

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

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Amicus Brief for In re Cliffman Estate, COA Case #321174

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The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,762.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 12. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

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Regarding:

In re Cliffman Estate, COA Case #321174

Date position was adopted:

June 7, 2014

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

12 Voted for position
0 Voted against position
0 Abstained from vote
11 Did not vote (absent)

Position:

See attached letter

It is the Council's opinion that the holding in *In re Combs*, 257 Mich App 622; 669 NW2d 313 (2003); cert den 469 Mich 1021; 678 NW2d 440(2004), was too restrictive a reading of the Wrongful Death Act, MCL 600.2922, relative to the treatment of step-children. The Council supports a complete appellate review of the issue and the overruling of the ruling in the *Combs* case.

PROBATE AND ESTATE PLANNING SECTION

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March 6, 2015

Michigan Court of Appeals
P.O. Box 30022
Lansing, MI 48909-7522

Re: **Elmer Carter, Philip Carter, David Carter and Doug Carter vs. Betty Woodwyk and Virginia Wilson, Court of Appeals No. 321174**

Letter in Support of Appellants' Requested Relief

Dear Sir/Madam:

This letter is being sent on behalf of the Probate and Estate Planning Section of the Michigan State Bar (the "Section"). The Section supports the Appellants' requested relief in the above-captioned case. Specifically, the Section believes a special panel of the Court of Appeals should be convened to reconsider the interpretation of Michigan's wrongful death statute set forth in In re Combs, 257 Mich App 622 (2003).

The wrongful death statute, MCL § 600.2922, governs the person or persons entitled to file a claim for a portion of the proceeds resulting from a wrongful death action. The pertinent part of the statute provides:

(3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805 the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:

...

(b) The children of the deceased's spouse.

MCL § 600.2922(3)(b). Thus, according to MCL § 600.2922(3)(b), "[t]he children of the deceased's spouse" are permitted to file such a claim. Although the wrongful death statute never defines "children of the deceased's spouse," in common parlance this phrase is equivalent to "step-children."

In In re Combs the court held that since Arlie Combs passed away six years before the decedent -- his wife Ellen Combs -- Arlie was not Ellen's "spouse" at the time of Ellen's death. Consequently, at the time of Ellen's death, Arlie was not "the deceased's spouse" within the meaning of MCL § 600.2922(3)(b). Therefore, Arlie's children -- Ellen's stepchildren -- were not entitled to file a claim in Ellen's wrongful death action. The In re Combs decision thus created two classes of step-children: those whose biological parent survived the step-parent, and those whose biological parent predeceased the step-parent. The former would be entitled to file a claim under MCL § 600.2922 and the latter would be barred.

The In re Combs' court's interpretation of MCL § 600.2922 directly contradicts the definition of "stepchild" in the Estates and Protected Individuals Code ("EPIC") -- Michigan's probate code. Under EPIC, "stepchild" is defined as follows:

"Stepchild" means a child of the surviving, **deceased**, or former spouse of the testator or of the donor of a power of appointment, who is not the testator's or donor's child.

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MCL § 700.2601(e) (emphasis added). In addition:

“Stepchild” means a child of the decedent's surviving, **deceased**, or former spouse and not of the decedent.

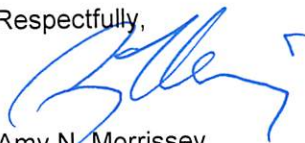
MCL § 700.2708(e) (emphasis added). The plain language of these statutory sections is quite clear: under Michigan probate law – as codified by EPIC – all step-children are treated equally. A stepchild does not cease to be a stepchild of a decedent simply because the stepchild's biological parent dies before the decedent. Rather, a stepchild remains a stepchild regardless of whether his or her biological parent survives the decedent.

Although the phrase “[t]he children of the deceased's spouse” in MCL § 600.2922(3)(b) is clearly a reference to step-children, it is nevertheless ambiguous. Because the phrase is not defined, it is open to two interpretations: that set forth by the *In re Combs* court on the one hand, and that set forth by the Michigan Legislature in EPIC on the other. The Appellants' Brief extensively discusses this ambiguity and presents persuasive evidence that, when passing the wrongful death statute, the Michigan Legislature intended that all step-children be treated equally and be entitled to file a claim – regardless of whether their biological parent was still living.

In today's society, second marriages have become commonplace and “blended” families seem to be the rule rather than the exception. The outcome of this case thus has far-reaching effects for a great deal of Michigan families. For this reason and the reasons set forth in the paragraphs above, the Section supports the Appellant's requested relief. The Section requests that the Court of Appeals make a specific finding under MCR 7.215(J)(2) that, but for the *In re Combs* holding, the Court would have held that MCL § 600.2922 is ambiguous and that the Michigan Legislature intended “the children of a deceased's spouse” to include all step-children. The Section believes that this particular question is outcome determinative and warrants convening a special panel under MCR 7.215(J)(3) to consider whether the *In re Combs* decision should be reversed.

Thank you for your consideration.

Respectfully,



Amy N. Morrissey
Chair