

DAVID M. MURKOWSKI
CHIEF JUDGE

AVERY D. ROSE
PROBATE REGISTER

AIMEE J. CORY
DEPUTY REGISTER



SUITE 2500
180 OTTAWA AVENUE NW
GRAND RAPIDS, MI 49503-2751

STATE OF MICHIGAN
KENT COUNTY PROBATE COURT

September 20, 2021

Honorable Graham Filler, Chairman
House Judiciary Committee
Michigan House of Representatives
P.O. Box 30014
Lansing, Michigan 48909

Re: House Bills 4847-4850

Dear Representative Filler:

As Chief Probate Judge and Probate Register of the Kent County Probate Court, we are writing to inform you that we both oppose House Bills 4847, 4848, 4849, and 4850, given the consequences that their passage would entail for professional guardians, guardians ad litem (GALs), probate courts and ultimately, the wards for whom the current rules were carefully crafted to protect. The Kent County Probate Court was the first probate court to welcome and host the Attorney General's Elder Abuse Taskforce Listening Tour, and following her visit to the Kent County, the Attorney General commented that the Court was running a "tight ship." We are sensitive to the needs of the most vulnerable in our community and share a desire to see that adequate protections are afforded to them. However, we are concerned that these proposed reforms will drive more individuals away from serving as guardians over time, put the individuals protected by guardians and conservators at much greater risk, and erode the guardianship system in our State. We would urge you to hold the bills in your committee until the concerns listed below are adequately addressed.

A large portion of the caseloads handled by probate courts involve guardianships and conservatorships for legally incapacitated adults and guardianships for developmentally disabled adults. In most of these cases, a family member or friend is appointed to act as guardian or conservator for the ward. However, when there are no family members or friends who are suitable and willing to serve it is often in the ward's best interest that a professional guardian be appointed. Kent County is extremely fortunate to have the Kent County Guardianship Program, consisting of 38 public guardians, as a resource to provide guardianship and conservatorship services for adult residents of Kent County who have no one else to serve them in a fiduciary capacity. Other counties may have a handful of willing professional fiduciaries or none at all. In Kent County, when a ward is indigent and has no other means to pay his or her public guardian,

the Guardianship Program also covers the professional guardian's monthly fee at a rate of \$60 or \$83 per month, which is by no means proportionate to the amount of work guardians perform in these cases. Funding for the Kent County Guardianship Program is provided by public and private entities alike, including Kent County, the Area Agency on Aging of Western Michigan, Mercy Health St. Mary's Hospital, Spectrum Health Hospital, and the State of Michigan.

In Kent County, and in other counties throughout the State, the demand for professional guardians remains stronger than ever. Our public guardians were serving an average of 383 indigent wards per month in 2015, and in the span of six years they are now serving 572 indigent wards per month. Last year alone there were 236 requests for public guardians in Kent County, and there were likely hundreds more in counties across the State. There is no doubt that the increasing demand for guardianship services is being fueled by an aging population. According to the Population Reference Bureau¹, the aging of baby boomers could generate "more than a 50 percent increase in the number of Americans ages 65 and older requiring nursing home care, to about 1.9 million in 2030." Additionally, the number of Americans living with Alzheimer's disease is projected to more than double by 2050, which will require a larger number of willing guardians to serve. These trends are demonstrated by the Kent County Probate Court's own caseload numbers, which reflect that new adult guardianship cases in Kent County grew by 58% between 2010 and 2019.

Before erecting additional barriers to the service of professional guardians, the Michigan Legislature should consider funding mechanisms to pay professional guardians for the services they provide, and in so doing, the Legislature ought to consider other judicial reforms which have succeeded in this regard, such as the Michigan Indigent Defense Commission. Requiring additional certification, educational and work-related requirements must be accompanied by corresponding funding. Outside of Kent County as many as 5,000 indigent people in Michigan have the benefit of a court-appointed guardian in cases in which the guardian receives no compensation. And while there is currently funding available for a number of indigent cases in Kent County, it is by no means unlimited.

The proposed legislative package will render the work of professional guardians unduly difficult, without providing any concomitant funding to support their important work. Proposed changes to the Estates and Protected Individuals Code (EPIC) which would create unacceptable consequences include, but are not limited to:

- **HB 4847** - Creating a mandatory certification process for professional guardians who assist more than two clients; details and funding for which have not been adequately outlined (MCL 700.5104)
- **HB 4847** - Allowing financial institutions to serve as guardians, without requiring any certification over a specified number of wards served, unlike the proposed rules for professional guardians and attorneys (MCL 700.5104)

¹ Mather, Mark, et al. "Fact Sheet: Aging in the United States." PRB, Population Reference Bureau, Dec. 2015, Vol. 70, No., www.prb.org/resources/fact-sheet-aging-in-the-united-states/.

- **HB 4848** - Limiting a professional guardian's authority to delegate duties to noncertified support staff (MCL 700.5104)
- **HB 4847** - Requiring in-person visits with wards on a monthly basis rather than a quarterly basis, without permitting other, less time-intensive, forms of contact such as telephone or two-way audiovisual communication (MCL 700.5104(5))
- **HB 4848** - Requiring guardians to file inventories and annual accounts, which the court can already require if necessary, and which would be best handled in a conservatorship (MCL 700.5314a, MCL 700.5314b)
- **HB 4848** - Restricting a guardian's authority to make placement decisions without court approval (MCL 700.5314c)
- **HB 4848** - Requiring guardians to continue the placement of wards in their "permanent residence," regardless of what is best for the health and welfare of the individual (MCL 700.5314c)

The bills would also have a negative and/or restrictive impact on the work performed by guardians ad litem, court funding, and judicial decision-making. Examples of these proposed changes include, but are not limited to:

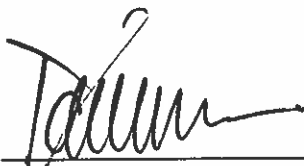
- **HB 4847** - The addition of restrictive suitability factors, which would limit the court's discretion in selecting the most appropriate fiduciary (MCL 700.5313(5), MCL 700.5409(3))
- **HB 4848** - Restricting the contents of GAL reports if the subject of the petition objects to the petition, which will limit the information available to the court and will have a negative impact on the court's ability to make informed decisions (MCL 700.5305(4))
- **HB 4848** - Requiring GAL reports to be filed with the court 7 days before a hearing, which conflicts with MCR 5.120(C), and does not take into account the court's preexisting discretion to set appropriate filing deadlines (MCL 5305(7))
- **HB 4848** - Limiting evidence contained in the GAL report that would not be admissible under the Michigan Rules of Evidence, which conflicts with MCR 5.121(D)(1), and would limit the information available to the court when making a determination (MCL 700.5305(8))
- **HB 4848** - Prohibiting GAL reports to be admitted into evidence if an attorney is appointed for the subject of the petition, which will limit the information available to the court and will have a negative impact on the court's ability to make informed decisions (MCL 700.5305(12))
- **HB 4848** - Creating the new role of "special guardian ad litem," upon the appointment of counsel, who can only be appointed for good cause to "provide information on a narrowly-defined issue that will likely be inadequately addressed," and who cannot communicate with the ward without the permission of the individual's counsel, which would be unworkable in practice (MCL 700.5305(13))

- **HB 4848** - Requiring the appointment of a GAL if a ward objects to an annual account (MCL 700.5314b(5))
- **HB 4848** - Requiring an attorney to be appointed upon the request of the ward or a GAL prior to a contested hearing on an annual account (MCL 700.5314b(5))
- **HB 4848** - Requiring additional petitions to be processed and hearings to be held regarding routine placement decisions (MCL 700.5314c)

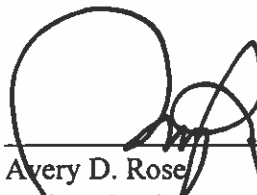
Representative Filler, we would urge you to consider how these proposed changes to EPIC will impact the work and availability of professional guardians, guardians ad litem, court funding, judicial resources, and ultimately, how they will affect the most vulnerable individuals in our communities who require the safety net of professional guardians when there is no one else suitable or willing to serve. We would respectfully ask that you hold the bills in your committee until they can be amended to address the concerns listed above, so that they might truly improve our system of guardianship and conservatorships in our State.

Thank you for your time and consideration.

Sincerely,



Hon. David M. Murkowski
Chief Probate Judge
Kent County Probate Court



Avery D. Rose
Probate Register
Kent County Probate Court

Cc: State Senator Winnie Brinks, 29th Senate District
State Representative David LaGrand, 75th House District
State Representative Rachel Hood, 76th House District
Chairperson Mandy Bolter, Kent County Board of Commissioners
Ms. Becky Bechler, Public Affairs Associates
Michigan Guardianship Association