

**MEETING OF THE COUNCIL OF THE  
PROBATE & ESTATE PLANNING SECTION OF THE  
STATE BAR OF MICHIGAN  
Friday, March 13, 2026**

Regular Meeting Agenda

- I. Commencement (Nathan R. Piwowarski)
  - A. Call to Order and Welcome
  - B. Attendance:
    - 1. Zoom Roll Call
    - 2. Excused Absences:
- 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 (Angela Hentkowski)
- Q. Nominating (Mark Kellogg)
- R. Planning (Nathan Piwowarski)
- S. Probate Institute (Chris Savage)
- T. Real Estate (Angela Hentkowski)
- U. State Bar and Section Journals (Melisa Mysliwicz)
- V. Tax (J.V. Anderton) – **Attachment 5**
- 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)**

# Attachment 1

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

Friday, February 13, 2026

Held remotely via Zoom

**(DRAFT) Minutes**

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**I. Commencement (Nathan R. Piwowarski)**

**A. Call to Order and Welcome**

Chairperson-Elect Richard C. Mills called the meeting of the Council of the Probate & Estate Planning Section of the State Bar of Michigan to order at 10:50 a.m. Chairperson-Elect Mills presided in Chairperson Nathan R. Piwowarski's absence.

**B. Attendance**

Chairperson-Elect Richard C. Mills conducted a roll call of Zoom participants in Secretary Melisa Mysliwiec's absence.

The following officers and members of the Council were present remotely via Zoom:

1. Richard C. Mills, Chairperson-Elect
2. Christine M. Savage, Vice Chairperson
3. Angela M. Hentkowski, Treasurer
4. J.V. Anderton
5. Ernschie Augustin
6. Daniel W. Borst
7. Patricia E. Davis
8. Sandra D. Glazier
9. Daniel S. Hilker
10. Warren H. Kreuger
11. Elizabeth Luckenbach
12. Kathleen A. Martone
13. Alexander S. Mallory
14. Hon. Sara A. Schimke
15. Michael D. Shelton
16. Joseph J. Viviano
17. David Sprague

Rollcall was not taken of others present remotely via Zoom.

## **C. Excused Absences**

The following were noted as excused:

1. Chairperson, Nathan R. Piwowarski
2. Secretary, Melisa M. W. Mysliwicz
3. Susan L. Chalgian
4. Georgette E. David
5. Nicholas A. Reister
6. Rebecca K. Wrock

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## **II. Monthly Reports**

### **A. Lobbyist's Report (Public Affairs Associates)**

A report was provided by Becky Bechler and Peter Langley. Becky and Representative Wozniak met with Representative Sarah Leitner, Chair of the House Judiciary Committee, and she is considering House Bills 4523 and 4408, the duties and powers of trustees and the powers of appointment act, which are both priorities of the Section. Becky and Pete will review the Section's public policy statement related to House Bills 4418 and 5833, and considering the substitute bills do not address the concerns raised by Counsel, talk with Representative Thompson to see if there is any room for changes.

### **B. Minutes of Prior Council Meetings (Melisa Mysliwicz)**

The minutes of the prior Council meeting were presented for approval. Chairperson-Elect Mills moved for approval of the minutes, Vice Chairperson Christine M. Savage supported the motion, and the motion carried. The Minutes of the prior Council meeting were approved.

### **C. Chair's Report (Nathan Piwowarski)**

No report due to Chair's excused absence.

### **D. Treasurer's Report (Angela Hentkowski)**

Treasurer Hentkowski reported that she has not yet received the monthly statements from the State Bar of Michigan.

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## **III. Committee Reports**

### **A. Committee on Special Projects (Dan Hilker)**

Mr. Hilker reported on the Committee's continued work reviewing the Undue Influence Committee's proposed statutory language addressing undue influence, including burden of proof provisions and definitions related to confidential and fiduciary relationships. The Council engaged in extensive discussion and determined the following by straw poll:

- The unanimous majority of CSP supports moving forward with an undue influence statute.
- A near unanimous majority of CSP supports the idea that the court should determine whether the presumption of undue influence has arisen, as opposed to the jury making this determination.
- A strong majority of CSP supports that the burden of proof should shift to the proponent of the instrument after the presumption of undue influence has arisen.

#### **B. Amicus Curiae (Andy Mayoras)**

Mr. Mayoras reported on the Supreme Court's invitation for the Section to submit an amicus brief in *In re Sherrod Estate*, addressing the standard for establishing a confidential or fiduciary relationship in undue influence cases. The Committee recommended that the Council authorize filing an amicus brief consistent with Section practice. Motion to authorize filing an amicus brief. A discussion followed. Mr. Mayoras then moved that the Section take a public policy position to authorize an amicus brief and advocate (1) that the Court of Appeals applied the wrong test for confidential fiduciary relationship and, citing to the Carmey footnote and other caselaw, applied the wrong analysis on that issue even though the outcome was not necessarily wrong, and (2) that in the event there is a finding of no confidential fiduciary relationship, that the matter be remanded to the probate court for determination of whether there is undue influence in the absence of the relationship. 14 voted in support, 2 abstentions, and 1 council member did not vote. The motion passed.

#### **C. Annual Meeting (Nathan Piwowarski)**

No report due to Chair's excused absence.

#### **D. Awards (Katie Lynwood)**

No Report.

#### **E. Budget (Melisa Mysliwicz)**

No Report.

#### **F. Bylaws (David Lucas)**

The group has convened, prepared a draft report, and anticipates presenting it at March's Council meeting.

#### **G. Charitable and Exempt Organizations (Rick Mills for Rebecca Wrock)**

The committee is meeting biweekly and nearing completion. Leadership is engaging key stakeholders to seek support for a proposal that may include fee increases to fund additional AG involvement in probate matters protecting charitable gifts.

#### **H. Citizens Outreach (Kathleen Goetsch)**

No Report.

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

No report.

**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)**

Ms. Glazier requested that her Committee's materials from the January meeting be included with March's agenda.

**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 further report.

**P. Membership (Ernschie Augustin)**

No report.

**Q. Nominating (Mark Kellogg)**

No report.

**R. Planning (Nathan Piwowarski)**

No report.

**S. Probate Institute (Chris Savage)**

The Institute schedule is finalized, the seminar lineup is set, and registration is now open.

**T. Real Estate (Angela Hentkowski)**

Angela Hentkowski reminded Council of the new FinCEN residential real estate reporting rule taking effect March 1, noting that certain transfers of residential property to legal entities or non-exempt trusts will require reporting by attorneys, with significant penalties for noncompliance. She encouraged members to review the rule and seek additional training.

**U. State Bar and Section Journals (Melisa Mysliwec)**

No Report.

**V. Tax (J. V. Anderton)**

Report provided. Discussion 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 (Jim Spica & Rob Tiplady)**

Report provided. Discussion only.

**AA. Premarital Agreements (Chris Savage)**

No report.

***BB. Trust Accounts (Elizabeth Luckenbach)***

Liz Luckenbach reported on legislative outreach regarding House Bill 6011, including a January 14 meeting with Representative Wozniak's Legislative Director and stakeholders. A red-lined version of the bill was provided to Patricia Herndon, with follow-up communications in late January and early February. Further status updates are pending.

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

No report.

***DD. Uniform Guardian, Conservatorship, and Protective Arrangements Act***

No report from Chair; brief update provided by Ms. Martone.

***EE. Undue Influence (Ken Silver)***

Report and discussion as part of Special Projects report. No separate action taken.

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

No report.

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

No report.

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#### **IV. Good of the Order**

General discussion. No formal action taken.

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#### **V. Adjournment**

There being no further business, Chairperson Elect Mills adjourned the regular Council meeting at 12:06 p.m.

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**Respectfully submitted,**

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

# **Attachment 2**



**State Bar of Michigan**  
**Parent Company : State Bar of Michigan : Sections**  
**Probate&Estate Section Expense Detail Report**  
**From Oct 2025 to Feb 2026**

ACCOUNT	DATE	TYPE	DOCUMENT NUMBER	ACS VENDOR NAME	DESCRIPTION	DEBIT	CREDIT	TOTAL NET AMOUNT
<b>60000 - Operating Expenses - Non-Labor</b>						\$0.00	\$0.00	\$0.00
<b>61200 - Travel</b>						\$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
	12/8/2025	Journal	JE14479	Kathleen Carignan	May 2025 Meeting Travel	\$500.00		\$500.00
	12/15/2025	Journal	JE14630	Sara Schimke	11-14-2025 Meeting travel	\$144.20		\$144.20
	2/19/2026	Journal	JE15433		K Carignan Reclass		\$500.00	-\$500.00
<b>Total - 61200 - Travel</b>						<b>\$4,098.86</b>	<b>\$500.00</b>	<b>\$3,598.86</b>
<b>62315 - Meetings</b>						\$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
	12/3/2025	Journal	JE14410	University Club of MSU	139481 11-14-2025 Probate Law Meeting	\$1,198.60		\$1,198.60
	1/13/2026	Journal	JE14960	University Club of MSU	139481 12-12-2025 Probate Law Meeting	\$1,808.60		\$1,808.60
<b>Total - 62315 - Meetings</b>						<b>\$7,804.41</b>	<b>\$0.00</b>	<b>\$7,804.41</b>
<b>64055 - Miscellaneous</b>						\$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
	1/13/2026	Journal	JE14962	Prime Time Awards Inc.	Probate Law Gavel & Plaque	\$317.00		\$317.00
<b>Total - 64055 - Miscellaneous</b>						<b>\$664.19</b>	<b>\$0.00</b>	<b>\$664.19</b>
<b>65460 - Newsletter/Publication</b>						\$0.00	\$0.00	\$0.00
	12/2/2025	Journal	JE14364	ICLE	Probate Law Journal	\$4,650.00		\$4,650.00
	2/24/2026	Journal	JE15476	ICLE	Probate Law Journal	\$4,800.00		\$4,800.00

ACCOUNT	DATE	TYPE	DOCUMENT NUMBER	ACS VENDOR NAME	DESCRIPTION	DEBIT	CREDIT	TOTAL NET AMOUNT
<b>Total - 65460 - Newsletter/Publication</b>						<b>\$9,450.00</b>	<b>\$0.00</b>	<b>\$9,450.00</b>
<b>67010 - Administrative Services</b>						\$0.00	\$0.00	\$0.00
	11/4/2025	Journal	JE13815	Theresa Castle	October 2025 Admin	\$1,062.00		\$1,062.00
	12/1/2025	Journal	JE14336	Theresa Castle	November 2025 Admin	\$810.00		\$810.00
	1/7/2026	Journal	JE14850	Theresa Castle	December 2025 Admin	\$847.50		\$847.50
	2/10/2026	Journal	JE15314	Theresa Castle	January 2026 Admin	\$744.00		\$744.00
<b>Total - 67010 - Administrative Services</b>						<b>\$3,463.50</b>	<b>\$0.00</b>	<b>\$3,463.50</b>
<b>67065 - Community Support, Donations &amp; Sponsorships</b>						\$0.00	\$0.00	\$0.00
	2/19/2026	Journal	JE15433		K Carignan Reclass	\$500.00		\$500.00
<b>Total - 67065 - Community Support, Donations &amp; Sponsorships</b>						<b>\$500.00</b>	<b>\$0.00</b>	<b>\$500.00</b>
<b>67115 - Legislative Consulting</b>						\$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
	12/1/2025	Journal	JE14328	Public Affairs Associates	December 2025	\$3,000.00		\$3,000.00
	1/2/2026	Journal	JE14760	Public Affairs Associates	January 2026	\$3,000.00		\$3,000.00
	2/2/2026	Journal	JE15184	Public Affairs Associates	February 2026	\$3,000.00		\$3,000.00
<b>Total - 67115 - Legislative Consulting</b>						<b>\$15,000.00</b>	<b>\$0.00</b>	<b>\$15,000.00</b>
<b>67235 - E Blast Expense</b>						\$0.00	\$0.00	\$0.00
	10/31/2025	Journal	JE13787		10/21 Read the Summer Newsletter Now (eblast)	\$100.00		\$100.00
	1/31/2026	Journal	JE15158		1/26 Read the Winter Newsletter Now (eblast)	\$100.00		\$100.00
<b>Total - 67235 - E Blast Expense</b>						<b>\$200.00</b>	<b>\$0.00</b>	<b>\$200.00</b>
<b>Total - 60000 - Operating Expenses - Non-Labor</b>						<b>\$41,180.96</b>	<b>\$500.00</b>	<b>\$40,680.96</b>

# Attachment 3

# MEMORANDUM

**To:** Probate Council  
**From:** Andrew W. Mayoras, Chair of Amicus Committee  
**Subject:** Amicus Invitation  
**Date:** February 27, 2026

## Overview

The PEPS previously filed two amicus briefs following public policy votes. First, Council voted to submit an amicus brief upon application to advocate for the Supreme Court to grant leave to address the case given the importance of the issues. We did not advocate for collectability or not at that time; rather, we voted to advocate for leave to be granted.

Second, after leave was granted and we were invited to submit a second amicus brief, Council voted to file a brief that advocated that the collectability of assets in a revocable living trust by a creditor of the estate, under MCL 700.7506 and 700.7605, turns on the nature of the assets. We advocated that 401k proceeds are shielded from collection but life insurance proceeds where the beneficiaries are not children/spouse are not shielded. Our discussion included analysis of both 7605(2) and (4), which was largely absent from the Court of Appeals discussion.

The Supreme Court recently entered an order directing supplemental briefs on 3 questions:

(1) whether the property at issue, the 401(k) and life insurance proceeds, became property of Jennifer's trust after the trust automatically became irrevocable upon her death; (2) if so, whether MCL 700.7605(1) applies to property paid into an irrevocable trust where the trust was revocable at the settlor's death; and (3) if MCL 700.7605(1) does not apply to the property at issue because the proceeds were paid into Jennifer's trust after it became irrevocable, whether the proceeds are analyzed under provisions related to irrevocable trusts, see MCL 700.7506(1)(c).

The Supreme Court again invited our section to file an amicus brief.

## Facts & Lower Court Ruling

The Trust settlor killed her elderly mother, who was suffering from dementia, and then killed

herself. Her estate assets were depleted, primarily with costs of defense as to the subsequent wrongful death action. The settlor had named her revocable living trust as the beneficiary of two assets at issue on appeal: (1) a 401k provided by an employer as an ERISA benefit and (2) a life insurance policy provided by the same employer. The settlor was not survived by a spouse or children.

The estate of the settlor's mother successfully brought a wrongful death action against the settlor's estate and won a monetary judgment. The probate court held an evidentiary hearing on the issue of whether the 401k and life insurance policy were subject to the creditor's claim under MCL 700.7605, and secondarily to the life insurance policy, MCL 700.550.2207. The court ruled that the 401k policy was protected from the creditor under 7605(2), as it constituted payments from a 401k plan, but that the life insurance policy did not enjoy protection.

The Court of Appeals issued a published decision that reversed the probate court as to the 401k and affirmed as to the life insurance. As to the 401k issue, the Court of Appeals relied first on well-settled case law that ERISA creditor protections end once the assets are distributed to the named beneficiary. As to the Michgian Trust Code's section on whether such an asset is subject to creditors of the estate, the Court relied on a similar case from an appellate court in Kansas. The Court found the Kansas court's analysis to be persuasive, particularly as to an owner of such an account who elects to use a revocable living trust as his or her estate planning mechanism. While a devise directly to an individual as beneficiary would have been protected under other case law, that protection is lost when an individual elects to use a revocable living trust, once the assets are distributed out from the 401k to the trust. The Michigan Court adopted this analysis. It did not discuss 700.7605(4) as part of this analysis and mentioned 7605(2) only in passing.

As to the life insurance issue, the Court of Appeals primarily relied on the language of MCL 500.2207, part of the Insurance Code. By its terms, an insured under an insurance policy cannot protect that policy from the insured's creditors. Proceeds payable to the insured's "executors or administrators" are similarly not protected. The opinion noted that distributions are therefore not protected, although distributions directly to individuals, or to a spouse or dependents even if through a trust, would be protected under 500.2207. The opinion did not discuss 7605(2), which would not seem to apply to an insurance plan offered as an ERISA benefit, and only briefly discussed 7605(4), rejecting its application by referring back to the language of MCL 500.2207.

One of the party's attorney submitted an amicus application to our committee and indicated that he would submit an application for leave to the Supreme Court. After we advocated for granting leave, the Supreme Court did in fact grant leave and invited us to submit a second brief. Our second brief advocated for reversal as to the 401k issue and affirming the life insurance issue, but on slightly different grounds.

Analysis

For our third brief, the committee recommends that the PEPS remain consistent as to its previous public policy vote and authorize a concise amicus brief that contends that:

- (1) the first question is a factual one and the PEPS takes no position as to when the assets were transferred to the trust;
- (2) Section 7605(1) does indeed apply to assets received post-death into a revocable living trust that became irrevocable upon death, as inherently discussed in our prior amicus brief, and more specifically, because the language of both 7605(1) and 7506(1)(b) limit the term “trust” based on revocability but do not discuss or limit application of those statutes based on when the trust received the property at issue; and,
- (3) If found otherwise, Section 7506(1)’s application would be governed by (1)(b) – which mirrors the application of 7605(1) – instead of (c), which applies to trusts that were irrevocable when created; otherwise, (1)(b) would have no meaning.

We recommend consistency with our prior public policy position and recommend that Andrew Mayoras of Barron, Rosenberg, Mayoras & Mayoras, P.C. author the brief if the recommendation of the Committee is adopted by Council.

However, if another position is taken by Council, then we recommend a different author be appointed because Mr. Mayoras will be unable to attend the March Council meeting and will not have the benefit of the discussion.

# Order

Michigan Supreme Court  
Lansing, Michigan

March 28, 2025

167501-3

Elizabeth T. Clement,  
Chief Justice

Brian K. Zahra  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden  
Kimberly A. Thomas,  
Justices

*In re* ESTATE OF JENNIFER L. FOWLER.

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SHELLIE SPACIL, Personal Representative of  
the ESTATE OF JENNIFER L. FOWLER,  
Appellant,

v

JULIE BROOKS, Personal Representative of  
the ESTATE OF HELEN FOWLER,  
Appellee.

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SC: 167501  
COA: 365600  
St Clair PC: 19-000085-DE

*In re* ESTATE OF JENNIFER L. FOWLER.

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SHELLIE SPACIL, Trustee for the JENNIFER  
L. FOWLER TRUST,  
Appellant,

v

JULIE BROOKS, Personal Representative of  
the ESTATE OF HELEN FOWLER,  
Appellee.

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SC: 167502  
COA: 365603  
St Clair PC: 22-000259-CZ

*In re* ESTATE OF JENNIFER L. FOWLER.

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SHELLIE SPACIL, Trustee for the JENNIFER  
L. FOWLER TRUST,  
Appellant,

v

JULIE BROOKS, Personal Representative of

SC: 167503  
COA: 365610  
St Clair PC: 2022-000259-CZ

the ESTATE OF HELEN FOWLER,  
Appellee.

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On order of the Court, the application for leave to appeal the July 18, 2024 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The parties shall file supplemental briefs in accordance with MCR 7.312(E), addressing whether: (1) the 401(k) account funds at issue are exempt from attachment by the Estate of Helen Fowler (Helen’s Estate); and (2) the life insurance proceeds at issue are subject to the claims by Helen’s Estate to the extent that the Estate of Jennifer L. Fowler lacks sufficient assets to satisfy the claims.

Amici who appeared at the application stage are invited to file supplemental briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



p0325

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 28, 2025

Handwritten signature of Larry S. Royster in black ink.

Clerk

*STATE OF MICHIGAN  
IN THE SUPREME COURT*

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In re ESTATE OF JENNIFER L. FOWLER

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SHELLIE SPACIL, Personal Representative of the  
ESTATE OF JENNIFER L. FOWLER,

Appellant,

v

JULIE BROOKS, Personal Representative of the  
ESTATE OF HELEN FOWLER

Appellee,

and

SHELLIE SPACIL, Trustee for the JENNIFER L.  
FOWLER TRUST,

Appellant

v

JULIE BROOKS, Personal Representative of the  
ESTATE OF HELEN FOWLER

Appellee

MSC Docket Nos. 167501, 167502,  
and 167503  
Court of Appeals Docket Nos. 365600,  
36510, and 365610  
St. Clair Probate Court Case Nos.  
19-000085-DE & 2022-000259-CZ

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**SUPPLEMENTAL BRIEF OF *AMICUS CURIAE* PROBATE AND ESTATE PLANNING  
SECTION OF THE STATE BAR OF MICHIGAN**

Submitted by:  
Andrew W. Mayoras (P54896)  
BARRON, ROSENBERG, MAYORAS & MAYORAS, P.C.  
*Counsel for Amicus Curiae Probate and Estate Planning Section  
of the State Bar of Michigan*

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## PROBATE & ESTATE PLANNING SECTION

### PROBATE & ESTATE PLANNING SECTION

#### Public Policy Position

#### *In re Estate of Jennifer L. Fowler*

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,471 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On July 10, 2025, the Section adopted its position after an electronic discussion and vote. 17 members voted in favor of the Section's position, 0 members voted against this position, 1 member abstained, 5 members did not vote.

#### **Explanation:**

The Section adopted the following public policy position: To determine whether the life insurance death benefit is accessible to Jennifer Fowler's creditors, it must be analyzed under MCL 700.7605(4) and, by extension, the Insurance Code. Under section 7605(4), the court should determine whether the death benefit constituted "property held or received by [the] trust . . . [that] would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section." After completing its analysis under section 7605(4), the Court should evaluate whether the death benefit was exempt from Jennifer Fowler's creditor claims under the Insurance Code; it should find that no exemption exists under the Insurance Code, which means that the insurance death benefit is governed by MCL 700.7605(1) and accessible to Jennifer Fowler's creditors. (c) The Section adopts the following additional public policy position: To determine whether the 401k payout is accessible to the estate or trust's creditors, it must be analyzed under MCL 700.7605(2). Because the Fowler 401k payout constituted "payments from [a] . . . plan that is qualified under section 401 of the internal revenue code, 26 USC 401," the payout "shall not be considered to be a trust described in subsection (1)", and therefore is exempt from Jennifer Fowler's creditor claims.

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**BASIS OF JURISDICTION**

This Court has jurisdiction over this matter pursuant to MCR 7.303(B)(1) and this Court's Order of March 29, 2025, scheduling oral arguments and directing supplemental briefs as to Appellant's Application for Leave to Appeal. Appellant appeals from an Opinion of the Michigan Court of Appeals dated July 18, 2024.

**STATEMENT OF RELIEF SOUGHT**

The State Bar of Michigan’s Probate and Estate Planning Section (the “PEPS”) files this supplemental *amicus curiae* brief pursuant to the Court’s invitation in the March 28, 2025 Order. The PEPS respectfully requests that this Court determine that: (1) the 401(k) account funds at issue are exempt from attachment by Helen’s Estate under MCL 700.7605(2) and (4); and (2) the life insurance proceeds at issue are subject to the claims by Helen’s Estate to the extent that Jennifer’s Estate lacks sufficient assets to satisfy the claims, under MCL 700.7605(4) and MCL 500.2207(2).

**QUESTIONS PRESENTED FOR REVIEW**

**1. Whether 401(k) proceeds left by beneficiary designation to a revocable living trust are protected against creditors of the settlor's estate under MCL 700.7605?**

The Trial Court answered: Yes

The Court of Appeals answered: No

The Appellant answers: Yes

The Appellee answers: No

The Probate and Estate Planning Section answers: Yes

**2. Whether life insurance proceeds left by beneficiary designation to a revocable living trust are protected against creditors of the settlor's estate under MCL 700.7605 and 500.2207?**

The Trial Court answered: No

The Court of Appeals answered: No

The Appellant answers: Yes

The Appellee answers: No

The Probate and Estate Planning Section answers: No

**STATEMENT OF FACTS AND PROCEEDINGS**

Pursuant to MCR 7.212(D)(3)(b), the Probate and Estate Planning Section (“PEPS”) accepts the Statements of Facts presented by the Appellants and Appellee. The PEPS is not aware of any additional facts that it believes are relevant to this appeal. The PEPS is not aware that any of the presented facts are either inaccurate or deficient.

**STANDARD OF REVIEW**

The Probate and Estate Planning Section adopts the standard of review presented by the Appellant.

## ARGUMENT

### INTRODUCTION<sup>1</sup>

Creditor protection for assets funded into a revocable living trust is an important, and complicated, issue for probate and estate planning attorneys in the State of Michigan, and more importantly, their clients. Practitioners need certainty so they can properly and fully advise their clients. These clients include both those wishing to create revocable living trusts or other estate planning instruments for the futures of their families, and those who are in the position of serving as a trustee or personal representative and need to address creditor issues as a fiduciary. Rather than relying primarily on case law from another state as the Court of Appeals did, the Probate and Estate Planning Section (“PEPS”) of the State Bar urges the Supreme Court to focus its analysis on Michigan statutory law -- primarily, MCL 700.7605, but also statutory laws that address creditor protections for specific assets types, such as MCL 600.6023 for 401(k) assets and MCL 500.2207 for insurance policy proceeds.

Admittedly, this presents a complex analysis. Indeed, this case was debated at multiple meetings of the PEPS Council and different viewpoints were presented and favored by various PEPS members. But ultimately, the PEPS Council voted to submit this *amicus curiae* brief to advocate that the outcome of the Probate Court was correct, and the Court of Appeals erred in its failure to rely primarily on MCL 700.7605. In doing so, the PEPS believes that 401(k) proceeds

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. No party, or counsel for a party, made a monetary contribution intended to fund the preparation or submission of this brief. No other person did so either, other than the PEPS, acting through its Council, and its members, all of whom submit dues that fund the PEPS, including *amicus curiae* briefs. It is not known if any counsel involved in this case is a member of the PEPS. MCR 7.312(H)(5).

should be shielded from creditors and the life insurance proceeds should not be.

Specifically, as to the collectability of 401(k) funds, those should be protected from the creditor under the facts of this case, both under the plain language of 700.7605(2) and secondarily, under 7605(4) and the law that it in turn implicates, MCL 600.6023(1)(k). In contrast, as to insurance policy proceeds, subsection (2) of 7605 does not apply, and it is entirely governed by subsection (4). That subsection in turn requires analysis of MCL 500.2207(2), which does not afford creditor protection in these circumstances, because the trust beneficiaries are neither spouses nor children.

**I. THE 401(K) ACCOUNT FUNDS ARE EXEMPT FROM ATTACHMENT BY HELEN'S ESTATE.**

The Court of Appeals did not fully and adequately discuss the key statutes of the Estates and Protected Individuals Code, including the Michigan Trust Code, in determining whether the assets in a revocable living trust that passed through a 401(k) plan enjoy creditor protection. The starting point for this analysis is MCL 700.7506(1)(b), which states:

After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

MCL 700.7506(1)(b).

That in turn requires analysis of MCL 700.7605, which states:

**700.7605 Liability of trust for expenses, claims, and allowances.**

Sec. 7605. (1) The property of a trust over which the settlor has the right without regard to the settlor's mental capacity, at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to all of the following, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses, claims, and allowances:

(a) The administration expenses of the settlor's estate.

(b) An enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses.

(c) Homestead, family, and exempt property allowances.

(2) A trust established as part of, **and all payments from**, an employee annuity described in section 403 of the internal revenue code, 26 USC 403, an individual retirement account described in section 408 of the internal revenue code, 26 USC 408, a Keogh, or HR-10, plan, or a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401, shall not be considered to be a trust described in subsection (1).

(3) This section does not impair a right that an individual has under a qualified domestic relations order as that term is defined in section 414(p) of the internal revenue code, 26 USC 414.

(4) For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate **if it had been paid** directly to a trust created under the settlor's will or **other than to the settlor's estate**, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1).

MCL 700.7605 (emphasis added).

The Court of Appeals skipped past the critical language of this statute and instead relied on case law from the State of Kansas, whose statutory scheme does not appear to include a statute with substantially similar language to MCL 700.7605. Indeed, the Kansas version of that statute, KSA 58a-505, does not contain any language similar to either subsection (2) or (4) of MCL 700.7605. *See KSA 58a-505, attached hereto as Exhibit A.* Accordingly, the Court of Appeals' reliance on the Kansas Supreme Court case should be rejected in light of the different statutory framework of that state.

In addition to relying on Kansas state case law, the Court of Appeals further reasoned that while federal law protects 401(k) funds, that protection is lost once the funds are distributed out from the 401(k) plan administrator and received by the beneficiary. In doing so, it relied primarily on federal law and this Court's decision in *State Treasurer v Abbott*, 468 Mich 143, 149, 153-159; 660 NW2d 714 (2003). However, unlike MCL 700.7605, the underlying state statute in *Abbott* does not offer creditor protection. In fact, it does just the opposite and directs the payment of assets from an inmate to reimburse the State for expenses incurred housing the inmate. *Id.*; discussing MCL 800.401 *et seq.*

In contrast to both the Kansas statute and the prisoner reimbursement statute in Michigan, MCL 700.7605(2) not only exempts the 401(k) plan (or similar assets) from being considered a “trust”, it also expressly exempts “all payments from” such a plan. MCL 700.7605(2). While under federal law analysis alone, the legal proposition may be true that creditor protection is lost once the proceeds are paid out from the 401(k) plan, that cannot be the case under this statute or the phrase “all payments from” would have no meaning. *See State Farm Fire and Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002) (Courts must “avoid an interpretation that would render any part of the statute surplusage or nugatory.”). The Court of Appeals did not adequately discuss this specific statute and erred by relying on case law from another state and Michigan case law discussing a different statute, because neither of those statutes contained language similar to 7605(2).

Second, as an alternate basis for this conclusion, even if, *arguendo*, subsection (2) of 7605 would not shield 401(k) proceeds, subsection (4) does in light of the specific creditor protection statute applicable to this type of asset. As highlighted above, subsection (4) protects from collection property that “... would not have been subject to a claim against the settlor’s estate if it had been paid ... other than to the settlor’s estate.” MCL 700.7605(4). This means that – again, only if this Court finds that subsection (2) does not offer protection – the analysis would then turn on whether assets that passed from a settlor to a recipient other than through the settlor’s estate enjoy creditor protection.

Accordingly, this analysis requires examination of the statutory framework for the specific asset at issue – here, 401(k) funds. Michigan has a statute directly on point, which was not discussed by the Court of Appeals. Specifically, MCL 600.6023(1) exempts certain

“property of a judgment debtor” from collection. This includes subsection (k): “The right or interest of a person in a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code ...”. MCL 600.6023(1)(k).

As the Court of Appeals noted, a settlor and her revocable living trust are not separate legal entities. *In re Estate of Fowler*, \_ Mich App \_ (2024) (see slip op attached to Appellant’s Supplement Brief at p 10). This is consistent with long-standing legal principles in the United States. “Traditionally, a trust was not considered a distinct legal entity, but a ‘fiduciary relationship’ between multiple people.” *Americold Realty Trust v Conagra Foods, Inc*, 577 US 378, 383; 136 SCt 1012 (2016). As such, property held in the settlor’s revocable living trust is still considered property of the “judgment debtor.” This is especially true because subsection (k) of 6023 protects not only the right to 401(k) proceeds but the interest in those proceeds themselves.

Jennifer Fowler’s Trust now owns the interest in the 401(k) plan and is expressly protected from the settlor’s creditors under 600.6023. This statute results in the Trust property being protected from collection under 700.7605(4) because the property would have been similarly shielded if the property had passed “other than to the settlor’s estate,” i.e., directly to the designated, individual beneficiaries. Consequently, it is, once again, the specific language of 7605 that dictates the result, as contrasted to the Kansas statute and the prisoner reimbursement statute relied upon by the Court of Appeals.

The PEPS advocates for reversing the Court of Appeals as to the collectability of payments to the Trust from a 401(k) plan under 700.7605(2), and as an alternate basis, 7605(4).

**II. THE LIFE INSURANCE PROCEEDS AT ISSUE ARE SUBJECT TO THE CLAIMS BY HELEN'S ESTATE TO THE EXTENT THAT JENNIFER'S ESTATE LACKS SUFFICIENT ASSETS TO SATISFY THE CLAIMS.**

While a different outcome is required for life insurance proceeds, the analysis of whether creditor protection applies must again begin with MCL 700.7605. Unlike the analysis as to 401(k) proceeds, subsection (2) of 7605 does not apply because insurance policy proceeds are not among the asset types listed in that subsection. Rather, the analysis must focus on 7605(4). Just as with the 401(k) proceeds, the question turns on whether Michigan law would shield the property from creditors "if it had been paid ... other than to the settlor's estate." In this case, collectability of insurance proceeds by creditors is governed by MCL 500.2207(2). As the Court of Appeals noted, had the ultimate beneficiaries of the proceeds been a spouse or children of the settlor, the proceeds would have been protected from collection. *See* MCL 500.2207(1) (protecting proceeds paid to a wife, husband, or children or to a trustee for the benefit of one of those individuals). In this case, however, because the ultimate beneficiaries are neither children nor a spouse, the operative language in 2207(2) is as follows:

...[T]he beneficiary or assignee thereof (**other than the insured** or the person so effecting such insurance, **or his executors or administrators**) shall be entitled to the proceeds and avails (including the cash value thereof) against the creditors and representatives of the insured and of the person effecting the same ...

MCL 500.2207(2) (emphasis added).

Unlike with the 401(k) proceeds, where the specific creditor protection statute shielded the right and interest of the debtor in the asset, this statute does the opposite. It excludes the insurance benefits when transferred either to the insured or his or her executors (i.e. personal representatives) or **administrators** from protection. This exclusion from protection would

expressly apply to a trustee of revocable living trust, who is a type of administrator. In that regard, the Michigan Trust Code makes clear that one of the primary duties of a trustee is to administer the trust. *See, for example*, MCL 700.7108 (directing principal place of administration of a trust); MCL 700.7801 (requiring a trustee to administer a trust in good faith and under certain other duties); and MCL 700.7802 (requiring a trustee to administer a trust solely for the trust beneficiaries). Just as 2207 does not employ the recognized legal term for one who administers an estate (utilizing the term “executor” rather than “personal representative”), the less formal term of “administrator” still encompasses a person serving as “trustee.” As such, because the trustee (i.e., settlor’s “administrator”) is the lawful beneficiary of the insurance proceeds, she cannot fit within the creditor protection pursuant to 2207, unless the trust that is being administered is for the benefit of a spouse or children.

Moreover, there is a statute in the Estates and Protected Individuals Code that corresponds to MCL 700.7605 and confirms this result: MCL 700.3805(3). In part, it provides that:

If the personal representative is aware of other nonprobate transfers **that may be liable** for claims and allowances, then unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, **including those made under a trust described in section 7605(1)**, bears a proportionate share or equitable share of the total burden.

MCL 700.3805(3) (emphasis added).

This section works in tandem with 7605 and requires the trustee to transfer to the personal representative such funds as are needed to share proportionately in satisfying a claim, if there is a deficiency due to insufficient assets in the estate. This statute has narrower application

for assets in a trust and only applies if 7605 permits the recovery to such assets. Further, as to any type of transfer, the statute only includes nonprobate transfers that **may be liable**. MCL 700.3805(3). As described in the preceding section, 401(k) proceeds are not liable because 7605(2) and (4) shield them from collection by creditors. Insurance proceeds, however, must be transferred from a trust to the personal representative under 3805(3) due to the language of 500.2207(2) when the insurance proceeds are paid to the executor (personal representative) or administrator (trustee) of the debtor, unless otherwise protected by 2207(1) for the benefit of a spouse or children.

As such, the PEPS advocates for affirming the Court of Appeals as to the collectability of insurance proceeds in this case.

## CONCLUSION

The Probate and Estate Planning Section of the State Bar of Michigan voted to advocate for the reversal of the Court of Appeals Opinion Section I (as to 401(k) proceeds) and to affirm Section II (as to life insurance proceeds). MCL 700.7605(2) and (4) govern this analysis and apply differently to the two types of properties. Subsection (2) clearly shields payments that a trust received from a 401(k) plan. Subsection (4) in turn requires analysis of the underlying statutes that address creditor protection for specific asset types and implicates how those assets are transferred. Again, those statutes mandate protection for 401(k) proceeds and no protection for life insurance proceeds payable to a revocable living trust where the beneficiaries do not include a spouse or children.

Respectfully submitted,

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Dated: July 22, 2025

### CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Michigan Court Rules 7.212(B)(1) and (3) because, excluding the parties of the document exempted, this document contains no more than 16,000 words. This document contains 3,569 words.

Dated: July 22, 2025

By: /s/ Andrew W. Mayoras  
Andrew W. Mayoras (P54896)

# EXHIBIT A

**58a-505. Creditor's claim against settlor.** (a) Except as provided by K.S.A. 33-101 et seq. and 33-201 et seq., and amendments thereto, whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, the homestead, homestead allowance, the elective share rights of the surviving spouse pursuant to K.S.A. 59-6a209, and amendments thereto, and statutory allowance to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power;

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the federal internal revenue code of 1986, as in effect on December 31, 2002; or section 2503(b) of the federal internal revenue code of 1986, as in effect on December 31, 2002; and

(3) this subsection shall not apply to the lapse of powers held by the spouse of a person occurring upon the death of such person.

**History:** L. 2002, ch. 133, § 42; L. 2004, ch. 158, § 8; July 1.

# Attachment 4

## 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.

# **Attachment 5**

**Tax Nugget; In re Elsie N. Sage Revocable Trust  
Christine Savage on behalf of the Tax Committee**

**Strict Compliance Required: Michigan Court of Appeals Clarifies Notice Requirements Under MCL 700.7604**

The Michigan Court of Appeals' decision in *In re Elsie N. Sage Revocable Trust*, an unpublished opinion, offers an important reminder to trustees and practitioners: when invoking the shortened six-month limitations period for contesting a revocable trust under MCL 700.7604, strict—not substantial—compliance is required. A trustee's failure to include any of the statutory elements, even if the omission seems minor or the beneficiary arguably had actual knowledge, will prevent the shortened period from taking effect.

**Background**

Elsie Sage executed a revocable trust in 2012 and restated it in 2018, 2019, and 2021. The 2021 Restatement expressly disinherited one daughter, Lola, and shifted a significant portion of the estate to the Hastings Fire Department. In September 2022, Elsie executed two additional amendments—one on September 18th and a second on September 23rd—further revising the distributions to beneficiaries, including adding Lola back in for a small percentage and adjusting charitable gifts.

Elsie died on October 24, 2022, rendering the trust irrevocable. On December 20, 2022, the successor trustee, Cynthia Winters, sent statutory notices to the beneficiaries purporting to trigger the six-month limitations period under MCL 700.7604(1)(b). However, the notice omitted the date of the Second Amendment, despite the trustee's knowledge of it. As the Court later noted, the notice "did not provide the 'date' of the date the amendment was executed," even though the statute expressly requires disclosure of "the date of any amendments known to the trustee."

The beneficiaries filed their trust contest in September 2023—within two years of Elsie's death, but outside the purported six-month window. The probate court dismissed the challenge as untimely, holding that the notice substantially complied with the statute. The Court of Appeals reversed.

**The Court's Holding: Strict Compliance Means Strict Compliance**

The Court of Appeals held that the trustee's notice failed to satisfy MCL 700.7604(1)(b) because it omitted the date of the Second Amendment. The statute requires that the notice inform the recipient of all listed items, including:

- the trust's existence,
- the date of the trust instrument,
- the date of any amendments known to the trustee,
- relevant portions affecting the beneficiary's interest,

- the settlor’s name,
- the trustee’s name and address, and
- the time allowed for commencing a proceeding.

Because the trustee omitted one of these mandatory elements, the six-month period never began to run. The Court rejected Hastings Fire Department’s argument that the beneficiaries could infer the amendment date from the five-week window between the First Amendment and Elsie’s death. The Court emphasized that the statute contains no substantial-compliance provision, and that other EPIC provisions explicitly allow substantial compliance—demonstrating that the Legislature knew how to include such language when intended.

As the Court explained, “the Statutory Notice was required to strictly comply with the terms of § 7604(1)(b) for application of the six-month limitations period.”

Accordingly, the beneficiaries had the full two years under MCL 700.7604(1)(a), and their petition was timely.

### **Laches Argument Rejected**

Hastings alternatively argued that the beneficiaries’ claims were barred by laches. The Court rejected this as well, noting that laches requires both inexcusable delay and prejudice. Hastings argued only that litigation costs would deplete the trust—an argument the Court dismissed because such costs would arise regardless of when the petition was filed. The Court found no evidence of a change in conditions or other prejudice attributable to delay.

### **Practical Implications for Trustees and Practitioners**

This decision underscores several key points:

#### **1. Notices under MCL 700.7604 must be drafted with precision.**

Even a single missing amendment date—despite the trustee’s knowledge—invalidated the attempt to shorten the contest period.

#### **2. Trustees should carefully evaluate whether to send a statutory notice at all.**

As the Reporter’s Comment notes, giving notice may alert omitted heirs or others who might not otherwise know they have potential claims.

#### **3. When providing only “relevant portions” of the trust, trustees must ensure completeness.**

Failing to include provisions affecting a beneficiary’s interest may undermine the notice.

#### **4. Early distributions before the contest period expires carry risk.**

If a trust contest later succeeds, the trustee may face surcharge if distributed assets cannot be recovered.

#### **5. Laches is not a fallback solution.**

Absent demonstrable prejudice caused by delay, courts will not use laches to bar a timely-filed trust contest.

#### **Conclusion**

In re Elsie N. Sage Revocable Trust is a clear directive: trustees must strictly comply with every element of MCL 700.7604(1)(b) if they wish to invoke the shortened six-month limitations period. The decision reinforces the importance of careful drafting, complete disclosure, and thoughtful strategic consideration before sending statutory notices. For practitioners, the case provides a valuable roadmap for both defending and challenging the sufficiency of trust-contest notices in Michigan probate litigation.