Probate and Estate Planning Section

Agenda

Saturday, November 17, 2012
9:00 a.m.

University Club of
Michigan State University
Lansing, Michigan
MEETING OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION

-AND-

MEETING OF THE SECTION’S COMMITTEE ON SPECIAL PROJECTS

November 17, 2012

University Club of Michigan State University
3435 Forest Road
Lansing, Michigan

The above stated meetings of the Section will be held at the University Club of Michigan State University, on Saturday, November 17, 2012, at the above address. The Section’s Committee on Special Projects meeting will begin at 9:00 a.m., followed immediately thereafter by a meeting of the Council of the Section.

Shaheen I. Imami
Secretary

Prince Law Firm
800 W. Long Lake Road
Suite 200
Bloomfield Hills, Michigan 48302-2058
Telephone: 248.865.8810
Fax: 248.865.0640
E-mail: sii@probateprince.com
COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE
STATE BAR OF MICHIGAN

Schedule and Location of Future Meetings
All at University Club, Lansing, MI, except October meeting
Meetings Begin at 9:00 a.m. unless otherwise noted on Meeting Notice

The following is a list of 2012-2013 meeting dates

September 8, 2012
(Annual Meeting Precedes Council Meeting)

October 27, 2012 -
Haworth Inn & Conference Center, Holland, Michigan

November 17, 2012

December 15, 2012

January 19, 2013

February 16, 2013

March 16, 2013

April 13, 2013

June 8, 2013

September 21, 2013
MEETING OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

November 17, 2012
Lansing, Michigan

Agenda

I. Call to Order

II. Excused Absences

III. Introduction of Guests

IV. Minutes of October 27, 2012, Meeting of the Council

V. Treasurer Report – James B. Steward

VI. Chairperson’s Report – Mark K. Harder

VII. Report of the Committee on Special Projects – Marlaine C. Teahan

VIII. Standing Committee Reports

A. Internal Governance
   1. Budget – Shaheen I. Imami
   2. Bylaws – Nancy H. Welber
   3. Awards – Douglas A. Mielock
   4. Planning – Thomas F. Sweeney
   5. Nominating – Harold G. Schuitmaker
   6. Annual Meeting – Thomas F. Sweeney

B. Education and Advocacy Services for Section Members
   1. Amicus Curiae – David L. Skidmore
   2. Probate Institute – Amy N. Morrissey
   3. State Bar and Section Journals – Amy N. Morrissey
4. Citizens Outreach – Rebecca A. Schnelz
5. Electronic Communications – William J. Ard

C. Legislation and Lobbying
1. Legislation – Christopher A. Ballard
2. Updating Michigan Law – Marguerite Munson Lentz
3. Insurance Committee – Thomas F. Sweeney

D. Ethics and Professional Standards
1. Ethics – J. David Kerr
2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor
3. Specialization and Certification – James B. Steward

E. Administration of Justice
1. Court Rules, Procedures and Forms – Marlaine C. Teahan
2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

F. Areas of Practice
1. Real Estate – George F. Bearup
2. Transfer Tax Committee – Nancy H. Welber
3. Charitable and Exempt Organization – Christopher A. Ballard
4. Transfer Tax – Thomas F. Sweeney
5. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman

G. Liaisons
1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips
2. Business Law Section Liaison – John R. Dresser
3. Elder Law Section Liaison – Amy R. Tripp
4. Family Law Section Liaison – Patricia M. Ouellette
5. ICLE Liaison – Jeanne Murphy
6. Law Schools Liaison – William J. Ard
7. Michigan Bankers Association Liaison – Susan Allan
9. Probate Registers Liaison – Rebecca A. Schnelz
10. SCAO Liaisons – Marlaine C. Teahan
11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz
12. State Bar Liaison – David R. Brake
13. Taxation Section Liaison – Frederick H. Hoops, III

IX. Other Business

X. Hot Topics

XI. Adjournment
## Officers for 2012-2013 Term

<table>
<thead>
<tr>
<th>Officer</th>
<th>Position</th>
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</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Mark K. Harder</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>Thomas F. Sweeney</td>
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<tr>
<td>Vice Chairperson</td>
<td>Amy N. Morrissey</td>
</tr>
<tr>
<td>Secretary</td>
<td>Shaheen I. Imami</td>
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<tr>
<td>Treasurer</td>
<td>James B. Steward</td>
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## Council Members for 2012-13 Terms

<table>
<thead>
<tr>
<th>Council Member</th>
<th>Year elected to current term (partial, first or second full term)</th>
<th>Current term expires</th>
<th>Eligible after Current term?</th>
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</thead>
<tbody>
<tr>
<td>Teahan, Marlaine C.</td>
<td>2010 (2nd term)</td>
<td>2013</td>
<td>No</td>
</tr>
<tr>
<td>Schnelz, Rebecca A.</td>
<td>2010 (2nd term)</td>
<td>2013</td>
<td>No</td>
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<tr>
<td>Brigman, Constance L.</td>
<td>2010 (1st term)</td>
<td>2013</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lentz, Marguerite M.</td>
<td>2010 (1st term)</td>
<td>2013</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Allan, Susan M.</td>
<td>2010 (1st term)</td>
<td>2013</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>O’Brien Hon. Darlene</td>
<td>2010 (1st term)</td>
<td>2013</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Murkowski, Hon. David M.</td>
<td>2011 (2nd term)</td>
<td>2014</td>
<td>No</td>
</tr>
<tr>
<td>Kerr, J. David</td>
<td>2011 (2nd term)</td>
<td>2014</td>
<td>No</td>
</tr>
<tr>
<td>Taylor, Robert M.</td>
<td>2011 (2nd term)</td>
<td>2014</td>
<td>No</td>
</tr>
<tr>
<td>Ballard, Christopher A.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Bearup, George F.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
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<tr>
<td>Welber, Nancy H.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
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<tr>
<td>Ard, W. Josh</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
</tr>
<tr>
<td>Ouellette, Patricia M.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2012 (1st term)</td>
<td>2015</td>
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<tr>
<td>Spica, James P.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<td>Lucas, David P.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
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<tr>
<td>Skidmore, David L.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
</tr>
</tbody>
</table>
Ex Officio Members

John E. Bos
Robert D. Brower, Jr.
Douglas G. Chalgian
Raymond H. Dresser, Jr.
Joe C. Foster, Jr.
George W. Gregory
Henry M. Grix
Hon. Philip E. Harter
Dirk C. Hoffius
Brian V. Howe
Raymond T. Huetteman, Jr.
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
Russell M. Paquette
Patricia Gormely Prince
Douglas J. Rasmussen
Harold G. Schuitmaker
John A. Scott
Fredric A. Sytsma
Lauren M. Underwood
W. Michael Van Haren
Susan S. Westerman
Everett R. Zack
2012-13 Probate and Estate Planning Section Committees

Budget Committee
Mission: To develop the annual budget and to alert the Council to revenue and spending trends
Shaheen I. Imami, Chair
Mark K. Harder
James B. Steward

Bylaws Committee
Mission: To review the Section Bylaws and recommend changes to ensure compliance with State Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council
Nancy H. Welber, Chair
Christopher A. Ballard
David P. Lucas

Planning Committee
Mission: To periodically review and update the Section’s Strategic Plan and to annually prepare and update the Council’s Biannual Plan of Work
Thomas F. Sweeney, Chair

Nominating Committee
Mission: To annually nominate candidates to stand for election as the officers of the Section and members of the Council
Harold G. Schuitmaker, Chair
Douglas G. Chalgian
George W. Gregory

Annual Meeting
Mission: 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
Thomas F. Sweeney

Awards Committee
Mission: 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
Douglas A. Mielock, Chair
Robert D. Brower, Jr.
Phillip E. Harter
Brian V. Howe
Nancy L. Little
Amy N. Morrisey

Committee on Special Projects
Mission: The Committee on Special Projects is a working committee of the whole of the Section that considers and studies in depth a limited number of topics and makes recommendations to the Council of the Section with respect to those matters considered by the Committee. The duties of the Chair include setting the agenda for each Committee Meeting, and in conjunction with the Chair of the Section, to coordinate with substantive Committee chairs the efficient use of time by the Committee
Marlaine C. Teahan, Chair

Legislation Committee
Mission: In cooperation with the Section’s lobbyist, to bring to the attention of the Council recent developments in the Michigan
legislature and to further achievement of the Section’s legislative priorities, as well as to study legislation and recommend a course of action on legislation not otherwise assigned to a substantive committee of the Section

Christopher A. Ballard, Chair
William J. Ard
George W. Gregory
Harold G. Schuitmaker
Mark E. Kellogg
Sharri L. Rolland Phillips

Amicus Curiae Committee
Mission: 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

David L. Skidmore, Chair
Patricia M. Ouellette
Nancy H. Welber
Kurt A. Olson

State Bar and Section Journals Committee
Mission: 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 trust administration

Amy N. Morrisey, Chair
Nancy L. Little, Managing Editor
Melisa Marie-Werkema Mysliwiec, Associate Editor
Richard C. Mills

Citizens Outreach Committee
Mission: 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

Rebecca A. Schnelz, Chair (Liaison to Solutions on Self-help Task Force)
Rhonda M. Clark-Kreuer
Hon. Darlene A. O’Brien
James B. Steward
Nancy H. Welber
Phillip E. Harter
Michael J. McClory
Michael Dean
Kathleen M. Goetsch
Melisa Marie-Werkema Mysliwiec
Neal Nusholtz
Michael L. Rutkowski
Melinda V. Sheets
Ellen Sugrue Hyman

Probate Institute
Mission: To consult with ICLE in the planning and execution of the Annual Probate and Estate Planning Institute

Amy N. Morrisey
Electronic Communications Committee
Mission: To oversee all forms of electronic communication with and among members of the Section, including communication via the Section’s web site, the Section listserve, and the ICLE Online Community site, to identify emerging technological trends of importance to the Section and its members, and to recommend to the Council best practices to take advantage of technology in carrying out the Section’s and Council’s mission and work

William J. Ard, Chair
Rhonda M. Clark-Kreuer
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Hon. Darlene A. O’Brien
Rebecca A. Schnelz
Phillip E. Harter
Nancy L. Little
Stephen J. Dunn
Neal Nusholtz
Michael L. Rutkowski
Serene K. Zeni

Ethics Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment

J. David Kerr, Chair
William J. Ard
Robert M. Taylor

Unauthorized Practice of Law and Multidisciplinary Practice Committee
Mission: To help identify the unauthorized practices of law, to report such practices to the appropriate authorities and to educate the public regarding the inherent problems relying on non-lawyers

Robert M. Taylor, Chair
William J. Ard
J. David Kerr
Patricia M. Ouellette
Amy Rombyer Tripp

Court Rules, Procedures and Forms Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Court Rules and published court forms, and the interpretation, use, and amendment of them

Marlaine C. Teahan, Chair (Liaison to SCAO for Estates & Trusts Workgroup)
Constance L. Brigman (Liaison to SCAO for Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Rhonda M. Clark-Kreuer
Hon. David M. Murkowski
Rebecca A. Schnelz (Liaison to SCAO for Mental Health/Commitment Workgroup)
David L. Skidmore
Shaheen I. Imami
Douglas A. Mielock
Phillip E. Harter
James F. (“JV”) Anderton
Melinda V. Sheets
Updating Michigan Law Committee
Mission: To review, revise, communicate and recommend Michigan’s trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times.

Marguerite Munson Lentz, Chair
Robert P. Tiplady, II, Vice Chair
Susan M. Allan
Christopher A. Ballard
Mark K. Harder
Shaheen I. Imami
James P. Spica
Phillip E. Harter
Henry P. Lee
Michael G. Lichterman
Richard C. Mills
Christine M. Savage

Insurance Ad Hoc Committee
Mission: To recommend new legislation related to insurability and the administration of irrevocable life insurance trusts

Thomas F. Sweeney, Chair
Mark K. Harder
James P. Spica
Stephen L. Elkins
Stephen C. Rohr
Geoffrey R. Vernon

Real Estate Committee
Mission: To recommend new legislation related to real estate matters of interest and concern to the Section and its members

George F. Bearup, Chair
William J. Ard
Rhonda M. Clark-Kreuer
J. David Kerr
David P. Lucas
James B. Steward
Douglas A. Mielock
Stephen J. Dunn
Mark E. Kellogg
Michael G. Lichterman
Katie Lynwood
Richard C. Mills
Melisa Marie-Werkema Mysliwiec

Transfer Tax Committee
Mission: To monitor developments concerning Federal and State transfer taxes and to recommend appropriate actions by the Section in response to developments or needs

Nancy H. Welber, Chair
Marguerite Munson Lentz
Thomas F. Sweeney
Guardianship, Conservatorship, and End of Life Committee
Mission: 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

Constance L. Brigman, Chair
William J. Ard
Rhonda M. Clark-Kreuer
Rebecca A. Schnelz
Michael J. McClory
Phillip E. Harter
Michael W. Bartnik
Ellen Sugrue Hyman
Kurt A. Olson

Specialization and Certification Ad Hoc Committee
Mission: To make recommendations to the Section with respect to the creation and implementation of a program that recognizes specialization and certification of specialization in the fields of probate, estate planning, and trust administration

James B. Steward, Chair
William J. Ard
Patricia M. Ouellette
Ronald A. Berridge
Wendy Parr Holtvluwer
Richard J. Siriani
Serene K. Zeni

Charitable and Exempt Organization Committee
Mission: 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 A. Ballard, Chair
Michael W. Bartnik
Robin D. Ferriby
Richard C. Mills
Tracy A. Sonneborn

Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee
Mission: To review the statutes, case law, and court rules of Michigan and other jurisdictions concerning the scope of the Attorney Client Privilege for communications between trustees and their counsel and if necessary or appropriate, to recommend changes to Michigan law in this area

George F. Bearup, Chair
Shaheen I. Imami
David L. Skidmore
Michael J. McClory
Kalman G. Goren
Serene K. Zeni
David G. Kovac

Alternative Dispute Resolution Section Liaison
Sharri L. Rolland Phillips

Business Law Section Liaison
Mission: The liaison to the Business Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Business Law Section on matters of mutual interest and concern

John R. Dresser
Elder Law Section Liaison
Mission: The liaison to the Elder Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Elder Law Section on matters of mutual interest and concern
Amy Rombyer Tripp

Family Law Section Liaison
Mission: The liaison to the Family Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Family Law Section on matters of mutual interest and concern
Patricia M. Ouellette

ICLE Liaison
Mission: The liaison to ICLE is responsible for developing and maintaining bilateral communication between the Section and the Institute for Continuing Legal Education
Jeanne Murphy

Law Schools Liaison
Mission: The Law Schools Liaison is responsible for developing and maintaining bilateral communication between the Section and the law schools located in the State of Michigan on matters of mutual interest and concern
William J. Ard

Michigan Bankers Association Liaison
Mission: The liaison to the Michigan Bankers Association is responsible for developing and maintaining bilateral communication between the Section and the Michigan Bankers Association on matters of mutual interest and concern
Susan M. Allan

Probate Judges Association Liaisons
Mission: The liaisons to the MPJA are responsible for developing and maintaining bilateral communication between the Section and the MPJA on matters of mutual interest and concern
Hon. David M. Murkowski
Hon. Darlene A. O'Brien

Probate Registers Liaisons
Mission: The liaison to the Michigan Probate and Juvenile Registers Association is responsible for developing and maintaining bilateral communication between the Section and the Probate and Juvenile Registers Association on matters of mutual interest and concern
Rebecca A. Schnelz

SCAO Liaisons
Mission: The liaisons to SCAO are responsible for developing and maintaining communications between the Section and SCAO on matters of mutual interest and concern
Marlaine C. Teahan
Constance L. Brigman
Rebecca A. Schnelz
Solutions on Self-help Task Force Liaison
Mission: The liaison to the Solutions on Self-help (SOS) Task Force is responsible for maintaining bilateral communications between the Section and the Task Force

Rebecca A. Schnelz

State Bar Liaison
Mission: The liaison to the State Bar is responsible for maintaining bilateral communication between the Section and the larger State Bar of Michigan,

David R. Brake

Tax Section Liaison
Mission: The liaison to the Taxation Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Taxation Section on matters of mutual interest and concern

Frederick H. Hoops, III
ATTACHMENT 1
I. Call to Order

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:25 a.m.

II. Attendance

A. The following officers and members of the Council were in attendance:

- Harder, Mark K. – Chair
- Imami, Shaheen I. – Secretary
- Morrissey, Amy N. – Vice-Chair
- Steward, James B. – Treasurer
- Sweeney, Thomas F. – Chair-Elect
- Ard, W. Josh
- Ballard, Christopher A.
- Bearup, George F.
- Brigman, Constance L.
- Clark-Kreuer, Rhonda M.
- Kerr, J. David
- Lucas, David P.
- Lentz, Marguerite M.
- Murkowski, Hon. David M.
- Ouellette, Patricia M.
- Schnelz, Rebecca A.
- Skidmore, David L.
- Spica, James P.
- Taylor, Robert M.
- Teahan, Marlaine C.
- Welber, Nancy H.

A total of 21 council members and officers were present representing a quorum.

B. The following officers and members of the Council were absent with excuse:

- Sue Allen
- Hon. Darlene O’Brien

C. The following officers and members were absent without excuse:

None.

D. The following ex-officio members of the Council were in attendance:

- Brower Jr., Robert D.
- Gregory, George W.
- Joslyn, Robert B.
- Little, Nancy L.
- Martin, John H.
- Schuitmaker, Harold G.
- Scott, John A.
E. Others in attendance:

Larry Ferguson
Geoffrey Vernon
Kathleen Goetsch
Lorraine New
Rebecca Bechler
Jill Goodell
Lynn Chard

Kurt A. Olson
Michael Lichterman
Jeanne Murphy
Michele Marquardt
Charlie Oftstein
Rick Mills

III. Minutes of September 8, 2012 Meeting of the Council

The minutes of the September 8, 2012, meeting of the Council were previously distributed. After a brief discussion regarding the combined regular and annual meeting on September 8, 2012, a motion to approve the minutes as to the regular meeting was made by Shaheen I. Imami, with support from Mark K. Harder, the minutes were approved.

IV. Treasurer Report

James B. Steward and Shaheen I. Imami reported and discussed the financial reports for August and September 2012 (which were previously distributed with the Agenda for the meeting). Mr. Steward indicated that an additional printing bill for the Journal may be submitted for FY 2011-2012 based on the timing of prior submissions. Mr. Steward moved for approval of the financial reports, with support from Mr. Imami. The financial reports were approved, with none opposed.

V. Chairperson’s Report

Mark K. Harder thanked George W. Gregory for pushing and creating institutional knowledge for the Section’s officers and members. Mr. Harder thanked the Section’s ex-officios and urged their continued participation and also thanked well-wishes from council members.

Mr. Harder noted that the Chair does not really get to set agendas because the agenda for any given year is often set by outside forces and specific issues that arise during the term. With that understanding Mr. Harder said he has the following goals for his term as Chair:

- To keep things running smoothly, encourage high participation, maintain civility with each other and other stakeholders, and keep the Section financially sound
- To leave things a little better – and hopes that the proposed two-year operational plan and manuals/materials to reflect institutional knowledge will help
- To foster success of individual committees
- To look at how the Council communicates with members of Section – the listserve is the primary vehicle at the moment, but he would like to look at other avenues
• To encourage legislative initiatives that benefit our Section and the public – currently the biggest is the statute of repose because of the direct benefit to our members, but there is also proposed decanting, domestic asset protection trust, insurable interest, and insurance trust/trustee liability legislation in the works.

Mr. Harder discussed the request from Daniel Levy, Chair of the SBM Leadership Liaison Committee and the Director for Law and Policy with the Michigan Department of Civil Rights, that the Section commit to the Diversity Pledge sponsored by the SBM. A general discussion took place on the purpose and perceived need for the Diversity Pledge, other sections’ approaches, and whether the Diversity Pledge is aspirational or intended to be affirmative-action like. The Council determined that, despite our perception that the Section is proactive in seeking participation from all groups, the Diversity Pledge is aspirational and should be adopted. A motion to adopt the Diversity Pledge was made by Nancy Little, with support from David L. Skidmore, and approved on a Council vote of 21-0 in favor of the motion, with no abstentions (this represents a PUBLIC POLICY POSITION and will be reported to the SBM as such).

VI. Report of the Committee on Special Projects

Marlaine C. Teahan reported on the following matters addressed during the CSP meeting earlier in the day:

• Reviewed CSP guidelines

• Reviewed two-year operational plan proposed by Mark K. Harder and Thomas F. Sweeney

• Reviewed the status of foreign guardianship legislation (SB 0539) and discussed whether the committee should move forward or table the issue indefinitely

• Reviewed introduced legislation on digital assets (HB 5929 and HB 5983) and noted that the issue was being addressed by the Committee on Updating Michigan Law chaired by Marguerite Munson Lentz

• Reviewed and discussed proposed changes to statute of repose legislation in light of comments and concerns that it inadvertently lengthens the statute of limitations for legal malpractice. Ms. Teahan reported that CSP recommended that the Council accept Christopher A. Ballard’s proposed revisions as follows:
  o Amend MCL 600.5805(15) to include reference MCL 600.5838A and 600.5838B
  o Amend proposed MCL 5838B as follows:
    ▪ (1) – delete “than”
    ▪ (1)(A) – insert “of limitation” after “periods” & replace “Section 5838” with “this Chapter”
    ▪ (1)(B) – leave as is
• Give Mark K. Harder the ability to communicate to and liaise with stakeholders and others addressing the proposed legislation, coupled with the ability to delegate such authority to others to do so.

• A motion to adopt the CSP recommendation regarding the statute of repose was made by Ms. Teahan, with support from Mr. Ballard, and approved on a Council vote of 21-0 in favor of the motion, with no abstentions (this represents a PUBLIC POLICY POSITION and will be reported to the SBM as such).

• Reviewed the Dignified Death Act & Family Consent Law and noted the following:
  
  o Constance L. Brigman’s committee is authorized to monitor and report when developments occur

  o Further discussion and agenda placement tabled until such report

VII. Standing Committee Reports

A. Internal Governance

1. Budget

   Shaheen I. Imami presented the proposed budget for FY 2012-2013 (which was previously distributed with the Agenda for the meeting). Mr. Imami discussed line-item changes to combine electronic communications expenses into a single category and increases to certain budgeted items to reflect increased expenses. Mr. Imami also proposed the creation of a separate fund for amicus briefs to be seeded with $25,000.00 from the general fund and into which unspent amounts for the amicus brief budget line-item would be swept at the end of each fiscal year. The purpose of the amicus fund is to buffer the Section’s finances from a sudden increase in amicus activity – which is anticipated as more cases involving the interpretation and application of the Michigan Trust Code move their way through the appellate courts. Mr. Imami moved for approval of the proposed budget, with support from Amy N. Morrissey. The proposed budget was approved, with none opposed.

2. Bylaws

   Nancy H. Welber requested that the Council: (a) consider permitting outside groups to be consulting members of Section; and (b) revisit the issue of remote-participation in meetings by Section members.

3. Awards

   No report.

4. Planning – Thomas F. Sweeney

   Thomas F. Sweeney reported nothing further on the operational plan that was not already discussed during the meeting for the Committee on Special Projects.
5. Nominating

No report.

6. Annual Meeting – Thomas F. Sweeney

Thomas F. Sweeney reported that the annual meeting is scheduled for September 21, 2013.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

David L. Skidmore reported on the invitation from the Michigan Supreme Court for the Section to provide an amicus brief in *Grange Ins Co of MI v Lawrence*, COA 145206. Mr. Skidmore opined that the case did not involve issues related to the Section and was primarily a no-fault benefit issue. Mr. Skidmore recommended declining the invitation. Patricia M. Oullette noted that the Family Law Section also declined. Mr. Skidmore moved to decline the invitation, with support by Judge David M. Murkowski, and approved on a Council vote of 20-0 in favor of the motion, with J. David Kerr abstaining (this represents a PUBLIC POLICY POSITION and will be reported to the SBM as such).

Mr. Skidmore queried whether the Section wants to monitor and offensively pursue amicus activity. George W. Gregory pointed out that many cases do not actually go anywhere. Mark K. Harder authorized Mr. Skidmore to monitor areas of potential amicus activity for the Section if Mr. Skidmore wanted to do so.

2. Probate Institute – Amy N. Morrissey

Amy N. Morrissey reported that no sponsors are confirmed yet, but she is continuing to work on content and will report more next month. Ms. Morrissey also reported that registration will open earlier than before.

3. State Bar and Section Journals – Amy N. Morrissey

Nancy Little reported that an e-blast was sent to members to determine those who want hard-copies of the Journal. Ms. Little described process of how it is determined who will get hard copies and how to change one’s preference.

Ms. Little also reported that the next issue of the Journal is on target, with space for tax issues being reserved in the event Congress makes any changes that affect the pending expiration of the current system.

Amy N. Morrissey reported that the topic issue in SBM Bar Journal has been pushed to 2014.

4. Citizens Outreach – Rebecca A. Schnelz
Rebecca A. Schnelz asked whether anyone actually orders from the SBM, rather than self-printing. She also discussed self-help site and requests for enhancements.

5. Electronic Communications – William J. Ard

No report, but William J. Ard elicited questions.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Christopher A. Ballard briefly discussed SB 1296 and then deferred to Rebecca Bechler regarding matters currently pending in the Legislature. Ms. Bechler reported the status of various items on her memorandum and stated that much may change the landscape of scheduling in the Senate Judiciary depending on results of various ballot proposals.

2. Updating Michigan Law – Marguerite Munson Lentz

Marguerite Munson Lentz reported the status of proposed domestic protection asset trust legislation.

3. Insurance Committee – Thomas F. Sweeney

Thomas F. Sweeney reported that the insurable interest legislation passed the Michigan Senate and that other insurance-related initiatives remained on hold in the Legislature.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

J. David Kerr reported that the inventory attorney issue will be raised at November 2012 CSP meeting and that anyone with issues should send them to him before then.

John Scott reported on the Financial Action Task Force (FATF) that addresses the potential federalization of certain legal ethics intended to address money laundering and anti-terrorist financing. Mr. Scott stated that FATF may relate to or affect attorneys who draft trusts and business entities that may be viewed as devices to hide money; and that it may require objective verification of identity of individual seeking a service. ACTEC and the ABA are working together to create voluntary guidelines that may be adopted to avoid imposition of rules by U.S. Treasury.

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

No report.

3. Specialization and Certification – James B. Steward
No report.

E. Administration of Justice
   1. Court Rules, Procedures and Forms
      No report.
   2. Fiduciary Exception to Attorney Client Privilege

George F. Bearup reported that the committee has met and is trying to ascertain the status of Michigan law on the issue, as well as surveying other states’ laws.

F. Areas of Practice
   1. Real Estate – George F. Bearup
      No report.
   2. Transfer Tax Committee

Nancy H. Welber deferred to Thomas F. Sweeney, who reported the status of efforts to repeal Michigan’s inheritance tax. Mr. Sweeney does not think it is worth the Section’s time to address the issue. He reported that the banks are apparently concerned with old trusts that discuss the tax and the related costs of administration.

James Spica discussed issues of allocating cost of living adjustments to GST prior to year-end for years after 2012, including some discussion of claw-backs, allocation, and contingency planning in drafting. Mr. Spica noted that the use of the allocated exemption in later years will depend on manner in which the sunset provision is interpreted and applied.

3. Charitable and Exempt Organization – Christopher A. Ballard

Christopher A. Ballard reported that the committee has identified the following, possible legislative proposals: supervision of trustees; authorizing charities to serve as trustees of trusts in which the charity is a beneficiary; some states have raised ethics opinions involving attorneys and conflicts of interests where drafting attorney sits on board of the charity-beneficiary.

4. Guardianship, Conservatorship, and End of Life Committee

Constance L. Brigman reported that the committee will look at the following:

- Whether a GAL represents the alleged ward or not?
- How GALs are appointed – should they be attorneys or someone with a specific skill set (like social workers)?
- Language of orders appointing guardians: does the order need to more fully explain “full” or “plenary” guardianship?
G. Liaisons

1. Alternative Dispute Resolution Section Liaison

No report.

2. Business Law Section Liaison – John R. Dresser

Mark K. Harder reported for John R. Dresser about the establishment of business court in the circuit courts with three or more judges. Judge David M. Murkowski indicated that Judge Chris Yates would be willing to speak on the issue to those interested.

3. Elder Law Section Liaison

No report.

4. Family Law Section Liaison

Patricia M. Oullette reported that the Family Law Section’s coordination on proposed statute of repose.

5. ICLE Liaison

Jeanne Murphy discussed briefly the ICLE Community initiative.

6. Law Schools Liaison

No report.

7. Michigan Bankers Association Liaison

Susan M. Allen was absent, but George W. Gregory reported that Chase Bank will not accept a DPOA unless it has two witnesses, neither of which may be the notary. Nancy Little said that she discussed issue with Chase Bank and apparently its legal department will inform its employees of the conflict between its position and Michigan law.

Mr. Gregory also reported that the Wayne County Register of Deeds says that notary affidavit needs to reflect title and authority of the individual signing deed.


Judge David M. Murkowski had no report, but asked that the MPJA be kept in the loop regarding proposed changes to GAL responsibilities and other issues.

9. Probate Registers Liaison

No report.
10. SCAO Liaisons

Marlaine C. Teahan reported that workgroups have met, but there is no report yet.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz

No report.

12. State Bar Liaison – David R. Brake

No contact from liaison. No report.

13. Taxation Section Liaison – Frederick H. Hoops, III

No report.

VIII. Other Business

None.

IX. Hot Topics

None.

X. Adjournment

Meeting adjourned at 11:55 a.m.
Memorandum

To:        Probate and Estate Planning Section
From:      Rebecca Bechler
           Public Affairs Associates, Inc.
Date:      Saturday, October 27, 2012
Re:        Fall Legislative Update

The Legislature has only thirteen session days scheduled between now and the end of the year. Depending on the election results and the ballot initiative outcomes, session could have either a very hectic or very light schedule.

There are a number of issues the Section is monitoring during the final two months of session. Below is a status of those issues. (Any issues that are not completed before the end of the year will need to be reintroduced next session.)

Those issues likely to be completed by the end of the year:
SB 92 (Bieda) Written acknowledgment
HB 5154 Uniform Principal & Income Act (Walsh)
HB 5237 (Ouimet) Federal Estate Tax issue
SB 1102-1103 (Schuitmaker) (Ins. Interests)
SB 589 Foreign Guardianship (Schuitmaker)
SB 192 (Caswell) Estate Admin Fee (Deduct mtg/inv.)
SB 978-980 (Jones, Schuitmaker) (Trust Decanting/poa)
SB 1296 Statute of Repose (Schuitmaker)

Issues unlikely to be completed by the end of the year:
SB 907 Principal Residence Exemption (Brandenburg)
          (Exemption for Trust-owned property)
SB 404,405, 406 Estate Recovery
Guardian Consent for DNR Orders (Cotter)
HB 5427 (Constan) (Property exempt from garnishment)
SB 1338 (Hildenbrand)
          (allow probate judges to schedule certain hearings prior to minor turning 18)
Senate Bill 1296 (2012)

Sponsor
Tonya Schuitmaker

Categories
Civil procedure, statute of limitations; Torts, nonmedical malpractice; Occupations, attorneys

Civil procedure; statute of limitations; statute of repose for actions against an attorney-at-law or a law firm; enact. Amends sec. 5838 of 1961 PA 236 (MCL 600.5838) & adds sec. 5838b.

Bill Document Formatting Information
[X]
The following bill formatting applies to the 2011-2012 session:
- New language in an amendatory bill will be shown in BOLD AND UPPERCASE.
- Language to be removed will be strucken.
- Amendments made by the House will be blue with square brackets, such as: [House amended text].
- Amendments made by the Senate will be red with double greater/lesser than symbols, such as: <<Senate amended text>>.

(gray icons indicate that the action did not occur or that the document is not available)

Documents

- Senate Introduced Bill
  Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.

- As Passed by the Senate
  As Passed by the Senate is the bill, as introduced, that includes any adopted Senate amendments.

- As Passed by the House
  As Passed by the House is the bill, as received from the Senate, that includes any adopted House amendments.

- Senate Enrolled Bill
  Enrolled bill is the version passed in identical form by both houses of the Legislature.

Senate Fiscal Analysis

- COMMITTEE SUMMARY (Date Completed: 9-24-12)
  This document analyzes: SB1296

- FLOOR SUMMARY (Date Completed: 9-28-12)
  This document analyzes: SB1296

History

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<tr>
<th>Date</th>
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<td>9/20/2012</td>
<td>SJ 67 Pg. 2062</td>
<td>REFERRED TO COMMITTEE ON JUDICIARY</td>
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<td>9/27/2012</td>
<td>SJ 69 Pg. 2140</td>
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<td>9/27/2012</td>
<td>SJ 69 Pg. 2140</td>
<td>COMMITTEE RECOMMENDED IMMEDIATE EFFECT</td>
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WITHOUT AMENDMENT(S)
10/17/2012 SJ 70 Pg. 2162 PLACED ON ORDER OF THIRD READING
10/17/2012 SJ 70 Pg. 2168 RULES SUSPENDED
10/17/2012 SJ 70 Pg. 2168 PLACED ON IMMEDIATE PASSAGE
10/17/2012 SJ 70 Pg. 2183 PASSED ROLL CALL # 712 YEAS 37 NAYS 0 EXCUSED 1 NOT VOTING 0
11/8/2012 Expected in HJ 73 received on 10/17/2012

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SB-1296, As Passed Senate, October 17, 2012

SENATE BILL No. 1296

September 20, 2012, Introduced by Senator SCHUITMAKER and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 5838 (MCL 600.5838), as amended by 1986 PA 178,
and by adding section 5838b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5838. (1) Except as otherwise provided in section 5838a
2 OR 5838B, a claim based on the malpractice of a person who is, or
3 holds himself or herself out to be, a member of a state licensed
4 profession accrues at the time that person discontinues serving the
5 plaintiff in a professional or pseudoprofessional capacity as to
6 the matters out of which the claim for malpractice arose,
7 regardless of the time the plaintiff discovers or otherwise has
8 knowledge of the claim.
(2) Except as otherwise provided in section 5838a OR 5838B, an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The **PLAINTIFF HAS THE** burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim. shall be on the plaintiff. A malpractice action which THAT is not commenced within the time prescribed by this subsection is barred.

**SEC. 5838B.** (1) AN ACTION FOR LEGAL MALPRACTICE AGAINST AN ATTORNEY-AT-LAW, LICENSED IN THIS STATE OR ELSEWHERE, OR A LAW FIRM SHALL NOT BE COMMENCED LATER THAN 6 YEARS AFTER THE DATE OF THE ACT OR OMISSION THAT IS THE BASIS FOR THE CLAIM.

(2) AS USED IN THIS SECTION, "LAW FIRM" MEANS EITHER OF THE FOLLOWING:

(A) AN ORGANIZATION THAT IS ENGAGED IN THE PRIVATE PRACTICE OF LAW, INCLUDING A PARTNERSHIP, SOLE PRACTITIONER WITH 1 OR MORE HIRED ASSOCIATES, PROFESSIONAL LIMITED LIABILITY PARTNERSHIP, PROFESSIONAL LIMITED LIABILITY COMPANY, OR PROFESSIONAL CORPORATION.

(B) A LEGAL SERVICES ORGANIZATION.
Senate Bill 1296 (as introduced 9-20-12)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 9-24-12

CONTENT

The bill would add Section 5838b to the Revised Judicature Act to provide that an action for legal malpractice against an attorney-at-law, licensed in Michigan or elsewhere, or a law firm could not be commenced later than six years after the date of the act or omission that was the basis for the claim.

The Act provides that a person may not bring an action to recover damages unless, after the claim first accrued to the person, the action is commenced within the period of time prescribed by the Act (the statute or period of limitations). As a rule, the statute of limitations on malpractice actions is two years.

Except as otherwise provided in Section 5838a (which applies to medical malpractice actions), if a claim is based on the malpractice of a person who is a member of a State licensed profession, the claim accrues at the time the person discontinues serving the plaintiff in a professional capacity as to the matters that were the basis for the malpractice action, regardless of when the plaintiff discovers or otherwise has knowledge of the claim.

In addition, except as otherwise provided in Section 5838a, a malpractice action may be commenced at any time within the applicable period of limitations, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later.

Under the bill, these provisions would apply except as otherwise provided in Section 5838a or proposed Section 5838b.

The bill would define "law firm" as either an organization that is engaged in the private practice of law, including a partnership, sole practitioner with one or more hired associates, professional limited liability partnership, professional limited liability company, or professional corporation; or a legal services corporation.

MCL 600.5838 et al.

Fiscal Analyst: Dan O'Connor

MCL 600.5838 et al.

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.
Senate Bill 77 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Judiciary
House Committee: Judiciary
Date Completed: 1-20-12

RATIONALE

A 2006 decision of the Michigan Supreme Court raised concerns about the length of time a person would have to bring a lawsuit against an architect, professional engineer, or contractor. In *Ostroth v Warren Regency, GP, LLC*, the Court addressed the interaction of Sections 5805 and 5839 of the Revised Judicature Act which, respectively, impose a statute of limitations and a statute of repose (also called a period of limitations and a period of repose). (A statute of limitations limits the period of time an action may be brought after an injury or damage occurs or is discovered. A statute of repose sets a fixed time following an event, other than the occurrence of the injury or damage, after which a person cannot be held liable for injury or damage. When the period of repose expires, an action may not be brought even if the injury or damage has not yet occurred.) Traditionally, lawsuits against architects and engineers were subject to the two-year statute of limitations on malpractice actions under Section 5805, and suits against contractors were subject to the section’s three-year statute of limitations on general negligence actions. As amended in 1988, however, Section 5805 specified that the period of limitations for an action against an architect, professional engineer, or contractor, based on an improvement to real property, was as provided in Section 5839. Under that section, as a rule, a person may not bring an action arising out of the defective and unsafe condition of an improvement to real property, against an architect, professional engineer, or contractor later than six years after the time of occupancy or acceptance of the completed improvement.

In *Ostroth*, the Supreme Court held that Section 5839 functioned as both a statute of limitations and a statute of repose. As a result, injured parties had six years after the completion of an improvement to real property to bring an action against an architect, professional engineer, or contractor, regardless of whether the two- or three-year period of limitations under Section 5805 otherwise would have barred the action. Some people believed that this holding contradicted the public policy against preventing scale claims and created confusion and instability in the legal environment for the design and construction industry. It was suggested, therefore, that the *Ostroth* decision be reversed in statute.

CONTENT

The bill amended Sections 5805 and 5839 of the Revised Judicature Act to make actions against architects, professional engineers, and professional surveyors subject to the two-year statute of limitations on malpractice actions; and remove language under which Section 5839 governed the period of limitations on actions against those professionals and contractors.

Specifically, under the bill, an action against a State-licensed architect or professional engineer or a licensed professional surveyor arising from professional services rendered is an action charging malpractice subject to the period of limitation contained in Section 5805(6) (the two-year period of limitation on malpractice actions).
The bill specifies that the periods of limitation under Section 5805 are subject to the applicable period of repose established in Section 5839.

The bill deleted the language under which the period of limitation for an action against a State licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property was as provided in Section 5839.

Under Section 5839, a person may not bring an action arising out of the defective and unsafe condition of an improvement to real property, against an architect, professional engineer, or contractor later than six years after the time of occupancy or acceptance of the completed improvement. If the defect constitutes the proximate cause of the injury or damage and is the result of gross negligence, the action must be brought within one year after the defect is or should have been discovered, but may not be brought more than 10 years after the time of occupancy, use, or acceptance. An action based on error or negligence of a land surveyor in the preparation of a survey or report may not be maintained more than six years after delivery of the survey or report.

The bill retains these provisions. For an action against a professional surveyor, the period of repose is six years after a survey or report is delivered or recorded.

The bill took effect on January 1, 2012, and the amendments to Sections 5805 and 5839 apply to causes of action accruing on or after that date.

MCL 600.5805 & 600.5839

BACKGROUND

Section 5839 of the Revised Judicature Act (RJA) originally was enacted in 1967 to limit the liability exposure of architects and engineers. Michigan courts had held that architects, like health professionals, were subject to the statute of limitations that governs malpractice actions; by extension, this also applied to engineers. Until the mid-20th century, a person had to be "in privity" with an architect or engineer in order to bring a claim against him or her (meaning, essentially, that the parties had to have a contractual relationship). This doctrine began to wane as a defense in suits by injured third parties, which expanded the scope of liability of architects and engineers. As a result, Public Act 203 of 1967 added Section 5839 to the RJA to establish a six-year period of repose for these actions. Subsequently, Public Act 188 of 1985 extended this to contractors.

The courts then dealt with the question of whether Section 5839 applied to all claims arising out of the defective and unsafe condition of an improvement to real property, or only to third-party claims. Separate panels of the Michigan Court of Appeals held that the section did not apply to the owner of the property, but also found that lawsuits by owners were subject to the six-year statute of limitations on contract actions. These opinions distinguished between damage suffered by third parties arising out of an improvement to real property and damage to the improvement itself. In response to these decisions, Public Act 115 of 1988 amended Section 5805, adding the language under which the period of limitations for an action against an architect, engineer, or contractor based on an improvement to real property was as provided in Section 5839. In a 1992 opinion, the Michigan Court of Appeals held that the intent behind this amendment was to apply the limitation in Section 5839 "...to all actions brought against contractors on the basis of an improvement to real property, including those by owners for damage to the improvement itself" (Michigan Millers Mutual Insurance Co. v West Detroit Building Co., Inc., 196 Mich App 367).

The interaction between Sections 5805 and 5839 was addressed by the Michigan Court of Appeals in January 1994 in Witherspoon v Guilford (203 Mich App 240). This case involved an action that was brought after the three-year period of limitations for negligence claims in Section 5805 had run, but within the six-year period set forth in Section 5839. Reading the statute as a whole, the Court stated, "[W]e do not understand those provisions to expand the general three-year period of viability for injury claims under...[Section 5805] to a six-year period insofar as the claims are protected by § 5839." According to the Court, the Legislature did not indicate an intention "to breathe additional life into claims that otherwise would have expired" under Section 5805. In other words, the
REvised JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

CHAPTER 58
LIMITATION OF ACTIONS

600.5801 Limitation on actions; time periods; defendant claiming title under deed, court-ordered sale, tax deed, or will; other cases.

Sec. 5801. No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.

(1) When the defendant claims title to the land in question by or through some deed made upon the sale of the premises by an executor, administrator, guardian, or testamentary trustee; or by a sheriff or other proper ministerial officer under the order, judgment, process, or decree of a court or legal tribunal of competent jurisdiction within this state, or by a sheriff upon a mortgage foreclosure sale the period of limitation is 5 years.

(2) When the defendant claims title under some deed made by an officer of this state or of the United States who is authorized to make deeds upon the sale of lands for taxes assessed and levied within this state the period of limitation is 10 years.

(3) When the defendant claims title through a devise or in any way, the period of limitation is 15 years after the probate of the will in this state.

(4) In all other cases under this section, the period of limitation is 15 years.


600.5803 Foreclosure of mortgages.

Sec. 5803. No person shall bring or maintain any action or proceeding to foreclose a mortgage on real estate unless he commences the action or proceeding within 15 years after the mortgage becomes due or within 15 years after the last payment was made on the mortgage. This section limits foreclosure by advertisement and any other entries under the mortgage as well as actions of foreclosure in the courts.


600.5805 Injuries to persons or property; period of limitations; “dating relationship” defined.

Sec. 5805. (1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

(2) Subject to subsections (3) and (4), the period of limitations is 2 years for an action charging assault, battery, or false imprisonment.

(3) The period of limitations is 5 years for an action charging assault or battery brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided.

(4) The period of limitations is 5 years for an action charging assault and battery brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship.

(5) The period of limitations is 2 years for an action charging malicious prosecution.

(6) Except as otherwise provided in this chapter, the period of limitations is 2 years for an action charging malpractice.

(7) The period of limitations is 2 years for an action against a sheriff charging misconduct or neglect of office by the sheriff or the sheriff’s deputies.

(8) The period of limitations is 2 years after the expiration of the year for which a constable was elected for actions based on the constable’s negligence or misconduct as constable.

(9) The period of limitations is 1 year for an action charging libel or slander.

(10) Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person, or for injury to a person or property.

(11) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided.
(12) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship.

(13) The period of limitations is 3 years for a products liability action. However, in the case of a product that has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, shall be required to do so without benefit of any presumption.

(14) An action against a state licensed architect or professional engineer or licensed professional surveyor arising from professional services rendered is an action charging malpractice subject to the period of limitation contained in subsection (6).

(15) The periods of limitation under this section are subject to the applicable period of repose established in section 5839.

(16) The amendments to this section made by the 2011 amendatory act that added this subsection apply to causes of action that accrue on or after the effective date of that amendatory act.

(17) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.


Compiler's note: Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

"(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 6098, 6301, 6303, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

600.5807 Damages for breaches of contract; specific performance; fiduciary bonds; deeds; mortgages; surety bonds; appeal bonds; public obligations.

Sec. 5807. No person may bring or maintain any action to recover damages or sums due for breach of contract, or to enforce the specific performance of any contract unless, after the claim first accrued to himself or to someone through whom he claims, he commences the action within the periods of time prescribed by this section.

(1) The period of limitations on actions charging any surety on any bond of any executor, administrator, guardian is 4 years after the discharge of the executor, administrator, or guardian.

(2) The period of limitations is 10 years for actions founded upon bonds of public officers.

(3) The period of limitations on actions founded upon bonds executed under sections 41.80 and 41.81 of the Compiled Laws of 1948, is 2 years after the expiration of the year for which the constable was elected.

(4) The period of limitations is 10 years for actions founded upon covenants in deeds and mortgages of real estate.

(5) The period of limitations is 2 years for actions charging any surety for costs.

(6) The period of limitations is 2 years for actions brought on bonds or recognizances given on appeal from any court in this state.

(7) The period of limitations is 10 years for actions on bonds, notes, or other like instruments which are the direct or indirect obligation of, or were issued by although not the obligation of, the state of Michigan or any county, city, village, township, school district, special assessment district, or other public or quasi-public corporation in the state of Michigan.

(8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.


600.5809 Action to enforce noncontractual money obligations; limitations.

Sec. 5809. (1) A person shall not bring or maintain an action to enforce a noncontractual money obligation
unless, after the claim first accrued to the person or to someone through whom he or she claims, the person
commences the action within the applicable period of time prescribed by this section.

(2) The period of limitations is 2 years for an action for the recovery of a penalty or forfeiture based on a
penal statute brought in the name of the people of this state.

(3) Except as provided in subsection (4), the period of limitations is 10 years for an action founded upon a
judgment or decree rendered in a court of record of this state, or in a court of record of the United States or of
another state of the United States, from the time of the rendition of the judgment or decree. The period of
limitations is 6 years for an action founded upon a judgment or decree rendered in a court not of record of this
state, or of another state, from the time of the rendition of the judgment or decree. A judgment entered in the
district court of this state before May 25, 1973, is a judgment of a court not of record. A judgment entered in
the district court of this state on or after May 25, 1973, except a judgment entered in the small claims division
of the district court, is a judgment of a court of record. Within the applicable period of limitations prescribed
by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree. The
new judgment or decree is subject to this subsection.

(4) For an action to enforce a support order that is enforceable under the support and parenting time
enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan
Compiled Laws, the period of limitations is 10 years from the date that the last support payment is due under
the support order regardless of whether or not the last payment is made.


600.5811 Common carriers; charges and overcharges; definitions.

Sec. 5811. (1) All actions by common carriers for the recovery of all or any part of their charges arising out
of the intrastate transportation of persons or property within the state of Michigan, and all actions against
carriers for the recovery of overcharges collected by common carriers for the intrastate transportation of
persons or property within the state of Michigan shall be begun within 2 years of the time the claim accrues
and not afterwards.

(2) The term “charges” as used in this section means the charges applicable for transportation services
under the tariffs lawfully on file with the Michigan public service commission; and the term “overcharge” as
used in this section means charges for transportation services in excess of the tariffs lawfully on file with the
Michigan public service commission.


600.5813 Other personal actions.

Sec. 5813. All other personal actions shall be commenced within the period of 6 years after the claims
accrue and not afterwards unless a different period is stated in the statutes.


600.5815 Scope of limitations; legal and equitable; laches.

Sec. 5815. The prescribed period of limitations shall apply equally to all actions whether equitable or legal
relief is sought. The equitable doctrine of laches shall also apply in actions where equitable relief is sought.


600.5821 Recovery of land; recovery of public ground; personal actions; maintenance, care, and
treatment of persons in state institutions.

Sec. 5821. (1) Actions for the recovery of any land where the state is a party are not subject to the periods
of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for
more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.

(2) Actions brought by any municipal corporations for the recovery of the possession of any public
highway, street, alley, or any other public ground are not subject to the periods of limitations.

(3) The periods of limitations prescribed for personal actions apply equally to personal actions brought in
the name of the people of this state, or in the name of any officer, or otherwise for the benefit of this state,
subject to the exceptions contained in subsection (4).

(4) Actions brought in the name of the state of Michigan, the people of the state of Michigan, or any
political subdivision of the state of Michigan, or in the name of any officer or otherwise for the benefit of the
state of Michigan or any political subdivision of the state of Michigan for the recovery of the cost of
maintenance, care, and treatment of persons in hospitals, homes, schools, and other state institutions are not
subject to the statute of limitations and may be brought at any time without limitation, the provisions of any
statute notwithstanding.


600.5823 Counterclaims.

Sec. 5823. To the extent of the amount established as plaintiff's claim the periods of limitations prescribed in this chapter do not bar a claim made by way of counterclaim unless the counterclaim was barred at the time the plaintiff's claim accrued.


600.5825 Effect of limits running in favor of some joint obligors but not all.

Sec. 5825. (1) In actions commenced against 2 or more joint obligors, or joint executors or administrators of any contractor, if it is shown that the plaintiff's action is barred by the period of limitations as to 1 or more of the defendants but that the plaintiff is entitled to recover against any of the other defendants because of a new acknowledgment, or promise, or for any other reason, then judgment shall be given in favor of the plaintiff against those defendants from whom he is otherwise entitled to recover and against the plaintiff as to those defendants in whose favor the period of limitations has run.

(2) If there are 2 or more joint obligors or joint executors or joint administrators of any obligor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable because of any acknowledgment or promise made or signed by any of the others.

(3) If there are 2 or more joint obligors, or joint executors or joint administrators of any obligor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable merely because of any payment made by any of the others.


600.5827 Accrual of claim.

Sec. 5827. Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.


600.5829 Accrual of claim; right of entry or recovery of possession of land.

Sec. 5829. The right to make an entry on, and the claim to recover land accrue:

(1) Whenever any person is disseised, his right of entry on and claim to recover land accrue at the time of his disseisin;

(2) When he claims as heir or devisee of one who died seised, his claim accrues at the time of the death, unless there is another estate intervening after the death of the ancestor or visiter in which case his claim accrues when the intermediate estate expires or would have expired by its own limitation;

(3) When there is an intermediate estate, and in all other cases where the party claims by force of any remainder or reversion, his claim accrues when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture of the intermediate or precedent estate for which he might have entered at an earlier time.

(4) The provision of (3), does not prevent any person from entering when he is entitled to do so by any forfeiture or breach of condition, but if he claims under either of them his claim accrues when the forfeiture is incurred or the condition broken.

(5) In all cases not otherwise provided for, the claim accrues when the claimant or the person under whom he claims first becomes entitled to the possession of the premises under the title upon which the entry or action is founded.


600.5831 Accrual of claim; mutual and open account current.

Sec. 5831. In actions brought to recover the balance due upon a mutual and open account current, the claim accrues at the time of the last item proved in the account.


600.5833 Accrual of claim; breach of warranty of quality or fitness.

Sec. 5833. In actions for damages based on breach of a warranty of quality or fitness the claim accrues at the time the breach of the warranty is discovered or reasonably should be discovered.

600.5834 Accrual of claim; common carriers; charges; overcharges.
Sec. 5834. In actions brought by common carriers to recover for charges arising out of intrastate transportation and in actions brought against common carriers to recover for overcharges arising out of intrastate transportation the claim in respect to each shipment of property accrues upon the delivery or tender of the shipment of property and not afterwards.

600.5835 Accrual of claim; life insurance; presumption of death.
Sec. 5835. In actions on life insurance contracts where the claim is based on the 7-year presumption of death, the claim accrues at the end of the 7 years, for the purpose of computing the running of the period of limitations.

600.5836 Accrual of claim; installment contracts.
Sec. 5836. The claims on an installment contract accrue as each installment falls due.

600.5837 Accrual of claim; alimony.
Sec. 5837. The claims for alimony payments accrue as each payment falls due.

600.5838 Claim based on malpractice; accrual; commencement of action; burden of proof; limitations.
Sec. 5838. (1) Except as otherwise provided in section 5838a, a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.

(2) Except as otherwise provided in section 5838a, an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim shall be on the plaintiff. A malpractice action which is not commenced within the time prescribed by this subsection is barred.


Compiler's note: Section 3 of Act 178 of 1986 provides:
“(1) Sections 2925b, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.
“(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.
“(3) Sections 1629, 1653, 2169, 2391, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6339, and 6331 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.
“(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.
“(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.
“(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988.”

600.5838a Claim based on medical malpractice; accrual; definitions; commencement of action; burden of proof; applicability of subsection (2); limitations.
Sec. 5838a. (1) For purposes of this act, a claim based on the medical malpractice of a person or entity who is or who holds himself or herself out to be a licensed health care professional, licensed health facility or agency, or an employee or agent of a licensed health facility or agency who is engaging in or otherwise assisting in medical care and treatment, whether or not the licensed health care professional, licensed health facility or agency, or their employee or agent is engaged in the practice of the health profession in a sole proprietorship, partnership, professional corporation, or other business entity, accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or
otherwise has knowledge of the claim. As used in this subsection:

(a) "Licensed health facility or agency" means a health facility or agency licensed under article 17 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20101 to 333.22260 of the Michigan Compiled Laws.

(b) "Licensed health care professional" means an individual licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, and engaged in the practice of his or her health profession in a sole proprietorship, partnership, professional corporation, or other business entity. However, licensed health care professional does not include a sanitarian or a veterinarian.

(2) Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. However, except as otherwise provided in section 5851(7) or (8), the claim shall not be commenced later than 6 years after the date of the act or omission that is the basis for the claim. The burden of proving that the plaintiff, as a result of physical discomfort, appearance, condition, or otherwise, neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim is on the plaintiff. A medical malpractice action that is not commenced within the time prescribed by this subsection is barred. This subsection does not apply, and the plaintiff is subject to the period of limitations set forth in subsection (3), under 1 of the following circumstances:

(a) If discovery of the existence of the claim was prevented by the fraudulent conduct of the health care professional against whom the claim is made or a named employee or agent of the health professional against whom the claim is made, of the health facility against whom the claim is made or a named employee or agent of a health facility against whom the claim is made.

(b) There has been permanent loss of or damage to a reproductive organ resulting in the inability to procreate.

(3) An action involving a claim based on medical malpractice under circumstances described in subsection (2)(a) or (b) may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The burden of proving that the plaintiff, as a result of physical discomfort, appearance, condition or otherwise, neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim is on the plaintiff. A medical malpractice action that is not commenced within the time prescribed by this subsection is barred.


Compiler's note: Section 3 of Act 178 of 1986 provides:

"(1) Sections 2925, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.

"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.

"(3) Sections 1629, 1653, 2169, 2591, 2912c, 2912d, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after October 1, 1986.

"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.

"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.

"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of 1 county on or after October 1, 1988."

600.5839 Period of limitations on actions against licensed architect, professional engineer, contractor, or licensed professional surveyor; definitions; applicability.

Sec. 5839. (1) A person shall not maintain an action to recover damages for injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective or unsafe condition of an improvement to real property, or an action for contribution or indemnity for damages sustained as a result of such injury, against any state licensed architect or professional engineer performing or furnishing the design or supervision of construction of the improvement, or against any contractor making the improvement, unless the action is commenced within either of the following periods:

(a) Six years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.

(b) If the defect constitutes the proximate cause of the injury or damage for which the action is brought and
is the result of gross negligence on the part of the contractor or licensed architect or professional engineer, 1 year after the defect is discovered or should have been discovered. However, an action to which this subdivision applies shall not be maintained more than 10 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.

(2) A person shall not maintain an action to recover damages based on error or negligence of a licensed professional surveyor in the preparation of a survey or report more than 6 years after the survey or report is recorded or is delivered to the person for whom it was made or the person's agent.

(3) As used in this section:
   (a) "Contractor" means an individual, corporation, partnership, or other business entity that makes an improvement to real property.
   (b) "State licensed architect or professional engineer" or "licensed professional surveyor" means an individual so licensed, or a corporation, partnership, or other business entity on behalf of whom the state licensed architect or professional engineer or licensed professional surveyor is performing or directing the performance of the architectural, professional engineering, or land surveying service.

(4) The amendments to this section made by the 2011 amendatory act that added this subsection apply to causes of action that accrue on or after the effective date of that amendatory act.


Constitutionality: In O'Brien v Hazelt & Erdal, 410 Mich 1; 299 NW2d 336 (1980), the Michigan supreme court held that this statute does not violate constitutional precepts of due process and equal protection.

600.5841 Accrual of claim; to person other than person bringing action.
Sec. 5841. If the claim first accrues to an ancestor, predecessor, or grantor of the person who brings the action or makes the entry, or to any other person from or under whom he claims, the periods of limitations shall be computed from the time when the claim first accrued to the ancestor, predecessor, grantor, or other person, except as otherwise provided by law.


600.5843 Accrual of claim; regaining possession of land; subsequent loss; effect.
Sec. 5843. If the person who has a right to make an entry on land or a claim for the possession of land regains possession of it before the period of limitations has run and then loses possession of the premises again, the subsequent loss shall be deemed to give rise to a new claim which has its own period of limitations.


600.5851 Disabilities of infancy or insanity; tacking of successive disabilities prohibited; year of grace; removing disability of infancy; claim alleging medical malpractice accruing to person 8 years old or less or 13 years old or less; disability of imprisonment; "release from imprisonment" defined.
Sec. 5851. (1) Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5852.

(2) The term insane as employed in this chapter means a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane.

(3) To be considered a disability, the infancy or insanity must exist at the time the claim accrues. If the disability comes into existence after the claim has accrued, a court shall not recognize the disability under this section for the purpose of modifying the period of limitations.

(4) A person shall not tack successive disabilities. A court shall recognize only those disabilities that exist at the time the claim first accrues and that disable the person to whom the claim first accrues for the purpose of modifying the period of limitations.

(5) A court shall recognize both of the disabilities of infancy or insanity that disable the person to whom the claim first accrues at the time the claim first accrues. A court shall count the year of grace provided in this section from the termination of the last disability to the person to whom the claim originally accrued that has continued from the time the claim accrued, whether this disability terminates because of the death of the person disabled or for some other reason.

(6) With respect to a claim accruing before the effective date of the age of majority act of 1971, Act No. 79 of the Public Acts of 1971, being sections 722.51 to 722.55 of the Michigan Compiled Laws, the disability of
infancy is removed as of the effective date of Act No. 79 of the Public Acts of 1971, as to persons who were at least 18 years of age but less than 21 years of age on January 1, 1972, and is removed as of the eighteenth birthday of a person who was under 18 years of age on January 1, 1972.

(7) Except as otherwise provided in subsection (8), if, at the time a claim alleging medical malpractice accrues to a person under section 5838a the person has not reached his or her eighteenth birthday, a person shall not bring an action based on the claim unless the action is commenced on or before the person's tenth birthday or within the period of limitations set forth in section 5838a, whichever is later. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her eighteenth birthday, he or she is subject to the period of limitations set forth in section 5838a.

(8) If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has not reached his or her thirteenth birthday and if the claim involves an injury to the person's reproductive system, a person shall not bring an action based on the claim unless the action is commenced on or before the person's fifteenth birthday or within the period of limitations set forth in section 5838a, whichever is later. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her thirteenth birthday and the claim involves an injury to the person's reproductive system, he or she is subject to the period of limitations set forth in section 5838a.

(9) If a person was serving a term of imprisonment on the effective date of the 1993 amendatory act that added this subsection, and that person has a cause of action to which the disability of imprisonment would have been applicable under the former provisions of this section, an entry may be made or an action may be brought under this act for that cause of action within 1 year after the effective date of the 1993 amendatory act that added this subsection, or within any other applicable period of limitation provided by law.

(10) If a person died or was released from imprisonment at any time within the period of 1 year preceding the effective date of the 1993 amendatory act that added this subsection, and that person had a cause of action to which the disability of imprisonment would have been applicable under the former provisions of this section on the date of his or her death or release from imprisonment, an entry may be made or an action may be brought under this act for that cause of action within 1 year after the date of his or her death or release from imprisonment, or within any other applicable period of limitation provided by law.

(11) As used in this section, "release from imprisonment" means either of the following:
(a) A final release or discharge from imprisonment in a county jail.
(b) Release on parole or a final release or discharge from imprisonment in a state or federal correctional facility.


Compiler's note: Section 3 of Act 178 of 1986 provides:
"(1) Sections 2925h, 5805, 5838, and 5851 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to causes of action arising before October 1, 1986.
"(2) Sections 1483, 5838a, and 6304 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to causes of action arising on or after October 1, 1986.
"(3) Sections 1629, 1633, 2169, 2591, 2912c, 2912d, 2912e, 6098, 6301, 6303, 6305, 6306, 6307, 6309, and 6311 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall apply to cases filed on or after October 1, 1986.
"(4) Sections 1651 and 6013 of Act No. 236 of the Public Acts of 1961, as amended by this amendatory act, shall not apply to cases filed before October 1, 1986.
"(5) Chapter 49 of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed on or after January 1, 1987.
"(6) Chapter 49a of Act No. 236 of the Public Acts of 1961, as added by this amendatory act, shall apply to cases filed in judicial circuits which are comprised of more than 1 county on or after July 1, 1990 and shall apply to cases filed in judicial circuits which are comprised of I county on or after October 1, 1988."

600.5852 Death before period of limitations has run or within 30 days thereafter; commencement of action.

Sec. 5852. If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run.


600.5853 Absence from state.

Sec. 5853. If any person is outside of this state at the time any claim accrues against him the period of limitation shall only begin to run when he enters this state unless a means of service of process sufficient to
vest the jurisdiction of a Michigan court over him was available to the plaintiff. If after any claim accrues the person against whom the claim accrued is absent from this state, any and all periods of absence in excess of 2 months at a time shall not be counted as any part of the time limited for the commencement of the action unless while he was outside of this state a means for service of process sufficient to vest the jurisdiction of a Michigan court over him was available to the plaintiff.


600.5854 War; inability to prosecute; period of limitation.

Sec. 5854. If any person is unable to prosecute an action in the courts of this state because he is a citizen or subject of any country at war with the United States or because he is detained in any country at war with the United States or because he is detained by any neutral power or because for any other reason arising out of the war he is unable to use the courts of this state, the time of the continuance of the war shall not be counted as a part of the period limited for the commencement of any action.


600.5855 Fraudulent concealment of claim or identity of person liable; discovery.

Sec. 5855. If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.


600.5856 Tolling of statute of limitations or repose.

Sec. 5856. The statutes of limitations or repose are tolled in any of the following circumstances:
(a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
(b) At the time jurisdiction over the defendant is otherwise acquired.
(c) At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given.


Compiler's note: Enacting section 1 of Act 87 of 2004 provides:
"Enacting section 1. (1) Except as provided in subsection (2), this amendatory act applies to civil actions filed on or after the effective date of this amendatory act.
(2) This amendatory act does not apply to a cause of action if the statute of limitations or repose for that cause of action has expired before the effective date of this amendatory act."
promise shall be recognized as effective to bar the running of the period of limitations or revive the claim unless the acknowledgment is made by or the promise is contained in some writing signed by the party to be charged by the action.


**600.5867 Presumption as to possession of land; exception.**

Sec. 5867. In every action for the recovery or possession of real estate, the person establishing the legal title to the premises is presumed to have been in possession of the premises within the time limited by law for bringing such action, unless it appears that the same has been possessed adversely to such legal title by the defendant or by those from or under whom he claims, or that the grantee, or his assigns, in a contract of purchase have been in possession claiming title by virtue of said contract of purchase for a period of 20 years after the last payment was due on said contract or after the last payment was made on said contract of purchase.


**600.5868 Entry and possession.**

Sec. 5868. No person shall be deemed to have been in possession of any lands, within the meaning of this chapter merely by reason of having made an entry thereon, unless he continues in open and peaceable possession of the premises for at least 1 year next after such entry, or unless an action is commenced upon such entry and seisin, within 1 year after he is ousted or dispossessed of the premises.


**600.5869 Rights governed by law under which right accrued.**

Sec. 5869. All actions and rights shall be governed and determined according to the law under which the right accrued, in respect to the limitations of such actions or right of entry.

ATTACHMENT 2
PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

* 

SB 1296

* 

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

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

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

The total membership of the Probate & Estate Planning Section is 4,128.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 21. The number who voted opposed to this position was 0.
Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
Shaheen I. Imami

E-Mail:
sii@probateprince.com

Bill:
SB 1296 (Schuitmaker) Civil procedure; statute of limitations; statute of repose for actions against an attorney-at-law or a law firm; enact. Amends sec. 5838 of 1961 PA 236 (MCL 600.5838) & adds sec. 5838b.

Date position was adopted:
October 27, 2012

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:
23

Number who voted in favor and opposed to the position:
21 Voted for position
0 Voted against position
0 Abstained from vote
2 Did not vote

Position:
Support and Amend

Explanation of the position, including any recommended amendments:
Amend MCL 600.5805(15) to include references to MCL 600.5838A and 600.5838B

Amend proposed MCL 5838B (as contained in SB 1296) as follows:
SEC. 5838B
(1) AN ACTION FOR LEGAL MALPRACTICE AGAINST AN ATTORNEY-AT-LAW OR A LAW FIRM SHALL NOT BE COMMENCED AFTER THE EARLIER OF:
(A) THE EXPIRATION OF THE APPLICABLE PERIODS OF LIMITATION DESCRIBED IN THIS CHAPTER, OR
(B) 6 YEARS AFTER THE DATE OF THE ACT OR OMISSION THAT IS THE BASIS FOR THE CLAIM.
(2) A LEGAL MALPRACTICE ACTION THAT IS NOT COMMENCED WITHIN THE TIME
PRESCRIBED BY SUBSECTION (1) IS BARRED.

(3) AS USED IN THIS SECTION:

(A) “LAW FIRM” MEANS A PERSON OR ENTITY THAT IS PRIMARILY ENGAGED IN THE
PRACTICE OF LAW, REGARDLESS OF WHETHER IT IS ORGANIZED AS A SOLE PROPRIETORSHIP,
PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, PROFESSIONAL LIMITED LIABILITY
COMPANY, PROFESSIONAL CORPORATION, OR OTHER BUSINESS ENTITY. THE TERM “LAW
FIRM” ALSO INCLUDES A LEGAL SERVICES ORGANIZATION. “ATTORNEY-AT-LAW” MEANS AN
INDIVIDUAL LICENSED TO PRACTICE LAW IN THIS STATE OR ELSEWHERE.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in
this report.

## 53rd Annual Probate and Estate Planning Institute

Thursday – Saturday, May 9 – 11, 2013  
Grand Traverse Resort and Spa, Acme  

Friday – Saturday, June 14 – 15, 2013  
The Inn at St. John’s, Plymouth

Cosponsored by the Probate & Estate Planning Section of the State Bar of Michigan

### Session 1

**Acme, Thursday, May 9, 2013 PM**  
**Plymouth, Friday, June 14, 2013 AM**

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### Plenary Sessions

Amy N. Morrissey  
Westerman & Morrissey PC  
Ann Arbor

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<tbody>
<tr>
<td>7:30 a.m. – 8:15 a.m.</td>
<td><strong>Continental Breakfast (Plymouth Only)</strong></td>
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</tbody>
</table>
| 8:00 a.m. – 8:30 a.m. | **Making the Most of Your ICLE Resources**  
- How to get around within the resources  
- Resources explained including specific features  
- Tips to find what you need quickly  
- Overview of your primary law research tool  
- Using the ICLE Community  
- ICLE resources on your mobile device  
- What’s coming soon  
- Your questions answered  
Demonstration by ICLE Staff |

### Welcoming Remarks and Announcements

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<th>Time</th>
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<tr>
<td>8:00 a.m. – 8:30 a.m.</td>
<td><strong>Welcoming Remarks and Announcements</strong></td>
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### Symposiums and Workshops

- **Symposium on Trust Administration**  
  - Date: June 14, 2013  
  - Location: The Inn at St. John’s, Plymouth  
- **Workshop on Estate Planning**  
  - Date: June 15, 2013  
  - Location: The Inn at St. John’s, Plymouth
Mark K. Harder  
Chair, Probate & Estate Planning Section of the State Bar of Michigan  
Warner Norcross & Judd LLP  
Holland  

Bruce A. Courtade (Acme Only)  
President, State Bar of Michigan  
Rhoades McKee PC  
Grand Rapids

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<tr>
<th>Time</th>
<th>Session</th>
<th>Speaker(s)</th>
<th>Location</th>
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</table>
| 1:30 p.m. –   | **Probate and Trust Law Cases**                                         | Phillip E. Harter  
Chalgian & Tripp Law Offices PLLC  
Battle Creek                  |                                    |
| 1:55 p.m. –   | **The Future of the Practice of Law**                                   | Jonathan Blattmachr  
Eagle River Advisors  
New York, NY                  |                                    |
| 3:00 p.m. –   | **Networking Break**                                                   |                                                                          |                                    |
| 3:15 p.m. –   | **Advanced Planning Track**                                            | Moderator: Amy N. Morrissey                                                | Plymouth Time                      |
| 3:15 p.m. –   | **The Critical Importance of Powers of Appointment**                    | **Core Concepts Track**                                                    | Plymouth Time                      |
| 3:45 p.m.    | **The Top Ten “Super Powers” in Your Durable Power of Attorney**       | Moderator: Douglas A. Mielock                                               |                                    |

**Advanced Planning Track**  
- Tax and non—tax reasons for “modifying” trusts by “decanting”  
- What are powers of appointment and why

**Core Concepts Track**  
- Lifetime transfers  
- Applications and benefits management  
- Estate planning
are they critically important?
- The dangers and opportunities that arise with powers of appointments
- How powers of appointment can increase or decrease estate and income taxes

Jonathan Blattmachr
Eagle River Advisors
New York, NY

• Fiduciary powers, rights and obligations
Michele C. Marquardt
DeMent and Marquardt PLC
Kalamazoo

3:45 p.m. – 4:15 p.m.
Tax Update: 2013 and Beyond
- Estate and gift tax updates 2013
- Charitable tax updates

Jonathan Blattmachr
Eagle River Advisors
New York, NY

Fundamentals of Funding Trusts
- Real property issues
- Retirement plan assets
- Transfer on death security registration
- “Dry” trusts

Douglas A. Mielock
Foster Swift Collins & Smith PC
Lansing

4:15 p.m. – 4:45 p.m.
Planting the Gift Annuities Garden
- How gift annuities work: a “fruitful” demonstration
- Legal and tax rules
- Planning opportunities
- Gift annuity administration considerations

Robin D. Ferriby
Community Foundation for Southeast Michigan
Detroit

Filling Out the Medicaid Application: A Step-By-Step Guide
- When to complete the application
- Line-by-line steps
- Your complete timeline

Amy Rombyer Tripp
Chalgian & Tripp Law Offices PLLC
Jackson

Douglas G. Chalgian
Chalgian & Tripp Law Offices PLLC
East Lansing

4:45 p.m. – 5:00 p.m.
Questions and Answers

Questions and Answers

12:15 p.m. – 12:30 p.m.
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<th>Time</th>
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<tr>
<td>6:30 p.m. – 8:00 p.m.</td>
<td>Reception (Acme Only)</td>
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<tr>
<td>12:30 p.m. – 1:45 p.m.</td>
<td>Roundtable Lunch on Premises (Plymouth Only)</td>
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**END SESSION 1**

**Session 2**

**Acme, Friday, May 10, 2013 AM**

**Plymouth, Friday, June 14, 2013 PM**

<table>
<thead>
<tr>
<th>Acme Time</th>
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<tr>
<td>7:30 a.m. – 8:30 a.m.</td>
<td>Continental Breakfast (Acme Only)</td>
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<tr>
<td>8:15 a.m. – 8:30 a.m.</td>
<td>Remarks from the State Bar Executive Director (Acme Only)</td>
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<tr>
<td>8:30 a.m. – 8:50 a.m.</td>
<td>The Landscape in Lansing and Recent Legislation for Probate and Estate Planners</td>
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<tr>
<td>8:50 a.m. – 9:35 a.m.</td>
<td>This Land is Your Land, This Land is My Land: Estate Planning For Noncitizens and Nonresident Aliens</td>
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| Moderator: Amy N. Morrissey, Westerman & Morrissey PC, Ann Arbor |

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<th>Plymouth Time</th>
<th>1:45 p.m. – 2:05 p.m.</th>
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- Residency for estate tax and applicable transfer tax laws
- Know your country: common law vs. civil law
• Treaty application and analysis
• Noncitizen spouse: marital deduction and planning alternatives
• Foreign trusts: planning and pitfalls

Raj A. Malviya
Miller Johnson
Grand Rapids

9:35 a.m. – 10:20 a.m.  **Joint Revocable Trusts: Better Than Sliced Bread? When to Use (And When Not to Use)**

- Why a joint trust rather than an individual trust
- Tax and marital planning with the joint trust
- Funding the joint trust
- Trustees and their powers
- Other drafting tips

Louis S. Harrison
Harrison & Held, LLP
Chicago, IL

10:20 a.m. – 10:35 a.m.  Networking Break

10:35 a.m. – 11:20 a.m.  **Pixar for Estate Planners: Animating Your Practice through Social Media: The Dos and Don’ts and How Tos of New Communication Channels**

- Social media that estate planners should tune into
- Use social media productively in your practice
- Manage the ever-evolving social media landscape

Louis S. Harrison

2:50 p.m. – 3:35 p.m.  **Estate Planning for the Young Family**

- Married and unmarried parents
- Naming a guardian and conservator for minor children
- Asset considerations for the house and 401(k)s
- Advising young families on life insurance
- Wills vs. trusts

Diane Kuhn Huff
Scott & Huff PC
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<th>Time</th>
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<tbody>
<tr>
<td>11:20 a.m. – 11:50 a.m.</td>
<td>Traverse City</td>
<td><strong>Running Your Estate Planning Practice on an iPad</strong></td>
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<td>- Client meetings, files, and communications with an iPad</td>
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<td>- Document production in the iPad environment</td>
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<td>- Billing and collection techniques with an iPad</td>
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<td>- Ethical issues to consider</td>
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<td>Harrison &amp; Held, LLP</td>
<td>John D. Mabley Smith &amp; Mabley PLC Farmington Hills</td>
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<td>11:50 a.m. – 12:20 p.m.</td>
<td>Traverse City</td>
<td><strong>Marketing and Serving Your Clients Online</strong></td>
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<td>- Tips for improving your law firm’s online presence</td>
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<td>- Online marketing strategy: what works and what doesn’t</td>
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<td>- New revenue and client service opportunities</td>
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<td>Brendan B. Chard</td>
<td>The Modern Firm LLC Ann Arbor</td>
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<tr>
<td>12:20 p.m. – 12:30 p.m.</td>
<td>Traverse City</td>
<td><strong>Questions and Answers</strong></td>
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<tr>
<td>12:30 p.m. – 1:30 p.m.</td>
<td>Traverse City</td>
<td><strong>Roundtable Lunch on Premises (Acme Only)</strong></td>
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<tr>
<td>1:30 p.m. – 3:30 p.m.</td>
<td>Traverse City</td>
<td><strong>SPECIAL ADVANCED SESSION: Tax Aspects of the Rule Against Perpetuities (Acme Only)</strong></td>
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<td>- Vesting and possession distinguished for planning purposes</td>
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<td>- The Delaware tax trap</td>
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<td>4:40 p.m. – 5:10 p.m.</td>
<td>Traverse City</td>
<td><strong>Estate Planning for Remarrying Seniors: Will You Still Marry Me When I’m 64?</strong></td>
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<td>- Pre- and post-nuptial agreements</td>
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<td>- Social Security and retirement account planning</td>
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<td>- Elective share and Allowances</td>
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<td>- Medicaid benefits</td>
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<td>- Medical and financial decision making</td>
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<td>- Portability and other tax issues</td>
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<td>George F. Bearup</td>
<td>Smith Haughey Rice &amp; Roegge Traverse City</td>
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<td>5:15 p.m. – 5:45 p.m.</td>
<td>Traverse City</td>
<td><strong>Estate Planning for the Farm-Owning Family</strong></td>
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<td>- Knowing your client’s business and assets</td>
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<td>- Special Michigan real property rules</td>
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<td>- Dealing with cash poor, land rich estates</td>
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<td>- Fairness versus equality in distributions</td>
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<td>Todd W. Hoppe</td>
<td>Foster Swift Collins &amp; Smith PC Grand Rapids</td>
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<td>5:45 p.m. – 6:00 p.m.</td>
<td>Traverse City</td>
<td><strong>Questions and Answers</strong></td>
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• The GST tax effective date regulations
• Perpetuities reform legislation

James P. Spica
Dickinson Wright PLLC
Detroit

1:30 p.m. – 3:30 p.m. SPECIAL BASIC SESSION: New Lawyers: You Have the Floor! (Acme Only)
• Ask your practice management and substantive questions in this open forum

Sarah Ostahowski
Sarah L. Ostahowski PLLC
Shepherd

Michele C. Marquardt
DeMent and Marquardt PLC
Kalamazoo

David L. Skidmore
Warner Norcross & Judd LLP
Grand Rapids

Reception (Plymouth Only) 6:00 p.m. – 7:15 p.m.

END SESSION 2

Session 3
Acme, Saturday, May 11, 2013 AM
Plymouth, Saturday, June 15, 2013 AM

Acme Time Plenary Sessions
Plymouth Time
Moderator:
Amy N. Morrissey
Westerman & Morrissey PC
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<td>7:30 a.m. –</td>
<td>Making the Most of Your ICLE Resources</td>
<td>Demonstration by ICLE Staff</td>
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<td>8:15 a.m.</td>
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<td>8:30 a.m. –</td>
<td>Administration of Estates and Trusts with</td>
<td>William M. Wright</td>
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<td>9:10 a.m.</td>
<td>Unique Assets: The Sequel</td>
<td>Wright Penning &amp; Beamer</td>
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<td>Caledonia</td>
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<td>9:10 a.m. –</td>
<td>Medicaid and Medicare Update 2013</td>
<td>Lauretta K. Murphy</td>
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<td>9:50 a.m.</td>
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<td>Miller Johnson</td>
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<td>Grand Rapids</td>
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<td>Time</td>
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| 9:50 a.m. –  | **The Ethics of Estate Planning and Elder Law - An Interactive Session** | Robert B. Fleming  
| 10:30 a.m.  | • Real-world examples of common ethical problems with audience participation  
|             | • Discussion, review and maybe resolution on how to proceed               | Fleming & Curti PLC  
|             | • Real-world examples of common ethical problems with audience participation  
|             | • Discussion, review and maybe resolution on how to proceed               | Tucson, AZ  
| 10:30 a.m. – | **Networking Break**                                                      |                                                                              |
| 10:45 a.m.   | **Trust and Estate Administration Track**                                | **Disability Planning Track**                                               |
|              | **Moderator: Wendy Zimmer Linehan**                                       | **Moderator: Constance L. Brigman**                                         |
| 10:45 a.m. – | **View from the Register’s Counter**                                      | **Dealing with the Aging Client**                                           |
| 11:15 a.m.   | • How the courts handle common scenarios                                  | • Clients with diminished capacity                                           |
|              | • Court rules, forms, and more                                            | • Ethical requirements and ER 1.14                                           |
|              | • Administrative and procedural updates                                   | • Practical considerations and tips                                          |
|              | Michael J. McClory  
|              | Chief Deputy Probate Register  
|              | Wayne County Probate Court  
|              | Detroit                                                                  | Robert B. Fleming  
|              | Susan B. Flakne  
|              | Probate Register  
|              | Kent County Probate Court  
|              | Grand Rapids                                                            | Fleming & Curti PLC  
|              | Wendy Zimmer Linehan  
|              | Greenleaf Trust  
|              | Birmingham                                                              | Tucson, AZ  
| 11:15 a.m. – | **Administration of Joint Trusts**                                       | **The Final Breath: Assisting Clients with End-of-Life Decisions**          |
| 11:45 a.m.   | • Division of assets at the first death                                  | • Family consent statute                                                     |
|              | • Tax issues: potential problems and pitfalls                             | • Why clients need the medical POA and what should be in it                 |
|              | • The case of the rogue surviving spouse                                 | • Hierarchy of the medical decision-making process                           |
|              | Wendy Zimmer Linehan  
|              | Greenleaf Trust  
|              | Birmingham                                                              | Birmingham
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<th>Time</th>
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<tr>
<td>11:45 a.m. – 12:15 p.m.</td>
<td><strong>Trust Administration: Discretionary Distributions</strong></td>
<td>Constance L. Brigman, Law Office of Constance L. Brigman PC, Wyoming</td>
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<td>• Common discretionary standards and limitations</td>
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<td>• Ambiguous and empty phrasings</td>
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<td>• Process and documentation</td>
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<td>• Protections available to trustee</td>
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<td>Todd W. Simpson, Warner Norcross &amp; Judd LLP, Grand Rapids</td>
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<td>• Decanting availability and limitations</td>
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<td>• Fixing flawed special needs trusts</td>
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<td>• Avoiding unnecessary marital trusts</td>
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<td>• Protecting beneficiaries and trustees</td>
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<td>10:45 a.m. – 11:15 a.m.</td>
<td><strong>What You Can Learn from Celebrity Estate Battles</strong></td>
<td>Andrew W. Mayoras, Barron Rosenberg Mayoras &amp; Mayoras PC, Troy</td>
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<td>• Was Jimmy Hendrix’s legacy controlled by undue influence?</td>
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<td>• Whitney Houston’s battle over life insurance</td>
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<td>• Anna Nicole Smith: from strip club to the U.S. Supreme Court</td>
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<td><strong>Dealing with the Aging Client</strong></td>
<td>Robert B. Fleming, Fleming &amp; Curti PLC, Tucson, AZ</td>
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<td>• Clients with diminished capacity</td>
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<td>• Ethical requirements and ER 1.14</td>
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<td>• Practical considerations and tips</td>
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<td>11:20 a.m. – 11:50 p.m.</td>
<td><strong>The Keys to Successful Discovery in Probate Matters</strong></td>
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<td>• E-discovery</td>
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<td>• Scope of discovery in probate proceedings</td>
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<td><strong>The Final Breath: Assisting Clients with End-of-Life Decisions</strong></td>
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<td>• Family consent statute</td>
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<td>• Why clients need the medical POA and what should be in it</td>
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<td><strong>The Final Word: Judge Mack Tackles Probate Litigation</strong></td>
<td><strong>The Non-Tax Reasons for Decanting</strong></td>
<td>11:55 a.m. – 12:25 p.m.</td>
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<tr>
<td>• The long arm of probate jurisdiction: The right case? The right party?</td>
<td>• Decanting availability and limitations</td>
<td>11:55 a.m. – 12:25 p.m.</td>
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<td>• Key court rules</td>
<td>• Fixing flawed special needs trusts</td>
<td>11:55 a.m. – 12:25 p.m.</td>
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<td>• Mediation-early and often</td>
<td>• Avoiding unnecessary marital trusts</td>
<td>11:55 a.m. – 12:25 p.m.</td>
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<td>• On to trial</td>
<td>• Protecting beneficiaries and trustees</td>
<td>11:55 a.m. – 12:25 p.m.</td>
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<td>Wayne County Probate Court</td>
<td>Fleming &amp; Curti PLC</td>
<td>11:55 a.m. – 12:25 p.m.</td>
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<td>Detroit</td>
<td>Tucson, AZ</td>
<td>11:55 a.m. – 12:25 p.m.</td>
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### Questions and Answers

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<th>12:15 p.m. – 12:30 p.m.</th>
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<th>12:25 p.m. – 12:40 p.m.</th>
<th>Questions and Answers</th>
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**Joseph P. Buttiglieri**
Kemp Klein Law Firm
Troy

**Constance L. Brigman**
Law Office of Constance L. Brigman PC
 Wyoming
Blattmachr Breaks It Down: an Interactive Discussion of Trusts and Life Insurance

Wednesday, May 8, 2013
Grand Traverse Resort and Spa, Acme

Seminar Schedule

Presenter:
Jonathan Blattmachr
Eagle River Advisors
New York, NY

2:00 p.m. – 3:15 p.m.  The Fundamentals and Fine Points of Life Insurance in Estate and Financial Planning
  o The appropriate reasons to acquire life insurance
  o The beneficial and adverse tax effects of life insurance
  o How life insurance “really” works as a financial product
  o How to select the best life product
  o How to make life insurance premiums deductible
  o The “model perfect” way to acquire and administer life products
  o Your questions answered

3:15 p.m. – 3:30 p.m.  Break

3:30 p.m. – 5:00 p.m.  The Importance of Trusts in Estate and Financial Planning
  o Why individuals seek wealth and how that relates to trusts
  o Choosing an appropriate structure for a trust
  o Leveraging the GST exemption with a trust
  o Cascading Crummey Powers℠: protecting assets from GST tax without allocation of GST exemption
  o The magic of generation jumping
  o Maximizing asset protection for trusts including self-settled trusts
  o The benefits for all married couples of Alaska Community Property Trusts
  o Your questions answered
Instructions for Section Expense Reimbursement Form

This form can be prepared on your computer, digitally signed, digitally approved, and e-mailed for processing. All receipts and other required documentation can be scanned and e-mailed along with the form. You should keep a copy for your electronic file, and you will save paper and filing cabinet space as a result. You do not need to print the form and manually fill it out.

1. Type your name & address information. (You may tab after each field).
2. Select a section name from the drop down list.
3. Enter the appropriate expense account number.
4. Enter the amount(s).
5. In the date box, enter the date or pick from the calendar.
6. Type in the description and business purpose of the expense.
7. The form will automatically calculate the mileage, if applicable.
8. Type in the amount of the expense(s) for lodging, meals, miscellaneous.
9. The total expense will be displayed at the right hand side of the form for each line entered.
10. Please make sure the bottom right hand total amount and the upper right hand side total amounts are the same.
11. Date the form.
12. You may now digitally sign your form (placing your cursor over the signature line—it will prompt you through the process). Once you complete your first digital signature, it will be saved for future use.
13. You may save the form on your personal drive or shared drive for future reference.
14. You may enter a title if applicable.
15. Forward the form (by e-mail) along with scanned copies of receipts, list of names, and other required documentation to the treasurer of the section.
16. Once the form is approved, the treasurer will then forward the form/attachments to Patti Schafer in the Finance Department at SBM for processing.

Note: This form replaces any old or existing forms and should be used going forward.

If you have any questions about this form, please contact Patti Schafer at (517) 346-6362 or pschafer@mail.michbar.org.
State Bar of Michigan

Expense Reimbursement Form

Please provide account number and amount.

Staple receipts to back of form as required. For electronic transmittal, scan and PDF receipts and send with form by e-mail. Policies and procedures on reverse side.

Select a section

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I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Date | Title | Signature
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Grand Total | $0.00

Date | Title | Approved by (signature)
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Reset Form | Print Form
General Policies
1. Requests for reimbursement of individual expenses should be submitted as soon as possible following the event and no later than two weeks following the close of the fiscal year in which the expense is incurred so that the books for that year can be closed and audited.

2. All out of pocket expenses must be itemized.

3. Detailed receipts are recommended for all expenses but required for expenses over $25.

4. Meal receipts for more than one person must indicate names of all those in attendance unless the function is a section council meeting where the minutes of that meeting indicate the names of those present. Seminar meal functions should indicate the number guaranteed and those in attendance, if different.

5. Spouse expenses are generally not reimbursable.

6. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursement of mileage or travel expenses is limited to actual distance traveled; not distance from domicile to the meeting site.

7. Receipts for lodging expenses must be supported by a copy of the itemized bill showing the per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid.

8. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
   A. Tickets should be at the best rate available for as direct a path as possible.
   B. First class tickets will not be reimbursed in full but will only be reimbursed up to the amount of the best or average coach class ticket available for that trip.
   C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.
   D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

9. Reimbursement for car, bus or train will be limited to the maximum reimbursable air fare if airline service to the location is available.

10. Outside speakers should be advised in advance of the need for receipts and the above requirements.

11. Bills for copying done by a firm should include the numbers of copies made, the cost per page and general purpose (committee or section meeting notice, seminar materials, etc.).

12. Bills for reimbursement of phone expenses should be supported by copies of the actual phone bills. If that is not possible, the party called and the purpose of the call should be provided.

13. The State Bar of Michigan is Sales tax exempt. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be collected.

14. Refunds from professional organizations (Example: ABA/NABE) for registration fees and travel must be made payable to the State Bar of Michigan and sent to the attention of the Finance Department. If the State Bar of Michigan is paying your expenses or reimbursing you for a conference and you are aware you will receive a refund, please notify the finance department staff at the time you submit your request for payment.

15. Reimbursement will in all instances be limited to reasonable and necessary expenses.

Specific Policies
1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.

2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.

3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.
CSP Agenda – Probate and Estate Planning Council

November 17, 2012

9:00 a.m.

1. Inventory Attorney – Ethics issue – David Kerr.

2. Certification/Specialization – discuss funding, implementation, testing, appeals, and other rules that may cause concern – Jim Steward.

Due to time constraints, the following items may be handled as part of today's Council meeting:

3. Family Consent Law – review proposed letter to other stakeholders – Josh Ard.

ETHICS COMMITTEE RECOMMENDATION

INVENTORY ATTORNEY

On September 20, 2012 the Master Lawyers Section suggested a revision to Rule 2 of the State Bar of Michigan which would require an Inventory Attorney. The inventory attorney’s duties begin upon the death, disability or disappearance of any attorney. The inventory attorney takes action as is appropriate to protect the interests of the clients, including but not limited to notifying clients of the changed status of the reporting member, returning files and papers as appropriate, and retaining files as appropriate. In certain circumstances where Court assistance might be necessary, the proposed amendment place the proceedings in the Circuit Court where receiverships are managed.

At the September 22, 2012 meeting of the Council, Attorney Linda Pohly provide a letter recommending that if Court proceedings were necessary for the duties of the inventory attorney, that those proceedings be in the Probate Court because that Court has jurisdiction over the estates of deceased and disabled persons.

The Ethics Committee recommends that if proceedings are necessary that they be in the Probate Court. To implement this recommendation the Ethics Committee recommends, that the proposed amendment to Rule 2 be amended as set forth in the attachment and that the recommendation change be sent to the Representative Assembly for consideration. The Ethics Committee recommends that the recommended change be sent with the statement that the Probate and Estate Planning Council neither supports nor opposes the change to Rule 2, but if the change does take place recommends that proceedings be in the Probate Court.

The Ethics Committee recognizes that there are many issues connected with the concept of an inventory attorney. The Ethics Committee recommends that these important matters be left to the wisdom of the Representative Assembly and that those wishing to address issues connected with the Inventory Attorney present their concerns to the Representative Assembly.

The recommended change to proposal for Rule 2 is attached.
Rule 2, Rules Concerning the State Bar of Michigan

Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan, subject to the provisions of these rules. Law students may become law student section members of the State Bar. None other than a member’s correct name shall be entered upon the official register of attorneys of this state. Each member, upon admission to the State Bar and in the annual dues statement, must provide the State Bar with the member’s correct name and address, and such other information as may be required. If the address provided by the member is a mailing address only, the member also must provide a street or building address for the member’s building or residence. No member shall practice law in this state until such information has been provided. Members shall notify the State Bar promptly in writing of any change of name or address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member’s name. The name and address on file with the State Bar at the time shall control in any matter arising under these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office. Every member who represents any client other than a governmental agency, public body, or political subdivision, in the annual dues statement must identify and certify the name of an active member who has agreed to serve as inventory attorney in the event of the death, disability or disappearance of the reporting member. In the event the reporting member learns of the unavailability, incompetence or death of the inventory attorney, the reporting member shall identify to the State Bar within thirty days an active member of the State Bar who has agreed to serve as inventory attorney. The reporting member should maintain this information, together with instructions directing that the inventory attorney and the State Bar of Michigan be contacted upon the death, disability or disappearance of the reporting member. Upon receipt of such notification, the inventory attorney shall take such action as is appropriate to protect the interests of the clients, including but not limited to notifying clients of the changed status of the reporting member, returning files and papers as appropriate, and retaining files as appropriate. The Attorney Grievance Commission may assist the inventory attorney as co-counsel in this process. In the event the inventory attorney is unable or unwilling to act and if MCR 9.121 does not apply, proceedings shall be in the Probate Court utilizing the provisions of MCR 9.119(G) shall apply and shall be coordinated with any proceedings in the Probate Court pertaining to the attorney. Every active member shall annually provide a certification as to whether the member or the member’s law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds. The certification shall be placed on the face of the annual dues notice and shall require the member’s signature or electronic signature.
1. Conflict checks before the inventory attorney acts? If there is a conflict, how will that be handled? This is statistically unlikely, but could happen. In this circumstance, Probate Court may not be best. A member of the Ethics Committee raises the following hypothetical. There is litigation in another court. The inventory attorney represents a client who is in conflict with a client of the nominating attorney. The client of the nominating attorney needs to have something done quickly but the inventory attorney has duties to her client. The judge in charge of the tribunal is the most proper one to address those matters, not a probate judge. Does a probate judge have a better sense of the capacity of a lawyer to practice patent law? It may be better if the probate court were the default court but recognize that some matters might be handled better elsewhere.

2. Who bears the costs? Is the inventory attorney stuck with the fee arrangements of the nominating attorney? Or could the inventory attorney charge more? What if the client objects that he had a contract?

3. Does the nominating attorney have a duty to find inventory attorneys that can handle each case? Attorneys practice in different areas.

4. In general, would a requirement expose a nominating attorney (or her estate) to a greater risk of malpractice? Does this raise the standards for negligence in other words? How much of a duty does the nominating attorney have in choosing an inventory attorney?

5. Can the inventory attorney simply decline to take on the cases when the time comes? What consequences to the nominating attorney?

6. What are the consequences for client confidentiality if the disciplinary rules are not changed? Does this mean that every engagement of an attorney must be in writing, must disclose the inventory attorney and must address client confidentiality.

7. If the inventory attorney becomes disabled or dies before the engaged attorney, what then?
8. If the Rules of Professional Conduct are not changed, will anyone agree to be an inventory attorney.
ATTACHMENT 2
SPECIALIZATION
RULE 1.
PURPOSE

The Rules Governing the State Bar of Michigan (“State Bar”) Program for certifying Legal Specialists is to establish a program for certifying specialists in specified areas of law, to identify and enhance public access to appropriate legal services by regulating the certification of attorneys as specialists, who have proficiency in the specialty fields, to identify such attorneys to the public, and to encourage attorney competence and efficiency.

Rule 1.1. Short Title

These rules shall be known as the Michigan Rules for Certifying Legal Specialists.

Rule 1.2. Public Notice

[See complete Rules for text]

Rule 1.3. Liability

The State Bar shall assume no liability to any persons whomever by reason of the adoption and implementation of this Certification program.

Rule 1.4. Amendment

These rules may be amended in accordance with the procedures for amending the Rules Regulating the State Bar.

Rule 1.5. Definitions

[See complete Rules for text]

RULE 2.
BOARD OF LEGAL SPECIALIZATION & SPECIALTY COMMITTEES

Rule 2.1. Board of Legal Specialization;

2.1.1. Composition. The Court hereby establishes a Board of Legal Specialization (“Board”), which Board shall have jurisdiction under state law over the subject of specialization of Attorneys. The Board shall be composed of thirteen (13) members appointed by
the Supreme Court. The Board shall be composed of eight (8) attorneys, two (2) judges, two (2) law faculty members from accredited Michigan law schools engaged in full time education, and one (1) representative of the Institute of Continuing Legal Education. The Attorney members of the Board shall be representative of the legal profession and shall have practiced continuously for (5) five years prior to appointment. The Attorney members may include Attorneys who are in general practice as well as those who are Board certified specialists or otherwise deemed to be competent in the specialty area(s) in which they practice. If a member of the Board misses more than three (3) meetings of the Board in any twelve month period, the member is subject to removal.

2.1.2. Terms.

[See complete Rules for text]

2.1.3. Meetings.

[See complete Rules for text]

2.1.4. Title. These rules shall be known as Michigan Rules of Legal Specialization.

2.1.5. Board Officers.

[See complete Rules for text]

2.1.6. Annual Report. The Board shall file with the Supreme Court an annual report detailing the work of the Board.

Rule 2.2. Powers and Duties

The Board shall have general jurisdiction of all matters pertaining to regulation of specialization and certification of specialists in the practice of law in Michigan and shall have the power and duty:

2.2.1 to administer these rules and the rules and regulations of the Board;

2.2.2 to designate specialties of law practice and define the scope and limits of such specialties and to provide procedures to achieve these purposes;
2.2.3 to appoint, supervise, receive and review the recommendations of and consult with Specialty Committees as herein defined:

2.2.4 to make and publish standards for the certification of specialists, upon the Board's own initiative or upon consideration of recommendations made by the Specialty Committees, such standards to be designed to produce a uniform minimum level of competence among the various specialties in accordance with the nature of each specialty;

2.2.5 to certify specialists or deny, suspend or revoke the certification of specialists upon the Board's own initiative, upon recommendations made by the Specialty Committees or upon requests for review of recommendations made by the Specialty Committees;

2.2.6 to establish and publish procedures, rules, regulations and by-laws to implement these rules;

2.2.7 to propose, and request the Supreme Court to make, amendments to these rules when appropriate;

2.2.8 to cooperate with other Boards or agencies in enforcing standards of professional conduct and to report apparent violations of the Rules of Professional Conduct of this state to the appropriate disciplinary authority;

2.2.9 to evaluate and approve, or disapprove, continuing legal education courses for the purpose of relevancy;

2.2.10 to cooperate with other organizations, boards and agencies engaged in the certification of legal specialists or concerned with the topic of legal specialization; and

2.2.11 to monitor Attorney representation concerning certification status.

2.2.12 to appoint special committees to investigate and make recommendations on particular issues that arise from time to time, including a suspected breach of confidentiality, and to act on such committees' recommendations.

Rule 2.3. Administration of Plan
2.3.1 The State Bar may appoint or contract for such services, equipment, facilities and staff as may be needed for the efficient administration of the Board's work.

2.3.2. The applicable assigned staff shall conduct a preliminary review of each application and complete a worksheet to show the file content for each Applicant prior to initial review by the applicable specialty committee.

2.3.3. Those Applicants who have questionable substantial involvement may be given the opportunity to respond to the Specialty Committee’s concerns in writing before the Applicant is denied to sit for the examination.

2.3.4 A minimum of two (2) Specialty Committee members shall review each application prior to making their recommendation to the full Specialty Committee.

2.3.5 The Board may allow Applicants found eligible, but who either fail to take the exam or who take the exam and fail it, to file an abbreviated application form if they reapply the following year.

2.3.6 Applicants will be notified in writing concerning the disposition of their applications.

Rule 2.4. Specialty Committees
The Board shall establish a Specialty Committee for each specialty in which specialists are to be certified.

2.4.1. Composition. The Specialty Committee shall be composed of five (5) members appointed by the Board, one of whom shall be designated by the Board as chairperson of the Specialty Committee. Members of the Specialty Committee shall be Attorneys licensed and currently in good standing to practice law in this state who are Board certified specialists in the specialty field, or, in the judgment of the Board, are otherwise deemed competent in the field of law covered by that specialty committee.

2.4.2 Term of Office. Specialty Committee members shall hold office for three (3) years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the Board to staggered terms of office and the initial appointees shall serve as follows: one shall serve for one (1) year after appointment; two shall serve for two (2) years after appointment; and two shall serve for three (3) years after
appointment. Appointment by the Board to a vacancy shall be for the remaining term for the member leaving the Specialty Committee. All members shall be eligible for reappointment to not more than one additional three (3) year term after having served one full three (3) year term.

2.4.3 Meetings. Meetings of the Specialty Committees shall be held at regular intervals, at such times and places and upon such notice as each Specialty Committee may from time to time prescribe or upon direction of the Board.

Rule 2.5. Jurisdiction of Specialty Committees

Each Specialty Committee shall advise and assist the Board in carrying out the Board’s objectives and in the implementation and regulation of the procedures for the receipt, processing and evaluation of applications for certification in that specialty. Each Specialty Committee shall advise and make recommendations to the Board as to the standards for specialty and the certification of individual specialists in that specialty. Committees for specialties shall include:

A. Trust, Estate and Probate Law
B. [others to be determined]

Rule 2.6. Duties of Specialty Committees

Each Specialty Committee shall be charged with actively administering the plan in its specialty and, with respect to that specialty, shall:

2.6.1 after public hearing after due notice, recommend to the Board reasonable and pertinent standards applicable to that specialty;

2.6.2 make recommendations to the Board for certification, continued certification, denial, suspension or revocation of certification of specialists and for procedures with respect thereto;

2.6.3 administer procedures established by the Board for review of applications for certification and continued certification as a specialist and for denial, suspension or revocation of such certifications;

2.6.4 administer examinations and other testing procedures, if applicable, investigate references of Applicants and, if deemed advisable, seek additional information regarding Applicants for certification or continued certification as specialists;
2.6.5 make recommendations to the Board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty; and

2.6.6. perform such other duties and make such other recommendations as may be requested of or delegated to the Specialty Committee by the Board.

Rule 2.7. **Limitation on Board Authority**

The Board in the implementation of these rules shall not alter the following privileges and responsibilities of Certified Specialists and other Attorneys.

2.7.1 **Scope of practice.** No standard shall be approved which shall in any way limit the right of a Certified Specialist to practice in all fields of law. An Attorney, alone or in association with any other Attorney, shall have the right to practice in all fields of law, even though the Attorney is certified as a specialist in a particular field of law.

2.7.2 **Practice of non-specialists.** No Attorney shall be required to be certified as a specialist in order to practice in the field of law covered by that specialty. An Attorney, alone or in association with any other Attorney, shall have the right to practice in any field of law, even though the Attorney is not certified as a specialist in that field.

2.7.3 **Individual certification.** All requirements for and all benefit to be derived from certification as a specialist are individual and may not be fulfilled by nor attributed to the law firm of which the Certified Specialist may be a member.

2.7.4 **Voluntary participation.** Participation in the program shall be on a completely voluntary basis.

2.7.5 **Multiple specialties.** An Attorney may be certified as a specialist in more than one field of law. The limitation on the number of specialties in which an Attorney may be certified as a specialist shall be determined only by such practical limits as are imposed by the requirement of substantial involvement and such other standards as may be established by the Board as a prerequisite to certification as a specialist.

2.7.6 **Advertisement.** Subject to the requirements of the rules of professional conduct, any Board Certified Specialist may
include the following or similar statement in a legal advertisement or solicitation:

A. Board Certified _______________ Attorney*
   *As certified by the Michigan Board of Legal Specialization.

B. Michigan Board of Legal Specialization – Certified Specialist in the ______________________ Area.

Rule 2.8. **Financing the Plan**

The financing of the plan shall be derived from fees collected from Applicants and participants in the plan and such other sources as the Supreme Court may from time to time approve. If fees are not established by the Supreme Court, the Board shall establish reasonable fees for each specialty field in such amounts as may be necessary to defray the expense of administering the plan, which fees may be adjusted from time to time. If established or adjusted by the Board, however, they must be approved by the Supreme Court as provided herein.

Rule 2.9. **Retained Jurisdiction of the Supreme Court**

The Supreme Court retains jurisdiction with respect to the following;

A. amending these Rules;

B. hearing appeals taken from actions of the Board: and

C. establishing or approving fees to be charged in connection with administering these Rules.

**RULE 3. APPLICATIONS FOR CERTIFICATION AND RECERTIFICATION**

Rule 3.1. **General Requirements**

3.1.1 **Licensed; good standing; malpractice insurance.**

[See complete Rules for text]

3.1.2 **Michigan Office and Practice.**

A. **Certification Applicants.** Applicants must have maintained a physical office in Michigan, or within 25 miles of a Michigan border, from which the Applicant personally conducts business an
average of at least three (3) days per week, for at least the three years immediately preceding application. Failure to meet this requirement will result in denial of application.

B. Board Certified Specialists and Recertification Applicants. All board Board Certified Specialists and Recertification Applicants must continue to meet the substantial involvement requirements pertinent to each applicable specialty area. These are found in the Speciality Area Requirements.

[Note numbering needs to be revised]

3.1.5 Required Period of Law Practice. Applicants for certification shall have been engaged in the practice of law for a period of at least five (5) years on a full-time basis.

3.1.6 Practice of Law.

[Needs to be revised pursuant to definition passed]

3.1.7 Examination. Applicants (other than current certificate holders applying for recertification in the same specialty area) must pass a written examination to demonstrate sufficient knowledge, proficiency and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public. After an Applicant has taken and failed an examination three times in a specialty area, the Applicant is ineligible to apply for certification in that specialty area for the next three years. An Applicant for recertification is also required to pass the written examination when ordered by the Board, or when otherwise required by these Rules to do so.

3.1.8 Forms.

[See complete Rules for text]

3.1.9 Fees.

[See complete Rules for text]

Rule 3.2. Application for Certification

3.2.1 Application requirements. Prior to filing an application for certification or recertification as a specialist, an Applicant shall complete all requirements set forth in the specialty standards for the particular specialty practice area for which certification is sought. The Applicant shall submit the written application in the
form approved by the Board, together with all information required by the applicable Specialty Committee. Peer review shall occur subsequent to filing the application.

3.2.2 Substantial Involvement in Specialty Practice Area.

A. Substantial Involvement Before Certification. Applicants (other than current Certified Specialists applying for recertification) must devote the minimum required time practicing in a specialty area, as specified in the applicable Specialty Area Requirements, during each year of the three years immediately preceding application. Failure to meet this requirement will result in denial of the application for certification.

B. Substantial Involvement After Certification. Board Certified Specialists must devote the minimum required time practicing in a specialty area, as specified in the applicable Specialty Area Requirements, during each year of certification. Failure to maintain the required percentage of practice may be grounds for revocation of the certification at any time.

C. Demonstration of Experience. Applicants must provide information concerning specific tasks required by the Board, as specified in the applicable Specialty Area Requirements. The Board may take into consideration the nature, complexity and duration of matters handled by Applicants in the specialty area in evaluating experience.

D. Other Experience.

i. Certification and Recertification Applicants. The Board may permit a certification or recertification Applicant to substitute up to two (2) years of other experience appropriate to each specialty area. In making this determination, the Board may take into consideration the nature, complexity, and duration of the matters the Applicant has handled in the specialty area. Judicial experience shall at least be equivalent to the Specialty Area Requirements of the specialty area, and the determination of equivalency shall be at the discretion of the Board.

ii. Certified Attorneys Continued Certification While Holding Judicial Office. The Board may permit a Board Certified Specialist who is serving as a full-time county, state or federal trial, appellate, probate, family or bankruptcy judge (including a U.S. magistrate judge, or Michigan
administrative law judge) to remain certified during his or her judicial service).

3.2.3 **Application Form and Content.**

[See complete Rules for text]

3.2.4 **Supplementary Information.**

[See complete Rules for text]

3.2.5 **Processing of Application.**

[See complete Rules for text]

3.2.6 **Withdrawal of an Application.**

[See complete Rules for text]

3.2.7 **Effective Date of Certification and Duration.**

A. The effective date of Certification or Re-Certification shall be the date the Board authorizes certification.

B. Certification shall expire five (5) years from the effective date of certification, unless renewed as provided herein. If timely application for recertification is made, certification shall continue in effect until final action is taken on the application for recertification, unless earlier revoked or suspended.

C. A Board Certified Specialist whose practice is interrupted, may, on approval by the Board, remain certified if the Board Certified Specialist complies with the applicable specialty area continuing legal education requirements, pays all required fees, and complies with any other requirements imposed by the Board.

3.2.8 **Applicant Authorizes Disclosure of Disciplinary Action.**

By filing an application, the Applicant agrees to reveal as to any court, state bar or other tribunal or regulatory body of any jurisdiction:

A. any pending disciplinary, regulatory or criminal action;
B. prior discipline by any regulatory body;
C. malpractice claims; and
D. judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction

In addition, the Applicant authorizes the Attorney Disciplinary Board to advise the Board of the imposition of any discipline, public or private, which has been imposed on the Applicant.

Rule 3.3 Peer Review

3.3.1 Peer review. After the Applicant has satisfied all other requirements established for certification or recertification but prior to certification or recertification, the Board or Specialty Committee shall conduct an independent inquiry and review of the Applicant to determine whether the Applicant has the level of competence necessary for proficient performance in handling the usual matters in the specialty field. The independent inquiry and review shall consider information furnished by references and other information which the Specialty Committee deems relevant to demonstrate whether the Applicant is proficient in the specialty field, including, but not limited to, the Applicant’s work product, problem analysis, statement of issues and analysis, or such other criteria which the Specialty Committee deems appropriate to take into account prior to making its certification recommendation.

3.3.2 Number and qualification of references. An Applicant shall submit to the Board the names and addresses of at least five lawyers who are licensed and currently in good standing to practice law in this state and can attest to the Applicant’s competence in the specialty field in which certification is requested.

3.3.3 References. References must be fairly representative of various facets of the practice in the specialty field involved.

3.3.4 Additional References. The Board and the Specialty Committee reserve the right to request further references.

3.3.5 Limitations.

[See complete Rules for text]

3.3.6 Reference forms.

[See complete Rules for text]
3.3.7 **Independent Inquiry by Board or Specialty Committee.** The Board and the Specialty Committee reserve the right to engage in an independent inquiry as to the Applicant’s overall competence as well as competence in the specialty field in which certification is sought. If information is received by the Board or Specialty Committee which indicates the Applicant may not have achieved an acceptable standard of competence in the field in which certification is requested, the Board or Specialty Committee shall undertake an independent inquiry as to the issues reflecting adversely on the Applicant’s competence.

3.3.8 **Publication of Applications.**

[See complete Rules for text]

3.3.9 **Evaluation.** An application shall not be acted upon until the minimum number of references required by the individual standards have been received and the comment period following publication has expired. In the event that two references indicate that the Applicant has not demonstrated proficiency in the specialty field, or if a serious question, in the discretion of the Board or the Specialty Committee, is raised concerning the Applicant’s demonstrated proficiency in the specialty field, the Board or Specialty Committee shall seek further information. Negative responses shall be investigated to assure that they are related to competence and not to personality conflicts or other factors irrelevant to competence.

3.3.10 **Oral interview.** If the Board or Specialty Committee desires further information, it may request the Applicant to participate in an oral interview.

3.3.11 **Review and recommendation.** Within sixty-three (63) days after the date of receipt of the minimum number of references or when the comment period following web page publication expires, whichever occurs later, the Specialty Committee shall review the application and prepare and submit a written recommendation to the Board. If the review is delayed, the Applicant shall be notified of the delay.

**Rule 3.4 Continuing Legal Education**

3.4.1 **New Certification Applicants - Required Hours / Time Period.** Applicants (other than current Certified Specialists applying for recertification in the same specialty area) must complete a total of 60 hours of CLE in the specialty area within the three years immediately preceding application, including at least...
ten (10) hours in each of those years, through December 31 of the year of application. Applicants may not receive credit for more than 30 hours of CLE in a calendar year.

3.4.2 **Recertification Applicants - Required Hours / Time Period.** Recertification Applicants must complete a total of 100 hours of CLE in the specialty area within 5 years after their last certification or recertification, including at least ten (10) hours in each of those years. Recertification Applicants may not receive credit for more than 30 hours of CLE in a calendar year.

3.4.3 **Demonstration of CLE:** Subject to standards established by the Board, the continuing legal education requirement may be satisfied by one or more of the following:

A. Attendance at continuing legal education seminars approved by the Board for the applicable specialty practice area;

B. Lecturing at such continuing legal education seminars; three hours of CLE credit may be awarded for each hour of actual teaching or presentation time under this subparagraph. Additional credit shall not be awarded for subsequent presentations of substantially the same material in the same year.

C. Authoring or writing articles, materials or books in the applicable specialty practice area published in professional periodicals or other professional publications; credit shall be awarded for the year in which the book or article actually appears in print. Number of hours of credit shall be determined by the applicable Specialty Committee.

D. Teaching courses in the applicable specialty practice area at an approved law school or other graduate level program presented by an accredited college or university or a recognized professional education association; up to eight hours of credit per course credit hour per year may be awarded for the teaching of such courses.

E. Completing such home study programs not listed above as may be approved by the Board in the applicable specialty practice area; and

F. Such other methods as may be approved by the Board.

3.4.4 **CLE Standards.**
3.4.5 **Course Approval Required:** Continuing legal education programs which will be accepted for purposes of these Rules must be approved by the applicable Speciality Committee in accordance with Board procedures.

3.4.6 **Verification of Continuing Legal Educational Credit:**

[See complete Rules for text]

**RULE 4.**

**ACTIONS ON APPLICATIONS**

**Rule 4.1**  **Board and Specialty Committee(s) Meetings**

4.1.1  **Meetings.**

[See complete Rules for text]

4.1.2  **Attendance at Meetings.**

[See complete Rules for text]

4.1.3  **Notice of Meetings.**

[See complete Rules for text]

4.1.4  **Quorum and Voting.**

[See complete Rules for text]

4.1.5  **Meetings Via Electronic Means.**

[See complete Rules for text]

4.1.6  **Open to Public.**

[See complete Rules for text]

4.1.7  **Specialty Committee**

[See complete Rules for text]

**Rule 4.2**  **Applications for of Initial Certification and Recertification**
4.2.1. **Completion of Requirements.** Prior to filing an application for certification as a Board Certified Specialist, an Applicant shall complete all requirements set forth in the applicable specialty standards as approved by the Board. Peer review shall occur subsequent to filing the application.

4.2.2. **Form and Content.**

[See complete Rules for text]

4.2.3 **Supplementary Information.** The Board or Specialty Committee may require an Applicant to submit information relevant to the Applicant's certification as a Board Certified Specialist in addition to that called for on the application form.

4.2.4. **Processing of Application.**

[See complete Rules for text]

4.2.5. **Withdrawal of an Application.**

[See complete Rules for text]

4.2.6. **Confidentiality.**

[See complete Rules for text]

4.2.7. **Effective Date of Certification and Re-Certification.**

A. **Original Certification.** The effective date of certification shall be the date the Board authorizes certification.

B. **Re-Certification.** The effective date of re-certification shall be five (5) years from the effective date of such re-certification.

4.2.8 **Interruption of Law Practice.** A Board Certified Specialist whose practice is interrupted, may, on approval by the Board, remain certified if the Board Certified Specialist complies with the specialty continuing legal education requirements, pays annual dues and complies with any other requirements imposed by the Board.

4.2.9. **Applicant Consents to Confidential Inquiry.** The Board and Specialty Committees may contact any person regarding the Applicant's competence and qualifications without disclosing this fact to the Applicant. The Applicant waives any right to discover
4.2.10. Applicants Authorizes Release of Disciplinary Action. By filing an application, the Applicant agrees to reveal as to all jurisdictions:

A. Any pending disciplinary, regulatory or criminal action;
B. Prior discipline by any regulatory body;
C. Malpractice claims; and
D. Judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction.

In addition, the Applicant authorizes the Attorney Disciplinary Board to advise the Board of the imposition of any discipline, public or private, which has been imposed on the Applicant.

**RULE 5. BOARD ACTION ON SPECIALTY COMMITTEE RECOMMENDATION**

**Rule 5.1. Action Regarding Certification or Recertification**

Except as provided in Rule 5.2, within ninety one (91) days of the receipt of the Specialty Committee Recommendation, the Board shall approve the application, deny the application, or take discretionary action as permitted by Rule 5.2. Such actions by the Board shall be by a vote of a majority of Board members at a meeting of the Board. The Applicant shall be notified of the action of the Board in writing. If the application has been denied, the notice shall specify the basis for the denial. All notices shall be sent by regular mail and addressed to the Applicant at the address last furnished to the State Bar of Michigan.

**Rule 5.2. Discretionary Action By Board**

While the Board is considering an application for certification or recertification, and at the discretion of the Board, the Board may:

A. Request the Applicant to participate in a formal interview. The purpose of the interview is to provide the Applicant with an opportunity to address the Board regarding whether certification or recertification should be granted. The Applicant is not entitled to have counsel present at the interview.

B. Send the application back to the Specialty Committee for further action as directed by the Board. In such case the
Board shall notify the Applicant of such action in writing by regular mail.

Rule 5.3 \textbf{Actions after Denial}

If the vote of the Board is tentatively to deny the application, the Board shall so notify the Applicant pursuant to Rule 1.5.8 and state the basis for the denial. The Applicant shall be permitted to withdraw the application or submit additional relevant information to the Board regarding the application, by sending such notice of withdrawal, or such additional information, to the Board within 35 days of the date of the Board’s notice of tentative denial. As provided above, the Board may, but is not required to, request the Applicant to participate in a formal interview. The Applicant is not entitled to have counsel present at the interview. If the Applicant does not respond timely in writing to the notice from the Board, the tentative denial shall become final. An Applicant whose application is denied, may not reapply until one year after the denial becomes final.

Rule 5.4 \textbf{Duration of Certification}

Certification by the Board shall commence on the date indicated in the Certification as a Board Certified Attorney, and shall remain in effect for the period specified on the notice of certification unless earlier revoked or suspended by the Board.

\textbf{RULE 6}

\textbf{SUSPENSION OR REVOCATION OF CERTIFICATION}

Rule 6.1. \textbf{Grounds.}

Rule 6.1.1. \textbf{Revocation.} The certification of a any Certificate holder may be revoked, if the Board determines that:

A. The certification was granted contrary to the Rules of the Board or the requirements of the Speciality Committee.

B. The certification was granted to a person who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board or the Speciality Committee in applying for a certificate.

C. The Certificate holder has failed to abide by the rules required by a Certificate holder and the requirements of the Speciality Committee necessary to maintain certified status.
D. The Certificate holder has failed to pay all/any fees required of certificate holders by the Board.

E. The Certificate holder no longer meets the requirements established by the Board for certificate holders.

F. The Certificate holder has been subject to final disciplinary action by the Supreme Court or by the highest court in another state or federal court resulting in reprimand, suspension, disbarment, or other discipline.

G. The Certificate holder has been convicted of a felony.

H. The Certificate holder has been previously suspended and at the end of the period of suspension, is not in full compliance with the requirements of these Rules.

I. The Certificate holder has been determined to be guilty of malpractice or other attorney misconduct as the result of a civil matter.

J. The Certificate holder has failed to inform the Board in writing within 35 days after the occurrence of any fact, circumstance, act or event described in Rule 6.1.1.

K. The program for certification in that field is terminated.

Rule 6.1.2. Suspension. If the Board finds a violation of one or more of the elements outlined under Rule 6.1.1, the Board may, lieu of revoking a certification pursuant to Rule 6.1.1, suspend the certification for a period of up to twelve (12) months,

Rule 6.2. Duty to Inform

The Certificate holder shall inform the Board in writing by regular mail within 35 days after the occurrence of any of the acts or events described under Rule 6.1.1.

Rule 6.3. Notice.

[See complete Rules for text]

Rule 6.4 Request for Review

6.4.1 After receiving notice of the Board’s intent to revoke or suspend the certification and before its effective date, a Certificate
holder may make a written request to the Board for a review of the Board's decision. To be effective, this request for review must be sent to the Board in time for the Board to receive it before the effective date of the revocation or suspension; state the reasons why the Board's determination is alleged to be in error; and specify whether the Certificate holder is requesting a hearing.

6.4.2 If no hearing is requested, the Board shall make a decision within 63 days following receipt of the request for review. If a hearing is timely requested, the Board must set a hearing within 63 days after receiving the request for a hearing.

6.4.3 During the time following a request for Review and prior to the Board's decision, any revocation or suspension is deferred until the request is withdrawn or the Board has entered its decision. The Board may, but is not required to, request a written response from the applicable Specialty Committee, if the dispute involves requirements of that committee. The Certificate holder may not have counsel present at the hearing.

Rule 6.5 Board Decision

Within 35 days after the hearing, or 63 days after receipt of a request for review without a request for a hearing, the Board will determine whether the Certificate holder's certificate will be revoked, suspended or remain in effect and the effective date of any revocation or suspension. The Board will notify the Certificate holder in writing about the decision and its basis in the manner required by Rule 6.3. The decision of the Board will be final. If a Certificate holder's certification is revoked or suspended, the former Certificate holder may not reapply until at least one year has elapsed after the effective date of the revocation or suspension.

Rule 6.6 Effect of Revocation or Suspension

As of the effective date of a revocation or suspension, the former Certificate holder shall not hold himself or herself out to the public or to any attorney in any manner whatsoever as being certified by the Board in the legal specialty which is subject to the revocation or suspension. The Board shall publish in the Michigan State Bar Journal notification of any revocation or suspension of a former Certificate holder.

RULE 7.
ELIGIBILITY FOR RECERTIFICATION

7.0 Recertification Period
Recertification shall be required every five years from the effective date of certification or recertification.

7.1 Standards for Recertification.

An Applicant must show that during the current certification period he or she has complied with all requirements set forth in the specialty standards approved by the Board engaged in the practice of the law in for the specialty field in which recertification is sought, including all of the requirements of Rule 3 which apply to Applicants for re-certification to the same extent as demonstrated in the application for original certification or as set forth in the individual standards. Such showing may be made by a sworn statement, in the discretion of the appropriate Specialty Committee Commission. Each area of certification established under this chapter shall contain requirements and safeguards for the continued proficiency of any Board Certified Specialist certificate holder. The following minimum standards shall apply:

7.1.1 Continued Substantial Involvement

A satisfactory showing of substantial involvement during the period of certification in the particular area for which certification was granted.

7.1.2 Educational Requirements

A satisfactory showing of such continuing legal education as required by these Rule in the area for which certification was granted but in no event less than 10 hours per year. Each Applicant for recertification shall maintain records sufficient to prove compliance with the educational requirements for recertification for at least one year from the date the Board acts to decertify the Applicant. The Applicant shall provide such records to the Board as the Board may require.

Educational activities which take place within the last six (6) months of a certification period that satisfy the individual standards, and which are in excess of the number of educational activities necessary for re-certification, may be applied to the next certification period.

7.1.3 Peer Review. Satisfactory peer review and professional ethics record in accordance with these Rules.

7.1.4 Standing with the State Bar of Michigan. Any Applicant for recertification who is not, at the time of application for recertification, a member in good standing of the State Bar of
Michigan, or any other bar or jurisdiction in which the Applicant is admitted, as a result of discipline, disbarment, suspension, or resignation, or other disciplinary action in lieu thereof, shall be denied re-certification. The fact of a pending disciplinary complaint or malpractice action against an Applicant for re-certification shall not be the sole basis to deny re-certification.

7.1.5 Payment of Fees. The payment of any fees prescribed by the plan and prior to the end of the five (5) year certificate period required by the Board.

7.1.6 Independent Inquiry and Review; Reexamination. The Applicant must demonstrate to the Board both continued knowledge of the law of this state and continued competence with respect to the specialty in such manner as the Board requires. The Board may order an Applicant for re-certification to take (and pass) the written examination to satisfy the requirements of this Rule.

7.2 Duration of Recertification. Each re-certification is for a period of five years, unless revoked or suspended as provided herein, and shall expire at the end of said five (5) years unless renewed as provided by these Rules. If timely application for re-certification is made, certification shall continue in effect until final action is taken on the application for re-certification, unless earlier revoked or suspended.

7.3 Judicial Service/Tolling. The Board, in the exercise of its discretion, may waive the five-year re-certification requirement in the event of judicial service during the certification period. The certification period may be tolled for the time during the certification period that the certified specialist is actually engaged in judicial service and otherwise is complying with the other requirements for continued certification (including the required number of CLE credits, paying the required fees, etc.). The certified specialist must provide confirmation of the fact that he or she continues to engage in judicial service when requested to do so by the Board and must notify the Board when he or she ceases to be engaged in judicial service.

Rule 7.4 Failure to Meet Standards; Lapse of Certificate; Revocation of Certificate.

Any Applicant for re-certification who has either failed to meet the standards for re-certification, or has allowed the certificate to lapse, or whose certificate has been revoked must meet all the requirements for initial certification as stated in these Rules and set out in the applicable specialty area's standards, including taking the written examination, unless otherwise ordered by the Board.
RULE 8.
CONFIDENTIALITY

Rule 8.1. General Rule

8.1.1 Applications and Related Documents Confidential. The contents of the application form, and all documents, records, communications, other papers and statements of reference submitted to or received by the Board in connection with any application for certification or re-certification under these rules shall be the property of the Board and shall be held in confidence, and shall not be released or disclosed, even to the Applicant, except to appropriate parties based on legitimate need to know, and except as otherwise provided by these rules, or upon prior order of a Court of competent jurisdiction. Provided, however, an Applicant may be informed as to the status of his/her application.

8.1.2 Revocation of a Certificate. All information regarding revocation shall be strictly limited to those persons who need to know and kept strictly confidential.

8.1.3 Applicability. These confidentiality rules apply to all Applicants, Speciality Committee members, the Board members and any State Bar staff, subject to the requirements of Rule 19 of the Bar Association of the State Bar of Michigan.

[Note: Rule 19 Section 2 may need to be amended to include this information as confidential as stated above.]
Rule 8.2. **Exceptions to General Rule**

8.2.1 **General Exceptions.** General exceptions to the above general rule of confidentiality include the following:

A. Previously published information or any other information in the public domain;
B. Specialty area definitions;
C. Names and biographical information about the Boards, Specialty Committees, Applicants and entities associated with the process;
D. The filing of an application.

8.2.2 **Request for Review Appeals.** In the event of a Request for Review of any decision:

A. In the event of an appeal of any decision, the Applicant and the Board will have access to relevant information to prepare the appeal for Review.

B. In the event of an appeal, the counsel for the Board will have access to the same information provided to the Applicant;

Rule 8.3. **Examinations**

[See complete Rules for text]

Rule 8.4. **Claim of Breach of Confidentiality**

[See complete Rules for text]

Rule 8.5. **Cross Reference to Rules of Professional Conduct.**

If during the investigation of an Applicant’s information, there is discovered evidence of what could reasonably lead one to conclude may be a violation of law or the Rules of Professional Conduct, such evidence shall be reported as required by law or the Rules of Professional Conduct to the appropriate authorities. The report and subsequent disclosure, when made in good faith, shall be deemed to hold harmless and indemnify that reporter from any sanctions under these Rules or the Rules of Professional Conduct. Nothing in these Rules supercedes the duty to report a violation of law or the Rules of Professional Conduct.
RULE 9.
CONFLICT OF INTEREST

Rule 9.1 Circumstances Requiring Recusal.

[See complete Rules for text]

Rule 9.2 Applicant as Opposing Counsel.

As a general rule, the fact that a member of the Board or Specialty Committee represents one party to a legal matter and the Applicant represents the opposing party is not a fact that requires recusal. In such event, however, the member of the Board or Specialty Committee shall notify the Applicant and give the Applicant the opportunity to recuse the member of the Board or Specialty Committee based on a belief of personal bias or prejudice.

Rule 9.3 Recusal Procedure.

[See complete Rules for text]

Rule 9.4 Recusal Request.

[See complete Rules for text]

Rule 9.5 Disqualification.

[See complete Rules for text]

Rule 9.6 Action on Application of Member of the Board or Specialty Committee.

[See complete Rules for text]

RULE 10.
SEVERABILITY

Rule 10.1 Invalidation of a Rule Does Not Invalidate the Rest.

[See complete Rules for text]
SPECIALIZATION & CERTIFICATION COMMITTEE REPORT

TO: Committee on Special Projects
FROM: Specialization & Certification Committee
DATE: November 6, 2012
RE: CSP meeting – November 17, 2012; and Follow-up to September 8, 2012/Specialization Rules Discussion

The Committee would like CSP to continue its discussion of the proposed Rules for certifying legal specialists in Michigan.

In September, CSP began with an overview of the Specialization Rules and a discussion of some of the concerns and issues which the members were seeing. We would like for CSP to continue with that discussion to provide additional input to the Committee regarding primary areas of concern, as well as suggestions, and options, for possible revisions.

One such area of concern (and uncertainty) is the overall cost of running such a program. The Committee will endeavor to collect data from other States in that regard. In the meantime, we welcome suggestions of possible ways to deal with some of those costs, particularly with respect to the continuing legal education requirement, developing and administering the test, and the appeals procedure. The procedures set forth in the Rules regarding this topics could have a significant effect on the cost of running the program. The Committee views CSP as a way to obtain the views and input from a broad spectrum of the attorneys to arrive at a (hopefully) workable and acceptable set of rules.

The committee has started work on a specific appeals procedure (which needs further review before it is presented to CSP), but any such procedure would involve the right to a hearing before the Michigan Board of Legal Specialization, and thereafter most likely an appeal of right to the Michigan Supreme Court (but nothing thereafter).

The following is an outline of some of the issues and concerns discussed at CSP at the September 2012 meeting:

1. One issue discussed is the requirement that applicants must be a practicing attorneys on a full-time basis for five years before they could be eligible to apply for certification. Serene Zeni brought up the issue of part-time practices and how that would fit. One possibility would be to require a longer time period for part-time practices, maybe 7 or 7½ years. Another approach that might go along with that, would be to state the number of
hours per week that constitutes full-time practice or the number of hours per year that need to be worked to be added up toward the total necessary before the person could apply, plus there is the issue of the attorney possibly being full-time part of the year, and taking a leave of absence, such as maternity leave or something else, during part of the year, so maybe the concept of the number of working hours per year would be the way to do that, or the accumulated total over a number of years.

2. Another issue was **physical location**. The Committee compromise was to require a physical location in Michigan, or a location within 25 miles of a Michigan border. The attorney would still have to do the required amount of Michigan legal work. So, the physical location in Michigan is only one aspect of that. The primary issue really is advising Michigan clients. My recollection is that most other States require a physical office in that State.

A related issue is the **virtual office**, where we have an attorney located many states away who does a website that says they do Michigan law, and they don’t have any physical presence in the State of Michigan at all. Of course, if they are licensed in Michigan to practice law, they can do that legally (I think), because I don’t think that Michigan actually has a requirement that you have to be physically located in Michigan to be licensed to practice Michigan law. From my perspective, the physical location ties into advising Michigan residents on Michigan law, because if you’re located in Michigan, then you will most likely be dealing with Michigan law on a regular basis. Also, the physical location would at least seem to increase accountability to the Michigan residents that the attorney is serving. (For example, the Trust forms sold by Suzie Orman’s group says the Trust is governed by California law, even though it was sold to a Michigan resident, and all of the settlor’s property is located here).

3. As mentioned above, another issue discussed was the **appeals procedure**. At the moment, the draft rules have only a basic appeals procedure that does not go beyond the Specialization Board level. Clearly, we’ll need a somewhat more elaborate appeals procedure.

4. Another issue that was discussed, was **advertizing** of the certification and limitations on
what could or could not be represented. This is another area that needs further work, so we’ll probably need to review some of the other State’s rules and additional detail regarding that question. At present, we have a situation where the term “specialist” is used by attorneys without any real regulation, control or standards, and that is something which we may want to regulate in our rules. For example, the rules could provide that such claims cannot be made unless you have been certified as a specialist according to our rules, or unless the rules otherwise allow you to claim particular expertise because you have qualified under another organization’s criteria which has been accepted pursuant to our rules.

5. A wording or rules structure issue brought up by Jim Spica was whether the Board would have authority to depart from the procedure of the rules when approving someone’s qualification as a board certified attorney. The concept envisioned by me, at least, was that the only way the person would qualify as a board certified attorney is by qualifying under the terms of the rules, although we did give the Board some discretion with regard to some of those procedures. Jim Spica felt that it wasn’t necessarily clear that the Board was limited to just that procedure, so we will want to look at that further.

6. Another area that was discussed was the continuing education requirements, particularly with regard to the cost of approving the CLEs, or the procedure for that, because right now in Michigan, since we don’t have any mandatory CLE at all, there is no procedure for approving qualified CLEs. Several people suggested that we try to utilize the experiences and procedures that are in place in other States as much as possible without having to reinvent everything. One option would be to state that if the CLE is approved by State X or Y, then it qualifies here. Another option is to list certain CLE providers that have been accepted as providing qualifying CLE courses. One suggestion was to allow the CLE provider to certify that its program meets the Board’s criteria – however, the rules would also need to provide that if such a certification later proved to be false or the CLE provider was otherwise not in compliance, then the provider could be “de-certified” – but then we need a procedure for that process (and what about the attorneys who attended that provider’s courses?)
7. Another **cost issue** that was identified is the **cost of dispute resolution**, when an attorney is denied certification for whatever reason. There’s going to be a procedure that needs to be followed and there’s going to be a cost for handling that procedure.

8. And, of course, there’s the **cost of developing the test itself and then administering it**. The bigger cost would be in the development part, because testing has to be structured so that it’s reasonably fair to everybody (including people who don’t or understand English? – personally, I feel that the applicants should be able to speak and write in English if they’re going to be practicing law in the State of Michigan; but what about blind attorneys?). In this regard, we will want to include this question in our inquiries to other States, along with our question about the overall cost issue -- what is the cost to run their program, what is included in those costs, and what is the revenue source?

9. Another question is whether the **conviction of any felony** should be permitted to be grounds for revocation (or denial) of certification. Perhaps only a felony conviction which is related to character & fitness to practice should be grounds for revocation or denial. In this regard we will want to look at the State Bar standards related to felony convictions. However, we do not necessarily need to limit the grounds for revocation (or denial) of certification that narrowly. After all, being “Board Certified” means that you are being held to a higher standard.

—

Committee Chair

Jim Steward
ATTACHMENT 3
FAMILY CONSENT
Proposed letter to be sent on behalf of the Probate and Estate Planning Council to interested groups in regard to family consent legislation.

Dear___________:

Overview
The Probate and Estate Planning Council believes that it is important for Michigan to clarify and potentially expand a person’s right to have her or his family consent to medical treatment when the person has not taken the necessary steps in appointing a patient advocate with clear authority to make medical decisions. The primary purposes of this letter are
- To explain the views of the council.
- To alert other interested groups about why we are deferring an active role at this time
- To solicit your help in crafting a reasonable solution.

Background Information
Michigan law provides a means for an adult to express her medical desires even when she cannot participate in medical decision making. The solution is to sign a Patient Advocate Designation appointing a patient advocate. Unfortunately, only a minority of our citizens have taken advantage of this opportunity. Some of those citizens will find themselves in a situation where a medical decision needs to be made but medical professionals deem them to lack the capacity to give informed consent. One solution is for a concerned person to petition a probate court to appoint a guardian with powers to make medical decisions. There are many downsides to this approach, including
- Obtaining guardianship is an expensive and time-consuming process
- Medical care may be in limbo until the legal process is completed, potentially creating needless costs and suffering
- Courts have limited resources and hearings and other court activities divert attention from more pressing matters where there is a consensus between family members and medical providers

Thus, where there is consensus, it makes sense to have a simpler procedure, allowing the family to consent to recommended medical treatment.

The council appointed a committee to work on a draft of proposed legislation but the committee recommended that these efforts be suspended because
- There is a dispute about the nature of current law
- Any chance of legislative success depends on presenting a proposal to the legislature that all or most of the interested groups can accept. For that reason, it is critical to involve more groups in early discussions.
The first of these bullet points requires more elaboration. In 1997 the Michigan Dignified Death Act became effective. Part of that act imposed a duty on a treating physician who has found the patient to be in a terminal condition to say both orally and in writing

(b) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, has the right to make an informed decision regarding receiving, continuing, discontinuing, and refusing medical treatment for the patient's reduced life expectancy due to advanced illness.

(c) That the patient, or the patient's patient surrogate or patient advocate, acting on behalf of the patient, may choose palliative care treatment including, but not limited to, hospice care and pain management.

(d) That the patient or the patient's surrogate or patient advocate acting on behalf of the patient may choose adequate and appropriate pain and symptom management as a basic and essential element of medical treatment.

MCL 333.5655

A patient surrogate is the next of kin if the patient doesn’t have a patient advocate or a guardian with medical decision making powers.

The question is whether the patient surrogates really have the powers the legislature ordered physicians to tell them that they have. Presumably, the intent of the legislature was not to force physicians to violate medical ethics and lie. A more charitable view is that the legislature assumed that the next of kin really had those rights. They had an opportunity to include a statement affirming this in the legislative findings listed in MCL 333.5652, but they declined to do so. We simply cannot say whether courts will agree that next of kin truly have those powers. In our system of separation of powers, it is the job of the judiciary to decide what the law is, not the legislature. Before working on a family consent law, we need to know what the current laws are with regard to family consent. Some people are quite insistent that they know the answer, but experts have been wrong before.

Subsequent Questions

Medical decisions have to be made in situations where the patient is not in a terminal condition. No matter what the rights are in an end-of-life situation, these situations need to be addressed as well.

We all agree that the preferable solution is to name a patient advocate, who need not be a family member at all. Where we have family consent, we have to decide who the family is. Even if we use “next of kin” there are problems. If the spouse is not the mother of adult children, whose voice is more important? If there are multiple children, what is required—unanimity, a majority decision, whoever shows up first? What safeguards are necessary to lessen the risk that a decision is made that is contrary to the known views of the patient? What is really meant by consent? Does it include the power to refuse to agree with what physicians
recommend? Does it include the power to demand alternative treatments? There needs to be some default mechanism if family consent is not obtained. That might be the current system of petitioning for a guardian. Medical providers will want adequate protections if they follow the protocols for family consent. For example, medical providers cannot be expected to conduct an investigation to determine they have been given a complete list of a patient’s children.

We thank you for your attention in reading this letter and would appreciate your participation in addressing these issues and crafting a solution.

Very truly yours,

Probate and Estate Planning Council
State Bar of Michigan

Mark K. Harder, Chair

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i Note that the Probate and Estate Planning Council is an entity of the State Bar of Michigan. The views expressed in this letter are not necessarily those of the State Bar as a whole. In fact, the State Bar is strongly limited in the positions it can take and may not be able to take a position on these matters at all.
ATTACHMENT 4
GUARDIANSHIP POWERS
Hon. Elwood Brown
President,
Michigan Probate Judges Association
St. Clair County Probate Court
201 McMorran Blvd., Rm. 220
Port Huron, Mich. 48060

Re: 2012 PA 173 – Powers of Full Guardian
Guardianship Orders

Dear Judge Brown:

On behalf of the Probate and Estate Planning Section of the Michigan State Bar, please allow me to provide some information regarding the issue of whether, pursuant to 2012 PA 173, the specific powers given to a full adult guardian should be listed on the order appointing guardian or on the letters of guardianship. Our review of this legislation, along with the conclusion reached by SCAO’s Guardianship, Conservatorship and Protective Proceedings Forms Committee, is that no specific powers need to be listed on either the order or the letters.

Several reasons support this conclusion. First, the proposed change to MCL 700.5306 which would have required that these powers be listed was not adopted. Thus, there is no mandate to delineate the authority provided. If the court makes a finding, pursuant to MCL 700.5306(4) that a guardian is unable to care for themselves and that a full guardianship is required, it is unnecessary to list the specific powers since the fiduciary receives all powers by virtue of his or her appointment as a full guardian. This is the rationale that the Guardianship, Conservatorship and Protective Proceedings Forms Committee adopted in reaching their determination to make no change to the order appointing guardian or the letters of guardianship forms. SCAO believes that if a full guardian is appointed, it is implied that they have all the powers pursuant to statute, and it is not necessary to spell them out on an order, letter of guardianship, or any other form.

Finally, uniformity of practice considerations weigh heavily in favor of a standard position not to list the specific powers of the adult guardian. If powers were specified without standardization among the Courts, a significant risk would be created that a full guardianship would be extremely specific and detailed in one county but not in the other. This result would cause significant confusion for practitioners and guardians throughout the state.

Judge Brown, if you have any questions or desire to discuss this matter further please do not hesitate to contact me at (616) 396-3225 or mharder@wnj.com.

Sincerely,

Mark K. Harder
Chairperson,
Probate and Estate Planning Section