

MICHIGAN COURT RULES OF 1985
RULE 5.405 PROCEEDINGS ON GUARDIANSHIP
OF INCAPACITATED INDIVIDUAL

(A) Examination by Physician or Mental Health Professional.

- (1) *Admission of Report.* The court may receive into evidence without testimony a written report of a physician or mental health professional who examined an individual alleged to be incapacitated, provided that a copy of the report is filed with the court five days before the hearing and that the report is substantially in the form required by the state court administrator. A party offering a report must promptly inform the parties that the report is filed and available. The court may issue on its own initiative, or any party may secure, a subpoena to compel the preparer of the report to testify.
- (2) *Abrogation of Privilege.* A report ordered by the court may be used in guardianship proceedings without regard to any privilege. Any privilege regarding a report made as part of an independent evaluation at the request of a respondent is waived if the respondent seeks to have the report considered in the proceedings.
- (3) *Determination of Fee.* As a condition of receiving payment, the physician or mental health professional shall submit an itemized statement of services and expenses for approval. In reviewing a statement, the court shall consider the time required for examination, evaluation, preparation of reports and court appearances; the examiner's experience and training; and the local fee for similar services.

(B) Hearings at Site Other Than Courtroom. When hearings are not held in the courtroom where the court ordinarily sits, the court shall ensure a quiet and dignified setting that permits an undisturbed proceeding and inspires the participants' confidence in the integrity of the judicial process.

(C) Guardian of Incapacitated Individual Appointed by Will or Other Writing.

- (1) *Appointment.* A guardian appointed by will or other writing under MCL 700.5301 may qualify after the death or adjudication of incapacity of a parent or spouse who had been the guardian of an incapacitated individual by filing an acceptance of appointment with the court that has jurisdiction over the guardianship. Unless the court finds the person unsuitable or incompetent for the trust, the court shall issue to the nominated guardian letters of guardianship equivalent to those that had been issued to the deceased guardian.
- (2) *Notice, Revocation.* The testamentary guardian shall notify the court in which the testamentary instrument has been or will be filed of the appointment as guardian. The probating court shall notify the court having jurisdiction over the guardianship if the will is denied probate, and the court having the guardianship jurisdiction shall immediately revoke the letters of guardianship.

[Formerly Rule 5.765, adopted effective September 1, 1990. Renumbered Rule 5.405 as interim amendment effective April 1, 2000. Amended effective January 1, 2002.]