Agendas and Attachments for

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

Saturday, November 5, 2016
9:00 am
University Club
3435 Forest Road
Lansing, Michigan 48910
Probate and Estate Planning Section of the State Bar of Michigan

Notice of Meetings

Meeting of the Section’s Committee on Special Projects (CSP)

And

Meeting of the Council of the Probate and Estate Planning Section

November 5, 2016

9:00 a.m.

University Club
3435 Forest Road
Lansing, Michigan 48910

The above stated meetings of the Section will be held at the University Club, 3435 Forest Road, Lansing, Michigan 48910, on Saturday, November 5, 2016. The Section’s Committee on Special Projects (CSP) meeting will begin at 9:00 am, followed immediately by the meeting of the Council of the Section. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

Christopher Ballard, Secretary

Varnum LLP
300 N. 5th Ave Ste 230
Ann Arbor, Michigan 48104
Phone: (734) 372-2912
Fax: (734) 372-2940
Email: caballard@varnumlaw.com
Schedule and Location of Future Meetings

Probate and Estate Planning Section

Of the

State Bar of Michigan

Unless otherwise noted, CSP meetings are held at 9:00 a.m., immediately followed by the Council meeting for the Section at approximately 10:15 a.m., at the University Club, 3435 Forest Road, Lansing, Michigan 48910.

Meeting Schedule for 2016-2017

November 5, 2016
December 17, 2016
January 14, 2017
February 18, 2017
March 18, 2017
April 22, 2017
June 24, 2017
September 9, 2017 (Annual Section Meeting)
CALL FOR MATERIALS
Council Meetings of the Probate and Estate Planning Section

Schedule of Dates for Materials for Committee on Special Projects

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

Schedule of dates for CSP materials, by 5:00 p.m.:
December 8, 2016
January 5, 2017
February 9, 2017
March 9, 2017
April 13, 2017
June 15, 2017
August 31, 2017 (for September meeting)

Schedule of Dates for Materials for Council Meeting

All materials are due on or before 5:00 p.m. of the Friday falling 8 days before the next Council meeting. Council materials are to be sent to Chris Ballard, Secretary (caballard@varnumlaw.com).

Schedule of dates for Council materials, by 5:00 p.m.:
December 9, 2016
January 6, 2017
February 10, 2017
March 10, 2017
April 14, 2017
June 16, 2017
September 1, 2017
# STATE BAR OF MICHIGAN
## PROBATE AND ESTATE PLANNING SECTION COUNCIL
### Officers for 2016-2017 Term

<table>
<thead>
<tr>
<th>Officer</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>James B. Steward</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>Marlaine C. Teahan</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>Marguerite Munson Lentz</td>
</tr>
<tr>
<td>Secretary</td>
<td>Christopher A. Ballard</td>
</tr>
<tr>
<td>Treasurer</td>
<td>David P. Lucas</td>
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</table>

### Council Members for 2016-2017 Term

<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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<tbody>
<tr>
<td>Bearup, George F.</td>
<td>2014 (2nd term)</td>
<td>2017</td>
<td>No</td>
</tr>
<tr>
<td>Jaconette, Hon Michael L.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<tr>
<td>Kellogg, Mark E.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lichterman, Michael G.</td>
<td>2015 (1st partial term)</td>
<td>2017</td>
<td>Yes (2 terms)</td>
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<tr>
<td>Malviya, Raj A.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<tr>
<td>Welber, Nancy H.</td>
<td>2014 (2nd term)</td>
<td>2017</td>
<td>No</td>
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<tr>
<td>Caldwell, Christopher J.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2015 (2nd term)</td>
<td>2018</td>
<td>No</td>
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<tr>
<td>Goetsch, Kathleen M.</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
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<tr>
<td>Lynwood, Katie</td>
<td>2015 (1st term)</td>
<td>2018</td>
<td>Yes (1 term)</td>
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<tr>
<td>Mysliwiec, Melissa M.W.</td>
<td>2016 (1st partial term)</td>
<td>2018</td>
<td>Yes (2 terms)</td>
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<tr>
<td>Skidmore, David L.J.M.</td>
<td>2015 (2nd term)</td>
<td>2018</td>
<td>No</td>
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<tr>
<td>Labe, Robert C.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Mills, Richard C.</td>
<td>2016 (1st full term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>New, Lorraine F.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
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<td>Piwowarski, Nathan R.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Syed, Nazneen H.</td>
<td>2016 (1st term)</td>
<td>2019</td>
<td>Yes (1 term)</td>
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<tr>
<td>Vernon, Geoffrey R.</td>
<td>2016 (2nd term)</td>
<td>2019</td>
<td>No</td>
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</tbody>
</table>
Ex Officio Members

John E. Bos
Robert D. Brower, Jr.
Douglas G. Chalgian
George W. Gregory
Henry M. Grix
Mark K. Harder
Hon. Philip E. Harter
Dirk C. Hoffius
Brian V. Howe
Shaheen I. Imami
Stephen W. Jones
Robert B. Joslyn
James A. Kendall
Kenneth E. Konop
Nancy L. Little
James H. LoPrete
Richard C. Lowe
John D. Mabley
John H. Martin
Michael J. McClory
Douglas A. Mielock
Amy N. Morrissey
Patricia Gormely Prince
Douglas J. Rasmussen

Harold G. Schuitmaker
John A. Scott
Thomas F. Sweeney
Fredric A. Sytsma
Lauren M. Underwood
W. Michael Van Haren
Susan S. Westerman
Everett R. Zack
Michael W. Irish Award

Mission:  To honor a practitioner (supported by recommendations from his or her peers) whose contributions to the Probate and Estate Planning Section of the State Bar of Michigan and whose service to his or her community reflect the high standards of professionalism and selflessness exemplified by Michael W. Irish.

Recipients

1995  Joe C. Foster, Jr.
1996  John H. Martin
1997  Harold A. Draper
1998  Douglas J. Rasmussen
1999  James A. Kendall
2000  NO AWARD PRESENTED
2001  John E. Bos
2002  Everett R. Zack
2003  NO AWARD PRESENTED
2004  Brian V. Howe
2005  NO AWARD PRESENTED
2006  Hon. Phillip E. Harter
2007  George Cooney (April 3, 2007)
2008  Susan A. Westerman
2009  Russell M. Paquette (posthumously)
2010  Fredric A. Sytsma
2011  John A. Scott
2012  NO AWARD PRESENTED
2013  Michael J. McClory
2014  Sebastian V. Grassi, Jr.
2015  NO AWARD PRESENTED
2016  Douglas A. Mielock

The Michael W. Irish Award was first presented in 1995 in honor of the late Michael W. Irish. The award reflects the professionalism and community leadership of its namesake.
The George A. Cooney Society

What: This award is presented by the Institute of Continuing Legal Education and the Probate & Estate Planning Section of the State Bar of Michigan to a Michigan estate planning attorney for outstanding contributions to continuing legal education in Michigan.

Who: As of November 2015, there have been five recipients:

John E. Bos (2007)
Everett R. Zack (2009)
John H. Martin (2011)
John A. Scott (2013)
Phillip E. Harter (2015)

When: This award is not necessarily given every year. So far we’ve given awards in 2007, 2009, 2011, 2013, and 2015.

Where: The award is presented at the Annual Probate & Estate Planning Institute. ICLE will invite the recipient to attend the Institute, and one of the Section officers will present the individual award at the start of the Institute.

Why: With George Cooney’s passing, the State Bar of Michigan lost one of its premier estate planning and elder law attorneys. The Section and ICLE have chosen to jointly create the George A. Cooney Society to recognize a select group of lawyers who epitomize George's dedication to his fellow attorneys and in recognition of his long-term, significant contributions to continuing legal education in Michigan.

How: ICLE will nominate candidates based upon the specific criteria contained in the Guidelines for Selection and will send a nominating letter to the Section for approval by the Executive Board. The Section’s leadership and at-large members may also recommend candidates to ICLE for consideration.

Guidelines for Selection:

- Significant CLE contributions to probate and estate planning over a substantial period of time.
- Outstanding quality of contributions.
- A wide range of contributions, e.g. multiple contributions for the following: speaker, author, editor, advisory board member, curriculum advisor, creating case study scenarios, preparing Top Tips, How-To Kits or other online resources, etc.
- Generous mentorship and assistance to colleagues with their probate and estate planning career development as well as activities and active involvement with the Probate & Estate Planning Section of the State Bar of Michigan.
Probate & Estate Planning Section Committees 2016-2017

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.J.M. Skidmore, Chair
Andrew B. Mayoras
Kurt A. Olson
Patricia M. Ouellette
Nazneen H. Syed
Nancy H. Welber

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

Amy N. Morrissey, Chair
Robert D. Brower, Jr.
George W. Gregory
Phillip E. Harter
Nancy L. Little

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

Marlaine C. Teahan

Assisted Reproductive Technology
Ad Hoc Committee
Mission: To review the 2008 Uniform Probate Code Amendments for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction

Nancy H. Welber, Chair
Christopher A. Ballard
Robert M. O’Reilly
Lawrence W. Waggoner
Edward Goldman
James P. Spica

Budget Committee
Mission: To develop the annual budget and to alert the Council to revenue and spending trends

Christopher A. Ballard, Chair
Marguerite Munson Lentz
David P. Lucas

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
John Roy Castillo
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 J. Caldwell, Chair
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby
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

Melisa M. W. Mysliwiec, Chair
Kathleen M. Goetsch
Katie Lynwood
Michael J. McClory
Neal Nusholtz
Jessica M. Schilling
Rebecca A. Schnelz, (Liaison to Solutions on Self-help Task Force)
Nancy H. Welber
Nicholas Vontroba

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

Geoffrey R. Vernon, Chair

Community Property Trusts Ad Hoc Committee
Mission: To review the statutes, case law, and legislative analysis of Michigan and other jurisdictions (including pending legislation) concerning community property trusts and, if advisable, to recommend changes to Michigan law in this area

Neal Nusholtz, Chair
George W. Gregory
Lorraine F. New
Nicholas A. Reister
Rebecca K. Wrock
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 listserv, 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

Michael G. Lichterman, Chair
William J. Ard
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Neal Nusholtz
Michael L. Rutkowski

Ethics & Unauthorized Practice of Law 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, including identifying the unauthorized practices of law, reporting of such practices to the appropriate authorities, and educating the public regarding the inherent problems relying on non-lawyers

Katie Lynwood, Chair
William J. Ard
Raymond A. Harris
J. David Kerr
Robert M. Taylor
Amy Rombyer Tripp

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

Rhonda M. Clark-Kreuer, Chair
Katie Lynwood, Vice Chair
William J. Ard
Michael W. Bartnik
Raymond A. Harris
Phillip E. Harter
Michael J. McClory
Kurt A. Olson
James B. Steward
Paul Vaidya

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

Geoffrey R. Vernon, Chair
Stephen L. Elkins
James P. Spica
Joseph D. Weiler, Jr.

Legislation Analysis & Monitoring 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

Ryan P. Bourjaily, Chair
Probate & Estate Planning Section Committees 2016-2017

Christopher A. Ballard
Georgette E. David
Mark E. Kellogg
Daniel S. Hilker
Michele C. Marquardt
Jonathon Nahhat

Legislation Development & Drafting 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. May work alone or in conjunction with other substantive standing or ad hoc committees.

Nathan Piwowarski, Chair
Susan M. Allan
Howard H. Collens
Georgette David
Henry P. Lee
Marguerite Munson Lentz
Michael G. Lichterman
Sueann Mitchell
Kurt A. Olson
James P. Spica
Robert P. Tiplady, II
Geoffrey R. Vernon

Ad Hoc Legislation Drafting Committee
Mission: Draft proposal for forfeiture of gifts to lawyer who drafted the instrument.

Sueann Mitchell, Chair
George W. Gregory
David P. Lucas
Kurt A. Olsen

Litigation, Proceedings, and Forms Committee
Mission: To consider and recommend to the Council action with respect to contested and uncontested proceedings, the Michigan Court Rules, and published court forms, including the interpretation, use, and amendment of them

David L.J.M. Skidmore, Chair
James F. (“JV”) Anderton
Constance L. Brigman (Liaison to SCAO for Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Rhonda M. Clark-Kreuer
Phillip E. Harter
Michael D. Holmes
Shaheen I. Imami
Hon. Michael L. Jaconette
Hon. David M. Murkowski
Rebecca A. Schnelz (Liaison to SCAO for Mental Health/Commitment Workgroup)

Membership Committee
Mission: To strengthen relations with Section members, encourage new membership, and promote awareness of and participation in Section activities

Joseph J. Viviano, Chair
David Borst
Ryan Bourjaily
Christopher J. Caldwell
Nicholas R. Dekker
Daniel A. Kosmowski
Raj A. Malviya
Robert O’Reilly
Nicholas A. Reister
Theresa Rose

Nominating Committee
Mission: To annually nominate candidates to stand for election as the officers of the Section and members of the Council

Thomas F. Sweeney, Chair
Probate & Estate Planning Section Committees 2016-2017

Amy N. Morrissey  Shaheen I. Imami
probate, estate planning, and trust administration

Planning Committee
Mission: To periodically review and update the Section’s Strategic Plan and to annually prepare and update the Council’s Biennial Plan of Work

Marlaine C. Teahan, Chair

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

Marguerite Munson Lentz, Chair

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

Mark E. Kellogg, Chair
Jeffrey S. Ammon
William J. Ard
George F. Bearup
Stephen J. Dunn
David S. Fry
J. David Kerr
Michael G. Lichterman
David P. Lucas
Katie Lynwood
Douglas A. Mielock
Melisa M. W. Mysliwiec
James T. Ramer
James B. Steward

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

Lorraine F. New, Chair
Robert B. Labe
Raj A. Malviya
Nazneen H. Syed

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
<table>
<thead>
<tr>
<th>Action Pending</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
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<tbody>
<tr>
<td></td>
<td>- Prop tax uncapping exempt (HB5552)</td>
<td></td>
<td>- Supreme Court Task Force Report</td>
<td>- &quot;Who Should I Trust?&quot; Program</td>
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<td>- Fiduciary Access to Digital Assets (HB5366-5370)</td>
<td></td>
<td>- Bylaw Update</td>
<td>- 55th Annual P&amp;EP Institute</td>
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<td>- PR access to online accts (SB 293)</td>
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<td>- Hearings minors &lt; 18 (SB 144 &amp; 177)</td>
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<td>- Funeral Representative (HB 5162/SB 731)</td>
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<th>Priority Items</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
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<tbody>
<tr>
<td></td>
<td>- Domestic Asset Protection Trusts</td>
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<td>- SCAO Meetings*</td>
<td>- Communications with members*</td>
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<td>- ILIT Trustee Liability Protection</td>
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<td>- Social media &amp; website*</td>
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<td>- Artificial Reproductive Technology</td>
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<td>- Brochures*</td>
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<td>- Charitable Trust</td>
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<td>- Annual Institute/ICLE seminars*</td>
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<td>- Probate Appeals</td>
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<td>- Section Journal*</td>
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<th>Secondary Priority</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
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<tr>
<td></td>
<td>- EPIC/MTC Updates</td>
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<td>- Inventory Lawyer</td>
<td>- Opportunities with ICLE</td>
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<td>- Directed Investment Trusts</td>
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<td>- Digital Journal</td>
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<td>- TBE Trusts</td>
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<td>- ADR Revision</td>
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<td>- Property tax on trust property</td>
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<td>- Uniform Real Property TOD Act</td>
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<tr>
<th>Priority To Be Determined</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
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<tbody>
<tr>
<td></td>
<td>- Dignified Death (Family Consent) Act</td>
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<td>- Budget Reporting</td>
<td>- Probate Court Opinion Bank</td>
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<td>- Pooled income trust exclusion</td>
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<td>- Action on SC recommendations</td>
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<td>- Neglect Legislation</td>
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<td>- Foreign Guardians</td>
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<td>- Inheritance Tax</td>
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<td>- Estate Recovery</td>
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<td>- PRE after death &amp; nursing home</td>
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*ongoing
CSP MATERIALS
FYI. Please let me know your thoughts.

Thanks!

Trisha M. Brumley
Legislative Director
Senator Tonya Schuitmaker
(517) 373-0793

Sent from my iPhone

Begin forwarded message:

From: "Frank Venuto" <venuto.frank@comcast.net>
Date: October 26, 2016 at 3:02:08 PM EDT
To: "Trisha Brumley" <TBrumley@senate.michigan.gov>
Cc: 'Frederick Mcgarvey' <frederick.mcgarvey@prudential.com>, 'John Gerni' <JohnGerni@acli.com>, 'Jim Miller' <miller.j@gcsionline.com>
Subject: SB 1010 Amendments

Dear Trisha,

I have attached proposed amendments to the ILIT bill, SB 1010. These amendments aim to limit the scope of the liability protection to non-professional trustees and to provide this protection prospectively, not retroactively. On Monday, 10/24, the Life Insurance Association of MI voted to oppose SB 1010 unless amended.

As I stated previously, I will make every effort to be at the meeting on 11/9. However, I learned this morning that House session is scheduled for 11/9 at 1:30pm and noon on the 10th, making it possible for House Elections to take up a measure for which I am primarily responsible in that committee on those days. Therefore, it is very likely that I will not be able to attend your meeting on 11/9 or 10. I respectfully ask that the meeting on SB 1010 be rescheduled. I could be available in the afternoon on either the 9th or 10th.

Thank you,

Frank Venuto

Venuto & Associates, PLLC
334 Townsend
Lansing, MI 48933

517.290.6002
SENATE BILL No. 1010

June 1, 2016, Introduced by Senator SCHUITMAKER and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," (MCL 700.1101 to 700.8206) by adding section 1511a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 1511A. (1) IT IS PRESUMED THAT A SETTLOR INTENDED TO CREATE AN ILIT TO ACQUIRE OR RECEIVE 1 OR MORE LIFE INSURANCE POLICIES IF EITHER OF THE FOLLOWING APPLY:

4 (A) A TRUSTEE ACQUIRES, BY PURCHASE OR GIFT, A LIFE INSURANCE POLICY WITHIN 6 MONTHS AFTER THE ILIT'S CREATION.
6 (B) FOR THE ENTIRE PERIOD BEFORE THE ACQUISITION OF THE LIFE INSURANCE POLICY THE ONLY TRUST ASSETS ARE CASH, CASH EQUIVALENTS, OR A LIFE INSURANCE POLICY.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THE MICHIGAN PRUDENT INVESTOR RULE AND, EXCEPT AS OTHERWISE REQUIRED IN THE TERMS OF THE TRUST, A TRUSTEE WHO IS NOT A SETTLOR OF THE ILIT, or who is a familial ILIT trustee, WITH RESPECT TO THE ACQUISITION, RETENTION, OR OWNERSHIP OF A LIFE INSURANCE POLICY AS A TRUST ASSET, DOES NOT HAVE A DUTY TO DO ANY OF THE FOLLOWING:

6 (A) DETERMINE IF THE TRUSTEE OR AN ILIT BENEFICIARY HAS AN INSURABLE INTEREST IN THE INSURED UNDER SECTION 7114.
8 (B) DETERMINE IF THE LIFE INSURANCE POLICY IS OR REMAINS A PROPER TRUST INVESTMENT.
10 (C) INVESTIGATE THE FINANCIAL STRENGTH OR CHANGES IN THE FINANCIAL STRENGTH OF THE LIFE INSURANCE COMPANY ISSUING OR MAINTAINING THE LIFE INSURANCE POLICY.
12 (D) INQUIRE ABOUT CHANGES IN THE HEALTH OR FINANCIAL CONDITION OF THE INSURED.
14 (E) DIVERSIFY THE INVESTMENT IN THE LIFE INSURANCE POLICY RELATIVE TO ANY OTHER LIFE INSURANCE POLICY OR ANY OTHER TRUST ASSET.
16 (F) PAY POLICY PREMIUMS UNLESS THERE IS SUFFICIENT CASH OR OTHER READILY MARKETABLE ASSETS HELD BY THE TRUST THAT WERE DESIGNATED FOR THIS PURPOSE BY THE SETTLOR OR A THIRD PARTY.
18 (G) EXERCISE OR NOT EXERCISE AN OPTION AVAILABLE UNDER THE LIFE INSURANCE POLICY REGARDLESS OF WHETHER THE EXERCISE OR NONEXERCISE RESULTS IN THE LAPSE OR TERMINATION OF THE LIFE INSURANCE POLICY.
20 (3) A TRUSTEE OTHER THAN A SETTLOR or a familial trustee OF THE ILIT IS NOT LIABLE TO A BENEFICIARY OF THE ILIT OR ANY OTHER PERSON FOR A LOSS.
SUSTAINED WITH RESPECT TO A LIFE INSURANCE POLICY TO WHICH THIS SECTION APPLIES.

(4) UNLESS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS SECTION DOES NOT APPLY TO A TRUSTEE OR AN AFFILIATE OF A TRUSTEE WHO RECEIVED A COMMISSION OR OTHER PAYMENT FROM THE ISSUER OF A LIFE INSURANCE POLICY ISSUED TO THE ILIT.

(5) A TRUSTEE OTHER THAN A SETTLOR OF AN ILIT, AN ATTORNEY WHO DRAFTED THE TERMS OF AN ILIT, OR ANY PERSON WHO WAS CONSULTED WITH REGARD TO THE CREATION OF AN ILIT, IN THE ABSENCE OF FRAUD, IS NOT LIABLE TO A BENEFICIARY OF THE ILIT OR TO ANY OTHER PERSON FOR A LOSS ARISING FROM OR ATTRIBUTABLE TO THE ABSENCE OF A DUTY UNDER SUBSECTION (2).

(5) This section applies to a commercial trustee of an ILIT.

(6) EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS SECTION APPLIES TO AN ILIT ESTABLISHED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND TO A LIFE INSURANCE POLICY ACQUIRED, RETAINED, OR OWNED BY A TRUSTEE OF THE ILIT BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

(7) AS USED IN THIS SECTION, "IRREVOCABLE LIFE INSURANCE TRUST" OR "ILIT" MEANS A TRUST TO WHICH ALL OF THE FOLLOWING APPLY:

(A) THE TRUST IS NOT REVOCABLE. AS USED IN THIS SUBDIVISION, "REVOCABLE" MEANS THAT TERM AS DEFINED IN SECTION 7103.

(B) A SETTLOR CREATED THE TRUST WITH THE INTENT THAT A TRUSTEE ACQUIRE, BY PURCHASE OR GIFT, 1 OR MORE LIFE INSURANCE POLICIES AS A TRUST ASSET.

(C) THE TRUST WAS NOT CREATED SOLELY TO ACCOMPLISH 1 OR MORE OF THE CHARITABLE PURPOSES SET FORTH IN SECTION 7405(1).

(8) As used in this section, "Familial Trustee" means a family member appointed ILIT trustee by the settlor and for whom no compensation will be paid for acting in this capacity.

(9) As used in this section, Commercial Trustee means a non family member appointed ILIT trustee by the settlor and for whom compensation will be paid for acting in this capacity.
END OF
CSP MATERIALS
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

November 5, 2016
Lansing, Michigan

Agenda

I. Call to Order
II. Excused Absences
III. Introduction of Guests
IV. Minutes of October 10, 2016, Meeting of the Council
   See Attachment 1
V. Treasurer's Report – David P. Lucas
   See Attachment 2
VI. Chairperson's Report – James B. Steward
   See Attachment 3
VII. Report of the Committee on Special Projects – Geoffrey R. Vernon
VIII. Report of Standing Committees
   A. Internal Governance
      1. Budget – Christopher A. Ballard
      See Proposed Budget as Part of Treasurer’s Report, Attachment 2
      2. Bylaws – Nancy H. Welber
      3. Awards – Amy N. Morrissey
      4. Planning – Marlaine C. Teahan
      5. Nominating – Thomas F. Sweeney
      6. Annual Meeting – Marlaine C. Teahan
B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – [vacant]
2. Legislation Development & Drafting Committee – Nathan Piwowarski
3. Ad-Hoc Legislation Drafting Committee – Sueann Mitchell
4. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon
5. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber

C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore
2. Probate Institute – Marguerite Munson Lentz
3. State Bar and Section Journals – Richard C. Mills
4. Citizens Outreach – Melisa M.W. Mysliwiec
5. Electronic Communications – Michael G. Lichterman

D. Ethics and Professional Standards

1. Ethics & Unauthorized Practice of Law – Katie Lynwood

E. Administration of Justice


See Attachment 4 for report from Probate Appeals Subcommittee

F. Areas of Practice

1. Real Estate – Mark E. Kellogg
2. Tax Committee – Lorraine F. New

See Attachment 5

3. Charitable and Exempt Organization – Christopher J. Caldwell
4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

IX. Other Reports

A. Liaisons
1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr.
2. Business Law Section Liaison – John R. Dresser
3. Elder Law and Disability Rights Section Liaison – Amy Rombyer 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 M. Allan
9. Probate Registers Liaison – Rebecca A. Schnelz
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz
11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch
12. State Bar Liaison – [vacant]
13. Taxation Section Liaison – George W. Gregory

X. Other Business

XI. Hot Topics

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

October 10, 2016
Mackinac Island, Michigan

Minutes

I. Call to Order

The Chair of the Section, James Steward, called the meeting to order at 10:43 am.

II. Attendance

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

James B. Steward
Marlaine C. Teahan
Marguerite Munson Lentz
David P. Lucas
Kathleen M. Goetsch
Hon. Michael L. Jaconette
Mark E. Kellogg
Robert C. Labe
Michael G. Lichterman
Katie Lynwood
Raj A. Malviya
Richard C. Mills
Melisa M.W. Mysliwiec
Lorraine F. New
Nazeen H. Syed
Geoffrey R. Vernon
Nancy H. Welber

A total of 17 council members and officers were present, representing a quorum.

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

Christopher A. Ballard
George F. Bearup
Christopher J. Caldwell
Rhonda M. Clark-Kreuer
Nathan R. Piwowarski
David L.J.M. Skidmore
C. The following officers and members of Council were absent without excuse:

None.

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

Douglas G. Chalgian
George W. Gregory
Shaheen I. Imami
Robert B. Joslyn
Nancy L. Little
Douglas A. Mielock
Harold Schuitmaker

E. Others in attendance:

Jeanne Murphy
Amy Rombyer Tripp
James P. Spica
Joe Viviano
David Lentz

III. Minutes of the September 10, 2016 Meeting of the Council

The minutes of the September 10, 2016, Meeting of the Council were attached to the combined Agenda for this meeting posted on the Section’s web page prior to the meeting. One change was noted to the minutes. Ms. Lentz moved that the minutes be approved as changed. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions. The corrected minutes will be posted to the Section’s web page.

IV. Treasurer’s Report – David P. Lucas

Mr. Lucas’ Treasurer’s Report was attached to the combined Agenda. The Hearts and Flowers fund currently has $600. Mr. Lucas requested that Council members make contributions of $35. Mr. Lucas reminded Council members to submit their reimbursement forms to him as soon as possible, as they must be submitted to the State Bar within 45 days.

V. Chairperson’s Report – James Steward

Mr. Steward’s written Chair’s report was attached to the Agenda for the meeting. Included was a proposed publishing agreement with ICLE to extend the present arrangement until March 31, 2019. A motion was made to approve the publishing agreement, which was seconded. The motion was approved with no nays and no abstentions.

Included with the Agenda was a tentative list of committee assignments. Please let Mr. Steward know of any changes.
George Gregory reported that Richard Siriani informed him that although he was not the State Bar liaison to the Section last year, he is now the State Bar liaison to the Section.

VI. Report of the Committee on Special Projects – Geoffrey R. Vernon

Mr. Vernon reported on recommendations made by CSP. CSP recommended that the Council approve proposals to amend MCL 700.2502, 700.2504, and 700.3406. Mr. Vernon made the motion. After discussion, the motion was approved with 13 in favor, 4 opposed, and no abstentions.

CSP also recommended that the Council approve the addition of proposed MCL 700.2810 and 700.2811. Mr. Vernon made the motion. After discussion, the motion was approved with 16 in favor, 0 opposed, and 1 abstention.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Christopher A. Ballard

Mr. Lucas gave the report. A proposed budget was included with the Agenda for the meeting. A final budget will be presented for a vote at a future meeting.


3. Awards – Amy N. Morrissey—no report.


B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – no report.

2. Legislation Development & Drafting Committee – Nathan R. Piwowarski

Mr. Vernon made the report. The Section’s lobbyist thinks that the qualified dispositions in trusts act may be passed this year.

Mr. Vernon raised the issue of a legislative proposal to overrule the decision in the Jajuga case. The proposed legislative change would permit a testator to exclude a child from receiving any statutory allowances, including a minor child. Judge Jaconette will raise the proposal with the probate judges.

Since the Michigan Supreme Court refused to hear the Perry v Cotton case, Mr. Vernon will be
adding to the list of proposed EPIC/MTC changes a statutory change to overrule the case.

One of the proposed changes to EPIC/MTC was to define probable cause in connection with no-contest clauses or to provide a procedure for the court to determine if there is probable cause to contest a document (and therefore void the effect of a no-contest clause). After discussion, the consensus was not to draft proposed legislation to either define probable cause or change the provisions in EPIC/MTC dealing with no-contest clauses.

3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon

Mr. Vernon reported that he and his committee are continuing discussions with respect to SB 1010 (which would exonerate trustees of life insurance trusts). Representatives of the insurance industry have voiced objections.

4. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber

The committee’s proposals presented to CSP were approved by the Council earlier in the meeting. Discussion of proposed changes to EPIC for definitions of “record” and “sign” has been tabled.

C. Education and Advocacy Services for Section Members


2. Probate Institute – Marguerite Munson Lentz

Ms. Lentz reported that the dates for the 2017 Annual Probate Institute are May 18-20, 2017 and June 16-17, 2017.

3. State Bar and Section Journals – Richard C. Mills

Mr. Mills reported that the next issue of the Journal is on track. Mr. Spica requested that endnotes for articles be printed as footnotes instead. Ms. Little will discuss that change with the ICLE editor.

4. Citizens Outreach – Melisa M.W. Mysliwiec

Ms. Mysliwiec reported that the online versions of the pamphlets are complete and ready to go live when the publication agreement is finalized. Drafts of the print versions are complete, but the committee is waiting for the State Bar to send us final print drafts to review and approve. The committee is negotiating the terms of the publication agreement. Ms. Mysliwiec gave a brief report of the print brochures that were sold at the Annual Probate Institute and at the September probate council meeting. The committee is discussing ways of selling the remaining print brochures. It appears that a few checks for brochures sold at the Annual Probate Institute in Acme have been misplaced; the committee is investigating. A more detailed report will be presented at a later Council meeting.


Mr. Viviano reported that the committee will focus on recruitment of new members and retention of existing members. Mr. Viviano will give a detailed report of the Section membership at a later meeting.

D. Ethics and Professional Standards

1. Ethics & Unauthorized Practice of Law – Katie Lynwood

Ms. Lynwood reported on the proposed change to MCR 9.119. Ms. Lynwood led a discussion as to whether the Council wanted to comment on the rule change. No motion was made to comment on the rule.

E. Administration of Justice


F. Areas of Practice

1. Real Estate – Mark E. Kellogg

Mr. Kellogg reported on continuing efforts to revise MCL 211.27a with respect to uncapping. It does not appear that any provision will be passed this legislative session. Next year, when the new legislative session starts, the committee would like to start over with a broader proposal.

2. Tax Committee – Lorraine F. New

Mr. Malviya gave the report summarizing his written report (see Attachment A).


VIII. Other Reports

A. Liaisons

1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr.—no report.


3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp

Ms. Tripp reported that the Special Needs Fairness Act, which was introduced in Congress in
2015, has been approved by the House, and has moved to the Senate. This bill, if enacted, would allow a special needs individual to create his or her own special needs trust.

Ms. Tripp also reported that Michigan should soon have its enabling legislation for ABLE accounts.

4. Family Law Section Liaison – Patricia M. Ouellette—no report.
5. ICLE Liaison – Jeanne Murphy—no report.

Judge Jaconette thanked Ms. Welber for preparing an outline regarding Assisted Reproductive Technology legislation.

10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—no report.
13. Taxation Section Liaison – George W. Gregory

Mr. Gregory reported that the Taxation Section is discussing their strategic plan. Mr. Gregory encouraged Probate & Estate Planning Section members to attend the meetings and events of the Trusts and Estates Committee of the Taxation Section.

The next Tax Conference will be May 25, 2017, at the Inn at St. John’s.

IX. Other Business

X. Hot Topics

XI. Adjournment

The meeting was adjourned by Chairperson James Steward at 12:04 pm.
   a. Facts:
      i. James Heller died on Jan. 31, 2008. His estate held 99% interest in James Heller Family,
         LLC, only asset of which was account with Bernard L. Madoff Investment Securities.
      ii. On 706, value of 99% interest reported was $16,560,990. Distributions made to estate
          over 9 month administration period.
      iii. Following distributions, Madoff arrested and account became worthless.
      iv. Estate claimed theft loss deduction under Section 2054 for $5,175,990.
   b. Issue:
      i. IRS didn’t dispute that a loss occurred. Victims of Madoff’s actions constituted theft.
      ii. IRC 2054 is clear it allows deduction to estate for theft.
      iii. Proximity at issue; IRS disputed deduction on ground that LLC, not estate, was victim.
   c. Ruling and Analysis:
      i. Court decided in favor of estate, holding IRS view of 2054 language was overly narrow.
      ii. Section 2054 states that the estate is entitled to a deduction for losses “arising from fires,
         storms, shipwrecks, or other casualties, or from theft....”
      iii. Court gave plain English reading of term “arise,” citing Merriam-Webster’s Collegiate
         Dictionary, in which word is “generally defined as ‘to originate from a source’."
      iv. This led Court to set standard for proximity as follows: “Pursuant to the phrase ‘arising
         from’ in [S]ection 2054, the estate is entitled to a deduction if there is a sufficient nexus
         between the theft and the estate’s loss.” Applying this standard to the facts, Court found
         that because there was a “direct and indisputable” nexus between the theft and the
         loss, the estate was entitled to the deduction.
   d. Unanswered Questions:
      i. Direct ownership required? Must estate actually hold direct title to asset suffering the loss
         or is tracing a sufficient way to get to the result? (Court seemed to inject policy into
         decision, explaining that estate tax deductions designed to ensure ‘that the tax is imposed
         on the net estate, which is really what of value passes from the dead to the living.’.. The
         theft extinguished the value of the estate’s JHF interest, thereby diminishing the value of
         property available to James Heller’s heirs. Thus, the estate’s entitlement to a [S]ection
         2054 deduction is consistent with the overall statutory scheme of the estate tax.”)
      ii. Non-probate assets? Does IRC 2054 theft deduction apply to non-probate assets? For
          example, if the Heller Family LLC was owned by Heller’s revocable living trust, would the
          deduction still apply? (Both the IRC and the accompanying Treasury Regulation state that
          losses are only allowed for those incurred “during the settlement of the estate...”The
          term “during” references a duration concept and doesn’t require loss be incurred as part
          of the probate estate. Further, the term “estate” is never limited to the probate estate
          under the IRC or accompanying Treasury Regulation.)
      iii. Different treatment for income tax deduction. IRS will give capital loss (not theft loss) if
          taxpayer suffered theft/fraud loss by investment through promoter. Heller decision is
          inconsistent with this position. Also, consider 642(g) where estate can take income tax
          deduction for 2053 and 2054 expenses instead of estate tax deduction. How will Heller
          decision impact this? And for revocable living trusts at death, a 645 election can be taken
          to treat trust property as part of probate estate for income tax purposes.
2. Revenue Procedure 2016-49: Guidance on Unnecessary QTIP Elections
   a. Overview:
      ii. IRS has confirmed that both QTIP election and portability election may be made on the same estate tax return, thereby maximizing exemption planning and flexibility.
      iii. New guidance was issued to clarify gray area posed by Rev. Proc. 2001-38 whereby a QTIP election could possibly be void where the executor also makes a portability election.
   b. Rev. Proc. 2001-38:
      i. Recall Rev. Proc. 2001-38 applied to situations where QTIP election was made but was unnecessary to eliminate the estate tax liability; the IRS would disregard QTIP election and treat the election as null and void.
      ii. This Rev. Proc. was issued to help taxpayers and eliminate estate tax or other related tax consequences at surviving spouse’s death when estate received no benefit from an unnecessary QTIP election.
   c. Evolution of Estate Planning:
      i. With higher federal estate tax exemptions and availability of portability election (i.e., the ability for a surviving spouse to utilize the deceased spouse’s unused exclusion amount (DSUE)), income tax planning has become an equally important focus in estate planning.
      ii. Planning involves preserving estate tax exemption of first spouse to die, and making QTIP election to strategically shift assets that would normally be sheltered by federal estate tax exemption (in family or credit shelter trust) into surviving spouse’s taxable estate for a second basis adjustment at that death.
      iii. Some practitioners were concerned that IRS would apply Rev. Proc. 2001-38 to void a QTIP election that wasn’t necessary to eliminate estate tax liability at first death.
   d. Takeaways of Rev. Proc. 2016-49 Guidance:
      i. Modifies and supersedes Rev. Proc 2001-38 by confirming the procedures by which IRS will continue to disregard a QTIP election, but excluding from its scope “unnecessary” QTIP elections made by estates that also elected portability.
      ii. Rev. Proc. 2016-49 treats as void QTIP elections that satisfy three requirements, one of which is that the executor of estate of first spouse to die didn’t make (nor was considered to have made) portability election under IRC 2010(c)(5)(A) and corresponding regs.
      iii. Provides clarity with respect to utilizing portability and QTIP trust to provide planning benefits to surviving spouse without fear that QTIP election may be disregarded by IRS.

3. Prop Regulations on IRC 2704: Update from Cathy Hughes @ABA Fall Joint RPTE/Tax Section Meeting
   a. Purpose of Proposed Regs project was to make 2701 and 2704 applicable again. Changes in state law now make it too easy to get around 2704b; narrowing regulatory exceptions to 2704b.
   b. Uproar to proposed Regs. has been “surprising” to the government. “We thought we were perfectly clear.”
   c. There is no deemed put right per Hughes. She said this twice in panel discussions. “Nothing in the proposed regs is meant to completely do away with minority discounts”.
   d. “Anyone who thinks you’ll have final regulations on 2704 by year end has never worked at treasury!”
   e. Treasury going to take comments seriously/consider them fully. No way will issue them quickly.
   f. See Tax Notes (October 3, 2016) by Matthew R. Madara that addressed Hughes comments.
Attachment 2
Probate and Estate Planning Council  
Treasurer’s Report  
November 5, 2016  

1. **Budget.** A proposed 2016-2017 budget is included with this Report.  

2. **Financial statements.** The State Bar is finishing financial statements for the Bar’s financial period ended September 30, 2016, so no updated financial statements were available at the time of preparation of this Report.  

3. **Hearts and Flowers Fund.** The Council’s Hearts and Flowers Fund is used, for example, to pay for plants sent in remembrance of deaths of individuals who have some relationship to the Council. Thanks to many of you who have recently contributed to the Hearts and Flowers Fund. As of the date that this Report was prepared, the Fund had a balance of $698.71. This balance is still historically low. For those who have not contributed to the Fund, please consider making a contribution of $35.00 to the Fund, to help replenish the Fund.  

4. **Section Expense Reimbursement Form.** Council members must use the State Bar’s Section Expense Reimbursement Form to request reimbursement. For the form and instructions, use [www.michbar.org/sections/home](http://www.michbar.org/sections/home), and scroll down to Section Leadership, and then Section Treasurer Information and click on Expense Reimbursement Form. A copy of the Form is also included with this report. Please carefully complete the Form before submitting it; Forms not fully completed cannot be processed.  

5. **Submitting expense reimbursement requests.** Council members may submit a completed Section Expense Reimbursement Form to me, in person, by email (dlucas@vcflaw.com), by fax, or by mail. All of my contact information follows. Generally, other than mileage reimbursement, the State Bar requires that I attach paid receipts to the Form when I submit the Form, requesting reimbursement, so please attach a copy of your paid receipt to your Form when you submit the completed Form to me.  

6. **Mileage reimbursement rate.** The IRS business mileage reimbursement rate for 2016 is $0.54 per mile. If you are eligible for reimbursement for your mileage for Probate Council business, you must use this rate, on the Section Expense Reimbursement Form.  

7. **Timely submission of reimbursement requests.** The State Bar’s policy is to reject any expense reimbursement requests for expenses more than 45 days old. Please submit expense reimbursement requests timely.  

8. **Section expenses.** Council and Section members are not authorized to sign any agreement on behalf of the Council or the State Bar.  

David P. Lucas  
Treasurer, Probate and Estate Planning Section  

**Treasurer contact information:**  
David P. Lucas  
Vandervoort, Christ & Fisher P.C.  
70 Michigan Avenue W., Suite 450  
Battle Creek, Michigan 49017  
voice: 269-965-7000  
fax: 269-965-0646  
email: d lucas@vcflaw.com
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The Treasurer's Report as of [insert date].
Treasurer's Report

Section Express Reimbursement Policies and Procedures

1. General Policies

All reimbursements shall be made in accordance with the Treasurer's Report and any applicable policies. Reimbursements shall be made only upon presentation of a properly completed reimbursement form signed by the requestor and the appropriate authorized person.

2. Reimbursement Requests

All reimbursement requests shall be submitted in writing on a reimbursement form. The form shall include the following information:

- Date of the event
- Description of the event
- Purpose of the event
- Amount of reimbursement requested

3. Approval Process

All reimbursement requests shall be reviewed and approved by the Treasurer or their designee. The Treasurer shall have the authority to deny any reimbursement request if it is deemed inappropriate or not in the best interests of the organization.

4. Refund Policy

Any reimbursement that is denied shall be returned to the requestor. Any reimbursement that is approved shall be credited to the requestor's account or disbursed by check.

5. Reimbursement Limitations

Reimbursements shall not exceed the amount specified in the Treasurer's Report. Reimbursements shall not be made for personal expenses or for expenses that are not related to the organization's mission.

6. Supporting Documents

All reimbursement requests shall be supported by evidence of the actual expenses incurred. This evidence may include receipts, invoices, or other documentation.

7. Reimbursement Disbursements

Reimbursements shall be made in the manner specified in the Treasurer's Report. Reimbursements shall be made within 30 days of the approval date.

8. Reimbursement Reports

The Treasurer shall prepare a report of all reimbursements made during each fiscal year. The report shall be submitted to the Board of Directors for review.

9. Reimbursement Policies

All reimbursement policies shall be reviewed and updated annually by the Treasurer. Any changes to reimbursement policies shall be approved by the Board of Directors.

10. Reimbursement Records

All reimbursement records shall be maintained for a period of five years from the date of the reimbursement. The records shall be subject to audit by the Treasurer or their designee.

11. Ongoing Audits

The Treasurer shall conduct ongoing audits of all reimbursement requests to ensure compliance with policy and internal controls.

12. Compliance with Laws

All reimbursement policies shall comply with all applicable laws and regulations. The Treasurer shall ensure that all reimbursement requests are in compliance with applicable laws and regulations.

13. Reporting Requirements

All reimbursement requests exceeding $5,000 shall be reported to the appropriate authorities as required by law.

14. Fraud Prevention

All reimbursement requests shall be subject to fraud prevention measures. The Treasurer shall work with the Board of Directors to implement measures to prevent fraud.

15. Audit and Review

The Treasurer shall conduct periodic audits and reviews of all reimbursement requests to ensure compliance with policy and internal controls.
Attachment 3
Materials not ready in time for publication
Attachment 4
Enclosed is a letter written to the Supreme Court with our committee's proposed rules.

After our submission, I received communications from Robin Eagleson of SCAO with questions and suggested changes. Robin sent me a draft of her modifications which I shared with our committee. We discussed the changes and provided additional comments and input. Robin and I talked again, after which I followed up with the attached email, confirming our discussion.

On Friday, October 28, 2016, she provided me with the proposed rules that our committee drafted as modified. It is my understanding that these modified rules will be submitted to the Supreme Court as part of their November administrative hearing. After the hearing, the rules may be posted for public comment with provisional approval by the Court. After public comment, the rules may or may not change, depending on what additional input the Court receives. We will be able to made additional comments if we wish.
October 12, 2016

Larry Royster, Clerk
Michigan Supreme Court
PO Box 30052
Lansing, Michigan 48909

Re: Proposed Amendments to MCR 5.801, 5.802, 7.102, 7.103, 7.108, 7.109, 7.203, 7.205, 7.208, 7.209, and 7.210

Dear Mr. Royster:

On behalf of the Council of the Probate and Estate Planning Section of the Michigan State Bar, please find attached proposed Rule changes to MCR 5.801, 5.802, 7.102, 7.103, 7.108, 7.109, 7.203, 7.205, 7.208, 7.209, and 7.210. Our proposal suggests changes to the Michigan Court Rules so that they are consistent with the following acts:


The Probate and 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 positions expressed in this letter and attachments are those of the Probate and Estate Planning Section only and are not the positions of the State Bar of Michigan. In accordance with our procedures when taking public policy positions, please find enclosed two Reports on Public Policy Position relative to our proposed Rule changes.

Please let me know if you require any further information or have any questions.

Very truly yours,

Marlaine C. Teahan
Chair
Sub-committee on Probate Appeals
Litigation, Proceedings, and Forms Committee
Probate and Estate Planning Section

Enclosures: Redlined versions of the proposed MCR changes and Two Reports of Public Policy Position of the Probate Council

Via email to: MSC_Clerk@courts.mi.gov
Memorandum

Date: October 12, 2016
To: Larry Royster, Clerk of the Michigan Supreme Court
From: Probate and Estate Planning Section
Re: Suggested changes to various Rules in Chapters 5 and 7 of the Michigan Court Rules necessitated to conform the Court Rules to recent law changes occasioned by Public Act No.186 of 2016 and Public Act No. 287 of 2016.

Rule 5.801 Appeals to Other Courts

(A) **Right to Appeal of Right.** Pursuant to MCL 600.308(1), a final order affecting the rights or interests of either a party to a civil action in a probate court or an interested person in a proceeding aggrieved by an order of the probate court may appeal as provided by this rule.

(B) Orders Appealable as a matter of right to the Court of Appeals. Orders appealable as of right to the Court of Appeals are defined as and a probate court order is "final" if it qualifies as a final order under MCR 7.202(6)(a), or if it affects with finality the rights or interests of a party or an interested person in the subject matter, including, but not limited to orders the following:

1. a final order affecting the rights or interests of a party to a civil action commenced in probate court under MCR 5.101(C);

2. a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:

   1a) appointing or removing a fiduciarypersonal representative, conservator, trustee, or trust protector as referred to in MCL 700.7103(n), or denying such an appointment or removal;

   2b) admitting or denying to probate of a will, codicil, or other testamentary instrument;

   3e) determining the validity of a governing instrument as defined in MCL 700.1104(m);

   4d) interpreting or construing a governing testamentary instrument or inter vivos trust as defined in MCL 700.1104(m);

   5) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(m);

   6f) reforming, terminating, or modifying or denying the reformation, termination or modification of a trust;

   7g) granting or denying a petition to consolidate or divide trusts;
(8h) discharging or denying the discharge of a surety on a bond from further
liability;
(9i) allowing, disallowing, or denying a claim;
(10j) assigning, selling, leasing, or encumbering any of the assets of an estate or
trust;
(11k) authorizing or denying the continuation of a business;
(12l) determining special allowances in a decedent’s estate such as a homestead
allowance, an exempt property allowance, or a family allowance;
(13m) authorizing or denying rights of election;
(14n) determining heirs, devisees, or beneficiaries;
(15o) determining title to or rights or interests in property;
(16p) authorizing or denying partition of property;
(17q) authorizing or denying specific performance;
(18r) ascertaining survivorship of parties;
(19s) granting or denying a petition to bar a mentally incompetent or minor wife
from dower in the property of her living husband;
(20t) granting or denying a petition to determine cy pres;
(21u) directing or denying the making or repayment of distributions;
(22v) determining or denying a constructive trust;
(23w) determining or denying an oral contract relating to a will;
(24x) allowing or disallowing an account, fees, or administration expenses;
(25y) surcharging or refusing to surcharge a fiduciary or trust protector as referred to
in MCL 700.7103(n);
(26z) determining or directing payment or apportionment of taxes;
(27aa) distributing proceeds recovered for wrongful death under MCL 600.2922;
(28bb) assigning residue;
(29cc) granting or denying a petition for instructions;
(30dd) authorizing disclaimers.
(31ee) allowing or disallowing a trustee to change the principal place of a trust’s
administration;
(32)
(3) other appeals as may be hereafter provided by statute.
(C) Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:

(1) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding under MCL 700.1101 et seq., or the Mental Health Code, MCL 330.1600 et seq.;

(33)

(2) a final order affecting the rights or interests of a person in a proceeding that results in an individual receiving involuntary mental health treatment under the Mental Health Code, MCL 330.1400 et seq., or judicial admission of an individual with a developmental disability to a center under the Mental Health Code, MCL 330.1500 et seq., except for a final order affecting the rights or interests of a person in the estate of an individual with developmental disabilities.

(DD) Appeal by Leave of Interlocutory Orders. Any judgment or order of the probate court which is not a final judgment or final order appealable of right—an interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit court of appeals and only by leave of that court. The circuit court shall give particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

(E) Transfer of Appeals From Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.

(F) Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.

MCR 5.802 Appellate Procedure; Stays Pending Appeal

(A-B) Unchanged.
(C) Stays Pending Appeals. An order removing or appointing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary’s bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

Rule 7.102 Definitions

For purposes of this subchapter:

(1-8) Unchanged.

(9) “trial court” means the district, probate, or municipal court from which the “appeal” is taken.

Rule 7.103 Appellate Jurisdiction of the Circuit Court

(A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere;

(2) a final order of a probate court under MCR 5.801(C);

(3) a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 et seq.; and

(4) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.

(B) Unchanged.
Rule 7.108 Stay of Proceedings; Bond; Review

(A-D) Unchanged.

(E) Probate Actions.

1. The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.

2. A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).

Rule 7.109 Record on Appeal

(A) Unchanged.

(B) Transcript.

1. Appellant’s Duties; Orders; Stipulations.

   (a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Unless otherwise provided by circuit court order or this subrule, the appellant shall order the full transcript of testimony and other proceedings in the trial court or agency. Under MCR 7.104(D)(2), a party must serve a copy of any request for transcript preparation on the opposing party and file a copy with the circuit court.

   (b) In an appeal from probate court, only that portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.

   (be) On the appellant’s motion, with notice to the appellee, the trial court or agency may order that no transcript or some portion less than the full transcript be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant.
(ca) The parties may stipulate that no transcript or some portion less than the full transcript be filed.

(de) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or agency and sent as the record of testimony in the action.

(B)(2-3) Unchanged.

(C-I) Unchanged.

Rule 7.203 Jurisdiction of the Court of Appeals

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

1. A final judgment or final order of the circuit court, court of claims, or probate court, as defined in MCR 7.202(6), except a judgment or order of the circuit court
   a. on appeal from any other court or tribunal;
   b. in a criminal case in which the conviction is based on a plea of guilty or nolo contendere;

   An appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right.

2. A judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule;

(B) Appeal by Leave. The court may grant leave to appeal from:

1. A judgment or order of the circuit court, court of claims, or probate court, that is not a final judgment appealable of right;

2. A final judgment entered by the circuit court on appeal from any other court;

3. A final order of an administrative agency or tribunal which by law is appealable to or reviewable by the Court of Appeals or the Supreme Court;

4. Any other judgment or order appealable to the Court of Appeals by law or rule;

5. Any judgment or order when an appeal of right could have been taken but was not timely filed.

(C - G) Unchanged
Rule 7.205 Application for Leave to Appeal

(A) Unchanged

(B) Unchanged

(1-4) Unchanged

(5) if the appeal is from aprobate court order, 5 copies of theprobate court’s certification of the issue, as required by law;

(56) proof that a copy of the filed documents was served on all other parties; and

(57) the entry fee.

(C-H) Unchanged.

MCR 7.208 Authority of Court or Tribunal Appealed From

(A) - (C) Unchanged.

(D) Probate Actions. The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.

Former (D) - (I) renumbered as sections (E) - (J).

(ED) Supervision of Property. When an appeal is filed while property is being held for conservation or management under the order or judgment of the trial court, that court retains jurisdiction over the property pending the outcome of the appeal, except as the Court of Appeals otherwise orders.

(EE) Temporary Orders. A trial court order entered before final judgment concerning custody, control, and management of property; temporary alimony, support or custody of a minor child, or expenses in a domestic relations action; or a preliminary injunction, remains in effect and is enforceable in the trial court, pending interlocutory appeal, except as the trial court or the Court of Appeals may otherwise order.

(GF) Stays and Bonds. The trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders.

(HG) Matters Pertaining to Appointment of Attorney. Throughout the pendency of an appeal involving an indigent person, the trial court retains authority to appoint, remove, or replace an attorney except as the Court of Appeals otherwise orders.

(HH) Acts by Other Judges. Whenever the trial judge who has heard a case dies, resigns, or vacates office, or is unable to perform any act necessary to an appeal of a case within the time prescribed by law or these rules, another judge of the same court, or if another judge of that court is unavailable, another judge assigned by the state court administrator, may perform the acts necessary to the review process. Whenever a case is heard by a judge assigned from another court, the judicial acts necessary in the
preparation of a record for appeal may be performed, with consent of the parties, by a judge of the court in which the case was heard.

(I) Attorney Fees and Costs. The trial court may rule on requests for costs or attorney fees under MCR 2.403, 2.405, 2.625 or other law or court rule, unless the Court of Appeals orders otherwise.

MCR 7.209 Bond; Stay of Proceedings

(A) Effect of Appeal; Prerequisites.

(1) Except for an automatic stay pursuant to MCR 2.614(D) or MCL 600.867, or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court's denial of the party's claim of governmental immunity.

(2) – (3) unchanged.

(B) Responsibility for Setting Amount of Bond in Trial Court.

(1) Civil Actions and Probate Proceedings. Unless determined by law, or as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action or probate proceeding must be set by the trial court in an amount adequate to protect the opposite party.

(2) Unchanged.

(C) – (E) Unchanged.

(F) Conditions of Stay Bond.

(1) Civil Actions and Probate Proceedings. In a bond filed for stay pending appeal in a civil action or probate proceeding, the appellant shall promise in writing:

(a) – (e) Unchanged.

(2) Unchanged.

(G) Sureties and Filing of Bond; Service of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court that entered the order or judgment to be stayed.

(1) Civil Actions and Probate Proceedings.

(a-f) Unchanged.

(2) Unchanged.

(H) – (I) Unchanged.
Rule 7.210 Record on Appeal

(A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

(1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

(2) – (4) Unchanged.

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) Unchanged.

(b) In an appeal from probate court in an estate or trust proceeding, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript.

(c) – (e) Unchanged.

(C) – (I) Unchanged.
PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

* MCR 5.802(C); MCR 7.208; MCR 7.209(A)(1), (B)(1), (F)(1); (G)(1); MCL 600.867 *

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 16. The number who voted opposed to this position was 0.
Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
James B. Steward

E-Mail:
jamessteward@stewardsheridan.com

Regarding:
MCR 5.802(C); MCR 7.208; MCR 7.209(A)(1), (B)(1), (F)(1); (G)(1); MCL 600.867

Date position was adopted:
September 21, 2013

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:
16 Voted for position
0 Voted against position
0 Abstained from vote
7 Did not vote

Position:
Support

Explanation of the position, including any recommended amendments:
The Probate & Estate Planning Section Council supports jurisdiction and procedural changes that would direct all appeals from the Probate Courts to the Court of Appeals, rather than the bifurcated appellate process that currently splits appeals between the Circuit Courts and the Michigan Court of Appeals based on the subject matter. As part of these proposed changes, Probate & Estate Planning Section Council also supports an amendment to MCL 600.867 to provide that an appeal of right would trigger a 21-day automatic stay to permit the appellant to then file a motion for stay with the probate court. The process is analogous to that in circuit courts under MCR 2.614. Also, part of this proposed change, MCR 5.802(C) would be amended to clarify that the automatic-stay provision does not apply to an order that removes or appoints a fiduciary (current version omits “appoints” and some practitioners have taken this to mean that the portion of an order that appoints a fiduciary after removing a prior fiduciary is stayed), while MCR 7.208 would be amended to add new MCR 7.08(D), and MCR 7.209(A)(1), (B)(1), (F)(1); (G)(1) would be amended to be consistent with the other changes.
The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter5ProbateCourt.pdf
http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter7AppellateRules.pdf
PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

* 
MCR 5.801, MCR 7.102(9), MCR 7.103(A)(2), MCR 7.108(E)(1 and 2), MCR 7.109(B)(1)(b), MCR 7.210(A)(I) and MCR 7.210(B)(1)(b)

* 

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 19. The number who voted opposed to this position was 0.
Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
James B. Steward

E-Mail:
jamessteward@stewardsheridan.com

Regarding:
MCR 5.801, MCR 7.102(9), MCR 7.103(A)(2), MCR 7.108(E)(1 and 2), MCR 7.109(B)(1)(b), MCR 7.210(A)(l) and MCR 7.210(B)(1)(b)

Date position was adopted:
October 12, 2013

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:
19 Voted for position
0 Voted against position
0 Abstained from vote
4 Did not vote

Position:
Support

Explanation of the position, including any recommended amendments:
Previously, on September 21, 2013, the Probate & Estate Planning Section Council voted to recommend changes as part of the court of appeals jurisdiction and procedural changes that would direct all appeals from the Probate Courts to the Court of Appeals, rather than the bifurcated appellate process that currently splits appeals between the Circuit Courts and the Michigan Court of Appeals based on the subject matter. As part of this appellate jurisdiction change, the Probate & Estate Planning Section Council has now also voted to recommend changes to MCR 5.801, MCR 7.102(9), MCR 7.103(A)(2), MCR 7.108(E)(1 and 2), MCR 7.109(B)(1)(b), MCR 7.210(A)(l) and MCR 7.210 (B)(1)(b) to coordinate with the statutory jurisdiction changes.
The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter5ProbateCourt.pdf
http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/1Chapter7AppellateRules.pdf
Dear Robin:

Thank you for your time today. I am writing to confirm our conversation in which we discussed the following changes to various Michigan Court Rules:

- The title to Rule 5.801 will be “Appeals to Court of Appeals.”
- Rule 5.801, Paragraphs (A) and (B) will be combined, as I originally had it in my original submission. Paragraph (A) will be called “Appeal of Right,” and paragraph (B) will be called “Appeal By Leave.” There will be no other paragraphs in Rule 5.801.
- In the laundry list of matters that are appealable of right, subparagraph (1) will be retained with subparagraph (2) being crossed out. The new subparagraph two, which was 5.801(B)(a), will be written as previously submitted with fiduciary added and personal representative, conservator, and trustee being deleted, with “referred to” deleted and the word “defined” inserted instead.
- In the laundry list, every time that a governing instrument is referred to, you will put back in the statutory reference, as originally submitted.
- In the laundry list, under your version subparagraphs (33) and (34) were changed. You have indicated you will discuss with Judge Mack your version is against the version we originally submitted for his review and final approval.
- In Rule 7.102(9), you will strike out the word probate, as originally submitted.
- In Rule 7.109, you will add in references to additional paragraphs that remain unchanged, as follows: (C) – (I).
- In Rule 7.202(6)(a)(vi)- (xv) – I have no comments to your additions. I think we will have to wait to see the feedback in the comment period. My committee was sent this language and I received no comments for or against. Also, being appellate practice section also receive this information and it was on their agenda last week. I received no comments for or against these additions; however, it is my understanding that the appellate practice section will review and comment during the comment. It is my understanding that the probate and estate planning section will do likewise.
- Rule 7.212 – while I did not give you any specific reference, I have been advised that if the priority of cases changes, you may wish to look at the brief filing requirements under this rule for any needed changes.
- Rule 7.213, priority of cases on the calendar – these additions were not our additions. Today, I gave you some suggestions for the wording of your language for (C)(2); however, our committee has not commented on these additions.

If you have any questions about the comments above, please let me know.
Rule 5.801 Appeals to Other Courts Court of Appeals

(A) Right to Appeal. An interested person aggrieved by an order of the probate court may appeal as provided by this rule.

(AB) Orders Appealable to Court of Appeals—Appeal of Right. Orders appealable of right to the Court of Appeals are defined as and limited to the following Pursuant to MCL 600.308(1), a final order affecting the rights or interests of either a party to a civil action in a probate court or an interested person in a proceeding in the probate is appealable as a Matter of Right to the Court of Appeals. A probate court order is “final” if it qualifies as a final order under MCR 7.202(6)(a), or if it affects with finality the rights or interests of a party or an interested person in the subject matter, including, but not limited to, the following orders:

1. a final order affecting the rights or interests of a party to a civil action commenced in the probate court under MCR 5.101(C);

2. a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:

   2a) appointing or removing a personal representative, conservator, trustee, fiduciary or trust protector as referred to defined in MCL 700.7103(n), or denying such an appointment or removal;

   3b) admitting or denying to probate of a will, codicil, or other testamentary instrument;

   4e) determining the validity of a governing instrument as defined in MCL 700.1104(m);

   5d) interpreting or construing a governing instrument as defined in MCL 700.1104(m);

   6e) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(m);

   7f) reforming, terminating, or modifying or denying the reformation, termination of modification of a trust;
Proposed MCRs for Probate Appeals

(8g) granting or denying a petition to consolidate or divide trusts;

(9h) discharging or denying the discharge of a surety on a bond from further liability;

(10i) allowing, disallowing, or denying a claim;

(11j) assigning, selling, leasing, or encumbering any of the assets of an estate or trust;

(12k) authorizing or denying the continuation of a business;

(13l) determining special allowances in a decedent’s estate such as a homestead allowance, an exempt property allowance, or a family allowance;

(14m) authorizing or denying rights of election;

(15n) determining heirs, devisees, or beneficiaries;

(16o) determining title to or rights or interests in property;

(17p) authorizing or denying partition of property;

(18q) authorizing or denying specific performance;

(19r) ascertaining survivorship of parties;

(20s) granting or denying a petition to bar a mentally incompetent or minor wife from dower in the property of her living husband;

(21t) granting or denying a petition to determine cy pres;

(22u) directing or denying the making or repayment of distributions;

(23v) determining or denying a constructive trust;

(24w) determining or denying an oral contract relating to a will;

(25x) allowing or disallowing an account, fees, or administration expenses;

(26y) surcharging or refusing to surcharge a fiduciary or trust protector as referred to in MCL 700.7103(n);
Proposed MCRs for Probate Appeals

(27z) determining or directing payment or apportionment of taxes;

(28aa) distributing proceeds recovered for wrongful death under MCL 600.2922;

(29bb) assigning residue;

(30cc) granting or denying a petition for instructions;

(31dd) authorizing disclaimers;

(32ee) allowing or disallowing a trustee to change the principal place of a trust’s administration;

(33) affecting the rights and interests of an adult or a minor in a guardianship proceeding under the Estates and Protected Individuals Code;

(34) affecting the rights or interests of a person under the Mental Health Code;

(353) other appeals as may be hereafter provided by statute.

(C) Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:

— (1) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding;

— (2) a final order affecting the rights or interests of a person under the Mental Health Code, except for a final order affecting the rights and interests of a person in the estate of an individual with developmental disabilities.

(BD) Appeal by Leave Interlocutory Orders. Any judgment or order of the probate court which is not a final judgment or final order appealable of right interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit Court of Appeals and only by leave of that court. The circuit court shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

(E) Transfer of Appeals from Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.
Proposed MCRs for Probate Appeals

(F) Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.

Rule 5.802 Appellate Procedure; Stays Pending Appeal

(A) – (B) Unchanged.

(C) Stays Pending Appeals. An order removing or appointing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary’s bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

Rule 7.102 Definitions

For purposes of this subchapter:

(1) – (8) Unchanged.

(9) “trial court” means the district, probate, or municipal court from which the “appeal” is taken.

Rule 7.103 Appellate Jurisdiction of the Circuit Court

(A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere;

(2) a final order of a probate court under MCR 5.801(C);

(23) a final order of decision of an agency governed by the Administrative Procedures Act, MCL 24.201 et seq.; and
Proposed MCRs for Probate Appeals

(34) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.

(B) Unchanged.

Rule 7.108 Stay of Proceedings; Bond; Review

(A) – (D) Unchanged.

(E) Probate Actions.

(1) The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.

(2) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).

Rule 7.109 Record on Appeal

(A) Unchanged.

(B) Transcript.

(1) Appellant’s Duties; Orders; Stipulations.

(a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Unless otherwise provided by circuit court order or this subrule, the appellant shall order the full transcript of testimony and other proceedings in the trial court or agency. Under MCR 7.104(D)(2), a party must serve a copy of any request for transcript preparation on the opposing party and file a copy with the circuit court.

(b) In an appeal from probate court, only portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.

(be) On the appellant’s motion, with notice to the appellee, the trial court or agency may order that no transcript or some portion less than the full transcript be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant.
Proposed MCRs for Probate Appeals

(cd) The parties may stipulate that no transcript or some portion less than the full transcript to be filed.

d(e) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or agency and sent as the record of testimony in the action.

(B)(2) – (3) Unchanged.

(C) - (I) Unchanged.

Rule 7.202 Definitions

For purposes of this subchapter:

(1) – (5) Unchanged.

(6) "final judgment" or "final order" means:

(a) In a civil case,

(i) – (v) Unchanged.

(vi) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after a reversal of an earlier final judgment or order commenced in the probate court under MCR 5.101(C);

(vii) a final order, as defined in MCR 5.801(B), affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, an inter vivos trust or a trust created under a will, a guardianship proceeding of an adult or minor under the Estates and Protected Individuals Code, or a mental health proceeding under the Mental Health Code.

(b) Unchanged.

Rule 7.203 Jurisdiction of the Court of Appeals

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:
Proposed MCRs for Probate Appeals

(1) A final judgment or final order of the circuit court, probate court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court

(a) – (b) Unchanged.

(2) Unchanged.

(B) Appeal by Leave. The court may grant leave to appeal from:

(1) a judgment or order of the circuit court, probate court, or court of claims that is not a final judgment appealable of right;

(2) – (5) Unchanged.

(C) – (G) Unchanged.

Rule 7.205 Application for Leave to Appeal

(A) Unchanged.

(B) Manner of Filing. To apply for leave to appeal, the appellant shall file with the clerk:

(1) – (4) Unchanged.

(5) if the appeal is from a probate court order, 5 copies of the probate court’s certification of the issue, as required by law;

(56) proof that a copy of the filed documents was served on all other parties; and

(67) the entry fee.

(C) – (H) Unchanged.

Rule 7.208 Authority of Court or Tribunal Appealed From

(A) – (C) Unchanged.

(D) Probate Actions. The probate court retains continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.
Proposed MCRs for Probate Appeals

(ED) Supervision of Property. When an appeal is filed while property is being held for conservation or management under the order or judgment of the trial court, that court retains jurisdiction over the property pending the outcome of the appeal, except as the Court of Appeals otherwise orders.

(EE) Temporary Orders. A trial court order entered before final judgment concerning custody, control, and management of property; temporary alimony, support or custody of a minor child, or expenses in a domestic relations action; or a preliminary injunction, remains in effect and is enforceable in the trial court, pending interlocutory appeal, except as the trial court or the Court of Appeals may otherwise order.

(GE) Stays and Bonds. The trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders.

(HG) Matters Pertaining to Appointment of Attorney. Throughout the pendency of an appeal involving an indigent person, the trial court retains authority to appoint, remove, or replace an attorney except as the Court of Appeals otherwise orders.

(IH) Acts by Other Judges. Whenever the trial judge who has heard a case dies, resigns, or vacates office, or is unable to perform any act necessary to an appeal of a case within the time prescribed by law or these rules, another judge of the same court, or if another judge of that court is unavailable, another judge assigned by the state court administrator, may perform the acts necessary to the review process. Whenever a case is heard by a judge assigned from another court, the judicial acts necessary in the preparation of a record for appeal may be performed, with consent of the parties, by a judge of the court in which the case was heard.

(II) Attorney Fees and Costs. The trial court may rule on requests for costs or attorney fees under MCR 2.403, 2.405, 2.625 or other law or court rule, unless the Court of Appeals orders otherwise.

Rule 7.209 Bond; Stay of Proceedings

(A) Effect of Appeal; Prerequisites.

(1) Except for an automatic stay pursuant to MCR 2.614 or MCL 600.867, or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court’s denial of the party’s claim of governmental immunity.

(2) – (3) Unchanged.
(B) Responsibility for Setting Amount of Bond in Trial Court.

   (1) Civil Actions and Probate Proceedings. Unless determined by law, or as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action or probate proceeding must be set by the trial court in an amount adequate to protect the opposite party.

   (2) Unchanged.

(C) – (E) Unchanged.

(F) Conditions of Stay Bond.

   (1) Civil Actions and Probate Proceedings. In a bond filed for stay pending appeal in a civil action or probate proceeding, the appellant shall promise in writing:

   (a) – (e) Unchanged.

   (2) Unchanged.

(G) Sureties and Filing of Bond; Service of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court that entered the order or judgment to be stayed.

   (1) Civil Actions and Probate Proceedings.

   (a) – (g) Unchanged.

   (2) Unchanged.

(H) – (I) Unchanged.

Rule 7.210 Record on Appeal

(A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

   (1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.
Proposed MCRs for Probate Appeals

(2) – (4) Unchanged.

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) Unchanged.

(b) In an appeal from probate court in an estate or trust proceeding, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript.

(c) – (e) Unchanged.

(C) – (I) Unchanged.

Rule 7.212 Briefs

(A) Time for Filing and Service

(1) Appellant’s Brief.

(a) Filing. The appellant shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) 28 days after the claim of appeal is filed, the order granting leave is certified, the transcript is filed with the trial court, or a settled statement of facts and certifying order is filed with the trial court or tribunal, whichever is later, in a child custody case, adult or minor guardianship case under the Estates and Protected Individuals Act or under the Mental Health Code, mental illness cases under the Mental Health Code, or an interlocutory criminal appeal. This time may be extended only by the Court of Appeals on motion; or

(ii) – (iii) Unchanged.

(b) Unchanged.

(2) Appellee’s Brief.
Proposed MCRs for Probate Appeals

(a) Filing. The appellee shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) 21 days after the appellant’s brief is served on the appellee, in an interlocutory criminal appeal, adult or minor guardianship case under the Estates and Protected Individuals Act or under the Mental Health Code, mental illness cases under the Mental Health Code, or a child custody case. This time may be extended only by the Court of Appeals on motion;

(ii) Unchanged.

(3) – (5) Unchanged.

(B) – (I) Unchanged.

Rule 7.213 Calendar Cases

(A) – (B) Unchanged.

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

(1) Unchanged.

(2) child custody cases, guardianship cases under the Estates and Protected Individuals Act and under the Mental Health Code, and mental illness cases under the Mental Health Code.

(3) – (7) Unchanged.

(D) – (E) Unchanged.
Attachment 5
It might be worth a look at the Estate of Beyer, TC Memo 2016-183, 9/29/16, for some tips on not how to draft trust language about paying estate tax, filing gift tax returns when funding 529 plans, as well as transfers out of the estate.

Edward G. Beyer was born in 1910. He never married or had children. He worked for Abbott Labs, and accumulated substantial stock options and stock. In 1999 he had 800,000 shares. According to the opinion, he was kind to his sisters, other siblings and their children, but ran into problems after doing some estate planning beginning in 1999 and continuing in 2003, and following his death on May 19, 2007.

Judge Chiechi found, in a 157 page opinion:

There was no legitimate or significant non-tax reason for a transfer of the decedent in 2004 to a limited partnership that had restrictions, therefore including them in the estate of the decedent after his May 19, 2007 death. She indicated that he continued to use assets (some checks were issued to him from the entity) and he failed to retain sufficient assets to pay gift and estate taxes. No discount was allowed because of the restrictions when they were included under Code section 2036(a).

Decedent made $55,000 gifts to 529 plans (reportedly for gifts over 5 years) in 2002 and again in 2005 and failed to file a gift tax return indicating this. His gifts were treated as made in the year gifted and an accuracy related penalty was added.

Decedent's trust indicated that estate and inheritance taxes were to be paid "out of trust principal". His estate planning did not leave sufficient funds in the trust to pay all of the taxes. Therefore, it was perceived as proof that he intended to continue to use and control the asset, further supporting the inclusion under Code section 2036.

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