



PROBATE & ESTATE PLANNING SECTION

Agenda and Attachments for

Friday, September 12, 2025

Annual Meeting of the Members of the Section

and

Meeting of Committee on Special Projects (CSP)

and

Meeting of the Council of the Probate and Estate Planning Section

at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

Or *via* Zoom

**Probate & Estate Planning Section of the
State Bar of Michigan**

You are invited to the September Annual meeting of the Section
and meeting of the Committee on Special Projects (CSP) and
the Council of the Probate & Estate Planning Section:

Friday, September 12, beginning at 9 AM
at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

Remote participation by Zoom will be available. So, you are also invited . . .

to a Zoom meeting.

When: Sep 12, 2025, 09:00 AM Eastern Time (US and Canada)

Register in advance for this meeting:

<https://us02web.zoom.us/meeting/register/tZwucOuppzltHtRtJfd02kjKPsWLkyQgOHel#/registration>

After registering, you will receive a confirmation email containing information about joining the meeting.

*If you are calling in by phone, email your name and phone number to Angela Hentkowski
ahentkowski@stewardsheridan.com, we will put your name in a zoom user list that
will identify you by name when you call in.*

Please note that the Zoom feature of these meetings entails that they will be recorded.

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

Christine Savage
Section Secretary

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Okemos, Michigan 48864
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**Officers of the Council
for 2024-2025 Term**

Office	Officer
Chairperson	Katie Lynwood
Chairperson Elect	Nathan R. Piwowarski
Vice Chairperson	Richard C. Mills
Secretary	Christine M. Savage
Treasurer	Melisa M. W. Mysliwiec

**Council Members
for 2024-2025 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Mayoras, Andrew W.	2022 (2 nd term)	2025	No
Silver, Kenneth	2022 (2 nd term)	2025	No
Dunnings, Hon. Shauna L.	2022 (1 st term)	2025	Yes
Chalgian, Susan L.	2022 (1 st term)	2025	Yes
Shelton, Michael D.	2022 (1 st term)	2025	Yes
Borst, Daniel W.	2022 (1 st term)	2025	Yes
Augustin, Ernschie	2023 (1 st term)	2026	Yes
Mallory, Alexander	2023 (1 st term)	2026	Yes
Anderton V, James F.	2023 (2 nd term)	2026	No
David, Georgette E.	2023 (2 nd term)	2026	No
Hilker, Daniel	2023 (2 nd term)	2026	No
Krueger III, Warren H.	2023 (2 nd term)	2026	No
Glazier, Sandra D.	2024 (2 nd term)	2027	No
Sprague, David	2024 (2 nd term)	2027	No
Wrock, Rebecca K.	2024 (2 nd term)	2027	No
Cieslik, Kathleen A.	2024 (1 st term)	2027	Yes
Davis, Patricia E.	2024 (1 st term)	2027	Yes
Reister, Nicholas A.	2024 (1 st term)	2027	Yes

Ex Officio Members of the Council

Christopher Ballard; Robert D. Brower, Jr.; Douglas G. Chalgian; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Shaheen I. Imami; Robert B. Joslyn; Mark E. Kellogg; Kenneth E. Konop; Marguerite Munson Lentz; Nancy L. Little; James H. LoPrete; Richard C. Lowe; David P. Lucas; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; David L.J.M. Skidmore; James P. Spica, James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Marlaine C. Teahan; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack

State Bar of Michigan
Probate and Estate Planning Section

2024–25 Standing Committees

Standing Committee	Mission	Chairperson	Members
Amicus Curiae	Review litigants’ applications and Courts’ requests for the Section to sponsor amicus curiae briefs in pending appeals cases relating to probate, and estate and trust planning, and oversee the work of legal counsel retained to prepare and file amicus briefs	Andrew W. Mayoras	Ryan P. Bourjaily Patricia Davis Angela Hentkowski Scott Kraemer Neil J. Marchand Laura E. Morris Kurt A. Olson David L.J.M. Skidmore Trevor J. Weston Timothy White
Annual meeting	Plan the Section’s Annual Meeting	Katie Lynwood [as Chair]	[Chair only]
Awards	Periodically make recommendations regarding recipients of the Michael Irish Award, and consult with ICLE regarding periodic induction of members in the George A. Cooney Society	James P. Spica [as immediate past Chair]	David L.J.M. Skidmore Mark E. Kellogg [as 2nd and 3rd most recent past Chairs]
Budget	Develop the Section’s annual budget	Christine M. Savage [as immediate past Treasurer]	Richard C. Mills Melisa M.W. Mysliwiec [as incoming Treasurer and immediate past Secretary]
Bylaws	Review the Section’s Bylaws, to ensure compliance with State Bar requirements, to include best practices for State Bar Sections, and to assure conformity to current practices and procedures of the Section and the Council, and make recommendations to the Council regarding such matters	David Lucas	Christopher A. Ballard John Roy Castillo Nancy H. Welber
Charitable and Exempt Organizations	Consider federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations, and make recommendations to the Council regarding such matters	Rebecca K. Wrock	Celeste E. Arduino Robin Ferriby Brian Heckman Richard C. Mills John McFarland Kate L. Ringler Matt Wiebe
Citizens Outreach	Provide opportunities for education of the public on matters relating to probate, and estate and trust planning	Kathleen M. Goetsch	Ernsie Augustin Kathleen Cieslik David Lucas Hon. Michael J. McClory Neal Nusholtz

State Bar of Michigan
 Probate and Estate Planning Section
 2024–25 Standing Committees

Committee on Special Projects	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Daniel S. Hilker	[Committee of the whole]
Court Rules, Forms, & Proceedings	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Chair: Patricia Davis; Vice Chair: Georgette E. David	JV Anderton Ryan Buck Susan L. Chalgian Daniel S. Hilker Hon. Michael L. Jaconette Andrew W. Mayoras Hon. Michael J. McClory Dawn Santamarina Marlaine C. Teahan
Electronic Communications	Oversee all matters relating to electronic and virtual communication matters, and make recommendations to the Council regarding such matters	Susan L. Chalgian	Angela Hentkowski Michael G. Lichterman Christine Savage [as Secretary]
Ethics & Unauthorized Practice of Law	Consider matters relating to ethics and the unauthorized practice of law with respect to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Alex Mallory	William J. Ard Raymond A. Harris J. David Kerr Neil J. Marchand Robert M. Taylor Amy Rombyer Tripp
Guardianship, Conservatorship, & End of Life Committee	Consider matters relating to Guardianships and Conservatorships, and make recommendations to the Council regarding such matters	Sandra Glazier	William J. Ard Michael W. Bartnik Kimberly Browning Susan L. Chalgian Kathleen A. Cieslik Georgette E. David Kathleen M. Goetsch Elizabeth Sue Graziano Raymond A. Harris Hon. Michael L. Jaconette Hon. Michael J. McClory Hon. David M. Murkowski Kurt A. Olson Nathan R. Piwowarski Katie Lynn Ringler Hon. Avery Rose Dawn Santamarina David L.J.M. Skidmore James B. Steward Paul S. Vaidya Karen S. Willard

State Bar of Michigan
 Probate and Estate Planning Section
 2024–25 Standing Committees

Legislation Development and Drafting	Consider matters with respect to statutes relating to probate, and estate and trust legislation, consider the provisions of introduced legislation and legislation anticipated to be introduced with respect to probate, and estate and trust planning, draft proposals for legislation relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Robert P. Tiplady and Richard C. Mills	Aaron A. Bartell Howard H. Collens Georgette David Kathleen M. Goetsch Daniel S. Hilker Michael G. Lichterman David P. Lucas Katie Lynwood Alex Mallory Nathan Piwowarski Nicholas Reister Christine M. Savage James P. Spica David Sprague
Legislation Monitoring & Analysis	Monitor the status of introduced legislation, and legislation anticipated to be introduced, regarding probate, and estate and trust planning, and communicate with the Council and the Legislation Development and Drafting Committee regarding such matters	Michael D. Shelton	Elizabeth Graziano Angela Hentkowski Daniel S. Hilker Katie Lynwood Nicholas Reister David Sprague
Legislative Testimony	As requested and as available, the Members of the Section will give testimony to the Legislature regarding legislation relating to probate, and estate and trust planning	Daniel S. Hilker [as CSP Chair]	[Various Section Members]
Membership	Strengthen relations with Section members, encourage new membership, and promote awareness of, and participation in, Section activities	Ernsceie Augustin	Susan L. Chalgian Angela Hentkowski Kate L. Ringler
Nominating	Nominate candidates to stand for election as the officers of the Section and the members of the Council	David L.J.M Skidmore [as most senior immediate past Chair]	Mark E. Kellogg James P. Spica [as 1st and 2nd most recent past Chairs]
Planning	Periodically review and update the Section's Plan of Work	Katie Lynwood [as Chair]	Nathan Piwowarski Richard C. Mills Christine M. Savage Melisa M.W. Mysliwiec James P. Spica [as Officers and immediate past Chair]

State Bar of Michigan
 Probate and Estate Planning Section
 2024–25 Standing Committees

Probate Institute	Work with ICLE to plan the ICLE Probate and Estate Planning Institute	Richard C. Mills [as Vice Chair]	[Chair only]
Real Estate	Consider real estate matters relating to probate, and estates and trusts, and make recommendations to the Council regarding such matters	Angela Hentkowski	Carlos Alvarado-Jorquera Jeffrey S. Ammon JV Anderton William J. Ard Leslie A. Butler Patricia Davis J. David Kerr Angela Hentkowski Mark E. Kellogg Michael G. Lichterman Melisa M.W. Mysliwicz Alaina M. Nelson Michael D. Shelton David Sprague James B. Steward
State Bar & Section Journals	Oversee the publication of the Section’s Journal, and assist in the preparation of periodic theme issues of the State Bar Journal that are dedicated to probate, and estates and trusts	Melisa M.W. Mysliwicz, Managing Editor	Diane Kuhn Huff Nancy L. Little Neil J. Marchand Richard C. Mills Kurt A. Olson Molly P. Petitjean Rebecca K. Wrock
Tax	Consider matters relating to taxation as taxation relates to probate, and estates and trusts, and make recommendations to the Council regarding such matters	JV Anderton	Daniel Borst Jonathan Beer Mark DeLuca Warren H. Krueger, III Robert Labe John McFarland Neal Nusholtz Nicholas Reister Christine M. Savage

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Standing Committee.

State Bar of Michigan
Probate and Estate Planning Section

2024–25 Ad Hoc Committees

Ad Hoc Committee	Mission	Chairperson	Members
Assisted Reproductive Technology	Review the 2008 Uniform Probate Code Amendment for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction, and make recommendations to the Council regarding such matters	Nancy H. Welber	Ernschie Augustin Susan L. Chalgian Nazneen Hasan Laura Jeltema Christina Lejowski Nathan Piwowarski
Electronic Wills	Review proposals for electronic wills, including the Uniform Law Commission's draft of a Uniform Law, and make recommendations to the Council regarding such matters	Kathleen Cieslik	Kimberly Browning Georgette David Sandra Glazier Douglas A. Mielock Neal Nusholtz Christine M. Savage James P. Spica
Fiduciary Exception to the Attorney-Client Privilege	Consider whether there should be some exception to the rule that beneficiaries of an estate or trust are entitled to production of documents regarding the advice given by an attorney to the fiduciary, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	Aaron A. Bartell Ryan P. Bourjaily
Nonbanking Entity Trust Powers	Consider whether there should be legislation granting trust powers to nonbanking entities, and make recommendations to the Council regarding such matters	James P. Spica and Robert P. Tiplady	JV Anderton Laura L. Brownfield Kathleen Cieslik Elise J. McGee Mark K. Harder Richard C. Mills Carol A. Sewell Joe Viviano
Premarital Agreements	Consider whether there should be legislation regarding marital property agreements, and	Christine M. Savage	Daniel W. Borst Georgette David Sandra Glazier Angela Hentkowski David Sprague

Uniform Community Property Disposition at Death Act	Consider the Uniform Community Property Disposition at Death Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Kathleen Cieslik Richard C. Mills Christine M. Savage David Sprague Rebecca Wrock
Undue Influence	Consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Sandra Glazier Hon. Michael L. Jaconette Warren H. Krueger, III John Mabley Andrew W. Mayoras Laura E. Morris Hon. David Murkowski Kurt A. Olson David L.J.M. Skidmore
Uniform Fiduciary Income & Principal Act	Consider the Uniform Fiduciary Income and Principal Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	James P. Spica	Anthony Belloli Kathleen Cieslik Marguerite Munson Lentz Richard C. Mills Robert P. Tiplady Joe Viviano
Uniform Partition of Heirs Property Act	Consider the Uniform Partition of Heirs Property Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Marguerite Munson Lentz Alex Mallory Elizabeth McLachlan Christine Savage David Sprague Rebecca Wrock
Various Issues Involving Death and Divorce	Should EPIC be changed so that a pending divorce affects priority to serve in a fiduciary position; Should Council explore whether EPIC should be changed so that a pending divorce affects intestacy, elective share, exemptions and allowances, etc. Should “affinity” be defined to prevent elimination of stepchildren’s gifts by operation of law after divorce or, instead, should there be an exception allowing gifts to stepchildren on a showing of, Perhaps, clear and convincing evidence demonstrating that the Settlor would not have intended the omission of the stepchild?	Daniel Borst Sean Blume	Ernsacie Augustin Georgette David Hon. Shauna Dunning Sandra D. Glazier Katie Lynwood Andy Mayoras Elizabeth Siefker

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Ad Hoc Committee.

State Bar of Michigan
Probate and Estate Planning Section

2024-25 Liaisons

Association	Liaison
Alternative Dispute Resolution Section	John Hohman
Business Law Section	Mark E. Kellogg
Elder Law and Disability Right Section	Angela Hentkowski
Family Law Section	Anthea E. Papista
Institute of Continuing Legal Education	Lindsey DiCesare
Law Schools	Savina Mucci
Michigan Bankers Association	David Sprague
Michigan Legal Help/Michigan Bar Foundation	Kathleen Goetsch
Michigan Probate Judges Association	Hon. David Murkowski
Probate Registers	Ryan J. Buck
Real Property Law Section	Angela Hentkowski
Supreme Court Administrative Office	Patricia Davis
State Bar	Jennifer Hatter
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

The mission of each Liaison is to develop and maintain bilateral communication between his or her association and the Probate and Estate Planning Section of the State Bar of Michigan on matters of mutual interest and concern.

ANNUAL MEETING MATERIALS

**ANNUAL MEETING OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**

Friday, September 12, 2025

10:00 AM or Immediately Preceding the September 12, 2025 Council Meeting

University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910
and
Remote via Zoom

Agenda

- I. Call to Order and Welcome (Katie Lynwood).
- II. Roll Call and Confirmation of Attendees (Katie Lynwood)
 - A. Officers and Council Members
 - B. Determination of quorum
 - C. Confirmation of ex officio members and others present
- III. Approval of 2024 Annual Meeting Minutes (Rick Mills) – **Attachment 1**
- IV. Chairperson’s Report (Katie Lynwood)
- V. Treasurers Report (Melisa Mysliwec) – **Attachment 2**
- VI. Nominating Committee (Jim Spica) – **Attachment 3**
 - A. Nominated officers
 - B. Nominated council members (partial terms)
 - C. Nominated council members (full terms)
- VII. Other Business
- VIII. Adjournment

ANNUAL MEETING ATTACHMENT 1

**MINUTES OF THE ANNUAL MEETING OF THE COUNCIL OF THE
OF THE PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**
Friday, September 13, 2024 @ 10:04 AM

University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910
and
Remote via Zoom

Agenda

I. Call to order and Welcome (James Spica). Chairperson Spica called the meeting to order at 10:04 AM noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Section.

II. Roll Call and Confirmation of Attendees

A. Zoom Roll Call

Christine Savage, Angela Hentkowski, Becky Bechler (Public Affairs Associates), David Lentz, Rebecca Wrock, Kenneth Silver, Nicholas Reister, Daniel W. Borst, Nazneen Hasan, Warren Krueger, III, and Hon. Shauna Dunning

Confirmation of In-Person Attendees

James P. Spica, Katie Lynwood, Richard C. Mills, Daniel Hilker, James F. Anderton V., Georgette David, Nathan Piwowarski, Rachel Sedlacek, Hon. David Murkowski, Alexander S. Mallory, Mark E. Kellogg, Andrew Mayoras, Ernschie Augustin, Kathleen Cieslik, Marlaine C. Teahan, Marguerite Munson Lentz, David Lucas, Patricia E. Davis, Neal Nusholtz, and Andrea Neighbors (section administrative assistant)

B. Excused Absences

Melisa M.W. Mysliwiec, Sandra Glazier, Susan L. Chalgian, and David Sprague

III. Approval of September 2023 Annual Meeting Minutes. Mr. Piwowarski moved to approve the 2023 Annual Meeting Minutes. Mr. Sprague seconded. Approved on unanimous voice vote.

- IV. Chairperson's Report (James P. Spica).** Mr. Spica gave the Chair's Report, which is attached to these minutes.
- V. Treasurer's Report (Chrisine Savage).** Ms. Savage offered the Treasurer's report.
- VI. Nominating Committee (David Lucas).** Mr. Lucas offered the Nominating Committee's report, which is attached to these minutes.
- A. Katie Lynwood became Chair by operation of our Section's bylaws.
- B. Nominated officers. Mr. Lucas reported that the Section's Nominating Committee report was attached to the combined Agenda for the Annual Meeting as an attachment and the September Council Meeting, which Agendas were posted to the Section's web page prior to the meeting. The nominations are as follows:
- | | |
|-------------------|-----------------------|
| Chairperson Elect | Nathan R. Piwowarski |
| Vice Chairperson | Richard C. Mills |
| Secretary | Christine M. Savage |
| Treasurer | Melisa M.W. Mysliwiec |
- C. No nominations came from the Section at large.
- D. Nominated council members (partial terms): None.
1. Nominated council members to three-year full terms ending in 2027):
- Sandra D. Glazier
- David D. Sprague
- Rebeca Wrock
2. Nominated to new three-year full terms ending in 2027:
- Kathleen A. Cieslik
- Patrica E. Davis
- Nicholas A. Reister
3. The slate of nominated officers and council members was approved by unanimous voice vote.
- E. Mr. Spica thanked Angela Hentkowski and Neal Nusholtz who completed their final term, for his generous and significant service to the Section. Mr. Spica presented plaques commemorating their service.
- VII. Adjournment.** Ms. Savage moved that the meeting be adjourned. Mr. Sprague seconded. The motion was approved on a unanimous voice vote.

ANNUAL MEETING ATTACHMENT 2

Probate and Estate Planning Section: 2024-2025
Treasurer's Monthly Activity Report

Carry-Over Fund Balance from FY 2023-2024	
Fund Balance - Probate & Estate Planning Section	\$204,051.48

Revenue		October 2024	November 2024	December 2024	January 2025	February 2025	March 2025	April 2025	May 2025	June 2025	July 2025	August 2025	September 2025	Revenue (2024-2025)	Budget (2024-2025)
42175 - Hein Publishing Agreement/Royalties		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00	500.00
42690 - Miscellaneous Revenue		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00	650.00
40085 - Section Affiliate Dues		385.00	105.00	70.00	0.00	35.00	0.00	0.00	0.00	0.00	0.00	0.00		595.00	500.00
40080 - Section Dues		56,000.00	46,235.00	7,350.00	4,270.00	735.00	175.00	70.00	35.00	70.00	0.00	0.00		114,940.00	110,000.00
Total Revenue		56,385.00	46,340.00	7,420.00	4,270.00	770.00	175.00	70.00	35.00	70.00	0.00			115,535.00	111,650.00

Expenses														Cumulative Expenses	Budget (2023-2024)
67010 - Administrative Services		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00	10,000.00
67015 - Amicus Brief		0.00	0.00	0.00	10,151.75	0.00	0.00	0.00	0.00	0.00	0.00	0.00		10,151.75	25,000.00
67020 - Annual Meeting		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00	1,000.00
67065 - Community Support, Donations & Sponsorships		5,500.00	0.00	0.00	0.00	0.00	0.00	17,000.00	0.00	1,380.00	0.00	0.00		23,880.00	30,000.00
67115 - Legislative Consulting		3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	0.00	0.00		27,000.00	36,000.00
62315 - Meetings		10,720.73	891.00	0.00	0.00	2,462.20	2,157.00	1,023.60	0.00	1,079.69	0.00	0.00		18,334.22	45,000.00
64055 - Miscellaneous		54.01	0.00	0.00	0.00	0.00	1,344.00	0.00	0.00	0.00	0.00	0.00		1,398.01	3,000.00
65460 - Newsletter/Publication		100.00	0.00	0.00	100.00	0.00	0.00	4,500.00	0.00	4,750.00	0.00	0.00		9,450.00	14,100.00
61200 - Travel		3,169.52	1,070.58	0.00	0.00	0.00	708.54	0.00	0.00	1,677.86	0.00	0.00		6,626.50	12,000.00
														0.00	
Total Expenses		22,544.26	4,961.58	3,000.00	13,251.75	5,462.20	7,209.54	25,523.60	3,000.00	11,887.55	0.00			96,840.48	176,100.00

Net Income		33,840.74	41,378.42	4,420.00	-8,981.75	-4,692.20	-7,034.54	-25,453.60	-2,965.00	-11,817.55	0.00			18,694.52	-64,450.00
General Fund plus Net Income (Running Total)		237,892.22	245,429.90	208,471.48	195,069.73	199,359.28	197,016.94	178,597.88	201,086.48	192,233.93	204,051.48			222,746.00	-64,450.00

Hearts and Flowers Fund															
Carry-Over Balance	1,709.55													1,709.55	
Contributions		0.00	35.00	105.00	0.00	0.00	120.00	85.00	0.00	0.00	0.00	0.00	0.00	345.00	
Withdrawals		0.00	0.00	0.00	86.90	66.72	0.00	116.90	0.00	0.00	0.00	0.00	0.00	270.52	
Total Fund		1,709.55	1,744.55	1,849.55	1,762.65	1,695.93	1,815.93	1,784.03	1,784.03	1,784.03	1,784.03	1,784.03	1,784.03	1,784.03	

ANNUAL MEETING ATTACHMENT 3

Report of the Nominating Committee
to the Council of the Probate and Estate Planning Section of the State Bar of Michigan
June 13, 2025

The members of the Nominating Committee of the Probate and Estate Planning Section of the State Bar of Michigan are David L.J.M. Skidmore (Chair), Mark E. Kellogg, and James P. Spica.

The Committee reminds the Council and Section that, under Sections 4.2.3 and 5.2 of the Section's Bylaws, the incumbent Chairperson-Elect in a given year assumes the office of Chairperson upon the conclusion of the Section's annual meeting for that year. Therefore, the Committee does not nominate a candidate for Chairperson of the Section, and the current incumbent Chairperson-Elect, Nathan R. Piwowski, will succeed to the office of Chairperson upon the conclusion of the Section's annual meeting for the current year without action by the Committee, the Council, or the Section.

The Committee deliberated and, pursuant to Section 4.1 of the Section's Bylaws, makes the following nominations. The Committee nominates each of the following individuals for the office shown opposite his or her name:

Chairperson-Elect:	Richard C. Mills
Vice Chairperson:	Christine M. Savage
Secretary:	Melisa M. W. Mysliwiec
Treasurer:	Angela M. Hentkowski

The Committee nominates each of the following first-term Council members for a second three-year term ending 2028:

Daniel W. Borst
Susan L. Chalgian
Michael D. Shelton

And the Committee nominates each of the following for an initial three-year term of Council membership ending 2028:

Elizabeth L. Luckenbach
Hon. Sara A. Schimke
Joseph J. Viviano

Respectfully submitted,

David L.J.M. Skidmore, Committee Chairperson

Council Materials

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN
Friday, September 12, 2025**

Regular Meeting Agenda

- I. Commencement (Nathan Piwowarski)
 - A. Call to Order and Welcome
 - B. Zoom Roll Call
 - C. Confirmation of In-Person Attendees
 - D. Excused Absences
- II. Monthly Reports
 - A. Lobbyist's Report (Public Affairs Associates)
 - B. Minutes of Prior Council Meetings (Melisa Mysliwicz / Chris Savage) – **Attachment 1**
 - C. Chair's Report (Nathan Piwowarski)
 - 1. Section letter to Rep. Lightner regarding Uniform Marital and Premarital Agreements Act. – **Attachment 2**
 - E. Treasurer's Report (Melisa Mysliwicz) – **Attachment 3**
- III. Committee Reports
 - A. Committee on Special Projects (Hilker)
 - B. Amicus Curiae (Mayoras)
 - C. Annual Meeting (Piwowarski)
 - D. Awards (Spica)
 - E. Budget (Mysliwicz)
 - F. Bylaws (Lucas)
 - G. Charitable and Exempt Organizations (Wrock)
 - H. Citizens Outreach (Goetsch)
 - I. Court Rules, Forms, and Proceedings (Davis and David)
 - J. Electronic Communications (Chalgian)
 - K. Ethics and Unauthorized Practice of Law (Mallory) - **Attachment 4**
 - L. Guardianship, Conservatorship, and End of Life (Glazier)
 - M. Legislation Development and Drafting (Tiplady and Mills)

- N. Legislation Monitoring and Analysis (Shelton)
- O. Legislative Testimony (Hilker)
- P. Membership (Augustin)
- Q. Nominating (Spica)
- R. Planning (Lynwood)
- S. Probate Institute (Savage)
- T. Real Estate (Hentkowski)
- U. State Bar and Section Journals (Mysliwiec)
- V. Tax (Anderton)
- W. Assisted Reproductive Technology (Welber)
- X. Electronic Wills (Cieslik)
- Y. Fiduciary Exception to the Attorney-Client Privilege (Krueger)
- Z. Nonbanking Entity Trust Powers (Spica and Tiplady)
- AA. Premarital Agreements (Savage)
- BB. Uniform Community Property Disposition at Death Act (Spica)
- CC. Undue Influence (Silver)
- DD. Uniform Fiduciary Income and Principal Act (Spica)
- EE. Various Issues Involving Death and Divorce (Borst and Blume)
- IV. ULC liaison report (Spica) - **Attachment 5**
- V. Good of the Order
- VI. Adjournment of Regular Meeting

Roundtable (Time Permitting)

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

Friday, June 13, 2025

Minutes

I. Commencement (Katie Lynwood)

A. Call to Order and Welcome

Chairperson Lynwood called the meeting to order at 10:52 a.m. noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Council.

B. Zoom Roll Call

Nathan R. Piwowarski, Angela Hentkowski, Andrew Mayoras, Peter Langley (Public Affairs Associates), Rebecca Bechler (Public Affairs Associates), James Steward, Brianne Gidcumb, Kathleen Cieslik, David Sprague, Sandra D. Glazier, David Lentz, James F. Anderton, Alexander S. Mallory, Daniel W. Borst, Sean Blume, Marguerite Munson Lentz, Michael Lichterman, Amir Abu-Aita, Daniel Benson, Hon. David Murkowski, Lindsey DiCesare, Marianne Drescosky, Cecilia Dunavant, Hon. Shauna Dunning, Rachel Estelle, Dustin Foster, Melisa Mysliwiec, Donald Haggins, John Mabley, Neal Nusholtz, Nashara Peart, Nicholas Reister, Nicole Shannon, Michael Shelton, Sarah Tayter, and Karen Whitcomb.

Confirmation of In-Person Attendees

Katie Lynwood, Richard C. Mills, Christine Savage, Daniel Hilker, Warren Krueger III, Alaina Nelson, Ernsie Augustine, Rebecca Wrock, Rosemary Buhl, James P. Spica, Jonathan Beer, Susan Chalgian, Georgette David, Mark Karabajakian, Chad McDonald, Austin McKee, Laura Morris and David Lucas.

C. Excused Absences

Ken Silver and Patricia E. Davis

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates): No report.

B. Minutes of Prior Council Meeting – (Christine Savage) – **Attachment 1**

Chris Savage motioned, and it was supported accepting the April minutes Motion carried.

C. Chair's Report (Katie Lynwood)

- i. Ms. Lynwood reported that the **Attachment 2** to the June meeting materials is a memorandum regarding creditor publication.
 - ii. Ms. Lynwood motioned, and it was supported by David Sprague, that the Section may exist the agreement it has with ICLE and Mark Harder for the EPIC Commentary, and that Mark Harder receives 100% of the honorarium for authoring the EPIC Commentary with no further honorarium to the Section. Motion carried. Ms. Lynwood will follow up with the State Bar regarding the issue of copyright relating to EPIC Commentary.
 - iii. Ms. Lynwood motioned, and was supported, to form a new ad hoc committee to slowly go through the Uniform Guardianship, Conservatorship, and Other Proactive Arrangements Act so that the committee can make a proposal to council as to whether or not this should be adopted in Michigan. Nathan Piwowarski would be the Chairperson of the committee. See **Attachment 4** to the June 13, 2025, meeting materials for more information about the committee's purpose.
 - iv. Ms. Lynwood motioned, and it was supported, to reinstate the Trust Account ad hoc committee. Motioned carried.
- D. Treasurer's Report (Melisa Mysliwec) – Ms. Mysliwec directed the section to **Attachment 5** of the June 13, 2025, meeting materials. The Hearts and Flowers account has approximately \$1,700.

III Committee Reports

- A. Committee on Special Projects (Hilker): Mr. Hilker reported that the committee had a lengthy discussion on undue influence and proposed statutes. There was also a discussion of HB 6011 and a committee has been formed.
- B. Amicus (Mayoras):
 - i. Mr. Mayoras lead a discussion on clarification of the motion from the April 2025 meeting regarding the Fowler case and the 401k motioned. Christine Savage will review the recording of the April 2025 meeting for clarification. Nathan Piwowarski will submit a revised motion via email to the council.
 - ii. Mr. Mayoras requested Laura Morris of Warner Norcross and Judd to author the Amicus brief in the Fowler matter. She agreed to consider authoring the brief. If Ms. Morris is unable to draft the brief, then Mr. Mayoras agreed to authoring it.
- C. Annual Meeting (Lynwood): Ms. Lynwood reported that the annual meeting will be in September and she encouraged everyone to attend.

- D. Awards (Spica): Mr. Spica reported that The Michael Irish Aware was handed out at the annual ICLE Institute in ACME's opening ceremony to Robert Brower of the Miller Johnson Firm.
- E. Budget (Savage): Ms. Savage directed the council to **Attachment 6** of the June 13, 2025 meeting materials. Katie Lynwood motioned, and was seconded, to accept the 2024-2025 budget as drafted. Motion carried.
- F. Bylaws (Lucas): No report.
- G. Charitable and Exempt Organizations (Wrock). Ms. Wrock reported that the committee is continuing its review and the next meeting is Thursday June, 19th at 10:00 am.
- H. Citizens Outreach (Goetsch): No report.
- I. Court Rules, Forms, and Proceedings (Davis): No report.
- J. Electronic Communications (Chalgian): No report.
- K. Ethics and Unauthorized Practice of Law (Mallory): Mr. Mallory referred to the ethical hypothetical in **Attachment 7** of the June 13, 2025 meeting materials.
- L. Guardianship, Conservatorship, and End of Life (Glazier): Sandy Glazier motioned, seconded by Michael Shelton, to adopt a public policy position against HB 4418 and HB 4419 using the same language as to public policy position for HB 5033. The secretary recorded a vote of 18 yes, 5 not voting, 0 abstain, 0 no. Motion carried.
- M. Legislation Development and Drafting (Mills/Tiplady): Mr. Hilker had drafted a one sentence bill stating that registrars can review DD accountings. The registrars took that bill and created something much broader, expanding registrars power. A bill will be presented to council in September or October.

Mr. Spica reported that in April the council voted to amend HB 7105 has become bill HB 4523 and the sponsor is Rep. Wozniak.
- N. Legislation Monitoring and Analysis (Shelton). No report.
- O. Legislative Testimony (Hilker): No report.
- P. Membership (Augustine): No report.
- Q. Nominating (Skidmore): Mr. Spica outlined the nomination committee report which is attachment 8 in the June 13, 2025 meeting materials. Mr. Spica noted that there is one correction to the report, and that Hon. Dunning will not be

returning for a second term. The committee is nominating Hon. Sara A. Schimke for a first term.

- R. Planning (Lynwood): No report.
- S. Probate Institute (Mills): Mr. Mills reported that probate institute was a success.
- T. Real Estate (Hentkowski): No report.
- U. State Bar and Section Journals (Mysliwiec): No report.
- V. Tax (Anderton): No report.
- W. Assisted Reproductive Technology (Welber): No report.
- X. Electronic Wills (Cieslik): Ms. Cieslik reported that the committee will be reviewing legislation in connection with the Uniform Electronic Wills Act.
- Y. Fiduciary Exception to the Attorney-Client Privilege (Krueger): No report.
- Z. Nonbanking Entity Trust Powers (Spica): No report.
- AA. Premarital Agreements (Savage): Ms. Savage reported that she and Dan Borst met with Senator Lightner as well as representatives from the Family Law Section. The two sections are going to work together in an effort to come to an agreement on the terms of a Uniform Act.
- BB. Uniform Community Property Disposition at Death Act (Spica): No report.
- CC. Undue Influence (Glazier): Ms. Glazier reported that there was a discussion of the first subparagraph of the first paragraph of the proposed undue influence statute at the CSP meeting.
- DD. Uniform Fiduciary Income and Principal Act (Spica): Mr. Spica reported that the Unitrust act, HB 4033 passed in the House 160 to 0 and now it will go to the Senate.
- EE. Uniform Partition of Heirs Property Act (Spica): No report.
- FF. Various Issues Involving Death and Divorce (Borst/Blume): The committee will be meeting over the summer to discuss the surviving spouse elective rights.
- GG. Elder law, disability, and rights liaison report (Hentkowski): Ms. Hentkowski requested that the committee take a public policy position supporting SB 266, which was a reinduction of SB 739 which the council supported in 2024. Dan Hilker motioned on behalf of Ms. Hentkowski and it was supported to adopt

a public policy position supporting SB 266. The secretary recorded a vote of 16 yes, 7 not voting, 0 abstain, 0 no. Motion carried

III. Good of the Order:

None.

IV. Adjournment of Regular Meeting at 12:31 p.m.

Respectfully Submitted,
Christine Savage, Secretary

The next Council meeting will be held on Friday, September 12, 2025.

ATTACHMENT 2

August 27, 2025

RE: Uniform Premarital and Marital Agreements Act

Dear Representative Lightner,

I am the Chair of the Probate and Estate Planning Section (“PEPS”) of the State Bar of Michigan, and I submit this letter to propose revisions to the language in Senate Bill 160 – a bill to enact the Uniform Premarital and Marital Agreements Act and to determine how and when a premarital or marital agreement is enforced. I appreciate the opportunity to share our perspective and contribute to the ongoing dialogue around this important issue.

Senate Bill 160 was written to codify *Allard v Allard*, 318 Mich App 583, 899 NW2d 420 (2017) (“*Allard*”). The Family Law Section of the State Bar of Michigan supports this codification of *Allard* as it gives the Family Divisions of the Circuit Courts great discretion in reviewing premarital agreements. The PEPS believes codifying *Allard* will lead to more litigation and undermine the freedom to contract.

While we acknowledge *Allard* is flawed, we likewise acknowledge that the difficulty of meeting the unconscionable standard makes it a less-than-ideal standard to protect private parties in situations when judicial oversight may be necessary.

For these reasons, we propose using the standard set forth by the Michigan Court of Appeals in *Rinvelt v Rinvelt*, 190 Mich App 372, 380 (1991). In *Rinvelt*, the Court of Appeals held that a premarital agreement may be deemed unenforceable if the facts and circumstances have so changed since the agreement was executed as to make its enforcement unfair and unreasonable. This standard is a compromise supporting the principle of freedom to contract and allowing courts in equity to grant relief when necessary.

Regarding the definition of duress, we think it wise to follow the guidance of the Supreme Court of Michigan. In *Hackley v Headley*, 45 Mich 569, 574 (1881), the Court defined duress, and our lower courts have followed that definition for a century and a half. We see no reason to stray from the Court’s wisdom.

Enclosed for your review and consideration are the Public Policy Positions that have been submitted by the PEPS with respect to SB 160. Also enclosed is SB 160 marked with the proposed revisions of the PEPS which incorporate the position set forth in this correspondence.

Thank you for your time and your continued service to the State of Michigan. We would be honored to discuss this matter further if helpful and welcome any opportunities to further the discussion with you and the Family Law Section as we work toward a compromise on this very important legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Katie Lynwood', with a stylized, flowing script.

Katie Lynwood

Enclosures

**Public Policy Position
SB 809**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,409 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 April 19, 2024, the Section adopted its position after a discussion and vote at a scheduled meeting. 20 members voted in favor of the Section's position, 0 members voted against this position, 1 member abstained, 2 members did not vote.

Oppose**Explanation:**

The Probate and Estate Planning section opposes SB 809 as drafted in light of its alterations to the Uniform Premarital and Marital Agreement Act.

Contact Person: Richard Mills

Email: rmills@shrr.com

**Public Policy Position
SB 160**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,430 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 November 8, 2024, the Section adopted its position after a discussion and vote at a scheduled meeting. 20 members voted in favor of the Section's position, 0 members voted against this position, 1 member abstained, 2 members did not vote.

Oppose**Explanation:**

SB 160 is a reintroduced version of Senate Bill 809 from the Legislature's 2023-2024 session. The Section's public policy position concerning the proposal remains in place.

Contact Person: Christine M. Savage

Email: csavage@lowelaw.net

SUBSTITUTE FOR
SENATE BILL NO. 160

A bill to enact the uniform premarital and marital agreements act; and to determine how and when a premarital or marital agreement is enforced.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "uniform premarital and
2 marital agreements act".

3 Sec. 2. In this act:

4 (1) "Amendment" means a modification or revocation of a
5 premarital agreement or marital agreement.

~~6 (2) "Duress" means an incident involving a threat of illegal,
7 humiliating, or unreasonable physical, financial, emotional, or
8 social damage or injury. All of the following factors are relevant
9 in a determination of duress for purposes of this subdivision:~~

~~1 (i) A threat of refusal to go forward with a marriage if a~~
~~2 premarital agreement is not signed.~~

~~3 (ii) The timing of presentment of a premarital agreement in~~
~~4 light of the public announcement of an engagement.~~

~~5 (iii) The state of wedding plans and expenditures.~~

~~6 (iv) The time until the planned wedding date.~~

71 (3) "Marital agreement" means an agreement between spouses who
 82 intend to remain married that affirms, modifies, or waives a
 93 marital right or obligation during the marriage or at separation,
 104 marital dissolution, death of one of the spouses, or the occurrence
 115 or nonoccurrence of any other event. The term includes an
 126 amendment, signed after the spouses marry, of a premarital
 137 agreement or marital agreement.

148 (4) "Marital dissolution" means the ending of a marriage by
 159 court decree. The term includes divorce, dissolution, and
 1610 annulment.

1711 (5) "Marital right or obligation" means any of the following
 1812 rights or obligations arising between spouses because of their
 1913 marital status:

2014 (A) Spousal support;

2115 (B) A right to property, including characterization,
 2216 management, and ownership;

2317 (C) Responsibility for a liability;

2418 (D) A right to property and responsibility for liabilities at
 2519 separation, marital dissolution, or death of a spouse; or

2620 (E) Award and allocation of attorney fees and costs.

2721 (6) "Premarital agreement" means an agreement between
 2822 individuals who intend to marry that affirms, modifies, or waives a
 2923 marital right or obligation during the marriage or at separation,

1 marital dissolution, death of one of the spouses, or the occurrence
2 or nonoccurrence of any other event. The term includes an
3 amendment, signed before the individuals marry, of a premarital
4 agreement.

5 (7) "Property" means anything that may be the subject of
6 ownership, whether real or personal, tangible or intangible, legal
7 or equitable, or any interest therein.

8 (8) "Record" means information that is inscribed on a tangible
9 medium or that is stored in an electronic or other medium and is
10 retrievable in perceivable form.

11 (9) "Sign" means with present intent to authenticate or adopt
12 a record:

13 (A) to execute or adopt a tangible symbol; or

14 (B) to attach to or logically associate with the record an
15 electronic symbol, sound, or process.

16 (10) "State" means a state of the United States, the District
17 of Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the
19 United States.

20 Sec. 3. (a) This act applies to a premarital agreement or
21 marital agreement signed on or after the effective date of this
22 act.

23 (b) This act does not affect any right, obligation, or
24 liability arising under a premarital agreement or marital agreement
25 signed before the effective date of this act.

26 (c) This act does not apply to:

27 (1) an agreement between spouses that affirms, modifies, or
28 waives a marital right or obligation and requires court approval to
29 become effective; or

1 (2) an agreement between spouses who intend to obtain a
 2 marital dissolution or court-decreed separation that resolves their
 3 marital rights or obligations and is signed when a proceeding for
 4 marital dissolution or court-decreed separation is anticipated or
 5 pending.

6 (d) This act does not affect the interests of a bona fide
 7 purchaser for value in a transfer or conveyance of property by
 8 either or both spouses to a third party.

9 Sec. 4. The validity, enforceability, interpretation, and
 10 construction of a premarital agreement or marital agreement are
 11 determined:

12 (1) by the law of the jurisdiction designated in the agreement
 13 if the jurisdiction has a significant relationship to the agreement
 14 or either party and the designated law is not contrary to a
 15 fundamental public policy of this state; or

16 (2) absent an effective designation described in paragraph
 17 (1), by the law of this state, including the choice-of-law rules of
 18 this state.

19 Sec. 5. Unless displaced by a provision of this act,
 20 principles of law and equity supplement this act, ~~including a~~
 21 ~~court's authority under sections 23(1) and 401 of 1846 RS 84, MCL~~
 22 ~~552.23 and 552.401, but only to the extent necessary to achieve the~~
 23 ~~purposes of the statutes. Imposition of a remedy under either~~
 24 ~~statute does not invalidate the entire marital agreement unless the~~
 25 ~~agreement otherwise fails to meet the requirements of this act.~~

26 21 Sec. 6. A premarital agreement or marital agreement must be in
 27 22 a record and signed by both parties. The agreement is enforceable
 28 23 without consideration.

29 24 Sec. 7. A premarital agreement is effective on marriage. A

1 marital agreement is effective on signing by both parties.

2 Sec. 8. If a marriage is determined to be void, a premarital
3 agreement or marital agreement is enforceable to the extent
4 necessary to avoid an inequitable result.

5 Sec. 9. (a) A premarital agreement or marital agreement is
6 unenforceable if a party against whom enforcement is sought proves:

7 (1) the party's consent to the agreement was involuntary or
8 the result of fraud, duress, mistake, misrepresentation or
nondisclosure of material fact;

9 (2) the party did not have access to independent legal
10 representation under subsection (b);

11 (3) unless the party had independent legal representation at
12 the time the agreement was signed, the agreement did not include a
13 notice of waiver of rights under subsection (c) or an explanation
14 in plain language of the marital rights or obligations being
15 modified or waived by the agreement; or

16 (4) before signing the agreement, the party did not receive
17 adequate financial disclosure under subsection (d).

18 (b) A party has access to independent legal representation if:

19 (1) before signing a premarital or marital agreement, the
20 party has a reasonable time to:

21 (A) decide whether to retain a lawyer to provide independent
22 legal representation; and

23 (B) locate a lawyer to provide independent legal
24 representation, obtain the lawyer's advice, and consider the advice
25 provided; and

26 (2) the other party is represented by a lawyer and the party
27 has the financial ability to retain a lawyer or the other party
28 agrees to pay the reasonable fees and expenses of independent legal
29 representation.

(c) A notice of waiver of rights under this section requires language, conspicuously displayed, ~~substantially~~ similar to the following, as applicable to the premarital agreement or marital agreement:

"If you sign this agreement, you may be:

Giving up your right to be supported by the person you are marrying or to whom you are married.

Giving up your right to ownership or control of money and property.

Agreeing to pay bills and debts of the person you are marrying or to whom you are married.

Giving up your right to money and property if your marriage ends or the person to whom you are married dies.

Giving up your right to have your legal fees paid."

(d) A party has adequate financial disclosure under this section if the party:

(1) receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party;

(2) expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(3) has adequate knowledge or a reasonable basis for having adequate knowledge of the information described in paragraph (1).

(e) If a premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the other party to provide support to the extent necessary to avoid

1 that eligibility.

2 (f) A court may refuse to enforce a term of a premarital
3 agreement or marital agreement if, in the context of the agreement
4 taken as a whole:

5 (1) the term was unconscionable at the time of signing or at
6 the time of enforcement; or

7 (2) enforcement of the term would unfair, unreasonable or
8 result in substantial
9 hardship for a party because of a material change in circumstances
10 arising after the agreement was signed].

11 (g) The court shall decide a question of unconscionability or
12 substantial hardship under subsection (f) as a matter of law.

13 Sec. 10. (a) In this section, "custodial responsibility" means
14 physical or legal custody, parenting time, access, visitation, or
15 other custodial right or duty with respect to a child.

16 (b) A term in a premarital agreement or marital agreement is
17 not enforceable to the extent that it:

18 (1) adversely affects a child's right to support;

19 (2) limits or restricts a remedy available to a victim of
20 domestic violence under law of this state other than this act;

21 (3) purports to modify the grounds for a court-decreed
22 separation or marital dissolution available under law of this state
23 other than this act; or

24 (4) penalizes a party for initiating a legal proceeding
25 leading to a court-decreed separation or marital dissolution.

26 (c) A term in a premarital agreement or marital agreement that
27 defines the rights or duties of the parties regarding custodial
28 responsibility is not binding on the court.

29 Sec. 11. A statute of limitations applicable to an action
asserting a claim for relief under a premarital agreement or
marital agreement is tolled during the marriage of the parties to

1 the agreement, but equitable defenses limiting the time for
2 enforcement, including laches and estoppel, are available to either
3 party.

4 Sec. 12. In applying and construing this uniform act,
5 consideration must be given to the need to promote uniformity of
6 the law with respect to its subject matter among states that enact
7 it.

8 Sec. 13. This act modifies, limits, or supersedes the
9 electronic signatures in global and national commerce act, 15 USC
10 section 7001 et seq., but does not modify, limit, or supersede
11 section 101(c) of that act, 15 USC section 7001(c), or authorize
12 electronic delivery of any of the notices described in section
13 103(b) of that act, 15 USC section 7003(b).

14 Sec. 14. This act takes effect 6 months after the effective
15 date of this act.

ATTACHMENT 3

State Bar of Michigan
Parent Company : State Bar of Michigan : Sections
Probate&Estate Section Expense Detail Report
From Oct 2024 to Jul 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
	10/15/2024	Journ al	JE7754	David Murkowski	10/4/2024 Meeting Travel	\$315.17		\$315.17
	10/15/2024	Journ al	JE7747	Andrea Neighbors	10/4/2024 Meeting Travel	\$334.33		\$334.33
	10/15/2024	Journ al	JE7762	Marguerite Munson Lentz	10/4/2024 Meeting Travel	\$311.15		\$311.15
	10/15/2024	Journ al	JE7756	Kathleen Cieslik	10/4/2024 Meeting Travel	\$267.87		\$267.87
	10/15/2024	Journ al	JE7758	Katie Lynwood	10/4/2024 Meeting Travel	\$209.67		\$209.67
	10/28/2024	Journ al	JE8015	Richard Mills	10-04-2024 Meeting Travel	\$266.13		\$266.13
	10/28/2024	Journ al	JE8012	Georgette David	10-04-2024 Meeting Travel	\$307.13		\$307.13
	10/28/2024	Journ al	JE8011	David Lucas	10-04-2024 Meeting Travel	\$295.07		\$295.07
	10/28/2024	Journ al	JE8016	Robert Brower	10-04-2024 Meeting Travel	\$302.83		\$302.83
	10/28/2024	Journ al	JE8014	Marlaine Teahan	10-04-2024 Meeting Travel	\$228.81		\$228.81
	10/28/2024	Journ al	JE8006	Andy Mayoras	10-04-2024 Meeting Travel	\$331.36		\$331.36
	11/19/2024	Journ al	JE8460	James Spica	10-04-2024 Meeting Travel	\$319.95		\$319.95
	11/25/2024	Journ al	JE8595	Patricia Davis	10-04-2024 Meeting Travel	\$750.63		\$750.63
	3/26/2025	Journ al	JE10452	Patricia Davis	03-13-2025 Meeting Travel	\$708.54		\$708.54
	6/4/2025	Journ al	JE11442	Patricia Davis	04-10-2025 meeting travel	\$716.38		\$716.38
	6/11/2025	Journ al	JE11482	Brianne Gidcumb	05-15-2025 meeting travel	\$500.00		\$500.00
	6/11/2025	Journ al	JE11492	Zenon Kwik	05-17-2025 Probate Law Meeting Travel	\$461.48		\$461.48
Total - 61200 - Travel						\$6,626.50	\$0.00	\$6,626.50
62315 - Meetings						\$0.00	\$0.00	\$0.00

Account	Date	Type	Document Number	ACS Vendor Name	Description	Debit	Credit	Total Net Amount
	10/1/2024	Journ al	JE7258	Katie Lynwood	U Club deposits 11/2024, 1/2025, & 9/2025	\$750.00		\$750.00
	10/15/2024	Journ al	JE7757	Katie Lynwood	10/4/2024 Meeting	\$9,801.24		\$9,801.24
	10/28/2024	Journ al	JE8007	Angela Hentkowski	09/2024 - 9/2025 Zoom	\$169.49		\$169.49
	11/19/2024	Journ al	JE8461	University Club of MSU	Probate Law Meeting 11-8-24	\$891.00		\$891.00
	2/11/2025	Journ al	JE9905	University Club of MSU	Probate Law Meeting12-13-2024	\$1,570.60		\$1,570.60
	2/11/2025	Journ al	JE9906	University Club of MSU	Probate Law Meeting 01-10-2025	\$891.60		\$891.60
	3/26/2025	Journ al	JE10450	University Club of MSU	Probate Law Meeting 2-14-2025	\$1,016.00		\$1,016.00
	3/26/2025	Journ al	JE10449	University Club of MSU	Probate Law Meeting 3-14-2025	\$1,141.00		\$1,141.00
	4/22/2025	Journ al	JE10813	University Club of MSU	Probate Law Meeting 04-11-2025	\$1,023.60		\$1,023.60
	6/10/2025	Journ al	JE11477	Angela Hentkowski	03-04-2025-04-03-2025 ZOOM	\$83.74		\$83.74
	6/24/2025	Journ al	JE11616	Angela Hentkowski	05-12-2025 Probate Law Travel	\$995.95		\$995.95
Total - 62315 - Meetings						\$18,334.22	\$0.00	\$18,334.22
64055 - Miscellaneous						\$0.00	\$0.00	\$0.00
	10/15/2024	Journ al	JE7747	Andrea Neighbors	10/4/2024 Meeting Travel	\$54.01		\$54.01
	3/31/2025	Journ al	JE10550		Oct 2024 - March 2025 2% CC Fee	\$1,344.00		\$1,344.00
Total - 64055 - Miscellaneous						\$1,398.01	\$0.00	\$1,398.01
65460 - Newsletter/Publication						\$0.00	\$0.00	\$0.00
	10/31/2024	Journ al	JE8101		10/2 Read the Summer Newsletter Now	\$100.00		\$100.00
	1/31/2025	Journ al	JE9724		1/27 Read the Winter Newsletter Now E Blast	\$100.00		\$100.00
	4/8/2025	Journ al	JE10660	ICLE	Probate Law Journal	\$4,500.00		\$4,500.00
	6/24/2025	Journ al	JE11620	ICLE	Probate Law Journal	\$4,650.00		\$4,650.00
	6/30/2025	Journ al	JE11705		6/6 Read the Spring Newsletter E Blast	\$100.00		\$100.00
Total - 65460 - Newsletter/Publication						\$9,450.00	\$0.00	\$9,450.00
67015 - Amicus Brief						\$0.00	\$0.00	\$0.00
	1/8/2025	Journ al	JE9398	Smith Haughey Rice & Roegge	10/2024-11/2024 Services Probate Law	\$10,151.75		\$10,151.75
Total - 67015 - Amicus Brief						\$10,151.75	\$0.00	\$10,151.75
67065 - Community Support, Donations & Sponsorships						\$0.00	\$0.00	\$0.00
	10/1/2024	Journ al	JE7301	ICLE	Experts Estate Planning 10-22-2024	\$5,500.00		\$5,500.00

Account	Date	Type	Document Number	ACS Vendor Name	Description	Debit	Credit	Total Net Amount
	4/22/2025	Journ al	JE10798	ICLE	Probate Law May 2025 Estate Planning	\$17,000.00		\$17,000.00
	6/4/2025	Journ al	JE11439	ICLE	RA Unsung Hero Award 2025	\$1,380.00		\$1,380.00
Total - 67065 - Community Support, Donations & Sponsorships						\$23,880.00	\$0.00	\$23,880.00
67115 - Legislative Consulting						\$0.00	\$0.00	\$0.00
	10/1/2024	Journ al	JE7262	Public Affairs Associates	October 2024	\$3,000.00		\$3,000.00
	11/19/2024	Journ al	JE8459	Public Affairs Associates	November 2024	\$3,000.00		\$3,000.00
	12/2/2024	Journ al	JE8716	Public Affairs Associates	December 2024	\$3,000.00		\$3,000.00
	1/7/2025	Journ al	JE9367	Public Affairs Associates	January 2025	\$3,000.00		\$3,000.00
	2/10/2025	Journ al	JE9895	Public Affairs Associates	February 2025	\$3,000.00		\$3,000.00
	3/26/2025	Journ al	JE10455	Public Affairs Associates	March 2025	\$3,000.00		\$3,000.00
	4/1/2025	Journ al	JE10538	Public Affairs Associates	April 2025	\$3,000.00		\$3,000.00
	5/1/2025	Journ al	JE10912	Public Affairs Associates	May 2025	\$3,000.00		\$3,000.00
	6/4/2025	Journ al	JE11445	Public Affairs Associates	June 2025	\$3,000.00		\$3,000.00
Total - 67115 - Legislative Consulting						\$27,000.00	\$0.00	\$27,000.00
Total - 60000 - Operating Expenses - Non-Labor						\$96,840.48	\$0.00	\$96,840.48

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

Financial Row	Amount (Jul 2025)	Amount YTD (Oct 2024 - Jul 2025)	Last FY YTD (Oct 2023 - Jul 2024)
Income			
42690 - Miscellaneous Revenue	\$0.00	\$0.00	\$650.00
40085 - Section Affiliate Dues	\$0.00	\$595.00	\$560.00
40080 - Section Dues	\$0.00	\$114,940.00	\$114,800.00
Total Income	\$0.00	\$115,535.00	\$116,010.00
Expenses			
67010 - Administrative Services	\$0.00	\$0.00	\$2,817.00
67015 - Amicus Brief	\$0.00	\$10,151.75	\$25,217.50
67065 - Community Support, Donations & Sponsorships	\$0.00	\$23,880.00	\$19,000.00
67115 - Legislative Consulting	\$0.00	\$27,000.00	\$27,000.00
62315 - Meetings	\$0.00	\$18,334.22	\$15,742.24
64055 - Miscellaneous	\$0.00	\$1,398.01	\$1,363.60
65460 - Newsletter/Publication	\$0.00	\$9,450.00	\$13,300.00
61200 - Travel	\$0.00	\$6,626.50	\$8,867.54
Total Expenses	\$0.00	\$96,840.48	\$113,307.88
Increase or Decrease in Net Position	\$0.00	\$18,694.52	\$2,702.12
Net Position, Beginning Of year	\$204,051.48	\$204,051.48	\$221,440.20
Net Position, End of Period	\$204,051.48	\$222,746.00	\$224,142.32

ATTACHMENT 4

M E M O R A N D U M

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan
Ethics & Unauthorized Practice of Law Committee

From: James P. Spica

Re: Ethical Hypothetical for June 13, 2025 Council Meeting

Date: August 30, 2025

I. MOOTED FACTS

Clients are Michigan residents who “need to restate/amend their trust,”¹ which they “formed . . . pursuant to Ohio law to be subject to Ohio law”² at a time when they resided in Ohio.

II. QUESTION PRESENTED

“As a Michigan lawyer not licensed [to practice] in the [S]tate of Ohio, [can] I [without engaging in unauthorized practice of law³ or breaching my duty to provide competent representation,⁴ prepare a] restate[ment] or amend[ment] of [the terms of Clients’] trust [that changes the governing law] to [that of] Michigan . . . [even] if the [original] trust [instrument] only provides that [the trust can] be amended or revoked by the grantor[s], with no additional language about amendments and revocation?”⁵

III. SHORT ANSWER

Yes: on plausible, alternative interpretations of the mooted facts,⁶ I can, without engaging in unauthorized practice of law or breaching my duty of competence, prepare a restatement or amendment of the terms of the trust about which Clients have consulted me (*T*) that designates Michigan law to govern the validity, construction, and administration⁷ of the result. And I can do

¹ Memorandum from Ethics & Unauthorized Prac. of L. Comm. to the Council of the Prob. & Est. Plan. Section of the State Bar of Mich. (June 13, 2025) (June 2025 Council Meeting Materials at 43) [hereinafter Committee Memorandum].

² *Id.*

³ Within the meaning of Model Rules of Pro. Conduct r. 5.5 (Am. Bar Ass’n 2005).

⁴ Within the meaning of *id.* r. 1.1. “Even though authorized by MRPC 5.5 to provide services in a non-admitted jurisdiction, the lawyer remains subject to all other ethical provisions of the MRPC. In particular, pursuant to MRPC 1.1 (Competence), the lawyer must provide competent representation regarding the laws and rules applicable in the non-admitted jurisdiction.” Am. Coll. of Tr. & Est. Couns., *ACTEC Commentaries on the Model Rules of Professional Conduct* 211 (6th ed. 2023) [hereinafter *ACTEC Commentaries*].

⁵ Committee Memorandum.

⁶ Specified *infra* Part IV.

⁷ Common law choice-of-law analysis assumes that every legal question concerning an express trust is allocable to (at least) one of these three categories. *See* Restatement (Second) of Conflict of Laws ch. 10, topic 1, intro. note (Am. L. Inst. 1971). As to a given trust, all three categories may be governed by the law of the same state or each by the law of a different state and they may change, together or severally, over time. *See, e.g.,* *Wilmington Tr. v. Wilmington Tr.*, 24 A.2d 309, 314 (Del. 1942) (finding settlor of trust created in New York intended change of law governing administration to effect change of law governing construction).

that, on both interpretations, without consulting Ohio counsel.

IV. ALTERNATIVE INTERPRETATIONS OF THE MOOTED FACTS

A. Common Assumptions

Of course, someone could set out to “restate” the terms of a trust without having any intention of amending those terms, as when, for example, translating a trust instrument from one language to another, or petitioning a court to declare the terms of a trust because the trust instrument is lost. But the Committee’s casual linkage of the verbs “restate” and “amend” in the expression “need to restate/amend . . .” suggests alternative means rather than alternative ends—it suggests that Clients may have a couple of different way of dealing with a particular problem rather than that they may have a couple of different problems. We will assume, therefore, that Clients’ interest in the possibility of *restating* the terms of *T* is as a particular means of *amending* at least some of those terms: the choice between restatement and amendment, as they conceive it, concerns merely the *extent* of the document I prepare for them and the number of operative trust instruments left standing after that document is executed.

The Committee hasn’t said whether I communicate with Clients regarding *T* when Clients and I are physically located in Ohio, when I am physically located in Michigan and Clients in Ohio, or when we are all physically located in Michigan. As to this, we will assume only that Clients’ residence in Michigan makes it possible for us (Clients and me) (1) to make the latter situation (in which I communicate with Clients regarding *T* when they and I are physically located in Michigan) the norm and any instance of either of the other two situations strictly “temporary” within the meaning of rule 5.5(c) of the Model Rules of Professional Conduct (MRPC)⁸ and (2) to arrange for Clients to execute any documents I prepare for them (wherever I prepare the documents) in Michigan.

The Committee also hasn’t adduced any difference between the rules of professional responsibility (concerning unauthorized practice of law, competence, or anything else) applicable to lawyers admitted in Ohio, on the one hand, and those applicable to lawyers admitted in Michigan, on the other. Without such a difference, it isn’t “necessary to have a choice-of-law rule to determine which specific provision of two . . . arguably applicable *and inconsistent* lawyer-code provisions should apply.”⁹ We will therefore assume that the question presented by the Committee does not involve a choice of law concerning *professional discipline*.¹⁰ We will also suppose (1) that the ground for saying that Clients “formed [*T*] to be subject to Ohio law”¹¹ is that a provision of the *T* trust instrument explicitly designates Ohio law to govern *T*’s validity and construction,¹² (2) that the *T* trust instrument was executed on or after January 1, 2007,¹³ and

⁸ “A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services *on a temporary basis* in this jurisdiction that . . .” Model Rules of Professional Conduct r. 5.5(c) (Am. Bar Ass’n 2005) (emphasis added).

⁹ Restatement (Third) of the L. Governing Lawyers § 5 cmt. h (Am. L. Inst. 2000) (emphasis added).

¹⁰ “In general, traditional choice-of-law principles, such as those set out in the Restatement Second of Conflict of Laws, have governed questions of choice of law in *nondisciplinary* litigation involving lawyers.” *Id.* § 1 cmt. e (emphasis added).

¹¹ See *supra* note 2 and accompanying text.

¹² See *supra* note 7.

¹³ January 1, 2007 being the effective date of Ohio’s enactment of the Uniform Trust Code (UTC). See Ohio Rev. Code Ann. § 5806.02(A) (being Ohio’s version of Unif. Tr. Code § 602(a) (Unif. L. Comm’n 2010)) (“Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This division does not apply to a trust created under an instrument executed before January 1, 2007.”).

(3) that I’ve informed Clients that I am not licensed to practice law in Ohio.¹⁴

B. Alternative Interpretation 1

We don’t know *why* Clients “need to restate/amend [the terms of *T*]” and change governing law.¹⁵ Is it because they are now (or are expecting soon to be) *domiciliaries*¹⁶ as well as residents of Michigan¹⁷ and suppose that domiciliary status requires (or is conveniently evidenced by) trust naturalization? Or is it because, though they are now (and expect to remain) domiciliaries of Ohio,¹⁸ they ultimately want *T* to be administered in (and otherwise subject to the local law¹⁹ of) Michigan because (for example) of the current or expected future locations of the intended beneficiaries, trustee(s), and trust asset(s)?²⁰ As stated, these candidate explanations are mutually exclusive, but we can embrace aspect of both—and build the neatest possible interpretation from my point of view as Clients’ Michigan counsel—if we assume that Clients have no present intention or concern that would foreseeably require *T* ever to be recognized as a trust by an Ohio court: on this “Interpretation 1” (let us say), Clients have moved “lock, stock, and barrel” (as the gunnery figure has it) to Michigan with the intention of dwelling, indefinitely, in the suburb of Detroit in which (for the nonce at least) all of the intended objects of Clients’ bounty happen to reside.

We can add signally to Interpretation 1’s *neatness*—again, from my point of view as Clients’ Michigan counsel—by also assuming (1) that Clients are, and have been since *T*’s inception the trustees of *T* and (2) that in light of Clients’ motivation (whatever it is exactly) for giving *T* a Michigan orientation, (a) the trouble of protectively retitling or redirecting any assets that Clients are *aware* of having titled or directed to themselves as trustees of *T* and of executing

¹⁴ “Under MRPC 5.5, a lawyer engaged in a multijurisdiction practice necessarily offers limited services in jurisdictions in which the lawyer is not admitted to practice law [and may, therefore,] need to obtain the client’s informed consent to do so.” *ACTEC Commentaries*, *supra* note 8, at 211 (citing MRPC rule 1.2(c)).

¹⁵ See *supra* Parts I–II.

¹⁶ I take it that by now, lawyers have sufficiently *noured* the adjective ‘domiciliary’ for *me* to join in. See, e.g., Bryan A. Garner, *A Dictionary of Modern Legal Usage* 196b (1987) (“[D]omiciliary is both adjective (‘of or pertaining to domicile’) and noun (‘one belonging to a domicile’).”). (There is no evidence of the latter use in, for example, *The Shorter Oxford English Dictionary on Historical Principles* 593c (C.T. Onions ed., 3d ed. with rev. etymologies & addenda 1973) (being entry for “domiciliary”).)

¹⁷ Assuming that Clients were previously domiciliaries of Ohio, the supposition that they are now domiciliaries of Michigan would involve that as far as the state of the forum is concerned, Clients (1) have capacity to acquire a “domicil of choice,” Restatement (Second) of Conflict of Laws § 11 cmt. a (Am. L. Inst. 1971), and (2) have made (or intend to make) Michigan “the center of [their] domestic, social and civil life,” *id.* § 12 (defining “home”). See *id.* § 13 (“In applying its rules of Conflict of Laws, the forum determines domicile according to its own standards.”).

¹⁸ “In principle one can be *resident* in two [states] at once, but to avoid the inadmissible result of . . . two domiciles of choice, . . . the residence requirement [for domicile] identifies the principal residence if there is more than one contender.” Adrian Briggs, *The Conflict of Laws* 25 (2d ed. 2008) (emphasis added); accord Restatement (Second) of Conflict of Laws § 20.

¹⁹ The “local law” of a given state is that state’s *domestic* or *intestate* law, that is, the state’s law *excluding* conflict of laws rules. See Restatement (Second) of Conflict of Laws § 4(1); see also *id.* § 222 cmt. e; *id.* ch. 9, topic 2, intro. note. A state’s conflict of laws rules comprise (1) rules concerning jurisdiction over matters involving what are, in respect of the *lex fori*, *foreign* elements, (2) rules concerning recognition of foreign judgments, and (3) choice-of-law rules. See Restatement (Second) of Conflict of Laws § 2 cmt. a; Briggs, *supra* note 18, at 1.

²⁰ These are contacts (or “connecting factors,” see *infra* note 82) relevant to the determination of whether a state has a significant relation to a trust and, perhaps, even the most significant relation to the trust as to the matter at issue for choice-of-law purposes at common law. See, e.g., Restatement (Second) of Conflict of Laws § 270 cmt. b–c.

one-sentence codicils republishing their respective pour-over wills is “worth the candle” (as the lucubratory figure has it) and (b) I can recommend—and Clients are willing—that the terms of *T* be *restated* in full.²¹

But the statement that “Clients . . . need to restate/amend [the terms of *T*]”²² is logically as well as factually ambiguous. It may mean that to achieve a certain set of their objectives (on a given understanding of the surrounding circumstances), Clients *should* (i.e., *are well advised* to) restate or amend the terms of *T* (Sense 1). Alternatively, it may mean that to achieve a certain set of their objectives (on a given understanding . . .), Clients *understandably wish* to restate or amend the terms of *T* (Sense 2). As used in Sense 1, the predicate “need(s) to . . .” is appropriate only when there is no question of the subject’s or subjects’ not being able to do what is “need[ed],” as when I say (of a sober person who is in good health), “He needs to sit up straight.” As used in Sense 2, “need(s) to . . .” is at least *consistent with* the idea, and, indeed, may *imply* that the subject’s or subjects’ ability to do what is “need[ed]” is doubtful, as when I say (even of a sober person who is in good health), “He’ll need to jump twenty-seven inches vertically.”

If we take “Clients . . . need to restate/amend [the terms of *T*]” in Sense 1, it is simply *given* that the trust described in the *T* trust instrument, viz., *T*, was validly created and is currently revocable; for in Sense 1, “need(s) to . . .” implies “*can* . . .,” and Clients cannot restate or amend a trust that is either nonexistent or irrevocable.²³ In that case, we might imagine, for example, that Clients have a recent letter (dated *after* the execution of the *T* trust instrument) from a lawyer licensed to practice in Ohio (who happens to be the current Chair of the Estate Planning, Trust, and Probate Law Section of the Ohio State Bar Association) that clearly states that *T* is a valid, *revocable* trust under Ohio law.

C. Alternative Interpretation 2

If, on the other hand, we take “Clients . . . need to restate/amend [the terms of *T*]” in Sense 2, the questions whether *T* is valid and, if so, *revocable* may be open; for in Sense 2, “need(s) to . . .” needn’t imply “*can* . . .”²⁴ In that case, Clients *do not* have any communication from Ohio counsel like the letter involved in Interpretation 1;²⁵ they avow that they “just always *assumed*” that *T* was revocable in light of the declaration to that effect in the trust instrument²⁶ and that *T* was valid in light the considerable fee they paid Ohio counsel to help them create the thing. We will assume that *T* would be a valid, revocable trust if Michigan law governed the meaning and effect of *T*’s terms from inception, but I won’t be able to use *Michigan* law to determine *directly* even that *T* was “validly created”²⁷ if we also assume (as we will) that the *T* trust instrument was executed somewhere outside of Michigan at a time when (1) Clients (and any trustee of *T* other than Clients)²⁸ had neither a residence nor a place of business in Michigan

²¹ As opposed to *amended* in part. See *supra* note 1 and accompanying text; see also *supra* Section IV.A.

²² See *supra* note 1 and accompanying text.

²³ See, e.g., Unif. Tr. Code § 602(c) (Unif. L. Comm’n 2010) (describing methods by which “[t]he settlor may revoke or amend a *revocable* trust” (emphasis added)). Cf. *id.* § 411 (describing methods by which “[a] noncharitable irrevocable trust may be *modified or terminated*” (emphasis added)).

²⁴ See *supra* Section IV.B.

²⁵ See *supra* Section IV.B.

²⁶ See *supra* note 5 and accompanying text.

²⁷ Mich. Comp. Laws § 700.7403 (being Unif. Tr. Code § 403) (quoted *infra* note 29).

²⁸ We needn’t assume in *this* interpretation that Clients are trustees of *T*. Cf. *supra* Section IV.B.

and (2) there was no property subject to the terms of *T* located in Michigan.²⁹ We can complicate things—from my point of view as Clients’ Michigan counsel—by assuming that Clients reasonably regard the trouble of protectively retitling or redirecting the assets titled or directed to the trustees of *T* as practically prohibitive (assuming *T* is valid and revocable).³⁰ And to otherwise make this “Interpretation 2” messy where Interpretation 1 is “neat[,]”³¹ we can assume that though Clients’ motivation (whatever it is exactly) for giving *T* a Michigan orientation is sufficiently compelling,³² it leaves open distinct possibilities that an Ohio court could one day be asked to acknowledge or repudiate the terms of *T* as amended.

V. ANALYSIS OF INTERPRETATION 1

Interpretation 1 is liable to deprive the mooted facts of their unauthorized-practice-or-competence interest by making *effective amendment of the terms of T under Ohio law* all but indifferent. Clients are reliably informed (on this interpretation)—by someone *other than me*—that *T* is a valid, revocable trust under Ohio law, but they currently have no reason to expect that it will ever be more important for *T* to be recognized as such by a court *in Ohio* than by a court in any other state that is not Michigan; and they are willing to republish their pour-over wills and protectively retitle or redirect assets that they’re *aware* of having titled or directed to themselves as trustees of *T*.³³ That means that Clients’ objectives (whatever they are exactly) in “restat[ing]/amend[ing] [the terms of *T*]” can all but handily be met by my simply creating a new, *T-substitute* revocable trust for them that is valid under Michigan law and that designates Michigan law to govern the new trust’s validity, construction, and administration.³⁴ The only *T*-related risk to which that tack leaves Clients exposed is that there may be assets titled or directed to the trustee(s) of *T* of which Clients are unaware—either because they’ve forgotten something or because, without Clients’ knowledge, assets have been (or later will be) contributed to *T* by someone other than Clients.

If Clients reasonably regard that risk as negligible, I can afford to be agnostic about whether the restatement I prepare³⁵ will be valid *qua amendment of the terms of the existing trust T under Ohio law* so long as the restatement alternatively creates a valid revocable trust under the law of Michigan. And happily (as we shall see shortly), the fact that the restatement might (for preference) amend the terms of a revocable trust (viz., *T*) created pursuant to Ohio law that designates Ohio to provide “governing” law does not prejudice the question whether the restatement might *alternatively* create a contingently independent revocable trust pursuant to Michigan law.

²⁹ See Mich. Comp. Laws § 700.7403 (“A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of a jurisdiction [in] which, at the time of creation . . . [t]he settlor was domiciled [or] had a place of abode . . . , [a] trustee was domiciled or had a place of business . . . [or] [a]ny trust property was located.”).

³⁰ This might be due either to the number *or to the nature* of trust assets: retitling shares in a closely held, federally chartered, regional bank, for example, could involve the trustee(s) in negotiations with organs of the Federal Reserve System. See, e.g., 12 U.S.C. § 1841(b) (defining “company” for purposes of Bank Holding Company Act to include certain express trusts).

³¹ See *supra* Section IV.B.

³² In the sense that Clients have good reason to seek the advice of someone knowledgeable about the law of Michigan in particular. See *supra* text accompanying notes 15–20.

³³ See *supra* Section IV.B.

³⁴ See *supra* note 7 and accompanying text.

³⁵ See *supra* text accompanying note 21.

A. Ohio Law Governs the Validity of An Initial Amendment of the Existing Trust *T*

As far as a UTC state like Michigan or Ohio is concerned, the validity of the restatement I prepare for Clients *as an amendment of the terms of the existing trust T* is a question (as between Michigan and Ohio at least) of Ohio law; for (1) the *T* trust instrument explicitly designates Ohio law to govern *T*'s validity and construction³⁶ and (2) UTC section 107(1) provides that

[t]he meaning and effect of the terms of a trust are determined by . . . the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue.³⁷

Now, it is possible that Michigan is “the jurisdiction having the most significant relationship to the matter”³⁸ of the validity of the restatement *qua* amendment of the terms of *T*.³⁹ But it is *not* possible that the *T* trust instrument's designation of Ohio law is “contrary to a strong public policy of [Michigan regarding that] matter”⁴⁰ because Ohio has enacted the same UTC provision regarding amendment of revocable trusts, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC: “The settlor may revoke or amend a revocable trust . . . if the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor's intent”⁴¹ And both states have

³⁶ See *supra* text accompanying note 12.

³⁷ Unif. Tr. Code § 107(1) (Unif. L. Comm'n 2010). See Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107). See also *In re Ringer Estate*, 2018 Mich. App. LEXIS 3741, at *5–6 (Mich. Ct. App. Dec. 20, 2018) (citing Mich. Comp. Laws § 700.7107(a) as authority for applying Illinois law to determine validity of disclaimer of interest in testamentary trust created under Illinois will); Restatement (Second) of Conflict of Laws § 6(1) (Am. L. Inst. 1971) (“A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.”).

³⁸ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

³⁹ Owing, perhaps, to Clients' motivation (whatever it is exactly) for giving *T* a Michigan orientation. See *supra* text accompanying notes 15–20. This might be especially likely to the extent Clients, *qua* trustees of *T*, own directly (i.e., without an entity wrapper) land located in Michigan; for though the legislative history (see *infra* note 85 and accompanying text) of UTC section 107 indicates that “[t]he settlor is free to select the governing law regardless of . . . whether [the trust property] consists of real or personal property,” Unif. Tr. Code § 107 cmt (emphasis added), deference to the law of the situs of land is a pervasive feature of common law choice-of-law rules, see, e.g., Restatement (Second) of Conflict of Laws § 281 (indicating that validity of exercise of trust-spawned power to appoint land is determined by the law that would be applied by courts of the situs); see generally *id.* ch. 10, topic 1, intro. note. And Michigan courts (at least) employ the interpretive presumption that a minimum change is to be effected by legislation in a common law area. See *Nation v. W.D.E. Elec. Co.*, 563 N.W.2d 233, 236 (Mich. 1997) (“[S]tatutes in derogation of the common law . . . will not be extended by implication to abrogate established rules of common law.”).

⁴⁰ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

⁴¹ Ohio Rev. Code Ann. § 5806.02(C) (being Ohio's version of Unif. Tr. Code § 602(c)). See Mich. Comp. Laws § 700.7602(3) (being Michigan's version of Unif. Tr. Code § 602(c)) (“The settlor may revoke or amend a revocable trust . . . [i]f the terms of the trust do not provide a method . . . [and] [i]f the trust is created pursuant to a writing, by another writing manifesting clear and convincing evidence of the settlor's intent to revoke or amend the trust.”). (The quotation of the Ohio statute that this note tags in the text, and that of the Michigan statute that this note contains both omit language concerning the possibility that the terms of the trust “provide a method [of amendment]” because the Committee has assumed that the *T* trust instrument “provides that [the trust can] be amended or revoked by the grantor[s], with no additional language about amendments and revocation.” Committee Memorandum; see *supra* Part II.)

enacted similar exhortations (of their respective judiciatures) to multistate uniformity in interpretation of UTC provisions.⁴² There can't be contrariety without difference.⁴³ So, as far as Michigan's public policy is concerned, the "unless . . ." condition of UTC section 107(1)⁴⁴ is inapplicable in this case, and (as between Michigan and Ohio at least) Ohio law therefore governs the validity of the restatement I prepare *qua* amendment of the terms of the existing trust *T*.⁴⁵

B. But Michigan Law Governs the Alternative Creation of a *T*-Substitute Revocable Trust

But though the "restatement" I prepare for Clients is intended—for preference, just in case there *are*, after all, *T* trust assets of which Clients are unaware—to amend the terms of the existing trust *T*, which (trust) was created pursuant to Ohio law and designates Ohio to provide "governing" law, *if* the restatement should come to be examined⁴⁶ for its capacity *alternatively* to create an independent trust of the same description as *T* as "*restated*," there is no ordering principle of choice of law according to which the validity of the creation of the putatively independent trust must be determined under Ohio law.⁴⁷ And there is, of course, no reason why a dispositive instrument can't condition alternative means of effecting a given disposition on alternative contingencies.⁴⁸

1. UTC section 403

Michigan Trust Code (MTC) section 7403 provides: "A trust not created by will is validly created if its creation complies with [among alternative, potential validating references] the law of *the jurisdiction in which the trust instrument was executed*."⁴⁹ And by hypothesis, Clients can execute the restatement I prepare for them (presumably in Michigan) in Michigan.⁵⁰

⁴² See Ohio Rev. Code Ann. § 5811.01 ("In applying and construing Chapters 5801. to 5811. of the Revised Code, a court may consider the need to promote uniformity of the law with respect to the subject matter of those chapters among states that enact the uniform trust code."); Mich. Comp. Laws § 700.1201(d) ("This act [including *id.* § 700.7602] shall be liberally construed and applied to . . . make the law uniform among the various jurisdictions, both within and outside of this state."). See Unif. Tr. Code § 1101 ("In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.").

⁴³ Difference (between potentially applicable local laws) is *necessary* to trigger UTC section 107(1)'s "strong public policy" override but, of course, it isn't sufficient: "obviously the mere fact that foreign and domestic law differ on some point is not *enough* to invoke the exception. Otherwise in every case of an actual conflict the court of the forum state would choose its own law; there would be no law of conflict of laws." *Spinozzi v. ITT Sheraton Corp.*, 174 F.3d 842, 847 (7th Cir. 1999) (Posner, C.J.) (emphasis added) (interpreting common law public-policy override of settlor autonomy in choice of law).

⁴⁴ See *supra* note 37 and accompanying text.

⁴⁵ See Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

⁴⁶ Owing, say, to the omission of some formality that is not required under the local law of Michigan but (unknown to Clients and me) *is* required under that of Ohio.

⁴⁷ As is argued *infra* Sections V.B.1–2.

⁴⁸ Think, for example, of the formerly standard provision in "pour-over" wills that disposed of the residue (for preference) to the trustee(s) of the testator or testatrix's revocable trust but then incorporated the terms of that trust (as they existed as of the date of the will) in case it should turn out for any reason that the trust was not in existence on the date of the testator or testatrix's death.

⁴⁹ Mich. Comp. Laws § 700.7403 (emphasis added) (being Unif. Tr. Code § 403) (quoted at length *supra* note 29). See also Ohio Rev. Code Ann. § 5804.03 (being Unif. Tr. Code § 403).

⁵⁰ See *supra* Section IV.A.

Since I can make sure that the restatement describes a trust that complies with Michigan's requirements for the creation of a revocable trust,⁵¹ the contemplated restatement of *T* that designates Michigan to provide governing law⁵² will describe a revocable trust that may be "validly created," according to Michigan law, as of the date of the restatement, *regardless* of whether the restatement does or does not constitute a valid amendment of the terms of the existing trust *T* under Ohio law.⁵³

Clients' willingness to republish their pour-over wills and protectively retitle or redirect *T* trust assets they're *aware* of will do the rest⁵⁴ in conjunction with (something like) the following provision of the restatement.

Settlors provisionally intend that this Restatement will amend and state anew the complete terms of the revocable trust that they created on [date of execution of *T* trust instrument] ("Date 1") pursuant to Ohio law ("Original Trust"). They expect that that intention ("Provisional Intention") will be realized based on their understanding (1) that this Restatement would constitute a valid amendment of the Original Trust if its validity as such were determined under Michigan law, by virtue of its compliance with a particular provision of the Uniform Trust Code ("UTC") that has been enacted in Michigan⁵⁵ as part of Michigan's general enactment of the UTC and (2) that the same UTC provision has likewise been enacted in Ohio.⁵⁶ This Restatement also complies, however, independently, with the requirements under Michigan law for the *creation*, as of the date hereof ("Date 2"), of the trust described herein.⁵⁷ In accordance with the Provisional Intention, the trust described herein shall be known, in any case, as "Clients' Trust dated Date 1." But Clients do not intend that the efficacy of this Restatement in achieving the dispositive and administrative purposes that it expresses shall be limited—by the Provisional Intention—to whatever validity it may have under Ohio law *as an amendment of the Original Trust*. Therefore, to the extent, if any, that this Restatement does not cause any asset currently held by Clients as trustees of the Original Trust to become subject to the provisions of this Restatement (as opposed to those of the Original Trust instrument), Clients hereby revoke the Original Trust and transfer the asset in question to themselves as trustees of Clients' Trust dated Date 1 as the trust that is, *in that case*, separately

⁵¹ Viz., Mich. Comp. Laws §§ 700.7105(2)(a), .7401, .7402, .7602(1).

⁵² See *supra* text accompanying note 7.

⁵³ See Mich. Comp. Laws § 700.7403 (quoted in part *supra* text accompanying note 49 and at length *supra* note 29).

⁵⁴ See *supra* text accompanying note 33–35.

⁵⁵ A note for my file will indicate that Clients refer here to Mich. Comp. Laws § 700.7602(3)(b) (being Michigan's version of Unif. Tr. Code § 602(c)(2) (Unif. L. Comm'n 2010)).

⁵⁶ A note for my file will indicate that Clients refer here to Ohio Rev. Code Ann. § 5806.02(C) (being Ohio's version of Unif. Tr. Code § 602(c)(2)).

⁵⁷ A note for my file will indicate that Clients refer here to Mich. Comp. Laws §§ 700.7401, .7402. See *supra* note 51 and accompanying text.

created on Date 2 by this Restatement pursuant to Michigan law.

2. A Dismissible Objection

It might be objected that the “catchline”⁵⁸ of Michigan’s enactment of UTC section 403, which reads “Trusts created in *other* jurisdictions,”⁵⁹ restricts MTC section 7403’s application to trusts created in states *other than* Michigan, whereas (1) the plan is for Clients to execute the restatement I prepare for them (presumably in Michigan) *in Michigan*⁶⁰ and (2) according to the argument above, it is the validity of the creation, not of *T*, but of the contingently separate *T-substitute trust*, originating pursuant to Michigan law, on Date 2,⁶¹ that MTC section 7403 is supposed to confirm.

The response to this objection is that catchlines are not included in legislative bills in Michigan⁶² (they are supplied by the Legislative Service Bureau (LSB) *after* enactment),⁶³ and generally “[h]eadings and titles may not be used in construing a statute . . . unless they are contained in the [enrolled bill] . . . as adopted.”⁶⁴ Furthermore, *this* catchline is just (verbatim) the heading that accompanies section 403 in the uniform act,⁶⁵ while there is nothing in the text of, or the official Comment to UTC section 403 to prevent or discourage the section’s application to trusts created in the enacting state,⁶⁶ and the Comment tells us that “[s]ection 403 is comparable to Section 2-506 of the Uniform Probate Code, which validates wills executed in compliance with the law of a variety of places,”⁶⁷ *including, explicitly, the law of the enacting state*.⁶⁸ So, the heading parroted by the LSB catchline⁶⁹ is simply a misnomer—one eschewed, by the way, in Ohio in favor of “Validity of nontestamentary trusts.”⁷⁰ The catchline should thus be ignored, and, thanks to MTC section 7403, the restatement I prepare for Clients will succeed *at least*⁷¹ as the creation of a substitute revocable trust (having the terms of *T* as “restated”) to which Clients transfer the assets of *T* of which they are aware.⁷²

⁵⁸ Within the meaning of the Legislative Council Act, 1986 Mich. Pub. Acts 268. *See, e.g.*, Mich. Comp. Laws § 4.1108(d) (“The [legislative service] bureau shall . . . [p]repare catchlines, indexes, and tables for the public and local acts of each session of the legislature.”).

⁵⁹ Mich. Comp. Laws § 700.7403 (emphasis added) (being Unif. Tr. Code § 403 and bearing catchline quoted in text).

⁶⁰ *See supra* note 50 and accompanying text.

⁶¹ *If* and to the extent that the restatement I prepare for Clients does not constitute a valid amendment of the terms of the existing trust *T* under Ohio law. *See supra* Section V.B.1.

⁶² This feature of the legislative process in Michigan is not universal: “Headings are not voted upon by Parliament, *but they are included in the Bill* and form part of the text entered on the Parliament Roll.” Rupert Cross, *Statutory Interpretation* 131 (John Bell & George Engle eds., 3d ed. 1995) (emphasis added).

⁶³ *See* Mich. Comp. Laws § 4.1108(d) (quoted *supra* note 58).

⁶⁴ Unif. Statute & Rule Constr. Act § 13 (Unif. L. Comm’n 1995).

⁶⁵ *See* Unif. Tr. Code § 403 (Unif. L. Comm’n 2010) (bearing heading, “Trusts created in other jurisdictions”). *Cf. supra* text accompanying note 59.

⁶⁶ *See* Unif. Tr. Code § 403; *id.* cmt.

⁶⁷ *See id.* cmt.

⁶⁸ *See* Unif. Prob. Code § 2-506 (Unif. L. Comm’n 2010) (“A written will is valid if executed in compliance with Section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed . . .” (emphasis added)).

⁶⁹ *See supra* text accompanying notes 59, 65.

⁷⁰ *See* Ohio Rev. Code Ann. § 5804.03 (being Unif. Tr. Code § 403) (bearing heading quoted in text).

⁷¹ *If* the restatement I prepare does not constitute a valid amendment of the terms of the existing trust *T* under Ohio law. *See supra* Section V.B.1.

⁷² *See supra* Section V.B.1.

C. Change to, or Designation of Michigan for Governing Law

1. Administration

Whether the restatement I prepare succeeds as an amendment of the terms of *T* (because it happens to comply with the requirements for that sort of thing under Ohio Law)⁷³ or merely as the creation of a new revocable trust *substitute* for *T*⁷⁴ (because the restatement complies with the requirements for *that* sort of thing under *Michigan* law),⁷⁵ the fact that the trustees of *T* (Clients)⁷⁶ are Michigan residents⁷⁷ is “a sufficient connection”⁷⁸ with Michigan for the restatement’s designation of Michigan (or a *place* in Michigan) as the trust’s “principal place of administration” within the meaning of UTC section 108⁷⁹ to determine judicial jurisdiction⁸⁰ and that the local law of Michigan will govern the trust’s administration.⁸¹

2. Validity and Construction

And whether the restatement I prepare succeeds as an amendment of the terms of *T* or merely as the creation of a new revocable trust *substitute*, there are neither too many contacts⁸² with Ohio nor too few with Michigan for the restatement to *designate* Michigan to provide law governing validity and construction.⁸³ That is because according to the legislative history of UTC section 107(1),⁸⁴ viz., the Uniform Law Commission (ULC) Comment to the section,⁸⁵ contacts

⁷³ See *supra* Section V.A.

⁷⁴ See *supra* note 72 and accompanying text.

⁷⁵ See *supra* Section V.B.1.

⁷⁶ See *supra* text accompanying notes 20–21.

⁷⁷ See *supra* text accompanying note 1.

⁷⁸ Unif. Tr. Code § 108(a) (Unif. L. Comm’n 2010) (“Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration . . .”); see Mich. Comp. Laws § 700.7108(1) (being Michigan’s version of Unif. Tr. Code § 108(a)); Ohio Rev. Code Ann. § 5801.07(A) (being Unif. Tr. Code § 108(a)).

⁷⁹ Unif. Tr. Code § 108(a) (“[T]erms of a trust designating the principal place of administration are . . . controlling if a trustee’s principal place of business is located in or a trustee is a resident of the designated jurisdiction or . . . all or part of the administration occurs in the designated jurisdiction.”).

⁸⁰ “Under the Uniform Trust Code, the fixing of a trust’s principal place of administration will determine where the trustee and beneficiaries have consented to suit It may also be considered by a court in another jurisdiction in determining whether it has jurisdiction.” *Id.* § 108 cmt. (As to the relevance of the cited Comment to Michigan or Ohio’s enactment of UTC section 108, see *infra* note 85.)

⁸¹ “[T]ransfer of the principal place of administration will normally change the governing law with respect to administrative matters.” Unif. Tr. Code § 108 cmt. The fact that the “the rights of the beneficiaries are [currently] subject to the control of [Clients as] settlor[s], and the duties of the trustee[s], including the duties to inform and report . . . are owed exclusively to [Clients as] settlor[s],” Ohio Rev. Code Ann. § 5806.03(A) (being Ohio’s version of Unif. Tr. Code § 603(b)), presumably dispenses with the need for the notice to beneficiaries that would otherwise be required under Ohio’s version of UTC section 108(d) in case the restatement I prepare constitutes a valid amendment of the terms of *T* under Ohio law. See Ohio Rev. Code Ann. § 5801.07(A) (being Ohio’s version of Unif. Tr. Code § 108(d) (“The trustee shall notify the current beneficiaries of a proposed transfer of a trust’s principal place of administration not less than sixty days before initiating the transfer.”)).

⁸² I.e., “connecting factors,” “[p]oints of contact [that] connect an individual or an event to a system of . . . law.” Briggs, *supra* note 18, at 20.

⁸³ See *supra* text accompanying notes 5, 7.

⁸⁴ I.e., the legislative history of the UTC section that is quoted *supra* text accompanying note 37.

⁸⁵ “[T]he Comments to any Uniform Act, may be relied on as a guide for interpretation.” Unif. Tr. Code § 106 cmt. (Unif. L. Comm’n 2010) (citing *Acerno v. Worthy Bros. Pipeline Corp.*, 656 A.2d 1085, 1090 (Del. 1995) (interpreting Uniform Commercial Code) and *Yale Univ. v. Blumenthal*, 621 A.2d 1304, 1307 (Conn. 1993) (interpreting Uniform Management of Institutional Funds Act)). See also, e.g., Gregory A. Elinson & Robert H.

don't matter:

Paragraph (1) [of UTC section 107] allows a settlor to select the law that will govern the meaning and effect of the terms of the trust. *The jurisdiction selected need not have any other connection to the trust.* The settlor is free to select the governing law regardless of where the trust property may be physically located, whether it consists of real or personal property, and whether the trust was created by will or during the settlor's lifetime.⁸⁶

a. The "Strong Public Policy" Override

Whether my restatement's designation of Michigan to provide governing law will be "controlling"⁸⁷ in a given situation, however, depends on the matter at issue; for, as we have seen,⁸⁸ a settlor is free to designate governing law "unless the designation . . . is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue."⁸⁹ And we cannot suppose "that all questions of validity[, for example,] will be determined by the same law"⁹⁰: "What state has the most significant relationship with the trust [in question] may depend upon the particular ground of invalidity."⁹¹ It is possible, therefore, that *in spite of* Clients' having moved (on Interpretation 1) "lock, stock, and barrel" to Michigan at or near the time of the restatement's execution,⁹² Ohio (or some other state that is not Michigan) will be "the jurisdiction having the most significant relationship to [some] matter"⁹³ that comes up under the terms of the restatement perhaps many years after the restatement is executed.⁹⁴

If that matter is covered by the UTC or some other uniform act that both Michigan and Ohio (or the other non-Michigan state in question) have enacted, it is unlikely that the restatement's designation of Michigan law will be "contrary to a strong public policy of [Ohio

Sitkoff, *When a Statute Comes With a User Manual: Reconciling Textualism and Uniform Acts*, 71 Emory L.J. 1073 *passim* (2022); Harry Wilmer Jones, *Statutory Doubts and Legislative Intention*, 40 Colum. L. Rev. 957, 970 (1940). For the proposition that decisions of foreign courts interpreting a given uniform act should be considered by courts in states that have enacted that act, see, for example, Robert S. Summers, *Statutory Interpretation in the United States*, in *Interpreting Statutes: A Comparative Study* 407, 427–28 (D. Neil MacCormick & Robert S. Summers eds., 1991).

⁸⁶ Unif. Tr. Code § 107 cmt (emphasis added). This is a departure from the common law. *See, e.g.*, Restatement (Second) of Conflict of Laws § 270 (Am. L. Inst. 1971) ("An inter vivos trust of interests in movables is valid if valid . . . under the local law of the state designated by the settlor to govern the validity of the trust, provided that this state has a substantial relation to the trust . . ."); *id.* § 278 ("The validity of a trust of an interest in land is determined by the law that would be applied by the courts of the situs.").

⁸⁷ Unif. Tr. Code § 107(2) (emphasis added) ("[I]n the absence of a controlling designation in the terms of the trust . . ."). *See* Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

⁸⁸ *See supra* text accompanying note 37.

⁸⁹ Unif. Tr. Code § 107(1) (emphasis added). *See* Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

⁹⁰ Restatement (Second) of Conflict of Laws § 270 cmt. e.

⁹¹ *Id.* *See also* Unif. Tr. Code § 106 ("The common law of trusts . . . supplement [the UTC], except to the extent modified by this [Code] or another statute of this State.").

⁹² *See supra* Section IV.B.

⁹³ *See supra* note 89 and accompanying text.

⁹⁴ As might be the case if, for example, contrary to Clients' present expectations (on Interpretation 1), *see supra* Section IV.B, the trustee(s) eventually come to own directly (i.e., without an entity wrapper) land located in Ohio (or some other state that is not Michigan). *See supra* note 39 and accompanying text.

(or the other non-Michigan state in question) regarding that] matter.”⁹⁵ Indeed, such contrariety is unlikely in any case.⁹⁶ But we can’t rule it out entirely, and if it should occur, the matter in issue would be governed by Ohio law (or the law of the other non-Michigan state in question),⁹⁷ which means my restatement’s designation of Michigan to provide governing law is only *presumptively* controlling. But that is not to say that my restatement is in any way *wanting*; for the *T* trust instrument’s designation of Ohio to provide governing law is likewise only presumptively controlling: *any* designation of governing law described in UTC section 107(1) is subject to the section’s “strong public policy” override.⁹⁸

b. A Dismissible Objection

It might occur to someone, however, to question that. UTC section 107 is, after all, part of an articulated system, a “trust code,” made up primarily of rules of construction⁹⁹ or “default” rules¹⁰⁰ that “can be overridden in the terms of the trust.”¹⁰¹ And *in* that system, “[t]he provisions [that are] *not subject to override* are scheduled in Section 105(b),”¹⁰² *which contains no*

⁹⁵ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A). As to the “unlikel[i]hood” of the situation described in the text, see *supra* notes 38–43 and accompanying text.

⁹⁶ The examples of possible strong public policies provided in the *Restatement (Second) of Conflict of Laws* (Restatement of Conflicts) include policies against donative provisions tending to encourage divorce or criminal activity, see Restatement (Second) of Conflict of Laws § 269 cmt. i (Am. L. Inst. 1971), policies against disinheritance of spouses, see *id.* § 270 cmt. e, and policies against certain dispositions to charity in lieu of near relations, see *id.* On the other hand, the Restatement tells us that “[n]o such strong policy is involved in rules against perpetuities or rules against accumulations [of income] or rules as to indefiniteness of beneficiaries.” *Id.* § 269 cmt. i (emphasis added). The latter statement is perhaps no longer credible (assuming it *was* credible when the Restatement of Conflicts was drafted) with regard to a state that currently wants to *enforce* any of the rules mentioned. See, e.g., Stewart E. Sterk, *Rethinking Party Autonomy in Trust Law*, 97 Tul. L. Rev. 1097, 1100–01 (2023); Steven J. Horowitz & Robert H. Sitkoff, *Unconstitutional Perpetual Trusts*, 67 Vand. L. Rev. 1769, 1817–18 (2014). But the many states that have *thrown off* such rules (*since* the Restatement of Conflicts was drafted) have certainly *not* done so because they wish to *discourage* the vesting of transferred future interests, or regular distributions of trust income, or the creation of trusts for the benefit of definite or definitely ascertainable beneficiaries: a state’s *abrogation* of a rule against perpetuities (RAP), accumulations of income, or noncharitable purpose trusts represents a recognition, not of strong public policy, but of the *absence* of such a policy. See James P. Spica, *Power Tools for Choice of Law on Trust Validity*, 59 Real Prop. Tr. & Est. L.J. 179, 214–15 (2024). It is unlikely, therefore, that a “strong public policy” regarding remoteness of vesting, for example, should ever be found to have arisen between two RAP-reforming states like Ohio (see Ohio Rev. Code Ann. § 2131.08 (“wait-and-see” type liberalization)) and Michigan (see Mich. Comp. Laws § 554.93 (general abrogation as to movables held in trusts of specified vintage)).

⁹⁷ See Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2) (Unif. L. Comm’n 2010)) (“The meaning and effect of the terms of a trust are determined . . . [i]n the absence of a controlling designation in the terms of the trust, [by] the law of the jurisdiction having the most significant relationship to the matter at issue.”); see also Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

⁹⁸ And in this respect, UTC section 107(1) is a codification of common law. See, e.g., Restatement (Second) of Conflict of Laws § 270 (“An inter vivos trust of interests in movables is valid if valid . . . under the local law of the state designated by the settlor . . . provided that . . . the application of its law does not violate a strong public policy of the state with which, as to the matter at issue, the trust has its most significant relationship.”).

⁹⁹ In the sense of “devices that *attribute* intention to *individual* donors in particular circumstances on the basis of *common* intention.” Restatement (Third) of Prop.: Wills & Other Donative Transfers § 11.3 cmt. a (Am. L. Inst. 2003).

¹⁰⁰ “The Uniform Trust Code is primarily a default statute.” Unif. Tr. Code art. 1 gen. cmt.

¹⁰¹ *Id.*

¹⁰² *Id.* (emphasis added).

reference or allusion to UTC section 107.¹⁰³ So, why (the hypothesized questioner continues) should we not read a designation that says (as such designations sometimes *do*), “This [restatement] shall be construed and administered, and the validity of each trust hereunder shall be determined, in accordance with the laws of the State of Michigan, *without giving effect to its conflict of laws principles*”¹⁰⁴ as a *waiver* of MTC section 7107(a)’s “strong public policy” override¹⁰⁵ authorized by MTC section 7105(2)?¹⁰⁶

The answer, of course, is that on our questioner’s reading of UTC section 105, that section is self-defeating. Section 105 is evidently meant to distinguish the “default” provisions of the Code,¹⁰⁷ which “can be overridden in the terms of the trust,”¹⁰⁸ from *mandatory* provisions that, thanks to 105, are “*not* subject to override.”¹⁰⁹ But if (as our questioner would have it) section 105 *itself* is a default provision, *there can be no mandatory provision* in the Code; for in that case, it is available to a settlor to waive section 105’s enforcement of any of the provisions cited or alluded to in section 105(b)—*reductio ad absurdum*. And a reading that renders a statutory provision absurd in the sense of being *self-defeating* is decidedly to be shunned,¹¹⁰ even if it means “that words which are in the statute are ignored or words which are not there are read in.”¹¹¹ Hence, UTC section 105(b) is no doubt to be read as if it says, “The terms of a trust prevail over any provision of *Articles 2 through 10* of this [Code] except”¹¹² And that makes UTC section 107(1)’s “strong public policy” override¹¹³ ineradicable.

D. The Upshot on Interpretation 1

But again, that is not a defect of the restatement I prepare for Clients under Interpretation 1: my restatement’s designation of Michigan to provide governing law is every bit as good as the *T* trust instrument’s designation of Ohio for that purpose.¹¹⁴ So, if Clients are prepared to regard the risk that there may be assets titled or directed to the trustee(s) of *T* of which Clients are unaware as negligible,¹¹⁵ then *given* that *T* is a valid, revocable trust under Ohio law, Clients’ willingness to republish their pour-over wills and protectively retitle or

¹⁰³ See Unif. Tr. Code § 105(b). See also Mich. Comp. Laws § 700.7105(2) (being Michigan’s version of Unif. Tr. Code § 105(b)); Ohio Rev. Code Ann. § 5801.04(B) (being Ohio’s version of Unif. Tr. Code § 105(b)).

¹⁰⁴ The language quoted in the text is taken verbatim (though emphasis has been added) from a trust instrument, drafted by an attorney licensed to practice in Michigan, that I reviewed in July of this year.

¹⁰⁵ I.e., the “unless . . .” clause of Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

¹⁰⁶ *Id.* § 700.7105(2) (being Michigan’s version of Unif. Tr. Code § 105(b)) (“The terms of a trust prevail over any provision of this article except . . .”).

¹⁰⁷ See *supra* note 100.

¹⁰⁸ See *supra* note 101.

¹⁰⁹ Unif. Tr. Code art. 1 gen. cmt (emphasis added).

¹¹⁰ “[I]n the construction of a statute, [the court is] to adhere to the ordinary meaning of the words used . . . unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance.” Cross, *supra* note 62, at 16 (quoting *Becke v. Smith* (1836) 2 M&W 191 at 195 (Parke, B.)).

¹¹¹ *Id.*

¹¹² *Cf.* Unif. Tr. Code § 105(b) (“The terms of a trust prevail over any provision of this [Code] except . . .”). See also Mich. Comp. Laws § 700.7105(2); Ohio Rev. Code Ann. § 5801.04(B).

¹¹³ UTC section 107 being found in Article 1 of the UTC. See Unif. Tr. Code § 107. See also Mich. Comp. Laws § 700.7107 (being Unif. Tr. Code § 107).

¹¹⁴ See *supra* text accompanying note 98; see generally *supra* Section V.C.2.a.

¹¹⁵ See *supra* text accompanying note 35.

redirect trust assets they're *aware* of (and the other assumptions that inform Interpretation 1),¹¹⁶ I can prepare a restatement of *T* that will meet Clients' "need" *regardless* of its effect under Ohio law.¹¹⁷ And that means that I can assist Clients without engaging in unauthorized practice of law, without breaching my duty of competence, and without consulting Ohio counsel.¹¹⁸

VI. ANALYSIS OF INTERPRETATION 2

On Interpretation 2, however, the restatement or amendment I prepare for Clients has to be valid as such under Ohio law because Clients reasonably regard the trouble of protectively retitling or redirecting the *T* trust assets as prohibitive (assuming *T* is valid and revocable) and they have reason to expect that an Ohio court could one day be asked to acknowledge or repudiate the terms of *T* as amended.¹¹⁹

A. The Threshold Questions of *T*'s Validity and Revocability

Interpretation 2 also leaves open the questions whether *T* is valid and, if so, revocable¹²⁰ and, therefore, subject to amendment.¹²¹ We know that the *T* trust instrument provides that *T* can "be amended or revoked by the grantor[s]."¹²² The threshold questions, then, are whether that is a provision of a valid trust, and if so, whether it is effective.¹²³

1. Ohio Law Governs the Validity and Revocability of *T*

As a lawyer licensed to practice in Michigan, I am certainly authorized and competent to ask how a Michigan court would answer these questions. And we know that a Michigan court would refer them both (as between Michigan and Ohio at least) to Ohio law; for, again,¹²⁴ (1) the *T* trust instrument explicitly designates Ohio law to govern *T*'s validity and construction¹²⁵ and (2) UTC section 107(1) provides that that designation is controlling "unless [it] is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue."¹²⁶ And again,¹²⁷ it is possible that Michigan is "the jurisdiction having the most significant relationship to the matter[s]"¹²⁸ of the validity and revocability of *T*.¹²⁹ But it is *not*

¹¹⁶ See *supra* Section IV.B.

¹¹⁷ See *supra* Section V.B–C.

¹¹⁸ See *supra* Part III.

¹¹⁹ See *supra* Section IV.C.

¹²⁰ See *supra* text accompanying note 24. Again, Clients cannot restate or amend a trust that is either nonexistent or irrevocable. See *supra* note 23 and accompanying text.

¹²¹ "A power of revocation includes the power to amend." Unif. Tr. Code § 602 cmt. (Unif. L. Comm'n 2010); accord Restatement (Third) of Trusts § 63 cmt. g (Am. L. Inst. 2003).

¹²² See *supra* Part II.

¹²³ At common law, the latter question would be just whether the provision is sufficient to overcome the presumption that—that is, to displace the rule of construction according to which—an express trust is *irrevocable*. See, e.g., Restatement (Second) of Trusts § 330(1) (Am. L. Inst. 1959) ("The settlor has power to revoke the trust if and to the extent that by the terms of the trust he reserved such a power.").

¹²⁴ See *supra* Section V.A.

¹²⁵ See *supra* text accompanying note 12.

¹²⁶ Unif. Tr. Code § 107(1) (Unif. L. Comm'n 2010) (quoted *supra* note 37). See Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)).

¹²⁷ See *supra* Section V.A.

¹²⁸ Mich. Comp. Laws § 700.7107(a).

¹²⁹ To the extent, for example, the trustee(s) of *T*, *qua* trustee(s), own(s) directly (i.e., without an entity wrapper) land located in Michigan. See *supra* note 39.

possible that the *T* trust instrument’s designation of Ohio law is “contrary to a strong public policy of [Michigan regarding those] matter[s]”¹³⁰ because Ohio has enacted the same UTC provisions regarding trust creation¹³¹ and revocability,¹³² as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC.¹³³ And, again, both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹³⁴ Since there can’t be contrariety without difference,¹³⁵ UTC section 107(1)’s “strong public policy” override¹³⁶ is inapplicable, and (as between Michigan and Ohio at least) Ohio law therefore governs the validity and revocability of *T*.¹³⁷

2. Conflict of Laws and the Local Necessity of Legal Cosmopolitanism

Now, I’ve neither engaged in unauthorized practice of law nor breached my duty of competence in reasoning—and in enabling myself, by research, to reason—in this way to the conclusion that *according to Michigan law*, Ohio law governs the validity and revocability of *T*. Like Michigan’s other conflict of laws rules, MTC section 7107(a)¹³⁸ is part of *Michigan’s law*.¹³⁹ And though like other choice-of-law rules, section 7107(a) is *jurisdiction* selecting,¹⁴⁰ its application—especially the determination whether the law of a designated state is “is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue”¹⁴¹—may require a comparison of the content of the local laws of interested states.¹⁴² Thus, conflict of laws rules are liable to provide a *domestically* motivated instance of the general necessity that

a lawyer conducting activities in the lawyer's home state may advise a client about the law of another state, a proceeding in another state, or a transaction there, *including conducting research in the law of the other state, advising the client about the*

¹³⁰ Mich. Comp. Laws § 700.7107(a).

¹³¹ Viz., Ohio Rev. Code Ann. §§ 5801.04(B)(1) (being Unif. Tr. Code § 105(b)(1) (Unif. L. Comm’n 2010)), 5804.01 (including Unif. Tr. Code § 401), 5804.02 (including Unif. Tr. Code § 402), 5806.02(A) (being Ohio’s version of Unif. Tr. Code § 602(a)).

¹³² Viz., *id.* § 5806.02(C) (being Ohio’s version of Unif. Tr. Code § 602(c)).

¹³³ See Mich. Comp. Laws §§ 700.7105(2)(a), .7401, .7402, .7602(1), (3).

¹³⁴ See *supra* note 42.

¹³⁵ See *supra* note 43 and accompanying text.

¹³⁶ I.e., the “unless . . .” clause of Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

¹³⁷ See *id.*

¹³⁸ See *supra* note 136.

¹³⁹ “Conflict of Laws is *that part of the law of each state* which determines what effect is given to the fact that the case may have a significant relationship to more than one state.” Restatement (Second) of Conflict of Laws § 2 (Am. L. Inst. 1971) (emphasis added). See also *id.* §§ 4(2) (“[T]he “law” of a state is that state’s local law, together with its rules of Conflict of Laws.”), 6(1) (“A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.”).

¹⁴⁰ In the sense that the rule points *directly*, not to a rule of decision (on the matter in issue), but to a *state*, “a territorial unit having a distinct general body of law,” Restatement (Second) of Conflict of Laws § 3, *regardless* of the content of any of the rules comprised by that body of law. See, e.g., David F. Cavers, *A Critique of the Choice-of-Law Problem*, 47 Harv. L. Rev. 173 (1933), *reprinted in The Choice of Law: Selected Essays, 1933–1983*, at 3, 9 (1985) (“The conflicts rule indicates in which jurisdiction the appropriate law may be found. . . . Not until its admission for that purpose does the content of that law become material.”).

¹⁴¹ Mich. Comp. Laws § 700.7107(a).

¹⁴² See *supra* Sections V.A, VI.A.1.

application of that law, and drafting legal documents intended to have legal effect there. There is no per se bar against such a lawyer giving a formal opinion based in whole or in part on the law of another jurisdiction, but a lawyer should do so only if the lawyer has adequate familiarity with the relevant law.¹⁴³

And, of course, there are two factors that contribute enormously to my ability to achieve “adequate familiarity,”¹⁴⁴ for my purposes, with Ohio law. One is technology: “Modern communications, including ready electronic connection to much of the law of every state, makes concern about a competent analysis of a distant state’s law unfounded.”¹⁴⁵ The other is that Michigan and Ohio are both UTC states that have legislatively acknowledged “the need to promote uniformity of the law with respect to the [UTC’s] subject matter.”¹⁴⁶

3. The Leverage of Uniformity in Answering the Threshold Questions

The latter factor inevitably leverages the knowledge of the UTC that a lawyer gains from the particular enactment(s) of that Code in the state(s) in which the lawyer is licensed to practice. And this is illustrated by my analysis of our threshold questions about the validity and revocability of *T*;¹⁴⁷ for *en route* to the conclusion that a Michigan court would refer those questions to Ohio law,¹⁴⁸ I’ve learned that at least as to matters as rudimentary as trust creation and revocability, to know the local law of Michigan is to know the local law of Ohio because, again, Ohio has enacted the same UTC provisions regarding trust creation and revocability, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC,¹⁴⁹ and both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹⁵⁰ So, by knowing that *T* would be a valid, revocable trust if Michigan law governed the meaning and effect of *T*’s terms from inception,¹⁵¹ I know that *T* is a valid, revocable trust under the local law of Ohio.

¹⁴³ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (Am. L. Inst. 2000) (emphasis added); *accord ACTEC Commentaries*, *supra* note 8, at 212 (“With the adoption of paragraph (c)(4) of MRPC 5.5, a transactional lawyer, in the circumstances described in that paragraph, may provide . . . legal counsel regarding the laws of a non-admitted jurisdiction.”).

For example, a Chicago lawyer providing estate counseling for Illinois clients is likely to find multiple occasions to analyze and opine on the laws of Wisconsin, Iowa, Indiana, and Michigan regarding titling, tax, and similar issues. In addition, the Chicago lawyer may need to prepare deeds and other documents according to the laws of one or more of these jurisdictions. Provided the Chicago lawyer otherwise complies with paragraph (c), the lawyer’s legal services regarding the surrounding non-admitted jurisdictions would constitute practicing law in those jurisdictions on a “temporary basis.”

Id. at 214.

¹⁴⁴ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e.

¹⁴⁵ *Id.*

¹⁴⁶ Ohio Rev. Code Ann. § 5811.01. *See* Mich. Comp. Laws § 700.1201(d) (“This act [including the MTC] shall be liberally construed and applied to . . . make the law uniform among the various jurisdictions, both within and outside of this state.”).

¹⁴⁷ *See supra* Section VI.A.1.

¹⁴⁸ *See supra* text accompanying note 131.

¹⁴⁹ *See supra* notes 131–33 and accompanying text.

¹⁵⁰ *See supra* note 134 and accompanying text.

¹⁵¹ I.e., without regard to the change of governing law (from Ohio’s to Michigan’s) that is to be effected by the restatement or amendment I prepare. *See supra* text accompanying notes 26–27.

Because Clients' motivation (whatever it is exactly) for giving *T* a Michigan orientation is sufficiently compelling,¹⁵² my deployment on Clients' behalf, of my knowledge of the local law of Ohio concerning trust creation and revocability (which I've obtained in determining that according to Michigan law, Ohio law governs those matters with respect to *T*) no doubt "arise[s] out of or [is] reasonably related to [my] practice in [Michigan]"¹⁵³ within the meaning of MRPC rule 5.5's permissive authorization for me to "provide legal services on a temporary basis in [Ohio]."¹⁵⁴ And that makes sense; for my using my knowledge in this way "do[es] not create an unreasonable risk to the interests of [my] clients, the public or the courts,"¹⁵⁵ and an "ethical" prohibition on my doing so (if there *were* one) "could seriously inconvenience [C]lients [if] [r]etaining [Ohio] counsel [should] cause . . . delay and expense and . . . require [C]lient[s] to deal with unfamiliar counsel."¹⁵⁶ So, I can, without engaging in unauthorized practice of law or breaching my duty of competence, advise Clients not only that a Michigan court would find that (as between Michigan and Ohio at least) the validity and revocability of *T* are questions of Ohio law¹⁵⁷ but that an Ohio court would find the same¹⁵⁸ and that *T* is a valid, *revocable* trust under Ohio law.¹⁵⁹

B. The Validity of the Restatement or Amendment I Prepare

A straightforward adaptation of the analysis of the preceding Section will likewise yield that I can, without engaging in unauthorized practice of law or breaching my duty of competence, advise Clients not only that a Michigan court would find that (as between Michigan and Ohio at least) the validity of the restatement or amendment of *T* that I prepare is a question of Ohio law, that an Ohio court would find the same, and that the restatement or amendment I prepare will be, as is needful,¹⁶⁰ valid as such under Ohio law as well as the law of Michigan.

1. Ohio Law Governs

As a lawyer licensed to practice in Michigan, I am certainly authorized and competent to ask how a Michigan court would answer the question whether the restatement or amendment of *T* that I prepare for Clients is valid as such. And we know that (as between Michigan and Ohio at least) a Michigan court would refer that question to Ohio law because, again,¹⁶¹ (1) the *T* trust instrument explicitly designates Ohio law to govern *T*'s validity and construction¹⁶² and

¹⁵² See *supra* note 32 and accompanying text.

¹⁵³ Model Rules of Pro. Conduct r. 5.5(c)(4) (Am. Bar Ass'n 2005).

¹⁵⁴ *Id.* r. 5.5(c).

¹⁵⁵ *Id.* r. 5.5 cmt. 5. See also *ACTEC Commentaries*, *supra* note 8, at 217 (indicating that avoidance of these risks is "fundamental[]" to MRPC rule 5.5's regulation of multijurisdictional practice); Restatement (Third) of the L. Governing Lawyers § 3 cmt. b (Am. L. Inst. 2000) (indicating that "the need to provide effective and efficient legal services to persons . . . with interstate legal concerns" moderates regulation of multistate practice by lawyers).

¹⁵⁶ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e.

¹⁵⁷ See *supra* Section VI.A.1.

¹⁵⁸ Because Ohio, like Michigan, has enacted UTC section 107(1) as part of its general enactment of the UTC. See *supra* Sections V.A, VI.A.1.

¹⁵⁹ See *supra* notes 147–51 and accompanying text.

¹⁶⁰ See *supra* note 119 and accompanying text.

¹⁶¹ See *supra* Sections V.A, VI.A.1.

¹⁶² See *supra* text accompanying note 12.

(2) under UTC section 107(1), that designation is presumptively controlling.¹⁶³ It is possible that Michigan is “the jurisdiction having the most significant relationship to the matter”¹⁶⁴ of the validity of the restatement or amendment.¹⁶⁵ But it is *not* possible that the *T* trust instrument’s designation of Ohio law is “contrary to a strong public policy of [Michigan regarding that] matter”¹⁶⁶ because Ohio has enacted the same UTC provision regarding amendment of revocable trusts, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC.¹⁶⁷ And both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹⁶⁸ Since there can’t be contrariety without difference,¹⁶⁹ UTC section 107(1)’s “strong public policy” override¹⁷⁰ is inapplicable in this case, and (as between Michigan and Ohio at least) Ohio law therefore governs the validity of the restatement or amendment I prepare for Clients.¹⁷¹

2. The Leverage of Uniformity Again

But *en route* to that conclusion, I’ve learned that as to the “method”¹⁷² by which “[t]he settlor may . . . amend a revocable trust,”¹⁷³ to know the local law of Michigan is to know the local law of Ohio because, again, Ohio has enacted the same UTC provisions regarding amendment of revocable trusts, as part of its general enactment of the UTC, that Michigan has enacted as part of *its* general enactment of the UTC,¹⁷⁴ and both states have enacted similar exhortations (of their respective judiciatures) to multistate uniformity of interpretation.¹⁷⁵ So, by knowing that I can prepare a restatement or amendment of *T* that would be valid as such if Michigan law governed the meaning and effect of *T*’s terms from inception,¹⁷⁶ I know that I can prepare a restatement or amendment of *T* that will be valid as such under the local law of Ohio.

Because Clients’ motivation (whatever it is exactly) for giving *T* a Michigan orientation is sufficiently compelling,¹⁷⁷ my deployment on Clients’ behalf, of my knowledge of the local law of Ohio concerning amendment of revocable trusts (which I have obtained in determining that according to Michigan law, Ohio law governs that matter with respect to *T*) no doubt

¹⁶³ See Unif. Tr. Code § 107(1) (Unif. L. Comm’n 2010) (quoted *supra* text accompanying note 37); Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁶⁴ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

¹⁶⁵ To the extent, for example, the trustee(s) of *T*, *qua* trustee(s), own(s) directly (i.e., without an entity wrapper) land located in Michigan. See *supra* note 39.

¹⁶⁶ Mich. Comp. Laws § 700.7107(a); Ohio Rev. Code Ann. § 5801.06(A).

¹⁶⁷ See Ohio Rev. Code Ann. § 5806.02(C) (quoted *supra* text accompanying note 41) (being Ohio’s version of Unif. Tr. Code § 602(c)); Mich. Comp. Laws § 700.7602(3) (quoted *supra* note 41) (being Michigan’s version of Unif. Tr. Code § 602(c)).

¹⁶⁸ See *supra* note 42.

¹⁶⁹ See *supra* note 43 and accompanying text.

¹⁷⁰ I.e., the “unless . . .” clause of Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1), quoted *supra* text accompanying note 37).

¹⁷¹ See *id.*

¹⁷² Ohio Rev. Code Ann. § 5806.02(C) (quoted *supra* text accompanying note 41) (being Ohio’s version of Unif. Tr. Code § 602(c)).

¹⁷³ *Id.*

¹⁷⁴ See *supra* notes 166–67 and accompanying text.

¹⁷⁵ See *supra* note 168 and accompanying text.

¹⁷⁶ See *supra* note 151.

¹⁷⁷ See *supra* note 152 and accompanying text.

“arise[s] out of or [is] reasonably related to [my] practice in [Michigan]”¹⁷⁸ within the meaning of MRPC rule 5.5’s permissive authorization for me to “provide legal services on a temporary basis in [Ohio].”¹⁷⁹ That makes sense because my using my knowledge in this way does not threaten the interests of clients, the public, or the courts that MRPC rule 5.5 aims to protect¹⁸⁰ and an “ethical” prohibition on my doing so (if there *were* one) would therefore expose clients to an unnecessary risk of serious inconvenience.¹⁸¹ So, I can, without engaging in unauthorized practice of law or breaching my duty of competence, advise Clients not only that a Michigan court would find that (as between Michigan and Ohio at least) the validity of the restatement or amendment that I prepare is a question of Ohio law¹⁸² but that an Ohio court would find the same¹⁸³ and that the restatement or amendment of *T* that I prepare is valid as such under Ohio law as well as the law of Michigan.¹⁸⁴

C. Change to Michigan for Governing Law

1. Administration

We’ve already seen that under UTC section 108(a),¹⁸⁵ the designation (in the restatement or amendment I prepare for Clients) of Michigan (or a *place* in Michigan) as *T*’s principal place of administration will determine judicial jurisdiction and that the local law of Michigan governs *T*’s administration if either (1) a trustee of *T* has a principal place of business or residence in Michigan or (2) all or part of the administration of *T* occurs in Michigan.¹⁸⁶ We have not assumed in Interpretation 2 that Clients are trustees of *T*.¹⁸⁷ If they aren’t, “a sufficient connection”¹⁸⁸ will have otherwise to be established.

2. Validity and Construction

As we’ve also seen, there are neither too many contacts with Ohio nor too few with Michigan for the restatement or amendment I prepare to *designate* Michigan to provide law governing validity and construction.¹⁸⁹ Whether that designation will be “controlling”¹⁹⁰ in a given situation, depends ineradicably on the matter at issue¹⁹¹: it is possible that Ohio (or some other state that is not Michigan) will be “the jurisdiction having the most significant relationship

¹⁷⁸ Model Rules of Pro. Conduct r. 5.5(c)(4) (Am. Bar Ass’n 2005).

¹⁷⁹ *Id.* r. 5.5(c).

¹⁸⁰ See *supra* note 155 and accompanying text.

¹⁸¹ See *supra* note 156 and accompanying text.

¹⁸² See *supra* Section VI.B.1.

¹⁸³ Because Ohio, like Michigan, has enacted UTC section 602(c) as part of its general enactment of the UTC. See *supra* notes 166–67 and accompanying text.

¹⁸⁴ See *supra* notes 172–76 and accompanying text.

¹⁸⁵ See *supra* Section V.C.1.

¹⁸⁶ See Ohio Rev. Code Ann. § 5801.07(A) (being Unif. Tr. Code § 108(a) (Unif. L. Comm’n 2010), quoted *supra* note 79).

¹⁸⁷ See *supra* note 28 and accompanying text. Cf. *supra* Section IV.B.

¹⁸⁸ Ohio Rev. Code Ann. § 5801.07(A) (being Unif. Tr. Code § 108(a), quoted *supra* note 78).

¹⁸⁹ See *supra* notes 82–86 and accompanying text.

¹⁹⁰ Unif. Tr. Code § 107(2) (emphasis added) (“[I]n the absence of a controlling designation in the terms of the trust . . .”). See Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹¹ See *supra* Sections V.C.1–2.

to [some] matter”¹⁹² that comes up under the terms of the restated or amended trust,¹⁹³ and in that case, the law of Ohio (or of the other non-Michigan state in question) will govern the matter at issue.¹⁹⁴ But that is not a defect of the restatement or amendment that I prepare under Interpretation 2; for *any* designation of governing law described in UTC section 107(1)¹⁹⁵ is subject to the section’s “strong public policy” override,¹⁹⁶ and my restatement or amendment’s designation of Michigan to provide governing law is therefore every bit as good as the original *T* trust instrument’s designation of Ohio for that purpose.¹⁹⁷

VII. CONCLUSION

What matters most on both of our alternative Interpretations is the confluence of Clients’ having a good reason to seek the advice of someone knowledgeable about the law of Michigan in particular¹⁹⁸ and a UTC choice-of-law rule. On Interpretation 1, the independence of the place-of-execution reference in MTC section 7403¹⁹⁹ allows me to prepare a restatement of *T* that will meet Clients’ “need” *regardless* of the restatement’s effect under Ohio law²⁰⁰ and, thereby, makes Ohio law (and the possibility of consulting Ohio counsel) practically irrelevant.²⁰¹ Interpretation 2 requires that the restatement or amendment that I prepare be valid as such under Ohio law, but the process of *deducing* that requirement *under MTC section 7107(a)*²⁰² (that is, from the point of view of a *Michigan* court), and of testing that section’s “strong public policy” override²⁰³ in particular, exemplifies the *domestic* necessity that “a lawyer conducting activities *in the lawyer’s home state*”²⁰⁴ can, without engaging in unauthorized practice of law, “advise a client about the law of another state . . . , including conducting research in the law of the other state, advising the client about the application of that law, and drafting legal documents intended to have legal effect there.”²⁰⁵ For as *both* of our Interpretations demonstrate, it may be that the “lawyer’s home state[’s]”²⁰⁶ conflict of laws rules²⁰⁷ require nothing less.²⁰⁸

¹⁹² Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹³ As might be the case to the extent, for example, the trustee(s) come to own directly (i.e., without an entity wrapper) land located in Ohio (or some other state that is not Michigan). *See supra* note 39 and accompanying text.

¹⁹⁴ *See* Mich. Comp. Laws § 700.7107(b) (being Unif. Tr. Code § 107(2)) (“The meaning and effect of the terms of a trust are determined . . . [i]n the absence of a controlling designation in the terms of the trust, [by] the law of the jurisdiction having the most significant relationship to the matter at issue.”). *See also* Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹⁵ Unif. Tr. Code § 107(1) (quoted *supra* text accompanying note 37). *See also* Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1)); Ohio Rev. Code Ann. § 5801.06(A) (being Unif. Tr. Code § 107).

¹⁹⁶ *See supra* note 98 and accompanying text.

¹⁹⁷ *See supra* Section V.D.

¹⁹⁸ *See supra* note 32 and accompanying text.

¹⁹⁹ Mich. Comp. Laws § 700.7403 (quoted *supra* note 29) (being Unif. Tr. Code § 403).

²⁰⁰ *See supra* Sections V.B–D.

²⁰¹ *See supra* Part V.

²⁰² Mich. Comp. Laws § 700.7107(a) (discussed *supra* Sections VI.A.1, B.1) (being Unif. Tr. Code § 107(1)).

²⁰³ *See supra* note 170 and accompanying text.

²⁰⁴ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (Am. L. Inst. 2000) (emphasis added) (quoted *supra* text accompanying note 137). *See supra* Section VI.A.2.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ In my case, Mich. Comp. Laws § 700.7107(a) (being Unif. Tr. Code § 107(1) (Unif. L. Comm’n 2010)). *See supra* Sections V.A, VI.A.1, B.1.

²⁰⁸ *See supra* note 142 and accompanying text.

To that extent, the ethical risk of the lawyer’s “advis[ing] a client about the law of another state . . . , including conducting research in the law of the other state . . . ”²⁰⁹ is not unauthorized practice of law but breach of the duty of competence²¹⁰—the risk that “the lawyer [may not have] adequate familiarity with the relevant law.”²¹¹ That risk is generally mitigated by technology—“including ready electronic connection to much of the law of every state.”²¹² But in this case, it is also mitigated by Michigan and Ohio’s both being UTC states that have enacted standard UTC provisions on the matters at issue and legislatively acknowledged “the need to promote uniformity of the law with respect to [those] matter[s].”²¹³ That congruity fairly *translates* my knowledge of Michigan law on the matters at issue into knowledge of the same departments of Ohio law. Indeed, the knowledge of Ohio law that I obtain on Interpretation 2, just *en route* to the conclusion that *under MTC section 7107(a)*, a Michigan court would find (as between Michigan and Ohio at least) the revocability of *T* and the validity of the restatement or amendment that I prepare to be questions of *Ohio law*²¹⁴ is sufficient for me to advise Clients that an Ohio court would find the same²¹⁵ and that the restatement or amendment I prepare, including its designation of Michigan to provide governing law, will be valid in Ohio as well as Michigan.²¹⁶ Happily for Clients, I have no “ethical” obligation to affect to disown such knowledge.²¹⁷

JPS

²⁰⁹ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (Am. L. Inst. 2000) (quoted *supra* text accompanying notes 137, 204).

²¹⁰ Within the meaning of MRPC rule 1.1. *See supra* note 4.

²¹¹ Restatement (Third) of the L. Governing Lawyers § 3 cmt. e (quoted *supra* text accompanying note 137).

²¹² *Id.* (quoted *supra* text accompanying note 139).

²¹³ Ohio Rev. Code Ann. § 5811.01. *See* Mich. Comp. Laws § 700.1201(d) (“This act [including the MTC] shall be liberally construed and applied to . . . make the law uniform among the various jurisdictions, both within and outside of this state.”).

²¹⁴ *See supra* Sections VI.A.1, B.1.

²¹⁵ Because Ohio, like Michigan, has enacted UTC section 107(1) as part of its general enactment of the UTC. *See supra* Section VI.A.1, B.1.

²¹⁶ *See supra* Sections VI.B.2., C.

²¹⁷ *See supra* notes 156, 181 and accompanying text.

ATTACHMENT 5

M E M O R A N D U M

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan
From: James P. Spica
Re: Uniform Law Commission Liaison Report
Date: September 2, 2025

The attached memorandum accompanied the (work-in-progress) draft Uniform Transfers to Minors Act as presented at the ULC's 2025 Annual Meeting in July, in Santa Fe.

JPS

Uniform Transfers To Minors Act
Santa Fe, July 2025
Reading Memorandum for the Floor

Turney Berry, Chair
Thad Balkman, Vice-Chair
Emily Taylor Poppe, Reporter

The Uniform Transfers to Minors Act has been a very successful effort by the Conference. Its popularity with trusts and estates professionals, financial advisors, and the population generally, has resulted in 52 enactments since it was approved by the Conference in 1983. The UTMA actually replaced the Uniform Gifts to Minors Act from 1966. Quite obviously, we do not want to make a mess of an Act with 52 enactments! However, despite the wise and judicious work of the 1983 drafting committee and the Conference as a whole, some provisions of the existing Act should be modernized, which is the charge of our committee. This Memo lists provisions noted by the Study Committee for our Drafting Committee to look at, and describes the Committee's progress so far.

Overview

The essence of the Transfers to Minors Act is to allow assets to be held by a custodian for the benefit of a minor until the minor reaches an appropriate age. Legal title is vested in the minor during the custodianship, making this different from a trust arrangement where legal title is held by a trustee for the benefit of a minor. Traditionally, the custodianship arrangement for the benefit of the minor ended when the minor reached the age of majority. The Act is generally aimed at situations involving limited assets where the creation of a trust is not warranted or necessary; for this reason, the Drafting Committee has continued to prioritize accessibility in its revisions. For example, while the custodian holds the property, the standards for investment and distribution are consistent with the standards for trustees in administering trusts. This standard allows custodians to consider the value of the custodial assets. In practice, the standard will often be simpler, we hope, because most custodians are neither professional fiduciaries nor will the value of the account support retention of regular legal counsel. See Section 12.

Suggestions from the Study Committee

- Raising the termination age. Several states now extend the default age for termination or provide custodians with discretion to extend custodianships until the beneficiary reaches age 25 or even 30. The revision could generate language that would allow extensions in certain circumstances while allowing for challenges. In Section 20 we have allowed assets to be given to a custodian to be held past the age of majority, until age 25, although the age at which the custodianship terminates may be younger if desired. This change is in response to the actions of some states and to requests across the country. **Done**

- Revising appointment process for successor custodians. Some states have clarified or altered the process through which successor custodians may be appointed. A revision could update the terms regarding appointment of successor custodians. Extending the termination age increases the need for potential successors. **Done**
- Clarifying UTMA use for support obligations. The most frequent source of litigation involving UTMA accounts is the violation of prohibitions on the use of UTMA funds to satisfy a legal guardian's support obligation. A revision could provide additional guidance or clarification on permissible uses of UTMA funds. **Done**
- Permitting distributions to qualified minor's trusts and 529 (and 529A ABLE) accounts. The UTMA does not explicitly permit transfers to qualified minor's trusts or 529 and 529A ABLE accounts, but some states provide this flexibility. A revision could grant UTMA custodians the authority to make such transfers. **Done**
- Increase thresholds for court oversight. Intended to provide an alternative to conservatorships or guardianships for modest amounts, the UTMA avoids court oversight below certain threshold amounts. A revision could increase those amounts, preserving or expanding the role of UTMA as an alternative to court-administered arrangements. **We've tried.**
- Specifically Referencing Certain Property Interests. The Joint Editorial Board for Uniform Family Law is studying how to secure funds earned by minors who are "kidfluencers." The UTMA would be a natural way to deal with those assets (but perhaps with certain differences: for instance, would a parent be the appropriate custodian in many circumstances). The UTMA is designed to deal with "all" forms of property, but the Study Committee has been advised of reluctance to use it in some instances due to the existing (40 year old) language. **This is on the Year Two list, as other ULC efforts progress.**
- Allowing joint custodians. The UTMA allows only one custodian per account, but a few states permit joint custodianships. A revision could expand this practice. **This proved difficult and we have chosen NOT to do it. Of course, the Conference could redirect us.**

Outstanding Issues

This draft does not describe, enable, or limit who may be custodians. It discusses how, but not who. That is true of the 1983 Act as well. Presumably a minor may not serve, but what about someone who is incarcerated, or under disability? The failure to describe who may serve does not seem to have created any controversy in the last 40 years so perhaps we should continue the tradition although doing so seems strange. This issue arises in Section 2 and in many other places.

The 1983 Act set forth specific procedures for subjecting certain kinds of assets to the UTMA – securities like this, real estate like that. The consequence has been occasional uncertainty as new kinds of assets have become common. We have made the mechanism more general, as you will see in Section 9. However, we acknowledge a gap: we have not buttoned up

how we make sure the state requirements relating to various property interests are followed. To illustrate, a transferor may transfer a piece of real estate to a custodian for the benefit of a minor by a deed, but our intent is that the deed be recorded as required by applicable state law. Ditto transferring a car, an O’Keefe, bitcoin, and Apple stock.

Finally, in Section 1 we have not modified the definitions to encompass electronic documents yet. We will, we promise. We have deliberately waited to see how other provisions fall out.

One Final Matter

In an effort to secure “easy” enactments, the Committee has tried to change only what needs to be changed from the 1983 Act. There are at least two negative consequences to that effort. One, the current draft is not arranged in a way that the current drafting committee finds the most logical, and thus if we were starting from scratch we would rearrange it. Two, many provisions to which we have no substantive changes to make are nonetheless not phrased in our current ULC style. After the 2025 Annual Meeting the drafting committee will review to changes overall and decide whether to continue with the “change only what should be changed” approach, or to move to a “produce a new act” approach, accepting wise counsel from the Style Committee as well. The comments from the Floor will be very helpful to us, as will your comments to any member of the committee. Thank you.