

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN
Friday, January 14, 2026**

Regular Meeting Agenda

- I. Commencement (Nathan Piwowarski)
 - A. Call to Order and Welcome
 - B. Attendance:
 - 1. Zoom Roll Call (Melisa Mysliwicz)
 - 2. Excused Absences: Sandra D. Glazier, Warren H. Kreuger, and Elizabeth L. Luckenbach
- II. Monthly Reports
 - A. Lobbyist's Report (Public Affairs Associates)
 - B. Minutes of Prior Council Meetings (Melisa Mysliwicz) – **Attachment 1**
 - C. Chair's Report (Nathan Piwowarski)
 - D. Treasurer's Report (Angela Hentkowski) – **Attachment 2**
- III. Committee Reports
 - A. Committee on Special Projects (Dan Hilker)
 - B. Amicus Curiae (Andy Mayoras) – **Attachment 3**
 - C. Annual Meeting (Nathan Piwowarski)
 - D. Awards (Katie Lynwood)
 - E. Budget (Melisa Mysliwicz)
 - F. Bylaws (David Lucas)
 - G. Charitable and Exempt Organizations (Rebecca Wrock)
 - H. Citizens Outreach (Kathleen Goetsch)
 - I. Court Rules, Forms, and Proceedings (Patricia Davis and Georgette David)
 - J. Electronic Communications (Susie Chalgian)
 - K. Ethics and Unauthorized Practice of Law (Alex Mallory)
 - L. Guardianship, Conservatorship, and End of Life (Sandy Glazier) – **Attachment 4**
 - M. Legislation Development and Drafting (Rob Tiplady and Rick Mills)
 - N. Legislation Monitoring and Analysis (Mike Shelton)

- O. Legislative Testimony (Dan Hilker)
- P. Membership (Ernschie Augustin)
- Q. Nominating (Mark Kellogg)
- R. Planning (Nathan Piwowarski)
- S. Probate Institute (Chris Savage)
- T. Real Estate (Angela Hentkowski) – **Attachment 5**
- U. State Bar and Section Journals (Melisa Mysliwiec)
- V. Tax (J.V. Anderton) – **Attachment 6**
- W. Assisted Reproductive Technology (Nancy Welber)
- X. Electronic Wills (Kathleen Martone)
- Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger)
- Z. Nonbanking Entity Trust Powers (Jim Spica and Rob Tiplady)
- AA. Premarital Agreements (Chris Savage)
- BB. Trust Accounts (Elizabeth Luckenbach)
- CC. Uniform Community Property Disposition at Death Act (Jim Spica)
- DD. Uniform Guardian, Conservatorship, and Protective Arrangements Act (Nathan Piwowarski and Kathleen Martone)
- EE. Undue Influence (Ken Silver)
- FF. Uniform Fiduciary Income and Principal Act (Jim Spica)
- GG. Various Issues Involving Death and Divorce (Dan Borst and Sean Blume)
- IV. Good of the Order
- V. Adjournment of Regular Meeting

Roundtable (Time Permitting)

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN**

Friday, December 12, 2025

Held at the University Club of Michigan State University and remotely via Zoom
(DRAFT) Minutes

I. Commencement (Nathan R. Piwowarski)

A. Call to Order and Welcome

Chairperson **Nathan R. Piwowarski** called the regular meeting of the Council to order at 10:30 a.m. and welcomed those attending in person and by Zoom. He noted that the meeting was being recorded via Zoom solely for the purpose of preparing the minutes and that the recording would be deleted after the minutes were finalized.

B. Attendance

Susan L. Chalgian conducted a roll call of Zoom participants and confirmed the presence of in-person attendees.

The following officers and members of the Council were present either in person or remotely via Zoom (“Z” reflects participation via Zoom):

1. Nathan R. Piwowarski, Chairperson
2. Christine M. Savage, Vice Chairperson
3. Melisa M. W. Mysliwiec, Secretary (Z)
4. Angela M. Hentkowski, Treasurer (Z)
5. Ernsacie Augustin (Z)
6. Daniel W. Borst (Z)
7. Susan L. Chalgian
8. Georgette E. David
9. Patricia E. Davis (Z)
10. Daniel S. Hilker
11. Elizabeth L. Luckenbach (Z)
12. Kathleen A. Martone (Z)
13. Michael D. Shelton (Z)
14. Hon. Sara A. Schimke (Z)
15. Joseph J. Viviano
16. David Sprague (Z)
17. Rebecca Wrock (Z)

18. Sandra Glazier (Z)
19. Warren Krueger (Z)

Others present either in person or remotely via Zoom:

1. Theresa Castle (Administrative Assistant) (Z)
2. Brianne M. Gidcumb (Z),
3. Dustin Foster (Z),
4. Jeff Kirkey (ICLE) (Z)
5. Peter Langley (Public Affairs Associates) (Z)
6. David Lucas (Ex Officio) (Z)
7. Katie Lynwood (Ex Officio) (Z)
8. James P. Spica (Ex Officio) (Z)
9. James Stewart (Ex Officio) (Z)
10. Brian Heckman (Z)
11. Becky Bechler (Public Affairs Associates) (Z)
12. David Lentz (Z)
13. Jonathan Beer (Z)
14. Kenneth Silver (Z)
15. Lindsey DiCesare (ICLE) (Z)
16. Lisa Gehrin (ICLE) (Z)
17. Michael Lichterman (Z)

C. Excused Absences

The following were noted as excused:

1. Richard C. Mills, Chairperson-Elect
2. Alexander S. Mallory
3. J.V. Anderton
4. Nicholas A. Reister

D. Approval of Agenda

The Chair reviewed the agenda included in the meeting materials. No additions or changes were requested, and the agenda was accepted as presented.

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates)

The Chair reported on behalf of Public Affairs Associates, referring Council to the written lobbyist report included in the meeting materials. The report addressed pending and proposed legislation affecting probate, estate planning, and real estate matters. No action was requested.

B. Minutes of Prior Council Meetings (Melisa Mysliwicz)

Ms. Mysliwicz directed Council to the draft minutes included as **Attachment 1**. After discussion, a motion was made and supported to approve the minutes as presented. The motion carried without objection.

C. Chair's Report (Nathan Piwowarski)

The Chair provided a brief oral report highlighting coordination among committees, upcoming legislative priorities, and ongoing collaboration with the Committee on Special Projects ("CSP"). No written report was submitted.

D. Treasurer's Report (Angela Hentkowski)

Ms. Hentkowski presented the Treasurer's Report included as **Attachment 2**, noting the Section remains financially sound. No questions were raised.

III. Committee Reports

A. Committee on Special Projects (Dan Hilker)

Mr. Hilker summarized the CSP meeting held earlier that morning. He explained that CSP focused primarily on the Real Estate Committee's proposed revisions to the uncapping statute, with additional introductory remarks from the Undue Influence Ad Hoc Committee.

B. Amicus Curiae (Andy Mayoras)

Written report received; no oral report was presented.

C. Annual Meeting (Nathan Piwowarski)

The Chair provided a brief update on planning efforts for upcoming Section events.

D. Awards (Katie Lynwood)

No Report.

E. Budget (Melisa Mysliwicz)

No Report.

F. Bylaws (David Lucas)

No Report.

G. Charitable and Exempt Organizations (Rebecca Wrock)

No Report. Next meeting, January 15th.

H. Citizens Outreach (Kathleen Goetsch)

No Report.

I. Court Rules, Forms, and Proceedings (Patricia Davis & Georgette David)

Ms. Davis reported that the committee reviewed the proposed amendment to the definition of “newspaper” in **MCR 2.106**, which is intended to mirror **MCL 691.1051**. The committee identified no significant concerns and recommends supporting the proposed amendment. The committee will circulate a memo and seek a special meeting in this regard.

J. Electronic Communications (Susan Chalgian)

No report.

K. Ethics and Unauthorized Practice of Law (Alex Mallory)

No report.

L. Guardianship, Conservatorship, and End of Life (Sandra Glazier)

No report.

M. Legislation Development and Drafting (Rob Tiplady & Rick Mills)

No report.

N. Legislation Monitoring and Analysis (Mike Shelton)

No report.

O. Legislative Testimony (Dan Hilker)

No report.

P. Membership (Ernschie Augustin)

No report.

Q. Nominating (Mark Kellogg)

No report.

R. Planning (Nathan Piwowski)

Addressed earlier in the Chair's Report.

S. Probate Institute (Chris Savage)

Mr. Savage referenced the written report included as **Attachment 3** and provided a brief update on program planning.

T. Real Estate (Angela Hentkowski)

Ms. Hentkowski summarized the Real Estate Committee's work on proposed revisions to **MCL 211.27a (uncapping)**, referencing the materials reviewed at CSP earlier that day. She explained the committee's goal of clarifying statutory language, expanding the definition of qualifying family transfers, and addressing issues arising in trust and estate planning contexts. Council discussion reflected the range of perspectives expressed at CSP. No formal action was taken.

U. State Bar and Section Journals (Melisa Mysliwec)

Ms. Mysliwec reported that all articles have been finalized and are expected to be submitted to ICLE shortly, with the Winter Journal anticipated to be published in the near future.

V. Tax (J. V. Anderton)

Council was directed to the **Tax Nugget regarding hanging withdrawal rights** included in the supplemental materials for informational purposes only.

W. Assisted Reproductive Technology (Nancy Welber)

No report.

X. Electronic Wills (Kathleen Martone)

No report.

Y. Fiduciary Exception to the Attorney-Client Privilege (Warren Krueger)

No report.

Z. Nonbanking Entity Trust Powers (James Spica & Rob Tiplady)

No report.

AA. Premarital Agreements (Chris Savage)

No report.

BB. Trust Accounts (Elizabeth Luckenbach)

Ms. Luckenbach reported that an ad hoc committee has been reconstituted to review **House Bill 6011**, which would add a new provision to the Michigan Trust Code addressing trustee termination and limitations periods. The committee expects to resume work in early 2026 and is coordinating with legislative staff.

CC. Uniform Community Property Disposition at Death Act (James Spica)

No report.

DD. Uniform Guardian, Conservatorship, and Protective Arrangements Act

(Nathan Piwowarski & Kathleen Martone)

Written report received.

EE. Undue Influence (Ken Silver)

Council was reminded that the Undue Influence Ad Hoc Committee is seeking continued CSP feedback on draft statutory language. The CSP discussion earlier that day was introductory only, with further discussion anticipated at a future meeting.

FF. Uniform Fiduciary Income and Principal Act (James Spica)

No report.

GG. Various Issues Involving Death and Divorce (Dan Borst & Sean Blume)

No report. Next meeting December 22nd. At 11:30

IV. Good of the Order

There was no additional business.

V. Adjournment

There being no further business, Mr. Piwowarski adjourned the regular Council meeting at 12:23 p.m.. A roundtable discussion followed, time permitting.

Respectfully submitted,

Melisa M. W. Mysliwicz, Secretary
Probate & Estate Planning Section Council
State Bar of Michigan

State Bar of Michigan
Parent Company : State Bar of Michigan : Sections
Sections Income Statement - Probate and Estate
Nov 2025

FINANCIAL ROW	AMOUNT (NOV 2025)	AMOUNT YTD (OCT 2025 - NOV 2025)	LAST FY YTD (OCT 2024 - NOV 2024)
Income			
40085 - Section Affiliate Dues	\$70.00	\$595.00	\$490.00
40080 - Section Dues	\$45,710.00	\$102,900.00	\$102,235.00
Total Income	\$45,780.00	\$103,495.00	\$102,725.00
Expenses			
67010 - Administrative Services	\$1,062.00	\$1,062.00	\$0.00
67065 - Community Support, Donations & Sponsorships	\$0.00	\$0.00	\$5,500.00
67235 - E Blast Expense	\$0.00	\$100.00	\$0.00
67115 - Legislative Consulting	\$3,000.00	\$6,000.00	\$6,000.00
62315 - Meetings	\$0.00	\$4,797.21	\$11,611.73
64055 - Miscellaneous	\$0.00	\$347.19	\$54.01
65460 - Newsletter/Publication	\$0.00	\$0.00	\$100.00
61200 - Travel	\$1,574.77	\$3,454.66	\$4,240.10
Total Expenses	\$5,636.77	\$15,761.06	\$27,505.84
Increase or Decrease in Net Position	\$40,143.23	\$87,733.94	\$75,219.16
Net Position, Beginning Of year	\$190,561.27	\$190,561.27	\$204,051.48
Net Position, End of Period	\$230,704.50	\$278,295.21	\$279,270.64

State Bar of Michigan
Parent Company : State Bar of Michigan : Sections
Probate&Estate Section Expense Detail Report
Oct 2025, Nov 2025

ACCOUNT	DATE	TYPE	DOCUMENT NUMBER	ACS VENDOR NAME	DESCRIPTION	DEBIT	CREDIT	TOTAL NET AMOUNT
60000 - Operating Expenses - Non-Labor						\$0.00	\$0.00	\$0.00
61200 - Travel						\$0.00	\$0.00	\$0.00
	10/20/2025	Journal	JE13492	Daniel Hilker	10/17/2025 Travel	\$310.63		\$310.63
	10/29/2025	Journal	JE13685	Christine Savage	10-17-2025 meeting travel	\$327.87		\$327.87
	10/29/2025	Journal	JE13692	Marguerite Munson Lentz	10-17-2025 meeting travel	\$381.83		\$381.83
	10/29/2025	Journal	JE13694	Melisa Mysliwicz	10-17-2025 meeting travel	\$269.33		\$269.33
	10/29/2025	Journal	JE13699	Angela Hentkowski	10-17-2025 meeting travel	\$590.23		\$590.23
	11/3/2025	Journal	JE13774	James Spica	10-17-2025 Meeting Travel	\$422.63		\$422.63
	11/10/2025	Journal	JE13892	Rebecca Wrock	10-17-2025 meeting travel	\$364.28		\$364.28
	11/19/2025	Journal	JE14043	David Murkowski	10-17-2025 meeting travel	\$268.63		\$268.63
	11/19/2025	Journal	JE14046	Joseph Viviano	10-17-2025 meeting travel	\$519.23		\$519.23
Total - 61200 - Travel						\$3,454.66	\$0.00	\$3,454.66
62315 - Meetings						\$0.00	\$0.00	\$0.00
	10/22/2025	Journal	JE13528	McCurdy Wotila & Porteous	10-18-2025 Probate Law Meeting	\$1,008.69		\$1,008.69
	10/22/2025	Journal	JE13527	McCurdy Wotila & Porteous	10-17-2025 Probate Law Meeting	\$3,788.52		\$3,788.52
Total - 62315 - Meetings						\$4,797.21	\$0.00	\$4,797.21
64055 - Miscellaneous						\$0.00	\$0.00	\$0.00
	10/22/2025	Journal	JE13526	McCurdy Wotila & Porteous	10-14-2025 Probate Law meeting supplies	\$278.29		\$278.29
	10/29/2025	Journal	JE13693	McCurdy Wotila & Porteous	10-28-2025 meeting supplies	\$68.90		\$68.90
Total - 64055 - Miscellaneous						\$347.19	\$0.00	\$347.19
67010 - Administrative Services						\$0.00	\$0.00	\$0.00
	11/4/2025	Journal	JE13815	Theresa Castle	October 2025 Admin	\$1,062.00		\$1,062.00
Total - 67010 - Administrative Services						\$1,062.00	\$0.00	\$1,062.00
67115 - Legislative Consulting						\$0.00	\$0.00	\$0.00
	10/29/2025	Journal	JE13697	Public Affairs Associates	October 2025	\$3,000.00		\$3,000.00
	11/3/2025	Journal	JE13776	Public Affairs Associates	November 2025	\$3,000.00		\$3,000.00
Total - 67115 - Legislative Consulting						\$6,000.00	\$0.00	\$6,000.00
67235 - E Blast Expense						\$0.00	\$0.00	\$0.00

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 Probate & Estate Planning Section
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ACCOUNT	DATE	TYPE	DOCUMENT NUMBER	ACS VENDOR NAME	DESCRIPTION	DEBIT	CREDIT	TOTAL NET AMOUNT
	10/31/2025	Journal	JE13787		10/21 Read the Summer Newsletter Now (eblast)	\$100.00		\$100.00
Total - 67235 - E Blast Expense						\$100.00	\$0.00	\$100.00
Total - 60000 - Operating Expenses - Non-Labor						\$15,761.06	\$0.00	\$15,761.06

STATE BAR OF MICHIGAN

Section Expense Reimbursement Policies and Procedures (July 2021)

General Policies

1. Requests for reimbursement of individual expenses should be submitted as soon as practical after being incurred, but not to exceed 45 days. However, at the end of the fiscal year, any remaining expense reimbursement requests for the fiscal year just ended must be submitted by the 3rd workday in October. The State Bar reserves the right to deny a reimbursement request that is untimely or where the State Bar's ability to verify an expense has been compromised due to any delay. Expense reimbursement forms, along with instructions for completing and transmitting expense reimbursement forms, are found on the State Bar of Michigan website at: <http://michbar.org/programs/forms>
2. All expenses must be itemized. Each reimbursed expense must be clearly described and the business purpose indicated.
3. Reimbursement in all instances is limited to reasonable and necessary expenses for business purposes.
4. Detailed receipts are recommended for all expenses but required for expenses over \$25.
5. An itemized receipt is required before reimbursement will be made for any meal. The reimbursement request must identify whether the meal is a breakfast, lunch or dinner. If the receipt covers more than one person, the reimbursement request must identify the names of all those in attendance for whom reimbursement is claimed, and the business purpose of the meal. If the receipt includes charges for guests for whom reimbursement is not claimed, the guests need not be identified by name, but their presence and number should be noted. Reimbursed meals while traveling (except group meals) are taxable if no overnight stay is required. For subsidized sections (Young Lawyers Section and Judicial Section) the presumptive limits on meal reimbursement are the per diem amounts published on the State of Michigan Department of Technology, Management and Budget's website at [DTMB - Travel\(michigan.gov\)](http://DTMB-Travel(michigan.gov)) referencing Travel Rates and Select Cities for the current fiscal year. This policy applies to each individual meal - breakfast, lunch and/or dinner. Meal reimbursements exceeding the per diem amounts due to special circumstances must be approved by the section treasurer or section chair, whenever possible in

advance of the expenditure. Reimbursement for meals exceeding the presumptive limits without an acceptable explanation of special circumstances will be limited to the published per diem amount. The presumptive limit on meal reimbursement applies to any meal expense (individual or group) reimbursed under this policy, but does not apply to meals for group meetings and seminars invoiced directly to the SBM. For all other sections, the amount of the meal reimbursement shall be deemed what is reasonable and necessary.

6. Spouse expenses are not reimbursable.
7. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursed mileage for traveling on State Bar business is limited to actual distance traveled for business purposes.
8. Receipts for lodging expenses must be supported by a copy of the itemized bill showing per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid. Barring special circumstances such as the need for handicap accessibility accommodations, for conference attendance, the reimbursement will be limited to the least expensive available standard room conference hotel rate.
9. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
 - A. Tickets should be at the best rate available for as direct a path as possible. The use of travel websites such as Travelocity, Priceline and Hotwire are recommended to identify the most economical airfare alternatives.
 - B. Reimbursement of airfare will be limited to the cost of coach class tickets available for the trip at the time the tickets are purchased. The additional cost of business class or first class airfare will not be reimbursed.
 - C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.
 - D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

10. Reimbursement for car, bus, or train will not exceed reimbursable air fare if airline service to the location is available.
11. Outside speakers must be advised in advance of the need for receipts and the above requirements.
12. Bills for copying done by an outside provider should include the number of copies made, the cost per page, and general purpose (committee or section meeting notice, seminar materials, etc.).
13. The State Bar of Michigan is exempt from sales tax. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.
14. All gift cards and gift certificates are taxable income regardless of the amount. Tangible gifts other than recognition items (e.g. plaques, gavels, etc.) are considered taxable if value is greater than \$100.

Specific Policies

1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.
2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.
3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.
4. Payments to vendors for \$5,000 or greater are not reimbursable. Payments to vendors for \$5,000 or greater should be paid directly by the State Bar.

MEMORANDUM

To: Probate Council
From: Andrew W. Mayoras, Chair of Amicus Committee
Subject: Amicus Application
Date: January 9, 2026

Overview/Basic Facts

Counsel for Appellant asks for amicus brief to support the argument that the Court of Appeals wrongly applied MCL 700.1205(3), EPIC's two-year discovery rule applicable to fraud based claims related to proceedings under EPIC or when fraud is used to circumvent the provisions or purposes of EPIC. The case involves a series of trusts and related estate planning issues, primarily based on alleged fraud, undue influence, conversion, and legal malpractice against an attorney who prepared the estate planning documents and represented the Appellant's parents, and allegedly the Appellant herself. In short, the Appellant believes that her mother's substantial trust was intended to provide her with additional benefits beyond what she received, and she blames the attorney for causing her father and others to redirect the assets away from her, primarily to a charitable foundation.

As a central part of these allegations, Appellant claims that the attorney occupied a trustee or similar fiduciary position as to her. In reality, for the at-issue trust, during the times in question, the Co-Trustees were the Appellant's father and Comerica Bank. The attorney did not occupy a formal fiduciary position during the time that the complained-of actions occurred.

The probate court granted summary disposition against Appellant's claims and the Court of Appeals affirmed the rulings. The Appellant recently filed an Application for Leave to Appeal to the Supreme Court, which has not yet issued a ruling on the Application.

The Amicus Committee recommends against filing an amicus brief at this stage of the proceedings.

Court of Appeals Ruling

The Court of Appeals issued an unpublished decision that affirmed the probate court, finding that: (1) the undue influence claims were untimely because they accrued prior to the Appellant's father's death in 2015, and suit was brought in 2022; (2) Appellant did not sufficiently allege an

attorney-client relationship; (3) the claims for breach of fiduciary duty failed because the attorney was not a trustee of the at-issue trust; (4) the conversion claims were untimely as they could only have occurred prior to 2015; (5) the civil RICO claims were also untimely because the Appellant was on notice of potential claims in 2015 and did not pursue them until 2022; and (6) the discovery rules, including 700.1205(3), do not render the conversion claims timely because the attorney did not occupy a fiduciary position and had no duty to share any information as alleged by Appellant.

Appellant's primary argument is that the attorney did have a fiduciary relationship with her and, as such, his actions and inactions constituted fraud contrary to the provisions and purposes of EPIC.

Analysis

The amicus committee does not recommend that Council authorize filing an amicus brief at this stage of the proceedings because: (1) the facts and rulings of this case do not appear to have potential widespread impact, beyond the participants of the case; (2) the committee, generally speaking, agreed with the Court of Appeals rulings; and (3) while there is a dearth of case law under 700.1205(3), it is not clear that it should be used to revive otherwise stale tort-based claims against someone who was not a trustee, personal representative, or similar fiduciary and therefore did not violate the primary principles of EPIC.

If the Supreme Court does grant leave or orders further proceedings in this case, then the committee recommends that additional discussions be held.

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: January 4, 2025

Name: J. Paul Janes

P Number: 43798

Firm Name: Gruel Mills Nims & Pylman PLLC

Address: 99 Monroe Avenue NW, Suite 800

City: Grand Rapids

State: MI

Zip Code: 49503

Phone Number: (616) 235-5500

Fax Number (616) 235-5550

E-mail address: jpjanes@gmnp.com; zak@gmnp.com (associate); alguest@gmnp.com (assistant)

Attach Additional Sheets as Required

Name of Case: Barbara Duchene v S Gary Spicer, Sr, et al, MSC No. 169247

Parties Involved: Barbara Duchene, individually and as beneficiary of the Doris J. Duchene Marital Trust and Family Trust; and S. Gary Spicer, Sr., in his various fiduciary capacities.

Current Status: Application for leave to appeal to the Michigan Supreme Court, filed November 6, 2025.

Deadlines: January 21, 2025 deadline for Petitioner Barbara Duchene’s reply in support of application for leave to appeal.

Issue(s) Presented: Interpretation of Estate and Protected Individual’s Code, MCL 700.1205(3) (effect of fraud), and its construction with other substantive remedies under EPIC, including for conversion, embezzlement, or wrongful withholding of trust assets (MCL 700.7813(4)).

Michigan Statute(s) or Court Rule(s) at Issue: MCL 700.1205(3) (effect of fraud); MCL 700.7813(4) (conversion of trust assets); and other sections of EPIC.

Common Law Issues/Cases at Issue: Whether a decades-long relationship of trust and reliance, coupled with one party's exclusive knowledge of the relevant instruments and probate proceedings, gives rise to a fiduciary duty of disclosure (*Taylor v Klahm*, 40 Mich App 255 (1972)); whether a fiduciary's failure to disclose material facts triggers concealment tolling (*Lumber Village, Inc v Siegler*, 135 Mich App 685 (1984)); and other probate-specific issues.

Why do you believe that this case requires the involvement of the Probate and Estate Planning Section? This case presents a question of first impression concerning the proper construction of MCL 700.1205(3), which establishes a unique, discovery-based limitations period tailored to victims of fraud in the probate context. Given the Section's expertise in probate law, its familiarity with EPIC's structure and remedial purposes, and its institutional interest in the sound development of Michigan precedent, the Section is uniquely positioned to assist the Supreme Court in faithfully applying MCL 700.1205(3).

Do you believe that a decision in this case will substantially impact this Section's attorneys and their clients? If so, how? Yes. If left undisturbed, the Court of Appeals' opinion—which fails to apply MCL 700.1205(3)'s plain language—threatens to nullify the limitations framework our Legislature enacted to protect victims of probate-related fraud. This outcome not only risks severe prejudice to the Section's attorneys and their clients, but also undermines EPIC's integrity as an independent remedial framework rather than as merely an overlay on the common law.

*****No attorney who is representing any party in the action or is affiliated with a firm representing any party in the action may address the Council or the Committee for Special Projects (CSP) with regard to the application. All attendees at the meeting who are affiliated with a firm representing any party in the action shall be excused from the meeting during consideration of the application.*****

4853-5180-0577.2

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA DUCHENE, individually, as beneficiary of the DORIS J DUCHENE LIVING TRUST, as beneficiary of the DONALD L DUCHENE SR LIVING TRUST, and as heir to the ESTATE OF DONALD R DUCHENE,

Petitioner-Appellant,

v

S GARY SPICER SR, individually, as Personal Representative of the ESTATE OF DONALD L DUCHENE SR, as Trustee of the DONALD L DUCHENE SR LIVING TRUST, as President of the DORIS J DUCHENE AND DONALD L DUCHENE SR FOUNDATION, as President of the S GARY SPICER FOUNDATION, and as Trustee of the S GARY SPICER SR TRUST, S GARY SPICER SR FOUNDATION, S GARY SPICER SR TRUST, and DORIS J DUCHENE AND DONALD L DUCHENE SR FOUNDATION,

Respondents-Appellees,

and

LEAH HAFNEY, DAVID C WIND, JANE DOE, Trustee of the DORIS J DUCHENNE LIVING TRUST, JOHN DOE, JACK DOE, JOHN DOE, JACK DOE, JOHN DOE, JACK DOE, and JACK DOE,

Respondents,

and

UNPUBLISHED
July 21, 2025
9:02 AM

No. 367308
Grand Traverse Probate Court
LC No. 22-036898-CZ

DAVID FINDLING, Receiver for the DORIS J
DUCHENE AND DONALD L DUCHENE SR
FOUNDATION,

Appellee.

Before: FEENEY, P.J., and BORRELLO and LETICA, JJ.

PER CURIAM.

Petitioner, Barbara Duchene, makes numerous allegations against Respondent, S. Gary Spicer, arising out of the latter's representation of petitioner and members of her family. The trial court granted summary disposition in favor of respondents regarding petitioner's various claims and for the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Petitioner asserts she is the sole surviving heir to considerable family wealth derived from a potato chip company established by her maternal grandfather in 1930, which was subsequently sold to what is now known as PepsiCo, Inc. Petitioner is the descendant of Doris and Donald Duchene, who jointly established the Doris Trust designed to manage the family assets which had accumulated over generations. Upon Doris's death in 2001, the assets were to be allocated into three distinct subtrusts: The Descendants Trust intended for the benefit of Doris's grandchildren, the Marital Trust structured to provide for Donald's support during his lifetime, and the Family Trust designated for equal distribution among Doris's children.¹ Donald assumed the role of successor trustee for the Doris Trust following Doris's passing. S. Gary Spicer is an attorney who provided legal assistance to the Duchene family. Petitioner alleges a dual representation by Spicer, which he has contested. The Duchene Foundation, a charitable entity funded by Doris and Donald, had Spicer and petitioner serving in fiduciary capacities.

Petitioner asserts that Donald lacked the authority to distribute any proceeds from the aforementioned trusts in a manner deviating from Doris's explicit directives; notably, the Duchene Foundation was intended as a secondary recipient only. Allegedly, the Family Trust, Marital Trust, and Descendants Trust were neither properly established nor funded, conflicting with Doris's intentions. Petitioner claims that Spicer exerted undue influence over Donald, manipulating him to amend his will and the Donald Trust in violation of Doris's distribution scheme. Petitioner alleges that Spicer redirected significant assets towards the Duchene Foundation, from which he could then earn fees. Petitioner further alleges that, as trustee of the Donald Trust after Donald's demise in 2015, Spicer had a fiduciary obligation to transfer assets into the Barbara Trust and disburse income and principal to petitioner. Petitioner alleges that despite her trust in Spicer, he

¹Petitioner's only sibling predeceased her and left no direct descendants.

consistently evaded her inquiries regarding her family's wealth and her financial standing. According to respondents, the Barbara Trust remains funded with over \$5 million.

Spicer drafted key documents including Doris's will, Donald's will, the Doris Trust, and the Donald Trust. Although he was not a trustee of the Doris Trust or Doris's personal representative, he did serve as a successor trustee of the Donald Trust and acted as Donald's personal representative in an informal probate proceeding. Petitioner claims her awareness of potential claims against Spicer arose inadvertently when her newly retained estate planning attorney sought information from Spicer, who was reticent to comply, leading to revelations of discrepancies between her presumptions and the records presented to petitioner by Spicer.

Petitioner brought numerous claims against Spicer in the trial court which ultimately granted summary disposition in favor of respondents regarding the petitioner's claims, ruling them time-barred and substantively lacking merit. Petitioner now appeals.

II. STANDARDS OF REVIEW

A grant or denial of summary disposition is reviewed de novo. *McMaster v DTE Energy Co*, 509 Mich 423, 431; 984 NW2d 91 (2022). Summary disposition may be granted under MCR 2.116(C)(7) if the facts establish that a claim is barred by a statute of limitations. *Grosse Pointe Law Firm, PC v Jaguar Land Rover North America, LLC*, 317 Mich App 395, 399; 894 NW2d 700 (2016). The reviewing court must accept as true all well-pleaded factual allegations in the complaint unless they are contradicted by other evidence. *Id.* "A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019). "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *Id.* at 160. "A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim." *Id.* at 160. The nonmoving party need not be able to immediately prove its case to survive a motion for summary disposition under MCR 2.116(C)(10), but the nonmoving party must provide some evidentiary basis beyond allegations or beliefs for the court to find a genuine question of fact that would warrant a trial. *Skinner v Square D Co*, 445 Mich 153, 160-161 & 161 n 7; 516 NW2d 475 (1994).

This Court also reviews de novo the interpretation and application of statutes and court rules, *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008), and common-law doctrines, *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 109; 1 NW3d 44 (2023). While a reviewing court must accept as true the factual allegations in a pleading, the court is not obligated to accept any legal conclusions stated in the pleading. *Masrur v Regents of Univ of Mich*, 344 Mich App 102, 110-112; 999 NW2d 55 (2022). The legal significance of a fact is a question of law. *Philips v Mirac, Inc*, 470 Mich 415, 428; 685 NW2d 174 (2004).

III. UNDUE INFLUENCE²

Petitioner contends that the trial court erred in determining that her claim of undue influence was barred by the statute of limitations. Claims for undue influence can be classified as a form of fraud, thus invoking the legal principles associated with fraudulent claims. *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710 n 1; 742 NW2d 399 (2007). A fraud claim accrues when the wrong is done, not when the fraud is discovered. *Boyle v Gen Motors Corp*, 468 Mich 226, 227, 230-232; 661 NW2d 557 (2003). The limitations period applicable to fraud claims is six years under MCL 600.5813. *Maurer v Fremont Ins Co*, 325 Mich App 685, 695; 926 NW2d 848 (2018). Petitioner contends that Donald's will and the amendments to the Donald Trust executed between 2007 and 2013 should be rendered invalid due to undue influence. Furthermore, petitioner clarifies that her intention is not to contest or annul the Donald Trust itself, but to hold Spicer liable for the alleged conversion of assets from the Marital Trust, which purportedly enabled Donald to exert control over those assets. However, any misconduct alleged by the petitioner must have occurred prior to or at the time of Donald's death in 2015. Consequently, her claim of undue influence was time-barred as of 2021. *Fremont Ins Co*, 325 Mich App at 695. Petitioner filed her claims in June, 2022.

IV. LEGAL MALPRACTICE

Petitioner contends that Spicer engaged in legal malpractice and asserts that the trial court erred in its determination that her claim was either time-barred or improperly founded. "A professional malpractice claim accrues when the professional stops serving the plaintiff in a professional capacity on the matter giving rise to the claim." *Nortley v Hurst*, 321 Mich App 566, 570; 908 NW2d 919 (2017). "A plaintiff must bring a malpractice action within two years of accrual of the claim, MCL 600.5805(1) and (6), or within six months of when he or she discovered or should have discovered the claim, MCL 600.5838(2), whichever is later," subject to a six-year period of repose. *Nortley*, 321 Mich App at 570-571. An attorney-client relationship may be established in the absence of a formal contract "when it is shown that the advice and assistance of the attorney are sought and received in matters pertinent to his profession." *Macomb Co Taxpayers Ass'n v L'Anse Creuse Pub Sch*, 455 Mich 1, 10-11; 564 NW2d 457 (1997). However, an attorney-client relationship may not be established on the basis of "unexpressed subjective intent." *Fletcher v Bd of Ed of Sch Dist Fractional No. 5, Brighten & Genoa Twps, Livingston Co*, 323 Mich 343, 348; 35 NW2d 177 (1948). "[T]o be a 'client' of an attorney, one must have a professional relationship with the attorney." *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC*, 507 Mich 272, 293; 968 NW2d 367 (2021). Such a professional relationship "arises from the agreement of the parties, which can be express or implied through their conduct," and it minimally requires the client to have sought legal advice or services from the attorney, although the mere fact that "some direct or indirect consultation between the parties" occurred is insufficient. *Id.* at 298-299. To bring a legal malpractice claim, a plaintiff must allege more than the mere conclusion that he or she was a client of the attorney. *Estate of Maki v Coen*, 318 Mich App 532, 536, 538; 899 NW2d 111 (2017).

² Due to the multitude of assertions presented by petitioner against Spicer and various other parties, we will evaluate each claim independently.

Petitioner asserts that Spicer served as her legal counsel; however, her petition fails to provide any meaningful clarification regarding the specifics of Spicer's alleged representation. Cf. *Kloian v Schwartz*, 272 Mich App 232, 240; 725 NW2d 671 (2006). The petition sets forth no facts on which the trial court could find that there exists a question of material fact as to whether Spicer was petitioner's attorney. Review of the record reveals that petitioner's claims on this issue are comprised of a series of conclusory allegations that this Court is not obligated to accept. *Philips*, 470 Mich at 428; *Masrur*, 344 Mich App at 110-112.

Furthermore, petitioner submitted an affidavit that calls into question the validity of her claims. In her affidavit, petitioner indicates that her parents informed her that Spicer was overseeing Donald's affairs, and they would instruct her to sign documents without providing any clarity, often responding to her inquiries with condescension. These assertions suggest that Spicer was not functioning in the capacity of petitioner's legal representative. And, although petitioner asserted that Spicer drafted certain documents on her behalf in 1989, 2013, and 2016, this does not substantiate a continued attorney-client relationship beyond 2016. The trial court afforded petitioner numerous opportunities to present documentary evidence establishing such a relationship, yet she was unable to provide any relevant corroboration. At best, petitioner has merely claimed a subjective belief that Spicer acted as her attorney, *Fletcher*, 323 Mich at 348; *Scott*, 140 Mich App at 400, which is insufficient to establish the legal parameters of an attorney-client relationship. On this record, at the latest, any limitations period for malpractice expired in 2018.³

V. BREACH OF FIDUCIARY DUTY

Petitioner asserts that respondent violated his fiduciary duty and contends that the trial court erred in granting summary disposition regarding this claim. However, it is well established that the mere act of managing certain affairs on behalf of another party does not inherently establish a fiduciary relationship. *In re Jennings' Estate*, 335 Mich 241, 243-244; 55 NW2d 812 (1952). An interpersonal relationship is also insufficient to give rise to a fiduciary duty. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 580-581; 603 NW2d 816 (1999). A plaintiff cannot establish a fiduciary relationship merely by alleging "inexperience and reliance." *Ulrich v Fed Land Bank of St Paul*, 192 Mich App 194, 196; 480 NW2d 910 (1991). A claim for breach of fiduciary duty is subject to a three-year period of limitations, and it "accrues when the beneficiary knew or should have known of the breach." *Prentis Family Foundation v Barbara Ann Karamanos Cancer Institute*, 266 Mich App 39, 47; 698 NW2d 900 (2005) (quotation marks and citation omitted).

³ In an effort to provide finality to this issue, even if we were to assume that petitioner was asserting a claim based on being a third-party beneficiary of Spicer's actions, while caselaw holds that an intended third-party beneficiary of an attorney-client relationship may be able to bring a malpractice action against an attorney who failed to draft a will that properly carried out the testator's intended distribution scheme, *Maki*, 318 Mich App at 542-544, because petitioner does not contend that anything Spicer drafted for Donald did not comport with Donald's wishes, that claim also fails.

In her legal submissions, petitioner has not articulated a foundation for her claim of reliance on Spicer, presenting only nebulous assertions of trust. Nonetheless, it is plausible that petitioner could qualify as a “trust beneficiary” of the Doris Trust under MCL 700.7103(l), given her assertion that the Barbara Trust should have been funded by the Doris Trust, thereby potentially affording her a contingent beneficial interest therein. Consequently, pursuant to MCL 700.7905(1), she may initiate “a proceeding against a trustee for breach of trust” within one year of receiving a report that discloses the existence of a viable claim. However, the crux of petitioner’s claim regarding the Doris Trust is fundamentally flawed, as Spicer was never a trustee of the Doris Trust. Thus, any claim against Spicer for breach of trust is precluded due to his lack of trustee status.

Additionally, petitioner contends that portions of the Marital Trust were inappropriately diminished during Donald’s lifetime, allegedly converted into personal assets. At that juncture, Donald and Comerica Bank served as the sole trustees; hence, any breach of fiduciary duty would rest with them. Petitioner further claims, albeit in conclusory terms, that Spicer failed to transfer Marital Trust assets into the Family Trust. However, she does not concretely assert that the assets held in the Marital Trust at the time of Donald’s death were not subsequently allocated as per the directives of the Doris Trust. Even if Spicer exercised trustee powers post-Donald’s death, the alleged detriment had already occurred by that point.

Moreover, the Marital Trust is not an autonomous entity separate from the Doris Trust. No independent trust document exists for the Marital Trust; it is, in fact, established and governed by the provisions of the Doris Trust. The Doris Trust instructs its trustee—who is not Spicer—to allocate its assets into the Marital Trust, Descendants Trust, and Family Trust. The Marital Trust encompasses assets excluded from both the Family Trust and the Descendants Trust. Following Donald’s death, any accrued and undistributed income was to be allocated to Donald’s estate, with remaining assets transferred to the Family Trust. Only the Family Trust provides any mechanism for the transfer of assets to the Barbara Trust.

In summary, the Marital Trust does not constitute a standalone trust from which Barbara could claim to be a “trust beneficiary” under MCL 700.7103(l). Her contingent beneficial interest, if any, lies within the Doris Trust or potentially the Family Trust. While petitioner has identified herself as a beneficiary of the Doris Trust, the Donald Trust, and Donald’s estate, she has notably failed to position herself as a beneficiary of the Marital Trust. Accordingly, for the reasons articulated, petitioner is precluded from bringing claims against Spicer for breach of either the Doris Trust or the Marital Trust.

VI. CONVERSION

Petitioner asserts that the trial court made an error in determining that her claims of conversion were barred by the statute of limitations. “[C]onversion is a wrongful act of dominion over another person’s property.” *Tillman v Great Lakes Truck Ctr, Inc*, 277 Mich App 47, 49; 742 NW2d 622 (2007). The period of limitations for conversion is three years under MCL 600.5805(2). *Id.*

Petitioner’s primary allegation of conversion involves Spicer withdrawing approximately \$2.6 million from the Duchene Foundation or various “FBO accounts.” Petitioner posits that these

withdrawals constitute conversion because the assets of the Duchene Foundation should have been transferred to the Barbara Trust. She characterizes the payments originating from the FBO accounts as “trustee fees,” asserting that Spicer administered these accounts under the “false pretenses” of them being trusts established by the Donald Trust. However, her precise interpretation of this claim remains ambiguous.

From what we can glean from petitioner’s complaint, the alleged wrongful dominion over the property, which the petitioner believes should have been allocated to Barbara, is said to have commenced in 2013 when Spicer allegedly “seized control of” the Donald Trust and the Duchene Foundation. In any case, no alleged wrongful dominion could have occurred after Donald’s death in 2015. Consequently, petitioner’s conversion claim is intrinsically linked to her assertion that Spicer violated the provisions of the Doris Trust or disrupted the estate distribution plans of Doris. Notably, any act of conversion would have been finalized long before three years prior to the initiation of the current legal action. Consequently, this claim is barred by MCL 600.5805(2). *Tillman*, 277 Mich App at 49.

VII. RICO

Next, petitioner argues that she has a viable claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 USC 1961-1968. RICO “created four new criminal offenses involving the activities of organized criminal groups in relation to an enterprise,” and “also created a new civil cause of action for any person injured in his business or property by reason of a violation of those prohibitions.” *RJR Nabisco v European Community*, 579 US 325, 329; 136 S Ct 2090; 195 L Ed 2d 476 (2016) (quotation marks, brackets, and citations omitted).⁴ A civil RICO claim has a four-year limitations period. *Agency Holding Corp v Malley-Duff & Assoc, Inc*, 483 US 143, 152-157; 107 S Ct 2759; 97 L Ed 2d 121 (1987). A civil RICO claim accrues when the plaintiff knew or should have known of the injury. *Rotella v Wood*, 528 US 549, 553-554; 120 S Ct 1075; 145 L Ed 2d 1047 (2000). A plaintiff seeking to bring a civil RICO claim must exercise reasonable diligence to investigate and uncover the unlawful activity. *Klehr v AO Smith Corp*, 521 US 179, 194-195; 117 S Ct 1984; 138 L Ed 2d 373 (1997). A civil RICO claim “seek[s] not only to compensate victims but also to encourage those victims themselves diligently to investigate and thereby to uncover unlawful activity.” *Id.* at 195.

Here, the alleged wrongful conduct involves either persuading Donald to modify his will and the Donald Trust to redirect familial assets into accounts not designated by the Doris Trust, or facilitating Donald’s control over assets that were supposed to be protected within the Marital Trust. These alleged wrongful actions were evidently finalized by 2013, and no later than 2015. Petitioner asserts that she became aware of her purported injury in the spring of 2022 when Spicer provided her with her parents’ estate documents and tax returns. However, the evidence suggests that petitioner should have recognized her injury much earlier. She was aware she was receiving funds from the trust, acknowledged Donald’s death, and held a position as an officer of the

⁴ This Court is bound by decisions of the United States Supreme Court construing federal law. *Abela v Gen Motors Corp*, 469 Mich 603, 606; 677 NW2d 325 (2004), cert den 543 US 870; 125 S Ct 98; 160 L Ed 2d 117 (2004).

Duchene Foundation. Additionally, all tax filings from the Duchene Foundation were publicly accessible and could have been retrieved at any time. Hence, the evidence points to petitioner being cognizant that she was lacking crucial information held by Spicer at least at the time of Donald's passing, yet she opted not to pursue further inquiries. It is clear that petitioner failed to exercise reasonable diligence, leading to the conclusion that her potential civil RICO claim is time-barred. *Klehr*, 521 US at 194 (“...we conclude that ‘reasonable diligence’ does matter, and a plaintiff who is not reasonably diligent may not assert ‘fraudulent concealment’”).

VIII. DISCOVERY RULES

Petitioner contends that the doctrine of discovery tolling applies to her claims, positing that her claims are not time-barred as a result. She relies on MCL 600.5855, which states that if a party “fraudulently conceals the existence of the claim,” the action may be initiated within two years after the claimant discovers, or should have discovered, the existence of said claim, notwithstanding the expiration of the limitations period. For the purposes of compliance with MCL 600.5855, establishing fraudulent concealment necessitates more than mere silence; the plaintiff must demonstrate that the defendant engaged in some affirmative act or contrivance that is explicitly designed to impede subsequent discovery of the claim. *Prentis Family Foundation*, 266 Mich App at 48. In cases involving a fiduciary relationship, there may exist an affirmative duty of disclosure that alleviates the need for an overt act of concealment. *The Reserve at Heritage Village Ass’n v Warren Financial Acquisition, LLC*, 305 Mich App 92, 123; 850 NW2d 649 (2014). Nonetheless, the party asserting fraud must exercise reasonable diligence in pursuing their claim. *Prentis Family Foundation*, 266 Mich App at 48 & 45 n 2. Here, petitioner fails to allege any affirmative act of concealment and, for reasons previously articulated, does not adequately establish that Spicer owed her a fiduciary duty or that she exercised reasonable diligence.

Additionally, petitioner asserts that her conversion claim is not time-barred under MCL 700.1205(3). This statute provides, in pertinent part, that if fraud is committed in connection with a proceeding or in a filing under this act, or if fraud is employed to subvert the provisions or objectives of this act, an injured party may seek appropriate relief against the perpetrator of the fraud or restitution from any party that benefited from the fraud, regardless of innocence. The statute mandates that an action must be initiated within two years of the discovery of the fraud, but precludes action against a non-perpetrator after a five-year repose period from the commission of fraud.

However, MCL 700.1205(3) is specifically limited to instances of fraud “in connection with a proceeding or in a statement filed under [the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*]” or fraud “used to avoid or circumvent the provisions or purposes of [EPIC].” Petitioner’s reliance on this statute is misplaced, as the alleged fraud does not fall within its ambit. Petitioner invokes this statute in an effort to salvage her conversion claim, yet the asserted fraud appears to fundamentally consist of failures to disclose pertinent facts or attempts to persuade Donald to ignore the estate plans set forth by Doris. The claim fails on the former as petitioner has not established any obligation on Spicer’s part to disclose those facts; the latter claim is equally deficient, as Spicer was neither the trustee of the Doris Trust nor Doris’s personal representative. The actions contravening Doris’s estate plans were executed by Donald, thereby rendering the five-year period of repose applicable. Furthermore, petitioner vaguely asserts that the probate file for Donald’s estate should evidently reveal Spicer’s involvement in fraudulent conduct; however, “[t]rial courts are not the research assistants of the litigants; the parties have a

duty to fully present their legal arguments to the court for its resolution of their dispute.” *Walters v Nadell*, 481 Mich 377, 388, 751 NW2d 431 (2008).

Affirmed. Respondents, being the prevailing parties, are entitled to tax costs. MCR 7.219(A).

/s/ Kathleen A. Feeney

/s/ Stephen L. Borrello

/s/ Anica Letica



GRUEL MILLS
ATTORNEYS & COUNSELORS

THOMAS R. BEHM
J. PAUL JANES
WILLIAM M. AZKOUL
BENJAMIN W. MILLS
THOMAS J. WORSFOLD
MELISSA B. HEINZ
JENNIFER M. ANTON
ZAKARY A. DRABCZYK

99 MONROE AVENUE NW, SUITE 800
GRAND RAPIDS, MICHIGAN 49503
TELEPHONE 616/235-5500
FACSIMILE 616/235-5550
www.gmnp.com

OF COUNSEL
WILLIAM F. MILLS
NORMAN H. PYLMAN
SCOTT R. MELTON

PARALEGALS
CAROL L. KOLENDA
BEN C. BAWTINHEIMER, R.N.
JENNIFER J. SCHWEIGERT

GRANT J. GRUEL
1932 - 2004

zak@gmnp.com

December 16, 2025

Sent via First Class Mail

Nathan R. Piwowski, Esq.
Chair of the Probate &
Estate Planning Section
McCurdy Wotila & Porteous PC
120 West Harris Street
Cadillac, MI 49601

**RE: *Duchene v. Spicer et al.*, MSC No. 169247
Request for Amicus Curiae Brief – Application for Leave to Appeal**

Dear Chairman Piwowski and Officers of the Council:

I write on behalf of Petitioner Barbara Duchene to respectfully request that the Probate & Estate Planning Section of the State Bar of Michigan consider submitting an amicus curiae brief in support of her pending Application for Leave to Appeal in the Michigan Supreme Court, a copy of which is enclosed on thumb drive. The application asks the Court to interpret section 1205(3) of the Estate and Protected Individuals Code (“EPIC”), MCL 700.1101 et seq., a critical yet seldom-discussed component of EPIC’s remedial framework. The Court’s guidance on this issue would have significant implications for trust and probate practice statewide.

By its plain language, section 1205(3) establishes an independent, two-year statute of limitations for certain species of fraud. Specifically, it allows any person injured by fraud “perpetrated in connection with a proceeding under this act” or “used to avoid or circumvent this act,” to petition for relief within two years of discovering the fraud. Unlike the Revised Judicature Act, section 1205(3) imposes no “could or should have discovered” standard; accrual turns on actual “discovery of the fraud.”

December 16, 2025

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Drawing from the Uniform Probate Code, the Legislature enacted section 1205(3) to ensure that beneficiaries, devisees, and other interested persons are afforded a meaningful opportunity to litigate claims on their merits. As the Section knows, fiduciary relationships are often marked by profound asymmetries of information and trust. Without section 1205(3), innocent beneficiaries—like Ms. Duchene—could be barred from relief merely because they relied on their *fiduciaries'* duties of candor and disclosure.

Unfortunately, the absence of meaningful authority construing section 1205(3) has led to confusion in the lower courts. In this case, both the probate court and the Court of Appeals effectively disregarded the statute's plain language, treating Ms. Duchene's EPIC claim for conversion of trust assets under MCL 700.1205(3) and 700.7813(4) as no different from an ordinary common-law suit between strangers. That approach is not just inconsistent with the statute's text; it threatens EPIC's viability as an independent remedial framework and undermines the rights of beneficiaries, devisees, and other interested persons across the state.

For these reasons, we believe that the Probate & Estate Planning Section's perspective, grounded in its collective expertise and stewardship of Michigan probate practice, would substantially assist the Supreme Court in construing section 1205(3). We welcome the opportunity to provide any additional materials or to answer any questions that might aid the Section in evaluating whether to participate as amicus.

Thank you for your consideration and your continued leadership in Michigan's trust and estate community. Should you wish to discuss this matter further, please do not hesitate to contact me at (616) 588-9669.

Very truly yours,



Zakary A. Drabczyk (P84777)
Counsel for Petitioner Barbara Duchene

Enclosed: Application for Leave to Appeal (MSC No. 169247)

CC: Officers of the Council, Probate & Estate Planning Section:

Chair-Elect Richard C. Mills
Smith Haughey Rice & Roegge
213 S Ashley Street, #400
Ann Arbor, MI 48104

Vice-Chair Christine M. Savage
Lowe Law Firm PC
2375 Woodlake Drive, Ste 380
Okemos, MI 48864

Secretary Melisa M. W. Mysliwicz
Barnes & Thornburg LLP
171 Monroe Avenue NW, Ste 1000
Grand Rapids, MI 49503

Treasurer Angela M. Hentkowski
Steward & Sheridan PLC
205 S Main Street
Ishpeming, MI 49849

Guardianship, Conservatorship and End of Life

Committee Report re: Meeting of 1-5-26

Present:

Sandra Glazier	Kathleen Goetsch
Georgette David	Elizabeth Graziano
James Steward	Hon. Michael McClory
Hon. Milton Mack	Kathleen Martone
Hon. Avery Rose	Hon. David Murkowski

The committee met via Zoom to review the proposed adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Bill Substitutes for SB 585 and 586: In addition, prior to the meeting substitute SB 586 (S-3) and SB 585 (S-1) were also circulated to members of the committee. As the meeting went long, we did not discuss the substitute bills, but no comments were received indicating a belief that a change in the public policy position already taken with regard to Senate Bills 584 or 586 were merited based upon any of the changes provided for in the bill substitutes. No change in the current public policy position is recommend.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act: The meeting focused on discussing challenges and potential solutions for aligning Michigan's guardianship laws with the Uniform Guardianship and Protective Proceedings Jurisdiction Act (the "Act"), particularly regarding jurisdictional transfers and the potential implications of differing standards between states relating to underlying proceedings that might be implicated by its adoption.

The group reviewed the potential implications of adopting the Act given Michigan's unique guardianship requirements, especially concerning developmental disability cases and a significant difference in who bears the burden of proof when a change in guardian or conservator or termination is requested. In Michigan, the petitioner or fiduciary (as opposed to the protected individual, whether under a conservatorship or adult guardianship) bears the burden of proof for establishment (as well as continuation) of the protective proceedings and the protected individual can request a change of fiduciary to any suitable person without having to demonstrate malfeasance. An additional concern that was raised related to who could petition for transfer.

When the Act was previously reviewed by the Probate Council, many changes to the Act were recommended to (and approved). It was reported that the Council felt changes were necessary to maintain protections afforded individuals under Michigan's current laws. It was also felt that given the potential implications of the varied burdens of proof imposed by other jurisdictions, that Michigan's statutes might afford greater protections to an individual's

rights and, as a result, expanded avenues for establishing jurisdiction in Michigan (when an individual is found to be within the state) should be afforded as opposed to the basis for establishing jurisdiction defined by the Act.

During the meeting James Steward was able to locate a draft version of the Act with proposed revisions then deemed important if the Act was to be adopted in Michigan. He will circulate it to members of this committee.

Jim reported that the documents he was able to locate identified a number of areas of concern, some of which were verbally outlined during the meeting. Given the breadth of issues involved, it was felt that the current committee would benefit from being able to review the prior proposed revisions to the Act and prior committee's reports given the extensive efforts involved in producing the report and its resulting recommended changes.

Some of the identified challenges were associated with aligning Michigan's guardianship laws with the Act, particularly regarding jurisdictional transfers, as it was felt that Michigan's approach to terminating guardianships is more favorable to wards and adoption of the Act might result in unintended adverse consequences. While it was felt that those issues might rarely arise and the provision allowing courts to adapt to an acceptance of transfer might permit adaptation to Michigan law might serve as a potential solution, further analysis was believed necessary.

Group discussion also highlighted the potential challenges of transferring guardianship cases between states and the need for clear communication between courts. Questions were also posed regarding how registration and issues relating to adaptation of a general adult guardianships under the probate code to a developmentally disabled adult proceeding under the mental health code might be implicated and effectuated.

While a number of members of the committee support the idea of adopting uniform laws when advantageous to Michigan residents, acknowledging the benefits of uniformity when practical and possible, it was felt the Act merited a more thorough analysis given the potential implications to liberty issues that might be implicated as a result of its adoption.

In addition, the committee recommends the formation of an ad hoc committee to thoroughly evaluate the Act and its potential implications to current Michigan jurisprudence. It was agreed that it might be prudent to have that task assigned to (if not to otherwise coincide with) the ongoing ad hoc committee work on the potential adoption of the Uniform Guardianship and Protective Proceedings Act.

Once Jim Steward circulates the historical information in his possession, the Guardianship, Conservatorship and End of Life Committee will attempt to schedule another meeting before the February council meeting is to occur. Nonetheless this committee recommends that

Council report back to the legislator who requested input to suggest that they slow the process down so that a thorough review and analysis might be conducted given the potential implications already identified.

MEMORANDUM

TO: PROBATE COUNCIL

**FROM: ANGELA HENTKOWSKI
REAL ESTATE COMMITTEE**

RE: HB 5152 and HB 5153

DATE: DECEMBER 9, 2025

Present:

J. David Kerr
James Steward
Angela Hentkowski
Chris Savage
Michael Shelton

The committee met via Zoom to review House Bills 5152 and 5153.

Summary of Bills:

HB 5152 mandates that any sale of property after a foreclosure notice is recorded is invalid unless the seller signs a plain-language "Notice of Rights." This notice explicitly informs them that they are waiving their rights to redemption, occupancy, and any potential surplus proceeds. The bill also requires the foreclosure notice to be recorded with the Register of Deeds.

HB 5153 makes the statutory right of redemption and the right to surplus proceeds non-assignable (except by intestate or testate succession). This bill provides that a mortgagor's right of redemption is not assignable or transferable after the notice of foreclosure is recorded, except by testate or intestate succession. A person that has a recorded interest in the property that is obtained after the notice of foreclosure is recorded may not redeem the premises. Further, mortgagor's right to surplus money is not assignable or transferable after the first publication of the notice of foreclosure, except by testate or intestate succession.

Committee Recommendations:

While the committee understands the bills purpose, the committee has great concerns that the bills are too broad, will not actually have the effect intended, and will not preserve owner's rights. The biggest issue the committee could not get past was taking the owner's right away of assignability. There are valid situations where an owner would want to assign or transfer the owner's right to surplus money or redemption, and this should not be restricted. There were also questions how ladybird deeds would fit in this scheme - what would happen if the owner died after the notice of foreclosure.

The committee recommends that Council oppose HB 5152 and 5153.

For Council's information, the Real Estate Section's view on these Bills are as follows:

For HB 5151, generally the Notice of Rights requirement appears to serve a legitimate purpose of informing parties of their existing legal rights, but the terms "house" and "property" could be cleaned out to avoid confusion as to what type of property this legislation applies to. Consider also whether these bills should apply only to real property owned by individuals (or their revocable living trusts) and not to property owned by entities.

For HB 5153, in its current form, this bill may be overly broad and could unintentionally prohibit legitimate post-foreclosure transactions involving the transfer of redemption rights for valuable consideration between informed and consenting parties.

Tax Nugget

To: Probate and Estate Planning Council

From: J.V. Anderton on behalf of the Tax Committee

RE: January 2026 Tax Nugget – Estate of Rowland v Commissioner, T.C. Memo 2025-76

For those practitioners who prepare Form 706 returns, the tax court’s opinion granting partial summary judgment to the IRS in the matter of *Estate of Rowland* is an important reminder that while the filing requirements for a DSUE 706 return are more lenient than other circumstances where a 706 must be filed, the taxpayer (and her advisers) do need to comply with the rules the IRS as set forth.

A summary of the facts: Billy and Fay were married, with Fay dying in April 2016 and Billy dying in January 2018. Prior to Billy’s death, a DSUE 706 was filed for Fay at the end of 2017 (well after both the 9-month filing period and the 6-month extension). Fay’s 706 reflects a gross estate of \$3 million and payments to 13 beneficiaries (including trusts for children and grandchildren), when the exclusion amount was \$5.45 million. The 706 also reported various assets but did not include values for those assets.

Upon Billy’s death and filing a 706 which included a DSUE amount of \$3,712,562 from Fay’s return, the IRS selected Billy’s 706 for audit and denied the DSUE amount from Fay’s 706. The denial was based on it being late, so to be considered it had to comply with the requirements of Rev. Proc. 2017-34, which include being a “complete and properly prepared estate tax return” and showing values for the assets in order to determine how much each beneficiary other than Billy and any charity was to receive.

The tax court agreed with the IRS, stating that the “relaxed reporting does not apply to marital or charitable deduction property if “[t]he value of such property relates to, affects, or is needed to determine, the value passing from the decedent to a recipient other than the recipient of the marital or charitable deduction property.””

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