Agendas & Attachments for

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

Saturday, March 14, 2015
9:00 a.m.
University Club
Lansing, Michigan
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

March 14, 2015
9:00 a.m.
University Club
3435 Forest Road
Lansing, Michigan 48910

The above stated meetings of the Section will be held at the MSU University Club, 3435 Forest Road, Lansing, Michigan, Saturday, March 14, 2015. The Section’s Committee on Special Projects (CSP) meeting will begin at 9:00 a.m., 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.

Marlaine C. Teahan
Secretary

Fraser Trebilcock
124 West Allegan Street, Suite 1000
Lansing MI 48933
Phone: (517) 377-0869
Fax: (517) 482-0887
e-Mail: mteahan@fraserlawfirm.com
Schedule and Location of Future Meetings
Probate and Estate Planning Section
of the
State Bar of Michigan

Unless otherwise noted, meetings are held at 9:00 a.m. at the University Club, 3435 Forest Road, Lansing, Michigan 48910.

The following is a list of the remaining meetings for 2014-15:
April 11, 2015
June 13, 2015
September 12, 2015 (Annual Section Meeting)

Tentative meeting schedule for 2015-16:
October Location TBD
November 7, 2015
December 12, 2015
January 16, 2016
February 13, 2016
March 12, 2016
April 16, 2016
June 4, 2016
September 10, 2016 (Annual Section Meeting)
CALL FOR MATERIALS
CSP and Council Meetings of the
Probate and Estate Planning Section
of the
State Bar of Michigan

All materials are due on or before 5 p.m. on the Thursday falling 10 days before the next Council meeting. Committee Chairs should typically plan to hold monthly committee meetings before the due dates listed below so that these deadlines can be met.

CSP materials are to be sent to Chris Ballard, Chair of the Committee on Special Projects (cballard@honigman.com).

Council materials are to be sent to Marlaine C. Teahan, Secretary of the Section (mteahan@fraserlawfirm.com).

Schedule of due dates for materials – by 5 p.m.

April 2, 2015
June 4, 2015
September 3, 2015 (Annual Section Meeting)
## Officers for 2014-2015 Term

<table>
<thead>
<tr>
<th>Officer</th>
<th>Position</th>
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</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Amy N. Morrissey</td>
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<tr>
<td>Chairperson Elect</td>
<td>Shaheen I. Imami</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>James B. Steward</td>
</tr>
<tr>
<td>Secretary</td>
<td>Marlaine C. Teahan</td>
</tr>
<tr>
<td>Treasurer</td>
<td>Lentz, Marguerite Munson</td>
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</tbody>
</table>

## Council Members for 2014-2015 Terms

<table>
<thead>
<tr>
<th>Council Member</th>
<th>Year elected to current term (partial, first or second full term)</th>
<th>Current term expires</th>
<th>Eligible after Current term?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ard, W. Josh.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
</tr>
<tr>
<td>Ouellette, Patricia M.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<tr>
<td>Spica, James P.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
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<tr>
<td>Lucas, David P.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
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<tr>
<td>Skidmore, David L.J.M.</td>
<td>2012 (1st term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
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<tr>
<td>Brigman, Constance L.</td>
<td>2010 (2nd term)</td>
<td>2016</td>
<td>No</td>
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<tr>
<td>Allan, Susan M.</td>
<td>2010 (2nd term)</td>
<td>2016</td>
<td>No</td>
</tr>
<tr>
<td>Mills, Richard C.</td>
<td>2014 (1st partial term)</td>
<td>2016</td>
<td>Yes (2 terms)</td>
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<tr>
<td>Marquart, Michele C.</td>
<td>2013 (1st term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<tr>
<td>New, Lorraine F.</td>
<td>2013 (1st term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<td>Vernon, Geoffrey R.</td>
<td>2013 (1st term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
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<tr>
<td>Ballard, Christopher A.</td>
<td>2014 (2nd term)</td>
<td>2017</td>
<td>No</td>
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<tr>
<td>Bearup, George F.</td>
<td>2014 (2nd term)</td>
<td>2017</td>
<td>No</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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<td>Jaconette, Hon Michael L.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
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<td>Kellogg, Mark E.</td>
<td>2014 (1st term)</td>
<td>2017</td>
<td>Yes (1 term)</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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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
Raymond T. Huetteman, Jr.
Stephen W. Jones
Robert B. Joslyn
James A. Kendall
Kenneth E. Konop
Nancy L. Little
James H. LoPrete

Richard C. Lowe
John D. Mably
John H. Martin
Michael J. McClory
Douglas A. Mielock
Russell M. Paquette
Patricia Gormely Prince
Douglas J. Rasmussen
Harold G. Schuitmaker
John A. Scott
Fredric A. Sytsma
Thomas F. Sweeney
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.

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 2014, there have been four recipients:

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

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

**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 2014-2015

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

Marlaine C. Teahan, Chair  
Marguerite Munson Lentz  
James B. Steward

**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*

Shaheen I. Imami

**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

**Awards Committee**
*Mission: To periodically award the Michael Irish Award to a deserving recipient and to consult with ICLE concerning periodic induction of members in the George A. Cooney Society*

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

**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*

Shaheen I. Imami, Chair

**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*

Christopher A. Ballard, Chair

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

George W. Gregory, Chair  
Mark K. Harder  
Thomas F. Sweeney
Probate & Estate Planning Section Committees 2014-2015

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

William J. Ard, Chair
Christopher A. Ballard
Georgette E. David
Mark E. Kellogg
Sharri L. Rolland Phillips
Harold G. Schuitmaker

Amicus Curiae Committee
Mission: To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs

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

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

James B. Steward

State Bar and Section Journals Committee
Mission: To oversee the publication of the Section’s Journal and periodic theme issues of the State Bar Journal that are dedicated to probate, estate planning, and trust administration

Richard C. Mills, Chair
Nancy L. Little, Managing Editor
Melisa M. W. Mysliwiec, Assoc. Editor

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

Constance L. Brigman, Chair
Kathleen M. Goetsch
Michael J. McClory
Neal Nusholtz
Michael L. Rutkowski
Rebecca A. Schnelz, (Liaison to Solutions on Self-help Task Force)
Nancy H. Welber
Melisa M. W. Mysliwiec
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.

William J. Ard, Chair
Stephen J. Dunn
Phillip E. Harter
Nancy L. Little
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Neal Nusholtz
Michael L. Rutkowski
Serene K. Zeni

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

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

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

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

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

Michele C. Marquardt, Chair
(Liaison to SCAO for Estates & Trusts Workgroup)
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)
David L. Skidmore
Updating Michigan Law Committee
Mission: To review, revise, communicate and recommend Michigan’s trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times

Geoffrey R. Vernon, Chair
Robert P. Tiplady, II, Vice Chair
Susan M. Allan
Howard H. Collens
Georgette E. David
Shawn P. Eyestone
Mark K. Harder
Raymond A. Harris
Shaheen I. Imami
Robert B. Labe
Henry P. Lee
Marguerite Munson Lentz
Michael G. Lichterman
Raj A. Malviya
Sueann T. Mitchell
Nathan R. Piwowarski
James P. Spica

Artificial 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
Keven DuComb
Robert M. O’Reilly
Lawrence W. Waggoner

Insurance 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
Mark K. Harder
James P. Spica
Joseph D. Weiler, Jr.

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

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

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

Raj A. Malviya, Chair
Christopher J. Caldwell
Nicholas R. Dekker
Probate & Estate Planning Section Committees 2014-2015

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

Lorraine F. New, Chair
Robert B. Labe
Marguerite Munson Lentz
Geoffrey R. Vernon
Nancy H. Welber

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 Trust, and if advisable, to recommend changes to Michigan law in this area

Neal Nusholtz, Chair
George W. Gregory
Lorraine F. New
Nicholas A. Reister
Patricia M. Ouellette

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

James B. Steward, Chair
William J. Ard
Wendy Parr Holtvluwer
Patricia M. Ouellette
Sharri L. Rolland Phillips
Daniel D. Simjanovski
Richard J. Siriani
Serene K. Zeni

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
Richard C. Mills
Kurt A. Olson
James B. Steward

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

Lorraine F. New, Chair
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby
Richard C. Mills
Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee
Mission: To review the statutes, case law, and court rules of Michigan and other jurisdictions concerning the scope of the Attorney Client Privilege for communications between trustees and their counsel and if necessary or appropriate, to recommend changes to Michigan law in this area

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

Alternative Dispute Resolution Section Liaison
vacant

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

John R. Dresser

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

Amy Rombyer Tripp

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

Patricia M. Ouellette

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

Jeanne Murphy

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

William J. Ard

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

J. David Kerr
Michigan Bankers Association Liaison
Mission: The liaison to the Michigan Bankers Association is responsible for developing and maintaining bilateral communication between the Section and the Michigan Bankers Association in matters of mutual interest and concern

Susan M. Allan

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

Rebecca A. Schnelz

SCAO Liaisons
Mission: The liaisons to SCAO are responsible for developing and maintaining communications between the Section and SCAO on matters of mutual interest and concern

Constance L. Brigman
Michele C. Marquardt
Rebecca A. Schnelz

Solutions on Self-help Task Force Liaison
Mission: The liaison to the Solutions on Self-help (SOS) Task force is responsible for maintaining bilateral communications between the Section and the Task Force

Rebecca A. Schnelz

Probate Judges Association Liaisons
Mission: The liaisons to the MPJA are responsible for developing and maintaining bilateral communication between the Section and the MPJA on matters of mutual interest and concern

Hon. David M. Murkowski
Hon. Michael L. Jaconette

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

Richard J. Siriani

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

George W. Gregory
<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>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-Prop tax uncapping exempt. (HB5552)</td>
<td></td>
<td>-Supreme Court Task Force Report</td>
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<td>-&quot;Who Should I Trust?&quot;Program</td>
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<td>-Fiduciary Access to Digital Assets (HB5366-5370)</td>
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<td>-Bylaw Update</td>
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<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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<td>Priority Items</td>
<td>-Domestic Asset Protection Trusts</td>
<td>-SCAO Meetings*</td>
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<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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<td>Secondary Priority</td>
<td>-EPIC/MTC Updates</td>
<td>-Inventory Lawyer</td>
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<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></td>
<td>-Property tax on trust property</td>
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<td>-Uniform Real Property TOD Act</td>
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<td>Priority To Be Determined</td>
<td>-Dignified Death (Family Consent) Act</td>
<td>-Budget Reporting</td>
<td>-Action on SC recommendations</td>
<td>-Probate Court Opinion Bank</td>
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<td>-Pooled income trust exclusion</td>
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<td>-Mentor program</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></td>
<td>-Estate Recovery</td>
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*ongoing
1. Artificial Reproductive Technology ("ART") Committee – Nancy Welber
   Professor Larry Waggoner will give a short introductory presentation
   Draft statutory changes will be circulated in April

2. Insurance Committee – Geoffrey Vernon
   Exculpation of trustees of life insurance trusts from liabilities related to
   the administration of policies held in the trust
   Proposed MCL 700.1513 (Exhibit A-1)
   Nebraska ILIT Trustee Liability Case (Exhibit A-2)

3. Updating Michigan Law Committee – Geoffrey Vernon
   Proposed tenancy by the entireties statutes
   Please see February CSP Materials for copies of the following:
   MCL 557.151, new version (Feb Exhibit D-1)
   MCL 700.7509, new version (Feb Exhibit D-2)
   Please see the January CSP Materials for copies of the following:
   MCL 554.44, 554.45 (Jan Exhibit B-1)
   MCL 557.151 (current) (Jan Exhibit B-2)
   MCL 557.151 (replacement), previous version (Jan Exhibit B-3)
   MCL 557.101, 557.102, 565.48, 565.49 (Jan Exhibit B-4)
   MCL 600.2807 (Jan Exhibit B-5)
   MCL 600.6023a (Jan Exhibit B-6)
   MCL 700.2801, 700.2806, 700.2114, 700.2519 (Jan Exhibit B-7)
   MCL 700.7509, previous version (Jan Exhibit B-8)
   Please see the December CSP Materials for copies of the following:
   ACTEC Chart Summarizing the state law (Dec Exhibit B-6)
   Sample State Statutes (Dec Exhibit B-7)
4. Citizens Outreach Committee – Connie Brigman
Drafts of Revised Pamphlets
What to Do When a Family Member Dies (Exhibit B-1)
Durable Power of Attorney (Exhibit B-2)
Patient Advocate Designation (Exhibit B-3)
Incapacitated Individual (Exhibit B-4)
EXHIBIT A-1
700.1513 Duties of a trustee with respect to the acquisition, retention, and ownership of life insurance policies

Sec. 1513 (1) As used in this Section, the term “irrevocable life insurance trust” (hereinafter referred to as an "ILIT") means a trust that:

(a) Is not revocable within the meaning of MCL 700.7103(h).

(b) The settlor(s) created with the intent that the trustee(s) acquire, by purchase or gift, one or more life insurance policies as a trust asset.

(c) Was not created solely to accomplish one or more of the charitable purposes set forth in MCL 700.7405(1).

(2) It is presumed that the settlor(s) intended to create an ILIT to acquire or receive one or more life insurance policies if either of the following apply:

(a) The trustee(s) acquire(s), by purchase or gift, a life insurance policy within 6 months of its creation.

(b) For the entire period prior to the acquisition of the life insurance policy the only trust assets are cash or cash equivalents.

(3) Notwithstanding any other provision of the Michigan prudent investor rule and, except as otherwise provided in the terms of the trust, the duties of a trustee with respect to the acquisition, retention, or ownership of a life insurance policy as a trust asset do not include any of the following:

(a) Determine whether the trustee or ILIT beneficiaries have an insurable interest in the insured in accordance with the provisions of MCL 700.7114.

(b) Determine whether any life insurance policy is or remains a proper trust investment.

(c) Investigate the financial strength or changes in the financial strength of the life insurance company issuing or maintaining the policy.

(d) Inquire about changes in the health or financial condition of the insured.

(e) Diversify the investment in the policy relative to any other life insurance policies or any other trust assets.

(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.

(g) Exercise or not exercise any option available under the policy regardless of whether the exercise or nonexercise results in the lapse or termination of the policy.
(4) A trustee is not liable to the beneficiaries of the trust or any other person for any loss sustained with respect to a life insurance policy to which this section applies.

(5) 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 any commission or other payment from the issuer of a life insurance policy issued to the ILIT.

(6) A trustee of the ILIT, the attorney or attorneys who drafted the terms of the ILIT, and any person who was consulted with regard to the creation of the ILIT, in the absence of fraud, is not liable to the beneficiaries of the ILIT or to any other person for any loss arising from or attributable to the absence of the duties specified in this section.

(7) Except as otherwise provided in the terms of the ILIT, this section applies to an ILIT established before, on, or after [the effective date of this section] and to a life insurance policy acquired, retained, or owned by a trustee before, on, or after such date.
EXHIBIT A-2
Rafert v. Meyer, 022715 NESC, S-14-003
290 Neb. 219
Jlee Rafert et al., appellants,
v.
Robert J. Meyer, appellee.
No. S-14-003
Supreme Court of Nebraska
February 27, 2015

1. Motions to Dismiss: Pleadings: Appeal and Error. An appellate court reviews a district
court's order granting a motion to dismiss de novo, accepting all allegations in the complaint as
true and drawing all reasonable inferences in favor of the nonmoving party.

2. Motions to Dismiss: Pleadings. To prevail against a motion to dismiss for failure to state a
claim, a plaintiff must allege sufficient facts to state a claim to relief that is plausible on its face.

[290 Neb. 220] 3. Trusts. As a general rule, the authority of a trustee is governed not only by
the trust instrument but also by statutes and common-law rules pertaining to trusts and trustees.

4. A trustee has a duty to fully inform the beneficiary of all material facts so that the
beneficiary can protect his or her own interests where necessary.

5. Every violation by a trustee of a duty required of him by law, whether willful and
fraudulent, or done through negligence, or arising through mere oversight or forgetfulness, is a
breach of trust.

6. Dismissal and Nonsuit: Pleadings: Appeal and Error. When analyzing a lower court's
dismissal of a complaint for failure to state a claim, an appellate court accepts the complaint's
factual allegations as true and construes them in the light most favorable to the plaintiff.

7. Trusts. A trustee has the duty to administer the trust in good faith, in accordance with its
terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska
Uniform Trust Code.

8. Trusts: Liability: Damages. A violation by a trustee of a duty required by law, whether
willful, fraudulent, or resulting from neglect, is a breach of trust, and the trustee is liable for any
damages proximately caused by the breach.

9. Trusts. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to
the extent that it relieves the trustee of liability for breach of trust committed in bad faith or with
reckless indifference to the purposes of the trust or the interests of the beneficiaries.

Appeal from the District Court for Richardson County: Daniel E. Bryan, Jr., Judge. Reversed
and remanded for further proceedings.

Gary J. Nedved and Joel Bacon, of Keating, O'Gara, Nedved & Peter, P.C, L.L.O., for
appellants.

Mark C. Laughlin and Jacqueline M. DeLuca, of Fraser Stryker, P.C, L.L.O., for appellee.

Heavican, C.J., Wright, Connolly, Stephan, McCormack, Miller-Lerman, and Cassel, JJ
WRIGHT, J.

NATURE OF CASE
This is an action for breach of trust. The settlor, Jlee Rafert, directed her attorney, Robert J.
Meyer, to prepare an irrevocable trust that named Meyer as the trustee. The corpus of the trust was three insurance policies on the life of Rafert, issued in the total amount of $8.5 million. The policies were payable [290 Neb. 221] on Rafert's death to the trustee for the benefit of Rafert's four daughters. The trust instrument provided that the trustee had no duty to pay the insurance premiums, had no duty to notify the beneficiaries of nonpayment of such premiums, and had no liability for any nonpayment.

Meyer executed all three insurance policy applications, each identifying the trust as owner of the policy. On each policy application executed by Meyer, he provided the insurer with a false address for the trust. The initial premiums were paid in 2009, but in 2010, the policies lapsed for nonpayment of the premiums due. Rafert, Meyer, and the beneficiaries did not receive notice until August 2012 from the insurers that the policies had lapsed. Rafert paid $252, 841.03 to an insurance agent who did not forward the payment to the insurers.

Rafert and her daughters (collectively Appellants) sued Meyer for breach of his duties as the trustee and damages that occurred as a result of the breach. The trial court sustained Meyer's motion to dismiss for failure to state a claim against Meyer.

For the reasons stated herein, we reverse the judgment of the district court and remand the cause for further proceedings.

SCOPE OF REVIEW

[1, 2] An appellate court reviews a district court's order granting a motion to dismiss de novo, accepting all allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party. Doe v. Board of Regents, 280 Neb. 492, 788 N.W.2d 264 (2010). To prevail against a motion to dismiss for failure to state a claim, a plaintiff must allege sufficient facts to state a claim to relief that is plausible on its face. State v. Mamer, 289 Neb. 92, 853 N.W.2d 517 (2014).

FACTS

Background

On March 17, 2009, Rafert executed an irrevocable trust for the benefit of her four adult daughters. Meyer prepared the trust instrument and named himself as the trustee. Meyer did not meet with Rafert to explain the provisions of the trust or [290 Neb. 222] who would be responsible for monitoring the insurance policies owned by the trust.

As trustee, Meyer signed three applications for life insurance that named Rafert as the insured and the trust as the owner of the policies. On each application, Meyer gave the insurer a false address in South Dakota for Meyer as trustee. Since the creation of the trust, Meyer was a resident of Falls City, Nebraska, and never received mail at the South Dakota address. The insurers were Trans America Life Insurance Company (Trans America), Lincoln Benefit Life Company (Lincoln Benefit), and Lincoln National Life Insurance Company (Lincoln National) (collectively insurers). In 2009, Rafert paid initial premiums on each of the policies in the amounts of $97, 860, $63, 916, and $100, 230, respectively.

TransAmerica sent a notice to Meyer at the false address that premiums of $97, 860 were due and a subsequent notice that the policy was in danger of lapsing. In November 2010, a final notice and letter were sent to Meyer stating that the policy had lapsed effective August 11, 2010,
but that the policy allowed for reinstatement.

Lincoln Benefit sent a notice to Meyer at the false address that a premium of $60,150 was
due on May 26, 2010, and a subsequent letter to inform Meyer that the policy was in its grace
period and was in danger of lapsing. On February 23, 2011, a final notice was sent to Meyer
stating that the grace period had expired but that the policy could be reinstated.

Appellants asserted that Lincoln National would have sent similar notices in 2010 to the false
address given to Lincoln National by Meyer.

Appellants alleged that Meyer breached his fiduciary duties as trustee and that as a direct
and that as a proximate result of the breach of Meyer's duties, the policies lapsed, resulting in the
loss of the initial premiums. And after the policies had lapsed, Rafert paid additional premiums in
the amount of $252,841.03. These premiums were paid directly to an insurance agent by issuing
checks to a corporation owned by the agent. However, the premiums were never forwarded to the
insurers by the agent or his company, and Appellants do not know what happened to the
premiums.

[290 Neb. 223] Appellants alleged that Rafert's daughters, as qualified beneficiaries, had an
immediate interest in the premiums paid by Rafert. As a result of Meyer's providing the insurers
with a false address, Appellants did not receive notices of the lapses of the three policies until
August 2012.

Procedural Background

Meyer moved to dismiss Appellants' second amended complaint, asserting that he did not
cause the nonpayment of the premiums, that he had no notice from the insurers of nonpayment,
and that his failure to submit annual reports to the beneficiaries had no causal connection to the
damages claimed, because the lapses had occurred after his report would have been submitted.

The district court dismissed the second amended complaint with prejudice, finding that
pursuant to the terms of the trust, Meyer did not have a duty to pay the premiums or to notify
anyone of the nonpayment of the premiums. Nor, it observed, did he have any responsibility for
the failure to pay the premiums. It concluded the pleadings failed to allege how Meyer's actions
had caused the lapses of the policies.

Appellants timely appealed.

ASSIGNMENTS OF ERROR

Appellants assign that the district court erred in granting Meyer's motion to dismiss their
second amended complaint. They claim the court erred in concluding that they had not stated a
plausible claim that Meyer had breached his mandatory duties under the Nebraska Uniform Trust
Code (Code) to act in good faith and in the interest of the beneficiaries. They assert that the court
erred in finding that Appellants did not state a plausible claim that Meyer breached his mandatory
duty to keep qualified beneficiaries reasonably informed about the administration of the trust and
of the material facts necessary for them to protect their interests.

ANALYSIS

This case is presented as a motion to dismiss under Neb. Ct. R. Pldg. § 6-1112(b)(6). We
therefore consider whether Appellants' factual allegations set forth a plausible claim for [290 Neb.
224] which relief may be granted. The issue is whether Appellants stated a plausible claim that
Meyer breached his fiduciary duties to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries and whether Appellants were damaged as a result.

Our decision is controlled by certain common-law rules pertaining to trusts and trustees and by the provisions of the Code.

As a general rule, the authority of a trustee is governed not only by the trust instrument but also by statutes and common-law rules pertaining to trusts and trustees. Wahrman v. Wahrman, 243 Neb. 673, 502 N.W.2d 95 (1993). A trustee has a duty to fully inform the beneficiary of all material facts so that the beneficiary can protect his or her own interests where necessary. Karf v. Karf, 240 Neb. 302, 481 N.W.2d 891 (1992). "[A] trustee owes beneficiaries of a trust his undivided loyalty and good faith, and all his acts as such trustee must be in the interest of the [beneficiary] and no one else." Id. at 311, 481 N.W.2d at 897.

Every violation by a trustee of a duty required of him by law, whether willful and fraudulent, or done through negligence, or arising through mere oversight or forgetfulness, is a breach of trust. Johnson v. Richards, 155 Neb. 552, 52 N.W.2d 737 (1952). It is generally held that an exculpatory clause will not excuse the trustee from liability for acts performed in bad faith or gross negligence. George Gleason Bogert & George Taylor Bogert, The Law of Trusts and Trustees § 542 (2d rev. ed. 1993).

The relevant provisions of the Code provide:

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

(b) The terms of a trust prevail over any provision of the [C]ode except:

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;[290 Neb. 225] (8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for . . . information reasonably related to the administration of a trust; [and] (9) the effect of an exculpatory term under section 30-3897.


A trustee must "administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the . . . Code." Neb. Rev. Stat. § 30-3866 (Reissue 2008). Regarding a trustee's duty to keep the beneficiaries of the trust reasonably informed of the trust assets, "[a] trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests." Neb. Rev. Stat. § 30-3878(a) (Reissue 2008). The Code provides that a term limiting a trustee's liability for breach of trust is unenforceable to the extent it "relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries." Neb. Rev. Stat. § 30-3897(a)(I) (Reissue 2008). Furthermore, an exculpatory clause in a trust is invalid "unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor." § 30-3897(b).
To prevail against a motion to dismiss for failure to state a claim, a plaintiff must allege sufficient facts to state a claim to relief that is plausible on its face. *State v. Mamer*, 289 Neb. 92, 853 N.W.2d 517 (2014). When analyzing a lower court's dismissal of a complaint for failure to state a claim, an appellate court accepts the complaint's factual allegations as true and construes them in the light most favorable to the plaintiff. *Doe v. Omaha Pub. Sch. Dist.*, 273 Neb. [290 Neb. 226] 79, 727 N.W.2d 447 (2007). Consequently, we look to the factual pleadings in the second amended complaint, accepting all allegations as true and drawing all reasonable inferences therefrom in favor of Appellants to determine whether Appellants have stated a plausible claim.

Appellants allege that Meyer breached his duties as trustee by providing a false address to the insurers, failing to keep Appellants informed of the facts necessary to protect their interests, failing to furnish annual statements, failing to communicate the terms of the trust to Rafert, and failing to act in good faith and in accordance with the terms and purposes of the trust and in the interests of the beneficiaries.

Meyer contends that his duties were limited by articles II and IV of the trust and that providing a false address to the insurers and failing to furnish annual reports did not cause the premiums not to be paid. Articles II and IV of the trust provide:

**ARTICLE II**

The Trustee shall be under no obligation to pay the premiums which may become due and payable under the provisions of such policy of insurance, or to make certain that such premiums are paid by the Grantor or others, or to notify any persons of the non-payment [sic] of such premiums, and the Trustee shall be under no responsibility or liability of any kind in the event such premiums are not paid as required.

**ARTICLE IV . . .**

The Trustee shall not be required to make or file an inventory or accounting to any Court, or to give bond, but the Trustee shall, at least annually, furnish to each beneficiary a statement showing property then held by the Trustee and the receipts and disbursements made.

Meyer claims that he had no obligation as trustee to monitor or notify any person of the nonpayment of premiums and that the district court correctly relied upon the language of article II in dismissing Appellants' action. We disagree. The Code provides deference to the terms of the trust, but this deference does not extend to all the trustee's duties. Those [290 Neb. 227] duties to which the Code does not defer are described above in § 30-3805.

A trustee has the duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Code. § 30-3866. A violation by a trustee of a duty required by law, whether willful, fraudulent, or resulting from neglect, is a breach of trust, and the trustee is liable for any damages proximately caused by the breach. *Trieweiler v. Sears*, 268 Neb. 952, 689 N.W.2d 807 (2004).

In drafting the trust, Meyer could not abrogate his duty under § 30-3805 to keep Appellants reasonably informed of the material facts necessary for them to protect their interests. Notice of nonpayment of the premiums would have profoundly affected Appellants' actions to protect the policies from lapsing. Notice that the policies had lapsed would have affected the subsequent payment by Rafert as settlor to the insurance agent.
Meyer admittedly provided a false address on each of the insurance applications. This had the obvious result that the insurers' notices regarding premiums due would not reach any of the parties. Despite this, Meyer argues that article II limits his liability for any claims related to nonpayment of the premiums. Meyer goes so far as to suggest that he did not have the duty to inform Appellants even if he had received notices of the nonpayment of the premiums.

Such a position is clearly untenable and challenges the most basic understanding of a trustee's duty to act for the benefit of the beneficiaries under the trust. Perhaps the most fundamental aspect of acting for the benefit of the beneficiaries is protecting the trust property. Article II cannot be relied upon to abrogate Meyer's duty to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Our conclusion remains the same whether we treat article II as an exculpatory clause or as a term limiting Meyer's duties or liability. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

1. relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

§ 30-3897(a). Appellants have alleged sufficient facts for a court to find that Meyer acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers. This is not a situation where a gratuitous trustee, who had no involvement in the drafting of the trust or the administration of the insurance policy, undertook only to distribute insurance proceeds after the insured's death. The trustee's duties must be viewed in the light of the trustee's alleged involvement in these matters. If there was none, the result might well be different.

If article II is an exculpatory clause, it is invalid because Meyer failed to adequately communicate its nature and effect to Rafert. "An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor." § 30-3897(b) (emphasis supplied). Appellants alleged that Meyer drafted the trust agreement but never met with Rafert or explained the terms of the trust and the respective duties of each party.

We next consider Meyer's duty to furnish annual reports to the beneficiaries. Meyer contends that the lapses of the policies occurred prior to the time such reports were due. But annual reporting was a minimum requirement in the ordinary administration of the trust. A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until such annual report was due before informing the beneficiaries that the trust assets were in danger of being lost. Meyer's duty to report the danger to the trust property became immediate when the insurers issued notices of nonpayment of the premiums. As trustee, Meyer had a statutory duty "to keep the qualified beneficiaries of the trust reasonably informed ... of the material facts necessary for them to protect their [290 Neb. 229] interests." § 30-3805(b)(8). Here, again, according to the allegations, Meyer was not an otherwise uninvolved and gratuitous trustee.

The pleadings alleged that Meyer's breach of his fiduciary duties as trustee was a direct and proximate cause of the damages sustained by Appellants. Meyer contends the damages claimed
by Appellants cannot be traced to Meyer’s conduct. And the district court concluded that Meyer’s actions did not cause the premiums not to be paid by the insurance agent. But Meyer’s actions prevented Appellants from knowing the premiums had not been paid, and it is reasonable to infer that Meyer’s actions prevented Appellants from acting to protect their interests.

Appellants claimed that the subsequent payment of premiums to the agent occurred after the policies had lapsed. It can reasonably be inferred that a false address given to the insurers caused the notices of the defaults in payment not to reach Appellants and that as a result, Appellants paid premiums amounting to $252,841.03 to the insurance agent after the policies had lapsed. It is reasonable to infer that had they known of the lapses, they would have taken the necessary action to protect their interests.

Meyer had a statutory duty to inform Appellants of the material facts necessary for them to protect their interests. This duty arose when the insurers issued the notices of nonpayment of the premiums. The second amended complaint alleged sufficient facts to state a plausible claim against Meyer for breach of fiduciary duty.

CONCLUSION

For the reasons stated herein, we reverse the judgment of the district court dismissing Appellants’ second amended complaint and we remand the cause for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings.
EXHIBIT B-1
What to Do When a Family Member Dies With Assets

Nine Frequently Asked Questions About Probate Administration of a Decedent’s Estate

State Bar of Michigan Probate and Estate Planning Section
Probating an Estate.

Probate is a court proceeding where a court-appointed person (often a family member) collects the assets titled in a decedent's name, pays the decedent's bills, and then turns what is left of the assets over to the decedent's beneficiaries under his or her will. If the decedent had no will, the assets go to the immediate family members or other relatives as spelled out by Michigan law. Distribution under Michigan law is spelled out in Reference A of this brochure.

1. When is Probate Required?

Outside of a handful of exceptions listed below, probate is necessary when a person dies leaving property in his or her sole name (such as a house titled only in the name of the decedent) or has rights to receive property at some time in the future (such as an inheritance from someone else). Four kinds of property can pass from a decedent without going through probate:

- Property owned by the decedent and another person as joint tenants with right of survivorship passes automatically to the surviving joint owner (except in the case of certain joint bank accounts established with another person acting as agent for the decedent).

- Property with a beneficiary designation such as life insurance, pension benefits, payable-on-death bank accounts, and IRAs. These properties are payable on death to the beneficiary designated by the decedent or, if none, as designated in the contract or plan. Arrangements must be made with the company holding the property.

- Property owned by a trust is not considered as being in a decedent's name. Assets held in a trust can be disposed of after death without probate according to instructions written in the trust document. This only applies to property actually titled in the name of the trust (e.g. John Doe, trustee of the John Doe Trust). Property in a decedent's name can be added later through a pour-over will, but such
assets require probate to make the transfer.

- Sometimes, property owned solely by the decedent does not have to pass through probate. **Reference B** contains the seven exceptions when property may pass to heirs without probate.

### 2. Can I Be the Personal Representative?

A personal representative is someone appointed by the court to act on behalf of the estate able to control or manage any assets in the decedent's name. The personal representative is responsible for carrying out the duties and responsibilities described in this pamphlet. The personal representative appointee is the person highest on the following list:

- A person named in the will as personal representative.
- A surviving spouse if he or she is beneficiary under the will.
- Other beneficiaries under the will.
- The surviving spouse if he or she is not a beneficiary under the will.
- Other heirs of the decedent.
- If none of the above, the nominee of a creditor approved by the probate judge 42 days after the date of death.

### 3. How Quick is Probate?

Generally, the probate proceeding requires five months after the estate’s creditors are properly notified. This five-month period provides an opportunity for creditors to file their claims against the estate. **Reference C** has information on the proper way to notify creditors. The estate’s personal representative is obligated to notify known creditors. If creditors do not file timely claims, they may not be able to collect what they are owed. **Reference D** notes two exceptions to the five-month rule.
4. What Should Family Do Immediately?

Immediately following death and before a personal representative is appointed, the decedent’s family (or loved ones) has many tasks:

- Make funeral arrangements and order copies of the death certificate. Before appointment, the personal representative named in the will may carry out the written instructions of the decedent relating to the decedent’s body and funeral and burial arrangements.
- Determine the existence and location of the will. Anyone who has the original will has a duty to file it with the probate court. Locate and keep the decedent’s other important documents (i.e. titles to vehicles, beneficiary designation forms, deeds to real estate) in a safe place.
- Get the names and addresses of the decedent’s heirs and all persons named in the will.
- Get a list of the decedent’s property and note how each property is held—sole name, in trust, joint names, or beneficiary designated such as life insurance policies, individual retirement accounts, assets in an employee benefit plan or accounts that have a beneficiary designation.
- Secure and properly insure the decedent’s home, business, and other real property.
- Record all funeral and estate-related expenses. Keep all receipts.
- Determine whether a probate proceeding is necessary for the decedent’s estate.
- Contact agencies that need to be notified. See **Reference E**.

In order to protect the estate, the personal representative should not let anyone use the decedent’s property prior to distribution. This is particularly important for cars. The personal representative nominated in a decedent’s will has no authority to act on behalf of the estate until he or she is appointed by the court. However, if there is a problem or dispute prior to the
appointment of the personal representative, the court can quickly appoint that person (or another) as a special personal representative to act on an interim basis for the purpose of preserving estate assets, obtaining the original will, or pursuing certain legal rights.

5. What Do I Do if I Am Appointed Personal Representative?

A personal representative has many tasks to complete. See Reference F. Generally, they have the following responsibilities:

- Acting honestly, fairly, diligently, impartially and prudently for the estate. Estate assets are not to be used for the personal representative’s benefit.

- Employing an attorney or other professionals to assist with estate administration. However, the personal representative is responsible for completing his or her duties.

- Informing beneficiaries and others who have an interest in the estate as it progresses.

- Managing the estate’s assets with care and ensuring the estate’s assets earn interest and are invested correctly. An attorney can advise the personal representative which standard applies when investing estate assets.

The estate may be administered with or without court supervision. Unsupervised administration permits the personal representative to act in a manner independent of the court unless intervention is requested by the personal representative or an interested person such as an unpaid creditor or an estate beneficiary. This form of administration is generally preferred unless there is a specific reason to request the court’s supervision because there is less court involvement and fewer details about the estate included in the court’s file.

Supervised administration requires the probate court’s review and approval of many estate activities. The court does the following:

- Approves the sale of the decedent’s real estate unless the decedent’s will
authorizes the personal representative to do so.

- Authorizes paying the personal representative and attorney fees;
- Reviews the personal representative’s accounting of receipts and disbursements; and
- Approves all distributions to heirs (people receiving property from the estate if there is no will) and beneficiaries (people receiving property under a will).

While the court’s involvement frequently adds to the time and expense of administering an estate, the court’s supervision will likely afford greater protection to the personal representative and other interested persons against losses and claims. For example, a personal representative may ask for supervision if the best offer for the sale of real property is below the assessed value.

6. When Can I Distribute Assets and Close the Estate?

Before distributing estate assets to the heirs, the personal representative must be certain all charges against the estate have been provided for or satisfied. To the extent there are insufficient assets, amounts distributable to certain beneficiaries may be reduced or eliminated. If there is a question of interpreting the decedent’s will or the laws of intestate succession, it may be necessary to obtain court approval of a proposed distribution.

Prior court approval is required for estates in supervised administration before distributing any assets to estate beneficiaries. Also, a complete or final distribution should not occur until after all tax returns and necessary tax clearances have been secured. Receipts from the estate beneficiaries and a final accounting may be required to close the estate.

7. Who Pays the Attorney Fees?

Like all expenses on behalf of the estate, fees for hiring attorneys and other professional services are paid by the estate. Most persons appointed as personal representative do not have the
technical expertise to carry out all of the responsibilities of handling the estate. Often, it is advisable for a personal representative to retain the assistance of an accountant, attorney, bank trust department, or investment counselor.

The fee charged by an attorney must be discussed, understood, and agreed to in writing. A copy of the agreement must be provided to all interested persons. Fees for other professionals should also be discussed and agreed to in the same manner, although copies of these agreements need not be provided to others. Also, the role assumed by each professional should be expressly defined and monitored throughout the estate’s administration.

8. Can the Estate Pay the Personal Representative?

In Michigan, there are no fee schedules or formulas for computing the amount of compensation for a personal representative. The law requires a personal representative’s fee be just and reasonable. The court applies six factors to determine what is just and reasonable. See Reference G.

9. Can the Estate Remove a Personal Representative?

The probate court has the authority to remove a personal representative who fails to perform his or her duties properly and in a timely manner. Any interested person or the court itself may begin proceedings to remove a personal representative or compel compliance. A personal representative may be found personally liable for losses caused by errors or omissions or by the failure to act quickly, prudently, or fairly.
## Reference A

<table>
<thead>
<tr>
<th>Surviving Family Member</th>
<th>Intestate Share</th>
</tr>
</thead>
</table>
| **Spouse**              | 1. The entire estate if the decedent is only survived by his spouse and no parents or children survive.  
                        | 2. $221,000.00 (2015) plus half of the balance if the decedent is survived by children.  
                        | 3. $221,000.00 (2015) plus 75 percent of the balance of the estate if there are no surviving children and parents of the decedent have also survived, who shall receive the other 25 percent. The 2015 numbers apply only when the decedent died in 2015. |
| **Children and Grandchildren** | If there is no surviving spouse, the estate (or the balance of the estate if there is a surviving spouse) is distributed equally among the surviving children. The shares of deceased children are distributed equally among the deceased children’s children. |
| **Parents**             | If there is no surviving spouse and no children, the estate (or the balance of the estate if there is a surviving spouse and no children) is distributed to surviving parents equally. |
| **Siblings and nieces or nephews** | If there is no surviving spouse, children, or parents, the estate is divided into equal shares for surviving siblings and deceased siblings leaving surviving children. The shares for surviving siblings are distributed to surviving siblings equally and the shares of all deceased siblings leaving surviving children are divided equally among those nieces and nephews. |
| **Grandparents**        | If there is no surviving descendant, parent, or descendant of a parent but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents, or either of them if both are deceased with the descendants taking by representation. The other half passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half. |
| **No Surviving Family Members Listed Above** | The state of Michigan |

These numbers may change each year. The Michigan Treasury annually publishes updated numbers as an “Economic Report” at its website’s “Reference Library” page.  
[http://www.michigan.gov/treasury/0,1607,7-121-44402_44404---,00.html](http://www.michigan.gov/treasury/0,1607,7-121-44402_44404---,00.html)  
Local county probate courts may also publish the numbers. Your attorney can advise you as to which numbers apply to your situation.
Reference B

Cash of $500 or less and apparel. A hospital, convalescent or nursing home, morgue, or law enforcement agency in Michigan holding cash not exceeding $500 and apparel of the decedent may deliver that property to the decedent’s spouse, child, or parent who provides suitable identification and an affidavit that states the person’s relationship to the decedent and there are no pending probate proceedings.

Traveler’s checks. Most issuing companies (such as American Express) will redeem unused traveler’s checks following the death of the owner without requiring the appointment of a personal representative. The traveler’s checks should be submitted with a death certificate and an affidavit by the next of kin indicating to whom payment should be made.

Unpaid wages. An employer may pay to the spouse, children, parents, or siblings of a deceased employee any wages due to a deceased employee. The employee may file a request to the contrary with the employer.

Motor vehicle transfers. If the combined value of one or more of the decedent’s vehicles does not exceed $60,000 and there are no probate proceedings, registration of title may be transferred by the Michigan Secretary of State to the surviving spouse or next of kin by following the instructions on the form TR-29 (including submitting a death certificate, the vehicle’s certificate of title if available, and certain other requirements).

Transfers of Watercraft Which Require Title. If the combined value of all of the decedent’s watercraft which require title does not exceed $100,000 and there are no probate proceedings for the decedent’s estate, registration of title may be transferred by the Michigan Secretary of State to the surviving spouse or next of kin upon submitting death certificate, an affidavit of kinship, and the
watercraft’s certificate of title. MCL 324.80312.

Income tax refund claims. These may be collected without probate proceedings by filing the appropriate IRS or Michigan Treasury forms 1310, which are attached to tax returns for which a refund is due.

Transfer by affidavit. Personal property with a value not exceeding $22,000 and held by some person or company may be transferred to a decedent’s successor by presenting a death certificate and an affidavit stating who is entitled to the property. The $22,000 amount (MCL 700.3982) is for persons dying in 2015.

- Regarding transfer by affidavit, the $22,000 amount may change each year after 2015. The Michigan Treasury annually publishes updated numbers as an “Economic Report” at its website’s “Reference Library” page.
- [http://michigan.gov/treasury/0,1607,7-121-44402_44404---,00.html](http://michigan.gov/treasury/0,1607,7-121-44402_44404---,00.html).
- Local county probate courts may also publish the numbers. Your attorney can advise you as to which numbers apply to your situation.
Creditors have to be notified either by:

- A general notice to creditors published in the proper newspaper (Michigan law dictates how to determine which newspaper may be used for publication of notice) indicating, among other things, the probate estate’s creditors have four months to file their claims; or

- If there is a known creditor, notice must be mailed by the personal representative directly to the creditor with the same information required for the general notice to creditors with one key difference: the known creditor is given either four months from the date the general notice to creditors was published in the proper newspaper or one month from the date the known creditor received the mailed notice. Whichever date gives the creditor more time to file a claim is the date that applies.
Reference D

The first type of estate exempt from the five-month rule is the one where all of the real and personal property owned by the decedent has a total value equal to or less than the funeral expenses plus $22,000 (2015). In this case, the probate court ensures the funeral expenses have been paid, then assigns the remaining property to those entitled to receive it. No court hearing is held. During the 63-day period following the court’s assignment of property, if the heir or heirs are not the decedent’s surviving spouse or minor child, they are responsible for any unsatisfied debt of the decedent up to the value of the property received. If children of a decedent receive assets and they are not minors, there is a $15,000 (2015) exemption amount protected from creditors’ claims. It is allocated to the spouse and children based on their percentage of the assets.

The second type of estate exempt from the five-month rule is one where the value of the estate is less than the sum of all of the following:

• All mortgages and liens;

• The homestead allowance of $22,000 (MCL 700.2402);

• The exempt property up to $14,000, (MCL 700.2404);

• The family allowance up to $26,000. (MCL 700.2405); and

• The funeral, last illness, and administrative expenses.

This second exemption only applies when a spouse or minor/dependent children survive the decedent.
Reference E

Agencies the family might need to notify of the decedent’s death:

- **Social Security Administration**: 800-772-1213. Find out if survivor benefits are available.

- **Veteran’s Administration**: 800-827-1000. Find out if veteran’s benefits are available.


- **Michigan Department of Motor Vehicles**: 888-767-6424 if decedent had a Michigan driver’s license or Michigan identification card.

- **Financial Companies and Insurers**: Contact credit card and merchant card companies. This is important if there are automatic payments drawn from bank accounts. If there are automatic withdrawals or transfers between accounts, then contact the banks, savings and loan associations, and credit unions to report the death and discontinue the decedent’s instructions for automatic withdrawals and transfers. The death should be reported to mortgage companies, lenders, financial planners, stockbrokers, pension providers, life insurers, annuity companies, and insurers of all kinds including health, medical, dental, disability, and automotive insurance companies to obtain the proper forms to collect benefits for survivors or discontinue premium payments for the deceased.

- **Credit Reporting Agencies**: There are three national credit reporting agencies which you should notify of the death and instruct them to list all accounts as “Closed. Account Holder is Deceased.” You may also request a credit report to obtain a list of all creditors and review recent credit activities. Provide them a letter signed by you with your name, address and phone number; relationship to the decedent; the decedent’s name, address, date of death,
date of birth, location of birth, social security number, and prior addresses for the last five years in chronological order; and that you want them to post in the decedent's credit report they are deceased and no credit should be issued. You may also want to request a credit report. The addresses and phone numbers are:

- Experian, 888-397-3742, P.O. Box 9701, Allen, Texas 75013
- Equifax, 800-525-6285, P.O. Box 105069, Atlanta, Georgia 30348
- TransUnion, 800-680-7289, P.O. Box 6790, Fullerton, California 92834

- **Memberships:** Cancel any memberships in the event there is a refund or automatic renewals in clubs, video rental organizations, alumni clubs, health and athletic clubs, and professional organizations or unions.
Reference F

Initial Responsibilities of the Personal Representative

After appointment by the court and receiving the letters of authority, the personal representative should do the following:

• Open and inventory the decedent’s safe deposit boxes in the manner provided by law.

• Within 14 days of appointment or retention of an attorney, whichever is later, the personal representative must send a notice of attorney fees to people affected by payment of attorney’s fees.

• Within 28 days of appointment, the personal representative should give notice to the surviving spouse that he or she can elect to take their intestate share reduced by outside inheritance such as joint property or insurance instead of what is provided to the spouse under the will. Alternatively, if the spouse is a widow, she can elect to take her dower right.

• Send copies of all papers filed in court and a copy of the will (if there is one) to the parties named in the will and intestate heirs.

• Set up an accurate system to record all estate transactions.

• Arrange for forwarding of decedent’s mail.

• Collect dividends, interest, rents, and other income from businesses or other property owned by decedent.

• Determine insurance, social security, pension, veteran, or other benefits payable to the estate or its beneficiaries.

• Give required notice creditors of the estate.

• Obtain possession of all known assets of the decedent on behalf of the estate.

• Confer with family, business associates, and others who may know of the decedent’s property.
• Review the insurance on decedent’s property and obtain, increase, and renew casualty and liability coverage as needed.

• Maintain any business or venture owned by decedent.

• Examine the decedent’s records and tax returns for income patterns indicating additional assets.

• Value estate assets having readily ascertainable values.

• Examine real estate leases and mortgages and determine their effect on asset valuations.

• Employ appraisers if necessary to determine the value of real estate, antiques, art collections, or other assets without easily ascertained value. An appraisal listing the contents of decedent’s home is normally needed for applicable death taxes.

• If decedent owned property in other states, arrange for ancillary administration as necessary.

• Carefully prepare the estate inventory reflecting the date of death holdings and values. Send a copy to the estate’s beneficiaries.

Other Responsibilities of a Personal Representative

During and after assembly of the estate’s assets, the personal representative should also do the following:

• Starting as early as possible, plan to meet final obligations of taxes, claims, administration expenses, allowances, and distributions.

• Process payment of all valid claims of creditors and give notice to those whose claims are being disallowed (if the estate is insolvent, extreme care must be taken to follow legal standards to prioritize claims before payment is made).

• Provide for distribution of exempt property and allowances to the decedent’s spouse, minor children, and others who were supported by decedent.
• Operate decedent’s business(es) if it will benefit the estate and if authorized to do so by the court or by decedent’s will.

• Maintain prudent investment and business practices; carefully record all investment transactions.

• Follow legal requirements when sale of assets is necessary.

• Obtain clearances from both federal and state taxing authorities.

• Prepare annual accountings reflecting all estate transactions and send copies to the estate’s beneficiaries.

Tax Returns

A personal representative must be mindful of the need to file tax returns both for the decedent and the estate. Failure to timely file returns and pay taxes when due may subject the personal representative to personal liability for any interest, penalties, and possibly the tax. The following returns may be required:

• Decedent’s federal, state, and city final income (or intangibles tax returns in other states) typically due in April following the calendar year of death.

• Gift tax returns are due for gifts in excess of $14,000 to a single person using IRS Form 709. It must be filed on April 15 of the year following the calendar year of death or the due date of the estate tax return, whichever is earlier. This dollar amount is for 2015 and is adjusted for inflation from year to year.

• Federal, state, and city business, sales, and/or payroll tax returns may be due. Make sure these are marked as "FINAL RETURN" or you will continue to receive notices expecting them to be filed.

• Federal information returns such as IRS forms 1096 and 1099 may need to be issued from the decedent to individuals who received payment from the decedent.
• Federal estate tax returns may need to be filed if the decedent’s probate and other property interests exceed the federal estate tax exemption amount. Unless extended, IRS Form 706 is due nine months after death.
Reference G

The court considers these six factors when determining if the proposed personal representative fee is reasonable:

- **The time expended to complete administration of the estate.** More and more, both the quantity and quality of the time spent by the personal representative is a significant factor. For this reason, each personal representative should log the amount of time spent each day on estate matters and include a detailed description of the services performed.

- **The professional expertise required.** Higher personal representative fees are justified if the personal representative’s work entails a greater level of expertise and skill. However, whenever the work is performed by professionals, lower fees are appropriate. Any time the estate’s work is performed by professionals, the professionals charge the estate for services and the personal representative’s fees are adjusted accordingly.

- **The nature, number, and complexity of the estate assets.** A personal representative is justified in receiving higher fees in estates with diverse, numerous, and/or unique assets because they require more time and effort to collect and manage.

- **The makeup of parties who are interested in the estate.** A greater number of creditors and beneficiaries of an estate will generally cause more questions, communications, and coordination. Likewise, interested parties whose actions are adversarial or uncooperative may be a basis for higher fees.

- **The extent of the responsibilities and risks assumed.** The total dollar value of the estate’s assets is some measure of the responsibilities and potential loss exposure undertaken by the personal representative. The size of an estate is an important factor in determining reasonableness of the personal representative fee. For example, all else being equal, an estate valued at $200,000 warrants a higher fee than an estate valued at $50,000. Also, the extent of
work required is an important factor. For example, in addition to assuming responsibility for a decedent’s assets, a personal representative may also be required to carry out or respond to transactions engaged in or events that occurred before the decedent’s death. This additional work is a basis for charging a larger fee.

- **The results obtained in administering the estate.** Favorable results in the investment and disposition of estate properties, minimizing estate expenses, and timely execution of responsibilities by the personal representative are also bases for a larger fee.
Durable Power of Attorney –

14 Frequently Asked Questions

State Bar of Michigan Probate and Estate Planning Section
1. What is a power of attorney? 3

2. What is a durable power of attorney? 4

3. Do I need a durable power of attorney if my spouse and I own everything jointly? 5

4. Can I make a durable power of attorney that is effective immediately? 5

5. Can I make a durable power of attorney that becomes effective only if I become incapacitated? 5

6. Can I revoke a durable power of attorney? If so, how? 5

7. What are some specific authorities which might be given in a durable power of attorney? 6

8. Whom should I name as my agent? 7

9. Can I name more than one agent? 7

10. What are the agent’s obligations to me? 7

11. What if my agent abuses the authority? 7

12. What are some problems with a durable power of attorney? 7

13. What are some of the advantages of a durable power of attorney? 8

14. How do I go about getting a durable power of attorney? 8
Durable Power of Attorney

A durable power of attorney can be an important part of your estate plan. It is important to plan for who will take care of your financial affairs for you – while you are alive – in the event that you cannot do so. While you are alive, you may become seriously ill or injured. If you are unable to handle your affairs, who can and will do so for you?

You can draft a document to decide who can act for you if you become seriously ill or injured. If such a document does not exist, a Michigan probate court can decide who will act for you. These court proceedings require time and cost money. A judge decides if you are incompetent, and the decision is available to the public. You cannot be sure whom the court will appoint to serve as your guardian or conservator. With a signed document you can avoid a probate court proceeding. In the document, you can choose to give the power to act for you to a relative, friend, or a bank. This document is a durable power of attorney.

It is important that the power of attorney be *durable*. If it is not durable, it becomes ineffective when you need it most: if you become incapacitated.

You should think about making a *durable* power of attorney. With it, you can avoid the time, expense, and inconvenience of a probate court proceeding.

1. What is a power of attorney?
You, as “principal,” name another individual as your “agent” or “attorney-in-fact” to act for you to handle your affairs.

Duties may include:
- signing checks,
- making deposits,
- paying bills,
- contracting for medical or other professional services,
- selling property,
- obtaining insurance, and
- doing all the things you do in managing your day to day affairs.

You can choose to give broad authority to your agent. For example, you can give the power to do anything you could do. Alternatively, you can choose to give narrow authority to your agent. For example, you can give the power to sell a piece of real estate. You sign your power of attorney, and your agent holds the document. Your signature must be notarized or properly witnessed. Your agent uses the document to show that he or she has authority to act for you. The agent must acknowledge his or her responsibilities and duties. Michigan law requires certain statements be within the acknowledgment. The agent must sign the document containing the acknowledgment. If the power of attorney satisfies the register of deeds requirements, it can be recorded. If recorded, your agent may use the power of attorney in connection with a real estate transaction.

2. What is a *durable* power of attorney?
A durable power of attorney is a written power of attorney that is effective during incapacity. It can become effective upon execution, or it can spring into effect upon incapacity. Either way, the durable power of attorney stays effective when the person is incapacitated. It contains the words “this power of attorney shall not be affected by my incapacity,” or “this power of attorney shall become effective upon my incapacity,” or
similar words. You must sign the durable power of attorney before you become incapacitated. Otherwise, it will not be valid.

3. **Do I need a durable power of attorney if my spouse and I own everything jointly?**

Yes. Your spouse can sign checks and make withdrawals on joint bank accounts, regardless of your capacity to do so. However, your spouse cannot sell jointly owned stocks or your jointly owned home or cottage without a durable power of attorney. Without authority under a durable power of attorney, your spouse cannot name or change a beneficiary on your life insurance. Without authority under a durable power of attorney, your spouse cannot name or change a beneficiary of your retirement benefits.

4. **May I make a durable power of attorney that is effective immediately?**

Yes, you can make a durable power of attorney that is presently effective. You may give your agent broad authority. Such authority should only be given to someone you trust. The durable power of attorney can require your agent to follow your instructions.

5. **Can I make a durable power of attorney that becomes effective only if I become incapacitated?**

Yes. The document would include the following language: “this power of attorney shall become effective upon my incapacity.” If you include this, you should explain how you will be determined to be incapacitated. For example, you might require that two licensed physicians certify in writing that you are unable to make decisions. It will be helpful later when your agent or others determine when it is the right time for your agent to act for you.

6. **Can I revoke a durable power of attorney? If so, how?**

As long as you are competent you can revoke your durable power of attorney. The revocation should be in writing, and it should be delivered to the agent and to third
parties with whom the agent is dealing (for example, your bank). A conservator appointed by the probate court can revoke the durable power of attorney. Finally, the durable power of attorney terminates at the time of your death, unless there is uncertainty as to whether you are dead or alive. Please understand, however, that a third party is entitled to rely on a power of attorney that has been terminated or revoked until the third party has actual notice of the termination.

7. What are some specific powers which might be given in a durable power of attorney?

You probably want your agent to have authority to do anything that you could do. Many durable powers of attorney are very broad, meaning that they give the agent a lot of authority to act on your behalf. Specifically, a power of attorney might authorize your agent to do any or all of the following on your behalf:

- Pay for support and care.
- Borrow money.
- Conduct banking transactions.
- Deal with property.
- Handle legal claims.
- Gain entry to safety deposit boxes.
- Deal with insurance and retirement benefits.
- Prepare and file tax returns.
- Exercise stockholder rights.
- Contract for services.
- Make gifts.
- Collect Social Security and other benefits.
- Exercise rights of the settlor or grantor of a trust.

If you want to authorize someone to make medical decisions for you or decisions to withdraw life-sustaining treatment when you are no longer able to do so, you should designate someone to act as your patient advocate.
8. Whom should I name as my agent?
You may name any adult (for example, a spouse, child, or other relative, or a friend) or a bank. Whomever you select as your agent, you should trust and have confidence in them and they should be willing to act for you. Remember, your agent may be making important financial and personal decisions for you.

9. Can I name more than one agent?
Yes, you can name two or more agents. If you do name more than one agent, you should specify whether your agents can act independently or whether they must act jointly. If you name two agents to act jointly, however, a deadlock may develop if they cannot agree. Rather than naming two people to act jointly, you could name one agent with an alternate to act if the first agent cannot or will not act.

10. What are the agent’s obligations to me?
Your agent has a duty to follow your instructions and act in your best interests. The agent should keep accurate records of the assets and accounts. If your agent improperly manages your affairs, he or she is legally responsible to compensate you.

11. What if my agent abuses the authority?
You can revoke the durable power of attorney if you have capacity. If you do not have capacity you can not revoke it. Anyone interested in your welfare can ask the probate court to intervene and appoint a conservator to handle your affairs. The conservator can require the agent to account for your assets and income. They can even suspend or revoke the durable power of attorney. In addition, you (or your conservator) can sue your agent for damages caused by the agent’s abuse of authority.

12. What are some problems with a durable power of attorney?
There is no guarantee that it will be accepted or recognized by third parties. For example, if the purpose of the durable power of attorney is to deal with governmental agencies, such as the Social Security Administration, the Veterans Administration, or the Internal
Revenue Service, you must either use the agency’s special power of attorney form, or make sure that the durable power of attorney provided to the agency contains the special wording required by each agency’s particular form.

Another problem occurs if you have an individual as your agent and he or she quits, dies or becomes unable to act as your agent. In such event, if you haven’t named an alternate agent, there will be no one to act on your behalf. In order for a durable power of attorney to be beneficial, you have to give the agent broad authority. Therefore, your agent should be someone you trust and have confidence in to handle your affairs.

13. What are some of the advantages of a durable power of attorney?

- You select your agent instead of the court.
- It can give you and your family some peace of mind knowing that you have appointed someone who will handle your affairs.
- It can save the stress, time and the expense of a court proceeding.

14. How do I go about getting a durable power of attorney?

You should consult a knowledgeable lawyer who can prepare a durable power of attorney to meet your needs and to advise you on how it is used. Everyone should consider the advantages of having a durable power of attorney. It’s an important part of estate planning.
EXHIBIT B-3
What You Need to Know About Designating Someone
to Make Medical Treatment Decisions for You

Seven Frequently Asked Questions about
Patient Advocate Designations

State Bar of Michigan Probate and Estate Planning Section
1. What Is a Patient Advocate Designation? 3
2. What if Someone Does Not Have a Patient Advocate Designation? 4
3. What Type of Directives Can Be Included in a Patient Advocate Designation? 4
4. What Are the Execution Requirements for a Patient Advocate Designation? 5
5. When Does the Designation Take Effect? When Can the Patient Advocate Act? 5
6. What Are the Responsibilities of the Patient Advocates and the Limitations on Their Powers? 6
7. What Are the Responsibilities of Medical Professionals Regarding Patient Advocate Designations? 7
**Patient Advocate Designations and Medical Decisions**

Suppose something happens to an individual that makes him or her unable to participate in medical care decisions, and the immediate family members are not in agreement as to the care this individual desired. Who will speak to the doctors on this individual’s behalf?

A legal document called a patient advocate designation allows an individual to designate another person to make medical treatment decisions in the event the individual is unable to do so due to a mental or physical condition. Outlined below is important information about what a patient advocate does, the decision-making powers a patient advocate has, how to properly designate a patient advocate, and more.

**1. What Is a Patient Advocate Designation?**

A person has the legal right to make his or her own medical care decisions. Some medical care decisions are very personal, and some are difficult to even think about. Yet at some point, a person may be unable to say which kind of medical care he or she wants. If that person has the proper legal documents, a patient advocate may act in this person’s behalf when necessary.

A patient advocate designation is a legal document allowing an individual (the patient) to appoint another person (the patient advocate) to exercise powers over his or her care, custody, and medical treatment in instances when the individual is unable to participate in making those decisions. A patient advocate designation is also sometimes referred to as a medical power of attorney or a health-care proxy.
2. What if Someone Does Not Have a Patient Advocate Designation?

A patient advocate designation is the legal document in Michigan by which an individual can designate another person to make medical treatment decisions on their behalf. The law is unclear on who makes medical care decisions for an incapacitated individual if there is conflict among family members and no guardian appointed by the probate court. Guardians are court-appointed advocates who have the authority to make care, custody, and medical treatment decisions. The probate court decides which medical care decisions the guardian may make. If the individual has a properly executed patient advocate designation before a guardian is appointed, the patient advocate usually retains the power to make decisions regarding medical care. Most importantly, designating a patient advocate often eliminates the need for a court-appointed guardian altogether.

3. Which Directives Can Be Included in a Patient Advocate Designation?

A patient advocate designation may include the individual’s statement of desires relating to their care and medical treatment. Directives an individual may choose include specifying that the patient Advocate may make anatomical gifts after death and describing the types of life-sustaining treatment he or she would like to receive or not receive. These directives are often put in a living will; however, Michigan law has not expressly authorized the use of living wills.

4. What Are the Execution Requirements for a Patient Advocate Designation?

A patient advocate designation must be properly executed to be legally valid. According to Michigan law, a properly executed patient advocate designation must have the following:
• **Signature.** The document must be signed by an individual of sound mind 18 or older. The individual must not sign the patient advocate designation due to duress, fraud, or undue influence.

• **Witnesses.** The document must be properly signed and witnessed by two people. The witnesses cannot be any of the following persons: the individual’s spouse; parent; child; grandchild; sibling; presumptive heir; known devisee at the time of the witnessing; physician; patient advocate; or an employee of the individual’s life or health insurance provider, health facility treating the individual, home for the aged where the individual resides, or community mental health services program or hospital providing mental health services to the individual.

The individual can change his or her mind about the patient advocate designation. If that happens, the individual may revoke it any manner sufficient to communicate intent and at any time—even after he or she is unable to participate in medical treatment decisions. If the patient’s physician or health facility has notice of the revocation, they are required to note it in the patient’s medical records and bedside chart. They must also notify the patient advocate.

5. **When Does the Designation Take Effect, and When Can the Patient Advocate Act?**

The designation comes into effect and the patient advocate can act only when the patient is no longer able to participate in medical treatment decisions. Generally speaking, the patient is considered unable to participate in medical treatment decisions if he or she is in a coma or has a severe mental impairment. The patient’s attending physician makes the determination in consultation with another physician or a licensed psychologist.
The physician’s determination must be put in writing, incorporated into the patient’s medical record, and reviewed at least once a year. If a dispute arises as to whether the patient is able to participate in medical treatment decisions, a petition can be filed in probate court requesting it to determine whether the patient is able to do so.

Prior to being acting as the patient advocate, appointee must also sign an acceptance of the designation and agree to the terms of the appointment as set out in state law. These terms include certain legal limitations on the patient advocate’s authority.

6. What Are the Responsibilities of Patient Advocates and Limitations on Their Powers?

The patient advocate has the duty to act in the patient’s best interests. Preferences expressed or evidenced when the patient was able to participate in medical treatment decisions are presumed to be in their best interests. The patient advocate must take reasonable steps to follow the patient’s expressed desires, preferences, and instructions. While these desires do not have to be set forth in writing, one of the best ways to ensure the patient advocate is aware of them is including them in the patient advocate designation.

A patient advocate cannot under any circumstances direct medical treatment that would directly cause the patient’s death—Michigan law prohibits euthanasia or mercy killing. However, a patient advocate is allowed decide to withhold or withdraw treatment that would allow the patient to die. This can only happen if the patient authorized the patient advocate in a clear and convincing manner to make such a decision. If the patient wants the patient advocate to
have this power, they must acknowledge that a decision to withhold or withdraw treatment could allow them to die. A patient advocate can never make a life-ending decision if the patient is pregnant.

Even when a patient has previously expressed a desire to have life-sustaining care or medical treatment withheld or withdrawn, the patient advocate cannot act on that declaration if the patient later states a desire to have life-sustaining care or treatment provided regardless of whether the patient is incapacitated or unable to participate in medical treatment decisions at that time.

The patient advocate’s powers cannot be delegated to another person without the patient’s prior authorization. A designation appointing a spouse as patient advocate executed during the patient’s marriage is suspended during an action for separation or dissolution of marriage and revoked when the marriage is dissolved.

Finally, a patient advocate cannot receive compensation but can be reimbursed for expenses.

7. What Are the Responsibilities of Medical Professionals Regarding Patient Advocate Designations?

Medical professionals are bound by sound medical practice. They also are bound by the patient advocate’s instructions as long as they reasonably believe the patient advocate designation was properly executed and the advocate is acting in compliance with the law. Medical professionals are liable in the same manner and extent as if the patient gave the directions and not the patient advocate. If a dispute arises as to whether the patient
advocate is acting consistent with the terms of the patient advocate designation, the patient’s best interests, or the law, a petition can be filed in the probate court requesting the court to determine whether the designation should be continued or the patient advocate should be removed.
Who Has Authority to Act on Behalf of an Incapacitated Individual?

Nine Frequently Asked Questions About Acting for Adults Who Are Incapacitated

State Bar of Michigan Probate and Estate Planning Section
1. Who are Incapacitated Individuals? ........................................................................................................4

2. Who Has Authority to Make Care and Custody Decisions for Incapacitated Individuals ..........5
   Alternatives to Guardianship ..................................................................................................................5
   Appointment of a Guardian ...................................................................................................................5

3. What are the Powers and Duties of a Guardian? ..................................................................................7

4. How is a Guardian Compensated? ......................................................................................................7

5. Who Has Authority to Make Decisions Regarding the Financial Interests of an Incapacitated
   Individual? ...........................................................................................................................................8
   Appointment of a Conservator ..............................................................................................................9

6. What are the Powers and Duties of a Conservator? ..........................................................................11

7. How is a Conservator Compensated? .................................................................................................13

8. Can Guardianships and Conservatorships be Modified or Terminated? .......................................13

9. Do I Need the Assistance of an Attorney or Other Professionals? ..................................................14
   Glossary ...............................................................................................................................................15
   Guardian ............................................................................................................................................15
   Conservator ......................................................................................................................................15
   Incapacitated Individual and Legally Incapacitated Individual ..........................................................15
   Protected Individual .........................................................................................................................15
This pamphlet explains how adults can make certain there is someone in place to handle their finances and make medical decisions on their behalf in the event they become incapacitated. It also explains who has the authority to do so if they don’t take care of it in advance.

Two ways a person can plan for potential incapacity are appointing someone to handle financial or medical matters in a document (called a durable power of attorney when it is for financial matters and a patient advocate designation when it is for medical and other care decisions) and/or creating a trust to hold his or her assets under which a successor trustee could handle the trust assets.

With a durable power of attorney for financial matters, a person names one or more other people (or sometimes a bank) as his or her agent, sometimes called an attorney in fact. The agent or agents have the authority to handle the items described in the document. For medical treatment and other types of care decisions, one or more people can be named as a patient advocate in a medical durable power of attorney, often called a patient advocate designation. A patient advocate only has the authority to act when the person is unable to act on their own behalf. Often, it is beneficial to use both financial and medical durable powers of attorney because each instrument authorizes someone to help in different ways. *The Durable Power of Attorney and Patient Advocate Designation* pamphlets published by the Probate and Estate Planning Section of the State Bar of Michigan contain more information on these important alternatives.

This pamphlet explains how adults can make certain someone is in place to handle their finances and make medical decisions on their behalf in the event they become incapacitated. It also explains who has the authority to do so if they don’t plan ahead.

If a person becomes incapacitated and did not plan accordingly, the probate court may appoint a guardian to take care of his or her personal care needs and/or a conservator to manage
finances and property. The same person may be appointed for both roles. Appointing a guardian or
conservator is a serious matter that involves the time and expense of a court proceeding and
limits—and sometimes eliminates—the individual’s right to legally handle their matters.

1. Who are Incapacitated Individuals?

   In Michigan, adults who are incapacitated generally fall into two categories: individuals
whose incapacity occurs during adulthood, and individuals who have developmental disabilities
which, in addition to other requirements, must occur before the age of 22 (guardians for persons
with developmental disabilities are appointed through a specialized procedure under the Mental
Health Code).

   This pamphlet focuses on individuals whose incapacity occurs during adulthood and who
meet the following definition of an incapacitated individual:

   Impaired by reason of mental illness, mental deficiency, physical illness or capacity,
chronic use of drugs, chronic intoxication, or other cause, not including minority, to
the extent of lacking sufficient understanding or capacity to make or communicate
informed decisions.

A legally incapacitated individual is one the court has determined to be incapacitated.

2. Who Has Authority to Make Care and Custody Decisions for Incapacitated Individuals?

Alternatives to Guardianship

   Often, a spouse or other family member tries to informally make decisions for an
incapacitated individual. However, as discussed above, before an adult becomes incapacitated he or
she may designate a patient advocate to make medical care decisions when he or she is no longer
able to do so. Under a patient advocate designation, the advocate has authority to legally act on the incapacitated individual’s behalf after the individual becomes incapable of participating in medical care decisions.

**Appointment of a Guardian**

If there is no one with legal authority to make decisions on an individual’s behalf or provide for his or her care or supervision, the incapacitated individual or another person interested in his or her welfare may request the court to appoint a guardian by filing a petition with the probate court. The petition must be filed in the probate court in the county where the individual lives or is located. The petition for appointment of a guardian must contain specific facts about the individual’s condition and recent conduct that demonstrate a need for assistance. Before a guardian can be appointed, the court must hold a hearing and find by clear and convincing evidence that the individual meets the definition of being incapacitated (defined above) and the appointment of a guardian is necessary to provide continuing care and supervision.

If the individual is legally incapacitated and lacks the ability to do some, but not all, required tasks, the probate court may only appoint a limited guardian.

The law requires the individual who is the subject of the petition be personally served with notice of the hearing, and he or she may object to the appointment of a guardian. There is a right to trial by jury and a hearing closed to the public. If the individual wishes to contest the petition, the court must appoint an attorney for him or her unless he or she is already represented by legal counsel. If no attorney is appointed, the court must appoint a guardian ad litem who must:

- personally visit the individual;
• explain to the individual the nature, purpose, and legal effects of the appointment of a guardian as well as the individual's rights at the hearing;

• inform the individual of the name of the person(s) seeking appointment as guardian; and

• submit a report to the court.

In addition, the individual's spouse, the person named as the individual’s agent in a durable power of attorney, and the children of the individual (or, if none, the parents) must be notified of the hearing and are likewise entitled to object to the appointment of a guardian.

The court may also appoint a physician or mental health professional to examine him or her and submit a detailed report. The individual, if he or she is indigent, has a right to an independent evaluation at public expense.

Any competent person or a professional guardian may be appointed as guardian—although the court gives preference to a person the individual has nominated, a person designated in the individual’s durable power of attorney, or, if none, the individual’s spouse, adult child, parent, or relative with whom the individual has lived for more than six months (in that order of priority).

3. What are the Powers and Duties of a Guardian?

The powers and duties of a guardian are detailed in the Michigan Estates and Protected Individuals Code. Generally, a full guardian is responsible for the individual’s care, custody, and supervision. The guardian must also try to restore the individual to independence. The guardian may be responsible for making medical or other professional care and treatment decisions if the court awards those powers. However, if the person already appointed a patient advocate, the patient
advocate still makes medical decisions unless the court removes the powers. The guardian is not
liable to other people for the individual’s acts. Each year, the guardian must file a report with the
probate court and give a copy to the individual and all interested persons as defined by Michigan
Estates and Protected Individuals Code.

If a conservator is not appointed, the guardian may receive limited amounts of funds and
hold certain personal possessions on behalf of the individual. Such sums or possessions can be used
for the individual’s support, care, and education without the appointment of a conservator. The
condition of the individual's estate must be included in the guardian's annual report of guardian if it
is within the guardian's control.

In limited circumstances and only after direct communication with the individual and, if
possible, the individual's attending physician, a guardian may execute, reaffirm, or revoke a do-not-
resuscitate order on behalf of an individual.

4. How is a Guardian Compensated?

A guardian may be paid for their services from the individual’s assets. The payment amount
depends upon the time spent by the guardian, the nature of services provided, the amount of
available funds, and the individual's specialized needs. The court will only approve just and
reasonable payment for a guardian’s services.

5. Who Has Authority to Make Decisions Regarding the Financial Interests of an
Incapacitated Individual?

If an individual cannot effectively manage his or her financial affairs, someone else will need
to manage them. There are several options a person can choose to plan for who will manage things.
A durable power of attorney can be an excellent tool to provide for managing a person’s finances and property if an individual becomes incapacitated. Assets may also be placed in a trust that names who will manage the assets (act as trustee) if and when the individual becomes incapacitated. An individual may set up a trust for his or her own benefit, or someone else (a third party) may establish a trust for another person using the third party’s assets. For example, a parent might create a trust for a child. No matter where the assets came from, they are owned by the trust and managed by the trustee for the benefit of the person named in the trust (the beneficiary). There are many ways trusts can be written depending on their purpose. Because they are very complicated and need to be written carefully in order to avoid creating substantial problems, you should consult an experienced trust attorney for assistance before creating any type of trust.

Another option is joint bank accounts. Both parties to a joint bank account (to which Social Security and other payments may be directly deposited) can use funds, even if one person is incapacitated, without court action. However, joint bank accounts should be used very cautiously because when an individual names someone jointly on his or her bank account, the joint owner has the power to remove all of the funds at any time. Adding a joint owner also allows the joint owner’s creditors to make claims on the account. There may also be tax issues by adding a joint owner to one's bank accounts. Consult with an attorney experienced in this area of law for more information.

In addition, Social Security benefits—including retirement benefits, disability and supplemental security income—may be paid to another person (called a representative payee) designated through the Social Security Administration. The representative payee must ensure those monies are used for the individual’s benefit. If these benefits are the individual’s sole source of income, designating a representative payee provides a means for managing that income without court involvement.
If arrangements have not been made or the arrangements in place are not complete enough to handle an individual’s financial and property issues, there are options available through the probate court. For example, the court might enter a protective order regarding the person’s assets or appoint a conservator to handle their financial affairs. Whether a proceeding in probate court is appropriate depends on the extent and nature of individual’s incapacity as well as the extent and nature of the individual’s financial interests.

**Appointing a Conservator**

The probate court may appoint a conservator for an individual after it holds a hearing and determines:

- the individual is unable to manage his or her property and business affairs because he or she has a mental illness, mental deficiency, physical illness, or disability; is a chronic drug user or chronically intoxicated; confined or detained by a foreign power; or has disappeared and
- the individual has property that will be wasted or dissipated unless proper management is provided or money is needed for the individual’s support, care, and welfare or for those entitled to his or her support and that protection is necessary to obtain or provide money.

Conservatorships are often for an indefinite duration and involve the management of the individual’s financial property and affairs.

When only a single transaction requires attention, the probate court may enter a protective order to accomplish this one-time matter without appointing a continuing conservator. For example, in a long-term marriage the court may decide adequate protection is provided by transferring all marital assets to the spouse who can still manage financial affairs or the court may allow for transfer...
of assets titled to a single individual to the trustee of their revocable trust for management under the trust. Before such an order may be entered, the court will conduct the same hearing and make the same findings required for a conservatorship.

Under Michigan law, conservatorship proceedings may be initiated by:

- an individual for his or her own benefit;
- anyone interested in an individual’s estate, affairs, or welfare (including a parent, adult child, guardian, or custodian); or
- anyone who would be adversely affected by a lack of effective management of an individual’s property or business affairs.

If an individual is mentally competent but due to age or physical infirmity desires a conservator to assist in the management of property and affairs, only that individual may petition the court for a conservator. An individual may obtain the same type of assistance without court involvement by executing a durable power of attorney or creating a living trust while he or she is competent.

Like a guardianship proceeding, the procedure for appointment of a conservator requires notice of the hearing be given to the individual in person. Notice must also be given to the individual’s children or, if none, to parents (or otherwise to his or her presumptive heirs); an individual’s agent (an attorney in fact) under a durable power of attorney; the nominated conservator; a government agency paying benefits to the individual or before which an application for benefits is pending; and the U.S. Administrator of Veterans’ Affairs if the individual is receiving or entitled to VA benefits.
The court hearing has many of the same safeguards and protections as a hearing on a guardianship as described above. There will also be a court-appointed guardian ad litem to review the accounts and petitions filed by the conservator during the conservatorship. The guardian ad litem fees are paid from the individual’s assets.

The conservator appointed by the court may be an individual or a professional conservator. Although Michigan law lists the priorities for appointment, the probate court, for good cause, may choose a person without priority or with lesser priority.

6. What are the Powers and Duties of a Conservator?

If a conservator is appointed, he or she is responsible for the collection, preservation, and investment of the individual’s property and must use the property for the support, care, and benefit of the individual and his or her dependents. A conservator has a duty of loyalty and may not use any of the individual’s assets for personal benefit. The court may require the filing of a fiduciary bond to provide protection for the individual in case there is loss caused by wrongful actions of the conservator.

The conservator must review all of the individual’s records and assemble a list of his or her properties, debts, charge accounts, and credit cards. Stores and companies of which the individual has been a customer, including credit card companies, should be notified of the conservator’s appointment. Within 56 days of appointment, the conservator must file with the probate court an inventory of all of the individual’s properties. A copy of the inventory must be sent to all interested persons—the same people entitled to notice of a hearing for appointment of a conservator. The conservator must maintain careful records and all payments from the individual’s funds or other
property should be evidenced by proof of payment or a receipt with a notation of the purpose of the disbursement.

The nature of investments made by the conservator on the individual’s behalf and the amount of funds expended for the individual’s benefit, should be based on:

- the size of the estate;
- the probable duration of the conservatorship and the likelihood that, sometime in the future, the individual may be fully able to manage his or her own affairs;
- the accustomed standard of living for the individual and members of his or her household; and
- the availability of other funds for his or her support.

In addition, Michigan law instructs a conservator to consider the individual’s estate plan in making investments and distributions. Therefore, it is important for everyone to establish a written estate plan while he or she is able to do so. The conservator should examine the individual’s will, trust agreement, and even informal estate plan arrangements—such as joint bank accounts, life insurance policies, and their beneficiary designations—and not take any inconsistent actions without prior court approval.

Each year, the conservator must file with the court for review an itemized account of all receipts, disbursements, and distributions as well as all remaining cash and property. Copies must be sent to the interested persons before the court approval hearing. The conservator may also be required to file federal, state, and city income tax returns for the individual each year.

7. How is a Conservator Compensated?
Like a guardian, a conservator is entitled to just and reasonable compensation for services. In approving a conservator’s fee, the court will usually consider six major factors:

- the time expended by the conservator (it is important the conservator keep accurate time records and demonstrate to the court the services were both necessary and beneficial);
- professional expertise and skill;
- the nature, number, and complexity of assets;
- the makeup of parties interested in the conservatorship;
- the extent of the responsibilities and risks assumed; and
- the results obtained in administering the property.

8. Can Guardianships and Conservatorships be Modified or Terminated?

An individual may request a modification or termination of his or her guardianship or conservatorship at any time. A request to modify or terminate the conservatorship may be filed by the conservator or anyone interested in the individual’s welfare with the probate court, or, in the case of guardianship, via an informal letter to the court or judge. Copies of the petition must also be served to all interested persons including the individual (in other words, those who would be entitled to notification of a guardianship or conservatorship petition filed at that time) and the guardian or conservator. A hearing is then held on the petition. The same procedural protections available at the initial hearing on the appointment are available at a hearing for modification. The court may find the individual’s condition has improved or worsened, in which case the responsibilities of the guardian or conservator could be decreased or increased. If the court terminates the guardianship or
conservatorship, their powers and authority expire and they are required to return all property to the
individual. The conservator must also file for court approval a final accounting through the time the
last of the property is returned to the individual.

9. Do I Need the Assistance of an Attorney or Other Professionals?

Many people who take on a fiduciary role for an incapacitated person do not have the
technical expertise to carry out all of the responsibilities and duties. In many instances, it is necessary
to retain the assistance of an attorney, accountant, bank trust department, investment counselor,
family counselor, or other professional. It is important the professional’s proposed fee—whether it
will be a fixed amount, an amount based on time and effort expended, a percentage, etc.—be
discussed, understood, and agreed upon in advance, preferably in writing. These fees are subject to
approval by the probate court. The role assumed by each professional should be expressly defined
and monitored by the guardian or conservator throughout the period the services are rendered.
While the services of one or more professionals may have been retained, the guardian or conservator
is still required by law to see their responsibilities are properly performed. Relying on the improper
actions of a professional will not necessarily prevent personal liability on the part of the guardian or
conservator for misdeeds or oversights.
Glossary

Guardian

This brochure discusses a guardian for a formerly competent adult. For the purposes of this brochure, a guardian is a person appointed by the court to act on behalf of an incapacitated individual. This brochure does not include guardians appointed for minors or for developmentally disabled adults, nor does it include a guardian ad litem.

Conservator

A conservator is a person appointed by a court to manage a protected individual's estate.

Protected individual

A protected individual is an individual for whom a conservator has been appointed. The term also applies to an individual for whom the court issues a protective order under Michigan’s probate code.
End of CSP Materials
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN

March 14, 2015
Lansing, Michigan

AGENDA

I. Call to Order
II. Excused Absences
III. Introduction of Guests
IV. Minutes of the February 14, 2014 Meeting of the Council – Marlaine C. Teahan
   See Attachment 1
V. Treasurer's Report – Marguerite Munson Lentz
   See Attachment 2 including a March written report, Treasurer's financial report (through January, 2015), and SBM reimbursement forms and instructions.
VI. Chairperson's Report – Amy N. Morrissey
   See Attachment 3
   • Public Policy Report re: In re Cliffman, Court of Appeals No. 321174
   • SBM Alert: New Task Force to Tackle Challenges of 21st Century Legal Practice
VII. Report of the Committee on Special Projects – Christopher A. Ballard
VIII. Standing Committee Reports
   A. Internal Governance
      1. Budget – Marlaine C. Teahan
      2. Bylaws – Nancy H. Welber
      3. Awards – Douglas A. Mielock
      4. Planning – Shaheen I. Imami
      5. Nominating – George W. Gregory
      6. Annual Meeting – Shaheen I. Imami
   B. Legislation and Lobbying
      1. Legislation – William J. Ard/Public Affairs Associates
   See Attachment 4 – Report of Public Affairs Associates, pending legislation of interest to the Probate and Estate Planning Section
2. Updating Michigan Law – Geoffrey R. Vernon
3. Community Property Trusts Ad Hoc Committee – Neal Nusholtz
4. Insurance Ad Hoc Committee – Geoffrey R. Vernon
5. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber
6. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup

C. Education and Advocacy Services for Section Members
1. Amicus Curiae – David L. Skidmore
2. Probate Institute – James B. Steward
3. State Bar and Section Journals – Richard C. Mills
4. Citizens Outreach – Constance L. Brigman

See Attachment 5 – Summary of Web-based Brochures Program
5. Electronic Communications – William J. Ard
6. Membership – Raj A. Malviya

See Attachment 6 – Report of Committee's initiatives; request for funding.

D. Ethics and Professional Standards
1. Ethics – David P. Lucas
2. Unauthorized Practice of Law & Multidisciplinary Practice – Patricia M. Ouellette
3. Specialization and Certification Ad Hoc Committee – James B. Steward

E. Administration of Justice
1. Court Rules, Procedures and Forms – Michele C. Marquardt


F. Areas of Practice
1. Real Estate – George F. Bearup
2. Transfer Tax Committee – Lorraine F. New
3. Charitable and Exempt Organization – Lorraine F. New
4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – VACANT
2. Business Law Section Liaison – John R. Dresser
3. Elder Law and Disability Rights Section Liaison – Amy R. Tripp
4. Family Law Section Liaison – Patricia M. Ouellette
5. ICLE Liaison – Jeanne Murphy
6. Law Schools Liaison – William J. Ard
7. Michigan Bankers Association Liaison – Susan 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 – Rebecca A. Schnelz
12. State Bar Liaison – Richard J. Siriani
13. Taxation Section Liaison – George W. Gregory

IX. Other Business

X. Hot Topics

XI. Adjournment – After the Council meeting adjourns, if there is time, and at the discretion of the Chair, we may return to the CSP agenda.
ATTACHMENT 1
MEETING OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

February 14, 2015 -- Lansing, Michigan

MINUTES

I. Call to Order. The Chair called the meeting of the Council of the Probate and Estate Planning Section to order at 10:22 a.m.

II. Attendance. Guests were introduced. [Snow, high wind, and white out conditions significantly affected attendance.]

A total of 5 officers and 13 members of the Council were present, representing a quorum.

A. The following 5 officers of the Council were in attendance:
   - Amy N. Morrissey, Chair
   - Shaheen I. Imami, Chair Elect
   - James B. Steward, Vice-Chair
   - Marlaine C. Teahan, Secretary
   - Marguerite Munson Lentz, Treasurer

B. The following 13 members of the Council were in attendance:
   - Susan M. Allan
   - W. Josh Ard
   - Christopher A. Ballard
   - Mark E. Kellogg
   - David P. Lucas
   - Raj A. Malviya
   - Michele C. Marquardt
   - Richard C. Mills
   - Lorraine F. New
   - Patricia M. Ouellette
   - James P. Spica
   - Geoffrey R. Vernon
   - Nancy H. Welber

C. The following 5 members were absent with excuse:
   - George F. Bearup
   - Constance L. Brigman
   - Rhonda M. Clark-Kreuer
   - Hon. Michael L. Jaconette
   - David L.J.M. Skidmore

D. The following ex-officio members of the Council were in attendance:
   - George W. Gregory
   - Michael McClory

E. The following guests were in attendance:
   - Rebecca Bechler
   - Jeanne Murphy
   - Raymond Harris
   - Neal Nusholtz
   - Robert B. Labe
   - Robert O'Reilly
   - Michael G. Lichterman
   - Nicholas Vontroba
III. Minutes – Marlaine C. Teahan. The Minutes of the February 14, 2015 Council meeting were approved as corrected, by general consent.

IV. Treasurer's Report – Marguerite Munson Lentz. The State Bar’s financial report did not get to Ms. Lentz in time for preparation of a financial spreadsheet for January, 2015. A written report was included in the Agenda. The Treasurer’s Report was approved as submitted, by general consent.

V. Chairperson's Report – Amy N. Morrissey. Ms. Morrissey welcomed those in attendance and reported on the following items:

- An email was received from the State Bar of Michigan (SBM) regarding the 50th anniversary of the Court of Appeals. Each Section has been asked to submit one case that has been the most influential in our practice area. Cases were suggested and discussed. Ms. Morrissey will submit a case for inclusion in the list of influential cases.
- An email was received from AARP requesting a meeting to discuss the UAGPPJA; Ms. Morrissey will reply and attend.

VI. Report of the Committee on Special Projects – Christopher A. Ballard
No action items were reported on and no votes were requested by CSP. A report was given regarding the following items discussed at the Committee on Special Projects (CSP):

- Community Property Trusts Ad Hoc Committee report;
- Insurance Committee report; and
- Artificial Reproductive Technology Committee report.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Marlaine C. Teahan reported that the Membership Committee will soon need money to fund their initiatives; this Committee is new and did not have a line item in this year's budget.


5. Nominating – George W. Gregory. The Nominating Committee consists of Mark Harder, George Gregory and Tom Sweeney. Those interested in serving as an officer or member of Probate Council should convey that interest to the Nominating Committee. In addition, individuals can be recommended to the Nominating Committee by others. The Committee has received some nominations for members and officers.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore. Pat Ouellette reported on behalf of the Committee that at the end of February, an Application For Consideration was received. The application requested the Probate and Estate Planning Section to submit an amicus curiae brief to the Court of Appeals in the Estate of Jesse Galvan, deceased. The issue presented involves an interpretation of MCL 700.3206 and the disposition of a decedent's remains. The Committee recommended that Council deny the request since the Committee felt that the law was clear. The Committee's suggestion was approved by general consent.

2. Probate Institute – James B. Steward reported that, compared to last year, we are ahead of the number of registrants for the Annual Institute. Work is ongoing for the Speakers' Dinner.

3. State Bar and Section Journals – Richard C. Mills reported that the Journal is on track to be published soon. Discussion ensued regarding an app for the Journal. Mr. Imami will send link to the developer for the ABA’s app to Mr. Mills for further investigation by the Committee.

4. Citizens Outreach – Constance L. Brigman had an excused absence. Ms. Morrissey reported on the Section brochures and how we can make them more searchable for online search engines.


6. Membership – Raj A. Malviya reported on three Committee initiatives, including hosting a vendor table at the May and June Annual Institutes, a social gathering at the Traverse City office of Smith Haughey Rice & Roegge, and meetings at Michigan law schools with 3Ls to explain benefits of Section membership and to encourage students to consider a future career in trusts and estates.

C. Legislation and Lobbying

1. Legislation – William J. Ard. Becky Bechler discussed that the current focus of the Legislature is on the Governor’s recent budget presentation which included 70 new fee increases.

Ms. Bechler discussed the status of digital assets legislation. There was a very lively workgroup last week with attendees including a Google lobbyist and a member of the Uniform Laws Commission.

The Elder Law and Disability Rights Section will take the lead on updating Michigan law in response to the passage of the ABLE Act. Also discussed were HB 4172, HB 4173, SB 19, and SB 50.

2. Updating Michigan Law – Geoffrey R. Vernon reported that Sen. Tonya Schuitmaker has agreed to sponsor the Qualified Dispositions in Trust Act. We are waiting on the Legislative Service Bureau to get a draft statute back to us.
3. Community Property Trusts Ad Hoc Committee – Neal Nusholtz reported on the mission of this brand new Ad Hoc Committee; a detailed report is contained in the February Agenda. Once the Committee has reviewed the statutes, case law and conducted a legislative analysis of Michigan and other jurisdictions, concerning Community Property Trusts, if advisable, the Committee will submit proposed legislation for review by CSP.

4. Insurance Ad Hoc Committee – Geoffrey R. Vernon. No further report other than that given at CSP.

5. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber. No further report other than that given at CSP.

D. Ethics and Professional Standards


E. Administration of Justice

1. Court Rules, Procedures and Forms – Michele C. Marquardt. No report.

2. Fiduciary Exception to Attorney Client Privilege Ad Hoc Committee – George F. Bearup. No report.

F. Areas of Practice

1. Real Estate – George F. Bearup. Report by Mark E. Kellogg on SB 24 related to proposed legislation allowing for the PRE exemption to be retained for 2 tax years under certain circumstances. The "by blood or affinity" language is used and is not clear; the committee will suggest using the specific relationships instead of the blood/affinity approach. Further, the committee would prefer a 3-year exemption in any case, or until sold, without the exemption being tied to any particular relationship.

Additional reporting on MCL 211.27a – language is used that uncapping can be avoided, under certain circumstances, for residential property provided it is not used for any commercial purpose. Since the definition of residential real property includes no commercial purpose, why is this extra language needed? These issues have been discussed with Rep. Pettalia’s office. In addition, discussions with Rep. Pettalia's office over the last few months have included requesting that this statute provide for no uncapping upon transfers to LLCs, corporations and business entities provided they are owned by the individuals excluded in the statute. We are getting pushback on this from Treasury against corporations. The question remains: Should we focus only on LLCs and drop corporations? This issue will be brought back to Council in the near future.
2. Transfer Tax Committee – Lorraine F. New. Tax nugget presented by Robert B. Labe. Rob submitted a revised report which has been placed into the February agenda online. The report discusses the tax changes suggested in the President’s State of the Union address. These changes are far reaching; however, it is unlikely that these changes will be made in this Congress. These concepts may continue in the country’s future discourse of tax policy.

3. Charitable and Exempt Organization – Lorraine F. New. In January, the Governor approved SB 623. The bill was filed with the Secretary of State on Jan. 15, 2015 and it was assigned PA 557 of 2014 with immediate effect. SB 623 was tie barred with SB 624 and 625. These bills include significant changes to charitable and exempt organizations. More information can be obtained at:

http://legislature.mi.gov/doc.aspx?2013-SB-0623; and


Updates to bylaws may be desirable to take advantage of the flexibility provided in the new act. Some changes include electronic voting and changes to indemnity provisions.


G. Liaisons

1. Alternative Dispute Resolution Section Liaison – VACANT. No report.
5. ICLE Liaison – Jeanne Murphy. No report.
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz. No report.

VIII. Other Business. None.

IX. Hot Topics. None.

X. Adjournment – Council meeting adjourned at 11:21 a.m. Returned to CSP agenda and adjourned for the day at 12 noon.
Attachment 2
Income/Expense Reports

Attached is the income/expense report for January 2015.

Mileage Reimbursement Rate Effective 1/1/2015

The IRS business mileage reimbursement rate for 2015 is $0.575 per mile. If you are eligible for reimbursement of your mileage for Probate Council business, please use this rate on your SBM expense reimbursement forms. The SBM forms and instructions are attached. Please note that the forms were revised to reflect the new mileage rate.

Expense Reimbursement Requests

- Form: http://www.michbar.org/generalinfo/pdfs/sectexp.pdf
- Email forms to mlentz@bodmanlaw.com or provide paper copies in person or by mail.

Marguerite Munson Lentz, Treasurer
Probate and Estate Planning Section

Treasurer Contact Information:

Marguerite Munson Lentz
BODMAN PLC
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
office: 313-393-7589
fax: 313-393-7579
email: mlentz@bodmanlaw.com
# Probate Council Treasurer's Report

## Jan-15

### Beginning Fiscal Year 2014-2015

<table>
<thead>
<tr>
<th>Fund Type</th>
<th>Dec-14</th>
<th>Jan-15</th>
<th>FY to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$186,741.33</td>
<td>$250,023.90</td>
<td></td>
</tr>
<tr>
<td>Amicus Fund (reserve)</td>
<td>$35,423.50</td>
<td>$35,423.50</td>
<td></td>
</tr>
<tr>
<td><strong>Total fund</strong></td>
<td><strong>$222,164.83</strong></td>
<td><strong>$285,447.40</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Dec-14</th>
<th>Jan-15</th>
<th>FY to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Fund</strong></td>
<td>$186,741.33</td>
<td>$250,023.90</td>
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<td><strong>$222,164.83</strong></td>
<td><strong>$285,447.40</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Revenue Subcategories

<table>
<thead>
<tr>
<th>Subcategories</th>
<th>Dec-14</th>
<th>Jan-15</th>
<th>FY to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Membership Dues</strong></td>
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</tr>
<tr>
<td>Actual</td>
<td>$113,645.00</td>
<td>$115,000.00</td>
<td>(1,355.00)</td>
</tr>
<tr>
<td>Budget</td>
<td>$113,645.00</td>
<td>$115,000.00</td>
<td>(1,355.00)</td>
</tr>
<tr>
<td><strong>Variance</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Year to Date Percentage</td>
<td>98.82%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td>$10,990.00</td>
<td>$3,220.00</td>
<td>$113,970.00</td>
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<tr>
<td><strong>Disbursements</strong></td>
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</tr>
<tr>
<td><strong>E-blast</strong></td>
<td>$75.00</td>
<td>$75.00</td>
<td>$75.00</td>
</tr>
<tr>
<td><strong>ILE (formatting)</strong></td>
<td>$3,750.00</td>
<td>$3,750.00</td>
<td>$3,750.00</td>
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<tr>
<td><strong>Total</strong></td>
<td>$12,225.00</td>
<td>$8,200.00</td>
<td>$15,000.00</td>
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<tr>
<td><strong>Lobbying</strong></td>
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<td><strong>Meetings(3)</strong></td>
<td>$15,000.00</td>
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<td><strong>Long-range Planning</strong></td>
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<tr>
<td><strong>Support for Annual Institute</strong></td>
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<tr>
<td>Contribution to institute</td>
<td>$5,000.00</td>
<td>$5,000.00</td>
<td>100.00%</td>
</tr>
<tr>
<td>Speaker’s Dinner</td>
<td>$9,000.00</td>
<td>$9,000.00</td>
<td>100.00%</td>
</tr>
<tr>
<td><strong>Amicus Briefs</strong></td>
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<tr>
<td><strong>Speaker’s Dinner</strong></td>
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<td>$10,000.00</td>
<td>100.00%</td>
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<tr>
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<td>Telephone</td>
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<td><strong>Other(5)</strong></td>
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<tr>
<td><strong>Total Disbursements</strong></td>
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<td><strong>$286,950.43</strong></td>
<td><strong>$50,687.43</strong></td>
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<tr>
<td><strong>Net Increase (Decrease)</strong></td>
<td>$63,282.57</td>
<td>$0</td>
<td>0%</td>
</tr>
</tbody>
</table>

### Footnotes

1. Includes e-blast for the Journal
2. Includes plaques for outgoing Chair and Council Members
3. Includes October meeting in connection with Chair’s Dinner and SBM Leadership Conference expenses for incoming Chair and Chair Elect
4. Includes ListServ, telephone, e-blast & other electronic communications
5. Includes copying costs and $750 for Young Lawyers’ Conference
State Bar of Michigan
336 Townsend St., Lansing MI 48933-2012, (800) 998-1442

Section
Expense Reimbursement Form

Select a Section

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

<table>
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<tr>
<th>Date</th>
<th>Description &amp; Purpose (Note start &amp; end point for mileage.)</th>
<th>Mileage</th>
<th>Lodging/Other Travel</th>
<th>Meals (Self + attach list of guests)</th>
<th>Miscellaneous (i.e. copying, phone, etc.)</th>
<th>TOTAL</th>
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<td>0.575</td>
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<td>0.575</td>
<td>$0.00</td>
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<td>0.575</td>
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<td>0.575</td>
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<td>0.575</td>
<td>$0.00</td>
<td></td>
<td></td>
<td>$0.00</td>
</tr>
</tbody>
</table>

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

Date | Title | Signature

Grand Total $0.00

Date | Title | Approved by (signature)

Reset Form
Print Form
Instructions for Section Expense Reimbursement Form

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

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

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

If you have any questions about this form, please contact Alpa Patel at (517) 346-6362 or apatel@mail.michbar.org.
ATTACHMENT 3
PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

* Amicus Brief for In re Cliffman Estate, COA Case #321174

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 3,762.

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

Name of section:
Probate & Estate Planning Section

Contact person:
Marlaine C. Teahan

E-Mail:
mteahan@fraserlawfirm.com

Regarding:
In re Cliffman Estate, COA Case #321174

Date position was adopted:
June 7, 2014

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:
12 Voted for position
0 Voted against position
0 Abstained from vote
11 Did not vote (absent)

Position:
See attached letter

It is the Council’s opinion that the holding in In re Combs, 257 Mich App 622; 669 NW2d 313 (2003); cert den 469 Mich 1021; 678 NW2d 440(2004), was too restrictive a reading of the Wrongful Death Act, MCL 600.2922, relative to the treatment of step-children. The Council supports a complete appellate review of the issue and the overruling of the ruling in the Combs case.
March 6, 2015

Michigan Court of Appeals
P.O. Box 30022
Lansing, MI 48909-7522

Re: Elmer Carter, Philip Carter, David Carter and Doug Carter vs. Betty Woodwyk and Virginia Wilson, Court of Appeals No. 321174

Letter in Support of Appellants’ Requested Relief

Dear Sir/Madam:

This letter is being sent on behalf of the Probate and Estate Planning Section of the Michigan State Bar (the "Section"). The Section supports the Appellants’ requested relief in the above-captioned case. Specifically, the Section believes a special panel of the Court of Appeals should be convened to reconsider the interpretation of Michigan’s wrongful death statute set forth in In re Combs, 257 Mich App 622 (2003).

The wrongful death statute, MCL § 600.2922, governs the person or persons entitled to file a claim for a portion of the proceeds resulting from a wrongful death action. The pertinent part of the statute provides:

(3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805 the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:

- The children of the deceased’s spouse.
- The children of the deceased.

MCL § 600.2922(3)(b). Thus, according to MCL § 600.2922(3)(b), “[t]he children of the deceased’s spouse” are permitted to file such a claim. Although the wrongful death statute never defines “children of the deceased’s spouse,” in common parlance this phrase is equivalent to “step-children.”

In In re Combs the court held that since Ariie Combs passed away six years before the decedent — his wife Ellen Combs — Ariie was not Ellen’s “spouse” at the time of Ellen’s death. Consequently, at the time of Ellen’s death, Ariie was not “the deceased’s spouse” within the meaning of MCL § 600.2922(3)(b). Therefore, Ariie’s children — Ellen’s stepchildren — were not entitled to file a claim in Ellen’s wrongful death action. The In re Combs decision thus created two classes of step-children: those whose biological parent survived the step-parent, and those whose biological parent predeceased the step-parent. The former would be entitled to file a claim under MCL § 600.2922 and the latter would be barred.

The In re Combs’ court’s interpretation of MCL § 600.2922 directly contradicts the definition of “stepchild” in the Estates and Protected Individuals Code (“EPIC”) — Michigan’s probate code. Under EPIC, “stepchild” is defined as follows:

“Stepchild” means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, who is not the testator’s or donor’s child.
MCL § 700.2601(e) (emphasis added). In addition:

"Stepchild" means a child of the decedent’s surviving, deceased, or former spouse and not of the decedent.

MCL § 700.2708(e) (emphasis added). The plain language of these statutory sections is quite clear: under Michigan probate law – as codified by EPIC – all step-children are treated equally. A stepchild does not cease to be a stepchild of a decedent simply because the stepchild’s biological parent dies before the decedent. Rather, a stepchild remains a stepchild regardless of whether his or her biological parent survives the decedent.

Although the phrase “[t]he children of the deceased’s spouse” in MCL § 600.2922(3)(b) is clearly a reference to step-children, it is nevertheless ambiguous. Because the phrase is not defined, it is open to two interpretations: that set forth by the In re Combs court on the one hand, and that set forth by the Michigan Legislature in EPIC on the other. The Appellants’ Brief extensively discusses this ambiguity and presents persuasive evidence that, when passing the wrongful death statute, the Michigan Legislature intended that all step-children be treated equally and be entitled to file a claim – regardless of whether their biological parent was still living.

In today’s society, second marriages have become commonplace and "blended" families seem to be the rule rather than the exception. The outcome of this case thus has far-reaching effects for a great deal of Michigan families. For this reason and the reasons set forth in the paragraphs above, the Section supports the Appellant’s requested relief. The Section requests that the Court of Appeals make a specific finding under MCR 7.215(J)(2) that, but for the In re Combs holding, the Court would have held that MCL § 600.2922 is ambiguous and that the Michigan Legislature intended “the children of a deceased’s spouse” to include all step-children. The Section believes that this particular question is outcome determinative and warrants convening a special panel under MCR 7.215(J)(3) to consider whether the In re Combs decision should be reversed.

Thank you for your consideration.

Respectfully,

[Signature]

Amy N. Morrissey
Chair
New Task Force to Tackle Challenges of 21st Century Legal Practice

3/5/15

State Bar of Michigan President Thomas C. Rombach has appointed distinguished legal leaders to a new 21st Century Practice Task Force to recommend how the State Bar can best serve the public and support lawyers’ professional development in a rapidly changing legal marketplace. The task force will also look at the potential for modernizing Michigan’s attorney regulation in response to those changes. SBM Past Presidents Bruce Courtade, of Grand Rapids, and Julie Fershtman, of Farmington Hills, will co-chair the task force. Other members of the task force include Michigan Supreme Court Justice Mary Beth Kelly, Speaker of the Michigan House of Representatives Kevin Cotter, the deans of all five Michigan law schools, former American Bar Association President Robert Hirshon and former Judge James Redford, Governor Snyder’s legal counsel.

“The willingness of such exceptional leaders to serve on the task force reflects the growing awareness in Michigan of how technology and globalization are profoundly changing the world in which lawyers practice,” Rombach said. He emphasized that the task force will focus on recommending concrete, practical steps to keep Michigan a leader in promoting improvements in the delivery of legal services.

The 21st Century Practice Task Force will build on the work of the State Bar of Michigan Judicial Crossroads Task Force. Michigan Supreme Court Chief Justice Robert P. Young Jr. has credited the 2011 Crossroads report with making valuable contributions to the transformational, cost-saving changes now underway in Michigan’s court system at the direction of the Michigan Supreme Court.

The task force will work for a year and release a public report in March of 2016. Meetings of the task force will be held in open session so that State Bar members and the public can follow its work and offer comment through the 21st Century Practice Task Force website.

The task force recommendations will be developed from the work of three committees comprised of prominent Michigan attorneys, judges, academicians and public officials. The three committees are Affordability of Legal Services: New Tools for Breaking through the Access Barrier; Building a 21st Century Practice: Developing and Maintaining Professional Excellence in a Dynamic Marketplace; and Modernizing the Regulatory Machinery: Building Resilience and Capacity in the Delivery of Legal Services.

The foundation for the new task force was laid in November of 2014 at a forum on the future of legal services convened by the State Bar in Lansing. The forum was held in conjunction with the American Bar Association Commission on the Future of Legal Services. ABA President William Hubbard told those gathered at the forum that the justice system is at an inflection point, and he challenged the legal profession to develop a new model to meet the needs of the underserved while enhancing the opportunities for lawyers to thrive in their practices.

###

Copied from: http://www.michbar.org/news/releases/archives15/3_5_15_21CPTF.cfm
Attachment 4
Below are bills that PAA has identified for Council of Probate Section of State Bar of MI

**H 4072**  
Title: Digital Assets Act  
Author: Forlini  
Introduction: 1/27/2015  
Location: House Judiciary Committee  
Summary: Enacts uniform fiduciary access to digital assets act.  
Status: 01/27/2015 INTRODUCED.  
01/27/2015 To HOUSE Committee on JUDICIARY.

**H 4124**  
Title: Retirement Income Deduction  
Author: Townsend  
Introduction: 1/29/2015  
Location: House Tax Policy Committee  
Summary: Clarifies limitations and restrictions on retirement income deduction for a surviving spouse.  
Status: 01/29/2015 INTRODUCED.  
01/29/2015 To HOUSE Committee on TAX POLICY.

**H 4133**  
Title: Second Parent Adoption  
Author: Irwin  
Introduction: 2/3/2015  
Location: House Families, Children and Seniors Committee  
Summary: Provides for second parent adoption.  
Status: 02/03/2015 INTRODUCED.  
02/03/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

**S 24**  
Title: Homestead Exemption  
Author: Nofs  
Introduction: 1/21/2015  
Location: SENATE
Summary: Continues principal residence homestead exemption upon death of a homeowner under certain circumstances.

Status:
01/21/2015 INTRODUCED.
01/21/2015 To SENATE Committee on FINANCE.
03/05/2015 From SENATE Committee on FINANCE: Recommended as substituted (S-I).
03/05/2015 In SENATE. To second reading.

**S 49**
Title: **Crimes Against Elder Adults**
Author: Smith V
Introduction: 1/28/2015
Location: Senate Second Reading - Committee Reports
Summary: Increases penalties for certain crimes against a person over 65 years of age.
Status:
01/28/2015 INTRODUCED.
01/28/2015 To SENATE Committee on JUDICIARY.
02/12/2015 From SENATE Committee on JUDICIARY: Recommended as substituted (S-I).
02/12/2015 In SENATE. To second reading.

**S 50**
Title: **Elder Abuse**
Author: Smith V
Introduction: 1/28/2015
Location: Senate Second Reading - Committee Reports
Summary: Provides for sentencing guidelines for elder adult abuse.
Status:
01/28/2015 INTRODUCED.
01/28/2015 To SENATE Committee on JUDICIARY.
02/12/2015 From SENATE Committee on JUDICIARY: Recommended as substituted (S-I).
02/12/2015 In SENATE. To second reading.

**S 73**
Title: **Obtaining Property**
Author: Schmidt W
Introduction: 2/3/2015
Location: Senate Judiciary Committee
Summary: Prohibits obtaining services or property by fraud or deception and provides penalties.
Status:
02/03/2015 INTRODUCED.
02/03/2015 To SENATE Committee on JUDICIARY.

**S 74**
Title: **Obtaining Services**
Author: Schmidt W
Introduction: 2/3/2015
Enacted: 1/10/2015
Last Amend: 12/4/2014
Location: Senate Judiciary Committee
Summary: Enacts sentencing guidelines for obtaining services or property by fraud or deception.
Status:
02/03/2015 INTRODUCED.
02/03/2015 To SENATE Committee on JUDICIARY.
TO: State Bar of Michigan Probate and Estate Planning Council

FR: Constance L. Brigman, Chairperson
    SBM Probate and Estate Planning Section Public Outreach Committee

RE: Summary of the Web-based brochures program

Q1: Why are we doing this?

Answer: Bar associations have been criticized for failing to respond to advances in technology. Some criticisms are directed at the lack of ethical guidance provided to members regarding cloud based technology, secure mobile devices, etc. There is also a very legitimate complaint that the bar associations are not doing enough to employ technology to inform the public and to advocate for the appropriate use of legal services. Work traditionally performed by law firms is now being done with software, online services and by outsourcing to non-lawyer agencies. Here is a quote that best sums it up:

Clients are flocking to alternative services because they are uninformed about the benefits of hiring lawyers. Lawyers have voluntarily agreed to duties and responsibilities undertaken on behalf of their clients. These duties include diligence, confidentiality, and fiduciary obligations.

... This is a simple case to make, and bar associations are best-positioned to make it.

Q2: What are our objectives?

Answer: Our objective is to employ the right technology at the right time. When a member of the public looks for information on our topic, we want to inform that highly interested person with accurate information on our webpage and also provide visible and easy access on that page to a lawyer database.

Our objective is to put the information in a format that is (1) easy to find with google, (2) interactive, (3) easy to navigate and (4) has a clean feel with a “call to action button.” The call to action button directs the reader to the SBM member directory.

Q3: What does it take to make this happen?

Answer: First, we need a “For the Public” button on the public side of a webpage that has public information materials in the right format for google to find this page. Right
now, if you go to michbar.org homepage there is a sidebar “for the public” that does not take you to a page with good information.

**Second**, we need the “for the Public” button to be on a page that we can control. Right now, if you click on connect.michbar.org there is a homepage for the sections. If you click on section websites, there is an index of 40 hyperlinks that take a person to sections’ homepages. At our homepage, we are still on the public side of the SBM website. If the SBM would support us, we could have a “For the Public” button on our section’s homepage.

**Third**, we need web architecture that supports intelligent web navigation. Our section’s homepage is provided by a company called Higher Logic of Arlington, Virginia. We spoke with a support person at Higher Logic (Kelsey at 202-499-7230) and she explained that they have it. She said that this is called a Resource Library function of their web architecture.

The Resource Library hosts content for both community members and non-members. She gave us a lot of information - too much to share here. There are prominent associations that have bought the Higher Logic webpage to build “connected communities” for their members. One example is the American Speech and Hearing Association.

**Fourth**, we need to work closely with support personnel who will feed our information into web architecture that uses parent and child pages rather than simply copying and pasting our entire brochure onto one webpage with a pdf link to download the brochure.

If you look at the ASHA “For the Public” resources, then you can see an example of what we need:

- **A landing page for the public that indexes what we have for them.** This page is called a parent page. We will put an index to our brochures on this page. *(Exhibit A shows ASHA’s Communication for a Lifetime page)*

- **A group of secondary pages linked to the parent page.** These pages are called child pages. Each child page is dedicated to one topic. We will take four secondary pages and put the main page for each brochure on a child page. *(Exhibit B shows one of ASHA’s child pages called “Hearing and Balance.”)* Right now, we have: (1) DPOA, (2) PAD, (3) Decedent’s Estates, and (4) Guardianships and Conservatorships.

- **Subtopic pages that present the materials in a user friendly format.** *(Exhibit C shows ASHA’s ten subtopic pages on the topic “Hearing and Balance.”)* We will put the main headings on subtopic pages. Right now, we might have: (1) What does it mean to probate and estate? (2) Who can be the Personal Representative? and (3) How long does it take to probate an estate?
Note: The subtopic page “How We Hear” has three paragraph pages: “Outer Ear,” “Middle Ear” and “Inner Ear.” “How We Hear” is a paginated webpage. Many of us are familiar with paginated webpages because we often use pages with terms like “previous” and “next.” You can click forward or backward through paginated webpages.

Lastly, we can still make pdfs available on this web architecture. The ASHA page has “Patient Information Handouts” as one of its 10 paragraph pages. (Exhibit D shows the list of those handouts and some samples. Note the handouts are simple and specific topics - not multi-page and comprehensive pamphlets on one major topic.)

Thank you for your consideration,

Constance L. Brigman
Communication for a Lifetime

The American Speech-Language-Hearing Association is committed to ensuring that all people with speech, language, and hearing disorders receive services to help them communicate effectively.

Here you will find resources to help you understand communication and communication disorders.

**Hearing and Balance**
- How We Hear
- Hearing Loss
- Hearing Screening and Testing
- Hearing Aids, Cochlear Implants and Assistive Technology
- Noise and Hearing Loss Prevention
- Dizziness & Balance
- Resources

**Speech, Language and Swallowing**
- Development
- Disorders and Diseases
- Swallowing
- ASHA's Literacy Gateway
- Speech Resources

**Additional Resources**
- Información en español
- Early Detection of Speech, Language, and Hearing Disorders
- Questions about New Products and Services
- Talking with Your Audiologist or SLP
- Code of Ethics
- Books About Communication
- Advocacy & Outreach
- Contact your member of Congress
- Share Your Stories

**Select ASHA Products**
- Talking on the Go
- Beyond Baby Talk
- Speech, Language, and Hearing Milestones: Birth to Age Five DVD
Hearing and Balance

Hearing and balance disorders can be assessed, treated, and rehabilitated by an audiologist. Audiologists are experts in providing services in the prevention, diagnosis, and evidenced-based treatment of hearing and balance disorders for people of all ages. Hearing and balance disorders are complex with medical, psychological, physical, social, educational, and employment implications. Audiologists provide professional and personalized services to minimize the negative impact of these disorders, leading to improved outcomes and quality of life.

- How We Hear
  How does the ear and hearing mechanism work?

- Hearing Loss
  Information on the causes and effects of hearing loss in both children and adults.

- Hearing Screening and Testing
  Explains the difference between hearing screening and testing, with links to help find audiologists.

- Hearing Aids, Cochlear Implants and Assistive Technology
  Information about hearing aids, cochlear implants, assistive listening devices, and other options for hearing rehabilitation.

- Noise and Hearing Loss Prevention
  How to protect your hearing from the effects of noise.

- Dizziness and Balance
  Information on our balance system.

- Hearing Loss in Children
  Hearing loss, in varying degrees, affects two in every 100 children under the age of 18.

- Hearing Loss in Adults
  Knowing the risk factors and recognizing the symptoms of hearing loss in yourself or someone you know is the first step to improving the situation.

- Patient Information Handouts
  Easy-to-understand handouts for patients on hearing loss, balance, and tinnitus.

- Resources
  Related organizations, funding resources and support services.
How We Hear

**Parts of the Ear:** Outer Ear | Middle Ear | Inner Ear

Hearing is one of the five senses. It is a complex process of picking up sound and attaching meaning to it. The ability to hear is critical to understanding the world around us.

The human ear is a fully developed part of our bodies at birth and responds to sounds that are very faint as well as sounds that are very loud. Even before birth, infants respond to sound.

So, how do we hear?

The ear can be divided into three parts leading up to the brain — the outer ear, middle ear and the inner ear.

- The **outer ear** consists of the ear canal and eardrum. Sound travels down the ear canal, striking the eardrum and causing it to move or vibrate.
- The **middle ear** is a space behind the eardrum that contains three small bones called ossicles. This chain of tiny bones is connected to the eardrum at one end and to an opening to the inner ear at the other end. Vibrations from the eardrum cause the ossicles to vibrate which, in turn, creates movement of the fluid in the inner ear.
- Movement of the fluid in the **inner ear**, or **cochlea**, causes changes in tiny structures called **hair cells**. This movement of the hair cells sends electric signals from the inner ear up the auditory nerve (also known as the hearing nerve) to the brain.

The brain then interprets these electrical signals as sound.
Hearing Loss

Many disorders can affect the hearing of children and adults. This section provides information on the causes and effects of hearing loss in both children and adults.

- What is Hearing Loss?
- Types of Hearing Loss
- Causes of Hearing Loss
- Prevalence and Incidence of Hearing Loss in Children
- Prevalence and Incidence of Hearing Loss in Adults
- Effects of Hearing Loss on Development
- Auditory Processing Disorder
- Tinnitus
Hearing Screening and Testing

Difference Between Hearing Screening and Hearing Evaluation
The difference between hearing screening and hearing evaluation can sometimes be confusing. Here we explain the differences.

Hearing Screening
- Hearing Screening
- Who Should be Screened for Hearing Loss?

Hearing Testing
- Self-Test for Hearing Loss
- Audiologic (Hearing) Evaluation
- Types of Tests Used to Evaluate Hearing in Children and Adults
- Hearing Case History
- The Audiogram
- Degree of Hearing Loss
- Configuration of Hearing Loss
Hearing Aids, Cochlear Implants and Assistive Technology

Cochlear Implants
- Overview

Hearing Assistive Technology
- Overview
- Hearing Assistive Technology (HATS) for Children

Audiologic Re/habilitation
- Audiologic (Hearing) Rehabilitation
- Child Aural/Audiologic Habilitation
- Adult Aural/Audiologic Rehabilitation

Hearing Aids
- Overview
- Different Styles of Hearing Aids
- Types of Hearing Aid Technology
- Features Available in Hearing Aids
- First Steps in Considering Hearing Aids
- Myths and Facts about Hearing Aids
- Daily Care for the Hearing Aid
- Buying a Hearing Aid
- What You Should Know Before Buying Hearing Aids Online
- Health Insurance Coverage for Hearing Aids
- Hearing Aids for Children
- Paying for Children's Hearing Aids
- Early Intervention for Children with Hearing Loss
- Hearing Aids for Adults
- Funding Options for Adult Hearing Aids
- Hearing Aids and Cell Phones
Noise and Hearing Loss Prevention

- Noise
- Noisy Toys
- Noise at Work
- Classroom Acoustics
- Recreational Firearm Noise Exposure

For Brochures: These remain same on all public pages
Dizziness and Balance

- Dizziness and Vertigo
- Our Balance System: How does it work?
- Balance (or Vestibular) Rehabilitation
- Dizziness and Balance Resources
- Preventing Falls
Hearing Loss in Children

Audiologic Treatment/Habilitation
Causes of Hearing Loss in Children
Cochlear Implants
Hearing Aids for Children
Hearing Assistive Technology for Children
Hearing Screening
Ototoxic Medications
Types of Hearing Loss
Types of Tests Used to Evaluate Hearing in Children and Adults
Hearing Loss in Adults

Types of Hearing Loss
Causes of Hearing Loss in Adults
Audiologic (Hearing) Evaluation
Types of Hearing Tests
Hearing Assistive Technology for Adults
Hearing Aids for Adults
Patient Information Handouts

ASHA provides the following handouts to help patients understand issues related to hearing loss, balance, and tinnitus. Audiologists are experts in providing services in the prevention, diagnosis, and evidence-based treatment of hearing and balance disorders for people of all ages.

The following documents are in PDF format and require Adobe Reader or other PDF reader to be viewed and printed. Acrobat Reader is free and may be downloaded from the Adobe website.

- Adult Audiologic/Aural Rehabilitation [Español]
- Age-Related Hearing Loss [Español]
- Aural/Audiologic Habilitation for Children
- Causes of Hearing Loss in Children [Español]
- Childhood Hearing Loss [Español]
- Children and Hearing Aids [Español]
- Cochlear Implants [Español]
- Daily Care and Troubleshooting Tips for Hearing Aids [Español]
- Dizziness and Balance [Español]
- Ear Infections (Otitis Media) [Español]
- Earwax
- Effects of Hearing Loss on Development [Español]
- Hearing Assistive Technology [Español]
- Helping Others Cope With Hearing Loss [Español]
- Home, Community, and Recreational Noise [Español]
- Hyperacusis [Español]
- Identifying and Managing Hearing Loss in School-Age Children [Español]
- Learning About Hearing Aids [Español]
- Newborn Hearing Screening
- Noise [Español]
- Noise and Apps
- Ototoxic Medications
- Preventing Falls
- Recreational Firearm Noise Exposure
- Reimbursement For Consumer Coverage
- Swimmer's Ear (Otitis Externa) [Español]
- Tinnitus [Español]
- Tinnitus Infographic
- Tips for Improving Your Listening Experience [Español]
- Type, Degree, and Configuration of Hearing Loss [Español]
- Understanding Auditory Processing Disorders in Children
- Understanding Hearing Loss in Children [Español]
Resources

- Hearing Loss Organizations and Associations
- Funding Resources for Audiology Services and Hearing Aids
- Support Services for Adults
- Support Services for Children
ASHA
Patient Information Handouts
Often with children, aural rehabilitation services would more appropriately be called *habilitative* rather than *rehabilitative*. *Rehabilitation* focuses on restoring a skill that is lost. In children, the skill may not be there in the first place, so it has to be taught—hence, the services are habilitative, not rehabilitative.

Specific services for children depend on individual needs as dictated by the following:

- The current age of the child
- The age that the hearing loss started
- The age at which the hearing loss was discovered
- The severity of the hearing loss
- The type of hearing loss
- The level of hearing loss
- The age at which hearing aids or assistive devices were introduced

The aural habilitation plan is also influenced by the communication methods the child is using. Examples of communication methods include the following:

- Auditory-oral
- American Sign Language
- Total communication
- Cued speech
- Manually coded English

One of the most serious concerns of a hearing loss beginning in childhood is its disruption to learning speech and language. The combination of early detection and early use of amplification has been shown to have a dramatically positive effect on the early language abilities of children with a hearing loss. In fact, infants identified with a hearing loss by age 6 months can be expected to reach language development similar to hearing friends.

Aural habilitation/rehabilitation services for children typically involve the following:

- **Training in auditory perception.** This includes activities to increase awareness of sound, identify sounds, tell the difference between sounds (sound discrimination), and attach meaning to sounds. In the end, this training increases the child’s ability to tell one word apart from another using any remaining hearing. Auditory perception also includes developing skills in hearing with hearing aids and assistive listening devices, and learning how to handle easy and difficult listening situations.

- **Using visual cues.** This goes beyond separating sounds and words on the lips. It involves using all kinds of visual cues that give meaning to a message, such as the speaker’s facial expression, body language, and the context and environment in which the communication is taking place.

- **Improving speech.** This involves skill development in the production of speech sounds (by themselves, in words, and in conversation), voice quality, speaking rate, breath control, loudness, and speech rhythms.

- **Developing language.** This involves developing language understanding (reception) and language usage (expression) according to developmental expectations. It is a complex process involving concepts, vocabulary, word knowledge, use in different social situations, narrative skills, expression through writing, and understanding rules of grammar.

- **Managing communication.** This involves the child’s understanding the hearing loss, developing assertiveness skills to use in different listening situations, handling communication breakdowns, and modifying situations to make communication easier.

- **Managing hearing aids and assistive listening devices.** Because children are fitted with hearing aids at a young age, early care and adjustment are done by family members and/or caregivers. It is important for children to participate in hearing aid care and management as much as possible. As they grow and develop, the goal is for them to do their own adjustment, cleaning, and troubleshooting of the hearing aid and, ultimately, to take over responsibility for making appointments with service providers.
Services for children occur in the contexts of early intervention (ages birth-to-3) and school services (ages 3–21) through the Individuals with Disabilities Education Act.

In early intervention, an Individualized Family Service Plan, or IFSP, is developed and may include audiology services, speech-language pathology services, the services of teachers of the deaf and hard of hearing, and the services of other professionals as needed.

When the child turns 3, an Individualized Education Program, or IEP, is developed that will follow the child through age 21. The services provided are designed to maximize the child’s success in the general education environment and to transition to postsecondary education programs (vocational, higher education, or technical). Again, the IEP may specify audiology services, speech-language pathology services, and the services of teachers of the deaf and hard of hearing. Each professional has a role to play in the child’s educational achievement and success.

NOTES:

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For more information about hearing loss, hearing aids, or referral to an ASHA-certified audiologist, contact the:

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Rockville, MD 20850
800-638-8255
E-mail: actioncenter@asha.org
Website: www.asha.org

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2200 Research Boulevard, Rockville, MD 20850 • 800-638-8255
Nothing Smaller Than Your Elbow, Please


Earwax: We all have it. We want it gone.
Most audiologists are asked about earwax. What is it? Why is it sticky? Why do I make so much? How can I get rid of it?

Earwax is good for your ears.
Earwax keeps your ears clean.
Earwax, or cerumen, traps dust and dirt, like dried shampoo and shaving cream and sometimes even a bug. This is held together by oil and wax comes from glands living in your ear canal. The wax also protects and can stop bad bacteria from growing in the ear. And you thought it was just a pain!

Earwax isn’t always sticky.
Earwax can look different for different people. It can be wet (honey-colored and sticky) or dry (grayish and flaky). Wet or dry, your earwax depends on where your family came from. Families from Europe or Africa have wet wax. Dry and flaky wax is found in families from northeastern Asia.

You can have too much earwax.
Some medications, stress, and exercise will cause your body to make too much earwax. Also, your body will make more wax as you get older. For many people, earwax comes out by itself. Sometimes twists, turns, or small ear canals can trap wax. It cannot easilycome out. Wax can become trapped in your ear if, for example, you wear in-ear phones that block the way out making it hard to hear and possibly uncomfortable.

You can hurt your hearing and ear by trying to get rid of your earwax at home.
Most people do not know how to safely take out their earwax. You may use tooth picks, hair pins, or Q-tips to try and clean your ears. This may not be safe. You can puncture the eardrum or push the wax even further into the ear. Earwax then becomes impacted up close to the eardrum. The wax will get dry like a hard ball. This can cause a temporary hearing loss or dizziness.

An audiologist can help you take out your earwax.
An audiologist is the professional who focuses on preventing and evaluating hearing and balance disorders as well as providing audiologic treatment, including hearing aids. Audiologists will advise you on how to prepare for a professional ear cleaning. They often provide earwax removal. They can even schedule a few appointments if you want to keep your ears clean. Contact an audiologist if you are dizzy or have any problems hearing...

You may have heard,...put nothing smaller than your elbow in your ear and let Mother Nature do her work.

NOTES:

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E-mail: coc@asha.org
Website: www.asha.org

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2200 Research Boulevard, Rockville, MD 20850 • 800-628-8255
Before leaving the hospital, your newborn baby's hearing will be checked using a quick, simple test. Hospital hearing screens are important for finding hearing loss early. If you are not sure about the results of this screening, ask your doctor.

What happens if my baby doesn't pass the hospital hearing screening?
Not all babies pass the hearing screening the first time. Your baby will be screened again before leaving the hospital. If your baby does not pass the hospital hearing screenings, you will be referred to a pediatric audiolist for a diagnostic hearing test.

It is very important to follow up with the diagnostic hearing test. The diagnostic hearing test is safe for your baby. Tiny earphones are placed in your baby's ears, and the test measures your child's response to sound while he or she sleeps.

Diagnostic hearing testing will tell you:
- if your baby has hearing loss;
- how much hearing loss there is;
- what to do next.

Why is newborn hearing screening important?
- Hearing loss is invisible.
- 2-3 per 1,000 babies will have hearing loss at birth.

- Untreated hearing loss can cause speech and language delays.
- Early access to sound through hearing aids and other technology will help prevent speech and language delays.

Children with hearing loss that is not treated:
- have difficulty learning to listen and speak;
- have trouble learning to read;
- have difficulty in school.

Newborn hearing screening can only tell you if your baby's hearing is okay at birth. Some babies develop hearing loss later. Pay attention to how well your child reacts to sounds. Also keep track of his or her speech and language development. Ask your doctor to order a diagnostic hearing test if you have any concerns.

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800-638-8255
E-mail: actioncenter@asha.org
Website: www.asha.org
Is the world getting louder?
The world is becoming a noisier place, and more people have hearing loss because of it. Noise is one of the most common causes of hearing loss. Over 5 million children and 26 million adults now have hearing loss due to noise.

Every day we hear sounds that may damage our hearing. We are exposed to noise from machines, traffic, sporting events, music, concerts, etc. Audiologists agree that continued exposure to noise over 85 dB can cause hearing loss.

How do I know if I have a hearing loss?
Signs of hearing loss may include:
- Having a hard time understanding conversations, especially in loud places
- Turning up the television or radio louder than you used to
- Not wanting to talk to other people
- Ringing in your ears
- Experiencing “fullness” in your ears

What loud sounds may cause hearing loss?
Sound is measured in decibels. Damage to hearing occurs when the decibels are too high or you listen to noise for too long.

Below are examples of decibel levels.
- Whisper, quiet library—30 dB
- Normal conversation, sewing machine—60 dB
- Lawnmower, shop tools, truck traffic—90 dB
- Chainsaw, pneumatic drill, snowmobile—100 dB
- Sandblasting, loud rock concert, auto horn—115 dB
- Gun muzzle blast, jet engine (such noise can cause pain, and even brief exposure injures unprotected ears)—120–149 dB

Is there an app to measure sound?
With technology, we can now use our cell phones to measure sounds using special apps. Apps allow you to measure many different types of noise. You can find out how loud some everyday sounds are—like the noise made by your car, dog, television, or stereo. And you can measure sound in different places under different circumstances, like a sports arena when your team scores, a movie theater when the previews are on, or a classroom when the teacher is talking to the students.

Sound-level meter apps allow you to be more involved in your hearing health. Some can even alert you when the noise around you is too loud around. Sound-level meter apps can range in price from “free” to $49.99. However, just because one app is more expensive than another doesn’t mean it is better. You should read reviews of sound-level meter apps to see which one is best for you.

It is important to note that most of these apps do not meet the same standards as the equipment audiologists have in their offices. These apps should be used only to help you make better decisions about your hearing and hearing safety, so that you can better protect yourself from noise that can damage your hearing.

What else can I do to protect my hearing?
- Be aware of the noise around you. Know what noises are dangerous.
- Avoid being around loud sounds. If you can’t avoid exposure, wear earplugs, earmuffs, or other devices that dampen sound.
- Limit exposure time—don’t listen to music at high volume for long periods of time.
- Turn down the volume on your personal listening devices.
- Move as far as you can away from the noise source.

You cannot fix your hearing once your hearing has been damaged. Signs of hearing loss can include ringing or buzzing in your ears, muffled hearing, and difficulty hearing in noisy rooms or when people are at a distance. If you do think you have a hearing loss, make sure you have it checked by an audiologist. Even if you are not worried about your hearing, take advantage of hearing screenings offered in schools, doctor’s offices, or in the community. A hearing screening can alert you to early signs of hearing loss. Then you can follow up by taking steps to better protect your hearing.
Ototoxic Medications

What is ototoxicity?
Certain medications can damage the ear, resulting in hearing loss, ringing in the ear, or balance disorders. These drugs are considered ototoxic.

Hearing and balance problems caused by these drugs can sometimes be reversed when the drug therapy is discontinued. Sometimes, however, the damage is permanent.

When a decision is made to treat a serious illness or medical condition with an ototoxic drug, your health care team will consider the effects of the medications on your hearing and balance systems. The team will discuss with you how these side effects will affect your quality of life.

What are the effects I may notice from ototoxic medications?
Usually the first sign of ototoxicity is ringing in the ears (tinnitus). Over time, you may also develop hearing loss. This hearing loss may go unnoticed until your ability to understand speech is affected.

Balance problems can also occur as a result of ototoxic medications. You may experience a loss of balance, and you may feel unsteady on your feet. Sometimes these problems are temporary because the human body can learn to adapt to reduced balance control.

The effects of ototoxic medications can affect your quality of life. Not being able to hear conversations or feeling a little dizzy may cause you to stop participating in your usual activities.

What is happening inside my ear to cause these effects?
Ototoxic medications cause damage to the sensory cells used in hearing and balance. These sensory cells are located in the inner ear.

Which medications are ototoxic?
There are more than 200 known ototoxic medications (prescription and over-the-counter) on the market today. These include medicines used to treat serious infections, cancer, and heart disease.

Ototoxic medications known to cause permanent damage include certain aminoglycoside antibiotics, such as gentamicin (family history may increase susceptibility), and cancer chemotherapy drugs, such as cisplatin and carboplatin.

Drugs known to cause temporary damage include salicylate pain relievers (aspirin, used for pain relief and to treat heart conditions), quinine (to treat malaria), and loop diuretics (to treat certain heart and kidney conditions).

In some instances, exposure to loud noise while taking certain drugs will increase their damaging effects.

It is important to discuss with your doctor the potential for hearing or balance damage from any drug you are taking. Sometimes there is little choice. Treatment with a particular medication may provide the best hope for curing a life-threatening disease or stopping a life-threatening infection.

Can I protect myself from ototoxicity?
Research is being done to develop ways of protecting people from ototoxicity. At this time, there is no approved protective strategy.

What should I do before I begin treatment with ototoxic medications?
You should monitor your hearing and balance systems before and during treatment. Before starting the treatment, a baseline record of your hearing and balance...
should be recorded by an audiologist. The baseline record should include an audiologic hearing test focuses on your ability to hear very high pitch sounds, word recognition, and other tests when possible. This information can help you and your doctor make any important decisions to stop or change the drug therapy before your hearing is damaged.

For cases in which the drugs cannot be stopped or changed, the patient and the audiologist can take steps to manage the effects of the hearing loss that results.

During the course of your treatment, you should have periodic hearing tests as part of the monitoring process. This will help enable you to report any hearing changes, ringing in the ears, or balance problems that you may notice.

Contributed by the following members of the American Speech-Language-Hearing Association: Barbara Cone, PhD, CCC-A, ASHA Fellow; Patricia A. Dorn, PhD, CCC-A; Dawn Konrad-Martin, PhD, CCC-A; Jennifer J. Lister, PhD, CCC-A; Candice E. Ortiz, AuD CCC-A.

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Preventing Falls

People do things all the time that may cause them to fall. Falls can lead to injuries and can stop someone from doing what he or she enjoys. The good news is that many falls can be prevented.

What puts someone at risk for falling?
There can be problems in the environment, such as:
- Poor lighting
- Stairs that may be too steep or not in good repair
- Floor surfaces that are uneven—for example, moving from a hardwood floor to a carpet
- Outside surfaces that are uneven—for example, a sidewalk

Falls can also be caused by health issues, such as:
- Balance, hearing, or vision changes
- Muscle weakness or numbness
- Normal aging
- A fall in the past
- Stroke, Parkinson's disease, arthritis, or other problems
- Some medications
- A history of falls

Fear of falling
Some people develop a fear of falling, especially if they have fallen before. People can worry about falling and may stop going out or doing what they enjoy. They may have to rely on others to help them. A fear of falling puts the person at risk for more falls.

Preventing falls
- Use care in the bathroom: The bathroom can be a dangerous place. The floor can become wet and slippery, making it easier to fall. Getting in and out of the tub or shower is a common time for people to fall. To prevent falls in the bathroom:
  - Use nonslip mats or strips in the bathtub or shower.
  - Install grab bars inside and outside of the tub or shower.
- Install grab bars near the toilet for support.
- Clean up wet areas and spills as quickly as possible.
- Keep muscles strong through exercise: Sitting too much puts you at risk for falling! Many exercise programs improve strength and balance. Learn about classes that target health conditions that you might have, such as arthritis, osteoporosis, or Parkinson's disease.
- Learn about the medications you are taking: People who take four or more medications may be at risk for falling. Ask your doctor or pharmacist about the medications you are taking and any side effects. Make sure you tell your doctor about all the medications you are taking, including over-the-counter drugs, herbal remedies, and vitamins.
- Keep your vision sharp: Poor vision can make it harder to get around safely. To help make sure you're seeing clearly, have your eyes checked every year and wear glasses or contact lenses with the right prescription strength.
- Have your hearing checked: Good hearing helps us notice sounds in our environment that can warn of danger. People who cannot hear well may stay by themselves and be less active. Reduced activity can put you at risk for falling.
- Make your house safer: About half of all falls happen at home. Use bright lightbulbs to brighten dark rooms. Wear secure shoes, not slippers or flip-flops, inside and outside of the house.
- Use contrasting colors at steps or thresholds so you can see them clearly. For example, if your bathroom is painted white, make sure the shower curtain is a different color and the threshold into the shower is a contrasting color. On dark wooden floors, paint the edge of the steps a lighter color.
- KEEP EMERGENCY PHONE NUMBERS IN LARGE PRINT CLOSE BY.
A home safety check can help identify fall hazards, like clutter and poor lighting. Look for the home safety checklist at the Centers for Disease Control and Prevention (CDC) website (www.cdc.gov). Search for "Check for Safety: A Home Fall Prevention Checklist."
Recreational Firearm Noise Exposure

Michael Stewart, PhD, CCC-A, Professor of Audiology, Central Michigan University

Firearms are loud

Exposure to noise greater than 140 dB can permanently damage hearing. Almost all firearms create noise that is over the 140-dB level. A small .22-caliber rifle can produce noise around 140 dB, while big-bore rifles and pistols can produce sound over 175 dB. Firing guns in a place where sounds can reverberate, or bounce off walls and other structures, can make noises louder and increase the risk of hearing loss. Also, adding muzzle brakes or other modifications can make the firearm louder. People who do not wear hearing protection while shooting can suffer a severe hearing loss with as little as one shot, if the conditions are right. Audiologists see this often, especially during hunting season when hunters and bystanders may be exposed to rapid fire from big-bore rifles, shotguns, or pistols.

Hearing loss due to firearm noise

People who use firearms are more likely to develop hearing loss than those who do not. Firearm users tend to have high-frequency permanent hearing loss, which means that they may have trouble hearing speech sounds like “s,” “th,” or “v” and other high-pitched sounds. The left ear (in right-handed shooters) often suffers more damage than the right ear because it is closer to, and directly in line with, the muzzle of the firearm. Also, the right ear is partially protected by head shadow. People with high-frequency hearing loss may say that they can hear what is said but that it is not clear, and they may accuse others of mumbling. They may not get their hearing tested because they don’t think they have a problem. They may also have ringing in their ears, called tinnitus. The ringing, like the hearing loss, can be permanent.

Protecting your hearing from firearm noise

The good news is that people can prevent hearing loss by using appropriate hearing protective devices (HPDs), such as earmuffs or earplugs. However, studies have shown that only about half of shooters wear hearing protection all the time when target practicing. Hunters are even less likely to wear hearing protection because they say they cannot hear approaching game or other noises. While some HPDs do limit what a person can hear, there are many products that allow shooters to hear softer sounds while still protecting them from loud sounds like firearm noise.

Two types of HPDs designed for shooting sports are electronic HPDs and nonlinear HPDs. Electronic HPDs make softer sounds louder but shut off when there is a loud noise. The device then becomes hearing protection. Electronic HPD styles include earmuffs, custom-made in-the-ear devices, one-size-fits-all plugs, and behind-the-ear devices.

Nonlinear HPDs are not electronic and are designed to allow soft and moderate sounds to pass through, while still reducing loud sounds. Nonlinear HPDs can be either earplugs that are inserted into the ear or custom-made earmolds. Nonlinear HPDs that have filters are the best choice. They are better than those that use mechanical valves. This is because the valves may not close fast enough to protect hearing from loud noise.

The U.S. military uses both electronic and nonlinear HPDs to protect soldiers’ hearing during combat and weapons training. Electronic HPDs cost from less than $100 for earmuffs to over $1,000 for high-technology custom-made devices. Insert plug-type nonlinear HPDs cost around $10–$20, while custom-made nonlinear devices cost around $100–$150 per pair. Talk with your audiologist to choose the type of hearing protection that is right for you.
Tips to protect your hearing

- Always use some type of hearing protection any time you fire a gun.
- Always have disposable HPDs handy—make them part of your gear.
- Double-protect your ears, like putting muffs over plugs, when shooting big-bore firearms.
- Choose smaller caliber firearms for target practice and hunting.
- Choose single-shot firearms instead of lever action, pump, or semi-automatic guns.
- Avoid shooting in groups or in reverberant environments.
- Use electronic or nonlinear HPDs for hunting.

NOTES:
What You Should Know Before Buying Hearing Aids Online

Before you buy your hearing aids online, here are some things you should know.

The Internet offers many advantages for consumers looking for information and products. Online purchasing is convenient and private, and in some cases may offer cost savings for individuals. However, before you buy devices such as hearing aids online, here are some things you should know:

- A hearing aid is a complex medical device, not a simple sound amplifier.
- Hearing aids have digital technology that can be set by an audiologist to meet your personal hearing needs.
- Hearing aids bought online without a complete hearing test and other necessary hearing aid services may not meet your needs.
- Setting hearing aids for your needs requires specific computer software that audiologists may not have access to if the devices were bought online. For some online businesses, getting the hearing aid settings changed may only be possible by shipping the hearing aid back to the manufacturer, which means you will have to go without your hearing aid for a while.
- To help with your adjustment to hearing aids, audiologists generally provide office visits, reprogramming, counseling, and support when you buy a hearing aid from them. Hearing aids purchased online will generally not include these services.

If you suspect that you have a hearing loss, see your doctor. The medical exam will determine if your hearing loss is medically treatable. If it is not, you will be referred to a licensed audiologist to see if you are a candidate for hearing aids. With a medical referral, Medicare beneficiaries can get a complete hearing test at no cost.

- The U.S. Food and Drug Administration (FDA) strongly recommends that you see a doctor to rule out medical causes of hearing loss before buying hearing aids. For children 18 years old or younger, a medical evaluation is required.
- Online hearing screens cannot tell you the cause of hearing loss—the cause may be something as minor as too much ear wax or as serious as brain tumor. Currently, online hearing screens can only alert you that your hearing is not normal and that you need further testing.

Success with hearing aids begins with a complete hearing test by an audiologist.

For accuracy, hearing tests are conducted in sound-treated rooms using special earphones and equipment that have been calibrated to national standards. Online hearing screens do not meet these standards and may lead to inaccurate test results.

The hearing test begins with a thorough discussion about your lifestyle, listening needs, medical history, and any other concerns you may have. This will help with the selection of the special features you might need in your hearing aids.

Your audiologist will perform several different tests to determine what benefits you can expect from hearing aids:

- The audiogram is a record of the type and degree of your hearing loss and how well you can hear soft tones at different pitches. It is more than a hearing screening.
- Speech testing is a measure of how well you can hear and understand speech in quiet and background noise.
- Loudness discomfort testing will measure your ability to tolerate loud sounds and will help the audiologist set the hearing aids so that loud sounds are not uncomfortable.

Following the testing, the audiologist will explain the results and work with you to develop a plan to improve your hearing and communication. This discussion is important for understanding your hearing loss and what you can expect from hearing aids if they are recommended for you.
With a better understanding of you and your hearing loss, your audiologist may recommend hearing assistive technology (e.g., telephone amplifiers, TV devices, FM systems, audio-loops) to help you hear better in situations where hearing aids may be of less help (e.g., in a car, when the TV is on, or in groups of people talking). Hearing assistive technology can be used alone or with hearing aids.

Get the most out of your hearing aids.

If hearing aids are recommended, you will continue to work with your audiologist to ensure that the hearing aid is meeting your needs and that you are happy with the sound quality and improvements in communication.

- Using very specialized technology called Real Ear equipment; the audiologist can precisely measure and filter the sound the hearing aids send into your ear canals. This technology will make sure that speech sounds are reaching your ear in a safe and comfortable way.

- When you purchase hearing aids through a hearing aid dispensing practice, you are assured that the audiologist is appropriately licensed and has the computer software to make changes to the function of your hearing aids. When hearing aids are purchased online, it may be difficult to get adjustments locally if the dispenser does not have access to the programming software.

- You will learn how to care for and use your hearing aids and be able to demonstrate this comfortably before you leave the office.

- You will learn about your hearing loss, what to expect with the new devices, and how to function best in different listening environments. Additional fitting follow up and counseling is valuable and can continue until you are satisfied.

- Be sure to bring family members or significant others along to your appointments. It is important that they understand how you communicate best. Some audiologists offer special classes designed to help you live successfully with hearing loss.

- Properly fitted devices, counseling, and support go a long way toward improving your listening and satisfaction with these complex digital devices. A bad experience with hearing aids can make you less likely to try again.

Face-to-face care from knowledgeable professionals is the key to improving your hearing and communication with your new hearing aids.

Success with hearing aids involves more than the device.

To find a certified audiologist who can make a difference in your life, use the ProSearch directory.

NOTES:

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________________________________________
________________________________________
________________________________________
________________________________________
________________________________________

For more information about hearing loss, hearing aids, or referral to an ASHA-certified audiologist, contact the:

2200 Research Boulevard
Rockville, MD 20850
800-638-8255
E-mail: actioncenter@asha.org
Website: www.asha.org

Compliments of
American Speech-Language-Hearing Association
2200 Research Boulevard, Rockville, MD 20850 • 800-638-8255
“TIN-A-TUS” or “TIN-EYE-TUS”
EITHER WAY — IT IS ANNOYING

WHAT IS TINNITUS?
Tinnitus is the perception of sound, or “ringing,” in one or both ears when no other sound is present. It can be intermittent or constant—with single or multiple tones—and its perceived volume can range from subtle to shattering.

IS TINNITUS RELATED TO AGE?

PREVALENCE OF CHRONIC TINNITUS

Age in years

IS TINNITUS A COMMON PROBLEM?

2.6 BILLION AFFECTED WORLDWIDE
Self-reported tinnitus in people of all ages indicates that tinnitus affects up to 1/5 of the general population.

WHAT DOES TINNITUS SOUND LIKE?

beeping, buzzing, ringing, blowing
pulsing, clicking, chirping
whooshing, static, crickets

HOW CAN YOU PREVENT TINNITUS?

You can be exposed to damaging noise, a leading cause of tinnitus, from many sources in day-to-day or recreational activities, such as:

- Long flights
- Factories
- Loud music
- Firearms

Avoid loud noise whenever possible—if you must shout to be heard, then you should avoid the situation. You can also:

- Wear hearing protection.
- Turn down the volume.
- Take breaks from loud noises.

HOW CAN TINNITUS MAKE YOU FEEL?

INDIVIDUALS EXPERIENCING SYMPTOMS OF TINNITUS REPORT FEELING:

Withdrawn, Helpless, Scared, Sad
Unfocused, Stressed, Irritable, Anxious, Depressed
Nervous, Angry, Tense, Fatigued

WHAT CAN YOU DO IF YOU HAVE TINNITUS?

Your hearing should be tested by an audiologist certified by ASHA to see if hearing loss is present. Since tinnitus can be associated with a number of hearing-related conditions, the hearing (audiologic) evaluation can help provide information about the cause and treatment options for you.

For more information, scan the QR code or visit: www.asha.org/public/hearing/Tinnitus/
ATTACHMENT 6
MEMBERSHIP COMMITTEE REPORT

Probate and Estate Planning Section

March 14, 2015

The Membership Committee has been working on various initiatives over the past few months. As a brand new Committee, we have no budget. As you may recall, this year's annual Budget "Meetings" line item was increased by $1,000 in case, as a result of our Committee's activities, more Section members attend Council meetings and stay for lunch. While helpful to the mission of the Membership Committee, the $1,000 Meetings budget increase was not intended to cover all of our initiatives.

2014-15 initiatives include:

- Send letters to new attorneys to provide information about our Section and the benefits of being a Section member;
- 2015 ICLE Annual Probate Institute (May and June)
  - Host a vendor table to provide information to non-members of the Section on the benefits of Section membership. Informational materials (tool kits) are being assembled with the assistance of the State Bar of Michigan, at a reduced cost to our Section from normal retail costs.
  - Provide questions on Section membership to ICLE for the electronic survey held at the beginning of the Institute to both provide information about Section membership and gather information on why attendees are not members.
  - Participate in the new attorney breakout session on Thursday afternoon at the May Institute.
  - Host a new attorney/new Section member social event at the Traverse City office of Smith Haughey Rice & Roegge at the May Institute. Date/time is May 8, 2015 from 4-6 p.m.
- Connect with law students at Michigan law schools to educate them on Section membership benefits and provide information on the practice of Trusts & Estates law. Events will include food and will cover mileage of Membership Committee members who participate. Informational materials (took kits) will be provided; these are the same materials that will be available at the Annual Institute vendor table.

Funding Request

To fund these initiatives, our Committee is asking for $3,500, with a proposed allocation of this amount as follows:

- Law school outreach ($800). Includes $500 for informational tool kits and $300 for food/mileage.
- Institute vendor table ($700) Includes table setup, SBM folders with information, pens, jump drives, candy, etc.
- Traverse City social event at Smith Haughey Rice & Roegge ($2,000).
ATTACHMENT 7
At the request of President Morrissey, the committee was asked to review the following communication from Mr. Cunningham at the State Bar:

"The following public policy item was identified as being of interest to your particular committee or section. The State Bar may adopt a position on this matter. If you wish to submit comments for consideration, please do so by April 2, 2015. If your committee/section would like to consider this item but cannot do so by April 2nd, please notify me to that effect and consideration may be postponed. Comments should be submitted via a template located at the Public Policy Resource Center.

Your participation in this process is highly valued and appreciated.

2014-09 - Proposed Amendment of MCR 7.215
The proposed amendments of MCR 7.215(A)-(C) were submitted by the Court of Appeals. Proposed MCR 7.215(A) would clarify the term “unpublished” as used in the rule. The proposed amendment of MCR 7.215(B) would provide more specific guidance for Court of Appeals judges regarding when an opinion should be published. Finally, in response to what the Court of Appeals describes as an increased reliance by parties on unpublished opinions, the proposed revision of MCR 7.215 (C) would explicitly note that citation of unpublished opinions is disfavored unless an unpublished decision directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal. [Emphasis added.]

Issued: February 18, 2015
Comment Period Expiration: June 1, 2015"

Accordingly, the Committee reviewed the proposed changes and the comments attached. The Committee is in accord with the comments of Justice Markman to the extent that he agrees with the changes except for the proposed changes to MCR 7.215 (C).

Specifically, Mr. Anderton and Judge Murkowski referred to Justice Markman’s dissent to the proposed changes in subsection C, which states in part, “While I recognize that, under current court rules, unpublished Court of Appeals opinions by themselves do not
constitute binding precedent (that is a matter for another day’s discussion), MCR 7.215 (C)(1), I see no reason why they should be foreclosed from being invoked as persuasive authority.”

The Committee feels that the proposed change to the court rule which specifically disfavors the use of unpublished authority does nothing more than limit the information available to the court to evaluate the law. Especially in probate court, where the body of law regarding EPIC and the Trust Code is limited due to the “youth” of these statutes, we need all the background available to us.

For this reason, the Committee recommends to the Council that comments in accord with our objection to this provision disfavoring unpublished opinions should be filed with the State Bar by April 2, 2015.

Respectfully submitted,

Michele Marquardt

Michele Marquardt, Chair
Order

February 18, 2015

ADM File No. 2014-09

Proposed Amendment of
Rule 7.215 of the Michigan
Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.215 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

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

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

Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals

(A) Opinions of Court. An opinion must be written and bear the writer's name or the label "per curiam" or "memorandum" opinion. An opinion of the court that bears the writer's name shall be published by the Supreme Court reporter of decisions. A memorandum opinion shall not be published. A per curiam opinion shall not be published unless one of the judges deciding the case directs the reporter to do so at the time it is filed with the clerk. A copy of an opinion to be published must be delivered to the reporter no later than when it is filed with the clerk. The reporter is responsible for having those opinions published as are opinions of the Supreme Court, but in separate volumes containing opinions of the Court of Appeals only, in a form and under a contract approved by the Supreme Court. An opinion not designated for publication shall be deemed "unpublished."

(B) Standards for Publication. A court opinion must be published if it:
(1) establishes a new rule of law;

(2) construes as a matter of first impression a provision of a constitution, statute, regulation, ordinance, or court rule;

(3) alters, or modifies, or reverses an existing rule of law or extends it to a new factual context;

(4) reaffirms a principle of law or construction of a constitution, statute, regulation, ordinance, or court rule not applied in a recently-reported decision since November 1, 1990;

(5) involves a legal issue of significant continuing public interest;

(6) criticizes existing law; or

(7) creates or resolves an apparent conflict among unpublished Court of Appeals opinions brought to the Court’s attention of authority, whether or not the earlier opinion was reported; or

(8) [Unchanged.]

(C) Precedent of Opinions.

(1) An unpublished opinion is not precedentially binding under the rule of stare decisis. Citation to such opinions in a party’s brief is disfavored unless the unpublished opinion directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal. A party who cites an unpublished opinion shall explain why existing published authority is insufficient to resolve the issue and must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.

(2) [Unchanged.]

(D)-(J)[Unchanged.]

*Staff Comment:* The proposed amendments of MCR 7.215(A)-(C) were submitted by the Court of Appeals. Proposed MCR 7.215(A) would clarify the term “unpublished” as used in the rule. The proposed amendment of MCR 7.215(B) would provide more specific guidance for Court of Appeals judges regarding when an opinion should be published. Finally, in response to what the Court of Appeals describes as an increased reliance by parties on unpublished opinions, the proposed revision of MCR 7.215(C)
would explicitly note that citation of unpublished opinions is disfavored unless an unpublished decision directly relates to the case currently on appeal and published authority is insufficient to address the issue on appeal.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by June 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-09. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

MARKMAN, J. (concurring in part and dissenting in part). I support publishing for comment the proposed amendments of MCR 7.215(A), which would clarify the term “unpublished,” and MCR 7.215(B), which would revise the standards regarding when an opinion of the Court of Appeals should be published so that our court rule better conforms to the real-world practices and available resources of that Court. However, I would not publish for comment the proposed amendments of MCR 7.215(C), which provide that citing an unpublished opinion is “disfavored” and should only be done when a published opinion is “insufficient” to address the issue on appeal, and would further require an “explanation” of “why existing published authority is insufficient to resolve the issue . . . .” I would not publish this proposal any more than I would publish a proposal disclaiming reliance by our judiciary on the principle of stare decisis. In my judgment, the proposed amendments of MCR 7.215(C) represent a solution in search of a problem and misperceive the nature of the judicial exercise.

The judiciary of our state possesses one principal authority, the exercise of the “judicial power,” Const 1963, art 6, § 1, the power to resolve “cases or controversies.” People v Richmond, 486 Mich 29, 34 (2010). This power can be exercised through a variety of traditional forms--published opinions, unpublished opinions, authored opinions, per curiam opinions, and memorandum opinions. Each of these must conform to the requirements of the law, and each carries the force of law. Concerning the former proposition, this signifies that the substance of each of these forms of opinion will be in accord with the principles and practices of the rule of law in which persons stand equally before the law and in which disparate treatments must be reasonably justified. Concerning the latter proposition, this signifies that each of these forms of opinion will constitute the bona fide law of this state and will contribute case by case to defining the body of law from which the precedents of this state must be identified. That is, while
these distinct forms of caselaw may serve different practical purposes of judicial
decision-making, each has in common that it constitutes the genuine corpus of this state’s
law, both being derived from traditional sources of the law—the Constitution, statutes,
ordinances, and the common law—and serves in turn as the basis of future law.

An unpublished opinion is not unpublished because it states a second-class, an
ersatz, or a quasi- law. Rather, it is unpublished because a Court of Appeals panel has
determined pursuant to MCR 7.215(B) that it would be repetitive of an published
opinion; that the factual circumstances of a case are relatively unique and unlikely to be
replicated; or that, for one reason or another, a case is of limited practical significance.
An unpublished opinion, however, is not unpublished because it does not constitute
“real” law. If an unpublished opinion constituted something other than “real” law— if, for
example, it was derived from something other than a traditional source of the law, or if it
would not supply an appropriate basis for the future development of the law— the opinion
would simply not constitute a legitimate product of the “judicial power,” and thus it
should not have been undertaken by a court of law in the first place. Most certainly, an
unpublished opinion is not a judicial form by which to “bury” a decision that is in discord
with the law of this state.

It is certainly understandable why an unpublished opinion would typically be of
less practical citational value than a published opinion, for the former tend to be more
succinct, be less detailed in their analyses, be less thorough in their description of factual
backgrounds, and pertain to matters of legal dispute about which a more thorough and
more helpful published opinion exists. But these merely reflect the practical limitations
of the unpublished opinion form. When for whatever serendipitous or other reason an
unpublished opinion does communicate a legal principle deemed by a litigan to be
relevant in a later case, there is, in my judgment, no principled reason why it should not
be drawn to the attention of a later court or why it should be “disfavored” from
consideration by our court rules. Perhaps by not publishing an opinion, the Court of
Appeals erred in its assessment that there was a published opinion that better articulated
relevant legal principles; perhaps there were specific facts that served to render the earlier
case particularly on-point regarding a later case; or perhaps the sheer passage of time had
come to cast unexpected or unanticipated new light on the value of an existing published
or unpublished opinion. I do not know why in these or in other appropriate
circumstances a party should be constrained from assessing the fullness of the existing
law of this state in search of applicable precedents, or why opposing parties (and the
courts) should not be required to assess this law by traditional and customary standards.

While I recognize that unpublished Court of Appeals opinions do not, under
current rules, constitute binding precedent (that is a matter for another day’s discussion),
MCR 7.215(C)(1), I see no reason why they should be foreclosed from being invoked as
persuasive authority. Indeed, this Court itself has been persuaded by unpublished
opinions. See, for example, Cedroni Assoc, Inc v Tomblinson, Harburn Assoc, Architects
& Planners, Inc, 492 Mich 40, 51 (2012) ("Although Mago[1] is an unpublished and therefore non-binding opinion of the Court of Appeals, and, as the dissent points out, the facts in Mago are not identical to those in the instant case, we nevertheless find its reasoning persuasive."); Tomlak v Hamtramck School Dist, 426 Mich 678, 698-699 (1986) ("We find the reasoning of the Court of Appeals decision in Purcell v Ferndale School Dist, unpublished opinion per curiam, decided November 24, 1982 (Docket No. 59505), persuasive . . . ").

It is obvious that one traditional practical limitation on citing unpublished law--the relative inaccessibility of that law--has been significantly ameliorated in recent years and serves as no contemporary justification for the present effort to diminish the use of an unpublished Court of Appeals opinion. Indeed, the fact that those opinions are now so easily accessible probably explains the "unmistakable . . . present trend . . . away from no-citation rules." Barnett, No-Citation Rules Under Siege: A Battlefield Report and Analysis, 5 J App Prac & Process 473, 487 (2003). The federal courts are now actually prohibited from restricting the citation of an unpublished federal opinion. See FR App P 32.1(a). As the advisory committee that supported the adoption of this rule explained:

"[A] court should not be able to forbid parties from citing back to it the public actions that the court itself has taken. It is antithetical to American values and to the common law system for a court to forbid a party or an attorney from calling the court's attention to its own prior decisions, from arguing to the court that its prior decisions were or were not correct, and from arguing that the court should or should not act consistently with those prior decisions in the present case. One member called no-citation rules an 'extreme' measure. Another member said that it was 'ludicrous' that an attorney cannot cite a court's prior decisions to the court itself, but can cite those decisions to virtually everyone else in the world, including other courts. Yet another member—a judge—said that judges should not be the only government officials who can shield themselves from being confronted with their past actions." [Schiltz, Much Ado About Little: Explaining the Sturm Und Drang Over the Citation of Unpublished Opinions, 62 Wash & Lee L Rev 1429, 1451-1452 (2005), quoting the minutes of the spring 2004 meeting of the Advisory Committee on Appellate Rules (April 13-14, 2004), p 8.]

By discouraging parties from citing an unpublished opinion, this Court will only deprive itself and the Court of Appeals, and those who argue before these Courts, of "an important tool in managing the development of a coherent body of caselaw . . . ."

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Barnett, 5 J App Prac & Process at 487 (citation omitted). What is to be gained by instructing those who are the custodians of the law in our bench and bar that they should tie one of their hands behind their back in calling to the attention of appellate courts the considered judicial decisions of previous appellate courts? How are the values of equal treatment under the law furthered by a rule that “disfavors” reliance on a class of judicial decisions that have been decided by persons who have taken judicial oaths of office, and who have conformed to the rules and procedures of the judicial process, and who have abided by the requirements of the adversarial process, and who have rendered judgments to the best of their ability in accordance with the requirements of the laws and constitutions of the United States and the state of Michigan? Given the “unmistakable . . . present trend . . . away from no-citation rules,” id., and the practical and constitutional rationales for this trend, I do not see what purpose would be served if we, and we alone, move toward a no-citation rule. See id. (“Since . . . 2001, six states have switched from banning citation to allowing it; two more states are considering proposals to do the same; and no state during this period appears to have switched the other way.”) (emphasis added).

In summary, the relatively infrequent citing of an unpublished opinion poses little or no practical burdens on the courts of this state, and its “disfavoring” serves only to further delegitimize a practice that does not warrant that treatment. There is no opinion of the Michigan Supreme Court that is “uncitable,” and there should be no such opinion of the Court of Appeals, an institution of equally legitimate judicial standing and one equally entrusted with responsibility for the exercise of the “judicial power” of this state.