

SENATE BILL NO. 955

February 26, 1998, Introduced by Senator VAN REGENMORTER
and referred to the Committee on Families, Mental Health
and Human Services.

A bill to amend 1978 PA 642, entitled
"Revised probate code,"
by amending sections 3, 427, and 437 (MCL 700.3, 700.427, and
700.437), section 3 as amended by 1988 PA 222 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. 3. (1) "Authenticated" means that the genuineness and
2 validity of the original or a copy of a public or official docu-
3 ment, instrument, or record is proved.

4 (2) "Beneficiary" INCLUDES, as it relates to trust benefi-
5 ciaries, ~~includes~~ a beneficiary of a present or future inter-
6 est, vested or contingent, and the owner of an interest by
7 assignment or other transfer. Beneficiary includes a party
8 entitled to enforce the trust if the trust is a charitable
9 trust.

1 (3) "Child" includes a person entitled to take as a child
2 under this act by intestate succession from the parent whose
3 relationship is in question and excludes a stepchild, a foster
4 child, a grandchild, or any more remote descendant who is not so
5 entitled to inherit.

6 (4) "CHILD-ATTORNEY" MEANS AN ATTORNEY APPOINTED BY THE
7 COURT TO REPRESENT A CHILD'S BEST INTERESTS.

8 (5) ~~(4)~~ "Claim" INCLUDES, in respect to estates of dece-
9 dents and protected persons, ~~includes~~ liabilities of the dece-
10 dent or protected person whether arising in contract, in tort, or
11 otherwise, and liabilities of the estate that arise before, at,
12 or after the death of the decedent or the appointment of the con-
13 servator, including funeral and burial expenses and expenses of
14 administration. Claim does not include estate and inheritance
15 taxes, demands, or disputes regarding title of a decedent or pro-
16 tected person to specific assets alleged to be included in the
17 estate.

18 (6) ~~(5)~~ "Conservator" means a person appointed by the
19 court, as provided in article 4, to exercise powers over the
20 estate of a protected person.

21 (7) ~~(6)~~ "County public administrator" means a county
22 public administrator appointed under ~~Act No. 194 of the Public~~
23 ~~Acts of 1947, as amended, being sections 720.201 to 720.223 of~~
24 ~~the Michigan Compiled Laws 1947 PA 194, MCL 720.201 TO 720.223.~~

25 (8) ~~(7)~~ "Court" means the probate court.

26 Sec. 427. (1) ~~Notice~~ THE PETITIONER SHALL GIVE NOTICE of
27 the time and place of hearing of a petition for the appointment

1 of a guardian of a minor ~~shall be given by the petitioner~~ to
2 each of the following:

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

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

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

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

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

20 (4) If, at any time in the proceeding, the court determines
21 that the MINOR'S interests ~~of the minor~~ are or may be inade-
22 quately represented, the court ~~may~~ SHALL appoint ~~an attorney~~
23 A CHILD-ATTORNEY to represent the minor, giving consideration to
24 the MINOR'S preference ~~of the minor~~ if the minor is 14 years of
25 age or older. IN ADDITION TO ANY OTHER POWERS AND DUTIES, A
26 CHILD-ATTORNEY'S POWERS AND DUTIES INCLUDE THOSE PRESCRIBED IN
27 SECTION 427A.

1 SEC. 427A. (1) A CHILD-ATTORNEY APPOINTED UNDER SECTION 427
2 HAS AT LEAST ALL OF THE FOLLOWING POWERS AND DUTIES:

3 (A) TO SERVE AS THE INDEPENDENT LEGAL REPRESENTATIVE OF THE
4 MINOR'S BEST INTERESTS. THE CHILD-ATTORNEY IS ENTITLED TO FULL
5 AND ACTIVE PARTICIPATION IN ALL ASPECTS OF THE PROCEEDING. THE
6 COURT SHALL GRANT THE CHILD-ATTORNEY ACCESS TO ALL RELEVANT
7 INFORMATION REGARDING THE MINOR.

8 (B) TO DETERMINE THE FACTS OF THE CASE BY CONDUCTING AN
9 INDEPENDENT INVESTIGATION INCLUDING INTERVIEWING THE CHILD,
10 SOCIAL WORKERS, FAMILY MEMBERS, AND OTHERS AS NECESSARY, AND BY
11 REVIEWING REPORTS AND OTHER INFORMATION.

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

18 (D) TO EXPLAIN TO THE MINOR, ACCORDING TO THE MINOR'S ABIL-
19 ITY TO UNDERSTAND THE PROCEEDINGS, THE CHILD-ATTORNEY'S ROLE, AND
20 THOSE CIRCUMSTANCES UNDER WHICH THE CHILD-ATTORNEY MAY DISCLOSE
21 INFORMATION TO THE COURT.

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

24 (F) TO ATTEND ALL HEARINGS AND SUBSTITUTE REPRESENTATION
25 ONLY WITH COURT APPROVAL.

26 (G) TO MAKE A DETERMINATION AS TO THE MINOR'S BEST INTERESTS
27 AND ADVOCATE FOR THE BEST INTERESTS AS THE CHILD-ATTORNEY SEES

1 THEM, REGARDLESS OF WHETHER THE CHILD-ATTORNEY'S DETERMINATION
2 REFLECTS THE MINOR'S WISHES. THE MINOR'S WISHES ARE RELEVANT TO
3 THE CHILD-ATTORNEY'S DETERMINATION OF BEST INTERESTS, AND THE
4 CHILD-ATTORNEY SHALL WEIGH THE MINOR'S WISHES ACCORDING TO THE
5 MINOR'S COMPETENCE AND MATURITY. IN ANY EVENT, THE
6 CHILD-ATTORNEY SHALL INFORM THE COURT AS TO THE MINOR'S WISHES
7 AND PREFERENCES.

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

9 (I) CONSISTENT WITH THE RULES OF PROFESSIONAL RESPONSIBILITY
10 FOR ATTORNEYS, TO IDENTIFY COMMON INTERESTS AMONG THE PARTIES
11 AND, TO THE EXTENT POSSIBLE, PROMOTE A COOPERATIVE RESOLUTION OF
12 THE MATTER.

13 (2) IF, AFTER DISCUSSION BETWEEN THE MINOR AND THE
14 CHILD-ATTORNEY, THE CHILD-ATTORNEY DETERMINES THAT THE MINOR'S
15 INTERESTS AS IDENTIFIED BY THE MINOR ARE INCONSISTENT WITH THE
16 CHILD-ATTORNEY'S DETERMINATION OF THE MINOR'S BEST INTERESTS, THE
17 CHILD-ATTORNEY SHALL COMMUNICATE THE MINOR'S POSITION TO THE
18 COURT AND ASK THE COURT TO APPOINT LEGAL COUNSEL TO REPRESENT THE
19 MINOR.

20 (3) THE ATTORNEY-CLIENT OR ANY OTHER STATUTORY OR LEGALLY
21 RECOGNIZED PRIVILEGE SHALL NOT PREVENT THE CHILD-ATTORNEY FROM
22 SHARING ALL INFORMATION RELEVANT TO THE MINOR'S BEST INTERESTS
23 WITH THE COURT.

24 (4) A PARTY TO THE PROCEEDINGS SHALL NOT CALL THE
25 CHILD-ATTORNEY AS A WITNESS TO TESTIFY IN THE PROCEEDINGS, AND
26 THE FILE OF THE CHILD-ATTORNEY IS NOT DISCOVERABLE.

1 (5) A CHILD-ATTORNEY APPOINTED UNDER SECTION 427 IS NOT
2 LIABLE IN A CIVIL ACTION FOR DAMAGES FOR AN ACT OR OMISSION OF
3 THE CHILD-ATTORNEY TAKEN IN FURTHERANCE OF THE APPOINTMENT,
4 UNLESS THE ACT OR OMISSION IS GROSSLY NEGLIGENT OR WILLFUL AND
5 WANTON.

6 (6) THE COURT MAY ASSESS ALL OR PART OF THE COSTS AND REA-
7 SONABLE FEES OF THE CHILD-ATTORNEY AGAINST 1 OR MORE OF THE PAR-
8 TIES INVOLVED IN THE PROCEEDINGS. A CHILD-ATTORNEY APPOINTED
9 UNDER SECTION 427 SHALL NOT BE PAID A FEE UNLESS THE COURT FIRST
10 RECEIVES AND APPROVES THE FEE.

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

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

25 (2) After notice and hearing on a petition for removal or
26 for permission to resign, the court may terminate the
27 guardianship and make any further order that may be appropriate.

1 (3) If, at any time in the proceeding, the court determines
2 that the WARD'S interests ~~of the ward~~ are, or may be, inade-
3 quately represented, ~~it may~~ THE COURT SHALL appoint ~~an~~
4 ~~attorney~~ A CHILD-ATTORNEY to represent the minor, giving consid-
5 eration to the MINOR'S preference ~~of the minor~~ if the minor is
6 14 or more years of age.