SBM
State Bar of Michigan

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

Friday, January 25, 2019
9:00 a.m.
University Club of MSU
3435 Forest Road
Lansing, Michigan 48910

Probate and Estate Planning Section of the
State Bar of Michigan

Meeting of the Section's Committee on Special Projects and
Meeting of the Council of the Probate and Estate Planning Section

January 25, 2019
9:00 a.m.

University Club of MSU
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 L.J.M. Skidmore, Secretary
Warner Norcross + Judd LLP
111 Lyon Street NW, Suite 900
Grand Rapids, Michigan 49503
Voice: 616-752-2491
Fax: 616-222-2491
Email: dskidmore@wnj.com

STATE BAR OF MICHIGAN
PROBATE AND ESTATE PLANNING SECTION COUNCIL
Council and CSP Meeting Schedule for 2018-2019
Friday, January 25, 2019, University Club, Lansing, Michigan**
Friday, February 15, 2019, University Club, Lansing, Michigan**
Friday, March 8, 2019, University Club, Lansing, Michigan**
Friday, April 12, 2019, University Club, Lansing, Michigan**
Friday, June 14, 2019, University Club, Lansing, Michigan**
Friday, September 20, 2019, University Club, Lansing, Michigan**

**University Club, 3435 Forest Road, Lansing, Michigan 48909
Each meeting starts with the Committee on Special Projects at 9:00am, followed by the meeting of the Council of the Probate & Estate Planning Section.

Call for materials

Due dates for Materials for Committee on Special Projects

All materials are due on or before 5:00 p.m. of the date falling 9 days before the next CSP meeting. CSP materials are to be sent to Katie Lynwood, Chair of CSP (klynwood@bllhlaw.com)

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

Wednesday, January 16, 2019 (for Friday, January 25, 2019 meeting)
Wednesday, February 6, 2019 (for Friday, February 15, 2019 meeting)
Wednesday, February 27, 2019 (for Friday, March 8, 2019 meeting)
Wednesday, April 3, 2019 (for Friday, April 12, 2019 meeting)
Wednesday, June 5, 2019 (for Friday, June 14, 2019 meeting)
Wednesday, September 11, 2019 (for Friday, September 20, 2019 meeting)

Due dates for Materials for Council Meeting

All materials are due on or before 5:00 p.m. of the date falling 8 days before the next Council meeting. Council materials are to be sent to David Skidmore (dskidmore@wnj.com).

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

Thursday, January 17, 2019 (for Friday, January 25, 2019 meeting)
Thursday, February 7, 2019 (for Friday, February 15, 2019 meeting)
Thursday, February 28, 2019 (for Friday, March 8, 2019 meeting)
Thursday, April 4, 2019 (for Friday, April 12, 2019 meeting)
Thursday, June 6, 2019 (for Friday, June 14, 2019 meeting)
Thursday, September 12, 2019 (for Friday, September 20, 2019 meeting)

Officers of the Council for 2018-2019 Term

Office	Officer
Chairperson	Marguerite Munson Lentz
Chairperson Elect	Christopher A. Ballard
Vice Chairperson	David P. Lucas
Secretary	David L.J.M. Skidmore
Treasurer	Mark E. Kellogg

Council Members for 2018-2019 Term

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Anderton, James F.	2018 (1st term)	2020	Yes (2 terms)
Jaconette, Hon. Michael L.	2017 (2nd term)	2020	No
Lichterman, Michael G.	2017 (1st term)	2020	Yes
Malviya, Raj A.	2017 (2nd term)	2020	No
Olson, Kurt A.	2017 (1st term)	2020	Yes
Savage, Christine M.	2017 (1st term)	2020	Yes
Caldwell, Christopher J.	2018 (2nd term)	2021	No
Goetsch, Kathleen M.	2018 (2nd term)	2021	No
Hentkowski, Angela M.	2018 (1st term)	2021	Yes
Lynwood, Katie	2018 (2nd term)	2021	No
Mysliwiec, Melisa M. W.	2018 (1st term)	2021	Yes
Nusholtz, Neal	2018 (1st term)	2021	Yes
Labe, Robert C.	2016 (1st term)	2019	Yes (1 term)
Mayoras, Andrew W.	2018 (to fill Geoff Vernon's seat)	2019	Yes (2 terms)
Mills, Richard C.	2016 (1st full term)	2019	Yes (1 term)
New, Lorraine F.	2016 (2nd term)	2019	No
Piwowarski, Nathan R.	2016 (1st term)	2019	Yes (1 term)
Syed, Nazneen H.	2016 (1st term)	2019	Yes (1 term)

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; Marlaine C. Teahan

Probate and Estate Planning Section
2018-2019 Plan of Work

	Section Initiatives	Respond to Others' Initiatives	Outreach to Section or Community
Fall 2018 priority	Obtain passage of: $ Omnibus EPIC $ ART, SB 1056, 1057, 1058 $ Certificate of Trust, HB 5362, 5398 $ Modify Voidable Transfers Act to fix glitch $ Divided and Directed Trustees act, HB 6129, 6130, 6131 $ Uncapping bill, SB 540, HB 5546	$ Respond if needed to HB 4751, 4969 $ Respond re HB 4684, 4996 (visitation of isolated adults)	$ State Bar Journal theme issue (Nov. 2018) $ Consider initiatives for involving younger lawyers, increasing diversity. $ Promote "Who Should I Trust" in October 2018? $ Update information regarding members, committees, etc. on web site
Spring 2019 priority	$ Lawyer drafter/beneficiary $ TBE Trusts $ Community Property Trusts $ Premarital property act $ Undisclosed trusts		$ Annual Probate Institute (May/June 2019)
Ongoing	$ SCAO meetings $ Review of forms and court rules for changes needed by legislative changes	$ State Bar 21st Century Task Force $ Modest Means Work Group $ E-filing in courts	$ Social events for members $ Joint event with other bars like the taxation section or business law section? $ Review brochures on web site. Need to be updated?
Secondary priority	$ Review Uniform Fiduciary Income and Principal Act $ No liability for trustee of ILIT (SB 644 stalled)		
Future projects	$ Legislative fix for who does attorney represent when attorney represents fiduciary $ Update supervision of charitable trusts act? $ Revise nonprofit corporation act so charity can clearly act as trustee $ Statutory authority for private trust companies.	$ Electronic Wills	

(2018 – 12-15)

CSP Materials

MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

AGENDA

Friday, January 25, 2019

East Lansing, Michigan

9:00 – 10:15 AM

1. **Katie Lynwood – Legislative Development and Drafting Committee – MCL 554.531 and UTMA threshold – 10 minutes**

   See attached:

   - Memo from the committee
   - Proposed redline version of MCL 554.531

2. **Kathleen Goetsch – Guardianship, Conservatorship and End of Life Committee – proposed modifications to the Patient Advocate Designation Statutes – 30 minutes**

   See attached:

   - Memo from the committee
   - Memo from Josh Ard with suggestions for improving PAD law
   - Proposed redline version of MCL 700.5508

3. **Christine Savage – Marital and Premarital Agreement Committee – 35 minutes**

   See attached:

   - Memo from the committee
   - Proposed redline version of the Uniform Premarital and Marital Agreements Act

To: Committee on Special Projects

From: Legislation Development and Drafting Committee

Re: EPIC Omnibus; additional UTMA update

2018 HBs 6467, 6468, 6470, and 6471 died at the end of the 2017-2018 legislative session. Our sponsors, Rep. Elder and Sen. Lucido, will likely reintroduce them in the next month or so. And we'll resume our efforts to shepherd this large proposal through the Legislature.

With the new session's advent, our Committee sought additions or corrections to the omnibus. Marlaine Teahan noticed that the omnibus didn't uniformly adjust thresholds in the Uniform Transfers to Minors Act, 1998 PA 433, MCL 554.521 et seq. As all of you are likely aware, the UTMA is a uniform act that provides a mechanism for making transfers to minors without appointing a conservator.

In the 2018 omnibus, we proposed increasing from $10,000 to $50,000 the limit for a transfer by a PR, trustee, or conservator to a custodian, under MCL 554.530(3). We now recommend the same increase for transfers by other third parties into UTMA accounts, under MCL 554.531. The proposed bill's straightforward text is included with this memo.

We ask that the CSP and then Council adopt a public policy position in favor of this addition to the omnibus so that we can promptly share it with our sponsors and the Legislative Services Bureau.

MCL 554.531 Minor not having conservator; transfer by person holding property or owing liquidated debt.

(1) Subject to subsections (2) and (3), a person not subject to section 9[1] or 10[2] who holds property of, or owes a liquidated debt to, a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 13[3].

(2) If a person having the right to do so under section 7[4] has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(3) If no custodian has been nominated under section 7, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company. If the value of the property exceeds ~~$10,000.00~~ **$50,000.00**, a transfer under this subsection shall only be made if authorized by the court.

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[1] MCL 554.529 creates the mechanism for a PR or trustee to nominate an UTMA custodian for a distribution. It also explains the interaction between the nomination of a custodian in a will or trust, and the PR or trustee's obligation/ability to nominate a custodian.
[2] MCL 554.530 outlines the authority of a PR, trustee, or conservator to transfer assets to a custodian. This is the section the 2018 omnibus proposed amending. It currently has a $10,000.00 threshold for a transfer, and would be increased to $50,000 under our proposal.
[3] MCL 554.533 lays out most of the mechanics of a transfer of property to a custodian under the UTMA.
[4] MCL 554.527 allows for the nomination of a custodian under nominating instruments like wills and trusts.

MEMORANDUM

To: *Probate Council*

From: *Guardianship, Conservatorship & End of Life Committee*

Date: *1/14/2019*

Re: *Proposed Modifications to PAD Statutes*

During the Fall 2018 two issues affecting the PAD statutes were presented to the Committee.

ISSUE # 1 – MULTIPLE CO-ADVOCATES

The first issue was raised by an organization Making Choices Michigan (MCM), an organization operating in the Western part of Michigan. They assist individuals in identifying appropriate people to serve as patient advocate and making informed decisions about treatment.

MCM questioned the validity of a PAD drafted by an attorney and nominating Co-Advocates to make medical decisions. The drafter is a former member of PEPC and was active in helping draft the standardized PAD available in hospitals and other places).

The Problem: *MCM takes the position that the current PAD statute authorizes ONLY successor appointments, therefore limiting a valid PAD to naming only 1 person to act at any one time. MCM claims physicians and treating personnel prefer not to field calls and inquiries from multiple Co-Advocates. Also naming Co-Advocates can lead to confusion and disagreement among the Co-Advocates, thus making the treating professional's job more difficult.*

The Discussion: *The committee does not believe the PAD Statute is so limiting – but understands that Co-Advocates could lead to some confusion and potential problems.*

The Solution: *Josh Ard undertook the challenge of addressing these concerns. See the attachment "Suggestions for Improving PAD Law Dated 9/22/2018.*

This proposal is submitted to CSP for a recommendation to Council for a up or down vote – and possibly be a part of the EPIC Omnibus

ISSUE #2 – DEFINATION OF WHO DETERMINES THE ADVOCATES ABILITY TO ACT.

This issue was raised by a general discussion of the application of PAD statutes by medical treatment personnel. The perceived issue is the possibility that medical personnel may be "liberally" construing MCL 700.5508(1), resulting in the statute not being strictly followed and an Advocate being allowed to make medical decisions with less than the required ***2 written*** *certifications. It was also brought to the committee's attention that in some areas of the state a patient's primary treater may be a para-professional – rather than a physician.*

THE PROBLEM: *How best to insure that the medical profession is complying with the statute. And can the statute better address the situation where there is not an abundance of "physicians" and/or licensed psychologists.*

THE DISCUSSION: *We determined that there is no good way under EPIC to make sure that physicians are properly documenting 2 written certifications. However, we may be able to address the issue of limiting the certification to physicians and licensed psychologist.*

THE SOLUTION: *Paul Vaidya explored the definition of "physician" as used in EPIC and the mental health statutes. His findings and recommendations are attached.*

Howard Collins has offered to Liaison with the Elder Law Section on these two matters.

Suggestions for Improving PAD law

Josh Ard

September 22, 2018

There are several ways in which Michigan's law governing advance medical directives could be improved. This comment addresses two concerns:

- There is no easy way under current law to enable someone other than the primary patient advocate to act if the primary patient advocate cannot participate in decision making in a timely manner.
- The law is totally silent on how a patient could require a patient advocate to consult with others, whether family members or not, and how the patient could require some sort of consensus if that is what she desires. These are topics that lawyers are particularly skilled in counseling clients about. Most of us know little about medical treatment but know quite a bit about how to facilitate successful decision making.

In this comment, I will first explain the problem in more depth and then offer solutions. In this discussion it is important to recognize that the end users of patient advocate designations are typically persons unskilled in both legal and medical matters and that no contemporary consultation with a lawyer is likely when the document would be used. In particular, it is important to recognize that the law creates default rules and that some defaults are more reasonable than others. Also, it is important to recognize that it is unwise to place any burden on medical facilities to ensure that the patient advocate acts "correctly." Their concern should be medical treatment.

What happens if the primary patient advocate cannot participate?

> The statute says:
> A patient may designate in the patient advocate designation a successor individual as a patient advocate who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate *does not accept, is incapacitated, resigns, or is removed*.MCL 700.5507(2).

Simply not being to get to the hospital quickly enough does not seem to meet any of these four criteria. I realize that in practice, medical facilities might not be so strict and will simply let another person act, but that is risky for both the facility and the person who makes the decision because there is no legal basis for such action.

The statute does give a way to solve this problem, one I use in my documents, but it is a ridiculous kludge. Here's the procedure:

- The acceptance forms for patient advocates say essentially "I delegate my powers, in order, to the patient advocates that follow me in the pecking order" and "I agree to step aside when a higher ranking patient advocate is ready and able to serve."

- The patient advocate designation itself ratifies these delegations.

The statutory basis of this is"

> A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient. MCL 700.5509(1)(g).

No one should expect ordinary laypersons to figure this out.

What should the law say?

Obviously, I think that the procedure I've described above is what most people want and from discussions with clients I think I'm right, but there ought to be ways of modifying that if the patient prefers. For example, a person with only one child she trusts might name a neighbor as a successor patient advocate but only wants that preferred child to make a major decision. The type of problem here has been described quite thoroughly by Cass Sunstein in his work on nudges.

- There should be a default if the person makes no decision to the contrary.
- The person should be allowed to vary the rule.

In setting defaults, various criteria are possible. Paternalistically, the basis should be the decision that is "best," either for most people or for society in general. For example, the default in America is that one is not an organ donor unless she affirmatively agrees to be one. In Scandinavia this is reversed—you are an organ donor unless you opt out. Sunstein wanted retirement contributions to be mandatory for employees unless they affirmatively opt out. Persons have choices either way, but in many areas of life we tend to take the easy course and go along with whatever happens if we do not make a choice. One problem with paternalistic decisions choosing the decision maker. Who is to decide what's best?

The other choice is more or less based on popular. The default was changed from *per stirpes* to *per capita by representation* because legal scholars claimed that was what the majority of people wanted after the issue was clearly explained to them. I can't say whether a proper survey was ever done but the result is not unreasonable.

I claim that most people want their secondary patient advocate to act if the primary one is not available but want that secondary patient advocate to step aside when the first patient advocate is available and willing to serve. That is an empirical claim. Nevertheless, the best solution is to have something as the default and make it easy to change.

Proposed language.

To replace MCL 700.5507.

A patient may designate in the patient advocate designation a successor individual or a series of individuals in a determined order who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate is not able to make decisions in a

timely manner. The power devolves in the order listed in the patient advocate designation. An acting successor patient advocate must relinquish powers to higher ranking individuals in order if they become available and willing to serve. The patient may modify this devolution of power in the patient advocate designation, such as authorizing the successor to act only if the individual does not accept, is incapacitated, resigns, or is removed.

Instructions about how decisions should be made

There is nothing I know of that forbids a patient from requiring that the patient advocate talk with somebody before making a decision or even requiring some sort of family consensus. Likewise, there is nothing that says what responsibility, if any, this places on the treating facility or what remedy there may be if the patient advocate ignores that requirement. Moreover, if instructions about decision making are not addressed in the statute (and even better in standard forms handed out by medical personnel) there is no reason to think that ordinary patients would be aware that they can say anything about that.

I propose to add a new section to 5507 allowing instructions of this sort, but holding medical facilities and personnel harmless from ensuring compliance or even having to query it. The proper place for that is in 5511.

Also, if instructions about decision making are addressed in 5507, then family members have a remedy if the instructions are not followed under 5511(5),

Here goes

700.5507 Patient advocate designation; statement; acceptance. Sec. 5507.

(1) A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment or mental health treatment, or both. A patient advocate designation may also include a statement of the patient's desires on the making of an anatomical gift of all or part of the patient's body under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The statement regarding an anatomical gift under this subsection may include a statement of the patient's desires regarding the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, medical treatment, mental health treatment, the making of an anatomical gift, or the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift that the patient could have exercised on his or her own behalf.

(2) A patient advocate designation may also include instructions about how the patient advocate is to make decisions. This includes decisions about what individuals or organizations should be consulted and whether a vote or other sort of consensus should be required for particular decisions.

~~(2) A patient may designate in the patient advocate designation a successor individual as a patient advocate who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.~~

(3) A patient may designate in the patient advocate designation a successor individual or a series of individuals in a determined order who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate is not able to make decisions in a timely manner. The power devolves in the order listed in the patient advocate designation. An acting successor patient advocate must relinquish powers to higher ranking individuals in order if they become available and willing to serve. The patient may modify this devolution of power in the patient advocate designation, such as authorizing the successor to act only if the individual does not accept, is incapacitated, resigns, or is removed.

~~(3)~~(4) Before a patient advocate designation is implemented, a copy of the patient advocate designation must be given to the proposed patient advocate and must be given to a successor patient advocate before the successor acts as patient advocate. Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the patient advocate designation.

~~(4)~~ (5) The acceptance of a designation as a patient advocate must include substantially all of the following statements:
1. This patient advocate designation is not effective unless the patient is unable to participate in decisions regarding the patient's medical or mental health, as applicable. If this patient advocate designation includes the authority to make an anatomical gift as described in section 5506, the authority remains exercisable after the patient's death.
2. A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

3. This patient advocate designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.
4. A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.
5. A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.
6. A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient's best interests.
7. A patient may revoke his or her patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.
8. A patient may waive his or her right to revoke the patient advocate designation as to the power to make mental health treatment decisions, and if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.
9. A patient advocate may revoke his or her acceptance of the patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.
10. A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the public health code, 1978 PA 368, MCL 333.20201.

700.5511 Binding effect; liability of provider; exception; dispute.
Sec. 5511.
(1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the patient's competency.
(2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.

(3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

~~(3)~~(4) A person providing care, custody, or medical or mental health treatment to a patient is not required to determine if a patient advocate complies with any instructions authorized by 5507(2) and has no liability if the patient advocate fails to comply.

~~(4)~~ (5) A mental health professional who provides mental health treatment to a patient shall comply with the desires of the patient as expressed in the designation. If 1 or more of the following apply to a desire of the patient as expressed in the designation, the mental health professional is not bound to follow that desire, but shall follow the patient's other desires as expressed in the designation:
(a) In the opinion of the mental health professional, compliance is not consistent with generally accepted community practice standards of treatment.
(b) The treatment requested is not reasonably available.
(c) Compliance is not consistent with applicable law.
(d) Compliance is not consistent with court-ordered treatment.
(e) In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances.
~~(5)~~ (6) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or is not complying with sections 5506 to 5515, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

Finally, there may be a need to modify 5509(1)(g)

A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.

The modification could reference that this does not apply to the new scheme under 5507(2). That may be unnecessary because that isn't a delegation created by the patient advocate.

applicable. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.

~~(3~~4) In the case of a patient advocate designation that authorizes a patient advocate to make an anatomical gift of all or part of the patient's body, the patient advocate shall act on the patient's behalf in accordance with part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only after the patient has been declared unable to participate in medical treatment decisions as provided in subsection (1) or declared dead by a licensed physician. The patient advocate's authority to make an anatomical gift remains exercisable after the patient's death.

Memo

To: Probate Council

From: Premarital and Marital Agreement Committee

Date: January 25, 2019

Subject: Uniform Premarital and Marital Agreements Act

The Premarital and Marital Agreement Committee ("Committee") has focused our efforts on a review of the Uniform Premarital and Marital Agreements Act ("Act"). This review has included an examination of the current law in Michigan relating to premarital and marital agreements, along with the review of the provisions of the Act during the CSP meetings. Attached is a copy of the Act marked with the revisions from the most recent CSP meeting.

At this point the Committee is requesting input from CSP on its interest in having the Committee pursue the advancement of the Act to the Michigan legislature.

Following is a brief summary of the Act:

Section 1: Title

"Uniform Premarital and Marital Agreements Act"

Section 2: Definitions

Section 2 of the Act is defined terms. To stay consistent with the uniformity of the Act, only minor revisions were made which are marked for terms that are also defined under EPIC. No substantive revisions were made to the defined terms.

Section 3: Scope

Section 3 outlines the scope of the Act. The Act applies to agreements signed after the effective date. It does not apply to agreements which require court approval to become effective or agreements between spouses who intend to obtain a marital dissolution or court-decreed separation.

Section 4: Governing Law

Section 4 describes the validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement and how it is determined by the law of jurisdiction designated in the agreement, given that it is not contrary to public policy or Michigan Law.

Section 5: Principles of Law and Equity

Section 5 makes clear that common law contract doctrines and principles of equity are continually applied where this act does not displace them.

Section 6: Formation Requirements

Section 6 states that the agreement must be in a record, typically written record, and signed by both parties. This Section also affirmatively provides that a premarital or marital agreement is enforceable without consideration.

Section 7: When Agreement Effective

Section 7 sets forth the effective date of the premarital and marital agreements. A premarital agreement is effective on marriage. A premarital agreement is effective on the signing of the agreement by both parties. The effective date does not deprive parties from agreeing that certain provisions within an agreement will not go into or out of effect until a later time.

Section 8: Void Marriage

Section 8 provides that if a marriage is void, the agreement is enforceable to the extent necessary to avoid inequitable result. This section is intended to apply primarily to cases where a marriage is void due to the pre-existing marriage of one of the partners. Situations where one partner seeking a civil annulment relating to some claims of misrepresentation or mutual mistake would usually be better left to the main enforcement provisions of Sections 9 and 10.

Section 9: Enforcement

Pursuant to Section 9 a premarital or marital agreement would be unenforceable if a party against whom enforcement is sought proves any of the following:

1. The party's consent to the agreement was involuntary or the result of duress;

   Note in the marked version, fraud and mistake were inserted consistent with Michigan case law.

2. The party did not have access to independent legal representation;

3. Unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights, or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement; or

4. Before signing the agreement, the party did not receive adequate financial disclosure.

Section 9 also details the requirements to meet the standards for enforceability:

1. **Independent Legal Representation**. A party has access to independent legal representation if (a) before signing a premarital or marital agreement, the party has a reasonable time to (i) decide whether to retain a lawyer to provide independent legal representation, and (ii) locate a lawyer to provide independent legal representation, obtain a lawyer's advice, and consider the advice provided; and (b) the other party is represented by a lawyer and the party has the financial ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of independent legal representation.

2. **Waiver**. A notice of waiver of rights under Section 9 requires language, conspicuously displayed, substantially similar to examples in the Act, as applicable to the premarital agreement or marital agreement.

3. **Adequate Financial Disclosure**. A party has adequate financial disclosure if the party: (a) receives a reasonably accurate description and good-faith estimate of the value of the property, liabilities, and income of the party, (b) expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided, or (c) has adequate knowledge or reasonable basis for having adequate knowledge of the description an estimate of the property, liabilities and income.

Note Section 9 also provides the following:

1. **Public Assistance**. If the premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the are their party to provide support to the extent necessary to avoid that eligibility.

2. **Unconscionability or Hardship**. A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole (a) the term is unconscionable at the time of signing, or (b) enforcement of the term results in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.

Note that the marked changes modified to state that the material change was reasonably foreseeable at the time the agreement was signed. This modification was made to be consistent with Michigan case law.

Section 10: Unenforceable Terms

Section 10 discusses specific incidents in which a premarital or marital agreement is not enforceable. A term in a premarital agreement or marital agreement is not enforceable to the extent that it:

1. Adversely affects a child's right to support;
2. Limits or restricts a remedy available to a victim of domestic violence;
3. Purports to modify the grounds for a court-decreed separation or marital dissolution; or
4. Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

Section 11: Limitation of Action

Section 11 provides that a claim for relief under a premarital agreement or marital agreement is tolled during the marriage, but equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party..

Section 12: Uniformity of Applications and Construction

Section 12 provides that consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 13: Relation to Electronic Signatures in Global and National Commerce Act

Section 13 modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101 (C) of that act, or authorize electronic delivery of any of the notices described under that act.

Section 14: Repeals; Conforming Amendments

As Michigan did not adopt the prior uniform act, the Uniform Premarital Agreement Act, there will be no act to repeal.

Section 15: Effective Date

The effective date will be stated in the Act.

UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR
NASHVILLE, TENNESSEE
JULY 13 - JULY 19, 2012

WITH PREFATORY NOTE AND COMMENTS

January 2, 2013

UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

TABLE OF CONTENTS

UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

SECTION 1. SHORT TITLE. This ~~[act]~~act ~~may be~~shall be known and cited as the "Uniform Premarital and Marital Agreements Act."

SECTION 2. DEFINITIONS. In this ~~[act]~~act:

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

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

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

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

(A) spousal support;

(B) a right to property, including characterization, management, and ownership;

(C) responsibility for a liability;

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

(E) award and allocation of attorney's fees and costs.

(5) "Premarital agreement" means an agreement between individuals who intend to marry which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed before the individuals marry, of a premarital agreement.

(6) "Property" means anything that may be the subject of ~~ownershi~~ownership and includes both ~~p, whether~~ real ~~or~~and personal property, tangible or intangible, legal or equitable, or any interest therein.

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

(8) "Sign" means with present intent to authenticate or adopt a record:

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

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

(9) "State" means a state of the United States, the District of Columbia, the Common Wealth of Puerto Rico, ~~the United States Virgin Islands,~~ or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. SCOPE.

(a) This ~~[act]~~act applies to a premarital agreement or marital agreement signed on or after [the effective date of this ~~[act]~~act].

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

(c) This ~~[act]~~act does not apply to:

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

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

(d) This ~~[act]~~act does not affect adversely the rights of a bona fide purchaser for value to the extent that this ~~[act]~~act applies to a waiver of a marital right or obligation in a transfer or conveyance of property by a spouse to a third party.

SECTION 4. GOVERNING LAW. The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined:

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

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

SECTION 5. PRINCIPLES OF LAW AND EQUITY. Unless displaced by a provision of this ~~[act]~~act, principles of law and equity supplement this ~~[act]~~act.

SECTION 6. FORMATION REQUIREMENTS. A premarital agreement or marital agreement must be in a record and signed by both parties. The agreement is enforceable without consideration.

SECTION 7. WHEN AGREEMENT EFFECTIVE. A premarital agreement is effective on marriage. A marital agreement is effective on signing by both parties.

SECTION 8. VOID MARRIAGE. If a marriage is determined to be void, a premarital agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable result.

SECTION 9. ENFORCEMENT.

(a) A premarital agreement or marital agreement is unenforceable if a party against whom enforcement is sought proves any of the following:

(1) ~~the~~ The ~~party's~~ parties' consent to the agreement was involuntary or the result of fraud, duress, or mistake;

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

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

(4) ~~b~~Before signing the agreement, the party did not receive adequate financial disclosure under subsection (d).

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

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

(A) ~~d~~Decide whether to retain a lawyer to provide independent legal representation; and

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

(2) ~~t~~The other party is represented by a lawyer and the party has the

financial ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of independent legal representation.

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

(1) "If you sign this agreement, you may be:

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

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

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

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

(E) Giving up your right to have your legal fees paid."

(d) A party has adequate financial disclosure under this section if ~~the party~~ one of the following applies:

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

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

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

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

(f) A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole, either of the following apply~~[:]~~:

~~[~~(1)~~]~~ ~~t~~The term was unconscionable at the time ~~of~~ the agreement was sign~~ing[~~ed; or

(2) ~~e~~Enforcement of the term may be unconscionable for a party at the time of enforcement because of ~~would result in substantial hardship for a party because of~~ a material change in circumstances arising after the agreement was signed~~]~~ that was not reasonably foreseeable at the time the agreement was signed.

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

SECTION 10. UNENFORCEABLE TERMS.

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

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

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

(2) ~~[~~Limits or restricts a remedy available to a victim of domestic violence

under law of this state other than this ~~[act]~~act;

(3) ~~p~~Purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this ~~[act]~~act; or

(4) ~~p~~Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

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

SECTION 11. LIMITATION OF ACTION. A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement or marital agreement is tolled during the marriage of the parties to the agreement, but equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This ~~[act]~~act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

[SECTION 14. REPEALS; CONFORMING AMENDMENTS.

~~(a) [Uniform Premarital Agreement Act] is repealed.~~

~~(b) [Uniform Probate Code Section 2-213 (Waiver of Right to Elect and of Other Rights)] is repealed.~~

~~(c) [. . .]~~

SECTION 15. EFFECTIVE DATE. This ~~[act]~~act takes effect ...

Council Materials

MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN
January 25, 2019
Agenda

I. Call to Order

II. Introduction of Guests

III. Excused Absences

IV. Lobbyist Report—Public Affairs Associates

V. Monthly Reports:

A. Minutes of Prior Council Meeting -- Attachment A

B. Chair's Report – Attachment B

1. Chair's Report—Schedule of Probate Council Initiatives

2. Extension of Contract with ICLE with respect to Michigan Trust Code and EPIC Commentary

3. Request for Assistance with webinar being presented by Consumer Law Section and Elder Law Section.

4. Request for Section to Co-Sponsor with ADR Section on telephone seminar on preparing for mediation.

C. Treasurer's Report – Attachment C

D. Committee on Special Projects

VI. Other Committees Presenting Oral Reports

A. Budget Committee – David L.J.M. Skidmore – Attachment D

B. Court Rules, Forms, & Proceedings Committee—Susan L. Chalgian—Attachment E

C. Guardianships, Conservatorships, & End of Life Committee – Kathleen Goetsch

D. Membership Committee – Robert B. Labe

E. Tax Committee – Robert B. Labe – Attachment F

VII. Other Committees Presenting Written Reports Only

A. Electronic Communications Committee – Michael Lichterman – Attachment G

B. Legislation Development & Drafting Committee – Nathan Piwowarski – Attachment H

C. Divided and Directed Trusteeships Ad Hoc Committee – James Spica – Attachment I

VIII. Other Business

IX. Adjournment

Next Probate Council Meeting: Friday, February 15, 2019

A

Meeting of the Council of the
Probate and Estate Planning Section of the
State Bar of Michigan

December 15, 2018
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Council, Marguerite Munson Lentz, called the meeting to order at 10:23 a.m.

II. Introduction of Guests

A. Meeting attendees introduced themselves.
B. The following officers and members of the Council were present: Marguerite Munson Lentz, Chair; Christopher A. Ballard, Chair Elect; David P. Lucas, Vice Chair; David L.J.M. Skidmore, Secretary; Mark E. Kellogg, Treasurer; James F. Anderton; Christopher J. Caldwell; Kathleen M. Goetsch; Angela M. Hentkowski; Hon. Michael L. Jaconette; Michael G. Lichterman; Katie Lynwood; Raj A. Malviya; Andrew W. Mayoras; Richard C. Mills; Melisa M.W. Mysliwiec; Lorraine F. New; Neal Nusholtz; Kurt A. Olson; Nathan R. Piwowarski; and Christine M. Savage. A total of 21 Council officers and members were present, constituting a quorum.
C. The following ex officio members of the Council were present: Robert D. Brower, Jr.; George W. Gregory; and Douglas A. Mielock.
D. The following liaisons to the Council were present: Susan L. Chalgian (SCAO); John R. Dresser (Business Law Section); and James P. Spica (Uniform Law Commission).
E. Others present: Ryan Bourjaily; Robert Nemzin; Aaron Bartell; Mike Shelton; Jacob Whiten; Warren Krueger; Georgette E. David; Ken Silver; and Joe Weiler.

III. Excused Absences

The following officers and members of the Council were absent: Robert C. Labe; and Nazneen H. Syed.

IV. Lobbyist Report – Public Affairs Associates

Becky Bechler of Public Affairs Associates reported that (1) HB 6129, 6130, and 6131, the divided and directed trusteeship bills, were moved to the floor of the Senate; and (2) HB 5362 and 5398, the certificate of trust bills, were en route to the Governor. Other bills of interest to the Probate Section will be reintroduced in the next legislative session.

V. Monthly Reports

A. Minutes of Prior Council Meeting (David L.J.M. Skidmore):

It was moved and seconded to approve the Minutes of the November 17, 2018 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.

B. Treasurer's Report (Mark E. Kellogg):

It was reported that the Budget Committee is working on the annual budget, having received the final audited financials from the State Bar, and that the expense reimbursement form was included in the meeting agenda materials.

C. Chair's Report (Marguerite Munson Lentz):

It was reported that an updated list of chairs and members of the Council's committees, and an updated list of liaisons to the Council, were included in the meeting agenda materials. It was reported that a bill tracker report was included in the meeting agenda materials. It was reported that correspondence from the SBM Board of Commissioners regarding non-fee generating cases was included in the meeting agenda materials.

D. Committee on Special Projects (Katie Lynwood):

Katie Lynwood reported on the discussion at the Committee on Special Projects meeting. Aaron Bartell and Nathan Piwoworski reported on proposed "prebate" legislation.

VI. Other Committees Presenting Oral Reports

A. Amicus Curiae Committee

Andrew Mayoras reported that a request for an amicus brief from the Section has been requested in In Re Rhea Brody Trust, a matter in which leave to appeal is being sought from the Michigan Supreme Court. The committee's motion is:

The Probate and Estate Planning Section declines to authorize the preparation and filing of an amicus brief in the matter before the Michigan Supreme Court, captioned, In Re Rhea Brody Trust.

The Chair stated that since an application for consideration was made, the vote of the Council should be recorded. Following discussion, the Chair called the question, and the Secretary recorded the vote of 21 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 2 not voting. The Chair declared the motion approved.

B. Electronic Communications Committee

Michael Lichterman reported regarding a proposal to permit section members to attend meetings electronically. The committee's motion is:

The Probate and Estate Planning Section authorizes the expenditure of $150 per month for audio equipment rental from the University Club and $15 per month for conference call services from Zoom for the remaining 6 meetings of the fiscal year.

Following discussion, the Chair called the question, and the Secretary recorded the vote of 21 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 2 not voting. The Chair declared the motion approved.

C. Guardianships, Conservatorships, & End of Life Committee

Kathleen Goetsch reported on the status of legislation of interest to the section.

D. Probate Institute

David Lucas reported on preparations for the 2019 ICLE Probate Institute.

E. Tax Committee

Raj Malviya provided a musical tax nugget, and Neal Nusholtz provided a non-musical tax nugget.

VII. Other Committees Presenting Written Reports Only

The Chair stated that there were written reports from the following committees:

A. Legislation Development & Drafting Committee

B. Divided and Directed Trusteeships Ad Hoc Committee

VIII. Other Business

The Chair noted that the meetings would switch to Fridays as of the next meeting date (January 25, 2019).

IX. Adjournment

Seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 11:30 a.m.

Respectfully submitted,
David L.J.M. Skidmore, Secretary

B

PROBATE & ESTATE PLANNING COUNCIL

CHAIR'S REPORT FOR JANUARY 25, 2019

Probate Council Initiatives (or Revisions to Proposed Legislation) that Were Enacted During 2017-2018 Legislative Session

- Override to *Jajuga* case. HB 4410. 2018 PA 143.
- Certificate of Trust coordination. HB 5362, 5398. 2018 PA 491, 2018 PA 492.
- Divided and Directed Trusteeships. HB 6129, 6130, 6131. 2018 PA 662, 18 PA 663, 18 PA 664.

Probate Initiatives That Have Gone Through LSB and Need Sponsors in 2019

- ART Legislation.
- EPIC Omnibus Bill.
- Community Property Trust bill.
- Tenancy by the Entireties Trust bill.

Probate Initiatives that Need To Be Reviewed by LSB and Need Sponsors (or be added to other bills)

- Voidable Transactions Act fix to harmonize with the Qualified Dispositions in Trusts Act (Rob Tiplady's request).
- Undisclosed Trusts (add to EPIC omnibus).

Probate Initiatives that Need To Be Drafted and Approved by Probate Council

- Fix so that newly enacted 18 PA 434 (SB 0798) does not supersede, or impose additional requirements on, temporary powers of attorney for child care under MCL 700.5103.
- Change MCL 554.530(3) to increase threshold for a change by PR, trustee, or conservator to UTMA account from $10,000 to $50,000. Add to EPIC Omnibus bill.
- Change MCL 700.3206(3)(a) regarding definition of "service member" and "armed forces". 700.3206 refers to armed forces as defined in MCL 35.1092, but MCL 35.1092 does not define "armed forces."
- Proposal from Drafter/Beneficiary Ad Hoc Committee?
- Proposal from Premarital Agreement Legislation Ad Hoc Committee?
- SLAT proposal? (Add to EPIC Omnibus bill?)
- Vehicle Title Transfer on Death?

Probate Initiatives that Stalled

- No uncapping for transfers to LLC's.
- Limit liability for Trustees of ILITs.
- Expand kinds of personal property that can be held as tenancy by the entireties.

Publishing Agreement Extension
Michigan Trust Code and EPIC Commentary

This Agreement is made by and among MARK K. HARDER (Mark Harder), of Holland, Michigan; JOHN H. MARTIN (John Martin), of Spring Lake, Michigan; THE REGENTS OF THE UNIVERSITY OF MICHIGAN ON BEHALF OF THE INSTITUTE OF CONTINUING LEGAL EDUCATION, of Ann Arbor, Michigan (ICLE); and the PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN (the Section), for the publication of the official drafters' commentary to the Michigan Trust Code (the MTC) and the Estates and Protected Individuals Code (EPIC).

Background:

a. The parties are party to an agreement dated July 1, 2009 (the 2009 Agreement), and Publishing Agreement Extensions made effective April 1, 2013 (the 2013 Extension) and April 1, 2016 (the 2016 Extension) for publication of the drafters' commentary to EPIC and the MTC (the Commentary). The term of 2016 Extension ended March 31, 2019.
b. Under these agreements, John Martin is the author of the EPIC Commentary, and Mark Harder is the author of the MTC Commentary.
c. ICLE has the exclusive right to publish the Commentary. The Commentary is included in two books published by ICLE, the Probate Sourcebook (print and online editions), and the Estates and Protected Individuals Code with Reporters' Commentary (print only). The Probate Sourcebook is included in the ICLE Premium Partnership. The most recent edition of the Commentary was published in February 2019.

The parties agree:

1. John Martin and Mark Harder will prepare and deliver to ICLE, as before, an annual update to the Commentary. Unless terminated earlier as permitted under the terms of the 2009 Agreement as extended, the parties anticipate updated editions of the Commentary will be published in 2020, 2021, and 2022.
2. ICLE will pay an honorarium of $6,500 per year for preparation of each edition of the Commentary, beginning with the edition published in February 2020. This honorarium is in lieu of all royalties specified in the 2009 Agreement. References to royalties in the 2009 Agreement shall be interpreted to mean the honorarium provided for in this Extension.
3. ICLE will pay the honorarium as follows:
    a. Half the honorarium will be paid every 6 months, with payments made in September and March.
    b. Each payment will be divided as follows: 90 percent to the two authors and 10 percent to the Section. As between John Martin and Mark Harder, payments shall be divided as they agree and direct ICLE in writing.
4. Upon termination, the parties' obligations to one another shall end, except that termination of the Agreement shall not eliminate ICLE's obligation to pay the honorarium for a period of one year following the publication of the most recent update of the Commentary.

5. This Agreement modifies the 2009 Agreement and the 2013 and 2016 Extensions and is effective as of April 1, 2019. It extends through March 31, 2022, except for rights of termination as described in section 3 of the 2009 Agreement and subject to section 6 below. All other provisions of the 2009 Agreement remain in effect.
6. If, during the term of this Extension, new legislation is enacted that significantly amends EPIC or the MTC (at least similar to the size and scope of the MTC) and which results in major revisions to the Commentary, the parties agree to renegotiate the terms of the 2009 Agreement, as modified by this Extension.

Accepted and agreed:

Date: _____

_____
Mark K. Harder

Date: _____

_____
John H. Martin

PROBATE AND ESTATE PLANNING SECTION,
STATE BAR OF MICHIGAN

Date: _____

_____
Marguerite Munson Lentz, Chair

REGENTS OF THE UNIVERSITY OF MICHIGAN
ON BEHALF OF THE INSTITUTE OF CONTINUING
LEGAL EDUCATION

Date: _____

_____

Lentz, Marguerite

From: Andrew Campbell <michiganbk@gmail.com>
Sent: Friday, January 4, 2019 4:41 PM
To: Lentz, Marguerite
Cc: schimke@mielderlaw.com
Subject: Re: Co Sponsoring Successor in Interest Training

Yes I am chair of consumer law section. I talked to you a couple of times. Sara from the Elder law section was kind enough and interested in doing a webinar. She informed me that her clients sometimes encounter problems with mortgage servicers in getting the information needed to assume the loan.

I am attempting to solidify a rough tentative plan with both sections, Elder Law and Probate.

No fee would be charged to anyone at all to listen to it. Your members might not be interested in the webinar but we will be generating (at least I plan to) paper-based documents such as powerpoint presentations, outlines, or flowcharts to help people understand this law. I will be working on those. To send an e-blast to another group, I do need permission from the chair (not the council or section only the chair of each section). I just confirmed this with the State Bar today.

I will be seeking an authorization from our Consumer Law section to pay the E-blast fees and to participate in it. So the Probate section does not have to pay for anything and neither does the Elder law section (except we will be using their webinar access subscription to do the actual webinar).

I wanted to see if you wanted to chime in or have one your members help out as the new RESPA rule does potentially implicate rights under state law.
I am not 100% on what those laws are or how probate works. That is why I am asking. Yes, we can wait until January 25th to see if you could produce a volunteer on the issue mentioned in the last email. It will take us time to put everything together and to think this through.

Please note my new address
Andrew L. Campbell
Attorney at Law
1000 Beach St. Suite B West Entrance
Flint, MI 48502
(810) 232-4344

On Fri, Jan 4, 2019 at 3:59 PM Lentz, Marguerite <MLentz@bodmanlaw.com> wrote:

Hello Andrew:

Happy New Year!

I remember talking to you, but I can't find my notes. I am sure you told me before, but to refresh my memory, which section do you represent?

The topic sounds interesting and I think the Probate & Estate Planning Section members would be interested in hearing about the webinar.

A few questions about the proposed webinar: is this webinar intended to be a webinar just for section members who receive the e-blast? Would a fee be charged to the section members to watch?

As I mentioned to Andrew on the phone, Probate and Estate Planning Section has not previously presented a webinar for section members to my knowledge, although the Section sponsors selected seminars that ICLE hosts (and members of the section often present at these seminars, but those are individual decisions, not P&EP Section decisions). I cannot volunteer someone from the Probate and Estate Planning Section to participate in the webinar, but I could request a volunteer at our next probate council meeting. Our next meeting is scheduled for January 25, 2019. If I asked the council members and other section members attending at that time, would that be soon enough for your purposes?

If your section paid for the e-blast, I would approve sending it to the Probate and Estate Planning Section members. (If you wanted the P&EP Section to pay for all or part of the e-blast expense, then I would need prior probate council approval for the expenditure.)

Best regards,

Meg

Marguerite Munson Lentz
BODMAN PLC
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
office: 313-393-7589
email: mlentz@bodmanlaw.com
My biography on bodmanlaw.com

From: Andrew Campbell <michiganbk@gmail.com>
Sent: Friday, January 4, 2019 2:04 PM
To: schimke@mielderlaw.com; Lentz, Marguerite <MLentz@BODMANLAW.COM>
Subject: Co Sponsoring Successor in Interest Training

Sara and Marguerite,

Sara thanks for your discussion on the above topic and your idea of doing a webinar co-sponsored. I am including the chair of the Probate Section to see if she is interested in helping out, giving advice and/or receiving information or access to the proposed webinar.

Attached is a short article (not yet edited) about this rule. Please read it as it will help you understand. As I was writing this article I realized that probate attorneys could help out with at least one or more issues. For example, the servicer can ask for certain documents from the successor to confirm identity and ownership (taken from another website):

"A "potential" successor in interest becomes a "confirmed" successor in interest if the servicer confirms "the successor in interest's identity and ownership interest in a property." 12 C.F.R. § 1024.31.

But a servicer may only request "documents the servicer reasonably requires to confirm that person's identity and ownership interest in the property." 12 C.F.R. § 1024.38(b)(1)(vi)(B) (emphasis added). The requested documents "must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in the servicer's possession." 81 Fed. Reg. 72,160 at 72,379. The servicer can also require documents it believes are necessary to prevent fraud or other criminal activity, e.g. if the servicer believes that the documents are forged. See id. at 72,380."

Subject to the foregoing, requesting a death certificate, executed will or court order might be reasonable. But it would be unreasonable to request certain probate documents when "the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has sole interest in the property." 81 Fed. Reg. 72,160, at 72,379-380. Because the reasonableness requirement depends heavily on the relevant jurisdiction, servicers must take into account local laws when requesting documents."

Can the probate section help out with this issue? Are you interested in participating by having a member discuss this via a recorded phone call webinar?

I would like to get approval from my section and I think I can get it through now b/c those against this idea won't have to do any work on it. I think it will also be easy to get permission if the Elder Law section can host the webinar. I can ask my section to pay for e-blasts to your section (with your approval) and e-blasts to our section as well. If the Probate section is interested I could ask for our section to pay for an e-blast.

Also I can put together a PDF with a flow chart or outline of this rule to make it something easier for visual learners.

Please note my new address

Andrew L. Campbell

Attorney at Law

1000 Beach St. Suite B West Entrance

Flint, MI 48502

(810) 232-4344

"In August of 2016, the Consumer Financial Protection Bureau ("CFPB") issued an Amendment to the Mortgage Servicing Rules. The new rules were issued because the CFPB " had received reports of servicers either refusing to speak to successors in interest or demanding documents to prove successors in interest's claims to the property that either did not exist or were not reasonably available" On April 19, 2018, the Bureau implemented the new rules." These new rules are important because they allow "confirmed successors in interest" to receive certain information about the mortgage loan account.

Successors in interest are defined as persons who receive an ownership interest in the property by:

- Devise or descent, or by inheritance from a deceased relative.
- Right of survivorship from a deceased joint tenant.
- Transfer from a spouse or a parent.
- A transfer incident to a divorce, legal separation and /or property settlement.
- Transfer into an inter vivos trust for the benefit of the successor in interest.

Servicers are now required to respond quickly to a possible successor in interest who contacts the servicer by providing a written list of information required to confirm the person's status as a successor in interest. The required information must be reasonable. A "potential" successor in interest becomes a "confirmed" successor in interest if the servicer confirms "the successor in interest's identity and ownership interest in a property." Servicers must have policies and procedures to help with their compliance with these successors in interest. Servicers are not, however, required to proactively search for a possible successor in interest.

Most importantly, a service cannot require that a confirmed successor in interest assume the mortgage loan to be considered a borrower. Once confirmed, a service may send a notice and acknowledgment form for the successor to execute and return in order to opt-in to receive required (escrow, servicing transfer, force-placed insurance) borrower correspondence. Failure to return this form will limit a confirmed successor in interest's rights.

This means that a "confirmed successor in interest" is entitled to the same rights possessed by the original borrower or consumer as long as they complete the necessary forms in a timely manner. A "confirmed successor in interest" is now a "borrower" for purposes of RESPA's mortgage servicing rules and a "consumer" for TILA's mortgage servicing rules.

These rights are critical as a successor in interest can now gain valuable information about the loan transaction in order to make an intelligent decision on whether to assume the loan.

It is critical that these new rules be communicated and explained not only to consumer lawyers but also to lawyers in contact with consumers who are potential successors in interest. For example, probate, estate planning and family law attorneys are clearly in contact with consumers who may be entitled to these rights. I encourage all section members to educate consumers and

other lawyers so that these important rights are utilized. After all, a home is the most valuable asset most consumers will ever own.

Lentz, Marguerite

From:	Mary Anne Parks <parks.maryanne@gmail.com>
Sent:	Thursday, January 17, 2019 11:40 AM
To:	Lentz, Marguerite
Cc:	Mike Leib
Subject:	Request to Co-Sponsor an ADR Section Teleseminar on Effective Mediation Preparation: A Primer for Advocates

Good morning Marguerite.

I'm writing on behalf of the ADR Section, State Bar of Michigan. Our Section is planning a very exciting 90-minute telephone seminar on how to prepare for and participate in mediation to achieve client goals and get the most out of the process. Below is a description. We plan to offer it March 7, 2019 from noon to 1:30 pm. Registrants will be able to ask questions at the end of the presentations. The presenters will be Susan Davis, Shel Stark and Bob Wright.

I'm requesting that the Probate and Estate Planning Section co-sponsor this program. In return, registrants from Section will receive a substantial discount: co-sponsoring section members register for $10.00; while non-sponsoring section members pay $40.00. We also ask only your permission to send one or two email notices to Labor & Employment Law Section members marketing the program. We would, of course, send the mailing at our own expense.

Is this of interest? Can we count on the Probate and Estate Planning Section to be a co-sponsor? Thanks to you and the council for your consideration of this request. We look forward to hearing from you.

Effective Mediation Preparation: A Primer for Advocates
Three experienced mediators share their best tips for advocates using the mediation process in civil, domestic and probate disputes. This 90-minute teleseminar will provide tools for proficient mediation advocacy; strategic negotiating techniques; drafting compelling mediation summaries; achieving client goals and objectives at the mediation table; preparing clients for the mediation process; and next steps when your case doesn't settle in full at the bargaining table. Become the most effective advocate you can be with new ideas, powerful insights and a fresh approach to achieve better results in your future mediations.

Regards,
--

Mary Anne Parks
Section Administrator
parks.maryanne@gmail.com
248.895.6400

Lentz, Marguerite

From:	Mary Anne Parks <parks.maryanne@gmail.com>
Sent:	Thursday, December 20, 2018 8:43 AM
To:	Mary Anne Parks
Cc:	Mike Leib
Subject:	Permission to Advertise an ADR Event to Your Section Members

Good Afternoon,

The Alternative Dispute Resolution Section is currently planning their 2019 Annual Summit, to be held March 19, 2019, 8:30 a.m.-5:30 p.m. (catered reception to follow) at WMU Cooley Law School, Auburn Hills. The summit includes topics that will enrich your mediation practice and once approved by SCAO will offer up to 8 hours of advanced mediation training. We are seeking permission to distribute an email blast to your section members (once the registration link is available) and would be happy to offer ADR Section pricing for your members in exchange. Additional information about our speaker and the event agenda are below.

Please respond to this email if permission is granted.Thank you very much for your consideration.

2019 ADR Annual Summit
The 2019 DR Section Annual Summit presents one of the most respected mediators and trainers in our field: Dwight Golann*.
The all-day workshop is geared to those who are willing to think about, discuss and incorporate new skills and cutting-edge issues. The program is offered in a highly interactive style and will cover:

- ***Using evaluation effectively as part of a facilitative process.*** This session explores evaluation, not as blunt assessment of case value but rather as a broad spectrum of techniques that skilled mediators can use to help parties settle. Techniques range from familiar reality testing to expressions of doubt, respectful disagreement, forecast of potential risks and decision analysis, delivered in a variety of formats. Evaluation, we suggest, is the mediative equivalent of surgery—a powerful tool, but one that can have damaging side effects and so should be applied carefully, ethically, and only as needed. You will learn new techniques, roleplay them, and discuss the challenges involved in applying them in your practice.
- ***Grieving over settlement: The impact of loss in legal negotiation.*** For many disputants settlement means accepting a painful loss, often one they did not expect when they entered mediation. Parties react intensely to the feeling of losing—indeed, it is perhaps the single most important reason negotiations fail. This session examines the complex psychology of loss and explores how mediators can help lawyers and clients anticipate and address loss feelings, enabling them to make decisions needed to settle.
- ***Fly on the wall: Watching mediators at work.*** We will show video excerpts of well-known mediators at work in civil and marital cases. The examples focus on interesting techniques and contrasting styles, which you will be encouraged to assess and discuss, providing a unique chance to pick up ideas you can incorporate in your practice.

*Dwight Golann is a Professor of Law at Suffolk University in Boston and has trained lawyers in mediation and negotiation skills for the American Bar Association, U.S. Department of Justice, courts and bar associations and leading organizations around the world. He is an active mediator, is a Distinguished Neutral for the International Institute for Conflcit Resolution in New York, the International mediation Institute in the Hague and the US-China Business mediation center in Beijing. He is also the author several publications on dispute resolution, including the prize-winning book Mediating Legal Disputes and Sharing a Mediator's Powers, published by the American Bar Association. Among his many honors, he received the Lifetime Achievement Award of the American College of Civil Trial Mediators.

--

Mary Anne Parks
Section Administrator
parks.maryanne@gmail.com
248.895.6400

C

Probate and Estate Planning Section: 2018-2019

TREASURER'S MONTHLY ACTIVITY REPORT (OCTOBER)

Revenue	State Bar Activity Report	Cumulative Monthly	Budget 2018-19	Comments
1-7-99-775-1050 Probate/Estate Planning Dues	$ 36,995.00	$ 36,995.00	$ 112,000.00	
1-7-99-775-1055 Probate/Estate Stud/Affil Dues	$ 595.00	$ 595.00	$ 800.00	
1-7-99-775-1330 Subscription to Newsletter	$ -	$ -	$ -	
1-7-99-775-1470 Publishing Agreement Account	$ -	$ -	$ 650.00	
1-7-99-775-1755 Pamphlet Sales Revenue	$ -	$ -	$ -	
Total Revenue	**$ 37,590.00**	**$ 37,590.00**	**$ 113,450.00**	
Hearts and Flowers Fund (in Fraser Law Trust Acct)	$ -	$ 1,038.81	$ 1,038.81	Not budgeted item, but this is the current carryover balance in Fraser Firm trust account.
Total Fund	$ -	$ 1,038.81	$ 1,038.81	
Expenses				
1-9-99-775-1127 Multi-Section Lobbying Group	$ 2,500.00	$ 2,500.00	$ 30,000.00	
1-9-99-775-1145 ListServ	$ -	$ -	$ 225.00	
1-9-99-775-1276 Meetings	$ -	$ -	$ 16,000.00	
1-9-99-775-1283 Seminars	$ -	$ -	$ 20,000.00	
1-9-99-775-1297 Annual Meeting Expenses	$ -	$ -	$ -	
1-9-99-775-1493 Travel	$ -	$ -	$ 15,000.00	
1-9-99-775-1528 Telephone	$ -	$ -	$ 1,250.00	
1-9-99-775-1549 Books & Subscriptions	$ -	$ -	$ 750.00	
1-9-99-775-1822 Litigation-Amicus Curiae Brief	$ -	$ -	$ 55,000.00	
1-9-99-775-1833 Newsletter	$ 100.00	$ 100.00	$ 10,000.00	
1-9-99-775-1987 Miscellaneous	$ -	$ -	$ 7,500.00	reception @ Probate Institute) & $5,000 (networking lunch @ Drafting Estate Planning Documents Seminar) as budget amdmts.
1-9-99-775-1297 Annual Meeting Expenses	$ -	$ -	$ 1,000.00	
1-9-99-775-1861 Printing	$ -	$ -	$ 100.00	
1-9-99-775-1868 Postage	$ -	$ -	$ -	
Total Expenses	**$ 2,600.00**	**$ 2,600.00**	**$ 156,825.00**	
Net Income	**$ 34,990.00**	**$ 34,990.00**	**$ (43,375.00)**	
		$ -		
Beginning Fund Balance 1-5-00-775-0001 Fund Bal-Probate/Estate Plan		$ 172,927.32	$ 172,927.32	
Ending Fund Balance		**$ 207,917.32**	**$ 129,552.32**	
Amicus Reserve		$ -		
Beginning Fund Balance		$ 19,167.25	$ 19,167.25	
Withdrawals		$ -		
Ending Fund Balance		$ -		
General Fund		$ 153,760.07	$ 153,760.07	
Total Fund		$ 172,927.32	$ 172,927.32	

Probate and Estate Planning Section: 2018-2019

TREASURER'S MONTHLY ACTIVITY REPORT (NOVEMBER)

Revenue	State Bar Activity Report (November)	Cumulative Monthly (through November)	Budget 2018-19	Comments
1-7-99-775-1050 Probate/Estate Planning Dues	$ 63,825.00	$ 100,820.00	$ 112,000.00	
1-7-99-775-1055 Probate/Estate Stud/Affil Dues	$ 245.00	$ 840.00	$ 800.00	
1-7-99-775-1330 Subscription to Newsletter	$ -	$ -	$ -	
1-7-99-775-1470 Publishing Agreement Account	$ -	$ -	$ 650.00	
1-7-99-775-1755 Pamphlet Sales Revenue	$ -	$ -	$ -	
Total Revenue	**$ 64,070.00**	**$ 101,660.00**	**$ 113,450.00**	
Hearts and Flowers Fund (in Fraser Law Trust Acct)	$ -	$ 1,038.81	$ 1,038.81	Not budgeted item, but this is the current carryover balance in Fraser Firm trust account.
Total Fund	**$ -**	**$ 1,038.81**	**$ 1,038.81**	
Expenses				
1-9-99-775-1127 Multi-Section Lobbying Group	$ 2,500.00	$ 5,000.00	$ 30,000.00	
1-9-99-775-1145 ListServ	$ 10.00	$ 10.00	$ 225.00	
1-9-99-775-1276 Meetings	$ 7,428.62	$ 7,428.62	$ 16,000.00	
1-9-99-775-1283 Seminars	$ -	$ -	$ 20,000.00	
1-9-99-775-1297 Annual Meeting Expenses	$ -	$ -	$ -	
1-9-99-775-1493 Travel	$ 1,876.64	$ 1,876.64	$ 15,000.00	
1-9-99-775-1528 Telephone	$ -	$ -	$ 1,250.00	
1-9-99-775-1549 Books & Subscriptions	$ -	$ -	$ 750.00	
1-9-99-775-1822 Litigation-Amicus Curiae Brief	$ -	$ -	$ 55,000.00	
1-9-99-775-1833 Newsletter	$ 4,000.00	$ 4,100.00	$ 10,000.00	
1-9-99-775-1987 Miscellaneous	$ -	$ -	$ 7,500.00	Line item increased by $3,000 (networking reception @ Probate Institute) & $5,000 (networking lunch @ Drafting Estate Planning Documents Seminar) as budget amdmts.
1-9-99-775-1297 Annual Meeting Expenses	$ -	$ -	$ 1,000.00	
1-9-99-775-1861 Printing	$ -	$ -	$ 100.00	
1-9-99-775-1868 Postage	$ -	$ -	$ -	
Total Expenses	**$ 15,815.26**	**$ 18,415.26**	**$ 156,825.00**	
Net Income	**$ 48,254.74**	**$ 83,244.74**	**$ (43,375.00)**	
		$ -		
Beginning Fund Balance 1-5-00-775-0001 Fund Bal-Probate/Estate Plan		$ 172,927.32	$ 172,927.32	
Ending Fund Balance		**$ 256,172.06**	**$ 129,552.32**	
Amicus Reserve		$ -		
Beginning Fund Balance		$ 19,167.25	$ 19,167.25	
Withdrawals		$ -		
Ending Fund Balance		$ -		
General Fund		$ 153,760.07	$ 153,760.07	
Total Fund		$ 172,927.32	$ 172,927.32	

2019 Standard Mileage Rates

Notice 2019-02

SECTION 1. PURPOSE

This notice provides the optional 2019 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This notice also provides the amount taxpayers must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan.

SECTION 2. BACKGROUND

Rev. Proc. 2010-51, 2010-51 I.R.B. 883, provides rules for computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes, and for substantiating, under § 274(d) of the Internal Revenue Code and § 1.274-5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses of local transportation or travel away from home. Taxpayers using the standard mileage rates must comply with Rev. Proc. 2010-51. However, a taxpayer is not required to use the substantiation methods described in Rev. Proc. 2010-51, but

instead may substantiate using actual allowable expense amounts if the taxpayer maintains adequate records or other sufficient evidence.

An independent contractor conducts an annual study for the Internal Revenue Service of the fixed and variable costs of operating an automobile to determine the standard mileage rates for business, medical, and moving use reflected in this notice. The standard mileage rate for charitable use is set by § 170(i).

SECTION 3. STANDARD MILEAGE RATES

The standard mileage rate for transportation or travel expenses is 58 cents per mile for all miles of business use (business standard mileage rate). See section 4 of Rev. Proc. 2010-51. However, § 11045 of the Tax Cuts and Jobs Act, Public Law 115-97, 131. Stat. 2054 (December 22, 2017) (the "Act") suspends all miscellaneous itemized deductions that are subject to the two-percent of adjusted gross income floor under § 67, including unreimbursed employee travel expenses, for taxable years beginning after December 31, 2017, and before January 1, 2026. Thus, the business standard mileage rate provided in this notice cannot be used to claim an itemized deduction for unreimbursed employee travel expenses during the suspension. Notwithstanding the foregoing suspension of miscellaneous itemized deductions, deductions for expenses that are deductible in determining adjusted gross income are not suspended. For example, members of a reserve component of the Armed Forces of the United States (Armed Forces), state or local government officials paid on a fee basis, and certain performing artists are entitled to deduct unreimbursed employee travel expenses as an adjustment to total income on line 24 of Schedule 1 of Form 1040

(2018), not as an itemized deduction on Schedule A of Form 1040 (2018), and therefore may continue to use the business standard mileage rate.

The standard mileage rate is 14 cents per mile for use of an automobile in rendering gratuitous services to a charitable organization under § 170. See section 5 of Rev. Proc. 2010-51.

The standard mileage rate is 20 cents per mile for use of an automobile: (1) for medical care described in § 213; or (2) as part of a move for which the expenses are deductible under § 217(g). See section 5 of Rev. Proc. 2010-51. Section 11049 of the Act suspends the deduction for moving expenses for taxable years beginning after December 31, 2017, and before January 1, 2026. However, the suspension does not apply to members of the Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station to whom § 217(g) applies. Thus, except for taxpayers to whom § 217(g) applies, the standard mileage rate provided in this notice is not applicable for the use of an automobile as part of a move occurring during the suspension.

SECTION 4. BASIS REDUCTION AMOUNT

For automobiles a taxpayer uses for business purposes, the portion of the business standard mileage rate treated as depreciation is 24 cents per mile for 2015, 24 cents per mile for 2016, 25 cents per mile for 2017, 25 cents per mile for 2018, and 26 cents per mile for 2019. See section 4.04 of Rev. Proc. 2010-51.

SECTION 5. MAXIMUM STANDARD AUTOMOBILE COST

For purposes of computing the allowance under a FAVR plan, the standard automobile cost may not exceed $50,400 for automobiles (including trucks and vans). See section 6.02(6) of Rev. Proc. 2010-51.

SECTION 6. EFFECTIVE DATE

This notice is effective for: (1) deductible transportation expenses paid or incurred on or after January 1, 2019; and (2) mileage allowances or reimbursements paid to a charitable volunteer or a member of the Armed Forces to whom § 217(g) applies (a) on or after January 1, 2019, and (b) for transportation expenses the charitable volunteer or such member of the Armed Forces pays or incurs on or after January 1, 2019.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2018-03, as modified by Notice 2018-42, is superseded.

DRAFTING INFORMATION

The principal author of this notice is Anna Gleysteen of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information on this notice contact Ms. Gleysteen at (202) 317-7007 (not a toll-free call).

D

Probate and Estate Planning Section: 2018-2019 Budget

Revenue	Budget 2017-18	YTD as of 09/30/18 (audited)	Over/Under	Budget 2018-19	Comments
1-7-99-775-1050 Probate/Estate Planning Dues	$112,000.00	$113,995.00	$1,995.00	$112,000.00	
1-7-99-775-1055 Probate/Estate Stud/Affil Dues	$900.00	$875.00	-$25.00	$800.00	
1-7-99-775-1330 Subscription to Newsletter	$0.00	$35.00	$35.00	$0.00	
1-7-99-775-1470 Publishing Agreement Account	$650.00	$325.00	-$325.00	$650.00	
1-7-99-775-1755 Pamphlet Sales Revenue	$0.00	$0.00	$0.00	$0.00	
Total Revenue	$113,550.00	$115,230.00	$1,680.00	$113,450.00	
Expenses					
1-9-99-775-1127 Multi-Section Lobbying Group	$30,000.00	$30,000.00	$0.00	$30,000.00	
1-9-99-775-1145 ListServ	$900.00	$630.00	-$270.00	$450.00	$75/mo. for listserv archive for 6 months.
1-9-99-775-1276 Meetings	$14,400.00	$15,216.33	$816.33	$16,990.00	Includes $150/month for University Club audio rental (6 mos.) and $15/month for Zoom service (6 mos.).
1-9-99-775-1283 Seminars	$19,000.00	$21,350.00	$2,350.00	$20,000.00	
1-9-99-775-1297 Annual Meeting Expenses	$0.00	$175.31	$175.31	$0.00	
1-9-99-775-1493 Travel	$20,325.00	$13,108.78	-$7,216.22	$15,000.00	
1-9-99-775-1528 Telephone	$1,500.00	$1,057.67	-$442.33	$1,250.00	
1-9-99-775-1549 Books & Subscriptions	$750.00	$750.00	$0.00	$750.00	
1-9-99-775-1822 Litigation-Amicus Curiae Brief	$20,000.00	$71,081.25	$51,081.25	$55,000.00	
1-9-99-775-1833 Newsletter	$12,225.00	$8,150.00	-$4,075.00	$10,000.00	
1-9-99-775-1987 Miscellaneous	$9,000.00	$3,121.40	-$5,878.60	$7,500.00	Line item increased by $3,000 (networking reception @ Probate Institute) & $5,000 (networking lunch @ Drafting Estate Planning Documents Seminar) as budget amdmts.
1-9-99-775-1297 Annual Meeting Expenses	$1,460.00	$0.00	-$1,460.00	$1,000.00	
1-9-99-775-1861 Printing	$100.00	$0.00	-$100.00	$100.00	
1-9-99-775-1868 Postage	$0.00	$0.00	$0.00	$0.00	
Total Expenses	$129,660.00	$164,640.74	$34,980.74	$158,040.00	
Net Income	-$16,110.00	-$49,410.74		-$44,590.00	
Beginning Fund Balance	$224,191.74	$222,338.06		$172,927.32	
Ending Fund Balance	$176,081.74	$172,927.32		$128,337.32	
Amicus Reserve					
Beginning Fund Balance		$70,248.50		$50,000.00	
Withdrawals		-$51,081.25			
Ending Fund Balance		$19,167.25			
General Fund		$153,760.07		$78,337.32	
Total Fund		$172,927.32		$128,337.32	

E

Skidmore, David

From: Melisa Mysliwiec <mmysliwiec@fraserlawfirm.com>
Sent: Friday, January 18, 2019 1:04 PM
To: Skidmore, David; schalgian@mielderlaw.com
Cc: Marguerite Munson Lentz
Subject: RE: Proposed Probate Court Rules
Attachments: 181010 Supplemental Report to Council re ADM 2002-37.pdf; FW: Recent Public Policy Position from Probate & Estate Planning

Meg and David,

I went back to our committee report on this as well as the public policy position taken. [Note that I could not locate the public policy position online yet, but I took it from Meg's attached email.] Below, I've addressed each of Robin's questions by using our committee comments and the public policy position. However, I seek your input on one issue. Robin has suggested alternative language for Rule 5.307 which would make Inventories filed with the court nonpublic and asks for the section's thoughts on this alternative language. Our public policy position opposed requiring an Inventory to be filed because to do so would be a substantive change in the law and is in direct conflict with MCL 700.3706(2), which states that a personal representative "may" file an original Inventory with the court, and that the personal representative "shall submit" information necessary to calculate the probate inventory fee. We took issue with it being part of the public record. Her proposed alternative language removes our concern about it being part of the public record, but her proposed alternative language still requires an Inventory to be filed, and so it still conflicts with the statute, which doesn't require this. I am unsure if we can just rely on our public policy position, or if this suggested alternative requires further discussion of the council. Thoughts? If you believe this should be presented to council again, I'm sure Susie would be willing to lead a discussion on this on Friday. Alternatively, my response (relying solely on the public policy position taken previously) is below.

- MCR 5.107(B): The opposition recommendation by the ATJ policy section states that it does not believe that the two attempts at mailing is sufficient. However, it does not provide an amount of attempts that is sufficient. The Probate section also states that it opposes opting out of service following two undeliverable attempts. Is there an alternative that the section proposes?

  Comment: The Probate section doesn't oppose opting out of service following two undeliverable attempts. We simply believed that the purpose for the proposed change to Rule 5.107(B)(1) related to "previous mailings to the last known address have been returned at least two times as undeliverable" is unclear, and so, **we believe the change is unnecessary and should be removed.** With that being said, if the change remains, we believe these options should follow a colon to make clear that they are options, and that this new added language isn't explaining how an "unknown" address is determined to be unknown. Suggested language: "is not required to be made on: (i) an interested person whose address or whereabouts, on diligent inquiry, is unknown; (ii) an interested person whose previous mailings to the last known address have been returned at least two times as undeliverable; or (iii) on an unascertained or unborn person."

- MCR 5.113(A): The Probate Section opposed the requirement to file documents on a SCAO-approved form. MCL 600.855 requires the use of forms approved by SCAO in probate courts to achieve uniformity. The current court rule is in direct conflict with MCL 600.855 that requires the use of a SCAO-approved form when one exists. Therefore, the change is needed to conform to the statute. Further, the intent of the proposal is to increase uniformity amongst all of the probate courts and to ensure all required information is provided to the court, which is an issue courts struggle with, especially with in pro per individuals. Does the section have an alternative to the proposal that is not in conflict with the statute?

Comment: The rule previously required that documents must be "substantially in the form approved by the State Court Administrative Office," but the proposed amendment changes this to require documents be "filed on a form approved by the State Court Administrative Office." This is a major change. There is not a SCAO form that fits each and every unique situation. We believe this proposed amendment will hinder attorneys' ability to efficiently advocate on behalf of their clients. What is an attorney to do when there is not a SCAO form for what it needs to accomplish? **We believe the change should be removed. Specifically, "substantially in the" should not be deleted, and the addition of "filed on a" should be deleted.**

- MCR 5.307(A) and (C): The Probate section opposed the requirement for the personal representative to file an inventory form with the court in all estate cases. Firstly, this has been a request from the courts for a number of years because should a matter come before the court needing a review of a previously submitted inventory, the court must search for the original inventory that was submitted by contacting the filer and any other person that may have possession. The court is not always able to find a copy of the inventory that was submitted by filers, especially from in pro per individuals. If the court is able to find the individual who has possession of the inventory, it also calls into question the validity and authenticity of the re-submitted inventory since there is no way to verify that the re-submitted inventory has not been altered. Secondly, in configuration of the MiFILE system, a concern has been raised in the development and design portion of the system with documents that are submitted and not filed and whether it can be accomplished (and sent back to the filer) without actually rejecting the document and having stamped "rejected". This causes another validity issue should the inventory need to be re-submitted. In addition, the system only allows rejection of documents as allowed under court rule. We understand that much of the information contained on an inventory form is sensitive information, so we propose the following alternative requiring the maintenance of this information nonpublic and would like to know the thoughts from the section:

  A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must ~~submit to~~ file with the court an inventory on a form approved by the State Court Administrative Office~~the information necessary for computation of the probate inventory fee~~. The filed inventory form must be maintained nonpublic by the court. Additional documentation to verify information provided on the inventory form must not be filed. However, the court may require additional information be filed and set the matter for a hearing if it finds good cause to do so. If the required additional information contains any personal identifying information as defined in MCR 1.109(9), that documentation must be maintained nonpublic by the court. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

Comment: The proposed amendment creates a substantive change in the law and would be in direct conflict with MCL 700.3706(2). The proposed amendment changes (A), which deals with the Inventory Fee, to require information necessary for the probate inventory fee to be filed with the court as opposed to "submitted to" the court for "computation of" the inventory fee. Further (C), which sets forth the notices to the personal representative, is amended to say that within 91 days of the date of the letters of authority, you must file the inventory with the court, as opposed to "submit" information necessary for computation of the fee.

MCL 700.3706(2) does not require the Inventory to be filed. It states that a personal representative "may" file an original Inventory with the court, and that the personal representative "shall submit" information necessary to calculate the probate inventory fee.

700.3706: Duty of personal representative; inventory and appraisement.

***

(2) The personal representative shall send a copy of the inventory to all presumptive distributees and to all other interested persons who request it, and may also file the original of the inventory with the court. The personal representative shall submit to the court on a timely basis information necessary to calculate the probate inventory fee.

The original proposed amendment to Rule 5.307 would make probate Inventories a part of the public record.

While the proposed alternative language would require maintenance of the information as nonpublic, which is something the Section is sensitive to, it is still in direct conflict with MCL 700.3706(2) by requiring an Inventory to be filed. The public policy position taken provides that **this change should be removed. Specifically, in (A), "submit to" and "computation of" should not be deleted, and the addition of "file with" should be deleted. In (C), "submit to" should not be deleted, and the addition of "file the inventory with" should be deleted.**

Thank you,

Melisa

Melisa M. W. Mysliwiec | Attorney | Fraser Trebilcock
p: 616.301.0800 f: 517.482.0887
a: 125 Ottawa Avenue NW, Suite 153, Grand Rapids, MI 49503
w: fraserlawfirm.com

From: Skidmore, David <DSkidmore@wnj.com>
Sent: Tuesday, January 15, 2019 6:15 PM
To: schalgian@mielderlaw.com; Melisa Mysliwiec <mmysliwiec@fraserlawfirm.com>
Cc: Marguerite Munson Lentz <meglentz@gmail.com>
Subject: FW: Proposed Probate Court Rules

Susan/Melissa, we received comments from SCAO regarding our comments on the proposed MCR edits. Can you help me prepare a response?
Regards, David

David L.J.M. Skidmore | Partner
Warner Norcross + Judd LLP
900 Fifth Third Center, 111 Lyon Street NW, Grand Rapids, MI 49503
d 616.752.2491 | f 616.222.2491 | dskidmore@wnj.com | profile | V-Card

From: Robin Eagleson <EaglesonR@courts.mi.gov>
Sent: Tuesday, January 15, 2019 2:14 PM
To: Skidmore, David <DSkidmore@wnj.com>
Cc: Rebecca Schnelz <SchnelzR@courts.mi.gov>
Subject: Proposed Probate Court Rules

Good Afternoon Mr. Skidmore,

My name is Robin Eagleson and I am the probate analyst for the State Court Administrative Office – Trial Court Services division. We are currently reviewing the comments submitted by the State Bar of Michigan regarding the proposed court rules outlined in ADM File No. 2002-37. As the probate analyst, I have been tasked with reaching out to the probate and estate planning section in review of its comments, specifically in regards to chapter 5. The following are courts rules that the section outlined as having concerns to:

- MCR 5.107(B): The opposition recommendation by the ATJ policy section states that it does not believe that the two attempts at mailing is sufficient. However, it does not provide an amount of attempts that is sufficient. The Probate section also states that it opposes opting out of service following two undeliverable attempts. Is there an alternative that the section proposes?
- MCR 5.113(A): The Probate Section opposed the requirement to file documents on a SCAO-approved form. MCL 600.855 requires the use of forms approved by SCAO in probate courts to achieve uniformity. The current court rule is in direct conflict with MCL 600.855 that requires the use of a SCAO-approved form when one exists. Therefore, the change is needed to conform to the statute. Further, the intent of the proposal is to increase uniformity amongst all of the probate courts and to ensure all required information is provided to the court, which is an issue courts struggle with, especially with in pro per individuals. Does the section have an alternative to the proposal that is not in conflict with the statute?
- MCR 5.307(A) and (C): The Probate section opposed the requirement for the personal representative to file an inventory form with the court in all estate cases. Firstly, this has been a request from the courts for a number of years because should a matter come before the court needing a review of a previously submitted inventory, the court must search for the original inventory that was submitted by contacting the filer and any other person that may have possession. The court is not always able to find a copy of the inventory that was submitted by filers, especially from in pro per individuals. If the court is able to find the individual who has possession of the inventory, it also calls into question the validity and authenticity of the re-submitted inventory since there is no way to verify that the re-submitted inventory has not been altered. Secondly, in configuration of the MiFILE system, a concern has been raised in the development and design portion of the system with documents that are submitted and not filed and whether it can be accomplished (and sent back to the filer) without actually rejecting the document and having stamped "rejected". This causes another validity issue should the inventory need to be re-submitted. In addition, the system only allows rejection of documents as allowed under court rule. We understand that much of the information contained on an inventory form is sensitive information, so we propose the following alternative requiring the maintenance of this information nonpublic and would like to know the thoughts from the section:

  A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must ~~submit to~~ file with the court an inventory on a form approved by the State Court Administrative Office~~the information necessary for computation of the probate inventory fee~~. The filed inventory form must be maintained nonpublic by the court. Additional documentation to verify information provided on the inventory form must not be filed. However, the court may require additional information be filed and set the matter for a hearing if it finds good cause to do so. If the required additional information contains any personal identifying information as defined in MCR 1.109(9), that documentation must be maintained nonpublic by the court. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

We would like to receive all comments no later than Tuesday, January 29, 2018 by 12:00 p.m. If you have any questions or concerns, please do not hesitate to contact me.

Robin K. Eagleson, JD, Management Analyst

Michigan Supreme Court | State Court Administrative Office | Trial Court Services
925 W. Ottawa St. | P.O. Box 33048 | Lansing, MI 48909 | 517-373-5542 phone | 517-373-0974 fax
eaglesonr@courts.mi.gov | trialcourtservices@courts.mi.gov

To: Probate and Estate Planning Council Members
From: Melisa M. W. Mysliwiec, Chair
RE: ADM 2002-37; Comments Due 11/2/18
Date: October 10, 2018

One week ago, we were contacted about ADM 2002-37, which is a proposed court rule amendment that affects Chapter 5 of the Michigan Court Rules. The State Bar may adopt a position on this item, and if we wish to submit comments for consideration by the Board of Commissioners, we must do so by November 2, 2018.

Here is a link to ADM 2002-37:

2002-37: Proposed Amendments of MCR 1.109, 2.102, 2.104, 2.106, 2.107, 2.117, 2.119, 2.403, 2.503, 2.506, 2.508, 2.518, 2.602, 2.603, 2.621, 3.101, 3.104, 3.203, 3.205, 3.210, 3.302, 3.607, 3.613, 3.614, 3.705, 3.801, 3.802, 3.805, 3.806, 4.201, 4.202, 4.303, 4.306, 5.001, 5.104, 5.105, 5.107, 5.108, 5.113, 5.117, 5.118, 5.119, 5.120, 5.125, 5.126, 5.132, 5.162, 5.202, 5.203, 5.205, 5.302, 5.304, 5.307, 5.308, 5.309, 5.310, 5.311, 5.313, 5.402, 5.404, 5.405, 5.409, 5.501, and 5.784 and new rule 3.618

The proposed amendments are an expected progression necessary for design and implementation of the statewide electronic-filing system. These particular amendments will assist in implementing the goals of the project.

Our committee has reviewed the proposed changes and has the following comments:

- Rule 5.107: Other ~~Papers~~Documents Required to be Served

(A) Other ~~Papers~~Documents to be Served. The person filing a petition, an application, a ~~sworn testimony form~~verified statement identifying heirs, supplemental ~~sworn testimony form~~verified statement identifying heirs, a motion or objection, a response ~~or objection~~, an instrument offered or admitted to probate, an accounting, or a sworn closing statement with the court must serve a copy of that document on interested persons. The person who obtains an order from the court must serve a copy of the order on interested persons.

(B) Exceptions.

(1) Service of the ~~papers~~documents listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on diligent inquiry, is unknown, previous mailings to the last known address have been returned at least two times as undeliverable, or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.

(2) [Unchanged.]

Comment:

The purpose for the proposed change to Rule 5.107(B)(1) related to "previous mailings to the last known address have been returned at least two times as undeliverable" is unclear. **We believe the change is unnecessary and should be removed.**

However, if the change remains, we believe these options should follow a colon to make clear that they are options, and that this new added language isn't explaining how an "unknown" address is determined to be unknown. Example: "is not required to be made on: (i) an interested person whose address or whereabouts, on diligent inquiry, is unknown; (ii) an interested person whose previous mailings to the last known address have been returned at least two times as undeliverable; or (iii) on an unascertained or unborn person."

- Rule 5.113: Form, Captioning, Signing, and Verifying Documents

(A) Forms of Documents Generally. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). Documents must be ~~substantially in the~~filed on a form approved by the State Court Administrative Office, if a form has been approved for the use. An application, petition, inventory, accounting, proof of claim, or proof of service must be verified in accordance with MCR 1.109(D)(3).

Comment:

The rule previously required that documents must be "substantially in the form approved by the State Court Administrative Office," but the proposed amendment changes this to require documents be "filed on a form approved by the State Court Administrative Office." This is a major change. There is not a SCAO form that fits each and every unique situation. We believe this proposed amendment will hinder attorneys' ability to efficiently advocate on behalf of their clients. **We believe the change should be removed.**

Specifically, "substantially in the" should not be deleted, and the addition of "filed on a" should be deleted.

- Rule 5.307: Requirements Applicable to All Decedent Estates

(A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must ~~submit to~~file with the court the information necessary for ~~computation of~~ the probate inventory fee. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

***

(C) Notice to Personal Representative. At the time of appointment, the court must provide the personal representative with written notice of information to be provided to the court. The notice should be substantially in the following form or in the form specified by MCR 5.310(E), if applicable:

"Inventory Information: Within 91 days of the date of the letters of authority, you must ~~submit to~~file the inventory with the court the information necessary for computation of the probate inventory fee. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution's main headquarters or the branch used most frequently by the personal representative.

Comment:

The proposed amendment creates a substantive change in the law and would be in direct conflict with MCL 700.3706(2). The proposed amendment changes (A), which deals with the Inventory Fee, to require information necessary for the probate inventory fee to be filed with the court as opposed to "submitted to" the court for "computation of" the inventory fee. Further (C), which sets forth the notices to the personal representative, is amended to say that within 91 days of the date of the letters of authority, you must file the inventory with the court, as opposed to "submit" information necessary for computation of the fee.

MCL 700.3706(2) does not require the Inventory to be filed. It states that a personal representative "may" file an original Inventory with the court, and that the personal representative "shall submit" information necessary to calculate the probate inventory fee.

> 700.3706: Duty of personal representative; inventory and appraisement.
>
> ***
>
> (2) The personal representative shall send a copy of the inventory to all presumptive distributees and to all other interested persons who request it, and may also file the original of the inventory with the court. The personal representative shall submit to the court on a timely basis information necessary to calculate the probate inventory fee.

The proposed amendment to Rule 5.307 would make probate Inventories a part of the public record.

This change should be removed. Specifically, in (A), "submit to" and "computation of" should not be deleted, and the addition of "file with" should be deleted. In (C), "submit to" should not be deleted, and the addition of "file the inventory with" should be deleted.

- Rule 5.310: Supervised Administration

  (A)-(B) [Unchanged.]

(C) Filing ~~Papers~~Documents With the Court. The personal representative must file the following additional ~~papers~~documents with the court and serve copies on the interested persons:

(1) Inventory. The personal representative must file an inventory as prescribed by MCR 5.307(A).

~~(a) Administration Commenced Supervised. If supervised administration is ordered at the commencement of the estate administration, the personal representative must file the inventory within 91 days of the date of the letters of authority.~~

~~(b) Administration Commenced Without Supervision. If supervised administration is ordered after a personal representative has been appointed, the court must specify in the order a time for that personal representative to file the inventory.~~

(2)-(6) [Unchanged.]

(7) Such other ~~papers~~documents as are ordered by the court.

Comment:

As opposed to explaining when an Inventory must be filed in a supervised administration, the proposed amendment strikes that language and states that "the personal representative must file an inventory as prescribed by MCR 5.307(A)." **Since we reject the proposed amendment to Rule 5.307(A) and (C), we also reject the proposed amendment to Rule 5.310(C)(1). Specifically, the language added to (C)(1) should be deleted and subsections (a) and (b) of (C)(1) should not be deleted.**

We request that the Council adopt the above comments as its public policy opinion and that the public policy opinion be submitted to the State Bar of Michigan's Board of Commissioners via a template located at the Public Policy Resource Center, on or before November 2, as required for all comments.

Respectfully submitted,

Melisa M. W. Mysliwiec

Skidmore, David

From: Lentz, Marguerite <MLentz@BODMANLAW.COM>
Sent: Thursday, October 18, 2018 12:20 PM
To: Melisa Mysliwiec
Cc: Skidmore, David
Subject: FW: Recent Public Policy Position from Probate & Estate Planning

Hi Melissa:
FYI. See below re the public policy position on probate council's objections to court rule changes.
By the way, we did not include your entire report to probate council as our public policy position as it was not posted on the web-site at the time of the meeting. (Those things happen when we have late-breaking stuff.) Susan gave an oral motion, but she did not have copies of your report to pass out. So the public policy position was based on Susan's oral motion, which only referred to three different court rule changes.

This is what was used as the public policy position:
The Probate and Estate Planning Section objects to the proposed revisions to MCR 5.107(B)(1) (specifically, the addition of "previous mailings to the last known address have been returned at least two times as undeliverable"); 5.113(A) (specifically, the deletion of "substantially in the" and the addition of "filed on a"), 5.307(A) (specifically, the deletion of "submit to," the addition of "file with," and the deletion of "computation of"), and 5.307(C) (specifically, the deletion of "submit to" and the addition of "file the inventory with").

If the State Bar gives us permission to take our position, I think you can give more explanation to the Supreme Court as long as you are clear that the Section's position is as stated above.

Let me know if you have questions.

Best regards,

Meg

Marguerite Munson Lentz
BODMAN PLC
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
office: 313-393-7589
email: mlentz@bodmanlaw.com
My biography on bodmanlaw.com

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From: Carrie Sharlow <CSHARLOW@michbar.org>
Sent: Thursday, October 18, 2018 10:24 AM
To: dskidmore@wnj.com
Cc: Lentz, Marguerite <MLentz@BODMANLAW.COM>; Peter Cunningham <PCUNNINGHAM@michbar.org>
Subject: Recent Public Policy Position from Probate & Estate Planning

David,

Thank you for your public policy position report on ADM File No. 2002-37.

This will be discussed by the Board of Commissioners on November 16, 2018 and the Section's recommendation will be reviewed at that time.

After the Board of Commissioners has taken action on the proposed rule amendment, we will provide you with the necessary cover letter for submission to the Court as long if the section position is either not in conflict with the official State Bar position or if the Board authorizes the section to submit a conflicting position in accordance with Article VIII, Section 7(2) of the State Bar Bylaws.

Thank you.

Carrie A. Sharlow
Administrative Assistant, Governmental Relations

STATE BAR OF MICHIGAN
Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2012
P: (517) 346-6317
csharlow@michbar.org
www.michbar.org

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F

TAX NUGGET
PROPOSED REGULATIONS ON CLAWBACK
By: Robert Labe

The Tax Cuts and Job Act of 2017 (the "2017 Tax Act") increased the basic exclusion amount from $5 Million as adjusted for inflation to $10 Million as adjusted for inflation. The increased basic exclusion amount expires on December 31, 2025 after which the exemption will revert back to $5 Million as adjusted for inflation. The sunset of the decreased basic exclusion amount prompted the question of what would happen if a donor took advantage of the increased gift tax exemption amount but dies after 2025. Would the Internal Revenue Service attempt to clawback the gifts made in excess of the basic exclusion amount applicable on the decedent's date of death.

The answer is no, according to proposed regulations issued by the Internal Revenue Service on November 20, 2018. The proposed regulations carry out the mandate set forth in Internal Revenue Code Section 2001(g)(2) adopted by the 2017 Tax Act which reads as follows:

> (2) MODIFICATIONS TO ESTATE TAX PAYABLE TO REFLECT DIFFERENT BASIC EXCLUSION AMOUNTS. - The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section with respect to any difference between -
>
> (A) the basic exclusion amount under section 2010(c)(3) applicable at the time of the decedent's death, and
>
> (B) the basic exclusion amount under such section applicable with respect to any gifts made by the decedent.

The proposed regulations (Treas. Reg. 20-2010-(c)) were issued to reassure taxpayers and their advisors that a decedent's estate is not inappropriately taxed for gifts made during the interim period of time the basic exclusion amount was increased by the 2017 Tax Act. The following example in the proposed regulations allays the concern that a death after 2025 may trigger an unexpected tax if the decedent took advantage of the temporary increase in the gift tax exemption amount from 2018 through 2025.

> (2) Example. Individual A (never married) made cumulative post-1976 taxable gifts of $9 million, all of which were sheltered from gift tax by the cumulative total of $10 million in basic exclusion amount allowable on the dates of the gifts. A dies after 2025 and the basic exclusion amount on A's date of death is $5 million. A was not eligible for any restored exclusion amount pursuant to Notice 2017-15. Because the total of the amounts allowable as a credit in computing the gift tax payable on A's post-1976 gifts (based on the $9 million exclusion amount used to determine those credits) exceeds the credit based on the $5 million basic exclusion amount applicable on the decedent's date of death. Under paragraph (c)(1) of this section, the credit to be applied for purposes of computing the estate tax is based on a basic exclusion of $9 million, the amount used to determine the credits allowable in computing the gift tax payable on the post-1976 gifts made by A.

The proposed regulations are necessary to prevent a person having lifetime gifts being clawed back into the estate tax calculation if the person made use of the increased exemption amount under the 2017 Tax Act and died after 2025. Under the proposed regulations, the decedent's estate "computes its estate tax credit amount using the higher of the basic exclusion amount applicable to gifts made during life or the basic exclusion amount applicable to the date of death." (The quoted language is from a press release issued by the Internal Revenue Service.)

According to some commentators "it appears the IRS has taken an unexpected position that denies any inflation adjustments to the basic exclusion amounts if gifts have been made to take advantage of the increased exemption amount under the 2017 Tax Act, until the adjustments to the basic exclusion amount exceed the total of gifts made that were sheltered from the gift tax by the $10 million basic exclusion amount." (See Evans Estate Law Resources Proposed Regulations on Exclusion Amount Changes.)

A cautious practitioner representing ultra-high net worth individuals will want to discuss having the client make top off gifts each year (i.e., making taxable gifts each year that use the increased basic exclusion amounts)) to lessen the impact of the proposed regulations denial of the loss of inflation adjustments in the above situation.

As expected, the proposed regulations follow what has been referred to as a use it or lose it principle. Any increased gift tax exemption amount that is not used under the 2017 Tax Act will not be carried forward after the end of 2025. As noted above, the IRS allows a decedent dying after 2025 to use the higher of the basic exclusion amount applicable to gifts made during life or

the basic exclusion amount on the date of death. In addition, the proposed regulations lead one to firmly believe no off the top option is available to taxpayers. An off the top option would allow taxpayers who make taxable gifts between 2018 thru 2025 to designate those gifts as using only the temporary additional exemption amount from the 2017 Tax Act. Thus, the basic exclusion amount of five million as adjusted for inflation would remain intact.

G

MEMORANDUM

TO: PROBATE AND ESTATE PLANNING COUNCIL

FROM: MICHAEL LICHTERMAN – CHAIR, ELECTRONIC COMMUNICATIONS COMMITTEE

SUBJECT: UPDATE ON MOVING LISTSERV ARCHIVE TO THE SECTION'S SBM CONNECT

DATE: JANUARY 25, 2019

At the December 2018 Council meeting I was asked for an update on the State Bar moving the old Section listserv archive over to the Section's SBM Connect site. I had no update at that time, as I had not been provided an update. I received an update on January 11, 2019. The State Bar is moving forward with the listserv archive migration project. A total of five Sections decided to have their archive moved over. The State Bar is working with the Modern Firm (host of the old listserv) and Higher Logic (SBM Connect vendor) to coordinate that move. Due to the large amount of data to transfer, there is not set date for completion, however I was told that the goal is to complete it before the end of the State Bar's fiscal year (September 30, 2019). I will make sure to keep the Council updated as I know more

Respectfully,

Michael Lichterman
Electronic Communications Committee Chair

H

To: Probate and Estate Planning Council

From: Legislation Development and Drafting Committee

Re: January 2019 Committee Report

Our Committee offers the following updates:

- **Certificates of trust (HB 5362 and 5398).** These bills were enacted as 2018 PA 491 and 2018 PA 492. Many thanks and congratulations to our lobbyists, Jim and Becky, and the bills' sponsor, Rep. Lucido.

- **Omnibus.** 2018 HBs 6467, 6468, 6470, and 6471 died at the end of the 2017-2018 legislative session. Thankfully, Rep. Elder and Sen. Lucido remain available to serve as sponsors in the new session. Our committee has examined several potential changes to the Omnibus:

    - We considered some feedback from Rebecca R. Wrock regarding the changes we are making to pet and purpose trusts. After significant discussion, we likely will maintain the proposal in its current (UTC-based) language.

    - In the 2018 omnibus, we proposed increasing from $10K to $50K the limit for a transfer by a PR, trustee, or conservator into an UTMA, MCL 554.530(3). We now recommend the same increase for transfers by other third parties into UTMA accounts, MCL 554.531.

    - The Guardianship, Conservatorship, and End of Life Committee will likely recommend changes to MCL 700.5103 to clearly demark its relationship to a new non-EPIC statutory device concerning delegations of parental rights, which was enacted in lame duck.

    - We likely will have an opportunity to include some other proposals of the Guardianship, Conservatorship, and End of Life Committee: increasing the class of persons who can certify a patient's incapacity under a patient advocate designation, and potentially some changes concerning co-patient advocates and patient advocate succession.

- **Entireties trusts (SB 905).** This bill died, and will need a new sponsor in the 2019-2020 session (since Sen. Rick Jones was term-limited). This entails working through objections of the Michigan Bankers Association's general counsel committee.

- **SLATs.** We likely will consider this in February. Depending on our progress, it could get incorporated into the 2019 omnibus or a substitute to it.

- **TODs for motor vehicles.** Katie and Georgette are drafting a decision memo concerning the creation of transfer-on-death designations for motor vehicles. This planning device might make it much easier to fund trusts with motor vehicles on death. It would also make it easier for persons of modest means to control the disposition of their motor vehicles and avoid probate. Currently the planning alternatives are: change in title to trust, joint ownership

- **Protective order notice fix**. Our committee had an excellent, lengthy discussion regarding Heidi Aull's project. Over the next month, Heidi is formulating the following:

    - MCR 5.125(C)(24) – recommend new subsection adding a class of persons affected by the entry of protective relief (which ultimately would be shared with the Court Rules and Forms Committee as a companion to the statutory piece)

    - Recommended statutory text that prompts the court to consider notice to persons affected by protective relief, e.g., second-line heirs who might have their expectancies eliminated by the implementation of beneficiary designations or the creation of a trust.

    - Recommended statutory text that prompts the court to consider probable intent of protected person when crafting protective relief

    - Recommended locations for the above text in Article IV, Part 5

- **Attorney-in-Fact's Authority to Create a Trust.** Nothing to report. This will not be included in the EPIC omnibus. We are keeping this in mind for next session.

- **Prebate.** Based on the CSP's feedback in December, we are retiring this project.

- **Generally**. We are fortunate that Rep. Lucido has been elected to the Senate and chosen to serve as the chair of its committee on the judiciary. He has sponsored several of the Section's proposals—several which became law last session.

I

M E M O R A N D U M

To:	Council of the Probate and Estate Planning Section of the State Bar of Michigan
From:	James P. Spica
Re:	Divided and Directed Trusteeships *ad Hoc* Committee (DDTC) Chair's Report
Date:	January 17, 2019

The Michigan House Bills embodying the DDTC legislative proposal, 2018 HBs 6129, 6130, and 6131, having passed in the House (Yeas 109, Nays 0) on November 28, 2018, were unanimously approved by the Senate (Yeas 38, Nays 0) on December 20, signed into law on December 28, and assigned 2018 Public Act numbers 662, 663, 664, respectively—each to become effective on March 29, 2019.

JPS
DETROIT 40411-1 1416471v12