Probate and Estate Planning Section

Agenda

Saturday, March 15, 2014
8:30 a.m.

University Club of Michigan State University
Lansing, Michigan
PROBATE AND ESTATE PLANNING SECTION
OF THE
STATE BAR OF MICHIGAN

NOTICE OF MEETINGS

MEETING OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION

-AND-

MEETING OF THE SECTION'S COMMITTEE ON SPECIAL PROJECTS

March 15, 2014

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

The above stated meetings of the Section will be held at the University Club of Michigan State University, on Saturday, March 15, 2014, at the above address. The Section’s Committee on Special Projects meeting will begin at 8:30 a.m., followed immediately thereafter by a meeting of the Council of the Section.

James B. Steward
Secretary
Steward & Sheridan, PLC
205 South Main St.
Ishpeming, Michigan 49849
Telephone: 906.485.6311
Fax: 906.485.6315
E-mail: jamessteward@stewardsheridan.com
Schedule and Location of Future Meetings
All at University Club, Lansing, MI, except October meetings
Meetings Begin at 9:00 a.m. unless otherwise noted on Meeting Notice

The following is a list of 2013-2014 meeting dates

September 21, 2013
(Annual Meeting Precedes Council Meeting)

October 12, 2013
Townsend Hotel, Birmingham, Michigan

November 16, 2013
December 14, 2013
January 18, 2014
February 15, 2014
March 15, 2014
April 19, 2014
June 7, 2014

September 6, 2014 (Annual Meeting)
I. Call to Order

II. Excused Absences

III. Introduction of Guests

IV. Minutes of February 15, 2014, Meeting of the Council

V. Treasurer Report – Marlaine C. Teahan

VI. Chairperson’s Report – Thomas F. Sweeney

VII. Report of the Committee on Special Projects – Marguerite C. Lentz

VIII. Standing Committee Reports

A. Internal Governance
   1. Budget – James B. Steward
   2. Bylaws – Nancy H. Welber
   3. Awards – Douglas A. Mielock
   4. Planning – Amy N. Morrissey
   5. Nominating – Douglas G. Chalgian
   6. Annual Meeting – Amy N. Morrissey

B. Education and Advocacy Services for Section Members
   1. *Amicus Curiae* – David L. Skidmore
   2. Probate Institute – Shaheen I. Imami
   3. State Bar and Section Journals – Amy N. Morrissey
4. Citizens Outreach – Constance L. Brigman
5. Electronic Communications – William J. Ard

C. **Legislation and Lobbying**
   1. Legislation – Christopher A. Ballard
   2. Updating Michigan Law – Marguerite Munson Lentz
   3. Insurance Committee – Geoffrey R. Vernon
   4. Artificial Reproductive Technology – Nancy H. Welber

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

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

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

G. **Liaisons**
   1. Alternative Dispute Resolution Section Liaison –
   2. Business Law Section Liaison – John R. Dresser
   3. Elder Law Section Liaison – Amy R. Tripp
   4. Family Law Section Liaison – Patricia M. Ouellette
5. ICLE Liaison – Jeanne Murphy
6. Law Schools Liaison – William J. Ard
7. Michigan Bankers Association Liaison – Susan Allan
9. Probate Registers Liaison – Rebecca A. Schnelz
10. SCAO Liaisons – Marlaine C. Teahan, Constance L. Brigman, Rebecca A. Schnelz
11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz
12. State Bar Liaison – Richard Siriani
13. Taxation Section Liaison – George W. Gregory

IX. Other Business
X. Hot Topics
XI. Adjournment
### Officers for 2013-2014 Term

<table>
<thead>
<tr>
<th>Officer</th>
<th>Position</th>
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</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Thomas F. Sweeney</td>
</tr>
<tr>
<td>Chairperson Elect</td>
<td>Amy N. Morrissey</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>Shaheen I. Imami</td>
</tr>
<tr>
<td>Secretary</td>
<td>James B. Steward</td>
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<tr>
<td>Treasurer</td>
<td>Marlaine C. Teahan</td>
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### Council Members for 2013-2014 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>
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<tr>
<td>Murkowski, Hon. David M.</td>
<td>2011 (2nd term)</td>
<td>2014</td>
<td>No</td>
</tr>
<tr>
<td>Kerr, J. David</td>
<td>2011 (2nd term)</td>
<td>2014</td>
<td>No</td>
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<tr>
<td>Taylor, Robert M.</td>
<td>2011 (2nd term)</td>
<td>2014</td>
<td>No</td>
</tr>
<tr>
<td>Ballard, Christopher A.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Bearup, George F.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
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<tr>
<td>Welber, Nancy H.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
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<tr>
<td>Ard, W. Josh</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
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<tr>
<td>Ouellette, Patricia M.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
</tr>
<tr>
<td>Spica, James P.</td>
<td>2012 (2nd term)</td>
<td>2015</td>
<td>No</td>
</tr>
<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>Lentz, Marguerite M.</td>
<td>2010 (2nd term)</td>
<td>2016</td>
<td>No</td>
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<td>Allan, Susan M.</td>
<td>2010 (2nd term)</td>
<td>2016</td>
<td>No</td>
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<tr>
<td>Marquardt, Michele C.</td>
<td>2013 (1st term)</td>
<td>2016</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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<tr>
<td>Vernon, Geoffrey R.</td>
<td>2013 (1st term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
</tr>
</tbody>
</table>
Ex Officio Members

John E. Bos
Robert D. Brower, Jr.
Douglas G. Chalgian
George W. Gregory
Henry M. Grix
Mark K. Harder
Hon. Philip E. Harter
Dirk C. Hoffius
Brian V. Howe
Raymond T. Huetteman, Jr.
Stephen W. Jones
Robert B. Joslyn
James A. Kendall
Kenneth E. Konop
Nancy L. Little

James H. LoPrete
Richard C. Lowe
John D. Mabley
John H. Martin
Michael J. McClory
Douglas A. Mielock
Russell M. Paquette
Patricia Gormely Prince
Douglas J. Rasmussen
Harold G. Schuitmaker
John A. Scott
Fredric A. Sytsma
Lauren M. Underwood
W. Michael Van Haren
Susan S. Westerman Everett R. Zack
2013-14 Probate and Estate Planning Section Committees

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

James B. Steward, Chair
Marlaine Teahan
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

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

Amy N. Morrissey, Chair

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

Douglas G. Chalgian, Chair
George W. Gregory
Mark K. Harder

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

Amy N. Morrissey

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

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

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

Marguerite C. Lentz, Chair

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

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

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

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

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

Shaheen I. Imami

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

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

Citizens Outreach Committee
Mission: To provide for education of the public on matters related to probate, estate planning, and trust administration, including the publication of pamphlets and online guidance to the public, and coordinating the Section’s efforts to educate the public with the efforts of other organizations affiliated with the State Bar of Michigan

Constance L. Brigman, Chair
Rebecca A. Schnelz, (Liaison to Solutions on Self-help Task Force)
James B. Steward
Nancy H. Welber
Phillip E. Harter
Michael J. McClory
Michael Dean
Kathleen M. Goetsch
Melisa Marie-Werkema Mysliwiec
Neal Nusholtz
Michael L. Rutkowski
Melinda V. Sheets
Ellen Sugrue Hyman
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
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Phillip E. Harter
Nancy L. Little
Stephen J. Dunn
Neal Nusholtz
Michael L. Rutkowski
Serene K. Zeni

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

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

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

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

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

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

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

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

Geoffrey R. Vernon, Chair
Mark K. Harder
Thomas F. Sweeney
James P. Spica
Stephen L. Elkins
Robert Z. Rogosich

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
Larry Waggoner
Keven DuComb

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

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

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

Lorraine F. New, Chair
Nancy H. Welber,
Marguerite Munson Lentz
Geoffrey R. Vernon
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 J. McClory
Phillip E. Harter
Michael W. Bartnik
Ellen Sugrue Hyman
Kurt A. Olson
Raymond A. Harris

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

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

Charitable and Exempt Organization Committee
Mission: To educate the Section about charitable giving and exempt organizations and to make recommendations to the Section concerning Federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations

Christopher A. Ballard, Chair
Michael W. Bartnik
Robin D. Ferriby
Richard C. Mills
William R. Bloomfield
Lorraine F. New

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

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

Alternative Dispute Resolution Section Liaison
Sharri L. Rolland Phillips

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

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

Amy Rombyer Tripp

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**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

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**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

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

William J. Ard

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

Susan M. Allan

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**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

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

Rebecca A. Schnelz

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

Marlaine C. Teahan
Constance L. Brigman
Rebecca A. Schnelz
Solutions on Self-help Task Force Liaison
Mission: The liaison to the Solutions on Self-help (SOS) Task Force is responsible for maintaining bilaterals communications between the Section and the Task Force

Rebecca A. Schnelz

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

Richard Siriani

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

George W. Gregory
Attachment 1
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

February 15, 2014
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, Thomas F. Sweeney, called the meeting to order at 10:10 a.m.

II. Attendance

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

Sweeney, Thomas F.  Kerr, J. David
Morrisey, Amy N.  Lentz, Marguerite M
Imami, Shaheen I.  Lucas, David P.
Steward, James B.  Marquardt, Michele C.
Teahan, Marlaine C.  New, Lorraine F.
Allan, Susan M.  Ouellette, Patricia M.
Ard, W. Josh  Skidmore, David L.J.M.
Ballard, Christopher A.  Vernon, Geoffrey R.
Bearup, George F.  Welber, Nancy H.
Brigman, Constance L.

A total of 19 council members and officers were present representing a quorum.

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

Clark-Kreuer, Rhonda M.  Spica, James P.
Murkowski, Hon. David M.  Taylor, Robert M.

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

None.

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

Gregory, George W.  McClory, Michael S.
Harder, Mark K.  Mielock, Douglas A.
Harter, Hon. Phillip E.

E. Others in attendance:
III. Minutes of the January 18, 2014, Meeting of the Council

The minutes of the January 18, 2014, Meeting of the Council were included with the meeting materials posted on the Section’s web page prior to the meeting. A few minor corrections were noted. Motion by Michele C. Marquardt, second by George F. Bearup, to approve the minutes as corrected. The motion was approved on a voice-vote with no nays or abstentions.

IV. Treasurer’s Report

Marlaine C. Teahan presented the Treasurer's report as attached to the materials. Included with that report is a spreadsheet which reflects the budget approved by Council at the November, 2013 Council meeting. Also, new line items, at the top of the spreadsheet, reflect each month's beginning General Fund, Amicus Fund and Total Fund balance. The Amicus Fund balance ($25,000 as of the beginning of our last fiscal year) is a sub-fund of our total fund balance, and was created to deal with the probability that we will need to submit more Amicus briefs than normal regarding cases interpreting the Michigan Trust Code, which in turn would cause us to incur more amicus brief expenses than our normal budgeted amount. The budget amount for amicus brief expenses for last year (and this year) was $10,000. As of the end of the last fiscal year, we paid out all but $785 of that budgeted amount; that $785 has been added to the Amicus Fund balance, bringing the total Amicus Fund balance to $25,785.00. However, there are a few expenses incurred for last year’s amicus budget category that are being paid now; those remaining bills will be allocated to the Amicus Fund balance, instead of dipping into the 2013-14 budget of $10,000 for Amicus briefs.

Ms. Teahan also noted the mileage rate change for 2014 to $0.56 per mile, and her report included an overview of the information to be supplied when submitting expense reimbursement requests.

V. Chairperson’s Report – Thomas F. Sweeney

Incoming-Chairperson, Thomas F. Sweeney, presented the Chairperson’s report:

- Mr. Sweeney circulated an e-mail from Gregory P. Conyers, the State Bar Director of Diversity, regarding the Section leadership questionnaire that the Diversity and Inclusion Advisory Committee (DIAC) asks all Section leadership to complete. A copy of that e-mail is attached. The link to that questionnaire is https://www.surveymonkey.com/s/sections2014.
Beginning in November 2014, ICLE is proposing to offer one "Experts" seminar each year in the fall. For fall of 2014, Natalie Choate would present at Plymouth on Nov. 18 for the first program. It will be called "Estate and Distribution Planning for Retirement Benefits" and will last for 3-3.5 hours. ICLE has requested that the Section serve as a financial sponsor and contribute $4,000 to Natalie's honorarium (about one-third; her total fee is over $12,000). The expected registration fee would be $165 for section members; $195 for others. This program would be web-cast, which would be available for viewing for up to 90 days, so it can be viewed by more section members; however, other speakers may not agree to a web cast. This proposal is for this year only and does not represent a continuing commitment to future “Experts” programs. The proposal was approved on a Council vote of 19-0, with no nays and no abstentions.

The ADR section has requested permission to send an e-blast to the Probate section members about its ADR program to encourage greater attendance. ADR would pay the cost; Mr. Sweeney suggested that we grant such permission; no one raised any concerns or objections, so Mr. Sweeney will approve.

The State Bar Unauthorized Practice of Law Committee has asked for assistance enlisting section members to volunteer for a series of one hour programs it is sponsoring for presentations on August 6 in different communities around Michigan to inform the public about "Who should I Trust" in estate planning. Presentation sites & speakers are needed, esp on west side of state. Mr. Sweeney has appointed an ad hoc committee to solicit volunteers. The members of that committee are: Robert M. Taylor, Chair, J. David Kerr, and Rick Mills. If anyone can help with these presentations, please contact the committee. Constance L. Brigman's contributions to Guardianship, Conservatorship, and End of Life Committee were specifically noted. Although Ms. Brigman is stepping aside as chair of the committee, she is staying on to guide transition as Rhonda M. Clark-Kreuer and Katie Lynwood take over as co-chairs. Ms. Brigman will now chair the Citizens Outreach committee.

The Updating Michigan Law Committee is continuing work on the proposed domestic asset protection trust ("DAPT") legislation. However, the trust departments of the banks and the commercial departments of the banks are not in agreement on this proposal. As a result, the Chairperson of that Committee, Marguerite Munson Lentz, has found it necessary to recuse herself from further work on this project, because her firm represents several bank credit departments, and the committee will continue its work without her participation.

VI. Report of the Committee on Special Projects – Marguerite M. Lentz

Marguerite M. Lentz presented the following report for CSP:
• CSP reviewed and discussed SB 743, which proposes to make membership in the State Bar of Michigan purely voluntary. CSP recommends that Council oppose this proposal as being contrary to the interests of the people of the State of Michigan. Motion by Ms. Lentz to accept the recommendation of CSP to oppose SB 743. After discussion, the motion was approved on a Council vote of 19-0, with no nays and no abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.

• CSP reviewed and discussed the current draft of the proposed Patient’s Guide to Health Care Decision Making which the Council’s Guardianship, Conservatorship, and End of Life Committee has prepared. Chairperson Sweeney has asked that all those who have suggestions and comments send them to him and he will go over them with the committee members who are working on this phase of the project.

• CSP reviewed the almost final draft of proposed revisions to our current Bylaws as approved at the last Council meeting. (See materials included with Meeting Agenda). However, one issue remains, which is whether to modify the notice procedure for submitting proposed amendments to the section members to provide more flexibility in how the proposals are distributed. CSP discussed several examples of wording used by other sections, and recommends adoption of wording from the corresponding portion of Article X of the Master Lawyers Section Bylaws. Motion by Ms. Lentz to accept the recommendation of CSP to incorporate into Article 9 of our proposed Bylaws, the wording corresponding to that portion of Article X of the Master Lawyers Section Bylaws which deals with distribution of the proposed Bylaw amendment to the members of the Section. The motion was approved on a Council vote of 19-0, with no nays and no abstentions, including authorizing Nancy H. Welber to finalize the exact wording to fit into our Bylaws structure.

• CSP reviewed the latest report from our Ad Hoc Committee on Undue Influence Jury Instructions regarding proposed revisions to Michigan Model Civil Jury Instructions relating to undue influence claims in Will and Trust contests: M Civ J1 170.44, 170.45, 179.10 and 179.25, as published by the Michigan Committee on Model Jury Instructions (the "MJI Committee"). See copy of that report attached hereto. CSP recommends that Council adopt the recommendation of our committee and oppose the proposed revisions to M Civ J1 170.44 & 179.10 in their current form. Motion by Ms. Lentz to accept the recommendation of CSP and oppose the proposed revisions to M Civ J1 170.44 & 179.10 in their current form. The motion was approved on a Council vote of 13 in favor; 1 nay; 5 abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.
George F. Bearup reported to CSP that one of the members of his Committee, David Fry, met with Matt Blakely of Representative Pettalia’s office regarding our proposed amendment to 2012 PA 497. See attached report. Mr. Blakely feels that the amendment should clear up as much as possible regarding the questions that have arisen about the proper interpretation of the current statute, and submitted a revised version of the proposed amendment, which has been edited by the Committee as shown in the attached report. Further discussions will be forthcoming.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – James B. Steward

No report.

2. Bylaws – Nancy H. Welber

No report, other than the discussion reported above as part of the CSP report.

3. Awards – Douglas A. Mielock

No report.

4. Planning – Amy N. Morrissey

No report.

5. Nominating – Douglas G. Chalgian

No report.

6. Annual Meeting – Amy N. Morrissey

No report.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

No report.

2. Probate Institute – Shaheen I. Imami

Mr. Imaami reported that the speakers slate for the Institute is complete; but marketing is slightly behind. There will be a registration fee discount for new lawyers.

3. State Bar and Section Journals – Amy N. Morrissey
4. Citizens Outreach – Constance L. Brigman

Ms. Brigman reported that the committee has met and started its review our brochures to identify issues that need to be addressed. The Committee has noted that the style of the brochures is not consistent. The Committee has also noted that for some brochures, such as those explaining durable powers of attorney, some states have two versions: one from view point of person and other from view point of family, so the Committee will look into this concept.

5. Electronic Communications – William J. Ard

No report.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Mr. Ballard reported that SB 4638, 4639, and 4640 (which relate to recording affidavit and copy of original conveyance) have not seen much movement.

Rebecca Bechler of PAA commented that the legislature is occupied with various budget issues including how to handle the expected revenue “surplus” during this election year: as a result, the actual time to get legislation considered and passed will be much shorter than usual. She also mentioned that the proposed probate appeals legislation is in the drafting process. Also, the Michigan Supreme Court has decided to appoint a task force to look at the voluntary bar association issue.

2. Updating Michigan Law – Marguerite Munson Lentz

No report.

3. Insurance Committee – Geoffrey R. Vernon

Mr. Vernon reported that SB 31 and SB 32 have been signed into law.

SB 32 (now PA 8 of 2014), added a new section to the Michigan Trust Code, MCL 700.7114, which addresses the question of when the trustee of a trust has an insurable interest in the life of an insured. It resolves the lingering concerns that existed after the Chawla case in 2005. The statute closely follows Section 113 of the Uniform Trust Code, which was added to the UTC in 2010. The section focuses on the relationship between the settlor of the trust and the insured, and for whose benefit the policy proceeds have been received. Here’s a link to the legislation: http://legislature.mi.gov/doc.aspx?2013-SB-0032

However, additional issues remain. Bankers are looking for some protection liability from ILITs investment duties responsibilities, including who is responsible for selecting the policy? Perhaps could be drafted as a safe harbor regarding what the Trustee is to review. These same issues can apply to the attorney who is drafting the trust or advising the trustee. Perhaps this concept could be packaged with the asset protection trust concept. The Committee is looked at existing statutes in other states.

4. Artificial Reproductive Technology – Nancy H. Welber

Ms. Welber reported that the Committee is meeting regularly and continuing work on a proposed bill.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

No report.

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

No report, other than as stated above under the Chairperson’s report.

3. Specialization and Certification – James B. Steward

No report.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Michele C. Marquardt

Ms. Marquardt reported that the Committee is working with Rebecca Schnelze on developing a brochure for lay persons regarding options to consider before filing for guardianship. After this has been developed, the Committee submit a proposal to Council.

Also, the Committee has received an e-mail from Mark Pasquali noting that the form for a petition for formal probate (PC 559) does not appear to exactly correspond to the statute, so the Committee will look at that.

The Committee has also looked at the recently proposed amendment to MCR 5.109 (Notice of Guardianship Proceedings Concerning Indian Child) and recommends no comment on the proposed changes.

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

F. **Areas of Practice**

1. **Real Estate – George F. Bearup**

No report, other than the discussion reported above as part of the CSP report.

2. **Transfer Tax Committee – Lorraine F. New**

Ms. New reported that the Internal Revenue Service has published Revenue Procedure 2014-18 which provides a method of obtaining an extension of time to make a portability election for some estates if the decedent died before 2014. See tax nugget attached to the meeting materials.

3. **Charitable and Exempt Organization – Christopher A. Ballard**

Mr. Ballard reported that the Committee is looking at the court rules regarding notice to the attorney general and whether they mesh with statutory requirements of notice when a charitable trust is involved.

4. **Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer**

No report, other than as stated above under the Chairperson’s report. As stated under the CSP report, comments and suggestions regarding the currently proposed draft of the Patient’s Guide to Health Care Decision Making should be sent to Chairperson Sweeney.

G. **Liaisons**

1. **Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips**

No report.

2. **Business Law Section Liaison – John R. Dresser**

No report.

3. **Elder Law Section Liaison – Amy R. Tripp**

No report.

4. **Family Law Section Liaison – Patricia M. Ouellette**

Ms. Ouellette reported that the Family Law Section remains concerned about the proposal to repeal dower. That Section is proposing that such a repeal be tied barred to some sort of notice requirement to a spouse when real estate is being transferred.
5. ICLE Liaison – Jeanne Murphy

No report, other than the discussion about the fall “Experts” program shown above under the Chairperson’s report.

6. Law Schools Liaison – William J. Ard

No report.

7. Michigan Bankers Association Liaison – Susan Allan

No report.


No report.

9. Probate Registers Liaison – Rebecca A. Schnelz

No report.

10. SCAO Liaisons – Marlaine C. Teahan, Constance L. Brigman, Rebecca A. Schnelz

No report.

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

No report.

12. State Bar Liaison – Richard Siriani

No report.

13. Taxation Section Liaison – George W. Gregory

Mr. Gregory reported that the Taxation Section has also discussed the issue of real estate tax uncapping in connection to transfers to family members. He also noted that the Taxation Section’s annual conference will be held in May, as usual.

VIII. Other Business

None.

IX. Hot Topics
X. **Adjournment**

Meeting adjourned by Thomas F. Sweeney at 11:20 a.m.
Greetings Section leaders,

Below please find the link to the Section leadership questionnaire that Diversity and Inclusion Advisory Committee (DIAC) Co Chair Judge Stephens referenced in her recent letter to you. We ask you again here to encourage your entire leadership body to participate, as it will optimize the usefulness of the information. Please feel free to forward the link to them.

https://www.surveymonkey.com/s/sections2014

Many thanks to those of you who provided us feedback. Please take some time to answer the questions at your earliest convenience, so that we can compile and utilize the results for you. The link will only be open for a limited time. The answers will only be shared in the aggregate. Feel free to contact us with any questions or concerns.

Thank you in advance for your participation in this important effort.

Gregory P. Conyers
Director of Diversity,
MEMORANDUM

TO: Thomas F. Sweeney, Chair, Probate & Estate Planning Council
FROM: David L.J.M. Skidmore, Chair, Ad Hoc Committee on Undue Influence Jury Instructions
DATE: February 14, 2014
RE: Proposed Revisions to Michigan Model Civil Jury Instructions Regarding Undue Influence

INTRODUCTION

The Committee on Model Jury Instructions (the “MJI Committee”) has published proposed revisions to the Michigan Model Civil Jury Instructions related to undue influence claims, soliciting comment on the proposed revisions. The Probate & Estate Planning Council (the “Council”) has formed an ad hoc committee to advise the Council regarding comment on the proposed revisions (the “Ad Hoc Committee”). The Ad Hoc Committee recommends that the Council should formally comment on the proposed revisions as outlined in this memorandum.

MICHIGAN LAW REGARDING PRESUMPTION OF UNDUE INFLUENCE

By way of background, undue influence in will and trust contests can be difficult to establish because direct evidence rarely exists. Accordingly, the “English rule that undue influence was never presumed was softened to allow circumstantial evidence, such as the existence of a fiduciary relationship[,] [t]o raise the presumption of undue influence.” Scalise, Jr., Undue Influence and the Law of Wills: A Comparative Analysis, 19 Duke J Comp & Int’l L 41, 53 (2008).

As the Michigan Supreme Court explained in In re Hartlerode’s Will, “there are certain cases in which the law indulges in the presumption that undue influence has been used, as where a patient makes a will in favor of his physician, a client in favor of his lawyer, or a sick person in favor of a priest or spiritual adviser.” 183 Mich 51, 60; 148 NW 774 (1914). In those circumstances, “experience has taught that if certain evidentiary facts [can] be established, there is such a strong practical likelihood that another stated fact will be true that that fact may be presumed.” Id.

Therefore, under Michigan law, “[t]he presumption of undue influence is brought to life upon the introduction of evidence which would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary or an interest which he represents benefits from a transaction, and (3) the fiduciary had an opportunity to
influence the grantor's decision in that transaction.” *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976).

A presumption has a dual nature. On the one hand, there is an evidentiary aspect to a presumption, because a presumption is an “assumed fact created by operation of law.” *Benson*, *Michigan Rule of Evidence 301, I Presume*, 87 Mich B J 34, 35 (2008). On the other hand, there is a procedural aspect to a presumption, such that the presumption of undue influence has been described as a “procedural mechanism” that “regulates the burden of proceeding with the evidence.” *Id.*

The contestant (the party contesting the validity of the will/trust) may seek to establish the presumption of undue influence in order to invalidate the instrument. In that case, the proponent (the party propounding the validity of the will/trust) will seek to defeat the presumption of undue influence in order to uphold the validity of the instrument.

The contestant who is alleging undue influence has the burden of proof in the sense of the burden of persuasion. “The ultimate burden of proof in undue influence cases does not shift; it remains with the plaintiff throughout trial.” *Kar*, 399 Mich at 538 (rejecting argument “that, once established, the presumption shifts the burden of proof to the defendant to show an absence of undue influence.”). “[A] presumption . . . does not shift to [the party against whom it is directed] the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.” MRE 301.

The burden of persuasion is one aspect of the burden of proof. “Generally the burden of persuasion is allocated between the parties on the basis of the pleadings. The party alleging a fact to be true should suffer the consequences of a failure to prove the truth of that allegation. A plaintiff has the burden of proof (risk of nonpersuasion) for all elements necessary to establish the case.” *Kar*, 399 Mich at 539. “This burden never shifts during trial. Therefore[e], plaintiffs, who alleged the existence of undue influence, bore the ultimate burden of persuading the trier of fact that undue influence was used to procure the deed.” *Id.*

The burden of production is another aspect of the burden of proof; it determines which party has the current duty to go forward with production of evidence in order to avoid a directed verdict. “[T]he burden of production always rests with the party in danger of losing a motion for a directed verdict.” *Benson*, 87 Mich B J 34. This burden can shift during trial. “Initially, the burden of going forward with evidence (the risk of nonproduction) is upon the party charged with the burden of persuasion. However, the burden of going forward may be shifted to the opposing party.” *Kar*, 399 Mich at 540.

If the contestant offers proof of the underlying elements required to establish the presumption of undue influence, then the contestant will avoid entry of an unfavorable directed verdict. “It [i.e., the presumption] is a procedural device which allows a person relying on the presumption to avoid a directed verdict[.]” *Widmayer*, 422 Mich at 289.

MRE 301 provides that the establishment of the presumption by the contestant imposes a burden on the proponent of producing evidence to rebut or meet the presumption: “In
all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption[].” Accord *Widmayer*, 422 Mich at 289 (“[T]he function of a presumption is solely to place the burden of producing evidence on the opposing party. It is a procedural device...”).

The trial court decides whether the contestant’s proofs are sufficient to establish the presumption of undue influence, for purposes of regulating the burden of production. “Under Thayer/MRE 301, the judge makes all determinations as to the existence, or nonexistence, of the presumption.” *Widmayer*, 422 Mich at 288. The Court need not, and should not, discuss its procedural determination regarding the presumption with the finder of fact, in order to avoid influencing its verdict.

After the burden of production shifts, the opposing party must introduce evidence that rebuts the presumption of undue influence. “[A] presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption...” MRE 301. “At a minimum, a presumption shifts to the opponent of the presumed fact the burden of going forward with evidence to rebut the fact presumed.” *Benson*, 87 Mich B J 34. “The immediate legal effect of a presumption is procedural[,] it shifts the burden of going forward with the evidence relating to the presumed fact. Once there is a presumption that fact C is true, the opposing party must produce evidence tending to disprove either facts A and B or presumed fact C[,]” *Kar*, 399 Mich at 540-41, quoting *In re Wood Estate*, 374 Mich 278, 288-289; 132 NW2d 35 (1965).

How much proof must the opposing party offer in order to rebut the presumption? “[I]t is clear that, under the ‘Thayer bursting bubble’ theory of presumptions, which theory is embodied in MRE 301, substantial evidence is required [to meet the burden of producing evidence sufficient to rebut a presumption]. ... Michigan courts have repeatedly held that substantial evidence consists of more than a mere scintilla of evidence but may amount to substantially less than a preponderance.” *Jozwiak v N Michigan Hosps, Inc*, 231 Mich App 230, 238; 586 NW2d 90 (1998), citing *Widmayer*, 422 Mich at 286.

If the proponent offers sufficient rebuttal evidence, then the case goes to the jury. “[I]f the proponent has produced so much evidence that the burden of production has shifted to the defendant, and if the defendant has met that burden with enough evidence to rebut the plaintiff’s evidence, the trial court will simply submit the issue to the jury. In other words, the burden of persuasion comes into play only after the proofs at trial are closed and the case is presented to the jury.” *Benson*, 87 Mich B J 34.

If the opposing party fails to produce evidence rebutting the presumption, then the court should grant a directed verdict to the contestant. “[I]f the proponent fails to produce evidence rebutting the presumption, then the court should grant a directed verdict to the contestant.” *Widmayer*, 422 Mich at 289. Accord *Kar*, 399 Mich at 542 (“[T]he plaintiff will always satisfy the burden of persuasion when the defendant fails to offer sufficient rebuttal evidence.”).
If and when the case goes to the jury, the jury instructions should not discuss the presumption. “[I]nsofar as Wood appears to hold that the trier of fact must be instructed as to the existence of the presumption . . . it is no longer controlling precedent. We are persuaded that instructions should be phrased entirely in terms of underlying facts and burden of proof.” Widmayer, 422 Mich at 288-89.

Where the contestant has invoked the presumption, the jury will make factual findings as to the existence of each of the underlying elements. If the jury finds that the elements of the presumption are established, then it must also find that the presumed fact (will/trust as product of undue influence) is also established, unless the evidence shows that the nonexistence of the presumed fact (undue influence) is more probable than the existence of the presumed fact. “That is, if the jury finds a basic fact, they must also find the presumed fact, unless persuaded by the evidence that its nonexistence is more probable than its existence.” Widmayer, 422 Mich at 290-291. “Again, even though the presumptions were overcome, permissible inferences remained. These inferences might have been sufficient to satisfy the trier of fact even in the face of the rebutting evidence.” Id.

The finder of fact weighs the contestant’s evidence (including the potential inference of undue influence, arising from the presumption elements) against the proponent’s evidence. “Almost all presumptions are made up of permissible inferences. Thus, while the presumption may be overcome by evidence introduced, the inference itself remains and may provide evidence sufficient to persuade the trier of fact even though the rebutting evidence is introduced. But always it is the inference and not the presumption that must be weighed against the rebutting evidence.” Widmayer, 422 Mich at 289.

DESCRIPTION OF PROPOSED REVISIONS

The MIJ Committee has proposed revisions to the following Michigan Model Civil Jury Instructions relating to undue influence claims: M Civ JI 170.44, 170.45, 179.10 and 179.25. The proposed revisions to the instructions at issue are attached as Exhibit A.

A. M Civ JI 170.44 (“Will Contests: Undue Influence”)

The MIJ Committee has proposed making seven revisions to M Civ JI 170.44. First, the title of the instruction would be changed to: “Will Contests: Undue Influence and Confidential or Fiduciary Relationship.” Second, in the sentence where the current instruction provides that the contestant has the burden of proof, the “by a preponderance of the evidence” standard would be inserted. Third, the following provision would be added to the instruction: “Undue influence may be proven by indirect or circumstantial evidence.”

Fourth, the following provision would be added to the instruction, only to be used where the contestant seeks to establish a presumption of undue influence (the “Proposed Presumption Provision”):
If you find:

a. That [name] had a confidential or fiduciary relationship with the decedent; and

b. That [name] (or a person or interest he represented) benefited from the will; and

c. That [name] had an opportunity to influence the decedent in giving that benefit;

then you should consider such circumstances, along with all the evidence, in determining whether the contestant has proven undue influence.

Fifth, the following definition would be added to the instruction, only to be used in conjunction with the Proposed Presumption Provision:

A ‘confidential or fiduciary relationship’ is a relationship where one person places confidence, reliance and trust in another person, such that the second person has authority or power over some aspect of the first person’s affairs, and the first person expects that the second person will act with integrity and fidelity towards the first person’s affairs. The relationship may be formal, informal, professional and/or personal.

(This definition is actually part of the Proposed Presumption Provision, but the definition has been separated for purposes of the discussion below.)

Sixth, the following note on use, corresponding to the new Proposed Presumption Provision, would be added:

Only give the instruction regarding a confidential or fiduciary relationship if the contestant seeks to establish a presumption of undue influence and has offered evidence of each of the three elements of the presumption into evidence. Whether the contestant has introduced evidence of the three elements of the presumption is a procedural matter, rather than an evidentiary matter, because it is the job of the finder of fact to decide, as an evidentiary matter, whether the contestant has proven the facts. *Widmayer v Leonard*, 422 Mich 280, 289; 373 NW2d 538 (1985). If the court determines, as a procedural matter, that the contestant has established the presumption, the burden of producing evidence shifts to the opposing party, but the burden of proof always remains with the contestant. MRE 301. The court need not, and should not, discuss its procedural determination as to the
presumption with the finder of a fact, in order to avoid influencing its verdict. If the opposing party produces no evidence to rebut the presumption, the court may direct a verdict in favor of the contestant. Widmayer, 422 Mich at 289. If the opposing party produces evidence to rebut the presumption, an inference remains for the jury to consider, which is reflected in the above instructions. See id.

Seventh, several additional cases would be cited in the comment to this instruction.

B. M Civ JI 170.45 (“Will Contests: Existence of Presumption of Undue Influence – Burden of Proof”)

The MJI Committee has proposed deleting M Civ JI 170.45, for the reason that “the proposed amendment to M Civ JI 170.44” would make “M Civ JI 170.45 no longer necessary.”

C. M Civ JI 179.10 (“Trust Contests: Undue Influence”)

The MJI Committee has proposed making seven revisions to M Civ JI 179.10, which are identical to the proposed revisions to M Civ JI 170.44.


The MJI Committee has proposed deleting M Civ JI 179.25, for the reason that “the proposed amendment to M Civ JI 179.10” would make “M Civ JI 179.25 no longer necessary.”

COMMENT ON PROPOSED REVISIONS

The Ad Hoc Committee believes that the Proposed Presumption Provision in M Civ JI 170.44 and 179.10 is inconsistent with, and contrary to, Michigan law and should not be adopted. Otherwise, the Ad Hoc Committee approves of the proposed revisions. (Two typographical errors were noted: in M Civ JI 170.44, the omission of an asterisk at the beginning of subparagraph b, following the clause that begins “It is not improper...”; and in M Civ JI 179.10, “trust” should replace “will” in the sentence that reads “If you find ... That [name] ... benefited from the will...”)

Under M Civ JI 170.44 and 179.10, the Proposed Presumption Provision would be used in will or trust contests where (1) the contestant meets its burden of production by introducing evidence of three factors that give rise to the presumption of undue influence; (2) the proponent meets its burden of production by introducing evidence that rebuts the presumption of undue influence; and (3) the trial court sends the case to the jury as finder of fact. Under that scenario, the Proposed Presumption Provision would instruct the jury that, if it finds the
existence of the three undue influence presumption factors (i.e., relationship, opportunity and benefit), then it “should consider such circumstances, along with all the evidence, in determining whether the contestant has proven undue influence.” Such an instruction would be inconsistent with, and contrary to, Michigan law.

The Michigan Supreme Court has ruled that, under such circumstances, the trial court should instruct the jury that, if it finds the facts that establish the presumed fact (without mentioning the presumption), then it must find the presumed fact, unless it finds — based on all the evidence — that the nonexistence of the presumed fact is more likely than the existence of the presumed fact. “We are persuaded that instructions should be phrased entirely in terms of underlying facts and burden of proof. That is, if the jury finds a basic fact, they must also find the presumed fact unless persuaded by the evidence that its nonexistence is more probable than its existence.” _Widmayer_, 422 Mich at 288-89. The Proposed Presumption Provision, by merely instructing the jury that it “should consider” the basic facts, fails to comport with _Widmayer_.

Professor Benson employs virtually identical wording in his discussion of the relevance of the presumption to the jury’s findings. “When a presumption applies, if a jury accepts as true the basic facts, it is instructed that it must, by law, accept the presumed facts unless the presumed facts have been rebutted by contrary evidence.” Benson, 87 Mich B J 34.

It should be emphasized that, in the scenarios under consideration by both the Michigan Supreme Court and Professor Benson, the undue influence case has gone to the jury, meaning that the contestant offered sufficient evidence to establish a presumption of undue influence, the burden of production passed to the opposing party, and the opposing party met its burden of producing evidence to rebut the presumption. Despite the fact that the presumption of undue influence has been “rebutted” in this scenario, both the Michigan Supreme Court and Professor Benson agree that the jury is to be instructed that it must find undue influence if it finds the underlying three factors, unless it is persuaded by all the evidence that the nonexistence of undue influence is more likely than the existence of undue influence.

Hence, the term “rebuttal” in the presumption of undue influence arena appears to be given two slightly different meanings. During the trial, the presumption of undue influence may be rebutted by the proponent/defendant meeting its burden of producing evidence sufficient to avoid a directed verdict. “[A] presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption...” MRE 301 (emphasis added). This type of rebuttal might be thought of as rebuttal for purposes of evaluating whether the trial court should enter a directed verdict.

After the close of the proofs, when the case is sent to the jury, the presumption of undue influence may be “rebutted” by the jury finding that the nonexistence of the presumed fact is more likely than the existence of the presumed fact, based on all the evidence. “[I]f a jury accepts as true the basic facts, ... it must, by law, accept the presumed facts unless the presumed facts have been rebutted by contrary evidence.” Benson, 87 Mich B J 34. This type of rebuttal might be thought of as rebuttal for purposes of a jury verdict.
Moreover, the Proposed Presumption Provision does not fit into any recognized inference format. Again, evidence of the three foundational factors (relationship, opportunity, benefit) supports an inference of undue influence. An inference may be mandatory ("If you find A, B and C, then you must find D"), conditionally mandatory ("If you find A, B and C, then you must find D, unless you find that all the evidence makes it more likely that D did not exist"), or permissive ("If you find A, B and C, then you may find D").

The template of the Proposed Presumption Provision is: "If you find A, B and C, then you should consider A, B and C, and all other evidence, in determining whether D existed." This language reflects that the jury is to draw no type of inference whatsoever from the underlying factors. The proposed language thereby fails to impress upon the jury that there is a significant link between the existence of A, B and C, and the likelihood that D occurred. "Experience has taught that if certain evidentiary facts be established, there is such a strong practical likelihood that another stated fact will be true that that fact may be presumed." *In re Wood's Estate*, 374 Mich at 289.

The Proposed Presumption Provision essentially says: "You can consider all the evidence, including A, B and C, in determining whether D existed." That seems to be little more than the basic charge to the jury: "Decide the case based on the evidence you've heard." In contrast, both *Widmayer* and Professor Benson require that the jury instructions employ a conditional mandatory inference under these circumstances (i.e., "If you find A, B and C, then you must find D, unless you find that all the evidence makes it more likely that D did not exist").

The Ad Hoc Committee believes that, as presently worded, the Proposed Presumption Provision would serve to vitiate the operation of the undue influence presumption in every case that goes to the jury. The Ad Hoc Committee strongly recommends that the Proposed Presumption Provision be revised to read as follows:

If you find:

a. That [name] had a confidential or fiduciary relationship with the decedent;

b. That [name] (or a person or interest he represented) benefited from the [will/trust]; and

c. That [name] had an opportunity to influence the decedent in giving that benefit;

then you must find that the [will/trust] is the product of undue influence, unless you are persuaded by all of the evidence that the existence of undue influence is less probable than the nonexistence of undue influence.

This alternative language would instruct the jury on the inferential relationship between A, B and C, on the one hand, and undue influence, on the other hand, and direct the jury
to weigh that important relationship against all of the countervailing evidence. It would also clarify that the burden of proof rests with the contestant and not the proponent, by replacing “the nonexistence of undue influence is more probable than the existence of undue influence” with “the existence of undue influence is less probable than the nonexistence of undue influence.”
FROM THE COMMITTEE ON
MODEL CIVIL JURY INSTRUCTIONS

The Committee solicits comment on the following proposals by April 1, 2014. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee is considering the adoption of amended instructions for use in cases where a will or trust is being contested and the deletion of two instructions previously used in those cases.

[AMENDED] M CIV JI 170.44
M CIV JI 170.44 WILL CONTESTS: UNDUE INFLUENCE AND CONFIDENTIAL OR FIDUCIARY RELATIONSHIP

The contestant has the burden of proving by a preponderance of the evidence that there was undue influence exerted on the decedent in the making of the will.

Undue influence is influence which is so great that it overpowers the decedent's free will and prevents [ him / her ] from doing as [ he / she ] pleases with [ his / her ] property.

To be "undue," the influence exerted upon the decedent must be of such a degree that it overpowered the decedent's free choice and caused [ him / her ] to act against [ his / her ] own free will and to act in accordance with the will of the [ person / persons ] who influenced [ him / her ].

The influence exerted may be by [ force / threats / flattery / persuasion / fraud / misrepresentation / physical coercion / moral coercion / ( other ) ]. A will which results from undue influence is a will which the decedent would not otherwise have made. It disposes of the decedent's property in a manner different from the disposition the decedent would have made had [ he / she ] been free of such influence.

The word "undue" must be emphasized, because the decedent may be influenced in the disposition of [ his / her ] property by specific and direct influences without such influences becoming undue. This is true even though the will would not have been made but for such influence. It is not improper for a [ spouse / child / parent / relative / friend / housekeeper / (other) ] to—
a. *([ advise / persuade / argue / flatter / solicit / entreat / implore ],)
b. (appeal to the decedent's [ hopes / fears / prejudices / sense of justice / sense of duty / sense of gratitude / sense of pity ],)
c. *(appeal to ties of [ friendship / affection / kinship ],)
d. *([ other ],)

provided the decedent's power to resist such influence is not overcome and [ his / her ]
capacity to finally act in accordance with [ his / her ] own free will is not overpowered. A
will which results must be the free will and purpose of the decedent and not that of
[ another person / other persons].

Mere existence of the opportunity, motive or even the ability to control the free will of the
decedent is not sufficient to establish that the decedent's will is the result of undue
influence.

Undue influence may be proven by indirect or circumstantial evidence.

**If you find:
 a. That [ name ] had a confidential or fiduciary relationship with the decedent; and
 b. That [ name ] (or a person or interest he represented) benefited from the will; and
c. That [ name ] had an opportunity to influence the decedent in giving that benefit;

then you should consider such circumstances, along with all the evidence, in
determining whether the contestant has proven undue influence.

A "confidential or fiduciary relationship" is a relationship where one person places
confidence, reliance and trust in another person, such that the second person has
authority or power over some aspect of the first person's affairs, and the first person
expects that the second person will act with integrity and fidelity towards the first
person's affairs. The relationship may be formal, informal, professional and/or personal.

Note on Use
*The Court should choose among subsections a-d those which are applicable to the
case.

This instruction should be accompanied by MCivJI 8.01, Meaning of Burden of Proof.

**Only give the instruction regarding a confidential or fiduciary relationship if the
contestant seeks to establish a presumption of undue influence and has offered
evidence of each of the three elements of the presumption into evidence. Whether the
contestant has introduced evidence of the three elements of the presumption is a
procedural matter, rather than an evidentiary matter, because it is the job of the finder of fact to decide, as an evidentiary matter, whether the contestant has proven the facts. Widmayer v Leonard, 422Mich 280, 289; 373 NW2d 538 (1985). If the court determines, as a procedural matter, that the contestant has established the presumption, the burden of producing evidence shifts to the opposing party, but the burden of proof always remains with the contestant. MRE 301. The court need not, and should not, discuss its procedural determination as to the presumption with the finder of a fact, in order to avoid influencing its verdict. If the opposing party produces no evidence to rebut the presumption, the court may direct a verdict in favor of the contestant. Widmayer, 422 Mich at 289. If the opposing party produces evidence to rebut the presumption, an inference remains for the jury to consider, which is reflected in the above instructions. See Id.

Comment
In re Estate of Karmey, 468 Mich 68; 658 NW2d 796 (2003); Widmayer v Leonard, 422 Mich 280; 373 NW2d 538 (1985); Kar v Hogan, 399 Mich 529; 251 NW2d 77 (1976); In re Willey Estate, 9 Mich App 245; 156 NW2d 631 (1967); In re Langlois Estate, 361 Mich 646; 106 NW2d 132 (1960); In re Paquin’s Estate, 328 Mich 293; 43 NW2d 858 (1950); In re Balk’s Estate, 298 Mich 303; 298 NW 779 (1941); In re Kramer’s Estate, 324 Mich 626; 37 NW2d 564 (1949); In re Reed’s Estate, 273 Mich 334; 263 NW 76 (1935); In re Curtis Estate, 197 Mich 473; 163 NW 944 (1917); Nelson v Wiggins, 172 Mich 191; 137 NW 623 (1912).

History
M Civ JI 170.44 was added January 1984.
Amended December 8, 2003.

[DELETED] M CIV JI 170.45
M CIV JI 170.45 WILL CONTESTS: EXISTENCE OF PRESUMPTION OF UNDUE INFLUENCE—BURDEN OF PROOF

To establish that the decedent made the will as a result of undue influence, the contestant has the burden of proving all three of the following propositions:

a. That [name] had a fiduciary relationship with the decedent.
b. That [name] (or a person or interest he represented) benefited from the will, and
c. That by reason of the fiduciary relationship [name] had an opportunity to influence the decedent in giving that benefit.

Your verdict will be against the will if you find that all three propositions have been proven. Otherwise, your verdict will be in favor of the will.
A "fiduciary relationship" is one of inequality where a person places complete trust in another person regarding the subject matter, and the trusted person controls the subject of the relationship by reason of knowledge, resources, power, or moral authority.

Note on Use

The committee recommends that this instruction be deleted in light of the proposed amendment to M Civ JI 170.44, making M Civ JI 170.45 no longer necessary.

In cases involving the presumption of undue influence, this instruction is applicable only where two conditions coexist: 1) the putative fiduciary has not introduced evidence to "meet" or "rebut" the presumption, i.e., the fiduciary hasn't introduced evidence tending to show that the bequest was not made as a result of undue influence, and 2) there is an issue of fact whether one or more of the three components of the presumption of undue influence exists. MRE 301; Widmayer v Leonard, 422 Mich 280; 373 NW2d 538 (1985).

Where evidence has been introduced to meet the presumption, and in cases that do not involve the presumption of undue influence, the applicable undue influence instruction is M Civ JI 170.44—Will Contests: Undue Influence—Burden of Proof.

A presumption casts on the opposing party only the obligation to come forward with evidence opposing the presumption, and if that is done, the effect of the presumption disappears, other than to prevent a directed verdict against the party having the benefit of the presumption, and the burden of proof remains with the person claiming undue influence. MRE 301; Widmayer, supra. If there is no genuine dispute that all elements of the presumption exist, and there is no evidence opposing the presumption, the party having the benefit of the presumption is entitled to a directed verdict. MRE 301; Widmayer, supra.

Often there will be no triable dispute on one or more of the elements of the presumption, in which case the court should not submit that element to the jury for decision. Typically, for example, there will be no dispute that the putative fiduciary benefited from the will.

While it is said generally that the existence of a confidential relationship is a question of fact, In re Kanable Estate, 47 Mich App 299; 209 NW2d 452 (1973), there are a number of relationships which are fiduciary as a matter of law, e.g., principal-agent, guardianward, trustee-beneficiary, attorney-client, physician-patient, accountant-client, stockbroker customer. Unless there is a dispute that the named relationship exists, it will be deemed a fiduciary relationship as a matter of law. See, In re Estate of Karmey, 468 Mich 68, 74 fn 2, 3; 668 NW2d 796 (2003). For that reason the definition in the instruction does not attempt to encompass all of them. A marriage relationship does not create a presumption of undue influence. In re Estate of Karmey.

The instruction uses the term "fiduciary relationship" instead of "confidential or fiduciary relationship" on the conclusion that the terms "fiduciary relationship" and "confidential or
fiduciary relationship" have identical meanings. See, In re Estate of Karmey.

This instruction should be accompanied by M Civ JI 8.01, Meaning of Burden of Proof.

Comment
In re Estate of Karmey; Widmayer, Kar v Hogan, 399 Mich 529; 251 NW2d 77 (1976). See also In re Cox Estate, 383 Mich 108; 174 NW2d 558 (1970) (fiduciary relationship of attorney and clergyman); In re Vollbrecht Estate, 26 Mich App 430; 182 NW2d 609 (1970) (substantial benefit derived by charitable foundation wherein testatrix's attorney and her accountant were also trustees of foundation); In re Spillette Estate, 352 Mich 42; 88 NW2d 300 (1958); In re Haskell's Estate, 283 Mich 513; 278 NW 668 (1938) (will in favor of attorney upheld where testatrix obtained independent advice; presumption of undue influence rebutted); In re Eldred's Estate, 234 Mich 131; 203 NW 870 (1926) (doctor); In re Hartlerode's Estate, 183 Mich 51; 148 NW 774 (1914) (clergyman).

History
M Civ JI 170.45 was added January 1984.

[AMENDED] M CIV JI 179.10
M CIV JI 179.10 TRUST CONTESTS: UNDUE INFLUENCE AND CONFIDENTIAL OR FIDUCIARY RELATIONSHIP

The contestant has the burden of proving by a preponderance of the evidence that there was undue influence exerted on the settlor in the [ creation / amendment / revocation ] of the trust.

Undue influence is influence that is so great that it overpowers the settlor's free will and prevents [ him / her ] from doing as [ he / she ] pleases with [ his / her ] property.

To be "undue," the influence exerted upon the settlor must be of such a degree that it overpowered the settlor's free choice and caused [ him / her ] to act against [ his / her ] own free will and to act in accordance with the will of the [ person / persons ] who influenced [ him / her ].

The influence exerted may be by [ force / threats / flattery / persuasion / fraud / misrepresentation / physical coercion / moral coercion / other ]. Action that results from undue influence is action that the settlor would not otherwise have taken. It disposes of the trust property in a manner different from the disposition the settlor would have made had [ he / she ] been free of such influence.

The word "undue" must be emphasized, because the settlor may be influenced in the disposition of the trust property by specific and direct influences without such influences
becoming undue. This is true even though the trust would not have been made but for such influence. It is not improper for a [spouse / child / parent / relative / friend / housekeeper / other] to—

a. *[advise / persuade / argue / flatter / solicit / entreat / implore],
b. *(appeal to the decedent's [hopes / fears / prejudices / sense of justice / sense of duty / sense of gratitude / sense of pity],
c. *(appeal to ties of [friendship / affection / kinship],
d. *((other],

provided the settlor's power to resist such influence is not overcome and [his / her] capacity to finally act in accordance with [his / her] own free will is not overpowered. A trust that results must be the free will and purpose of the settlor and not that of [another person / other persons].

Mere existence of the opportunity, motive or even the ability to control the free will of the settlor is not sufficient to establish that [creation / amendment / revocation] of the trust is the result of undue influence.

Undue influence may be proven by indirect or circumstantial evidence.

**If you find:
a. That [name] had a confidential or fiduciary relationship with the decedent; and
b. That [name] (or a person or interest he represented) benefited from the will; and
c. That [name] had an opportunity to influence the decedent in giving that benefit;

then you should consider such circumstances, along with all the evidence, in determining whether the contestant has proven undue influence.

A "confidential or fiduciary relationship" is a relationship where one person places confidence, reliance and trust in another person, such that the second person has authority or power over some aspect of the first person's affairs, and the first person expects that the second person will act with integrity and fidelity towards the first person's affairs. The relationship may be formal, informal, professional and/or personal.

Note on Use
*The Court should choose among subsections a-d those which are applicable to the case.
This instruction should be accompanied by M Civ JI 8.01, Definition of Burden of Proof.

**Only give the instruction regarding a confidential or fiduciary relationship if the contestant seeks to establish a presumption of undue influence and has offered evidence of each of the 3 elements of the presumption into evidence. Whether the
contestant has introduced evidence of the 3 elements of the presumption is a procedural matter, rather than an evidentiary matter, because it is the job of the finder of fact to decide, as an evidentiary matter, whether the contestant has proven the facts. Widmayer v Leonard, 422 Mich 280, 289; 373 NW2d 538 (1985). If the court determines, as a procedural matter, that the contestant has established the presumption, the burden of producing evidence shifts to the opposing party, but the burden of proof always remains with the contestant. MRE 301. The court need not and should not, discuss its procedural determination as to the presumption with the finder of a fact, in order to avoid influencing its verdict. If the opposing party produces no evidence to rebut the presumption, the court may direct a verdict in favor of the contestant. Widmayer, 422 Mich at 289. If the opposing party produces evidence to rebut the presumption, an inference remains for the jury to consider, which is reflected in the above instructions. See Id.

Comment
This instruction is virtually identical to M Civ JI 170.44

In re Estate of Karmey, 468 Mich 68; 658 NW2d 796 (2003); Widmayer v Leonard, 422 Mich 280; 373 NW2d 538 (1985); Kar v Hogan, 399 Mich 529; 251 NW2d 77 (1976); In re Willey Estate, 9 Mich App 245; 156 NW2d 631 (1967); In re Langlois Estate, 361 Mich 646; 106 NW2d 132 (1960); In re Paquin's Estate, 328 Mich 293; 43 NW2d 858 (1950); In re Balk's Estate, 298 Mich 303; 298 NW 779 (1941); In re Kramer's Estate, 324 Mich 626; 37 NW2d 564 (1949); In re Reed's Estate, 273 Mich 334; 263 NW 76 (1935); In re Curtis Estate, 197 Mich 473; 163 NW 944 (1917); Nelson v Wiggins, 172 Mich 191; 137 NW 623 (1912).

History
M Civ JI 179.10 was added June 2011.

[DELETED] M CIV JI 179.25
M CIV JI 179.25 TRUST CONTESTS: EXISTENCE OF PRESUMPTION OF UNDUE INFLUENCE—BURDEN OF PROOF

To establish that the settlor [created / amended / revoked] the trust as a result of undue influence, the contestant has the burden of proving all three of the following propositions:

1. that [name] had a fiduciary relationship with the settlor,
2. that [name] (or a person or interest he represented) benefited from the [creation / amendment / revocation] of the trust, and
3. that by reason of the fiduciary relationship [name] had an opportunity to influence the settlor in giving that benefit.

If you find that all three propositions have been proven, then the settlor's action is
invalid as a result of undue influence. Otherwise, the settler's action is not invalid as a result of undue influence.

— A "fiduciary relationship" is one of inequality where a person places complete trust in another person regarding the subject matter, and the trusted person controls the subject of the relationship by reason of knowledge, resources, power, or moral authority.

Note on Use
The committee recommends that this instruction be deleted in light of the proposed amendment to M Civ JI 179.10, making M Civ JI 179.25 no longer necessary.

In cases involving the presumption of undue influence, this instruction is applicable only where two conditions coexist: 1) the putative fiduciary has not introduced evidence to "meet" or "rebut" the presumption, i.e., the fiduciary hasn't introduced evidence tending to show that the bequest was not made as a result of undue influence, and 2) there is an issue of fact whether one or more of the three components of the presumption of undue influence exists, MRE 301; Widmayer v Leonard, 422 Mich 280 (1985).

Where evidence has been introduced to meet the presumption, and in cases that do not involve the presumption of undue influence, the applicable undue influence instruction is M Civ JI 179.10 Trust Contests: Undue Influence — Definition.

A presumption casts on the opposing party only the obligation to come forward with evidence opposing the presumption, and if that is done, the effect of the presumption disappears, other than to prevent a directed verdict against the party having the benefit of the presumption, and the burden of proof remains with the person claiming undue influence. MRE 301; Widmayer, supra. If there is no genuine dispute that all elements of the presumption exist, and there is no evidence opposing the presumption, the party having the benefit of the presumption is entitled to a directed verdict. MRE 301; Widmayer, supra.

Often there will be no triable dispute on one or more of the elements of the presumption, in which case the court should not submit that element to the jury for decision. Typically, for example, there will be no dispute that the putative fiduciary benefited from the will. While it is said generally that the existence of a confidential relationship is a question of fact, In re Kanable Estate, 47 Mich App 299 (1973), there are a number of relationships which are fiduciary as a matter of law, e.g., principal-agent, guardian-ward, trustee-beneficiary, attorney-client, physician-patient, clergy-penitent, accountant-client, stockbroker-customer. Unless there is a dispute that the named relationship exists, it will be deemed a fiduciary relationship as a matter of law. See, In re Estate of Karmey, 469 Mich 68, 74 fn 2,3 (2003). For that reason the definition in the instruction does not attempt to encompass all of them. A marriage relationship does not create a presumption of undue influence. In re Estate of Karmey.
The instruction uses the term "fiduciary relationship" instead of "confidential or fiduciary relationship" on the conclusion that the terms "fiduciary relationship" and "confidential or fiduciary relationship" have identical meanings. See, In re Estate of Karmey.

This instruction should be accompanied by M Civ JI 8.01, Definition of Burden of Proof.

Comment
This instruction is substantially similar to M Civ JI 170.45.

In re Estate of Karmey, Widmayer, Kar v Hogan, 399 Mich 529 (1976). See also In re Cox Estate, 383 Mich 108 (1970) (fiduciary relationship of attorney and clergyman); In re Vollbrecht Estate, 26 Mich App 430 (1970) (substantial benefit derived by charitable foundation wherein testatrix's attorney and her accountant were also trustees of foundation); In re Spillette Estate, 352 Mich 12 (1958); In re Haskell's Estate, 283 Mich 513 (1936) (will in favor of attorney upheld where testatrix obtained independent advice; presumption of undue influence rebutted); In re Eldred's Estate, 234 Mich 131 (1926) (doctor); In re Hartlerode's Estate, 163 Mich 51 (1914) (clergyman).

History
M Civ JI 179.25 was added June 2011.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Alfred M. Butzbaugh
Reporter: Timothy J. Raubinger
MEMORANDUM

TO: Probate and Estate Planning Council
FROM: George F. Bearup, Real Estate Committee Chair
RE: Clarification of MCL 211.27(a)(7)(b): Intra-Family Residential “Uncapping” Exemption.

STATUS “UNCAPPING” EXEMPTION AMENDMENT

David Fry of the Subcommittee (David Fry, James Ramer, Jeff Ammon and George Bearup) met with Representative Peter Pettalia’s legislative aide on Monday of this week. A summary of that meeting is David’s email that follows. Due to the optimism of Representative Pettalia’s office we expanded upon our earlier proposal to add sections that clarify what relationships are intended “by the first degree” and also address transfers to and from legal entities.

David Fry’s Report dated February 11, 2014:

My meeting with Matt Blakely of Representative Pettalia’s office yesterday went even better than I had hoped. In contrast to the last meeting, Matt was very positive about the change for amended PA 497, perhaps even as soon as before year end. I am attaching a version of the amending language that Matt gave me yesterday so you can see what he is suggesting. Some of the new language he attributed to Mark Harder of Warner, Norcross & Judd. Matt said that Mark was going to attend yesterday’s meeting, but he didn’t show up. I told Matt that the language looked good at first blush, but I wanted to have a day or so to review it more carefully and give him any feedback. Please get back to me quickly if you have comments on his proposed language.

I also gave Matt some language that covers transfers of property into an LLC, corporation, partnership, etc. Given the State Tax Commission’s new Guidelines which omit the specific example of such a transfer not being an uncapping event, I said that there is some concern that the STC is backing away from their position that such transfers are exempt from uncapping. The language I gave Matt is also attached. Since we are amending the statute to make clear that transfers of ownership in an entity are not uncapping transfers, it only makes sense to include transfer into the entity in the exemption from uncapping. Your thoughts on this language are also welcome.
All in all, Matt and I spent more time talking about the mechanics of passing this proposed legislation than the substance of the language itself. He was much more positive about the likelihood of passage than at any other time he and I have spoken. Matt wants to get language to the Legislative Service Bureau (the arm of the Legislature that actually drafts language for legislators) yet this week, then hopes to introduce a bill before the end of the month, hold hearings sometime this summer and he hopes for passage before year end. I asked him about the Senate and he said he will start working on them as soon as a bill is introduced in the House. Given the support that PA 497 had (the House vote was about 90% in favor), he does not anticipate much opposition to the amendment. He also said that having a budget surplus this year works in our favor.

Please get back to me as soon as possible with your thoughts on the language attached. I want to get back to Matt within the next day or so if possible.

Let me know if you have questions in the meantime.

Matt Blakely’s Proposed amendment to MCL 2.11.27a(6)(d), as further edited by the Subcommittee:

(d) EXCEPT AS PROVIDED IN SUBDIVISION (7)(s), a conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

Proposed amendment to MCL 211.27a(7)(s):

(s) Beginning December 31, 2013, a transfer of residential real property if the transferee OR THE TRANSFEREE’S SPOUSE by blood or affinity to the first degree and the use of the residential real property does not change following the transfer. As used in this subdivision, (i) “residential real property” means real property classified as residential real property under section 34c; AND (ii) “TRANSFEROR” SHALL INCLUDE (A) A PERSON FOR WHOM ANOTHER IS ACTING IN A FIDUCIARY CAPACITY, INCLUDING A CONSERVATOR, AS DEFINED IN MCL 700.1103(h), A GUARDIAN AS DEFINED IN MCL 700.1104(l), A PERSONAL REPRESENTATIVE AS DEFINED IN MCL 700.1105(o), AND A TRUSTEE OF A TRUST, AS DEFINED IN MCL 700.1107(o); AND (b) SHALL INCLUDE A TESTATOR AS DEFINED IN MCL 700.1107(m) OF A WILL AS DEFINED IN MCL 700.1108(b), AN INTESTATE DECEDENT AS DEFINED IN MCL 700.2101, AND A SETTLOR OF A TRUST, AS DEFINED IN MCL 700.7103(i); AND (iii) “TRANSFEREE” SHALL INCLUDE A BENEFICIARY AS DEFINED IN MCL 700.1103(d). NOTWITHSTANDING ANY PROVISION IN SECTION 27a TO THE CONTRARY, A CHANGE IN TRUST BENEFICIARIES THAT ADDS OR SUBSTITUTES A PERSON OR PERSONS RELATED TO THE PRESENT BENEFICIARY OR BENEFICIARIES BY BLOOD OR AFFINITY TO THE FIRST DEGREE IS NOT A TRANSFER WITH RESPECT TO RESIDENTIAL REAL PROPERTY HELD IN THE TRUST; FURTHER, A TRANSFER OF AN OWNERSHIP INTEREST IN A CORPORATION, LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP OR OTHER LEGAL ENTITY OWNING RESIDENTIAL REAL PROPERTY.
BETWEEN PERSONS RELATED BY BLOOD OR AFFINITY TO THE FIRST DEGREE IS NOT A TRANSFER OF OWNERSHIP WITH RESPECT TO RESIDENTIAL REAL PROPERTY HELD IN THE ENTITY.

(t) THE TRANSFER OF AN OWNERSHIP INTEREST IN REAL PROPERTY EITHER:

(i) TO A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP OR OTHER LEGAL ENTITY, IF THE OWNERSHIP OF THE ENTITY AFTER THE TRANSFER IS IDENTICAL TO THE OWNERSHIP OF THE REAL PROPERTY BEFORE THE TRANSFER, BOTH IN THE IDENTITY OF THE OWNER(S) AND THE PERCENTAGE OF THE ENTITY OWNED IF OWNED BY MORE THAN ONE PERSON; OR

(ii) FROM A CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP, OR OTHER LEGAL ENTITY, IF THE TRANSFEREE IS AN OWNER OF THE ENTITY AND THE PERCENTAGE OF OWNERSHIP TRANSFERRED IS EQUAL TO THE PERCENTAGE OF THE TRANSFEREE’S OWNERSHIP IN THE ENTITY.

(u) AS USED IN THIS SECTION, THE FOLLOWING RELATIONSHIP SHALL CONSTITUTE PERSONS RELATED BY THE FIRST DEGREE OR BLOOD OR AFFINITY, REGARDLESS OF WHETHER THE RELATIONSHIP IS BIOLOGICAL OR THE RESULT OF ADOPTION OR MARRIAGE:

(i) SPOUSE
(ii) FATHER OR MOTHER
(iii) FATHER OR MOTHER OF SPOUSE
(iv) SON OR DAUGHTER
(v) DON OR DAUGHTER OF SPOUSE
(vi) SIBLINGS
ATTACHMENT 2
Probate and Estate Planning Council  
Treasurer’s Report  
March 15, 2014

Income/Expense Reports  
An unaudited report through February 28, 2014 is attached. There will be no report produced entitled, "Treasurer's Report as of January 31, 2014," as both January's and February's State Bar reports arrived this month and are included in my report. Last month's spreadsheet covered October to December; this month's covers December to February.

A few items in the attached spreadsheet to highlight:

- Fourth line of February, usage of some of the Amicus overage budget is reported.
- We have now received 100% of our expected revenue.
- We have expended 37% of our expected disbursements.
- February's expenses are much higher than the past two months. The following items account for this increase: Publication of the Journal, submission of several months of travel expenses by some council members, and the support for the Annual Institute.

Remember -- New Mileage Reimbursement Rate Effective 1/1/2014  
The IRS business mileage reimbursement rate for 2014 is $0.56 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 have been updated. The form and instructions are attached.

Expense Reimbursement Requests  
- Form: http://www.michbar.org/generalinfo/pdfs/sectexp.pdf  
- Email forms to mteahan@fraserlawfirm.com or provide paper copies in person or by mail.

Marlaine C. Teahan, Treasurer  
Probate and Estate Planning Section
## Probate and Estate Planning Section
### Treasurer's Report as of February 28, 2014

<table>
<thead>
<tr>
<th>Description</th>
<th>Beginning General Fund</th>
<th>Beginning Amicus Fund</th>
<th>Beginning Total Fund Balance</th>
<th>Use of Amicus Fund overage</th>
</tr>
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<tbody>
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<td>$ 264,980.12</td>
<td>$ 25,785.00</td>
<td>$ 290,765.12</td>
<td>(361.50)</td>
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<tr>
<td></td>
<td>$ 267,313.09</td>
<td>$ 25,785.00</td>
<td>$ 293,098.09</td>
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<td>$ 25,785.00</td>
<td>$ 291,971.64</td>
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<td></td>
<td>$ 180,511.60</td>
<td>$ 25,785.00</td>
<td>$ 206,296.60</td>
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### Revenue

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<tr>
<th>Description</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>FY to Date Actual</th>
<th>Budget 2013-14</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
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<tbody>
<tr>
<td>Membership Dues</td>
<td>8,015.00</td>
<td>3,045.00</td>
<td>1,260.00</td>
<td>114,975.00</td>
<td>115,000.00</td>
<td>(25.00)</td>
<td>100%</td>
</tr>
<tr>
<td>Publishing Agreements</td>
<td>-</td>
<td>325.00</td>
<td>-</td>
<td>325.00</td>
<td>650.00</td>
<td>(325.00)</td>
<td>50%</td>
</tr>
<tr>
<td>Other</td>
<td>-</td>
<td>-</td>
<td>35.00</td>
<td>350.00</td>
<td></td>
<td>(315.00)</td>
<td>10%</td>
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<tr>
<td><strong>Total Receipts</strong></td>
<td>8,015.00</td>
<td>3,370.00</td>
<td>1,260.00</td>
<td>115,335.00</td>
<td>116,000.00</td>
<td>(665.00)</td>
<td>99%</td>
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### Disbursements

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<tr>
<th>Description</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>FY to Date</th>
<th>Budget</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Journal</td>
<td>-</td>
<td>-</td>
<td>5,083.28</td>
<td>5,083.28</td>
<td>25,000.00</td>
<td>(19,916.72)</td>
<td>20%</td>
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<tr>
<td>Chairperson's Dinner*</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5,457.20</td>
<td>6,500.00</td>
<td>(1,042.80)</td>
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<td>Travel</td>
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<td>18,500.00</td>
<td>(9,978.05)</td>
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<td>Lobbying</td>
<td>2,500.00</td>
<td>2,500.00</td>
<td>2,500.00</td>
<td>15,000.00</td>
<td>30,000.00</td>
<td>(15,000.00)</td>
<td>50%</td>
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<td>Meetings</td>
<td>972.72</td>
<td>977.04</td>
<td>1,137.02</td>
<td>5,283.46</td>
<td>14,000.00</td>
<td>(8,716.54)</td>
<td>38%</td>
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<tr>
<td>Long-range Planning</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1,000.00</td>
<td>(1,000.00)</td>
<td>0%</td>
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<tr>
<td>Support for Annual Institute</td>
<td>-</td>
<td>-</td>
<td>5,000.00</td>
<td>5,000.00</td>
<td>14,000.00</td>
<td>(9,000.00)</td>
<td>36%</td>
</tr>
<tr>
<td>Amicus Briefs</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10,000.00</td>
<td>(10,000.00)</td>
<td>0%</td>
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</tr>
<tr>
<td>ListServ**</td>
<td>75.00</td>
<td>75.00</td>
<td>75.00</td>
<td>300.00</td>
<td>1,400.00</td>
<td>(1,100.00)</td>
<td>21%</td>
</tr>
<tr>
<td>Postage</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>100.00</td>
<td>(100.00)</td>
<td>0%</td>
</tr>
<tr>
<td>Telephone</td>
<td>-</td>
<td>-</td>
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<td>250.00</td>
<td>(250.00)</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>Other***</td>
<td>15.00</td>
<td>-</td>
<td>-</td>
<td>21.33</td>
<td>1,000.00</td>
<td>(978.67)</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Total Disbursements</strong></td>
<td>5,682.03</td>
<td>4,496.45</td>
<td>16,267.26</td>
<td>45,028.72</td>
<td>121,750.00</td>
<td>(77,082.78)</td>
<td>37%</td>
</tr>
</tbody>
</table>

### Net Increase (Decrease)

- December: $2,332.97
- January: (1,126.45)
- February: (15,368.76)
- FY to Date Actual: 70,306.28
- Budget 2013-14: 76,417.78

### Additional Information

*Includes plaques for outgoing Chair and 2 Council Members
**Includes ListServ, e-blast & other electronic communications to members
***Includes copying costs; budget for this line increased to $1,000 & now includes $750 for Young Lawyers' Summit
****Includes $25,000 allocated to "Amicus Fund" for extra amicus brief expenses in excess of current budget amount
# Expense Reimbursement Form

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>
<thead>
<tr>
<th>Date</th>
<th>Description &amp; Purpose</th>
<th>Mileage</th>
<th>Lodging/Other Travel</th>
<th>Meals</th>
<th>Miscellaneous</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Note start &amp; end point for mileage.)</td>
<td>Rate</td>
<td>Mileage</td>
<td>Reimbursement</td>
<td>(Self + attach list of guests)</td>
<td>(i.e. copying, phone, etc.)</td>
</tr>
<tr>
<td></td>
<td>0.56</td>
<td>$0.00</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>0.56</td>
<td>$0.00</td>
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<td></td>
<td></td>
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<tr>
<td></td>
<td>0.56</td>
<td>$0.00</td>
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<td></td>
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<tr>
<td></td>
<td>0.56</td>
<td>$0.00</td>
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<td></td>
<td>0.56</td>
<td>$0.00</td>
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<td>0.56</td>
<td>$0.00</td>
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<tr>
<td></td>
<td>0.56</td>
<td>$0.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.56</td>
<td>$0.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grand Total $0.00
STATE BAR OF MICHIGAN
Section Expense Reimbursement Policies and Procedures

General Policies
1. Requests for reimbursement of individual expenses should be submitted as soon as possible following the event and no later than two weeks following the close of the fiscal year in which the expense is incurred so that the books for that year can be closed and audited.

2. All out of pocket expenses must be itemized.

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

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

5. Spouse expenses are generally not reimbursable.

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

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

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

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

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

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

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

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

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

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

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

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

3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.
Attachment 3
Probate and Estate Planning Council
Budget Committee Report
for
March 15, 2014, Meeting
regarding
Proposed Amended Budget for 2013-2014

Overview:
During the week of February 24, 2014, the Budget Committee discussed whether or not to recommend amending the budget to reflect the additional expense of $4,000 which was approved as our support for the fall 2014 ICLE “Experts” program. The Committee has voted to recommend to Council that the current budget be amended to include that additional expenditure (see attached budget spreadsheet). The change is reflected on the attached budget spreadsheet by the addition of a new line item titled “seminars” to reflect that support.

Discussion:
The rationale for amending the budget is that we will then be able to better see where we stand from month to month regarding both proposed and actual expenditures, in relation to what we have predicted for those expenditures and also in relation to what we have predicted for receipts. The amended budget will also show what we predict for the draw from our fund balance. That way, as we evaluate future proposals for additional expenditures that are not currently included in the budget, we can more easily see the effect on our fund balance.

This recommendation was not unanimous. The argument against amending the budget includes the fact that this may be a one-time expenditure, and we should not be amending the budget for every extra expenditure that comes in. Also, the budget is just a prediction of the receipts and expenditures, and we don’t really know where we are until the end of the year – we can decide next year whether we want to include this in next year’s budget.

Summary:
Overall, as shown by our budget before the approval of the $4,000 support for the ICLE fall Experts program, our projected expenses will exceed projected revenue by $5,570, if all line items exactly follow this budget. With the approval of this additional $4,000 expenditure, our projected expenses will exceed projected revenue by $9,570. With our current fund balance and recent history of revenue exceeding actual expenses, we can manage this possible revenue shortfall for the coming year, but if we do not amend the budget, the budget will understate the projected shortfall of revenue versus expenses. We also need to keep in mind that our expenses continue to increase each year, but our projected, as well as actual, dues revenue really does not increase significantly unless we raise membership fees.

James B. Steward
Chair
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Membership Dues</td>
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<td>$116,650</td>
<td>$115,000</td>
<td>$116,060</td>
<td>$115,000</td>
<td>$116,655</td>
<td>$115,000</td>
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<tr>
<td>Publishing Agreements</td>
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<td>$374</td>
<td>$350</td>
<td>$500</td>
<td>$350</td>
<td>$500</td>
<td>$650</td>
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<tr>
<td>Other</td>
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<td>$350</td>
<td>$350</td>
<td>$3,460</td>
<td>$350</td>
<td>$350</td>
<td>$620</td>
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<tr>
<td>Total Receipts</td>
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<td>$115,700</td>
<td>$120,020</td>
<td>$115,700</td>
<td>$117,775</td>
<td>$116,000</td>
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</table>

<table>
<thead>
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<th></th>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
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<td>$27,500</td>
<td>$27,378</td>
<td>$27,500</td>
<td>$25,445</td>
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<tr>
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<td>$17,142</td>
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<tr>
<td>Meetings</td>
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<td>$10,899</td>
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<td>$10,601</td>
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<tr>
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<td>$1,000</td>
<td>$0</td>
<td>$1,000</td>
</tr>
<tr>
<td>Publishing Agreements</td>
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<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Total Disbursements</td>
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<td>$88,605</td>
<td>$118,250</td>
<td>$102,527</td>
<td>$120,750</td>
<td>$112,484</td>
<td>$125,750</td>
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| Net Funds Remaining                          | -$5,100        | $28,769       | -$2,550       | $17,493       | -$5,050       | $5,291        | -$9,750       |

$5,750 was allocated to budget from fund balance, which is approx $206,296 at end of FY 2012-13

*New category which includes the listserv, e-blast, & other electronic communications to members.

Previously, $25,000 was allocated from our total fund balance to a separate "Amicus Fund". The unused portion of the Amicus Brief line-item ($785 from last year) was added to that Amicus Fund, bringing the total Amicus Fund portion of our Fund Balance to $25,785. The ultimate goal being to establish a buffer for anticipated appeals involving the Michigan Trust Code and other newly enacted legislation that may need judicial interpretation. The effect for 2013-2014 is to use book entries to create the following funds:

- General Fund: $180,511.00
- Amicus Fund: $25,785.00
- Total Fund Balance: $206,296.00

On 4/14/12, the Council approved an increase of the line-item for "Meetings" by $2,600.00 for registration fees, travel, meals and lodging for the Chair- Elect and Vice Chair to attend the annual Leadership Conference on Mackinac Island. This amount is included in the Meetings budget total of $12,000.

On 3-16-2013 Council approved an increase in the "Other" line item to a total of $1,000, with up to $750 allocated to support for the Young Lawyer's conference.
Below are bills that PAA has identified for Council of Probate Section of State Bar of MI

**H 4264**  
Title: Vulnerable Adults  
Author: Leonard  
Introduction: 2/14/2013  
Enacted: 5/21/2013  
Location: Chaptered  
Summary: Allows consecutive sentencing for financial exploitation of vulnerable adults.  
Status: 02/14/2013 INTRODUCED.  
02/14/2013 To HOUSE Committee on JUDICIARY.  
03/14/2013 From HOUSE Committee on JUDICIARY: Reported with recommendation.  
03/14/2013 In HOUSE. To second reading.  
03/20/2013 In HOUSE. Read second time. To third reading.  
03/21/2013 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.  
04/09/2013 To SENATE Committee on JUDICIARY.  
04/17/2013 From SENATE Committee on JUDICIARY: Recommended passage.  
04/17/2013 In SENATE. To second reading.  
05/02/2013 In SENATE. Read second time. To third reading.  
05/07/2013 In SENATE. Read third time. Passed SENATE.  
05/07/2013 Ordered Enrolled.  
05/09/2013 *****To GOVERNOR.  
05/21/2013 Signed by GOVERNOR.  
05/21/2013 Public Act No. 34

**H 4301**  
Title: Individual Income Tax  
Author: Townsend  
Introduction: 2/21/2013  
Location: House Tax Policy Committee  
Summary: Clarifies limitations and restrictions on retirement income deductions for a surviving spouse.  
Status: 02/21/2013 INTRODUCED.  
02/21/2013 To HOUSE Committee on TAX POLICY.

**H 4382**  
Title: Do Not Resuscitate Orders
Author: Cotter
Introduction: 3/6/2013
Enacted: 11/5/2013
Last Amend: 4/17/2013
Location: Chaptered
Summary: Requires a declarant's patient advocate to date and sign a do-not-resuscitate order; provides that a guardian may execute a do-not-resuscitate order on behalf of a ward.
Status: 03/06/2013 INTRODUCED.
03/06/2013 To HOUSE Committee on JUDICIARY.
04/11/2013 From HOUSE Committee on JUDICIARY: Reported with recommendation.
04/11/2013 In HOUSE. To second reading.
04/17/2013 In HOUSE. Read second time and amended. To third reading.
04/18/2013 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.
04/23/2013 To SENATE Committee on JUDICIARY.
05/22/2013 From SENATE Committee on JUDICIARY: Recommended passage.
05/22/2013 In SENATE. To second reading.
10/22/2013 In SENATE. Read second time. To third reading.
10/23/2013 In SENATE. Read third time. Passed SENATE.
10/23/2013 Ordered Enrolled.
10/25/2013 *****To GOVERNOR.
11/05/2013 Signed by GOVERNOR.
11/05/2013 Public Act No. 155

H 4383 Title: Do Not Resuscitate Orders
Author: LaFontaine
Introduction: 3/6/2013
Enacted: 11/5/2013
Last Amend: 4/17/2013
Location: Chaptered
Summary: Amends the Adult Foster Care facility Licensing Act; revises citation to do-not-resuscitate orders.
Status: 03/06/2013 INTRODUCED.
03/06/2013 To HOUSE Committee on JUDICIARY.
04/11/2013 From HOUSE Committee on JUDICIARY: Reported with recommendation.
04/11/2013 In HOUSE. To second reading.
04/17/2013 In HOUSE. Read second time and amended. To third reading.
04/18/2013 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.
04/23/2013 To SENATE Committee on JUDICIARY.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>05/22/2013</td>
<td>From SENATE Committee on JUDICIARY: Recommended passage.</td>
</tr>
<tr>
<td>05/22/2013</td>
<td>In SENATE. To second reading.</td>
</tr>
<tr>
<td>10/22/2013</td>
<td>In SENATE. Read second time.</td>
</tr>
<tr>
<td>10/22/2013</td>
<td>To third reading.</td>
</tr>
<tr>
<td>10/23/2013</td>
<td>In SENATE. Read third time. Passed SENATE.</td>
</tr>
<tr>
<td>10/23/2013</td>
<td>Ordered Enrolled.</td>
</tr>
<tr>
<td>10/25/2013</td>
<td>*****To GOVERNOR.</td>
</tr>
<tr>
<td>11/05/2013</td>
<td>Signed by GOVERNOR.</td>
</tr>
<tr>
<td>11/05/2013</td>
<td>Public Act No. 156</td>
</tr>
</tbody>
</table>

**H 4384**

**Title:** Do Not Resuscitate Order  
**Author:** Kurtz  
**Introduction:** 3/6/2013  
**Enacted:** 11/5/2013  
**Last Amend:** 10/29/2013  
**Location:** Chaptered  
**Summary:** Clarifies guardian's authority to consent to a do-not-resuscitate order and provides procedure.  
**Status:** 03/06/2013 INTRODUCED.  
03/06/2013 To HOUSE Committee on JUDICIARY.  
04/11/2013 From HOUSE Committee on JUDICIARY: Reported with recommendation.  
04/11/2013 In HOUSE. To second reading.  
04/17/2013 In HOUSE. Read second time and amended. To third reading.  
04/18/2013 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.  
04/23/2013 To SENATE Committee on JUDICIARY.  
05/22/2013 From SENATE Committee on JUDICIARY: Recommended as substituted. (S-1)  
05/22/2013 In SENATE. To second reading.  
10/22/2013 In SENATE. Read second time and committee substitute adopted. (S-1) To third reading.  
10/23/2013 In SENATE. Read third time. Passed SENATE. *****To HOUSE for concurrence.  
10/29/2013 In HOUSE. Amended on HOUSE floor.  
10/29/2013 HOUSE concurred in SENATE amendments with additional amendments. *****To SENATE for concurrence.  
10/30/2013 SENATE concurred in HOUSE amendments.  
10/30/2013 Ordered Enrolled.  
11/05/2013 *****To GOVERNOR.  
11/05/2013 Signed by GOVERNOR.  
11/05/2013 Public Act No. 157
H 4412  Title: Digital Court Records  
Author: Price  
Introduction: 3/12/2013  
Location: House Judiciary Committee  
Summary: Allows digital court records and electronically filed court papers in every state court and provides for electronic signatures.  
Status: 03/12/2013 INTRODUCED.  
03/12/2013 To HOUSE Committee on JUDICIARY.

H 4413  Title: Digital Court Records  
Author: Rutledge  
Introduction: 3/12/2013  
Location: House Judiciary Committee  
Summary: Gives same force and effect to reproduction of digital court records and electronically filed court papers as original for purposes of admissibility into evidence if authenticated.  
Status: 03/12/2013 INTRODUCED.  
03/12/2013 To HOUSE Committee on JUDICIARY.

H 4414  Title: Court Records  
Author: Lane  
Introduction: 3/12/2013  
Location: House Judiciary Committee  
Summary: Allows courts to provide electronic access to court records, pleadings and practice.  
Status: 03/12/2013 INTRODUCED.  
03/12/2013 To HOUSE Committee on JUDICIARY.

H 4415  Title: Court Records  
Author: Jacobsen  
Introduction: 3/12/2013  
Location: House Judiciary Committee  
Summary: Allows digital court records and electronic filing of testimony given in probate court.  
Status: 03/12/2013 INTRODUCED.  
03/12/2013 To HOUSE Committee on JUDICIARY.

H 4416  Title: Court Records  
Author: LaFontaine  
Introduction: 3/12/2013
Location: House Judiciary Committee
Summary: Allows digital court records and electronically filing of probate court records.
Status: 03/12/2013 INTRODUCED.
03/12/2013 To HOUSE Committee on JUDICIARY.

**H 4417**
Title: Certified Reproduction
Author: Schor
Introduction: 3/12/2013
Location: House Judiciary Committee
Summary: Relates to judgments in a civil action; allows a registry or certified reproduction to serve as a complete replacement of validity and enforceability of certain judgments.
Status: 03/12/2013 INTRODUCED.
03/12/2013 To HOUSE Committee on JUDICIARY.

**H 4501**
Title: Fraud or Deception
Author: Schmidt W
Introduction: 4/9/2013
Location: House Criminal Justice Committee
Summary: Prohibits obtaining service or property by fraud or deception; provides penalties.
Status: 04/09/2013 INTRODUCED.
04/09/2013 To HOUSE Committee on CRIMINAL JUSTICE.

**H 4502**
Title: Sentencing Guidelines
Author: Schmidt W
Introduction: 4/9/2013
Location: House Criminal Justice Committee
Summary: Enacts sentencing guidelines for obtaining service or property by fraud or deception.
Status: 04/09/2013 INTRODUCED.
04/09/2013 To HOUSE Committee on CRIMINAL JUSTICE.

**H 4532**
Title: Court Record Maintenance
Author: Price
Introduction: 4/10/2013
Enacted: 12/18/2013
Last Amend: 11/14/2013
Location: Chaptered
Summary: Requires the Clerk of the Probate Court to maintain every record created by or filed with the Court; requires the maintenance of any court record in that manner and on any medium authorized by Supreme Court rules; provides that if a signature is required on any document filed with or created by a court, that requirement is satisfied by an electronic signature as prescribed by Supreme Court rules.

Status: 04/10/2013 INTRODUCED.
04/10/2013 To HOUSE Committee on JUDICIARY.
04/18/2013 From HOUSE Committee on JUDICIARY: Reported with recommendation with substitute. (H-2)
04/18/2013 In HOUSE. To second reading.
04/23/2013 In HOUSE. Read second time and substituted. (H-3)
04/23/2013 In HOUSE. Read second time. To third reading.
04/25/2013 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.
04/30/2013 To SENATE Committee on JUDICIARY.
11/07/2013 From SENATE Committee on JUDICIARY: Recommended as substituted. (S-1)
11/07/2013 In SENATE. To second reading.
11/14/2013 In SENATE. Read second time and committee substitute adopted. (S-1)
To third reading.
12/05/2013 In SENATE. Read third time. Passed SENATE. *****To HOUSE for concurrence.
12/10/2013 HOUSE concurred in SENATE amendments.
12/10/2013 Ordered Enrolled.
12/12/2013 *****To GOVERNOR.
12/18/2013 Signed by GOVERNOR.
12/18/2013 Public Act No. 201

H 4583  Title: Parental Rights
Author:  Johnson J
Introduction: 4/18/2013
Location: House Criminal Justice Committee
Summary: Allows immediate termination of parental rights and visitation rights for a parent or legal guardian upon sentencing for criminal sexual conduct or other sex crimes.
Status: 04/18/2013 INTRODUCED.
04/18/2013 To HOUSE Committee on CRIMINAL JUSTICE.

H 4584  Title: Parenting Time
Author:  Johnson J
Introduction: 4/18/2013
Location: House Criminal Justice Committee
Summary: Allows immediate termination of a grand parenting time order upon sentencing for
certain criminal sexual conduct.

Status: 04/18/2013 INTRODUCED.  
04/18/2013 To HOUSE Committee on CRIMINAL JUSTICE.

H 4638  Title: Recording Act
Author: Pettalia
Introduction: 4/30/2013
Last Amend: 2/20/2014
Location: Senate Banking and Financial Institutions Committee
Summary: Relates to copy of original instrument verified by affidavit; creates presumption of compliance with recording act.
Status: 04/30/2013 INTRODUCED.
04/30/2013 To HOUSE Committee on LOCAL GOVERNMENT.
02/13/2014 From HOUSE Committee on LOCAL GOVERNMENT: Reported with recommendation with substitute.(H-3)
02/13/2014 In HOUSE. To second reading.
02/20/2014 In HOUSE. Read second time and committee substitute adopted. (H-3)
To third reading.
02/26/2014 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.
02/27/2014 To SENATE Committee on BANKING AND FINANCIAL INSTITUTIONS.

H 4639  Title: Recording Affidavit
Author: Lane
Introduction: 4/30/2013
Location: Senate Banking and Financial Institutions Committee
Summary: Relates to recording affidavit and copy of original conveyance; allows for indexing under names of parties to the conveyance.
Status: 04/30/2013 INTRODUCED.
04/30/2013 To HOUSE Committee on LOCAL GOVERNMENT.
02/13/2014 From HOUSE Committee on LOCAL GOVERNMENT: Reported with recommendation.
02/13/2014 In HOUSE. To second reading.
02/20/2014 In HOUSE. Read second time. To third reading.
02/26/2014 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.
02/27/2014 To SENATE Committee on BANKING AND FINANCIAL INSTITUTIONS.

H 4640  Title: Original Conveyance
Title: Credit Union Joint Accounts
Author: Brinks
Introduction: 10/1/2013
Location: House Financial Services Committee
Summary: Regulates credit union multiple-party accounts; requires written disclosure of the rights of account holders for joint accounts; requires credit union disclosure and acknowledgment; includes minor joint account holders.
Status: 10/01/2013 INTRODUCED.
10/01/2013 To HOUSE Committee on FINANCIAL SERVICES.

Title: Joint Accounts
Author: Cochran
Introduction: 10/1/2013
Location: House Financial Services Committee
Summary: Requires written disclosure of rights of account holders for joint accounts.
Status: 10/01/2013 INTRODUCED.
10/01/2013 To HOUSE Committee on FINANCIAL SERVICES.

Title: Joint Accounts
Author: Cochran
Introduction: 10/1/2013
Location: House Financial Services Committee
Summary: Requires written disclosure of rights of account holders for joint accounts.
Status: 10/01/2013 INTRODUCED.
10/01/2013 To HOUSE Committee on FINANCIAL SERVICES.

H 5139  Title: Family Law
Author: Geiss
Introduction: 11/6/2013
Location: House Judiciary Committee
Summary: Provides for right to first refusal of child care for children during other parent's normal parenting time.
Status: 11/06/2013 INTRODUCED.
11/06/2013 To HOUSE Committee on JUDICIARY.

H 5162  Title: Probate
Author: Segal
Introduction: 11/14/2013
Location: House Families, Children and Seniors Committee
Summary: Modifies individuals authorized to make disposition arrangements for decedent.
Status: 11/14/2013 INTRODUCED.
11/14/2013 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

H 5343  Title: Parental Rights
Author: Jenkins
Introduction: 2/20/2014
Location: House Judiciary Committee
Summary: Provides for clarification of termination of parental rights and obligation to pay child support.
Status: 02/20/2014 INTRODUCED.
02/20/2014 To HOUSE Committee on JUDICIARY.

H 5366  Title: Assets
Author: LaFontaine
Introduction: 2/26/2014
Location: House Judiciary Committee
Summary: Enacts Fiduciary Access to Digital Assets Act.
Status: 02/26/2014 INTRODUCED.
02/26/2014 To HOUSE Committee on JUDICIARY.

H 5367  Title: Assets
Author: Lauwers
Introduction: 2/26/2014
Enacted: 12/27/2012
Last Amend: 12/13/2012
Location: House Judiciary Committee
Summary: Enacts powers of personal representatives Fiduciary Access to Digital Assets Act.
Status: 02/26/2014 INTRODUCED.
02/26/2014 To HOUSE Committee on JUDICIARY.

H 5368  Title: Assets
Author: Cotter
Introduction: 2/26/2014
Location: House Judiciary Committee
Summary: Enacts definitions relating to the Fiduciary Access to Digital Assets Act.
Status: 02/26/2014 INTRODUCED.
02/26/2014 To HOUSE Committee on JUDICIARY.

H 5369  Title: Assets
Author: Leonard
Introduction: 2/26/2014
Location: House Judiciary Committee
Summary: Enacts authority or agent Fiduciary Access to Digital Assets Act.
Status: 02/26/2014 INTRODUCED.
02/26/2014 To HOUSE Committee on JUDICIARY.

H 5370  Title: Assets
Author: Jenkins
Introduction: 2/26/2014
Location: House Judiciary Committee
Summary: Enacts Fiduciary Access to Digital Assets Act.
Status: 02/26/2014 INTRODUCED.
02/26/2014 To HOUSE Committee on JUDICIARY.
S 31  Title: Life Insurance and Trustees  
Author: Schuitmaker  
Introduction: 1/16/2013  
Enacted: 2/11/2014  
Location: Chaptered  
Summary: Relates to life insurance; provides that the trustee of a trust has an insurable interest in the life of an individual under the Estates and Protected Individuals Code.  
Status: 01/16/2013 INTRODUCED.  
01/16/2013 To SENATE Committee on INSURANCE.  
03/06/2013 Rereferred to SENATE Committee on JUDICIARY.  
03/13/2013 From SENATE Committee on JUDICIARY: Recommended passage.  
03/13/2013 In SENATE. To second reading.  
03/19/2013 In SENATE. Read second time. To third reading.  
03/20/2013 In SENATE. Read third time. Passed SENATE. *****To HOUSE.  
03/20/2013 To HOUSE Committee on INSURANCE.  
01/23/2014 From HOUSE Committee on INSURANCE: Reported with recommendation.  
01/23/2014 In HOUSE. To second reading.  
01/23/2014 In HOUSE. Read second time. To third reading.  
01/28/2014 In HOUSE. Read third time. Passed HOUSE.  
01/29/2014 Ordered Enrolled.  
02/04/2014 *****To GOVERNOR.  
02/11/2014 Signed by GOVERNOR.  
02/11/2014 Public Act No. 7  

S 32  Title: Life Insurance  
Author: Schuitmaker  
Introduction: 1/16/2013  
Enacted: 2/11/2014  
Location: Chaptered  
Summary: Relates to life insurance; provides the factors that provides a trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy that is owned by the trustee of the trust acting in a fiduciary capacity or that designates the trust itself as the owner if, certain conditions are met.  
Status: 01/16/2013 INTRODUCED.  
01/16/2013 To SENATE Committee on JUDICIARY.  
03/13/2013 From SENATE Committee on JUDICIARY: Recommended passage.  
03/13/2013 In SENATE. To second reading.  
03/19/2013 In SENATE. Read second time. To third reading.  
03/20/2013 In SENATE. Read third time. Passed SENATE. *****To HOUSE.  
03/20/2013 To HOUSE Committee on INSURANCE.  
01/23/2014 From HOUSE Committee on INSURANCE: Reported with
recommendation.
01/23/2014 In HOUSE. To second reading.
01/23/2014 In HOUSE. Read second time. To third reading.
01/28/2014 In HOUSE. Read third time. Passed HOUSE.
01/29/2014 Ordered Enrolled.
02/04/2014 *****To GOVERNOR.
02/11/2014 Signed by GOVERNOR.
02/11/2014 Public Act No. 8

**S 43**  
Title: District Court Judgeships  
Author: Jones Ri  
Introduction: 1/16/2013  
Enacted: 5/20/2013  
Last Amend: 4/18/2013  
Location: Chaptered  
Summary: Increases number of district court judgeships and reduces number of circuit court judgeships in specified districts.  
Status: 01/16/2013 INTRODUCED.  
01/16/2013 To SENATE Committee on JUDICIARY.  
01/24/2013 From SENATE Committee on JUDICIARY: Recommended passage.  
01/24/2013 In SENATE. To second reading.  
02/12/2013 In SENATE. Read second time. To third reading.  
02/13/2013 In SENATE. Read third time. Passed SENATE. *****To HOUSE.  
02/13/2013 To HOUSE Committee on JUDICIARY.  
04/11/2013 From HOUSE Committee on JUDICIARY: Reported with recommendation.  
04/11/2013 In HOUSE. To second reading.  
04/18/2013 In HOUSE. Read second time and substituted. (H-1) To third reading.  
04/25/2013 In HOUSE. Read third time. Passed HOUSE. *****To SENATE for concurrence.  
05/01/2013 SENATE concurred in HOUSE amendments.  
05/01/2013 Ordered Enrolled.  
05/07/2013 *****To GOVERNOR.  
05/20/2013 Signed by GOVERNOR.  
05/20/2013 Public Act No. 33

**S 144**  
Title: Court Guardianship  
Author: Anderson  
Introduction: 2/5/2013  
Location: Senate Families, Seniors and Human Services Committee
Summary: Allows the court to schedule certain hearings on guardianship petitions for developmentally disabled minors before the minor turns 18 years of age.

Status: 02/05/2013 INTRODUCED.
02/05/2013 To SENATE Committee on FAMILIES, CHILDREN, AND SENIORS.

S 176 Title: Mental Health Guardianship
Author: Hildenbrand
Introduction: 2/12/2013
Location: Senate Second Reading - Committee Reports
Summary: Allows the court to schedule a guardianship petition for developmentally disabled individual hearing before the individual turns 18 years of age.

Status: 02/12/2013 INTRODUCED.
02/12/2013 To SENATE Committee on FAMILIES, CHILDREN, AND SENIORS.
05/23/2013 From SENATE Committee on FAMILIES, SENIORS AND HUMAN SERVICES: Recommended passage.
05/23/2013 In SENATE. To second reading.

S 177 Title: Probate Guardianship
Author: Hildenbrand
Introduction: 2/12/2013
Location: Senate Families, Seniors and Human Services Committee
Summary: Allows probate judges to schedule certain guardianship petition hearings prior to minor turning 18 years of age.

Status: 02/12/2013 INTRODUCED.
02/12/2013 To SENATE Committee on FAMILIES, CHILDREN, AND SENIORS.

S 293 Title: Wills And Estates
Author: Bieda
Introduction: 4/10/2013
Location: Senate Judiciary Committee
Summary: Provides power of personal representative of a decedent's estate access to certain online accounts.

Status: 04/10/2013 INTRODUCED.
04/10/2013 To SENATE Committee on JUDICIARY.

S 465 Title: Jurisdictional Provisions
Author: Schuitmaker
Introduction: 9/10/2013
Location: Senate Judiciary Committee
Summary: Revises jurisdictional provisions in the estates and protected individuals code to reflect adoption of the uniform adult guardianship and protective proceedings jurisdiction act.
Status: 09/10/2013 INTRODUCED.
09/10/2013 To SENATE Committee on JUDICIARY.

S 466  Title: Uniform Adult Guardianship
Author: Schuitmaker
Introduction: 9/10/2013
Location: Senate Judiciary Committee
Summary: Enacts uniform adult guardianship and protective proceedings jurisdiction act.
Status: 09/10/2013 INTRODUCED.
09/10/2013 To SENATE Committee on JUDICIARY.

S 524  Title: Retirement Accounts
Author: Nofs
Introduction: 9/19/2013
Location: Senate Second Reading - Committee Reports
Summary: Subjects retirement accounts that are levied upon for child support to garnishment.
Status: 09/19/2013 INTRODUCED.
09/19/2013 To SENATE Committee on FAMILIES, SENIORS AND HUMAN SERVICES.
11/12/2013 From SENATE Committee on FAMILIES, SENIORS AND HUMAN SERVICES: Recommended as substituted.(S-1)
11/12/2013 In SENATE. To second reading.

S 525  Title: Retirement Accounts
Author: Nofs
Introduction: 9/19/2013
Location: Senate Second Reading - Committee Reports
Summary: Relates to the Office of Child Support; includes qualified individual retirement accounts.
Status: 09/19/2013 INTRODUCED.
09/19/2013 To SENATE Committee on FAMILIES, SENIORS AND HUMAN SERVICES.
11/12/2013 From SENATE Committee on FAMILIES, SENIORS AND HUMAN SERVICES: Recommended as substituted.(S-1)
11/12/2013 In SENATE. To second reading.
S 565 Title: Account Holder Rights
Author: Young
Introduction: 10/1/2013
Location: Senate Banking and Financial Institutions Committee
Summary: Requires written disclosure of rights of account holders at credit unions for joint accounts.
Status: 10/01/2013 INTRODUCED.
10/01/2013 To SENATE Committee on BANKING AND FINANCIAL INSTITUTIONS.

S 566 Title: Account Holder Rights
Author: Young
Introduction: 10/1/2013
Location: Senate Banking and Financial Institutions Committee
Summary: Requires written disclosure of rights of account holders for joint accounts at savings banks.
Status: 10/01/2013 INTRODUCED.
10/01/2013 To SENATE Committee on BANKING AND FINANCIAL INSTITUTIONS.

S 567 Title: Account Holder Rights
Author: Young
Introduction: 10/1/2013
Location: Senate Banking and Financial Institutions Committee
Summary: Requires written disclosure of rights of account holder for joint accounts at banks.
Status: 10/01/2013 INTRODUCED.
10/01/2013 To SENATE Committee on BANKING AND FINANCIAL INSTITUTIONS.

S 623 Title: Businesses
Author: Bieda
Introduction: 10/16/2013
Location: Senate Economic Development Committee 10/23/2013 1:30 pm
Summary: Amends non-profit and charitable organizations to promote their underlying purposes and policies.
Status: 10/16/2013 INTRODUCED.
10/16/2013 To SENATE Committee on ECONOMIC DEVELOPMENT.
**S 624**  
**Title:** Charitable Organizations  
**Author:** Jones Ri  
**Introduction:** 10/16/2013  
**Location:** Senate Economic Development Committee 10/23/2013 1:30 pm  
**Summary:** Provides for general revisions in act relating to dissolution of domestic charitable purpose corporations; requires the filing of notice of intention to withdraw with the attorney general by foreign charitable purpose corporations attempting to withdraw from this state; includes required notice of mergers or conversions; provides for religious purposes.  
**Status:** 10/16/2013 INTRODUCED.  
10/16/2013 To SENATE Committee on ECONOMIC DEVELOPMENT.

**S 625**  
**Title:** Nonprofit Corporations  
**Author:** Bieda  
**Introduction:** 10/16/2013  
**Location:** Senate Economic Development Committee 10/23/2013 1:30 pm  
**Summary:** Includes nonprofit corporations in the definition of a corporation in the Michigan limited liability company act.  
**Status:** 10/16/2013 INTRODUCED.  
10/16/2013 To SENATE Committee on ECONOMIC DEVELOPMENT.

**S 714**  
**Title:** Uniform Collaborative Law Act  
**Author:** Schuitmaker  
**Introduction:** 12/5/2013  
**Location:** Senate Judiciary Committee  
**Summary:** Enacts alternate dispute resolution in uniform collaborative law act.  
**Status:** 12/05/2013 INTRODUCED.  
12/05/2013 To SENATE Committee on JUDICIARY.

**S 731**  
**Title:** Wills And Estates  
**Author:** Warren  
**Introduction:** 12/12/2013  
**Location:** Senate Judiciary Committee  
**Summary:** Relates to wills and estates; allows individual to designate a person to make decisions and require that the individual's instructions to be followed on decisions regarding funeral, burial or cremation.  
**Status:** 12/12/2013 INTRODUCED.  
12/12/2013 To SENATE Committee on JUDICIARY.
S 743  Title: State Bar Membership
Author: Meekhof
Introduction: 1/23/2014
Location: Senate Government Operations Committee
Summary: Establishes voluntary state bar membership.
Status: 01/23/2014 INTRODUCED.
01/23/2014 To SENATE Committee on GOVERNMENT OPERATIONS.

S 854  Title: Local Government
Author: Marleau
Introduction: 3/6/2014
Location: Senate Local Government and Elections Committee
Summary: Amends 1943 PA 20, entitled an act relative to the investment of funds of public corporations of the state.
Status: 03/06/2014 INTRODUCED.
03/06/2014 To SENATE Committee on LOCAL GOVERNMENT AND ELECTIONS.

SJR  F  Title: Constitutional Amendment Resolution
Author: Bieda
Introduction: 1/24/2013
Location: Senate Second Reading - Committee Reports
Summary: Provides for a Constitutional Amendment; removes prohibition on election or appointment to a judicial office of person who has reached 70 years of age.
Status: 01/24/2013 INTRODUCED.
01/24/2013 To SENATE Committee on JUDICIARY.
01/30/2013 From SENATE Committee on JUDICIARY: Recommended passage.
01/30/2013 In SENATE. To second reading.
Attachment 5
A Whole New World

If you have occasion to take an estate and gift tax case to Appeals, you will notice a number of changes. There are two divisions, East and West, and only 9 estate and gift tax division appeals officers who are all experienced in these cases. They are located in New York (2), Philadelphia (1), Jacksonville (2), Houston (1), Dallas (1), Chicago (1) and Indianapolis (1). Some appeals conferences are conducted remotely by video-conference. While cases are typically assigned based on the location of the executor, they are also assigned based on inventory of the appeals officers.

Appeals considers itself an independent organization from IRS with a mission to resolve tax agreements. As a result, large estate cases have participated in preconferences similar to those of business cases. In these, the examining agent discloses his/her arguments, and the taxpayer is present. The taxpayer can respond in a separate conference with Appeals, without the examining agent.

There are a few alternative dispute resolution options which are gaining popularity. Many of these have been used in large business cases, but are now available for large estate and gift tax controversies. These include Fast Track Mediation (FTM), Fast Track Settlement (FTS) Post-Appeals Mediation (PAM).

FTM involves a trained mediator for Appeals to help both sides reach an agreement. You both have full control on every decision made, and no decision can be imposed on a party. If resolution is not reached, regular Appeals is still available. FTM promises to offer a quick acceptable resolution. There are certain requirements and procedures, you can review Publication 3605, Fast Track Mediation, Revenue Procedure 2003-41 and the Appeals Mediation Programs Self-Help Tool at irs.gov.

FTS is similar, and it also offers a speedy resolution with a trained Appeals Mediator, who can offer settlement proposals and use Appeals’ settlement authority to resolve the dispute. Either the taxpayer or IRS can agree or deny the Appeals mediator’s settlement proposal. You can then go the regular Appeals route with a different Appeals officer. For more information, see Publication 5022 and Announcement 2011-5.

The examining agent chooses whether a particular case goes to FTS or FTM, and most choose FTS. The process occurs before a 30 day letter is prepared if agreement is not reached with the examiner and before Appeals receives jurisdiction.

PAM also offers a quick solution, while the case is under Appeals jurisdiction, and an Appeals mediator helps parties resolve a disputed issue. See Revenue Procedure 2009-44 for details on how to apply. The Appeals Team Manager decides if a case is eligible and assigns a new Appeals officer, who reviews the settlement proposal.