES OF UNDIVIDED LOYALTY, CONFIDENTIALITY,
10 AND ZEALOUS REPRESENTATION OF THE CHILD'S EXPRESSED WISHES AS HE
11 OR SHE WOULD TO AN ADULT CLIENT.

12 Sec. 437. (1) A person interested in ~~the~~ A WARD'S welfare
13 ~~of a ward~~ or the ward, if 14 or more years of age, may petition
14 for A GUARDIAN'S removal ~~of a guardian~~ on the ground that
15 removal would serve the WARD'S welfare. ~~of the ward.~~ A guardian
16 may petition for permission to resign. A petition for removal or
17 for permission to resign may include a request for A SUCCESSOR
18 GUARDIAN'S appointment. ~~of a successor guardian.~~

19 (2) After notice and hearing on a petition for removal or
20 for permission to resign, the court may terminate the guardian-
21 ship and make any further order that may be appropriate.

22 (3) If, at any time in the proceeding, the court determines
23 that the WARD'S interests ~~of the ward~~ are, or may be, inade-
24 quately represented, ~~it may~~ THE COURT SHALL appoint ~~an~~
25 ~~attorney~~ A GUARDIAN AD LITEM to represent the minor, giving con-
26 sideration to the MINOR'S preference ~~of the minor~~ if the minor
27 is 14 or more years of age.