PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

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

Saturday, January 20, 2018
9:00 am
University Club
3435 Forest Road
Lansing, Michigan 48910
Probate and Estate Planning Section of the
State Bar of Michigan

Notice of Meetings

Meeting of the Section’s Committee on Special Projects (CSP) And
Meeting of the Council of the Probate and Estate Planning Section

January 20, 2018
9:00 a.m.
University Club
3435 Forest Road
Lansing, Michigan 48910

The meeting of the Section’s **Committee on Special Projects (CSP)** meeting will begin at 9:00 am and will end at approximately 10:15 am. The meeting of the **Council of the Probate and Estate Planning Section** will begin at approximately 10:30 am. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

David P. Lucas, Secretary

Vandervoort, Christ & Fisher, PC
70 Michigan Ave. West, Suite 450
Battle Creek, Michigan 49017
voice: (269) 965-7000
fax: (269) 965-0646
e-mail: dluca@vcflaw.com

Meeting Schedule for 2017-2018

January 20, 2018
February 17, 2018
March 24, 2018
April 21, 2018
June 16, 2018
September 8, 2018 (Annual Section Meeting)
CALL FOR MATERIALS

Council Meetings of the Probate and Estate Planning Section

Due dates for Materials for Committee on Special Projects

All materials are due on or before 5:00 p.m. of the Thursday falling 9 days before the next CSP meeting. CSP materials are to be sent to Geoffrey Vernon, Chair of CSP (gvernon@joslynvernon.com).

Schedule of due dates for CSP materials, by 5:00 p.m.:

February 8, 2018
March 15, 2018
April 12, 2018
June 7, 2018
August 30, 2018 (for September meeting)

Due dates for Materials for Council Meeting

All materials are due on or before 5:00 p.m. of the Friday falling 8 days before the next Council meeting. Council materials are to be sent to David Lucas, Secretary (dlucas@vcflaw.com).

Schedule of due dates for Council materials, by 5:00 p.m.:

February 9, 2018
March 16, 2018
April 13, 2018
June 8, 2018
August 31, 2018
### Officers of the Council for 2017-2018 Term

<table>
<thead>
<tr>
<th>Office</th>
<th>Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Marlaine C. Teahan</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>Marguerite Munson Lentz</td>
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<tr>
<td>Vice Chairperson</td>
<td>Christopher A. Ballard</td>
</tr>
<tr>
<td>Secretary</td>
<td>David P. Lucas</td>
</tr>
<tr>
<td>Treasurer</td>
<td>David L.J.M. Skidmore</td>
</tr>
</tbody>
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### Council Members for 2017-2018 Term

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<th>Council Member</th>
<th>Year Elected to Current Term (partial, first or second full term)</th>
<th>Current Term Expires</th>
<th>Eligible after Current Term?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caldwell, Christopher J.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2015 (2nd term)</td>
<td>2018</td>
<td>No</td>
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<tr>
<td>Goetsch, Kathleen M.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
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<tr>
<td>Lynwood, Katie</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
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<tr>
<td>Mysliwiec, Melisa M.W.</td>
<td>2016 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
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<tr>
<td>Hentkowski, Angela M.</td>
<td>2017 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Labe, Robert C.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Mills, Richard C.</td>
<td>2016 (1st full term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>New, Lorraine F.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
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<tr>
<td>Piwowarski, Nathan R.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Hasan, Nazneen H.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Vernon, Geoffrey R.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
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<tr>
<td>Jaconette, Hon Michael L.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
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<td>Kellogg, Mark E.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
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<td>Lichterman, Michael G.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
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<td>Malviya, Raj A.</td>
<td>2017 (2nd term)</td>
<td>2020</td>
<td>No</td>
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<td>Olson, Kurt A.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
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<tr>
<td>Savage, Christine M.</td>
<td>2017 (1st term)</td>
<td>2020</td>
<td>Yes (1 term)</td>
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</table>
Ex Officio Members of the Council

John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Stephen W. Jones; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack
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<td>- HB 4821 and HB 4822 (public administrators)</td>
<td>-Streamline agenda of Council meeting</td>
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<td>-SB Journal Probate &amp; Estate Planning Section focused edition (Nov. 18) - Amicus briefs in Brody, Mardigian, - Promotion of &quot;Who Should I Trust?&quot; Program* (Oct /17) - 58th Annual P&amp;EP Institute (May/June 2018) - Committee use of SBM Connect - Listserv upgrade to SBM Connect</td>
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<td>- Assisted Reproductive Technology</td>
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<td>- Property Tax Uncapping Exemptions SB 540</td>
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<td>- Michigan Community Property Trust Act</td>
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<td>- Tenants by Entirety Property in Trust bill</td>
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<td>- Certificates of Trust legislation</td>
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<td>-Directed and Divided Trusts</td>
<td>-e-filing in courts -SCAO Meetings* -New forms based on EPIC/MTC updates legislation</td>
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<td>- Communications with members* - Social events for Section members - Liaise with local bar associations - Social media &amp; website* - Brochures* - Annual Institute/ICLE seminars*</td>
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<td>- EPIC/MTC Updates (with COLA)</td>
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<td>- MTC Notice Fix</td>
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<td>- Review Ch. 5 of MCR for potential updates (incl. attorney representation, but not fiduciary exception)</td>
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<td>- Opportunities with ICLE</td>
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-HB 4589 / SB 345?– financial exploitation; 65 y.o. vulnerable adults in financial transactions
-HB 5037 implanting tracking device in wards
-SB 49 compensation for professional guardian
-??Dignified Death (Family Consent) Act
-HB 4905PRE after death & nursing home
-Passed in the 2015-16 Legislative Session but we want to review/suggest changes:
  -Probate court jurisdiction over G/C proceedings (SB 270 (PA 498 of 2016) which added Sections 5301b & 5402a to EPIC.
-??Update to uniform voidable transactions act (SB 982 (PA 552 of 2016) which amended secs. 1-3 of MCL 566.31 and adds secs. 14-15.
-Did not pass in the 2015-16 Session and will need to be reintroduced:
  • ILIT trustee exoneration bill (SB 1010)
-Pending/working with Bankers:
  • Tenants by Entirety Property bill

*ongoing
CSP Materials
The entire duration of the Committee on Special Projects meeting will be utilized to dis-,
cuss the Legislation Development and Drafting Committee’s proposed omnibus EPIC,
legislation. We intend to obtain a vote to recommend to the Probate & Estate Planning
Council that a public policy position be taken in support of the proposed legislation and
that the chair of the Legislation Development & Drafting Committee be authorized to
make nonsubstantive changes to such legislation during the legislative process.

The text of the proposed omnibus legislation follows this agenda.
Legislative Development and Drafting Committee
EPIC Omnibus Update – Presented at Council Committee on Special Projects, 1/20/18
This document was last edited 1/11/18 (changes from prior CSP are highlighted)

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MCL 700.1106 Definitions; M to P

(1) As used in this act:

(a) “Mental health professional” means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

(i) A physician who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) A psychologist licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A registered professional nurse licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iv) A licensed master’s social worker licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(v) A physician’s assistant licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vi) A licensed professional counselor licensed under part 181 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.

(b) “Michigan prudent investor rule” means the fiduciary investment and management rule prescribed by part 5 of this article.

(c) “Minor” means an individual who is less than 18 years of age.

(d) “Minor ward” means a minor for whom a guardian is appointed solely because of minority.

(e) “Money” means legal tender or a note, draft, certificate of deposit, stock, bond, check, or credit card.
“Mortgage” means a conveyance, agreement, or arrangement in which property is encumbered or used as security.

“Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of his or her death.

“Organization” means a corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; governmental subdivision, agency, or instrumentality; public corporation; or another legal or commercial entity.

“Parent” includes, but is not limited to, an individual entitled to take, or who would be entitled to take, as a parent under this act by intestate succession from a child who dies without a will and whose relationship is in question. Parent does not include an individual who is only a stepparent, foster parent, or grandparent.

“Partial guardian” means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

“Patient advocate” means an individual designated to exercise powers concerning another individual’s care, custody, and medical or mental health treatment or authorized to make an anatomical gift on behalf of another individual, or both, as provided in section 5506.

“Patient advocate designation” means the written document executed and with the effect as described in sections 5506 to 5515.

“Payor” means a trustee, insurer, business entity, employer, government, governmental subdivision or agency, or other person authorized or obligated by law or a governing instrument to make payments.

“Person” means an individual or an organization.

“Personal representative” includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person, other than a trustee of a trust subject to article VII, who performs substantially the same function under the law governing that person’s status.
EPIC Omnibus Update, 1/20/18 version

(p) “Petition” means a written request to the court for an order after notice.

(q) “Plenary guardian” means that term as defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(r) “Power of appointment” means that term as defined in section 2 of the powers of appointment act, 1967 PA 224, MCL 556.111 to 556.133.5.1

(s) “Proceeding” includes an application and a petition, and may be an action at law or a suit in equity. A proceeding may be denominated a civil action under court rules.

(t) “Professional conservator” means a person that provides conservatorship services for a fee. Professional conservator does not include a person who is an individual who is related to all but 2 of the protected individuals for whom he or she is appointed as conservator.

(u) “Professional guardian” means a person that provides guardianship services for a fee. Professional guardian does not include a person who is an individual who is related to all but 2 of the wards for whom he or she is appointed as guardian.

(v) “Property” means anything that may be the subject of ownership, and includes both real and personal property or an interest in real or personal property.

(w) “Protected individual” means a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in part 4 of article V.

(x) “Protective proceeding” means a proceeding under the provisions of part 4 of article V.

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1 This is a tie-in with Council’s earlier-adopted clarifications concerning powers of appointment in section 7302. This is a clarification, rather than new law.
MCL 700.1210  Cost-of-living adjustment

(1) The specific dollar amounts stated in sections 2102, 2402, 2404, 2405, and 3983 apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts shall be multiplied by the cost-of-living adjustment factor for the calendar year in which the decedent dies.

(2) The specific dollar amounts stated in sections 2519, 3605, 3916, 3917, 3918, 3981, 3982, and 5102 apply to those sections for the period ending December 31, 2017. For the period after December 31, 2017, those specific dollar amounts shall be multiplied by the cost-of-living adjustment factor for each calendar year in which the decedent dies.

(3) Before February 1, 2001, and annually after 2001 thereafter, the department of treasury shall publish the cost-of-living adjustment factor to be applied to the specific dollar amounts referred to in subsection (1) for decedents who die during that calendar year and in section 7414 for trusts the value of the property of which is insufficient to justify the cost of administration. A product resulting from application of the cost-of-living adjustment factor to a specific dollar amount shall be rounded to the nearest $1,000.00 amount.

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2 Threshold concerning payments to parents and guardians (without appointment of conservator) inside statutory will.
3 Threshold for the demand of a bond.
4 Threshold for the disposition of a decedent’s unclaimed assets.
5 Threshold; holding of funds by county treasurer.
6 Threshold for distributing to a disabled person without appointing a conservator.
7 Threshold for the disposition of decedent’s apparel and cash.
8 Threshold for distribution of a small estate.
9 Threshold; facility of payment.

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MCL 700.2519 Statutory will

(1) A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions shall be printed in 10-point boldfaced type.

(2) The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1. An individual age 18 or older who has sufficient mental capacity may make a will.

2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.

3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.

4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.

5. This will is not designed to reduce estate taxes.

6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.

You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file this will in your county’s probate court for safekeeping. You should tell your family where the will is kept.
You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF

(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils.

I live in _____________ County, Michigan.

My spouse is ___________________________.

(Insert spouse’s name or write “none”)

My children now living are:

__________________________
__________________________
__________________________

(Insert names or write “none”)

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.
I can leave no more than two (2) cash gifts. I make the following cash gifts
to the persons or charities in the amount stated here. Any transfer tax due
upon my death shall be paid from the balance of my estate and not from
these gifts. Full name and address of person or charity to receive cash gift
(name only 1 person or charity here):

____________________________________

(Insert name of person or charity)

____________________________________

(Insert address)

AMOUNT OF GIFT (In figures): $ ________________________________

AMOUNT OF GIFT (In words): ____________________________ Dollars

____________________________________

(Your signature)

Full name and address of person or charity to receive cash gift
(Name only 1 person or charity):

____________________________________

(Insert name of person or charity)

____________________________________

(Insert address)

AMOUNT OF GIFT (In figures): $ ________________________________

AMOUNT OF GIFT (In words): ____________________________ Dollars

____________________________________

(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.
I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.
(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse’s heirs as if my spouse had died just after me without a will.

_________________________________
(Your signature)

(b) All to be distributed to my heirs as if I did not have a will.

_________________________________
(Your signature)

ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE, GUARDIAN, AND CONSERVATOR
Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child’s assets and make payments from those assets for the child’s benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate

_____________________________________________________

(Insert name of person or eligible financial institution)

of _________________________ to serve as personal representative.

(Insert address)

If my first choice does not serve, I nominate _____________________________

_____________________________________________________

(Insert name of person or eligible financial institution)

of _________________________ to serve as personal representative.

(Insert address)

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name an individual as guardian of the child, and an individual or eligible financial institution as conservator of the child’s assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for a child of mine, I nominate

_____________________________________________________

(Insert name of individual)
of ____________________________________________ as guardian and

(Insert address)

_____________________________________________________________

___

(Insert name of individual or eligible financial institution) of

_____________________________________________________________

___

(Insert address)

If my first choice cannot serve, I nominate

_____________________________________________________________

___

(Insert name of individual) of

_____________________________________________________________

___

(Insert address)

(Insert name of individual or eligible financial institution)

of ________________________________ to serve as conservator.

(Insert address)

3.3 BOND.

A bond is a form of insurance in case your personal representative or a
conservator performs improperly and jeopardizes your assets. A bond is not
required. You may choose whether you wish to require your personal
representative and any conservator to serve with or without bond. Bond
premiums would be paid out of your assets. (Select only 1)

(a) My personal representative and any conservator I have named shall serve
with bond.

________________________________________

(Your signature)
(b) My personal representative and any conservator I have named shall serve without bond.

_________________________________
(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on _______________, 20____.

_________________________________
(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to have sufficient mental capacity to make this will and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

_____________________________________
(Print Name)

_____________________________________
(Signature of witness)
DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

(a) “Assets” means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.
(b) “Descendants” means your children, grandchildren, and their descendants.

(c) “Descendants” or “children” includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.

(d) “Jointly held assets” means those assets to which ownership is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.

(e) “Spouse” means your husband or wife spouse at the time you sign this will.

(f) Whenever a distribution under a Michigan statutory will is to be made to an individual’s descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.

(g) “Heirs” means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws that are then in effect.

(h) “Person” includes individuals and institutions.

(i) Plural and singular words include each other, where appropriate.

(j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person’s decision to do or not to do the act shall be made in good faith exercise of the person’s powers.

ADDITIONAL CLAUSES
Powers of personal representative

1. A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent funds are not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.

2. The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to the minor’s conservator or, in amounts not exceeding $5,000.00$25,00010 per year, either to the minor, if married; to a parent or another adult with whom the minor resides and who has the care, custody, or control of the minor; or to the guardian. The personal representative is free of liability and is discharged from further accountability for distributing assets in compliance with the provisions of this paragraph.

POWERS OF GUARDIAN AND CONSERVATOR

A guardian named in this will has the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will has all of the powers conferred by law.

10 If this figure were subject to COLA under section 1210, it would be $7,475.00 today. The new base figure is intended to match our recommendation in section 3918.
MCL 700.3605 Demand for bond by interested person

(1) A person apparently having an interest in the estate worth in excess of $2,500.00 or a creditor having a claim against the estate in excess of $2,500.00 may make a written demand that a personal representative give bond. The demand must be filed with the register, and if appointment and qualification have occurred, a copy must be mailed to the personal representative. Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in section 3603 or 3604. After receipt of notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the fiduciary office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 28 days after receipt of notice is cause for removal and appointment of a successor personal representative.

(2) The dollar amounts described in this section shall be adjusted as provided in section 1210.

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11 If this figure were subject to COLA under section 1210, it would be $3,737.50 today. This threshold is significantly higher than the current figure in EPIC, which reflects our conclusion that a beneficiary should have a significant gift at stake before they have the ability to easily impose an (expensive) bond requirement on the estate.
MCL 700.2722 Honorary trusts; trusts for pets

(1) Except as provided by another statute and subject to subsection (3), if a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee, and if there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(2) Subject to this subsection and subsection (3), a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those subsections is subject to the following provisions:

(a) Except as expressly provided otherwise in the terms of the trust, no portion of the principal or income may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(b) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) As directed in the terms of the trust.

(ii) To the settlor, if then living.

(iii) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will.

(iv) If no taker is produced by the application of subparagraph (i), (ii), or (iii), to the transferor's heirs under section 2720.

(e) For the purposes of sections 2714 to 2716, the residuary clause is treated as creating a future interest under the terms of a trust.
(d) The intended use of the principal or income may be enforced by an individual designated for that purpose in the terms of the trust or, if none, by an individual appointed by a court upon petition to it by an individual. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or remove a person appointed.

(e) Except as ordered by the court or required by the terms of the trust, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) The court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subdivision (b).

(g) If a trustee is not designated or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the terms of the trust or if no designated successor trustee agrees to serve or is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

(h) The trust is not subject to the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.
As used in this section and sections 2807 to 2809:

(a) “Disposition or appointment of property” includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(b) “Divorce or annulment” means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife decedent’s marriage is not a divorce for purposes of this section and sections 2807 to 2809.

(c) “Divorced individual” includes, but is not limited to, an individual whose marriage has been annulled.

(d) “Governing instrument” means a governing instrument executed by a divorced individual before the divorce from, or annulment of his or her marriage to, his or her former spouse.

(e) “Relative of the divorced individual's former spouse” means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) “Revocable” means, with respect to a disposition, appointment, provision, or nomination, one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.
MCL 700.3916 Disposition of unclaimed assets

(1) In exchange for suitable receipts and following a court order if the administration is supervised, a fiduciary making final distribution shall deposit with the county treasurer the money or personal property the fiduciary has that belongs to any of the following:

(a) An heir, devisee, trust beneficiary, or claimant whose whereabouts the fiduciary cannot ascertain after diligent inquiry.

(b) An heir, devisee, trust beneficiary, or claimant who declines to accept the money awarded to the person.

(c) A person if the right of the person is the subject of appeal from an order of the court.

(2) As an alternative to deposit with the county treasurer under subsection (1), if the amount involved for a person described under subsection (1)(a) or (b) is $250.00\(^{12}\) or less, the fiduciary may distribute the amount as part of the residue of the decedent’s estate or to those entitled to the trust fund balance. If the fiduciary has property other than money that belongs to a person described in subsection (1)(a) or (b), the fiduciary may sell the property for the purpose of reducing it to money to be deposited with the county treasurer.

(3) The fiduciary shall retain or file the county treasurer’s receipt for property deposited under this section in the same fashion as though the fiduciary paid or delivered the money or property to, and received a receipt from, the heir, devisee, trust beneficiary, or claimant.

(4) The dollar amounts described in this section shall be adjusted as provided in section 1210.

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\(^{12}\) If this figure were subject to COLA under section 1210, it would be $373.50 today.
MCL 700.3917  Duties of county treasurer

(1) The county treasurer shall receive and safely keep money deposited under authority of this act in a separate fund and keep a separate account for each distributee or claim. The county treasurer shall deposit the money in a county depository at the current rate of interest, shall pay out from the fund upon the order of the court, and shall turn over any surplus left in the treasurer’s hands at the termination of the treasurer’s term of office to the treasurer’s successor. The county treasurer shall, at the end of each year, render to the court, and to the county board of commissioners, a true account of that money.

(2) For the care of the money received under authority of this act, the county treasurer may take 1% from the different amounts paid out under court order unless the amount paid out to a single individual exceeds $1,000.00, in which case the county treasurer shall take $10.00 plus 1/2 of 1% of the excess of the amount over $1,000.00.

(3) A person entitled to the money may petition the court having jurisdiction for an order directing the county treasurer to pay over money that is deposited with the county treasurer. Upon receiving the petition, the court shall make an order as to notice of the hearing as the court considers proper. Upon satisfactory proof being made to the court of the claimant’s right to the money, the court shall order the county treasurer to pay the money and interest earned on the money, less the fee of the county treasurer, to the claimant.

(4) If a person whose whereabouts are unknown or who declined to accept the money does not make a claim to money deposited by a fiduciary before the expiration of 3 years after the deposit date, the money and interest earned on the money that would be distributed under this section to the person, if alive, less expenses, shall be distributed by court order to each person who would be entitled to the money if the person had died before the date that he or she became entitled to the money, and the person is forever barred from all claim or right to the money.

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13 If this figure were subject to COLA under section 1210, it would be $1,495.00 today.
(5) The dollar amounts described in this section shall be adjusted as provided in section 1210.
MCL 700.3918 Distribution to person under disability

(1) A personal representative may discharge the personal representative’s obligation to distribute to an individual under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative’s obligation to distribute to an individual under legal disability as authorized by section 5102 or another statute. If the personal representative knows that a conservator has been appointed for an individual or that a proceeding for appointment of a conservator for the individual is pending, the personal representative is authorized to distribute only to the conservator. If the personal representative knows that a guardian of the estate of an individual with a developmental disability has been appointed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or that a proceeding for appointment of a guardian of the estate for the individual with the developmental disability is pending, the personal representative is authorized to distribute only to the guardian of the estate.

(3) If the heir or devisee is under legal disability other than minority, the personal representative is authorized to distribute to any of the following:

(a) A trustee appointed by the court under section 3915(4).

(b) An attorney in fact who has authority under a power of attorney to receive property for that person.

(c) The spouse, parent, or other close relative with whom the individual under legal disability resides if both of the following are true:

(i) A conservator has not been appointed for the individual.

(ii) The distribution is in amounts not exceeding $5,000.0014 $25,000.00 a year or property not exceeding $5,000.00 $25,000.00 in value, unless the court authorizes a higher amount or value.15

14 If this figure were subject to COLA under section 1210, it would be $7,475.00 today.
15 We believe that it is appropriate to revise mandatory bond and restricted account requirements. Currently, Section 3982 is statutorily tied to section 5410, which requires a conservator to be bonded.
A person receiving money or property for an individual under legal disability shall use the money or property only for that individual’s support and for reimbursement of out-of-pocket expenses for goods and services necessary for that individual’s support. Excess money and property shall be preserved for the individual’s future support. The personal representative is not responsible for the proper use of money or property by the recipient if distribution is made under the authority of this section.

The dollar amounts described in this section shall be adjusted as provided in section 1210.

Under the committee’s proposal, a probate court will not be required to impose a bond or restrict account requirement on a conservator if the liquid assets are less than $100,000. To be clear, the Committee’s proposal would maintain probate courts’ discretion to impose these requirements. The Committee is suggesting these changes for three reasons:

(a) Bond can be uneconomical, particularly in smaller matters. In some regions, insurers are routinely requiring that attorneys be the signatories on even smaller accounts. Between the cost of bond and mandatory lawyer involvement, this statute can impose costs disproportionate to the risks mitigated.

(b) While restricted accounts are a good alternative, practitioners occasionally experience significant difficulties in getting a financial institution to agree to hold a restricted account for the fiduciary.

(c) Fundamentally, the Committee believes that probate judges are well able to evaluate the risks and benefits of bond requirements without the current heavy-handed statutory mandate. In many if not most cases, we expect that probate courts will still impose bond, but our suggested change will give probate courts a bit more latitude.
MCL 700.3959 Subsequent administration.

If estate property is discovered after an estate is settled and either the personal representative is discharged or 1 year has expired after a closing statement is filed, or if there is other good cause to reopen a previously administered estate, including an estate administratively closed, upon petition of an interested person and notice as the court directs, the court may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this act apply as appropriate. A claim previously barred shall not be asserted in the subsequent administration.

(1) The court may reopen an estate if any of the following is true:
   (a) Estate property is discovered after the estate is settled and either the personal representative is discharged or 1 year has expired after a closing statement is filed.
   (b) There is other good cause to reopen a previously administered estate, including an estate administratively closed, upon petition of an interested person and notice as the court directs.

(2) The court may appoint the same or a successor personal representative to administer the estate.

(3) If a new appointment is made, unless the court orders otherwise, the provisions of this act apply as appropriate.

(4) A claim previously barred shall not be asserted in the subsequent administration.
MCL 700.3981  Delivery of modest amounts of cash not exceeding $500 and decedent’s wearing apparel

(1) A hospital, convalescent or nursing home, morgue, or law enforcement agency holding $500.00 or less and wearing apparel of a decedent may deliver the money and wearing apparel to an individual furnishing identification and a sworn statement that the individual is the decedent’s spouse, child, or parent and that there is no application or petition pending for administration of the decedent’s estate. The hospital, home, morgue, or law enforcement agency making the delivery is released to the same extent as if delivery were made to a legally qualified personal representative of the decedent’s estate and is not required to see to the property’s disposition. The individual to whom delivery is made is answerable for the property to a person with a prior right and accountable to a personal representative of the decedent’s estate appointed after the delivery.

(2) The dollar amounts described in this section shall be adjusted as provided in section 1210.

16 If this figure were subject to COLA under section 1210, it would be $747.50 today.
MCL 700.3982 Court order distributing small estates

[The Legislation Development and Drafting Committee is separating the small estate proposal from the Omnibus, at least for now. We are closely reviewing existing alternative procedures, including those in Florida and Arizona.]
MCL 700.3983 Collection of personal property by sworn statement

(1) After 28 days after a decedent’s death, a person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall pay the indebtedness or deliver the tangible personal property or the instrument to a person claiming to be the decedent’s successor upon being presented with the decedent’s death certificate and a sworn statement made by or on behalf of the successor stating all of the following:

(a) The estate does not include real property and the value of the entire estate, wherever located, net of liens and encumbrances, does not exceed $15,000.00 $25,000.00, adjusted as provided in section 1210.

(b) Twenty-eight days have elapsed since the decedent’s death.

(c) An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction.

(d) The claiming successor is entitled to payment or delivery of the property.

(e) The name and address of each other person that is entitled to a share of the property and the portion to which each is entitled.

(2) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of a sworn statement as provided in subsection (1).

(3) The state court administrative office shall develop and make available a standardized form for use as a sworn statement that can be used for the procedure authorized under subsection (1). The form shall include a notice that a false statement may subject the person swearing to the statement to prosecution for perjury.

(4) The dollar amounts described in this section shall be adjusted as provided in section 1210.
MCL 700.5102  Payment or delivery

(1) A person under a duty to pay or deliver money or personal property to a minor may perform this duty by paying or delivering the money or property, in an aggregate value that does not exceed $5,000.00 each year, to any of the following:

(a) The minor if he or she is married.

(b) An individual having the care and custody of the minor with whom the minor resides.

(c) A guardian of the minor.

(d) A financial institution incident to a deposit in a state or federally insured savings account in the sole name of the minor with notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or a proceeding for appointment of a conservator of the minor’s estate is pending.

(3) Other than the minor or a financial institution, an individual receiving money or property for a minor is obligated to apply the money to the minor’s support and education, but shall not pay himself or herself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor’s support. An excess amount shall be preserved for the minor’s future support and education. A balance not used for those purposes and property received for the minor shall be turned over to the minor when majority is attained. A person who pays or delivers money or property in accordance with this section is not responsible for the proper application of the money or property.

(4) The dollar amounts described in this section shall be adjusted as provided in section 1210.

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17 If this figure were subject to COLA under section 1210, it would be $7,475.00 today.
MCL 700.531 new Standby Guardian; qualifications

(1) At a hearing convened under this part, the court may designate 1 or more standby guardians. The court may designate as standby guardian any competent person who is suitable and willing to serve.

(2) The standby guardian shall receive a copy of the petition nominating him or her to serve, the court order establishing or modifying the guardianship, and the order designating the standby guardian.

(3) A standby guardian shall file an acceptance of her designation under subsection (2) within 28 days of receiving notice of the order designating the standby guardian.

(4) If, for any reason, the standby guardian is unable or unwilling to serve, the standby guardian shall promptly notify the court and interested persons.

(5) A standby guardian has no authority to act unless the guardian is unavailable for any reason, including the following:

(a) the guardian dies;

(b) the guardian is permanently or temporarily unavailable; or,

(c) the guardian is removed or suspended by the court.

(6) During an emergency affecting the protected person’s welfare when the guardian is unavailable, the standby guardian may temporarily assume the powers and duties of the guardian. A person may rely on the standby guardian’s representation that she has authority to act, if given the order issued under subsection (2) and acceptance filed under subsection (3). A person who acts in reliance upon the representations and documentation described in this subsection without knowledge that the representations are incorrect is not liable to any person for so acting and may assume without further inquiry the existence of the standby guardian’s authority.

Commented [NP3]: This is designed to address the scenario raised by Marlaine at the December CSP meeting (succession because of the court-ordered removal of guardian).
A standby guardian’s appointment as guardian shall become effective without further proceedings or reiteration of acceptance immediately upon the guardian’s unavailability as described in subsection (5). The powers and duties of the standby guardian shall be the same as those of the prior guardian.

Upon assuming office, the standby guardian shall promptly notify the court, any known agent appointed under a power of attorney executed pursuant to section 5103, and interested persons. Upon receiving notice, the court may enter an order appointing the standby guardian as guardian without the need for additional proceedings. The guardian shall serve this order on the interested persons.
MCL 700.5301 Appointment of guardian for incapacitated individual by will or other writing

(1) If serving as guardian, the parent of an unmarried legally incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian for the legally incapacitated individual. If both parents are dead or the surviving parent is adjudged legally incapacitated, **and no standby guardian has been appointed pursuant to section 531new**, a parental appointment becomes effective when, after having given 7 days’ prior written notice of intention to do so to the legally incapacitated individual and to the person having the care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian’s acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. **If no Standby Guardian has been appointed pursuant to Section 531new, the appointment by will or other writing becomes effective when, after having given 7 days’ prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian’s acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).**

(3) An appointment effected by filing the guardian’s acceptance under a will probated in the state of the decedent’s domicile is effective in this state.
(4) Upon the filing of the legally incapacitated individual’s written objection to a guardian’s appointment under this section in either the court in which the will was probated or, for a nontestamentary nominating instrument or a testamentary nominating instrument made by a testator who is not deceased, the court at the place where the legally incapacitated individual resides or is present, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or another suitable person upon an adjudication of incapacity in a proceeding under sections 5302 to 5317.
MCL 700.5310  Resignation or removal of guardian

(1) On petition of the guardian and subject to the filing and approval of a report prepared as required by section 5314, the court shall accept the guardian’s resignation and make any other order that is appropriate.

(2) The ward, a person appointed to be guardian in a will or other writing by a parent or spouse under section 5301, or any other a person interested in the ward’s welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship’s terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. If the request is made by the person appointed by will or other writing under section 5301, the person shall also present proof of their appointment by will or other writing. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court.

(3) Except as otherwise provided in the order finding incapacity, upon receiving a petition or request under this section, the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request. An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or request for a finding that a ward is no longer an incapacitated individual, or for an order removing the guardian, modifying the guardianship’s terms, or terminating the guardianship, shall not be filed without special leave of the court.

(4) Before removing a guardian, appointing a successor guardian, modifying the guardianship’s terms, or terminating a guardianship, and following the same procedures to safeguard the ward’s rights as apply to a petition for a guardian’s appointment, the court may send a visitor to the present guardian’s residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court.
MCL 700.5313 Guardian; qualifications

(1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward’s property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in this or another state.

(b) A person the individual subject to the petition chooses to serve as guardian.

(c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.

(d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.

(e) A person appointed by a parent or spouse of a legally incapacitated person by will or other writing pursuant to Section 5301.

(3) If there is no person chosen, nominated, or named under subsection (2), or if none of the persons listed in subsection (2) are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual’s spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.
(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.
MCL 700.5314  Powers and duties of guardian

Whenever meaningful communication is possible, a legally incapacitated individual’s guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court under section 5306, the guardian is responsible for the ward’s care, custody, and control, but is not liable to third persons by reason of that responsibility for the ward’s acts. In particular and without qualifying the previous sentences, a guardian has all of the following powers and duties, to the extent granted by court order:

(a) The custody of the person of the ward and the power to establish the ward’s place of residence within or without this state. The guardian shall visit the ward within 3 months after the guardian’s appointment and not less than once within 3 months after each previous visit. The guardian shall notify the court within 14 days of a change in the ward’s place of residence or a change in the guardian’s place of residence.

(b) If entitled to custody of the ward, the duty to make provision for the ward’s care, comfort, and maintenance and, when appropriate, arrange for the ward’s training and education. The guardian shall secure services to restore the ward to the best possible state of mental and physical well-being so that the ward can return to self-management at the earliest possible time. Without regard to custodial rights of the ward’s person, the guardian shall take reasonable care of the ward’s clothing, furniture, vehicles, and other personal effects and commence a protective proceeding if the ward’s other property needs protection.

If a guardian commences a protective proceeding because the guardian believes that it is in the ward’s best interest to sell or otherwise dispose of the ward’s real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward’s real property or interest in real property.
(c) The power to give the consent or approval that is necessary to enable
the ward to receive medical or other professional care, counsel,
treatment, or service. The power of a guardian to execute a do-not-
resuscitate order under subdivision (d) does not affect or limit the
power of a guardian to consent to a physician’s order to withhold
resuscitative measures in a hospital.

(d) The power of a guardian to execute, reaffirm, and revoke a do-not-
resuscitate order on behalf of a ward is subject to this subdivision. A
guardian shall not execute a do-not-resuscitate order unless the
guardian does all of the following:

(i) Not more than 14 days before executing the do-not-resuscitate
order, the guardian visits the ward and, if meaningful
communication is possible, consults with the ward about
executing the do-not-resuscitate order.

(ii) The guardian consults directly with the ward’s attending
physician as to the specific medical indications that warrant the
do-not-resuscitate order.

(e) If a guardian executes a do-not-resuscitate order under subdivision
(d), not less than annually after the do-not-resuscitate order is first
executed, the guardian shall do all of the following:

(i) Visit the ward and, if meaningful communication is possible,
consult with the ward about reaffirming the do-not-resuscitate
order.

(ii) Consult directly with the ward’s attending physician as to
specific medical indications that may warrant reaffirming the
do-not-resuscitate order.

(f) If a conservator for the ward’s estate is not appointed, the power to do
any of the following:

(i) Institute a proceeding to compel a person under a duty to
support the ward or to pay money for the ward’s welfare to
perform that duty.

(ii) Receive money and tangible property deliverable to the ward
and apply the money and property for the ward’s support, care,
and education. The guardian shall not use money from the ward’s estate for room and board that the guardian or the guardian’s spouse, parent, or child have furnished the ward unless a charge for the service is approved by court order made upon notice to at least 1 of the ward’s next of kin, if notice is possible. The guardian shall exercise care to conserve any excess for the ward’s needs.

(g) The guardian shall report the condition of the ward and the ward’s estate that is subject to the guardian’s possession or control, as required by the court, but not less often than annually. The guardian shall also serve the report required under this subdivision on the ward and interested persons as specified in the Michigan court rules. A report under this subdivision shall contain all of the following:

(i) The ward’s current mental, physical, and social condition.

(ii) Improvement or deterioration in the ward’s mental, physical, and social condition that occurred during the past year.

(iii) The ward’s present living arrangement and changes in his or her living arrangement that occurred during the past year.

(iv) Whether the guardian recommends a more suitable living arrangement for the ward.

(v) Medical treatment received by the ward.

(vi) Whether the guardian has executed, reaffirmed, or revoked a do-not-resuscitate order on behalf of the ward during the past year.

(vii) Services received by the ward.

(viii) A list of the guardian’s visits with, and activities on behalf of, the ward.

(ix) A recommendation as to the need for continued guardianship.

(x) **A statement signed by the standby guardian, if any have been appointed, that the standby guardian continues to be willing to serve in the event of the unavailability, death, incapacity, or resignation of the guardian.**
(h) If a conservator is appointed, the duty to pay to the conservator, for
management as provided in this act, the amount of the ward’s estate
received by the guardian in excess of the amount the guardian
expends for the ward’s current support, care, and education. The
guardian shall account to the conservator for the amount expended.
MCL 700.7103 Definitions

As used in this article:

(a) “Action”, with respect to a trustee or a trust protector, includes an act or a failure to act.

(b) “Ascertained standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code, 26 USC 2041 and 2514.

(c) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1).

(d) “Discretionary trust provision” means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee’s discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:

(i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.

(ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.

(iii) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.

(iv) Whether the distribution of trust property is from income or principal or both of the trust.

(v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.

(e) “Interests of the trust beneficiaries” means the beneficial interests provided in the terms of the trust.
EPIC Omnibus Update, 1/20/18 version

(f) “Power of withdrawal” means a presently exercisable general power
of appointment other than a power that is either of the following:

(i) Exercisable by a trustee and limited by an ascertainable
standard.

(ii) Exercisable by another person only upon consent of the trustee
or a person holding an adverse interest.

(g) Except as provided in subparagraph (iv), “qualified trust beneficiary” means a trust beneficiary the settlor’s (or settlors’) intent to benefit whom is a material purpose of the trust and at least 1 of at least one of subparagraphs (i) through (iii) applies to whom 1 or more of the following apply on the date the trust beneficiary’s qualification is determined:

(i) The trust beneficiary is a distributee or permissible distributee
of trust income or principal.

(ii) The trust beneficiary would be a distributee or permissible
distributee of trust income or principal if the interests of the
distributees under the trust described in subparagraph (i)
terminated on that date without causing the trust to terminate.

(iii) The trust beneficiary would be a distributee or permissible
distributee of trust income or principal if the trust terminated on
that date.

(iv) If on the date the trust beneficiary’s qualification is
determined, there is no beneficiary of the trust described in
subparagraph (i), (ii), or (iii) the settlor’s (or settlors’) intent to benefit whom is a material purpose of the trust, then the term qualified trust beneficiary means merely a trust beneficiary to whom at least 1 of subparagraphs (i) through (iii) applies on that date.

18 The intuitive idea here is just that if the settlor authorizes a distribution to a beneficiary B merely to avoid a resulting trust, the benefit to B is incidental to the trust’s purposes.
“Revocable”, as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust’s characterization as revocable is not affected by the settlor’s lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.

“Settlor” means a person, including a testator or a trustee, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution. The lapse, release, or waiver of a power of appointment shall not cause the holder of a power of appointment to be treated as a settlor of the trust.

“Spendthrift provision” means a term of a trust that restrains either the voluntary or involuntary transfer of a trust beneficiary’s interest.

“Support provision” means a provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a trust beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions pursuant to the trust provision is not a support provision, but rather is a discretionary trust provision.

“Trust beneficiary” means a person to whom 1 or both of the following apply:

(i) The person has a present or future beneficial interest in a trust, vested or contingent.

(ii) The person holds a power of appointment over trust property in a capacity other than that of trustee.

“Trust instrument” means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.
“Trust protector” means a person or committee of persons appointed pursuant to the terms of the trust who has the power to direct certain actions with respect to the trust. Trust protector does not include either of the following:

(i) The settlor of a trust if, in creating the trust, the settlor was not acting in a fiduciary capacity.

(ii) The holder of a power of appointment, if the holder does not hold the power in a fiduciary capacity.19

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19 The changes in subsection 14 have already been approved by Council. In its current form, Michigan Trust Code (MTC) section 7103’s definition of ‘trust protector’ excludes the settlor of a trust and the holder of a power of appointment. Yet a decanting trustee (an attorney-in-fact who creates a trust pursuant to a durable power of attorney, a conservator, etc.) may find it in the beneficiaries’ (the principal’s, the protected individual’s, etc.) best interest (1) to transfer assets to an independent trustee, (2) to retain powers to direct that trustee, and (3) to expect to exercise the retained powers in a fiduciary capacity. Furthermore many of the powers settlors grant nontrustee “protectors” amount to powers of appointment within the meaning of the Powers of Appointment Act. It is hard to see why trust beneficiaries and settlors in these cases should be deprived of the facility and protections of MTC section 7809. The following proposed amendments to section 7103 are designed to allow settlors who create trusts while acting as fiduciaries and the holders of fiduciary powers of appointment to be treated as “trust protectors” within the meaning of the MTC.
MCL 700.7105   Duties and powers of trustee; provisions of law prevailing over terms of trust

(1) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a trust beneficiary.

(2) The terms of a trust prevail over any provision of this article except the following:

(a) The requirements under section 7401 for creating a trust.

(b) The duty of a trustee to administer a trust in accordance with section 7801.

(c) The requirement under section 7404 that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.

(d) The durational limits specified in section 7408 for trusts for the care of animals and in section 7409 for other noncharitable purpose trusts.

(e) The power of the court to modify or terminate a trust under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

(f) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.

(g) The power of the court under section 7702 to require, dispense with, or modify or terminate a bond.

(h) The power of the court under section 7708(2) to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.

(i) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).
The duty under section 7814(2)(a) to (c) to provide beneficiaries with
the terms of the trust and information about the trust's property, and to
notify qualified trust beneficiaries of an irrevocable trust of the
existence of the trust and the identity of the trustee.

The power of the court to order the trustee to provide statements of
account and other information pursuant to section 7814(4).

The effect of an exculpatory term under section 7809(8) or 7908.

The rights under sections 7910 to 7913 of a person other than a trustee
or beneficiary.

Periods of limitation under this article for commencing a judicial
proceeding.

The power of the court to take action and exercise jurisdiction.

The subject-matter jurisdiction of the court and venue for
commencing a proceeding as provided in sections 7203 and 7204.

The requirement under section 7113 that a provision in a trust that
purports to penalize an interested person for contesting the trust or
instituting another proceeding relating to the trust shall not be given
effect if probable cause exists for instituting a proceeding contesting
the trust or another proceeding relating to the trust.
MCL 700.7110 Others treated as qualified beneficiaries

(1) A charitable organization expressly named in the terms of a trust to receive distributions under the terms of a charitable trust has the rights of a qualified trust beneficiary under this article if 1 or more of the following are applicable to the charitable organization on the date the charitable organization's qualification is being determined:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.

(b) The charitable organization would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal under section 7408 or another noncharitable purpose as provided in section 2722 trust under section 7409 has the rights of a qualified trust beneficiary under this article.

(3) The attorney general of this state has the following rights with respect to a charitable trust having its principal place of administration in this state:

(a) The rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) The right to notice of any judicial proceeding and any nonjudicial settlement agreement under section 7111.
MCL 700.7302 Representation; holder of power of revocation or amendment or power of appointment.

(1) To the extent there is no conflict of interest between the holder of a power of appointment and the person represented with respect to a particular question or dispute, the holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment, including one in the form of a power of amendment or revocation, may represent and bind a person whose to the extent the person’s interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person as provided in this section.

(2) For purposes of this section:

(a) There is no conflict of interest between the holder of a nonfiduciary power of appointment and a person whose interest is subject to the power to the extent the subject interest is liable to be extinguished by an exercise of the power. Thus, for example, if person A currently has a right to receive income from property P for life subject to a nonfiduciary testamentary power in person B to appoint the income of P away from A, then there is no conflict of interest that would prevent B from currently representing A with respect to A’s right to receive income from the property after B’s death (if A survives B); but there may be such a conflict with respect to A’s right to receive income from P during B’s life.

20 The changes to this section have already been approved by Council.
(b) If a power of appointment is subject to a condition precedent other than the death of the holder of a testamentary power, no interest is subject to the power until the condition precedent is satisfied. Thus, for example, if person A currently has a right to receive income from property P for life, and person B is granted a testamentary power to appoint the income of P away from A if, but only if, B graduates from college, then A’s right to receive income from P after B’s death (if A survives B) is not subject to B’s power until B graduates from college; but if B does graduate from college, then A’s right to receive income from P after B’s death (if A survives B) will become subject to B’s power on B’s graduation, even though B can only exercise the power by will.

(c) “Nonfiduciary” means, with respect to a power of appointment, that the power is not held in a fiduciary capacity.
MCL 700.7402  Creating trust; requirements

(1) A trust is created only if all of the following apply:

(a) The settlor has capacity to create a trust.

(b) The settlor indicates an intention to create the trust.

(c) The trust has a definite beneficiary or is either of the following:

   (i) A charitable trust.

   (ii) A trust for a noncharitable purpose under section 7409 or a trust for the care of an animal under section 7408, as provided in section 2722.

(2) The trustee has duties to perform.

(3) The same person is not the sole trustee and sole beneficiary.
MCL 700.7408

(1) A trust may be created to provide for the care of a designated domestic or pet animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than 1 domestic or pet animal alive during the settlor’s lifetime, upon the death of the last surviving such animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal(s) for which the trust is created may request the court to appoint a person to enforce the trust or to remove a person appointed.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.
MCL 700.7409 new Noncharitable purpose trust

Except as otherwise provided in section 7408 or by another statute, the following rules apply:

(a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may be performed by the trustee according to the trust’s terms for up to 25 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.
MCL 257.236 [Motor Vehicle Code; Administration, Registration, Certificate of Title and Anti-Theft] Procuring title to vehicle acquired by operation of law; validity of registration upon death of owner; application for title by surviving spouse or heir; proof of death; certification; petition

1 (1) If ownership of a vehicle passes by operation of law, upon furnishing satisfactory proof of that ownership to the secretary of state, the person acquiring the vehicle may procure a title to the vehicle regardless of whether a certificate of title has ever been issued. Upon death of an owner of a registered vehicle, the license plate assigned to the vehicle, unless the vehicle is destroyed, is a valid registration until the end of the registration year or until the personal representative of the owner’s estate transfers ownership of the vehicle.

2 (2) If an owner of 1 or more vehicles, which vehicles do not have a total value of more than $60,000.00\(^{21}\) $100,000.00, dies and the owner does not leave other property that requires issuance of letters as provided in section 3103 of the estates and protected individuals code, 1998 PA 386, MCL 700.3103, the owner’s surviving spouse, or an heir of the owner in the order specified in section 2103 of the estates and protected individuals code, 1998 PA 386, MCL 700.2103, may apply for a title, after furnishing the secretary of state with proper proof of the death of the registered owner, attaching to the proof a certification setting forth the fact that the applicant is the surviving spouse or an heir. Upon proper petition, the secretary of state shall furnish the applicant with a certificate of title.

3 (3) The specific dollar amount specified in sub-section 257.236(2) shall be multiplied by the cost-of-living adjustment factor for each calendar year.

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\(^{21}\) If this figure were subject to COLA under section 1210, it would be $89,700.00 today.
(4) “Cost-of-living adjustment factor” means a fraction, the numerator of which is the United States consumer price index for the prior calendar year and the denominator of which is the United States consumer price index for 2017. As used in this subdivision, “United States consumer price index” means the annual average of the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics, or its successor agency, and as certified by the state treasurer.

(5) The department of treasury shall publish the cost-of-living adjustment factor to the specific dollar amount referred to in sub-section 257.236(2) for the calendar year in which the owner dies.
MCL 324.80312  [Natural Resources and Environmental Protection Act; Part 803
Watercraft Transfer and Certificate of Title] Certificate of title for watercraft; issuance; compliance; transfer of ownership; requirements; petition for watercraft not owned; proof of ownership and right of possession; statement of lien

(1) The secretary of state may issue a certificate of title for a watercraft to a person who complies with subsection (2) or (3) if the transfer of ownership of that watercraft is any of the following:

(a) By operation of law including, but not limited to, inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution of sale.

(b) By sale to satisfy a storage or repair charge.

(c) By repossession upon default in performance of the terms of a security agreement.

(d) As provided in subsection (3).

(2) A person applying for a certificate of title under this section shall do all of the following:

(a) Surrender to the secretary of state either a valid certificate of title or the manufacturer’s or importer’s certificate for the watercraft or, if surrender of a certificate for that watercraft is not possible, present proof satisfactory to the secretary of state of the applicant’s ownership of and right of possession to the watercraft.

(b) Pay the fee prescribed in section 80311.

(c) Present to the secretary of state an application for certificate of title.

(3) A person may petition the secretary of state for a certificate or certificates of title for 1 or more registered watercraft that the person does not own, if each of the following circumstances exists:

(a) The record owner of the registered watercraft dies without leaving other property that requires the procurement of letters under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102.
(b) The total value of the deceased owner’s interest in all watercraft subject to the petition for a certificate or certificates of title under this section is $100,000.00 or less, as adjusted for each calendar year beginning January 1, 2017.

(i) The specific dollar amount shall be multiplied by the cost-of-living adjustment factor for each calendar year.

(ii) “Cost-of-living adjustment factor” means a fraction, the numerator of which is the United States consumer price index for the prior calendar year and the denominator of which is the United States consumer price index for 2017.

As used in this subdivision, “United States consumer price index” means the annual average of the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics, or its successor agency, and as certified by the state treasurer.

(iii) The department of treasury shall publish the cost-of-living adjustment factor to the specific dollar amount for the calendar year of the deceased owner’s death.

(iv) A product resulting from the cost-of-living adjustment factor to a specific dollar amount shall be rounded to the nearest $1,000.00 amount.

(c) The person petitioning for a certificate or certificates of title under this section is 1 of the following, in the following order of priority:

(i) The surviving spouse of the watercraft owner.

(ii) A person entitled to the certificate or certificates of title in the order specified in section 2103 of the estates and protected individuals code, 1998 PA 386, MCL 700.2103.

(d) The person who petitions for a certificate of title under this section furnishes the secretary of state with proof satisfactory to the secretary of state of each of the following:

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22 If this figure were subject to COLA under section 1210, it would be $149,500.00 today.
(i) The death of the owner of each watercraft for which a certificate of title is sought.

(ii) The petitioner’s priority to receive the decedent’s interest in each watercraft for which a certificate of title is sought.

(4) A certification by the person, or agent of the person, to whom possession of the watercraft passed, that sets forth the facts entitling that person to possession and ownership of the watercraft, together with a copy of the journal entry, court order, instrument, or other document upon which the claim of possession and ownership is founded, are satisfactory proof of ownership and right of possession. If the applicant cannot produce proof of ownership, the applicant may apply to the secretary of state for a certificate of title and submit evidence that establishes that person’s ownership interest in the watercraft. If the secretary of state finds the evidence sufficient, the secretary of state may issue to that person a certificate of title for that watercraft. The office of secretary of state shall examine the records in its possession and, if it determines from that examination that a lien is on the watercraft, and if the applicant fails to provide satisfactory evidence of extinction of the lien, the secretary of state shall furnish a certificate of title that contains a statement of the lien.
MCL 554.530 [Michigan Uniform Transfers to Minors Act] Absence of will or authorization to make irrevocable transfer; transfer by personal representative, trustee, or conservator; conditions

(1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 13 in the absence of a will or under a will or trust that does not contain an authorization to make the irrevocable transfer.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 13.

(3) A transfer under subsection (1) or (2) may be made only if the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor; the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and, if the transfer exceeds $10,000.00 $50,000.00 in value, the transfer is authorized by the court.
Council Materials
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

January 20, 2017
Lansing, Michigan

Agenda

10:15-12:00

1. Call to Order
2. Introduction of Guests
3. Excused Absences
4. Minutes of December 16, 2017 Meeting of the Council with 12-18-17 Email vote
   Attachment 1
5. Treasurer’s Report – David Skidmore
6. Chairperson’s Report – Marlaine Teahan
   Attachment 2
7. Committee Reports
   A. Committee on Special Projects – Geoff Vernon
   B. Electronic Communications Committee – Mike Lichterman
      Report of Committee on upgrading Listserv to SBM Connect. Vote by Council requested on Committee’s plan. Attachment 3
   C. Tax Committee – Raj Malviya
      Oral Report and Tax Nugget: Is There Life After the Estate Tax? Attachment 4
D. Court Rules, Forms, & Proceedings Committee – Melisa Mysliwiec

Update on HB 5073 and letter from SBM stating that no Section may take a position on HB 5073; however, any Section may address these issues by proposing changes to court rules. No vote requested. Attachment 5

Update on HB 4752, inventory lien reduction.

Update on Public Administrator legislation. HB 4821 and HB 4822.

Update on e-filing; see Order from Supreme Court delaying e-filing implementation until further notice. Attachment 6

E. State Bar & Section Journals Committee – Rick Mills


8. Written Reports Without Oral Presentation

- Divided and Directed Trusteeship Committee Attachment 7
- Legislative Monitoring Committee – Report of Bills being watched Attachment 8
- Probate Institute Schedule and Experts Add-on Seminar Schedule – Chris Ballard/ICLE Attachment 9
- Uniform Law Commission Liaison Report Attachment 10
- Legislative Development Committee, HB 5398, Certificate of Trust legislation. Attachment 11

9. Other Business

10. Adjournment
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION OF
THE STATE BAR OF MICHIGAN

December 16, 2017
Lansing, Michigan

Minutes

1. Call to Order: The Chair of the Section, Marlaine C. Teahan, called the meeting to order at 10:06 am.

2. Introduction of Guests and attendance.
   a. Meeting attendees introduced themselves
   b. The following officers and members of the Council were present:
      Marlaine C. Teahan, Chair
      Marguerite Munson Lentz, Chair Elect
      Christopher A. Ballard, Vice Chair
      David P. Lucas, Secretary
      David L.J.M. Skidmore, Treasurer
      Christopher J. Caldwell
      Rhonda M. Clark-Kreuer
      Kathleen M. Goetsch
      Nazneen Hasan
      Angela M. Hentkowski
      Mark E. Kellogg
      Michael G. Lichterman
      Katie Lynwood
      Raj A. Malviya
      Richard C. Mills
      Kurt A. Olson
      Nathan R. Piwowarski
      Geoffrey R. Vernon
      A total of 18 Council officers and members were present, constituting a quorum

3. Absences
   a. The following members of the Council were absent with excuse:
      Michael L. Jaconette
      Robert B. Labe
      Melisa M. W. Mysliwiec
      Lorraine F. New
      Christine M. Savage
   b. The following officers and members of the Council were absent without excuse:
      none

(2018 - 01 - a) (December 16, 2017)
c. The following ex-officio members of the Council were present:
   Robert D. Brower, Jr.

d. The following liaisons to the Council were present:
   Daniel W. Borst
   Jeanne Murphy
   James P. Spica

e. Others present:
   Aaron Bartell
   Rosemary Buhl
   Ellen “Molly” Burns
   Daniel Hilker
   Steve Jones
   Andrew Marks
   Ken Seavoy
   Mike Shelton
   Paul Vaidya
   Becky Bechler

4. Minutes of November 11, 2017 Meeting of the Council: it was moved and seconded to approve the
   Minutes of the November 11, 2017 meeting of the Council, as included in the meeting agenda
   materials and presented to the meeting. On voice vote, the Chair declared the motion approved.

5. Report of the Budget Committee - David P. Lucas: On behalf of the Budget Committee, Mr. Lucas
   presented a proposed budget for the fiscal period October 1, 2017 through September 30, 2018,
   which was included in the meeting agenda materials. The Committee’s motion is:
   The Probate and Estate Planning Section adopts the October 1, 2107
   through September 30, 2018 budget, in the form presented to the Council,
   with a modification to the Amicus Reserve.
   Following discussion, on voice vote, the Chair declared the motion approved.

6. Chair’s Report – Marlaine C. Teahan: The Chair reviewed the Chair’s Report which was included with
   the meeting agenda materials, including a request from the Membership Committee for more
   members to assist with planning. During the Chair’s Report, Mr. Spica told the Council that he had
   talked to Representative Lucido about legislation regarding certificates of trust existence and
   addressing In re Jajuga. Mr. Spica also told the Council that he had met with Representative Kesto
   about the Divided and Directed Trusteeship legislation, and was told that the legislation would likely
   take the form of three bills.

(2018 - 01 - a) (December 16, 2017)
7. Presentation on SBM Connect - Andrew Marks: Mr. Marks, a representative of the State Bar of Michigan, made a presentation regarding SBM Connect, the State Bar’s online member communication internet software for lawyer discussions, announcements, events calendar, and documents library which will soon be the sole discussion forum for our Section. In particular, Mr. Marks illustrated how to use the discussion group solely within an email client, without having to log in to the SBM website, and demonstrated how our Section Committees are using Connect for discussions and sharing of committee work product.

8. Committee Reports

a. Guardianship, Conservatorship, and End of Life Committee - Rhonda M. Clark-Kreuer: The Chair stated that the Committee’s report would be taken out of the order as stated in the agenda. Ms. Clark-Kreuer reported the Committee’s discussion regarding proposed changes to MCR 3.903, and that the Committee recommends taking no action at this time. 

Ms. Clark-Kreuer reported the Committee’s discussion regarding HB 5075. The Committee’s motion is:

The Probate and Estate Planning Section opposes HB 5075.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 18 in favor of the motion, 0 opposed to the motion, 0 abstain, and 5 not voting. The Chair declared the motion approved.

Ms. Clark-Kreuer reported the Committee’s discussion regarding HB 5076. The Committee’s motion is:

The Probate and Estate Planning Section opposes HB 5076.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 18 in favor of the motion, 0 opposed to the motion, 0 abstain, and 5 not voting. The Chair declared the motion approved.

Ms. Clark-Kreuer reported the Committee’s discussion regarding SB 713. The Committee’s motion is:

The Probate and Estate Planning Section opposes SB 713 as written.

The Chair stated that, since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question and the Secretary recorded the vote of 17 in favor of the motion, 1 opposed to the motion, 0 abstain, and 5 not voting. The Chair declared the motion approved.
The Chair asked Ms. Clark-Kreuer to provide a summary of the Committee’s concerns and comments to the Section’s lobbyist so that she can provide our concerns to the bill’s sponsors.

b. Tax Committee - Raj Malviya: Mr. Malviya presented a 2-Part Report from the Tax Committee, dated December 16, 2017, which Report is included in the Council agenda meeting materials. Mr. Brower pointed out that if the Tax Cuts and Jobs Act passes, our Section should consider whether it would require an amendment to EPIC similar to the one made to MCL 700.2723 after the passage of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

c. Amicus Curiae Committee - David L.J.M. Skidmore: Mr. Skidmore reported the Committee’s discussion regarding the Estate of James Erwin, Sr., a decision of the Michigan Court of Appeals, for which the Michigan Supreme Court has granted leave to appeal. The matter involves MCL 700.2801, regarding a spouse’s willful absence. The Supreme Court has invited interested persons or groups to submit amicus briefs on two issues: (i) whether the “willfully absent” provision in MCL 700.2801(2)(e)(i) is defined exclusively by physical separation, or whether it includes consideration of the emotional bonds and connections between spouses and specifically requested that amici compare the Court of Appeals’ holding in Erwin Estate, supra, with In re Peterson Estate, 315 Mich App 423, 889 NW2d 753 (2016); and (ii) whether MCL 700.2801(2)(e)(i) requires proof that a spouse intends to abandon her or his marital rights. The Committee’s materials include a Committee report, and a minority report, both of which were included in the Council agenda meeting materials. The Committee’s motion is:

The Probate and Estate Planning Section authorizes (i) the filing with the Michigan Supreme Court of a motion requesting permission to file an amicus curiae brief and an amicus curiae brief in the Estate of James Irwin, Sr., taking the position that (a) the “absent” portion of the “willfully absent” provision in MCL 700.2801(2)(e)(i) is defined exclusively by physical absence; (b) the “willfully” portion of the “willfully absent” provision in MCL 700.2801(2)(e)(i) permits consideration of mental and emotional bonds and connections; and (c) MCL 700.2801(2)(e)(i) does not require proof that a spouse intends to abandon his or her marital rights; and (ii) the payment of up to $15,000 in legal fees and costs for the preparation and submission of such brief on behalf of the Section; and (iii) the engagement of a lawyer to be determined by the Council to prepare and submit such brief.

Mr. Skidmore stated that the Committee discussed that the Council engage Chris Ballard of Varnum to prepare and file such motion and brief on behalf of the Council. The Chair
Minutes of the Meeting of the Council of the
Probate and Estate Planning Section of
the State Bar of Michigan
on December 16, 2017

stated that, since this would be a public policy position of the Section, the vote of the
Council would have to be recorded. Following discussion, the Chair called the question and
the Secretary recorded the vote of 14 yes, 1 no, 2 abstain (Chris Ballard and Chris Caldwell
of the Varnum firm), and 6 not voting. The Chair declared the motion approved.

d. Court Rules, Forms & Proceedings Committee - Melisa Mysliwiec: The Chair reviewed the
Committee's report, a memo to the Council from Melisa M.W. Mysliwiec dated December
8, 2017, which Report is included in the Council agenda meeting materials. Ms. Bechler, the
Section's lobbyist, informed the Council that, in her view, the Council did not need to take
action at this meeting because: (i) while HB 4821 and HB 4822 were before the House of
Representatives, action will be delayed because of the Legislature's schedule; and (ii) there
will be sufficient time in the future for the Council to address HB 5073. The Chair stated
that the Council could take action in the future, if warranted, and there were no objections
from the floor noted. The Chair will notify Ms. Mysliwiec of the Council’s discussion. Due
to the SBM’s position on HB 5073, see below in “Other Business,” our Section will not take
a position in the future on HB 5073.

e. State Bar & Section Journals Committee - Rick Mills: Mr. Mills presented a report from the
Committee, dated December 11, 2017, which report is included in the Council agenda
meeting materials. The Committee’s motion is:

The Probate and Estate Planning Section (i) approves the renewal
of the publishing agreement between the Section and ICLE, on the
terms described in a proposed Publishing Agreement for the
Probate Journal (Fifth Renewal); and (ii) authorizes the Chair of the
Section to present such Agreement to the State Bar of Michigan
for approval, and with that approval, the Chair will execute the
contract and deliver it to ICLE.

Following discussion, on voice vote, the Chair declared the motion approved.

9. Written Reports Without Oral Presentation: The Chair noted that there were four reports included
in the Council agenda meeting materials, for which there was no oral report to be given at the
meeting, and for which no action was requested or needed at this time.

10. Other Business: The Chair called for any other matters or business to be brought before the Council
at the meeting.

• Mike Lichterman stated that the ability to deduct for liens from inventory will expire at the
end of 2017, and the Chair noted that there was legislation in process to address this matter
(HB 4752).
Mike Shelton stated that there was no update from the Assisted Reproductive Technology Ad Hoc Committee at this time except that they are still awaiting a Blue Back on this bill to be produced.

Kathy Goetsch stated that the ADR Section Chair sent their Section members an email about HB 5073, attaching a letter from the State Bar of Michigan that the State Bar had taken a position against HB 5073 since the content is more appropriately dealt with via a court rule instead of legislation. It further stated that no Section may take a position on this bill contrary to the State Bar’s position but that this did not preclude a Section from taking a position on the content if in the form of a court rule.

There was no other business offered or requested.

11. Adjournment: seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 12:15 pm.

Respectfully submitted,
David P. Lucas, Secretary
Electronic Vote - Regarding Preparer of Amicus Brief

in support of Chris Ballard of Varnum drafting the In re Ervin Estate Motion and Brief

December 18, 2017 – date of electronic vote

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<tr>
<td>Marguerite Munson Lentz, Chair-Elect</td>
<td>Yes</td>
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<tr>
<td>Chris A. Ballard, Vice Chair</td>
<td>Abstain</td>
</tr>
<tr>
<td>David Lucas, Secretary</td>
<td>Yes</td>
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<td>David Skidmore, Treasurer</td>
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<tr>
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<tr>
<td>Rhonda M. Clark-Kreuer</td>
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<tr>
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<td>Nazneen Hasan</td>
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<tr>
<td>Rob Labe</td>
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<td>Richard C. Mills</td>
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<td>Lorraine New</td>
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<td>Geoffrey R. Vernon</td>
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<td>Michael Lichterman</td>
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<tr>
<td>Raj A. Malviya</td>
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<tr>
<td>Kurt A. Olson</td>
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<td>Chris Savage</td>
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1. **ADR Liaison.** We are in need of a new ADR Liaison. I would appreciate suggestions and will contact the Chair of the ADR Section to discuss his recommendations as well. Many thanks go out to Milton L. Mack, Jr. for his many years of service to our Section as our ADR Liaison and in his role as advisor on many topics.

2. **Representative Lucido meeting.** On December 21, 2017, I met with Representative Lucido, Becky Bechler, Jim Ryan, Jim Spica, Dan Hilker, and Nathan Piwowarski. We had a lively discussion on many issues. Rep. Lucido asked our Council to work on a project to see if we could develop legislation that would allow a Court to order visitation of a shut-in adult (with capacity) by petitioners who would like to visit with the adult and by those of the adult's choosing. At this meeting, we informed Rep. Lucido of some similar laws and some potential obstacles to his proposal. In the end, we agreed to see what we could come up with over the next 2 months. I have discussed this matter with Geoff Vernon and he is willing to propose to me a Committee with whom he could review and propose legislation for Council to review that might fit Rep. Lucido's plan. I would like Council to approve my appointment of an ad hoc committee to address these issues.

3. **Correspondence.** On January 8, 2018, I received an email from attorney Donna MacKenzie, Chair Elect of the Women Lawyer's Association of Michigan, inviting our section to attend and sponsor the WLAM's April 27, 2018, celebration of their 100th anniversary. While our Section does not sponsor affinity bar association events, I urge our Section members to consider attending and sponsoring the WLAM Centennial celebration. For more information, check out [www.womenlawyers.org](http://www.womenlawyers.org).

4. **SBM Presentation on SBM Connect.** I am very pleased with the work of the Electronic Communication Committee on our Section's upcoming migration to SBM Connect and the retiring of our Listserv as of June 1, 2018. Learn more from the Committee’s report in this month's Agenda materials.

5. **We took Public Policy Positions in December on the following:**
   - We will write an amicus brief in the Estate of James Erwin, Sr.;
   - We took a position to oppose HB 5075.
   - We took a position to oppose HB 5076.
   - We took a position to oppose SB 713.
   - 002-37 to the State Bar of Michigan;

Reports are posted online at [http://connect.michbar.org/probate/reports/policy](http://connect.michbar.org/probate/reports/policy)

6. **Amicus Briefs.** In December, amicus curiae briefs were filed in the Breakey case and the Brody Conservatorship. Earlier in January, an amicus curiae brief was filed in the Brody Trust case. Many thanks to Doug Mielock, Doug Chalgian, and David Skidmore for drafting the amicus briefs.
7. **New Ideas, Comments, Questions.** Please email or call me with your thoughts and ideas for the following:
   - projects our Section should tackle – legislative or otherwise;
   - new ways to benefit our Section Members;
   - new social events for our Section Members, guests, and those interested in joining our Section;
   - anything you would like to discuss; and
   - your questions -- If I can't answer your question, I will find someone who can.

8. **Membership Committee.** The Membership Committee is still looking for some new members from around the State to help discuss and plan regional activities. To join the Committee contact the Committee Chair, Nick Reister (nreister@shrr.com) or Marlaine C. Teahan (mteahan@fraserlawfirm.com).

9. **Agenda.** To get on an upcoming Agenda, please contact me directly. Let me know what you want to do (report on your committee's work, have general discussion to help guide your committee, get a vote to report a public policy position). Tell me how much time you need and who will be presenting for your committee. Most important, if your matter must be heard in a certain month, let me know so that you are near the top of the agenda, ensuring adequate time for discussion. If you do not let me know you need time on the agenda, there is a possibility you will not be able to present for your committee. If there a late-breaking development and you need time on the agenda but the latest news on the issue happened after the deadline for the agenda, please call me to see what we can do to address the issue. If you want a public policy position taken on a pending bill, please be sure to include the bill in your report.

   - Experts in Estate Planning: Estate and Distribution Planning for Retirement Benefits, Plymouth - This was an excellent seminar. If you missed it, you may wish to catch the webcast.
   - Jan. 18 - Drafting Estate Planning Documents, 27th Annual, Grand Rapids (Live)
   - Feb. 15 - Drafting Estate Planning Documents, 27th Annual, Plymouth (Live)
   - March 15 – Drafting an Estate Plan for an Estate Under $5 Million
   - Apr. 10 - Medicaid and Health Care Planning Update 2018, Plymouth (Live)
   - May 16 - Income Tax Planning for Family LPs, LLCs, and Disregarded Entities (Probate Institute add-on seminar), Acme (Live)
   - May 17-19 - Probate & Estate Planning Institute, 58th Annual, Acme (Live) – [registration is open](http://www.icle.org)
   - June 14-15 - Probate & Estate Planning Institute, 58th Annual, Plymouth (Live) -- [registration is open](http://www.icle.org) and note that the Plymouth location of the Institute will be held on Thursday and Friday this year – due to popular demand.
The Section Officers have requested that we start to transition away from the Section mailing list (“Listserv”) to the Section’s SBM Connect site (“Connect”). There are many reasons to make this transition, a few of which are lower cost, increased functionality, and more robust archive search tools.

This report is meant to share information we have gathered in evaluating the transition and to provide a proposed roadmap for the transition. As some of the Council members may know, prior to becoming an Attorney, I worked in the Information Technology department of a large corporation. During my time there, we went through two major technology transitions – one of which was an email system migration. I gained insight into the process from the bumps and bruises we experienced, including how to ease the transition from the “end user” standpoint; our Committee has incorporated these techniques into our transition plan, where suitable.

We anticipate and will try to address several transition concerns, such as:

- Ensure usability can closely approximate what Section members are used to with the Listserv (e.g., make sure there is a way to interact with Connect that is similar to the Listserv);

- Provide a reasonable transition period with regular communications to the Listserv users about the change;

- Continue to be able to access the Listserv archive for an additional time period; and

- Provide support for those who have difficulty making the transition.

**Analogizing Connect Functionality to Listserv Functionality**

Andrew Marks from the State Bar gave a helpful presentation on Connect at the December Council meeting. A key part of that presentation was showing us the ability for Connect users to receive messages from and interact with Connect in a way that is like the Listserv using email. Connect users can receive the posted topics in a daily digest format or a direct format. As the name implies, a daily digest format sends the user an email once a day that contains that day’s posts. The direct format sends each post in real time to the user as a separate email. Additionally, a Connect user can choose to reply directly to the message poster or to the “thread” where all Section Connect users will see the reply. To more closely approximate the experience of the Listserv, we suggest that Connect users choose the format that most closely matches how they...
currently receive Listserv emails.

In order for this to work, a Connect user needs to reply from either their email address on file with the State Bar of Michigan or one that is set up as an override address in the Connect system. In addition, there is the option to log in to the Section’s Connect site online, go to the Discussions page, and interact with the posts from there. In fact, there can be some benefits to interacting with Connect on the Connect site, as you can see all posts in one place, and, in many cases, there are additional text formatting options available.

It is possible to interact with the Connect system solely by email (like the Listserv). This includes starting a new post in Connect from email. The user need only send the email with subject and body text to michbar-probate@connectedcommunity.org.

Transition Period

In my past email transition experience, we ran the old and the new systems together for a minimum of 6 months and communicated with end users monthly, reminding them of the “shut off” date for the old system and how they could setup their new system to work like the old system. Our Committee proposes a June 1, 2018 “shut-off” date for the Listserv with monthly communications to Listserv users is reasonable. A draft of such a communication is attached as Exhibit A.

Continued Access to the Listserv Archive

The archive of Listserv emails is a potential research resource that is occasionally used by Section members. However, there have been several complaints about the functionality of searching the archive. The search functionality is set by the Listerv software vendor. The Modern Firm hosts the Listserv software but does not have the ability to change the search functionality. Additionally, there are fewer and fewer Listserv software vendors, as many groups are moving to systems similar to Connect, so it is difficult to get support for the software.

The Modern Firm estimates that it would be $10 per month to keep the archive function after shutting down the Listserv. Given the lackluster development for the Listserv software platform, they estimate they would only be able to continue to do so for the rest of 2018.

The Listserv emails are saved on the server in a raw text/eml format and are downloadable in a batch. I am currently exploring with State Bar representatives the possibility of importing the archive emails into Connect. So far, we do not have a firm answer on whether that is possible, but it looks promising.

Technical Support for Those Who Have Trouble With Connect

The State Bar has a great set of instructions for using connect at http://connect.michbar.org/home. There is even a video walk through. There is a help section with Frequently Asked Questions (FAQs) at http://connect.michbar.org/participate/faq. Andrew Marks and Sandra Barger at the State Bar are available as a resource. I am also willing to help as my time allows.

We support the move to Connect and the proposed process set out in this report. I look forward to Council’s feedback and request Council’s approval to proceed with the process provided in this report with permission to make changes to the content of the stated
communications if the technology features change between now and June 1, 2018.

Respectfully,

Michael Lichterman
Electronic Communications Committee Chair
EXHIBIT A

Proposed Communications to Listserv Users

Email subject line: Listerv Changeover to SBM Connect

Dear Mailing List User,

You are receiving this email because you are signed up to receive emails from the Probate and Estate Planning Section’s (the “Section”) email list (more commonly referred to as the “Listserv”). On January 20, 2018, the Section Council voted to retire the Listserv and have all Section communications occur through the SBM Connect system.

We recognize the value of the Listerv to our Section members and will be continuing this benefit on the SBM Connect system. To ease the transition, the Listserv will continue to be available until June 1, 2018. We encourage you to use the SBM Connect system during the transition period to minimize the impact to you of the Listserv retirement. The Council believes the added features and more intuitive archive features will benefit all Section members. Further, we expect that having a centralized discussion forum will increase discussions and foster greater congeniality among Section members.

It is possible to setup your SBM Connect system preferences to function like the Listerv – messages can be received in direct email (each SBM Connect message is a separate email) or a daily digest email (all of a day’s SBM Connect messages are delivered in one email). Like the Listserv, you can interact with the Connect system solely via email, if you choose to do so. A brief list of Frequently Asked Questions is provided below. A walk through of the Connect system can be found at http://connect.michbar.org/home on the left side of the page, and additional Frequently Asked Questions can be found at http://connect.michbar.org/participate/faq.

Respectfully,

Michael Lichterman
Chair, Electronic Communications Committee
Probate and Estate Planning Section

**Note: in each month that I send the above email to the Listserv, I will provide a reminder of how much time is remaining until the June 1, 2018 date. The above message will be cross-posted to the Section’s Connect page on the same schedule.

Frequently Asked Questions
How do I access the Section’s Connect forum?
You can access the Section’s Connect forum by going to http://connect.michbar.org/probate/home and clicking the “Section Discussions” link on the right side of the page. If you do not see the discussions, click the Login button in the upper right-hand corner of the page and login with your State Bar login. By clicking "Remember Me" on the login page, you will make future logins easier. Any time that you are at the Section’s Connect homepage (http://connect.michbar.org/probate/home), you can access the Section’s Connect form by clicking the “Resources” tab at the top of the page and clicking “Section Discussions”.

How do I make sure I am setup to receive the Section’s SBM Connect emails?
Navigate to your profile and click on the "My Account" tab. Choose "Community Notifications" from the drop-down menu. On that page, there are subscription options: Real Time, Daily Digest, No E-mail. Real time sends an e-mail every time a new message is posted. Daily digest sends one e-mail to you each day, consolidating all the posts from the previous day. No e-mail allows you to be part of the group without having e-mails sent to you. You can still post and read others’ messages by logging into the group’s site.

If you are still not able to send or receive SBM Connect emails, it may be that you have instructed the State Bar to not publish your email address as part of your State Bar member directory entry. If that is the case, please contact Sandra Barger at the State Bar (SBARGER@michbar.org) to change that preference with the State Bar. You should then be able to send emails to and receive emails from the Section’s Connect forum.

Can I reply to message directly from email?  
Yes. When you receive the Section’s Connect emails by direct message (each post to Connect is a separate email), you simply click “reply” in your email software. The “To” line in your reply email should show that the email is going to michbar-probate@connectedcommunity.org. You have the option to reply to the sender or to the group. Both options will be at the top of the email message. Some users have reported that clicking “reply all” in the message results in no action; instead, they have found that clicking reply all to the email itself (in Outlook, for example) results in the message going back to the entire group.

Can I start a new posting to Connect by email?  
Yes. If you send the email to michbar-probate@connectedcommunity.org, it will be posted to the Section’s Connect forum. The Subject line of your email will be the topic of the post on the Connect Forum. The email that you are sending your email from must be the email address that the State Bar has tied to your Member Directory record or an SBM Connect “Override” email address.

Can I use an email address for the Connect system that is different from the email address that the State Bar has tied to my Member Directory record?  
Yes. To do this, you must set up an “override” address in the Connect system. Go to connect.michbar.org. If you are not already logged in, log in to the Connect site. Click on the “My Profile” tab, then the “My Account” tab, and then the “Community Notifications” option. Approximately half way down the page (depending on your computer’s browser window size and resolution), click “add override addresses”. This will open a window that will allow you to add a specific “override” email address for one or more of the State Bar Connect community(ies) to which you belong.
The Tax Cuts and Jobs Act of 2017 doubled the Applicable Exclusion Amount and the GST Exemption Amount by increasing the statutory basic amount from $5,000,000 to $10,000,000. After taking into account indexing for inflation under §1(f), the amount for 2018 is...we don't know. In addition to changing the exclusions, Congress also changed the inflation calculations from using the traditional CPI to a Chained CPI, which all analysts agree lowers the impact of inflation adjustments. We expect the amount will be less than the easily computed $11.2 million (by doubling what it would have been absent TCJA) but more than $10.46 million that fully retroactive Chained CPI calculations would generate. Some experts have posited $11.18 million as the correct number, but confirmation must come from the IRS. As a consequence, the Law & Strategy and synopsis have been generalized by using “about $11 million” as the reference number for the AEA and GST Exclusions. This should be close enough for most clients, for whom these concepts are inherently fuzzy anyway.

Likewise, the Gift Tax Annual Exclusion Amount was scheduled to rise to $15,000 (up from $14,000) and would do so if the Chained CPI does not get applied retroactively. Assuming this is not the case, we stated that number as $15,000 with more confidence. We shall see. Meanwhile, here is my suggested idea for client information:

Is There Life after the Estate Tax is Dead? Five Rules.

Rule One: Understand Your Current Estate Plan

Many people do no estate planning. Those that do generally think that a will, and maybe a trust, will cover them forever. George Gregory often says that clients do not remember most of their trust provisions beyond the parking lot. Martin Shenkman says that he writes on every bill and newsletter that “Your Estate Plan Will Not Work without a Yearly Review.”

Certainly many that have done estate planning may have been tax motivated- setting up an A-B trust that gives a lifetime income interest only to a spouse, with distribution to family at the surviving spouse’s death, and an amount that would be subject to estate tax if it wasn’t put into a spousal trust. This is the well used amount going to the spousal trust “which would result in the lowest combined federal estate taxes on the deceased Grantor’s taxable estate for federal estate tax purposes.” Given the increase in estate tax exemption, this could mean that the spouse only gets a lifetime income interest. Is this the desired plan? What if the assets of the trust are not income producing and are not easy to convert to income producing? Others set up a disclaimer trust where everything goes to the spouse, subject to the disclaimer that the spouse makes to create a family trust or inheritance. Many planners say that at the time of the first death, the spouse does not want to disclaim, and does not do so. Was this the desired plan? There are also partial QTIPs (Qualified terminable interest property trusts) or Clayton Trusts which require an election to be made to provide the spouse with part of the trust that he or she will have income from, and maybe additional powers.

Rule Two: What Do You Really Want and Need?

The increase in the estate exemption amount and the availability of portability creates a wonderful freedom for clients to decide what they really want to do with the estate. What sort of income
will the estate earn? How much will the spouse need? At what ages do children receive money outright? Many of these decisions, once made, need to be revisited, not only because of tax law changes, but because people get older, need more or less, and even because of deaths of people who are designated as heirs or trustees. In addition, there have been societal changes that make us think and therefore plan for the future in a different way. We may need to consider digital asset planning, non-traditional marriage recognition, posthumous birth consideration, pet provisions, and even funeral representative designations and planning. Health care desires and representation may also change with time.

Revocable trusts provide an efficient way to manage affairs during a Grantor’s incapacity, and provide assets that are immediately available at death and not subject to probate. They can provide a succession plan, minimize investment risk, plan for business succession and provide for disposition of assets in blended families. Trusts can protect against creditors, appoint guardians for minor children, appoint acceptable personal representatives and trustees, and protect special need beneficiaries. Irrevocable trusts can be set up during life to insure that particular individuals receive assets, and can take advantage of annual gift tax exclusion amounts while controlling when the beneficiary receives the gift.

Rule Three: Flexibility is Key

New trusts, while directing who is to receive assets, can provide flexibility as to funding and provide a trusted representative to make decisions after death in consideration of the current tax regime and needs of beneficiaries. This can involve disclaimer planning, a partial QTIP election or a Clayton Trust. It can provide for discretionary distributions or powers to appoint. Clients should understand that no tax policy is guaranteed, and estate tax, if ended, could return. There may also be estate or inheritance taxes in other states where the client has a presence to take into consideration.

Rule Four: Death with an Unworkable Estate Plan

If the first three rules are ignored, resulting in an unworkable distribution at death, disclaimer or decanting might work. Disclaimer is time limited and tricky, and would generally not work to provide additional assets to the surviving spouse. Decanting might work if the desired beneficiaries remain the same and are cooperative. Judicial reformation might also work if there is no estate or income tax issue involved. It is also possible that a legislative solution might be effected that will give surviving spouses an option to take more from the estate with approval of the named heirs.

Rule Five: Possible Death Tax Scenarios

There are many possibilities of reform. These include getting rid of all transfer taxes, estate, gift and generation skipping tax (GST). More likely is eliminating estate and GST. This could be combined with capital gains tax at death. Or the step up in basis could be eliminated, so that heirs would receive the decedent’s basis and have to pay capital gains tax upon sale. If this will happen, how and when, is up in the air. In any case, I suggest that the first three rules be followed if, no matter what the tax reform. The latest plan eliminates estate tax for many more clients and gives them the opportunity to review their documents and wishes without tax concerns. They can leave a minimum amount outright to their spouse or children, purchase life insurance or change asset allocations. While unlikely, they should be aware that estate and gift tax could return in a bigger way, but we are back to Rule One and periodic reviews.

Lorraine New George W. Gregory PLLC
November 20, 2017

Mr. Lee Hornberger
Chair, Alternative Dispute Resolution Section
6730 Mission Rdg
Traverse City, MI 49686-6131

Dear Chair Hornberger:

On November 17, 2017, the State Bar of Michigan Board of Commissioners voted unanimously to oppose House Bill 5073 because the content of the legislation should be addressed in court rule, not legislation. In accordance with the State Bar bylaws, the Alternative Dispute Resolution Section can no longer advocate for HB 5073 or use its section resources to do so.

Article VIII, Section 7(2) states:

A State Bar Section may not advocate a policy position on behalf of the Section that is inconsistent with State Bar policy, unless expressly authorized to do so by a majority vote of the Board of Directors or Representative Assembly.

In this case, the Board of Commissioners did not authorize the ADR Section to advocate for HB 5073. However, because the Board did not take a position on the content of the legislation, the ADR Section is free to pursue the policies contained in the bill through court rule amendments.

If you have any questions about the bylaws or the Board’s position, please feel free to contact me; Peter Cunningham, the State Bar’s Director of Governmental Relations; or Tom McCarthy, Board of Commissioner liaison to the ADR section. Our contact information is:

Janet K. Welch
517.346.6331
jwelch@michbar.org

Peter Cunningham
517.346.6325
pcunningham@michbar.org

Sincerely,

Janet K. Welch
Executive Director

cc: E. Thomas McCarthy, Jr.
December 20, 2017

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909


Dear Clerk Royster:

At its November 17, 2017 meeting, the Board of Commissioners of the State Bar of Michigan (Board) considered the above-referenced rule amendments published for comment. In its review, the Board considered recommendations from the Criminal Jurisprudence & Practice Committee, Civil Procedure & Courts Committee, Access to Justice Policy Committee, Family Law Section, Probate & Estate Planning Section, and Appellate Practice Section. After a review of these recommendations, the Board voted unanimously to support the proposed rules with the amendments discussed below and contained in the enclosed recommendations submitted by the committees and sections. These recommendations have been summarized in a chart that is also included with this letter.

The Board strongly supports the Court’s efforts to modernize court procedure and implement a state-wide e-filing system. An effective e-filing system, however, must ensure access to justice for all, including litigants who are indigent, are self-represented, or have limited or no access to e-mail or the internet. The Board believes the rules should be revised to specifically address these access to justice issues. While the State Court Administrative Office may intend on addressing these issues in the standards that are referenced in the proposed rules, these access to justice concerns are fundamental to a fair and effective e-filing system and merit being explicitly included in the court rules.

The Board endorses the other recommendations and comments made by State Bar committees and sections, which are included with this letter and summarized in the enclosed chart.

We thank the Court for its efforts in implementing a uniform e-filing system in Michigan, and we hope these comments assist with these efforts. Thank you for the opportunity to comment on the proposed amendments.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
    Donald G. Rockwell, President
ADM 2002-37: Electronic Filing Procedures

State Bar of Michigan Summary of Comments Made by Committees and Sections

Abbreviations for committees and sections used below:
- CIV: Civil Procedure & Courts Committee
- CJAP: Criminal Jurisprudence & Practice Committee
- ATJ: Access to Justice Committee
- PEPS: Probate & Estate Planning Section
- FLS: Family Law Section
- APS: Appellate Practice Section

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<tr>
<th>MCR</th>
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<th>Comment</th>
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<tr>
<td>1.109(B)</td>
<td>CIV</td>
<td>Definition of “document” is too narrow. In proposal, the definition of document is limited to anything on 8 ½ x 11 inch paper without manipulation, meaning that anything on legal sized paper is not considered a document.</td>
</tr>
<tr>
<td>1.109(D)(1)(a)</td>
<td>CIV</td>
<td>The proposed rules are not clear as to what types of items are encompassed under the term “document.” If affidavits and exhibits are considered documents, then the restrictions set forth in subsection (D)(1)(a) are problematic. First, this subsection requires that all documents are in English, which poses problems for foreign affidavits and the generally-accepted use of Latin phrases in court filings. Second, the subsection requires a minimum font size. This poses problems for certain commercial documents, such as loan documents, which are typically printed on non-standard paper and must be reduced down to 8 ½ x 11 paper, which also reduces the size of the font. The definition of document be amended to specifically exempt affidavits and exhibits. Additionally, the last sentence of this provision (which addresses affidavits) seems out of place; this sentence should be included in MCR 2.119(B), which addresses the form of affidavits.</td>
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<tr>
<td>1.109(D)(1)(b)</td>
<td>PEPS</td>
<td>Require email address, if known, to caption requirements. In addition, a request for email addresses should be added to court forms.</td>
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<td></td>
<td>ATJ</td>
<td>Amend to allow self-represented who has PPO or similar criminal order or who wishes to request order of confidential address in the pending case to use mailing address rather than residential address, and revise SCAO forms accordingly.</td>
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<tr>
<td>1.109(D)(1)(c)</td>
<td>CIV</td>
<td>For clarity, define “case initiating document” used here and throughout the rule proposal.</td>
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<tr>
<td>1.109(D)(2)(b)</td>
<td>CJAP</td>
<td>Remove requirement that prosecutors inform the court whether or not there are any pending or resolved cases in any jurisdiction that involve a minor child of the family or individual family member of the defendant should be removed. Prosecutors have no way of knowing or verifying this information, and it would be difficult to ascertain such information for a juvenile case.</td>
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<tr>
<td>1.109(D)(2)(c)</td>
<td>PEPS</td>
<td>Remove family case inventory requirement from probate proceedings.</td>
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<tr>
<td>1.109(D)(3)</td>
<td>CIV</td>
<td>This provision would be better placed in MCR 2.119(B), which addresses the form of affidavits.</td>
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<tr>
<td></td>
<td>PEPS</td>
<td>The list of documents previously identified in MCR 5.114(B)(1) as requiring authentication by verification under oath or penalties of perjury needs to be reinstated either in the modified MCR 1.109 or within the probate rules. These documents are not all specifically identified in the rules other than in MCR 5.114(B)(1); therefore the current language of 1.109(D)(3) effectively removes the signing requirement.</td>
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<tr>
<td>1.109(D)(8)</td>
<td>CIV</td>
<td>The provisions set forth for filing documents under seal conflict with a proposed court rule amendment that was approved by the RA and was recently published for comment by the Court in ADM 2016-20. This rule proposal would allow parties who have designated materials as confidential under protective orders to file those documents under seal without having to file a motion to seal. It is important for the Court to address this issue to prevent parties from being forced to file layers of motions to seal documents that have already been deemed confidential. Further, subsection (D)(8) is not consistent with MCR 8.119(I); these rules should be amended to be consistent with each other.</td>
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<td></td>
<td>CJAP</td>
<td>Amend the requirement that the person filing documents under seal “serve copies of the motion, each document to be sealed, and the proposed order on all parties.” This provision is overly broad and would require that prosecutors serve criminal defendants investigational documents, such as investigative subpoenas, search warrants, and affidavits. These items should not be subject to disclosure to defendant and should be excluded from this rule.</td>
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<tr>
<td>1.109(G)(3)-(6)</td>
<td>APS</td>
<td>Amend the rules so that electronic service is not contingent on the clerk’s approval or rejection of a filing. Instead, the e-filing system should immediately serve a copy of any document submitted for filing upon all other counsel or record and unrepresented parties.</td>
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<tr>
<td>1.109(G)(3)(b)</td>
<td>PEPS</td>
<td>Create a separate rule to provide for greater specificity on allowing documents to be sent electronically, such as inventory information.</td>
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</table>
| 1.109(G)(3)(c)      | ATJ      | Expand and better define the “good cause” exemption to e-filing requirements by directing courts to consider:  
  • Individuals with no access to an electronic device;  
  • Individuals who must travel a certain distance to access a public computer;  
  • Individuals facing a lack of transportation or other limitations on the ability to travel;  
  • Individuals facing safety issues; and  
  • Age or disability limitations. |
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<td>1.109(G)(5)</td>
<td>PEPS</td>
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<td>1.109(G)(5)(a)(i)</td>
<td>ATJ</td>
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<tr>
<td>1.109(G)(5)(a)(ii)</td>
<td>ATJ</td>
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<tr>
<td>1.109(G)(5)(a)(iii)</td>
<td>PEPS</td>
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<td></td>
<td>APS</td>
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<tr>
<td>1.109(G)(5)(b)</td>
<td>CIV</td>
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<td></td>
<td>ATJ</td>
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| 1.109(G)(5)(c) | PEPS | Clarify protocols for notification of the rejection of a filing must be developed, including the following issues:  
- Should an SCAO e-form notification be created? (this would address statewide technical rejections)  
- The interplay between a statewide system (technical) rejection (MCR 1.109(G)(5)(c)) and a subsequent notification by a court of rejection |
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<td>1.109(G)(5)(a)(iii)</td>
<td>PEPS</td>
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<td>for substantive reasons (jurisdiction, venue, etc.). (MCR 1.109(G)(5)(a)(iii)) must be clarified.</td>
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<td>1.109(G)(6)</td>
<td>PEPS</td>
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<td>E-service process issues must also be addressed. Simultaneous e-service (which the filing system has the capability to perform) cannot be utilized if the hearing date is not available when the pleading is filed. MCR 1.109(G)(6). For example, when a party submits a motion for filing but the court sets a hearing date, simultaneous e-service will require the court to create and serve the notice of hearing separately from other documents once a date has been assigned. In addition, there are instances when a party may not want to immediately serve a document that has been filed with the court. The same issue for e-service process relates to e-service transactions. A probate court rule amendment is desirable.</td>
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<td>1.109(G)(6)(a)(ii)</td>
<td>ATJ</td>
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<td>Amend rule to provide an exception for individuals who do not have electronic devices. Amend – possibly in MCR 1.109(g)(6)(v) – to include a provision requiring that courts accommodate service by other means for litigants who do not have regular access to an email address. Amend rules to require courts to accommodate filing fees paid by any method, not just by credit card. Language for these amendments is proposed in ATJ Policy’s position.</td>
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<td>1.109(G)(7)</td>
<td>ATJ</td>
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<td>Streamline the process to account for transmission errors. In addition, SCAO should create a form to make it easier for self-represented litigants.</td>
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<td>3.206</td>
<td>FLS</td>
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<td>Include additional captioning language for domestic relations actions. Language proposed in Family Law Section position.</td>
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<td>5.113(A)</td>
<td>ATJ</td>
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<td>Amend to clarify that litigants are not required to use SCAO forms, and amend to account for litigants without electronic devices.</td>
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<td>6.101(A)(6)</td>
<td>CJAP</td>
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<td>Remove requirement that prosecutors inform the court whether or not there are any pending or resolved cases in any jurisdiction that involve a minor child of the family or individual family member of the defendant should be removed. Prosecutors have no way of knowing or verifying this information, and it would be difficult to ascertain such information for a juvenile case.</td>
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<td>8.117</td>
<td>ATJ</td>
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<td>Amend rule to allow the court clerk can assist a self-represented litigant with selecting a case-type code and such assistance is not considered legal advice.</td>
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<td>8.119(C)</td>
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<td>Amend rule to account for individuals who are exempt from e-filing requirements. Language proposed in ATJ Policy’s position.</td>
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<td>8.119(J)(2)</td>
<td>CIV</td>
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<td>Charging a reproduction fee for all copies raises access to justice concerns, particularly for in pro per litigants who may not have an e-mail address or regular access to their e-mail. The rules should be amended to require courts to provide the first copy free to e-filers, as is done in the federal e-filing system.</td>
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<tr>
<td>N/A</td>
<td>PEPS</td>
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<td>N/A</td>
<td>PEPS</td>
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Public Policy Position
ADM File No. 2002-37

The Civil Procedure & Courts Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed herein is that of the Civil Procedure & Courts Committee only and not the State Bar of Michigan. The State Bar position in this matter is to support the proposed rules with the amendments recommended by the State Bar committees and sections.

The Civil Procedure & Courts Committee has a public policy decision-making body with 26 members. On November 11, 2017, the Committee adopted its position after a discussion and vote at a scheduled meeting. 18 members voted in favor of the Committee’s position on 2002-37, 0 members voted against this position, 0 members abstained, 8 members did not vote due to absence.

The Civil Procedure & Courts Committee Supports ADM File No. 2002-37 with Recommended Amendments.

Explanation
The committee supports the Court’s great efforts to implement a state-wide electronic filing system and applauds the Court’s efforts to consolidate filing rules in one spot. The committee, however, has a number of recommendations with regard to the rule proposal.

- The committee was generally concerned how these rule amendments could potentially limit access to the court by the average person who does not have experience with e-filing procedures.
- MCR 1.109(B): The definition of “document” appears too narrow. In the proposed amendments, the definition of document is limited to anything on 8 ½ x 11 inch paper without manipulation, meaning that anything on legal sized paper would not be considered a document.
- MCR 1.109(D)(1)(a): The proposed rules are not clear as to what types of items are encompassed under the term “document.” If affidavits and exhibits are considered documents, then the restrictions set forth in subsection (D)(1)(a) are problematic. First, this subsection requires that all documents are in English, which poses problems for foreign affidavits and the generally-accepted use of Latin phrases in court filings. Second, the subsection requires a minimum font size. This poses problems for certain commercial documents, such as loan documents, which are typically printed on non-standard paper and must be reduced down to 8 ½ x 11 paper, which also reduces the size of the font. The committee recommends that the definition of document be amended to specifically exempt
affidavits and exhibits. Additionally, the last sentence of this provision (which addresses affidavit) seems out of place. The committee recommends including this sentence in MCR 2.119(B), which addresses the form of affidavits.

- MCR 1.109(D)(1)(c): In this subsection and throughout the rule proposal, the term “case initiating document” is used; however, this term is not defined. For clarity, the committee recommends defining this term.

- MCR 1.109(D)(3): While the committee agrees with the substance of the provisions in subsection (D)(3), the committee believes that these provisions would be better placed in MCR 2.119(B), which addresses the form of affidavits.

- MCR 1.109(D)(8): The provisions set forth for filing documents under seal conflict with a proposed court rule amendment that the Representative Assembly approved and is pending before the Court that would allow parties who have designated materials as confidential under protective orders to file those documents under seal without having to file a motion to seal. It is important for the Court to address this issue to prevent parties from being forced to file layers of motions to seal documents that have already been deemed confidential. Further, subsection (D)(8) is not consistent with MCR 8.119(l); these rules should be amended to be consistent with each other.

- MCR 1.109(G)(5): For the electronic filing process, the committee is concerned that the Court will adopt certain problematic aspects of the Oakland and Wayne counties e-filing systems. These systems contain an option for e-filers to uncheck and not serve certain individuals who have signed up for electronic service. While this could serve a purpose for ex parte motions, the committee is concerned that pro per individuals who do not fully understand service requirements could uncheck opponents or opposing counsel. This creates procedural problems because the opposing party may not receive notice that a motion has been filed. While there may not be a one-size-fits-all solution to this problem, for regular motions, e-filers should not have the option of unchecking opponents for electronic service.

- MCR 1.109(G)(5)(b): From a judicial administration perspective, accepting a filing at the time of transmission being completed may not be workable. For example, in probate courts, pro per individuals make multiple mistakes when filing documents concerning guardianship or conservatorship proceedings and the clerk’s office needs to send back a lot of filings before the filing is acceptable for filing.

- MCR 8.119(J)(2): Charging a reproduction fee for all copies raises access to justice concerns, particularly for in pro per litigants who may not have an e-mail address or regular access to their e-mail. The committee recommends that the rules require courts to provide the first copy free to e-filers, as is done in the federal e-filing system.

**Contact Person:** Karen H. Safran  
**Email:** ksafran@carsonfischer.com
Public Policy Position
ADM File No. 2002-37

The Criminal Jurisprudence & Practice Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed herein is that of the Criminal Jurisprudence & Practice Committee only and not the State Bar of Michigan. The State Bar position in this matter is to support the proposed rules with the amendments recommended by the State Bar committees and sections.

The Criminal Jurisprudence & Practice Committee has a public policy decision-making body with 17 members. On October 20, 2017, the Committee adopted its position after a discussion and vote at a scheduled meeting. 10 members voted in favor of the Committee’s position on 2002-37, 0 members voted against this position, 1 member abstained, 6 members did not vote due to absence.

The Criminal Jurisprudence & Practice Committee Supports ADM File No. 2002-37 With Amendments.

Explanation
The committee supports the proposed amendments set forth in ADM No. 2002-37, subject to two amendments.

First, in MCR 1.109(D)(2)(b) and 6.101(A)(6), the requirement that prosecutors inform the court whether or not there are any pending or resolved cases in any jurisdiction that involve a minor child of the family or individual family member of the defendant should be removed. Prosecutors have no way of knowing or verifying this information, and it would be difficult to ascertain such information for a juvenile case.

Second, MCR 1.109(D)(8) contains a requirement that the person filing documents under seal “serve copies of the motion, each document to be sealed, and the proposed order on all parties.” This provision is overly broad and would require that prosecutors serve criminal defendants investigational documents, such as investigative subpoenas, search warrants, and affidavits. These items should not be subject to disclosure to defendant and should be excluded from this rule.

Contact Person: Nimish R. Ganatra
Email: ganatran@cwashcenaw.org
The Access to Justice Policy Committee Supports ADM 2002-37 with Amendments.

Explanation
The committee supports the Court’s efforts to implement a state-wide electronic filing system. The committee, however, has a number of recommendations for the proposed rules.

1. MCR 1.109(G)(3)(c): Expand and Better Define the Good Cause Exception to E-Filing Requirement.

The committee believes that the “good cause” standard for opting out of electronic filing must be broadened and more clearly defined. MCR 1.109(G)(3)(c) makes electronic filing mandatory unless good cause is shown; however, “good cause” for an exception is not defined by the rules. The committee recommends that the good cause exception to the e-filing requirement be defined and expanding to encompass the following:

- Individuals with no access to an electronic device;
- Individuals who must travel a certain distance to access a public computer;
- Individuals facing a lack of transportation or other limitations on the ability to travel;
- Individuals facing safety issues; and
- Age or disability limitations.

In addition, the committee recommends that the rules should include the following public access court requirement: “Each court shall provide sufficient public access terminals to enable reasonable access
to e-filing, and/or sufficient personnel to provide clerk-aided e-filing for litigants seeking to file paper documents.”

2. MCR 1.109(D)(1)(b)(vi): Allow Protected Parties to Use Mailing Address Rather than Residential Address.

The committee recommends that MCR 1.109(D)(1)(b)(vi) be amended to allow a self-represented party who is under the protection of a PPO or other similar criminal order or who wishes to request an order of confidential address in the pending case to use a mailing address which does not have to be their residential address and SCAO forms should be revised accordingly to explain this option.

As proposed, MCR 1.109(D)(1)(b)(vi) requires all court documents to include “name, address, and telephone number of each party appearing without an attorney.” This is problematic from a domestic violence context where addresses and other contact (identifying) information should not be available to the public.

As proposed, this rule will create negative unintended consequences. For example, under the Uniform Child Custody Jurisdiction and Enforcement Act, a party may request that identifying information not be disclosed if a party’s or minor child’s health, safety or liberty would be at risk by the disclosure. However, if a self-represented party is required to disclose his or her name, address, and telephone number on this request for non-disclosure, the harm is already done. And a party’s failure to comply with the requirements of MCR 1.109(D)(1)(vi) may result in their pleading being rejected by the clerk.

Parties under the protection of a PPO should be permitted to use a mailing address, which does not have to be their residential address, for their protection. Similar accommodations for protected parties are allowed in other rules. For example, MCR 3.703(B)(6) permits a PPO petitioner to omit her residential address, but must provide a mailing address.

For these reasons, the committee recommends amending MCR 1.109(D)(1)(b)(vi) to allow self-represented parties who are under the protection of a PPO or other similar criminal order or who wishes to request an order of confidential address in the pending case to use a mailing address, rather than their residential address, in documents filed in court and to amend the SCAO forms accordingly.


The committee recommends amending MCR 1.109(G)(5)(a)(i) to explicitly account for individuals who opt out of e-filing as follows (suggested additions show in underline and bold):

Specified case information, including email address for achieving electronic service or a mailing address if opting out of electronic service, shall be provided . . .


The committee recommends that the MCR 1.109(G)(5)(a)(ii) be amended to require that the court clerk notifies the party of an error and provide time to correct the filing, as is done in the Court of Appeals.
As proposed, MCR 1.109(G)(5)(a)(ii) places the responsibility on the user to confirm submission and any errors are presumed to be the fault of the user; however, this is unduly burdensome to self-represented individuals who are computer illiterate.

5. MCR 1.109(G)(5)(b): Amend to Account for Delays in Approval of Fee Waiver Requests

The committee recommends that MCR 1.109(G)(5)(b) be amended to account for delays parties experience in the approval of the fee waiver request for filing fee, as follows (suggested additions shown in bold and underline):

A document submitted electronically is considered filed with the court when the transmission to the electronic-filing system is completed and the required filing fees have been paid or an application for waiver has been filed waived.

The filing date should be the date that the document was filed and request for waiver was filed; the filing date should not be based on the date that the waiver was granted by the court. This prejudices indigent filers. In certain courts, including Wayne County, there can be significant delays between the filing of the request for waiver and the court actually granting the waiver.

6. MCR 1.109(G)(6): Amend to Accommodate Individuals Without Access to Electronic Devices or Credit Cards.

The committee recommends that subsection (6)(a)(ii) be amended to provide an exception for individuals who do not have electronic devices, as follows (suggested additions shown in bold and underline):

Service of process of all other documents electronically filed shall be accomplished electronically among authorized users through the electronic-filing system and through regular mail or personal service for litigants not engaged in electronic service.

The rule should also be amended – possibly in MCR 1.109(g)(6)(v) – to include a provision requiring that courts accommodate service by other means for litigants who do not have regular access to an email address, as follows (suggested additions shown in bold and underline):

Courts must accommodate service by means other than electronic service for litigants lacking an e-mail address that is able to be access regularly. Such litigants may opt out of electronic service by submitting an Opt-Out of Electronic Service form to the Clerk. [form TBD by SCAO].

In addition, the rules should require courts to accommodate filing fees paid by any method, not just by credit card, by providing (suggested additions shown in bold and underline):

Courts must accommodate filing fees to be paid by any method, not just by credit card.
7. **MCR 1.109(G)(7): Streamline the Process for Dealing with Transmission Failures.**

The committee believes that the process set forth in the rule seems excessive and overly complex particularly for a self-represented party. The rule should be amended to streamline the process to account for these types of errors. In addition, SCAO should create a form to make it easier for self-represented litigants.

8. **MCR 5.113(A): Amend to Clarify that Litigants Are Not Required to Use SCAO Forms and to Account for Parties Without Electronic Devices.**

As proposed, the rule requires that “[d]ocuments must be substantially in the form approved by the SCAO if a form has been approved for the use.” The committee is concerned that the language of the rule could be interpreted to require litigants to only use SCAO forms. This could cause problems for practitioners, as many practitioners regularly use forms provided by local courts, rather than SCAO forms.

In addition, this rule should explicitly provide protections for individuals without electronic devices.

9. **MCR 8.117: Allow Clerks to Assist E-Filings with Non-Legal Advice.**

The committee recommends that this be amended to provide that the court clerk can assist a self-represented litigant with selecting a case-type code and such assistance is not considered legal advice.

10. **MCR 8.119(C): Account for Individuals Exempt from E-Filing.**

In proposed MCR 8.119(c), the clerk may reject filings not accompanied by a filing fee, “unless waived or suspended by court order;” however, similar to the concern raised in Paragraph 4 above, the rule should account for those who are exempt from electronic filing, as follows (suggested additions shown in bold and underline):

   The clerk of the court may only reject documents that do not comply with MCR 1.109(D), are not signed in accordance with MCR 1.109(e) or are not accompanied by a filing fee or fee waiver request.

11. **The Rules Should Set Forth Procedure for Obtaining Fee Waiver Under E-Filing System.**

The committee is also concerned with the lack of procedure for filing and obtaining a fee waiver under the new electronic filing rules. Must the fee waiver request be filed electronically? If so, what about parties who request an exemption from e-filing? What’s the process? How long will it take? Will a filing date be preserved pending approval of a fee waiver?

In addition, the court rules should require immediate conditional acceptance of a fee waiver and attached pleadings upon filing, or immediate acceptance of fee waivers for litigants who are statutorily required to have fees waived (there’s talk of connecting the e-filing system to the DHHS computers so that number can be instantaneously checked) and a short time period for deciding all other fee waivers.

The committee recommends that the rules be reviewed to better address self-represented and indigency issues. While SCAO may be well-intentioned in its internal efforts to accommodate self-represented and indigency issues in the e-filing process, there should be a court rule backing up these efforts with more specificity.

Number who voted in favor and opposed to the position:
When the committee voted on ADM 2002-37, it offered members two alternatives when dealing with e-filing exemptions for self-represented individuals: (1) provide a blanket exemption for self-represented individuals to the e-filing requirements or (2) broaden and expand the good cause exemption to e-filing already contained in the proposed rules. 7 members preferred the blanket exemption alternative, and 14 members preferred the broadening and better defining good cause alternative.

With regard to the recommendations set forth in paragraphs 2 through 12, the committee supported the amendments as above.

Contact Persons:
Lorraray S.C. Brown
Valerie R. Newman

Email:
lorrayb@mplp.org
vnewman@waynecounty.com
Public Policy Position
ADM File No. 2002-37

The Probate & Estate Planning Section Supports ADM File No. 2002-37.

The rules are required to be in place to enable SCAO’s e-Filing vendor to begin programming the statewide solution. In addition, the proposal would move existing language into MCR 1.109 as a way to, for the first time, include most filing requirements in one single rule, instead of scattered in various rules. The proposal largely mirrors the administrative orders that most e-Filing pilot projects have operated under, but contains some significant new provisions. For example, courts would be required to maintain documents in an electronic document management system, and the electronic record would be the official court record.

Our review has identified a number of issues with the amendments. Some of the issues will have an immediate impact on probate cases if the proposed rules are not modified. Other issues are identified here in order to create awareness on the part of the Supreme Court and the State Court Administrative Office (SCAO) that the items must be addressed as these rules become refined. It is likely that drafts of specific proposed probate court rule amendments will be developed for submission by the committee.

Please note that the following is an initial list, which will be refined and likely be added to over time:

- The email address, if known, should be added to the required caption information. MCR 1.109(D)(1)(b).
• While not a court rule issue, a line request for e-mail addresses must be added to court forms.

• The list of documents previously identified in 5.114(B)(1) as requiring authentication by verification under oath or penalties of perjury needs to be reinstated either in the modified 1.109 or within the probate rules. These documents are not all specifically identified other than in 5.114(B)(1), therefore the current language of 1.109(D)(3) effectively removes the signing requirement.

• The new requirement contained in MCR 1.109(D)(2)(c) to include a family case inventory should be removed in relation to probate proceedings. This information has little relevance in relation to probate proceedings such as decedent estates, trusts and mental health cases. The additional filing requirement could also prove onerous to parties in many instances where they do not have access to such information. Currently, many filers simply leave this information blank on guardianship forms because they do not know the information.

• Proof of service e-service for probate filings must be addressed in greater detail. A separate rule must be created or provisions made part of an existing court rule.

• Greater specificity is necessary on allowing documents to be sent electronically for other than filing (i.e., inventory info, etc.). A separate rule must be created or provisions made part of an existing court rule. MCR 1.109(G)(3)(b).

• A separate rule should be created for probate proceedings regarding the good cause exception safe harbor for items that do not have to be filed electronically. It is imperative that the issue of filing original wills be addressed as part of this issue. MCR 1.109(G)(3)(c).

• Clarification regarding protocols for notification of the rejection of a filing must be developed, including the following issues:
  o Should an SCAO e-form notification be created? (this would address statewide technical rejections)
  o The interplay between a statewide system (technical) rejection (MCR 1.109(G)(5)(c)) and a subsequent notification by a court of rejection for substantive reasons (jurisdiction, venue, etc.). (MCR 1.109(G)(5)(a)(iii)) must be clarified.

• E-service process issues must also be addressed. Simultaneous e-service (which the filing system has the capability to perform) cannot be utilized if the hearing date is not available when the pleading is filed. MCR 1.109(G)(6). For example, when a party submits a motion for filing but the court sets a hearing date, simultaneous e-service will require the court to create and serve the notice of hearing separately from other documents once a date has been assigned. In addition, there are instances when a party may not want to immediately serve a document that has been filed with the court. Simultaneous service also removes a party’s option to serve a document only after they know the court has officially accepted it for filing.

• The same issue for e-service process relates to e-service transactions. A probate court rule amendment is desirable.
Consideration needs to also be given on how to handle instances where there are multiple interested persons that require service of documents throughout the life of a case, but not all individuals become registered users of the e-filing system.

Contact Person: David P. Lucas
Email: dluucas@vcflaw.com
Public Policy Position
ADM File No. 2002-37

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,859 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. The State Bar position in this matter is to support the proposed rules with the amendments recommended by the State Bar committees and sections.

The Family Law Section has a public policy decision-making body with 21 members. On November 16, 2017, the Section adopted its position after a discussion and vote at a scheduled meeting. 15 members voted in favor of the Section’s position on 2002-37, 0 members voted against this position, 0 members abstained, 6 members did not vote.

The Family Law Section Supports ADM File No. 2002-37 with Recommended Amendments.

Explanation
Generally speaking, the Family Law Council supports the proposed Court Rule amendments of ADM File No. 2002-37. However, not every single proposed rule change in ADM File No. 2002-37 will impact Family Law/Domestic Relations practice. The Family Law Section's supportive vote and comments are limited to those provisions that we believe will have an impact on our practice. The Family Law Council voted in favor of the following changes in ADM File No. 2002-37, as written:

- MCR 1.109, generally;
- MCR 1.109(D)(2)(c)(ii) regarding Family Inventory;
- MCR 1.109(D)(8) regarding standards for filing documents under seal;
- MCR 2.107, 2.113, and 2.114
- MCR 3.206(A) regarding labels for pleadings and identifying information for minor children;
- MCR 3.206(B) regarding Verified Statements;
- MCR 3.901, 3.931, and 3.961 regarding captioning in delinquency cases
- MCR 8.119(D)(4) regarding the Official Court Record

The Family Law Council takes no position with regard to the following proposed amendments in ADM File No. 2002-37:

- MCR 4.302
The Family Law Section also recently voted on a proposed amendment to MCR 3.206(D) & (E), which would impact captioning in Domestic Relations matters. This vote occurred within the past year, and was independent of ADM File No. 2002-37. The proposed language is relevant to the proposed changes in ADM File No. 2002-37, and the Family Law Council believed this would be a good opportunity to introduce these changes, and make them part of the ADM File No. 2002-37 package as a "Friendly Amendment". This proposal would only affect captioning in Domestic Relations/Family Law cases. The following is the specific language the Family Law Council would like to see proposed:

**MCR 3.206**

[(A) -(C) unchanged]

(D) Designation of Parties. The party who initiates a case by a complaint or petition is designated as the Petitioner and the responding party is designated as the Respondent. Parties who initiate a case by a joint petition are designated as Petitioner A and Petitioner B. These designations will remain the same throughout the action and in any postjudgment proceedings. To the extent that court rules outside of subchapter 3.200 are applicable to Domestic Relations Actions, the term “plaintiff” will mean petitioner, and “defendant” will mean respondent.

(E) Captions. In an action for divorce, separate maintenance or annulment, the case caption must be substantially in the following form: "Regarding the Marriage of [petitioner's name] and [respondent's name or joint petitioner's name]." In actions for child support or child custody which are not divorce, separate maintenance, or annulment cases, the caption must be in substantially the following form: "Regarding the Child[ren] of [petitioner's name] and [respondent's name or joint petitioner's name]." In an action for paternity or revocation of paternity, the case caption will be as set forth in MCR 2.113(C)(I), except that the filing party will be designated as petitioner, and the responding party as respondent.

**Contact Person:** Christopher Harrington

**Email:** christopherj26@gmail.com
Public Policy Position  
ADM File No. 2002-37  

The Council supports the uniform set of rules that the Court has adopted for the new statewide e-filing system, but wishes to share two main concerns for the Court's consideration as it works to implement the new rules.

1. **Defect Correction Procedure Needed.** Under new MCR 1.109(D)(6), a court clerk may reject filings that do not conform to MCR 8.119. Although new MCR 1.109(G)(5)(b) would provide that “a document submitted electronically is considered filed with the court when the transmission to the electronic-filing system is completed,” and that “[r]egardless of the date a filing is accepted by the clerk of the court, the date of the filing is the date submitted,” it is not clear how those provisions affect new MCR1.109(G)(5)(a)(iii), which states that “[a] rejected document is not part of the official court record.”

Without a specific procedure for resubmitting corrected filings, the Council is concerned that a clerk’s ability to reject a filing can result in the loss of substantive rights. For example, if a complaint is filed on the last day of a limitations period and is rejected the next day, any attempt to correct the defect may be futile, since the opposing party could interpose a limitations defense to a corrected-but-late complaint.

This procedure can also create problems with the record on appeal. For example, if a party unsuccessfully opposes a motion on the papers, and that party’s brief is later rejected, the brief will not be part of the record. If the party attempts to file a corrected, conforming brief, it may be after the briefing deadline, which may create problems for properly preserving issues for appeal.

If the Court believes that clerks should retain the power to reject filings, then the Council respectfully submits that the Court should adopt a defect-correction procedure that allows a party to file a corrected pleading or paper within a set time, and provide that a corrected filing filed in compliance with the procedure will be deemed filed on the date and at the time of the original filing.
2. *Simultaneous Electronic Service.* It is unclear from new MCR 1.109(G)(3)(a)(i), MCR 1.109(G)(5)(a)(iii), MCR 1.109(G)(6)(a)(ii), and MCR 1.109(G)(6)(b)–(c), whether a document is electronically served on other parties when submitted for filing or after a clerk approves or rejects a filing. The Council respectfully submits that electronic service of a document should not be contingent upon a clerk’s approval or rejection of a filing. The e-filing system should immediately serve a copy of any document submitted for filing upon all other counsel of record and unrepresented parties.

**Contact Person:** Joanne Geha Swanson  
**Email:** jswanson@kerr-russell.com
December 20, 2017

ADM File No. 2002-37

Amendments of Rules 1.109, 2.107, 2.113, 2.114, 3.206, 3.901, 3.931, 3.961, 4.302, 5.113, 5.114, 6.001, 6.101, 8.117, and 8.119 of the Michigan Court Rules

On September 20, 2017, for purposes of proceeding with creation and implementation of a statewide electronic filing system, this Court ordered that various rule amendments take effect January 1, 2018, with the understanding that comments submitted during the comment period and at the public hearing might result in revisions of these amendments. Because it appears that some significant changes will be considered on final review of these amendments in January 2018, the effective date of amendments adopted by order dated September 20, 2017, is deferred until further order of the Court.
MEMORANDUM

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan
From: James P. Spica
Re: Divided and Directed Trusteeships ad Hoc Committee Chair’s Report
Date: January 12, 2018

State Representative Klint Kesto agreed on December 13, 2017, to sponsor and pilot the DDTC legislative proposal that the Council approved on November 11, 2017. The proposal has been submitted to the Legislative Service Bureau; we are currently waiting for the “blueback.”

JPS
DETOIT 40411-1 1416471v5 - 1/12/2018 10:24:49 AM
Upcoming Meetings With Agenda Items On Your Tracking List:
The following is a list of committee meetings in the next 7 days that have agenda items on your tracking list.

- **Tuesday, Jan 16, 2018 at 12:30 PM - SENATE: Local Government**
  - **SB 0736** - PROPERTY, Recording, Remove recording requirements from exception for wills. (Hertel Jr., Curtis, 12/13/17)
    - **Status:** 12/13/2017 - SENATE - REFERRED TO THE COMMITTEE ON LOCAL GOVERNMENT
    - **Tracking List:** Real Estate Committee

  - **SB 0734** - PROPERTY, Recording, Require trust to be recorded separately under conveyance of a trust. (Conyers, Ian, 12/13/17)
    - **Status:** 12/13/2017 - SENATE - REFERRED TO THE COMMITTEE ON LOCAL GOVERNMENT
    - **Tracking List:** Legislation Development & Drafting Committee

Bills and resolutions with movement in the past 7 days (listed again below):

- **SB 0525** - COURTS, Reorganization, Modify reorganization of courts and number of judgeships (Jones, Rick (R), 09/06/17)
  - **Status:** 01/11/2018 - returned to Senate
  - **MCL Tracking:** 600.801 to 600.899 - Probate Courts

- **HB 5398** - PROBATE, Trusts, Allow use of a certificate of trust under the estates and protected individuals code for a trust that affects real property. (Lucido, Peter J. (R), 01/11/18)
  - **Status:** 01/16/2018 - bill electronically reproduced 01/11/2018
  - **MCL Tracking:** 565.431 to 565.439 - Certificates of Trust
  - **MCL Tracking:** 565.431 to 565.439 - Certificates of Trust

Bills and resolutions matching your MCL Tracking with movement in the past 7 days:

- **HB 5398** - PROBATE, Trusts, Allow use of a certificate of trust under the estates and protected individuals code for a trust that affects real property. (Lucido, Peter J. (R), 01/11/18)
  - **Status:** 01/16/2018 - bill electronically reproduced 01/11/2018
  - **MCL Tracking:** 565.431 to 565.439 - Certificates of Trust
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SB 0525 - COURTS, Reorganization, Modify reorganization of courts and number of judgeships (Jones, Rick (R), 09/06/17)
(Status: 01/11/2018 - returned to Senate)
MCL Tracking: 600.801 to 600.899 - Probate Courts

All bills and resolutions in your current tracking list:
(Bills and resolutions with recent movement will be highlighted in blue.)

- TO BE ASSIGNED/Legislation Monitoring and Analysis

HB 4205 - ADMINISTRATIVE PROCEDURE, Rules, Prohibit adoption of rules by state agencies from being more stringent than federal regulations. (Cole, Triston (R), 02/14/17)
(Status: 10/10/2017 - REFERRED TO COMMITTEE OF THE WHOLE WITH SUBSTITUTE S-1)

Notes on HB 4205:
This may be more properly an elder-law issue, but it is important.

HB 4931 - CIVIL PROCEDURE, Civil Actions, Create financial exploitation liability act (Kosowski, Robert L. (D), 09/13/17)
(Status: 09/14/2017 - bill electronically reproduced 09/13/2017)

Notes on HB 4931:
Interesting bill regarding undue influence, and council will want to discuss thoroughly if it proceeds.

HB 5027 - CRIMINAL PROCEDURE, Sentencing Guidelines, Provide for sentencing guidelines for elder adult abuse (Kesto, Klint (R), 09/27/17)
(Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

Notes on HB 5027:
HB 5027-5032 is a bill package related to Elderly Adults (65+). The bills mostly relate to criminal penalties and licensing of nursing homes. HB 5032 in particular is noteworthy and may be due comments from our section.

HB 5032 creates a rebuttable presumption of exploitation for lifetime transfers of $10,000 or more from A PERSON WHO IS 65 YEARS OF AGE OR OLDER (“elder adult”) to a non-relative (undefined).
HB 5028 - CRIMINAL PROCEDURE, Sentencing, Modify certain penalties for assaulting elder or vulnerable adults. (Farrington, Diana (R), 09/27/17) (Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

HB 5029 - CRIMINAL PROCEDURE, Sentencing Guidelines, Modify sentencing guidelines for embezzlement from vulnerable adult to include elder adults. (Guerra, Vanessa (D), 09/27/17) (Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

HB 5030 - HEALTH OCCUPATIONS, Nursing Home Administrators, Require nursing home administrators to be trained in detection of elderly abuse and exploitation. (Liberati, Frank (D), 09/27/17) (Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

HB 5031 - SENIOR CITIZENS, Housing, Require assisted living facilities licensure. (Hammoud, Abdullah (D), 09/27/17) (Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

HB 5032 - CRIMES, Other, Establish definition of consent in crime of embezzlement against vulnerable adults and include elder adults as victims. (Green, Mike (R), 09/27/17) (Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

SB 0100 - CIVIL PROCEDURE, Costs and Fees, Remove certain restrictions in recovery of costs and fees in an action involving the State of Michigan. (Casperson, Tom (R), 02/02/17) (Status: 09/14/2017 - referred to Committee on Judiciary)

SB 0101 - ADMINISTRATIVE PROCEDURE, Contested Cases, Remove certain restrictions in award of costs and fees to prevailing party in a case involving the State of Michigan and exempt parole hearings from administrative procedures act. Make general revisions to contested case provisions. (Robertson, David B. (R), 02/02/17) (Status: 09/14/2017 - referred to Committee on Judiciary)

Court Rules, Forms, & Proceedings Committee

HB 4821 - PROBATE, Wills and Estates, Require appointment of the state or county public administrator as personal representative of a decedents estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives. (Runestad, Jim (R), 07/12/17) (Status: 11/30/2017 - REFERRED TO COMMITTEE OF THE WHOLE WITH SUBSTITUTE S-1)

MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

HB 4822 - PROBATE, Wills and Estates, Require appointment of the state or county public administrator as personal representative of a decedents estate in a formal proceeding and modify powers and duties of public administrators acting as personal representatives. (Ellison, Jim (D), 07/12/17) (Status: 11/30/2017 - REFERRED TO COMMITTEE OF THE WHOLE WITH SUBSTITUTE S-1)
**MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code**

**HB 5073** - **CIVIL PROCEDURE, Alternate Dispute Resolution**, Revise procedures for mediation and case evaluation of civil actions. (Kesto, Klint (R), 10/10/17)
*(Status: 10/17/2017 - reported with recommendation for referral to Committee on Law and Justice)*

**Ethics & Unauthorized Practice of Law Committee**

**HB 4312** - **OCCUPATIONS, Attorneys**, Modify eligibility requirements for attorney licensed in another state to practice law in Michigan. (LaFave, Beau (R), 03/07/17)
*(Status: 06/15/2017 - substitute H-1 adopted and amended)*

**Notes on HB 4312:**

Bill is likely dead.

**HB 4588** - **OCCUPATIONS, Securities**, Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults and posting of information. (Brinks, Winnie (D), 05/04/17)
*(Status: 05/09/2017 - bill electronically reproduced 05/04/2017)*

**HB 4589** - **OCCUPATIONS, Securities**, Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults. (Graves, Joseph (R), 05/04/17)
*(Status: 05/09/2017 - bill electronically reproduced 05/04/2017)*

**SB 0345** - **OCCUPATIONS, Securities**, Require certain record keeping and posting of information for financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults (Jones, Rick (R), 05/02/17)
*(Status: 05/02/2017 - INTRODUCED BY SENATOR STEVEN BIEDA)*

**SB 0346** - **OCCUPATIONS, Securities**, Require financial advisors to report suspected cases of financial abuse of elderly or other vulnerable adults (Ananich, Jim (D), 05/02/17)
*(Status: 05/02/2017 - INTRODUCED BY SENATOR JIM ANANICH)*

**Guardianship, Conservatorship, and End of Life Com**

**HB 4021** - **PROBATE, Guardians and Conservators**, Allow guardianship petitions probate judges to schedule certain hearings before minor turns 18 years of age. (Kosowski, Robert (D), 01/12/17)
*(Status: 01/18/2017 - bill electronically reproduced 01/12/2017)*

**MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code**
HB 4171  PA 155  - PROBATE, Guardians and Conservators, Authorize a guardian to sign physician orders for scope of treatment form. (Cox, Laura (R), 02/07/17)
(Status: 11/09/2017 - assigned PA 155'17 with immediate effect)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

HB 4173  PA 156  - HUMAN SERVICES, Adult Foster Care, Establish physician orders for scope of treatment form procedure if adult foster care facility is unwilling to comply with the form. (Vaupel, Hank (R), 02/07/17)
(Status: 11/09/2017 - assigned PA 156'17 with immediate effect)

HB 4174  PA 157  - HEALTH, Emergency Response, Revise procedure for complying with a do-not-resuscitate order to reflect physician orders for scope of treatment forms. (Love, Leslie (D), 02/08/17)
(Status: 11/09/2017 - assigned PA 157'17 with immediate effect)

HB 4684  - PROBATE, Guardians and Conservators, Allow limited guardianship to supervise access to incapacitated individuals relative. (Lucido, Peter J. (R), 05/31/17)
(Status: 06/06/2017 - bill electronically reproduced 05/31/2017)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

HB 4996  - PROBATE, Guardians and Conservators, Expand notification requirement of guardians. (Kosowski, Robert L. (D), 09/20/17)
(Status: 09/26/2017 - bill electronically reproduced 09/20/2017)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

HB 5037  - PROBATE, Guardians and Conservators, Provide for power of guardian to implant a tracking device with a ward. (Lucido, Peter J. (R), 09/27/17)
(Status: 09/28/2017 - bill electronically reproduced 09/27/2017)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

HB 5075  - PROBATE, Patient Advocates, Provide for court determination of whether a patient advocate is acting within his or her authority or in a patients best interest. (Cole, Triston (R), 10/10/17)
(Status: 10/11/2017 - bill electronically reproduced 10/10/2017)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

HB 5076  - HEALTH, Other, Establish procedure to require physician and hospital to obtain the consent of certain persons to withhold or withdraw a life-sustaining treatment. (Noble, Jeff (R), 10/10/17)
(Status: 10/11/2017 - bill electronically reproduced 10/10/2017)

HB 5152  - HEALTH, Patient Directives, Create non-opioid directive form. (Singh, Sam (D), 10/19/17)
(Status: 10/24/2017 - bill electronically reproduced 10/19/2017)

HB 5153  - PROBATE, Guardians and Conservators, Allow a guardian to execute a non-opioid directive form. (Canfield, Edward (R), 10/19/17)
(Status: 10/24/2017 - bill electronically reproduced 10/19/2017)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

SB 0378 [PA 167] - SENIOR CITIZENS, Housing, Amend home for the aged definition and create an exemption from licensing. (Knollenberg, Marty (R), 05/16/17) (Status: 11/28/2017 - ASSIGNED PA 167'17 WITH IMMEDIATE EFFECT)

SB 0488 - CHILDREN, Other, Clarify parent or guardian to delegate care of minor child via power of attorney under the safe families program. (MacGregor, Peter (R), 06/22/17) (Status: 06/22/2017 - INTRODUCED BY SENATOR PETER MACGREGOR)

SB 0597 - HEALTH, Other, Establish procedure to withhold or withdraw a life-sustaining treatment to require physician and hospital to obtain the consent of certain persons. (Proos, John (R), 09/28/17) (Status: 09/28/2017 - INTRODUCED BY SENATOR JOHN PROOS)

SB 0598 - PROBATE, Patient Advocates, Provide for court determination of whether a patient advocate is acting within his or her authority or in a patient's best interest. (Proos, John (R), 09/28/17) (Status: 09/28/2017 - INTRODUCED BY SENATOR JOHN PROOS)

SB 0713 - PROBATE, Guardians and Conservators, Provide for visitation procedures for isolated adults. (Marleau, Jim (R), 12/06/17) (Status: 12/06/2017 - INTRODUCED BY SENATOR JAMES MARLEAU)

MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

SB 0644 - TORTS, Liability, Enact insurance agents liability act. (Jones, Rick (R), 11/01/17) (Status: 11/01/2017 - INTRODUCED BY SENATOR RICK JONES)

Insurance Legislation ad Hoc Committee

Legislation Development & Drafting Committee

HB 4410 - PROBATE, Wills and Estates, Allow exempt property decedent to exclude adult child by written instrument. (Lucido, Peter J. (R), 03/23/17) (Status: 10/03/2017 - reported with recommendation with substitute H-1) MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code Position: Support

Notes on HB 4410:
Probate and Estate Planning Section, Public Policy Position:

http://www.michbar.org/publicpolicy/ppolicyDB_Detail/PublicPolicyID=1429

HB 5362 - PROBATE, Trusts, Modify information required in a certificate of trust. (Lucido, Peter J. (R), 12/13/17)
(Status: 12/28/2017 - bill electronically reproduced 12/13/2017)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

HB 5398 - PROBATE, Trusts, Allow use of a certificate of trust under the estates and protected individuals code for a trust that affects real property. (Lucido, Peter J. (R), 01/11/18)
(Status: 01/16/2018 - bill electronically reproduced 01/11/2018)
MCL Tracking: 565.431 to 565.439 - Certificates of Trust
MCL Tracking: 565.431 to 565.439 - Certificates of Trust

SB 0734 - PROPERTY, Recording, Require trust to be recorded separately under conveyance of a trust. (Conyers, Ian (D), 12/13/17)
(Status: 12/13/2017 - INTRODUCED BY SENATOR IAN CONYERS)
MCL Tracking: 565.431 to 565.439 - Certificates of Trust
MCL Tracking: 565.431 to 565.439 - Certificates of Trust

Senate Committee Hearing: 01/16/2018 Local Government (SB 0734 on Agenda) - (Click for More Info)

Premarital Agreements Legislation ad Hoc Committee

HB 4751 - FAMILY LAW, Marriage and Divorce, Clarify enforceability of prenuptial agreements. (Kesto, Klint (R), 06/13/17)
(Status: 12/05/2017 - REFERRED TO COMMITTEE OF THE WHOLE WITH SUBSTITUTE S-1)

HB 4959 - FAMILY LAW, Marriage and Divorce, Require prenuptial and postnuptial agreements to be enforceable. (Hoitenga, Michele (R), 09/14/17)
(Status: 09/19/2017 - bill electronically reproduced 09/14/2017)

Real Estate Committee

HB 4686 - HOUSING, Affordable, Authorize local units to impose rent limitation for senior citizens and individuals with disabilities and provide for tax exemptions and specific tax. (Chang, Stephanie (D), 05/31/17)
(Status: 06/06/2017 - bill electronically reproduced 05/31/2017)
**HB 4905** - **PROPERTY TAX, Principal Residence Exemption**, Modify principal residence exemption for individual residing in nursing home or assisted living facility (Lucido, Peter J. (R), 09/07/17)
(Status: 12/12/2017 - REFERRED TO COMMITTEE ON FINANCE)

**SB 0078** - **PROPERTY TAX, Principal Residence Exemption**, Continue homestead exemption upon death of homeowner under certain conditions. (Nofs, Mike (R), 01/31/17)
(Status: 04/20/2017 - referred to Committee on Tax Policy)

**SB 0284** - **PROPERTY, Recording**, Remove requirement statement of marital status in instruments conveying or mortgaging real estate. (Jones, Rick (R), 03/29/17)
(Status: 04/26/2017 - referred to Committee on Financial Services)

**SB 0540** - **PROPERTY TAX, Assessments**, Modify definition of transfer of ownership and certain excluded transfers. (Schuitmaker, Tonya (R), 09/07/17)
(Status: 09/07/2017 - INTRODUCED BY SENATOR TONYA SCHUITMAKER)

**SB 0736** - **PROPERTY, Recording**, Remove recording requirements from exception for wills. (Hertel Jr., Curtis (D), 12/13/17)
(Status: 12/13/2017 - INTRODUCED BY SENATOR CURTIS HERTEL)

Senate Committee Hearing: 01/16/2018 Local Government (SB 0736 on Agenda) - (Click for More Info)

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**x - No position to be taken**

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**HB 4021** - **PROBATE, Guardians and Conservators**, Allow guardianship petitions probate judges to schedule certain hearings before minor turns 18 years of age. (Kosowski, Robert (D), 01/12/17)
(Status: 01/18/2017 - bill electronically reproduced 01/12/2017)

MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

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**HB 4040** - **VEHICLES, Registration**, Exempt senior citizens from vehicle registration fees increases. (Camilleri, Darrin (D), 01/12/17)
(Status: 01/18/2017 - bill electronically reproduced 01/12/2017)

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**HB 4043** - **LAW ENFORCEMENT, Communications**, Establish missing senior and vulnerable adult plan. (Farrington, Diana (R), 01/18/17)
(Status: 01/24/2017 - bill electronically reproduced 01/18/2017)

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**HB 4469** - **SENIOR CITIZENS, Other**, Provide for eligibility for participation in senior farmers' market nutrition program (SFMNP) and create a rotating distribution process (Guerra, Vanessa (D), 03/30/17)
(Status: 04/19/2017 - bill electronically reproduced 03/30/2017)

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**HB 4484** - **PROPERTY TAX, Exemptions**, Modify exemption for surviving spouse of disabled veteran. (Elder, Brian (D), 04/19/17)
HB 4674 - HUMAN SERVICES, Long-Term Care, Require impact study related to long-term care needs. (Hoadley, Jon (D), 05/30/17)
(Status: 05/31/2017 - bill electronically reproduced 05/30/2017)

HB 4752 - PROBATE, Wills and Estates, Revise fee ratio and reporting requirement and remove sunset (Kesto, Klint (R), 06/08/17)
(Status: 12/05/2017 - REFERRED TO COMMITTEE OF THE WHOLE WITH SUBSTITUTE S-1)

MCL Tracking: 600.801 to 600.899 - Probate Courts

HB 4754 - COURTS, Jurisdiction, Authorize inter-circuit concurrent jurisdiction plan. (Barrett, Tom (R), 06/13/17)
(Status: 06/14/2017 - referred to Committee on Judiciary)

MCL Tracking: 600.801 to 600.899 - Probate Courts

HB 4754 - COURTS, Jurisdiction, Authorize inter-circuit concurrent jurisdiction plan. (Barrett, Tom (R), 06/13/17)
(Status: 06/14/2017 - referred to Committee on Judiciary)

MCL Tracking: 600.801 to 600.899 - Probate Courts

HB 4885 - CRIMES, Embezzlement, Increase penalties for stealing, embezzling, or converting personal or real property from a vulnerable adult. (Lucido, Peter J. (R), 08/16/17)
(Status: 09/06/2017 - bill electronically reproduced 08/16/2017)

HB 4886 - CRIMINAL PROCEDURE, Sentencing Guidelines, Increase penalties for embezzlement from vulnerable adult.
(Lucido, Peter J. (R), 08/16/17)
(Status: 09/06/2017 - bill electronically reproduced 08/16/2017)

HB 4994 - SENIOR CITIZENS, Crimes, Provide for public relations campaign to prevent elder abuse. (Kosowski, Robert L. (D), 09/20/17)
(Status: 09/26/2017 - bill electronically reproduced 09/20/2017)

HB 4995 - SENIOR CITIZENS, Crimes, Require neglect and mistreatment of senior citizens the department of health and human services to collect and analyze data. (Kosowski, Robert L. (D), 09/20/17)
(Status: 09/20/2017 - introduced by Representative Robert Kosowski)

HB 5030 - HEALTH OCCUPATIONS, Nursing Home Administrators, Require nursing home administrators to be trained in detection of elderly abuse and exploitation. (Liberati, Frank (D), 09/27/17)
(Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

HB 5031 - SENIOR CITIZENS, Housing, Require assisted living facilities licensure. (Hammoud, Abdullah (D), 09/27/17)
(Status: 09/28/2017 - bill electronically reproduced 09/27/2017)

HB 5182 - HUMAN SERVICES, Adult Foster Care, Enhance registration requirement for group homes and adult foster care facilities. (Yanez, Henry (D), 10/25/17)
(Status: 10/26/2017 - bill electronically reproduced 10/25/2017)

HB 5191 - CRIMES, Assaultive, Prohibit assault of a vulnerable adult and establish penalties. (Lucido, Peter J. (R), 10/31/17)
(Status: 11/01/2017 - bill electronically reproduced 10/31/2017)
HB 5192 - CRIMINAL PROCEDURE, Sentencing Guidelines, Provide for sentencing guidelines for crime of assaulting a vulnerable adult. (Liberati, Frank (D), 10/31/17)
(Status: 11/01/2017 - bill electronically reproduced 10/31/2017)

SB 0049 PA 136 - PROBATE, Guardians and Conservators, Modify provision related to compensation for professional guardian or professional conservator. (Booher, Darwin (R), 01/18/17)
(Status: 10/31/2017 - ASSIGNED PA 0136’17 WITH IMMEDIATE EFFECT)
MCL Tracking: 700.1 to 700.9999 - EPIC and Trust Code

SB 0071 - VEHICLES, Registration, Exempt vehicle registration fees senior citizens from increases. (Ananich, Jim (D), 01/31/17)
(Status: 01/31/2017 - INTRODUCED BY SENATOR JIM ANANICH)

SB 0525 - COURTS, Reorganization, Modify reorganization of courts and number of judgeships (Jones, Rick (R), 09/06/17)
(Status: 01/11/2018 - returned to Senate)
MCL Tracking: 600.801 to 600.899 - Probate Courts

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Probate & Estate Planning Institute, 58th Annual
Thursday – Saturday, May 17-19, 2018
Grand Traverse Resort and Spa, Acme

Thursday – Friday, June 14-15, 2018
The Inn at St. John’s, Plymouth

Full Schedule

DAY 1
Thursday, May 17, 2018

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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| 12:00PM - 12:45PM | Put the ICLE Partnership to Work for Your Practice—Demonstration by ICLE Staff  
Are you making the most of your Partnership resources? Do you really know everything that you have and how to use it? Learn to use the ICLE website effectively on a computer or mobile device. Discover the Partnership's main resources and primary law research capabilities and get tips for quickly finding what you need. Plus, use the ICLE Community to network and get specific practice questions answered.  
NOTE: everything is final. |
| 1:00PM - 1:30PM  | Welcoming Remarks and Announcements  
Marlaine C. Teahan  
Chair, Probate & Estate Planning Section of the State Bar of Michigan  
Fraser Trebilcock  
Lansing  
http://eve/modules/intranet/contributors/Person.aspx?id=87912  
Donald G. Rockwell (Acme Only)  
President, State Bar of Michigan  
Nill Rockwell PC  
Flint  
http://eve/modules/intranet/contributors/Person.aspx?id=61456 |
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Speaker</th>
<th>Institution</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>1:30PM - 2:10PM</td>
<td>Caselaw Update</td>
<td>Phillip E. Harter</td>
<td>Chalgin &amp; Tripp Law Offices PLLC</td>
<td>Confirmed 8-22-17. Everything is final.</td>
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<tr>
<td>2:10PM - 3:00PM</td>
<td>Putting it On and Taking it Off: Managing Tax Basis Today for Tomorrow</td>
<td>Paul S. Lee <em>(Acme only)</em></td>
<td>The Northern Trust Company</td>
<td>Confirmed 4-11-17. Everything is final.</td>
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<td>3:00PM - 3:15PM</td>
<td>Networking Break</td>
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<td>3:15PM - 4:00PM</td>
<td>Advanced Planning Track</td>
<td>MODERATOR: Douglas A. Mielock</td>
<td>Foster Swift Collins &amp; Smith PC</td>
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<td>4:00PM - 4:15PM</td>
<td>Unique Assets Track</td>
<td>MODERATOR: John H. Martin</td>
<td>Warner Norcross &amp; Judd LLP</td>
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<td>Lansing</td>
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<tr>
<td>3:15PM - 3:45PM</td>
<td><strong>Using Partnerships to Strip, Shift and Swap Tax Basis</strong></td>
<td><strong>Planning for Intellectual Property Assets</strong></td>
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<td></td>
<td>• A deep dive into tax basis “stripping” and “shifting”</td>
<td>• Ownership and divisibility of rights</td>
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<td>• Tax basis planning with publicly-traded stock positions, collectibles, and commercial real estate</td>
<td>• Digital asset planning</td>
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<td>• Techniques involving grantors, grantor trusts, and the unitary basis rule</td>
<td>• Testamentary transfers</td>
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<td>• Partnership leverage to create basis and maximize the “step-up” in basis</td>
<td>• Restrictions on alienability</td>
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<td>• Tax basis management with foreign trusts, partners, and partnerships</td>
<td>• Exercise of copyright renewal rights and termination of rights by an executor</td>
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<td>• Disregarded entities to avoid capital gain and “step-up” the basis of assets sold to an IDGT</td>
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<td>• Disguised sale and mixing bowl rules when contributed assets are used in tax basis management</td>
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<td><strong>Planning for Aircraft</strong></td>
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<td></td>
<td>Paul S. Lee <em>(Acme only)</em></td>
<td>• Care and feeding of aircraft prior to sale</td>
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<td>The Northern Trust Company</td>
<td>• Valuation of aircraft</td>
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<td>New York, New York</td>
<td>• Marketing and sale of aircraft</td>
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<td><strong>Planning for Aircraft</strong></td>
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<td>3:45PM - 4:15PM</td>
<td><strong>Planning for Intellectual Property Assets</strong></td>
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<td><strong>Drafting and Implementing Domestic Asset Protection Trusts</strong></td>
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<td>• What clients may want to consider a Domestic Asset Protection Trust</td>
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<td>• Transferor’s rights that can be retained</td>
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<td>• Dealing with creditors</td>
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<td>• Choice of law issues</td>
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<td>Robert P. Tiplady</td>
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<td>Brian Clark Doughty</td>
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<td>Brooks Kushman PC</td>
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**NOTE:** confirmed Doughty 10-20-17. Everything is final.
### DAY 2
**Friday, May 18, 2018**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Speaker(s)</th>
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<tbody>
<tr>
<td>4:15PM - 4:45PM</td>
<td><strong>Non-Probate Transfers</strong></td>
<td>Douglas A. Mielock, Foster Swift Collins &amp; Smith PC, Lansing</td>
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<tr>
<td></td>
<td>- The “Nonprobate Revolution”</td>
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<td>- Types of nonprobate transfers</td>
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<td>- Article VI of EPIC</td>
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<td>- Creditors rights</td>
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<td><strong>Planning for Guns</strong></td>
<td>Michael G. Lichterman, Bolhouse Baar &amp; Hofstee PC, Grandville</td>
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<td>- NFA and non-NFA items – what difference does it make?</td>
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<td>- What is a gun trust and why should you draft one?</td>
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<td>- Understanding the laws governing gun trusts</td>
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<td>- Things to be wary of during the initial consultation and</td>
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<td>while drafting</td>
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<td>- Sample trust</td>
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<td>NOTE:</td>
<td>confirmed Mielock 8-21-17 for both topics. Everything is final.</td>
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<tr>
<td>4:45PM - 5:00PM</td>
<td><strong>Questions and Answers</strong></td>
<td>Melissa M. Pearce, Melissa Pearce &amp; Associates, PLC, Milford</td>
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<td><strong>Planning for Guns</strong></td>
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<td>6:00PM - 7:00PM</td>
<td><strong>Networking Reception</strong></td>
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**NOTE:** confirmed Tiplady 8-14-17. Everything is final.
<table>
<thead>
<tr>
<th>Time</th>
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<th>Speaker/Details</th>
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<tbody>
<tr>
<td>8:45AM</td>
<td>Legislative Update</td>
<td>Geoffrey R. Vernon, Joslyn &amp; Vernon PC, St. Clair Shores</td>
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<td>- Current Probate &amp; Estate Planning Council drafting projects</td>
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<td>- Update on probate and estate planning related bills and recently passed legislation</td>
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<td>- Uniform laws being considered</td>
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<td>9:20AM</td>
<td>Trustee Discretion: The Better Part of Valor or Vulnerability?</td>
<td>Amy K. Kanyuk (Acme only), McDonald &amp; Kanyuk PLLC, Concord, NH</td>
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<td>- Challenges trustees face with respect to discretion over distributions</td>
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<td>- The scope and meaning of different types of discretion</td>
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<td>- The interplay between a trustee’s discretion and a beneficiary’s rights and interests</td>
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<td>10:20AM-10:35AM</td>
<td>Networking Break</td>
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<tr>
<td>10:35AM-11:00AM</td>
<td>Disability Planning Track</td>
<td>MODERATOR: Jane A. Bassett</td>
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<td>Charitable Track</td>
<td>MODERATOR: Christopher A. Ballard</td>
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**NOTE:** Everything is final. Confirmed 7-7-17.
<table>
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<th>Time</th>
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<th>Speaker(s)</th>
<th>Institution(s)</th>
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<tbody>
<tr>
<td>10:35AM - 11:10AM</td>
<td><strong>Medicaid, Elder Law, and Disability Update 2018</strong></td>
<td>Kathleen Hogan Aguilar, Miller Johnson, Grand Rapids</td>
<td>Varnum LLP, Ann Arbor</td>
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<td>- Latest Michigan and federal Medicaid developments</td>
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<td>- Tip and traps for Medicaid planning</td>
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<td>- Veterans’ benefits update</td>
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<td>- What’s new in special needs planning</td>
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<td><strong>NOTE:</strong> confirmed 8-11-17. Everything is final.</td>
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<td>- when and when not to use a guardianship</td>
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<td>- the sliding scale of capacity</td>
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<td>- who is the client and your duties</td>
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<td>- the latest guardianship caselaw</td>
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<tr>
<td>11:45AM - 12:20PM</td>
<td><strong>Handling Qualified Retirement Accounts and Non-Qualified Plans in the Medicaid Context</strong></td>
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<td>Varnum LLP, Ann Arbor</td>
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<td>- Discerning the type and characteristics of each account</td>
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<td>11:45AM - 12:20PM</td>
<td><strong>Nuts and Bolts of Charitable Remainder Trusts</strong></td>
<td>Amy K. Kanyuk (Acme only), McDonald &amp; Kanyuk PLLC, Concord, NH</td>
<td>Varnum LLP, Ann Arbor</td>
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<td>- Tax considerations</td>
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<td>- Planning opportunities</td>
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<td>- Administration issues</td>
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<td>Time</td>
<td>Session</td>
<td>Speaker</td>
<td>Institute</td>
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<tr>
<td>12:20PM - 12:30PM</td>
<td>Questions and Answers</td>
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<tr>
<td>12:30PM - 1:30PM</td>
<td>Networking Lunch on Premises with Hot Topic Discussions</td>
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<tr>
<td>1:30PM - 3:30PM</td>
<td>SPECIAL ADVANCED SESSION: Divided and Directed Trusteeships (Acme Only)</td>
<td>James P. Spica</td>
<td>Dickinson Wright PLLC Detroit</td>
</tr>
<tr>
<td>1:30PM - 3:30PM</td>
<td>SPECIAL BASIC SESSION: New Lawyers, You Have the Floor (Acme Only)</td>
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</tr>
</tbody>
</table>

- Tax consequences of transfers and distributions
- Planning techniques for non-qualified accounts
- Planning techniques for retirement accounts in the community spouse’s name
- Planning techniques for retirement accounts in the institutionalized spouse’s name
- duties and responsibilities
- protections
- how to get on a board

Robin D. Ferriby
Community Foundation for Southeast Michigan
Detroit

NOTE: Robin confirmed 9-19-17. Everything is final.

DAY 3
Saturday, May 19, 2018

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>7:30AM - 8:30AM</td>
<td>Continental Breakfast, Vendor Showcase, and Registration</td>
</tr>
<tr>
<td>8:30AM - 9:25AM</td>
<td>Probate Court Best Practices: the Judges Weigh In</td>
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<tr>
<td></td>
<td>• Effective pleading practice</td>
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<td>• Audience members submit questions in advance</td>
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<td></td>
<td>Douglas A. Mielock (moderator)</td>
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<td>Foster Swift Collins &amp; Smith PC</td>
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<td>Lansing</td>
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<td>Time</td>
<td>Session Title</td>
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<tr>
<td>10:15AM - 10:30AM</td>
<td>Networking Break</td>
</tr>
<tr>
<td>Drafting/Design Track</td>
<td>MODERATOR:&lt;br&gt;Katie Lynwood (Acme only) &lt;br&gt;Buhl Little Lynwood &amp; Harris PLC</td>
</tr>
<tr>
<td>Blended Families Track (Acme only)</td>
<td>MODERATOR:</td>
</tr>
<tr>
<td>Time</td>
<td>Session Title</td>
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<tr>
<td>10:30AM -</td>
<td><strong>Everything You Must Know about Florida Property and Estates</strong></td>
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<td>11:05AM</td>
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<tr>
<td>11:40AM</td>
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<tr>
<td>10:30AM -</td>
<td><strong>Planning for Adopted, ART and Stepchildren</strong>*</td>
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<tr>
<td>11:05AM</td>
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</tbody>
</table>

**NOTE:** confirmed 5-22-17. Everything is final.

**NOTE:** confirmed Harvey 10-12-17. Everything is final.

---

**Creative Plans for Blended Families**
- Common scenarios
- His, hers and ours – children from all the marriages
- Raising kids together
- Late life marriages
- The younger woman

Tara J. Peterson
Crenshaw Peterson & Associates PC
Okemos

**NOTE:** confirmed Peterson 10-4-17. Everything is final.
### Day 1

**Thursday, June 14, 2018**

#### 11:40AM - 12:15PM

**Planning for Pets**
- EPIC provision authorizing pet trusts
- Simple pet trust provisions
- More complex pet trust provisions
- Pitfalls to avoid
- Tax considerations
- Supporting documents

Rebecca Kristen Wrock  
Couzens Lansky Fealk Ellis Roeder & Lazar PC  
Farmington Hills  

### Premarital Agreements after Allard

- What does *Allard* mean and how broad is its reach?
- Pre- and post-marital planning after *Allard*
- Drafting trusts for clients with marital issues in mind
- Possible use of jurisdictions outside of Michigan

Shaheen I. Imami  
Prince Law Firm  
Bloomfield Hills  

#### 12:15PM - 12:30PM

**Questions and Answers**

### Questions and Answers

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**Thursday – Friday, June 14-15, 2018**

The Inn at St. John’s, Plymouth

### Full Schedule

**Day 1**

*Thursday, June 14, 2018*

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>7:30AM - 8:30AM</td>
<td>Continental Breakfast, Vendor Showcase, and Registration</td>
</tr>
<tr>
<td>7:30AM - 8:15AM</td>
<td>Put the ICLE Partnership to Work for Your Practice—Demonstration by ICLE Staff</td>
</tr>
</tbody>
</table>

Are you making the most of your Partnership resources? Do you really know everything that you have and how to use it? Learn to
use the ICLE website effectively on a computer or mobile device. Discover the Partnership's main resources and primary law research capabilities and get tips for quickly finding what you need. Plus, use the ICLE Community to network and get specific practice questions answered.

**NOTE:** everything is final.

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Presenter/Details</th>
</tr>
</thead>
</table>
| 8:30AM - 8:50AM | **Welcoming Remarks and Announcements** | Marlaine C. Teahan  
Chair, Probate & Estate Planning Section of the State Bar of Michigan  
Fraser Trebilcock  
Lansing  
| 8:50AM - 9:30AM | **Caselaw Update**                  | Phillip E. Harter  
Chalgian & Tripp Law Offices PLLC  
Battle Creek  
| 9:30AM - 10:20AM | **Putting it On and Taking it Off: Managing Tax Basis Today for Tomorrow** | Paul S. Lee (*Acme only*)  
The Northern Trust Company  
New York, New York  
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Tracks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- A deep dive into tax basis “stripping” and “shifting”</td>
<td>Planning for Intellectual Property Assets</td>
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<td></td>
<td>- Tax basis planning with publicly-traded stock positions,</td>
<td>- Ownership and divisibility of rights</td>
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<td></td>
<td>collectibles, and commercial real estate</td>
<td>- Digital asset planning</td>
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<td></td>
<td>- Techniques involving grantors, grantor trusts, and the unitary</td>
<td>- Testamentary transfers</td>
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<td></td>
<td>basis rule</td>
<td>- Restrictions on alienability</td>
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<td></td>
<td>- Partnership leverage to create basis and maximize the “step-up”</td>
<td>- Exercise of copyright renewal rights and termination of</td>
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<tr>
<td></td>
<td>in basis</td>
<td>rights by an executor</td>
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<tr>
<td></td>
<td>- Tax basis management with foreign trusts, partners, and partnerships</td>
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<td></td>
<td>- Disregarded entities to avoid capital gain and “step-up” the basis</td>
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<td></td>
<td>of assets sold to an IDGT</td>
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<td></td>
<td>- Disguised sale and mixing bowl rules when contributed</td>
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<td>assets are used in tax basis management</td>
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<tr>
<td>11:10AM - 11:40AM</td>
<td>Drafting and Implementing Domestic Asset Protection Trusts</td>
<td>Planning for Aircraft</td>
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<tr>
<td></td>
<td>- What clients may want to consider a Domestic Asset</td>
<td>- Care and feeding of aircraft prior to sale</td>
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<td>Protection Trust</td>
<td>- Valuation of aircraft</td>
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<td>- Transferor’s rights that can be retained</td>
<td>- Marketing and sale of aircraft</td>
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<td>- Dealing with creditors</td>
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<td>- Choice of law issues</td>
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<td></td>
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<td>Stephen L. Tupper</td>
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</table>

**NOTE:** confirmed 4-11-17. Everything is final.
<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Speaker(s)</th>
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<tbody>
<tr>
<td>11:45AM -</td>
<td><strong>Non-Probate Transfers</strong></td>
<td><strong>Douglas A. Mielock</strong>&lt;br&gt;Foster Swift Collins &amp; Smith PC&lt;br&gt;Lansing</td>
</tr>
<tr>
<td>11:45AM -</td>
<td>• The “Nonprobate Revolution”</td>
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<tr>
<td>12:15PM -</td>
<td>• Types of nonprobate transfers</td>
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<td>12:15PM -</td>
<td>• Article VI of EPIC</td>
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<td>12:15PM -</td>
<td>• Creditors rights</td>
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<tr>
<td>11:45AM -</td>
<td><strong>Planning for Guns</strong></td>
<td><strong>Michael G. Lichterman (Acme only)</strong>&lt;br&gt;Bolhouse Baar &amp; Hofstee PC&lt;br&gt;Grandville</td>
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<tr>
<td>11:45AM -</td>
<td>• NFA and non-NFA items — what difference does it make?</td>
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<td>12:15PM -</td>
<td>• What is a gun trust and why should you draft one?</td>
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<td>12:15PM -</td>
<td>• Understanding the laws governing gun trusts</td>
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<td>12:15PM -</td>
<td>• Things to be wary of during the initial consultation and while drafting</td>
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<td>12:15PM -</td>
<td>• Sample trust</td>
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<tr>
<td>12:15PM -</td>
<td><strong>Questions and Answers</strong></td>
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<tr>
<td>12:15PM -</td>
<td><strong>Networking Lunch on Premises with Hot Topic Discussions</strong></td>
<td>Enjoy lunch with colleagues, share your thoughts on the Institute’s most thought-provoking topics, and get your questions answered.</td>
</tr>
<tr>
<td>1:45PM -</td>
<td><strong>Legislative Update</strong></td>
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</table>

**NOTE:** confirmed Tiplady 8-14-17. Everything is final.

**NOTE:** confirmed Mielock 8-21-17 for both topics. Everything is final.

**NOTE:** confirmed Lichterman 10-4-17. Confirmed Pearce 10-10-17. Everything is final.
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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</table>
| 2:20PM       | • Current Probate & Estate Planning Council drafting projects  
• Update on probate and estate planning related bills and recently passed legislation  
• Uniform laws being considered  
Geoffrey R. Vernon  
Joslyn & Vernon PC  
St. Clair Shores  
http://eve/modules/intranet/contributors/Person.aspx?id=101128  

**NOTE:** Confirmed Vernon 10-10-17. Everything is final. |
| 2:20PM - 3:20PM | **Trustee Discretion: The Better Part of Valor or Vulnerability?**  
• Challenges trustees face with respect to discretion over distributions  
• The scope and meaning of different types of discretion  
• The interplay between a trustee’s discretion and a beneficiary’s rights and interests  
Amy K. Kanyuk *(Acme only)*  
McDonald & Kanyuk PLLC  
Concord, NH  
http://eve/modules/intranet/contributors/Person.aspx?id=170109  

**NOTE:** Confirmed Kanyuk 10-17-17. Everything is final. |
| 3:20PM - 3:35PM | **Networking Break** |
| 3:35PM - 4:10PM | **Medicaid, Elder Law, and Disability Update 2018**  
• Latest Michigan and federal Medicaid developments  
• Tip and traps for Medicaid planning  
• Veterans’ benefits update  
**Charitable Track**  
MODERATOR:  
Christopher A. Ballard  
Vice-Chair, Probate & Estate Planning Section of the State Bar of Michigan  
Varnum LLP  
Ann Arbor  
http://eve/modules/intranet/contributors/Person.aspx?id=80971  

**Regulation of Charities in Michigan**  
• Attorney General’s interest in protecting charitable gifts and trusts  
• Registering charitable trusts and notifying the Attorney
<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Presenter(s)</th>
<th>Website</th>
<th>Notes</th>
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<tbody>
<tr>
<td></td>
<td>• when and when not to use a guardianship</td>
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<td>• the sliding scale of capacity</td>
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<td>• who is the client and your duties</td>
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<td>• the latest guardianship caselaw</td>
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<td>• Discerning the type and characteristics of each account</td>
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<td>• Tax consequences of transfers and distributions</td>
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<td>• Planning techniques for retirement accounts in the institutionalized spouse’s name</td>
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<td>• Tax considerations</td>
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<td>• Planning opportunities</td>
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<td>• Administration issues</td>
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<td>• Regulation of charitable entities – registration, solicitation, and fraud</td>
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<td>• why serve on charitable board?</td>
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<td>• types of boards; type of charity; trustee vs director</td>
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<td>• duties and responsibilities</td>
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<td>• protections</td>
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<td>• how to get on a board</td>
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|                      | Mannor Law Group PLLC  
|----------------------|-----------------------------  
|                      | Grand Blanc                 
|                      | http://eve/modules/intranet/contributors/Person.aspx?ID=82819  
|                      | NOTE: Robin confirmed 9-19-17. Everything is final.  
| 5:30PM - 5:45PM     | Questions and Answers       
| 5:45PM - 6:45PM     | Networking Reception        
|                      | Questions and Answers       |
## DAY 2
**Friday, June 15, 2018**

<table>
<thead>
<tr>
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<td>• Audience members submit questions in advance</td>
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Douglas A. Mielock (*moderator*)  
Foster Swift Collins & Smith PC  
Lansing  
http://eve/modules/intranet/contributors/Person.aspx?id=77584

Hon. Michael L. Jaconette  
Calhoun County Probate Court  
Battle Creek  
http://eve/modules/intranet/contributors/Person.aspx?id=81164

Hon. Lisa Sullivan (*Acme only*)  
Clinton County Probate Court  
St. Johns  
http://eve/modules/intranet/contributors/Person.aspx?id=83330

Hon. Lawrence J. Paolucci (*Plymouth only*)  
Wayne County Probate Court  
Detroit  
http://eve/modules/intranet/contributors/Person.aspx?id=80448

Everything is final.
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Presenter/Details</th>
</tr>
</thead>
</table>
| 9:25AM - 10:15AM    | **Prove Your Worth, Lock in More Middle Class Clients, then Represent Them Well**           | Terrence G. Quinn  
The TGQ Law Firm  
Ann Arbor  
http://eve/modules/intranet/contributors/Person.aspx?id=94946  

*NOTE: confirmed 9-20-17. Everything is final.* |
| 10:15AM - 10:30AM   | **Networking Break**                                                                         |                                                                                                       |
| 10:30AM - 11:05AM   | **Drafting/Design Track**                                                                    | MODERATOR: Raymond A. Harris *(Plymouth only)*  
Buhl Little Lynwood & Harris PLC  
East Lansing  
http://eve/modules/intranet/contributors/Person.aspx?id=113988  

**LPM/Tech Track (Plymouth only)**  
MODERATOR: Sarah L. Ostahowski  
Sarah’s Law Firm PLC  
Alma  
http://eve/modules/intranet/contributors/Person.aspx?id=128041  

*NOTE: confirmed 10-18-17. Everything is final.* |
|                      | **Everything You Must Know about Florida Property and Estates**                               | Katie Lynwood *(Acme only)*  
Buhl Little Lynwood & Harris PLC  
East Lansing  
http://eve/modules/intranet/contributors/Person.aspx?id=116896  

Raymond A. Harris *(Plymouth only)*  
Buhl Little Lynwood & Harris PLC  
East Lansing  
http://eve/modules/intranet/contributors/Person.aspx?id=113988  

*NOTE: confirmed Matt 10-18-17. Everything is final.* |
|                      | **Automate and Delegate with Your Document Drafting System**                                 | Matthew M. Wallace  
Wallace Law Firm PC  
Port Huron  
http://eve/modules/intranet/contributors/Person.aspx?id=74104  

*NOTE: confirmed Matt 10-18-17. Everything is final.* |
<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Presenter/Contributor</th>
<th>Notes</th>
</tr>
</thead>
</table>
| 11:10AM - 11:45AM | Better Document Drafting with Insights from the Administration Side* | Wendy Zimmer Cox  
Greenleaf Trust  
Birmingham  
| 11:50AM - 12:25PM | Planning for Pets  
- EPIC provision authorizing pet trusts  
- Simple pet trust provisions  
- More complex pet trust provisions  
- Pitfalls to avoid  
- Tax considerations  
- Supporting documents | Rebecca Kristen Wrock  
Couzens Lansky Fealk Ellis Roeder & Lazar PC  
Farmington Hills  
| 12:25PM - 12:45PM | Billing Systems and Methodologies for Estate Planners  
- Retainers  
- Timing of billing  
- Billing software  
- Payment tools | Sarah L. Ostahowski  
Sarah's Law Firm PLC  
Alma  
| 11:10AM - 11:45AM | The Latest Hardware Technology for Your Practice  
- The best smartphone options  
- Laptops, convertibles and tablets to consider  
- Note taking tools for an initial client interview  
- Printers and scanners to make you more productive  
- Amazon Echo, Google Home and more smart gadgets  
- Securing your devices | Scott Bassett  
Scott Bassett, Esq.  
Portage  
Family LPs, LLCs, and Disregarded Entities – Income Tax Pitfalls and Opportunities

Or

Income Tax Planning for Family LPs, LLCs, and Disregarded Entities

Or

Income Tax Planning for Your Clients’ Companies

Wednesday, May 16, 2018
Grand Traverse Resort and Spa, Acme

MARKETING IDEAS:
Tag Line: Invaluable Income Tax and Basis Strategies

Regardless of the form “tax reform” takes, income tax planning and tax basis management will be at the forefront of estate planning for years to come. Explore how partnerships (and disregarded entities) can be used to shift basis between assets, maximize the “step-up” in basis, defer and shift tax items (income and deductions), and transfer wealth in a world of diminishing valuation discounts. Gain insights into partnership design, elections, and provisions you must consider.
Benefits of Attending:
- Determine inside basis, outside basis, and capital accounts
- Make effective gifts and sales of partnership interests
- Gain the basics of stripping, shifting, and swapping basis
- Creatively use the applicable exclusion amount

Full Schedule

Presenter (all topics):
Paul S. Lee
The Northern Trust Company
New York, New York

<table>
<thead>
<tr>
<th>Time</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>2:00pm-3:00pm</td>
<td><strong>Creation, Contribution, Distribution, Allocation &amp; Structure</strong></td>
</tr>
<tr>
<td></td>
<td>• Entity classification and entity conversions</td>
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<tr>
<td></td>
<td>• Contributions of property or services</td>
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<td>• Determining inside basis, outside basis, and capital accounts</td>
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<tr>
<td></td>
<td>• Distributions of property and marketable securities</td>
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<td></td>
<td>• Disguised sale rules and mixing bowl considerations</td>
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<td>• Treatment of liabilities</td>
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<td>• Family controlled entity considerations under IRC § 2701</td>
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<tr>
<td>3:00pm-3:30pm</td>
<td><strong>Transfers, Sales, Redemptions, and Liquidations</strong></td>
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<tr>
<td></td>
<td>• Gifts and sales of partnership interests</td>
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<td>• Redemptions and liquidations</td>
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<td>• Options for buyout of a partner</td>
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<td>• Technical terminations</td>
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<td>3:30pm-3:45pm</td>
<td><strong>Networking Break</strong></td>
</tr>
<tr>
<td>3:45pm-4:15pm</td>
<td><strong>Inside and Outside Basis Considerations</strong></td>
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<td></td>
<td>• Death of a partner</td>
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<td>• Loss of grantor trust status</td>
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<td></td>
<td>• Inside basis adjustments under IRC §§ 734 &amp; 743</td>
</tr>
<tr>
<td>Time</td>
<td>Topic</td>
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<tr>
<td>4:15pm-5:00pm</td>
<td><strong>Estate Planning (Beyond the Valuation Discount)</strong></td>
</tr>
<tr>
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<td>- Opportunities with disregarded entities</td>
</tr>
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<td>- Preferred partnership structures (driving forward or in reverse)</td>
</tr>
<tr>
<td></td>
<td>- Creative partnership uses of the applicable exclusion amount</td>
</tr>
<tr>
<td></td>
<td>- Planning with charitable entities</td>
</tr>
</tbody>
</table>
MEMORANDUM

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: January 12, 2018

UFIPA

As of the date of this report, the Reporter to the ULC Fiduciary Income and Principal Act Drafting Committee, Ron Aucutt, has not circulated a revised draft Act embodying the changes discussed at the Committee’s last face-to-face meeting (on November 17 and 18 in Washington, D.C.). The draft we worked on at that meeting is posted at:


The next discussion draft is expected, among other things, to present a more unified treatment of the power to adjust, on the one hand, and the power to switch to (and from) unitrust treatment, on the other. That draft should be posted sometime in the week of January 22. (It is scheduled to be reviewed by the ULC Style Committee at the end of that week.) The UFIPA Committee’s next face-to-face meeting is scheduled for February 16 and 17 in Philadelphia.

Electronic Wills

As of the date of this report, the ULC’s Electronic Wills Drafting Committee has still not posted a discussion draft. But that Committee’s next face-to-face meeting is on March 2 and 3, so I expect something new will be posted soon. So far, the Committee has only posed an “Issues memo” and research information, which can be viewed at:


JPS
DETOIT 40411-1 1416338v6 - 1/12/2018 10:23:13 AM
HOUSE BILL No. 5398

January 11, 2018, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1991 PA 133, entitled

"An act to allow the use and recording of certain documents regarding trusts in the case of real property that is conveyed or otherwise affected by a trust; and to prescribe their effect,"

by amending the title and sections 1 and 5 (MCL 565.431 and 565.435); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to allow the use and recording of certain documents regarding trusts in the case of real property that is conveyed or otherwise affected by a trust; and to prescribe their effect.

Sec. 1. An instrument conveying, encumbering, THAT CONVEYS, ENCUMBERS, or otherwise affecting an interest in real property, executed pursuant to an express trust, may be accompanied either by:

EITHER OF THE FOLLOWING:
(A) A copy of the EACH OPERATIVE trust agreement or by a
INSTRUMENT. AS USED IN THIS SUBDIVISION, "TRUST INSTRUMENT" MEANS
THAT TERM AS DEFINED IN SECTION 7103 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7103.

(B) A certificate of trust existence and authority, as
described in sections 2 and 3. UNDER SECTION 7913 OF THE ESTATES AND
PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, THAT
INCLUDES THE LEGAL DESCRIPTION OF THE AFFECTED REAL PROPERTY.

Sec. 5. A purchaser or other party relying upon
the information contained in a recorded certificate of trust
existence and authority shall be afforded UNDER SECTION 7913 OF THE
ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913,
HAS the same protection as is provided to a subsequent purchaser in
good faith under section 29 of chapter 65 of the Revised Statutes
of 1846 RS 65, being section MCL 565.29. of the Michigan Compiled
Laws, and shall A PURCHASER OR OTHER PARTY DESCRIBED IN THIS
SECTION IS not be required to further examine the trust agreement,
INSTRUMENT, unless an instrument amending or revoking the trust
agreement INSTRUMENT or certificate of trust existence and
authority UNDER SECTION 7913 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, is recorded in the
same office in which the trust agreement INSTRUMENT or certificate of trust existence and authority UNDER SECTION 7913 OF THE ESTATES
AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7913, was
recorded. AS USED IN THIS SECTION, "TRUST INSTRUMENT" MEANS THAT
TERM AS DEFINED IN SECTION 7103 OF THE ESTATES AND PROTECTED
INDIVIDUALS CODE, 1998 PA 386, MCL 700.7103.
PRINCIPAL RESIDENCE EXEMPTION FOR NURSING HOME OR ASSISTED CARE FACILITY RESIDENTS

House Bill 4905 as introduced
Sponsor: Rep. Peter J. Lucido
Committee: Tax Policy
Complete to 11-6-17

BRIEF SUMMARY:

HB 4905 would amend the General Property Tax Act to remove a requirement that a property must be unoccupied for an individual who resides in a nursing home or assisted care facility to continue to claim a principal residence exemption (PRE) on the property.

MCL 211.7cc

DETAILED SUMMARY:

Currently under the act, an owner of property who previously occupied that property as a principal residence but now resides in a nursing home or assisted facility can retain the PRE if certain criteria are met. The individual must manifest an intent to return to the property by satisfying all of the following:

- The owner continues to own the property while in a nursing home or assisted living facility.
- The owner has not established a new PRE.
- The owner maintains or provides for the maintenance of the property while in a nursing home or assisted living facility.
- The property is not occupied, is not leased, and is not used for business or commercial purpose.

The bill would remove the requirement that the property “is not occupied.” That is, the bill would allow an individual residing in a nursing home or assisted living facility to retain a PRE on the property, even if it were occupied, so long as the other criteria were met.

FISCAL IMPACT:

As written, the bill would broaden the requirements for claiming a principal residence exemption, which would result in a reduction in the 18-mill levy earmarked for local schools and would require an increase in School Aid Fund expenditures to maintain the existing foundation allowance. Because the number of eligible residences and corresponding taxable values cannot be identified in advance, it is not possible to calculate the actual reduction in the non-homestead levy, although the total fiscal impact would likely be small.
Purely as an example, for a residence with a taxable value of $55,000 (roughly the statewide average), an exemption from the 18-mill non-homestead levy would reduce local K-12 revenue by just under $1,000. Thus, if 1,000 taxpayers availed themselves of this provision, the total reduction in revenue would be about $1.0 million.

Legislative Analyst: Patrick Morris
Fiscal Analyst: Jim Stansell

This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.