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

Saturday, October 13, 2018
9:00 am
Somerset Inn
2601 West Big Beaver Road
Troy, Michigan 48084

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

October 13, 2018
9:00 a.m.

Somerset Inn
2601 West Big Beaver Road
Troy, Michigan 48084

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
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Email: dskidmore@wnj.com

STATE BAR OF MICHIGAN
PROBATE AND ESTATE PLANNING SECTION COUNCIL
Council and CSP Meeting Schedule for 2018-2019
Saturday, October 13, 2018, Somerset Inn, Troy, Michigan*
Saturday, November 17, 2018, University Club, Lansing, Michigan**
Saturday, December 15, 2018, University Club, Lansing, Michigan**
Note the remainder of the meetings are on Fridays
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**

*Somerset Inn, 2601 West Big Beaver Road, Troy, Michigan 48084
**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.:

Thursday, October 4, 2018 (for Saturday, October 13, 2018 meeting)
Thursday, November 8, 2018 (for Saturday, November 17, 2018 meeting)
Thursday, December 6, 2018 (for Saturday, December 15, 2018 meeting)
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.:

Friday, October 5, 2018 (for Saturday, October 13, 2018 meeting)
Friday, November 9, 2018 (for Saturday, November 17, 2018 meeting)
Friday, December 7, 2018 (for Saturday, December 15, 2018 meeting)
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

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

October 13, 2018

Troy, Michigan

9:00 – 10:00 AM

1. **Kathy Goetsch – Premarital and Marital Agreements Act – 60 minutes**

   See attached Uniform Premarital and Marital Agreements 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[:]T

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

(2) e[E]nforcement 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) [L]imits 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
October 13, 2018
Agenda

I. Call to Order

II. Introduction of Guests

III. Excused Absences

IV. Lobbyist Report—Public Affairs Associates (Jim Ryan)

V. Monthly Reports:

A. Minutes of Prior Council Meeting (David P. Lucas)—Attachment 1

B. Treasurer's Report (Mark Kellogg) – Attachment 2

C. Chair's Report—Attachment 3

1. Updated list of committee chairs and committee members
2. Updated list of liaisons
3. Updated Plan of Work
4. ADM File No. 2002-37 – Proposed amendments to court rules

D. Committee on Special Projects (Katie Lynwood)

VI. Other Committees Presenting Oral Reports

A. Amicus Curiae Committee (Andrew Mayoras) – Attachment 4

B. Guardianships, Conservatorships, & End of Life Committee (Kathleen M. Goetsch) – Attachment 5

C. Tax Committee (Lorraine New) – Attachment 6

VII. Other Committees Presenting Written Reports Only

A. Court Rules, Forms, and Procedures Committee—Attachment 7

B. Divided and Directed Trusteeships Ad Hoc Committee—Attachment 8

C. Report from the Liaison to the Uniform Law Commission—Attachment 9

VIII. Other Business

IX. Adjournment

Next Probate Council Meeting: November 17, 2018, University Club, 3435 Forest Road, Lansing, Michigan @ 9:00 am.

ATTACHMENT 1

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

September 8, 2018
Lansing, Michigan

Minutes

I. Call to Order

The Chair (chairperson) of the Council, Marguerite Munson Lentz, called the meeting to order at 10:50am.

II. Introduction of Guests

A. Meeting attendees introduced themselves.
B. The following officers and members of the Council were present: Marquerite Munson Lentz, Chair; David P. Lucas, Secretary; David L.J.M. Skidmore, Treasurer; Kathleen M. Goetsch, Angela M. Hentkowski, Robert B. Labe, Michael G. Lichterman, Katie Lynwood, Raj A. Malviya, Andy Mayoras, Richard C. Mills, Lorraine F. New, Kurt A. Olson, Nathan R. Piwowarski, and Christine M. Savage. A total of 15 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, Nancy L. Little, Douglas A. Mielock, and Marlaine Teahan.
D. The following liaisons to the Council were present: Daniel W. Borst, Susan Chalgian, John R. Dresser, Jeanne Murphy, and James P. Spica.
E. Others present: J.V. Anderton, Ernscie Augustin, Aaron Bartell, Ryan Bourjaily, Georgette David, Jim Hughesian, Adam Lowen, Alex Mallory, Neal Nusholtz, Ken Silver, Paul Vaidya, and Joe Weiler.

III. Excused Absences

The following officers and members of the Council were absent: Christopher A. Ballard, Vice Chair; Christopher J. Caldwell, Rhonda Clark-Kreuer. Nazneen Hasan, Hon. Michael Jaconette, Mark E. Kellogg, and Melisa M.W. Mysliwiec.

IV. Lobbyist Report - Public Affairs Associates

The Chair stated that there was no Lobbyist Report to present to the meeting.

V. Monthly Reports:

A. Minutes of Prior Council Meeting (David P. Lucas): it was moved and seconded to approve the Minutes of the June 16, 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. Chair's Report: The Chair welcomed incoming Council members. The Chair thanked Marlaine Teahan for her service to the Section and the Council, and presented Ms. Teahan with a plaque expressing appreciation. The Chair thanked Rhonda Clark-Kreuer for her service.

1. The following motion was properly made and seconded:

> The Chair of the Council is authorized to appoint the Chairs of the respective Committees of the Council.

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

2. The following motion was properly made and seconded:

> Certain committees will be populated with certain Officers and ex-officios, as described in the Chair's written report.

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

3. The following motion was properly made and seconded:

> The Chair of each Committee of the Council not mentioned in the prior motion is authorized to appoint the members of their respective Committees.

An amendment to the motion was accepted by the movant and the second, so that, following such accepted amendment, the motion is:

> The Chair of each Committee of the Council not mentioned in the prior motion is authorized to appoint the members of their respective Committees, following consultation with the Chair of the Council.

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

4. The following motion was properly made and seconded:

The name of the Council's Mardigian Case Review & Drafting Ad Hoc Committee is changed to the Lawyer/drafter beneficiary ad hoc Committee.

Without objection, the Chair declared the motion approved.

5. The following motion was properly made and seconded:

The Chair and the Chair-Elect are authorized to create or delete Ad Hoc Committees as they determine in their discretion and to modify the mission of any Committee as they determine in their discretion.

Without objection, the Chair declared the motion approved.

6. The Chair gave a report, including matters described in the Chair's written report, which was included with the meeting materials

C. Committee on Special Projects

1. Nathan Piwowarski and Katie Lynwood discussed the EPIC Omnibus legislation as prepared by the Legislative Service Bureau, as included in the meeting materials. The Committee's motion is:

The Probate and Estate Planning Section supports "A bill to amend 1998 PA 386, entitled 'Estates and protected individuals code,' by amending ...," identified by the Legislative Service Bureau as "06613 '18 Draft 1", but changed as follows:

1. increase each reference of "$15,000.00" in EPIC section 3982 to "$25,000.00";

2. add the phrase "if that charitable purpose is a material purpose of the trust" to the end of EPIC section 7103(c);

3. replace the proposed language in section EPIC section 7103(g) with the following:

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

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

(ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interest of the

distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate.

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

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

The Chair of the Probate and Estate Planning Section's Committee on Special Projects is authorized to modify the Section's public policy position with nonsubstantive changes, as determined by such Chair.

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded the vote of 15 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 7 not voting. The Chair declared the motion approved.

2. Neal Nusholtz reported on legislation regarding community property trusts.

3. Christine Savage reported on legislation regarding marital agreements.

4. Nathan Piwowarski and Aaron Bartell reported on legislation regarding "prebate."

D. Legislative Analysis & Monitoring Committee (Ryan Bourjaily)

Dan Hilker reported on activity of the Legislative Analysis & Monitoring Committee.

E. Legislative Development and Drafting Committee (Nathan Piwowarski)

Nathan Piwowarski reported on activity of the Legislative Development and Drafting Committee, including activity regarding certificates of existence of trust, and a legislative proposal relating to such certificates, HB 5362. Mr. Piwowarski reported that HB 5362 removes a requirement that such a certificate state whether or not a trust is revocable, and, if revocable, who holds the power to revoke (currently appearing as EPIC section 7913(1)(d)), which change is supported in a Public Policy Position of the Section, but to which such change there is substantial objection by certain persons, including representatives of the Michigan Bankers Association. The Committee's motion is :

The Probate and Estate Planning Section's Public Policy Position regarding certificates of existence of trust, as reflected in HB 5362, may be modified with

respect to EPIC section 7913(1)(d) at the discretion of the Chair of the Legislative Development and Drafting Committee; any such modification will be reported to the Council by the Chair of the Legislative Development and Drafting Committee.

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded the vote of 15 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 7 not voting. The Chair declared the motion approved.

VI. Other Committees Presenting Oral Reports

A. Tax Committee (Christopher J. Caldwell)

Raj Malviya referred to the Committee's written report, which was included with the meeting materials.

B. Membership Committee (Robert B. Labe)

Robert Labe reported on the activity of the Committee, including an update on networking luncheons, sponsored by the Section, to be held in Plymouth and Grand Rapids, to encourage membership in the Section.

C. Amicus Curiae Committee (David L.J.M. Skidmore)

David L.J.M Skidmore reported that a request for an amicus from the Section has been requested in a matter before the Michigan Court of Appeals, captioned "Lewis v. Rosebrook," Court of Appeals No. 343765. Individuals associated with the Chalgian and the Varnum law firms, which firms represent the parties, were asked to excuse themselves from the meeting, and did so. 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 Court of Appeals, captioned "Lewis v. Rosebrook," Court of Appeals No. 343765.

Following a presentation by Mr. Skidmore and discussion by the Council, on voice vote with no nays and no abstentions (any individuals associated with the Chalgian and the Varnum law firms not present and not voting), the Chair declared the motion approved. The Chair asked Mr. Skidmore to relay the Council's action to the persons requesting an amicus brief.

VII. Other Committees Presenting Written Reports Only

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

A. Court Rules, Forms, and Procedures Committee

B. Divided and Directed Trusteeships Ad Hoc Committee

C. Uniform Fiduciary Income & Principal Act Ad Hoc Committee

D. Report from the Liaison to the Uniform Law Commission

Those reports were included with included in the meeting agenda materials, and the Chair referred Council members to such reports. The Chair stated that no action of the Council was requested by such Committees.

VIII. Other Business

The Chair requested a volunteer to Chair the Council's Electronic Wills Ad Hoc Committee.

Mr. Skidmore presented a Treasurer's Report, which was included with a supplement to the meeting agenda materials.

IX. Adjournment

Seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 11:25 am.

Respectfully submitted,
David P. Lucas, Secretary

ATTACHMENT 2

THE INSTITUTE OF CONTINUING LEGAL EDUCATION
The education provider of the State Bar of Michigan

1020 Greene Street, Ann Arbor, MI 48109-1444
Phone: 877-229-4350 ■ Fax: 877-229-4351 ■ E-mail: icle@umich.edu ■ ICLE.ORG

The State Bar of Michigan
The University of Michigan Law School
Wayne State University Law School
University of Detroit Mercy School of Law
Western Michigan University Thomas M. Cooley Law School
Michigan State University College of Law

Attn: Mark E. Kellogg
State Bar of Michigan Probate & Estate Planning Section
Fraser Trebilcock Davis & Dunlap PC
124 W. Allegan St. Ste. 1000
Lansing, MI 48933

October 2, 2018

Re: *Michigan Probate & Estate Planning Journal*

Dear Mark: 1-9-99-775-1549

Enclosed is the invoice for the Summer 2018 issue of the Probate Journal in the amount of $4,000.00. Please let me know if you need any further information.

Thank you once again for this opportunity to work with the Section on the *Journal.*

Sincerely,

Cindy M. Huss
Director of Print and Online Products
734-763-1393

1-9-99-775-1549

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F | 877-229-4351 Ann Arbor, MI 48109

> Invoice

ID: 102238
Invoice #: 749231

Sold To: Attn: Mark E Kellogg
State Bar of Michigan Probate & Estate Planning Section
Fraser Trebilcock Davis & Dunlap PC
124 W Allegan St Ste 1000
Lansing, MI 48933

Ship To: Attn: Mark E Kellogg
State Bar of Michigan Probate & Estate Planning Section
Fraser Trebilcock Davis & Dunlap PC
124 W Allegan St Ste 1000
Lansing, MI 48933

ID	PURCHASE ORDER #	ORDER DATE	ORDER #	TERMS	INVOICE DATE	DUE DATE
102238		10/1/2018	1072718	Net 30	10/1/2018	**10/31/2018**

QTY ORDERED	QTY SHIPPED	BACK-ORDER	ITEM CODE DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1		PROBJOURNL Probate Section Journal-Summer 2018	4,000.00	4,000.00

Approved: Account No. 1-9-99-775-1549

HANDLING	
TAX	
SUBTOTAL	4,000.00
AMOUNT REC'D	
AMOUNT DUE	**4,000.00**

4 Ways to Pay

Online	Call	Fax	Mail
www.icle.org	877-229-4350	877-229-4351	ICLE, 1020 Greene St. Ann Arbor, MI 48109-1444

Check #:_____ Payable to ICLE

Credit Card: ☐ Mastercard ☐ Visa ☐ AMEX ☐ Discover

CREDIT CARD #_____ EXP. DATE _____

_____
AUTHORIZED SIGNATURE

749231

Late fees will be charged on overdue balances.

1-9-99-775-1549

ICLE | Your Partner in Practice

www.icle.org P | 877-229-4350 1020 Greene Street
F | 877-229-4351 Ann Arbor, MI 48109

> Invoice

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AUTHORIZED SIGNATURE

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ATTACHMENT 3

Updated 10/4/2018

Probate and Estate Planning Section

2018-2019 Proposed Committee Chairs

Committee/Mission	*Chair*	*Other Members*
Amicus Curiae Committee To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs.	Andrew W. Mayoras	Ryan P. Bourjaily Nazneen Hasan Kurt A. Olson Patricia M. Ouellette David L.J.M. Skidmore Trevor J. Weston Timothy White
Annual Meeting To arrange the annual meeting at a time and place and with an agenda to accomplish all necessary and proper annual business of the Section.	Christopher A. Ballard	
Assisted Reproductive Technology Ad Hoc Committee To review the 2008 Uniform Probate Code Amendments for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction.	Nancy Welber	Christopher A. Ballard Edward Goldman James P. Spica Lawrence W. Waggoner
Awards Committee To periodically award the Michael Irish Award to a deserving recipient and to consult with ICLE concerning periodic induction of members in the George A. Cooney Society.	Amy Morrissey	Mark Harder Thomas Sweeney
Budget Committee To develop the annual budget and to alert the Council to revenue and spending trends.	David L.J.M. Skidmore	David P. Lucas Mark Kellogg
Bylaws Committee To review the Section Bylaws and recommend changes to ensure compliance with State	David Lucas	Christopher A. Ballard Nazneen Hasan John Roy Castillo

Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council.		
Charitable & Exempt Organization Committee To educate the Section about charitable giving and exempt organizations and to make recommendations to the Section concerning federal and state legislative developments and initiatives in the fields of charitable giving and exempt organizations.	Christopher J. Caldwell	Celeste E. Arduino Christopher A. Ballard Michael W. Bartnik William R. Bloomfield Robin D. Ferriby Mark E. Kellogg Richard C. Mills
Citizens Outreach Committee To provide for education of the public on matters related to probate, estate planning, and trust administration, including the publication of pamphlets and online guidance to the public, and coordinating the Section's efforts to educate the public with the efforts of other organizations affiliated with the State Bar of Michigan.	Kathleen M. Goetsch	Michael J. McClory Neal Nusholtz Jessica M. Schilling Nicholas J. Vontroba
Committee on Special Projects To consider and study in depth a limited number of topics and make recommendations to the Council of the Section with respect to those matters considered by the Committee.	Katie Lynwood	All members of the Section who attend a meeting of the Committee on Special Projects ("CSP") are considered members of CSP and are entitled to vote on any matter brought before the CSP.
Community Property Trusts Ad Hoc Committee To review the statutes, case law, and legislative analysis of Michigan and other jurisdictions (including pending legislation) concerning community property trusts and, if advisable, to recommend changes to Michigan law in this area.	Neal Nusholtz	George W. Gregory Lorraine F. New Nicholas A. Reister Rebecca K. Wrock

Court Rules, Forms, & Proceedings Committee To consider and recommend to the Council action with respect to contested and uncontested proceedings, the Michigan Court Rules, and published court forms, including their development, interpretation, use, and amendment.	Melisa M.W. Mysliwiec	James F. (JV) Anderton Susan Chalgian Phillip E. Harter Hon. Michael L. Jaconette Michael J. McClory Andrew W. Mayoras Marlaine Teahan
Divided and Directed Trusteeships Ad Hoc Committee To review the Uniform Directed Trust Act and other legislative proposals concerning the division of fiduciary labor and responsibility among non-trustee directors, co-trustees, and divided trusteeships and, if advisable, to recommend changes to Michigan law in this area.	James P. Spica	Judith M. Grace Marguerite Munson Lentz Gabrielle M. McKee Ray A. Malviya Richard C. Mills Jeffrey A. Robbins Robert P. Tiplady
Electronics Communications Committee To oversee all forms of electronic communications with and among members of the Section, including communication via the Section's web site (SBM Connect site) and the ICLE Online Community site, to identify emerging technological trends of important to the Section and its members, and to recommend to the Council of the Section best practices to take advantage of technology in carrying out the Section's and Council's mission and work.	Michael G. Lichterman	William J. Ard Amy N. Morrissey Jeanne Murphy (Liaison to ICLE) Neal Nusholtz Marlaine Teahan
Electronic Wills Ad Hoc Committee To study the proposal on electronic wills of the Uniform Law Commission, determine problems and pitfalls of the formation, validity, and	Kurt A. Olson	Kimberly Browning Douglas A. Mielock Neal Nusholtz Christine Savage James P. Spica (Special Advisor)

recognition of electronic wills, and be prepared to respond to both the Uniform Law Commission's proposal and any related legislation introduced in Michigan.		
Ethics & Unauthorized Practice of Law To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment, including identifying the unauthorized practices of law, reporting of such practices to the appropriate authorities, and educating the public regarding the inherent problems relying on non-lawyers.	Kurt A. Olson	William J. Ard Raymond A. Harris J. David Kerr Robert M. Taylor Amy Rombyer Tripp
Guardianships, Conservatorships, & End of Life Committee To monitor the need for, and make recommendations with respect to, statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships.	Kathleen M. Goetsch	William J. Ard Michael W. Bartnik Kimberly Browning Raymond A. Harris Phillip E. Harter Hon. Michael L. Jaconette Michael J. McClory Kurt A. Olson James B. Steward Paul S. Vaidya
Lawyer drafter/beneficiary ad hoc committee To make recommendations for possible statutory changes to deal with the situation where a lawyer prepares an instrument for a non-relative which includes a gift to that lawyer or members of that lawyer's family.	Andrew Mayoras	George W. Gregory David P. Lucas Kurt A. Olson
Legislative Analysis & Monitoring Committee In cooperation with the Section's lobbyist, to bring to the attention of the Council recent developments in the	Daniel S. Hilker	Christopher A. Ballard Ryan P. Bourjaily Georgette E. David Mark E. Kellogg Jonathan R. Nahhat

Michigan legislature and to further achievement of the Section's legislative priorities, as well as to study legislation and recommend action on legislation not otherwise assigned to another committee of the Section.		
Legislation Development & Drafting Committee To review, revise, communicate, and recommend proposed legislation affecting Michigan's trusts and estates law with the goal of achieving and maintaining leadership in promulgating trusts and estates laws in changing times.	Nathan Piwowarski	Heidi Aull Aaron A. Bartell Howard H. Collens Georgette E. David Kathleen M. Goetsch Daniel S. Hilker Henry P. Lee Michael G. Lichterman David P. Lucas Katie Lynwood Richard C. Mills Kurt A. Olson Christine M. Savage James P. Spica Marlaine Teahan Robert P. Tiplady II
Legislative Testimony Committee To testify on behalf of the Section regarding pending bills before Michigan House or Senate Committees and to promote and explain the Council's Public Policy Positions to Michigan Representatives and Senators or members of their staff.	Marguerite Munson Lentz	Gary Bauer Susan L. Chalgian Howard Collens Mark T. Evely Ashley Gorman Raymond A. Harris Mark E. Kellogg Carol Kramer Katie Lynwood Amy E. Peterman Nathan Piwowarski Kenneth Silver Marlaine C. Teahan Robert W. Thomas
Membership Committee To strengthen relations with Section members, encourage new membership, and promote awareness of and participation in Section activities.	Nicholas A. Reister	Daniel S. Hilker, Vice-Chair Daniel W. Borst Ryan P. Bourjaily Nicholas R. Dekker Angela Hentkowski David A. Kosmowski Robert B. Labe Raj A. Malviya Ryan S. Mills

		Robert O'Reilly Theresa A. Rose
Nominating Committee To annual nominate candidates for election as the officers of the Section and members of the Council.	Shaheen I. Imami	James B. Steward Marlaine C. Teahan
Planning Committee To review and update the Council's Plan of Work	Marguerite Munson Lentz	Christopher A. Ballard David P. Lucas David L.J.M. Skidmore Mark E. Kellogg
Premarital Agreements Legislation Ad Hoc Committee To review and compare Michigan's statutes and case law (particularly the *Allard* decision) regarding enforcement and potential effects on estate planning and estate administration with the Uniform Premarital and Marital Agreements Act and similar acts from other states and, if advisable, recommend changes to Michigan law in this regard.	Christine Savage	Kathleen M. Goetsch Patricia M. Ouellette (Family Law Liaison) Rebecca Wrock
Probate Institute To consult with ICLE in the planning and execution of the Annual Probate and Estate Planning Institute.	David P. Lucas	
Real Estate Committee To recommend new legislation related to real estate matters of interest and concern to the Section and its members.	Mark E. Kellogg	Jeffrey S. Ammon William J. Ard David S. Fry J. David Kerr Michael G. Lichterman James T. Ramer James B. Steward
State Bar & Section Journals Committee To oversee the publication of the Section's Journal and periodic theme issues of the State Bar Journal that are dedicated to probate, estate planning, and trusts.	Richard C. Mills	Nancy L. Little, Managing Editor Melisa M.W. Mysliwiec, Associate Editor.

Tax Committee To monitor, provide regular updates on, and deliver select educational programs concerning federal and state income and transfer taxes and, if applicable, to recommend appropriate actions by the Section in response to developments.	Raj A. Malviya	James F. (JV) Anderton Christopher J. Caldwell Mark J. DeLuca Angela Hentkowski Robert B. Labe Richard C. Mills Lorraine F. New Christine M. Savage Michael David Shelton James P. Spica Timothy White
Uniform Fiduciary Income & Principal Ad Hoc Committee To review the Uniform Law Commission's draft and final version of the Uniform Fiduciary and Principal Act, and, if advisable, to recommend changes to Michigan law in this area.	James P. Spica	Anthony J. Belloli Marguerite Munson Lentz Raj A. Malviya Gabrielle M. McKee Richard C. Mills Robert P. Tiplady Joseph Viviano

Updated 9/15/2018

Probate and Estate Planning Section

2018-2019 Liaisons

Liaison To:	
Alternative Dispute Resolution Section	John A. Hohman, Jr.
Business Law Section	John R. Dresser
Elder Law and Disability Rights Section	Angela Hentkowski
Family Law Section	Patricia M. Ouellette
ICLE	Jeanne Murphy
Laws Schools	
Modest Means Work Group	Georgette E. David
Michigan Bankers Association	Daniel W. Borst
Probate Judges Association	Hon. David M. Murkowski Hon. Michael L. Jaconette
Probate Register	
SCAO	Melisa M.W. Mysliwiec Susan L. Chalgian Nathan Piwowarski
Solutions on Self-Help Task Force	Kathleen M. Goetsch
State Bar Commissioner	
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

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. • SLATs (spousal limited access trust)	• Electronic Wills	

Probate and Estate Planning Section

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Order

September 27, 2018

ADM File No. 2002-37

Proposed Amendments of Rules 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 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 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 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

(A)-(F) [Unchanged.]

(G) Electronic Filing and Service.

(1)-(2) [Unchanged.]

(3) Scope and Applicability.

(a)-(e) [Unchanged.]

(f) For the required case types, attorneys must electronically file documents in courts where electronic filing has been implemented. All other filers are required to electronically file documents only in courts that have been granted approval to mandate electronic filing by the State Court Administrative Office under AO 2018-XX.

(4) [Unchanged.]

(5) Electronic-Filing Process.

(a) [Unchanged.]

(b) Time and Effect of Electronic Filing. A document submitted electronically is deemed filed with the court when the transmission to the electronic-filing system is completed and the required filing fees have been paid or waived. If a document is submitted with a request to waive the filing fees, the document is deemed filed on the date the document was submitted to the court. A transmission is completed when the transaction is recorded as prescribed in subrule (c). Regardless of the date a filing is accepted by the clerk of the court, the date of filing is the date submitted. Electronic filing is not restricted by the operating hours of a court and any document submitted at or before 11:59 p.m. of a business day is deemed filed on that business day. Any document submitted on a weekend, legal holiday, or day on which the court is closed pursuant to court order~~court holiday~~ is deemed filed on the next business day.

(c)-(d) [Unchanged.]

(6)-(7) [Unchanged.]

Rule 2.102 Summons; Expiration of Summons; Dismissal of Action for Failure to Serve

(A) [Unchanged.]

(B) Form. A summons must be issued "In the name of the people of the State of Michigan," under the seal of the court that issued it. It must be directed to the defendant, and include

(1)-(2) [Unchanged.]

(3) the ~~file~~case number,

(4)-(11) [Unchanged.]

(C) [Unchanged.]

(D) Expiration. A summons expires 91 days after the date the ~~complaint is filed~~summons is issued. However, within those 91 days, on a showing of due diligence by the plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the ~~complaint is filed~~summons is issued. If such an extension is granted, the new summons expires at the end of the extended period. The judge may impose just conditions on the issuance of the second summons. Duplicate summonses issued under subrule (A) do not extend the life of the original summons. The running of the 91-day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

(E)-(G) [Unchanged.]

Rule 2.104 Process; Proof of Service

(A) Requirements. Proof of service may be made by

(1)-(2) [Unchanged.]

(3) ~~an affidavit stating~~written statement of the facts of service, verified under MCR 1.109(D)(3). The statement shall include~~ing~~ the manner, time, date, and place of service, and indicate~~ing~~ the process server's official capacity, if any.

The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location.

(B)-(C) [Unchanged.]

Rule 2.106 Notice by Posting or Publication

(A)-(F) [Unchanged.]

(G) Proof of Service. Service of process made pursuant to this rule may be proven as follows:

(1) [Unchanged.]

(2) Posting must be proven by ~~an affidavit~~verified statement of the person designated in the order under subrule (E) attesting that a copy of the order was posted for the required time in the courthouse in a conspicuous place open to the public and in the other places as ordered by the court.

(3) Mailing must be proven by ~~affidavit~~a verified statement. The affiant must attach a copy of the order as mailed, and a return receipt.

Rule 2.107 Service and Filing of Pleadings and Other Documents

(A) Service; When Required.

(1) Unless otherwise stated in this rule, every party who has filed a pleading, an appearance, or a motion must be served with a copy of every ~~paper~~document later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with ~~papers~~documents that relate to that motion.

(2) Except as provided in MCR 2.603, after a default is entered against a party, further service of ~~papers~~documents need not be made on that party unless he or she has filed an appearance or a written demand for service of ~~papers~~documents. However, a pleading that states a new claim for relief against a party in default must be served in the manner provided by MCR 2.105.

(3) [Unchanged.]

(4) All ~~papers~~documents filed on behalf of a defendant must be served on all other defendants not in default.

(B) Service on Attorney or Party.

(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a)-(b) [Unchanged.]

(c) After a final judgment or final order has been entered and the time for an appeal of right has passed, ~~papers~~documents must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;

(d) [Unchanged.]

(e) If an attorney files a notice of limited appearance under MCR 2.117 on behalf of a self-represented party, service of every ~~paper~~document later filed in the action must continue to be made on the party, and must also be made on the limited scope attorney for the duration of the limited appearance. At the request of the limited scope attorney, and if circumstances warrant, the court may order service to be made only on the party.

(2) If two or more attorneys represent the same party, service of ~~papers~~documents on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a ~~paper~~document.

(3) If a party prosecutes or defends the action on his or her own behalf, service of ~~papers~~documents must be made on the party in the manner provided by subrule (C).

(C) Manner of Service. Except under MCR 1.109(G)(6)(a), ~~S~~service of a copy of a ~~paper~~document on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Except under MCR 1.109(G)(6)(a), ~~S~~service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means

(a) handing it to the attorney personally, serving it electronically under MCR 1.109(G)(6)(a), or, if agreed to by the parties, e-mailing it to the attorney as allowed under MCR 2.107(C)(4);

(b)-(c) [Unchanged.]

(2) Delivery to Party. Delivery of a copy to a party within this rule means

(a) handing it to the party personally, serving it electronically under MCR 1.109(G)(6)(a), or, if agreed to by the parties, e-mailing it to the party as allowed under MCR 2.107(C)(4); or

(b) [Unchanged.]

(3) [Unchanged.]

~~(4) E-mail. Some or all of the parties may agree to e-mail service among themselves by filing a stipulation in that case. Some or all of the parties may agree to e-mail service by a court by filing an agreement with the court to do so. E-mail service shall be subject to the following conditions:~~

~~(a) The stipulation or agreement for service by e-mail shall set forth the e-mail addresses of the parties or attorneys that agree to e-mail service, which shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties and attorneys who have stipulated or agreed to service by e-mail under this subsection shall immediately notify all other parties and the court if the party's or attorney's e-mail address changes.~~

~~(b) The parties shall set forth in the stipulation or agreement all limitations and conditions concerning e-mail service, including but not limited to:~~

~~(i) the maximum size of the document that may be attached to an e-mail;~~

~~(ii) designation of exhibits as separate documents;~~

~~(iii) the obligation (if any) to furnish paper copies of e-mailed documents; and~~

~~(iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.~~

~~(c) Documents served by e-mail must be in PDF format or other format that prevents the alteration of the document contents.~~

~~(d) A paper served by e-mail that an attorney is required to sign may include the attorney's actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).~~

~~(e) Each e-mail that transmits a document shall include a subject line that identifies the case by court, party name, case number, and the title or legal description of the document(s) being sent.~~

~~(f) An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service by e-mail under this subrule is treated as service by delivery under MCR 2.107(C)(1).~~

~~(g) A party may withdraw from a stipulation or agreement for service by e-mail if that party notifies the other party or parties and the court in writing at least 28 days in advance of the withdrawal.~~

~~(h) Service by e-mail is complete upon transmission, unless the party making service learns that the attempted service did not reach the e-mail address of the intended recipient. If an e-mail is returned as undeliverable, the party, attorney, or court must serve the paper or other document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the e-mail was undeliverable. A party, attorney, or court must also retain a notice that the e-mail was undeliverable.~~

~~(i) The e-mail sender shall maintain an archived record of sent items that shall not be purged until the conclusion of the case, including the disposition of all appeals.~~

(4) Alternative Electronic Service

(a) Except as provided by MCR 1.109(G)(6)(a)(ii), the parties may agree to alternative electronic service among themselves by filing a stipulation in that case. Some or all of the parties may also agree to alternative electronic service of notices and court documents by a court or a friend of the court by filing an agreement with the court or

friend of the court. Alternative electronic service may be by any of the following methods:

(i) e-mail,

(ii) text message, or

(iii) sending an e-mail or text message to log into a secure website to view notices and court papers.

(b) Obligation to Provide and Update Information.

(i) The agreement for alternative electronic service shall set forth the e-mail addresses or phone numbers for service. Attorneys who agree to e-mail service shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have agreed to alternative electronic service under this subrule shall immediately notify the court or the friend of the court if the e-mail address or phone number for service changes.

(ii) The agreement for service by text message or text message alert shall set forth the phone number for service. Parties or attorneys who have agreed to service by text message or text message alert under this subrule shall immediately notify the court or the friend of the court if the phone number for service changes.

(c) The party or attorney shall set forth in the agreement all limitations and conditions concerning e-mail or text message service, including but not limited to:

(i) the maximum size of the document that may be attached to an e-mail or text message,

(ii) designation of exhibits as separate documents,

(iii) the obligation (if any) to furnish paper copies of e-mailed or text message documents, and

(iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.

(d) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.

(e) A document served by alternative electronic service that the court or friend of the court or his or her authorized designee is required to sign may be signed in accordance with MCR 1.109(E).

(f) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the name of the court, case name, case number, and the title of each document being sent.

(g) An alternative electronic service transmission sent at or before 11:59 p.m. shall be deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order, it is deemed to be served on the next business day.

(h) A party or attorney may withdraw from an agreement for alternative electronic service by notifying the party or parties, court, and the friend of the court, as appropriate, in writing at least 28 days in advance of the withdrawal.

(i) Alternative electronic service is complete upon transmission, unless the party, court, or friend of the court making service learns that the attempted service did not reach the intended recipient. If an alternative electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.

(j) The party, court, or friend of the court shall maintain an archived record of sent items that shall not be purged until a judgment or final order is entered and all appeals have been completed.

(k) This rule does not require the court or the friend of the court to create functionality it does not have nor accommodate more than one standard for alternative electronic service.

(D) [Unchanged.]

(E) Service Prescribed by Court. When service of ~~papers~~documents after the original complaint cannot reasonably be made because there is no attorney of record, because the party cannot be found, or for any other reason, the court, for good cause on ex parte application, may direct in what manner and on whom service may be made.

(F) Numerous Parties. In an action in which there is an unusually large number of parties on the same side, the court on motion or on its own initiative may order that

(1) they need not serve their ~~papers~~documents on each other;

(2)-(4) [Unchanged.]

A copy of the order must be served on all parties in the manner the court directs.

Rule 2.117 Appearances

(A) Appearance by Party.

(1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. ~~The party's address and telephone number must be included in the appearance.~~

(2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to ~~receive copies of~~be served with all ~~pleadings and papers~~documents as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

(1) [Unchanged.]

(2) Notice of Appearance.

(a) If an appearance is made in a manner not involving the filing of a ~~paper~~document with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. ~~The attorney's address and telephone number must be included in the appearance.~~

(b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to ~~service of pleadings and papers~~be served with all documents as provided by MCR 2.107(A).

(c)-(d) [Unchanged.]

(3) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other ~~paper~~document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a ~~paper~~document in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered, or a confirming notice of withdrawal of a notice of limited appearance is filed as provided by subrule (C)(3). This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) [Unchanged.]

(C) [Unchanged.]

(D) Nonappearance of Attorney Assisting in Document Preparation. An attorney who assists in the preparation of pleadings or other ~~papers~~documents without signing them, as authorized in MRPC 1.2(b), has not filed an appearance and shall not be deemed to have done so. This provision shall not be construed to prevent the court from investigating issues concerning the preparation of such a ~~paper~~document.

(E) Service of Documents After Removal of Appearance. If an attorney has filed a limited appearance or the attorney is removed from the case for any other reason, the attorney shall not continue to be served with documents in the case after the limited appearance ends or after an order is entered removing the attorney from the case.

Rule 2.119 Motion Practice

(A) [Unchanged.]

(B) Form of Affidavits.

(1) [Unchanged.]

(2) Sworn or certified copies of all ~~papers~~documents or parts of ~~papers~~documents referred to in an affidavit must be attached to the affidavit unless the ~~papers or copies~~documents:

(a)-(d) [Unchanged.]

(C) Time for Service and Filing of Motions and Responses.

(1) Unless a different period is set by these rules or by the court for good cause, a written motion (other than one that may be heard ex parte), notice of the hearing on the motion, and any supporting brief or affidavits must be served as follows:

(a) at least 9 days before the time set for the hearing, if served by first-class mail, or

(b) at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1) or (2) or MCR 1.109(G)(6)(a).

(2) Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be served as follows:

(a) at least 5 days before the hearing, if served by first-class mail, or

(b) at least 3 days before the hearing, if served by delivery under MCR 2.107(C)(1) or (2) or MCR 1.109(G)(6)(a).

(3)-(4) [Unchanged.]

(D)-(G) [Unchanged.]

Rule 2.403 Case Evaluation

(A)-(J) [Unchanged.]

(K) Decision.

(1) Within 14 days after the hearing, the panel will make an evaluation and ~~notify~~submit the evaluation to the court. If an evaluation is made immediately following the hearing, the panel will provide a copy to the attorney for each party of its evaluation in writing. If an evaluation is not made immediately following the hearing, the evaluation must be served by the ADR clerk on each party within 14 days after the hearing. If an award is not unanimous, the evaluation must so indicate.

(2)-(5) [Unchanged.]

(L)-(O) [Unchanged.]

Rule 2.503 Adjournments

(A)-(C) [Unchanged.]

(D) Order for Adjournment; Costs and Conditions.

(1) [Unchanged.]

(2) In granting an adjournment, the court may impose costs and conditions. When an adjournment is granted conditioned on payment of costs, the costs may be taxed summarily to be paid on demand of the adverse party or the adverse party's attorney, and the adjournment may be vacated if nonpayment is shown by ~~affidavit~~written statement verified under MCR 1.109(D)(3).

(E)-(F) [Unchanged.]

Rule 2.506 Subpoena; Order to Attend

(A) [Unchanged.]

(B) Authorized Signatures.

(1) [Unchanged.]

(2) For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, ~~or~~ lithographed, or executed under MCR 1.109(E)(4).

(C)-(I) [Unchanged.]

Rule 2.508 Jury Trial of Right

(A) [Unchanged.]

(B) Demand for Jury.

(1) A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply. The demand for jury must be filed as a separate document.~~A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading.~~ The jury fee provided by law must be paid at the time the demand is filed.

(2)-(3) [Unchanged.]

(C)-(D) [Unchanged.]

Rule 2.518 Receipt and Return or Disposal of Exhibits

(A) Receipt of Exhibits. Except as otherwise required by statute or court rule, materials that are intended to be used as evidence at or during a trial shall not be filed with the clerk of the court, but shall be submitted to the judge for introduction into evidence as exhibits. Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by Michigan Supreme Court trial court ~~case file~~records management standards. As defined in MCR 1.109, exhibits received and accepted into evidence under this rule are not court records.

(B)-(C) [Unchanged.]

Rule 2.602 Entry of Judgments and Orders

(A) Signing; Statement; Date of Entry.

(1) Except as provided in this rule and in MCR 2.603, all judgments and orders must be in writing, signed by the court, and dated with the date they are signed.

(2)-(3) [Unchanged.]

(4) Where electronic filing is implemented, judgments and orders must be issued under the seal of the court.

(B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:

(1)-(2) [Unchanged.]

(3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the notice and proof of service along with~~original of~~ the proposed judgment or order ~~and proof of its service on the other parties~~.

(a) If no written objections are filed within 7 days of the date of service of the notice, the ~~clerk shall submit the judgment or order to the court, and the court~~judge shall ~~then~~ sign ~~it~~the judgment or order if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

(b)-(c) [Unchanged.]

(d) The court must schedule the hearing upon filing of the first objection. Other parties to the action may file objections with the court through the end of the 7-day period. The court must schedule a hearing for all objections within 14 days after the first objection is filed or as soon as is practical afterward.

(4) A party may prepare a proposed judgment or order and notice it for settlement before the court. A court shall not charge a motion fee if the order is dispositive except as directed in 2.116(B)(1), 2.603(B)(3) and 3.210(B)(4).

(C) [Unchanged.]

(D) ~~Filing~~Placement in Case File. The ~~original of the~~signed judgment or order must be placed in the case file.

(E) [Unchanged.]

Rule 2.603 Default and Default Judgment

(A) Entry of Default; Notice; Effect.

(1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is ~~made to appear by affidavit or otherwise~~filed with the court in a request verified in the manner prescribed by MCR 1.109(D)(3), the clerk must enter the default of that party.

(2) Notice that the default has been entered must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court.

~~(a) In the district court, the court clerk shall send the notice.~~

~~(b) In all other courts, t~~The notice must be sent by the party who sought entry of the default. Proof of service and a copy of the notice must be filed with the court.

(3) ~~Once~~After the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612.

(B) Default Judgment.

(1) [Unchanged.]

(2) Default Judgment Entered by Clerk. On written request of the plaintiff ~~supported by an affidavit~~verified under MCR 1.109(D)(3) as to the amount due, the clerk may sign and enter a default judgment for that amount and costs against the defendant, if

(a) [Unchanged.]

(b) the default was entered because the defendant failed to appear; ~~and~~

(c) the defaulted defendant is not an infant or incompetent person; and

(d) [Unchanged.]

(3) [Unchanged.]

(4) Notice of Entry of Default Judgment. The ~~court clerk must promptly mail notice of entry of a default judgment to~~party who sought entry of the default judgment must promptly serve all parties with the default judgment. The ~~notice to the defendant~~default judgment shall be mailed to the defendant's last known address or the address of the place of service. ~~The clerk must keep a record that notice was given~~Proof of service must be filed with the court.

(C) [Unchanged.]

(D) Setting Aside Default or Default Judgment.

(1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and ~~an affidavit~~a verified statement of facts showing a meritorious defense is filed.

(2)-(4) [Unchanged.]

(E) [Unchanged.]

Rule 2.621 Proceedings Supplementary to Judgment

(A)-(G) [Unchanged.]

(H) Appeal; Procedure; Bonds. A final order entered in a supplementary proceeding may be appealed in the usual manner. The appeal is governed by the provisions of chapter 7 of these rules except as modified by this subrule.

(1)-(2) [Unchanged.]

(3) If the order appealed from directs the assignment or delivery of ~~papers or~~ documents by the appellant, the ~~papers~~documents must be delivered to the

clerk of the court in which the proceeding is pending or placed in the hands of an officer or receiver, as the judge who entered the order directs, to await the appeal, subject to the order of the appellate courts.

(4) [Unchanged.]

Rule 3.101 Garnishment After Judgment

(A)-(G) [Unchanged.]

(H) Disclosure. The garnishee shall ~~mail or deliver to~~file with the court~~,~~ and deliver to the plaintiff~~,~~ and ~~the~~ defendant, a verified disclosure within 14 days after being served with the writ.

(1)-(2) [Unchanged.]

(I)-(T) [Unchanged.]

Rule 3.104 Installment Payment Orders

(A) Motion for Installment Payment Order. A party against whom a money judgment has been entered may move for entry of an order permitting the judgment to be paid in installments in accordance with MCL 600.6201 *et seq.* A copy of the motion must be served on the plaintiff~~, by the clerk of the court in district court and~~ by the party who filed the objection ~~in circuit or probate court~~.

(B) Consideration of Motion. The motion will be granted without further hearing unless the plaintiff files, and serves on the defendant, written objections within 14 days after the service date of the defendant's motion. If objections are filed, the clerk must promptly present the motion and objections to the court. The court will decide the motion based on the ~~papers~~documents filed or notify the parties that a hearing will be required. Unless the court schedules the hearing, the moving party is responsible for noticing the motion for hearing.

(C)-(D) [Unchanged.]

Rule 3.203 Service of Notice and Court ~~Papers~~Documents in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1) [Unchanged.]

(2) court ~~papers~~documents and notice for which the statute or court rule does not specify the manner of service must be served as provided in MCR 2.107, except that service by mail shall be to a party's last known mailing address.

(3) Alternative Electronic Service

(a) A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney in accordance with MCR 2.107(C)(4).~~by any of the following methods:~~

~~(i) e-mail;~~

~~(ii) text message;~~

~~(iii) sending an e-mail or text message alert to log into a secure website to view notices and court papers.~~

~~(b) Obligation to Provide and Update Information~~

~~(i) The agreement for service by e-mail or e-mail alert shall set forth the e-mail addresses for service. Attorneys who agree to e-mail service shall include the same email address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have agreed to service by e-mail or email alert under this subsection shall immediately notify the friend of the court if the e-mail address for service changes.~~

~~(ii) The agreement for service by text message or text message alert shall set forth the phone number for service. Parties or attorneys who have agreed to service by text message or text message alert under this subsection shall immediately notify the friend of the court if the phone number for service changes.~~

~~(c) The party or attorney shall set forth in the agreement all limitations and conditions concerning e-mail or text message service, including but not limited to:~~

(i) the maximum size of the document that may be attached to an e-mail or text message;

(ii) designation of exhibits as separate documents;

(iii) the obligation (if any) to furnish paper copies of emailed or text message documents; and

(iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.

(d) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.

(e) A paper served by alternative electronic service that the friend of the court or an authorized designee is required to sign may include the actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).

(f) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the case by court, party name, case number, and the title or legal description of the document(s) being sent.

(g) An alternative electronic service transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service under this subrule is treated as service by delivery under MCR 2.107(C)(1).

(h) A party or attorney may withdraw from an agreement for alternative electronic service by notifying the friend of the court in writing at least 28 days in advance of the withdrawal.

(i) Alternative electronic service is complete upon transmission, unless the friend of the court learns that the attempted service did not reach the intended recipient. If an alternative electronic service

~~transmission is undeliverable, the friend of the court must serve the paper or other document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The friend of the court must also retain a notice that the electronic transmission was undeliverable.~~

~~(j) The friend of the court shall maintain an archived record of sent items that shall not be purged until a judgment or final order is entered and all appeals have been completed.~~

~~(k) This rule does not require the friend of the court to create functionality it does not have nor accommodate more than one standard for alternative electronic service.~~

(B)-(C) [Unchanged.]

(D) Administrative Change of Address. The friend of the court office may change a party's address administratively pursuant to the policy established by the state court administrator for that purpose when:

(1) [Unchanged.]

(2) notices and court ~~papers~~documents are returned to the friend of the court office as undeliverable or the friend of the court determines that a federal automated database has determined that mail is not deliverable to the party's listed address.

(E) Service on Nonparties. Notice to a nonparty must be provided as set forth in the statute requiring the notice. Absent statutory direction, the notice may be provided by regular mail. Absent statutory direction, court ~~papers~~documents initiating an action against nonparties to enforce a notice must be served in the same manner as a summons and complaint pursuant to MCR 2.105.

(F) Confidential Addresses. When a court order makes a party's address confidential, the party shall provide an alternative address for service of notice and court ~~papers~~documents.

(G) Notice to Friend of the Court. Except where electronic filing is implemented, ~~I~~if a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, or if child support or spousal support is requested, the parties must provide the friend of the court with a copy of all pleadings and other ~~papers~~documents filed in the action. The copy must be marked "friend of the court" and submitted to the court clerk at the time of filing. The court clerk must

send the copy to the friend of the court. Where electronic filing is implemented, the court and the friend of the court shall determine the manner in which pleadings and other documents filed in the action will be made available to the friend of the court.

(H) Notice to Prosecuting Attorney. In an action for divorce or separate maintenance in which a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, the plaintiff must serve a copy of the summons and complaint on the prosecuting attorney when required by law. ~~Service must be made at the time of filing by providing the court clerk with an additional copy marked "prosecuting attorney". The court clerk must send the copy to the prosecuting attorney.~~

(I)-(J) [Unchanged.]

Rule 3.205 Prior and Subsequent Orders and Judgments Affecting Minors

(A) [Unchanged.]

(B) Notice to Prior Court, Friend of the Court, Juvenile Officer, and Prosecuting Attorney.

(1) [Unchanged.]

(2) If a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, the plaintiff or other initiating party must ~~mail written~~send notice of proceedings in the subsequent court to ~~the attention of~~

(a)-(b) [Unchanged.]

(3) The notice must be ~~mailed~~sent at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be ~~given~~sent immediately when it becomes known.

(4) [Unchanged]

(C)-(D) [Unchanged.]

Rule 3.210 Hearings and Trials

(A) [Unchanged.]

(B) Default Cases.

(1) [Unchanged.]

(2) Entry of Default.

(a) A party may request the entry of a default of another party for failure to plead or otherwise defend~~. Upon presentation of an affidavit~~ by ~~a party~~ asserting facts setting forth proof of service and failure to plead or otherwise defend in a written request verified under MCR 1.109(D)(3). On filing of the request, the clerk must enter a default of the party.

(b)-(d) [Unchanged.]

(e) A party in default must be served with the notice of default and a copy of every ~~paper~~document later filed in the case as provided by MCR 3.203, and the person serving the notice or other ~~paper~~document must file a proof of service with the court.

(3)-(7) [Unchanged.]

(C)-(E) [Unchanged.]

Rule 3.302 Superintending Control

(A)-(D) Unchanged

(E) Procedure for Superintending Control in Circuit Court.

(1)-(2) [Unchanged.]

(3) Issuance of Order; Dismissal.

(a)-(b) [Unchanged.]

(c) The court may require in an order to show cause that additional records and ~~papers~~documents be filed.

(d) [Unchanged.]

Rule 3.607 Proceedings to Restore Lost Records or ~~Papers~~Documents in Courts of Record

(A)-(D) [Unchanged.]

Rule 3.613 Change of Name

(A)-(B) [Unchanged.]

(C) Notice to Noncustodial Parent. Service on a noncustodial parent of a minor who is the subject of a petition for change of name shall be made in the following manner.

(1) Address Known. If the noncustodial parent's address or whereabouts is known, that parent shall be served with a copy of the petition and a notice of hearing at least 14 days before the hearing in a manner prescribed by MCR 2.107(C).

(2) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 3.614 Health Threats to Others

(A) [Unchanged.]

(B) Service of ~~Papers~~Documents. The moving party is responsible for service when service is required.

(C)-(E) [Unchanged.]

[New] Rule 3.618 Emancipation of Minor

(A) Interested Persons. The persons interested in a petition for emancipation of a minor are

(1) the minor,

(2) parents of the minor,

(3) the affiant on an affidavit supporting emancipation, and

(4) any guardian or conservator.

(B) Summons.

(1) A summons in an emancipation proceeding must be served on an interested person at least 14 days before the date of hearing unless the interested person has waived his or her right to service.

(2) The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must identify the nature of hearing.

(C) Manner of Serving Summons and Petition.

(1) Except as provided in subrule (C)(2), a summons and petition for emancipation must be served by personal service.

(2) If service of the summons and petition cannot be made under subrule (C)(1) because the whereabouts of an interested person could not be ascertained after diligent inquiry, the petitioner must file proof of the efforts made to locate the interested person in a statement verified under MCR 1.109(D)(3). If the court finds, on reviewing the statement, that a reasonable attempt was made, the court may issue an ex parte order directing another manner of service reasonably calculated to give notice of the proceedings, including notice by publication under subrule (3).

(3) Service by Publication.

(a) Requirements. A notice of hearing or other notice required to be made by publication must be published in a newspaper as defined by MCR 2.106(F) at least one time 21 days before the date of hearing. Publication shall be in the county in which the court is located.

(b) Contents of Notice. The published notice must include the name of the individual to whom the notice is given, a statement describing the nature of the hearing, and a statement that the hearing may affect the individual's interest in the matter. If an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.

(c) Service of Notice. A copy of the notice shall be mailed to the individual to whom the notice is given at his or her last known address. If the last known address of the individual cannot be

ascertained after diligent inquiry, mailing a copy of the notice is not required.

(d) Proof of service under this subrule shall be made according to MCR 2.106(G).

(D) Time of Service.

(1) A summons shall be personally served at least 14 days before hearing on a petition of emancipation, except as allowed under subrule (C)(2).

(2) If the summons is served by registered mail, it must be sent at least 21 days before hearing if the interested person to be served resides in Michigan, or at least 28 days before hearing if the interested person to be served resides outside of Michigan.

(E) Other Service. The clerk of the court shall serve an order issued by the court. If notice of the petition and hearing was given to an interested person by publication, a copy of an order issued by the court need not be served on that interested person.

(F) Proof of Service

(1) Summons and Petition. Proof of service of the summons and petition must be made in the manner provided in MCR 2.104(A).

(2) Other Documents. Proof of service of other documents permitted or required to be served under this rule must be made in the manner provided in MCR 2.107(D).

Rule 3.705 Issuance of Personal Protection Orders

(A) Ex Parte Orders.

(1) The court must rule on a request for an ex parte order within ~~24 hours~~one business day of the filing date of the petition.

(2)-(5) [Unchanged.]

(B)-(C) [Unchanged.]

Rule 3.801 ~~Papers~~Documents, Execution

(A)-(B) [Unchanged.]

Rule 3.802 Manner and Method of Service

(A) Service of ~~Papers~~Documents.

(1) [Unchanged.]

(2) Notice of a petition to identify a putative father and to determine or terminate his rights, or a petition to terminate the rights of a noncustodial parent, must be served on the individual or the individual's attorney in the manner provided in:

(a) MCR ~~5.105(B)(1)(a) or (b)~~2.107(C)(1) or (2), or

(b) MCR 2.105(A)(2), but service is not made for purpose of this subrule until the individual or the individual's attorney receives the notice or petition.

(3) [Unchanged.]

(4) Except as provided in subrules (B) and (C), all other ~~papers~~documents may be served by mail under MCR 2.107(C)(3), e-mail under MCR 2.107(C)(4), or electronic service under MCR 1.109(G)(6)(a).

(B) Service When Identity or Whereabouts of Father is Unascertainable

(1) If service cannot be made under subrule (A)(2) because the identity of the father of a child born out of wedlock or the whereabouts of the identified father has not been ascertained after diligent inquiry, the petitioner must file proof ~~by affidavit or by declaration under MCR 1.109(D)(3), of the attempt~~of the efforts made to identify or locate the father in a statement verified under MCR 1.109(D)(3). No further service is necessary before the hearing to identify the father and to determine or terminate his rights.

(2) [Unchanged.]

(C) Service When Whereabouts of Noncustodial Parent Is Unascertainable.
If service of a petition to terminate the parental rights of a noncustodial parent pursuant to MCL 710.51(6) cannot be made under subrule (A)(2) because the whereabouts of the noncustodial parent has not been ascertained after diligent inquiry, the petitioner must file proof~~, by affidavit or by declaration under MCR 1.109(D)(3), of the attempt~~ of the efforts made to locate the noncustodial parent in a statement verified under MCR 1.109(D)(3). If the court finds, on reviewing the

statement~~affidavit or declaration~~, that service cannot be made because the whereabouts of the person has not been determined after reasonable efforts, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

(D) Service by Publication.

(1) Requirements. A notice of hearing or other notice required to be made by publication must be published in a newspaper as defined by MCR 2.106(F) at least one time 21 days before the date of the hearing. Publication shall be in the county in which the court is located.

(2) Contents of Notice. The published notice must include the name of the individual to whom the notice is given, a statement describing the nature of the hearing, and a statement that the result of the hearing may affect the individual's interest in the matter, including possible termination of parental rights.

(3) Service of Notice. A copy of the notice shall be mailed to the individual to whom the notice is given at his or her last known address. If the last known address of the individual cannot be ascertained after diligent inquiry, mailing a copy of the notice is not required.

(4) Proof of service under this subrule shall be made according to MCR 2.106(G).

Rule 3.805 Temporary Placements, Time for Service of Notice of Hearing to Determine Disposition of Child

(A) Time for ~~Personal~~ Service. ~~Personal s~~Service of notice of hearing on a petition for disposition of a child ~~pursuant to~~under MCL 710.23e(1) must be served at least:

(1) 3 days before the date set for hearing for personal service under MCR 2.107(C)(1) or (2), e-mail service under MCR 2.107(C)(4), or electronic service under MCR 1.109(G)(6)(a); or

(2) 7 days before the date set for hearing when served by first-class mail under MCR 2.107(C)(3).

~~(B) Time for Service by Mail. Service by mail must be made at least 7 days before the date set for hearing.~~

(~~C~~B) Interested Party, Whereabouts Unknown. If the whereabouts of an interested party, other than the putative father who did not join in the temporary placement, is unknown, service on that interested party will be sufficient if ~~personal service or~~ service ~~by mail~~ is attempted at the last known address of the interested party.

(~~D~~C) [Relettered but otherwise unchanged.]

Rule 3.806 Rehearings

(A) Filing, Notice and Response. A party may seek rehearing under MCL 710.64(1) by timely filing a petition stating the basis for rehearing. Immediately upon filing the petition, the petitioner must give all interested parties notice of its filing in accordance with MCR ~~5.105~~3.802. Any interested party may file a response within 7 days of the date of service of notice on the interested party.

(B)-(D) [Unchanged.]

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A)-(B) [Unchanged.]

(C) Summons.

(1) [Unchanged.]

(2) The summons must also include the following advice to the defendant:

(a)-(c) [Unchanged.]

(d) The defendant has a right to a jury trial which will be lost unless it is demanded in the first defense response, written or oral. The jury trial fee must be paid when the demand is made, unless payment of fees is waived ~~or suspended~~ under MCR 2.002.

(D) Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant ~~by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. In addition to mailing, the defendant must be served~~ in one of the following ways:

(1) [Unchanged.]

(2) By delivering the ~~papers~~documents at the premises to a member of the defendant's household who is

(a)-(b) [Unchanged.]

(c) asked to deliver the ~~papers~~documents to the defendant; or

(3) After diligent attempts at personal service have been made, by securely attaching the ~~papers~~documents to the main entrance of the tenant's dwelling unit. A return of service made under this subrule ~~(D)(3)~~ must list the attempts at personal service. Service under this subrule ~~(D)(3)~~ is effective only if a return of service is filed showing that, after diligent attempts, personal service could not be made. An officer who files proof that service was made under this subrule ~~(D)(3)~~ is entitled to the regular personal service fee.

(E) [Unchanged.]

(F) Appearance and Answer; Default.

(1) Appearance and Answer. The defendant or the defendant's attorney must appear and answer the complaint by the date on the summons. Appearance and answer may be made as follows:

(a) [Unchanged.]

(b) By orally answering each allegation in the complaint at the hearing. The answers must be recorded ~~or noted on the complaint~~.

(2)-(3) [Unchanged.]

(4) Default.

(a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (K). The plaintiff must mail the default judgment ~~must be mailed~~ to the defendant and file a proof of service with the court. ~~by the court clerk and~~ The default judgment must inform the defendant that (if applicable)

(i)-(ii) [Unchanged.]

(b)-(c) [Unchanged.]

(5) [Unchanged.]

(G)-(O) [Unchanged.]

Rule 4.202 Summary Proceedings; Land Contract Forfeiture

(A)-(G) [Unchanged.]

(H) Answer; Default.

(1) [Unchanged.]

(2) Default.

(a) If the defendant fails to appear, the court, on the plaintiff's motion, may enter a default and may hear the plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment under MCL 600.5741, and in accord with subrule (J). The plaintiff must mail the default judgment ~~must be mailed~~ to the defendant and file a proof of service with the court.~~by the court clerk and~~ The default judgment must inform the defendant that (if applicable)

(i)-(ii) [Unchanged.]

(b)-(c) [Unchanged.]

(3) [Unchanged.]

(I)-(L) [Unchanged.]

Rule 4.303 Notice

(A)-(B) [Unchanged.]

(C) Notice Not Served. If it appears that notice was not received by the defendant at least 7 days before the appearance date and the defendant does not appear, the clerk must, at the plaintiff's request, issue further notice without additional cost to the plaintiff, setting the hearing for a future date. The further notice may be served as provided in MCR 2.105.

Rule 4.306 Removal to Trial Court

(A) [Unchanged.]

(B) Order; Fee. On receiving a demand for removal, the court shall, by a written order filed in the action, direct removal to the trial court for further proceedings.

(1) [Unchanged.]

(2) ~~A copy of the order must be mailed to each party by the clerk~~The party demanding removal must promptly serve the order on the opposing party and file proof of service with the court.

(3) [Unchanged.]

(C)-(E) [Unchanged.]

Rule 5.001 Applicability

(A) Applicability of Rules. Procedure in probate court is governed by the general rules set forth in chapter one and by the rules applicable to other civil proceedings set forth in chapter two, except as modified by the rules in this chapter.

(B) [Unchanged.]

Rule 5.104 Proof of Service; Waiver and Consent; Unopposed Petition

(A) Proof of Service.

(1) Whenever service is required by statute or court rule, a proof of service must be filed promptly and ~~at the latest~~ before a hearing to which the ~~paper~~document relates. If the document does not involve a hearing, a proof of service must be filed with the document ~~or at the time the paper is required to be filed with the court if the paper does not relate to a hearing~~. The proof of service must include a description of the ~~papers~~documents served, the date of service, the manner and method of service, and the person or persons served.

(2) Except as otherwise provided by rule, proof of service of a ~~paper~~document required or permitted to be served may be by

(a) including it at the end~~a copy~~ of the notice of hearing or other documents being filed with the court, or~~, if any~~;

(b) a written statement by the individual who served the notice of hearing or other documents, verified under MCR 1.109(D)(3).~~copies of other paper served with the notice of hearing, with a description of the paper in the proof of service;~~

~~(c) authentication under MCR 1.109(D)(3) of the person making service.~~

(3)-(4) [Unchanged.]

(B) Waiver and Consent.

(1) [Unchanged.]

(2) Consent. The relief requested in an application, petition, or motion may be granted by consent. An interested person who consents to an application, petition, or motion does not have to be served with or waive notice of hearing on the application, petition, or motion. The consent must

(a) [Unchanged.]

(b) be in a writing which is dated and signed by the interested person or someone authorized to consent on the interested person's behalf and must contain a ~~declaration~~statement that the person signing has received a copy of the application, petition, or motion.

(3)-(4) [Unchanged.]

(C) Unopposed Petition. If a petition is unopposed at the time set for the hearing, the court may either grant the petition on the basis of the recitations in the petition or conduct a hearing. However, an order determining heirs based on an uncontested petition to determine heirs may only be entered on the basis of ~~sworn~~ testimony or a ~~sworn testimony~~verified statement identifying heirs form. An order granting a petition to appoint a guardian may only be entered on the basis of testimony at a hearing.

Rule 5.105 Manner and Method of Service

(A) Manner of Service.

(1) [Unchanged.]

(2) Unless another method of service is required by statute, court rule, or special order of a probate court, service may be made:

(a) to the current address of an interested person by registered, certified, or ordinary first-class mail~~.~~, or

(b) by electronic service in accordance with MCR 1.109(G)(6)(a).

Foreign consul and the Attorney General may be served by mail or by electronic service in accordance with MCR 1.109(G)(6)(a).

(3) An interested person whose address or whereabouts is not known may be served by publication, if ~~an affidavit or~~ a declaration of intent to give notice by publication, verified under MCR 1.109(D)(3) is filed with the court~~.~~. The declaration must set forth facts ~~showing~~asserting that the address or whereabouts of the interested person could not be ascertained on diligent inquiry. Except in proceedings seeking a determination of a presumption of death based on absence pursuant to MCL 700.1208(2), after an interested person has once been served by publication, notice is only required on an interested person whose address is known or becomes known during the proceedings.

(4) [Unchanged.]

(B) Method of Service.

(1) Personal Service.

(a) On an Attorney. Personal service of a ~~paper~~document on an attorney must be made by

(i)-(iii) [Unchanged.]

(iv) sending the ~~paper~~document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the attorney receives the ~~paper~~document.

(b) On Other Individuals. Personal service of a ~~paper~~document on an individual other than an attorney must be made by

(i)-(ii) [Unchanged.]

(iii) sending the ~~paper~~document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the ~~paper~~document.

(c) [Unchanged.]

(2)-(3) [Unchanged.]

(4) E-mail. Unless otherwise limited or provided by this court rule or MCR 1.109(G)(6)(a)(ii), parties to a civil action or interested persons to a proceeding may agree to service by e-mail in the manner provided in and governed by MCR 2.107(C)(4).

(5) Electronic Service. Electronic service of a document shall be made in accordance with MCR 1.109(G)(6)(a) when required.

(C) Petitioner, Service Not Required. For service of notice of hearing on a petition, the petitioner, although otherwise an interested person, is presumed to have waived notice and consented to the petition, unless the petition expressly indicates that the petitioner does not waive notice and does not consent to the granting of the requested prayers without a hearing. Although a petitioner or a fiduciary may in fact be an interested person, the petitioner need not indicate, either by written waiver or proof of service, that the petitioner has received a copy of any ~~paper~~document required by these rules to be served on interested persons.

(D) [Unchanged.]

(E) Service on Beneficiaries of Future Interests. A notice that must be served on unborn or unascertained interested persons not represented by a fiduciary or guardian ad litem is considered served on the unborn or unascertained interested persons if it is served as provided in this subrule.

(1) If an interest is limited to persons in being and the same interest is further limited to the happening of a future event to unascertained or unborn persons, notice and ~~papers~~documents must be served on the persons to whom the interest is first limited.

(2) If an interest is limited to persons whose existence as a class is conditioned on some future event, notice and ~~papers~~documents must be served on the persons in being who would comprise the class if the required event had

taken place immediately before the time when the ~~papers~~documents are served.

(3) If a case is not covered by subrule (E)(1) or (2), notice and ~~papers~~documents must be served on all known persons whose interests are substantially identical to those of the unascertained or unborn interested persons.

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.]

Rule 5.108 Time of Service

(A)-(B) [Unchanged.]

(C) Electronic Service. Electronic service made under MCR 1.109(G)(6)(a) must be made at least 7 days before the date set for hearing or an adjourned date.

(C)-(E) [Relettered (D)-(F) but otherwise unchanged.]

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).

(B) Contents of Petitions.

(1) [Unchanged.]

(2) The petition may incorporate by reference ~~papers~~documents and lists of interested persons previously filed with the court if changes in the papers or lists are set forth in the incorporating petition.

(C) Filing by Registered Mail. Except as otherwise stated in this subrule~~Where e-filing is implemented~~, any document required by law to be filed in or delivered to the court by registered mail may be filed ~~through the electronic filing system~~in accordance with MCR 1.109(G)(6)(a). Deliveries of wills or codicils must be delivered in accordance with MCL 700.2515 and 700.2516.

(D) Filing Additional ~~Papers~~Documents. The court in its discretion may receive for filing a ~~paper~~document not required to be filed.

Rule 5.117 Appearance by Attorneys

(A) [Unchanged.]

(B) Appearance.

(1) [Unchanged.]

(2) Notice of Appearance. If an appearance is made in a manner not involving the filing of a ~~paper~~document served with the court or if the appearance is made by filing a ~~paper~~document which is not served on the interested persons, the attorney must promptly file a written appearance and serve it on the interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a) and on the fiduciary. ~~The attorney's address and telephone number must be included in the appearance.~~

(3) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other ~~paper~~document filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a ~~paper~~document in the action. All

notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the client.

(b) [Unchanged.]

(C)-(D) [Unchanged.]

Rule 5.118 Amending or Supplementing Papers

(A) ~~Papers~~Documents Subject to Hearing. A person who has filed a ~~paper~~document that is subject to a hearing may amend or supplement the ~~paper~~document

(1)-(2) [Unchanged.]

(B) ~~Papers~~Documents Not Subject to Hearing. A person who has filed a ~~paper~~document that is not subject to a hearing may amend or supplement the ~~paper~~document if service is made pursuant to these rules.

Rule 5.119 Additional Petitions; Objections; Hearing Practices

(A) Right to Hearing, New Matter. An interested person may, within the period allowed by law or these rules, file a petition and obtain a hearing with respect to the petition. The petitioner must serve copies of the petition and notice of hearing on the fiduciary and other interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a).

(B) Objection to Pending Matter. An interested person may object to a pending petition orally at the hearing or by filing and serving a ~~paper~~document which conforms with MCR 5.113. The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.

(C)-(D) [Unchanged.]

Rule 5.120 Action by Fiduciary in Contested Matter; Notice to Interested Persons; Failure to Intervene

The fiduciary represents the interested persons in a contested matter. The fiduciary must give notice to all interested persons whose addresses are known or who are authorized users of the electronic filing system under MCR 1.109(G)(6)(a) that a contested matter has been commenced and must keep such interested persons reasonably informed of the

fiduciary's actions concerning the matter. The fiduciary must inform the interested persons that they may file a petition to intervene in the matter and that failure to intervene shall result in their being bound by the actions of the fiduciary. The interested person shall be bound by the actions of the fiduciary after such notice and until the interested person notifies the fiduciary that the interested person has filed with the court a petition to intervene.

Rule 5.125 Interested Persons Defined

(A)-(B) [Unchanged.]

(C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1)-(18) [Unchanged.]

(19) The persons interested in a proceeding under the Mental Health Code in a petition for appointment of a guardian of an individual with a developmental disability are the

(a) individual,

(b) individual's attorney,

(c) petitioner,

(d) individual's presumptive heirs,

(e) preparer of the report or another appropriate person who performed an evaluation,

(f) director of any facility where the individual may be residing,

(g) individual's guardian ad litem, if appointed, and

(h) such other persons as the court may determine.

(19)-(24) [Renumbered (20)-(25) but otherwise unchanged.]

(2~~5~~6) The persons interested in a petition for the modification or termination of a guardianship or conservatorship or for the removal of a guardian or a conservator are

(a) those interested in a petition for appointment under subrule (C)(~~19~~20), (2~~1~~2), (2~~2~~3), or (24~~5~~) as the case may be, and

(b) [Unchanged.]

(2~~6~~7) The persons interested in a petition by a conservator for instructions or approval of sale of real estate or other assets are

(a) [Unchanged.]

(b) those persons listed in subrule (C)(24~~5~~) who will be affected by the instructions or order.

(27)-(28) [Renumbered (28)-(29) but otherwise unchanged.]

~~(29) The persons interested in a petition for emancipation of a minor are~~

~~(a) the minor,~~

~~(b) parents of the minor,~~

~~(c) the affiant on an affidavit supporting emancipation, and~~

~~(d) any guardian or conservator.~~

(30)-(32) [Unchanged.]

(33) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in a proceeding affecting a trust other than those already covered by subrules (C)(6), (C)(~~28~~29), and (C)(32) are:

(a)-(g) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 5.126 Demand or Request for Notice

(A) [Unchanged.]

(B) Procedure.

(1) Obligation to Provide Notice or Copies of Documents. Except in small estates under MCL 700.3982 and MCL 700.3983, the person responsible for serving a ~~paper~~document in a decedent estate, guardianship, or conservatorship in which a demand for notice is filed is responsible for providing copies of any orders and filings pertaining to the proceeding in which the demandant has requested notification. If no proceeding is pending at the time the demand is filed, the court must notify the petitioner or applicant at the time of filing that a demand for notice has been filed and of the responsibility to provide notice to the demandant.

(2) Rights and Obligations of Demandant.

(a) [Unchanged.]

(b) Unless the demand for notice is limited to a specified class of ~~papers~~documents, the demandant is entitled to receive copies of all orders and filings subsequent to the filing of the demand. The copies must be served on the demandant through the electronic filing system if the demandant is an authorized user under MCR 1.109(G)(6)(a), but if not, mailed to the address specified in the demand. If the ~~address becomes invalid and the demandant does not provide a new address~~copies are undeliverable, no further copies of ~~papers~~documents need be provided to the demandant.

(C) Termination, Withdrawal.

(1)-(2) [Unchanged.]

(3) Withdrawal. The demandant may withdraw the demand at any time by communicating the withdrawal in writing to the fiduciary and to the court. If withdrawn, the demandant shall not continue to be served with documents in the case.

Rule 5.132 Proof of Wills

(A) [Unchanged.]

(B) Use of Copy of Will. When proof of a will is required and a deposition is to be taken, a copy of the original will or other document ~~made by photographic or~~

~~similar process~~reproduced in accordance with the Records Reproduction Act, MCL 24.401 *et seq.* may be used at the deposition.

Rule 5.162 Form and Signing of Judgments and Orders

(A) Form of Judgments and Orders. A proposed judgment or order must be prepared in accordance with MCR 2.602(A) and MCR 1.109(D)(2).~~include the name, address, and telephone number of the attorney or party who prepared it. All judgments and orders of the court must be typewritten or legibly printed in ink and signed by the judge to whom the proceeding is assigned.~~

(B) [Unchanged.]

Rule 5.202 Letters of Authority

(A) Issuance. Letters of authority shall be issued after the appointment and qualification of the fiduciary. If bond is ordered, the letters shall be issued after proof of bond has been filed with the court, unless otherwise ordered. Unless ordered by the court, letters of authority will not have an expiration date.

(B)-(C) [Unchanged.]

Rule 5.203 Follow-Up Procedures

Except in the instance of a personal representative who fails to timely comply with the requirements of MCL 700.3951(1), if it appears to the court that the fiduciary is not properly administering the estate, the court shall proceed as follows:

(A) Notice of Deficiency. The court must notify the fiduciary, the attorney for the fiduciary, if any, and each of the sureties for the fiduciary of the nature of the deficiency, together with a notice to correct the deficiency within 28 days, or, in the alternative, to appear before the court or an officer designated by it at a time specified within 28 days for a conference concerning the deficiency. Service of the notice of deficiency is complete on mailing to the last known address of the fiduciary or when served under MCR 1.109(G)(6)(a).

(B) Conference, Memorandum. If a conference is held, the court must prepare a written memorandum setting forth the date of the conference, the persons present, and any steps required to be taken to correct the deficiency. The steps must be taken within the time set by the court but not to exceed 28 days from the date of the conference. A copy of the memorandum must be given to those present at the conference~~ and.~~ ~~i~~If the fiduciary is not present at the conference, a copy of the

memorandum must be mailed to the last known address of the fiduciary ~~at the last known address~~or served on the fiduciary under MCR 1.109(G)(6)(a).

(C)-(E) [Unchanged.]

Rule 5.205 Address of Fiduciary

A fiduciary must keep the court and the interested persons informed in writing within 7 days of any change in the fiduciary's address even if the fiduciary is an authorized user of the electronic filing system. Any notice ~~sent to~~served on the fiduciary by the court ~~by ordinary mail~~ to the last address on file or under MCR 1.109(G)(6)(a) shall be notice to the fiduciary.

Rule 5.302 Commencement of Decedent Estates

(A) Methods of Commencement. A decedent estate may be commenced by filing an application for an informal proceeding or a petition for a formal testacy proceeding. A request for supervised administration may be made in a petition for a formal testacy proceeding. When filing either an application or petition to commence a decedent estate, a copy of the death certificate must be attached. If the death certificate is not available, the petitioner may provide alternative documentation of the decedent's death. The court is prohibited from ~~R~~requiring additional documentation, such as information about the proposed or appointed personal representative~~, is prohibited~~.

(B) ~~Sworn Testimony~~Verified Statement Identifying Heirs Form. At least one ~~sworn testimony~~verified statement identifying heirs ~~form sufficient to establish the identity of heirs~~ and devisees must be submitted with the application or petition that commences proceedings. ~~A sworn testimony form must be executed before a person authorized to administer oaths.~~

(C)-(D) [Unchanged.]

Rule 5.304 Notice of Appointment

(A) Notice of Appointment. The personal representative must, not later than 14 days after appointment, serve notice of appointment by personal service or by first-class mail as provided in MCL 700.3705 and the agreement and notice relating to attorney fees required by MCR 5.313(D). No notice of appointment need be served if the person serving as personal representative is the only person to whom notice must be given.

(B) [Unchanged.]

(C) Prior Publication. After an interested person has once been served by publication, notice of appointment is only required if that person's address is known or becomes known during the proceedings or the person registers as an authorized user of the electronic filing system under MCR 1.109(G)(6)(a).

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.

(B) Notice of Continued Administration. If unable to complete estate administration within one year of the original personal representative's appointment, the personal representative must file with the court and serve on all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of administration. The notice must be ~~given~~served within 28 days of the first anniversary of appointment and all subsequent anniversaries during which the administration remains uncompleted.

(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.
>
> "Change of Address: You must keep the court and all interested persons informed in writing within 7 days of any change in your address that you have provided for service."

"Notice of Continued Administration: If you are unable to complete the administration of the estate within one year of the original personal representative's appointment, you must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. You must give this notice within 28 days of the first anniversary of the original appointment and all subsequent anniversaries during which the administration remains uncompleted."

"Duty to Complete Administration of Estate: You must complete the administration of the estate and file appropriate closing ~~papers~~documents with the court. Failure to do so may result in personal assessment of costs."

(D) [Unchanged.]

(E) Requiring or Filing of Additional ~~Papers~~Documents. Except in formal proceedings and supervised administration, the court may not require the filing of any ~~papers~~documents other than those required to be filed by statute or court rule. However, additional ~~papers~~documents may be filed under MCR 5.113(D).

Rule 5.308 Formal Proceedings

(A) [Unchanged.]

(B) Determination of Heirs.

(1) [Unchanged.]

(2) Determination Without Estate Administration.

(a) Petition and ~~Testimony~~Verified Statement Form. Any person may initiate a formal proceeding to determine intestacy and heirs without appointment of a personal representative by filing a petition and a ~~sworn testimony~~verified statement form~~, executed before a person authorized to administer oaths,~~ sufficient to establish the domicile of the decedent at the time of death and the identity of the interested persons.

(b)-(d) [Unchanged.]

Rule 5.309 Informal Proceedings

(A)-(B) [Unchanged.]

(C) Notice of Intent to Seek Informal Appointment as Personal Representative.

(1) A person who desires to be appointed personal representative in informal proceedings must ~~give~~serve notice of intent to seek appointment and a copy of the application ~~to~~on each person having a prior or equal right to appointment who does not renounce this right in writing before the appointment is made.

(2)-(3) [Unchanged.]

(D) [Unchanged.]

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.

(D) [Unchanged.]

(E) Notice to Personal Representative. When supervised administration is ordered, the court must serve a written notice of duties on the personal representative. The notice must be substantially as follows:

"Inventories: You are required to file an inventory of the assets of the estate within 91 days of the date of your letters of authority or as ordered by the court. The inventory must list in reasonable detail all the property owned by the decedent at the time of death, indicating, for each listed item, the fair market value at the time of decedent's death and the type and amount of any encumbrance. If the value of any item has been obtained through an appraiser, the inventory should include the appraiser's name and address with the item or items appraised by that appraiser.

"Accountings: You are required to file annually, or more often if the court directs, a complete itemized accounting of your administration of the estate, showing in detail all the receipts and disbursements and the property remaining in your hands together with the form of the property. When the estate is ready for closing, you are required to file a final accounting and an itemized and complete list of all properties remaining. Subsequent annual and final accountings must be filed within 56 days after the close of the accounting period.

"Change of Address: You are required to keep the court and interested persons informed in writing within 7 days of any change in your address that you have provided for service.

"Notice of Continued Administration: If you are unable to complete the administration of the estate within one year of the original personal representative's appointment, you must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. You must give this notice within 28 days of the first anniversary of the original appointment and all subsequent anniversaries during which the administration remains uncompleted.

"Duty to Complete Administration of Estate: You must complete the administration of the estate and file appropriate closing ~~papers~~documents with the court. Failure to do so may result in personal assessment of costs."

(F)-(H) [Unchanged.]

Rule 5.311 Closing Estate

(A) [Unchanged.]

(B) Formal Proceedings.

(1)-(2) [Unchanged.]

(3) Discharge. A personal representative may petition for discharge from liability with notice to the interested persons. A personal representative who files such a petition with the court must also file the ~~papers~~documents described in MCR 5.310(C) and (D), as applicable, proofs of service of those ~~papers~~documents that are required to be served on interested persons, and such other ~~papers~~documents as the court may require. The court may order the personal representative discharged if the court is satisfied that the personal representative has properly administered the estate.

(4) Other Requests for Relief. With respect to other requests for relief, the petitioner must file appropriate ~~papers~~documents to support the request for relief.

(5) [Unchanged.]

(C) [Unchanged.]

Rule 5.313 Compensation of Attorneys

(A)-(C) [Unchanged.]

(D) Notice to Interested Persons. Within 14 days after the appointment of a personal representative or the retention of an attorney by a personal representative, whichever is later, the personal representative must ~~mail to~~serve on the interested persons whose interests will be affected by the payment of attorney fees, a notice ~~in the~~on a form ~~substantially~~ approved by the State Court Administrator and a copy of the written fee agreement. The notice must state:

(1)-(4) [Unchanged.]

(E)-(G) [Unchanged.]

Rule 5.402 Common Provisions

(A)-(B) [Unchanged.]

(C) Responsibility for Giving Notice; Manner of Service. The petitioner is responsible for giving notice of hearing. Regardless of statutory provisions, an interested person may be served the notice by mail, ~~by~~ personal service, or when necessary, ~~by~~ publication. ~~when necessary; h~~However, if the person who is the subject of the

petition is 14 years of age or older, notice of the initial hearing must be served on the person personally unless another method of service is specifically permitted in the circumstances.

(D) Letters of Authority. After entering an order appointing a fiduciary, the court must issue letters of authority after an acceptance of appointment is filed, and if ordered, the filing of the fiduciary's bond. The letters of authority shall be issued~~On the filing of the acceptance of appointment or bond required by the order appointing a fiduciary, the court shall issue letters of authority~~ on a form approved by the state court administrator. Any restriction or limitation of the powers of a guardian or conservator must be set forth in the letters of authority.

(E) Indian Child; Definitions, Jurisdiction, Notice, Transfer, Intervention.

(1)-(4) [Unchanged.]

(5) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall do all of the following:

(a)-(b) [Unchanged.]

(c) provide notice of the guardianship and the hearing scheduled in subrule (5)(a) and the potential applicability of the Indian Child Welfare Act and the Michigan Indian Family Preservation Act on a form approved by the State Court Administrative Office to the persons prescribed in MCR 5.125(A)(8), (C)(19), and (C)(25) in accordance with MCR 5.109(1). A copy of the notice shall be ~~mailed to~~served on the guardian~~ by first-class mail~~.

Rule 5.404 Guardianship of Minor

(A) Petition for Guardianship of Minor.

(1) [Unchanged.]

(2) Investigation. Upon the filing of a petition, the court may appoint a guardian ad litem to represent the interests of a minor and may order the Department of Health and Human Services or a court employee or agent to conduct an investigation of the proposed guardianship and file a written report of the investigation in accordance with MCL 700.5204(1). If the petition involves an Indian child, the report shall contain the information required in MCL 712B.25(1). The report shall be filed with the court and served no later than 7 days before the hearing on the petition. If the petition

for guardianship states that it is unknown whether the minor is an Indian child, the investigation shall include an inquiry into Indian tribal membership.

(3) [Unchanged.]

(4) Social History. ~~If the court requires t~~The petitioner ~~to~~must file a social history before a hearing is held on a petition for guardianship of a minor~~, it~~ and shall do so on a form approved by the State Court Administrative Office. The social history for minor guardianship is confidential, and it is not to be released, except on order of the court, to the parties or the attorneys for the parties.

(5) [Unchanged.]

(B)-(H) [Unchanged.]

Rule 5.405 Proceedings on Guardianship of Incapacitated Individual

(A) Examination by Physician or Mental Health Professional.

(1) Admission of Report. The court may receive into evidence without testimony a written report of a physician or mental health professional who examined an individual alleged to be incapacitated, provided that a copy of the report is filed with the court five days before the hearing and that the report is ~~substantially in~~on the form required by the state court administrator. A party offering a report must promptly inform the parties that the report is filed and available. The court may issue on its own initiative, or any party may secure, a subpoena to compel the preparer of the report to testify.

(2)-(3) [Unchanged.]

(B)-(C) [Unchanged.]

Rule 5.409 Report of Guardian; Inventories and Accounts of Conservators

(A) Reports. A guardian shall file a written report annually within 56 days after the anniversary of appointment and at other times as the court may order. Reports must be ~~substantially~~ in the form approved by the state court administrator. The guardian must serve the report on the persons listed in MCR 5.125(C)(2~~3~~4).

(B) [Unchanged.]

(C) Accounts.

(1)-(4) [Unchanged.]

(5) Contents. The accounting is subject to the provisions of MCR 5.310(C)(2)(c) and (d), except that references to a personal representative shall be to a conservator. A copy of the corresponding financial institution statement ~~must be presented to the court~~ or a verification of funds on deposit must be filed with the court, either of which must reflect the value of all liquid assets held by a financial institution dated within 30 days after the end of the accounting period, unless waived by the court for good cause.

(6) [Unchanged.]

(D) Service and Notice. A copy of the account must be ~~sent to~~served on the interested persons as provided by these rules. Notice of hearing to approve the account must be ~~given to~~served on interested persons as provided in subchapter 5.100 of these rules.

(E)-(F) [Unchanged.]

Rule 5.501 Trust Proceedings in General

(A)-(C) [Unchanged.]

(D) Appointment of Trustee not Named in Creating Document. An interested person may petition the court for appointment of a trustee when there is a vacancy in a trusteeship. The court may issue an order appointing as trustee the person nominated in the petition or another person. The order must state whether the trustee must file a bond or ~~execute~~sign and file an acceptance.

(E) Qualification of Trustee. A trustee appointed by an order of the court, nominated as a trustee in a will that has been admitted to probate shall qualify by ~~executing~~signing and filing an acceptance indicating the nominee's willingness to serve. The trustee must serve the acceptance and order, if any, on the then known qualified trust beneficiaries described in MCL 700.7103(g)(i) and, in the case of a testamentary trustee, on the personal representative of the decedent estate, if one has been appointed. No letters of trusteeship shall be issued by the court. The trustee or the attorney for the trustee may establish the trustee's incumbency by executing an affidavit to that effect, identifying the trustee and the trust and indicating that any required bond has been filed with the court and is in force.

(F) [Unchanged.]

Rule 5.784 Proceedings on a Durable Power of Attorney for Health Care or Mental Health Treatment

(A)-(B) [Unchanged.]

(C) Notice of Hearing, Service, Manner and Time.

(1) Manner of Service. If the address of an interested party is known or can be learned by diligent inquiry, notice must be by mail or personal service, but service by mail must be supplemented by facsimile, electronic mail, or telephone contact within the period for timely service when the hearing is an expedited hearing or a hearing on the initial determination regarding whether the patient is unable to participate in medical or mental health treatment decisions.

(2)-(3) [Unchanged.]

(D)-(E) [Unchanged.]

Staff comment: The proposed amendments of Rules 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 of the Michigan Court Rules 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.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by January 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No.

2002-37. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

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

September 27, 2018

Clerk

ATTACHMENT 4

MEMORANDUM

To: Probate Council
From: Andrew W. Mayoras
Subject: Application for Amicus Brief - Estate of Louis Henry Bitto, III
Date: October 1, 2018

Overview

This case involves the issue of whether a joint will by a husband and wife is enforceable when the surviving spouse created a new will after the death of the first, which varied from the terms of the initial will. The original will left a life estate in all property to the survivor, with the freedom to invade principal and even convey the property, but with the proceeds of the conveyance being used for the survivor's care and support. It also specified the beneficiaries upon the death of the survivor and did not contain a power to appoint.

The probate court and the court of appeals both held that the original will provisions constituted sufficient evidence of a contract to make a will that the later will violated the agreement. It further held that the party who sought specific enforcement of the initial will could do so in the estate proceeding, which permitted the court to invalidate the new will. The aggrieved party now seeks an amicus brief to support her application to the Supreme Court.

Factual Basis

Louis Bitto III was the survivor after the passing of his wife, Judith Ann Bitto, who died in 2006. Louis and Judith had a joint will from 2005 with required all of their estate, held jointly, severally or as tenants in common, to be:

> [H]eld by the survivor of us with the right to the income, rents, or profits of all our property for the life of the survivor, and as so much of the principal as the survivor may desire from time to time for his or her care and support with his or her sound discretion and with the further right on the part of the survivor to sell and execute conveyances of without the authority or approval of any Court, and or all of the property, to invest and reinvest the same, and to use the proceeds as he or she may deem proper during the survivor's lifetime for his or her care and support without being required in any manner to account therefore.

The 2005 will also included provisions for the assets to pass to the couple's three children, along with a grandchild, after the death of the survivor. Finally, the will included provisions for a testamentary trust for any share passing to a grandchild under the age of 25.
Years after his wife died, Louis executed a new pour-over will, with a new trust (in 2015). Under the 2015 trust (which apparently was not funded during life), the named beneficiaries were different than those under the 2005 will, and included a non-family member. It also disinherited one son.

After Louis died, the son who was excluded from the 2015 will and trust sought enforcement of the 2005 will under a theory that it contained an implied contract to make a will, which should render the 2015 documents invalid. He was opposed by the non-family member who was added as a beneficiary in the 2015 trust.

The probate court granted summary disposition to the son who sought enforcement of the 2005 will. The opposing party appealed to the court of appeals, which affirmed the probate court ruling in an unpublished opinion. The appellant now seeks leave to appeal to the Supreme Court and has submitted an application seeking an amicus brief from the Probate Section.

Legal Basis

The appellant relies primarily on MCL 700.2514, which reads:

> Sec. 2514. (1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:
>
> (a) Provisions of a will stating material provisions of the contract.
> (b) An express reference in a will to a contract and extrinsic evidence providing the terms of the contract.
> (c) A writing signed by the decedent evidencing the contract.
>
> (2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Both the probate court and court of appeals cited and applied this statute. Both found that, under 1(a), the 2005 joint will stated the material provisions of a contract to make a will/not to revoke. Both courts believed that the creation of a life estate in favor of the surviving spouse and specifying who would inherit the assets after the death of the survivor implied a contract that prohibited the survivor from creating a different will.

In so ruling, both courts relied on two prior decisions. In *Rogers* v *Rogers*, 136 Mich App 125 (1984), the court of appeals cited the applicable rule as follows:

> As a general rule, a mutual or joint will may be revoked by either of the co-makers, provided it was not made in pursuance of a contract. But, where such a will has been executed in pursuance of a contract or agreement entered into by the testators to devise their separate property to certain designated beneficiaries, subject to a life estate or other interest in the survivor, it is generally held irrevocable when, upon the death of one, the survivor avails himself of the benefits of the devise in his favor.

> Thus, for the terms of the will to be irrevocable upon the death of one of the parties, an agreement between the parties must be established. The general rule is stated as follows:
>
> > 'A will jointly executed by two testators may disclose so clearly that it is the product of a contract between them, that the will itself is sufficient evidence to establish the contract.'

136 Mich App at 131 (emphasis added).

The *Rogers* court relied on *Schondelmayer* v *Schondelmayer*, 320 Mich 565 (1948) for this rule. In both *Rogers* and *Schondelmayer*, the courts found that a joint will that left the survivor a life estate in the property, and then stated who was to receive the property upon the death of the survivor, was sufficient to establish the terms of the agreement not to revoke even without express language indicating that there was a contract to make a will.

As both of the courts in this case noted, Michigan case law also holds that this agreement can be specifically enforced by the probate court overseeing the estate of the survivor.

Interestingly, other Michigan case law holds that a survivor who conveys property away during lifetime can do so without violating such an agreement, unless the agreement expressly forbids the conveyance. *In re Leix Estate*, 289 Mich App 574 (2010). Here, the will permitted conveyances by the survivor, although arguably with limitations. However, the surviving spouse (at least from the record) did not convey the assets into his new trust or otherwise.

Analysis

The Committee believes that the probate court and court of appeals correctly applied existing Michigan case law in *Rogers* and *Schondelmayer*, which are generally consistent with the existing statute.

The larger question is whether these older cases (one of which predated the statute, and the later of which came after the effective date of the predecessor statute but did not discuss or apply the statute), represent sound public policy. MCL 700.2514(1)(a) requires, in the absence of a separate contract, "Provisions of a will stating material provisions of a contract." Here, no material provisions were expressly stated, but following the prior case law, they were implied by the provisions that created the life estate and named the beneficiaries after the survivor's death, including provisions for a testamentary trust in certain conditions.

Should, as the appellant contends, 2514 be read to require the will expressly state the material provisions, i.e., something to the effect that the will is intended to be non-revocable by the survivor? Without it, estates involving joint wills are subject to potential litigation as to whether the non-revocability provision is implied or not.

On the other hand, if a married couple spells out the terms of a life estate in the survivor and jointly declare who the beneficiaries are after they both die, isn't that a clear enough expression of intent so that the express language of non-revocability isn't really necessary?

Clearly, the law on this point since 1948 is that a joint will creating a life estate such as this is sufficient to imply the contract and express language is not needed. The appellant in this case will essentially be asking the Supreme court to overturn prior case law (although she does seek to distinguish the prior case law based on the language of the joint will at issue, the difference between the respective wills is not substantial).

Complicating the issue further, under the *Leix* case, a survivor could defeat the contract by conveying the property away under a will such as this one, perhaps even through a trust (especially an irrevocable trust). If Louis Bitto had gifted the assets, or funded them into his trust, then this case may have had a different outcome. Should the law in Michigan allow opposite results based simply on the quality of the estate planning or gifting done during life?

Recommendation

Considering the foregoing, the Committee recommends that no amicus brief be filed by the Probate Section. The law has been consistent in Michigan as to this specific type of will since 1948. The statute did not clearly alter this result. While it may be preferable to have a bright-line rule, the Committee does not believe that this is a substantial or common enough issue to advocate for the Supreme Court to change the outcome. Rather, if there is a policy that warrants changing the legal impact of 700.2514 in order to dissuade litigation, it could be accomplished legislatively.

Ultimately, the Committee doubts that the case of a joint will changed by the survivor is common. Even when that situation does arise, the case law is consistent enough to preclude excessive litigation. And future estate planners and probate attorneys can plan around this litigation with clear language in the will or by an alternate estate plan that takes advantage of the freedom of the survivor to convey assets if not expressly precluded.

As such, the Committee recommends that the Probate Council deny the amicus application.

Amicus Curiae Committee
Probate and Estate Planning Section of the State Bar of Michigan

Application for Consideration

If you believe that you have a case that warrants involvement of the Probate and Estate Planning Section of the State Bar of Michigan ("Section"), based upon the Section's Policy Regarding Consideration of Amicus Curiae Matters, please complete this form and submit it to the Chair of the Amicus Curiae Committee, along with all relevant pleadings of the parties involved in the case, and all court orders and opinions rendered.

Date September 13, 2018

Name Joseph P. Buttiglieri P Number (P26410)

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Attach Additional Sheets as Required

Name of Case In Re Estate of Louis Henry Bitto, III

Parties Involved Joann Bush, as Personal Representative of the Estate of Louis Henry Bitto, III and as Trustee of the Louis Henry Bitto Trust, Appellant vs. Louis H. Bitto, IV, Appellee

Current Status Court of Appeals issued an unpublished opinion on August 21, 2018; Court of Appeals Nos. 339083; 339507

Deadlines Application for Leave to Appeal to the Supreme Court must be filed by October 2, 2018.

Issue(s) Presented Whether a joint Will created a contract that became irrevocable upon a spouse's death. The joint Will was created in 2005 and the spouse died in 2006. The surviving spouse died October 8, 2015.

Michigan Statute(s) or Court Rule(s) at Issue MCL 700.2514.

Common Law Issues/Cases at Issue

Why do you believe that this case requires the involvement of the Probate and Estate Planning Section? Both the lower Court and the Court of Appeals have erred in their decisions in this matter. This case involves a statute that was specifically adopted to avoid litigation such as this. The decision has the potential to effect the practice of law by Members of the Section, especially in terms of Estate Planning and for those involved in litigation because the decision will encourage litigation that should not occur.

Do you believe that a decision in this case will substantially impact this Section's attorneys and their clients? If so, how? Yes. It seriously undermines MCL 700.2514.

Doc. #919459

STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE COUNTY OF MONROE

In the Matter of the:	Case No. 15-0538-DA
Estate of Louis Henry Bitto, III, Deceased.	Hon. Frank L. Arnold

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Following Courts June 16 2017 Decision

ORDER ~~GRANTING SUMMARY DISPOSITION~~

At a session of said Court, held in the City of Monroe, County of Monroe, State of Michigan, on July 19, 2017

THIS ORDER WAS FILED UNDER MCR 2.602 (B
THE (7) DAY PERIOD AFTER SERVICE OF TH
NOTICE EXPIRED ON 7-18-2017
AND NO OBJECTIONS HAVE BEEN FILED
Susan M Vagt 7-19-2017 (De

PRESENT: Frank L Arnold
Probate Court Judge (Deputy Clerk)

This matter having come before the Court by competing Motions for Summary Disposition; the Court issuing a decision on June 16, 2017, and being otherwise fully advised in the premises and for the reasons stated in this Courts June 16, 2017 Decision:

IT IS HEREBY ORDERED for the reasons stated in this Courts June 16, 2017 Decision Regarding 2005 Joint &Mutual Will ("Decision") attached hereto and incorporated by reference, Joann Bush's Motions for Summary Disposition pursuant to MCR 2.116(C)(8) and (10), seeking

dismissal of Louis Bitto IV's Petitions to Admit the 2005 Will and set aside probate of the 2015 will, are denied.

IT IS FURTHER ORDERED for the reasons stated in this Court's June 16, 2017 Decision, attached hereto and incorporated by reference, Louis Bitto IV's Motions for Summary Disposition pursuant to MCR 2.116(C)(8), (9) and (10) are granted.

IT IS FURTHER ORDERED that the 2005 Will was a binding contract between Decedent and his wife, and further Louis Bitto IV's Petition to Admit the 2005 Will and Set Aside Probate of the 2015 Will should be allowed to proceed. Joann Bush has failed to state a proper claim for admission of the 2015 Will because the 2015 Will is void/invalid in light of the binding contract contained in the 2005 Will which governs.

IT IS SO ORDERED

Dated: July 20, 2017

Hon. Frank L. Arnold P 52771
Judge of Probate

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF MONROE

IN THE MATTER OF: CASE NO. 2015-0538-DA

ESTATE OF LOUIS HENRY BITTO, III
Deceased HON. FRANK L. ARNOLD

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DECISION REGARDING 2005 JOINT & MUTUAL WILL

At hearing on April 18, 2017, counsel requested that this Court issue a ruling solely as to one aspect of the competing motions in the supervised estate case, File No. 2015-0538-DA: whether the 2005 "Joint & Mutual Will" of Louis Bitto III and Judith Ann Bitto (husband and wife) was a contract pursuant to MCL 700.2154.[1]

This Court determines that the language in the 2005 Will constituted a contract, irrevocable upon the death of either spouse for reasons explained herein.

I. FACTS

On **November 7, 2005**, Louis Bitto, III and Judith Bitto – husband and wife – executed a single document titled "Joint and Mutual Last Will and Testament". The original of this

[1] At hearing on April 18th, the Court recapitulated its in-chambers conference with counsel before the hearing which included opining "certifying the question" (i.e. appellate court rule dealing with issuing an advisory opinion) on the limited issue, though this court did not see how those appellate court rule applied or could be used by a trial court.

2005 Will has not been located although a photocopy has been proposed / proffered, though not admitted.

On **April 10, 2006**, wife Judith Bitto died.

On **September 14, 2015**, surviving husband Louis Bitto III executed a new Will and Trust. He transferred assets into his 2015 Trust.

On **October 8, 2015**, Louis Bitto III died.

Subsequently this decedent's estate was opened by Joann Bush who was the nominated Personal Representative in the 2015 Will and was also named First Successor Trustee in the 2015 Trust.

One of the surviving heirs – son Louis Bitto IV – filed petitions herein seeking admission of the 2005 Will and to have probate of the 2015 Will and Trust set aside.

It is the position of Louis Bitto IV that: 1) the 2005 Will ***was a binding contract*** between Louis Bitto III/Husband and Judith Bitto/Wife which could not be lawfully revoked upon the death of Judith Bitto and that, 2) the 2015 Will is void/invalid and should be set aside as a matter of law.

It is the position of Joann Bush that: 1) the 2005 Will ***did not create a binding irrevocable contract*** between Louis III and Judith, and that 2) the 2005 Will was revoked by Louis III in executing the 2015 estate documents, and that 3) that the 2015 Will and Trust govern estate and trust proceedings herein and that, accordingly 4) Louis IV's motions should be summarily dismissed.

Counsel for Joann Bush asserts that the *execution of the 2005 Will is not disputed*; rather the instant contested issues are the validity, revocability and legal effect of the 2005 Will. (See Joann Bush's MSD of 2-27-17, p.2).[2]

The proposed 2005 Will was signed by both the decedent Louis Bitto III and Judith Bitto, and was dated and witnessed in accordance with law. To this Court, the relevant excerpts of the 2005 Will (attached hereto) identify:

1) Its title:

JOINT AND MUTUAL
Last Will and Testament of
LOUIS H. BITTO III and JUDITH ANN BITTO

2) Its preamble, in pertinent part (with emphases added)

[2] Again, all counsel have stipulated to the court issuing a decision on the limited legal determination as to whether the 2005 Will was a contract pursuant to statute. The fact that there was a 2005 Will is not disputed despite the absence of the original. Discovery/deposition included testimony from the attorney who drafted and who also witnessed execution of the 2005 Will – attorney Peter Fales.

"We, **Louis H. Bitto III** and **Judith Ann Bitto** ...

for the purpose of making disposition upon our death of **our entire estate** ...

whether owned and possessed **by us** at the date of execution hereof or acquired **by us** after such date,

do hereby make, publish and declare this to be our Last Will and Testament."

3) Its mutual survivorship and residual clauses in pertinent part (with emphases added):

"ALL of **our estate**, whether held jointly, severally, or as tenants in common, both real, personal, and mixed, shall be held by the survivor of us with the right to the income, rents, or profits of all our property for the life of the survivor, and as so much of the principal as the survivor may desire from time to time for his or her care and support with his or her sound discretion and with the further right on the part of the survivor to sell and execute conveyances of without the authority or approval of any Court, and or all of the property, to invent and reinvest the same, and to use the proceeds as he or she may deem proper during the survivor's lifetime for ***his or her*** care and support without being required in any manner to account therefore.

Upon the death of the survivor of us, or in the event of our simultaneous deaths, WE GIVE, DEVISE AND BEQUEATH, all of the rest, residue and remainder of **our estate**, real personal, or mixed of whateversoever nature and wheresoever situate, to which we may be entitled or which we may own and any estate which we may have the dispose of at death, and which has not been herefore disposed of in this Will to our three children, Sheryl Dauterman, Brian Bitto, and Louis Bitto IV, and to Lousi H. Bitto III's son Terry Woods..."

4) Its testamentary trust in pertinent part (with emphases added):

"If any of our children should predecease us, the deceased child's share shall go to that child's children, share and share alike.

Provided, however, in the event any of our grandchildren of the deceased child should not have reached the age of twenty five (25) on the date of our deaths, we give, devise and bequeath our deceased child's share of our estate to **the BITTO TESTAMENTARY TRUST** hereinafter established in this paragraph of this, OUR LAST WILL AND TESTAMENT.

The Trust described in the preceding paragraph may be referred to as the BITTO TESTAMENTARY TRUST, said Trust shall come into existence only if necessary to receive a bequest under the foregoing provisions of the preceding paragraphs, and the terms of said Trust, if in existence at any time, shall be set out below:

A. The Co-Trustees of said Trust shall be our son, **Louis H. Bitto, IV** and our daughter, **Sheryl L. Dauterman** and the Co-Trustees, to the extent permitted by law, shall be allowed to serve without bond.

B.In administering the Trust for our grandchildren and provided by the previous paragraph, our Co-Trustees shall maintain and distribute the Trust assets as follows..."

The 2005 Will goes on with several pages of the testamentary trust provisions, instructions, etc., until the testamentary trust provisions end on p. 8. The 2005 Will concludes with clauses pertaining to nomination of Personal Representatives, the P.R's authority, and standard execution and witness clauses.

II. ANALYSIS

For the limited scope requested of the court and *not addressing* the motions as they pertain to the annum 2015 testamentary capacity issues, undue influence issues, issues relating to "intent to revoke", or suitability of administrators, etc., this Court hereby denies Joanne Bush's Motion for Summary Disposition for dismissal of Louis IV's petitions. Further, in this respect, this Court grants Louis Bitto IV's competing Motion for Summary Disposition.

The Court concludes that the 2005 Will was a binding contract between decedent and his wife and further that Louis IV's petitions to admit the 2005 Will should be able to proceed for hearing and the request to set aside probate of the 2015 Will should be allowed to proceed for hearing. While the Court was asked to address a limited issue, it overlaps in the competing motions and therefore the court must find that Joanne Bush has failed to state a proper claim for admission of the 2015 Will because the 2015 Will is void/invalid in light of the binding contract contained in the 2005 Will.

First, in viewing the Michigan Estates and Protected Individuals Code, MCL 700.2514 reads as follows:

"Contracts concerning succession.
Sec. 2514.

"(1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by one or more of the following:

(a) Provisions of a will stating material provisions of the contract.

(b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.

(c) A writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."

In this Court's eyes, the 2005 Will herein establishes the material provisions of the contract between Louis Bitto III and Judith Bitto consistent with subsection 1(a) above: very simply, that as husband and wife they agreed in this one, single, jointly signed document that if one of them survived the other, the surviving spouse would hold a life estate in "ALL" of their estate using the "income, rents, profits" etc. from their estate for that surviving spouse's "care and support", and further upon that surviving spouse's death, what was left of their estate would be given in certain shares to their surviving children (or to grandchildren if a child pre-deceased, with detailed trust provisions for grandchildren under age 25).

Even more simply stated, the 2005 agreement/contract/compact was for the Bitto estate – in lay person's terms – *to stay in the family.*

This Bitto singular 2005 Will is distinguishable from what this Court views as another common, yet slightly different, estate plan between spouses involving mutual and reciprocal wills of husbands and wives often (but not always) consisting of 2 identical/reciprocal wills, executed simultaneously and containing mutual provisions giving/bequeathing the estate to the other surviving spouse *outright* upon death (or to their children if the surviving spouse predeceases).[3] Bequeathing the estate *outright* leaves the survivor free to do whatever they want with their estate.[4] The Bitto singular Will did not reflect the mutual/reciprocal scheme as stated above, but rather created a clear, singular binding structure for the Bittos to ensure that the estate they both shared in life would take care of the surviving spouse and anything left would to the kids (or their kids). The estate scheme was "lock, stock, and barrel", in toto, and irrevocable upon the death of the first spouse. The 2005 Will represented the marital and estate compact, and the Bittos' intent was reflected in form and substance.[5]

Louis III's execution of estate documents in 2015 did not revoke the 2005 Will because the 2005 will was a binding contract that could not be revoked, therefore making the 2015 Will invalid. Louis III's execution of estate documents in 2015 appears to have resulted in a breach of the contract embodied in the 2005 Will.

[3] The court uses the term "outright" for descriptive purposes. Naturally, estates are subject to payment of just debts, taxes, claims, liens, costs, fees, encumbrances, allowances, etc., etc.

[4] "Mutual wills" are separate wills of two or more persons which are reciprocal in their provisions, or wills executed in pursuance of compact or agreement between two or more persons to dispose of their property, to each other or to third persons, in particular mode or manner. In re Estate of Thwaites, 173 Mich.App. 697 (1988).

[5] While this Court has repeated the *singular* aspect of the 2005 Bitto Will, the fact that it was a single document is not dispositive in the ruling herein, but certainly is one factor of many in evidencing the contract embodied in the document.

While the law provides that *execution of the 2005 Will* does not create a presumption of a contract not to revoke a will (see MCL 750.2514(2), supra), there is nothing factually or legally presented to suggest that the 2005 Will is anything other than embodying the contract between the Bittos given its clear language[6]. The fact that Mr. Bitto executed estate documents and a new Will in 2015 does not negate the clear compact entered into by the Bittos 10 years earlier for the benefit of them and their children.

This Court finds persuasive Rogers v. Rogers, 136 Mich.App. 125 (1984). In reviewing the wording of the Will executed by husband Charles Rogers and wife Faith Rogers in that case, the Court of Appeals decision recites as follows:

> "The April 20, 1961, joint will of Charles H. and Faith B. Rogers provides in part:
>
> "SECOND, It is the will and desire of each of us, and the mutual wish and desire of both of us, that on the death of either of us, all of the property of the deceased party, whether real, personal or mixed, shall become the sole and separate property of the surviving party for his or her use so long as the survivor shall live.
>
> "THIRD, Upon the decease of the survivor of us, we give, devise and bequeath any remainder and residue of our property to the following people, in equal shares, share and share alike, except each husband and wife will take one share..."
> Id., p. 128 (emphases added)

In its analysis, the Court of Appeals in Rogers noted the governing rules (cited by counsel in the Bitto matter herein):

> "A will, although jointly executed by two persons, is not a contract, strictly speaking, since it is subject to change and represents simply a statement of the wishes of the testators as they exist at the time of execution. The terms of, or the benefits from, a will, however, may be the subject of a contract between the persons executing it. Moreover, a will jointly executed by two testators containing reciprocal bequests may be, under some circumstances, sufficient evidence to establish a contract to make the testamentary dispositions contained in such a will.
>
> A will which is executed by two testators pursuant to an agreement and is reciprocal in its bequests creates a contractual obligation; the mere fact alone that two identical wills are made by a husband and wife does not suffice to establish an oral agreement to make mutual reciprocal wills, each binding on the other. It is the contract to make a joint and mutual will, not the will itself, that is irrevocable by the survivor after the death of one of the parties to it.
>
> As a general rule, a mutual or joint will may be revoked by either of the co-

[6] The contractual nature of the Will and intent of the Bittos in 2005 was testified to by the attorney who drafted and witnessed the 2005 Will, for what it's worth, if the court can/should consider that testimony.

makers, provided it was not made in pursuance of a contract. But, ***where such a will has been executed in pursuance of a contract or agreement entered into by the testators to devise their separate property to certain designated beneficiaries, subject to a life estate or other interest in the survivor, it is generally held irrevocable when, upon the death of one, the survivor avails himself of the benefits of the devise in his favor.*** (*Citing Schondelmayer v. Schondelmayer, 320 Mich. 565, 31 N.W.2d 721 (1948)).*

Thus, for the terms of the will to be irrevocable upon the death of one of the parties, an agreement between the parties must be established. The general rule is stated as follows:

> *"A will jointly executed by two testators may disclose so clearly that it is the product of a contract between them, that the will itself is sufficient evidence to establish the contract."*

Id., pp. 130-132.

Ultimately, the Rogers court held that this joint and mutual will constituted and contained a contract between the Mr. and Mrs. Rogers whereby, after death of either of them, the survivor would be bound by the terms of the will, that is, the Will would be irrevocable. Id., 134.

It is for the legal analysis above that this Court determines that the 2005 Bitto Will was a contract between Louis Bitto III/Husband and Judith Bitto/Wife which could not be lawfully revoked upon the death of Judith Bitto and that, further, the 2015 Will is void/invalid and should be set aside as a matter of law.

III. MOTIONS FOR SUMMARY DISPOSITION

A. Joann Bush has failed to state a claim on which relief can be granted regarding the binding contractual nature of the 2005 Will

In ruling on a Summary Disposition Motion brought under MCR 2.116(C)(8), the Court must accept all well-pleaded factual allegations as true and construe them in a light most favorable to the nonmovant. Maiden v. Rozwood, 461 Mich 109, 119 (1999). The Court must also decide the Motion under this rule only upon the pleadings; "the motion must be granted if no factual development could justify the plaintiff's claim for relief" Bailey v Schaaf, 494 Mich 595 (2013). "All well-pleaded factual allegation sare accepted as true and construed in a light most favorable to the nonmovant". Johnson v Pastoriza, 491 Mich 417 (2012).

In viewing Louis IV's (C)(8) Motion in a light most favorable to Joann Bush, there is no factual development that could justify Joann Bush's claim that the 2005 Will was superseded by the 2015 Will considering the court's analysis above. While discovery evolved which included deposition testimony of the attorney who drafted and witnessed

the execution of the 2005 Bitto Will, and while that testimony gives further credence to evidence an intent that Louis III and Judith Bitto indeed entered into a binding mutual and joint contract in their 2005 Will as cited by this Court (and argued by Louis Bitto IV), this Court does not believe it is even necessary to go beyond the 2005 Will document itself; it speaks clearly for itself. If the Court can/must go beyond the "four-corners" of the document, then the scrivener's testimony adds to the court's ruling.

B. There is No Genuine Issue of Material Fact to Controvert the Binding Contract Embodied in the 2005 Will

Under MCR 2.116(C)(10), a party is entitled to judgment when there is no genuine issue of any material fact. A Motion brought pursuant to this rule "tests the factual support for a claim." *Smith v. Globe Life Ins Co*, 460 Mich 446, 454-5 (1999). A motion pursuant to MCR 2.116(C)(10) is reviewed by considering the pleadings, admissions and other evidence submitted by the parties in a light most favorable to the nonmoving party. " Lathan v Baron Malow Co., 480 Mich 105 (2008). "The moving party must specifically identify the matters that have no disputed factual issues and it has the initial burden of support its position by affidavits, depositions, admissions, or other documentary evidence." Bronson Methodist Hos v Auto Owners Ins Co, 295 Mich App 431 (2012. "The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed material fact exists." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." West v Gen Motors Corp, 469 Mich 177 (2003).

Again, for the limited scope requested of the court by counsel in its ruling herein, and *not addressing* the motions as they pertain to the annum 2015 testamentary capacity issues, undue influence issues, issues relating to "intent to revoke", or suitability of administrators, etc., this Court hereby denies Joanne Bush's Motion for Summary Disposition for dismissal of Louis IV's petitions and grants Louis Bitto IV's competing Motion for Summary Disposition because there is no genuine issue of material fact regarding the contractual, binding and irrevocable nature of the 2005 Bitto Will.

In viewing Louis IV's (C)(10) Motion in a light most favorable to Joann Bush and even in giving her the benefit of reasonable doubt considering a subsequent Will in 2015 which ostensibly appeared to revoke the prior will, there is no factual development to suggest that the 2005 Will was revocable or anything other than what it purports to be for the reasons stated above: that is, a contract between husband and wife, granting the survivor a life estate, with the remainder going to the children (or grandchildren as the case might be). Again, because the concepts in (C)(8) and (C)(10) overlap, even though discovery evolved which included deposition testimony of the attorney who drafted and witnessed the execution of the 2005 Bitto Will, and while that testimony gives further credence to evidence an intent that Louis III and Judith Bitto indeed entered into a binding mutual and joint contract in their 2005 Will as cited by this Court (and argued by Louis Bitto IV), this Court does not believe it is even necessary to go beyond the 2005

Will document itself: it speaks clearly for itself. If the Court can/must go beyond the "four-corners" of the document, then the scrivener's testimony adds to the court's ruling.

IV. RECAPITUATION OF CONCLUSION

For these reasons, and in the limited context, this Court hereby denies Joann Bush's Motion for Summary Disposition for dismissal of Louis IV's petitions for which he may proceed. Further this Court grants Louis Bitto IV's competing Motion for Summary Disposition against Joann Bush.

The 2005 Will was a binding contract between decedent and his wife, and further Louis IV's petitions to admit the 2005 Will and set aside probate of the 2015 Will should be allowed to proceed. Joann Bush has failed to state a proper claim for admission of the 2015 Will because the 2015 Will is void/invalid in light of the binding contract contained in the 2005 Will which governs.

Dated: June 16, 2017

Frank L. Arnold

Hon. Frank L. Arnold (P52771)
Probate Court Judge for Monroe County

Attachment:

2005 Joint and Mutual
Last Will & Testament

STATE OF MICHIGAN
COURT OF APPEALS

In the matter of:	Court of Appeals No. 339083
ESTATE OF LOUIS HENRY BITTO, III.	Monroe County Probate Court Case No. 2015-0538-DA

/

In the matter of:	Court of Appeals No. 339507
ESTATE OF LOUIS HENRY BITTO, III.	Monroe County Probate Court Case No. 2015-0538-DA

/

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APPELLANT JOANN BUSH'S BRIEF ON APPEAL

Oral Argument Requested

Table of Contents

Index of Authorities

Cases

Statutes

Rules

Other Authority

Jurisdictional Statement

These are appeals from the Monroe County Probate Court's June 16, 2017 "Decision Regarding 2005 Joint & Mutual Will" (exhibit 1) (court of appeal docket no. 339083) and its July 19, 2017 "Order Following Court's June 16, 2017 Decision." Exhibit 2 (court of appeals docket no. 339507). This court consolidated the appeals by order on August 17, 2017.

Decedent Louis H. Bitto, III executed a joint and mutual will with his wife in 2005. Exhibit 3. He executed another will in 2015, after his wife's death. Exhibit 4. Louis Bitto, III died on October 8, 2015. Decision, p 2 (exhibit 1). Appellant Joann Bush, nominated as personal representative in the 2015 will, opened an estate and sought to probate the 2015 will. *Id.* Louis Bitto, IV, one of decedent's children, disinherited by the 2015 estate planning documents, sought admission of the 2005 will and to have probate of the 2015 will set aside. *Id.*

The legal issue is whether the 2005 will constituted a contract not to revoke the will after the death of one of the joint testators—whether the 2005 will became irrevocable on the death of one of the spouses. The probate court held the 2005 will was a contract under MCL 700.2514 and the 2015 will was void. Decision, p 9 (exhibit 1). The court entered a "decision" on the parties' cross-motions for summary disposition on June 16, 2017. Exhibit 1. It followed up with an "Order Following Court's June 16, 2017 Decision" on July 19, 2017. Exhibit 2.

Joann Bush filed claims of appeal from both the "decision" and the "order." The "decision" should be treated as an order, since it ruled on the parties' cross-motions for summary disposition. The "decision" expressly denied Joann Bush's summary disposition motion and granted Louis Bitto, IV's motion for summary disposition. Exhibit 1, pp 4, 9. The substance of the order, not its label, controls. *Lichon v American Universal Ins Co*, 435 Mich 408, 427 n14; 459 NW2d 288 (1990). But, even if that view is incorrect, the later order "following" the "decision" is an order that may be appealed under the court rules cited below.

Each of the two orders is appealable of right to this court. This court has jurisdiction over "[a] judgment or order of a court ... from which appeal of right to the Court of Appeals has been established by ... court rule." MCR 7.203(A)(2). MCR 5.801(A) defines probate court orders that are appealable as a matter of right. The orders here satisfy several provisions of that rule.[1]

First, the orders admit the 2005 will to probate and deny probate of the 2015 will. MCR 5.801(A)(2)(b) (order "admitting or denying to probate of a will"). Second, the orders determine the validity of both wills. MCR 5.801(A)(2)(c) (order "determining the validity of a governing instrument").[2] Third, the orders interpret the 2005 will.

[1] The Supreme Court amended MCR 5.801, effective June 21, 2017, to implement legislation that eliminated probate court appeals to the circuit court. Order, 6/21/17, ADM File No. 2016-32. Appellant filed the claims of appeal after the amendment took effect, so the amended rule applies.

[2] MCL 700.1104(m) defines "governing instrument" and includes a will.

MCR 5.801(A)(2)(d) (order "interpreting or construing a governing instrument"). Finally, the orders affect the rights and interests of both appellant and appellee, since the two wills treat them differently. MCR 5.801(A)(5) ("an order ... that otherwise affects with finality the rights or interests of a party or an interested person in the subject matter").

The claims of appeal were timely. Appellant filed a claim of appeal from the June 16, 2017 decision on July 5, 2017. She filed a claim of appeal from the July 19, 2017 order on August 1, 2017. Each claim of appeal was within 21 days of the order appealed. MCR 7.204(A)(1)(a).

Statement of Questions Involved

1. Does the mere fact that a husband and wife executed a mutual will providing that the survivor would inherit their property and providing for disposition of the property on the death of the survivor evidence a contract for the survivor not to revoke the will after the death of the first spouse as provided under MCL 700.2514?

The probate court said "yes."

Appellant Joann Bush says "no."

2. Even if there were a contract that the survivor would not revoke the will after the death of the first spouse, does that invalidate a subsequent will revoking the first will?

The probate court said "yes."

Appellant says "no."

3. Is an action for breach of contract the only proper remedy for breach of a contract not to revoke a will?

The probate court said "no."

Appellant says "yes."

Statement of Facts

I. Nature of the Action

The issue is whether decedent's 2015 will should be admitted to probate. Appellee claims the 2015 will is invalid because it violates a contractual promise in decedent's 2005 will that decedent would not revoke the 2005 will after his spouse's death.

II. Summary of Facts

The relevant facts—the terms of the 2005 and 2015 wills—are not disputed. The legal effect of the 2005 will is at issue.

The decedent, Louis Bitto, III, and his wife Judith Ann Bitto executed a "joint and Mutual Last Will and Testament" on November 7, 2005. Exhibit 3.[3] The will was a single document signed by both of them. *Id.*, p 8. The main dispositional provision was as follows:

> ALL of our estate ... shall be held by the survivor of us with the right to the income, rents or profits of all our property for the life of the survivor, and so much of the principal as the survivor may desire from time to time for his or her care and support with his or her sound discretion, and with the further right on the part of the survivor to sell and execute conveyances of, without the authority or approval of any Court, any or all of the property, to invest and reinvest the same, and to use the proceeds as he or she may deem proper during the survivor's lifetime for his or her care and support without being required in any manner to account therefore.
>
> Upon the death of the survivor of us, or in the event of our simultaneous deaths, WE GIVE, DEVISE AND BEQUEST, all of the rest, residue and remainder of our estate ... to our three children, SHERYL L. DAUTERMAN, BRIAN M. BITTO and LOUIS H. BITTO, IV, and to Louis H. Bitto, III's son, TERRY MICHAEL WOODS ....

[3] The original of the 2005 will was not located. A copy was offered. Decision p 2 and n2 (exhibit 1). For purposes of the issues here, there is no dispute that it was executed.

Id., p 1. There were other provisions for the possibility of children predeceasing their parents and establishment of a trust for grandchildren. *Id.*, pp 2-5. The will nominated Louis H. Bitto, IV and Sheryl L. Dauterman as co-personal representatives. *Id.*, p 8.

Judith Bitto died on April 10, 2006. Decision, p 2 (exhibit 1).

Louis Bitto, III executed a new will on September 14, 2015. Exhibit 4. The will revoked previous wills. *Id.*, p 1. It was a pour-over will devising his estate to a trust established on the same date. *Id.*, ¶ V, p 2. It nominated Joann Bush as personal representative and decedent's son Brian Bitto as alternate personal representative. *Id.*, ¶ VIII, p 7. Joann Bush is the first successor trustee (after Louis Bitto, III) under the trust and Brian Bitto is the second successor trustee. Louis M. Bitto, III Trust Agreement, p 2 (exhibit 2 to Joann Bush's 2/27/17 motion for summary disposition). The trust provides for distributions after Louis Bitto, III's death to his children and grandchildren and to Joann Bush but expressly excludes Louis Bitto, IV.

Louis Bitto, III died on October 8, 2015. Decision, p 2 (exhibit 1).

III. Proceedings in Probate Court

Joann Bush filed a petition to probate the 2015 will. Decision, p 2 (exhibit 1). Louis Bitto, IV sought to probate the 2005 will and to have probate of the 2015 will set aside. *Id*[4].

[4] Amended Petition to Set Aside Informal Probate of Will, 3/30/16; Petition to Admit Will, 6/27/16.

The parties filed cross-motions for summary disposition.[5] They agreed that the court should rule on the threshold question of whether the 2005 will constituted a contract not to revoke the will after the death of one of the testators. Decision, p 2 n2 (exhibit 1) ("all counsel have stipulated to the court issuing a decision on the limited legal determination as to whether the 2005 Will was a contract pursuant to statute"). *Accord, id.,* p 8; transcript 4/18/17, pp 5-6 (requesting a ruling on "whether the 2005 will is a contract pursuant to MCL 700.2514" and asking the court to defer the issues of capacity and undue influence) (exhibit 5). The parties waived oral argument. *Id.,* p 6. Execution of the 2005 will was not contested.[6]

The court issued its decision on June 16, 2017. Exhibit 1. It stated the decision was of "limited scope" and was not addressing "testamentary capacity issues, undue influence issues, issues relating to 'intent to revoke', or suitability of administrators, etc." *Id.,* pp 4, 8. It held that the 2005 will was a contract not to revoke the will after the death of the first spouse. *Id.,* p 5. It read the 2005 will as creating a life estate in the surviving spouse, with the children and grandchildren as remaindermen. *Id,* pp 5, 8. It said the 2005 will was a contract "for the Bitto estate ... *to stay in the family.*" *Id.,* p 5 (emphasis in original). It concluded that "[t]he estate scheme was ... irrevocable upon the death of the first spouse."

[5] Motion for Summary Disposition on Behalf of Joann Bush With Regard to Purported Last Will and Testament Dated November 7, 2005, 2/27/17; Petitioner's [Louis Bitto, IV's] Motion for Summary Disposition Pursuant to MCR 2.116(C)(8), (C)(9) and (C)(10), 2/27/17.

[6] Brief in Support of Motion for Summary Disposition on Behalf of Joann Bush Pursuant to MCR 2.116(C)(8) & (10), 2/27/17, p 2.

Id. It followed, the court said, that the 2015 will was invalid and was "a breach of the contract embodied in the 2005 Will." *Id.* The court's decision was based solely on reviewing the text of the 2005 will. *Id.*, pp 8-9 (noting that the scrivener's testimony was taken but it was not necessary to go beyond the document itself).

There are other matters in the probate court not relevant to this appeal. Appellee claims that, if the 2015 will is to be considered, it is invalid because of undue influence by Joann Bush and lack of the decedent's capacity. Appellant claims that, since the original 2005 will has not been found, there is a presumption that it was revoked and it is appellee's burden to prove otherwise. These are issues to be determined by a trier of fact, if they are relevant, after the threshold issue presented in this appeal. The probate court did not address those issues. The parties and the court viewed the conflict between the two wills as a threshold issue and the court addressed that first. Its decision was "solely as to one aspect of the competing motions in the supervised estate case, File No. 2015-0538-DA: whether the 2005 'Joint and Mutual Will' of Louis Bitto III and Judith Ann Bitto (husband and wife) was a contract pursuant to MCL 700.2154 [*sic*; should be MCL 700.2514]." Exhibit 1, p 1. *Accord, id.*, p 2 n2 ("all counsel have stipulated to the court issuing a decision on the limited legal determination as to whether the 2005 Will was a contract pursuant to statute"). There are also proceedings regarding decedent's trust. Monroe County Probate Court Case No. 16-0147-TT. Those proceedings are not relevant to the issues on appeal here regarding the two wills.

Argument

I. Standard of Review

This appeal involves application of a statute to uncontested facts. This court reviews issues of statutory interpretation *de novo. In re Attia Estate*, 317 Mich App 705, 709; 895 NW2d 564 (2016). It also involves a ruling on summary disposition motions, which is reviewed de novo. *Id.*

II. The 2005 Will Was Not a Contract Not to Revoke After Death of One of the Spouses[7]

A. The Controlling Statute

This is the statute that governs contracts not to revoke a will:

> (1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:
>
> (a) Provisions of a will stating material provisions of the contract.
>
> (b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.
>
> (c) A writing signed by the decedent evidencing the contract.
>
> (2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

[7] Joann Bush preserved this argument in her Brief in Support of Motion for Summary Disposition on Behalf of Joann Bush Pursuant to MCR 2.116(C)(8) & (10), 2/27/17, pp 7-10; and her Brief in Support of Response to Petitioner's Motion for Summary Disposition Pursuant to MCR 2.116(C)(8), (C)(9) and (C)(10), 4/11/17, pp 4-11.

MCL 700.2514. This provision of the Estates and Protected Individuals Code was carried over from the Revised Probate Code, former MCL 700.140, with minor wording changes.

B. Mutual or Reciprocal Wills Do Not Evidence a Contract Not to Revoke

One cannot rely solely on the dispositive provisions of a joint or mutual will to evidence a contract not to revoke. The statute requires a *contract,* something *in addition* to the will itself, or at least some kind of contractual language in the will. A joint and mutual will alone "does not create a presumption of a contract not to revoke the will." MCL 700.2514(2). The statute distinguishes between the will itself and "a contract ... not to revoke a will." There must be something more than two spouses providing for joint and mutual provisions for disposition of their property. "An agreement that mutual wills are to be binding on the survivor cannot be inferred from the identical and reciprocal provisions alone, but *must be established by other evidence.*" *Soltis v First of America Bank-Muskegon,* 203 Mich App 435, 442; 513 NW2d 148 (1994) (emphasis added)[8]; *In re Thwaites Estate,* 173 Mich App 697, 702; 434 NW2d 214 (1988) (same). *Accord, In re VanConett Estate,* 262 Mich App 660, 663; 687 NW2d 167 (2004); *Rogers v Rogers,* 136 Mich App 125, 130-131; 356 NW2d 288 (1984) ("the mere fact alone that two identical wills are made by a husband and wife does not suffice to establish an oral agreement to make mutual reciprocal wills, each binding on the other."); *Glover v Glover,* 18 Mich App 323, 324; 171 NW2d 51 (1969). "A will which is executed by two testators *pursuant to an agreement* and

[8] *Soltis* involves a trust instead of a will. But this court applied former MCL 700.140 (now MCL 700.2514) as a guide to its analysis. 203 Mich App at 442.

is reciprocal in its bequests creates a contractual obligation ...." *Rogers,* 136 Mich App at 130 (emphasis added). The person claiming a contract not to revoke must "prove an actual express agreement ...." *Soltis,* 203 Mich App at 443; *Thwaites,* 173 Mich App at 703. *Accord, Rogers,* 136 Mich App at 131 ("an agreement between the parties must be established"). There must be something "stating material provisions of the contract" not to revoke. MCL 700.2514(1)(a).

C. Contract Interpretation Principles Apply

In considering whether the 2005 will constitutes a contract not to revoke, the court must apply general contract interpretation principles:

> [W]hen the language is clear and unambiguous, interpretation is limited to the actual words used, and parol evidence is inadmissible to prove a different intent. An unambiguous contract must be enforced according to its terms.

In re Leix Estate, 289 Mich App 574, 590; 797 NW2d 673 (2010). "These principles apply to a contract to make a mutual will." *Id.* at 591.

D. The 2005 Will Does Not Evidence a Contract Not to Revoke

Applying the law summarized above, the 2005 will does not evidence a contract not to revoke. MCL 700.2514(1)(b) and (c) don't apply. There is no "express reference in [the] will to a contract." MCL 700.2514(1)(b). Nor is there a "writing signed by the decedent evidencing the contract." MCL 700.2514(1)(c). The sole argument below was based on MCL 700.2514(1)(a). Decision, p 5 (exhibit 1). That requires a showing of "[p]rovisions of a will stating material provisions of the contract." There are none in the 2005 will. And, since the language of the 2005 will is not ambiguous, extrinsic evidence of intent is not

permitted. *Leix,* 289 Mich App at 590.[9] The probate court agreed that it was not necessary to go beyond the language of the 2005 will. Decision, pp 8-9 (exhibit 1).

The 2005 will does not contain contractual language—let alone "material provisions"—that say that it could not be revoked after the first spouse's death. Neither appellee nor the probate court decision point to any clear *contractual* language that states the will could not be revoked after the death of the first spouse. There is none. All that appellee and the probate court point to is that the will says the survivor inherits the estate and, on the death of the second spouse, the remainder (if any) goes to the children and grandchildren. But that alone is not enough to prove a contract not to revoke. The claimed contract "must be established by *other evidence*" that will "prove an actual express agreement." *Soltis,* 203 Mich App at 442, 443 (emphasis added); *Thwaites,* 173 Mich App at 702, 703 (same). There is no other evidence and no express agreement. "Nothing in the language of the will indicates that the will is irrevocable." *In re White Estate,* 260 Mich App 416, 421; 677 NW2d 914 (2004).

The probate court inferred an agreement from the dispositive provisions. Decision, p 5 (exhibit 1). But that contravenes the statutory and case law requirements that there must

[9] Appellee relied on the testimony of the drafter of the 2005 will. Even if that were considered (which it should not be), that testimony proved nothing. The witness had no specific memory of discussions he had with the Bittos but rather relied on his 11-year-old cryptic notes that revealed nothing specific about the discussions and the Bittos' intent. He said that the will was a mutual will intended to be irrevocable based on the language of the will itself, not on any specific recollection of discussions with the Bittos. But, as discussed above, the language of the will does not evidence an agreement not to revoke.

be *other evidence* showing an *express* (not implied) contract. Here, as in *Soltis,* "[t]here is no provision ... stating material provisions of a contract, nor is there any express reference ... to a contract." 203 Mich App at 443. *Accord, Thwaites,* 173 Mich App at 703; *Glover,* 18 Mich App at 324 (no express agreement that will is binding on the survivor). An example of a will that satisfies this requirement is in *VanConett.* There, the will said: "I hereby expressly acknowledge that this Will is made pursuant to a contract or agreement" and "then state[d] the material provisions of the contract." 262 Mich App at 664. There is no similar statement here.

The probate court was also wrong in applying the incorrect burden of proof. The proponent of a contract not to revoke has the burden of proving existence of the contract. *Soltis,* 203 Mich App at 442; *Thwaites,* 173 Mich App at 702-703; *Glover,* 18 Mich App at 324. Relying solely on the dispositive terms of the 2005 will, the court said "there is nothing factually or legally presented to suggest that the 2005 Will is anything other than embodying the contract between the Bittos ...." Decision, p 6 (exhibit 1). In saying that, the court assumed that the dispositive provisions of the 2005 will evidence a contract not to revoke (contrary to MCL 700.2514(2)) and then incorrectly placed the burden on Joann Bush to present evidence contradicting that assumption.

The terms of the 2005 will itself weigh against finding a contract not to revoke. First, the will does not create a life estate in the surviving spouse, as the probate court held. Decision, p 5 (exhibit 1). It doesn't use the term "life estate." Rather, it gives the surviving spouse full ownership. "All of our estate ... shall be held by the survivor of us." Exhibit 3,

p 1. Decedent "received a fee simple estate in the couple's property at [the first spouse's] death; hence, he was free to dispose of the property as he wished, and his beneficiaries were only entitled to the remainder." *VanConett,* 262 Mich App at 665.

Second, under the terms of the will, the surviving spouse can transfer the property without restriction. He can use income and principal "for his ... care and support with [*sic;* should be "within"] his or her sound discretion" and, *in addition,* has "the *further right* ... to sell and execute conveyances of ... any or all of the property." Exhibit 3, p 1 (emphasis added). Giving the phrase "further right" effect means that disposition of the property can be for purposes other than care and support. The survivor could sell or gift the property to anyone "without being required in any manner to account therefore." *Id.* Although the will says the survivor may use proceeds of a sale "for his or her care and support" (*id.*), that is only one of three alternatives for use of the property. The survivor may (1) sell, (2) invest and reinvest, and (3) use the proceeds for care and support. *Id.* Giving effect to all this language means that the survivor is not contractually limited in disposition of the property.

The language in the 2005 will is in contrast to the language that the Supreme Court held was contractual in *Schondelmayer v Schondelmayer,* 320 Mich 565; 31 NW2d 721 (1948). There the survivor was allowed to "live as he or she has been accustomed, using so much of the income or principal as may be necessary for his or her comfort of [or?] convenience." 320 Mich at 571 (bracketed word in original). That language—limiting the survivor to "so much of the income or principal" as necessary for

"comfort or convenience"—showed an intention to limit the survivor's ability to otherwise dispose of the assets. In contrast, the 2005 will here provides for unrestricted use of the "income, rents or profits." Exhibit 3, p 1. And it provides for as much of the principal "as the survivor may desire from time to time ...." *Id.* The will in *Schondelmayer* also directly referred to its irrevocability by stating "This instrument is hereby declared to be the last Will and Testament of either, as the said survivor ...." 320 Mich at 571. The 2005 will here does not have such limiting language.

The probate court's decision exclusively relied on *Rogers*. Exhibit 1, pp 6-7. That reliance was misplaced. First, although that opinion discussed whether there was a contract not to revoke a mutual will, that discussion was nonbinding dictum because the court held that title to realty owned by spouses as tenants by the entirety passed by operation of law and was not governed by the will. Second, *Rogers* did not cite or discuss the controlling statute. Third, the will in *Rogers,* while providing that the property became the property of the surviving spouse, did not contain the broad language that is in the 2005 will here that the survivor could dispose of any or all of the property without the authority or approval of any court. Ultimately, *Rogers* holds only that a joint will with reciprocal bequests *"may be, under some circumstances"* evidence of a contract. 136 Mich App at 130 (emphasis added). It recognizes the general rule is that the will must be "executed in pursuance of a contract" and that "an agreement between the parties must be established." *Id.* at 131.

In short, the 2005 will does not evidence a contract not to revoke. The probate court was wrong in finding that it did.

III. Even if the 2005 Will Was a Contract, the 2015 Will Is Not Void[10]

> It is not a ground for contest to the probate of a will that it breaches the contract made under a prior joint and mutual will. The injured's remedy lies in his right of action to enforce the contract, not in a contest of the probate of the will, which constitutes the breach.

Kozyra v Jackman, 60 Mich App 7, 13; 230 NW2d 284 (1975).

The discussion above shows that there was no contract not to revoke the 2005 will. But, even if there were such a contract, that does not invalidate the 2015 will. If the decedent breached the supposed contract, the remedy is damages for breach of the contract, not invalidation of the 2015 will. The 2015 will (including its nomination of Joann Bush as personal representative and its dispositional provisions) still stands; the 2005 will is revoked; and appellee would have a claim against the estate for damages for breach of contract. That is because "the agreement (not the will) is irrevocable." *Leix,* 289 Mich App at 578. *Accord, Schondelmayer,* 320 Mich at 572. "[T]he contract, rather than the will itself, becomes irrevocable by the survivor after the death of a party." *VanConett,* 262 Mich App at 666. *Accord, Schondelmayer,* 320 Mich at 570; *Eicholtz v Grunewald,* 313 Mich 666, 675-676; 21 NW2d 914 (1946). "[T]he decedent had the right to revoke his will ...." *VanConett,* 262 Mich App at 666. That leaves only a right of action to enforce the supposed contract. *Schondelmayer,* 320 Mich at 572; *Leix,* 289 Mich App at 579; *Kozyra,* 60 Mich App at 13.

[10] Joann Bush preserved this argument in her Brief in Support of Response to Petitioner's Motion for Summary Disposition Pursuant to MCR 2.116(C)(8), (C)(9) and (C)(10), 4/11/17, p 6.

Relief Requested

Joann Bush requests that the court reverse and remand to the probate court with directions to grant her motion for summary disposition and deny appellee's motion for summary disposition. Alternatively, if the court holds that the 2005 will was a contract not to revoke, Joann Bush requests that the court vacate the probate court's decision holding that the 2015 will was void and remand for further proceedings for a remedy for breach of contract.

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Dated: September 7, 2017

Certificate of Service

I hereby certify that on September 7, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the EFC system which sends notification of such filing to all parties of record.

s/Marsha L. Johnson

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Exhibits

1	Decision Regarding 2005 Joint & Mutual Will, 6/16/2017
2	Order Following Court's June 16, 2017 Decision, 7/19/2017
3	Joint and Mutual Last Will and Testament of Louis H. Bitto, III and Judith Ann Bitto, 11/7/2005
4	Last Will and Testament of Louis H. Bitto, III, 9/14/2015
5	Transcript of hearing on cross-motions for summary disposition, 4/18/2017

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of:	Court of Appeals No. 339083
ESTATE OF LOUIS HENRY BITTO, III,	Monroe County Probate Court Case No. 2015-0538-DA

In the Matter of:	Court of Appeals No. 339507
ESTATE OF LOUIS HENRY BITTO, III,	Monroe County Probate Court Case No. 2015-0538-DA

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APPELLEE'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Court Rules

Miscellanous

COUNTER-STATEMENT OF JURISDICTION

Appellant asserts she is entitled to an appeal of right pursuant to MCR 7.203 and this Court has jurisdiction over said appeal based on three alternative theories – (1) the orders admit the 2005 will to probate and deny probate of the 2015 will, (2) both orders determine the validity of both wills and the (3) orders interpret the 2005 will as a governing instrument.

Appellee asserts this court lacks jurisdiction pursuant to MCR 7.203 for the following reasons. First, the 2015 will was informally admitted to probate on October 19, 2015. Although counsel for Appellant asserts there is no objection to the 2005 Will, the 2005 Will has not yet been admitted to probate and all assets have been probated pursuant to the terms of the 2015 will during the course of litigation. Additionally, despite the fact Appellee prevailed on summary disposition in the lower court, the orders do not "admit" the 2005 Will to probate and deny probate of the 2015 will but simply allows Appellee to proceed with his Petition to Admit the 2005 Will and Petition to Remove Personal Representative and Trustee.

Secondly, both orders do not determine the validity of the 2005 and 2015 will but state the 2005 will is a binding contract which became irrevocable upon the death of Judith Bitto. Finally, Appellee asserts the 2005 Will cannot be considered the "governing instrument" in this matter as it has not yet been admitted to probate. The 2015 will was admitted to probate, informally, in 2015 and estate assets have been probated according to the terms of the same during the course of litigation.

As such, Appellee asserts this Court lacks jurisdiction to hear this matter as it is interlocutory and not appealable of right as the orders at issue are not final orders under MCR 5.801.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Whether the Probate Court properly determined that the language in the 2005 Joint and Mutual Will of Louis Henry Bitto, III and Judith Ann Bitto, a married couple, constituted a contract that became irrevocable upon the death of the first spouse.

Respondent/Appellee Bitto Answers: "YES"

The Probate Court Answered: "YES"

Petitioner/Appellant Bush Answers: "NO"

II. Whether the Probate Court properly determined that the 2015 Will to be void as a matter of law in violation of the contract not to revoke contained within the 2005 Joint Will.

Respondent/Appellee Bitto Answers: "YES"

The Probate Court Answered: "YES"

Petitioner/Appellant Bush Answers: "NO"

COUNTER-STATEMENT OF FACTS

Louis Henry Bitto, III (hereinafter "Decedent") and his wife Judith Ann Bitto executed their Joint and Mutual Last Will and Testament on November 7, 2005 (hereinafter "2005 Joint Will"). (Exhibit A-Joint and Mutual Will). The 2005 Joint Will was executed shortly after the couple won a substantial sum of money from the Michigan Lottery which was and will continue to pay out over a number of years to come. Notably, the parties had previously executed a substantially similar joint and mutual will on two separate occasions. Both aforementioned wills were prepared by the couples long time estate planner Peter Fales, Esq.. Much like the prior Bitto wills, the November 7, 2005 Joint Will also contained a Testamentary Trust. The aforementioned estate plan was prepared with the intent to leave a life estate with the surviving testator and subsequently distribute all assets, either then owned or after acquired, to the parties' children. (Exhibit A-Joint and Mutual Last Will & Testament). Petitioner Louis Bitto, IV was given a copy after the will was executed in 2005. (Exhibit B-Louis Bitto Dep. p. 204-205).

The 2005 Joint Will was drafted and witnessed by local Monroe County Attorney Peter Fales. Attorney Fales also prepared the Bitto's prior Joint and Mutual Wills. Attorney Fales testified as to both the Decedent's and Judith Bitto's intent in preparing one will together instead of reciprocal wills: "Doing a joint mutual will was so that later on, if one of them died, the other one could not change the beneficiaries or, excuse me, the devisees of the will." (Exhibit C-Fales Dep. p. 6).

As properly set forth by the probate court in it's opinion regard the 2005 Joint and Mutual Will, the pertinent provisions within the 2005 Will are as follows. The preamble states, in pertinent part:

> We, Louis H. Bitto III and Judith Ann Bitto...being of sound mind and disposing memory, for the purpose of making disposition upon

> our death of our entire estate, real, personal and mixed and any estate which we may have the power to dispose of, wherever situate, whether owned and possessed by us at the date of execution hereof or acquired by us after such date, do hereby make, publish and declare this to be our Last Will & Testament.

Furthermore, the 2005 Joint Will contains clear and specific mutual survivorship and residuary clauses that state the following:

> ALL of our estate, whether held jointly, severally, or as tenants in common, both real, personal, and mixed, shall be held by the survivor of us with the right to the income, rents, or profits of all our property for the life of the survivor, and as so much of the principal as the survivor may desire from time to time for his or her care and support with his or her sound discretion and with the further right on the part of the survivor to sell and execute conveyances of without the authority or approval of any Court, any or all of the property, to invest and reinvest the same, and to use the proceeds as he or she may deem proper during the survivor's lifetime for his or her care and support without being required in any manner to account therefore.
>
> Upon the death of the survivor of us, or in the event of our simultaneous deaths, WE GIVE, DEVISE AND BEQUEATH, all of the rest, residue and remainder of our estate, real, personal, or mixed of whateversoever nature and wheresoever situate, to which we may be entitled or which we may own and any estate which we may have the dispose of at death, and which has not been herefore disposed of in this Will to our three children..." (Exhibit A-Joint and Mutual Will p. 1).

Additionally, the 2005 Joint and Mutual Will contains a Testamentary Trust for purposes of preserving and applying assets for the Decedent's grandchildren in the event a child of the Decedent predeceased leaving surviving descendants. Unfortunately, the Decedent's daughter Sheryl predeceased the Decedent leaving three surviving descendants. Notably, the surviving grandchildren take less under the 2015 Estate Plan than pursuant to the 2005 Testamentary Trust. created a testamentary trust which states in pertinent part:

If any of our children should predecease us, the deceased child's share shall go to that child's children, share and share alike.

> Provided, however in the event any of our grandchildren of the deceased child should not have reached the age of twent five (25) on the date of our deaths, we give, devise, and bequeath our deceased child's share of our estate to the BITTO TESTAMENTARY TRUST hereinafter established in this paragraph of OUR LAST WILL AND TESTAMENT.
> The Trust described in the preceding paragraph may be referred to as the BITTO TESTAMENTARY TRUST, said Trust shall come into existence only if necessary to receive a bequest under the foregoing provision of the preceding paragraphs, and the terms of said Trust, in in existence at any time, shall be set out below:
>
> A. The Co-Trustees of said Trust shall be our son, Louis H. Bitto, IV and our daughter, Sheryl L. Dauterman and the Co-Trustees, to the extent permitted by law, shall be allowed to serve without bond.
>
> B. In administering the Trust for our grandchildren and provided by the previous paragraph, our Co-Trustees shall maintain and distribute the assets as follows..."

The 2005 Joint Will continues with several pages of testamentary trust provisions and concludes with the standard execution and witness clauses. Judith Ann Bitto died the year after execution of the 2005 Joint and Mutual Will on April 10, 2006. Therefore, on April 10, 2006 the Joint and Mutual Will dated November 7, 2005 became irrevocable.

On September 14, 2015, Decedent executed a new Last Will and Testament ("2015 Will") drafted by Attorney Thomas Kuzmiak. (Exhibit D-Last Will & Testament of Louis H. Bitto, III dated September 14, 2015). Joann Bush, the decedent's girlfriend was nominated/appointed as personal representative in the 2015 will. The September 14, 2015 will contained a pour over provision such that the Decedent's assets would pour to a newly executed Revocable Trust ("2015 Trust"), also drafted by Attorney Thomas Kuzmiak. (Exhibit D- 2015 Will and Trust).

The Decedent died on October 8, 2015. The distributions within the two estate plans substantially differ. The 2015 Will pours into the 2015 Trust and omits the Decedent's eldest son, Louis H. Bitto, IV, the contestant herein. Furthermore, Proponent Joann Bush's distributive share includes twenty-five percent (25%) of trust assets (inclusive of lottery proceeds the Trust is designated receive in the amount of One Hundred Nineteen Thousand and Eight Hundred and 00/100 Dollars ($119,800.00) per year for the next five (5)[1] years), the Decedent's condominium in Florida free and clear of any debts or liens and the Decedent's 2015 Cadillac free and clear of any debts or liens. Notably, the shares of the Decedent's grandchildren are substantially diminished under the 2015 Estate Plan which also omits any distributive share for Contestant Louis H. Bitto, IV.

PROCEDURAL HISTORY

On October 18, 2015, only 10 days after the decedent died, Joanna Bush filed an Application for Probate and Appointment of Personal Representative seeking to be appointed Personal Representative of the Estate of Louis Henry Bitto, III and to admit the September 14, 2015 will to probate as the Decedent's only testamentary document. Louis Bitto, IV sought to probate the 2005 Joint and Mutual will and have the 2015 will set aside. The parties filed cross-motions for summary disposition. The parties agreed that the court should rule on the controlling issue of whether the 2005 Joint and Mutual Will constituted an irrevocable contract pursuant to MCL 700.2514. The parties waived oral argument.

The court issued its decision on June 16, 2017. (Exhibit E-Decision Regarding 2005 Joint and Mutal Will). The ruling states:

[1] In total the Trust would receive Five Hundred Ninety Nine Thousand and 00/100 Dollars in future installments from the Michigan Lottery.

> In this Court's eyes, the 2005 Will herein establishes the material provisions of the contract between Louis Bitto III and Judith Bitto consistent with section 1(a) above: very simply, that as husband and wife they agreed in this one, single, jointly signed document that if one of them survived the other, the surviving spouse would hold a life estate in "ALL" of their estate using the "income, rents, profits" etc. from their estate for that surviving spouse's "care and support", and further upon the surviving spouse's death, what was left of their estate would be given in certain shares to their surviving children (or to grandchildren if a child pre-deceased, with detailed trust provisions for grandchildren under age 25).
>
> Even more simply stated, the 2005 agreement/contract/compact was for the Bitto estate-in lay person's terms- to stay in the family.

The ruling further states:

> "The state scheme was "lock, stock, and barrel", in toto, and irrevocable upon the death of the first spouse. The 2005 Will represented the marital and estate compact, and the Bittos' intent was reflected in form and substance."

The Appellant-Petitioner, Joann Bush, now seeks to appeal the determination made by the probate court that the 2005 Will contained the material provisions of a contract which became irrevocable upon the death of Judith Bitto.

STANDARD OF REVIEW

This court reviews issues of statutory interpretation *de novo*. *In re Attia Estate*, 317 Mich App 705; 895 NW2d 564 (2016). It also involves a ruling on summary disposition motions, which is reviewed *de novo*. *Id.* "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Briggs Tax Serv., LLC v. Detroit Pub. Sch.*, 485 Mich. 69, 76; 780 NW2d 753 (2010). To determine the legislative intent, the court must first examine the statute's plain language. *Klooster,* 488 Mich. at 296. If the language of the statute is clear and unambiguous, it is presumed that the Legislature intended the meaning plainly expressed in the statute. *Briggs,* 485 Mich at 76.

ARGUMENT

I. The 2005 Joint and Mutual Will contains the material provisions of a contract which became irrevocable upon the death of Judith Bitto.

A. The Controlling Statute

Before legislative action, an oral agreement to make a will or devise could be established without a writing provided there were sufficient proofs to establish the oral agreement. See *McDaniels v. Schroeder,* 9 Mich App 444, 451–452; 157 NW2d 491 (1968). In 1978, Michigan's Probate Code was amended to provide that the "only" way to prove the existence of a contract to make a will or devise was to comply with the writing requirements of MCL 700.140, now repealed. *McKim Estate,* 238 Mich App at 455–456. MCL 700.140 of the Probate Code was replaced in EPIC by MCL 700.2514, but retained the language of MCL 700.140 without substantive changes. *Id.* at 456 n 1.

MCL 700.2514 governs contracts to make or not revoke a will or devise and provides:

1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:
   a. Provisions of a will stating material provisions of the contract.
   b. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.
   c. A writing signed by the decedent evidencing the contract.
2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

B. Provisions in a Joint Will are Sufficient Evidence of a Contract not to Revoke a Will or Devise Pursuant to MCL 700.2514(1)(a).

A will, although jointly executed by two persons, is not a contract, strictly speaking, since it is subject to change and represents simply a statement of the wishes of the testators as they exist at the time of execution. The terms of, or the benefits from, a will, however, may be the subject of a contract between the persons executing it. Moreover, a will jointly executed by two testators containing reciprocal bequests may be, under some circumstances, sufficient evidence to

establish a contract to make the testamentary dispositions contained in such a will. 79 Am Jur 2d, Wills, § 770, p 831.

A will which is executed by two testators pursuant to an agreement and is reciprocal in its bequests creates a contractual obligation; the mere fact alone that two identical wills are made by a husband and wife does not suffice to establish an oral agreement to make mutual reciprocal wills, each binding on the other. It is the contract to make a joint and mutual will, not the will itself, that is irrevocable by the survivor after the death of one of the parties to it. *Eicholtz v Grunewald*, 313 Mich 666; 21 NW2d 914 (1946).

As a general rule, a mutual or joint will may be revoked by either of the co-makers, provided it was not made in pursuance of a contract. But, where such a will has been executed in pursuance of a contract or agreement entered into by the testators to devise their separate property to certain designated beneficiaries, subject to a life estate or other interest in the survivor, it is generally held irrevocable when, upon the death of one, the survivor avails himself of the benefits of the devise in his favor. *Schondelmayer v Schondelmayer*, 320 Mich 565; 31 NW2d 721 (1948).

> Where an agreement as to mutual wills does not define the survivor's power over the property, but merely provides as to the disposition of the property at his or her death, the survivor may use not only the income, but reasonable portions of the principal, for his or her support and for ordinary expenditures, and he or she may change the form of the property by reinvestment, but must not give away considerable portions of it or do anything else with it that is inconsistent with the spirit of the obvious intent and purpose of the agreement. . . . [T]he surviving spouse cannot make a gift in the nature, or in lieu, of a testamentary disposition, or to defeat the purpose of the agreement. [97 CJS, Wills at 660-661.]

Appellant relies on *Soltis v First of America Bank – Muskegon, 203 Mich App 435* (2006) for the proposition that one cannot rely solely on the dispositive provisions of a joint and mutual will as evidence of a contract not to revoke but that there must be some contract

in addition to the will itself prior to recognition under MCL 700.2514. Appellant's argument is substantially misplaced as *Soltis* is factually distinguishable from the instant matter.

In *Soltis,* petitioner claimed he had an agreement with his wife that neither would amend or revise their respective individual yet reciprocal trusts without the consent of the other. *Id.* at 443. The Court found no evidence of a contract between the parties and in doing so relied upon the revocatory language contained in the trust document at issue. The trust document in *Soltis* specifically provided the settlor with the right to alter, amend, revoke or terminate the [trust] agreement. *Id.* at 443-44.

In this case, unlike in *Soltis*, there is no language in the 2005 Joint Will allowing one of the individual testators to alter, amend, revoke or terminate the trust agreement. As such, Appellant's argument that a contract not to revoke a will or devise must be shown by an additional writing or evidence outside the four corners of the instrument is unfounded and has no basis in statute or common law.

C. Appellant is Correct that Contract Interpretation Principles Apply.

As appellant properly states, general contract principles apply in determining whether or not there was a contract not to revoke. "When the language is clear and unambiguous, interpretation is limited to the actual words used, and parol evidence is inadmissible to prove a different intent. An unambiguous contract must be enforced according to its terms. *In re Leix Estate*, 289 Mich App 574, 590; 797 NW2d 673 (2010). "These principles apply to a contract to make a mutual will." *Id.* at 591.

Appellant argues that dispositive provisions of a joint and mutual will, alone, are not sufficient evidence of a contract. Contrary to Appellant's assertion, the plain language of the

applicable statute[2] specifically identifies that a contract not revoke a will or devise ***may be established by provisions of a will stating material terms of the contract.*** *See* MCL 700.2514. The essential elements of a contract are parties competent to contract, a proper subject matter, legal consideration, mutuality of agreement, and mutuality of obligation. *Mallory v City of Detroit,* 181 Mich App 121, 127 449 NW2d 115, 118 (1989) *citing Borg-Warner Acceptance Corp v Dep't of State,* 169 Mich App 587, 590 426 NW2d 717 (1988).

In this matter, all essential elements of a valid contract are present. There is no dispute that in 2005, Louis H. Bitto, III (the Decedent) and his wife Judith were fully competent to create a contractual agreement with regard to disposition of their assets. The subject matter of their agreement was proper as it pertained to disposition of assets they owned at the time of or acquired after execution. Adequate consideration for the agreement is present in that the Decedent or Judith gave up his or her right to independently dispose of his or her property after the death of the first of them.

Further, the express terms of the 2005 Joint Will indicate clear mutuality of obligation. To wit, Decedent and his wife agreed the survivor of the two of them would retain use and enjoyment of the property during the survivor's lifetime while ensuring all owned and after-acquired property would pass to the couple's children. This mutuality is evidenced by express language in the 2005 Joint Will providing for mutual obligations on behalf of either party upon the death of the first.

Pursuant to the plain language of MCL 700.2514(1)(a), the 2005 Joint Will contains all material terms required to create a valid contract not to revoke the will and/or a devise contained therein.

[2] MCL 700.2514(1)(a)

D. The 2005 Will Contains Clear Evidence of a Contract Not to Revoke.

Pursuant to MCL 700.2514(1)(a) the will contains provisions stating materials provisions of a contract. As the trial court properly concluded:

> In this Court's eyes, the 2005 Will herein establishes the material provisions of the contract between Louis Bitto III and Judith Bitto consistent with subsection 1(a) above: very simply, that as husband and wife they agreed in this one, single, jointly signed document that if one of them survived the other, the surviving spouse would hold a life estate in "ALL" of their estate using the "income, rents, profits" etc. from their estate for that surviving spouse's "care and support", and further upon that surviving spouse's death, what would be left of their estate would be given in certain shares to their surviving children" (Exhibit E-Decision Regarding 2005 Joint and Mutual Will, p. 5).

A jointly executed will is not a contract, strictly will, strictly speaking, since it is subject to change and represents simply a statement of the wishes of the testators as they exist at the time of execution." *Rogers v Rogers*, 136 Mich. App. 125, 130; 356 N.W.2d 288 (1984). However, a will that is jointly executed by two testators containing reciprocal bequests is sufficient to establish a contract to make the testamentary dispositions contained in such a will. *See Id.*; *See also* MCL 700.2514(1)(a).

Here, not only does the language of the 2005 Joint and Mutual Will indicate a contract between the parties as required by MCL 700.2514(1), but there are also reciprocal bequests akin to those in *Rogers*. As our Supreme Court previously held, "upon the death of one party to a contract to make a mutual will, the agreement underlying the will becomes irrevocable and right of action to enforce it vested in the beneficiaries." *Getchell v Tinker,* 291 Mich 267; 289 NW 156 (1939).

The 2005 Joint Will became irrevocable at the instant Judith Ann Bitto died. Upon the passing of Judith, the Decedent acquired a life estate in all property the couple had at the time

and which was thereafter acquired. The Decedent's life estate is evidenced by clear language in the 2005 Will which provided in pertinent part as follows:

> All of our Estate, whether held jointly, severally, or as tenants and common, both real, personal, and mixed ***shall be held by the survivor of us*** with the right to the income, rents or profits of all our property ***for the life of the survivor***, and so much of the principal as the survivor may desire from time to time for his or her care and support with his or her sound discretion, and with the further right on the part of the survivor to sell and execute conveyances of, without the authority or approval of any court, any and all of the property, to invest and reinvest the same, and to ***use the proceeds as he or she may deem proper during the survivor's lifetime for his or her care and support*** without being required in any manner to account therefore. (emphasis added). Exhibit A- Joint and Mutual Will p. 1)

At the time Judith died, the Decedent gained only a life estate interest in all property owned or after acquired with the remainder passing to the parties' heirs at law. Decedent breached the terms of the contract by allegedly executing a new will and trust on September 14, 2015 which dramatically altered the distributive provisions of the 2005 Will. Modification of the distributive provisions of the 2005 Will breached the parties' contract.

The Decedent's life estate interest was subject to restrictions upon the passing of Judith Ann Bitto as referenced above. In addition, the clear language of the will indicates the surviving spouse was given discretion to use, sell, convey or otherwise dispose of property and use the proceeds for ***his care and support***. (Exhibit A- Joint and Mutual Will p. 1). There is no language contained in the 2005 Joint Will providing Decedent authority to modify or revoke the 2005 Joint Will or a devise therein. Specifically, the following language, outset above, restricted the Decedent's ability to modify the terms of distribution:

> "ALL of our estate, whether held jointly, severally, or as tenants in common, both real, personal, and mixed, shall be held by the survivor of us with the right to the income, rents, or profits of all our property for the life of the survivor...."

The restrictive language continues:

> "Upon the death of the survivor of us, or in the event of our simultaneous deaths, WE GIVE, DEVISE AND BEQUEATH, all of the rest, residue and remainder of our estate, real, personal, or mixed of whateversoever nature and wheresoever situate, to which we may be entitled or which we may own and any estate which we may have the dispose of at death, and which has not been herefore disposed of in this Will to our three children..."

According to the terms of the 2005 Joint and Mutual Will, any real or personal property titled in decedent's name regardless of the fashion is to be distributed to his three children. While decedent was free to make transfers during his lifetime, he was not free to redirect the distributions at the time of his passing inconsistent with the terms of the agreement. Specifically, the Decedent had no legal authority to omit his son Louis Bitto, IV, from receiving his rightful distribution from what remained in the life estate held by the Decedent at the time of his death. The Joint and Mutual Will became irrevocable upon the death of Judith Bitto, therefore any testamentary document entered into by decedent after the date of Mrs. Bitto's passing is void.

II. The 2015 Will is Void as a Matter of Law.

As previously discussed, the 2005 Joint and Mutual Will was a contract that became irrevocable upon the death of Judith Bitto. The 2015 Will stands in direct contravention of the 2005 Joint and Mutual Will. Specifically, it alters the disposition of property in a manner contrary to the 2005 Will and violates public policy. Additionally, because the 2005 Joint Will is a binding bi-lateral contract executed by both the Decedent and his wife, it simply cannot be unilaterally revoked at the behest of the survivor. Allowing unilateral revocation of a bilateral contract undermines the basic principles of contract law that control. In this instance, simply put, the decedent was not free to redirect after the death of his wife. Decedent contracted for a life

estate maintaining only the right to "the income, rents, or profits of all our property for the life of the survivor." (Exhibit A-Joint and Mututal Will p. 1).

"When the language is clear and unambiguous, interpretation is limited to the actual words used, and parol evidence is inadmissible to prove a different intent. An unambiguous contract must be enforced according to its terms. *In re Leix Estate*, 289 Mich App 574, 590; 797 NW2d 673 (2010). "These principles apply to a contract to make a mutual will." *Id.* at 591. Having only a life estate, the decedent was not free to create additional instruments which knowingly contradicted the 2005 Joint and Mutual Will.

Relief Requested

Louis Bitto, IV requests that this honorable court affirm the ruling of the probate court and allow this matter to proceed.

Respectfully submitted,

Law Office of Daniel Randazzo

/s/Ryan P. Dobson
RYAN P. DOBSON (P76734)
Attorney for Appellee Louis H. Bitto, IV
2731 S. Adams Rd., Ste. 100
Rochester Hills, MI 48309
248-853-1003

Dated: October 12, 2017

Exhibits

Exhibit A-2005 Joint and Mutual Will

Exhibit B-Louis Bitto Deposition

Exhibit C-Peter Fales Deposition

Exhibit D-Last Will & Testament of Louis H. Bitto, III and Trust dated September 14, 2015

Exhibit E-Decision Regarding 2005 Joint and Mutual Will

STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF LOUIS HENRY BITTO III.

ESTATE OF LOUIS HENRY BITTO III, by JOANN BUSH, Personal Representative,

Appellant,

v

LOUIS HENRY BITTO IV,

Appellee.

UNPUBLISHED
August 21, 2018

Nos. 339083; 339507
Monroe Probate Court
LC No. 15-000538-DA

Before: CAMERON, P.J., and RONAYNE KRAUSE and TUKEL, JJ.

PER CURIAM.

After the death of Louis Henry Bitto III (the "decedent") in 2015, appellant Joann Bush ("appellant") applied for informal probate of the decedent's 2015 will, which named appellant as personal representative of the decedent's estate. The decedent's son, appellee Louis Henry Bitto IV ("appellee"), contested the 2015 will and maintained that the decedent and his wife, Judith Bitto, previously executed a joint will in 2005, which became irrevocable upon Judith's death in 2006. The parties filed cross-motions for summary disposition regarding the enforceability of the competing wills. The probate court granted appellee's motion and denied appellant's motion, concluding that there was no genuine issue of material fact that the 2005 will created a binding contract between the decedent and Judith, which became irrevocable upon Judith's death in 2006, thereby rendering the proffered 2015 will void and invalid. Appellant appeals as of right, and we now affirm.[1]

---

[1] Appellant filed a claim of appeal from both the probate court's June 16, 2017 written decision deciding the parties' cross-motions, and a July 20, 2017 order incorporating that decision. Although appellee challenges this Court's jurisdiction as of right over both appeals, appellee raised these same challenges in a prior motion to dismiss, which this Court denied. *In re Bitto Estate*, unpublished order of the Court of Appeals, entered October 16, 2017 (Docket Nos.

I. BACKGROUND

The parties agree that the decedent and his wife Judith executed a joint will in 2005, but the parties disagree as to whether that will created a contract that became irrevocable upon Judith's death in 2006. The 2005 will included the following pertinent provisions:

> We, **Louis H. Bitto, III** and **Judith Ann Bitto** . . . , being of sound mind and disposing memory, for the purpose of making disposition upon our death, of our entire estate, real, personal and mixed, and any estate which we may have power to dispose of, wherever situate, whether owned and possessed by us at the date of execution hereof or acquired by us after such date, do hereby make, publish and declare this to be our Last Will and Testament.
>
> * * *
>
> ALL of our estate, whether held jointly, severally, or as tenants in common, both real, personal and mixed, shall be held by the survivor of us with the right to the income, rents or profits of all our property for the life of the survivor, and so much of the principal as the survivor may desire from time to time for his or her care and support with his or her sound discretion, and with the further right on the part of the survivor to sell and execute conveyances of, without the authority or approval of any Court, any or all of the property, to invest and reinvest the same, and to use the proceeds as he or she may deem proper during the survivor's lifetime for his or her care and support without being required in any manner to account therefore.
>
> Upon the death of the survivor of us, or in the event of our simultaneous deaths, WE GIVE, DEVISE AND BEQUEATH, all of the rest, residue and remainder of our estate, real, personal, or mixed, of whatsoever nature and wheresoever situate, to which we may be entitled or which we may own, and any estate which we may have the dispose of at death, and which has not been heretofore disposed of in this Will to our three children, **SHERYL L. DAUTERMAN, BRIAN M. BITTO** and **LOUIS H. BITTO, IV**, and to Louis H. Bitto, III's son, **TERRY MICHAEL WOODS** in the following shares: . . .

At issue is whether the probate court erred in ruling that the 2005 will established a binding contract that became irrevocable upon Judith's death in 2006, thereby rendering a later will executed by the decedent in 2015 void or invalid.[2]

II. STANDARD OF REVIEW

339083 & 339507). Because the jurisdictional challenges have already been resolved, we do not revisit those challenges in this opinion.

[2] The 2015 will added appellant as a beneficiary and omitted appellee entirely.

The probate court decided this issue in the context of the parties' cross-motions for summary disposition. We review a probate court's decision to grant summary disposition de novo. *In re McKim Estate*, 238 Mich App 453, 455; 606 NW2d 30 (1999). Although the probate court's order refers to MCR 2.116(C)(8), (9), and (10), the court's written decision is based on its determination that there is no genuine issue of material fact that the 2005 will established a binding contract that became irrevocable after the death of the decedent's wife. Therefore, the probate court's decision is appropriately analyzed under MCR 2.116(C)(10), which provides that a party is entitled to summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

III. ANALYSIS

The parties agreed that the decedent properly executed the 2005 will with his wife, but the probate court was asked to rule on whether the terms of that will made it irrevocable, which would mean that the decedent could not change his estate plan by way of the 2015 will. We conclude that the probate court correctly determined that the 2005 will was a contract, and appellee was entitled to specific performance of that contract.

MCL 700.2514 provides:

> (1) If executed after July 1, 1979, a contract to make a will or devise, not to revoke a will or devise, or to die intestate may be established only by 1 or more of the following:
>
> (a) Provisions of a will stating material provisions of the contract.
>
> (b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.
>
> (c) A writing signed by the decedent evidencing the contract.
>
> (2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

A party seeking specific performance of a contract to leave property pursuant to a will has the burden of proving that contract. *In re McKim Estate*, 238 Mich App at 456.

In this case, appellee relied on the terms of the will alone to establish a contract. MCL 700.2514(1)(a) expressly provides that a contract to make a will, or not revoke a will, may be established by the "[p]rovisions of a will stating material provisions of the contract." Thus, it is not necessary that a contract be established by a separate document. However, simply executing a joint will does not create a presumption of a contract not to revoke the will. MCL 700.2514(2).

The terms of the 2005 will created a life estate in the surviving spouse, after one spouse predeceased the other spouse, even though the surviving spouse could dispose of the estate's property during his or her lifetime. See *Quarton v Barton*, 249 Mich 474; 229 NW 465 (1930) (a grant of an estate to a spouse for her lifetime, with the remainder to named individuals, creates a life estate, even though the surviving spouse has the right to dispose of the estate's property

during her lifetime). The 2005 will provides that, upon the death of the surviving spouse, the estate shall be divided among the couple's three children and the decedent's son. While the will does not explicitly state that it is irrevocable, the probate court relied on *Rogers v Rogers*, 136 Mich App 125, 131; 356 NW2d 288 (1984), for the following rule:

> As a general rule, a mutual or joint will may be revoked by either of the co-makers, provided it was not made in pursuance of a contract. But, where such a will has been executed in pursuance of a contract or agreement entered into by the testators to devise their separate property to certain designated beneficiaries, subject to a life estate or other interest in the survivor, it is generally held irrevocable when, upon the death of one, the survivor avails himself of the benefits of the devise in his favor.
>
> Thus, for the terms of the will to be irrevocable upon the death of one of the parties, an agreement between the parties must be established. The general rule is stated as follows:
>
> > "A will jointly executed by two testators may disclose so clearly that it is the product of a contract between them, that the will itself is sufficient evidence to establish the contract." [Footnotes omitted.]

The rule in *Rogers* was based on *Schondelmayer v Schondelmayer*, 320 Mich 565; 31 NW2d 721 (1948). In that case, which is factually similar to the instant case, our Supreme Court considered whether a joint will became irrevocable upon the death of the first spouse. The Court reviewed the language of the will to determine if the will itself was evidence of a contract to make the will irrevocable upon the death of the first spouse. The Court stated:

> On this appeal we must first determine whether under the record the trial court was correct in decreeing that Charles and Cathrin Schondelmayer "executed a joint and mutual will *which contains an agreement therein for the executing of a joint and mutual will.*"
>
> We are not in accord with appellant's contention that a recital in the will itself of the agreement by the parties to constitute the instrument their joint mutual will is not competent evidence of such contract. The will involved in the instant case contains the following:
>
> "It is hereby agreed that whichever is deceased first, be it Charles Schondelmayer or Cathrin Schondelmayer, the survivor shall pay the funeral expenses and all just debts of either or both, and shall thereafter become the sole owner of any and all property owned by either or both of them. The said survivor shall live as he or she has been accustomed, using so much of the income or principal as may be necessary for his or her comfort of [or?] convenience.
>
> > "This instrument is hereby declared to be the last will and testament of either, as the said survivor, and after the decease of the said survivor, the estate shall be divided as follows."

> Immediately following the foregoing, the will contains the provisions for the three sons as above noted. The words just above quoted from the will, which was solemnly executed by the respective parties, must be held to be competent evidence of an understanding and agreement between the parties that after the death of one of them the will should be and remain the last will and testament of the survivor in accordance with the terms of which disposition should be made of the estate.
>
> > "A contract incorporating the mutual will of the parties is sufficient evidence of the agreement in pursuance of which the will was executed.
> >
> > "Upon the death of one party to a contract to make mutual will, the agreement underlying the will becomes irrevocable and right of action to enforce it vested in the beneficiaries." [*Schondelmayer*, 320 Mich at 571-572 (citation omitted).]

Based on *Rogers* and *Schondelmayer*, the probate court correctly held that the joint and mutual will executed by the Bittos in 2005 was intended to be irrevocable upon the death of the first spouse. The Bittos prepared a joint and mutual will in which they planned to dispose of their joint estate to designated beneficiaries, subject to a life estate in the surviving spouse. Their will was almost identical to the wills in *Rogers* and *Schondelmayer*, which were held to be irrevocable upon the death of the first spouse. Accordingly, the probate court correctly held that the 2005 will became irrevocable upon Judith Bitto's death. As a result of being bound by their mutual agreement regarding their 2005 will, the decedent could not dispose of the estate by means of the will he executed in 2015.

Appellant argues that even if the 2005 will created a binding contract that became irrevocable upon Judith's death, that does not invalidate the 2015 will. According to appellant, appellee may maintain an action for breach of contract, but that does not render the 2015 will invalid.

In *In re VanConett Estate*, 262 Mich App 660, 666; 687 NW2d 167 (2004), this Court observed "[w]hen parties enter a contract to make a will, the contract, rather than the will itself, becomes irrevocable by the survivor after the death of a party." Nevertheless, "to the extent any subsequent wills contradicted the contract [to make a will], plaintiffs have a right to seek specific, [sic] performance of the agreement." *Id.* In *Kozyra v Jackman*, 60 Mich App 7, 12-13; 230 NW2d 284 (1975), this Court also recognized that the remedy for breach of a contract for a mutual and joint will is specific performance of that contract, which is distinguishable from probating a will. This Court stated:

> We further hold that the probate of the 1967 will did not constitute res judicata as to the present controversy. The issue in the probate court was whether the document presented was the last will of the decedent. The probate court has limited statutory jurisdiction. MCLA 701.19 . . . . It is not a ground for contest to the probate of a will that it breaches a contract made under a prior joint and mutual will. The injured's remedy lies in his right of action to enforce the

> contract, not in a contest of the probate of the will which constitutes the breach. See *Keasey v Engles*, 259 Mich 178, 181-182; 242 NW 878, 879-880 (1932). See also 57 Am Jur, Wills, § 715, 716, pp 485, 486; Annotation, *Joint, mutual and reciprocal wills*, 169 ALR 9, 53-55, 60, 81. In short, a judgment probating a revoking will is not res judicata as to an action for specific performance of a contract manifested by the earlier, revoked will. [*Kozyra*, 60 Mich App at 12-13.]

In this case, the estate remained open and unsettled, and the probate court had jurisdiction to decide appellee's challenge to the 2015 will. Indeed, the probate court's jurisdiction has expanded since *Kozyra* was decided. See *Noble v McNerney*, 165 Mich App 586, 592-593; 419 NW2d 424 (1988). MCL 700.1302(a) grants the probate court jurisdiction over matters related to the administration of a decedent's estate. In particular, a probate court has jurisdiction to review a claim for specific performance of a contract related to a will. MCL 700.1303(1)(c) provides:

> (1) In addition to the jurisdiction conferred by section 1302 [MCL 700.1302] and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent . . . .:
>
> * * *
>
> (c) Authorize or compel specific performance of a contract in a joint or mutual will or of a contract to leave property by will.

In contrast to *Kozyra*, the probate court was still overseeing the administration of the decedent's estate when appellee raised his claim that the 2005 will was irrevocable. Having decided that the 2005 will established a binding contract that became irrevocable after the death of Judith in 2006, the probate court was authorized to compel specific performance of that contract, which necessarily precluded administration of the estate pursuant to the terms of the 2015 will. Accordingly, the probate court did not err in ruling that the 2015 will was void or invalid.

Affirmed.

/s/ Thomas C. Cameron
/s/ Amy Ronayne Krause
/s/ Jonathan Tukel

Page 416

260 Mich.App. 416 (Mich.App. 2004)

677 N.W.2d 914

In the Matter of the ESTATE of Cornor WHITE, Deceased.

David White, Petitioner-Appellant,

v.

Bernice Blow, Eula Copeland, David Cross, and Wilbert Richardson, Respondents-Appellees.

No. 245021.

Court of Appeals of Michigan

January 22, 2004.

Submitted Jan. 6, 2004, at Lansing

Released for Publication April 14, 2004.

Page 915

[260 Mich.App. 417] Winter Law Firm, P.L.L.C. (by Paul L. Winter), Grand Haven, for David White.

Paul M. Ladas, North Muskegon, for Eula Copeland and others.

Before: DONOFRIO, P.J., and GRIFFIN and JANSEN, JJ.

PER CURIAM.

Petitioner appeals by leave granted an order of the probate court admitting Cornor White's will to probate. Petitioner challenges the probate court's finding that the will at issue is not a joint and mutual will. Petitioner also argues that because it is undisputed that Catherine White's execution of the will was invalid, the entire will is invalid and the probate court erred when it admitted the will to probate in the estate of Cornor White. We agree with the probate court that the will at issue is a joint and reciprocal will, but not a mutual will, and also find that Catherine White's failed execution of the joint will did not invalidate the will as it pertained to Cornor White. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Cornor White was born on October 17, 1915, and Catherine White was born on December 24, 1918. The testators married but had no children. They purportedly signed a will on May 8, 1999, distributing their estate to approximately seventy friends and relatives. The estate was comprised of several rental properties and a barber shop business. A few months later, on November 29, 1999, Catherine White died. No probate estate was opened for Catherine White. Upon Catherine's death, property that was jointly owned went to Cornor White regardless of the will. Any remainder property owned by CatherineWhite is subject to the probateprobate

[677 N.W.2d 916]

Page 418

court's determination of intestacy and not a matter of this appeal. Cornor White died the following spring, on May 3, 2000.

A probate estate was opened for Cornor White. On January 15, 2002, petitioner, who would benefit from intestate succession, challenged the validity of the will. Soon after, the probate court entered an order ordering a bill of particulars. Petitioner furnished a bill of particulars in March 2002, asserting that one of the two purported witnesses to the will "did not see the two principals sign" and that "the other subscribing witness has built into the will a $5,000 legacy to himself." Petitioner concluded in the bill of particulars that the will should be disallowed as the last will and testament of both Catherine and Cornor White.

The two purported witnesses to the will, Theresa Pearce and attorney Charles Waugh, gave their deposition testimony in March 2002. The parties do not dispute that Catherine White's signature on the will was witnessed only by Waugh and not by two persons as required by statute. Further, attorney Waugh could not remember whether Pearce was in the room when Cornor White signed the will or if Pearce entered the room after both Catherine and Cornor signed. Pearce testified that she was called into the room and both Cornor White's and Waugh's signatures were on the will. Pearce also stated that Cornor White asked her to witness his will, and then she noted the document stated that it was a will and then she witnessed the will in Cornor White's presence. Waugh also testified that he both drafted the will and was the recipient of a $5,000 bequest from the testators in their will. Waugh was removed as counsel as of August 29, 2001, as noted by a probate court docket entry.

Page 419

In April 2002, petitioner moved for summary disposition, arguing again that the will should be invalidated in its entirety. Respondents, who are devisees under the will, opposed petitioner's motion and filed their own motion for summary disposition in May 2002. The personal

representative specifically declined to take a position on the motions. The probate court heard arguments on the motions on June 11, 2002.

In a written opinion, the probate court found that the will was joint and reciprocal but not mutual. The probate court found that the will constituted a single document expressing the individual intentions of the testators "just as two separate wills would have done instead of this one will." The will was "not necessarily mutual because the will does not express a mutually acknowledged promise, consideration, or obligation between the testators that the will is irrevocable." The probate court held that the will was invalid and unenforceable with regard to Catherine White and that her assets will pass by intestacy. However, the probate court held that the will was valid and enforceable with regard to Cornor White and that the will should be admitted to probate to carry out his intentions. Hence, jointly owned assets would pass to Cornor White by intestacy and then as directed in Cornor White's will. The probate court's opinion was effectuated by an order dated August 12, 2002, admitting Cornor White's will to probate. This appeal followed.

"The standard of review on appeal in cases where a probate court sits without a jury is whether the court's findings are clearly erroneous." *In re Bennett Estate,* 255 Mich.App. 545, 549, 662 N.W.2d 772 (2003). "A finding is clearly erroneous when a reviewing

Page 420

court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.*

[677 N.W.2d 917] Petitioner argues that the trial court impermissibly made findings of disputed fact when it found that the document at issue is not a joint and mutual will. Petitioner asserts that the document should be construed as a joint and mutual will and attempts to persuade us to apply Illinois law [1] to this matter. Respondents argue that the probate court made no impermissible findings of disputed fact and assert that the mere use of the words "joint" and "mutual" in the will do not make the will a binding contract. Respondents also state that the will contains no words indicating a contractual agreement between Catherine and Cornor White and no basis to reach a conclusion that there was a contractual commitment to make the joint will irrevocable.

The probate court held that Cornor and Catherine White did not execute a mutual will. "A will, although jointly executed by two persons, is not a contract, strictly speaking, since it is subject to change and represents simply a statement of the wishes of the testators as they exist at the time of execution." *Rogers v. Rogers,* 136 Mich.App. 125, 130, 356 N.W.2d 288 (1984). "[A] will jointly executed by two testators containing reciprocal bequests may be, under some circumstances, sufficient evidence to establish a contract to make the testamentary dispositions contained in such a will." *Id.* "[T]he mere fact alone that two identical wills are made by a husband and wife does not suffice to establish an oral agreement to make

Page 421

mutual reciprocal wills, each binding on the other." *Id.* at 130-131, 356 N.W.2d 288. Furthermore, MCL 700.2514(2) states: "The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."

The probate court stated that, "the will does not express a mutually acknowledged promise, consideration, or obligation between the testators that the will is irrevocable" and held that the will was joint and reciprocal, but not mutual. After reviewing the language of the document at issue and the relevant case law and statutory law, we agree with the probate court that Cornor and Catherine White did not execute a mutual will. Nothing in the language of the will indicates that the will is irrevocable. Accordingly, we find that the probate court did not make any impermissible findings of fact and did not err when it found that the document at issue is not a joint and mutual will.

Petitioner next argues in conjunction with the first issue, that the trial court erred as a matter of law when it held that Catherine White's failure to properly execute the will did not render the will invalid as it pertained to both Catherine White and Cornor White. As Michigan courts have not yet addressed the specific factual scenario before us, petitioner again cites Illinois law [2] in support of his assertion that Catherine White's failure to properly execute the will consequently renders the entire will invalid. Respondents took the opposite view, and the probate court agreed, that the will is partially invalid and unenforceable [260 Mich.App. 422] with respect to Catherine White only, but valid and enforceable with respect to Cornor White.

Our review has found a dearth of Michigan law in this area. However, the probate court's holding comports with 79 Am Jur 2d Wills § 665, p. 724, which provides, in pertinent part:

[677 N.W.2d 918]

A will jointly executed by both spouses in which the dispositions made by one spouse are separate from those made by the other may be valid as the will of one spouse, even if it fails as the will of the other because he or she did not understand the effect of his or her signature or the

contents of the instrument. However, an instrument purporting to be the will of both spouses with reciprocal bequests is not valid as the will of the spouse who dies first if it is ineffective as the will of the survivor because it was not legally executed by him or her, and the will was made pursuant to an agreement and understanding between the spouses.

Concerning the language of the joint and reciprocal will in this case alone, we hold that Catherine White's improper execution has no import on Cornor White's execution of the will. And since this will is not a mutual will, we agree with the probate court that the will is invalid and unenforceable with respect to Catherine White, and valid and enforceable with respect to Cornor White.

Finally, petitioner raises in passing in his brief on appeal that the probate court prematurely admitted Cornor White's will to probate without deciding if Cornor White's execution of the will was proper. We disagree. We are convinced by respondents' argument, in this case only, that petitioner waived this issue. Petitioner represented to the probate court that the parties "pretty well agree as to the facts" at the hearing on the summary disposition motions. He also stated to the probate court, when discussing the issue

Page 423

before the court in his summary disposition motion, that "it is only a question of law based on those facts" referring to the effect of Catherine White's failure to properly execute her will and whether invalid execution by Catherine White invalidated the testamentary execution by Cornor White. We view these assertions, coupled with the fact that petitioner did not raise the issue in his summary disposition motion, as a concession that Cornor White's execution of the will was proper.

Affirmed.

Notes:

[1] *Young v. Young*, 210 Ill.App.3d 912, 155 Ill.Dec. 1, 569 N.E.2d 1 (1991).

[2] *Martin v. Helms*, 319 Ill. 281, 149 N.E. 770 (1925); *In theMatter of Estate of Edwards*, 3 Ill.2d 116, 120 N.E.2d 10 (1954).

ATTACHMENT 5

Guardianship, Conservatorship & End of Life Committee - October 2018 Report:

We have had 2 meetings since the "new" fiscal year. We are discussing modernizing MCL 700.5508 – the designation of patient advocate/medical power of attorney statute. We are exploring making modifications to the definition of "medical professional" as used in the statute to better reflect the way people currently receive medical treatment. Many "medical offices" are principally staffed by para-professionals, who are actually the "treating physicians" in some of our less populated areas.

We are also addressing the succession of agents who may be available to act. There has been some confusion about whether or not a principal can appoint co-agents, as well as, proper consultation by the agent with appropriate family members.

We will also try to tackle the common practice by the medical profession to overlook the actual requirements of the statute that the patients "treating physician and another physician or a licensed psychologist" certify in writing that the patient is unable to participate in their own medical decisions. The majority of us have experienced situations where the "treating physician" begins dealing with the agent rather than the patient, without following the requirements of the statute.

We have not developed any particular time-line on completing this task.

Fortunately, the legislature appears to be quite regarding legislation affecting guardianships, conservatorships and end-of-life matters.

Kathleen M. Goetsch
Chair – Guardianship, Conservatorship & End-of-Life Committee

HOUSE BILL No. 4996

September 20, 2017, Introduced by Rep. Kosowski and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending sections 5308, 5310, and 5314 (MCL 700.5308, 700.5310, and 700.5314), section 5308 as amended by 2005 PA 204, section 5310 as amended by 2000 PA 54, and section 5314 as amended by 2013 PA 157.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 5308. **(1)** ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), A** guardian's authority and responsibility for a legally incapacitated individual terminates ~~upon~~ **ON** the death of the guardian or ward, ~~upon~~ **ON** the determination of incapacity of the guardian, or ~~upon~~ **ON** removal or resignation as provided in section 5310. Testamentary appointment of a guardian under an unprobated

HOUSE BILL No. 4996

will or a will informally probated under article III terminates if the will is later denied probate in a formal testacy proceeding.

(2) WITHIN 36 HOURS AFTER THE DEATH OF A WARD, IF THE GUARDIAN KNOWS THE FUNERAL ARRANGEMENTS OF THE DECEDENT, THE GUARDIAN SHALL PROVIDE WRITTEN OR ORAL NOTICE TO THE HEIRS ABOUT THE FUNERAL ARRANGEMENTS.

Sec. 5310. (1) On petition of the guardian and subject to the filing and approval of a report prepared as required by section 5314, the court shall accept the guardian's resignation and make any other order that is appropriate.

(2) The ward or a person interested in the ward's welfare may petition **THE COURT** for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court.

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

(4) A RELATIVE OF THE WARD MAY PETITION THE COURT FOR AN ORDER MODIFYING THE TERMS OF THE GUARDIANSHIP TO GRANT THE RELATIVE ACCESS TO THE WARD, INCLUDING VISITATION AND COMMUNICATION WITH THE WARD. IF THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE GUARDIAN PREVIOUSLY DENIED THE RELATIVE ACCESS TO THE WARD AND THAT THE WARD DESIRES CONTACT WITH THE RELATIVE OR THAT CONTACT WITH THE RELATIVE IS IN THE WARD'S BEST INTEREST, THE COURT SHALL ISSUE AN ORDER PROHIBITING THE GUARDIAN FROM DENYING ACCESS TO THE WARD. AN ORDER ISSUED UNDER THIS SUBSECTION MUST SPECIFY THE FREQUENCY, TIME, PLACE, LOCATION, AND ANY OTHER TERMS OF ACCESS.

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

Sec. 5314. ~~Whenever~~ **IF** meaningful communication is possible, a legally incapacitated individual's guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court under section 5306, the guardian is responsible for the ward's care, custody, and control, but is not liable to third persons ~~by reason~~ **BECAUSE** of that responsibility for the ward's acts. In particular and without qualifying the previous sentences, a guardian has all of the following powers and duties, to the

extent granted by court order:

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

(b) If entitled to custody of the ward, the duty to make provision for the ward's care, comfort, and maintenance and, when appropriate, arrange for the ward's training and education. The guardian shall secure services to restore the ward to the best possible state of mental and physical well-being so that the ward can return to self-management at the earliest possible time. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence a protective proceeding if the ward's other property needs protection. If a guardian commences a protective proceeding because the guardian believes that it is in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward's real property or interest in real property.

(c) The power to give the consent or approval that is necessary to enable the ward to receive medical or other

professional care, counsel, treatment, or service. The power of a guardian to execute a do-not-resuscitate order under subdivision (d) does not affect or limit the power of a guardian to consent to a physician's order to withhold resuscitative measures in a hospital.

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

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

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

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

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

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

(f) If a conservator for the ward's estate is not appointed,

the power to do any of the following:

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

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

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

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

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

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

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

(*v*) Medical treatment received by the ward.

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

(*vii*) Services received by the ward.

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

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

(h) If a conservator is appointed, the duty to pay to the conservator, for management as provided in this act, the amount of the ward's estate received by the guardian in excess of the amount the guardian expends for the ward's current support, care, and education. The guardian shall account to the conservator for the amount expended.

(I) THE DUTY TO NOTIFY THE INTERESTED PERSONS AS SPECIFIED IN THE MICHIGAN COURT RULES IF THE WARD HAS BEEN ADMITTED TO A HOSPITAL FOR ACUTE CARE FOR 3 OR MORE DAYS. A NOTICE UNDER THIS SUBDIVISION MAY BE WRITTEN OR ORAL. AS USED IN THIS SUBDIVISION, "HOSPITAL" MEANS THAT TERM AS DEFINED IN SECTION 20106 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20106.

ATTACHMENT 6

Tax Committee: Tax Nugget
October 13, 2018

TAX REFORM...STILL GOING
RECENT BILLS INTRODUCED AFFECTING TRANSFER TAXES [1]

By Raj A. Malviya

1. The "Protecting Family and Small Business Tax Cuts Act of 2018", H.R. 6760 115th Cong. 2d Sess. (Sept. 10, 2018)

a. Activity in Congress:

i. House: Passed by House on September 28, 2018 (220-191 vote).

ii. Senate: Read twice and referred to the Committee on Finance (October 1, 2018).

b. Key Provisions:

i. Makes following provisions from the TCJA permanent:

1. **doubling of the estate, gift, and GST exemptions;**
2. increased limitation for charitable contributions.
3. 199A QBI deduction;
4. limitation on losses for taxpayers other than corporations;
5. Increase in standard deduction;
6. increase in and modification of child tax credit;
7. increased contributions to ABLE accounts;
8. rollovers to ABLE programs from 529 programs;
9. extension of reduction in threshold for medical expense deduction;
10. treatment of student loans discharged on account of death or disability;
11. repeal of deduction for personal exemptions;
12. limitation on SALT deduction;
13. limitation on deduction for qualified residence interest;
14. modification of deduction for personal casualty losses;
15. termination of miscellaneous itemized deductions;
16. repeal of overall limitation on itemized deductions;
17. increased alternative minimum tax exemption for individuals.

ii. Clarifies the operation of the 60% limitation on the deductibility of charitable gifts of cash to public charities.

[1] This report was created on October 5, 2018; the status of the legislation may not be up to date when presented to Section members and attendees on October 13, 2018.

2. **The "American Housing and Economic Mobility Act", S. 3503 115th Cong., 2d Sess. (September 26, 2018)**

a. Activity in Congress:

i. Senate: Introduced on September 26, 2018 by U.S. Senator Elizabeth Warren (D-Mass.).

ii. Senate: Read twice and referred to the Committee on Finance.

b. Key Provisions:

i. Lower transfer tax exemption to George W. Bush's administration levels in 2009 — **$3.5 million for individuals or $7 million for couples**.

ii. Transfer tax on value above that threshold beginning at 55%.

iii. Progressive, marginal transfer tax rates with higher thresholds:

1. 60 percent on anything over $10 million for an individual;
2. 65 percent on anything over $50 million for an individual;
3. For estates worth more than $1 billion, rates would be increased 10 percent across the board to 65 percent, 70 percent, and 75 percent, respectively.

TAX NUGGET

October 2018

The secret, special tax liens for estates exist because of Internal Revenue Code Section 6324. Unlike the general tax lien, they arise automatically. The estate tax lien attaches to the decedent's entire gross estate, exclusive of property used to pay charges against the estate and administrative expenses for a period of ten years from the date of the decedent's death. While the practice in dealing with this lien varies from state to state, many practitioners have had to seek release of the lien for the sale of real estate or the distribution of assets.

Prior to June 2016, requests for release of this lien for sale of the property were handled locally. Then, perhaps due to lack of staff, the function was transferred to the Collection Advisory Estate Tax Lien group in San Jose, California. Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien, and necessary accompanying documents go to the Advisory group. This group was reluctant to release funds, holding them for application to tax or in escrow until the estate was closed. On April 5, 2017, IRS provided Interim Guidance for Responsibility to Process all Request for Discharge of the Estate Tax Lien in SBSE-05-0417-0011. This guidance was not for practitioners, but for Collection personnel. This memo discussed various scenarios and possible approaches. For example, if it appears that if no estate tax filing is necessary or appropriate estate tax has been paid with an extension or return, if the property appears to have no value to IRS or if the remaining property of the estate subject to the estate tax lien has a fair market value that is at least double the amount of the unsatisfied liability secured by the estate tax lien and the amount of all of the other liens upon the property which have priority of the estate tax lien. The guidance expired but was put into the Internal Revenue Manual, guidance for IRS employees. See IRM 5.5.8 for assistance in making the best case for release of the lien should you need it.

Lorraine New

George W. Gregory PLLC

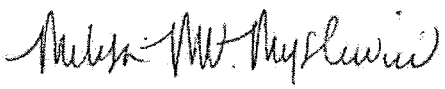
ATTACHMENT 7

COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

To: Probate and Estate Planning Council Members
From: Melisa M. W. Mysliwiec, Chair
RE: Committee Report
Date: October 2, 2018

On September 6, 2018, the Michigan Court Forms Committee, Estates and Protected Individuals Code Workgroup met to discuss the proposed EPIC forms changes that were posted to the SCAO website in July. Attached is a summary of the proposed EPIC forms changes that were discussed. Those changes that were approved by the committee are listed first, followed by the changes that were not approved. Please note that these changes are not yet final and no court forms have been changed yet. We will update you when the changes are made.

Respectfully submitted,



Melisa M. W. Mysliwiec

SCAO Michigan Court Forms Committee, EPIC Workgroup

2018 Report

by: Susan Chalgian

The committee approved the following changes:

PC 566 Supplemental Testimony to Identify Nonheir Devisees, Testate Estate - removed "witness" from the caption "witness signature" because of confusion on who should sign.

PC 626 Notice of Rights to Alleged Incapacitated Individual – added all rights listed in MCL 700.530(1)(a) and (ff) then made font size 10 to fit onto 2 full pages.

PC 640 Order Regarding Appointment of Conservator – corrected misspelling of disability.

PC 662 Letters of Guardianship of Individual with Developmental Disability – corrected misspelling of statute.

PC 663 Report of Guardian on Condition of Individual with Developmental Disability – added "standby" in front of "Guardian" for second signature line because of confusion on who should sign.

PC 684 Application and Order for Appointment of Out-of-State Guardian of Minor – added an explanation of the asterisk on item 5: "Also list person who had principal care and custody of the minor during the 63 days before filing this form."

MC 70 Request for Reasonable Accommodations and Response – modified to make clear this form is to be used to request a sign language interpreter versus a foreign language interpreter and if a foreign language interpreter is needed, form MC 81 should be used. Parenthetical language defining the accommodations was removed to encourage more reliable requests for actual needs. In appointment language, "denied" was modified to "denied or altered" to allow Judges more options.

MC 70a Review of Request for Reasonable Accommodations and Response - modified to make clear this form is to be used to request a sign language interpreter versus a foreign language interpreter and if a foreign language interpreter is needed, form MC 81 should be used. The response section header was modified to "Response to Request for Review" to clarify between the two MC 70 forms. In appointment language, "denied" was modified to "denied or altered" to allow Judges more options.

There was a request for a revision to the top instructional paragraph because it creates a condition if it is considered part of the form itself. Proposed language was "I am requesting a review of my request that was denied or altered." New language will be reviewed by this committee, other committees, and will need approval regarding ADA requirements.

MC 81 Request and Order for Interpreter - modified to make clear this form is to be used to request a foreign language interpreter versus a sign language interpreter and if a sign language interpreter is

needed, form MC 70 should be used. Options were added to the granted appointment to clarify the time period of coverage (specific hearing date or until case is closed).

MC 81a Review of Request for Interpreter and Order - modified to make clear this form is to be used to request a foreign language interpreter versus a sign language interpreter and if a sign language interpreter is needed, form MC 70 should be used. Options were added to the granted appointment to clarify the time period of coverage (specific hearing date or until case is closed).

There was a request for a revision to the top instructional paragraph because it creates a condition if it is considered part of the form itself. Proposed language was "I am requesting a review of my request that was denied or altered." New language will be reviewed by this committee, other committees, and will need approval regarding ADA requirements.

*Practice Tip: forms MC 70, 70a, 81, and 81a can be completed on behalf of the person needing accommodations as long as the representation (court/attorney/family) is noted in signature line "with consent of" and the person completing has actual knowledge of the accommodations needed. Courts vary on whether these forms should be filed with each proceeding or if one form covers all proceedings including with temporary versus permanent proceedings. The check boxes added to the Order language should assist with this clarification but there is no clarification on the MC 80 forms for accommodations in other forums such as meeting with a GAL. Best practice may be to file with each proceeding to ensure ability to reschedule should accommodations not be provided.

PC 625 Petition to Appoint Guardian of Alleged Incapacitated Individual – modified to show recent MCL 5.125(22) clarification of minor children as presumptive heirs of the alleged incapacitated individual. Addition of "adult" before child(ren) on Interested Party check box 4 and clarification of presumptive heirs to include minor children in instructions under L.

PC 675 Petition to Terminate/Modify Guardianship - modified to show recent MCL 5.125(22) clarification of minor children as presumptive heirs of the alleged incapacitated individual. Addition of "adult" before child(ren) on Interested Party check box 2 and clarification of presumptive heirs to include minor children in second asterisk.

PC 685 Application and Order for Appointment of Out-of-State Guardian of a Legally Incapacitated Individual - modified to show recent MCL 5.125(22) clarification of minor children as presumptive heirs of the alleged incapacitated individual. Addition of "adult" before child(ren) on Interested Party check box 2 and clarification of presumptive heirs to include minor children in asterisk.

PC 627 Acceptance of Appointment and Report of Guardian Ad Litem of Alleged Incapacitated Individual – modified to highlight specific important rights awarded the Alleged Incapacitated Individual: the right to object to DNR and POST orders. Under Section 4 check box "have limits placed on the guardian's powers" the following check boxes were added: do-not-resuscitate order executed on his or her behalf and POST form. The duties of GAL were also revised to reflect these clarified rights. The consensus as these needed to be highlighted from other rights to make sure the GAL got as clear an answer as possible from the Alleged Incapacitated Individual on their wishes and any objection to this particular.

nominated person doing this for them, and so that the court respected those wishes directly in the order for Guardianship.

PC 638a Order Regarding Termination/Modification of Guardian – modified to allow Judge to dismiss a petition under Section 3 and to order child support payments under Section 11 (insert as "b" and revise current "b" to "c").

PC 679 Order Appointing Emergency Temporary Guardian for Person with Alleged Developmental Disability – modified Section 8 to include check box for bond to be set by Judge as required by statute for professional guardians. A citation for that statue requirement will be added to the form.

PC 676 Petition to Terminate/Modify Conservatorship – modified to include space for the last four digits of the protected individual's Social Security number pursuant to MCR 5.125(C)(24)(e) and MCR 5.125(C)(25)(a). This allows the Social Security Administration to locate individuals named in proceeding.

New Form: Petition to Exercise Personal Representative's Powers – the committee agreed to the creation of this form to allow a Conservator to petition to exercise a personal representative's powers pursuant to MCL 700.5426(4). The form was drafted based on Judge Bell's current document for such action. There will be some issues for the court office in tracking these estates especially if moving counties (conservatorship to place of death). These issues should be worked out as use of the powers increases with the new forms.

New Form: Order to Exercise Personal Representative's Powers – the committee agreed to the creation of this form to allow a Conservator to exercise a personal representative's powers pursuant to MCL 700.5426(4). The form was drafted based on Judge Bell's current document for such action. There will be some issues for the court office in tracking these estates especially if moving counties (conservatorship to place of death). These issues should be worked out as use of the powers increases with the new forms.

New Form: Petition for Authority to Consent to Adoption – the committee agreed to the creation of this form to allow a guardian to request permission to consent to adoption of their ward pursuant to MCL 710.43. This form will be reviewed by other committees before it is released for use.

New Form: Order Regarding Request to Consent to Adoption – the committee agreed to the creation of this form to allow a guardian to request permission to consent to adoption of their ward pursuant to MCL 710.43. This form will be reviewed by other committees before it is released for use.

*Practice Tip: This consent is required even when guardian is adopting their ward.

New Form: Notice of Public Administrator's Intent to Seek Appointment as Personal Representative – the committee agreed to creation of this form as required by the revisions to MCL 700.3414(5). This form will be used by the state or county public administrators to provide notice of intent to seek appointment. The form has not been drafted and will need to be reviewed by this committee at next year's meeting before it will be released for use.

The committee declined to make the following changes:

PC 557 Notice of Intent to Request Appointment of Personal Representative – despite a suggestion that the second bullet point was incorrect in stating a person of higher priority may respond to the notice by filing an application for informal appointment as personal representative, the committee made no modification to this form. The consensus was that this was a correct application of the law and the Probate Register can schedule the matter for a hearing if there is an issue of nomination or priority.

PC 564 Proof of Service – despite a suggestion that Section 2 should be expanded and Section 4 should be shortened to accommodate that change, the committee made no modification to this form. The consensus was that the change would only add one additional line item to Section 2 and the current resolution to the space problem, attaching addendums, is adequate.

PC 572 Letters of Authority for Personal Representative – despite a suggestion to remove the check box and language "These letters expire:" the committee made no modification to this form. The suggestion was made because of difficulty with banks. The consensus was that a not checked box was clear communication of no expiration and keeping the check box made it easier for Judges to note expiration in cases where appropriate.

PC 650 Petition for Appointment of Limited Guardian of Minor – despite a suggestion to include a space for former names of the guardian, the committee made no modification to this form. The consensus was this information is already collected in other ways, varying by court, and should not be on the public form but instead kept confidential. Specifically the social history form by SCAO can be used.

PC 650i Petition for Appointment of Limited Guardian of Minor Indian Child (Voluntary Guardianship) – despite a suggestion to include a space for former names of the guardian, the committee made no modification to this form. The consensus was this information is already collected in other ways, varying by court, and should not be on the public form but instead kept confidential. Specifically the social history form by SCAO can be used.

PC 651 Petition for Appointment of Guardian of Minor – despite a suggestion to include a space for former names of the guardian, the committee made no modification to this form. The consensus was this information is already collected in other ways, varying by court, and should not be on the public form but instead kept confidential. Specifically the social history form by SCAO can be used.

PC 651ia Petition for Appointment of Guardian of Minor Indian Child (Voluntary Guardianship) – despite a suggestion to include a space for former names of the guardian, the committee made no modification to this form. The consensus was this information is already collected in other ways, varying by court, and should not be on the public form but instead kept confidential. Specifically the social history form by SCAO can be used.

PC 651ib Petition for Appointment of Guardian of Minor Indian Child (Involuntary Guardianship) – despite a suggestion to include a space for former names of the guardian, the committee made no modification to this form. The consensus was this information is already collected in other ways, varying

by court, and should not be on the public form but instead kept confidential. Specifically the social history form by SCAO can be used.

PC 658 Petition for Appointment of Guardian, Individual with Alleged Developmental Disability – despite a suggestion to add check boxes indicating partial or plenary temporary guardianship, the committee made no modification of this form. The consensus was that the statute does not contemplate one or the other form for temporary guardianships.

New Forms: Petition & Order to Resolve Disagreement Regarding Funeral Arrangements/Disposition of Decedent – despite a suggestion to create a process for funeral directors to request court resolution of disagreement regarding funeral arrangements and/or disposition of a deceased individual's remains pursuant to MCL 700.3207, the committee did not agree to create such forms. The consensus was that this was too rare an occurrence to be needed, that the new funeral estate planning documents may deter these rare occurrences even more, and that the funeral directors would not file because of fees.

New Forms: Petition & Order to Unseal Secret Marriages – despite a suggestion to create a process for individuals seeking to have a secret marriage unsealed pursuant to MCL 551.203, the committee did not agree to create such forms. The consensus was that this was too rare an occurrence to be needed.

New Form: Testimony Regarding Interested Persons in a Guardianship/Conservatorship – despite a suggestion to create a form to identify interested parties for a guardianship or conservatorship case, similar to what is used in a decedent estate, the committee did not agree to create such a form. The consensus was that this was covered thoroughly on the petition for guardianship/conservatorship so it was not necessary to add another form to the process. It was shared between courts that a family tree of heirs chart could be helpful to visitors of the court office in understanding who to name as heirs.

ATTACHMENT 8

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: October 4, 2018

The House Committee on Law and Justice took up the DDTC legislative proposal, 2018 House Bills 6129, 6130, and 6131, on Tuesday, September 25: I testified along with the Committee Chair, Representative Kesto (who is sponsoring HB 6129); no one offered to speak in opposition; the Committee members' questions were benign. The Committee met again on October 2 and voted out all three bills without issue. We are now awaiting passage on the House floor.

JPS
DETROIT 40411-1 1416471v10

ATTACHMENT 9

M E M O R A N D U M

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan

From: James P. Spica

Re: Uniform Law Commission Liaison Report

Date: October 4, 2018

UFIPA

The final version of the Uniform Fiduciary Income and Principal Act is now complete and posted at:

http://www.uniformlaws.org/shared/docs/principal%20and%20income/UFIPA_Final%20Act_2018.pdf

Electronic Wills

The draft Electronic Will Act, which received its first reading at the 2018 ULC Annual Meeting in July, is available at:

http://www.uniformlaws.org/shared/docs/electronic%20wills/2018AM_E-Wills_%20Draft.PDF

Management of Funds Raised Through Crowdfunding Efforts

I have been assigned to the ULC Drafting Committee on Management of Funds Raised through Crowdfunding Efforts. This Committee has not yet produced a draft act for discussion.

JPS
DETROIT 40411-1 1416338v11