Agendas & Attachments for

- Meeting of the Committee on Special Projects (CSP); and
- Meeting of the Council of the Probate and Estate Planning Section

Saturday, June 13, 2015
9:00 a.m.
University Club
Lansing, Michigan
Probate and Estate Planning Section of the State Bar of Michigan

Notice of Meetings

Meeting of the Section's Committee on Special Projects (CSP)

and

Meeting of the Council of the Probate and Estate Planning Section

June 13, 2015
9:00 a.m.
University Club
3435 Forest Road
Lansing, Michigan 48910

The above stated meetings of the Section will be held at the MSU University Club, 3435 Forest Road, Lansing, Michigan, Saturday, June 13, 2015. The Section's Committee on Special Projects (CSP) meeting will begin at 9:00 a.m., followed immediately by the meeting of the Council of the Section. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

Marlaine C. Teahan
Secretary

Fraser Trebilcock
124 West Allegan Street, Suite 1000
Lansing MI 48933
Phone: (517) 377-0869
Fax: (517) 482-0887
e-Mail: mteahan@fraserlawfirm.com
Schedule and Location of Future Meetings
Probate and Estate Planning Section
of the
State Bar of Michigan

Unless otherwise noted, meetings are held at 9:00 a.m. at the University Club, 3435 Forest Road, Lansing, Michigan 48910.

The following is a list of the remaining meetings for 2014-15:

September 12, 2015 (Annual Section Meeting)

Tentative meeting schedule for 2015-16:
October 10, 2015 (Kingsley Inn, 39475 Woodward Ave., Bloomfield Hills, MI)

November 7, 2015
December 12, 2015
January 16, 2016
February 13, 2016
March 12, 2016
April 16, 2016
June 4, 2016

September 10, 2016 (Annual Section Meeting)
CALL FOR MATERIALS
CSP and Council Meetings of the
Probate and Estate Planning Section
of the
State Bar of Michigan

All materials are due on or before 5 p.m. on the Thursday falling 10 days before the next Council meeting. Committee Chairs should typically plan to hold monthly committee meetings before the due dates listed below so that these deadlines can be met.

CSP materials are to be sent to Chris Ballard, Chair of the Committee on Special Projects (cballard@honigman.com).

Council materials are to be sent to Marlaine C. Teahan, Secretary of the Section (mteahan@fraserlawfirm.com).

Schedule of due dates for materials – by 5 p.m.
September 3, 2015 (Annual Section Meeting)
## Officers for 2014-2015 Term

<table>
<thead>
<tr>
<th>Officer</th>
<th>Position</th>
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</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Amy N. Morrissey</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>Shaheen I. Imami</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>James B. Steward</td>
</tr>
<tr>
<td>Secretary</td>
<td>Marlaine C. Teahan</td>
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<tr>
<td>Treasurer</td>
<td>Lentz, Marguerite Munson</td>
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## Council Members for 2014-2015 Terms

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<th>Council Member</th>
<th>Year elected to current term (partial, first or second full term)</th>
<th>Current term expires</th>
<th>Eligible after Current term?</th>
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<tbody>
<tr>
<td>Ard, W. Josh.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<tr>
<td>Ouellette, Patricia M.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<tr>
<td>Spica, James P.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
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<td>Lucas, David P.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
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<tr>
<td>Skidmore, David L.J.M.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
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<tr>
<td>Brigman, Constance L.</td>
<td>2010 (2nd term)</td>
<td>2016</td>
<td>No</td>
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<tr>
<td>Allan, Susan M.</td>
<td>2010 (2nd term)</td>
<td>2016</td>
<td>No</td>
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<tr>
<td>Mills, Richard C.</td>
<td>2014 (1st partial term)</td>
<td>2016</td>
<td>Yes (2 terms)</td>
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<tr>
<td>Marquart, Michele C.</td>
<td>2013 (1st term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<tr>
<td>New, Lorraine F.</td>
<td>2013 (1st term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<td>Vernon, Geoffrey R.</td>
<td>2013 (1st term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<tr>
<td>Ballard, Christopher A.</td>
<td>2014 (2nd term)</td>
<td>2017</td>
<td>No</td>
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<tr>
<td>Bearup, George F.</td>
<td>2014 (2nd term)</td>
<td>2017</td>
<td>No</td>
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<tr>
<td>Welber, Nancy H.</td>
<td>2014 (2nd term)</td>
<td>2017</td>
<td>No</td>
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<td>Jaconette, Hon Michael L.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<td>Kellogg, Mark E.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<tr>
<td>Malviya, Raj A.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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Ex Officio Members

John E. Bos
Robert D. Brower, Jr.
Douglas G. Chalgian
George W. Gregory
Henry M. Grix
Mark K. Harder
Hon. Philip E. Harter
Dirk C. Hoffius
Brian V. Howe
Raymond T. Huetteman, Jr.
Stephen W. Jones
Robert B. Joslyn
James A. Kendall
Kenneth E. Konop
Nancy L. Little
James H. LoPrete

Richard C. Lowe
John D. Mabley
John H. Martin
Michael J. McClory
Douglas A. Mielock
Russell M. Paquette
Patricia Gormely Prince
Douglas J. Rasmussen
Harold G. Schuitmaker
John A. Scott
Fredric A. Sytsma
Thomas F. Sweeney
Lauren M. Underwood
W. Michael Van Haren
Susan S. Westerman
Everett R. Zack
Michael W. Irish Award

Mission: To honor a practitioner (supported by recommendations from his or her peers) whose contributions to the Probate and Estate Planning Section of the State Bar of Michigan and whose service to his or her community reflect the high standards of professionalism and selflessness exemplified by Michael W. Irish.

Recipients
1995 Joe C. Foster, Jr.
1996 John H. Martin
1997 Harold A. Draper
1998 Douglas J. Rasmussen
1999 James A. Kendall
2000 NO AWARD PRESENTED
2001 John E. Bos
2002 Everett R. Zack
2003 NO AWARD PRESENTED
2004 Brian V. Howe
2005 NO AWARD PRESENTED
2006 Hon. Phillip E. Harter
2007 George Cooney (April 3, 2007)
2008 Susan A. Westerman
2009 Russell M. Paquette (posthumously)
2010 Fredric A. Sytsma
2011 John A. Scott
2012 NO AWARD PRESENTED
2013 Michael J. McClory
2014 Sebastian V. Grassi, Jr.

The Michael W. Irish Award was first presented in 1995 in honor of the late Michael W. Irish. The award reflects the professionalism and community leadership of its namesake.
The George A. Cooney Society

What: This award is presented by the Institute of Continuing Legal Education and the Probate & Estate Planning Section of the State Bar of Michigan to a Michigan estate planning attorney for outstanding contributions to continuing legal education in Michigan.

Who: As of November 2014, there have been four recipients:

- John E. Bos (2007)
- Everett R. Zack (2009)
- John H. Martin (2011)
- John A. Scott (2013)
- Phillip E. Harter (2015)

When: This award is not necessarily given every year. So far we’ve given awards in 2007, 2009, 2011, and 2013.

Where: The award is presented at the Annual Probate & Estate Planning Institute. ICLE will invite the recipient to attend the Institute, and one of the Section officers will present the individual award at the start of the Institute.

Why: With George Cooney’s passing, the State Bar of Michigan lost one of its premier estate planning and elder law attorneys. The Section and ICLE have chosen to jointly create the George A. Cooney Society to recognize a select group of lawyers who epitomize George’s dedication to his fellow attorneys and in recognition of his long-term, significant contributions to continuing legal education in Michigan.

How: ICLE will nominate candidates based upon the specific criteria contained in the Guidelines for Selection and will send a nominating letter to the Section for approval by the Executive Board. The Section’s leadership and at-large members may also recommend candidates to ICLE for consideration.

Guidelines for Selection:

- Significant CLE contributions to probate and estate planning over a substantial period of time.
- Outstanding quality of contributions.
- A wide range of contributions, e.g. multiple contributions for the following: speaker, author, editor, advisory board member, curriculum advisor, creating case study scenarios, preparing Top Tips, How-To Kits or other online resources, etc.
- Generous mentorship and assistance to colleagues with their probate and estate planning career development as well as activities and active involvement with the Probate & Estate Planning Section of the State Bar of Michigan.
**Budget Committee**
*Mission: To develop the annual budget and to alert the Council to revenue and spending trends*

Marlaine C. Teahan, Chair  
Marguerite Munson Lentz  
James B. Steward

**Annual Meeting**
*Mission: To arrange the annual meeting at a time and place and with an agenda to accomplish all necessary and proper annual business of the Section*

Shaheen I. Imami

**Bylaws Committee**
*Mission: To review the Section Bylaws and recommend changes to ensure compliance with State Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council*

Nancy H. Welber, Chair  
Christopher A. Ballard  
David P. Lucas

**Awards Committee**
*Mission: To periodically award the Michael Irish Award to a deserving recipient and to consult with ICLE concerning periodic induction of members in the George A. Cooney Society*

Douglas A. Mielock, Chair  
Robert D. Brower, Jr.  
George W. Gregory  
Phillip E. Harter  
Nancy L. Little  
Amy N. Morrissey

**Planning Committee**
*Mission: To periodically review and update the Section’s Strategic Plan and to annually prepare and update the Council’s Biennial Plan of Work*

Shaheen I. Imami, Chair

**Committee on Special Projects**
*Mission: The Committee on Special Projects is a working committee of the whole of the Section that considers and studies in depth a limited number of topics and makes recommendations to the Council of the Section with respect to those matters considered by the Committee. The duties of the Chair include setting the agenda for each Committee Meeting, and in conjunction with the Chair of the Section, to coordinate with substantive Committee chairs the efficient use of time by the Committee*

Christopher A. Ballard, Chair

**Nominating Committee**
*Mission: To annually nominate candidates to stand for election as the officers of the Section and members of the Council*

George W. Gregory, Chair  
Mark K. Harder  
Thomas F. Sweeney
Legislation Committee
Mission: In cooperation with the Section’s lobbyist, to bring to the attention of the Council recent developments in the Michigan legislature and to further achievement of the Section’s legislative priorities, as well as to study legislation and recommend a course of action on legislation not otherwise assigned to a substantive committee of the Section

William J. Ard, Chair
Christopher A. Ballard
Georgette E. David
Mark E. Kellogg
Sharri L. Rolland Phillips
Harold G. Schuitmaker

Amicus Curiae Committee
Mission: To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs

David L. Skidmore, Chair
Kurt A. Olson
Patricia M. Ouellette
Nazneen H. Syed
Nancy H. Welber

State Bar and Section Journals Committee
Mission: To oversee the publication of the Section’s Journal and periodic theme issues of the State Bar Journal that are dedicated to probate, estate planning, and trust administration

Richard C. Mills, Chair
Nancy L. Little, Managing Editor
Melisa M. W. Mysliwiec, Assoc. Editor

Citizens Outreach Committee
Mission: To provide for education of the public on matters related to probate, estate planning, and trust administration, including the publication of pamphlets and online guidance to the public, and coordinating the Section’s efforts to educate the public with the efforts of other organizations affiliated with the State Bar of Michigan

Constance L. Brigman, Chair
Kathleen M. Goetsch
Michael J. McClory
Neal Nusholtz
Michael L. Rutkowski
Rebecca A. Schnelz, (Liaison to Solutions on Self-help Task Force)
Nancy H. Welber
Melisa M. W. Mysliwiec

Probate Institute
Mission: To consult with ICLE in the planning and execution of the Annual Probate and Estate Planning Institute

James B. Steward
Electronic Communications Committee
Mission: To oversee all forms of electronic communication with and among members of the Section, including communication via the Section’s web site, the Section listserv, and the ICLE Online Community site, to identify emerging technological trends of importance to the Section and its members, and to recommend to the council best practices to take advantage of technology in carrying out the section’s and Council’s mission and work

William J. Ard, Chair
Stephen J. Dunn
Phillip E. Harter
Nancy L. Little
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Neal Nusholtz
Michael L. Rutkowski
Serene K. Zeni

Unauthorized Practice of Law and Multidisciplinary Practice Committee
Mission: To help identify the unauthorized practices of law, to report such practices to the appropriate authorities and to educate the public regarding the inherent problems relying on non-lawyers

Patricia M. Ouellette, Chair
William J. Ard
Raymond A. Harris
J. David Kerr
Robert M. Taylor
Amy Rombyer Tripp

Ethics Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment

David P. Lucas, Chair
William J. Ard
J. David Kerr
Robert M. Taylor

Court Rules, Procedures and Forms Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Court Rules and published court forms, and the interpretation, use, and amendment of them

Michele C. Marquardt, Chair
(J Liaison to SCAO for Estates & Trusts Workgroup)
James F. ("JV") Anderton
Constance L. Brigman (Liaison to SCAO for Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Rhonda M. Clark-Kreuer
Phillip E. Harter
Michael D. Holmes
Shaheen I. Imami
Hon. Michael L. Jaconette
Hon. David M. Murkowski
Rebecca A. Schnelz (Liaison to SCAO for Mental Health/Commitment Workgroup)
David L. Skidmore
Updating Michigan Law Committee
Mission: To review, revise, communicate and recommend Michigan’s trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times

Geoffrey R. Vernon, Chair
Robert P. Tiplady, II, Vice Chair
Susan M. Allan
Howard H. Collens
Georgette E. David
Shawn P. Eyestone
Mark K. Harder
Raymond A. Harris
Shaheen I. Imami
Robert B. Labe
Henry P. Lee
Marguerite Munson Lentz
Michael G. Lichterman
Raj A. Malviya
Sueann T. Mitchell
Nathan R. Piwowarski
James P. Spica

Artificial Reproductive Technology Ad Hoc Committee
Mission: To review the 2008 Uniform Probate Code Amendments for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction

Nancy H. Welber, Chair
Christopher A. Ballard
Keven DuComb
Robert M. O’Reilly
Lawrence W. Waggoner

Real Estate Committee
Mission: To recommend new legislation related to real estate matters of interest and concern to the Section and its members

George F. Bearup, Chair
Jeffrey S. Ammon
William J. Ard
Stephen J. Dunn
David S. Fry
Mark E. Kellogg
J. David Kerr
Michael G. Lichterman
David P. Lucas
Katie Lynwood
Douglas A. Mielock
Melisa M. W. Mysliwiec
James T. Ramer
James B. Steward

Insurance Ad Hoc Committee
Mission: To recommend new legislation related to insurability and the administration of irrevocable life insurance trusts

Geoffrey R. Vernon, Chair
Stephen L. Elkins
Mark K. Harder
James P. Spica
Joseph D. Weiler, Jr.

Membership Committee
Mission: To strengthen relations with Section members, encourage new membership, and promote awareness of and participation in Section activities

Raj A. Malviya, Chair
Christopher J. Caldwell
Nicholas R. Dekker
Transfer Tax Committee
Mission: To monitor developments concerning Federal and State transfer taxes and to recommend appropriate actions by the Section in response to developments or needs

Lorraine F. New, Chair
Robert B. Labe
Marguerite Munson Lentz
Geoffrey R. Vernon
Nancy H. Welber

Community Property Trusts Ad Hoc Committee
Mission: To review the statutes, case law and legislative analysis of Michigan and other jurisdictions (including pending legislation) concerning Community Property Trust, and if advisable, to recommend changes to Michigan law in this area

Neal Nusholtz, Chair
George W. Gregory
Lorraine F. New
Nicholas A. Reister
Patricia M. Ouellette

Specialization and Certification Ad Hoc Committee
Mission: To make recommendations to the Section with respect to the creation and implementation of a program that recognizes specialization and certification of specialization in the fields of probate, estate planning, and trust administration

James B. Steward, Chair
William J. Ard
Wendy Parr Holtvluwer
Patricia M. Ouellette
Sharri L. Rolland Phillips
Daniel D. Simjanovski
Richard J. Siriani
Serene K. Zeni

Guardianship, Conservatorship, and End of Life Committee
Mission: To monitor the need for and make recommendations with respect to statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships

Rhonda M. Clark-Kreuer, Chair
Katie Lynwood, Vice Chair
William J. Ard
Michael W. Bartnik
Raymond A. Harris
Phillip E. Harter
Michael J. McClory
Richard C. Mills
Kurt A. Olson
James B. Steward

Charitable and Exempt Organization Committee
Mission: To educate the Section about charitable giving and exempt organizations and to make recommendations to the Section concerning Federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations

Lorraine F. New, Chair
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby
Richard C. Mills

2-9-15
Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee
Mission: To review the statutes, case law, and court rules of Michigan and other jurisdictions concerning the scope of the Attorney Client Privilege for communications between trustees and their counsel and if necessary or appropriate, to recommend changes to Michigan law in this area

George F. Bearup, Chair
Kalman G. Goren
Shaheen I. Imami
David G. Kovac
Michael J. McClory
David L. Skidmore
Serene K. Zeni

Family Law Section Liaison
Mission: The liaison to the Family Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Family law Section on matters of mutual interest and concern

Patricia M. Ouellette

Alternative Dispute Resolution Section Liaison

Hon. Milton L. Mack, Jr.

Business Law Section Liaison
Mission: The liaison to the Business Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Business Law Section on matters of mutual interest and concern

John R. Dresser

Elder Law and Disability Rights Section Liaison
Mission: The liaison to the Elder Law and Disability Rights Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Elder Law Section on matters of mutual interest and concern

Amy Rombyer Tripp

ICLE Liaison
Mission: The liaison to ICLE is responsible for developing and maintaining bilateral communication between the Section and the Institute for Continuing Legal Education

Jeanne Murphy

Law Schools Liaison
Mission: The Law Schools Liaison is responsible for developing and maintaining bilateral communication between the Section and the law schools located in the State of Michigan in matters of mutual interest and concern

William J. Ard

Master Lawyers Section Liaison
Mission: The liaison to the Master Lawyers Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Master Lawyers Section on matters of mutual interest and concern

J. David Kerr
Michigan Bankers Association Liaison
Mission: The liaison to the Michigan Bankers Association is responsible for developing and maintaining bilateral communication between the Section and the Michigan Bankers Association in matters of mutual interest and concern
Susan M. Allan

Probate Registers Liaison
Mission: The liaison to the Michigan Probate and Juvenile Registers Association is responsible for developing and maintaining bilateral communication between the Section and the Probate and Juvenile Registers Association on matters of mutual interest and concern
Rebecca A. Schnelz

SCAO Liaisons
Mission: The liaisons to SCAO are responsible for developing and maintaining communications between the Section and SCAO on matters of mutual interest and concern
Constance L. Brigman
Michele C. Marquardt
Rebecca A. Schnelz

Solutions on Self-help Task Force Liaison
Mission: The liaison to the Solutions on Self-help (SOS) Task force is responsible for maintaining bilateral communications between the Section and the Task Force
Rebecca A. Schnelz

Probate Judges Association Liaisons
Mission: The liaisons to the MPJA are responsible for developing and maintaining bilateral communication between the Section and the MPJA on matters of mutual interest and concern
Hon. David M. Murkowski
Hon. Michael L. Jaconette

State Bar Liaison
Mission: The liaison to the State Bar is responsible for maintaining bilateral communication between the Section and the larger State Bar of Michigan, including the Board of Commissioners and staff of the State Bar
Richard J. Siriani

Taxation Section Liaison
Mission: The liaison to the Taxation Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Taxation Section on matters of mutual interest and concern
George W. Gregory
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<tr>
<th>Action Pending</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
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<td></td>
<td>-Prop tax uncapping exempt. (HB5552)</td>
<td></td>
<td>-Supreme Court Task Force Report</td>
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<td>-&quot;Who Should I Trust?&quot;Program</td>
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<td></td>
<td>-Fiduciary Access to Digital Assets (HB5366-5370)</td>
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<td>-Bylaw Update</td>
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<td>-55th Annual P&amp;EP Institute</td>
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<td>-PR access to online accts (SB 293)</td>
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<td>-Hearings minors &lt; 18 (SB 144 &amp; 177)</td>
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<td>-Funeral Representative (HB 5162/SB 731)</td>
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<td>Priority Items</td>
<td>-Domestic Asset Protection Trusts</td>
<td>-SCAO Meetings*</td>
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<td>-Communications with members*</td>
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<td>-ILIT Trustee Liability Protection</td>
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<td>-Social media &amp; website*</td>
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<td>-Artificial Reproductive Technology</td>
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<td>-Brochures</td>
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<td>-Charitable Trust</td>
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<td>-Annual Institute/ICLE seminars*</td>
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<td>-Probate Appeals</td>
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<td>-Section Journal*</td>
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<td>Secondary Priority</td>
<td>-EPIC/MTC Updates</td>
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<td>-Inventory Lawyer</td>
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<td>-Directed Investment Trusts</td>
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<td>-Opportunities with ICLE</td>
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<td>-TBE Trusts</td>
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<td>-Digital Journal</td>
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<td>-ADR Revision</td>
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<td>-Property tax on trust property</td>
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<td>-Uniform Real Property TOD Act</td>
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<td>Priority To Be Determined</td>
<td>-Dignified Death (Family Consent) Act</td>
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<td>-Budget Reporting</td>
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<td>-Probate Court Opinion Bank</td>
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<td>-Pooled income trust exclusion</td>
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<td>-Action on SC recommendations</td>
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<td>-Mentor program</td>
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<td>-Neglect Legislation</td>
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<td>-Foreign Guardians</td>
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<td>-Inheritance Tax</td>
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<td>-Estate Recovery</td>
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*ongoing
Probate and Estate Planning Council
Committee on Special Projects Agenda

June 13, 2015

9:00 a.m.

1. Community Property Trusts Committee – Neal Nusholtz
   Proposed Community Property Trust statute (Exhibit A-1)

2. Artificial Reproductive Technology (“ART”) Committee – Nancy Welber
   Proposed Addition to Michigan Health Code (Exhibit B-1)
   Modifications to drafts of MCL 700.3715 and 700.7821 (Exhibit B-2)
   See also, proposed amendments to EPIC (on the Probate Council
   website), which contains all of the sections that will be discussed at CSP
   in the upcoming months.

3. Updating Michigan Law Committee – Geoffrey Vernon
   Proposed tenancy by the entireties statutes
   Please see the current CSP materials for the following:
   MCL 557.151, new version (Exhibit C-1)
   MCL 700.7509, new version (Exhibit C-2)
   Other materials appear in the January 2015 CSP materials on the
   Probate Council website

4. Updating Michigan Law Committee – Geoffrey Vernon
   Senator Schuitmaker's bill regarding pre-death probate litigation (Exhibit
   D-1)
700.7616. The Michigan Community Property\(^1\) Trust Act.\(^2\)

(1) Definitions. As used in this section:

a. “Michigan Common Law Ownership by Married Spouses” is the ownership of marital property other than property owned by a Michigan Community Property Trust.

b. “Michigan Community Debt” is debt incurred by both married spouses during the Period of the Michigan Community Property Estate.

c. “Michigan Community Property” is that property held by a Michigan Community Property Trust that has been placed in said Trust during the Period of the Michigan Community Estate. On documents of ownership, where the full name of the trust as a Community Property Trust is not included, the trustee of a Michigan Community Property Trust should be titled as either a “Community Property Trustee” or as a “CP Trustee.”

Michigan Community Property includes:

a. property transferred to the Michigan Community Property Trust; or

b. property transferred to the Michigan Community Property Trustee; or

c. property or rights to property made payable to a Michigan Community Property Trust or titled either in the name of the Michigan Community Property Trust or in the name of the Michigan Community Property Trustee as Trustee for the Michigan Community Property Trust; and.\(^3\)

d. Income, earnings or appreciation associated with said property.

d. “Michigan Community Property Trust” (“CP Trust”). A Michigan Community Property Trust is a trust that bears the name “Community Property Trust” or “CP Trust” in its title and is subject to the provisions of 700.7510(2).\(^4\)

e. “Michigan Community Property Trustee” (or a CP Trustee) is a trustee or co-trustee of a Michigan Community Property Trust.
f. “Period of the Michigan Community Estate”. The Michigan Community Estate exists during the period of time that both married spouses are domiciled in the State of Michigan. The Michigan Community Estate commences the moment before property is transferred to a Michigan Community Property Trust for the first time and ends on the first of the following events:
   a. Both spouses are no longer domiciled in Michigan.
   b. Death of one spouse
   c. Divorce
   d. Annulment.

In regard to the rights and interests of a spouse in Michigan Community Property Trust property, the character of Michigan Community Property in a Michigan Community Property Trust shall continue to exist after the Period of the Michigan Community Estate has ended, although future contributions to a Michigan Property Trust after the Period of the Michigan Community Estate has ended will not qualify as Michigan Community Property and joint debts of married spouses after the Period of the Michigan Community Estate has ended will not qualify as Michigan Community Debt.

g. “Transmutation of Michigan Common law ownership into Michigan Community Property” by married spouses occurs when Michigan Common Law property held by married spouses is transferred to a Michigan Community Property Trust during the Period of the Michigan Community Property Estate.

(2) Michigan Community Property Trust. A trust qualifies as a Michigan Community Property Trust only if it:

a. Contains property placed in the Michigan Community Property Trust by married spouses during the Period of the Michigan Community Estate;

b. Expressly declares it is a Michigan Community Property Trust;

c. Has the phrase “Community Property Trust” or has the phrase “CP Trust” in its title;

d. has been executed by married spouses; and

e. Contains the following paragraph:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND
YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.8

(3) Michigan Community Property Trust; Community Spousal Rights. Each married spouse will have the following rights in property placed in a Michigan Community Property Trust during the Period of the Michigan Community Estate:9

a. Each spouse shall have a one half (1/2) interest in Michigan Community Trust Property during their lifetime and on death.

b. Each spouse may bequest or devise one half (1/2) of the property in a Michigan Community Property Trust both as expressed in the original trust document and in subsequent amendments separate from the trust document signed by the spouse amending their bequest or devise. Spouses may join together in making such devises. Valuations of property, when necessary to achieve a one half distribution on death, may be fairly made by the Michigan Community Property Trustee.

c. Expenses of a Michigan Community Property Trust shall be treated as one-half (1/2) belonging to each spouse.

d. Property of a Michigan Community Property Trust shall be distributed out of the Trust equally to both spouses. Property which cannot be divided shall be held as tenants in common upon distribution unless otherwise agreed by both spouses. Unless otherwise expressly agreed in the Michigan Community property Trust, or ordered by a court having jurisdiction over a Michigan Community property Trust, distributions by a Michigan Community Property Trustee from a Michigan Community Property Trust shall only occur by joint consent of the spouses either in the original Michigan Community Property Trust document or by other agreement or restatement of the Michigan Community Property Trust.

e. All rights in Michigan Community Property Trust Property are equal regardless of the source of funds used to buy such property, regardless of who transferred property into the trust, including by third parties, and
regardless of whose labor relates to its acquisition or its appreciation in value. Other than devises or bequests of a spouse’s one half interest, amendments to or revocation of a Michigan Community Property Trust require consent of both spouses. A third party gift to a Michigan Community Property Trust shall be considered to be a gift to the community of the marriage.

f. All property placed in a Michigan Community Property Trust during the Period of the Michigan Community Estate shall be considered community property subject to the provisions herein even after the Period of the Michigan Community Estate has ended.

g. Michigan Community Property is subject to joint control.

(1) Each spouse may authorize the other spouse to unilaterally manage the Michigan Community Property Trust as a sole Michigan Community Property Trustee by declaring so in a Michigan Community Property Trust or by separate document. Similarly, both spouses may authorize a third party to act as a Michigan Community Property Trustee. Unless both spouses agree otherwise, removal of Michigan Community Property Trustees and reappointment of Michigan Community Property Trustees must be made jointly by spouses during their joint lifetimes and singularly in the event of the death of one spouse. Spouses may revoke specific grants of authority to the Michigan Property Trustee at any time and may provide new grants of authority at any time, although spouses may otherwise agree that revocations of authority must be made jointly. Unless specifically provided in a Michigan Community Property Trust, neither spouse shall sell, convey, or encumber the real property in the Michigan Community Property Trust without the other spouse either: (1) joining as a Michigan Community Property Co-Trustee in the execution of the deed or other document by which the real estate is sold, conveyed, or encumbered, or (2) executing some other document authorizing a Michigan Community Property Trustee or Co-Trustees the execute documents selling, conveying or encumbering real estate.

(2) A Michigan Community Property Trustee or Co-Trustee shall not, sell, convey, or encumber the assets, including real estate or the
goodwill of a business held in the Michigan Community Property Trust where both spouses participate in its management unless there has been the consent of both spouses to do so: Where only one spouse participates in such management of a business, the Michigan Community Property Trustee may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse.

h. Neither spouse may gift property of the Michigan Community Property Trust without the express consent of the other spouse provided in the Michigan Community Property Trust or by separate document.

i. Property transferred to a Michigan Community Property Trust during the Period of the Michigan Community Estate is treated for all purposes as if it were acquired by either or both spouses during their marriage on the date the property is transferred to the trust.

j. A spouse serving as a Michigan Community Property Trustee is liable to the other spouse for any loss or damage caused by fraud or bad faith in the management of the Michigan Community Property.

Judicial Proceedings

700.7212. Community Property Trust and Divorce. In the event of a court proceeding involving divorce or separation, the court with jurisdiction over the divorce or separation shall have exclusive jurisdiction over the Michigan Community Property Trust, property held by the Michigan Community Property Trust or property payable to the Michigan Community Property Trust. A spouse may file a petition for determination of abandonment by or disappearance of a spouse and that court will also have exclusive jurisdiction over the trust. A court having jurisdiction may enter an order allowing a co-trustee spouse to have exclusive management and control over part or all of a Michigan Community Property Trust. (a) The court may:

(1) impose any condition and restriction the court deems necessary to protect the rights of a spouse;
(2) require a bond conditioned on the faithful administration of the property; and
(3) require payment to an agent of the court of all or a portion of the proceeds of the sale of the property, to be disbursed in accordance with the court's further directions. The court has continuing jurisdiction over the court's order rendered under this subchapter.

(b) On the motion of either spouse, the court shall amend or vacate the original order after notice and hearing if:
(1) the spouse who disappeared reappears;
(2) the abandonment or permanent separation ends; or
(3) a spouse who was reported to be a prisoner of war or missing on public service returns.

(1) In the event of a divorce, the court having jurisdiction over said divorce shall treat each spouse’s one-half share in a Michigan Community Property Trust in the same manner as all other marital property and may cause distributions from the Trust to occur in accordance with its allocation of property of the spouses in a divorce. Further, in such divorce proceedings, the distributions from a Michigan Community Property Trust may be the subject of a property settlement agreement (in conjunction with the divorce) where the distributions from the Michigan Community Property Trust are allocated in any manner in which the spouses decide.

700.7510. Michigan Community Debt. Michigan Community Debt may be collected from the assets of a Michigan Community Property Trust without any claim of contribution or indemnification between spouses; and action for such payment may be brought directly against a Michigan Community Property Trust. In case of debt which is the debt of a single spouse or in the case of joint debt which has not been incurred during the Period of the Michigan Community Estate, the Michigan Community Property Trustee may either be joined in a suit against the spouse or spouses having such debt; or, in the alternative, an action against the Michigan Community Property Trust may be brought in a subsequent proceeding after a judgment has been obtained against that spouse individually or both spouse’s jointly.
1. In Michigan, a surviving spouse has a basis in entireties property of one half of the fair market value of the property plus one half of the original purchase price. In community property states, the surviving spouse has a basis in community property equal to the full fair market value of the property. This is because property held by a spouse in community property states is considered property acquired from a decedent.

1014 (b) Property acquired From a Decedent. (6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

2 Alaska and Tennessee are common law states but they have optional community property statutes. Alaska permits married couples to declare what property is community property in a community property agreement without having to place property into a trust. Tennessee only has a trust provision in its statute which allows community property treatment for property placed in a community property trust. The Committee has decided to stay away from issues that can come up with Community Property Agreements because prior tax law in the area of community property agreements indicates agreements might create problems.

In a 1944 Supreme Court case, Oklahoma created what the Supreme Court called “an optional community property law.” Commissioner v. Harmon, 323 U.S. 44 (1944). Under that statute, a husband and wife could make a written election to have their property treated as community property. The purpose of doing so (before the advent of joint tax return filing) was so that a husband and wife could split their income and each would report ½ of the total income to save on taxes. The husband and wife then filed two separate tax returns and split the income, even though the split income included the husband’s salary and income on property separately owned by the husband. The Supreme Court called that an impermissible assignment of income. It did not work to permit the husband not to report the income. The government still maintains that position in its Internal Revenue Manual 25.18.1.1.2 “Community Property Law”:

Alaska has also adopted a community property system, but it is optional. Spouses may create community property by entering into a community property agreement or by creating a community property trust. See Alaska Stat. §§ 34.77.020 - 34.77.995. The U.S. Supreme Court ruled that a similar statute allowing spouses to elect a community property system under
Oklahoma law would not be recognized for federal income tax reporting purposes. *Commissioner v. Harmon*, 323 U.S. 44 (1944). The Harmon decision should also apply to the Alaska system for income reporting purposes.

In Rev. Rul. 77‐359, a taxpayer husband and wife agreed in the state of Washington that they would hold their property as community property. The ruling described a Washington case which it said had held that:

> a written agreement between husband and wife that each parcel of land wherever situated, both presently owned or thereafter to be acquired, *should* be deemed community property was a valid contract and operated to convert separate real property into community property. In reaching this conclusion, the court said that under the laws of Washington husband and wife were given the right to deal in every possible manner with their property, and that the husband and wife could change the status of separate property to community property.

The revenue ruling held that ownership of property must be changed for income to be split:

> To the extent that the agreement affects the income from separate property and not the separate property itself, the Service will not permit the spouses to split that income for Federal income tax purposes where they file separate income tax returns. *See Commissioner v. Harmon*, 323 U.S. 44 (1944)

3 Alaska has a complicated provisions for insurance. Tennessee does not. The Alaska statute addresses ownership issues where insurance is held by a community trust and paid for with separate property or vice versa. The Committee believes this is unnecessary. If insurance is paid into the community property trust during the period of the community estate, then it is community property. If it is paid out of the community property trust, it becomes equally owned by the spouses.

4 To achieve community property status when community property is optional, should require a public declaration of a community property trust since Michigan is a common law state where it cannot be assumed that property is held as community property. Alaska and Tennessee have no such provision.

5 The phrase “Community Estate” appears in the Internal Revenue Manual 25.18.1.2.4 (3‐04‐2011)

Termination of the Community Estate:
1. The community estate may be terminated in a number of ways including the following.
   - Death
   - Change of domicile
   - Divorce or legal separation
   - Physical separation (in a few states)

The practical implications of using a “Period of the Michigan Community Estate” allows a Community Property Trust to toggle on and off without having to terminate the trust. The Tennessee statute provides that on termination of the marriage other than death, the assets of the trust are distributed. The Alaska statute allows the married couple to agree on when the trust is distributed. Neither Tennessee nor Alaska require domicile of the spouses for there to be community property. Because domicile is a requirement in community property states for property to be treated as community property, the Committee believes Michigan should have a domicile requirement. A community property trust can, in essence, toggle on and off if married couples leave the state and not have to terminate the trust. Property in the trust will not lose its community property status if the couples leave the state, but any property put in the trust while not a resident of the state will not have community property status under Michigan law. Community estate also relates to Community Debt. See below.

6 The term character is drawn from the Internal Revenue Manual, which provides:

   25.18.1.2.7 (03-44-2011)
   Characterization of Property

1. After it is determined that community property laws apply (i.e., the taxpayers are married and domicile in a community property state), the next step is to determine the taxpayer’s rights and interest in the property under state law. This process is known as characterization. Characterization of property is a crucial and necessary component of every community property tax case.

2. Characterization is important = because it will determine the tax consequences. As it relates to separate tax returns filed by married individuals domiciled in a community property state, federal Income tax is assessed on 100% of a taxpayer's separate property income, and 50% of the total community property income acquired by either spouse. In some cases, property may be partially community property and partially separate property, requiring an allocation. In addition, the reach of the tax lien depends, in part, on the character of the taxpayer's property. As a result, the Service must characterize the taxpayer's property before it can correctly determine and collect tax.
Alaska and Tennessee allow a community property trust to include a resident trustee and non domiciled spouses. The Committee believes that domicile is a general requirement of being subject to the community property laws of a state. Neither the Alaska nor Tennessee statutes address how the trust or the trustee are identified on property.

This language is in the Alaska statute.

The proposed Michigan Statute differs from Alaska and Tennessee statutes which provide that spouses can agree on many terms in the trust, such as control or management, rights and obligations, or choice of law. The Committee believes it would be better to affirmatively state the rights and obligations which the spouses have and from which they can deviate so that the community property is an incident of living in the state. In Commissioner v. Harmon the Supreme Court noted a difference between consensual and legal community property:

“Under Lucas v. Earl an assignment of income to be earned or to accrue in the future, even though authorized by state law and irrevocable in character, is ineffective to render the income immune from taxation as that of the assignor. On the other hand, in those states which, by inheritance of Spanish law, have always had a legal community property system, which vests in each spouse one half of the community income as it accrues, each is entitled to return one half of the income as the basis of federal income tax. Communities are of two sorts,—consensual and legal. A consensual community arises out of contract. It does not significantly differ in origin or nature from such a status as was in question in Lucas v. Earl, where by contract future income of the spouses was to vest in them as joint tenants. In Poe v. Seaborn, supra, the court was not dealing with a consensual community but one made an incident of marriage by the inveterate policy of the State. In that case the court was faced with these facts: The legal community system of the States in question long antedated the Sixteenth Amendment and the first Revenue Act adopted thereunder. Under that system, as a result of State policy, and without any act on the part of either spouse, one half of the community income vested in each spouse as the income accrued and was, in law, to that extent, the income of the spouse.”

Commissioner v. Harmon, 323 U.S. 44 (1944)
Proposed Addition to Michigan Health Code

MICHIGAN HEALTH CODE

§ ____._____ Assisted reproduction; Form required to be provided to individual to establish parental intent for purposes of the Estates and Protected Individuals Code § 700.---; contents of form.

(1) Section 700.--- of the Estates and Protected Individuals Code provides that a birth mother who is not a gestational carrier is automatically the mother of the child. The form required by this section is intended to assist in determining whether, in the case of posthumous conception, any other individual is the other parent of the child. An individual need not be the donor of genetic material to be the other parent of the child.

(2) This section and the form required by this section only apply to cases of assisted reproduction in which the prospective birth mother will not be a gestational carrier as defined in MCL § 700.____.

(3) Any entity that, on or after the effective date of this section, receives human genetic material that may be used for conception must make available a form that can be used by an individual, other than the prospective birth mother, to signify the individual’s consent to assisted reproduction by the prospective birth mother with intent to be treated as the other parent of the child for purposes of Section 700.--- of the Estates and Protected Individuals Code. The execution of the form is not mandatory, and the form is not the exclusive means of expressing an individual’s intent. The entity should retain either the original form or an electronic version of the form and provide a copy of the signed form to the individual and the prospective birth mother. The form shall include advisements in substantially the following form:

You may wish to consult with a lawyer before signing this form. This form is designed only to clarify your intent; signing this form is not mandatory.
IF THE TRANSFER OF EGGS, SPERM, OR EMBRYOS FOR
PURPOSES OF ASSISTED REPRODUCTION BY (INSERT NAME
OF PROSPECTIVE BIRTH MOTHER) OCCURS AFTER YOUR
DEATH, DO YOU INTEND TO BE TREATED AS THE CHILD’S
OTHER PARENT?

PLEASE SELECT ONLY ONE, THEN SIGN AND DATE
BELOW:

_____ Yes
_____ No

Signed: ________________    Dated: ________________

• In case of a multiple birth, your response applies to all children
  born alive from the transfer that resulted in the birth.

• You can amend or revoke your consent at any time before the
  transfer of eggs, sperm, or embryos.

• Any future amendment or revocation you wish to make must be in
  a written document that you sign and date. A designation,
  amendment, or revocation may not be changed or revoked orally.
EXHIBIT B-2
Add new subsection to MCL 700.3715.

(gg) In deciding how and when to distribute all or part of a
decedent’s estate, the decedent’s personal representative:

(i) may take into account whether:

(a) the personal representative has received notice or
has knowledge of an intention to use genetic material to create a child
after the decedent’s death; and

(b) the posthumous birth of a child of assisted
reproduction may have an effect on the distribution of the decedent’s
estate.

(ii) shall incur no liability for making a distribution of all or
part of a decedent’s estate if the personal representative made a
distribution before receiving notice or acquiring knowledge of an
intention to use genetic material to create a child after the decedent’s
death.

COMMENT

This section is based on Cal. Prob. Code§ 249.5 and 249.6. In most
cases when an intestate decedent is survived by a surviving spouse, the
surviving spouse will inherit all or almost all of the decedent’s estate.
Consequently, even when there is a posthumous conception by the
surviving spouse, the child will not inherit any portion of the decedent’s
estate even if the child is treated under 2-120 or 2-121 as the child of the
deceased spouse.
Add new subsection to MCL 700.7821.

(4) In deciding how and when to distribute all or part of a trust estate, the trustee:

(a) may take into account whether:

(i) the trustee has received notice or has knowledge of an intention to use genetic material to create a child after the trust distribution date; and

(ii) the posthumous birth of a child of assisted reproduction may have an effect on the distribution of the trust estate.

(b) shall incur no liability for making a distribution of all or part of a trust estate if the trustee made a distribution before receiving notice or acquiring knowledge of an intention to use genetic material to create a child after the trust distribution date.

COMMENT

This new subsection is a companion provision to MCL 700.3715(gg).
EXHIBIT C-1
Sec. 1
Any interest in real property may be held jointly by an individual and his or her spouse as tenants by the entireties. All interests in real property jointly held by persons married to each other shall be presumed to be held by the spouses as tenants by the entireties, unless the deed or other instrument of conveyance expressly provides for some other form of ownership. It is the intent of the legislature that this subsection be a codification of the common law of this state in effect before the effective date of the public act that added this subsection.

Sec. 2
After [effective date], any interest in tangible or intangible personal property may be held jointly by an individual and his or her spouse as tenants by the entireties.

Sec. 3
With respect to all tangible and intangible personal property transferred to or acquired by an individual and his or her spouse after [effective date]:

(a) If there is a written instrument of conveyance, title, other writing evidencing ownership by the spouses, or a written agreement made between the spouses (whether such agreement was made before or during the marriage) the property shall be presumed to be held by the spouses as tenants by the entireties unless such instrument of conveyance, title, other writing evidencing ownership, or a written agreement made between the spouses (whether such agreement was made before or during the marriage) expressly provides for some other kind of ownership.

(b) If there is no written instrument of conveyance, title, other writing evidencing ownership, or a written agreement made between the spouses (whether such agreement was made before or during the marriage):

   (i) Tangible personal property transferred to or acquired for the use of both spouses (such as furniture and furnishings) shall be presumed to be held by the spouses as tenants by the entireties.

   (ii) Tangible personal property transferred to or acquired for the use of only one of the spouses (such as jewelry or clothing) shall be presumed not to be held by the spouses as tenants by the entireties.

   (iii) There shall be no presumption with respect to intangible personal property.

(c) All presumptions in this Section 3 are rebuttable presumptions.

Sec. 4
The term "tenants by the entireties" shall mean the same as "tenants by the entirety," "tenancy by the entirety," "tenancy by the entireties," "tenancies by the entirety," and "tenancies by the entireties".
Sec. 5
Nothing in this section is intended to alter the rights, restrictions, consequences, and conditions of:

(a) An individual and his or her spouse jointly holding real or personal property as tenants by the entireties, including the full right of survivorship upon the death of either.

(b) Any agreement made between an individual and his or her spouse (whether such agreement was made before or during the marriage) with regard to the ownership and disposition of tangible or intangible personal property.

Sec. 6
This section shall be effective on [effective date].

Sec 7
Nothing in this act shall affect the application of MCL 557.151 to personal property transferred to or acquired by persons married to each other prior to [effective date] or held by such married persons as tenants by the entireties on [effective date].
EXHIBIT C-2
ARTICLE VII: MICHIGAN TRUST CODE
PART 5: CREDITOR’S CLAIMS: SPENDTHRIFT, SUPPORT, AND DISCRETIONARY TRUSTS
700.7509 TENANCY BY THE ENTIRETY PROPERTY

(1) As used in this section:

(a) "Property" means real or personal property and any interest in real or personal property.

(b) "Proceeds" means:

(i) Property acquired by a trustee upon the sale, lease, license, exchange, or other disposition of property originally conveyed by spouses as tenants by the entirety to a trustee.

(ii) Interest, dividends, rents, and other property collected by a trustee on, or distributed on account of, property originally conveyed by spouses as tenants by the entirety to a trustee.

(iii) Rights arising out of property originally conveyed by spouses as tenants by the entirety to a trustee.

(iv) Claims and resulting damage awards and settlement proceeds arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, property originally conveyed by spouses as tenants by the entirety to a trustee.

(v) Insurance proceeds or benefits payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, property originally conveyed by spouses as tenants by the entirety to a trustee.

(vi) Property held by a trustee that is otherwise traceable to property originally conveyed by spouses as tenants by the entirety to a trustee or the property proceeds described in subsections (i) to (v).

(2) While both spouses are still living, any property once held by the spouses as tenants by the entirety and subsequently conveyed as tenants by the entirety to a trustee of one or more trusts, and the proceeds of that property, shall have the same immunity from the claims of each spouse’s separate creditors as would exist if the spouses retained the property or its proceeds as tenants by the entirety, so long as all of the following apply:

(a) The spouses remain married.
(b) The property or its proceeds continue to be held in trust by a trustee.

(c) The trust or trusts are revocable by either spouse or both spouses, acting together.

(d) Each spouse is a distributee or permissible distributee of the trust or trusts.

(e) The trust instrument, deed, or other instrument of conveyance provides that this section shall apply to the property or its proceeds.

(3) Upon the death of the first spouse:

(a) All property held in trust that, under subsection (2), was immune from the claims of the deceased spouse’s creditors immediately prior to his or her death shall continue to have immunity from the claims of the decedent’s separate creditors as if both spouses were still alive.

(b) To the extent that the surviving spouse remains a distributee or permissible distributee of the trust or trusts and has the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (2), was immune from the claims of the separate creditors of the decedent, the property shall be subject to the claims of the separate creditors of the surviving spouse.

(c) If the surviving spouse remains a distributee or permissible distributee of the trust or trusts, but does not have the power, exercisable in his or her individual capacity, to vest individually in the surviving spouse title to the property that, under subsection (2), was immune from claims of the spouses’ separate creditors, that property shall continue to have immunity from the claims of the separate creditors of the surviving spouse.

(4) The immunity from the claims of separate creditors under subsections (2) and (3) may be waived by the express provisions of a trust instrument, deed, or other instrument of conveyance, or by the written consent of both spouses, as to any specific creditor or any specifically described trust property, including all separate creditors of a spouse or all former tenancy by the entirety property conveyed to a trustee.

(5) Except as provided in subsection (6), immunity from the claims of separate creditors under subsections (2) and (3) shall be waived if a trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors.
(6) Immunity is not waived under subsection (5) if the identity of the property that is immune from the claims of separate creditors and evidence of such immunity is otherwise reasonably disclosed by any of the following:

(a) A publicly recorded deed or other instrument of conveyance by the spouses to the trustee.

(b) A written memorandum by the spouses, or by a trustee, that is recorded among the land records or other public records in the county or other jurisdiction where the records of the trust are regularly maintained.

(c) The terms of the trust instrument, including any schedule or exhibit attached to the trust instrument, if a copy of the trust instrument is provided with the financial statement.

(7) A waiver under subsection (5) shall be effective only as to:

(a) The person to whom the financial statement is delivered by a trustee.

(b) The particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement.

(c) The transaction for which the disclosure was sought.

(8) In any dispute relating to the immunity of trust property from the claims of either spouse’s separate creditor, the creditor has the burden of proving, by clear and convincing evidence, that the trust property is not immune from the creditor’s claims.

(9) In the event that any transfer of property held in tenancy by the entirety to a trustee of a trust as provided under subsection (2) is held invalid by any court of proper jurisdiction, or if the trust is revoked or dissolved by a court decree or operation of law, while both spouses are living, then immediately upon the occurrence of either event, absent a contrary provision in a court decree, all property held in the trust shall be deemed for all purposes to be held by both spouses as tenants by the entirety.

(10) No transfer by spouses described in subsection (2) shall affect or change either spouse’s marital property rights to the transferred property or interest therein immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless both spouses expressly agree otherwise in writing. Upon entry of a judgment of divorce or annulment between the spouses, the immunity from the claims of separate creditors under subsection (2) shall terminate.
(11) If property is transferred to a trustee of a trust as provided under subsection (2), the trustee may transfer such trust property to the spouses as tenants by the entirety.

(12) This section may not be construed to affect existing state law with respect to tenancies by the entirety. This section applies only to tenancy by the entirety property conveyed to a trustee on or after _________ ____, 2014.
EXHIBIT D-1
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1302, 1401, and 1403 (MCL 700.1302, 700.1401, and 700.1403), section 1403 as amended by 2009 PA 46, by adding section 3201a, and by adding part SA to article III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1302. The court has exclusive legal and equitable jurisdiction of all of the following:

(a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:
(i) The internal affairs of the estate.
(ii) Estate administration, settlement, and distribution.
(iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.
(iv) Construction of a will.
(v) Determination of heirs.
(vi) Determination of death of an accident or disaster victim under section 1208.
(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation; or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:
(i) Appoint or remove a trustee.
(ii) Review the fees of a trustee.
(iii) Require, hear, and settle interim or final accounts.
(iv) Ascertain beneficiaries.
(v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.
(vi) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.
(vii) Release registration of a trust.
(viii) Determine an action or proceeding that involves settlement of an irrevocable trust.
(c) Except as otherwise provided in section 1021 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a proceeding that concerns a guardianship, conservatorship, or protective proceeding.

(d) A proceeding to require, hear, or settle the accounts of a fiduciary and to order, upon request of an interested person, instructions or directions to a fiduciary that concern an estate within the court's jurisdiction.

(E) A PROCEEDING TO DETERMINE THE VALIDITY OF A WILL BEFORE THE TESTATOR'S DEATH.

Sec. 1401. (1) If notice of a hearing on a petition is required and except for specific notice requirements as otherwise provided by supreme court rule, the petitioner shall cause notice of the time and place of the hearing on the petition to be given to each interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Unless otherwise provided by supreme court rule, notice must be given by 1 of the following methods:

(a) Mailing a copy at least 14 days before the time set for the hearing by certified, registered, or first-class mail addressed to the person being notified at the post office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known.

(b) Delivering a copy to the person being notified personally at least 7 days before the time set for the hearing.

(c) If the address or identity of the person is not known and cannot be ascertained with reasonable diligence, publishing once a
copy in a newspaper having general circulation in the county where
the hearing is to be held at least 14 days before the time set for
the hearing.
(2) The court for good cause shown may provide for a different
method or time of giving notice for a hearing.
(3) Proof that notice was given must be made at or before the
hearing and filed in the proceeding.
(4) If a person entitled to notice under section 3306, 3310,
3403, 3414, 3510, 3705, or 5426 is a resident in and a citizen of a
foreign country, the person required to give notice must notify the
consul of the foreign nation in the city of New York or of the
district having jurisdiction, or the consul, vice-consul, or
consular agent resident in this state, if there is one, of the
matters and with the particulars described in the relevant section
of this act.
Sec. 1403. In a formal proceeding that involves an estate of a
decedent, minor, protected individual, or incapacitated individual
or in a judicially supervised settlement relating to such matters,
OR IN A FORMAL PROCEEDING THAT INVOLVES THE VALIDITY OF A WILL
UNDER PART 5A OF ARTICLE III, the following apply:
(a) An interest to be affected shall be described in pleadings
that give reasonable information to owners by name or class, by
reference to the instrument that creates the interests, or in
another appropriate manner.
(b) A person is bound by an order binding others in each of
the following cases:
(i) An order that binds the holder of a power of revocation or
amendment or a presently exercisable or testamentary general or
special power of appointment binds another person to the extent the
person's interest, as a permissible appointee, taker in default, or
otherwise, is subject to the power.
(ii) To the extent there is no conflict of interest between
the persons represented, as follows:
(A) An order that binds a conservator, plenary guardian, or
partial guardian binds the estate that the conservator, plenary
guardian, or partial guardian controls.
(B) An order that binds an agent under a durable power of
attorney having authority to act binds the principal if a
conservator, plenary guardian, or partial guardian has not been
appointed.
(C) An order that binds a guardian having authority to act
with respect to the matter binds the ward if a conservator of the
ward's estate has not been appointed and no agent under a durable
power of attorney has authority to act.
(D) An order that binds a trustee binds beneficiaries of the
trust.
(E) An order that binds a personal representative binds a
person interested in the undistributed assets of a decedent's
estate in an action or proceeding by or against the estate.
(F) An order that binds a parent who represents his or her
minor or unborn child binds that minor or unborn child if a
conservator or plenary guardian has not been appointed.
(iii) A minor, incapacitated, or unborn individual or a person
whose identity or location is unknown and not reasonably
ascertainable and who is not otherwise represented is bound by an
order that binds another party that has a substantially identical
interest in the proceeding, but only to the extent there is no
conflict of interest between the representation and the person
represented.
(c) Notice is required as follows:
i) Notice as prescribed by section 1401 shall be given to
every interested person or to one who can bind an interested person
as described in subdivision (b) (i) or (ii). Notice may be given
both to a person and to another who may bind the person.
(ii) Notice is given to an unborn or unascertained person, who
is not represented under subdivision (b) (i) or (ti), by giving
notice to all known persons whose interests in the proceedings are
substantially identical to those of the unborn or unascertained
person.
(d) At any point in a proceeding, the court may appoint a
guardian ad litem to represent the interest of a minor, an
incapacitated individual, an unborn or unascertained person, or a
person whose identity or address is unknown, if the court
determines that representation of the interest otherwise would be
inadequate. If not precluded by a conflict of interest, a guardian
ad litem may be appointed to represent several persons or
interests. The court shall set out the reasons for appointing a
guardian ad litem as a part of the record of the proceeding. If he
or she accepts the appointment, the guardian ad litem shall report
of his or her investigation and recommendation concerning the
matters for which he or she is appointed in writing or recorded
testimony. In making recommendations, a guardian ad litem may consider the general benefit accruing to living members of the individual's family. After the attorney general files an appearance as required by law in an estate proceeding on behalf of an unknown or unascertained heir at law, the attorney general represents the interest of the heir at law, and the court shall not appoint a guardian ad litem. If a guardian ad litem was previously appointed for the interest, the appointment of the guardian ad litem terminates.

SEC. 3201A. THE VENUE FOR A PETITION TO DETERMINE THE VALIDITY OF A WILL BEFORE THE TESTATOR'S DEATH UNDER SECTION 3510 IS 1 OF THE FOLLOWING:

(A) THE COUNTY WHERE THE TESTATOR IS DOMICILED.

(B) IF THE TESTATOR IS NOT DOMICILED IN THIS STATE, ANY COUNTY IN THIS STATE WHERE THE TESTATOR OWNS REAL PROPERTY.

ARTICLE III PART 5A

SEC. 3510. A TESTATOR, A PERSON WHO IS NOMINATED IN A WILL TO SERVE AS A PERSONAL REPRESENTATIVE, OR, WITH THE TESTATOR'S CONSENT, AN INTERESTED PERSON MAY PETITION THE COURT TO DETERMINE BEFORE THE TESTATOR'S DEATH THAT THE TESTATOR'S WILL, AND ANY DOCUMENTS THAT ARE INCORPORATED INTO IT BY REFERENCE, IS VALID SUBJECT ONLY TO SUBSEQUENT REVOCATION OR MODIFICATION. A PETITION UNDER THIS SECTION MUST INCLUDE ALL OF THE FOLLOWING:

(A) A REQUEST FOR AN ORDER DETERMINING THE VALIDITY OF THE WILL AND, IF APPLICABLE, ANY DOCUMENTS THAT THE WILL INCORPORATES BY REFERENCE UNDER SECTION 2510.

(B) A STATEMENT AS TO WHETHER THE WILL IS IN THE COURT'S POSSESSION OR ACCOMPANIES THE PETITION A COPY OF THE WILL AND ANY DOCUMENTS THAT THE PETITIONER SEeks TO HAVE INCORPORATED BY REFERENCE.
(C) A statement that the will meets the requirements of execution under section 2502 or 2506.

(D) A statement that the testator had sufficient mental capacity to make a will under section 2501.

(E) A statement that the testator was under no constraint or undue influence when the testator executed the will.

(F) The testator's name and address and the names and addresses of the spouse, children, devisees, nominated personal representative, and presumptive heirs, with the ages of those who are minors.

(G) A statement that the will has not been revoked or modified.

SEC. 3511. (1) On commencement of a proceeding under section 3510, the court shall fix a time and place of hearing. The petitioner shall give notice in the manner prescribed by section 1401 to each of the following persons:

(A) The testator.

(A) The testator's presumptive heirs.

(C) The devisees and personal representatives named in the will.

(2) Notice may be given to other persons. In addition, the petitioner shall give notice by publication to each unknown person, and to each known person whose address is unknown, who has an interest in the matters being litigated.

SEC. 3512. A party to a proceeding under section 3510 who opposes validity of a will for any reason shall state in his or her pleadings the party's objection to the validity of the will.
SEC. 3513. IF A PETITION UNDER SECTION 3510 IS UNOPPOSED, THE COURT MAY EITHER ORDER THE WILL VALID ON THE STRENGTH OF THE PLEADINGS OR CONDUCT A HEARING IN OPEN COURT AND REQUIRE PROOF OF THE MATTERS NECESSARY TO SUPPORT THE ORDER SOUGHT.

SEC. 3514. SECTION 3406 APPLIES TO A CONTESTED CASE UNDER THIS PART.

SEC. 3515. ALL OF THE FOLLOWING APPLY TO A CONTESTED CASE UNDER THIS PART:

(A) A PETITIONER WHO SEeks THE VALIDITY OF A WILL HAS THE BURDEN OF ESTABLISHING PRIMA FACIE PROOF OF DUE EXECUTION.

(B) A CONTESTANT OF A WILL HAS THE BURDEN OF ESTABLISHING LACK OF TESTAMENTARY CAPACITY, UNDUE INFLUENCE, FRAUD, DURESS, MISTAKE, OR REVOCATION.

(C) A PARTY HAS THE ULTIMATE BURDEN OF PERSUASION AS TO A MATTER WITH RESPECT TO WHICH THE PARTY HAS THE INITIAL BURDEN OF PROOF.

SEC. 3516. ON REQUEST OF AN INTERESTED PERSON, AFTER THE TESTATOR'S DEATH, A WILL FOUND TO BE VALID AND UNREVOKED UNDER THIS PART SHALL BE SUBMITTED UNDER ARTICLE III, PART 4,FORMALLY PROBATED.

SEC. 3517. SUBJECT TO APPEAL, AN ORDER DECLARING A WILL VALID UNDER THIS PART IS FINAL AS TO ALL PERSONS WHO RECEIVED NOTICE OF THE PETITION AND HEARING OR WHO ARE BOUND UNDER SECTION 1403 WITH RESPECT TO ALL ISSUES CONCERNING THE TESTATOR'S WILL THAT THE COURT CONSIDERED OR MIGHT HAVE CONSIDERED INCIDENT TO ITS RENDITION RELEVANT TO THE QUESTION OF WHETHER THE TESTATOR EXECUTED A VALID WILL. THE ORDER IS NOT FINAL, HOWEVER, AS TO SUBSEQUENT REVOCATIONS OF THE WILL, CODICILS TO THE WILL, CHANGES TO DOCUMENTS INCORPORATED BY REFERENCE UNDER SECTION 2510, OR WRITINGS INCORPORATED UNDER SECTION 2513.

SEC. 3518. A PROVISION IN THE TESTATOR'S WILL OR ANY INSTRUMENT IT INCORPORATES BY REFERENCE PURPORTING TO PENALIZE A PERSON FOR CONTESTING THE WILL OR INSTITUTING OTHER PROCEEDINGS RELATING TO THE ESTATE IS NOT ENFORCEABLE AGAINST A PERSON ON ACCOUNT OF HIS
OPPOSING A PETITION UNDER THIS PART.

SEC. 3519. THE COURT MAY NOT MAKE A NEGATIVE INFERENCE REGARDING THE VALIDITY OF A WILL ON ACCOUNT OF IT NOT HAVING BEEN THE SUBJECT OF A PROCEEDING UNDER THIS PART.
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN

June 13, 2015
Lansing, Michigan

AGENDA

I. Call to Order

II. Excused Absences

III. Introduction of Guests

IV. Minutes of the April 11, 2015 Meeting of the Council – Marlaine C. Teahan

See Attachment 1 – April 11, 2015 Minutes including these additional materials:
- Memorandum, April 10, 2015, Amy Morrissey, Chair of the Section to the P&EP Council, regarding Support of Solo and Small Firm Institute (referencing copy of email, March 10, 2015, Jeff Kirkey to Amy Morrissey, regarding Probate Section Sponsorship of the 2015 Solo & Small Firm Institute)
- Summary of Mediation in Probate Cases, written by Susan J. Butterwick, J.D. and Susan D. Hartman, J.D., provided by the Hon. Milton L. Mack, Jr., Liaison to the Alternative Dispute Resolution Section.

V. Treasurer's Report – Marguerite Munson Lentz

See Attachment 2 including a June 13, 2015 written report, Treasurer's financial report (March and April, 2015), and SBM reimbursement forms and instructions.

VI. Chairperson's Report – Amy N. Morrissey

See Attachment 3
- June 2015 ICLE agreement with the P&EP Section on Member Content – a vote of Council is needed; SBM General Counsel Cliff Flood has approved.
- May 27, 2015, Kirkey to Morrissey email, ICLE Experts in Estate Planning – approval for support of this program will be discussed.
- Copyright Registration is complete for the Section's Patient's Guide to Health Care Decision Making; Author and Copyright Claimant are listed as Constance L. Brigman; Rights and Permissions are listed as: Probate and Estate Planning Section, State Bar of Michigan. Many thanks to Tom Sweeney for his work on this registration.

VII. Report of the Committee on Special Projects – Christopher A. Ballard

VIII. Standing Committee Reports

A. Internal Governance

1. Budget – Marlaine C. Teahan
2. Bylaws – Nancy H. Welber
3. Awards – Douglas A. Mielock
4. Planning – Shaheen I. Imami
5. Nominating – George W. Gregory – written report of the Nominating Committee will be handed out at meeting.
6. Annual Meeting – Shaheen I. Imami

B. Legislation and Lobbying
1. Legislation – William J. Ard/Public Affairs Associates
   
   See Attachment 4 – June Report of Public Affairs Associates, pending legislation of interest to the Probate and Estate Planning Section

2. Updating Michigan Law – Geoffrey R. Vernon
3. Community Property Trusts Ad Hoc Committee – Neal Nusholtz
4. Insurance Ad Hoc Committee – Geoffrey R. Vernon
5. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber
6. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup

C. Education and Advocacy Services for Section Members
1. Amicus Curiae – David L. Skidmore

   See Attachment 5 – Application for Consideration of Amicus Curiae, In re Filibeck Estate

   See Attachment 6 – Amicus Committee Policy and Application

2. Probate Institute – James B. Steward
3. State Bar and Section Journals – Richard C. Mills

   See Attachment 7, June 8, 2015 Memorandum, Richard C. Mills, regarding Proposal from William S. Hein & Co. concerning the section Journal

4. Citizens Outreach – Constance L. Brigman

   See Attachment 8 – Citizens Outreach Committee Meeting June 3, 2015

5. Electronic Communications – William J. Ard
6. Membership – Raj A. Malviya

   See Attachment 9, Membership Committee Report, June 13, 2015
D. **Ethics and Professional Standards**
   1. Ethics – David P. Lucas
   2. Unauthorized Practice of Law & Multidisciplinary Practice – Patricia M. Ouellette
   3. Specialization and Certification Ad Hoc Committee – James B. Steward

E. **Administration of Justice**
   1. Court Rules, Procedures and Forms – Michele C. Marquardt

F. **Areas of Practice**
   1. Real Estate – George F. Bearup
      
      **See Attachment 10**, June 2, 2015, Email, David Fry to George Bearup, et. al, regarding proposed amendments to MCL 211.27a.
      
      2. Transfer Tax Committee – Lorraine F. New
         
         **See Attachment 11**, Tax Nugget by Robert Labe, "Another Crummey Loss for the Internal Revenue Service."
         
         3. Charitable and Exempt Organization – Lorraine F. New

G. **Liaisons**
   1. Alternative Dispute Resolution Section Liaison – Hon. Milton L. Mack, Jr.
   2. Business Law Section Liaison – John R. Dresser
   3. Elder Law and Disability Rights Section Liaison – Amy R. Tripp
   4. Family Law Section Liaison – Patricia M. Ouellette
   5. ICLE Liaison – Jeanne Murphy
   6. Law Schools Liaison – William J. Ard
   7. Michigan Bankers Association Liaison – Susan M. Allan
   9. Probate Registers Liaison – Rebecca A. Schnelz
   10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz
   11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz
12. State Bar Liaison – Richard J. Siriani
13. Taxation Section Liaison – George W. Gregory

See Attachment 12, Tax Section June events

See Attachment 13, Draft RAB 2015-XX regarding Taxability of Income to Estates, Trusts or Beneficiaries, comments due June 22, 2015.

IX. Other Business

X. Hot Topics

XI. Adjournment – After the Council meeting adjourns, if there is time, and at the discretion of the Chair, we may return to the CSP agenda.
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION OF
THE STATE BAR OF MICHIGAN

April 11, 2015 -- Lansing, Michigan

MINUTES

I. Call to Order. The Chair called the meeting of the Council of the Probate and Estate Planning Section to order at 10:20 a.m.

II. Attendance. Guests were introduced.

A total of 5 officers and 15 members of the Council were present, representing a quorum.

A. The following 5 officers of the Council were in attendance:

Amy N. Morrissey, Chair
Shaheen I. Imami, Chair Elect
James B. Steward, Vice-Chair
Marlaine C. Teahan, Secretary
Marguerite Munson Lentz, Treasurer

B. The following 15 members of the Council were in attendance:

W. Josh Ard                    Richard C. Mills
Christopher A. Ballard        Lorraine F. New
George F. Bearup              Patricia M. Ouellette
Rhonda M. Clark-Kreuer        David L.J.M. Skidmore
Hon. Michael L. Jaconette     James P. Spica
David P. Lucas                Geoffrey R. Vernon
Raj A. Malviya                Nancy H. Welber
Michele C. Marquardt

C. The following 3 members were absent with excuse:

Susan M. Allan                Mark E. Kellogg
Constance L. Brigman

D. The following ex-officio members of the Council were in attendance:

John E. Bos                   George W. Gregory
Robert D. Brower, Jr.

E. The following guests were in attendance:

John Roy Castillo             Sueann Mitchell
Lisa M. Damphousse            Jeanne Murphy
Kathleen Goetsch              Neal Nusholtz
Raymond Harris                Robert O'Reilly
J. David Kerr                 Julie Paquette
Buzz S. Leach                 Nicholas A. Reister
III. Minutes – Marlaine C. Teahan. The Minutes of the March 14, 2015 Council meeting were approved as submitted, by general consent.

IV. Treasurer's Report – Marguerite Munson Lentz. A written Treasurer's report and financial spreadsheet for January and February, 2015 were included in the Agenda. A new line item of $4,000 was added to the budget for Membership Development Committee – this looks as if we are over budget but we are not since it was newly added. The Treasurer’s Report and financial report were approved as submitted, by general consent.

V. Chairperson's Report – Amy N. Morrissey. Ms. Morrissey welcomed those in attendance and reported on the following items:

- Two public policy reports from positions taken at our last meeting have been reported to the State Bar. They are ADM File No. 2014-09 (court rule change to MCR 7.215 related to unpublished opinions), and a public policy position on a proposed section, MCL 700.1513, related to exculpation of trustees of life insurance trusts from liability related to the administration of life insurance policies held in the trust.
- Michele Marquardt sent a thank you note regarding plant received.
- Discussed request from ICLE for a $2500 sponsorship of the Solo and Small Firm Institute. Ms. Morrissey went over demographic information and benefits of sponsorship as provided by Jeff Kirkey at ICLE. Pros and cons were discussed. Many issues raised. Motion by Jim Stewart with support from Meg Lentz, modified to request that ICLE allocate $1000 of the $2500 sponsorship to scholarships for Section members. This motion passed with unanimous support. Attachment A, Memorandum from Ms. Morrissey, discussing sponsorship and attaching email from Mr. Kirkey.
- ICLE website agreement from 2011 needs updating. Discussed background and benefit to the Section to continue with an agreement for the ICLE website. More discussion will be had by the officers on the specific language. The contract must be reviewed and approved by SBM general counsel, Cliff Flood. Ms. Morrissey asked council members for input on this and she may be circulating the agreement before June for additional Council input.
- Council’s letter to the Court of Appeals in the Cliffman case was returned from the Court. Discussed need for motion to file an amicus brief and brief. Suggestion made to look at superintending control. Amicus Committee to look at our future procedures.
- Referral to the Committee on Court Rules, Forms and Procedures to consider the court rule related to who is entitled to make a motion for reconsideration.
- The Hon. Milton L. Mack, Jr. is welcomed as our new ADR Section Liaison; we look forward to his contributions.

VI. Report of the Committee on Special Projects – Christopher A. Ballard
No action items were reported on and no votes were requested by the Committee on Special Projects (CSP). A report was given regarding the following items discussed at CSP:

- Artificial Reproductive Technology Committee report, Professor Lawrence W. Waggoner reviewed issues relative to MCL 700.2114 and the possible expansion of the section in accord with the Uniform Probate Code (as revised in 2008 and 2010).
A complete package of materials is in the Agenda. We began a review of the package and this will continue for several months.

- A vote was taken at CSP to approve the draft of new version for MCL 557.151; the latest draft was approved. A motion to approve by Council was deferred.
- Updating Michigan Law Committee
  - Proposed tenancy by the entireties statutes – next month

VII. **Standing Committee Reports**

A. **Internal Governance**

5. Nominating – George W. Gregory. No report

B. **Education and Advocacy Services for Section Members**

1. Amicus Curiae – David L.J.M. Skidmore. No further report than the discussion on this issue during Chair Morrissey's report.
2. Probate Institute – James B. Steward reported that, compared to last year, we are still ahead of the number of registrants for the Annual Institute. Work is ongoing for the Speakers' Dinner. Discussed bus use and the various other activities at the Institute.
3. State Bar and Section Journals – Richard C. Mills reported that Spring Journal was recently published.
4. Citizens Outreach – Constance L. Brigman. Ms. Morrissey reported in Ms. Brigman’s absence. Discussed possibility of looking at third party vendors for brochures, focusing on options and cost. Discussed print versions – for now we are dealing with website but will consider print versions. Ms. New asked if the public would use the website. Ms. Welber said the SBM wants us to have this online. Discussion that indigent and older clients still want paper brochures and could not access or know how to use the digital versions. It is important to keep in mind that the mission was from the pamphlet committee.
6. Membership – Raj A. Malviya. Mr. Malviya reported on visits to law schools. The packets to be distributed at law schools were passed around; these can also be used at solo and small firm institute and at the vendor table at the May and June Annual Institutes. Discussed the social gathering at the Traverse City office of Smith Haughey Rice & Roegge, May 8, from 4-6 p.m. Details will be worked out for buses. Discussed how the social event will be promoted using emails, posts on
C. Legislation and Lobbying

1. Legislation – William J. Ard. The PAA report of bills we are watching is in the Agenda materials. Mr. Ard also reported on a bill involving a statute of repose for engineers etc. (SB 149). Ms. Lentz discussed digital assets bill which is moving forward; however, Rep. Forlini is trying to get a small workgroup together to tweak the bill. Discussed industry's response around the country. Council still favors the Uniform Law Commission's, standalone bill approach.

2. Updating Michigan Law – Geoffrey R. Vernon. Work continues on many issues including domestic asset protection trusts, digital assets, trustee exoneration in certain situations relative to life insurance trusts, and proposed tenancy by the entitites statutes. Mr. Vernon requested that Section members email him ideas for corrections, changes, or updates to EPIC and other probate and estate planning topics for consideration by the Updating Michigan Law committee.

3. Community Property Trusts Ad Hoc Committee – Neal Nusholtz reported that the draft was circulated in the materials and we hope to review it next month.


5. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber. Summarized what was discussed at CSP.

D. Ethics and Professional Standards


3. Specialization and Certification Ad Hoc Committee – James B. Steward spoke with Lynn Chard and Janet Welch on Specialization and one hurdle is that Michigan does not have mandatory CLE and specialization program would require mandatory CLE. It is difficult to push a specialization program along by ourselves. New issue is that the SBM Task Force identified the concept of specialization last fall. We will watch and see where the Task Force goes on this issue before we do much more on our level. Nancy Welber, while at a recent ACTEC meeting, talked to the person in charge of specialization in Florida, who is willing to discuss these issues with Mr. Steward. Ms. Welber learned that the cost in Florida is astronomical, especially the appeals process when someone does not qualify or fails the test. We discussed the need to review potential programs of other groups approval or use of other groups to specialize with a need to review the program; this issue was referred to the Ethics Committee. David Lucas and Rick Mills will work on this issue with Mr. Steward.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Michele C. Marquardt. No report.
2. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup. No report.

F. Areas of Practice

1. Real Estate – George F. Bearup. PRE statute was discussed. This is a work in progress.

2. Transfer Tax Committee – Lorraine F. New. Discussion of IRS report that lists common taxpayer errors. 


4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer. Judge Mack – reported that Sen. Jones and AARP had a meeting regarding an amendment to EPIC relative to guardianships in two states. This issue appears in probate court infrequently. Sen. Jones will introduce a bill to allow probate court to appoint a guardian here. Judge Mack provided additional insight. John Roy Castillo supplied information on the details of a probate case in Michigan that played a part in the proposed legislation. We will work with Becky Bechler on this bill. LSB has finished the draft of the bill and it will be introduced in the next few weeks (Later we learned this is SB 270, introduced on April 15, 2015 by Sen. Jones).

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Hon. Milton L. Mack, Jr. is a proponent of alternative dispute resolution (ADR) as it provides a mechanism allowing big chunks of time to be set aside to handle the difficult cases. Wayne County Probate Court has terminated the case evaluation system. See Attachment B, Mediation in Probate Cases, Susan J. Butterwick, J.D. and Susan D. Hartman, J.D.


3. Elder Law and Disability Rights Section Liaison – Amy R. Tripp.


5. ICLE Liaison – Jeanne Murphy. Discussed renewal for the website for EPIC Q&A. Has usage reports if people want that.


10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz. No report.


VIII. **Other Business.** We had a discussion on the Section's listserv and the other discussion boards available at the State Bar of Michigan Probate Section page and at ICLE's probate forum. It is not likely we will be making any move to consolidate these three resources in the near term; however, it was noted that having so many locations to post discussions may have the negative impact of diluting the power of these resources.

IX. **Hot Topics.** Recent estate recovery cases before the Court of Appeals were discussed.

X. **Adjournment – 12:05 adjourned**
Attachment A
interoffice
MEMORANDUM

To: P&EP Council
From: A. Morrissey, Chair
Date: April 10, 2015
Subject: Support of Solo and Small Firm Institute

1. At the March Section meeting, I presented the joint request of ICLE and the SBM for our Section’s financial support of the Solo and Small Firm Institute in October 2015.

2. Attached is Jeff Kirkey’s March 10 email to me, which I summarized at the March meeting. Our Section has been asked to contribute $2,500 in support of this Institute.

3. In response to additional questions that Council members raised in March, Jeff Kirkey and the SBM report:
   a. 58 of 194 at the 2014 Solo-Small Firm Institute were Probate Section members. That’s almost 30%. About 1/3 of our Section members attending this Institute in 2014 were women; 2/3 men.
   b. In terms of years in practice for our Section members, 15 had P numbers over 70000; 22 were P numbers under 40000, and the rest P numbers between 40000 and 70000, so yes, attendance included a significant amount of newer attorneys but also many experienced ones.
   c. 61 Probate & EP Section members attended in 2013.
   d. There isn’t a co-sponsoring section discount for this program. The only discount is “Early Bird,” but it’s a $50 savings so we should all encourage section members to sign up early. The price of the institute is cheaper than a usual ICLE event - $195 gets one 2 full days, three breakout tracks, national speakers, etc.
   e. SBM says that we can set aside an amount of support dedicated to scholarships for the section members similar to how the Business Law Section has done so in the past. The Business Law Section has offered $1000 of their $2500 sponsorship toward member registrations. We can do same if we choose.
   f. There will also be an opportunity for someone to speak on behalf of our Section.
Hi Amy,

You may recall that we talked recently about the Probate Section potentially serving as a sponsor of the Solo-Small Firm Institute.

On behalf of the State Bar and ICLE, please consider this my formal request to sponsor the 2015 SSFI. The State Bar requests $2,500 to serve as a sponsor. The dates are Thursday & Friday, October 8 & 9, 2015 at the Suburban Showplace in Novi. We’re all looking forward to trying out this new location. The benefits to the Section include:

- Listed as one of the sponsoring sections along with the Solo-Small Firm Section, LPM Section and Business Law Section
- Recognition of the Section from ICLE course planner at start
- Exhibitor table available to hand out information and sign up new members
- Large sign thanking all the Institute sponsors
- Prominent placement on cover of brochure and on website
- 4-5 e-blasts to all SBM members with the Section prominently featured
- Featured on full page ad in Bar Journal
- Featured in E-Journal ads for the Institute
- Input into the topics and speakers (2016 and beyond)

The 2014 program got excellent reviews. Attendees really loved our new national speaker, Cordell Parvin, as well as Randy Dean and Barron’s Henley’s technology topics. We had more than 190 in attendance. The 2015 schedule is almost complete. We’re bringing in new national speakers Deborah Epstein Henry (www.flextimelawyers.com) and Steve Hughes (www.HitYourStride.com) along with fan-favorite Barron Henley and a terrific cast of Michigan experts.

Please let me know if there is any additional info I can provide right now. I understand if the section is not able to vote on sponsorship until your next meeting, but I’m certain the State Bar would like to know as soon as possible.

Thanks very much for considering this opportunity, Amy. Also, I will soon send you a nomination for Judge Harter for the George Cooney Society for consideration at the council meeting.

Jeff
MEDIATION IN PROBATE CASES

Susan J. Butterwick, J.D. and Susan D. Hartman, J.D.

The following summaries are based on mediations of probate cases. Judge Milton Mack, Chief Judge of Wayne County Probate Court, reviewed the summaries and submitted likely court decisions based on the facts of each case. The actual mediated agreements, following the judge’s opinions below, illustrate the differences between court decisions and mediated settlements.

Estate division case. Two daughters (step-sisters) of deceased father disagreed over personal property and the house. Angry accusations surfaced over who had removed several valuable personal items.

Court Decision: “The question is who should be the Personal Representative of the estate. In this case, a Public Administrator would be appointed who would then propose how to distribute the property. The Public Administrator’s plan would probably be approved by the court.”

Mediated Agreement:

- All “missing” and contested items were located, accounted for and distributed cooperatively.
- Both families agreed informally on ways to repair their strained relationships.

Note: Relieved attorneys noted they had not been able to settle this contentious case for months.

Guardianship case. A woman in advanced stages of dementia was cared for at home by her two daughters, one of whom was co-guardian with their brother. The sisters accused their two brothers of removing mementos and furniture from the home, and denied both brothers access to the home. The sisters removed all photos of their brothers from their mother’s room. The paid care workers, on the sisters’ instruction, gave no health information to the brothers. The sisters characterized the co-guardian brother’s calls for information and issuing care orders as interference.

The sister co-guardian petitioned to have her brother removed as co-guardian. Both sisters were unhappy that they had to “do all the work,” while their brothers maintained they could not help while being denied access.

Court Decision: “The legal question would be whether to remove the brother as co-guardian. An additional question would be whether to remove the sister for failing to carry out her duties. The request to remove the brother would be denied and the sister would instead be removed.”

Mediated Agreement:
• Sister and brother remain co-guardians.

• Brothers’ photos to be returned to the mother’s room.

• Co-guardian brother to make medical decisions.

• All siblings to exchange information for mother’s care by logging information in her care notebook.

• Brothers to bring groceries, clothing, and medications to the home.

• Bills to be submitted to the brother for reimbursement from respondent’s account.

• If further disputes arise, they will return to mediation before going to court.

Note: After the mediation, the siblings told old family stories, reminisced, and hugged one another.

Conservatorship case. An 81-year old single nursing home resident with cancer and early dementia was extremely proud that she had worked in a factory since age 20 and supported herself. Her brother petitioned the court for conservatorship so that he could pay her nursing home and other bills, which she had not been paying. Respondent opposed the court petition and the idea of anyone handling her finances.

Court Decision: “The legal question is whether she needs a conservator. The brother would probably be appointed in this situation.”

Mediated Agreement:

• Respondent agreed to a conservatorship because she was reassured she would have some autonomy. Respondent received the $60 left over each month after payment of bills to use as she pleased.

Note: While the mediated agreement appears similar to the court decision in this case, the effect was different. During the mediation, respondent admitted that she couldn’t keep track of things as well as she used to and didn’t really object to her brother handling her bills. Her primary interest was in retaining some spending money (“to jingle in my pockets”) and feeling that she still could make some choices. Had the court imposed the same conservatorship, she would have continued to resist her brother’s authority and might never have discussed her interest in maintaining some autonomy while losing control over other aspects of her life.

With its focus on collaborative process, mediation is often a good fit for probate cases. As in these examples, mediation is particularly useful when the claims are not simply legal disputes, but involve ongoing relationships. The process in a contested probate hearing can polarize and damage relationships further; a third-party decision based solely on the legal merits of the case usually creates unhappiness and anger on at least one side.
Mediatable issues can arise in almost any kind of case in the probate jurisdiction: decedent’s estates, disputes arising from trusts, guardianships over minors or adults, conservatorships, other protective proceedings and Mental Health Code cases. In guardianship and mental health cases, although the question of capacity remains an issue for court decision, there are often a multitude of other issues, regarding care and planning and assignment of responsibilities, that are well suited to collaborative decision making.

As an attorney in probate-related mediation, you have an opportunity to counsel your clients on using the process effectively. You can educate your clients on their legal options and the legal effects of actions, letting them know the risks as well as benefits of a court hearing, and then allow them to be the final decision-maker once you have given them the necessary information. Guardians ad litem, or sometimes the vulnerable person’s attorney, can help by focusing on the interests of the vulnerable person, by moving the focus onto meeting needs of the parties.

Attorneys who are able to prepare themselves and their clients well, to understand what their clients believe is truly important about a case, and to recognize that personal relationships as well as legal issues may have an impact on the agreement, will find that clients benefit from mediated agreements. Even when agreements are not reached, parties will have gained insight about their own goals and expectations about the case, and often will have set the stage for reaching a settlement through further negotiation.

This article appeared in Michigan Lawyer’s Weekly in February 2010.
Income/Expense Reports

Attached is the income/expense report for March and April, 2015.

Mileage Reimbursement Rate Effective 1/1/2015

The IRS business mileage reimbursement rate for 2015 is $0.575 per mile. If you are eligible for reimbursement of your mileage for Probate Council business, please use this rate on your SBM expense reimbursement forms. The SBM forms and instructions are attached. Please note that the forms were revised to reflect the new mileage rate.

Expense Reimbursement Requests

- For instructions or forms, use [www.michbar.org/sections/home](http://www.michbar.org/sections/home) and scroll down to click on Expense Reimbursement Form | Instructions under the heading Section Forms or use the attached.
- Email forms to [mlentz@bodmanlaw.com](mailto:mlentz@bodmanlaw.com) or provide paper copies in person or by mail.

Marguerite Munson Lentz, Treasurer
Probate and Estate Planning Section

Treasurer Contact Information:

**Marguerite Munson Lentz**
BODMAN PLC
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
office: 313-393-7589
fax: 313-393-7579
email: [mlentz@bodmanlaw.com](mailto:mlentz@bodmanlaw.com)
# Probate Council
## Treasurer’s Report
### March and April 2015

**Beginning Fiscal Year 2014-2015**

<table>
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<tr>
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<th>FY to Date</th>
<th>Budget 2014-2015</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
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**Revenue**

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<th>Mar-15</th>
<th>Apr-15</th>
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<th>Budget 2014-2015</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
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**Disbursements**

| Journal (1)          |        | $12,225.00| (4,325.00) | 64.62% |
| E-blast               | 75.00  | $75.00    | $75.00     | 100.00%|
| KCLE (formatting)     | 3,750.00| 4,000.00  | $75.00     | 100.00%|
| **Total Disbursements**| $28,950.43| $5,413.74| $1,226.37| $10,225.10| $67,552.64| $122,150.00| $(54,597.36)| 55.30% |

**Net Increase (Decrease)**

|               | $48,562.36| $(6,500.00) |

**Footnotes**

(1) Includes e-blast for the Journal
(2) Includes plaques for outgoing Chair and Council Members
(3) Includes October meeting in connection with Chair’s Dinner and SBM Leadership Conference expense for incoming Chair and Chair Elect
(4) Includes telephone, e-mail & other electronic communications
(5) Includes copying costs and $700 for Young Lawyer’s Conference
(6) New budget item approved at March probate council meeting
(7) New budget item approved at April probate council meeting

**Net Increase (Decrease)**

2015-2016 Chair’s Dinner: Big Rock $1,000.00
State Bar of Michigan
306 Townsend St., Lansing MI 48933-2012, 5800 958-1442

Payee Name

Street

City

State Michigan Zip Code

E-mail

Phone

Section
Expense Reimbursement Form

Select a Section

Staple receipts to back of form as required.
For electronic transmittal, scan and PDF
receipts and send with form by e-mail.
Policies and procedures on reverse side.

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</tr>
</tbody>
</table>

I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Date Title Signature

Grand Total $0.00

Date Title Approved by (signature)
Instructions for Section Expense Reimbursement Form

The Expense Reimbursement Form can be prepared on your computer, digitally signed, digitally approved, and e-mailed for processing. All receipts and other required documentation can be scanned and e-mailed along with the form. You should keep a copy for your electronic file, and you will save paper and filing cabinet space as a result. You do not need to print the form and manually fill it out.

1. Type your name & address information. (You may tab after each field).
2. Select a section name from the drop down list.
3. Enter the appropriate expense account number.
4. Enter the amount(s).
5. In the date box, enter the date or pick from the calendar.
6. Type in the description and business purpose of the expense.
7. The form will automatically calculate the mileage, if applicable.
8. Type in the amount of the expense(s) for lodging, meals, miscellaneous.
9. The total expense will be displayed at the right hand side of the form for each line entered.
10. Please make sure the bottom right hand total amount and the upper right hand side total amounts are the same.
11. Date the form.
12. You may now digitally sign your form (placing your cursor over the signature line—it will prompt you through the process). Once you complete your first digital signature, it will be saved for future use.
13. You may save the form on your personal drive or shared drive for future reference.
14. You may enter a title if applicable.
15. Forward the form (by e-mail) along with scanned copies of receipts, list of names, and other required documentation to the treasurer of the section.
16. Once the form is approved, the treasurer will then forward the form/attachments to Alpa Patel in the Finance Department at SBM for processing.

Note: This form replaces any old or existing forms and should be used going forward.

If you have any questions about this form, please contact Alpa Patel at (517) 346-6362 or apatel@mail.michbar.org.
Agreement for Probate Section Member Area

This agreement is made between the Regents of the University of Michigan for its Institute of Continuing Legal Education (ICLE) and the Probate and Estate Planning Section of the State Bar of Michigan (the Section).

Background:

ICLE’s customers, who are primarily practicing Michigan lawyers, overlap substantially with the membership of the Section, and ICLE has worked closely with leaders and members of the Section in developing online resources for the ICLE website.

The Section has long provided to its members two valuable resources: the EPIC Q&A and the Probate Review. The Probate Review is written by Judge Harter. The Section appoints members of the EPIC Q&A Committee, which answers selected questions submitted by attorneys concerning EPIC, including the Michigan Trust Code.

The Probate Review and the EPIC Q&A’s were hosted on Calhoun County’s website, but upon Judge Harter’s retirement, the Section needed a new place to make these resources available to their members.

The Section was also in the process of replacing its print journal with an electronic journal and wanted to have the same search functionality for its electronic journal as ICLE had on its website, including the ability to search for individual articles.

In 2011, ICLE and the Section entered into a contract under which ICLE developed and maintained an area for Section members (Member Area) on the ICLE website that is both a Section benefit and a source of outreach for ICLE to potential new customers.

ICLE invested substantial staff time in development of the Member area. The Section paid a nominal fee of $2500 to cover the cost of preparing the journal archive and granted the right to link to the EPIC Q&A from the Michigan Probate Sourcebook in consideration for ICLE’s staff time investment and use of its technical infrastructure. ICLE and the Section have received a full and mutual benefit from this arrangement.

Section members log in at the ICLE website with a user name and password to access the Member Area. It includes the EPIC Q&A, the Probate Review, the Probate Journal from 1994 forward, and ads for ICLE services and Section-ICLE co-sponsored events. The Member Area uses the same search engine and functionality as www.icle.org. The Member Area on ICLE’s website links to the State Bar of Michigan and “back to ICLE.”

The parties are satisfied with the functionality and usage of the Member Area and wish to continue the arrangement.
ICLE and the Section agree to the following:

1. ICLE shall update and maintain the Member Area for the term of this agreement. New EPIC Q&A, new editions of the Probate Journal, and new summaries for the Probate Review will be added within a reasonable time as they are provided to ICLE.

2. ICLE shall provide search functionality for the Member Area through the same search engine used for resources on the ICLE web site. Currently, ICLE uses the Google Search Appliance.

3. ICLE shall assign a user name and password for each Probate Section member and handle customer support and answer questions for Section members using the Member Area.

4. ICLE shall have the right to post regular announcements and ads announcing ICLE products and services of interest to probate practitioners.

5. ICLE shall provide usage reports and other web statistics as reasonably requested by the Section.

6. The Probate Review summaries are prepared by Judge Harter. The EPIC Q&A’s are prepared by Judge Harter and the Section’s EPIC Q&A Committee. At the request of Judge Harter or his successor, the Section will appoint members of the EPIC Q&A Committee who will work with Judge Harter or his successor to prepare and review the answers to questions.

7. If Judge Harter decides to not continue in his role with the EPIC Q&A or the Probate Review, the Section, in consultation with ICLE, will select a successor who provides similar quality of service, provided that a successor can be identified at no additional cost to the Section.

8. The Section permits ICLE to link to the EPIC Q&A from the relevant portions of the online Michigan Probate Sourcebook, allowing access to that collection for subscribers to the Sourcebook. The Section grants ICLE a perpetual, royalty free, non-exclusive license to do this, subject to paragraph 11.

9. ICLE acknowledges that the content on the Member Area created by the Section or Judge Harter remains the property of the Section.

10. Each party retains copyright rights it may have in any materials it may provide or create for use in fulfillment of its obligations under this Agreement; except that the Section grants ICLE, over the term of this Agreement and all renewals and amendments, with a non-exclusive license to use Section copyrighted materials that are provided by the Section for use in this Agreement. The Section warrants that all materials it provides for posting do not infringe on any intellectual rights of third parties.

11. The term of this Agreement shall begin June 1, 2015, and end May 31, 2018. It shall automatically renew for additional three-year terms unless terminated pursuant to Sections 11 or 12.
12. Either party may terminate this Agreement for the other party’s material breach after notice and reasonable opportunity to cure the breach.

13. Either party, in its sole discretion, may terminate this Agreement at any time without cause, by providing at least six months prior written notice to the other party.

14. On termination of the Agreement, ICLE will provide the Section with an electronic copy of the most updated files belonging to the Section from the Member Area. The parties shall enter into good faith discussions to explore the Section granting a continuing license to ICLE to provide access to new EPIC Q&A issued after the date of termination.

15. The individual signing this Agreement on behalf of a party warrants that he or she has legal authority to bind the party to this Agreement.

Regents of the University
Michigan for its Institute
Of Continuing Legal Education

Probate and Estate Planning Section
of the State Bar of Michigan

Date: _____________________     Date: ________________________
Hi Amy,

In November 2014 the Probate Section sponsored ICLE’s revived “Experts in Estate Planning” seminar featuring Natalie Choate. The program was a huge hit. At that time we discussed that the Experts seminar would happen each fall.

Susan Bart has agreed to present the seminar this year on November 17, 2015 in Plymouth. It will be called “Experts in Estate Planning: Leaving an Education Legacy” and will last for 3 hours. The schedule is attached.

I’m requesting that the Section serve as a financial sponsor and once again contribute $4,000 toward bringing outstanding presenters to Michigan. Like last year ICLE will charge $195 as the general fee and Section members will receive a $30 discount. The seminar will be an elective for the certificate program. The Section will be featured prominently as the sponsor of the program.

Once again we will webcast so we can reach Section members around the state.

I hope the Section will agree to participate again. Please let me know if there is any additional info I can provide.

Thanks very much and talk to you soon.

Jeff
Experts in Estate Planning:
Leaving an Education Legacy

Tuesday, November 17, 2015
Inn at St. John's, Plymouth

Seminar Schedule

Presenter:
Susan T. Bart
Sidley Austin LLP
Chicago, IL

9:00 a.m. – 9:55 a.m.  Education Funding Basics
- Section 2503(e)
- Techniques you should never use
- Crummey Trusts
- Trust provisions for education
- Health and education exclusion trusts
- Costs of using different techniques

9:55 a.m. – 10:05 a.m.  Break

10:05 a.m. – 11:05 a.m.  Section 529 Savings Accounts
- Prepaid vs. savings accounts
- Income, gift and estate taxation
- Qualified withdrawals
- Changing investment options
- Rollover to other program manager
- Changing the beneficiary
- Changing the account owner
- Nonqualified distributions
- Creditor protection
- Trusts as account owners

11:05 a.m. – 11:15 a.m.  Break

11:15 a.m. – 12:00 p.m.  Dynasty Education Trusts with 529 Accounts
- Trusts as 529 account owners
- Trust law issues
- Taxation of 529 accounts owned by a Dynasty Education Trust
- Drafting the Dynasty Education Trust
- Disadvantages of trust-owned 529 accounts

Adjourn
ATTACHMENT 4
Below are bills that PAA has identified for Council of Probate Section of State Bar of MI

**H 4072**  
Title: Digital Assets Act  
Author: Forlini  
Introduction: 1/27/2015  
Location: House Judiciary Committee  
Summary: Enacts uniform fiduciary access to digital assets act.  
Status: 01/27/2015 INTRODUCED. 
01/27/2015 To HOUSE Committee on JUDICIARY.

**H 4124**  
Title: Retirement Income Deduction  
Author: Townsend  
Introduction: 1/29/2015  
Location: House Second Reading  
Summary: Clarifies limitations and restrictions on retirement income deduction for a surviving spouse.  
Status: 01/29/2015 INTRODUCED. 
01/29/2015 To HOUSE Committee on TAX POLICY. 
06/03/2015 From HOUSE Committee on TAX POLICY: Reported with recommendation with substitute (H-2). 
06/03/2015 In HOUSE. To second reading.

**H 4133**  
Title: Second Parent Adoption  
Author: Irwin  
Introduction: 2/3/2015  
Location: House Families, Children and Seniors Committee  
Summary: Provides for second parent adoption.  
Status: 02/03/2015 INTRODUCED. 
02/03/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

**H 4370**  
Title: Homestead Property Tax Credit  
Author: Hughes  
Introduction: 3/24/2015  
Location: House Tax Policy Committee  
Summary: Eliminates limitations and restrictions on deduction of certain retirement or pension benefits and restores treatment of senior citizens and the homestead property tax credit.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To HOUSE Committee on TAX POLICY.

H 4374 Title: Same Sex Marriage
Author: Irwin
Introduction: 3/24/2015
Location: House Families, Children and Seniors Committee
Summary: Removes prohibition on same-sex marriage.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

H 4375 Title: Same Sex Marriage
Author: Zemke
Introduction: 3/24/2015
Location: House Families, Children and Seniors Committee
Summary: Removes prohibition of same-sex marriage from foreign marriage act.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

H 4376 Title: Same Sex Couples
Author: Wittenberg
Introduction: 3/24/2015
Location: House Families, Children and Seniors Committee
Summary: Allows issuance of marriage license to same-sex couples without publicity.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

H 4547 Title: Video Interrogations
Author: Hooker
Introduction: 5/5/2015
Location: House Judiciary Committee
Summary: Requires video recording of child interrogations in child protection cases.
Status: 05/05/2015 INTRODUCED.
05/05/2015 To HOUSE Committee on JUDICIARY.

H 4548 Title: Video Interrogations
Author: Kosowski
Introduction: 5/5/2015
Location: House Judiciary Committee
Summary: Allows consideration of video recorded statements in certain proceedings.
Status: 05/05/2015 INTRODUCED.
05/05/2015 To HOUSE Committee on JUDICIARY.

**H 4549** Title: Video Interrogations  
Author: Santana  
Introduction: 5/5/2015  
Location: House Judiciary Committee  
Summary: Allows video recorded statements to be used in child protective services hearings, increases fines for improper release of video and requires to be retained for a certain period of time.  
Status: 05/05/2015 INTRODUCED.  
05/05/2015 To HOUSE Committee on JUDICIARY.

**H 4550** Title: Vulnerable Adult Abuse  
Author: Miller  
Introduction: 5/5/2015  
Location: House Criminal Justice Committee  
Summary: Revises penalty for crime of fourth degree vulnerable adult abuse.  
Status: 05/05/2015 INTRODUCED.  
05/05/2015 To HOUSE Committee on CRIMINAL JUSTICE.

**H 4599** Title: Disposition Arrangements  
Author: Schor  
Introduction: 5/14/2015  
Location: House Judiciary Committee  
Summary: Allows designation of funeral representative to make disposition arrangements for decedent.  
Status: 05/14/2015 INTRODUCED.  
05/14/2015 To HOUSE Committee on JUDICIARY.

**H 4658** Title: Court Ordered Financial Obligations  
Author: McCready  
Introduction: 6/2/2015  
Location: House Families, Children and Seniors Committee  
Summary: Allows collection of court-ordered financial obligations from judgments against the state.  
Status: 06/02/2015 INTRODUCED.  
06/02/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

**H 4676** Title: Sentencing Guidelines  
Author: Barrett  
Introduction: 6/2/2015  
Location: House Judiciary Committee  
Summary: Updates sentencing guidelines references.
HJR L  Title: Same Sex Marriage Resolution  
Author: Moss  
Introduction: 3/24/2015  
Location: House Families, Children and Seniors Committee  
Summary: Reduces cap on amount of venture capital voucher certificates.  
Status: 03/24/2015 INTRODUCED.  
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

S 9  Title: Parenting Time  
Author: Jones Ri  
Introduction: 1/20/2015  
Last Amend: 5/21/2015  
Location: Senate Consideration of House Amendments  
Summary: Modifies requirement to file motion for change of custody or parenting time order when parent is called to active military duty.  
Status: 01/20/2015 INTRODUCED.  
01/20/2015 To SENATE Committee on JUDICIARY.  
02/18/2015 From SENATE Committee on JUDICIARY: Recommended as substituted (S-1).  
02/18/2015 In SENATE. To second reading.  
02/18/2015 In SENATE. Read second time and committee substitute adopted.  
(S-1) To third reading.  
03/25/2015 In SENATE. Read third time and substituted (S-2).  
03/26/2015 In SENATE. Read third time. Passed SENATE. *****To HOUSE.  
03/26/2015 To HOUSE Committee on JUDICIARY.  
04/28/2015 From HOUSE Committee on JUDICIARY: Reported with recommendation with substitute. (H-1)  
04/28/2015 In HOUSE. To second reading.  
05/21/2015 In HOUSE. Read second time and committee substitute adopted.  
(H-1) To third reading.  
05/26/2015 In HOUSE. Read third time. Passed HOUSE. *****To SENATE for concurrence.  
05/27/2015 SENATE concurred in HOUSE amendments.

S 24  Title: Homestead Exemption  
Author: Nofs  
Introduction: 1/21/2015  
Last Amend: 3/18/2015  
Location: House Tax Policy Committee  
Summary: Continues principal residence homestead exemption upon death of a homeowner under certain circumstances.  
Status: 01/21/2015 INTRODUCED.
01/21/2015 To SENATE Committee on FINANCE.
03/05/2015 From SENATE Committee on FINANCE: Recommended as substituted (S-1).
03/05/2015 In SENATE. To second reading.
03/18/2015 In SENATE. Read second time and committee substitute adopted. (S-1) To third reading.
03/19/2015 In SENATE. Read third time. Passed SENATE. *****To HOUSE.
03/19/2015 To HOUSE Committee on TAX POLICY.

S 49  Title: Crimes Against Elder Adults
     Author: Smith V
     Introduction: 1/28/2015
     Location: Senate Second Reading - Committee Reports
     Summary: Increases penalties for certain crimes against a person over 65 years of age.
     Status: 01/28/2015 INTRODUCED.
             01/28/2015 To SENATE Committee on JUDICIARY.
             02/12/2015 From SENATE Committee on JUDICIARY: Recommended as substituted. (S-1)
             02/12/2015 In SENATE. To second reading.

S 50  Title: Elder Abuse
     Author: Smith V
     Introduction: 1/28/2015
     Location: Senate Second Reading - Committee Reports
     Summary: Provides for sentencing guidelines for elder adult abuse.
     Status: 01/28/2015 INTRODUCED.
             01/28/2015 To SENATE Committee on JUDICIARY.
             02/12/2015 From SENATE Committee on JUDICIARY: Recommended as substituted. (S-1)
             02/12/2015 In SENATE. To second reading.

S 73  Title: Obtaining Property
     Author: Schmidt W
     Introduction: 2/3/2015
     Location: Senate Judiciary Committee
     Summary: Prohibits obtaining services or property by fraud or deception and provides penalties.
     Status: 02/03/2015 INTRODUCED.
             02/03/2015 To SENATE Committee on JUDICIARY.

S 74  Title: Obtaining Services
     Author: Schmidt W
     Introduction: 2/3/2015
     Enacted: 1/10/2015
     Last Amend: 12/4/2014
Location: Senate Judiciary Committee
Summary: Enacts sentencing guidelines for obtaining services or property by fraud or deception.
Status: 02/03/2015 INTRODUCED.
02/03/2015 To SENATE Committee on JUDICIARY.

**S 227**
Title: Same Sex Marriage
Author: Hertel
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Removes prohibition on same-sex marriage from family law.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

**S 228**
Title: Marriage Licenses
Author: Knezek
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Allows issuance of marriage license to same-sex couple without publicity.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

**S 229**
Title: Same Sex Marriage
Author: Smith V
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Removes prohibition on same-sex marriage from foreign marriage act.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

**S 253**
Title: Domestic Relations Mediation
Author: Bieda
Introduction: 4/14/2015
Location: Senate Judiciary Committee
Summary: Limits mediation in certain domestic relations actions.
Status: 04/14/2015 INTRODUCED.
04/14/2015 To SENATE Committee on JUDICIARY.

**S 254**
Title: Protective Orders
Author: Bieda
Introduction: 4/14/2015
Location: Senate Judiciary Committee
Summary: Provides for alternate service of papers if party is protected by a protective order.
Status: 04/14/2015 INTRODUCED.
04/14/2015 To SENATE Committee on JUDICIARY.

S 270
Title: Probate Court Jurisdiction
Author: Jones Ri
Introduction: 4/15/2015
Enacted: 1/10/2015
Last Amend: 12/16/2014
Location: House Judiciary Committee
Summary: Clarifies probate court jurisdiction over guardianship and conservatorship proceedings.
Status: 04/15/2015 INTRODUCED.
04/15/2015 To SENATE Committee on JUDICIARY.
04/30/2015 From SENATE Committee on JUDICIARY: Recommended passage.
04/30/2015 In SENATE. To second reading.
05/13/2015 In SENATE. Read second time. To third reading.
05/14/2015 In SENATE. Read third time. Passed SENATE. *****To HOUSE.
05/14/2015 To HOUSE Committee on JUDICIARY.

SJR I
Title: Same Sex Marriage
Author: Warren
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Repeals constitutional prohibition of same-sex marriage and civil unions; Repeals section 25 of article I of the state constitution of 1963 to allow the recognition of marriage or similar unions of two people.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

SJR J
Title: Judicial Office Resolution
Author: Bieda
Introduction: 4/16/2015
Location: Senate Second Reading - Committee Reports
Summary: Removes prohibition on the election of or appointment to a judicial office of a person who has reached 70 years of age.
Status: 04/16/2015 INTRODUCED.
04/16/2015 To SENATE Committee on JUDICIARY.
06/03/2015 From SENATE Committee on JUDICIARY: Recommended passage.
06/03/2015 In SENATE. To second reading.
Attachment 5
Amicus Curiae Committee  
Probate and Estate Planning Section of the State Bar of Michigan  

Application for Consideration  

If you believe that you have a case that warrants involvement of the Probate and Estate Planning Section of the State Bar of Michigan ("Section"), based upon the Section’s Policy Regarding Consideration of Amicus Curiae Matters, please complete this form and submit it to the Chair of the Amicus Curiae Committee, along with all relevant pleadings of the parties involved in the case, and all court orders and opinions rendered.  

Date __May 14, 2015__  

Name __David L. Skidmore/Amicus Committee____________ P Number___58794___________  

Firm Name___Warner Norcross & Judd LLP________________________________________  

Address__111 Lyon St., N.W., Ste. 900_____________________________________________  

City__Grand Rapids________________________ State__MI____ Zip Code___49503_______  

Phone Number___616-752-2491____________ Fax Number____616-222-2491____________  

E-mail address____dskidmore@wnj.com__________________________________________  

Attach Additional Sheets as Required  

Name of Case______In re Filibeck Estate____________________________________________  

Parties Involved__Heidi J. Filibeck as Personal Representative of the Estate of Stephen J. Filibeck, Plaintiff-Appellee; Laura J. Beal, Defendant-Appellant._____________________________________________________________  

Appellant.______________________________________________________________________________  

Current Status: On June 5, 2014, the Michigan Court of Appeals (Docket No. 315107) rendered its decision (In re Filibeck Estate, 305 Mich App 550; 853 NW2d 448 (2014).  On April 23, 2015, the Michigan Supreme Court (Docket No. 149671) entered its Order granting the application for leave to appeal.  

Deadlines:____Amicus Briefs due on August 13, 2015_______________________________
Issue(s) Presented: The Michigan Supreme Court directed the parties to brief the following (non-exclusive) questions: (1) whether a constructive trust was properly imposed where the defendant raised funds from third party donors to defray a relative’s unexpected medical expenses for a life threatening condition, and those funds were placed in a credit union account in the defendant’s own name, which she later withdrew for her personal benefit before the relative’s death; (2) whether the decedent-beneficiary of the donated funds made a valid inter vivos or causa mortis gift of the funds to the defendant, including delivery of the funds to the defendant; and (3) if there was no such valid gift, whether the trial court erred in concluding that the remaining balance of donated funds must be paid to the decedent-beneficiary’s estate.

Michigan Statute(s) or Court Rule(s) at Issue Not applicable


Why do you believe that this case requires the involvement of the Probate and Estate Planning Section? This case involves several legal issues that recur with some frequency in routine estate-planning practice: constructive trusts and gifts. It also involves fundraising campaigns for ill persons and the disposition of funds not used for the intended purpose. The Michigan Court of Appeals considered the case important enough to publish, and the Michigan Supreme Court considered the case important enough to grant leave to appeal. The case does not present an
obvious error, but rather a challenging application of some basic legal principles germane to
T&E practice. The Amicus Committee recommends that the Probate Council submit an amicus
brief in order to wisely guide the Supreme Court’s decision. Given the increasing use of crowd-
source fundraising, it is expected that disputes over the disposition of funds raised through such
means will occur with more frequency in the future.

Do you believe that a decision in this case will substantially impact this Section’s attorneys and
their clients? If so, how? This case involves several legal issues that recur with some frequency
in routine estate-planning practice: constructive trusts and gifts. It also involves fundraising
campaigns for ill persons and the disposition of funds not used for the intended purpose. The
Michigan Court of Appeals considered the case important enough to publish, and the Michigan
Supreme Court considered the case important enough to grant leave to appeal. The case does not
present an obvious error, but rather a challenging application of some basic legal principles
 germane to T&E practice. The Amicus Committee recommends that the Probate Council submit
an amicus brief in order to wisely guide the Supreme Court’s decision. Given the increasing use
of crowd-source fundraising, it is expected that disputes over the disposition of funds raised
through such means will occur with more frequency in the future.
ATTACHMENT 6
Probate and Estate Planning Section of the State Bar of Michigan
Policy Regarding Consideration of Amicus Curiae Matters

The Amicus Curiae Committee (“Amicus Committee”) of the Probate and Estate Planning Section of the State Bar of Michigan (the “Section”) reviews and considers requests to the Section to file an amicus curiae brief, makes recommendations to the Section’s Council whether to file an amicus curiae brief, identifies legal counsel to prepare an amicus curiae brief, and oversees the work of legal counsel doing so.

It is the policy of the Section that amicus curiae briefs shall only be filed by the Section in cases pending in the Michigan Court of Appeals or the Michigan Supreme Court and which involve issues of significance in the areas of estate planning, trusts, probate, nonprobate estate settlement, guardianships, and conservatorships, or which involve Cases related to the practice of law in these areas. The Section does not file amicus curiae briefs in cases pending in a probate or circuit court and ordinarily does not file amicus curiae briefs in cases pending in federal court unless dealing directly with issues of Michigan law in the above mentioned areas.

The Amicus Committee reviews and considers requests for an amicus curiae brief (1) upon receipt of an Application for Consideration from a party to the litigation, (2) in response to an invitation to file an amicus curiae brief that is received by the Section from the court before which a case involving an issue of significance to the Section is pending, (3) upon the request of a Council member at the discretion of the Chair of the Committee or (4) by the Committee at its own discretion.

In determining whether to file an amicus curiae brief the Amicus Committee and the Section’s Council will consider all factors they consider relevant, including the anticipated impact of the lower court and appellate court(s) opinions on the Section’s attorneys and their clients, whether the lower court erred, the perceived likelihood a court to which leave to appeal has been sought will accept the case, whether the lower court’s opinion is a published opinion, whether the case involves facts that are likely to recur, whether a higher court is likely to grant leave to appeal in a particular case, and the financial resources of the Section. Examples of cases in which the Section favors filing an amicus curiae brief are (a) cases involving facts or principles with widespread applicability, (b) cases that affect the practice of law by members of the Section, and (c) cases in which the Michigan court of appeals has erred in a published opinion.

In determining whether to file an amicus curiae brief, the Amicus Committee will contact the legal counsel for the parties in the particular case to determine the facts and legal principles involved, obtain and review all relevant pleadings, independently review the applicable law, and evaluate possible positions the Section might wish to take in the matter. After completing its review, the Amicus Committee will submit a written report and recommendation to the Section’s Council regarding whether an amicus curiae brief should be filed by the Section and what position(s) the Section should take on the issues presented. In general, the Section will take positions and advocate for what the Section believes the law is or should be and will not advocate or favor a result for any particular party to the litigation.
When time permits, the Amicus Committee will submit its written report and recommendations before the Council’s next regularly scheduled meeting following receipt of the request by the Amicus Committee. When time permits, a decision regarding whether to file an amicus curiae brief will be made by the Council at the meeting at which the Amicus Committee’s recommendation is presented.

At meetings of the Section’s Council, or at meetings of the Section’s Committee on Special Projects (“CSP”) when a request for an amicus curiae brief has been referred by the Council to the CSP, the Amicus Committee will present the facts of the case, discuss the legal principles and issues involved, and offer the Committee’s recommendation.

Attorneys for the parties in the case will be permitted to offer written submissions to the Council and CSP and to answer specific questions from members of the Council or CSP, but oral presentations by attorneys for the parties will not be permitted at CSP or Council meetings unless requested by a vote of the Council members. Attorneys representing parties in the proceeding (including attorneys affiliated with law firms representing the parties) shall identify themselves at the commencement of the Amicus Committee’s presentation of the matter and shall excuse themselves and shall not be present during the Council’s or CSP’s discussions nor during the CSP’s and/or Council’s vote whether to accept the Amicus Committee’s recommendation.

All votes by the Council to accept the Amicus Committee’s report and recommendation, to file an amicus curiae brief, and to determine the position(s) to be taken in the brief shall be by show of hands and the votes for, against, and in abstention shall be recorded in the minutes by the Secretary of the Section or the acting secretary of the meeting of the Council if the Secretary of the Section is not present.

Notwithstanding any discussion or vote by CSP or otherwise, the Section’s Council retains final authority to determine whether the Section will file an amicus curiae brief and the position(s) that the Section will take. Where possible the Section will seek opportunities to file joint amicus curiae briefs and share in the cost of their preparation with other sections of the State Bar of Michigan or other interested organizations. The Section will pay the costs of preparing and filing amicus curiae briefs from Section funds, and shall not accept contributions to defray the costs from any party to the proceeding.

In connection with any case in which the Section’s Council votes to file an amicus curiae brief, the Council ordinarily shall authorize the Amicus Committee to retain legal counsel, and shall authorize a sum, ordinarily not to exceed $5,000 per case, to be paid to legal counsel, to file a brief on behalf of the Section setting forth the Section’s position(s) in the case.

This policy is subject to change by vote of the Section’s Council.

Adopted 9/19/09
Application for Consideration

If you believe that you have a case that warrants involvement of the Probate and Estate Planning Section of the State Bar of Michigan (“Section”), based upon the Section’s Policy Regarding Consideration of Amicus Curiae Matters, please complete this form and submit it to the Chair of the Amicus Curiae Committee, along with all relevant pleadings of the parties involved in the case, and all court orders and opinions rendered.

Date

Name______________________________ P Number_____________________

Firm Name_____________________________________________________

Address________________________________________________________________

City__________________ State______ Zip Code________________

Phone Number___________________ Fax Number_____________________

E-mail address____________________________________________________

Attach Additional Sheets as Required

Name of Case____________________________________________________

Parties Involved____________________________________________________

____________________________________________________________________

Current Status____________________________________________________

Deadlines___________________________________________________________

Issue(s) Presented___________________________________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________
Michigan Statute(s) or Court Rule(s) at Issue

Common Law Issues/Cases at Issue

Why do you believe that this case requires the involvement of the Probate and Estate Planning Section?

Do you believe that a decision in this case will substantially impact this Section’s attorneys and their clients? If so, how?
Memorandum

To: Probate and Estate Planning Council, State Bar of Michigan
From: Richard Mills, Chair of the State Bar and Section Journal Committee
Date: June 8, 2015
Re: Proposal from William S. Hein & Co., Inc. to include the Michigan Probate and Estate Planning Journal on HeinOnline

The Section has been approached by William S. Hein & Co., Inc. with a proposal to publish the Michigan Probate & Estate Planning Journal on its subscription-based website for scholarly journals in return for royalties paid to the Section (15% of net revenues based on the Journal’s pro rata share of HeinOnline revenues). More than 1,900 research libraries subscribe to HeinOnline, which claims to get more than three million hits per day. I recommend that we do contract with Hein & Co. to publish the Journal on HeinOnline.

The question has arisen whether the Section has the authority to license Journal articles to a third party. Currently Journal authors do not sign a license agreement with the Section. I spoke with Shane Marmion, Vice President of Hein & Co., who assured me that because Hein & Co. does not sell individual articles, but merely provides the Journal as a whole to libraries on a subscription basis in pdf format, licensing would not violate federal copyright law.

Prior to my conversation with Mr. Marmion I also spoke with a firm of two intellectual property attorneys, who both informed me that there is some technical argument of copyright infringement, but indicated that the practical interest of most authors in seeing their work disseminated widely and the fact that the articles would be available through law libraries and not sold to the general public give the Section a good argument that there was an implied license granted by the author or that the use falls under the Fair use Doctrine. They did recommend, however, that we obtain a written license from author’s to grant publishing rights to the Section, which I recommend.
ATTACHMENT 8
REPORT:  Public Outreach Committee of State Bar of Michigan Probate and Estate Planning Section, conference call on 6-3-15

PRESENT:  Katie Lynwood
          Melisa Mysliwiec
          Neal Nusholtz
          Rebecca Schnelz
          Nancy Welber
          Kathy Goetsch
          Connie Brigman.

ABSENT WITH EXCUSE: Jessica Schilling, Mike McClory, Nicholas Vontroba

1. All present committee members are in favor of developing a publication agreement with the State Bar of Michigan for print and online publication.
2. All present committee members are in favor of working with the State Bar of Michigan website and not moving to a third party website.
3. All present members agreed that the sidebar of the brochures pages on the website ought to index the entire set of brochures. Sandi Barger agrees (call with her on 6-3-15).
4. All present members agreed that the Health Care Decision-Making Guide was written as a print publication. It is not clear whether the Council wants to submit it and allow it to be sold by the SBM. Previously, the Council discussed direct sales by the section. Regardless, it could be posted as an online brochure if the Council wishes to do so.
5. All present members agree that the webpage for the brochures needs to be a landing page optimized for the Google web crawler. Sandi Barger agrees (call on 6-3-15). The links for the brochures will be on the “For Public” page and it is a landing page. She also agrees that it makes sense to make the first page of each brochure its own landing page, but she must take that up with her supervisors. At any rate, we have approval of multi-page format for each brochure and the text will be HTML as we requested. A “landing page” is a page capable of responding to a google search request.
6. Decision tree that Neal did in previous years: We realize that probate courts in different counties have differing procedures and forms. For that reason, the decision tree project is dead on arrival unfortunately.
7. Statutory Will discussion: Kathy pointed out there are problems with the Q & A that accompanies it.
RECOMMENDATIONS TO THE COUNCIL

1. The section needs to develop a publication agreement with the SBM regarding the print and online brochures that we write and the SBM publishes. We should do so prior to turning over final drafts of either to the State Bar of Michigan. However, the executive board of the Council must negotiate it with the SBM General Counsel. We have researched the items to consider in the publication agreement. Exhibit A

2. Continue to work with the SBM to publish brochures online at the SBM website. It appears to be going well at this point.

3. The Council should consider forming an ad hoc committee to work with the Legislative Council on the Q & A section for the statutory will materials that are being circulated.

Respectfully submitted,

Constance L. Brigman, Chairperson
Exhibit A – Recommendations for Publishing Agreement

Publishing agreement expires either when the copyright expires or a prior date.

Require a permissions statement to be included in all of the publications. For example:

**PUBLICATION NOTICE**
Copyright [YEAR] held by the State Bar of Michigan Probate and Estate Planning Section.

Publication Rights licensed to the State Bar of Michigan.

Permission to make digital or hard copies of part or all of this work for personal or classroom use is granted without fee provided that copies are not made or distributed for profit or commercial advantage and that copies bear this verbatim notice and the full citation on the first page.

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Persons granted permission to copy a SBM published work must display the above Publication Notice followed by: "Included here by permission."

As a professional courtesy, the Council Secretary should consult the State Bar of Michigan Webmaster regarding third party requests to republish materials that have been licensed to the SBM.

Copyright ownership – This is a license agreement for a term of years with the Section keeping the copyright.

- Name for it to be registered
- Should be done within the statutory period
- Joint authors and collaboration agreements
- Author owns all rights not specifically granted (they are reserved to Author)
Agreement covers:
- Publication in print whether in periodical or hardcover
- Publication on the internet

Subsidiary rights if work used in other forms or media -- reserved or granted
- Author approval of subsidiary rights licenses controlled by Publisher
- Electronic, audio, video, new technologies
- Rights not exercised by Publisher within reasonable period (e.g., 2 –3 years after published) revert to Author
- Include general reservation of rights clause: any rights not expressly granted remain with Author

Acceptance of submission
A. Define work
- Author represents it is the sole creator of the work
- Reading level: adult, college level, YA, middle reader, picture book
- Word count (range)
- Copyright permissions and releases in the manuscript itself
B. Publisher must comment - accept or reject -- as submitted (periodic review)
C. Standard: fit in form and content for publication vs. satisfactory at sole discretion of the publisher
D. Author’s right to revise in response to detailed rejection
E. Editing
- Author may perform (extra comp. beyond certain point)
- If Author desires changes after publication, no charge unless cost to fix exceeds $____________and no charge if due to printer’s or Publisher’s error.

Editor obliged to perform a good faith edit (written editorial guidance, line-editing, proof-reading)

Publication Issues
A. Require firm publication date (6-18 mos.)
B. Print run amount of the first print (# of copies)
C. Publisher shall not insert any ads or third party material without Author’s consent

Author Approvals
A. Approval of edits and final work
B. Approval/consultation for title, cover, layout, artwork, including manner, wording, order and prominence of Author or co-author credit
C. Approval/consultation for advertising, promotion of work by publisher or its agents

Accounting and payment
A. Publisher keeps accurate records (copies printed, sold, returned, and given away)
B. Author may inspect (*Audit right*)
C. If and when there will be payments to authors

Warranties, Indemnities and Liabilities
A. Warranties based on work *as submitted by Author*: no indemnity for Publisher’s contributions
B. Author warrants no infringement (best knowledge?)
C. Author warrants no libel or invasion of privacy
D. Author warrants no errors in instructions provided
E. If Author indemnifies, it hires lawyer and controls defense -- no settlement without Author’s consent
F. Author not liable for incidental or consequential damages
G. Neither may sue third parties for infringement etc. without consulting other

Revisions – specify frequency
A. If Publisher wants revision, Author is asked first to perform
B. If Author refuses, Publisher may allow other to revise the work
C. Limit frequency of revisions under this Agreement.
D. At some point, no more revisions. New Agreement must be reached.
E. If a work is revised and the revision contains 25% or more new substantive material, then it is a new work, a Major Revision. The author owns and controls the new work and may do as it wishes with it and the SBM does not have a license in it.

The permissions statement shall be revised accordingly:

"This work is based on an earlier work: TITLE, © State Bar of Michigan Probate and Estate Planning Section. Publication Rights Licensed to the State Bar of Michigan. {YEAR}. http://dx.doi.org/10.1145/{number}"

If the new work is not a Major Revision, then it is a Minor Revision and the State Bar of Michigan’s license will continue.

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The appropriate notice should appear both within the document and in the metadata associated with the document.

Fixity of Works

Works shall not be altered once published. There are times, however, when it is appropriate to publish a revised or corrected version of a work; doing so requires the approval of both the State Bar of Michigan Webmaster and the Council Secretary.
Reversion and termination of contract; reversion of unexercised rights
A. Rights revert to Author on termination or if Publisher fails to publish
B. Materials and manuscripts returned to Author

Conflicting Publications
Prohibiting Author to publish on same subject is too restrictive, especially for academics and experts
The Membership Committee (the “MC”) is about to conclude its first year of grass roots efforts. Since the last Council meeting on April 11, 2105, the MC provided a meaningful and impactful presence at the Probate & EP Institute in Acme (May 7 -9). The MC has also participated in several law school outreach initiatives to date. Members of the MC still have to attend the Plymouth Institute (June 19 -20) and seek feedback from the participants of that programming via survey. By early July, the MC will be able to secure more complete information on new section members from May 1 to June 30, which will help measure the MC’s campaign success after the annual institute venues. The MC will present again to the Council at the annual meeting on September 12, 2015.

Below is a short summary of successful initiatives completed by the MC in 2015:

1. Law School Outreach Program. The MC organized a law school outreach program and began implementation by attending its first visit at Cooley Law School. The event was held on May 19 at the Lansing campus of Thomas M. Cooley law school. Members of the MC presented to law students, the Ingham County Bar Association and the Elder law and Disability Section of the State Bar. Prof. Gary Bauer, Director of the Estate Planning clinic, helped members of the MC organize the event. The event produced a good turnout (estimated 50 participants), but law student participation was low, likely due to student population being spread out at Cooley’s multiple campuses throughout the State. The MC is considering visiting other Cooley campuses in the fall, but its first priority is making sure that all law schools are covered before committing to satellite campuses. The MC has other law school visits planned throughout the summer and fall, which were scheduled based on law school preference.

2. Institute Vendor Table At Probate & EP Institute (Acme). The MC had a table in the vendor hallways that received significant traffic. Placement of the table was also helpful as it was next to the entry doorways in the main ballroom. The vendor table displayed a large, tasteful sign and SBM folders that contained informational material about the section, and included a survey, which would help the MC gauge reasoning for section membership and wants/needs to improve the section. Members of MC who staffed the table throughout the Institute had the opportunity to converse and engage with institute attendees. Many members of the section and Council were also “hovering” around the vendor table, which helped create a positive and energetic gathering area between sessions. Overall, the vendor table was a positive experience and impactful for the section in creating visibility and strengthening the “brand”.

3. Survey. The MC created a survey for institute attendees to complete. The survey is a critical resource of information for the MC. It contains questions that will help the MC better understand why bar members are involved in the section and what will help attract more membership. Over 70 surveys were completed. Part of the success in securing survey completion was through the incentive of winning a raffle for an Apple watch. The raffle drawing went smoothly and a winner was drawn (Kathy Goetsch), who received her watch a few weeks
ago. The survey will be provided again to Plymouth Institute attendees. Once survey results are
tallied from that Institute, the MC will provide a report summarizing the overall results.

4. Social Event. Members of the MC organized a social event at the offices of Smith Haughey
on Friday, May 8, 2015. The event was heavily promoted through list serves, email, word of
mouth and at the Institute. The event was a success as an estimated 70+ attended. Many veteran
members of the section and Council members attended. Members of the MC received positive
feedback and thank you emails from several attendees during the weeks following the Institute.
Those types of emails and notes are still being generated and sent to MC members. The MC
reported that many new attorneys and seasoned attorneys who are new section members
thoroughly enjoyed the event and networking opportunity. The social event absorbed a majority
of the allocated funds to the MC for the year, but the MC believes it was worth the section’s
investment. Overall, the social event was a success and can hopefully be continued next year.

As noted above, the MC will prepare a more detailed report for the upcoming annual
meeting on September 12, 2015, which will summarize the data collected on new membership
after participate in the Plymouth Institute.
Bearup, George

From: David Fry <David@cottageLaw.com>
Sent: Tuesday, June 02, 2015 4:02 PM
To: James Ramer; Bearup, George; Ammon, Jeffrey S.
Cc: Tricia Korhorn
Subject: RE: Proposed Amendments to Uncapping Statute
Attachments: 2015 PROPOSED AMENDMENTS TO MCL 211 V 6-2-2015.docx

Gentlemen:
I am attaching a copy of the proposed amendments to MCL Section 211.27a as I believe they are now ready to go to Matt Blakely in Rep. Pettalia’s office. As a reminder, the language in RED font is what I sent to Matt in January, the BLUE font is language we added as a result of our conference call in late March, and I have added the GREEN font to incorporate suggestions in emails from Jim on February 9 (see change to Sec 6(h)), George on May 15 (see change to Sec. 7(f)) and Jim on May 18 (see change to Sec. 11(h)). I will also do a letter to Matt explaining the changes and why we believe they are essential to Michigan property owners.

Please take final look at these changes at your early convenience and let me know if you have any questions or concerns. With other amendments getting introduced, I think we need to act quickly before some less encompassing amendments get acted upon and closing out our opportunity to get better amendments considered.

Thanks for your input,
Dave

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Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

************
This message may contain privileged and confidential information. If you receive this message in error, please so indicate in reply and delete this message and any attachments.
Cc: Tricia Korhorn
Subject: RE: Proposed Amendments to Uncapping Statute

David,

Thank you for your efforts, they are most appreciated!

Should there be a definition for “transferor”? In the event of a transfer by the trustee of a trust, it is my understanding that legally, the transferor is the trustee. In the case where there is a corporate or independent trustee of a trust, this principle could defeat the purpose of the amendments. Perhaps an additional definitional section at the end would cure this problem, such as:

(11) As used in this section:

......

(h) “Transferor” means a person who makes a transfer and includes, but is not limited to, the settlor of a trust.

What are your thoughts?

Thank you.

Jim

From: David Fry [mailto:David@cottagelaw.com]
Sent: Thursday, May 14, 2015 4:52 PM
To: James Ramer; Bearup, George; Ammon, Jeffrey S.
Cc: Tricia Korhorn
Subject: Proposed Amendments to Uncapping Statute

Gentlemen;
Now that the Transportation bill has been voted on (and resoundingly defeated), I want to get back to Matt Blakely in Rep. Pettalia’s office and renew our efforts on amending MCL 211.27a. We left off in this effort at the end of March in which I circulated a copy of all of the changes that we had discussed since early January. A copy of that draft is attached, and the red font in the attachment is the language from the amendments we sent to Matt in January. The strike-through’s and the blue font is the language I added as a result of teleconference call March.

With respect to the March changes, please note that I did not originally replace all of the references to “settlor” with “transferor” since there are some cases where I believe we should retain that term. However, I took another look at the amendment in light of the “Gene Richards Memo” raising a concern about trustee to trustee transfers. With that in mind, I made the change in Section 7(f)(ii) that was made in Section 6(c) from “settlor” to “Transferor” and I believe Gene’s concern is now addressed. Also, please note that there is already a definition of “residential real property” at the very end of this statute, so there is no need to define it further by amendment. The definition of “commercial purpose” has been eliminated because one of the March changes was to eliminate any reference to “commercial purpose” in the statute and replace it with “so long as the classification under Section 34c does not change.”

Please note that I (unilaterally) have made new changes in Section 6(h) and 7(c) in order to be consistent with the March changes eliminating any reference to a “commercial purpose”. I also struck a few words in Section 7(w) because they didn’t belong there—it is the ownership percentage of both the real estate and the entity that must be identical—not just the owner of the entity as it was phrased.
I will put together a memo to Matt as you are reviewing the attached changes, and will circulate it as soon as it’s finished. Hopefully I can get your comments on the proposed changes shortly so we can touch base with Matt in the near future.

I seem to recall seeing a reference to another State Bar Section having an interest in the uncapping statute, but I can’t find or recall which Section or Committee was involved. If this legislative effort should be coordinated with another group, I trust someone will either forward this proposal on to the appropriate person(s) or let me know who I should send it to.

If anyone has concerns or questions, please let me know.

Regards,
Dave Fry

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Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

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This message may contain privileged and confidential information. If you receive this message in error, please so indicate in reply and delete this message and any attachments.
THE GENERAL PROPERTY TAX ACT (EXCERPT)
Act 206 of 1893

211.27a. Amended Property tax assessment; determining taxable value; adjustment; exception; "transfer of ownership" defined; qualified agricultural property; notice of transfer of property; applicability of subsection (10) to certain personal property; definitions.

Sec. 27a.

(1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.

(2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

(a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The property's current state equalized valuation.

(3) Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer.

(4) If the taxable value of property is adjusted under subsection (3), a subsequent increase in the property's taxable value is subject to the limitation set forth in subsection (2) until a subsequent transfer of ownership occurs. If the taxable value of property is adjusted under subsection (3) and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years. A corrected tax bill shall be issued for each tax year for which the taxable value is adjusted by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. For purposes of section 53b, an adjustment under this subsection shall be considered the correction of a clerical error.

(5) Assessment of property, as required in this section and section 27, is inapplicable to the assessment of property subject to the levy of ad valorem taxes within voted tax limitation increases to pay principal and interest on limited tax bonds issued by any governmental unit, including a county, township, community college district, or school district, before January 1, 1964, if the assessment required to be made under this act would be less than the assessment as
state equalized prevailing on the property at the time of the issuance of the bonds. This inapplicability shall continue until levy of taxes to pay principal and interest on the bonds is no longer required. The assessment of property required by this act shall be applicable for all other purposes.

(6) As used in this act, "transfer of ownership" means the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. Transfer of ownership of property includes, but is not limited to, the following:

(a) A conveyance by deed.

(b) A conveyance by land contract. The taxable value of property conveyed by a land contract executed after December 31, 1994 shall be adjusted under subsection (3) for the calendar year following the year in which the contract is entered into and shall not be subsequently adjusted under subsection (3) when the deed conveying title to the property is recorded in the office of the register of deeds in the county in which the property is located.

(c) A conveyance to a trust after December 31, 1994, except under any of the following conditions:

(i) If the settlor TRANSFEROR or the settlor’s TRANSFEROR’S spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor TRANSFEROR or the settlor’s TRANSFEROR’S spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the settlor TRANSFEROR or the settlor’s TRANSFEROR’S spouse, or both, conveys the residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor TRANSFEROR or the settlor’s TRANSFEROR’S spouse’s ESTATE, mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose CLASSIFICATION UNDER SECTION 34c DOES NOT CHANGE following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(d) A conveyance by distribution from a trust, except under any of the following conditions:

(i) If the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

(ii) Beginning December 31, 2014, a distribution of residential real property if the distributee is the settlor’s or the settlor’s spouse’s mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose CLASSIFICATION UNDER SECTION 34c DOES NOT CHANGE
following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(c) A change in the sole present beneficiary or beneficiaries of a trust, except under any of the following conditions:

(i) A change that adds or substitutes the spouse of the sole present beneficiary.

(ii) Beginning December 31, 2014, for residential real property, a change that adds or substitutes the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose CLASSIFICATION UNDER SECTION 34c DOES NOT CHANGE following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(f) A conveyance by distribution under a will or by intestate succession, except under any of the following conditions:

(i) If the distributee is the decedent's spouse.

(ii) Beginning December 31, 2014, for residential real property, if the distributee is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose CLASSIFICATION UNDER SECTION 34c DOES NOT CHANGE following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(g) A conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than 35 years or the lease grants the lessee a bargain purchase option. As used in this subdivision, "bargain purchase option" means the right to purchase the property at the termination of the lease for not more than 80% of the property's projected true cash value at the termination of the lease. After December 31, 1994, the taxable value of property conveyed by a lease with a total duration of more than 35 years or with a bargain purchase option shall be adjusted under subsection (3) for the calendar year following the year in which the lease is entered into. This subdivision does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j).
This subdivision does not apply to that portion of the property not subject to the leasehold interest conveyed.

(h) Except as otherwise provided in this subdivision, a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. BEGINNING ON DECEMBER 31, 2014, THE PRECEDING SENTENCE SHALL NOT APPLY TO A CONVEYANCE OF AN OWNERSHIP INTEREST IN AN ENTITY WHERE THE TRANSFEREE IS THE TRANSFEROR’S SPOUSE, OR THE TRANSFEROR’S OR SPOUSE’S MOTHER, FATHER, BROTHER, SISTER, SON, DAUGHTER, ADOPTED SON, ADOPTED DAUGHTER, GRANDSON OR GRANDDAUGHTER, OR TO A TRUST WHERE THE PRIMARY BENEFICIARY OR BENEFICIARIES IS ONE OR MORE OF SAID INDIVIDUALS, AND ANY SUCH CONVEYANCE SHALL NOT CONSTITUTE A CONVEYANCE OF AN OWNERSHIP INTEREST FOR PURPOSES OF THIS SUBDIVISION SO LONG AS THE RESIDENTIAL REAL PROPERTY IS NOT USED FOR ANY COMMERCIAL PURPOSE CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE FOLLOWING THE CONVEYANCE.

Unless notification is provided under subsection (10), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision. Both of the following apply to a corporation subject to 1897 PA 230, MCL 455.1 to 455.24:

(i) A transfer of stock of the corporation is a transfer of ownership only with respect to the real property that is assessed to the transferor lessee stockholder.

(ii) A cumulative conveyance of more than 50% of the corporation's stock does not constitute a transfer of ownership of the corporation's real property.

(i) A transfer of property held as a tenancy in common, except that portion of the property not subject to the ownership interest conveyed.

(j) A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.

(7) Transfer of ownership does not include the following:

(a) The transfer of property from 1 spouse to the other spouse or from a decedent to a surviving spouse.
(b) A transfer from a husband, a wife, or a husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.

(c) A transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease. **EXCEPT, BEGINNING ON DECEMBER 31, 2014, FOR RESIDENTIAL PROPERTY WHERE THE TRANSFEREE IS THE TRANSFEROR’S SPOUSE, OR THE TRANSFEROR’S OR SPOUSE’S MOTHER, FATHER, BROTHER, SISTER, SON, DAUGHTER, ADOPTED SON, ADOPTED DAUGHTER, GRANDSON OR GRANDDAUGHTER AND THE RESIDENTIAL REAL PROPERTY IS NOT USED FOR ANY COMMERCIAL PURPOSE. CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE FOLLOWING THE CONVEYANCE.** That portion of property transferred that is not subject to a life lease shall be adjusted under subsection (3).

(d) A transfer through foreclosure or forfeiture of a recorded instrument under chapter 31, 32, or 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to 600.3285 and MCL 600.5701 to 600.5759, or through deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property. If a mortgagee does not transfer the property within 1 year of the expiration of any applicable redemption period, the property shall be adjusted under subsection (3).

(e) A transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes.

(f) A conveyance to a trust if the settlor **TRANSFEROR** or the settlor’s **TRANSFEROR’S** spouse, **OR THE TRANSFEROR’S LEGAL REPRESENTATIVE**, conveys the property to the trust and any of the following conditions are satisfied:

(i) If the sole present beneficiary of the trust is the settlor **TRANSFEROR** or the settlor’s **TRANSFEROR’S** spouse, or both.

(ii) Beginning December 31, 2014, for residential real property, if the sole present beneficiary of the trust is the settlor’s **TRANSFEROR’S** or the settlor’s **TRANSFEROR’S** spouse’s mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose **CLASSIFICATION UNDER SECTION 34C DOES NOT CHANGE** following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subparagraph. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subparagraph, that present beneficiary is subject to a fine of $200.00.

(g) A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer.
(h) A transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse.

(i) A transfer for security or an assignment or discharge of a security interest.

(j) A transfer of real property or other ownership interests among members of an affiliated group. As used in this subsection, "affiliated group" means 1 or more corporations connected by stock ownership to a common parent corporation. Upon request by the state tax commission, a corporation shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of $200.00.

(k) Normal public trading of shares of stock or other ownership interests that, over any period of time, cumulatively represent more than 50% of the total ownership interest in a corporation or other legal entity and are traded in multiple transactions involving unrelated individuals, institutions, or other legal entities.

(l) A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of $200.00.

(m) A direct or indirect transfer of real property or other ownership interests resulting from a transaction that qualifies as a tax-free reorganization under section 368 of the internal revenue code, 26 USC 368. Upon request by the state tax commission, a property owner shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A property owner who fails to comply with a request by the state tax commission under this subdivision is subject to a fine of $200.00.

(n) A transfer of qualified agricultural property, if the person to whom the qualified agricultural property is transferred files an affidavit with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county in which the qualified agricultural property is located attesting that the qualified agricultural property shall remain qualified agricultural property. The affidavit under this subdivision shall be in a form prescribed by the department of treasury. An owner of qualified agricultural property shall inform a prospective buyer of that qualified agricultural property that the qualified agricultural property is subject to the recapture tax provided in the agricultural property recapture
act, 2000 PA 261, MCL 211.1001 to 211.1007, if the qualified agricultural property is converted by a change in use, as that term is defined in section 2 of the agricultural property recapture act, 2000 PA 261, MCL 211.1002. If property ceases to be qualified agricultural property at any time after being transferred, all of the following shall occur:

(i) The taxable value of that property shall be adjusted under subsection (3) as of the December 31 in the year that the property ceases to be qualified agricultural property.

(ii) The property is subject to the recapture tax provided for under the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

(o) A transfer of qualified forest property, if the person to whom the qualified forest property is transferred files a qualified forest taxable value affidavit with the assessor of the local tax collecting unit in which the qualified forest property is located and with the register of deeds for the county in which the qualified forest property is located attesting that the qualified forest property shall remain qualified forest property. The qualified forest taxable value affidavit under this subdivision shall be in a form prescribed by the department of agriculture and rural development. The qualified forest taxable value affidavit shall include a legal description of the qualified forest property, the name of the new property owner, the year the transfer of the property occurred, a statement indicating that the property owner is attesting that the property for which the exemption is claimed is qualified forest property and will be managed according to the approved forest management plan, and any other information pertinent to the parcel and the property owner. The property owner shall provide a copy of the qualified forest taxable value affidavit to the department. The department shall provide 1 copy of the qualified forest taxable value affidavit to the local tax collecting unit, 1 copy to the conservation district, and 1 copy to the department of treasury. These copies may be sent electronically. The exception to the recognition of a transfer of ownership, as herein stated, shall extend to the land only of the qualified forest property. If qualified forest property is improved by buildings, structures, or land improvements, then those improvements shall be recognized as a transfer of ownership, in accordance with the provisions of section 7jj[1]. An owner of qualified forest property shall inform a prospective buyer of that qualified forest property that the qualified forest property is subject to the recapture tax provided in the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, if the qualified forest property is converted by a change in use, as that term is defined in section 2 of the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1032. If property ceases to be qualified forest property at any time after being transferred, all of the following shall occur:

(i) The taxable value of that property shall be adjusted under subsection (3) as of the December 31 in the year that the property ceases to be qualified forest property, except to the extent that the transfer of the qualified forest property would not have been considered a transfer of ownership under this subsection.

(ii) Except as otherwise provided in subparagraph (iii), the property is subject to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036.
(iii) Beginning June 1, 2013 and ending November 30, 2013, owners of property enrolled as qualified forest property prior to January 1, 2013 may execute a new qualified forest taxable value affidavit with the department of agriculture and rural development. If a landowner elects to execute a qualified forest taxable value affidavit, that owner is not required to pay the $50.00 fee required under section 7j][1](2). If a landowner elects not to execute a qualified forest taxable value affidavit, the existing affidavit shall be rescinded, without subjecting the property to the recapture tax provided for under the qualified forest property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036, and the taxable value of that property shall be adjusted under subsection (3).

(p) Beginning on December 8, 2006, a transfer of land, but not buildings or structures located on the land, which meets 1 or more of the following requirements:

(i) The land is subject to a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140 to 324.2144. As used in this subparagraph, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(ii) A transfer of ownership of the land or a transfer of an interest in the land is eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170.

(q) A transfer of real property or other ownership interests resulting from a consolidation or merger of a domestic nonprofit corporation that is a boy or girl scout or camp fire girls organization, a 4-H club or foundation, a young men's Christian association, or a young women's Christian association and at least 50% of the members of that organization or association are residents of this state.

(r) A change to the assessment roll or tax roll resulting from the application of section 16a of 1897 PA 230, MCL 455.16a.

(s) Beginning December 31, 2013 through December 30, 2014, a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential real property does not change following the transfer.

(t) Beginning December 31, 2014, a transfer of residential real property if the transferee is the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose. CLASSIFICATION UNDER SECTION 34c DOES NOT CHANGE following the conveyance. Upon request by the department of treasury or the assessor, the transferee shall furnish proof within 30 days that the transferee meets the requirements of this subdivision. If a transferee fails to comply with a request by the department of treasury or assessor under this subdivision, that transferee is subject to a fine of $200.00.

(u) Beginning December 31, 2014, for residential real property, a conveyance from a trust if the person to whom the residential real property is conveyed is the settlor's or the settlor's spouse's
mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose. **CLASSIFICATION UNDER SECTION 34e DOES NOT CHANGE** following the conveyance. Upon request by the department of treasury or the assessor, the sole present beneficiary or beneficiaries shall furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements of this subdivision. If a present beneficiary fails to comply with a request by the department of treasury or assessor under this subdivision, that present beneficiary is subject to a fine of $200.00.

(v) Beginning on the effective date of the amendatory act that added this subdivision, a conveyance of land by distribution under a will or trust or by intestate succession, but not buildings or structures located on the land, which meets 1 or more of the following requirements:

(i) The land is made subject to a conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140 to 324.2144, prior to the conveyance by distribution under a will or trust or by intestate succession. As used in this subparagraph, "conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(ii) The land or an interest in the land is made eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170, prior to the conveyance by distribution under a will or trust or by intestate succession.

(w) **BEGINNING DECEMBER 31, 2014, THE TRANSFER OF AN OWNERSHIP INTEREST IN REAL PROPERTY TO OR FROM A CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP, OR OTHER LEGAL ENTITY, IF THE OWNERSHIP OF THE ENTITY OR REAL PROPERTY AFTER THE TRANSFER IS IDENTICAL TO THE OWNERSHIP OF THE REAL PROPERTY OR ENTITY BEFORE THE TRANSFER, BOTH IN THE IDENTITY OF THE OWNER(S) AND THE PERCENTAGE OF THE ENTITY OWNED IF OWNED BY MORE THAN ONE PERSON.**

(8) If all of the following conditions are satisfied, the local tax collecting unit shall revise the taxable value of qualified agricultural property taxable on the tax roll in the possession of that local tax collecting unit to the taxable value that qualified agricultural property would have had if there had been no transfer of ownership of that qualified agricultural property since December 31, 1999 and there had been no adjustment of that qualified agricultural property's taxable value under subsection (3) since December 31, 1999:

(a) The qualified agricultural property was qualified agricultural property for taxes levied in 1999 and each year after 1999.

(b) The owner of the qualified agricultural property files an affidavit with the assessor of the local tax collecting unit under subsection (7)(n).
(9) If the taxable value of qualified agricultural property is adjusted under subsection (8), the owner of that qualified agricultural property shall not be entitled to a refund for any property taxes collected under this act on that qualified agricultural property before the adjustment under subsection (8).

(10) The register of deeds of the county where deeds or other title documents are recorded shall notify the assessing officer of the appropriate local taxing unit not less than once each month of any recorded transaction involving the ownership of property and shall make any recorded deeds or other title documents available to that county’s tax or equalization department. Unless notification is provided under subsection (6), the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description. Forms filed in the assessing office of a local unit of government under this subsection shall be made available to the county tax or equalization department for the county in which that local unit of government is located. This subsection does not apply to personal property except buildings described in section 14(6) and personal property described in section 8(h), (i), and (j).

(11) As used in this section:

(a) "Additions" means that term as defined in section 34d.

(b) "Beneficial use" means the right to possession, use, and enjoyment of property, limited only by encumbrances, easements, and restrictions of record.

(c) "Inflation rate" means that term as defined in section 34d.

(d) "Losses" means that term as defined in section 34d.

(e) "Qualified agricultural property" means that term as defined in section 7dd.

(f) "Qualified forest property" means that term as defined in section 7jj[1].

(g) "Residential real property" means real property classified as residential real property under section 34c.

(h) THE TERM "COMMERCIAL PURPOSE" DOES NOT INCLUDE THE OCCASIONAL RENTAL OF PROPERTY CLASSIFIED AS RESIDENTIAL UNDER SECTION 34 (C), IF THE TOTAL NUMBER OF DAYS OF RENTAL IN ANY ONE CALENDAR YEAR DOES NOT EXCEED 30.

(h) “TRANSFEROR” MEANS A PERSON WHO MAKES A TRANSFER AND INCLUDES, BUT IS NOT LIMITED TO, THE SETTLOR OF A TRUST, AND A LEGAL REPRESENTATIVE ACTING IN A FIDUCIARY CAPACITY.
TAX NUGGETS
Dated June 13, 2015
By: Robert Labe

ANOTHER CRUMMEY LOSS FOR THE INTERNAL REVENUE SERVICE

Mikel v. Commissioner T.C. Memo 2015-64 (April 6, 2015)

Israel and Erna Mikel each made a gift to a family trust of $1,631,000 in 2007. The Mikel’s filed separate gift tax returns reporting these gifts in 2011. The Mikel’s each claimed annual exclusions in the aggregate of $720,000 based on a gift of a present interest of $12,000 to each of the trust’s 60 beneficiaries. The transfers to the trust made by the Mikel’s consisted of their residence in Brooklyn, New York, two other properties in Brooklyn (held directly or through a limited liability company) and a condominium in Florida. The IRS disallowed the claimed annual exclusion gifts because they believed the beneficiaries did not have a present interest in the property. The IRS argued that the trust beneficiaries lacked legally enforceable rights to withdraw funds from the trust and accordingly the Mikel’s made gifts of future interests.

The beneficiaries of the family trust were the Mikel’s children and lineal descendants and their respective spouses. Each beneficiary was granted a crummey withdrawal power to withdraw property from the trust limited annually to the lesser of a formula derived amount and the maximum federal gift tax annual exclusion under Section 2503(b) of the Internal Revenue Code in effect at the time of the transfer.

A donee must have a present interest in the gifted property to qualify for the annual exclusion. To be a gift of a present interest, the donee must have the unrestricted right to the immediate use, possession or enjoyment of the gifted property or income from the gifted property. Treas. Reg. §25.2503-3(b). Transfers in trust are characterized as a gift to the beneficiary or beneficiaries of the trust. See Helvering v. Hutchings, 312 U.S. 393 (1941).

If the beneficiaries of a trust have a present interest in the gifted property, a transfer to the trust may qualify for numerous annual exclusions. The most common method to ensure that a gift in trust will qualify for the annual exclusion under Section 2503(b), as a gift of a present interest is to include a crummey withdrawal power in the trust. A crummey withdrawal power grants one or more beneficiaries of a trust a withdrawal right over a contribution of property to a trust.

The IRS believed that the crummey withdrawal rights were not legally enforceable in Mikel. The IRS probably pursued this argument because of its complete disdain by the taxpayers use of a contingent remainder crummey withdrawal power (aka Cristofani crummey withdrawal power). The IRS theorized that the trustees might wrongfully refuse to honor a timely
withdrawal power. The Mikel trust instrument required a panel of three arbitrators (in this instance to be of the Orthodox Jewish faith known as a bin deth) to determine if the refusal to honor the withdrawal power was reasonable. The IRS acknowledged the trust beneficiaries could seek redress in New York courts from the arbitrator’s determination. However, the IRS argued in accordance with the trust instrument if the trust beneficiary sought redress in a New York court the trust beneficiary would be subject to forfeiture of his trust share because of the intertemporal provision. The IRS took the position that the trust beneficiaries’ crummeay withdrawal rights were “illusory” and did not constitute a present interest in property, because if the trustee did not honor the donee’s withdrawal power, the trust beneficiaries would need to have the beth din determine if the refusal to honor the withdrawal power was reasonable. The IRS further asserted the trust beneficiaries would not seek court redress because in the Internal Revenue Service’s opinion this would trigger the trust’s in terrem provision.

The tax court disagreed with the Internal Revenue Service’s position and the court found that being required to seek enforcement of the withdrawal power before a panel of arbitrators in this instance a beth din did not make the crummeay withdrawal powers illusory. As part of its findings, the tax court determined that the beth din in accordance with the trust instrument was required to give the parties the rights he or she is entitled to under New York law. Further, the tax court determined the in terrem provision in the trust instrument did not apply to trust beneficiaries exercising their withdrawal rights.

The Internal Revenue Service has long been frustrated by estate planners exploiting the use of multiple crummeay withdrawal powers to obtain annual exclusions. In particular where the trust beneficiary does not have a valid present interest or remainder interest, but in lieu thereof grant the crummeay power holders a contingent remainder interest like that held by many of the Mikel trust beneficiaries the IRS has been adverse to the use of that technique. This case serves as a reminder to practitioners why the Obama Administration is attempting to limit the use of multiple crummeay powers to qualify gifts for annual exclusions and the government’s belief of their abuse by techniques such as contingent remainder crummeay withdrawal powers. This technique permits the trust beneficiary a withdrawal right over the gifted property without a vested present income interest or remainder interest, but in lieu thereof grants the crummeay power holder a contingent remainder interest. See Estate of Cristofani v. Commissioner, 97 TC 74 (1991), A.O.D. 1992-09, 1992-2 CB-1, A.O.D. 1996-10; Estate of Kohlsaat v. Commissioner, T.C. Memo 1997-212 and Estate of Holland v. Commissioner, 73 TCM CCH 3236 (1997).

Irrevocable trusts like Mikel and Kohlsaat are being designed with only a limited number of primary beneficiaries and a significant number of contingent remainder beneficiaries all holding crummeay withdrawal powers. The contingent remainder beneficiaries are lineal descendant of the primary beneficiaries or spouses of the lineal descendants. This enables the donors to the trust to claim numerous annual exclusions for crummeay withdrawal powers held by contingent remainder beneficiaries of a trust who only have a remote possibility of receiving the underlying trust corpus. For example, in Kohlsaat the settlor of the trust was able to make $155,000 of death bed gifts to a trust that had two primary beneficiaries and sixteen contingent remainder beneficiaries. The contingent remainder beneficiaries received none of the trust
properties upon the Settlor's death. The tax court in *Kohlsaat* determined none of the transfers were taxable gifts since the Settlor/Donor was entitled to claim 18 annual exclusions.

Robert B. Labe is a Shareholder with Williams, Williams, Rattner & Plunkett, P.C. in Birmingham, Michigan. Labe practices in the areas of estate planning, trusts and estates, probate disputes, tax law and business law. He has been included in the Michigan Super Lawyers since 2009 and is also designated as a Leading Lawyer by the Chicago Law Bulletin. Labe has made multiple presentations on business planning, estate planning and estate and trust law for the Institute of Continuing Legal Education and State Bar of Michigan. Labe is a fellow of the American Bar Foundation.
ATTACHMENT 12
Dear ListServ Members:

Two upcoming Tax Section events merit immediate placement upon your calendar: to save the date; RSVP; and then attend.

First up: On June 23, the final Tax Court Luncheon of the season, for which Event Chair Gina Staudacher writes:

Please assist me in getting the invitation out to our tax professionals in the area, including the law schools, to join us for our last US Tax Court lunch for the year:

Please join us to welcome the Honorable Judge Joseph H. Gale for our State Bar of Michigan US Tax Court Lunch on Tuesday June 23 at Noon at the London Chop House.

Judge Gale will address the audience for a few minutes with an update on issues and trends and all will have an opportunity to meet and talk with Judge Gale over a casual and friendly lunch at one of Detroit’s finest legendary restaurants.

We will offer a limited menu to keep the lunch timely for all.

All guests are expected to pick up their own lunch tab – law students’ lunches are sponsored through the SBM Tax Council (member prof’s: please help with publicity and notice to your students!).

We look forward to seeing you there!

Please RSVP no later than Friday, June 19 to Jessica Garavaglia at 248.723.0313 or jgaravaglia@HowardandHoward.com to confirm your seat for this great event. Seating is limited to 30 guests.
And then: On June 30, an Estates and Trusts Committee Meeting with special guest speakers and a networking mixer afterward, for which Event Chair Sean Cook writes:

Meeting June 30: Topic: From the Basics to the Complex: Pitfalls, Minefields and Other Considerations

Tuesday, June 30, 2015, 4:00 PM - 5:30 PM (Eastern Time (US & Canada))

Subject: Estates and Trusts Committee of the Tax Section of the State Bar of Michigan: Meeting Notice

Guest Speakers: Carla Smaston and Mandy Chardoul of Plante & Moran

Topic: From the Basics to the Complex: Pitfalls, Minefields and Other Considerations while representing US Beneficiaries of Foreign Estates and Trusts

Meeting Location: Warner Norcross & Judd LLP, 2000 Town Center, Suite 2700, Southfield

Mixer Following Meeting: Skyline Club, 2000 Town Center, Suite 2800, Southfield

Agenda:

- Summary of Taxation Section activities
- Discussion regarding topics and speakers for future meetings
- Discussion regarding meeting structure
- Program
- Networking mixer
RSVP Request:
Please respond to my assistant, Laurie Geralds, LGerals@wnj.com, if you know whether you will or will not be attending so we can determine if alternative location will be required. [Thanks. (I know some did when I sent the Save the Date so please do so again.)]

Please remember to forward this to any of your colleagues that may be interested in the topic and/or joining our committee. Also, let me know if any of your contact information has changed.

These items are posted on the SBM Connect website, at http://connect.michbar.org/tax/events/upcomingevents/, along with other upcoming events. Bookmark the events page and check it often!

Brian D. Figot
Program Facilitator
SBM Tax Section
248.594.5950
ATTACHMENT 13
REVENUE ADMINISTRATIVE BULLETIN 2015-XX

Approved: __________, 2015

Taxability of Income to Estates, Trusts or Beneficiaries

(Replaces Revenue Administrative Bulletin 1988-19)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

RAB 2015-XX. This Revenue Administrative Bulletin (RAB) explains the income tax treatment of income attributable to estates, trusts and beneficiaries.

Overview of the taxation of estates, trusts and beneficiaries.

Under the Michigan Income Tax Act, income received by an estate or trust will keep its character (interest, dividend, capital gain, business income, etc.) whether the income is retained by the estate or trust or is distributed to the beneficiaries. If income is retained by the estate or trust, the income will usually be taxed to the estate or trust. If the income is distributed to beneficiaries, the income will usually be taxed to the beneficiaries. The taxation of the income under the Michigan Income Tax Act depends on the residence of the taxpayer for certain types of income and on the source of the income for other types of income. The fiduciary of the estate or trust should provide beneficiaries with a federal Form 1041 Schedule K-1 that reports the income attributable to beneficiaries. The fiduciary should also provide supplemental information to the beneficiaries identifying income that is attributable to Michigan.

Resident Estates or Trusts

The Michigan Income Tax Act defines a resident estate and a resident trust in MCL 206.18(b) and (c), respectively. Under subsection (b), the estate of a decedent is a resident estate if the decedent was domiciled in Michigan at the time of death. Under subsection (c), a trust is a resident trust if the trust was created by the will of a decedent who was domiciled in Michigan at the time of death. Resident trusts also include any trust created by, or consisting of property of, a person domiciled in this state at the time the trust becomes irrevocable.
Resident estates and resident trusts are subject to Michigan income tax on all income from any source, except for income that is attributable to another state according to the allocation or apportionment provisions of the Income Tax Act.\(^1\) The taxable income of a resident estate or resident trust is federal taxable income subject to Michigan adjustments.\(^2\)

**Nonresident Estates or Trusts**

A nonresident estate or trust is one that does not meet the definition of a resident estate or trust. In addition, a trust that meets the definition of a resident trust may nonetheless become a nonresident trust if all the following are true: the trustee is not a Michigan resident; the trust assets are not held, located or administered in Michigan; and all of the beneficiaries are nonresidents.\(^3\)

Nonresident estates and trusts are subject to Michigan income tax on income sourced to Michigan, including: income derived from real or tangible personal property located in Michigan; income from a business, trade, profession, or occupation conducted in Michigan; income from services performed in Michigan, and; income earned, received, or acquired in Michigan.\(^4\) Nonresident trusts and estates are taxed on the Michigan-sourced income that is not taxable to the beneficiaries.\(^5\)

**Grantor Trust**

No fiduciary income tax return is required when the grantor is treated as the owner of the trust’s assets under IRC 671-678. Instead, the grantor reports the trust’s income, deductions, and credits on the grantor’s individual Michigan income tax return.

**Taxable Income of a Beneficiary of an Estate or Trust**

Beneficiaries who are residents of Michigan are subject to Michigan income tax on all sources of income distributed from an estate or trust after adjustments.\(^6\) For income that is allocable based on residency, the allocation is based on the residency of the beneficiary regardless of the residency of the estate or trust.

Nonresident beneficiaries are subject to Michigan income tax on income distributed by an estate or trust if the income is allocable or apportioned to Michigan. For example, rents and royalties from real or tangible personal property located in Michigan and capital gains and losses from sales or exchanges of those properties are allocated to Michigan. Patent and copyright royalties are allocable to Michigan if they are used in Michigan. Business income is subject to allocation or apportionment\(^7\). The net income from Michigan oil and gas wells is not subject to tax if the oil and gas is subject to Michigan severance tax. After 2012, income and expenses subject to the nonferrous metallic mineral extraction severance tax are not taxable. Nonresident beneficiaries are not subject to Michigan income tax on interest and dividends or on capital gains or losses.

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\(^1\) MCL 206.110(1).
\(^2\) MCL 206.36.
\(^3\) Blue v Michigan Department of Treasury, 185 Mich App 406; 462 NW2d 762 (1990).
\(^4\) MCL 206.110(2).
\(^5\) MCL 206.110(3).
\(^6\) MCL 206.30 and MCL 206.110, for adjustments see MCL 205.30.
\(^7\) MCL 206.110-115.
from the sale of intangible property even if the income is distributed from a Michigan estate or trust.

**Allocation of Michigan Income Additions and Subtractions to Beneficiaries**

The allocation of Michigan income additions and subtractions must be in proportion to the beneficiary’s share of distributable net income of the estate or trust.\(^8\)

If the distributable net income of an estate or trust is zero or less than zero, the share of each beneficiary’s Michigan additions and subtractions is in proportion to each beneficiary’s share of the income for that year (determined under local law or the terms of the instrument) which is required to be distributed currently, plus any other income distributed. Any balance of the Michigan additions and subtractions not allocable to any beneficiary is allocated to the estate or trust.

For example, a trust has income, for trust accounting purposes, of $10,000, and the Michigan net adjustment is $5,000. Certain expenses paid by the trustee are chargeable to principal under the terms of the trust instrument but are nevertheless deductible for federal income tax purposes and have the effect of reducing distributable net income to zero.

The trust instrument requires that $4,000 of income be distributed to the beneficiary. An additional $3,000 is paid to the beneficiary under the discretionary authority of the trustee, and the remaining $3,000 of income is accumulated by the trust. The beneficiary’s $7,000 share is 70% of the total income for trust accounting purposes, so that 70% of the adjustment ($5,000 x 70% = $3,500) is allocated to the beneficiary. The beneficiary will add $3,500 to federal adjusted gross income to determine Michigan income. The remaining $1,500 of the net adjustments belongs to the trust and is added to the federal taxable income of the trust to determine the trust’s Michigan income.

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\(^8\) MCL 206.36(2).