Agendas and Attachments for

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

Saturday, June 24, 2017
9:00 am
University Club
3435 Forest Road
Lansing, Michigan 48910
Probate and Estate Planning Section of the
State Bar of Michigan

Notice of Meetings

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

And

Meeting of the Members of the Probate and Estate Planning Section

And

Meeting of the Council of the Probate and Estate Planning Section

June 24, 2017
9:00 a.m.
University Club
3435 Forest Road
Lansing, Michigan 48910

The above stated meetings of the Section will be held at the University Club, 3435 Forest Road, Lansing, Michigan 48910, on Saturday, April 22, 2017. The Section’s Committee on Special Projects (CSP) meeting will begin at 9:00 am, followed immediately by the meeting of the Members and then followed immediately by the meeting of the Council of the Section. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

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

Probate and Estate Planning Section

Of the

State Bar of Michigan

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

Meeting Schedule for 2016-2017

June 24, 2017

September 9, 2017 (Annual Section Meeting)
CALL FOR MATERIALS

Council Meetings of the Probate and Estate Planning Section

Schedule of Dates for Materials for Committee on Special Projects

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

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

August 31, 2017 (for September meeting)

Schedule of Dates for Materials for Council Meeting

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

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

September 1, 2017
## Officers for 2016-2017 Term

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

## Council Members for 2016-2017 Term

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

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

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

**Recipients**

<table>
<thead>
<tr>
<th>Year</th>
<th>Name</th>
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</thead>
<tbody>
<tr>
<td>1995</td>
<td>Joe C. Foster, Jr.</td>
</tr>
<tr>
<td>1996</td>
<td>John H. Martin</td>
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<tr>
<td>1997</td>
<td>Harold A. Draper</td>
</tr>
<tr>
<td>1998</td>
<td>Douglas J. Rasmussen</td>
</tr>
<tr>
<td>1999</td>
<td>James A. Kendall</td>
</tr>
<tr>
<td>2000</td>
<td>NO AWARD PRESENTED</td>
</tr>
<tr>
<td>2001</td>
<td>John E. Bos</td>
</tr>
<tr>
<td>2002</td>
<td>Everett R. Zack</td>
</tr>
<tr>
<td>2003</td>
<td>NO AWARD PRESENTED</td>
</tr>
<tr>
<td>2004</td>
<td>Brian V. Howe</td>
</tr>
<tr>
<td>2005</td>
<td>NO AWARD PRESENTED</td>
</tr>
<tr>
<td>2006</td>
<td>Hon. Phillip E. Harter</td>
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<tr>
<td>2007</td>
<td>George Cooney (April 3, 2007)</td>
</tr>
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<td>2008</td>
<td>Susan A. Westerman</td>
</tr>
<tr>
<td>2009</td>
<td>Russell M. Paquette (posthumously)</td>
</tr>
<tr>
<td>2010</td>
<td>Fredric A. Sytsma</td>
</tr>
<tr>
<td>2011</td>
<td>John A. Scott</td>
</tr>
<tr>
<td>2012</td>
<td>NO AWARD PRESENTED</td>
</tr>
<tr>
<td>2013</td>
<td>Michael J. McClory</td>
</tr>
<tr>
<td>2014</td>
<td>Sebastian V. Grassi, Jr.</td>
</tr>
<tr>
<td>2015</td>
<td>NO AWARD PRESENTED</td>
</tr>
<tr>
<td>2016</td>
<td>Douglas A. Mielock</td>
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The Michael W. Irish Award was first presented in 1995 in honor of the late Michael W. Irish. The award reflects the professionalism and community leadership of its namesake.
The George A. Cooney Society

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

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

John E. Bos (2007)
Everett R. Zack (2009)
John H. Martin (2011)
John A. Scott (2013)
Phillip E. Harter (2015)
George W. Gregory (2017)

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

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

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

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

Guidelines for Selection:

- Significant CLE contributions to probate and estate planning over a substantial period of time.
- Outstanding quality of contributions.
- A wide range of contributions, e.g. multiple contributions for the following: speaker, author, editor, advisory board member, curriculum advisor, creating case study scenarios, preparing Top Tips, How-To Kits or other online resources, etc.
- Generous mentorship and assistance to colleagues with their probate and estate planning career development as well as activities and active involvement with the Probate & Estate Planning Section of the State Bar of Michigan.
Amicus Curiae Committee
Mission: To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs

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

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

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

Annual Meeting
Mission: To arrange the annual meeting at a time and place and with an agenda to accomplish all necessary and proper annual business of the Section

Marlaine C. Teahan

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

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

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

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

Bylaws Committee
Mission: To review the Section Bylaws and recommend changes to ensure compliance with State Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council

Nancy H. Welber, Chair
Christopher A. Ballard
David P. Lucas
John Roy Castillo
Charitable and Exempt Organization Committee
Mission: To educate the Section about charitable giving and exempt organizations and to make recommendations to the Section concerning Federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations

Christopher J. Caldwell, Chair
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby
Richard C. Mills

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

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

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

Geoffrey R. Vernon, Chair

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

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

Divided and Directed Trusteeships Ad Hoc Committee
Mission: To review the forthcoming Uniform Directed Trust Act and other legislative proposals concerning the division of fiduciary labor and responsibility among non trustee directors, co-trustees, and divided trusteeships and, if advisable, to recommend changes to Michigan law in this area

James P. Spica, Chair
Probate & Estate Planning Section Committees 2016-2017

Judith M. Grace  
Raj A. Malviya  
Gabrielle M. McKee  
Richard C. Mills  
Marlaine C. Teahan  
Robert P. Tiplady  
Geoffrey R. Vernon  
Nancy H. Welber

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

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

Ethics & Unauthorized Practice of Law Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment, including identifying the unauthorized practices of law, reporting of such practices to the appropriate authorities, and educating the public regarding the inherent problems relying on non-lawyers

Katie Lynwood, Chair

William J. Ard  
Raymond A. Harris  
J. David Kerr  
Robert M. Taylor  
Amy Rombyer Tripp

Guardianship, Conservatorship, and End of Life Committee
Mission: To monitor the need for and make recommendations with respect to statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships

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

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

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

Legislation Analysis & Monitoring Committee
Mission: In cooperation with the Section’s lobbyist, to bring to the attention of the Council recent developments in the Michigan legislature and to further achievement of the Section’s legislative priorities, as well as to study legislation and

04.17.2017
recommend a course of action on legislation not otherwise assigned to a substantive committee of the Section

Ryan P. Bourjaily, Chair
Christopher A. Ballard
Georgette E. David
Mark E. Kellogg
Daniel S. Hilker
Michele C. Marquardt
Jonathon Nahhat

Legislation Development & Drafting Committee

Mission: To review, revise, communicate and recommend Michigan’s trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times. May work alone or in conjunction with other substantive standing or ad hoc committees.

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

Mardigian Case Review and Drafting Ad Hoc Committee

Mission: To follow the progress and outcome of the Mardigian case, and make recommendations for possible statutory changes to better deal with the situation where a lawyer prepares an instrument for a non-relative which includes a gift for that lawyer.

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

Litigation, Proceedings, and Forms Committee

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

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

Membership Committee

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

Nicholas A. Reister, Chair
Daniel S. Hilker, Vice Chair
David Borst
Ryan Bourjaily
Christopher J. Caldwell
Nicholas R. Dekker
Daniel A. Kosmowski
Probate & Estate Planning Section Committees 2016-2017

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

Thomas F. Sweeney, Chair
Amy N. Morrissey
Shaheen I. Imami

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

Marlaine C. Teahan, Chair

Premarital Agreements Legislation Ad Hoc Committee
Mission: To review and compare Michigan’s statutes & case law (particularly the Allard decision) regarding enforcement and potential effects on estate planning and estate administration with the Uniform Premarital and Marital Agreements Act and similar acts from other states, and recommend changes to our laws as needed.

Robert C. Labe (chair)
George F. Bearup
Kathleen M. Goetsch
Daniel S. Hilker
Gabrielle M. McKee
Patricia M. Ouellette (family law liaison)

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

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

Mark E. Kellogg, Chair
Jeffrey S. Ammon
William J. Ard
David S. Fry
J. David Kerr
Michael G. Lichterman
Melisa M. W. Mysliwiec
James T. Ramer
James B. Steward

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

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

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

Lorraine F. New, Chair
Christopher J Caldwell
Robert B. Labe
Raj A. Malviya
Nazneen H. Syed
Probate & Estate Planning Section Liaisons 2016-2017

Alternative Dispute Resolution Section Liaison

Milton L. Mack, Jr.

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

John R. Dresser

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

Amy Rombyer Tripp

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

Patricia M. Ouellette

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

Jeanne Murphy

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

William J. Ard

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

Nazneen H. Syed

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

Hon. David M. Murkowski
Hon. Michael L. Jaconette
Probate Registers Liaison

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

Rebecca A. Schnelz

SCAO Liaisons

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

Constance L. Brigman
(Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Michele C. Marquardt
(Estates & Trusts Workgroup)
Rebecca A. Schnelz
(Mental Health/Commitment Workgroup and Guardianship, Conservatorship, and Protective Proceedings Workgroup)

Solutions on Self-help Task Force Liaison

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

Kathleen M. Goetsch

State Bar Commissioner Liaison

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

Richard J. Siriani

Taxation Section Liaison

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

George W. Gregory

Uniform Law Commission Liaison

Mission: The Liaison to the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission, is responsible for developing and maintaining bilateral communication between the Section and the Uniform Law Commission on matters of mutual interest and concern

James P. Spica
<table>
<thead>
<tr>
<th>Action Pending</th>
<th>Statutory/Legislative</th>
<th>Court Rules, Procedures and Forms</th>
<th>Council Organization &amp; Internal Procedures</th>
<th>Professional Responsibility</th>
<th>Education &amp; Service to the Public &amp; Members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-Prop tax uncapping exempt. (HB5552)</td>
<td></td>
<td>-Supreme Court Task Force Report</td>
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<td></td>
<td>-Fiduciary Access to Digital Assets (HB5366-5370)</td>
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<td>-Bylaw Update</td>
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<td>-PR access to online accts (SB 293)</td>
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<td></td>
<td>-Hearings minors &lt; 18 (SB 144 &amp; 177)</td>
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<td></td>
<td>-Funeral Representative (HB 5162/SB 731)</td>
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<tr>
<td>Priority Items</td>
<td>-Domestic Asset Protection Trusts</td>
<td>-SCAO Meetings*</td>
<td>-Inventory Lawyer</td>
<td>-Communications with members*</td>
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<tr>
<td></td>
<td>-ILIT Trustee Liability Protection</td>
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<td>-Social media &amp; website*</td>
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<td>-Artificial Reproductive Technology</td>
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<td>-Brochures*</td>
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<td></td>
<td>-Charitable Trust</td>
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<td>-Annual Institute/ICLE seminars*</td>
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<tr>
<td></td>
<td>-Probate Appeals</td>
<td></td>
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<td>-Section Journal*</td>
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<tr>
<td>Secondary Priority</td>
<td>-EPIC/MTC Updates</td>
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Materials for Special Meeting of the Members
NOTICE OF SPECIAL MEETING OF THE MEMBERS

There will be a special meeting of the Members held on Saturday, June 24, 2017, immediately following the conclusion of the Committee for Special Projects of the Probate Council. It is anticipated that the Meeting of the Members will start at approximately 10:00 am. The meeting will be held at the University Club of Michigan State University, located at 3435 Forest Road, Lansing, Michigan 48910.

The only items of business for the Meeting of the Members is consideration of an amendment to strike Section 8.4 of the Section's Bylaws.

The following materials are attached:

1. Letter from Nancy Welber to James Steward, Chair of the Section, requesting the change to the Bylaws

2. The notice of the meeting included in the May 2017 issue of the Michigan Bar Journal

3. The notice of meeting that was published to the Members on the Probate Council email list on May 25, 2017
February 13, 2017

James B. Steward  
Steward & Sheridan, P.L.C.  
205 South Main Street  
Ishpeming, Michigan 49849  

Re: Amendment to Probate and Estate Planning Section Bylaws  

Dear Jim:  

As was discussed at our February 2017 Probate and Estate Planning Council meeting, the Bylaws Committee has determined that it would be appropriate to amend the Probate and Estate Planning Section bylaws to delete Section 8.4 concerning printing. The current Section 8.4 states:  

SECTION 8.4 PRINTING. All printing for the Section or for the Council or any committee of the Section is done under the supervision of the Executive Secretary of the State Bar of Michigan.  

Section 8.4 no longer reflects the processes that the Section uses to print Section and Council materials. A case in point is the brochures that were printed in 2016. The State Bar was consulted to see whether it was competitive to use its printing services for the brochures but there was no supervision by the State Bar during the printing process and the printing was done by an outside company which was arranged by the committee in charge of the content of the brochures. Moreover, I sent an inquiry to the State Bar to determine whether Section 8.4 was required by State Bar policies. Clifford Flood, the general counsel for the State Bar responded to my email. He noted that there is no reference in either the Supreme Court Rules Concerning the State Bar of Michigan or the SBM Bylaws to the position of “Executive Secretary of the State Bar of Michigan.” Indeed, a review of the State Bar website’s list of the entire staff does not list anyone with the title of “Executive Secretary” or that job description. His conclusion is that Section 8.4 does not reflect a current requirement of the State Bar of Michigan. A copy of his email is attached.  

Section 9.2 of the Probate and Estate Planning Section bylaws establishes the procedures for an amendment to the bylaws as follows:  

SECTION 9.2 PROPOSED AMENDMENTS. Any proposed amendment must be submitted in writing to the Council by at least three (3) members of the Section. The Council will consider the proposed amendment and if it is approved by Council, the
Council will prepare recommendations, and provide to members of the Section a complete and accurate text of the proposed amendment at least thirty (30) days prior to the meeting of the Section at which it is to be considered. Notice of the proposed amendment may be communicated in writing by in-person delivery, first-class mail, electronic mail, facsimile, publication in the Michigan Bar Journal, or by any other means reasonably likely to provide adequate written notice, including any form of notice authorized by the State Bar of Michigan.

David Lucas and Chris Ballard who are the other members of the Bylaws Committee, join me in proposing the deletion of Section 8.4 of the current bylaws because it is obsolete. They may sign counterparts of this letter as a matter of convenience.

I look forward to discussing the proposed amendment briefly on Saturday at the Council meeting. Of course, please contact me before then if you have any questions or concerns.

Best regards,

Nancy H. Welber

I concur with the content of this letter:

Date: February ____, 2017  _____________________________________

David P. Lucas

Date: February ____, 2017  _____________________________________

Christopher A. Ballard

Att.
Council will prepare recommendations, and provide to members of the Section a complete and accurate text of the proposed amendment at least thirty (30) days prior to the meeting of the Section at which it is to be considered. Notice of the proposed amendment may be communicated in writing by in-person delivery, first-class mail, electronic mail, facsimile, publication in the Michigan Bar Journal, or by any other means reasonably likely to provide adequate written notice, including any form of notice authorized by the State Bar of Michigan.

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Date: February ____, 2017

David P. Lucas

Date: February 13, 2017

Christopher A. Ballard

Att.
Probate and Estate Planning Bylaws Question

Cliff Flood <CFLOOD@mail.michbar.org>  
To: nhwelber@gmail.com, Candace Crowley <CCROWLEY@mail.michbar.org>  

Nancy, I'm with Candace as I'm not aware of any other section bylaws with a similar provision. I note in passing that there is no reference in either the Supreme Court Rules Concerning the State Bar of Michigan or the SBM Bylaws to the position of "Executive Secretary of the State Bar of Michigan". It follows, therefore, that this is not a current requirement of the SBM.

Cliff Flood

Clifford T. Flood  
General Counsel  
State Bar of Michigan,  
306 Townsend St., Lansing, MI 48933

DD: 517-346-6383  
fax: 517-372-2410  
Cflood@mail.michbar.org

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E-mail Notice: If you think you received this e-mail by mistake, please do not use it in any way. It may contain confidential or legally protected information. Please delete the e-mail, destroy any copies, and immediately notify us by reply e-mail or by phone (800-968-1442).

E-mail Warning: This e-mail was swept for computer viruses, but we cannot guarantee that it is virus-free or accept responsibility if it is contaminated.

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Hi Nancy,

That provision does not sound familiar to me and I am not aware without methodical research whether any other section has something like that. It's not a bylaw requirement that I am aware of but I will certainly double check with Cliff Flood, by copy here.

Candace

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[Quoted text hidden]
Bylaws of the Probate and Estate Planning Section of the State Bar of Michigan

Pursuant to Article 9 of the bylaws of the Probate and Estate Planning Section of the State Bar of Michigan, the Probate and Estate Planning Section Council has recommended that an amendment be adopted by a vote of the section at its next regular meeting that occurs at least 30 days after the notification of section members. The recommendation from the council is to strike Section 8.4 of the bylaws that requires all printing for the section or for the council or any committee of the section be done under the supervision of the executive secretary of the State Bar of Michigan. The probate council made this recommendation because the bylaw is not required by the Supreme Court Rules Concerning the State Bar of Michigan nor by the State Bar of Michigan itself. Furthermore, the position of executive secretary no longer exists at the State Bar of Michigan. The provision, is, therefore, obsolete. Questions or comments regarding the council recommendations may be directed to Nancy H. Welber at (248) 932-1230 or nhwelberpc@gmail.com.

The current text of Section 8.4 of the bylaws reads as follows:

SECTION 8.4 PRINTING. All printing for the Section or for the Council or any committee of the Section is done under the supervision of the Executive Secretary of the State Bar of Michigan.

If the recommended bylaw change is adopted, the Section 8.4 text shown above will be deleted in its entirety.
Proposed Bylaw Change

Pursuant to Article 9 of the bylaws of the Probate and Estate Planning Section of the State Bar of Michigan, the Council has recommended that an amendment be adopted by a vote of the section at its next regular meeting on June 24, 2017, at 10:15 a.m. at the University Club of Michigan State University, 3435 Forest Rd, Lansing, MI 48910—30 days after the notification of section members.

The recommendation from the Council is to strike Section 8.4 that requires all printing for the section or for the council or any committee of the section be done under the supervision of the Executive Secretary of the State Bar of Michigan. The probate council made this recommendation because the bylaw is not required by the Supreme Court Rules Concerning the State Bar of Michigan nor by the State Bar of Michigan itself. Furthermore, the position of Executive Secretary no longer exists at the State Bar of Michigan. The provision, is, therefore, obsolete. Questions or comments regarding the Council recommendations may be directed to Nancy H. Welber, or call her at (248) 932-1230.

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State Bar of Michigan.

If the recommended bylaw change is adopted, the Section 8.4 text shown above will be deleted in its entirety.

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Click here to manage your preferences.
End of
Materials for Special
Meeting of the
Members
CSP MATERIALS
END OF
CSP MATERIALS
I. Call to Order
II. Excused Absences
III. Introduction of Guests
IV. Minutes of April 22, 2017, Meeting of the Council
   See Attachment 1
V. Treasurer's Report – David P. Lucas
   See Attachment 2
VI. Chairperson's Report – James B. Steward
    See Attachment 3
VII. Report of the Committee on Special Projects – Geoffrey R. Vernon
VIII. Report of Standing Committees
    A. Internal Governance
       1. Budget – Christopher A. Ballard
       2. Bylaws – Nancy H. Welber
       3. Awards – Amy N. Morrissey
       4. Planning – Marlaine C. Teahan
       5. Nominating – Thomas F. Sweeney
       6. Annual Meeting – Marlaine C. Teahan
    B. Legislation and Lobbying
       1. Legislative Analysis and Monitoring Committee – Ryan P. Bourjaily
2. Legislation Development & Drafting Committee – Nathan Piwowarski
3. Ad-Hoc Legislation Drafting Committee – Sueann Mitchell
4. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon
5. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber
6. Divided and Directed Trusteeship Committee – James P. Spica

See Attachment 4

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

See Attachment 5
6. Membership – Nicholas A. Reister

D. Ethics and Professional Standards
1. Ethics & Unauthorized Practice of Law – Katie Lynwood

E. Administration of Justice

F. Areas of Practice
1. Real Estate – Mark E. Kellogg
2. Tax Committee – Lorraine F. New
3. Charitable and Exempt Organization – Christopher J. Caldwell
4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

IX. Other Reports

A. Liaisons
1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr.
2. Business Law Section Liaison – John R. Dresser
3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp
4. Family Law Section Liaison – Patricia M. Ouellette
5. ICLE Liaison – Jeanne Murphy
6. Law Schools Liaison – William J. Ard
7. Michigan Bankers Association Liaison – Nazneen H Syed
9. Probate Registers Liaison – Rebecca A. Schnelz
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz

See Attachment 6

11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch
12. State Bar Liaison – Richard J. Siriani
13. Taxation Section Liaison – George W. Gregory

See Attachment 7

X. Other Business
XI. Hot Topics

Tax Nugget from Lorraine New

See Attachment 8

XII. Adjournment
Attachment 1
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

April 22, 2017
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, James Steward, called the meeting to order at 10:15 am.

II. Attendance

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

James B. Steward
Marlaine C. Teahan
Marguerite Munson Lentz
David Lucas
George F. Bearup
Christopher J. Caldwell
Rhonda M. Clark-Kreuer
Kathleen M. Goetsch
Hon. Michael L. Jaconette
Robert B. Labe
Michael G. Lichterman
Katie Lynwood
Lorraine F. New
Nathan R. Piwowarski
David L.J.M. Skidmore
Nazneen H. Syed
Geoffrey R. Vernon
Nancy H. Welber

A total of 18 council members and officers were present, representing a quorum.

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

Christopher A. Ballard
Mark E. Kellogg
Raj A. Malviya
Richard C. Mills
Melisa M.W. Mysliwiec

C. The following officers and members of Council were absent without excuse:
None.

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

George W. Gregory  
Kenneth E. Konop  
Harold Schuitmaker

E. **Others in attendance:**

James P. Spica  
Neal Nusholtz  
Scott Robbins  
Aaron Bartell  
Michael Shelton  
Daniel Hilker  
Paul Vaidya  
J. David Kerr  
Gabrielle M. McKee  
Ryan Bourjaily

III. **Minutes of the March 18, 2017, Meeting of the Council**

The minutes of the March 18, 2017, Meeting of the Council were attached to the combined Agenda for this meeting posted on the Section’s web page prior to the meeting. A correction was made to VII.B.2 of the minutes so that the fourth paragraph of that section reads: “The Uniform Law Commission has proposed a model guardianship and conservatorship act. The committee recommends that the assignment of this project to the Guardianship, Conservatorship, and End of Life Committee or to an ad hoc committee to examine the model act.” Ms. Lentz moved that the minutes as corrected be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

IV. **Treasurer’s Report – David P. Lucas**

Mr. Lucas’s Treasurer’s Report was attached to the combined Agenda. Mr. Lucas shared the thank you card from Melisa M.W. Mysliwiec for flowers she received.

V. **Chairperson’s Report – James Steward**

Mr. Steward delivered the report of the chair. Mr. Steward’s written Chair Report was attached to the combined Agenda.

- Mr. Steward led a discussion whether the Section should become a Section Sponsor at the State Bar annual meeting, now called the NEXT conference. Cost of Section Sponsorship is $1,000. Ms. Welber made the motion, which was seconded. The motion was approved on a voice-vote with no nays and no abstentions.
- Mr. Steward has added a new committee: the “Premarital Agreements Legislation
Ad Hoc Committee.” Its mission and members are as stated in the Chair Report attached to the combined Agenda, except that George Bearup will chair the committee instead of Robert Labe.

- Mr. Steward has assigned the task of reviewing the Uniform Guardianship, Conservatorship, and Other Protected Arrangements Act to the Guardianship, Conservatorship, and End of Life Committee and asked the committee to create a sub-committee for this project. Mr. Steward asked for volunteers for this subcommittee.
- The “Ad Hoc Legislation Drafting Committee” was renamed to be the “Mardigan Case Review and Drafting Ad Hoc Committee.” Its mission is as stated in the Chair Report attached to the combined Agenda.
- As reported in the Chair Report, Gift of Life of Michigan supplied copies of informational materials in connection with National Healthcare Decisions Day, and Samantha Meinke, Communications Manager for the State Bar of Michigan, suggested posting the materials or link on the Section’s webpage. Mr. Steward referred the suggestion to the Citizens Outreach Committee for review and for determination whether any third-party content or links should be put on the Section’s webpage.

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

Mr. Vernon presented a summary of the committee report:

Standby guardianship. CSP discussed a draft proposal for naming standby guardians for incapacitated adults, similar to the current process for naming standby guardians for developmentally disabled adults. The proposal will be discussed further by the Legislation Development and Drafting Committee in light of comments made at CSP.

Proposed legislative fix to the Jajuga case. CSP had further discussion whether a testator should be able to exclude minor children or whether such exclusion should be limited. The Legislative Development and Drafting Committee will prepare an analysis of the proposed bill to present to the Michigan Probate Judges Association for their review.

ART Proposal. The ART proposed legislation, as previously approved by the Council, had an appendix which recommended that the Michigan Surrogate Parenting Act be repealed. Right-to-Life objected to that suggestion. CSP recommends to Council that Council approve the ART proposed legislation without the appendix. The motion was made and seconded. The motion was approved with 18 in favor, and no nays and no abstentions.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Christopher A. Ballard – no report.
2. Bylaws – Nancy H. Welber

Ms. Welber reported that that Council previously approved amending the Section’s bylaws to
delete the requirement for State Bar approval of the Section’s publications. Notice of the proposed amendment will be published in the Michigan State Bar Journal on May 8th. Section members need 30 days advance notice of a vote to amend the bylaws. Ms. Welber moved to send an eblast to all Section members in early May notifying Section members of a vote on the amendment at June 24 Council meeting. The motion was approved on a voice-vote with no nays and no abstentions.

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


5. Nominating – Thomas W. Sweeney—no report. Per Mr. Steward, Mr. Sweeney will have a report for June meeting.


B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – Ryan P. Bourjaily—no report.

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

Mr. Piwowarski’s written materials were attached to the combined Agenda. In addition, Mr. Piwowarski reported that the committee is examining undisclosed trusts.


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

Mr. Vernon reported that they are looking for sponsor for the ILIT exoneration bill.

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

Ms. Welber reported that the Council approved striking the appendix from the ART legislation and that Ms. Bechler is looking for a sponsor for the bill.

6. Divided and Directed Trusteeships Ad Hoc Committee – James P. Spica

Mr. Spica reported that the Uniform Law Commission will be voting on its Directed Trust Act at its July meeting. The committee will start reviewing the latest ULC draft. J. David Kerr has agreed to join the committee.

C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore
Mr. Skidmore reported that the Council previously filed an amicus brief in *In re Cliffman* supporting the position of the children. The Court of Appeals ruled against the children, and the children filed an application for leave to appeal to the Michigan Supreme Court. The Michigan Supreme Court denied the application for leave to appeal. The children filed a motion for rehearing and requested that the Council file a supporting letter. The committee recommended no further action.

Ms. Teahan reported that, pursuant to the Council’s decision, her firm was hired to file an amicus brief in the *Vansach* case. A motion for leave to appeal has been filed.

2. **Probate Institute – Marguerite Munson Lentz**

Ms. Lentz reported that to date, 46 participants have signed up for the add-on seminar, Experts in Estate Planning: Drafting Trusts to Optimize Income Tax Results. 432 have registered for the annual institute: 276 in Acme, 156 in Plymouth.

3. **State Bar and Section Journals – Richard C. Mills—no report.**

4. **Citizens Outreach – Melisa M.W. Mysliwic—no report.**

5. **Electronic Communications – Michael G. Lichterman**

Mr. Lichterman reported that an issue was raised with the list serve concerning an advertisement for a paralegal position. The committee has revised the Policy and Code of Conduct for the list serve. Mr. Lichterman proposed to put the Policy on the Section’s webpage and publish the Code of Conduct quarterly. Language suggestions were made. Mr. Lichterman will present revised documents at the June meeting.

6. **Membership – Nicholas A. Reister**

Mr. Hilker gave the report. The committee will have a table at the annual institute in Acme and will have a social event. The committee will have a table at the annual institute in Plymouth but may not have a social event since it was not successful last year.

**D. Ethics and Professional Standards**

1. **Ethics & Unauthorized Practice of Law – Katie Lynwood.**

Ms. Lynwood raised questions about a recent citizens outreach event sponsored by a local bar association. The committee will contact the bar association to do further inquiry.

**E. Administration of Justice**

1. **Litigation, Proceedings, and Forms – David L. Skidmore**

Mr. Skidmore did not have a report.

Ms. Teahan reported that there will be a public hearing May 17, 2017 before Michigan Supreme Court on the revisions to the probate court rules. Mr. Steward moved that Council authorize Ms. Teahan to appear at the hearing to advocate for the Council’s rationale and reasons for the
Council’s version of the proposed court rule changes. The motion was supported and approved on voice vote, with no nays and no abstentions.

F. Areas of Practice

1. Real Estate – Mark E. Kellogg—no report.

2. Tax Committee – Lorraine F. New

Ms. New’s report is attached to these minutes.


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

Ms. Clark-Kreuer reported that the committee will prepare a summary for the MPJA on SB 270. The committee will review the proposal for standby guardians at its April 27th meeting.

Mr. Steward asked the committee to determine whether materials from the Michigan Peace of Mind Registry should be posted on the Section’s webpage.

VIII. Other Reports

A. Liaisons

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


3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp—no report.

4. Family Law Section Liaison – Patricia M. Ouellette—no report.

5. ICLE Liaison – Jeannie Murphy—no report.


10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—no report.


13. Taxation Section Liaison – George W. Gregory.

One report from Mr. Gregory was attached to the combined Agenda. A second report is attached to these minutes.

14. ULC Liaison – James P. Spica

Mr. Spica reported that the ULC will be drafting a revision to the Uniform Principal and Income Act. The new act will be called the Uniform Fiduciary Income and Principal Act. Mr. Spica has been assigned to that committee.

IX. Other Business

Ms. Teahan reported that Mr. Tiplady is presenting on the Michigan Qualified Dispositions in Trust Act at the Business Law Section meeting on Wed evening.

X. Hot Topics

XI. Adjournment

The meeting was adjourned by Chair James Steward at 12:11pm.
TAX NUGGET

Two items of interest for practitioners...

April 2017

I

The ongoing situation for release of the “secret” estate tax lien on real estate has resulted in a Memorandum, SBSE-05-0417-0011 for collection employees dated April 5, 2017 which discusses how requests for lien release are to be handled. It provides a number of scenarios and how they may be treated. Anecdotally, people have been reporting that release certificates have shown up even when the estate has not yet been closed. With Collection handling the release of lien, one still needs to file Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien, at least 45 days before the planned sale. An appraisal showing fair market value of the property should be attached. Apparently, now discretion is available if there will not be an estate tax or if the tax has been paid in full so that the proceeds of the sale less reasonable closing expenses do not necessarily have to be held by the IRS or an escrow agent until the closing of the estate. I suggest that you make those facts clear if that is your situation. The memorandum may be of use to you if you face this concern.

II

Beth Shapiro Kaufman reported in Steve Leimberg’s email newsletter on April 18, 2017, that IRS Senior Technical Reviewer Karlene Lesho made a presentation to the Federal Bar Association last month where she pointed out some ways to save a portability election. One handy dandy one is for estates that want to claim portability but the estate was not required to file a 706. If no extension was filed, and it is 15 months or less from the date of death, you may be able to file a Form 4768 requesting an extension “for good cause”. Treasury Regulation Section 20.6081-1(c) gives IRS the discretion “upon the showing of good and sufficient cause” to grant an extension of time to file the estate tax return. A return is due by the 15 month date, and can cite the request for extension if approval has not yet been obtained.

If a return was timely filed but the box indicating “no portability” was checked, and the estate later wants to elect portability due to errors on the return, § 301.9100-2 allows relief within a six-month period after the deadline for the statutory election. An amended return is prepared and filed marked “FILED PURSUANT TO § 301.9100-2” in order to take advantage of this option.

Lorraine F. New
George W. Gregory PLLC
Taxation Section Liaison  
Report to the Probate & Estate Planning Section  
April 22, 2017

The last meeting of the Taxation Section Council was April 20, 2017.

Tax Conference will be held on May 25, 2017 at the Inn at St. Johns, Plymouth. It will include a strolling lunch. ICLE materials are attached. The Washington Update by Patrick Robertson of FTI Consulting, Washington, D.C., and other presentations may be of interest to Section members.

There will be a State and Local Tax (SALT) mixer on May 25, 2017.

On June 14, 2017 the Young Lawyers Committee will have an event with the Michigan Women’s Tax Association at the Lansing Brewing Company.

Judge Gustafson will be in Michigan for the Tax Court Calendar on September 18, 2017.

The Taxation Section Annual Meeting will be September 28, 2017.

The Taxation Section will have an educational event at the Detroit office of Honigman Miller with rebroadcast to other Honigman offices on October 12, 2017. It may be called “Fundamentals of Taxation.” A draft of the materials is attached. It is not being run through ICLE.

The Taxation Section will make grants to not-for profit institutions who proved tax services to low income taxpayers.

The Taxation Section has its own pro bono service for low income taxpayers. It provides education to volunteer lawyers to enable them to provide services which are primarily representation before the Internal Revenue Service.

Michigan Tax Tribunal reform legislation is back on the table with HB 4412 on which the Taxation Section may take a position.

Raj Malviya will publish an article on State and Local Tax Issues in the summer issue of the Michigan Tax Lawyer.

The Taxation Section has a social media presence on both Facebook (with pictures) and on LinkedIn. Both can be accessed by searching Taxation Section of the State Bar of Michigan.

The Internal Revenue Service in Detroit will move from 500 Woodward Avenue to 985 Michigan Avenue in 2019.

George W. Gregory, Liaison
Boot Camp/Fundamentals of Taxation – Schedule

Hosted at the Detroit offices of Honigman

With video link-ups in Honigman’s Ann Arbor, Grand Rapids, Kalamazoo and Lansing offices

Thursday, October 12, 2017

Cost: Tax Section Members: $50; Non-Members: $75

Please contact the Tax Section regarding multiple attendee discount

Admission includes Tax Section Luncheon for R.S.V.P.’s

(Non-members joining the Tax Section for the first time may apply their admission towards a Tax Section membership)

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity/Presentation</th>
<th>Presenter(s)</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:30-8:15 a.m.</td>
<td>Registration and continental breakfast</td>
<td></td>
<td>[Honigman center]</td>
</tr>
<tr>
<td>8:15-8:50 a.m.</td>
<td>Introductory Panel: The Role of the Tax Attorney</td>
<td>(1) Federal (2) State</td>
<td>22-___</td>
</tr>
<tr>
<td>8:50-9:00 a.m.</td>
<td>Break</td>
<td></td>
<td>22-___</td>
</tr>
<tr>
<td>9:00-9:55 a.m.</td>
<td>Core Track: Types of Taxes and Basics of Income Taxation</td>
<td>(1) Federal (2) State</td>
<td>22-___</td>
</tr>
<tr>
<td>9:00-9:55 a.m.</td>
<td>Advanced Track: Tax Aspects of Mergers and Acquisitions</td>
<td></td>
<td>22-___</td>
</tr>
<tr>
<td>9:55-10:05 a.m.</td>
<td>Break</td>
<td></td>
<td>22-___</td>
</tr>
<tr>
<td>10:05-11:00 a.m.</td>
<td>Core Track: Introduction to Entity Classification</td>
<td></td>
<td>22-___</td>
</tr>
<tr>
<td>10:05-11:00 a.m.</td>
<td>Advanced Track: Advanced State and Local Taxes</td>
<td></td>
<td>22-___</td>
</tr>
<tr>
<td>11:00-11:10 a.m.</td>
<td>Break</td>
<td></td>
<td>22-___</td>
</tr>
<tr>
<td>11:10-12:05 p.m.</td>
<td>Closing Panel: Providing Tax Advice – Levels of Comfort and Tax Penalties</td>
<td></td>
<td>22-___</td>
</tr>
<tr>
<td>12:05-1:00 p.m.</td>
<td>Tax Section Luncheon (w/s/g presenter and roundtables with a discussion leader)</td>
<td></td>
<td>22-___</td>
</tr>
</tbody>
</table>

Timeline for Implementation

March 7, 2017     Strategic planning meeting to discuss Boot Camp/Core Concepts
March 9, 2017     Officer call review of proposed Boot Camp/Core Concept location, schedule and topics
March 16, 2017    Council meeting discussion and approval of location, schedule and topics
April-May 2017    Finalize all presenters
                  Design promotional materials
                  Coordinate with committee chairs to promote the event
May 25, 2017      Announcement and promotion of event at Annual Tax Conference (including pamphlet)
June-August 2017  Periodic emails to Section members to promote the event
                  Announcements at Committee events
                  Advertisements in Michigan Tax Lawyer and Michigan Bar Journal
                  Outreach to major Detroit law firms, lawyers in CPA firms, law schools and the Business
                  Law Section to encourage participation
September 13, 2017 Promotion of event at SALT Mixer
September 28, 2017 Promotion of event at annual meeting
October 19, 2017  Boot Camp/Core Concepts Event at Honigman Detroit offices

1 Subject to availability of Honigman offices and video-conferencing.
2 ½ off discount for Tax Section members registering at the Annual Tax Conference.
3 To discuss potential sponsors for underwriting the cost of the luncheon.
Tax Conference, 30th Annual

05/25/17 Plymouth | On-Demand Seminar | CLE: 7 | CTFA Credit: 7.5* | CPE Credit: Call ICLE | Level: Intermediate/Advanced

Presented by the Taxation Section of the State Bar of Michigan in cooperation with the Institute of Continuing Legal Education

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Master the Latest Tax Developments

Stay on top of evolving issues in tax law—from changes on the national front to state and local developments. Get complete coverage of tax reform and in-depth analysis from experts at the top of their fields. New this year: an optional ethics session (perfect for accountants and lawyers), Core Concepts Track, and Michigan Business Law and Business Court Update. There’s something for everyone, regardless of your professional perspective.

Benefits of Attending:

- Hear from top government officials, DC insiders, and other experts
- Get the national perspective on international tax and Circular 230 developments
- Examine the Trump administration’s effect on benefits
- Analyze collection and enforcement issues facing Detroit and other local jurisdictions
- Gain a judge’s advice on drafting contracts to avoid litigation

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Tax Law Series: Estate Planning Tax Considerations for 2017
Presented 02/21/17

Tax Law Series: Handle the New Partnership Tax Audit Procedures
Presented 01/24/17

Tax Law Series: An Inside Look into the IRS Appeals Process
Presented 02/15/16

Tax Law Series: Estate Planning Tax Considerations for 2015
Presented 03/12/15

Tax Law Series: An Inside Look into IRS Criminal Investigation
Presented 02/04/15

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*30th Annual Tax Conference has been approved for 7.5 CTFA credits. Optional Session: Practical Ethical Advice for Tax Professionals—1.25 CTFA credits not included in total. This statement should not be viewed as an endorsement of this program or its sponsor.

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Ann Arbor, MI 48109-1444
877-729-8299 | 734-764-9533
icle@umich.edu
M-F 8am-5pm

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Full Schedule

8:00am-9:00am  Continental Breakfast, Vendor Showcase, and Registration

8:00am-9:00am  Plenary Session: Practical Ethical Advice for Tax Professionals

- confidence level needed for tax positions
- when is an attorney a tax preparer?
- disclosure for penalty situations (10.34)
- tax return preparer–amending tax returns
- requirements for written tax advice (10.37)
- reliance on another preparer
- rethink whether a Circular 230 banner
- other hot topics

Michael P. Monaghan, Plante Moran Trust, Clinton Township
Christina Thompson, Fellows, Michigan State University College of Law, East Lansing

9:05am-9:15am  Plenary Session: Welcome and Introductions

Alexander G. Domenicucci, Seyburn Kahn, Southfield
William C. Lenting, Dykema, Bloomfield Hills

9:15am-10:15am  Plenary Session: Washington Update: Current Tax Legislative Developments

MP3 download available to all registrants after the seminar

ON-DEMAND SEMINARS
Tax Law Series: Estate Planning Tax Considerations for 2017
Presented 02/21/17
Tax Law Series: Handle the New Partnership Tax Audit Procedures
Presented 03/24/17
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Presented 02/04/15

BOOKS
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10:15am-11:15am
Plenary Session:
The Latest with Circular 230
- overview of the last round of amendments
- possible changes/additions
- recent disciplinary results, trends in OPR’s numbers, and ancillary developments
- collaborating with tax professionals to make it more effective
- practice by tax return preparers--Annual Filing Season Program

Patrick Robertson, Managing Director, Strategic Communications, FTI Consulting, Washington, DC

11:15am-11:30am
Vendor Showcase and Networking Break

11:30am-12:30pm
State and Local Tax Committee:
Dark Stores and Property Tax Update
- key developments
- practical advice on valuation issues
- developments in big box caselaw

Andrea D. Crumback, Mika Meyers PLC, Grand Rapids
Carl Rashid, Jr., Dykema, Lansing
Jack L. Van Coevering, Foster Swift Collins & Smith PC, Grand Rapids

11:30am-12:30pm
Federal Income Tax Committee:
International Tax Developments: A Business Community Overview
- navigating international issues in U.S. tax reform
- the global tax environment--developments worldwide

Caroline L. Harris, U.S. Chamber of Commerce, Washington, DC
11:30am-12:30pm  Core Concepts:
Tax Controversy and Litigation
- examination procedures update and defense strategy
- international civil and criminal enforcement update and the surprising impact on clients
- IRS appeals--where have they gone?
- IRS--CI turns up the heat

Eric M. Nemeth, Varnum LLP, Novi

12:30pm-1:30pm Networking Lunch

1:30pm-2:30pm State and Local Tax Committee:
City Income Tax Update: Detroit and More
- Detroit’s goals, activities, and enforcement actions
- challenges faced by local jurisdictions under the statewide City Income Tax Act
- jurisdictional issues to collect and enforce
- overview of the audit, assessment, and appeals process
- practical insights to working at the local level

Robert E. Forrest, City of Detroit, Detroit
Lynn A. Gandhi, Honigman Miller Schwartz and Cohn LLP, Detroit

1:30pm-2:30pm Employee Benefits Committee:
The Benefits Policy of a Trump Administration
- retirement plan simplification initiatives
- the future of the Affordable Care Act
- impact on the DOL’s new fiduciary rules

Don Wellington, Steptoe & Johnson LLP, Washington, DC

1:30pm-2:30pm Core Concepts:
Anatomy of a Tax Attorney’s Involvement in an M&A Transaction
- transaction structure
- review of transaction-related agreements
- risk allocation with respect to taxes between buyer and seller
2:30pm-2:40pm  Vendor Showcase and Networking Break

2:40pm-3:40pm  Plenary Session:  
Michigan Business Law and Business Court Update

- proposed changes in Michigan business legislation
- caselaw update
- primer on business court for the transactional lawyer
- business court opinions--how to access them, use them, and what they mean
- how to avoid court--a judge's lessons for drafting contracts

Hon. James M. Alexander, Sixth Circuit Court, Pontiac  
James L. Carey, Carey Law Offices PC, South Lyon

3:40pm-3:50pm  Vendor Showcase and Networking Break

3:50pm-4:50pm  Plenary Session:  
An Update on Issues Facing In-House Tax Professionals

- current state of in-house tax work
- insights for outside professionals
- what does the future hold?

Katherine C. Castillo, Guardian Industries  
Corporation, Auburn Hills  
Aaron Seth Feinberg, General Motors, Detroit  
Jay Fruciell, Ally Financial Inc., Detroit  
Michael D. Lax, Nexteer Automotive, Auburn Hills

4:50pm-6:00pm  Networking Reception

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Moderators

Katherine C. Castillo
Guardian Industries Corporation, Auburn Hills
Katherine C. Castillo moved into her current federal audit management and tax planning role in 2012 after leading Guardian’s Domestic Tax Group. In more than 20 years at the company, she has been responsible for research, planning, audits, and solutions to Guardian’s federal, state, and local income/franchise and sales and use tax matters. Ms. Castillo is actively involved in business... View Full Bio

Speakers

Hon. James M. Alexander
Sixth Circuit Court, Pontiac
Hon. James M. Alexander was appointed to the court in 2001. He served in the Family Division through 2010 and was then assigned to the Civil/Criminal Division. Judge Alexander was also appointed as a Business Court judge when the court was created in 2013. He was formerly a presiding judge of the Family Court and a chief judge pro tem... View Full Bio

James L. Carey
Carey Law Offices PC, South Lyon
James L. Carey is a business and trust lawyer representing mid-sized companies and doing estate planning work for families. He is a professor emeritus of the Western Michigan University Thomas Cooley Law School. While at Cooley Law School, Mr. Carey was a professor and the director of the Corporate Law & Finance Graduate Program, teaching courses on many business topics... View Full Bio

Andrea D. Crumback
Mika Meyers PLC, Grand Rapids
Andrea D. Crumback practices before the Michigan Tax Tribunal and the State Tax Commission in property tax appeals. She concentrates her practice in civil litigation, with a focus on general corporate, construction, and family law matters. She is a member of the Taxation Section of the... View Full Bio

Michigan Bar Association, where she chairs the State and Local Taxation Committee. Ms. Crumback...View Full Bio

**Alexander G. Domenicucci**  
*Seyburn Kahn, Southfield*  
A shareholder in the firm, Alexander G. Domenicucci counsels businesses and individuals on a wide range of tax planning, transactional, and business matters. Mr. Domenicucci has extensive expertise in the area of tax law, including the taxation of C corporations, S corporations, partnerships, LLCs, real estate investment trusts (REITs), tax-exempt organizations, and disregarded entities. He regularly advises clients in the...View Full Bio

**Aaron Seth Feinberg**  
*General Motors, Detroit*  
Aaron Seth Feinberg is general tax director for General Motors, where he is responsible for tax matters relating to GM Financial and the Global Connected Customer Experience divisions. In addition to these roles, Mr. Feinberg focuses to a considerable degree on tax policy issues and domestic and international tax planning and mergers and acquisitions. Before joining GM, he was a...View Full Bio

**Robert E. Forrest**  
*City of Detroit, Detroit*  
Robert E. Forrest has been income tax counsel with the city since April 2016. Previously he was a member of Kerr, Russell and Weber, PLC, where he specialized in the litigation of civil and criminal tax controversies with the federal and state government, federal criminal matters, and litigation of complex commercial disputes. Mr. Forrest served as a trial attorney for...View Full Bio

**Jay Frucci**  
*Ally Financial Inc., Detroit*  
Jay Frucci was named the company’s chief tax officer in June 2013. He leads the tax staff and is responsible for tax affairs, including planning and forecasting, accounting for income taxes under U.S. GAAP, tax compliance and exam defense, and any public statements about the company’s tax matters. Mr. Frucci previously served as executive director of strategic tax planning. Before...View Full Bio

**Lynn A. Gandhi**  
*Honigman Miller Schwartz and Cohn LLP, Detroit*  
A partner in the firm, Lynn A. Gandhi practices in the area of taxation and tax appeals, advising clients nationwide on multistate tax strategies, resolving tax disputes, and litigating state tax cases. She concentrates in matters involving single business tax, sales and use tax, insurance company and retaliatory tax, investment incentives and tax savings, corporate income and franchise taxes, net...View Full Bio

**Caroline L. Harris**  
*U.S. Chamber of Commerce, Washington, DC*  
Caroline L. Harris is vice president, tax policy, and chief tax policy counsel at the chamber. She directs the development, promotion, and publication of policy on tax-related matters. She analyzes tax legislation, other legislation with revenue-raising provisions, and tax reform proposals, and submits comments, Hill letters, and testimony to Congress and...
regulatory agencies. Ms. Harris routinely meets with members of...

**Michael D. Lax**
Nexteer Automotive, Auburn Hills
Michael D. Lax, CPA, has been chief tax officer at the company since October 2016. He is responsible for overseeing the worldwide tax function, including mergers and acquisitions support. Mr. Lax previously served as vice president-taxes at Compuware Corporation and Dynatrace LLC from 2001 through 2016, and director-taxes from 1998 through 2001. Additionally, he held various tax managerial positions...

**William C. Lentine**
Dykema, Bloomfield Hills
William C. Lentine is a member of the firm’s Taxation and Estates Group, where his practice focuses on federal and state tax matters, corporate matters, and estate planning. He is also experienced in corporate tax matters and governance issues, partnership taxation, and tax controversy, as well as estate planning including sophisticated tax planning. Mr. Lentine has also dealt with public...

**Michael P. Monaghan**
Plante Moran Trust, Clinton Township
Michael P. Monaghan consults with many closely held and mid-sized companies and specializes in tax planning related to the restructuring of entities, including determining the best strategy to sell or buy a business and tax-free mergers and reorganizations. He frequently consults with clients to structure newly formed businesses and has considerable experience with cross-entity mergers, mergers of partnerships, redemptions, 338(h)(10)...

**Stuart Murray**
Internal Revenue Service, Washington, DC
Stuart Murray is special counsel to the director, Office of Professional Responsibility. He is the Office of Chief Counsel’s principal representative to OPR, serving as the liaison between the two organizations. Mr. Murray identifies issues concerning practice before the IRS on which published guidance or legislation are needed or might benefit tax practitioners or federal tax administration. He has been...

**Ilan Napchan**
Honigman Miller Schwartz and Cohn LLP, Chicago, IL
Ilan Napchan is a tax attorney who focuses his practice on complex business transactions, including domestic and cross-border mergers, acquisitions, leverage buyouts, and joint ventures. He has been the lead tax and structuring attorney on numerous M&A transactions, ranging in size from several million to more than $1 billion. Mr. Napchan earned a BS from Northwestern University and his JD...

**Eric M. Nemeth**
Varnum LLP, Novi
Eric M. Nemeth is a firm partner and leads the firm’s tax team. He concentrates his practice on tax and financial controversy (IRS and various states) including examinations, appellate conferences, criminal investigations, witness
representation, and civil and criminal tax litigation. Mr. Nemeth has served as senior trial attorney for the District Counsel of the Internal Revenue Service and special assistant... View Full Bio

Carl Rashid, Jr.
Dykema, Lansing
Carl Rashid, Jr., is a member of the firm’s Real Estate Practice Group and leads its Property Tax Appeals practice. He focuses his practice on property tax appeals, with vast experience in eminent domain, economic development and tax incentives, and general real estate. Mr. Rashid also has experience in state and local taxes, condemnation law, and government affairs matters. As... View Full Bio

Patrick Robertson
FTI Consulting, Washington, DC
Patrick Robertson is a managing director in the firm’s public affairs practice. He advises executive teams, boards of directors, and senior decision-makers on public policy issues that pose opportunities and challenges to their organizations’ enterprise value. Mr. Robertson focuses primarily on serving clients in the fields of tax policy and regulation, energy matters, transportation, communications, and trade. He has worked... View Full Bio

Christina Thompson
Michigan State University College of Law, East Lansing
Christina Thompson assists with supervision of second- and third-year law students, organizes outreach events, and oversees the students’ work in managing their client case files. She is admitted to practice in the Western District of Michigan, Eastern District of Michigan, and the U.S. Tax Court. Ms. Thompson is a member of the State Bar of Michigan Taxation Section and the... View Full Bio

Jack L. Van Coevering
Foster Swift Collins & Smith PC, Grand Rapids
Jack L. Van Coevering is the former chief judge and chairman of the Michigan Tax Tribunal. For 20 years, he has worked in the area of state and local tax, a career that has included government service and private practice. Mr. Van Coevering was the administrator of the Michigan Department of Treasury’s legal division. Beginning with his work for the... View Full Bio

Don Wellington
Steptoe & Johnson LLP, Washington, DC
Don Wellington has practiced in the areas of employee benefits and executive compensation for more than 20 years. Mr. Wellington represents some of the largest pension funds in the country, and is a fellow of the American College of Employee Benefits Counsel. He has also served as managing partner of the firm’s Los Angeles office. Mr. Wellington previously was the... View Full Bio

SPECIAL THANKS TO OUR SPONSORS

Attachment 2
1. **Financial statements.** Included with this report is the State Bar’s report for the eight-month period ended May 31, 2017. Also included with this report is the State Bar’s Membership Update for the Section, as of May 31.

2. **Hearts and Flowers Fund.** The Council’s Hearts and Flowers Fund is used, for example, to pay for plants sent in remembrance of deaths of individuals who have some relationship to the Council. The amount in the Fund is carried over from year to year.

   Thank you so much to the many of you who have contributed to the Hearts and Flowers Fund. For Council members who have not contributed to the Fund this year, please consider making an annual contribution of $35.00.

   As of the date that this Report was prepared, the Fund had a balance of $530.11.

3. **Individuals who are entitled to Section expense reimbursement.** Council Officers, Council Members, Council Ex Officio Members, and Council Liaisons might be entitled to reimbursement for expenses incurred on behalf of the Council. Reimbursable expenses include mileage expenses for attendance at regularly-scheduled meetings of the Council.

4. **Section Expense Reimbursement Form.** Council members must use the State Bar’s Section Expense Reimbursement Form to request reimbursement. The form and instructions are available at www.michbar.org/file/generalinfo/pdfs/sectexp.pdf. A copy of the Form is also included with this report. Please carefully complete the Form before submitting it; Forms not fully completed cannot be processed. When signing the Form, please indicate your title (e.g., “Council Member”; “Council Liaison”; etc.); the State Bar will not accept Forms signed simply “Attorney.”

5. **Submitting expense reimbursement requests.** Council members may submit a completed Section Expense Reimbursement Form to me, in person, by email (dlucas@vcflaw.com), by fax, or by mail. All of my contact information follows. Generally, other than mileage reimbursement, the State Bar requires that I attach paid receipts to the Form when I submit the Form, requesting reimbursement, so please attach a copy of your paid receipt to your Form when you submit the completed Form to me. So far, the State Bar has not required proof of mileage for mileage reimbursement.

6. **Mileage reimbursement rate.** The IRS business mileage reimbursement rate for 2017 is $0.535 per mile. If you are eligible for reimbursement for your mileage for Probate Council business for 2017 mileage, then you must use this rate, reported on the Section Expense Reimbursement Form.

7. **Timely submission of reimbursement requests.** While the State Bar is somewhat flexible, the State Bar’s policy is to reject any expense reimbursement requests for expenses more than 30 days old. Please submit expense reimbursement requests as soon as possible.
8. **Section expenses.** If you have any question about whether an expense is reimbursable by the Section, please contact me or any other officer. If there is any question about whether an expense is reimbursable, please don’t incur the expense until a Section officer confirms that it is reimbursable. Council and Section members are not authorized to sign any agreement on behalf of the Council or the State Bar.

9. **Section receipts.** When amounts are paid to the Council or Section for credit to the Council’s account, the State Bar will accept only physical checks (no cash, debit card, or credit card payments). When accepting checks, please complete the State Bar’s check transmittal form, which requires notations regarding who made the payment, and the purpose for the payment. After you have received the checks, please send the checks and the completed check transmittal form to me; I will send the checks and the completed form to the State Bar. Please see me if you would like a check transmittal form; the check transmittal forms are also available on the State Bar website.

David P. Lucas  
Treasurer, Probate and Estate Planning Section

**Treasurer contact information:**  
David P. Lucas  
Vandervoort, Christ & Fisher P.C.  
70 Michigan Avenue W., Suite 450  
Battle Creek, Michigan 49017  
voice: 269-965-7000  
fax: 269-965-0646  
email: dlucas@vcflaw.com
## Revenue:

<table>
<thead>
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<th>Description</th>
<th>May 2017</th>
<th>May 2017</th>
<th>May 2016</th>
</tr>
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<tr>
<td>1-99-775-1050 Probate/Estate Planning Dues</td>
<td>35.00</td>
<td>112,980.00</td>
<td>114,555.00</td>
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<td>1-99-775-1055 Probate/Estate Stud/Affil Dues</td>
<td>910.00</td>
<td>875.00</td>
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<tr>
<td>1-99-775-1470 Publishing Agreement Account</td>
<td>325.00</td>
<td>650.00</td>
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<tr>
<td>1-99-775-1755 Pamphlet Sales Revenue</td>
<td>1,902.35</td>
<td>1,231.65</td>
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<tr>
<td><strong>Total Revenue</strong></td>
<td><strong>35.00</strong></td>
<td><strong>116,117.35</strong></td>
<td><strong>117,311.65</strong></td>
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## Expenses:

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<th>May 2017</th>
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<th>May 2016</th>
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<td>1-99-775-1127 Multi-Section Lobbying Group</td>
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<td>1-99-775-1283 Seminars</td>
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<td>1-99-775-1297 Annual Meeting Expenses</td>
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<td>9,997.67</td>
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<tr>
<td>1-99-775-1493 Travel</td>
<td>12,661.17</td>
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<td>1-99-775-1528 Telephone</td>
<td>76.13</td>
<td>729.60</td>
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<td>1-99-775-1798 Pamphlets</td>
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<td>5,143.74</td>
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<td>1-99-775-1822 Litigation-Amicus Curiae Brief</td>
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<td>1-99-775-1826 Copying</td>
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<td>62.75</td>
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<td>1-99-775-1833 Newsletter</td>
<td>4,000.00</td>
<td>8,075.00</td>
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<td>1-99-775-1861 Printing</td>
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<td>1-99-775-1868 Postage</td>
<td>1.36</td>
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<tr>
<td>1-99-775-1987 Miscellaneous</td>
<td>75.00</td>
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<tr>
<td><strong>Total Expenses</strong></td>
<td><strong>6,801.13</strong></td>
<td><strong>88,925.41</strong></td>
<td><strong>103,092.02</strong></td>
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**Net Income**

(6,766.13)  27,191.94  14,219.63

## Beginning Fund Balance:

<table>
<thead>
<tr>
<th>Description</th>
<th>May 2017</th>
<th>May 2017</th>
<th>May 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5-00-775-0001 Fund Bal-Probate/Estate Plan</td>
<td>224,191.74</td>
<td>228,702.77</td>
<td></td>
</tr>
<tr>
<td><strong>Total Beginning Fund Balance</strong></td>
<td><strong>224,191.74</strong></td>
<td><strong>228,702.77</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Ending Fund Balance**

251,383.68  242,922.40
**Total Current Section Membership:** 3490

<table>
<thead>
<tr>
<th>Membership by Member Type:</th>
<th>Current</th>
<th>End of Last FY</th>
<th>Annual Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney, Active (ATA Only)</td>
<td>3,374</td>
<td>3,524</td>
<td>(150)</td>
</tr>
<tr>
<td>Attorney (All others)</td>
<td>25</td>
<td>17</td>
<td>8</td>
</tr>
<tr>
<td>Affiliate (LASST and LADM)</td>
<td>26</td>
<td>25</td>
<td>1</td>
</tr>
<tr>
<td>Law Student (LS)</td>
<td>64</td>
<td>57</td>
<td>7</td>
</tr>
<tr>
<td>Non Members (NON)</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,490</td>
<td>3,624</td>
<td>(134)</td>
</tr>
</tbody>
</table>

**Membership by Dues Type:**

<table>
<thead>
<tr>
<th></th>
<th>Paid</th>
<th>Free</th>
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</thead>
<tbody>
<tr>
<td>Current</td>
<td>3,249</td>
<td>241</td>
</tr>
<tr>
<td>End of Last FY</td>
<td>3,303</td>
<td>318</td>
</tr>
<tr>
<td>Annual Increase (Decrease)</td>
<td>(54)</td>
<td>(77)</td>
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</table>

*Membership numbers fluctuate during certain months due to the following reasons:

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<tbody>
<tr>
<td>New dues pmts.</td>
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<tr>
<td>New admits &amp; dues pmts.</td>
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<td>New admits</td>
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<tr>
<td>Non-pmt. Suspension</td>
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<tr>
<td>Non-renewal removal</td>
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<td>Free m'ships expire</td>
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</table>

** Add paid plus discounted dues type to equal revenue from Section Dues (-1050) and Law Student/Affil Dues (-1055).
Section Expense Reimbursement Form

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Description &amp; Purpose (Note start and end point for mileage)</th>
<th>Mileage</th>
<th>Lodging/Other Travel</th>
<th>Meals (Self &amp; attach list of guests)</th>
<th>Miscellaneous (i.e. copying, phone, etc.)</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td>.535</td>
<td></td>
<td></td>
<td></td>
<td>$ 0.00</td>
</tr>
</tbody>
</table>

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

Date: 
Title: 
Signature:

GrandTotal: $ 0.00

Probate and Estate Planning Section 
Treasurer's Report

Page 5

06/24
Treasurer's Report

Probate and Estate Planning Section

Requests for reimbursement of expenses which require council approval shall be submitted as soon as practical after being incurred, but not to exceed 45 days. However, at the end of the fiscal year, any remaining expense reimbursement requests for the fiscal year just ended must be submitted by the 3rd workday in October. The State Bar reserves the right to deny a reimbursement request that is untimely or where the State Bar's ability to verify an expense has been compromised due to any delay. Expense reimbursement forms, along with instructions for completing and transmitting expense reimbursement forms, are found on the State Bar of Michigan website at: http://michbar.org/programs/forms

1. All out of pocket expenses must be itemized. Each reimbursed expense must be clearly described and the business purpose indicated.

2. Reimbursement in all instances is limited to reasonable and necessary expenses.

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

4. An itemized receipt is required before reimbursement will be made for any meal. The reimbursement request must identify whether the meal is a breakfast, lunch or dinner. If the receipt covers more than one person, the reimbursement request must identify the names of all those in attendance for whom reimbursement is claimed, and the business purpose of the meal. If the receipt includes charges for guests for whom reimbursement is not claimed, the guests need not be identified by name, but their presence and number should be noted. Reimbursed meals while traveling (except group meals) are taxable if no overnight stay is required.

For subsidized sections (Young Lawyers Section, Master Lawyer Section, and Judicial Section) the presumptive limits on meal reimbursement are the per diem amounts published on the State of Michigan Department of Technology, Management and Budget’s website at http://www.michigan.gov/dmb/0,5552,7-150-9141_13332---,00.html referencing Travel Rates and Select Cities for the current fiscal year. This policy applies to each individual meal - breakfast, lunch and/or dinner. Meal reimbursements exceeding the per diem amounts due to special circumstances must be approved by the section treasurer or section chair, whenever possible in advance of the expenditure. Reimbursement for meals exceeding the presumptive limits without an acceptable explanation of special circumstances will be limited to the published per diem amount. The presumptive limit on meal reimbursement applies to any meal expense (individual or group) reimbursed under this policy, but does not apply to meals for group meetings and seminars invoiced directly to the SBM. For all other sections, the amount of the meal reimbursement shall be deemed what is reasonable and necessary.

5. Spouse expenses are not reimbursable.

6. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursed mileage for traveling on State Bar business is limited to actual distance traveled for business purposes.

7. Receipts for lodging expenses must be supported by a copy of the itemized bill showing per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid. Barring special circumstances such as the need for handicap accessibility accommodations, for conference attendance, the reimbursement will be limited to the least expensive available standard room conference hotel rate.

8. Airline tickets should be purchased as far in advance as possible to take advantage of any cost savings possible. The use of travel websites such as Travelocity, Priceline and Hotwire are recommended to identify the most economical airfare alternatives.

9. Reimbursement of airfare will be limited to the cost of coach class tickets available for the trip at the time the tickets are purchased. The additional cost of business class or first class airfare will not be reimbursed.

10. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.

11. Outside speakers must be advised in advance of the need for receipts and the above requirements.

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

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

14. The State Bar of Michigan is exempt from sales tax. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.

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

16. Gift cards (Visa, AMEX) that are reimbursed are taxable for any amount, and tangible gifts (other than recognition items such as plaques, gavels, etc.) and gift certificates (for restaurants, department stores, etc.) purchased and reimbursed are considered taxable if greater than $100.

Specific Policies

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

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

3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.

4. Payments to vendors for $5,000 or greater are not reimbursable. Payments to vendors for $5,000 or greater should be paid directly by the State Bar.
Attachment 3
I. State Bar 2017 NEXT Conference.

Registration for the NEXT conference is now open. A copy of that notice from the State Bar is attached hereto as Chair Report Attachment A. As mentioned previously, the 2017 Annual Meeting and Solo & Small Firm Institute is now called the 2017 NEXT Conference and will be held this year on September 27-29 at the Cobo Center in Detroit.

II. House Bill 4170, Physician Orders for Scope of Treatment is nearing passage.

This Bill deals with the creation and use of what is called “Physician Orders for Scope of Treatment” (“POST”). Part of the goal of this concept is to provide a better system for carrying out a patient’s wishes for his/her medical treatment, and the use of medical interventions for the patient with an “advanced illness”. The term “advanced illness” as defined in the Bill is as follows:

"ADVANCED ILLNESS" MEANS A MEDICAL OR SURGICAL CONDITION WITH SIGNIFICANT FUNCTIONAL IMPAIRMENT THAT IS NOT REVERSIBLE BY CURATIVE THERAPIES AND THAT IS ANTICIPATED TO PROGRESS TOWARD DEATH DESPITE ATTEMPTS AT CURATIVE THERAPIES OR MODULATION.

The primary purpose of POST is to provide a system to communicate scope of treatment decisions that are made between a clinician and the patient or the patient’s advocate/healthcare agent across the continuum of health services. The POST concept can addresses various levels of treatment, from aggressive care to comfort care only, including decisions about CPR, ventilation, antibiotics, nutrition and transport. Part of the concept is that POST is important because a “living will” is not self-implementing, and the directions contained in a “living will” may not be transferred across different healthcare settings. The POST attempts to bridge this gap by stating the person's medical treatment wishes on a medical order form signed by a physician and the patient or other person authorized to sign on behalf of the patient. As stated in the Bill:

THE POST FORM IS INTENDED TO BE USED AS PART OF AN ADVANCE CARE PLANNING PROCESS. THE POST FORM IS NOT INTENDED TO BE USED AS A STAND-ALONE ADVANCE HEALTH CARE DIRECTIVE THAT UNILATERALLY EXPRESSES THE PATIENT'S MEDICAL TREATMENT WISHES. THE POST FORM CONTAINS MEDICAL ORDERS THAT ARE JOINTLY AGREED TO BY THE PATIENT AND THE ATTENDING HEALTH
Several attorneys from the Elder Law and Disability Rights Section (including myself) have worked on the project dating back to 2011. More recently, we have worked with the legislation sponsor, Representative Jim Tedder, and his staff on several wording revisions for the Bill. Most of these have been incorporated into a substitute bill, and we are continuing to suggest some additional changes which we believe will ultimately be included. Therefore, although this proposed legislation is still undergoing further refinement, it should be nearing final form soon.

III. Expedited Processing of Attorney Pleadings by Wayne County Probate Court\Attorney Line Relocation.

See copy of email notice from Michael J. McClory, Chief Deputy Probate Register for the Wayne County Probate Court attached hereto as Chair Report Attachment B.


Although this is an unpublished decision, it includes a good review of MCL 700.3715(x), MCL 700.3715(w), MCR 5.313(A), and MRPC 1.5h(a), and related cases, as well as the “fees for fees” ruling of the case of In re Sloan Estate, 212 Mich App at 363. If you have a contested attorney’s fees matter, you should review this case and the cases cited therein. However, also take note of the dissenting opinion. That dissenting opinion appears to emphasize the outcome of the litigation as a factor for the trial court to consider when evaluating the reasonableness of the fees. However, as noted by the majority opinion, MCL 700.3720 provides:

“If a personal representative or person nominated as personal representative defends or prosecutes a proceeding in good faith, **whether successful or not**, the personal representative is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney fees incurred.” [emphasis added]

This statute states very clearly that the outcome of the case is not a factor for the allowance of attorney fees. Nevertheless, you must be prepared to address a mind set such as expressed by the dissent in this case.

A copy of the Cary Estate case attached hereto as Chair Report Attachment C.

V. The Michigan Law Revision Commission has identified the Jajuga case as one needing a statutory review; however, no specific recommendation is made.

On May 18, 2017, the Michigan Law Revision Commission approved its draft 2015 Report on
Recent Court Decisions Identifying Statutes for Legislative Actions and Recommendations to the Legislature. That report notes the outcome of the case of In re: Estate of Jajuga, 312 Mich.App. 706 (2015), and recommends legislative review of the statutory wording issues identified in the Jajuga case, but makes no recommendation of specific legislative action.

Our Legislation Development & Drafting Committee will be reporting at our June meeting on the status of its work on the issues presented by this case.

Jim Steward,
Chair
CHAIR REPORT

ATTACHMENT A
SBM NEXT Conference: Registration is Now Open

Shape the Future of Your Law Practice Today

Register Now

WHAT: Formerly the Annual Meeting/Solo & Small Firm Institute, the NEXT Conference focuses on the future of law practice by bringing Michigan lawyers together in a whole new way to learn, share ideas, make connections, and more. We'll give you the tools to develop your dream career, gain the most recent updated information about your law practice areas, learn technology tricks to streamline your practice, and build a better professional network.

WHERE: Cobo Center, Detroit

WHEN: Wednesday–Friday, September 27–29

WHY: Tailor the program to your needs by creating your own unique experience. Want to attend a section meeting, grab lunch, and catch an educational session or two? We've got you covered. Or maybe you'd rather focus on education and networking? You can do that too with a new, inclusive "all-member" networking lunch and reception.

With two day, one day, and a la carte pricing options, it's the conference that fits your schedule. Your conference, your way.

HOW: Register Now

Join the conversation on social media using #SBMNEXT
FYI—for those who practice in Wayne County Probate Court from Mike McClory.

Sincerely,

Michele

*Chair, Elder Law and Disability Rights Section of the State Bar of Michigan 2016-2017
*Distinguished Lawyer 2016
*Listed in Top 1% Lawyers, National Association of Distinguished Counsel 2016
*Women in Law Elder Law and Special Needs Planning Attorney of the Year 2016
*Parenting Magazine Top Special Needs Advocate 2013
*Advisory Board, Academy of Special Needs Planners

Michele P. Fuller
Michigan Law Center, PLLC
12900 Hall Road, Suite 470
Sterling Heights, MI 48313
ph: 586-803-8500
fx: 586-803-8508
Www.michiganlawcenter.com
In an effort to expedite the processing of attorney pleadings filed with the Wayne County Probate Court, effective April 24, 2017 (1) lawyers will be able to file their papers with no screening by Court intake staff, (2) the Attorney Line will be moved to the back of Room 1307 and (3) The Attorney Line will be staffed with two attorney line clerks whenever possible.

This new method should streamline the filing process by eliminating the requirement for staff to examine the pleadings. Staff will simply process the paperwork and set the matter for hearing with the Judge of record to adjudicate your filing.

The screening process will continue to be required for certain items filed with or adjudicated by court staff without a hearing (i.e., applications, inventories, notices of continued administration, sworn closing statements, etc.).

Moving the Attorney Line to the back of Room 1307 will also allow attorneys file their pleadings in a more expedited manner by having a dedicated intake area separate from the general public who will check-in at the File Viewing Desk. Please do not attempt to seek service from a clerk at the Probate Counter, check-in directly at the Attorney Line.

The Attorney Drop Box may be utilized at any time to submit pleadings without having to wait in line. The Attorney Drop Box is located next to the Attorney Line Clerks, now at the back of Room 1307.

If you have any questions regarding this issue or any other issue please do not hesitate to contact me.

Michael J. McClory
Chief Deputy Probate Register
Wayne County Probate Court

(313) 224-5685
mmccclory@wcpc.us
CHAIR REPORT

ATTACHMENT C
The Department of Health and Human Services (DHHS) appeals as of right the order of the Branch Probate Court settling decedent, Marian I. Cary’s, estate. We affirm.

On appeal, the DHHS argues that Philip Cary, the personal representative of the estate, did not provide sufficient evidence for the probate court to determine whether the attorney fees, personal representative fees, and administrative fees charged to the estate were reasonable. We disagree.

An issue is preserved for appeal when it is raised in and decided by the trial court. Fast Air, Inc v Knight, 235 Mich App 541, 549; 599 NW2d 489 (1999). In its objection, the DHHS argued that the personal representative failed to demonstrate that the attorney fees were reasonable. The probate court concluded that the attorney fees were reasonable. Therefore, this issue is preserved. Id. However, a review of the lower court record indicates that the DHHS did not properly raise an objection to the personal representative’s fee or the estate’s other administrative fees and that the probate court approved those fees as submitted due to the absence of a proper objection. Therefore, the DHHS’s challenges to the personal representative fee and other administrative fees are unpreserved and this Court “need not consider” them. Milligan v Milligan, 197 Mich App 665, 671; 496 NW2d 394 (1992).

With respect to an award of attorney fees, a trial court’s “underlying findings of fact” are reviewed “for clear error.” In re Temple Marital Trust, 278 Mich App 122, 128; 748 NW2d 265
(2008). However, as to the trial court’s decision whether to award attorney fees and the reasonableness of the attorney fees, this Court reviews those issues for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). “The court does not abuse its discretion when its decision is within the range of reasonable and principled outcomes.” *In re Temple Marital Trust*, 278 Mich App at 128.

MCL 700.3715(x) states that “a personal representative, acting reasonably for the benefit of interested persons, may . . . [p]rosecute or defend a claim or proceeding in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative’s duties.” Furthermore, the personal representative may “[e]mploy an attorney to perform necessary legal services or to advise or assist the personal representative in the performance of the personal representative’s administrative duties . . . .” MCL 700.3715(w). “If a personal representative or person nominated as personal representative defends or prosecutes a proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney fees incurred.” MCL 700.3720.

According to MCR 5.313(A), “[a]n attorney is entitled to receive reasonable compensation for legal services rendered on behalf of a personal representative, and to reimbursement for costs incurred in rendering those services. In determining the reasonableness of fees, the court must consider the factors listed in MRPC 1.5(a).” MRPC 1.5(a) lists the following factors that a court should consider when determining whether attorney fees are reasonable:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

3. the fee customarily charged in the locality for similar legal services;

4. the amount involved and the results obtained;

5. the time limitations imposed by the client or by the circumstances;

6. the nature and length of the professional relationship with the client;

7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and

8. whether the fee is fixed or contingent.

“[T]he burden of proving the reasonableness of the requested fees rests with the party requesting them. *Smith*, 481 Mich at 528-529.

In *Smith*, the Michigan Supreme Court articulated an approach to determine whether an attorney fee was reasonable that requires a court to determine a baseline reasonable fee and then
multiply that amount by a reasonable number of hours required for the case. *Id.* at 530-531. Although *Smith* considered an attorney fee award in the context of case evaluation sanctions, the Michigan Supreme Court stated that “[t]he operative language triggering the *Smith* analysis is the Legislature’s instruction that an attorney is entitled to a ‘reasonable fee.’” *Pirgu v United Services Auto Ass’n*, 499 Mich 269, 279; 884 NW2d 257 (2016) (emphasis in original). Because MCR 5.313(A) states that a personal representative’s attorney “is entitled to receive reasonable compensation[,]” the *Smith* framework applies. See e.g., *Id.* (“Because the plain language of [MCL 500.3148(1)] speaks in terms of awarding a ‘reasonable fee,’ [this Court concludes] that the *Smith* framework governing reasonable fee determinations is equally applicable in this context.”).

Here, the personal representative provided sufficient evidence to support its contention that its attorney fees were reasonable. The personal representative submitted detailed billing records showing each attorney’s hourly rate, the work the attorney performed, and the time the attorney spent on each task. *Smith*, 481 Mich at 532 (stating that a “fee applicant must submit detailed billing records, which the court must examine and opposing parties may contest for reasonableness”). See also MCR 5.313(C) and (F) (providing that “the personal representative must append to an accounting, petition, or motion in which compensation is claimed a statement containing… [the following details]: the identity of the person performing the services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services”). In addition, the personal representative provided evidence showing how his attorneys’ rates compared to other attorneys in the state. He provided the 2014 Economics of Law Practice survey from the Michigan State Bar and the curriculum vitae for all three attorneys, which described each attorney’s experience and qualifications. *Smith*, 481 Mich at 531-532 (stating that “[t]he fees customarily charged in the locality for similar legal services can be established by testimony or empirical data found in surveys and other reliable reports”). Finally, the DHHS did not dispute that the attorneys’ hourly rates were reasonable. The probate court agreed.

Furthermore, at the evidentiary hearing, the personal representative explained to the probate court why the time spent on the estate was reasonable. The personal representative explained that at the time that the DHHS filed its claim, estate recovery was new in Michigan. As a result, there were relatively few cases on the subject. In order to comply with MRPC 3.3, the personal representative had to remain updated on the law. Therefore, the personal representative followed similar cases around the state. In addition, the personal representative attempted to settle the claim with the DHHS. Finally, the personal representative noted that no work was billed to the estate while awaiting the *In re Keyes Estate*, 310 Mich App 266; 871 NW2d (2015) decision. Based on the detailed billing records and verbal explanation of the time spent on the estate at the evidentiary hearing, the personal representative provided sufficient evidence for the probate court to determine whether the attorney fees were reasonable. *Smith*, 481 Mich at 531-532.

Furthermore, there is evidence to support the probate court’s finding that the personal representative acted in good faith by originally denying the DHHS’s claim. In *In re Sloan Estate*, 212 Mich App 357, 362; 538 NW2d 47 (1995), this Court stated that “legal services rendered in behalf of an estate are compensable where the services confer a benefit on the estate by either increasing or preserving the estate’s assets.” However, MCL 700.3720 states that “[i]f
a personal representative or person nominated as personal representative defends or prosecutes a proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney fees incurred.” There is support in the record that the personal representative acted in the best interests of the estate by disallowing the DHHS’s claim in June 2014 based on the state of the law at the time. In addition, the work and research completed by the personal representative’s attorneys to support his position benefited the estate because he was defending against such a large claim and the area of the law relating to estate recovery was unsettled. Furthermore, the personal representative allowed the DHHS’s claim once *In re Keyes Estate* was decided and it was apparent that his position was no longer viable. Accordingly, the personal representative “was entitled to receive from the estate necessary expenses and disbursements including reasonable attorney fees incurred” for defending against the DHHS’s claim. MCL 700.3720.

In addition, the DHHS argues that some of the personal representative’s attorney fees are actually “fees for fees” and are not payable by the estate. The fees referenced by the DHHS would arise out of the need to establish and/or defend a petition for attorney fees. *In re Sloan Estate*, 212 Mich App at 363. These fees “clearly do not benefit the estate because they do not increase or preserve the estate’s assets” and are thus not compensable. *Id.* However, in this case, the petition for adjudication of the estate was filed on August 4, 2015. The DHHS’s objection to the personal representative’s attorney fees was filed on August 18, 2015. The probate court stated that no attorney fees were allowed outside of the estate’s final accounting, which was also filed on August 4, 2015. Therefore, the estate was not charged for the personal representative’s defense of the DHHS’s objection to attorney fees and there are no “fees for fees” concerns in this case. *In re Sloan Estate*, 212 Mich App at 363. Accordingly, the personal representative provided sufficient evidence for the probate court to properly review the reasonableness of the attorney fees.

Next, the DHHS contends that the probate court abused its discretion by approving the personal representative’s attorney fees without articulating its findings of fact in regard to each factor in MRPC 1.5(a) on the record. We disagree.

The approach articulated in *Smith* requires a court to first determine a reasonable base fee customarily charged in the locality for similar legal services, which is factor 3 under MRPC 1.5(a), and then to multiply that amount “by the reasonable number of hours expended in the case[,]” which is factor 1 under MRPC 1.5(a). *Smith*, 481 Mich at 530-531. The court should then “consider the remaining [MRPC 1.5(a)] factors to determine whether an up or down adjustment is appropriate.” *Id.* at 531. “And, in order to aid appellate review, a [] court should briefly discuss its view of the remaining factors.” *Id.*

Here, DHHS does not argue that the hourly rate was unreasonable. Instead, it contends that the time spent disallowing its claim and researching estate recovery law was unreasonable. However, the probate court found that the personal representative disallowed the DHHS claim in June 2014 in good faith based on the state of the law at the time.

Further, the probate court found that the hourly rate for each attorney was reasonable. In addition, the probate court stated that it had reviewed the billing records in detail, and it asked the personal representative several detailed questions regarding some of the billings, such as
whether different attorneys were billing for the same services. The probate court then found that the attorney fees were reasonable. Although the probate court did not specifically address all of the MRPC 1.5(a) factors, the purpose of making detailed factual findings on the record is “to aid appellate review.” Id. Here, the probate court’s factual findings relating to the remaining factors would not aid this Court in its review of the issue on appeal, which is whether the time spent on the DHHS claim was reasonable. As a result, we find that remand is unnecessary. Even if all of the MRPC 1.5(a) factors were not discussed, the probate court specifically addressed whether the time spent on DHHS’s claim was reasonable (the specific issue raised by the DHHS). Therefore, the probate court’s conclusion that the personal representative’s attorney fees were reasonable did not fall “outside the range of reasonable and principled outcomes.” Id. at 526. Accordingly, the probate court’s approval of the personal representative’s attorney fees was not an abuse of discretion. Id.

Affirmed.

/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens
STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of MARIAN I. CARY.

PHILIP A. CARY, Personal Representative of the
Estate of MARIAN I. CARY,

Appellee,

v

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Appellant.

Before: O'BRIEN, P.J., and SERVITTO and STEPHENS, JJ.

O'BRIEN, P.J. (dissenting).

I respectfully dissent.

Marian I. Cary passed away on April 1, 2014, leaving behind only two assets worth $92,451.73: real property valued at $92,000.00 and $451.73 in cash. Between her death and the order appealed, which was entered on January 6, 2016, three attorneys charged Cary’s estate $46,390.40 in attorney fees, according to the first annual and final accountings filed before the trial court.\(^1\) The issue presented before the trial court and again on appeal is whether this amount was reasonable under the facts and circumstances of this case. On the record before me, I cannot conclude whether it is or is not. In concluding that this amount was reasonable, the trial court explained, \textit{in full}, as follows:

What the Court’s going to do in this particular case is I am going to approve the attorney fees that have been submitted on the first . . . annual accounting. I will also approve what has been submitted on the final accounting and those will be attorney fees in this case. Nothing since then, so that means everything that

\(^1\) To be clear, this amount reflects only the requested attorney fees. It does not reflect any other expenses sought by the attorneys or their firms.
you’ve done today or from the date of that filing up until this day will not be reimbursed for, but I will approve those amounts and that will be the amounts that the Court will approve and nothing else.

In my view, this is simply insufficient. See Smith v Khouri, 481 Mich 519, 530-534; 751 NW2d 472 (2008). The decedent received, and appellant sought reimbursement for, $113,196.71 in Medicaid benefits prior to her death. The estate, represented by three attorneys, unsuccessfully defended against appellant’s claim in a zealous fashion. According to the invoices provided by each law firm, these three attorneys spent 169.6 hours on this case during that time period. Despite this amount of work, the parties ended up stipulating to allow appellant’s claim. Nevertheless, the estate’s attorneys sought compensation for their zealous, albeit unsuccessful, efforts. Their charged fees, coupled with various other costs such as funeral expenses, costs related to the sale of the real property, and other fees, reduced the value of the estate from its original value of $92,451.73 to $14,895.42. While attorney fees in an amount that is equal to 50 (50.177969 to be precise) percent of the entire estate might be reasonable in some cases, I believe that a more thorough analysis is required in this matter. Therefore, I would remand to provide the trial court with an opportunity to do exactly that.

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2 In Smith, 481 Mich at 530-531, our Supreme Court explained the proper procedure for evaluating the reasonableness of claimed attorney fees as follows:

We conclude that our current multifactor approach needs some fine-tuning. We hold that a trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services, i.e., factor 3 under MRPC 1.5(a). In determining this number, the court should use reliable surveys or other credible evidence of the legal market. This number should be multiplied by the reasonable number of hours expected in the case (factor 1 under MRPC 1.5[a] and factor 2 under Wood). The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee. We believe that having the trial court consider these two factors will lead to greater consistency in awards. Thereafter, the court should consider the remaining Wood/MRPC factors to determine whether an up or down adjustment is appropriate. And, in order to aid appellate review, a trial court should briefly discuss its view of the remaining factors.

While it is possible that the trial court may have followed this procedure off the record, the record does not reflect that such a procedure was followed, and, at least in my view, such a lack of record precludes adequate appellate review.

3 Additionally, that remaining amount, $14,895.42, remains subject to various statutory exemptions. See, e.g., MCL 700.2404.

4 My review of the record leaves me with serious questions as to the reasonableness of various charges against the estate under the facts and circumstances in this case. For example, I question whether it is reasonable for attorneys in a case such as this, i.e., a case where the estate is valued
Similarly, despite the majority’s conclusion to the contrary, I would also conclude that, on remand, the trial court should additionally address the reasonableness of the personal representative’s claimed fee, which was a flat-rate $5,000.00 fee. The majority disregards appellant’s arguments in this regard due to appellant’s failure to “properly raise an objection.” My review of the record, however, reflects that these arguments were adequately preserved to facilitate appellate review. Therefore, I am of the view that the trial court should be provided an opportunity to review those as well.

/s/ Colleen A. O'Brien

at less than $100,000.00 and subject to claims in excess of that amount, for attorneys to charge a client $225.00 per hour to request meeting minutes from the Senate Appropriations Committee. While this is only one example, there are various other charges to the estate that leave me with concerns regarding the reasonableness of the strategy taken by the estate’s attorneys. As another example, I also question whether it was reasonable for the estate’s attorneys to contact various probate courts to obtain lower-court files regarding cases that were appealed until more information was available before this Court. While it is possible that these extraordinary efforts were requested by the personal representative, it is these concerns, coupled with appellant’s assertions that the estate’s attorneys were using this case to improve their overall knowledge of estate recovery rather than to actually benefit the estate, that leave me with serious questions as to whether the fees, as requested, were reasonable. I believe that these questions could be adequately answered by the trial court on remand.

5 Specifically, appellant expressly contested the reasonableness of the fees claimed by the personal representative. For example, it specifically argued that “the attorney fees and the Personal Representative cannot justify a large percentage of the fees charged.” (Emphasis added.) While this argument could well have been further developed by appellant, I nevertheless believe it was sufficient for preservation purposes. I would note, however, that the fee sought by the personal representative seems, at least at first blush, to be significantly more reasonable than the fees sought by the attorneys in this matter.
Attachment 4
MEMORANDUM

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan
From: James P. Spica
Re: Divided and Directed Trusteeships ad Hoc Committee Chair's Report
Date: June 16, 2017

The Committee has met twice to date. Minutes of those meetings are attached.
The meeting commenced at 1:05 PM

Members Present:
- Judy Grace
- David Kerr
- Raj Malviya
- Gabrielle McKee (Secretary)
- Rick Mills
- Jim Spica (Chair)
- Marlaine Teahan (Vice-Chair)
- Rob Tiplady
- Geoff Vernon
- Nancy Welber

Proposed future meetings: twice a month, Wednesdays at 1:00pm-2:30
- June 7
- June 28
- July 12
- July 26
- August 9
- August 23
- September 6
- September 27

Plan of Action: Examine the penultimate draft of the Uniform Directed Trust Act (UDTA) section by section beginning on June 7, with section 5 of the Act (p. 8)

Strategic Questions to Bear in Mind: Questions introduced by the Chair with discussion by members:

- Do we want to recommend that Michigan adopt a version of the UDTA?
  - If so, as a stand-alone act or as part of the Michigan Trust Code (MTC)?
  - With or without Section 9(b) (p. 20)? (See Uniform Trust Code (UTC) section 806(b) and MTC section 7809(4))
  - With or without Section 12 (p. 28)? (See UTC section 703(g) and MTC section 7703)
  - With or without Section 5 (exclusions) (p. 8) (See MTC section 7103(n)(ii) apropos of powers of appointment)
  - To what extent should application be retroactive? (See UDTA section 3 (p. 6))
• Do we want to recommend that Michigan create a *separate* or *divided* trusteeship regime? (A more thoroughgoing implementation, perhaps, of what has been attempted in Florida and North Carolina)
  ▪ If so, in addition to or instead of (some version of) the UDTA?
  ▪ As a stand-alone act or as part of the MTC?
  ▪ As a safe-harbor and how-to-manual or with constraints? (See UTC section 105 and MTC section 7105)

• Can we create something as good as a separate or divided trusteeship regime from a directed trusteeship statute (by, for instance, omitting UDTA section 9(b))?

The meeting adjourned at 2:35 PM

[Signature]
Gabrielle M. McKee, Secretary
Divided & Directed Trusteeships Committee
Meeting Minutes 6-7-17

The meeting commenced at 1:03 PM

Members Present:
- Judy Grace
- David Kerr
- Raj Malviya
- Meg Lentz
- Gabrielle McKee (Secretary)
- Jim Spica (Chair)
- Rob Tiplady
- Geoff Vernon

Excused Absences:
- Nancy Welber
- Marlaine Teahan

Missing and Missed:
- Rick Mills

Review of Meeting Minutes 5-24-17

Future Meetings (with locations for those who wish to attend in person):

- June 28: Dickinson Wright PLLC, Lansing Office
  o 215 S. Washington Square, Suite 200, Lansing
- July 12: Dickinson Wright PLLC, Troy Office
  o 2600 W. Big Beaver Road, Suite 300, Troy
- July 26: Dickinson Wright PLLC, Grand Rapids Office
  o 200 Ottawa Ave, N.W., Suite 1000, Grand Rapids
- August 9: Dickinson Wright PLLC, Lansing Office
- August 23: Dickinson Wright PLLC, Ann Arbor Office
  o 350 S. Main Street, Suite 300, Ann Arbor
- September 6: Dickinson Wright PLLC, Troy Office
- September 27: Dickinson Wright PLLC, Lansing Office

Discussion: The Committee’s deliberations of the Uniform Directed Trust Act (June 2, 2017 draft) begins (as planned at the last meeting) with Section 5 of the Act. (See attached outline of the Act, which was shared with the Committee.)

Sections 5 through 8 Act were each read aloud by a Committee member, briefly commented on by the Chair, and then discussed by the Committee.
Section 9 was read aloud and set up for discussion at the next meeting by the Chair, who focused attention Section 9(b) and the willful-misconduct standard.

Next Meeting: 6-28-17

The meeting adjourned at 2:30 PM

Gabrielle M. McKee, Secretary
Clarity and Comfort under the Uniform Directed Trust Act

I. Introduction to the Uniform Directed Trust Act [David English]

II. The Act [Jim Spica]

A. Legislative Apparatus
   1. Internal aids to construction
      a) Enacting parts
         (1) Interpretive sections (§§ 2 and 5(a))
            (a) Non exclusio: "Breach of trust' includes . . ."
            (b) Exclusio: e.g., "Directed trust' means . . ."
         (2) Meta-interpretive sections (§§ 4 and 17)
         (3) Saving section (§ 18) (and herein of ESGNCA section 102(a))
      b) Non-enacting parts: short title (§ 1) (and herein of the uses of ULC Commentary)
   2. External aids to construction: the referents of the meta-interpretive sections, *viz*.,
      a) Common law and principles of equity (§ 4)
      b) Interpretations of the Act arrived at in other enacting jurisdictions (§ 17)
   3. Effective date and application (§ 3)
      a) Prospective application to decisions or acts (§ 3(a))
      b) Trust director's location assimilated to that of trustee for purposes of determining the validity of provisions designating principal place of administration (à la UTC section 108(a)) (§ 3(b))

B. Exclusions from the Act's Application (§ 5)
   1. Nonfiduciary powers of appointment (§ 5(b)(1))
      a) Definition (§ 5(a))
      b) Construction (§ 5(c))
   2. Fiduciary (and nonfiduciary) powers to appoint or remove decision makers (§ 5(b)(2))
   3. Settlor's UTC section 603(a) (Restatement (Third) of Trusts section 74) powers (§ 5(b)(3))
   4. Powers of a beneficiary *qua* beneficiary (§ 5(b)(4))
   5. Powers created to achieve tax effects that depend on the powers' being nonfiduciary (§ 5(b)(5))

C. Powers of Direction (§§ 6, 7)
   1. Definition (§ 2(5))
   2. Whatever is expressly granted (§ 6(b)) (and herein of the Comment's list)
   3. Rules of construction (§ 6(c))
      a) Ancillary powers inferred (§ 6(c)(1))
      b) Co-directors act by majority decision (§ 6(c)(2))
   4. Saving limitations for special-needs and charitable planning (§ 7)

D. Duties and Liabilities of Trust Decision Makers (§§ 8, 9, and 10 (part))
   1. Trust directors in particular (§§ 2(8), 8)
      a) Fiduciary floor: directorship assimilated (by absorption) to trusteeship (§ 8(a)(1))
      b) Same as to possible exculpation (§ 8(a)(2))
      c) Rule of construction for health-care-professional directors (§ 8(b))
      d) Floor, no ceiling (§ 8(c))
      e) Duty reasonably to inform trust decision makers (§ 10(b))
   2. Directed trustees in particular (§ 9)
      a) Duty reasonably to comply with direction (§ 9(a))
      b) Unless (as a floor) . . . "the trustee would engage in willful misconduct" (§ 9(b)) (herein of fugitive mental states)
      c) Release by trust director assimilated to release by beneficiary (à la UTC section 1009) (§ 9(c))
      d) Proceeding on reasonable doubt (§ 9(d))
      e) Floor, no ceiling (§ 9(e))
      f) Duty reasonably to inform trust directors (§ 10(a))
E. Rights, Privileges, and Immunities (§§ 10 (part) and 11)
   1. Right to rely of information provided by other trust decision maker (§ 10(c)-(d))
      a) *Unless...* the relying decision maker “would engage in willful misconduct” (*id.*)
      b) *N.b.,* the virtue of accuracy (*id. Cf. § 9(b)*)
   2. Presumptive absence of duty to monitor other trust decision makers and privilege to keep mum (§ 11)
      a) Presumptive irrelevance of willful misconduct (*id. Cf. §§ 9(b), 10(c)-(d)*)
      b) Presumption by construction (§ 11)

F. Directed-Trustee Treatment for Excluded Co-Trustees (§ 12)
   1. Motivation: e.g., UTC section 703(g)
   2. *But see id. section 105*
   3. *Cf. Restatement (Third) of Trusts section 81(2) cmt. b.*

G. Personal Jurisdiction (à la UTC section 202(a)) (§ 15)

H. For the Rest, Directorships Are Assimilated (by Absorption) to Trusteeships (§§ 13, 14, and 16)
   1. Limitations on actions for breach (§§ 2(1), 13)
   2. Defenses (§ 14)
   3. Acceptance (§ 16(1))
   4. Bond and compensation (§ 16(2)-(3))
   5. Resignation and removal (§ 16(4)-(3))
   6. Vacancy (§ 16(6))

III. Uses in Planning [Turney Berry and Jim Spica]
This report is a follow-up to the report provided to the Council at the April 2017 meeting. Our Committee reviewed the comments made at the April 2017 Council meeting and revised the email list policy (the “Policy”) and the mailing list code of conduct (the “Code of Conduct”) to reflect Council’s feedback. The revised Policy and Code of Conduct are attached to this report.

_Our Committee is requesting adoption of the Policy and Code of Conduct attached to this report, and the following procedure for initial and ongoing dissemination to Section members:_

- The Policy will be added to the Listserv page under the Resources tab on the Section website
- The Committee Chair will post the Code of Conduct to the email list on a quarterly basis (on or about the first day of January, April, July, and October each year)

Respectfully Submitted,

Michael G. Lichterman
1. Membership in the Probate and Estate Planning Section (the “Section”) is a prerequisite of participation in the Section mailing list. Participation in the mailing list may be suspended for inappropriate conduct (as described below in paragraph 3). The suspension may be for a definite or indefinite period of time. Indefinite suspensions continue until removed. When justified by the particular circumstances, rather than suspension, participation can be subjected to moderation. Moderation means that any posting from the member in question must be approved by the administrator before it is released to the general membership on the mailing list. There will be no rebate or reduction of dues if participation in the list is limited or terminated for inappropriate conduct.

2. Decisions to limit participation may be made either by the State Bar of Michigan or the Section. The Section is governed by the State Bar itself. Normally, such decisions will be made by the leadership of the Section. The Section Council normally delegates these decisions to a committee within the section Council (currently called the electronic communications committee). A decision to suspend participation requires concurrence by the greater of 3 active committee members or a simple majority vote of active committee members. By simple majority vote of active committee members, the committee may authorize an administrator of the mailing list to temporarily subject a member to Moderation before an action is taken on a potential suspension. Termination of a Section member’s participation in the mailing list may only be implemented by direction of the Section Council. The Section member subject to Moderation, suspension or termination may appeal such action to the Section Council. The committee’s decision may be overruled by action of the Section Council.

3. There is no exhaustive list of what constitutes inappropriate conduct on the Section mailing list. Actions that violate state or federal laws or that violate court rules, the Michigan Rules of Professional Conduct or other rules governing the State Bar are per se inappropriate. Other examples include personal attacks or offensive remarks, using the list as a form of marketing products or services to Section members, and improper religious, political, or off-topic remarks that are not directly related to probate and estate planning practice or policy. Section members are required to accept a general code of conduct to participate in the list, but this general code of conduct is not meant to be co-extensive with actions that constitute grounds for limiting a Section member’s participation in the mailing list. Preferred behavior for lawyers goes well beyond what might be an overt ethical violation. The same holds true for behavior on the Section mailing list. There is no requirement that Section members first be warned before the committee or Council takes action to limit an attorney’s participation in the mailing list, but warnings before action will normally be expected for actions based on improper religious, political, or off-topic remarks that are not directly related to probate and estate planning practice or policy.
4. Section members will be required to agree to a Code of Conduct to participate in the mailing list. Notice of this policy and the Code of Conduct will be disseminated on a quarterly basis. By participating in the mailing list a Section member impliedly consents to the Code of Conduct.
Probate Section Mailing List:
Code of Conduct

Overview

Membership in the Probate and Estate Planning Section (the “Section”) is a prerequisite of participation in the Section mailing list. Any Section member (“Member”) may choose to participate in the mailing list; however, if abuse occurs, participation may be subject to moderation, suspended, or terminated by either the State Bar of Michigan or the Probate and Estate Planning Section Council (the “Council”). Please see the Section Mailing List Policy statement for procedural details. Offending messages may be removed from the archives by a mailing list moderator at the direction of the Council or the Chair of the Electronic Communications Committee.

A Member may remove himself or herself from the mailing list at any time by unsubscribing and may change her or his settings at any time (e.g., change to to nomail, if you do not want mail while on vacation). A person with nomail settings still has the ability to search the archives.

Participation in the mailing list is consent to the Code of Conduct described below as well as the Section Mailing List Policy. This Code of Conduct is not co-extensive with grounds for moderation, suspension or termination. Just as lawyers should behave at a standard beyond the minimum required to comply with criminal laws and ethical rules, Members should behave at a standard beyond the minimum while participating in the list.

Above all, Members must be polite, respectful of others, and in compliance with laws and rules of professional conduct with regard to list participation. The mailing list is not moderated. That means that no one screens messages before they appear. Members largely police themselves. If necessary, the State Bar or the Council will take action after improper list activity. Such action may result from the severity of a single instance of improper use or a pattern of improper use.

Postings are neither confidential nor privileged. Keep in mind when posting that any member of the State Bar of Michigan may choose to join the Probate and Estate Planning Section and then join the Section mailing list. Postings on this mailing list may be republished. They may be forwarded and used for purposes that were not intended at the time of publishing. For these reasons, treat all communications as if they were freely available to the public.

Responsible conduct

This is generally common sense. If you do not belong to the Section, unsubscribe. Be courteous. Do not be disrespectful, defamatory, unprofessional, uncivil, condescending, or disparaging of persons. Do not violate any laws or the Michigan
Rules of Professional Conduct. Try to welcome other Members and help them out. Do not waste people’s time by posting irrelevant information. Try to avoid participating in a string of “me too” emails. If you make a mistake and somebody else does not point it out, please do so yourself.

A frequent complaint among Members is the use of the mailing list for commercial purposes. Keep the list a commercial-free zone. Do not market products or services to the list members. It is not acceptable to use the list to sell things. Do not forward messages to commercial entities that will try to sell things to the original person who posted a message. It is not easy to discover who has forwarded a message, but if actions are egregious enough, we will make an effort to try. It is acceptable to tell members about job openings for lawyers and staff. It is acceptable to announce events of other sections that are relevant to probate or estate planning practice.

**Code of Conduct**

By participating in the Mailing List of the Probate and Estate Planning Section of the State Bar of Michigan, a Member agrees to all of the following:

1) The Member is a member of the Probate and Estate Planning Section of the State Bar of Michigan. If the Member’s membership lapses or the Member no longer agrees to comply with this Code of Conduct, the Member will unsubscribe from the list.

2) The Member will strive to be courteous. The Member will not be disrespectful, defamatory, unprofessional, uncivil, condescending, or disparaging of persons.

3) The Member will post comments related to the purposes of the list, namely to discuss topics relevant to the practice of probate and estate planning. The Member understands that this list is not intended as a venue for political or religious discussion.

4) The Member will obey laws, especially those that could harm the Section or the State Bar. In particular, the Member will respect intellectual property laws, such as copyright laws, and will not engage in antitrust or unfair competition activities.

5) The Member will comply with the Michigan Rules of Professional Conduct. In particular, the Member will take all reasonable efforts to protect the secrets and confidences of clients.

6) The Member will refrain from unsolicited marketing of products, services and other commercial activities to list participants.

7) The Member will strive to make other Members welcome on the list and to encourage greater participation.

8) The Member will be respectful of the time of others, and will make reasonable efforts at research before asking a question. The Member will give correct information and will correct mistakes the Member has made, or incorrect or incomplete statements by others. The Member understands that the list is self-regulating and will do the Member’s part to help.
9) The Member agrees to indemnify the Section and the State Bar for any claims resulting from the Member’s activities on this list.
Attachment 6
TO: Jim Steward

FROM: Rebecca Schnelz, SCAO Liaison

RE: Report for June 24, 2017

DATE: June 15, 2017

SCAO is accepting suggestions for revisions to approved forms and suggestions for new forms in the areas of EPIC and Mental Health proceedings. The mental health forms were significantly revised this year due to changes in the law and while not many attorneys work with the commitment process, I know it does come up for some.

Any submissions should provide the name of the person submitting, email address or telephone number, the form name and number (if there is one), the reason for the proposal and any other information that will help present the proposed change for publication and comment.

The deadline for submissions is June 30. Suggestions should be sent to courtformsinfo@courts.mi.gov. I would also be happy to forward any suggestions people may have.
Attachment 7
MEMORANDUM

To: Council of the Probate and Estate Planning Section of the State Bar of Michigan

From: James P. Spica

Re: Uniform Law Commission Liaison Report

Date: June 16, 2017

Directed Trust Act

The draft of the Uniform Directed Trust Act that will be presented for the approval of the Uniform Law Commission (ULC) at the Commission’s Annual Meeting in San Diego next month is available at:


Electronic Wills

An Electronic Wills Drafting Committee has been appointed. The Chair is Suzanne Walsh (ULC Commissioner for Connecticut), the Reporter is Prof. Susan Gary (University of Oregon School of Law), and the ABA Advisor is John Rogers. The committee’s charge is to:

[D]raft a uniform act or model law addressing the formation, validity and recognition of electronic wills. The committee may seek expansion of its charge to address end-of-life planning documents such as advance medical directives or powers of attorney for health care or finance.

The committee has yet to meet.

Fiduciary Income and Principal Act (UFIPA)—“RUPIA” No More

In March, ULC President Richard Cassidy allowed Prof. Robert Sitkoff (Commissioner for Massachusetts) to give his seat on (what was then) the Revised Uniform Principal and Income Act (RUPIA) Drafting Committee to me. So, I am now a voting member of this ULC Drafting Committee.

In May, the ULC Executive Committee approved the Drafting Committee’s recommendation that henceforward the name of what had been called the Revised Uniform Principal and Income
Act should be changed to the Uniform Fiduciary Income and Principal Act. So, we have a new name.

UFIPA is a work in progress: the Drafting Committee will have its fourth face-to-face drafting session this November.

Guardianship, Conservatorship, and Other Protective Arrangements Act

The draft of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act that will be presented for ULC approval at the Commission’s Annual Meeting in San Diego next month has not yet been posted. The last-posted draft (dated March 9, 2017) is available at:

Attachment 8
Effective August 15, IRS will stop taking checks or money orders for user fees for ruling described in Revenue Procedure 2017-1, and sent to the Docket, Records and User Fee Branch of the Legal Processing Division of the Associate Chief Counsel (Procedure and Administration) such as private letter rulings, closing agreements and rulings using Form 1128, 2553, 3115, or 8716, but not determination letters are included. From June 15-August 15, there will be a choice of Pay.gov or checks/money orders. Pay.gov allows people to pay for a variety of government services online using a credit card, debit card or by direct debit or electronic funds withdrawal from a checking or savings account. Pay.gov is for payments only. The original signed ruling request and supporting materials must still be submitted by mail or hand delivery.

To submit a user fee, visit www.pay.gov and use the IRS Chief Counsel User Fees for Form 1128, Form 2553, Form 3115, Form 8716, Private Letter Rulings and Closing Agreements form. You can find it by putting the underlined words above in the search for forms box at irs.gov. Once a payment is made, print a copy of the completed form and the receipt and include it with the ruling request and supporting materials.

If you want the fastest processing, Efax a copy of the pay.gov receipt, the completed form and the ruling request to this eFax line 877-773-4950. If you have a question about the new payment procedures you can call 202-317-6828. Full details on making a ruling request are in Revenue Procedure 2017-1, also available on IRS.gov.

**Enough Already**

IRS is tired of private letter ruling requests for missed portability elections. Effective June 9, 2017, it has created an exclusive procedure, Revenue Procedure 2017-34, for seeking portability for those that could have qualified using a private letter ruling (decedent died after 12/31/10, survived by a spouse, was a citizen or resident on date of death, no estate tax return was required to be filed, no estate tax return was filed within the time period allowed).

The new procedure requires that a 706 be filed by the later of January 2, 2018 or the second anniversary of decedent’s death. It must have the statement on top: *Filed Pursuant to Revenue Procedure 2017-34 To Elect Portability under Section 2010(c)(5)(A).* There is no fee. If the surviving spouse is filing a gift tax return where the DSUE amount would be used or has paid gift tax or a 706 is filed for them showing estate tax due, the tax must be paid if the 706 for the preceding death spouse has not been filed using this procedure. A protective claim for credit or refund of tax must be filed for the surviving spouse.

Private letter Ruling requests for extension of portability filing will not be accepted, any in process will be returned along with the user fee.

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