



PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

Meeting of the Committee on Special Projects (CSP);

Meeting of the Council of the Probate and Estate Planning Section

Friday, March 8, 2019
9:00 a.m.
University Club of MSU
3435 Forest Road
Lansing, Michigan 48910

**Probate and Estate Planning Section of the
State Bar of Michigan**

Meeting of the Section's Committee on Special Projects and
Meeting of the Council of the Probate and Estate Planning Section

March 8, 2019
9:00 a.m.

University Club of MSU
3435 Forest Road
Lansing, Michigan 48910

The meeting of the Section's **Committee on Special Projects (CSP)** meeting will begin at 9:00 am and will end at approximately 10:15 am. The meeting of the **Council of the Probate and Estate Planning Section** will begin at approximately 10:30 am. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

David L.J.M. Skidmore, Secretary
Warner Norcross + Judd LLP
111 Lyon Street NW, Suite 900
Grand Rapids, Michigan 49503
Voice: 616-752-2491
Fax: 616-222-2491
Email: dskidmore@wnj.com

STATE BAR OF MICHIGAN
PROBATE AND ESTATE PLANNING SECTION COUNCIL
Council and CSP Meeting Schedule for 2018-2019

Friday, March 8, 2019, University Club, Lansing, Michigan**
Friday, April 12, 2019, University Club, Lansing, Michigan**
Friday, June 14, 2019, University Club, Lansing, Michigan**
Friday, September 20, 2019, University Club, Lansing, Michigan**

**University Club, 3435 Forest Road, Lansing, Michigan 48909

Each meeting starts with the Committee on Special Projects at 9:00am, followed by the meeting of the Council of the Probate & Estate Planning Section.

Call for materials

Due dates for Materials for Committee on Special Projects

All materials are due on or before 5:00 p.m. of the date falling 9 days before the next CSP meeting. CSP materials are to be sent to Katie Lynwood, Chair of CSP (klynwood@billhlaw.com)

Schedule of due dates for CSP materials, by 5:00 p.m.:

Wednesday, February 27, 2019 (for Friday, March 8, 2019 meeting)
Wednesday, April 3, 2019 (for Friday, April 12, 2019 meeting)
Wednesday, June 5, 2019 (for Friday, June 14, 2019 meeting)
Wednesday, September 11, 2019 (for Friday, September 20, 2019 meeting)

Due dates for Materials for Council Meeting

All materials are due on or before 5:00 p.m. of the date falling 8 days before the next Council meeting. Council materials are to be sent to David Skidmore (dskidmore@wnj.com).

Schedule of due dates for Council materials, by 5:00 p.m.:

Thursday, February 28, 2019 (for Friday, March 8, 2019 meeting)
Thursday, April 4, 2019 (for Friday, April 12, 2019 meeting)
Thursday, June 6, 2019 (for Friday, June 14, 2019 meeting)
Thursday, September 12, 2019 (for Friday, September 20, 2019 meeting)

**Officers of the Council
for 2018-2019 Term**

Office	Officer
Chairperson	Marguerite Munson Lentz
Chairperson Elect	Christopher A. Ballard
Vice Chairperson	David P. Lucas
Secretary	David L.J.M. Skidmore
Treasurer	Mark E. Kellogg

**Council Members
for 2018-2019 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Anderton, James F.	2018 (1st term)	2020	Yes (2 terms)
Jaconette, Hon. Michael L.	2017 (2nd term)	2020	No
Lichterman, Michael G.	2017 (1st term)	2020	Yes
Malviya, Raj A.	2017 (2nd term)	2020	No
Olson, Kurt A.	2017 (1st term)	2020	Yes
Savage, Christine M.	2017 (1st term)	2020	Yes
Caldwell, Christopher J.	2018 (2nd term)	2021	No
Goetsch, Kathleen M.	2018 (2nd term)	2021	No
Hentkowski, Angela M.	2018 (1st term)	2021	Yes
Lynwood, Katie	2018 (2nd term)	2021	No
Mysliwicz, Melisa M. W.	2018 (1st term)	2021	Yes
Nusholtz, Neal	2018 (1st term)	2021	Yes
Labe, Robert C.	2016 (1st term)	2019	Yes (1 term)
Mayoras, Andrew W.	2018 (to fill Geoff Vernon's seat)	2019	Yes (2 terms)
Mills, Richard C.	2016 (1st full term)	2019	Yes (1 term)
New, Lorraine F.	2016 (2nd term)	2019	No
Piwowarski, Nathan R.	2016 (1st term)	2019	Yes (1 term)
Syed, Nazneen H.	2016 (1st term)	2019	Yes (1 term)

Ex Officio Members of the Council

John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Stephen W. Jones; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack; Marlaine C. Teahan

**Probate and Estate Planning Section
2018-2019 Plan of Work**

	Section Initiatives	Respond to Others' Initiatives	Outreach to Section or Community
Fall 2018 priority	Obtain passage of: \$ Omnibus EPIC \$ ART, SB 1056, 1057, 1058 \$ Certificate of Trust, HB 5362, 5398 \$ Modify Voidable Transfers Act to fix glitch \$ Divided and Directed Trustees act, HB 6129, 6130, 6131 \$ Uncapping bill, SB 540, HB 5546	\$ Respond if needed to HB 4751, 4969 \$ Respond re HB 4684, 4996 (visitation of isolated adults)	\$ State Bar Journal theme issue (Nov. 2018) \$ Consider initiatives for involving younger lawyers, increasing diversity. \$ Promote "Who Should I Trust" in October 2018? \$ Update information regarding members, committees, etc. on web site
Spring 2019 priority	\$ Lawyer drafter/beneficiary \$ TBE Trusts \$ Community Property Trusts \$ Premarital property act \$ Undisclosed trusts		\$ Annual Probate Institute (May/June 2019)
Ongoing	\$ SCAO meetings \$ Review of forms and court rules for changes needed by legislative changes	\$ State Bar 21 st Century Task Force \$ Modest Means Work Group \$ E-filing in courts	\$ Social events for members \$ Joint event with other bars like the taxation section or business law section? \$ Review brochures on web site. Need to be updated?
Secondary priority	\$ Review Uniform Fiduciary Income and Principal Act \$ No liability for trustee of ILIT (SB 644 stalled)		
Future projects	\$ Legislative fix for who does attorney represent when attorney represents fiduciary \$ Update supervision of charitable trusts act? \$ Revise nonprofit corporation act so charity can clearly act as trustee \$ Statutory authority for private trust companies.	\$ Electronic Wills	

(2019-02-15)

CSP Materials

**MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE
COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**

AGENDA

Friday, March 8, 2019

East Lansing, Michigan

9:00 – 10:15 AM

1. **Nathan Piwowski – Legislative Development and Drafting Committee – MCL 700.3206 and “Armed Forces” definition – 5 minutes**

See attached proposed redline version of MCL 700.3206(a) referenced in email between Jim Spica and Nathan Piwowski

2. **Nathan Piwowski – Legislative Development and Drafting Committee – Spousal Lifetime Access Trusts (SLATs) – 10 minutes**

See attached:

- Email chain between Nathan Piwowski, Martin Shenkman, Robert Tiplady, Henry Lee and Sandy Glazier
- Proposed redline version of MCL 700.7103 and MCL 700.7506

3. **Nathan Piwowski – Legislative Development and Drafting Committee – Standby Guardian provisions of the Omnibus – 10 minutes**

See attached proposed redline version edited as of 03/01/2019

4. **Kathleen Goetsch and Paul Vaidya – Guardianship, Conservatorship and End of Life Committee – proposed modifications to the Patient Advocate Designation Statutes – 30 minutes**

See attached:

- Memo from Kathy Goetsch and the committee dated 2/27/2019
- Proposed revised redline version of MCL 700.5508 from Paul Vaidya

5. Kathleen Goetsch/Josh Ard – Safe Families for Children Act MCL 722.1551 et seq – remaining time

See attached Memo from Josh Ard re: Safe Families for Children Act dated January 2019

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From: Marlaiane Teahan <mteahan@fraserlawfirm.com>

The problem....

Sent: Monday, July 30, 2018 3:58 PM

To: 'nathan@mwplegal.com' (nathan@mwplegal.com) <nathan@mwplegal.com>; Katie Lynwood <Klynwood@BLLHlaw.com>

Cc: Lentz, Marguerite <MLentz@BODMANLAW.COM>

Subject: MCL 700.3206 -- Issue for LDDC?

I think there may be an error in EPIC Section 3206. <http://legislature.mi.gov/doc.aspx?mcl-700-3206>

Look at 3206(3)(a) – it references “service member.”

3206(14)(g) defines “service member” to include a member of the armed forces.

3206(14)(a) defines “armed forces” to be defined as THAT TERM is defined in section 2 of the veteran right to employment services act, 1994 PA 39, MCL 35.1092. Look at 1092 and there is no definition in that section and not even in the entire VRES Act of “armed forces.” <http://legislature.mi.gov/doc.aspx?mcl-35-1092>

So – where does that leave the definition of service member that is so important to determining the person with the first priority as funeral representative under 3206(1)??



Marlaiane C. Teahan | Shareholder | Fraser Trebilcock

p: 517.377.0869 f: 517.482.0887

a: 124 W. Allegan Street, Suite 1000 Lansing, MI 48933

w: fraserlawfirm.com



The fix....

Nathan Piwowarski

From: James P. Spica <JSpica@dickinson-wright.com>
Sent: Thursday, January 31, 2019 4:05 PM
To: Nathan Piwowarski
Subject: FW: Legislation Development & Drafting Committee : LDDC 02/01/19 agenda
Attachments: 190127%20eml%20re%20MCL%20700.3206.pdf

Apropos of Marlaine Teahan's message of July 30, 2018 (~~copy attached~~), Nathan, I think the LDDC should definitely consider the institution of an annual award for ~~(something like) The Most Boring Legislative Suggestion~~ ~~[(or, perhaps) Legislative Glitch Spotting]~~ of the Year. On the other hand, Marlaine does have ~~(an intensely boring!)~~ point. Let me try to greet boredom with ~~(boring!)~~ ingenuity by suggesting that MCL § 700.3206(14)(a) should be amended to read:

(a) "Armed forces" means **the United States Armed Forces, including the reserve components**~~service units referred to that term as defined in section 1 of the veteran right to employment services act, 1994 PA 39, MCL 35.1092.~~

Jim

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Nathan Piwowski

From: Martin Shenkman <Shenkman@shenkmanlaw.com>
Sent: Wednesday, February 20, 2019 3:20 PM
To: Tiplady II, Robert; Nathan Piwowski; Sandy Glazier
Cc: Lee, Henry P.
Subject: RE: Scan From Lipson Neilson- Seeking your input re SLAT legislation - Thanks Marty!
2-18-19

Got it. Makes sense. Given the chorus of Democratic Presidential hopefuls talking about raising estate taxes, etc. we might well find another 2012 happening in 2020. Getting the changes you made done in advance of that will make it safer for the mere wealthy (as compared to the uber wealthy) to plan.

Marty

Martin M. Shenkman
Martin M. Shenkman, PC
Parker Plaza, 12th Floor, 400 Kelby Street, Fort Lee, New Jersey 07024
Phone: 201-845-8400 Cell: 201-563-4967 Fax: 201-845-8433 shenkman@shenkmanlaw.com Mailing Address: P.O. Box 1130, Fort Lee, NJ 07024

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-----Original Message-----

From: Tiplady II, Robert <RTiplady@dykema.com>
Sent: Wednesday, February 20, 2019 3:17 PM
To: Nathan Piwowski <nathan@mwplegal.com>; Sandy Glazier <SGlazier@lipsonneilson.com>; Martin Shenkman <Shenkman@shenkmanlaw.com>
Cc: Lee, Henry P. <Hlee@HowardandHoward.com>
Subject: RE: Scan From Lipson Neilson- Seeking your input re SLAT legislation - Thanks Marty! 2-18-19

Sandy and Marty:

Here is a clean version of the proposal (ignoring the minor change to the definitions in 7105).

The reason why we deleted the language regarding QTIPs is because we viewed QTIP trusts as merely being a subset of the trusts covered under 7506(4)(a). Is there something else we missed?

We did not try and coordinate the SLAT Proposal with the DAPT statute in part because the DAPT statute seems to draw excess attention (our changes to the UVTA have languished).

Robert P. Tiplady
Dykema
Member

734-214-7644 Direct
734-214-7660 Main
855-264-1081 Fax

2723 South State Street, Suite 400
Ann Arbor, Michigan 48104
<http://www.dykema.com>

-----Original Message-----

From: Nathan Piwowarski [mailto:nathan@mwplegal.com]
Sent: Wednesday, February 20, 2019 2:58 PM
To: Sandy Glazier; Martin M. Shenkman (shenkman@shenkmanlaw.com)
Cc: Tiplady II, Robert; Lee, Henry P.
Subject: RE: Scan From Lipson Neilson- Seeking your input re SLAT legislation - Thanks Marty! 2-18-19

Sandy and Marty,

Thank you for the helpful feedback! For selfish personal reasons, I particularly appreciate Marty's additional planning-related remarks.

I've shared it with this proposal's drafters, Henry Lee and Rob Tiplady.

Thanks again,

Nathan Piwowarski

-----Original Message-----

From: Sandy Glazier [mailto:SGlazier@lipsonneilson.com]
Sent: Friday, February 15, 2019 7:13 PM
To: Martin M. Shenkman (shenkman@shenkmanlaw.com) <shenkman@shenkmanlaw.com>
Cc: Nathan Piwowarski <nathan@mwplegal.com>
Subject: FW: Scan From Lipson Neilson- Seeking your input re SLAT legislation - Thanks Marty! 2-18-19

Thanks Marty. I'm copying Nathan Piwowarski, as he chairs the legislative subcommittee of the Michigan Probate Council (and because I promised him I would)!

Thanks Marty.

Your comments also bring to mind the "technique" that Steve Oshins was touting last week. He called it a Hybrid Dapt. Per Steve it's not truly as self-settled trust, because you don't make the grantor a beneficiary, instead you retain in the grantor a power to appoint a trust protector and you give the trust protector the power to add the grantor in the pool of beneficiaries at a later date if need be. He also suggested providing for splitting the trust if the grantor is ever added as a beneficiary, so that you have a "clean" trust and what he calls a "dirty trust".

I agree having listen to you (and others) that SLATs have possible uses far beyond just using up the high exemption amounts and that the inclusion of the proposed language in a statute might provide protection from the relation back doctrine.

It appears that the scan didn't clearly reflect that the following language in 4 would be eliminated (on the page that has the number 39 at the bottom) delete: (a) The individual creates, or has created, the trust. In its place the following would appear (a) During the lifetime of the individual's spouse the only distributees or permissible distributees of trust income or principal are either (i) the individual's spouse, or (iii) the individual's spouse and the individual's issue or the issue of the individual's spouse.

(b) The individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust.

(5) An individual shall not be considered a settlor of a trust for the benefit of the individual:

(a) if the settlor is the individual's spouse, regardless of whether or when the individual was the settlor of a trust for the benefit of that spouse; or

(b) to the extent that the property of the trust was subject to a general power of appointment in another individual.

My point was, I liked having the option of reference to a QTIP. I think it could be added back in as an option but the proposal would require some reworking to have that option.

Also, it seems to me that the proposed legislation doesn't cover all of the options you identified in your redlined attached comments to George's memo. In fact, you may have identified the need to address DAPT's (particularly those now being drafted to be completed gifts, as opposed to retained grantor trust - as opposed to intentionally defective trusts for income tax purposes under IRC 671.

Thanks for your insights and input - love debating and attacking these issues with you - you always make me think about additional issues I might not have otherwise considered.....

My best to Patti (and now Jonathan and the grandkiddies)- let me know when you're ready for me to weigh back into the 4 pending articles (and don't forget that old lingering one from last year that we still need to finish)!

Nathan - I hope this helps..... as you can see, there may be more to consider here. Marty's comments are appended and embedded in George Bearup's memo. You will have to view them in word with the full review option (as opposed to just the redline in the margin).

BTW, Marty I'm sure you will meet Nathan when you come to the ICLE Probate Seminar in Acme. If I don't see you before then - I will see you then. Nathan, as you can see, Marty is not only a fund of knowledge, but generous in sharing so that others can benefit!!!!

-Sandy

Sandra D. Glazier, Esq.
E-mail: sglazier@lipsonneilson.com
Lipson Neilson P.C.
3910 Telegraph Road, Suite 200
Bloomfield Hills, MI 48302
Telephone: (248) 593-5000 ext. 138
Telefax: (248) 593-5040

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-----Original Message-----

From: Martin Shenkman <Shenkman@shenkmanlaw.com>
Sent: Friday, February 15, 2019 6:10 PM
To: Sandy Glazier <SGlazier@lipsonneilson.com>
Subject: RE: Scan From Lipson Neilson- Seeking your input re SLAT legislation

Here are my comments. You should propose this change but there is much more to this. I do not understand why a SLAT with donee spouse using special power back to donor spouse is any riskier than a DAPT. What am I missing?

Marty

Martin M. Shenkman
Martin M. Shenkman, PC
Parker Plaza, 12th Floor, 400 Kelby Street, Fort Lee, New Jersey 07024
Phone: 201-845-8400 Cell: 201-563-4967 Fax: 201-845-8433 shenkman@shenkmanlaw.com Mailing Address: P.O. Box 1130, Fort Lee, NJ 07024

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-----Original Message-----

From: Sandy Glazier <SGlazier@lipsonneilson.com>
Sent: Friday, February 15, 2019 5:36 PM
To: Martin Shenkman <Shenkman@shenkmanlaw.com>
Subject: RE: Scan From Lipson Neilson- Seeking your input re SLAT legislation

Thanks, sweetheart (seemed an appropriate response during the week of Valentine's day). Hope all is well with your true sweetheart - Patti.

-Sandy

-----Original Message-----

From: Martin Shenkman <Shenkman@shenkmanlaw.com>
Sent: Friday, February 15, 2019 5:34 PM
To: Sandy Glazier <SGlazier@lipsonneilson.com>
Subject: RE: Scan From Lipson Neilson- Seeking your input re SLAT legislation

I'll review and get back to you. I have rarely done SLATs in NJ mostly in DE, AK, SD and NV.

Marty

Martin M. Shenkman
Martin M. Shenkman, PC
Parker Plaza, 12th Floor, 400 Kelby Street, Fort Lee, New Jersey 07024
Phone: 201-845-8400 Cell: 201-563-4967 Fax: 201-845-8433 shenkman@shenkmanlaw.com Mailing Address: P.O. Box 1130, Fort Lee, NJ 07024

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-----Original Message-----

From: Sandy Glazier <SGlazier@lipsonneilson.com>
Sent: Friday, February 15, 2019 4:33 PM
To: Martin Shenkman <Shenkman@shenkmanlaw.com>
Subject: FW: Scan From Lipson Neilson- Seeking your input re SLAT legislation

Marty,

An issue came up today at the Michigan Probate Council meeting regarding SLATs. As you may or may not know, while you commonly draft them, they are not as commonly used here in Michigan. Perhaps due to the presentations (at Notre Dame, Heckerling and at other forums) about the potential use of these devices to take advantage of the high exemptions (which may go away), attorneys are considering their use. Several respected attorneys in Michigan had raised concerns that the relation back doctrine will be imposed by the IRS to undo the estate planning objectives of a SLAT. Therefore, they proposed a state legislative "fix" to enhance the argument against relation back which could be effective for Michigan SLAT trusts governed by Michigan law.

My concern was that in doing so they were eliminating the protective language we had in the Michigan statute for QTIP trusts.

I know that you have studied (and used) SLATs and wondered if you could look at the attached and give me your opinion. I notice that New Jersey is not listed as a state that has a protective statute, yet you are doing SLATs. Michigan wants to introduce this as part of an omnibus corrections to EPIC, so timing is tight - and I thought I'd just go to "my expert" on these matters for input, so that I could pass the information along and counsel could have an educated discussion about whether the proposed change in language would address both the QTIP's which we already protected (and are recognized under the IRC) and SLATs.

I look forward to your comments.

I hope you have a good Shabbos (and aren't too bogged with our other articles).

-Sandy

-----Original Message-----

From: scanuser@lipsonneilson.com <scanuser@lipsonneilson.com>
Sent: Friday, February 15, 2019 4:23 PM
To: Sandy Glazier <SGlazier@lipsonneilson.com>
Subject: Scan From Lipson Neilson

CS 8052ci

[00:17:c8:62:da:c8]

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3

700.7103 Definitions.

Sec. 7103.

As used in this article:

(a) "Action", with respect to a trustee or a trust protector, includes an act or a failure to act.

(b) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code, 26 USC 2041 and 2514.

(c) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1).

(d) "Discretionary trust provision" means a provision in a trust, regardless of whether the terms of the trust provide a standard for the exercise of the trustee's discretion and regardless of whether the trust contains a spendthrift provision, that provides that the trustee has discretion, or words of similar import, to determine 1 or more of the following:

(i) Whether to distribute to or for the benefit of an individual or a class of beneficiaries the income or principal or both of the trust.

(ii) The amount, if any, of the income or principal or both of the trust to distribute to or for the benefit of an individual or a class of beneficiaries.

(iii) Who, if any, among a class of beneficiaries will receive income or principal or both of the trust.

(iv) Whether the distribution of trust property is from income or principal or both of the trust.

(v) When to pay income or principal, except that a power to determine when to distribute income or principal within or with respect to a calendar or taxable year of the trust is not a discretionary trust provision if the distribution must be made.

(e) "Interests of the trust beneficiaries" means the beneficial interests provided in the terms of the trust.

(f) "Power of withdrawal" means a presently exercisable general power of appointment other than a power that is either of the following:

(i) Exercisable by a trustee and limited by an ascertainable standard.

(ii) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(g) "Qualified trust beneficiary" means a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:

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

(ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate.

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

(h) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving.

(i) Except as provided in section 7506, "Settlor" means a person, including a testator or a trustee, who creates a trust. If more than 1 person creates a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution. The lapse, release, or waiver of a power of appointment shall not cause the holder of a power of appointment to be treated as a settlor of the trust.

(j) "Spendthrift provision" means a term of a trust that restrains either the voluntary or involuntary transfer of a trust beneficiary's interest.

(k) "Support provision" means a provision in a trust that provides the trustee shall distribute income or principal or both for the health, education, support, or maintenance of a trust beneficiary, or language of similar import. A provision in a trust that provides a trustee has discretion whether to

distribute income or principal or both for these purposes or to select from among a class of beneficiaries to receive distributions pursuant to the trust provision is not a support provision, but rather is a discretionary trust provision.

(l) "Trust beneficiary" means a person to whom 1 or both of the following apply:

(i) The person has a present or future beneficial interest in a trust, vested or contingent.

(ii) The person holds a power of appointment over trust property in a capacity other than that of trustee.

(m) "Trust instrument" means a governing instrument that contains the terms of the trust, including any amendment to a term of the trust.

(n) "Trust protector" means a person or committee of persons appointed pursuant to the terms of the trust who has the power to direct certain actions with respect to the trust. Trust protector does not include either of the following:

(i) The settlor of a trust.

(ii) The holder of a power of appointment.

700.7506 Creditor's claim against settlor; "settlor" explained.

Sec. 7506.

(1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

(c) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach no more than the lesser of the following:

(i) The claim of the creditor or assignee.

(ii) The maximum amount that can be distributed to or for the settlor's benefit exclusive of sums to pay the settlor's taxes during the settlor's lifetime.

(2) If a trust has more than 1 settlor, the amount a creditor or assignee of a particular settlor may reach under subsection (1)(c) shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) A trust beneficiary is not considered a settlor merely because of a lapse, waiver, or release of a power of withdrawal over the trust property.

(4) An individual who creates a trust shall not be considered a settlor with regard to the individual's retained beneficial interest in the trust that follows the termination of the individual's spouse's prior beneficial interest in the trust if all of the following apply:

~~(a) The individual creates, or has created, the trust~~ (a) During the lifetime of the individual's spouse the only distributees or permissible distributees of trust income or principal are either (i) the individual's spouse, or (ii) the individual's spouse and the individual's issue or the issue of the individual's spouse, for the benefit of the individual's spouse.

~~(b) The trust is treated as qualified terminable interest property under section 2523(f) of the internal revenue code, 26 USC 2523.~~

~~(c) The individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust.~~

(5) An individual shall not be considered a settlor of a trust for the benefit of the individual:

(a) if the settlor is the individual's spouse, regardless of whether or when the individual was the settlor of a trust for the benefit of that spouse; or

(b) to the extent that the property of the trust was subject to a general power of appointment in another individual.

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1 MCL 700.531^{new} Standby Guardian; qualifications

- 2 (1) At a hearing convened under this part, the court may designate 1 or
3 more standby guardians. The court may designate as standby guardian
4 any competent person who is suitable and willing to serve in the order
5 of priority set forth in section 5313(2) and (3).
- 6 (2) The standby guardian shall receive a copy of the petition nominating
7 him or her to serve, the court order establishing or modifying the
8 guardianship, and the order designating the standby guardian.
- 9 (3) A standby guardian shall file an acceptance of his or her designation
10 under subsection (2) within 28 days of receiving notice of the order
11 designating the standby guardian.
- 12 (4) If, for any reason, the standby guardian is unable or unwilling to serve,
13 the standby guardian shall promptly notify the court and interested
14 persons.
- 15 (5) A standby guardian has no authority to act unless the guardian is
16 unavailable for any reason, including the following:
- 17 (a) the guardian dies;
- 18 (b) the guardian is permanently or temporarily unavailable; or,
- 19 (c) the guardian is removed or suspended by the court.
- 20 (6) During an emergency affecting the protected person's welfare when the
21 guardian is unavailable, the standby guardian may temporarily assume
22 the powers and duties of the guardian. A person may rely on the
23 standby guardian's representation that she has authority to act, if given
24 the order issued under subsection (2) and acceptance filed under
25 subsection (3). A person who acts in reliance upon the representations
26 and documentation described in this subsection without knowledge that
27 the representations are incorrect is not liable to any person for so acting
28 and may assume without further inquiry the existence of the standby
29 guardian's authority.

- 1 (7) A standby guardian’s appointment as guardian shall become effective
2 without further proceedings or reiteration of acceptance immediately
3 upon the guardian’s unavailability as described in subsection (5). The
4 powers and duties of the standby guardian shall be the same as those of
5 the prior guardian.
- 6 (8) Upon assuming office, the standby guardian shall promptly notify the
7 court, any known agent appointed under a power of attorney executed
8 pursuant to section 5103, and interested persons. Upon receiving notice,
9 the court may enter an order appointing the standby guardian as
10 guardian without the need for additional proceedings. The guardian
11 shall serve this order on the interested persons.
- 12

1 MCL 700.5301 Appointment of guardian for incapacitated individual by will or
2 other writing

3 (1) If serving as guardian, the parent of an unmarried legally incapacitated
4 individual may appoint by will, or other writing signed by the parent and
5 attested by at least 2 witnesses, a guardian for the legally incapacitated
6 individual. If both parents are dead or the surviving parent is adjudged
7 legally incapacitated, **and no standby guardian has been appointed**
8 **pursuant to section 531new**, a parental appointment becomes effective
9 when, after having given 7 days' prior written notice of intention to do so to
10 the legally incapacitated individual and to the person having the care of the
11 legally incapacitated individual or to the nearest adult relative, the guardian
12 files acceptance of appointment in the court in which the will containing the
13 nomination is probated or, if the nomination is contained in a
14 nontestamentary nominating instrument or the testator who made the
15 nomination is not deceased, when the guardian's acceptance is filed in the
16 court at the place where the legally incapacitated individual resides or is
17 present. The notice must state that the appointment may be terminated by
18 filing a written objection in the court as provided by subsection (4). If both
19 parents are dead, an effective appointment by the parent who died later has
20 priority.

21 (2) If serving as guardian, the spouse of a married legally incapacitated
22 individual may appoint by will, or other writing signed by the spouse and
23 attested by at least 2 witnesses, a guardian of the legally incapacitated
24 individual. **If no standby guardian has been appointed pursuant to**
25 **Section 531new, the**~~The~~ **appointment by will or other writing** becomes
26 effective when, after having given 7 days' prior written notice of intention to
27 do so to the legally incapacitated individual and to the person having care of
28 the legally incapacitated individual or to the nearest adult relative, the
29 guardian files acceptance of appointment in the court in which the will
30 containing the nomination is probated or, if the nomination is contained in a
31 nontestamentary nominating instrument or the testator who made the
32 nomination is not deceased, when the guardian's acceptance is filed in the
33 court at the place where the legally incapacitated individual resides or is
34 present. The notice must state that the appointment may be terminated by
35 filing a written objection in the court as provided by subsection (4).

- 1 (3) An appointment effected by filing the guardian’s acceptance under a will
2 probated in the state of the decedent’s domicile is effective in this state.
- 3 (4) Upon the filing of the legally incapacitated individual’s written
4 objection to a guardian’s appointment under this section in either the
5 court in which the will was probated or, for a nontestamentary
6 nominating instrument or a testamentary nominating instrument made
7 by a testator who is not deceased, the court at the place where the
8 legally incapacitated individual resides or is present, the appointment is
9 terminated. An objection does not prevent appointment by the court in
10 a proper proceeding of the parental or spousal nominee or another
11 suitable person upon an adjudication of incapacity in a proceeding
12 under sections 5302 to 5317.

1 MCL 700.5305 Guardian ad litem; duties; compensation; legal counsel.

2 (1) The duties of a guardian ad litem appointed for an individual alleged
3 to be incapacitated include all of the following:

4 (a) Personally visiting the individual.

5 (b) Explaining to the individual the nature, purpose, and legal effects of a
6 guardian's appointment.

7 (c) Explaining to the individual the hearing procedure and the
8 individual's rights in the hearing procedure, including, but not limited
9 to, all of the following:

10 (i) The right to contest the petition.

11 (ii) The right to request limits on the guardian's powers, including a
12 limitation on the guardian's power to execute on behalf of the
13 ward either of the following:

14 (A) A do-not-resuscitate order.

15 (B) A physician orders for scope of treatment form.

16 (iii) The right to object to a particular person being appointed
17 guardian or designated as a standby guardian.

18 (iv) The right to be present at the hearing.

19 (v) The right to be represented by legal counsel.

20 (vi) The right to have legal counsel appointed for the
21 individual if he or she is unable to afford legal counsel.

22 (d) Informing the individual that if a guardian is appointed, the guardian
23 may have the power to execute a do-not-resuscitate order on behalf of
24 the individual and, if meaningful communication is possible, discern
25 if the individual objects to having a do-not-resuscitate order executed
26 on his or her behalf.

- 1 (e) Informing the individual that if a guardian is appointed, the guardian
2 may have the power to execute a physician orders for scope of
3 treatment form on behalf of the individual and, if meaningful
4 communication is possible, discern if the individual objects to
5 having a physician orders for scope of treatment form executed
6 on his or her behalf.
- 7 (f) Informing the individual of the name of each person known to be
8 seeking appointment as guardian or designation as a standby
9 guardian.
- 10 (g) Asking the individual and the petitioner about the amount of cash and
11 property readily convertible into cash that is in the individual's estate.
- 12 (h) Making determinations, and informing the court of those
13 determinations, on all of the following:
- 14 (i) Whether there are 1 or more appropriate alternatives to the
15 appointment of a full guardian or whether 1 or more actions
16 should be taken in addition to the appointment of a guardian.
17 Before informing the court of his or her determination under
18 this subparagraph, the guardian ad litem shall consider the
19 appropriateness of at least each of the following as alternatives
20 or additional actions:

- 1 (A) Appointment of a limited guardian, including the
2 specific powers and limitation on those powers the
3 guardian ad litem believes appropriate.
- 4 (B) Appointment of a conservator or another protective
5 order under part 4 of this article. In the report
6 informing the court of the determinations under this
7 subdivision, the guardian ad litem shall include an
8 estimate of the amount of cash and property readily
9 convertible into cash that is in the individual’s estate.
- 10 (C) Execution of a patient advocate designation, do-not-
11 resuscitate order, physician orders for scope of
12 treatment form, or durable power of attorney with or
13 without limitations on purpose, authority, or duration.
- 14 (ii) Whether a disagreement or dispute related to the guardianship
15 petition might be resolved through court ordered mediation.
- 16 (iii) Whether the individual wishes to be present at the hearing.
- 17 (iv) Whether the individual wishes to contest the petition.
- 18 (v) Whether the individual wishes limits placed on the guardian’s
19 powers.
- 20 (vi) Whether the individual objects to having a do-not-resuscitate
21 order executed on his or her behalf.
- 22 (vii) Whether the individual objects to having a physician orders for
23 scope of treatment form executed on his or her behalf.
- 24 (viii) Whether the individual objects to a particular person being
25 appointed guardian or designated as a standby guardian.
- 26 (2) The court shall not order compensation of the guardian ad litem unless the
27 guardian ad litem states on the record or in the guardian ad litem’s written
28 report that he or she has complied with subsection (1).

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- 1 (3) If the individual alleged to be incapacitated wishes to contest the petition, to
2 have limits placed on the guardian's powers, or to object to a particular
3 person being appointed guardian or designated as a standby guardian,
4 and if legal counsel has not been secured, the court shall appoint legal
5 counsel to represent the individual alleged to be incapacitated. If the
6 individual alleged to be incapacitated is indigent, this state shall bear the
7 expense of legal counsel.
- 8 (4) If the individual alleged to be incapacitated requests legal counsel or the
9 guardian ad litem determines it is in the individual's best interest to have
10 legal counsel, and if legal counsel has not been secured, the court shall
11 appoint legal counsel. If the individual alleged to be incapacitated is
12 indigent, this state shall bear the expense of legal counsel.
- 13 (5) If the individual alleged to be incapacitated has legal counsel appointed
14 under subsection (3) or (4), the appointment of a guardian ad litem
15 terminates.

16

1 MCL 700.5306a Rights of individual for whom guardian is sought or appointed;
2 form.

3 (1) An individual for whom a guardian is sought or has been appointed under
4 section 5306 has all of the following rights:

5 (a) To object to the appointment of a successor guardian by will or other
6 writing, as provided in section 5301.

7 (b) To have the guardianship proceeding commenced and conducted in
8 the place where the individual resides or is present or, if the individual
9 is admitted to an institution by a court, in the county in which the
10 court is located, as provided in section 5302.

11 (c) To petition on his or her own behalf for the appointment of a guardian
12 or designation of a standby guardian, as provided in section 5303.

13 (d) To have legal counsel of his or her own choice represent him or her on
14 the petition to appoint a guardian or designate a standby guardian,
15 as provided in sections 5303, 5304, and 5305.

16 (e) If he or she is not represented by legal counsel, to the appointment of
17 a guardian ad litem to represent the individual on the petition to
18 appoint a guardian or designate a standby guardian, as provided in
19 section 5303.

20 (f) To an independent evaluation of his or her capacity by a physician or
21 mental health professional, at public expense if he or she is indigent,
22 as provided in section 5304.

23 (g) To be present at the hearing on the petition to appoint a guardian or
24 designate a standby guardian and to have all practical steps taken to
25 ensure this, including, if necessary, moving the hearing site, as
26 provided by section 5304.

27 (h) To see or hear all the evidence presented in the hearing on the petition
28 to appoint a guardian or designate a standby guardian, as provided
29 in section 5304.

- 1 (i) To present evidence and cross-examine witnesses in the hearing on
2 the petition to appoint a guardian or designate a standby guardian,
3 as provided in section 5304.
- 4 (j) To a trial by jury on the petition to appoint a guardian or designate a
5 standby guardian, as provided in section 5304.
- 6 (k) To a closed hearing on the petition to appoint a guardian or designate
7 a standby guardian, as provided in section 5304.
- 8 (l) If a guardian ad litem is appointed, to be personally visited by the
9 guardian ad litem, as provided in section 5305.
- 10 (m) If a guardian ad litem is appointed, to an explanation by the guardian
11 ad litem of the nature, purpose, and legal effects of a guardian’s
12 appointment, as provided in section 5305.
- 13 (n) If a guardian ad litem is appointed, to an explanation by the guardian
14 ad litem of the individual’s rights in the hearing procedure, as
15 provided in section 5305.
- 16 (o) If a guardian ad litem is appointed, to be informed by the guardian ad
17 litem of the right to contest the petition, to request limits on the
18 guardian’s powers, to object to a particular person being appointed
19 guardian or designated as a standby guardian, to be present at the
20 hearing, to be represented by legal counsel, and to have legal counsel
21 appointed if the individual is unable to afford legal counsel, as
22 provided in section 5305.
- 23 (p) To be informed of the name of each person known to be seeking
24 appointment as guardian or designated as a standby guardian,
25 including, if a guardian ad litem is appointed, to be informed of the
26 names by the guardian ad litem as provided in section 5305.
- 27 (q) To require that proof of incapacity and the need for a guardian be
28 proven by clear and convincing evidence, as provided in section 5306.
- 29 (r) To the limitation of the powers and period of time of a guardianship to
30 only the amount and time that is necessary, as provided in section
31 5306.

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- 1 (s) To a guardianship designed to encourage the development of
2 maximum self-reliance and independence as provided in section 5306.
- 3 (t) To prevent the grant of powers to a guardian if those powers are
4 already held by a valid patient advocate, as provided in section 5306.
- 5 (u) To periodic review of the guardianship by the court, including the
6 right to a hearing and the appointment of an attorney if issues arise
7 upon the review of the guardianship, as provided in section 5309.
- 8 (v) To, at any time, seek modification or termination of the guardianship
9 by informal letter to the judge, as provided in section 5310.
- 10 (w) To a hearing within 28 days of requesting a review, modification, or
11 termination of the guardianship, as provided in section 5310.
- 12 (x) To the same rights on a petition for modification or termination of the
13 guardianship including the appointment of a visitor as apply to a
14 petition for appointment of a guardian, as provided in section 5310.
- 15 (y) To personal notice of a petition for appointment or removal of a
16 guardian or a standby guardian, as provided in section 5311.
- 17 (z) To written notice of the nature, purpose, and legal effects of the
18 appointment of a guardian, as provided in section 5311.
- 19 (aa) To choose the person who will serve as guardian and the person
20 designated as standby guardian, if the chosen persons are suitable
21 and willing to serve, as provided in section 5313 and section 531x,
22 respectively.
- 23 (bb) To consult with the guardian about major decisions affecting the
24 individual, if meaningful conversation is possible, as provided in
25 section 5314.
- 26 (cc) To quarterly visits by the guardian, as provided in section 5314.
- 27 (dd) To have the guardian notify the court within 14 days of a change in
28 the individual's residence, as provided in section 5314.

- 1 (ee) To have the guardian secure services to restore the individual to the
2 best possible state of mental and physical well-being so that the
3 individual can return to self-management at the earliest possible time,
4 as provided in section 5314.
- 5 (ff) To have the guardian take reasonable care of the individual’s clothing,
6 furniture, vehicles, and other personal effects, as provided in section
7 5314.
- 8 (2) A guardian ad litem shall inform the ward in writing of his or her rights
9 enumerated in this section. The state court administrative office and the
10 office of services to the aging created in section 5 of the older Michiganians
11 act, 1981 PA 180, MCL 400.585, shall promulgate a form to be used to give
12 the written notice under this section, which shall include space for the court
13 to include information on how to contact the court or other relevant
14 personnel with respect to the rights enumerated in this section.
- 15

1 MCL 700.5310 Resignation or removal of guardian

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

5 (2) The ward, a person appointed to be guardian in a will or other writing
6 by a parent or spouse under section 5301, or any other person interested
7 in the ward's welfare may petition for an order removing the guardian,
8 appointing a successor guardian, changing the designated standby
9 guardian, modifying the guardianship's terms, or terminating the
10 guardianship. A request for this order may be made by informal letter to the
11 court or judge. If the request is made by the person appointed by will or
12 other writing under section 5301, the person shall also present proof of
13 their appointment by will or other writing. A person who knowingly
14 interferes with the transmission of this kind of request to the court or judge
15 is subject to a finding of contempt of court.

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

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

31

1 **MCL 700.5311 Appointment or removal of guardian; notice of hearing.**

2 (1) In a proceeding for the appointment or removal of an incapacitated
3 individual's guardian or the changing of the designated standby
4 guardian, other than the appointment of a temporary guardian or temporary
5 suspension of a guardian, notice of hearing must be given to each of the
6 following:

7 (a) The ward or the individual alleged to be incapacitated and that
8 individual's spouse, parents, and adult children.

9 (b) A person who is serving as the guardian or conservator or who has the
10 individual's care and custody.

11 (c) If known, a person named as attorney in fact under a durable power of
12 attorney.

13 (d) The standby guardian.

14 (e) If no other person is notified under subdivision (a), (b), ~~or (c)~~ or (d),
15 at least 1 of the individual's closest adult relatives, if any can be
16 found.

17 (2) Notice must be served personally on the alleged incapacitated individual.
18 Notice to all other persons must be given as prescribed by court rule. Waiver
19 of notice by the individual alleged to be incapacitated is not effective unless
20 the individual attends the hearing or a waiver of notice is confirmed in an
21 interview with the visitor.

22 (3) In a proceeding for a guardian's appointment under sections 5303 and 5304,
23 a copy of the petition must be attached to the hearing notice, and the notice
24 to the alleged incapacitated individual must contain all of the following
25 information:

26 (a) The nature, purpose, and legal effects of the appointment of a
27 guardian.

28 (b) The alleged incapacitated individual's rights in the proceeding,
29 including the right to appointed legal counsel.

1 MCL 700.5313 Guardian; qualifications

- 2 (1) The court may appoint a competent person as guardian of a legally
3 incapacitated individual. The court shall not appoint as a guardian an
4 agency, public or private, that financially benefits from directly providing
5 housing, medical, mental health, or social services to the legally
6 incapacitated individual. If the court determines that the ward's property
7 needs protection, the court shall order the guardian to furnish a bond or shall
8 include restrictions in the letters of guardianship as necessary to protect the
9 property.
- 10 (2) In appointing a guardian under this section, the court shall appoint a person,
11 if suitable and willing to serve, in the following order of priority:
- 12 (a) A person previously appointed, qualified, and serving in good
13 standing as guardian for the legally incapacitated individual in this or
14 another state.
- 15 (b) A person the individual subject to the petition chooses to serve as
16 guardian.
- 17 (c) A person nominated as guardian in a durable power of attorney or
18 other writing by the individual subject to the petition.
- 19 (d) A person named by the individual as a patient advocate or attorney in
20 fact in a durable power of attorney.
- 21 (e) A person appointed by a parent or spouse of a legally
22 incapacitated person by will or other writing pursuant to Section
23 5301.
- 24 (3) If there is no person chosen, nominated, or named under subsection (2), or if
25 none of the persons listed in subsection (2) are suitable or willing to serve,
26 the court may appoint as a guardian an individual who is related to the
27 individual who is the subject of the petition in the following order of
28 preference:
- 29 (a) The legally incapacitated individual's spouse. This subdivision shall
30 be considered to include a person nominated by will or other writing
31 signed by a deceased spouse.

- 1 (b) An adult child of the legally incapacitated individual.
- 2 (c) A parent of the legally incapacitated individual. This subdivision shall
3 be considered to include a person nominated by will or other writing
4 signed by a deceased parent.
- 5 (d) A relative of the legally incapacitated individual with whom the
6 individual has resided for more than 6 months before the filing of the
7 petition.
- 8 (e) A person nominated by a person who is caring for the legally
9 incapacitated individual or paying benefits to the legally incapacitated
10 individual.
- 11 (4) If none of the persons as designated or listed in subsection (2) or (3) are
12 suitable or willing to serve, the court may appoint any competent person
13 who is suitable and willing to serve, including a professional guardian as
14 provided in section 5106.

1 **MCL 700.5314 Powers and duties of guardian**

2 Whenever meaningful communication is possible, a legally incapacitated
3 individual’s guardian shall consult with the legally incapacitated individual
4 before making a major decision affecting the legally incapacitated
5 individual. To the extent a guardian of a legally incapacitated individual is
6 granted powers by the court under section 5306, the guardian is responsible
7 for the ward’s care, custody, and control, but is not liable to third persons by
8 reason of that responsibility for the ward’s acts. In particular and without
9 qualifying the previous sentences, a guardian has all of the following powers
10 and duties, to the extent granted by court order:

11 (a) The custody of the person of the ward and the power to establish the
12 ward’s place of residence within or without this state. The guardian
13 shall visit the ward within 3 months after the guardian’s appointment
14 and not less than once within 3 months after each previous visit. The
15 guardian shall notify the court within 14 days of a change in the
16 ward’s place of residence or a change in the guardian’s place of
17 residence.

18 (b) If entitled to custody of the ward, the duty to make provision for the
19 ward’s care, comfort, and maintenance and, when appropriate, arrange
20 for the ward’s training and education. The guardian shall secure
21 services to restore the ward to the best possible state of mental and
22 physical well-being so that the ward can return to self-management at
23 the earliest possible time. Without regard to custodial rights of the
24 ward’s person, the guardian shall take reasonable care of the ward’s
25 clothing, furniture, vehicles, and other personal effects and commence
26 a protective proceeding if the ward’s other property needs protection.
27 If a guardian commences a protective proceeding because the
28 guardian believes that it is in the ward’s best interest to sell or
29 otherwise dispose of the ward’s real property or interest in real
30 property, the court may appoint the guardian as special conservator
31 and authorize the special conservator to proceed under section
32 5423(3). A guardian shall not otherwise sell the ward’s real property
33 or interest in real property.

- 1 (c) The power to give the consent or approval that is necessary to enable
2 the ward to receive medical or other professional care, counsel,
3 treatment, or service. The power of a guardian to execute a do-not-
4 resuscitate order under subdivision (d) does not affect or limit the
5 power of a guardian to consent to a physician’s order to withhold
6 resuscitative measures in a hospital.
- 7 (d) The power of a guardian to execute, reaffirm, and revoke a do-not-
8 resuscitate order on behalf of a ward is subject to this subdivision. A
9 guardian shall not execute a do-not-resuscitate order unless the
10 guardian does all of the following:
- 11 (i) Not more than 14 days before executing the do-not-resuscitate
12 order, the guardian visits the ward and, if meaningful
13 communication is possible, consults with the ward about
14 executing the do-not-resuscitate order.
- 15 (ii) The guardian consults directly with the ward’s attending
16 physician as to the specific medical indications that warrant the
17 do-not-resuscitate order.
- 18 (e) If a guardian executes a do-not-resuscitate order under subdivision
19 (d), not less than annually after the do-not-resuscitate order is first
20 executed, the guardian shall do all of the following:
- 21 (i) Visit the ward and, if meaningful communication is possible,
22 consult with the ward about reaffirming the do-not-resuscitate
23 order.
- 24 (ii) Consult directly with the ward’s attending physician as to
25 specific medical indications that may warrant reaffirming the
26 do-not-resuscitate order.
- 27 (f) If a conservator for the ward’s estate is not appointed, the power to do
28 any of the following:
- 29 (i) Institute a proceeding to compel a person under a duty to
30 support the ward or to pay money for the ward’s welfare to
31 perform that duty.

- 1 (ii) Receive money and tangible property deliverable to the ward
2 and apply the money and property for the ward’s support, care,
3 and education. The guardian shall not use money from the
4 ward’s estate for room and board that the guardian or the
5 guardian’s spouse, parent, or child have furnished the ward
6 unless a charge for the service is approved by court order made
7 upon notice to at least 1 of the ward’s next of kin, if notice is
8 possible. The guardian shall exercise care to conserve any
9 excess for the ward’s needs.
- 10 (g) The guardian shall report the condition of the ward and the ward’s
11 estate that is subject to the guardian’s possession or control, as
12 required by the court, but not less often than annually. The guardian
13 shall also serve the report required under this subdivision on the ward
14 and interested persons as specified in the Michigan court rules. A
15 report under this subdivision shall contain all of the following:
- 16 (i) The ward’s current mental, physical, and social condition.
- 17 (ii) Improvement or deterioration in the ward’s mental, physical,
18 and social condition that occurred during the past year.
- 19 (iii) The ward’s present living arrangement and changes in his or her
20 living arrangement that occurred during the past year.
- 21 (iv) Whether the guardian recommends a more suitable living
22 arrangement for the ward.
- 23 (v) Medical treatment received by the ward.
- 24 (vi) Whether the guardian has executed, reaffirmed, or revoked a
25 do-not-resuscitate order on behalf of the ward during the past
26 year.
- 27 (vii) Services received by the ward.
- 28 (viii) A list of the guardian’s visits with, and activities on behalf of,
29 the ward.
- 30 (ix) A recommendation as to the need for continued guardianship.

- 1 (x) A statement signed by the standby guardian, if any have
2 been appointed, that the standby guardian continues to be
3 willing to serve in the event of the unavailability, death,
4 incapacity, or resignation of the guardian.
- 5 (h) If a conservator is appointed, the duty to pay to the conservator, for
6 management as provided in this act, the amount of the ward's estate
7 received by the guardian in excess of the amount the guardian
8 expends for the ward's current support, care, and education. The
9 guardian shall account to the conservator for the amount expended.

5

MEMORANDUM

To: *Katie Lynnwood*

From: *Guardianship committee/ Kathy Goetsch*

Date: *2/27/2019*

Re: *MARCH 8, 2019 CSP AGENDA*

In an effort to keep the proposed modifications to the PAD statutes moving at a pace that they may be a part of the EPIC Omnibus I am submitting the following for action at CSP – Normally I would not “offer” alternatives, however, since time is of the essence I am doing just that.

These modifications to .5506 in particular are designed to make it clear that Co-Advocates are contemplated and are authorized. The proposed modification should resolve the concern of care providers that Co-Agents are not permitted, and secondarily, make it clear that the actions of 1 of the Co-Agents does not create a liability concern for the provider. The issue of liability is likely a common reason for providers to decline to honor a PAD that appoints multiple agents to act at one time.

There has been considerable discussion since the February CSP discussion on multiple patient advocates and expressly acknowledge that Co-Agents may be appointed. Particular attention was given to the Reporters Comments following .5506 regarding the use of singular pronouns vs. plural. Attention was also given to the suggestion that the word “committee” is recognized & in various statutes. What follows is the recommendation to CSP for modification to .5506 -- deleting any reference to “group” or “committee” and instead adding the final sentence -- making it clear that providers of medical or mental health treatment may rely on the representation of any designated individual. By adding this sentence it makes it clear that multiple individuals may serve at the same time, however, one may speak for the “group” or “committee”. This proposal is what is being recommended to CSP for action during the March CSP meeting.

The Guardianship Committee recommends adoption of the following:

2ND ALTERNATIVE TO JOSH’S WORK – DROPPING GROUP AND OR COMMITTEE AND ADDING THE LAST SENTENCE TO CLARIFY THAT 1 PERSON MAY ACT ALONE.

.5506 (1) An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual ~~or group committee of individuals~~ who is 18 years of age or older to exercise powers concerning care, custody and medical or mental health treatment decisions for the individual making the patient advocate designation. An individual making a patient advocate designation under this subsection may include in the patient advocate designation the authority for the designated individual ~~or committee of individuals~~, to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. the authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift. ~~If a group committee of individuals is designated, third parties may rely on representations of any designated individual.~~ If more than one individual is designated as a patient advocate to serve at the same time, a person providing care, custody or medical or mental health treatment may rely on the representations of any designated patient advocate without further inquiry.

There is an alternative to the above – this alternative borrows from the statutes dealing with Co-Personal Representatives (.3717 - .3718). This alternative would require an additional subsection to .5506 or other section of the applicable PA statutes or perhaps a new stand-alone section. This addition, though borrowing from the PR statutes, may make the waters muddy for providers of care – because it requires that the PA Designation be properly drafted clearly indicating that the Co-Patient Advocates may act independently of each other. It requires that the providers of care interpret the document, which may be undesirable to the providers, resulting in NOT honoring the PAD for fear of liability.

3RD ALTERNATIVE – ADDING A 5TH SECTION TO .5506 -- OR PERHAPS A SEPARATE NEW SECTION – THIS LANGUAGE FOLLOWS THE LANGUAGE IN .3717 & .3718

Either .5506(6) or

*New 700.550*****

If 2 or more persons are designated to serve as a patient advocate, and unless the designation provides otherwise, the concurrence of all is required to act with regard to the care, custody, and medical or mental health treatment decisions of the individual. This restriction does not apply if the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to act on behalf of the individual or if a copatient advocate has been delegated to act for the other. If advised by the patient advocate with whom the person deals that 1 patient advocate alone has authority to act for a reason mentioned in this section, a person dealing with a

patient advocate is as fully protected as if the patient advocate with whom the person deals is the sole patient advocate.

Either .5506(7) or

*New 700.550***

Unless the designation provides otherwise, each power exercisable by the copatient advocates may be exercised by the 1 or more remaining patient advocate after the designation of 1 or more is terminated.

The following is the work previously provided by Josh Ard. These suggestions amend other parts of the PAD statutes to allow and individual to direct in their PAD how a decision may be made – including a direction to consult with others before the designated PA actually acts. However, if the object of the modifications to PAD statutes is to make it abundantly clear that Co-Agents may serve, it may not be necessary for the following modifications to be made to the existing statutes.

**700.5507 Patient advocate designation; statement; acceptance.
Sec. 5507.**

(1) A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment or mental health treatment, or both. A patient advocate designation may also include a statement of the patient's desires on the making of an anatomical gift of all or part of the patient's body under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The statement regarding an anatomical gift under this subsection may include a statement of the patient's desires regarding the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, medical treatment, mental health treatment, the making of an anatomical gift, or the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift that the patient could have exercised on his or her own behalf.

(2) A patient advocate designation may also include instructions about how the patient advocate is to make decisions. This includes decisions about what individuals or organizations should be consulted and whether a vote or other sort of consensus should be required for particular decisions.

~~(2) A patient may designate in the patient advocate designation a successor individual as a patient advocate who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.~~

(3) A patient may designate in the patient advocate designation a successor individual or a series of individuals in a determined order who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate is not able to make decisions in a timely manner. The power devolves in the order listed in the patient advocate designation. An acting successor patient advocate must relinquish powers to higher ranking individuals in order if they become available and willing to serve. The patient may modify this devolution of power in the patient advocate designation, such as authorizing the successor to act only if the individual does not accept, is incapacitated, resigns, or is removed.

~~(3)~~(4) Before a patient advocate designation is implemented, a copy of the patient advocate designation must be given to the proposed patient advocate and must be given to a successor patient advocate before the successor acts as patient advocate. Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the patient advocate designation.

~~(4)~~ (5) The acceptance of a designation as a patient advocate must include substantially all of the following statements:

1. This patient advocate designation is not effective unless the patient is unable to participate in decisions regarding the patient's medical or mental health, as applicable. If this patient advocate designation includes the authority to make an anatomical gift as described in section 5506, the authority remains exercisable after the patient's death.
2. A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.
3. This patient advocate designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.
4. A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

5. A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.

6. A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient's best interests.

7. A patient may revoke his or her patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

8. A patient may waive his or her right to revoke the patient advocate designation as to the power to make mental health treatment decisions, and if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.

9. A patient advocate may revoke his or her acceptance of the patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

10. A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the public health code, 1978 PA 368, MCL 333.20201.

700.5511 Binding effect; liability of provider; exception; dispute.

Sec. 5511.

(1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the patient's competency.

(2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.

(3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

~~(3)~~(4) A person providing care, custody, or medical or mental health treatment to a patient is not required to determine if a patient advocate complies with any

instructions authorized by 5507(2) and has no liability if the patient advocate fails to comply.

~~(4)~~ (5) A mental health professional who provides mental health treatment to a patient shall comply with the desires of the patient as expressed in the designation. If 1 or more of the following apply to a desire of the patient as expressed in the designation, the mental health professional is not bound to follow that desire, but shall follow the patient's other desires as expressed in the designation:

(a) In the opinion of the mental health professional, compliance is not consistent with generally accepted community practice standards of treatment.

(b) The treatment requested is not reasonably available.

(c) Compliance is not consistent with applicable law.

(d) Compliance is not consistent with court-ordered treatment.

(e) In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances.

~~(5)~~ (6) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or is not complying with sections 5506 to 5515, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

Finally, there may be a need to modify 5509(1)(g)

A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.

The modification could reference that this does not apply to the new scheme under 5507(2). That may be unnecessary because that isn't a delegation created by the patient advocate.

6

Suggested Changes to MCL 700.5508 of EPIC:
REVISED FEBRUARY 2019

700.5508 Determination of advocate's authority to act.
Sec. 5508.

(1) Except as provided under subsection (3), the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions. The patient's attending ~~physician~~ medical professional and ~~another physician~~ one other medical professional or licensed psychologist shall determine upon examination of the patient whether the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually. If the patient's religious beliefs prohibit an examination and this is stated in the designation, the patient must indicate in the designation how the determination under this subsection shall be made. The determination of the patient's ability to make mental health treatment decisions shall be made under section 5515.

(2) If a dispute arises as to whether the patient is unable to participate in medical or mental health treatment decisions, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to whether the patient is unable to participate in decisions regarding medical treatment or mental health treatment, as applicable. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.

(3) In the case of a patient advocate designation that authorizes a patient advocate to make an anatomical gift of all or part of the patient's body, the patient advocate shall act on the patient's behalf in accordance with part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only after the patient has been declared unable to participate in medical treatment decisions as provided in subsection (1) or declared dead by a licensed physician. The patient advocate's authority to make an anatomical gift remains exercisable after the patient's death.

(4) As used in this section:

(a) "Medical professional" means an individual who is one of the following:

(i) A physician who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) A physician's assistant licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A certified nurse practitioner under part 172 of the public health code, MCL 333.17201 to 333.17242.

(b) "Attending medical professional" means a physician, physician's assistant, or certified nurse practitioner, who has primary responsibility for the treatment and care of a patient.

Suggested Changes to MCL 700.5508 of EPIC:
REVISED FEBRUARY 2019

700.5508 Determination of advocate's authority to act.
Sec. 5508.

(1) Except as provided under subsection (3), the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions. The patient's attending ~~physician~~ medical professional and ~~another physician~~ one other medical professional or licensed psychologist shall determine upon examination of the patient whether the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually. If the patient's religious beliefs prohibit an examination and this is stated in the designation, the patient must indicate in the designation how the determination under this subsection shall be made. The determination of the patient's ability to make mental health treatment decisions shall be made under section 5515.

(2) If a dispute arises as to whether the patient is unable to participate in medical or mental health treatment decisions, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to whether the patient is unable to participate in decisions regarding medical treatment or mental health treatment, as applicable. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.

(3) In the case of a patient advocate designation that authorizes a patient advocate to make an anatomical gift of all or part of the patient's body, the patient advocate shall act on the patient's behalf in accordance with part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only after the patient has been declared unable to participate in medical treatment decisions as provided in subsection (1) or declared dead by a licensed physician. The patient advocate's authority to make an anatomical gift remains exercisable after the patient's death.

(4) As used in this section:

(a) "Medical professional" means an individual who is one of the following:

(i) A physician who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) A physician's assistant licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A certified nurse practitioner under part 172 of the public health code, MCL 333.17201 to 333.17242.

(b) "Attending medical professional" means a physician, physician's assistant, or certified nurse practitioner, who has primary responsibility for the treatment and care of a patient.

7

What to do about the new Safe Families for Children Act, MCL 722.1551 et seq.

Josh Ard
January 2019

Contrary to representations made, the act was not amended before passage to clarify that it does not create more burdens on families who wish to use the existing temporary powers of attorneys authorized under EPIC. Thus, we need to provide suggestions as to how this should be done.

The problem is obvious is looking at the text of the act. In some places, such as in Section 9, the drafters were careful to use language such as “a power of attorney under this act”. In Sections 11 and 13, this clarifying phrase is missing and the act only refers to “a power of attorney”. Sections 11 and 13 place significant burdens both on state government and on families who wish to use powers of attorneys for relatively mundane tasks such as ensuring grandparents’ power to take actions while the parents are out of town for short trips.

There are two logical methods to address the problem:

- ❖ Add a section saying something like “this act does not apply to powers of attorneys created under the authority of MCL 700.5103.
- ❖ Add clarifying language in the new statute where appropriate.

I suggest that the second approach is better for two reasons:

- ❖ There are some cases where protections ought to apply to EPIC powers of attorney, such in Section 15. I don’t know if anybody has ever said that executing a power of attorney under EPIC is in itself a sign of neglect, but it makes sense to make it plain that it does not.
- ❖ Even if a new section is added, some clever lawyers may make something of the fact that “under this act” is found in some section but not others.

Therefore, I submit that we ought to add “under this act” where necessary. Please consider the following, where the added language is in red and underlined.

By the way, I have no idea why some things are in blue and double underlined.

SAFE FAMILIES FOR CHILDREN ACT

Act 434 of 2018

AN ACT to establish the safe families for children program; to prescribe the powers and duties of certain state departments and public and private agencies; to allow for temporary delegation of a parent's or guardian's powers regarding care, custody, or property of a minor child; and to prescribe procedures for providing host families for the temporary care of children.

722.1551.new Short title.

Sec. 1.

This act shall be known and may be cited as the "safe families for children act".

722.1553.new Definitions.

Sec. 3.

As used in this act:

(a) "Automatic notification system" means a system that stores and retains fingerprints and that provides for an automatic notification to a participant when a fingerprint is submitted into the system that matches an individual whose fingerprints are retained in the system or when the criminal history of an individual whose fingerprints are retained in the system is updated.

(b) "Child placing agency" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(c) "Department" means the department of health and human services.

(d) "Family service agency" means an agency that assists a tax-exempt charitable organization recruiting persons and families under section 7 with obtaining and reviewing criminal history records checks required under section 9 and conducting home safety assessments and training as required under sections 11 and 13. A family service agency must also be licensed as a child placing agency.

(e) "FBI automatic notification system" means the automatic notification system that is maintained by the Federal Bureau of Investigation.

(f) "Minor child" means an individual less than 18 years of age.

722.1555.new Temporary delegation of parental power; limitations; revocation or withdrawal.
Sec. 5.

(1) By a properly executed power of attorney, a parent or guardian of a minor child may temporarily delegate to another person his or her powers regarding care, custody, or property of the minor child under this act. This temporary delegation of power may be for up to 180 days, except that if a parent or guardian is serving in the United States Armed Forces and is deployed to a foreign nation, a power of attorney may be effective until the thirty-first day after the end of the deployment. A person to whom the parent or guardian delegates these powers is required to have undergone the criminal history records check, home safety assessment and inspection, and training required under this act. A parent or guardian cannot delegate, under this act, his or her power to consent to marriage or adoption of the minor child, consent to an abortion or inducement of an abortion to be performed on or for the minor child, or to terminate parental rights to the minor child.

(2) The parent or guardian executing a power of attorney may revoke or withdraw the power of attorney at any time. [I see no reason for this not to apply to EPIC powers of attorney]

722.1557.new Recruitment of persons or families by charitable organizations to serve as resource families.
Sec. 7.

A tax-exempt charitable organization, including, but not limited to, a church or faith-based organization, may recruit persons or families to whom a temporary power of attorney may be executed under section 5. A tax-exempt charitable organization recruiting persons and families under this section must use the services of a family service agency to assist the tax-exempt charitable organization in obtaining and reviewing criminal history records checks required under section 9 and conducting home safety assessments and training as required under sections 11 and 13.

722.1559.new Recruitment of persons or families by charitable organizations to serve as resource families.
Sec. 9.

(1) For each person over 18 years of age residing in a home where a minor child may be temporarily hosted according to a power of attorney under this act, a criminal history records check must be conducted as follows:

(a) A family service agency must request the department of state police to do both of the following:

(i) Conduct a criminal history records check on the person.

(ii) Conduct a criminal history records check through the Federal Bureau of Investigation on the person.

(b) Each person must submit his or her fingerprints to the department of state police for the criminal history records check required under this act. Both of the following apply concerning fingerprints submitted to the department of state police under this subdivision:

(i) The department of state police shall store and retain all fingerprints submitted under this section in an automated fingerprint identification system database that searches against latent fingerprints and provides for an automatic notification when a subsequent fingerprint is submitted into the system that matches a set of fingerprints previously submitted under this section or when the criminal history of an individual whose fingerprints are retained in the system is updated. Upon receiving a notification under this subparagraph, the department of state police shall immediately notify the family service agency that requested the criminal history records check under this section. Information in the database maintained under this section is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(ii) The department of state police shall forward all fingerprints submitted to it under this section to the Federal Bureau of Investigation to be retained in the FBI automatic notification system that provides for automatic notification if subsequent criminal history record information matches fingerprints previously submitted to the Federal Bureau of Investigation under this section. The fingerprints retained under this section may be searched by using future submissions to the FBI automatic notification system, including, but not limited to, latent fingerprint searches. This subparagraph does not apply until the department of state police is a participant in the FBI automatic notification system.

(c) A family service agency requesting a criminal history records check under this section shall notify the department of state police within 5 days after the individual for which the criminal history records check was requested is no longer residing in a home where a minor child may be temporarily hosted or the individual's home is no longer hosting or available to host a minor child under this act. After receiving this notice from a family service agency, the department of state police is no longer required to provide any notice to the family service agency under subdivision (b)(i) for that individual.

(2) When a home is hosting or is available to host a minor child according to a power of attorney, each person residing in that home for whom a criminal history records check has been conducted under subsection (1) must report to a family service agency within 3 business days after he or she has been arraigned for 1 or more of the crimes listed in section 5r of 1973

PA 116, MCL 722.115r, or any disqualifying offense under the national child protection act of 1993, Public Law 103-209.

(3) If a person residing in a home in which a minor child is or is proposed to be hosted according to a power of attorney under this act is not of good moral character as that term is defined in and determined under 1974 PA 381, MCL 338.41 to 338.47, or has been arraigned for 1 or more disqualifying offenses under the national child protection act of 1993, Public Law 103-209, a minor child shall not be hosted in that home.

(4) A family service agency may request the criminal history records checks under this section as allowed under state and federal law, including, but not limited to, being a qualified entity under the national child protection act of 1993, Public Law 103-209.

722.1561.new Home safety assessment.
Sec. 11.

A family service agency shall conduct a home safety assessment and inspection as follows:

(a) A family service agency shall conduct a home safety assessment for each home where a minor child may be temporarily hosted according to a power of attorney under this act. The home safety assessment must include an inspection of the physical dwelling, assessment of the person's or family's financial ability to provide care for the minor child, and assessment of the person's or family's ability and capacity to provide care for the minor child. As part of the home safety assessment, the family service agency shall obtain 3 current references from persons not related to the person or family.

(b) A family service agency shall conduct a home safety assessment every 2 years while a home is hosting or is available to host a minor child according to a power of attorney under this act.

(c) A family service agency shall conduct periodic inspections of a home that is hosting a minor child under this act to monitor the well-being of the minor child and any change impacting the most recent home safety assessment. The family service agency must conduct this inspection within 48 hours after a person or family begins hosting a minor child in a home, 1 day per week for the first month during which a minor child is hosted in the home, and 1 day per month after that for the duration of the period of time that the minor child is being hosted in the home.

(d) A family service agency's home safety assessment and inspection under subdivisions (a), (b), and (c) must result in a determination that a home is safe for a minor child before the home may host or continue to host a minor child under this section.

722.1563.new Training for preparing, developing, training, and supporting resource families.
Sec. 13.

(1) Before a minor child is hosted in a home according to a power of attorney under this act, a family service agency shall provide training for the persons in that home. The training must be based on a national model for preparing, developing, training, and supporting resource families for the temporary care of minor children and must include training on identifying child maltreatment, understanding grief and loss, behavior management strategies, environmental safety and universal precautions, and unique child-specific needs-based training.

(2) A person to whom power related to a minor child is delegated according to a power of attorney under this act shall not be compensated for serving as the temporary attorney-in-fact. This subsection does not prohibit an individual, private organization, or governmental entity from providing funds to a family service agency for providing services under this act.

722.1565.new Execution of power attorney does not constitute abuse or neglect; services under this act by resource family not subject to licensing or regulation by the department.
Sec. 15.

(1) A parent or guardian executing a power of attorney does not, by itself, constitute evidence of abandonment, child abuse, child neglect, delinquency, or other maltreatment of a minor child unless the parent or guardian fails to take custody of the minor child when a power of attorney expires. This act does not prevent or delay an investigation of child abuse, child neglect, abandonment, delinquency, or other mistreatment of a minor child.

(2) Executing a power of attorney does not subject a parent, guardian, or person in a home in which a minor child is hosted under this act to any law, rule, or regulation concerning licensing or regulation of foster care or a child care organization. Providing a service under this act does not subject a family service agency to regulation by the department.

722.1567.new Records; availability; liability; rules prohibited; referral.
Sec. 17.

(1) A family service agency shall maintain records for each criminal history records check, home safety assessment, and training it conducts under this act for a period of not less than 7 years after the minor child attains 18 years of age. The family service agency shall make the records available to any local, state, or federal authority requesting the records as part of an investigation involving the minor child, parent or guardian, or person in a home in which a minor child is or was hosted according to a power of attorney.

(2) The department is not liable for any action arising out of this act.

(3) The department shall not promulgate rules under this act.

(4) The department, a local office of the department, or a law enforcement agency or officer may refer cases or families to a tax-exempt charitable organization that is recruiting persons and families under this act. The services provided under this act are community-based services that may be recommended commensurate with the risk to the child under section 8d(1)(b) and (c) of the child protection law, 1975 PA 238, MCL 722.628d.

Council Materials

**MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**

March 8, 2019

Agenda

- I. Call to Order
- II. Introduction of Guests
- III. Excused Absences
- IV. Monthly Reports:
 - A. Minutes of Prior Council Meeting -- Attachment A
 - B. Chair's Report
 - C. Treasurer's Report -- Attachment B
 - D. Committee on Special Projects
- V. Other Committees Presenting Oral Reports
 - A. Court Rules, Forms, & Proceedings Committee—Melisa M.W. Mysliwec
 - B. State Bar & Section Journals—Nancy Little
- VI. Other Business
- VII. Adjournment

Next Probate Council Meeting: Friday, April 12, 2019

A

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

**February 15, 2019
Lansing, Michigan**

Minutes

I. Call to Order

The Chair of the Council, Marguerite Munson Lentz, called the meeting to order at 10:35 a.m.

II. Introduction of Guests

- A. Meeting attendees introduced themselves.
- B. The following officers and members of the Council were present: Marguerite Munson Lentz, Chair; Christopher A. Ballard, Chair Elect; David L.J.M. Skidmore, Secretary; Mark E. Kellogg, Treasurer; Christopher J. Caldwell; Kathleen M. Goetsch; Angela M. Hentkowski; Robert C. Labe; Michael G. Lichterman; Katie Lynwood; Raj A. Malviya; Melisa M.W. Mysliwiec; Richard C. Mills; Kurt A. Olson; Nathan R. Piwowarski; Christine M. Savage; Andrew W. Mayoras (via remote attendance); and Neal Nusholtz (via remote attendance). A total of 18 Council officers and members were present, constituting a quorum.
- C. The following ex officio members of the Council were present: Amy N. Morrissey; and Marlaine C. Teahan.
- D. The following liaisons to the Council were present: Susan L. Chalgian (SCAO); Jeanne Murphy (ICLE); and James P. Spica (Uniform Law Commission).
- E. Others present: Sandra Glazier; Ryan Bourjaily; Jim Ryan (Public Affairs Associates); Ken Silver; Paul Vaidya; Dan Hilker; David Sprague; Jacob Whiten; Joe Weiler; and Mike Shelton (via remote attendance).

III. Excused Absences

The following officers and members of the Council were absent: David P. Lucas, Vice Chair; Hon. Michael L. Jaconette; Lorraine F. New; James F. Anderton; Nazneen S. Hasan.

IV. Lobbyist Report – Public Affairs Associates

Jim Ryan of Public Affairs Associates reported that: (1) he met with Senator Lucido, chair of the Senate Judiciary Committee, regarding the Probate Council's top two priorities, EPIC omnibus bill and ART, and Senator Lucido is anxious to get such bills filed; and (2) the Michigan Probate Judges Association retained PAA as its lobbyist, and in the event of a conflict between the Probate Section and MPJA, PAA would represent the Section's interests as it is the firm's more longstanding client.

V. Monthly Reports

A. Minutes of Prior Council Meeting (David L.J.M. Skidmore):

It was moved and seconded to approve the Minutes of the January 25, 2019 meeting of the Council, as included in the meeting agenda materials and presented to the meeting. On voice vote, the Chair declared the motion approved.

B. Chair's Report (Marguerite Munson Lentz):

It was reported that the Divided and Directed Trusteeships Committee had been disbanded because its service was complete; there is an invitation in the materials to attend a telephone seminar on effective mediation preparation; the Section received a request to sponsor the Young Lawyers Summit in the amount of \$350; and the Section received a request for assistance with a mortgage lending webinar.

It was moved and seconded to approve the request to sponsor the Young Lawyers Summit in the amount of \$350. On voice vote, the Chair declared the motion approved.

C. Treasurer's Report (Mark E. Kellogg):

It was reported that the Treasurer's Report is included in the materials.

D. Committee on Special Projects (Katie Lynwood):

Katie Lynwood reported on the discussion at the Committee on Special Projects meeting.

Nathan Piwowarski of the Legislative Development and Drafting Committee led a discussion on three issues: (1) MCL 700.3206 and "armed forces" definition; (2) standby guardian provisions of the EPIC omnibus bill; and (3) Spousal Lifetime Access Trusts. CSP will likely request a vote of the Council on these three issues at the March meeting.

Kathleen Goetsch of the Guardianship, Conservatorship, and End of Life Committee led a discussion on proposed modifications to the patient advocate designation statutes. CSP will likely request a vote of the Council on this issue at the March meeting.

VI. Other Committees Presenting Oral Reports

A. Court Rules, Forms, & Proceedings Committee

Melisa Mysliwec led a discussion on ADM File No. 2017-28, related to proposed Michigan Court Rule amendments intended to protect parties' confidential information. The committee's motion is:

The Section opposes ADM File No. 2017-28 in its current format but recognizes the need for protection of personal identifying information, especially as the court system moves toward universal e-filing.

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded a vote of 18 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 5 not voting.

B. Electronic Communications Committee

Michael Lichterman reported on the status of the new remote attendance technology.

C. Guardianships, Conservatorships & End of Life Committee

Kathleen Goetsch reported on the status of the work of the committee, including the fact that Senator Lucido has reintroduced SB 110, the guardianship visitation bill.

D. Membership Committee

Rob Labe reported on the status of the work of the committee, including membership initiatives related to the Drafting Seminar and the Probate Institute.

E. State Bar & Section Journals

Richard Mills reported on the status of the work of the committee, including the fact that Nancy Little is transitioning out of her de facto leadership role, after many years of service.

F. Tax Committee

Raj Malviya reported on a tax nugget, which was included with the meeting materials.

G. Amicus Curiae Committee

Mr. Mayoras reported that the Amicus Curiae Committee received a request for an amicus brief by counsel for Mr. Larry J. Winget and the Larry J. Winget Living Trust. Various persons recused themselves and left the room. After discussion, a motion was made to file an amicus brief on the position that a revocable living trust for the benefit of the settlor is not a separate legal entity from the settlor, which was supported. After discussion, the motion was not approved.

VII. Other Committees Presenting Written Reports Only

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

A. Tax Liaison (Neal Nusholtz)

VIII. Other Business

Marlaine Teahan on behalf of the Nominating Committee requested nominations for officers and members of the Probate Council, which will be submitted to the Council at its June meeting.

IX. Adjournment

Seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 12:12 p.m.

Respectfully submitted,
David L.J.M. Skidmore, Secretary

B

Probate and Estate Planning Section: 2018-2019

Mde
3-5-2019

TREASURER'S MONTHLY ACTIVITY REPORT (JANUARY)

Revenue	State Bar Activity Report (January)	Cumulative Monthly (through January)	Budget 2018-19	Comments
1-7-99-775-1050 Probate/Estate Planning Dues	\$ 2,485.00	\$ 107,190.00	\$ 112,000.00	
1-7-99-775-1055 Probate/Estate Stud/Affil Dues		\$ 840.00	\$ 800.00	
1-7-99-775-1330 Subscription to Newsletter	\$ -	\$ -	\$ -	
1-7-99-775-1470 Publishing Agreement Account	\$ -	\$ -	\$ 650.00	
1-7-99-775-1755 Pamphlet Sales Revenue	\$ -	\$ -	\$ -	
Total Revenue	\$ 2,485.00	\$ 108,030.00	\$ 113,450.00	
Hearts and Flowers Fund (in Fraser Law Trust Acct)	\$ -	\$ 1,038.81	\$ 1,038.81	Not budgeted item, but this is the current carryover balance in Fraser Firm trust account.
Total Fund	\$ -	\$ 1,038.81	\$ 1,038.81	
Expenses				
1-9-99-775-1127 Multi-Section Lobbying Group	\$ 2,500.00	\$ 10,000.00	\$ 30,000.00	
1-9-99-775-1145 ListServ	\$ 10.00	\$ 30.00	\$ 225.00	
1-9-99-775-1276 Meetings	\$ 1,124.00	\$ 8,552.62	\$ 16,000.00	
1-9-99-775-1283 Seminars	\$ -	\$ -	\$ 20,000.00	
1-9-99-775-1297 Annual Meeting Expenses	\$ -	\$ -	\$ -	
1-9-99-775-1493 Travel	\$ 1,059.21	\$ 3,247.05	\$ 15,000.00	
1-9-99-775-1528 Telephone	\$ -	\$ -	\$ 1,250.00	
1-9-99-775-1549 Books & Subscriptions	\$ -	\$ -	\$ 750.00	
1-9-99-775-1822 Litigation-Amicus Curiae Brief	\$ -	\$ -	\$ 55,000.00	
1-9-99-775-1833 Newsletter	\$ 4,100.00	\$ 8,200.00	\$ 10,000.00	
1-9-99-775-1987 Miscellaneous		\$ 143.10	\$ 7,500.00	Line item increased by \$3,000 (networking reception @ Probate Institute) & \$5,000 (networking lunch @ Drafting Estate Planning Documents Seminar) as budget amdmnts.
1-9-99-775-1297 Annual Meeting Expenses	\$ -	\$ -	\$ 1,000.00	
1-9-99-775-1861 Printing	\$ -	\$ -	\$ 100.00	
1-9-99-775-1868 Postage	\$ -	\$ -	\$ -	
Total Expenses	\$ 8,793.21	\$ 30,172.77	\$ 156,825.00	
Net Income	\$ (6,308.21)	\$ 77,857.23	\$ (43,375.00)	
Beginning Fund Balance		\$ -		
1-5-00-775-0001 Fund Bal-Probate/Estate Plan		\$ 172,927.32	\$ 172,927.32	
Ending Fund Balance		\$ 250,784.55	\$ 129,552.32	
Amicus Reserve		\$ -		
Beginning Fund Balance		\$ 19,167.25	\$ 19,167.25	
Withdrawals		\$ -		
Ending Fund Balance		\$ -		
General Fund		\$ 153,760.07	\$ 153,760.07	
Total Fund		\$ 172,927.32	\$ 172,927.32	

2/15/2019

State Bar of Michigan
 Probate and Estate Planning Section
 For the Four Months Ending January 31, 2019

	Current Activity January 2019	Year To Date January 2019	Year to Date January 2018
	<u> </u>	<u> </u>	<u> </u>
Revenue:			
1-7-99-775-1050 Probate/Estate Planning Dues	2,485.00	107,190.00	112,315.00
1-7-99-775-1055 Probate/Estate Stud/Affil Dues		840.00	840.00
1-7-99-775-1330 Subscription to Newsletter			35.00
Total Revenue	<u>2,485.00</u>	<u>108,030.00</u>	<u>113,190.00</u>
Expenses:			
1-9-99-775-1127 Multi-Section Lobbying Group	2,500.00	10,000.00	12,500.00
1-9-99-775-1145 ListServ	10.00	30.00	300.00
1-9-99-775-1276 Meetings	1,124.00	8,552.62	11,333.42
1-9-99-775-1493 Travel	1,059.21	3,247.05	4,560.06
1-9-99-775-1833 Newsletter	4,100.00	8,200.00	75.00
1-9-99-775-1987 Miscellaneous		143.10	
1-9-99-775-1283 Seminars			6,000.00
1-9-99-775-1528 Telephone			507.60
1-9-99-775-1822 Litigation-Amicus Curiae Brief			15,000.00
Total Expenses	<u>8,793.21</u>	<u>30,172.77</u>	<u>50,276.08</u>
Net Income	(6,308.21)	77,857.23	62,913.92
Beginning Fund Balance:			
1-5-00-775-0001 Fund Bal-Probate/Estate Plan		172,927.32	222,338.06
Total Beginning Fund Balance		<u>172,927.32</u>	<u>222,338.06</u>
Ending Fund Balance		250,784.55	285,251.98