Agendas & Attachments for

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

Saturday, September 12, 2015
9:00 a.m.
University Club
Lansing, Michigan
Probate and Estate Planning Section of the State Bar of Michigan

Notice of Meetings

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

and

Annual Meeting of the Probate and Estate Planning Section

and

Meeting of the Council of the Probate and Estate Planning Section

September 12, 2015
9:00 a.m.
University Club
3435 Forest Road
Lansing, Michigan 48910

The above stated meetings of the Section will be held at the MSU University Club, 3435 Forest Road, Lansing, Michigan, Saturday, September 12, 2015. The Section's Committee on Special Projects (CSP) meeting will begin at 9:00 a.m., with the Annual Meeting of the Section at 10:15 a.m., followed immediately by the meeting of the Council of the Section. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

Marlaine C. Teahan
Secretary

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

Unless otherwise noted, 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 2015-16:
October 10, 2015 (Kingsley Inn, 39475 Woodward Ave., Bloomfield Hills, MI)
   November 7, 2015
   December 19, 2015
   January 16, 2016
   February 13, 2016
   March 12, 2016
   April 16, 2016
   June 4, 2016
September 10, 2016 (Annual Section Meeting)
CALL FOR MATERIALS
CSP and Council Meetings of the
Probate and Estate Planning Section
of the
State Bar of Michigan

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

CSP materials are to be sent to the new Chair of the Committee on Special Projects – to be announced.

Council materials are to be sent to Marguerite Munson Lentz, Secretary of the Section (mlentz@bodmanlaw.com).

Schedule of due dates for materials – by 5 p.m.
October 1, 2015
October 29, 2015
December 10, 2015
January 7, 2016
February 4, 2016
March 3, 2016
April 7, 2016
May 26, 2016
September 1, 2016 (Annual Section Meeting)
# Officers for 2014-2015 Term

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

## Council Members for 2014-2015 Terms

<table>
<thead>
<tr>
<th>Council Member</th>
<th>Year elected to current term (partial, first or second full term)</th>
<th>Current term expires</th>
<th>Eligible after Current term?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ard, W. Josh.</td>
<td>2012 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2015</td>
<td>No</td>
</tr>
<tr>
<td>Ouellette, Patricia M.</td>
<td>2012 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2015</td>
<td>No</td>
</tr>
<tr>
<td>Spica, James P.</td>
<td>2012 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2015</td>
<td>No</td>
</tr>
<tr>
<td>Clark-Kreuer, Rhonda M.</td>
<td>2012 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Lucas, David P.</td>
<td>2012 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Skidmore, David L.J.M.</td>
<td>2012 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2015</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Brigman, Constance L.</td>
<td>2010 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2016</td>
<td>No</td>
</tr>
<tr>
<td>Allan, Susan M.</td>
<td>2010 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2016</td>
<td>No</td>
</tr>
<tr>
<td>Mills, Richard C.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; partial term)</td>
<td>2016</td>
<td>Yes (2 terms)</td>
</tr>
<tr>
<td>Marquardt, Michele C.</td>
<td>2013 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>New, Lorraine F.</td>
<td>2013 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Vernon, Geoffrey R.</td>
<td>2013 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2016</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Ballard, Christopher A.</td>
<td>2014 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2017</td>
<td>No</td>
</tr>
<tr>
<td>Bearup, George F.</td>
<td>2014 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2017</td>
<td>No</td>
</tr>
<tr>
<td>Welber, Nancy H.</td>
<td>2014 (2&lt;sup&gt;nd&lt;/sup&gt; term)</td>
<td>2017</td>
<td>No</td>
</tr>
<tr>
<td>Jaconette, Hon Michael L.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Kellogg, Mark E.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
</tr>
<tr>
<td>Malviya, Raj A.</td>
<td>2014 (1&lt;sup&gt;st&lt;/sup&gt; term)</td>
<td>2017</td>
<td>Yes (1 term)</td>
</tr>
</tbody>
</table>
Ex Officio Members

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

Richard C. Lowe
John D. Mabley
John H. Martin
Michael J. McClory
Douglas A. Mielock
Russell M. Paquette
Patricia Gormely Prince
Douglas J. Rasmussen
Harold G. Schuitmaker
John A. Scott
Fredric A. Sytsma
Thomas F. Sweeney
Lauren M. Underwood
W. Michael Van Haren
Susan S. Westerman
Everett R. Zack
Michael W. Irish Award

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

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

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

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

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

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

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

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

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

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

Guidelines for Selection:

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

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

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

Nancy H. Welber, Chair
Christopher A. Ballard
David P. Lucas

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

Shaheen I. Imami, Chair

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

George W. Gregory, Chair
Mark K. Harder
Thomas F. Sweeney

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

Shaheen I. Imami

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

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

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

Christopher A. Ballard, Chair
Probate & Estate Planning Section Committees 2014-2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

David P. Lucas, Chair
William J. Ard
J. David Kerr
Robert M. Taylor
Updating Michigan Law Committee
*Mission: To review, revise, communicate and recommend Michigan’s trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times*

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

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

Nancy H. Welber, Chair
Christopher A. Ballard
Keven DuComb
Robert M. O’Reilly
Lawrence W. Waggoner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alternative Dispute Resolution Section Liaison
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

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

J. David Kerr
Probate & Estate Planning Section Committees 2014-2015

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

Susan M. Allan

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

Rebecca A. Schnelz

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

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

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

Rebecca A. Schnelz

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

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

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

Richard J. Siriani

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

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

* ongoing
Probate and Estate Planning Council
Committee on Special Projects Agenda

September 12, 2015

9:00 a.m.

1. Proposed Repeal of Dower
   Updating Michigan Law Committee – Geoffrey Vernon
   LSB Memo (Exhibit A-1)
   Draft Bill Modifying Real Estate Provisions (Exhibit A-2)
   Draft Bill Modifying EPIC (Exhibit A-3)

2. Proposed Michigan Fiduciary Access to Digital Assets Act
   Updating Michigan Law Committee – Geoffrey Vernon
   Proposed Bill (Exhibit B-1)
MEMORANDUM

Date: August 28, 2015
To: The Honorable Rick Jones, State Senator
Attn: Jessica Averill
From: Derek A. Walters, Legal Counsel
Re: Bill Request Nos. 03432'15 and 03432'15 b

Accompanying this memorandum are the second drafts for the above requests. Jessica's August 25, 2015, email to me included suggested changes from the Probate and Estate Planning and Real Property Sections of the State Bar. I found most of the suggestions helpful and agree that they would improve the bills. However, I believe that the primary suggested change – retaining the right of dower for a wife whose husband died before the effective date of the abolishing act, regardless of whether the dower election has been made – requires a restructuring of the bills as briefly discussed below.

Draft 1 for bill request no. 03432'15 was a new act that abolished dower and repealed the dower rights in sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29. With the goal of retaining dower for a wife whose husband died before the effective date, I do not believe it would be appropriate to repeal the those sections. Therefore, for draft 2, rather than create a new act, I decided to add a new section 30 to 1846 RS 66 that would effectively abolish dower going forward but retain the right to elect dower under the estates and protected individuals code for a woman whose husband died before the effective date.

Draft 1 for bill request no. 03432'15 b amending EPIC struck language in section 2202 relating to the election of dower. Given that you want to retain the right to elect dower for certain women, I think, generally, we need to keep those election provisions. For draft 2, I amended section 2202 to provide that the right to elect dower only applies to a widow whose husband died before the effective date.

Please contact me with any questions.

DAW:k

Attachments
EXHIBIT A-2
A bill to amend 1846 RS 66, entitled
"Of estates in dower, by the curtesy, and general provisions concerning real estate,"
(MCL 558.1 to 558.29) by adding section 30; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 30. (1) NOTWITHSTANDING SECTIONS 1 TO 29, AND EXCEPT AS

OTHERWISE PROVIDED IN SUBSECTION (2), A WIFE'S DOWER RIGHT, ON THE

DEATH OF HER HUSBAND, TO A LIFE ESTATE IN 1/3 OF ANY LAND THAT THE

HUSBAND OWNED IN FEE DURING HIS LIFETIME IS ABOLISHED AND

UNENFORCEABLE EITHER THROUGH STATUTE OR AT COMMON LAW.

(2) THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

(A) A LIFE ESTATE INTEREST CREATED BY THE ELECTION OF A

WIDOW'S DOWER RIGHT BY A WOMAN WHOSE HUSBAND DIED BEFORE THE

EFFECTIVE DATE THE AMENDATORY ACT THAT ADDED THIS SECTION.
(B) IF A WIDOW'S HUSBAND DIED BEFORE THE EFFECTIVE DATE OF THE
AMENDATORY ACT THAT ADDED THIS SECTION, THE WIDOW'S RIGHT TO ELECT
DOWER UNDER SECTION 2202 OF THE ESTATES AND PROTECTED INDIVIDUALS
CODE, 1998 PA 386, MCL 700.2202.

Enacting section 1. Sections 2931 and 2933 of the revised
judicature act of 1961, 1961 PA 236, MCL 600.2931 and 600.2933, are
repealed.

Enacting section 2. This amendatory act does not take effect
unless all of the following bills of the 98th Legislature are
enacted into law:
(a) Senate Bill No.____ or House Bill No.____ (request no.
03432'15 a).
(b) Senate Bill No.____ or House Bill No.____ (request no.
03432'15 b).
A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1303, 2202, 2205, and 3807 (MCL 700.1303,
700.2202, 700.2205, and 700.3807), sections 1303, 2202, and 2205 as
amended by 2000 PA 54 and section 3807 as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1303. (1) In addition to the jurisdiction conferred by
section 1302 and other laws, the court has concurrent legal and
equitable jurisdiction to do all of the following in regard to an
estate of a decedent, protected individual, ward, or trust:

(a) Determine a property right or interest.
(b) Authorize partition of property.
(c) Authorize or compel specific performance of a contract in
a joint or mutual will or of a contract to leave property by will.
(d) Ascertain if individuals have survived as provided in this
act.

(e) Determine cy-pres or a gift, grant, bequest, or devise in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to 554.353.

(f) Hear and decide an action or proceeding against a distributee of a fiduciary of the estate to enforce liability that arises because the estate was liable upon some claim or demand before distribution of the estate.

(g) Impose a constructive trust.

(h) Hear and decide a claim by or against a fiduciary or trustee for the return of property.

(i) Hear and decide a contract proceeding or action by or against an estate, trust, or ward.

(j) Require, hear, or settle an accounting of an agent under a power of attorney.

(k) Bar an incapacitated or minor wife of her dower right.

(2) If the probate court has concurrent jurisdiction of an action or proceeding that is pending in another court, on the motion of a party to the action or proceeding and after a finding and order on the jurisdictional issue, the other court may order removal of the action or proceeding to the probate court. If the action or proceeding is removed to the probate court, the other court shall forward to the probate court the original of all papers in the action or proceeding. After that transfer, the other court shall not hear the action or proceeding, except by appeal or review as provided by law or supreme court rule, and the action or proceeding **shall MUST** be prosecuted in the probate court as a
probate court proceeding.
(3) The underlying purpose and policy of this section is to simplify the disposition of an action or proceeding involving a decedent's, a protected individual's, a ward's, or a trust estate by consolidating the probate and other related actions or proceedings in the probate court.

Sec. 2202. (1) The surviving widow of a decedent who was domiciled in this state and who dies intestate may file with the court an election in writing that she elects to take 1 of the following:

(a) Her intestate share under section 2102.

(b) IF THE DECEDENT DIED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 30 TO 1846 RS 66, HER dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(2) The surviving spouse of a decedent who was domiciled in this state and who dies testate may file with the court an election in writing that the spouse elects 1 of the following:

(a) That the spouse will abide by the terms of the will.

(b) That the spouse will take 1/2 of the sum or share that would have passed to the spouse had the testator died intestate, reduced by 1/2 of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death.

(c) If a widow, AND IF THE DECEDENT DIED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 30 TO 1846 RS 66, that she will take her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.
(3) The surviving spouse electing under subsection (1) is limited to 1 choice. Unless the testator's will plainly shows a contrary intent, the surviving spouse electing under subsection (2) is limited to 1 choice. The right of election of the surviving spouse UNDER THIS SECTION must be exercised during the lifetime of the surviving spouse. The election must be made within 63 days after the date for presentment of claims or within 63 days after service of the inventory upon the surviving spouse, whichever is later.

(4) Notice of right of election shall be served upon the decedent's spouse, if any, as provided in section 3705(5), and proof of that notice shall be filed with the court. An election as provided by this section may be filed instead of service of notice and filing of proof.

(5) In the case of a legally incapacitated person, the right of election may be exercised only by order of the court in which a proceeding as to that person's property is pending, after finding that exercise is necessary to provide adequate support for the legally incapacitated person during that person's life expectancy.

(6) The surviving spouse of a decedent who was not domiciled in this state is entitled to election against the intestate estate or against the will only as may be provided by the law of the place in which the decedent was domiciled at the time of death.

(7) As used in subsection (2), "property derived by the spouse from the decedent" includes all of the following transfers:

(a) A transfer made within 2 years before the decedent's death...
to the extent that the transfer is subject to federal gift or
estate taxes.

(b) A transfer made before the date of death subject to a
power retained by the decedent that would make the property, or a
portion of the property, subject to federal estate tax.

(c) A transfer effectuated by the decedent's death through
joint ownership, tenancy by the entireties, insurance beneficiary,
or similar means.

Sec. 2205. The rights of the surviving spouse to a share under
intestate succession, homestead allowance, election, dower, exempt
property, or family allowance may be waived, wholly or partially,
before or after marriage, by a written contract, agreement, or
waiver signed by the party waiving after fair disclosure. Unless it
provides to the contrary, a waiver of "all rights" in the property
or estate of a present or prospective spouse or a complete property
settlement entered into after or in anticipation of separate
maintenance is a waiver of all rights to homestead allowance,
election, dower, exempt property, and family allowance by the
spouse in the property of the other and is an irrevocable
renunciation by the spouse of all benefits that would otherwise
pass to the spouse from the other spouse by intestate succession or
by virtue of a will executed before the waiver or property
settlement.

Sec. 3807. (1) Upon the expiration of 4 months after the
publication date of the notice to creditors, and after providing
for administration costs and expenses, for reasonable funeral and
burial expenses, for dower, for the homestead, family, and exempt
property allowances, for claims already presented that have not yet
been allowed or whose allowance has been appealed, and for unbarred
claims that may yet be presented, including costs and expenses of
administration, the personal representative shall pay the claims
allowed against the estate in the order of priority as provided in
this act. A claimant whose claim has been allowed, but not paid as
provided in this section, may petition the court to secure an order
directing the personal representative to pay the claim to the
extent that property of the estate is available for the payment.

(2) The personal representative may pay a claim that is not
barred at any time, with or without formal presentation, but is
individually liable to another claimant whose claim is allowed and
who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit
stated in subsection (1) and the personal representative fails to
require the payee to give adequate security for the refund of any
of the payment necessary to pay another claimant.

(b) Payment is made, due to the negligence or willful fault of
the personal representative, in a manner that deprives the injured
claimant of priority.

(3) If a claim is allowed, but the claimant's whereabouts are
unknown at the time the personal representative attempts to pay the
claim, upon petition by the personal representative and after
notice that the court considers advisable, the court may disallow
the claim. If the court disallows a claim under this subsection,
the claim is barred.

Enacting section 1. This amendatory act does not take effect
unless Senate Bill No.____ or House Bill No.____ (request no. 03432'15) of the 98th Legislature is enacted into law.
EXHIBIT B-1
MICHIGAN FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

SECTION 1. SHORT TITLE. This act may be cited as the Michigan Fiduciary Access to Digital Assets Act.

SECTION 2. DEFINITIONS. In this act:

(1) “Account” means an arrangement under a terms-of-service agreement in which the digital custodian holds one or more digital assets of the user or provides goods or services to the user.

(2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(3) “Carries” means engaging in the transmission of electronic communications.

(4) “Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) “Conservator” means a person that is appointed by a court to manage all or part of the estate of a protected person, including, without limitation, a conservator or limited conservator for a protected individual as defined in MCL 700.1106(v); a plenary guardian or partial guardian for an individual who has a developmental disability as defined in MCL 330.1100a(25); and a guardian for a minor if no conservator has been appointed. “Conservator” also includes a parent for the parent’s minor child if no conservator, plenary guardian, or partial guardian has been appointed for the minor child.

(6) “Content of an electronic communication” means information concerning the substance or meaning of an electronic communication which:

(A) has been sent or received by a user;

(B) is in electronic storage by a digital custodian providing an electronic-communication service to the public or is carried or maintained by a digital custodian providing a remote-computing service to the public; and

(C) is not readily accessible to the public.

(7) “Court” means the probate court or, when applicable, the circuit court.

(8) “Designated recipient” means a person appointed to administer digital assets by a user using only an online tool.
(9) “Digital asset” means an electronic record in which a user has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(10) “Digital custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic communication” has the same meaning as the definition in 18 U.S.C. Section 2510(12).

(13) “Electronic-communication service” means a digital custodian that provides to a user the ability to send or receive an electronic communication.

(14) “Fiduciary” means each person who is an original, additional, or successor personal representative, conservator, agent, or trustee. If a court or a governing instrument appoints a “special fiduciary”, for purposes of this act, the special fiduciary shall be treated as a personal representative if such fiduciary controls all or part of a decedent’s estate, as a trustee if such fiduciary controls all or part of a trust, as a conservator if such fiduciary controls all or part of the assets of a protected person, or as an agent if such fiduciary is appointed in a power of attorney.

(15) “Governing instrument” means a will, a trust, an instrument creating a power of attorney, or other dispositive or nominative instrument.

(16) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(17) “Online Tool” means an electronic service provided by a digital custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the digital custodian and user, to provide directions for disclosure or non-disclosure of digital assets to a third person.

(18) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(19) “Personal representative” has the meaning as stated in MCL 700.1106(o), or a person that performs substantially the same function under the laws of this State.

(20) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(21) “Principal” means an individual who grants authority to an agent in a power of attorney.
“Protected person” includes a protected individual as defined in MCL 700.1106(v); a legally incapacitated individual as defined in MCL 700.1105(i); a minor for whom a guardian has been appointed but no conservator has been appointed; and an individual who has a developmental disability as defined in MCL 330.1100a(25). This term includes an individual for whom an application for the appointment of a guardian or conservator is pending.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Remote-computing service” means a digital custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14).

“Settlor” has the meaning stated in MCL 700.7103.

“Terms-of-service agreement” means an agreement that controls the relationship between a user and a digital custodian.

“Trust” has the meaning stated in MCL 700.1107(n).

“Trustee” has the meaning stated in MCL 700.1107(o).

“User” means a person that has an account with a digital custodian.

“Will” has the meaning stated in MCL 700.1108(b).

SECTION 3. APPLICABILITY.

(a) Subject to subsections (b), (c) and (d), this act applies to:

1. A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this act;

2. A personal representative acting for a decedent who died before, on, or after the effective date of this act;

3. A proceeding involving a conservator, whether pending in a court or commenced before, on, or after the effective date of this act;

4. A trustee acting under a trust created before, on, or after the effective date of this act; and

5. A digital custodian of digital assets for a user if the user resides in this state or resided in this state at the time of the user’s death.
(b) This act does not impair an accrued right or an action taken in a proceeding before the effective date of this act in a proceeding.

(c) This act does not apply to a digital asset of an employer used by an employee in the ordinary course of business.

(d) A digital custodian may disclose account information to a fiduciary when the account information is required to close an account used to access licensed digital assets.

SECTION 4. INDIVIDUAL’S DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

(a) A user may use an online tool to allow a digital custodian to disclose or prohibit a digital custodian from disclosing some or all of the user’s digital assets, including the contents of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool supersedes a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under subsection (a) regarding disclosure of digital assets, or if a custodian has not provided an online tool, a user may allow or prohibit in a will, trust, power of attorney, or other record, the disclosure of some or all of the user’s digital assets, including the contents of electronic communications sent or received by the user.

(c) The user’s direction for disclosure of digital assets under subsection (a) or (b) supersedes a contrary provision in a custodian’s terms-of-service agreement that did not require the user to act affirmatively and distinctly from the user’s assent to the terms-of-service agreement.

SECTION 5. TERMS-OF-SERVICE AGREEMENT PRESERVED.

(a) This act does not change or impair a right of a digital custodian or a user under a terms-of-service agreement to access and use digital assets of a user.

(b) This act does not give a fiduciary any new or expanded rights than those held by the user for whom, or for whose estate, the fiduciary acts or represents.

(c) A fiduciary’s access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement when the user has not provided any direction that is recognized in Section 4.

SECTION 6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS
(a) When disclosing the digital assets of a user under this act, the digital custodian may at its sole discretion:

(1) grant the fiduciary or designated recipient full access to the user’s account;

(2) grant the fiduciary or designated recipient partial access to the user’s account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) provide the fiduciary or designated recipient with a digital or paper copy of any digital asset that, on the date the digital custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A digital custodian may assess a reasonable administrative charge for the cost of disclosing digital assets.

(c) A digital custodian need not disclose a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a digital custodian to disclose some, but not all, of the user’s digital assets, the digital custodian need not disclose the requested digital assets if segregation of the requested digital assets would impose an undue burden on the digital custodian. If the digital custodian considers the direction or request to impose an undue burden, either the digital custodian or the fiduciary may petition the court for an order to:

(1) disclose a date delimited subset of the user’s digital assets;

(2) disclose all of the user’s digital assets to the fiduciary or designated recipient;

(3) disclose none of the user’s digital assets; or

(4) disclose all of the user’s digital assets to the court for review in chambers.

SECTION 7. DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS OF DECEASED USER.

If the user consented to disclosure of the contents of electronic communications or if the court directs disclosure, a digital custodian shall disclose to the personal representative of the estate of a deceased user the content of an electronic communication sent or received by the user if the personal representative gives to the digital custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a copy of the death certificate of the user;

(3) a certified copy of the letters of authority of the personal representative, a small-estate affidavit or other court order;
(4) unless the user provided direction using an online tool, a copy of the user’s will, trust, power of attorney, or other record evidencing the user’s consent to disclosure of the contents of electronic communications; and

(5) if requested by the digital custodian:

(A) a number, username, or address assigned by the digital custodian to identify the user’s account;

(B) evidence linking the account to the user; or

(C) an order of the court finding that:

(i) the user had a specific account with the digital custodian, identifiable by a number, username, or address assigned by the digital custodian;

(ii) disclosure of the content of the user’s electronic communications would not violate 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law;

(iii) unless the user provided direction using an online tool, the user consented to disclosure of the contents of electronic communications; or

(iv) disclosure of the contents of electronic communications of a user is reasonably necessary for estate administration.

SECTION 8. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a digital custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets in which the user had a right or interest, except the contents of electronic communications, if the personal representative gives to the digital custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a copy of the death certificate of the user;

(3) a certified copy of the letters of authority of the personal representative, a small-estate affidavit, or court order; and

(4) if requested by the digital custodian:
(A) a number, username, or address assigned by the digital custodian to identify the user’s account;
(B) evidence linking the account to the user;
(C) an affidavit stating that disclosure of the user’s digital assets is reasonably necessary for estate administration; or
(D) an order of the court finding that:
   (i) the user had a specific account with the digital custodian, identifiable by a number, username, or address assigned by the digital custodian; or
   (ii) disclosure of the contents of electronic communications of a user is reasonably necessary for estate administration.

SECTION 9. PETITION BY INTERESTED PERSON.
Notwithstanding section 7 or 8 of this act, a person interested in an estate as defined in MCL 700.1105(c) may file a petition in the court for an order to limit, eliminate, or modify the personal representative’s powers with respect to the decedent’s digital assets. On receipt of a petition under this subsection, the court shall set a date for a hearing on the petition. The hearing date shall not be less than 14 days and not more than 56 days after the date the petition is filed.

SECTION 10. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS OF PRINCIPAL.
To the extent a power of attorney grants an agent authority over the contents of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a digital custodian shall disclose to the agent the content of an electronic communication sent or received by the principal if the agent gives to the digital custodian:

   (1) a written request for disclosure in physical or electronic form;
   (2) an original or copy of the power of attorney granting the agent the authority over the contents of electronic communications of the principal to the agent;
   (3) an affidavit from the agent pursuant to MCL 700.5505; and
   (4) if requested by the digital custodian:
      (A) a number, username, or address assigned by the digital custodian to identify the principal’s account; or
(B) evidence linking the account to the principal.

SECTION 11. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.
Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a digital custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and any digital assets in which the principal has a right or interest, except the contents of electronic communications, if the agent gives to the digital custodian:

1. a written request for disclosure in physical or electronic form;
2. an original or a copy of the power of attorney that gives the agent authority over digital assets or general authority to act on behalf of the principal;
3. an affidavit from the agent pursuant to MCL 700.5505; and
4. if requested by the digital custodian:
   A. a number, username, or address assigned by the digital custodian to identify the principal’s account; or
   B. evidence linking the account to the principal.

SECTION 12. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS THE ORIGINAL USER.
Unless otherwise ordered by the court or provided in a trust, a digital custodian shall disclose to the trustee that is an original user any digital assets held in trust, including any catalogue of electronic communications of the trustee and the contents of all electronic communications.

SECTION 13. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE IS NOT ORIGINAL USER.
Unless otherwise ordered by the court, directed by the user, or provided in a trust, a digital custodian shall disclose to a trustee that is not an original user the content of an electronic communication sent or received by an original or successor user and carried, maintained,
processed, received, or stored by a digital custodian in an account of the trust if the trustee gives to the digital custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certificate of the trust under MCL 700.7913 that includes consent to disclosure of the contents of electronic communications to the trustee;

(3) a certification of the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust; and

(4) if requested by the digital custodian:
   (A) a number, username, or address assigned by the digital custodian to identify the trust’s account; or
   (B) evidence linking the account to the trust.

SECTION 14. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a digital custodian shall disclose to a trustee that is not an original user, the catalogue of electronic communications sent or received by an original or successor user and store, carried, or maintained by a digital custodian in an account of the trust and any digital assets in which the trust has a right or interest, other than the contents of electronic communications, if the trustee gives to the digital custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certificate of the trust under MCL 700.7913;

(3) a certification of the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust; and

(4) if requested by the digital custodian:
   (A) a number, username, or address assigned by the digital custodian to identify the trust’s account; or
   (B) evidence linking the account to the trust.
SECTION 15. DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR.

(a) The court, after an opportunity for a hearing, may grant a conservator the right to access a protected person’s digital assets.

(b) Unless otherwise ordered by a court or directed by the user, a digital custodian shall disclose to a conservator the catalogue of electronic communications sent or received by the protected person; and any digital asset in which the protected person has a right or interest, other than the contents of electronic communications, if the conservator gives to the digital custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the court order that gives the conservator authority over the protected person’s digital assets; and

(3) if requested by the digital custodian:

(A) a number, username, or address assigned by the digital custodian to identify the protected person’s account; or

(B) evidence linking the account to the protected person.

(c) A conservator may request a digital custodian of the protected person’s digital assets to suspend or terminate an account of the protected person for good cause. A request made under this subsection shall be accompanied by a certified copy of the conservator’s letters of authority or other order appointing the conservator.

SECTION 16. FIDUCIARY DUTY AND AUTHORITY.

(a) The legal duties imposed on a fiduciary charged with managing tangible personal property also apply to the management of digital assets, including, when applicable:

(1) the duty of care;

(2) the duty of loyalty; and

(3) the duty of confidentiality.

(b) A fiduciary’s authority with respect to a digital asset of a user:

(1) except as otherwise provided in Section 4, is subject to the terms-of-service agreement governing the account;

(2) is subject to other applicable laws, including copyright law;

(3) is limited to the scope of the fiduciary’s duties; and
(4) may not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a digital custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary’s duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer access laws, including, but not limited to, MCL 752.795, MCL 750.540, and MCL 750.157n.

(e) A fiduciary with authority over tangible personal property of decedent, protected person, principal, or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for purposes of any applicable computer-fraud and unauthorized-computer access laws, including, but not limited to, MCL 752.795, MCL 750.540, and MCL 750.157n.

(f) A fiduciary may request termination of a user’s account if termination would not violate any fiduciary duty. A request for account termination must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a copy of the death certificate of the user:

(2) a certified copy of the letters of authority of the personal representative, small estate affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) if requested by the digital custodian:

(A) a number, username, or address assigned by the digital custodian to identify the user’s account;

(B) evidence linking the account to the user; or

(C) an order of the court finding that the user had a specific account with the digital custodian, identifiable by a number, username, or address assigned by the custodian.

SECTION 17. DIGITAL CUSTODIAN COMPLIANCE AND IMMUNITY.

(a) A digital custodian shall comply with a fiduciary’s request for disclosure of digital assets or account termination not later than 56 days after receipt of all the required information.
If the digital custodian fails to comply, the fiduciary may petition or otherwise apply to
the court for an order directing compliance.

(b) An order directing compliance must contain a finding that compliance is not in violation
of 18 U.S.C. Section 2702.

(c) A digital custodian which receives a certificate of trust under Section ____ may require
the trustee to provide copies of excerpts from the original trust instrument and later
amendments which designate the trustee and if the trustee is requesting content of
electronic communications, that includes consent to disclosure of the contents of
electronic communications to the trustee.

(d) A digital custodian or other person that demands the trust instrument in addition to a
certificate of trust under Section ____ or excerpts under subsection (c) of this Section is
liable for damages to the same extent the digital custodian or other person would be liable
under MCL 700.7913(8).

(e) This act does not limit the right of a person to obtain a copy of a trust instrument in a
judicial proceeding concerning the trust.

(f) A digital custodian may notify a user that a request for disclosure of digital assets or
account termination was made pursuant to this act.

(g) A digital custodian may deny a fiduciary’s request for disclosure of digital assets or
account termination if the digital custodian is aware of any lawful access to the account
following the receipt of the fiduciary’s request.

(h) This act does not limit the digital custodian’s ability to require a requesting party to
obtain a court order from the court which makes the finding that:

(1) the account belongs to the protected person or principal;

(2) there is sufficient consent from the protected person or principal to support the
requested disclosure; and

(3) any specific factual finding required by any other applicable law in effect at that
time.

(i) A digital custodian and its officers, employees, and agents are immune from liability for
any action done in good faith in compliance with this act.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT. This act modifies, limits, or supersedes the Electronic Signatures
in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or
supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of
any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).
SECTION 19. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 20. EFFECTIVE DATE. This act takes effect immediately.
End of CSP Materials
ANNUAL MEETING OF THE MEMBERS
OF THE PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN

September 12, 2015
Lansing, Michigan
10:15 a.m.

AGENDA

I. Call to Order

II. Approval of Minutes of September 6, 2014, Annual Meeting of the Section
Attachment 1

III. Chairperson’s Report – Amy N. Morrissey

IV. Treasurer's Report – Marguerite Munson Lentz
Attachment 2

V. Elections of Council Members and Officers
Attachment 3 -- Nominating Committee Report
Excerpt of the June 13, 2015 Council meeting minutes:

"VII. Committee Reports.

B. Internal Governance

***

5. Nominating – George W. Gregory

A written report of the Nominating Committee was handed out and was discussed. [See Attachment 3] The Chair opened nominations from the floor for officers; hearing none, the nominations for officers were closed. The Chair opened nominations from the floor for council members; hearing none, the nominations for council members were closed. With no nominations from the floor for officers or council members, upon a motion of the Nominating Committee, the Committee's written report was accepted as the Nominations for officers and council members for the 2015-2016 council year. A vote on these nominations will be held in September.

VI. Other Business

VII. Adjournment of Annual Meeting of Section Membership
Attachment 1
ANNUAL MEETING OF THE MEMBERS
OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE
STATE BAR OF MICHIGAN
September 6, 2014
Lansing, Michigan
Agenda

I. Call to Order. The annual meeting of the Probate and Estate Planning Section was called to order at 9:35 a.m. All in attendance were asked to sign an attendance sheet.

II. Approval of Minutes of September 21, 2013, Annual Meeting of the Section. Motion to approve the minutes of the last year’s annual meeting of the section was made by George Gregory and seconded by Rhonda Clark. Unanimous vote was cast. No votes opposed. No abstentions. These minutes can be found online at http://higherlogicdownload.s3.amazonaws.com/MICHBAR/36b40f18-75e7-4b75-a650-4e26fe2c65ac/UploadedImages/pdfs/minutes/min_sept13AM.pdf

III. Chairperson’s Report – Thomas F. Sweeney
Mr. Sweeney expressed thanks to many individuals, including

• George Gregory for inviting Mr. Sweeney to attend Probate Council meetings 13 years ago.
• The many people who attend Council meetings but are not council members; these individuals bring experience, perspective, backgrounds, and give many insights. Council greatly appreciates all your efforts.
• Thanks to Judge Murkowski, David Kerr and Bob Taylor, for all their efforts and years of service to the Probate Council. A presentation plaque was presented to each.
• Thanks to the 18 members of Council; this is a tremendous group of experienced, dedicated, and committed individuals who have accomplished so much in this past year.
• Thanks to the officers who have served with Mr. Sweeney; thank you for your service and leadership.
IV. Treasurer Report – Marlaine C. Teahan
Ms. Teahan summarized the written report indicating that we are ahead of our budget on receipts and under budget on disbursements with two months left still to report on. The last two months reports are still expected from the State Bar and an update will be provided once they are received. She requested bills and mileage reimbursement forms to be sent to her by mail, email or in person by midnight on Friday Sept. 26, 2014 so that complete reports can be sent to the State Bar by fiscal year end. Treasurer's Report can be found online at: https://higherlogicdownload.s3.amazonaws.com/MICHBAR/36b40f18-75e7-4b75-a650-4e26fe2c65ac/UploadedImages/pdfs/minutes/min_sept14.pdf

V. Elections of Council Members and Officers
Nominating Committee Report can be found online at pages 27-28, https://higherlogicdownload.s3.amazonaws.com/MICHBAR/36b40f18-75e7-4b75-a650-4e26fe2c65ac/UploadedImages/pdfs/agenda9-6-14.pdf

June 7, 2014, Council meeting minutes with the votes recited below can be found online at https://higherlogicdownload.s3.amazonaws.com/MICHBAR/36b40f18-75e7-4b75-a650-4e26fe2c65ac/UploadedImages/pdfs/minutes/min_june14.pdf

- Nominations for officer positions was read and a vote was called. Unanimous vote was cast. No votes opposed. No abstentions.
- Nominations for the Council member positions were read and a vote was called. Unanimous vote was cast. No votes opposed. No abstentions.

VI. Other Business
- Proposed Bylaw Amendments
  Unanimous vote was cast. No votes opposed. No abstentions.
  The new Bylaws can be found at https://higherlogicdownload.s3.amazonaws.com/MICHBAR/36b40f18-75e7-4b75-a650-4e26fe2c65ac/UploadedImages/pdfs/bylaws.pdf

- Vote to approve the Council recommendation that beginning with the Winter 2014 edition, the Probate and Estate Planning Journal will only be in electronic form. As stated in the April 2014 Council Minutes:

"Mr. Sweeney discussed the process we use to produce the Probate & Estate Planning Journal with Nancy Little and Jeanne Murphy to quantify the likely cost savings of changing to an electronic only Journal. At present, we utilize 3 steps: our State Bar and Section Journals Committee collects and edits the articles; ICLE sets up the format; and E.P. Horak Company prints
the Journal and sends out the paper version, which currently costs about
$5,000 per issue for the printing and mailing of the paper copies to only
about 17% of our membership; the State Bar handles the electronic
distribution. If we go to an all-electronic version, the first two steps would not
change, but the step handled by E.P. Horak Company would be eliminated.
At that point, the only way to obtain access to the Journal would be "on line". Announcements would be primarily electronic, which we now doing for the
most part anyway. The State Bar Journal will still be printed on paper (for
now). Saving the mailing & printing expense would allow us to support a
broader range of programs for our members."

Unanimous vote was cast. No votes opposed. No abstentions.

VII. Adjournment of Annual Meeting of Section Membership at 9:50 a.m.
**Income/Expense Reports**

Attached is the income/expense report for May, June, and July, 2015.

**Mileage Reimbursement Rate Effective 1/1/2015**

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

**Expense Reimbursement Requests**

- For instructions or forms, use [www.michbar.org/sections/home](http://www.michbar.org/sections/home) and scroll down to click on Expense Reimbursement Form | Instructions under the heading Section Forms or use the attached.
- Email forms to [mlentz@bodmanlaw.com](mailto:mlentz@bodmanlaw.com) or provide paper copies in person or by mail.

Marguerite Munson Lentz, Treasurer
Probate and Estate Planning Section

Treasurer Contact Information:

**Marguerite Munson Lentz**
BODMAN PLC
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
office: 313-393-7589
fax: 313-393-7579
email: [mlentz@bodmanlaw.com](mailto:mlentz@bodmanlaw.com)
<table>
<thead>
<tr>
<th>Revenue Subcategories</th>
<th>May-15</th>
<th>Jun-15</th>
<th>Jul-15</th>
<th>FY to Date Actual 2014-2015</th>
<th>Budget 2014-2015</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership Dues</td>
<td>70.00</td>
<td>70.00</td>
<td>105.00</td>
<td>115,710.00</td>
<td>115,000.00</td>
<td>710.00</td>
<td>100.02%</td>
</tr>
<tr>
<td>Publishing Agreements</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>600.00</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>-</td>
<td>650.00</td>
<td>-</td>
<td>600.00</td>
<td>600.00</td>
<td>-</td>
<td>100.00%</td>
</tr>
<tr>
<td>Total Receipts</td>
<td>70.00</td>
<td>70.00</td>
<td>105.00</td>
<td>116,360.00</td>
<td>115,650.00</td>
<td>710.00</td>
<td>103.01%</td>
</tr>
<tr>
<td>Disbursements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Journal (1)</td>
<td>$12,225.00</td>
<td>(250.00)</td>
<td>$11,975.00</td>
<td></td>
<td>$12,225.00</td>
<td>(250.00)</td>
<td>57.98%</td>
</tr>
<tr>
<td>Chairperson's Dinner (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Travel</td>
<td>110.00</td>
<td>3,470.00</td>
<td>14,119.81</td>
<td>18,500.00</td>
<td>4,380.00</td>
<td>76.32%</td>
<td></td>
</tr>
<tr>
<td>Loyalty</td>
<td>2,500.00</td>
<td>2,500.00</td>
<td>2,500.00</td>
<td>2,500.00</td>
<td>30,000.00</td>
<td>(5,500.00)</td>
<td>83.33%</td>
</tr>
<tr>
<td>Meetings (3)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-range Planning</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support for Annual Institute</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Eble</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seminar</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electronics communications (4)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (5)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Membership Activities (6)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Disbursements</td>
<td>$2,091.30</td>
<td>$5,213.04</td>
<td>$15,159.02</td>
<td>$30,916.80</td>
<td>$122,150.00</td>
<td>(31,333.20)</td>
<td>74.43%</td>
</tr>
<tr>
<td>Net Increase (Decrease)</td>
<td>$25,443.20</td>
<td>(6,500.00)</td>
<td>$25,443.20</td>
<td>$25,443.20</td>
<td>$25,443.20</td>
<td>$25,443.20</td>
<td></td>
</tr>
<tr>
<td>Fincotes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Includes e-blast for the Journal
(2) Includes plaques for outgoing Chair and Council Members
(3) Includes October meeting in connection with Chair's Dinner and CLE/Leadership Conference expenses for incoming Chair and Chair-Elect
(4) Includes LitServ, telephone, e-blast & other net communications
(5) Includes copying costs and $750 for Young Lawyers' Conference
(6) Paper budget was approved at March meeting; current meeting
(7) New budget was approved at April meeting; current meeting

Paid this year but charged to next year's budget

2015-2016 Chair's Dinner Big Rock: $1,000
ATTACHMENT 3
The Nominating Committee of the Probate and Estate Planning Section of the State Bar of Michigan consists of Mark K. Harder, Thomas F. Sweeney, and George W. Gregory.

The Committee reminds the Council and Section that under the Section 5.2 of the Section’s By-Laws the incumbent Chairperson Elect assumes the office of Chairperson upon the conclusion of the Section’s annual meeting. The Committee therefore does not nominate a candidate for Chairperson of the Section, and the incumbent Chairperson Elect, Shaheen I. Imami, will succeed to the office of Chairperson without action by the Committee, Council or Section.

The Committee met and pursuant to Section 4.1 of the Section By-Laws, the Committee nominates the following individuals for the positions shown opposite their name:

- **Chairperson Elect**: James B. Steward
- **Vice Chairperson**: Marlaine C. Teahan
- **Secretary**: Marguerite Munson Lentz
- **Treasurer**: Christopher A. Ballard

For the Council for a second three year term:

- Rhonda M. Clark-Kreuer
- David P. Lucas
- David L.J.M. Skidmore

For the Council for an initial three year term:

- Kathleen M. Goetsch
- Katie Lynwood
- Christopher J. Caldwell

Assuming that Christopher A. Ballard is elected as Treasurer, then Michael G. Lichterman is nominated to serve the balance of Mr. Ballard’s term as a member of the Council, which ends with the annual meeting in 2017. Mr. Lichterman will thereafter be eligible for election to two three-year terms as a member of the Council.

Respectfully submitted on behalf of the nominating committee,

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

September 12, 2015
Lansing, Michigan

AGENDA

I. Call to Order

II. Excused Absences

III. Introduction of Guests

IV. Minutes of June 13, 2015, Meeting of the Council
   See Attachment 1

V. Treasurer's Report – Marguerite Munson Lentz
   See Attachment 2

VI. Chairperson's Report – Shaheen I. Imami
   See Attachment 3
   • 2 year biennial plan of work, 2015-2017; and
   • August 20, 2015 letter to Mr. Richard Pietroski, CEO, Gift of Life of Michigan
     regarding Peace of Mind Registry

VII. Report of the Committee on Special Projects – Christopher A. Ballard

VIII. Standing Committee Reports
   A. Internal Governance
      1. Budget – Marlaine C. Teahan
      2. Bylaws – Nancy H. Welber
      3. Awards – Douglas A. Mielock
      4. Planning – Shaheen I. Imami
      5. Nominating – George W. Gregory
      6. Annual Meeting – Shaheen I. Imami
B. Legislation and Lobbying
1. Legislation – William J. Ard
   See Attachment 4, Public Affairs Legislative Report
2. Updating Michigan Law – Geoffrey R. Vernon
3. Insurance Ad Hoc Committee – Geoffrey R. Vernon
4. Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber

C. Education and Advocacy Services for Section Members
1. Amicus Curiae – David L. Skidmore
2. Probate Institute – James B. Steward
3. State Bar and Section Journals – Richard C. Mills
   See Attachment 5, Proposed Contract with William S. Hein & Co., Inc.
   The committee is requesting Council action on this Contract.
4. Citizens Outreach – Constance L. Brigman
5. Electronic Communications – William J. Ard
6. Membership – Raj A. Malviya
   See Attachment 6
   • Committee Report; and
   • Survey Results from the 55th Annual Probate and Estate Planning Institute, Acme, Michigan

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

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

F. Areas of Practice
1. Real Estate – George F. Bearup
2. Transfer Tax Committee – Lorraine F. New

See Attachment 7

- New Basis Reporting Requirements; and
- How to Get a Closing Letter from the IRS for a Form 706

3. Charitable and Exempt Organization – Lorraine F. New

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

G. Liaisons

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

IX. Other Business

X. Hot Topics

XI. Adjournment
ATTACHMENT 1
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

June 13, 2015
Lansing, Michigan

Minutes

I. Call to Order – The meeting was called to order by the Chair at 10:15 a.m.

II. Attendance.

A total of 3 officers and 14 members of the Council were present, representing a quorum.

A. The following 3 officers of the Council were in attendance:

Amy N. Morrissey, Chair
Marlaine C. Teahan, Secretary
Marguerite Munson Lentz, Treasurer

B. The following 14 members of the Council were in attendance:

Susan M. Allan
Christopher A. Ballard
George F. Bearup
Constance L. Brigman
Hon. Michael L. Jaconette
Mark E. Kellogg
David P. Lucas
Michele C. Marquardt
Richard C. Mills
Lorraine F. New
Patricia M. Ouellette
David L.J.M. Skidmore
James P. Spica
Geoffrey R. Vernon

C. The following officers and members were absent with excuse:

Shaheen I. Imami, Chair Elect
James B. Steward, Vice-Chair
W. Josh Ard
Rhonda M. Clark-Kreuer
Raj A. Malviya
Nancy H. Welber

D. The following officers and members were absent without excuse: None

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

George W. Gregory
Thomas Sweeney
Susan S. Westerman
F. **The following guests were in attendance:**

Becky Bechler
Christopher J. Caldwell
Kathleen Goetsch
Raymond A. Harris
J. David Kerr
Robert B. Labe
Michael G. Lichterman
Bradley C. Martin
Jeane Murphy
Kurt A. Olson
Jessica M. Schilling
Nazneen H. Syed

III. **Minutes of April 11, 2015 Meeting of the Council – Marlaine C. Teahan.** The minutes of the April 11, 2015 meeting were approved as submitted and will be posted online with the following attachments:

- Memorandum, April 10, 2015, Amy Morrissey, Chair of the Section to the P&EP Council, regarding Support of Solo and Small Firm Institute (referencing copy of email, March 10, 2015, Jeff Kirkey to Amy Morrissey, regarding Probate Section Sponsorship of the 2015 Solo & Small Firm Institute)
- Summary of Mediation in Probate Cases, written by Susan J. Butterwick, J.D. and Susan D. Hartman, J.D., provided by the Hon. Milton L. Mack, Jr., Liaison to the Alternative Dispute Resolution Section.

IV. **Treasurer's Report – Marguerite Munson Lentz**

The Treasurer's report, including a June 13, 2015 written report, Treasurer's financial report (March and April, 2015), and SBM reimbursement forms and instructions were provided as Attachment 2 of the June 13, 2015 Agenda, and can be found online. The State Bar of Michigan is requiring reimbursement forms to be submitted within 45 days of the date on which the expense occurs.

V. **Chairperson's Report – Amy N. Morrissey**

Ms. Morrissey's report is based in part on the Attachment 3 of the June 13, 2015 Agenda materials. In addition, Ms. Morrissey reported on the following items:

- The 55th Annual Institute in Traverse City in May had a great turnout with great speakers. Highlights included expanded vendor tables, the membership committee’s vendor table, membership survey, and social event hosted at Smith Haughey Rice & Roegge.
- The June 2015 ICLE agreement with the P&EP Section on Member Content has been finalized – a vote of Council is needed; SBM General Counsel Cliff Flood has approved. The contract's highlights were discussed. Motion by Amy Morrissey, support by Jim Spica; the vote was unanimous with no votes against and no abstentions. Ms. Morrissey will execute the contract.
9, 2015, pp 175-198. Mr. Sweeney reported on the article and provided the article to those in attendance. This article was also the foundation for an ICLE webinar on undue influence and was presented at the 27th Annual Spring Symposium, ABA Section of Real Property, Trust & Estate Law, April 2015. Plans also include a presentation in the Fall at the 41st Annual Notre Dame Tax & Estate Planning Institute.

- N. Little advised that Fred Rolf will be stepping down as editor of the Ethics column of the Section Journal. Anyone interested in writing that column should let Ms. Morrissey or Ms. Little know of their interest.
- Ms. Morrissey will be sending a letter to Chief Judge Talbot regarding our Section's willingness to help with probate and estate planning cases by the end of June and requests any input from Council members regarding the letter.
- Email dated May 27, 2015 from Jeff Kirkey to Ms. Morrissey regarding ICLE Experts in Estate Planning – approval for support of this program was discussed. It is requested that our Section contribute $4000. Motion in support by Ms. Morrissey, support from Mr. Spica; the vote was unanimous with no votes against, and no abstentions. The costs were also discussed as $195, with section members at $165. It will also be available as a webcast for 90 days after the presentation.

VI. Report of the Committee on Special Projects – Christopher A. Ballard

1. Review of SB 270. CSP recommends to council that it take a position to support SB 270 in concept but to move the language from Article 5 to Article 1 and to reflect that the intent is to expand the court’s jurisdiction instead of restrict the court’s jurisdiction. Motion includes granting authority to co-chairs of the Guardianship, Conservatorship and End of Life Committee, Rhonda Clark and Katie Lynwood, to modify the language in accordance with the position taken by Council, as outlined above. Vote taken: 17 for, 0 against, 0 abstentions

2. Updating Michigan Law Committee – Geoffrey Vernon presented Senator Schuitmaker's proposed bill regarding pre-death probate litigation (Agenda, Exhibit D-1). Discussed who can file the petition and that while this is not currently included in the MTC, there is nothing in EPIC that would preclude a petition relative to approving a trust. Mr. Vernon suggests that we ask Sen. Schuitmaker to delay the submission of this bill so that we can consider it further. CSP recommended that it be sent back to Committee with the thought that it be taken up again at a future time.

VII. Committee Reports

B. Internal Governance

5. **Nominating – George W. Gregory**

A written report of the Nominating Committee was handed out and was discussed. [Attachment 3 of the Annual Meeting of the Section Agenda.] The Chair opened nominations from the floor for officers; hearing none, the nominations for officers were closed. The Chair opened nominations from the floor for council members; hearing none, the nominations for council members were closed. With no nominations from the floor for officers or council members, upon a motion of the Nominating Committee, the Committee's written report was accepted as the Nominations for officers and council members for the 2015-2016 council year. A vote on these nominations will be held in September.

6. **Annual Meeting – Shaheen I. Imami – No report.**

**C. Legislation and Lobbying**

1. **Legislation – William J. Ard**

The June Report of Public Affairs Associates, pending legislation of interest to the Probate and Estate Planning Section was included in the Agenda materials as Attachment 4.

Becky Bechler reported on many items, including:

- Sen. Schuitemaker willing to sponsor our version of digital assets;
- Domestic asset protection – draft back before next Friday;
- Probate appeals will have comments given to LSB this week; and
- Regarding SB 270, she will get with sponsor this week.

2. **Updating Michigan Law – Geoffrey R. Vernon – The Committee will continue on pre-death probate litigation and will get back with CSP on this in September. Mr. Vernon also reported on a call from Mr. Siriani regarding MCL 700.5102, facility of payment or delivery. Discussion ensued that the $5,000 limit in that section should be increased and cola adjusted. Ms. Welber has a list of what should be updated as far as technical corrections for EPIC and Mark Harder has a list of needed updates for the MTC.**

3. **Insurance Ad Hoc Committee – Geoffrey R. Vernon – no report.**

4. **Artificial Reproductive Technology Ad Hoc Committee – Nancy H. Welber. Will be taken back up in the fall.**
D. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

The Committee's report included Agenda Attachment 5 and 6. Discussion held on the Application for Consideration of Amicus Curiae, In re Filibeck Estate. Discussed the facts of the case and the recommendation that amicus committee wants to hire a firm to research the issue and give a recommendation to be circulated electronically. $5000 to be approved now but then up to $10,000 if we approved the position of the appellate firm’s recommendation. Mr. Skidmore explained that the case's impact is unique because of the growing practice of fundraising, crowdfunding, and issues such as inter vivos gifts and constructive trusts. Motion by Mr. Skidmore, support from Mr. Spica. Vote: 16 For, 1 Against, no abstentions. Motion carries.

Discussion on In re Ketchum, oral request for consideration of the filing of an amicus brief by Attorney Charlotte Shoup. This is an estate recovery case. Ms. Shoup will file a formal application and the Committee will make a recommendation.

2. Probate Institute – James B. Steward – no report

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

Mr. Mills report included Attachment 7 of the June Agenda, June 8, 2015 Memorandum, Richard C. Mills, regarding Proposal from William S. Hein & Co. concerning the section Journal. Hein wants to publish our section’s journal online and will give 15% of proceeds to the Section; the journal would be published as a whole and not parse out the articles. Mr. Mills discussed this with Ms. Little. Mr. Mills recommends that this be approved and that the contract be submitted for review by Cliff Flood at the SBM. This contract will be reviewed by Mr. Flood and provided in the September materials for review and a vote by Council.

4. Citizens Outreach – Constance L. Brigman – Citizens Outreach Committee Meeting June 3, 2015, see Attachment 8 of the June 2015 Agenda. Ms. Brigman will discuss this at our next meeting and will discuss the contract with the SBM. Discussion was held on the update and revision of the brochures, including publishing agreements, various notices to be included on the materials, permissions to reprint, and coordination with the State Bar. In addition, the copyright was secured on the brochure – the patient’s guide.


E. Ethics and Professional Standards


2. Unauthorized Practice of Law & Multidisciplinary Practice – Patricia M. Ouellette – No report.


F. Administration of Justice

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

Three issues were discussed:
• Whether court rules should be changed regarding applications for amicus filings and who may file them. This issue was referred to the Amicus Committee.
• Ms. Morrissey referred to the Committee to review court forms to provide for a check box to allow a Judge to check a box allowing access to restricted accounts to pay for attorney fees.
• The Committee has review the Q&A from the Peace of Mind Registry website and has concerns. Upon a motion by the Committee, with support of Ms. Morrissey, Council unanimously approved a motion for the Committee to draft a letter for Ms. Morrissey's signature outlining the various issues with the Q&A, providing language that is consistent with EPIC.

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

G. Areas of Practice

1. Real Estate – George F. Bearup reported on Attachment 10, June 2015 Agenda, June 2, 2015, Email, David Fry to George Bearup, et. al, regarding proposed amendments to MCL 211.27a. Mr. Bearup reported that Mr. Fry reached out to the sponsor of this bill. In addition, Mr. Bearup receives weekly requests for clarification from members of the Bar. The issue at stake is that the legislation requires a delicate balance in clear drafting and maintaining revenue for state.

2. Transfer Tax Committee – Lorraine F. New. A Tax Nugget, located at Attachment 11, June 2015 Agenda, was presented by Robert Labe, "Another Crummey Loss for the Internal Revenue Service." Mr. Labe gave a brief report regarding the issues raised in the Mikel v. Commissioner T.C. Memo 2015-64 (April 6, 2015) case and his written report.

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreurer. Raymond Harris reported for committee on SB 270 during the CSP. As part of the report of the Chair of CSP, a vote was taken as outlined above in the report on CSP. A public policy report will be filed with the SBM.

H. Liaisons

1. Alternative Dispute Resolution Section Liaison – Hon. Milton L. Mack, Jr. – No report.
3. Elder Law and Disability Rights Section Liaison – Amy R. Tripp – No report.
4. Family Law Section Liaison – Patricia M. Ouellette – No report.
5. ICLE Liaison – Jeanne Murphy – No report.
10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz – No report.
13. Taxation Section Liaison – George W. Gregory reported on the June 2015 events of the Tax Section as outlined in Attachment 12, June 2015 Agenda.

Mr. Gregory also reported on Attachment 13, June 2015 Agenda, Draft RAB 2015-XX regarding Taxability of Income to Estates, Trusts or Beneficiaries, comments due June 22, 2015. Bob Joslyn will be working on this with George. In the Fall of 2014, we reviewed another version of this RAB. This version could use some clarification; Mr. Gregory thinks there is too much room for interpreting the examples. 2 years ago Treasury put in MCL 206.36. IF this is a positive adjustment this makes some sense. The RAB is consistent with the statute but it is contrary to many standards of trust accounting. Mr. Gregory agrees with the narrative but the allocation in the examples are limited. He would like to see more examples. Ms. New and Mr. Gregory pointed out that the last RAB that indicated that an out of state resident would be taxed. Bob Joslyn and Mr. Gregory would like to comment on this to Treasury re typos, examples are
not clear, pose new examples and clarify that if the individuals in the examples are Michigan residents or not. Mr. Gregory is still not happy and thinks there are constitutional issues involved. George will write a letter that will be circulated for an electronic vote by Council so that we can take a public policy position.

VII. Other Business

VIII. Hot Topics

IX. Adjournment. The chair adjourned the meeting at 11:57
ATTACHMENT 2
Income/Expense Reports

Attached is the income/expense report for May, June, and July, 2015.

Mileage Reimbursement Rate Effective 1/1/2015

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

Expense Reimbursement Requests

• For instructions or forms, use www.michbar.org/sections/home and scroll down to click on Expense Reimbursement Form | Instructions under the heading Section Forms or use the attached.
• Email forms to mlenzt@bodmanlaw.com or provide paper copies in person or by mail.

Marguerite Munson Lentz, Treasurer
Probate and Estate Planning Section

Treasurer Contact Information:

Marguerite Munson Lentz
BODMAN PLC
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
office: 313-393-7589
fax: 313-393-7579
email: mlenzt@bodmanlaw.com
## Probate and Estate Planning Section
### Treasurer's Report Through July 2015

<table>
<thead>
<tr>
<th></th>
<th>Beginning Fiscal Year 2014-2015</th>
<th>FY to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$186,741.33</td>
<td>$212,184.53</td>
</tr>
<tr>
<td>Reserve Fund</td>
<td>$35,423.00</td>
<td>$35,423.50</td>
</tr>
<tr>
<td>Total fund</td>
<td>$222,164.33</td>
<td>$247,608.03</td>
</tr>
</tbody>
</table>

### Revenue
<table>
<thead>
<tr>
<th>Subcategories</th>
<th>May-15</th>
<th>Jun-15</th>
<th>Jul-15</th>
<th>FY to Date Actual</th>
<th>Budget 2014-2015</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership Dues</td>
<td>$70.00</td>
<td>$70.00</td>
<td>$105.00</td>
<td>$115,710.00</td>
<td>$115,000.00</td>
<td>710.00</td>
<td>100.02%</td>
</tr>
<tr>
<td>Publishing Agreements</td>
<td>$50.00</td>
<td>$50.00</td>
<td>$50.00</td>
<td>$600.00</td>
<td>$600.00</td>
<td>$0.00</td>
<td>100.00%</td>
</tr>
<tr>
<td>Other</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>100.00%</td>
</tr>
<tr>
<td>Total Receipts</td>
<td>$70.00</td>
<td>$70.00</td>
<td>$105.00</td>
<td>$116,360.00</td>
<td>$115,600.00</td>
<td>$760.00</td>
<td>100.01%</td>
</tr>
</tbody>
</table>

### Disbursements
| Journal (1)                   |        |        |        | $12,225.00         | (250.00)          | 97.98%   |                      |
| E-blast                        | 75.00  | $225.00 |        |                   |                   |          |                        |
| ICLE (formatting)              | 4,000.00 | $11,750.00 |      |                   |                   |          |                        |
| Chairman's Dinner (2)          |        |        |        | $7,000.00         | (1,000.00)        | 70.00%   |                      |
| Tickets                        | $132.50 | $132.50 |        |                   |                   |          |                        |
| Gavel                          | $103.76 | $103.76 |        |                   |                   |          |                        |
| Chairs Dinner - Food           | $6,198.24 |        |        |                   |                   |          |                        |
| Chairs Dinner - Vessels         | $633.00 |        |        |                   |                   |          |                        |
| Travel                         | 110.05 | 4,870.63 | 14,119.81 | 18,500.00         | (4,380.00)        | 78.32%   |                      |
| Lodging                        | 2,596.00 | 2,600.00 | 2,590.00 | 2,600.00          | (10,000.00)       | 83.33%   |                      |
| Long-range Planning            |        |        |        | $15,000.00        | (5,495.85)        | 67.37%   |                      |
| Support for Annual Institute   |        |        |        | $14,000.00        | (10,000.00)       | 100.00%  |                      |
| Contribution to institute      | $5,000.00 |        |        |                   |                   |          |                        |
| Speaker's Dinner               | $9,000.00 |        |        |                   |                   |          |                        |
| Annual Events                  |        |        |        |                   |                   |          |                        |
| Seminar                        | $4,000.00 |        |        |                   |                   | 100.00%  |                      |
| CLE (Small Firm and Solo institute) - Subsections (7) | $1,000.00 | (1,000.00) | (0.00%) |       |
| CLE (Small Firm and Solo institute) - General Support (7) | $1,550.00 | (1,550.00) | (0.00%) |       |
| Electronical communications (4) |        |        |        | $2,625.00         | (1,972.01)        | 35.71%   |                      |
| List servis                    | 150.00 | 75.00  | $750.00 |                   |                   |          |                        |
| E-blast                        | 75.00  | 75.00  |        |                   |                   |          |                        |
| Telephone                      | 24.16  | 24.27  | $127.39 |                   |                   |          |                        |
| Other                          |        |        |        | $1,100.00         | (951.22)          | 12.07%   |                      |
| Copying                        | $138.78 |        |        |                   |                   |          |                        |
| Postage                        |        |        |        |                   |                   |          |                        |
| Young Lawyer's Conference      |        |        |        |                   |                   |          |                        |
| Membership Activities (8)      |        |        |        |                   |                   |          |                        |
| Postage                        | 24.30  | $34.30 |        |                   |                   |          |                        |
| Reception                      | 1,761.50 |        |        | $1,761.50         |                   |          |                        |
| Printing                       |        |        |        | $668.18           |                   |          |                        |
| Lunch at Cooley's for members |        |        |        |                   |                   |          |                        |
| Total Disbursements            | $2,991.30 | 5,213.84 | 15,159.02 | 50,916.80         | (31,233.20)       | 74.43%   |                      |
| Net Increase (Decrease)        | $25,443.20 |        |        | (5,000.00)        |                   |          |                        |

### Footnotes
1. Includes e-blast for the Journal
2. Includes plaques for outgoing Chair and Council Members
3. Includes October meeting in connection with Chief's Dinner and CLE Program (Chair's Diner expenses for incoming Chair and Chief Elected)
4. Includes List Server, telephone, e-blast & other electronic communications
5. Includes clerical costs and travel for Young Lawyers Conference
6. New budget approved by April probate council meeting
7. New budget approved by April probate council meeting

Paid this year but charged to next year's budget

*2015-2016 Chair's Dinner Big Rock: $1,000*
**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</th>
<th>Mileage</th>
<th>Lodging/Other Travel</th>
<th>Meals</th>
<th>Miscellaneous</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Rate</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Note start and end point for mileage)</td>
<td>Mileage</td>
<td>Reimbursement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.575</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.575</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.575</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.575</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.575</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.575</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.575</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

GrandTotal: $0.00

If you need to reset the form, click **Reset Form**.

If you want to print the form, click **Print**.
General Policies

1. Requests for reimbursement of individual expenses should 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

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

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

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

5. 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 Lawyers 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/dtbh/0,55527,7-150-9141_13132---,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.

6. Spouse expenses are not reimbursable.

7. 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.

8. 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.

9. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.

A. Tickets should be at the best rate available for as direct a path as possible. The use of travel websites such as Travelocity, Priceline and Hotwire are recommended to identify the most economical airfare alternatives.

B. 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.

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

D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

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

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.
ATTACHMENT 3
### Probate & Estate Planning Section

#### Biennial Plan of Work

**10/1/2015 - 9/30/2017**

<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>-Dower Repeal</td>
<td></td>
<td></td>
<td>-Promotion of &quot;Who Should I Trust?&quot; Program*</td>
<td>-56th Annual P&amp;EP Institute</td>
</tr>
<tr>
<td></td>
<td>-Probate Appeals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Prop tax uncapping exempt. (HB 5552)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Fiduciary Access to Digital Assets (HB 4072)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Hearings minors &lt; 18 (SB 144 &amp; 177)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Funeral Representative (HB 4599)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Priority Items</td>
<td>Domestic Asset Protection Trusts</td>
<td>-SCAO Meetings*</td>
<td></td>
<td></td>
<td>Communications with members*</td>
</tr>
<tr>
<td></td>
<td>-Artificial Reproductive Technology</td>
<td></td>
<td></td>
<td></td>
<td>-Social events for Section members</td>
</tr>
<tr>
<td></td>
<td>-Probate Appeals</td>
<td></td>
<td></td>
<td></td>
<td>-Liaise with local bar associations</td>
</tr>
<tr>
<td></td>
<td>-EPIC/MTC Updates</td>
<td></td>
<td></td>
<td></td>
<td>-Social media &amp; website*</td>
</tr>
<tr>
<td></td>
<td>-Pre-Death Probate</td>
<td></td>
<td></td>
<td></td>
<td>-Brochures*</td>
</tr>
<tr>
<td>Priority To Be Determined</td>
<td>Charitable Trust</td>
<td>Review Ch. 5 of MCR for potential updates (incl. attorney representation, but not fiduciary exception)</td>
<td>-Amend bylaws to better coordinate transition of new officers/members</td>
<td>-Inventory Lawyer</td>
<td>Opportunities with ICLE</td>
</tr>
<tr>
<td></td>
<td>-TBE Property</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Expand Personal Residence Exemption</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Uniform Real Property TOD Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-ILIT Trustee Liability Protection</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secondary Priority</td>
<td>Dignified Death (Family Consent) Act</td>
<td>New forms based on legislation</td>
<td>Budget Reporting</td>
<td>Supreme Court Task Force Report</td>
<td>Probate Court Opinion Bank</td>
</tr>
<tr>
<td></td>
<td>-Pooled income trust exclusion</td>
<td></td>
<td>-Amend bylaws to better coordinate transition of new officers/members</td>
<td>-Action on SC recommendations</td>
<td>-Mentor program</td>
</tr>
<tr>
<td></td>
<td>-Neglect Legislation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Foreign Guardians</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Inheritance Tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Estate Recovery</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-PRE after death &amp; nursing home</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-Directed/Separate Trustee Proposals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Indicates items requiring action or involvement.
*ongoing
August 20, 2015

Mr. Richard Pietrosi, CEO
Gift of Life of Michigan
3861 Research Park Drive
Ann Arbor, Michigan 48108

RE: Peace of Mind Registry at mipieceofmind.org.

Dear Mr. Pietroski:

Congratulations to your organization for its successful launch of the Peace of Mind Registry website.

In addition to storing completed patient advocate designations for patients and their health care providers, your website has a link to an external webpage – the link is to a Michigan Department of Health and Human Services webpage that provides answers to frequently asked questions about patient advocate designations.

We know that many Michigan citizens and care facilities rely on your guidance, and we appreciate the services you render.

The Probate and Estate Planning Section Council recently reviewed the DHHS frequently asked questions webpage (the webpage to which your Peace of Mind Registry website is linked). We have concerns about some of the information provided there. We ask your that all concerned consider our suggested revisions:

Suggested Revisions

First revision

The first revision concerns the patient advocate's duty to act on the patient's instructions. Unfortunately, DHHS's information is misleading. The following is what the DHHS website provides in its frequently asked questions section:

They must take reasonable steps to follow your wishes and instructions that you gave when you were still able to participate in your care, whether you wrote them down or told someone. Your patient advocate must also always act in your best interests. (FAQ page 1)
According to MCL 700.5509(1)(a), the patient advocate is a fiduciary, but in the next subsection, the patient advocate’s mandate to follow written directions is limited to those provided in the designation. The statute would have omitted "as written in the designation," if it intended to include other advance directives as well. Please note that MCL Subsection 770.5509(1) is completely on point. Section one (1) articulates the "authority, rights, responsibilities, and limitations" of a patient advocate:

(a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.
(b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, whether given orally or as written in the designation.
(c) A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.
(d) The designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient’s death.
(e) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient’s death.
(f) A patient advocate may choose to have the patient placed under hospice care.
(g) A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.
(h) With regard to mental health treatment decisions, the patient advocate shall only consent to the forced administration of medication or to inpatient hospitalization, other than hospitalization as a formal voluntary patient under section 415 of the mental health code, 1974 PA 258, MCL 330.1415, if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment. If a patient is hospitalized as a formal voluntary patient under an application executed by his or her patient advocate, the patient retains the right to terminate the hospitalization under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

Our suggested revision:

They must take reasonable steps to follow the desires, instructions or guidelines that you gave either orally or in the designation itself when you were still able to participate in your care.
Second revision
The second revision concerns the scope of the patient advocate’s discretion. The patient advocate is expected to apply the correct standard of care when exercising his discretionary power. Unfortunately, DHHS’ instructions are misinforming. DHHS’ frequently asked questions provide:

If you do not express your wishes, your patient advocate must act in what he or she sees as your best interests. (FAQ page 2)

DHHS misunderstands whose point of view the patient advocate is expected to adopt. A patient advocate is a fiduciary. MCL 700.5507 provides the fundamentals for a patient advocate designation form. MCL 700.5507(4) contains the required statements for all patient advocate acceptance forms including the duty to act according to the known desires of the patient as expressed or evidenced while the patient was able to participate in his or her own medical or mental health treatment decisions. [emphasis added] MCL 700.5507(4) reads in relevant part:

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

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

At item number six in MCL700.5507(4), the patient advocate is told to presume that “the known desires of the patient expressed or evidenced while the patient is able to participate in medical decisions are in the patient’s best interests.” [emphasis added] According to the preceding sentence, the patient advocate “shall act consistent with the patient’s best interests.” For example, if the patient and patient advocate are spouses and they are devout followers of opposing religions, and the patient never abandoned her faith, then the patient advocate must make all decisions in the patient’s behalf in accordance with the patient’s religious beliefs.

Our suggested revision:

If your patient advocate does not know what your wishes are, then your patient advocate must act on what he or she believes to be your wishes.
Third revision
The third revision echoes the same concern as the second regarding the patient advocate’s duty to honor the patient’s wishes. Unfortunately, DHHS’ instructions misconstrue the duty:

DHHS’ frequently asked questions provide:

*If it is not clear from the form what you want for your care, your advocate will have to make decisions based on what he or she thinks would be best for you. This may not always be the same as what your advocate would want for him or herself, or what your family or friends think is best, so your advocate should be able to handle conflict if it comes up.* (FAQ page 5)

MCL 700.5507(1) provides that “[a] patient advocate designation may include a statement of the patient’s desires on care, custody, and medical treatment or mental health treatment, or both.” However, the patient’s failure to do so does not excuse the patient advocate from his duty to take reasonable steps to follow the patient’s oral expressions about his desires, instructions, and guidance given while able to participate in decisions regarding care, custody and medical or mental health treatment. (MCL 700.5509(1)(b)). The only exception is when a patient advocate must make an end of life decision. When an end of life decision is made, the patient advocate must have clear and convincing evidence of the patient’s wishes. Written instructions meet that higher evidentiary standard.

Our suggested revision:

*Generally, if your patient advocate does not know what your wishes are, then he or she may decide based on who you are and what kinds of decisions you yourself would likely make. But your patient advocate cannot make a decision that would allow you to die unless you very clearly say so. In order for your patient advocate to make a decision that would allow you to die, you must do two things. You must give your patient advocate the authority to make a decision that would allow you to die. And, you must specifically state in a clear and convincing manner when and how your patient advocate may exercise this authority.*

MCL 700.5509(1)(e) provides that a patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient’s death.
We suggest these simple changes so as to indicate that the patient advocate must act in the manner that he or she has reason to believe are the patient's wishes. These changes would greatly assist us in our efforts to help people understand their obligations.

Thank you for your kind attention to our concerns.

Respectfully,

Amy Morrissey
Chair
Below are bills that PAA has identified for Council of Probate Section of State Bar of MI

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

**H 4124**  
Title: **Retirement Income Deduction**  
Author: Townsend  
Introduction: 1/29/2015  
Location: House Second Reading  
Summary: Clarifies limitations and restrictions on retirement income deduction for a surviving spouse.  
Status: 01/29/2015 INTRODUCED.  
01/29/2015 To HOUSE Committee on TAX POLICY.  
06/03/2015 From HOUSE Committee on TAX POLICY: Reported with recommendation with substitute (H-2).  
06/03/2015 In HOUSE. To second reading.

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

**H 4370**  
Title: **Homestead Property Tax Credit**  
Author: Hughes  
Introduction: 3/24/2015  
Location: House Tax Policy Committee  
Summary: Eliminates limitations and restrictions on deduction of certain retirement or pension benefits and restores treatment of senior citizens and the homestead property tax credit.
H 4374  Title:  Same Sex Marriage  
Author: Irwin  
Introduction: 3/24/2015  
Location: House Families, Children and Seniors Committee  
Summary: Removes prohibition on same-sex marriage.  
Status: 03/24/2015 INTRODUCED.  
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

H 4375  Title:  Same Sex Marriage  
Author: Zemke  
Introduction: 3/24/2015  
Location: House Families, Children and Seniors Committee  
Summary: Removes prohibition of same-sex marriage from foreign marriage act.  
Status: 03/24/2015 INTRODUCED.  
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

H 4376  Title:  Same Sex Couples  
Author: Wittenberg  
Introduction: 3/24/2015  
Location: House Families, Children and Seniors Committee  
Summary: Allows issuance of marriage license to same-sex couples without publicity.  
Status: 03/24/2015 INTRODUCED.  
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

H 4547  Title:  Video Interrogations  
Author: Hooker  
Introduction: 5/5/2015  
Location: House Second Reading  
Summary: Requires video recording of child interrogations in child protection cases.  
Status: 05/05/2015 INTRODUCED.  
05/05/2015 To HOUSE Committee on JUDICIARY.  
06/09/2015 From HOUSE Committee on JUDICIARY: Reported with recommendation with substitute (H-1).  
06/09/2015 In HOUSE. To second reading.

H 4548  Title:  Video Interrogations  
Author: Kosowski  
Introduction: 5/5/2015
Location: House Second Reading
Summary: Allows consideration of video recorded statements in certain proceedings.
Status: 05/05/2015 INTRODUCED.
05/05/2015 To HOUSE Committee on JUDICIARY.
06/09/2015 From HOUSE Committee on JUDICIARY: Reported with recommendation with substitute (H-1).
06/09/2015 In HOUSE. To second reading.

**H 4549**  
**Title:** Video Interrogations  
**Author:** Santana  
**Introduction:** 5/5/2015  
**Location:** House Second Reading  
**Summary:** Allows video recorded statements to be used in child protective services hearings, increases fines for improper release of video and requires to be retained for a certain period of time.  
**Status:** 05/05/2015 INTRODUCED.
05/05/2015 To HOUSE Committee on JUDICIARY.
06/09/2015 From HOUSE Committee on JUDICIARY: Reported with recommendation with substitute (H-1).
06/09/2015 In HOUSE. To second reading.

**H 4550**  
**Title:** Vulnerable Adult Abuse  
**Author:** Miller  
**Introduction:** 5/5/2015  
**Location:** House Criminal Justice Committee  
**Summary:** Revises penalty for crime of fourth degree vulnerable adult abuse.  
**Status:** 05/05/2015 INTRODUCED.
05/05/2015 To HOUSE Committee on CRIMINAL JUSTICE.

**H 4599**  
**Title:** Disposition Arrangements  
**Author:** Schor  
**Introduction:** 5/14/2015  
**Location:** House Judiciary Committee  
**Summary:** Allows designation of funeral representative to make disposition arrangements for decedent.  
**Status:** 05/14/2015 INTRODUCED.
05/14/2015 To HOUSE Committee on JUDICIARY.

**H 4658**  
**Title:** Court Ordered Financial Obligations  
**Author:** McCready  
**Introduction:** 6/2/2015  
**Location:** House Second Reading  
**Summary:** Allows collection of court-ordered financial obligations from judgments against the state.
Status: 06/02/2015 INTRODUCED.
06/02/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.
08/19/2015 From HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS: Reported with recommendation with substitute (H-1).
08/19/2015 In HOUSE. To second reading.

**H 4676**
Title: **Sentencing Guidelines**
Author: Barrett
Introduction: 6/2/2015
Location: House Judiciary Committee
Summary: Updates sentencing guidelines references.
Status: 06/02/2015 INTRODUCED.
06/02/2015 To HOUSE Committee on JUDICIARY.

**H 4742**
Title: **Family Support Act**
Author: Kosowski
Introduction: 6/18/2015
Location: House Judiciary Committee
Summary: Repeals uniform interstate family support act and recreates.
Status: 06/18/2015 INTRODUCED.
06/18/2015 To HOUSE Committee on JUDICIARY.

**H 4743**
Title: **Family Support Act**
Author: Kosowski
Introduction: 6/18/2015
Location: House Judiciary Committee
Summary: Updates reference to the uniform interstate family support act.
Status: 06/18/2015 INTRODUCED.
06/18/2015 To HOUSE Committee on JUDICIARY.

**H 4744**
Title: **Family Support Act**
Author: Kesto
Introduction: 6/18/2015
Location: House Judiciary Committee
Summary: Updates referenced o the uniform interstate family support act.
Status: 06/18/2015 INTRODUCED.
06/18/2015 To HOUSE Committee on JUDICIARY.

**H 4745**
Title: **Family Support Act**
Author: Heise
Introduction: 6/18/2015
Location: House Judiciary Committee
Summary: Updates reference to the uniform interstate family support act.
**H 4793** Title: *Involuntary Hospitalization*
Author: Lucido
Introduction: 8/18/2015
Location: House Judiciary Committee
Summary: Requires confidentiality of filing petitions for involuntary hospitalization.
Status: 08/18/2015 INTRODUCED.
08/18/2015 To HOUSE Committee on JUDICIARY.

**HJR L** Title: *Same Sex Marriage Resolution*
Author: Moss
Introduction: 3/24/2015
Location: House Families, Children and Seniors Committee
Summary: Reduces cap on amount of venture capital voucher certificates.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To HOUSE Committee on FAMILIES, CHILDREN, AND SENIORS.

**S 9** Title: *Parenting Time*
Author: Jones Ri
Introduction: 1/20/2015
Enacted: 6/8/2015
Last Amend: 5/21/2015
Location: Chaptered
Summary: Modifies requirement to file motion for change of custody or parenting time order when parent is called to active military duty.
Status: 01/20/2015 INTRODUCED.
01/20/2015 To SENATE Committee on JUDICIARY.
02/18/2015 From SENATE Committee on JUDICIARY: Recommended as substituted (S-1).
02/18/2015 In SENATE. To second reading.
02/18/2015 In SENATE. Read second time and committee substitute adopted. (S-1) To third reading.
03/25/2015 In SENATE. Read third time and substituted (S-2).
03/26/2015 In SENATE. Read third time. Passed SENATE. *****To HOUSE.
03/26/2015 To HOUSE Committee on JUDICIARY.
04/28/2015 From HOUSE Committee on JUDICIARY: Reported with recommendation with substitute. (H-1)
04/28/2015 In HOUSE. To second reading.
05/21/2015 In HOUSE. Read second time and committee substitute adopted. (H-1) To third reading.
05/26/2015 In HOUSE. Read third time. Passed HOUSE. *****To SENATE for concurrence.
05/27/2015 SENATE concurred in HOUSE amendments.
05/27/2015 Ordered Enrolled.
06/04/2015 *****To GOVERNOR.
06/08/2015 Signed by GOVERNOR.
06/11/2015 Public Act No. 52

**S 24**  
Title: **Homestead Exemption**  
Author: Nofs  
Introduction: 1/21/2015  
Last Amend: 3/18/2015  
Location: House Tax Policy Committee  
Summary: Continues principal residence homestead exemption upon death of a homeowner under certain circumstances.

**S 49**  
Title: **Crimes Against Elder Adults**  
Author: Smith V  
Introduction: 1/28/2015  
Location: Senate Second Reading - Committee Reports  
Summary: Increases penalties for certain crimes against a person over 65 years of age.

**S 50**  
Title: **Elder Abuse**  
Author: Smith V  
Introduction: 1/28/2015  
Location: Senate Second Reading - Committee Reports  
Summary: Provides for sentencing guidelines for elder adult abuse.

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

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

S 227 Title: Same Sex Marriage
Author: Hertel
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Removes prohibition on same-sex marriage from family law.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

S 228 Title: Marriage Licenses
Author: Knezek
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Allows issuance of marriage license to same-sex couple without publicity.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

S 229 Title: Same Sex Marriage
Author: Smith V
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Removes prohibition on same-sex marriage from foreign marriage act.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

S 253 Title: Domestic Relations Mediation
Author: Bieda
**S 254** Title: *Protective Orders*
Author: Bieda
Introduction: 4/14/2015
Location: Senate Judiciary Committee
Summary: Provides for alternate service of papers if party is protected by a protective order.
Status: 04/14/2015 INTRODUCED.
04/14/2015 To SENATE Committee on JUDICIARY.

**S 270** Title: *Probate Court Jurisdiction*
Author: Jones Ri
Introduction: 4/15/2015
Enacted: 1/10/2015
Last Amend: 12/16/2014
Location: House Judiciary Committee
Summary: Clarifies probate court jurisdiction over guardianship and conservatorship proceedings.
Status: 04/15/2015 INTRODUCED.
04/15/2015 To SENATE Committee on JUDICIARY.
04/30/2015 From SENATE Committee on JUDICIARY: Recommended passage.
04/30/2015 In SENATE. To second reading.
05/13/2015 In SENATE. Read second time. To third reading.
05/14/2015 In SENATE. Read third time. Passed SENATE. *****To HOUSE.
05/14/2015 To HOUSE Committee on JUDICIARY.

**SJR I** Title: *Same Sex Marriage*
Author: Warren
Introduction: 3/24/2015
Location: Senate Judiciary Committee
Summary: Repeals constitutional prohibition of same-sex marriage and civil unions; Repeals section 25 of article I of the state constitution of 1963 to allow the recognition of marriage or similar unions of two people.
Status: 03/24/2015 INTRODUCED.
03/24/2015 To SENATE Committee on JUDICIARY.

**SJR J** Title: *Judicial Office Resolution*
Author: Bieda
Introduction: 4/16/2015
Location: Senate Second Reading - Committee Reports
Summary: Removes prohibition on the election of or appointment to a judicial office of a person who has reached 70 years of age.
Status: 04/16/2015 INTRODUCED.
04/16/2015 To SENATE Committee on JUDICIARY.
06/03/2015 From SENATE Committee on JUDICIARY: Recommended passage.
06/03/2015 In SENATE. To second reading.
Michigan Probate and State Planning Journal
State Bar of Michigan
306 Townsend Street
Lansing, Michigan  48933............................................................hereinafter called the "Journal"

--and--

William S. Hein & Co., Inc.
2350 North Forest Road
Getzville, New York  14068............................................................hereinafter called the "Company"

This agreement by and between Michigan Probate and State Planning Journal and William S. Hein & Co., Inc. is as follows:

I.  GRANT OF RIGHTS

A.  The Journal grants the Company the non-exclusive rights to...

   1.  ...reproduce, transmit, and distribute the Journal, in whole or part, on CD, DVD, magnetic, optical, or any other form of electronic media, including electronic transmission to on-line terminals and computer networks for searching, displaying, and printing.

   2.  ...prepare, reproduce, transmit, and distribute bibliographic abstracts and/or citations and abstract of selected articles from the Journal and index selected articles.

B.  The Company shall own the master copies it produces under this agreement.

C.  The rights granted herein shall cover all issues of the Journal including current issues and all future issues.

D.  For the purpose of production and archiving, the Company shall have the right to electronically scan and/or store the electronic images and text of the Journal. The right to distribute such electronic images and text shall be strictly limited to the rights granted by the Journal in Section A.
II. **ROYALTY**

A. When the full-text of the Journal is included in HeinOnline, the Company will pay the Journal a royalty of 15% of all net revenues based on the Journal’s pro-rated share within that library. Pro-rated share is a percentage equal to the percentage of pages in the Journal in relationship to the total number of pages in the library. Net revenues are revenues less taxes and other customer costs directly related to the product.

B. Royalties will be reported and paid annually on the prior calendar year sales when total royalties earned reaches $25.00 or more.

III. **TERM**

A. The initial term of this agreement shall be for five years from the date of this agreement and will automatically renew for successive one-year periods unless either party notifies the other of termination in writing at least 180 days prior to the expiration date.

B. In the event of termination, the Company shall retain the rights set forth herein for the works published by the Company prior to the termination of this agreement. The Company’s royalty obligation herein shall remain in force during the post-termination period.

IV. **OTHER MATTERS**

A. Quality Assurance. All pages will be recorded in their entirety.

B. Copyright Notice. A copyright protection notice will be included in each and all format distributions.

C. If available, the Journal agrees to provide one copy of all back issues for HeinOnline production. Furthermore, the Journal agrees to provide one complimentary subscription (at no cost) so that the Company will have copies of future volumes for HeinOnline production. The subscription should be addressed to: HeinOnline Project, William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, New York 14068. If in electronic form, the subscription should be addressed to hol@wshein.com.

This agreement will be construed in accordance with the laws of New York State and constitutes the full and complete understanding of both parties regarding the subject.

Editor-in-Chief / Authorized Signature

*Michigan Probate and State Planning Journal*

Shane P. Marmion, Vice President, Production Development

*William S. Hein & Co., Inc.*
Probate and Estate Planning Council: Meeting on September 12, 2105

Membership Committee Report

The Membership Committee (MC) had a productive year implementing new initiatives. The following were significant ones that helped promote awareness of the section and its offerings and importantly, grow the section membership:

1. Consistent and ongoing personal connections with new and recently admitted attorneys to educate them on section, mentorship, probate council and benefits.

2. Securing a vendor table at ICLE Probate & EP Institute in Acme and Plymouth. Through the table initiative, conducting a survey on conference attendees on ways to improve the section.

3. Hosting a social event during ICLE Probate & EP Institute in Traverse City to provide a forum for social interaction among new and seasoned attorneys.

Section membership for the 2014 – 2015 year has increased. Below are some relevant statistics:

- Section members 2013-2014 (October through October): 3,481
- Section members 2014-2015 (as of September 1, 2015): 3,728
- **Total increase in section members:** 247

- Section dues are $35 per member. With the 247 new members for the 2014 – 2015 year @$35 per member, there was increased revenue to the Section of **$8,645**.

- While our understanding is that the first year of section membership is free for new admittees to the bar, the State Bar of Michigan recently reported that such an incentive has not been offered since 2014. We’ll need to confirm this policy and if it’s correct, whether we should propose a change.

- Demographic information on Section membership (age, primary practice area, firm size, etc.) will be available from the State Bar of Michigan on October 15, 2015 and will be shared with Council at the November meeting.
The results of the survey conducted at both the Acme and Plymouth Institutes were informative and helpful. **Over 80 attendees completed surveys at both the Acme and Plymouth Institutes.** Attached is an excel spreadsheet summarizing the results from the Acme Institute, which represents a majority of the survey pool. Here are some important takeaways:

1. The highest concentration of attendees who took the survey are working at firms with 10 or less lawyers.

2. Over 90% of attendees who took the survey were already Section members or becoming one.

3. Only 10% of attendees who took the survey were practicing for 5 years or less.

4. Over 50% of attendees who took the survey were practicing for 20 years or more.

5. What members seem to like most about the Section are the resources, continuing education and importantly, the people. There were mostly positive comments about the resources and education being provided with not many critiques.

6. There didn’t seem to be any common item or theme on member dislikes. Many reported no dislikes. However, some of the comments to which the membership committee will attempt to address over the next year are the following:

   a. Creating more awareness and communication on section membership, meetings, resources, probate council and other applicable gatherings.

   b. Working with the online community organizers to find a way to possibly consolidate the probate list serve with the general section list serve.

   c. Opening discussing of the monthly probate council meetings to possible “satellite” locations (perhaps at a law school or sponsoring law firm) where Section members can Skype or Video conference into the meeting at the University Club.
<table>
<thead>
<tr>
<th>Question</th>
<th>Percentage</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What percentage of your practice includes matters pertaining to</td>
<td>100%</td>
<td>Continue listserv and seminars, establish mentor system</td>
</tr>
<tr>
<td>probate, trusts, estate planning, estate administration, guardianships</td>
<td></td>
<td>Listserv and Advocacy</td>
</tr>
<tr>
<td>and conservatorship, and tax planning?</td>
<td></td>
<td>Elder Law</td>
</tr>
<tr>
<td>2. How many attorneys are employed by your employer?</td>
<td>100%</td>
<td>Not as friendly/social as ELDRS</td>
</tr>
<tr>
<td>3. How many years have you been practicing law?</td>
<td>100%</td>
<td>Elder - main area of practice in conjunction with probate, do elder</td>
</tr>
<tr>
<td>4. What can the Probate &amp; Estate Planning Section do to help you with</td>
<td>100%</td>
<td>planning in estate planning</td>
</tr>
<tr>
<td>your practice?</td>
<td></td>
<td>Surveys</td>
</tr>
<tr>
<td>5. What do you dislike most about the Probate &amp; Estate Planning</td>
<td>80%</td>
<td>The people</td>
</tr>
<tr>
<td>Section?</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>6. What do you like most about the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>N/A</td>
</tr>
<tr>
<td>7. What other Section(s) of the State Bar of MI are you a member of?</td>
<td>100%</td>
<td>None</td>
</tr>
<tr>
<td>8. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>Yes</td>
</tr>
<tr>
<td>9. If you are not currently a member of the Probate &amp; Estate Planning</td>
<td>80%</td>
<td>Keep up the good work</td>
</tr>
<tr>
<td>Section:</td>
<td></td>
<td>Public Corporations, Professional climate</td>
</tr>
<tr>
<td>a. Why?</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>10. How many years have you been practicing law?</td>
<td>80%</td>
<td>Reference materials</td>
</tr>
<tr>
<td>11. How many years have you been practicing law?</td>
<td>100%</td>
<td>Nothing</td>
</tr>
<tr>
<td>12. What can the Probate &amp; Estate Planning Section do to help you with</td>
<td>100%</td>
<td>Seminars</td>
</tr>
<tr>
<td>your practice?</td>
<td></td>
<td>Employment &amp; Labor</td>
</tr>
<tr>
<td>13. What do you dislike most about the Probate &amp; Estate Planning</td>
<td>80%</td>
<td>Great resources/programs</td>
</tr>
<tr>
<td>Section?</td>
<td></td>
<td>Elder Law and Disability Rights</td>
</tr>
<tr>
<td>14. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>Yes</td>
</tr>
<tr>
<td>15. If you are not currently a member of the Probate &amp; Estate Planning</td>
<td>80%</td>
<td>Keep up the good work</td>
</tr>
<tr>
<td>Section:</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>a. Why?</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>16. How many years have you been practicing law?</td>
<td>80%</td>
<td>Speakers on advanced estate planning tasks providing practical</td>
</tr>
<tr>
<td>17. How many years have you been practicing law?</td>
<td>100%</td>
<td>expense</td>
</tr>
<tr>
<td>18. What can the Probate &amp; Estate Planning Section do to help you with</td>
<td>100%</td>
<td>This conference</td>
</tr>
<tr>
<td>your practice?</td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>19. What do you dislike most about the Probate &amp; Estate Planning</td>
<td>80%</td>
<td>Yes</td>
</tr>
<tr>
<td>Section?</td>
<td></td>
<td>Real Estate and Elder Law</td>
</tr>
<tr>
<td>20. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>Yes</td>
</tr>
<tr>
<td>21. If you are not currently a member of the Probate &amp; Estate Planning</td>
<td>80%</td>
<td>Continue education</td>
</tr>
<tr>
<td>Section:</td>
<td></td>
<td>Ability to learn and share information</td>
</tr>
<tr>
<td>a. Why?</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>22. How many years have you been practicing law?</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>23. What do you dislike most about the Probate &amp; Estate Planning</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Section?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>25. If you are not currently a member of the Probate &amp; Estate Planning</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>Section:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Why?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26. How many years have you been practicing law?</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>27. What do you dislike most about the Probate &amp; Estate Planning</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Section?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>29. If you are not currently a member of the Probate &amp; Estate Planning</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>Section:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Why?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30. How many years have you been practicing law?</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>31. What do you dislike most about the Probate &amp; Estate Planning</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Section?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>33. If you are not currently a member of the Probate &amp; Estate Planning</td>
<td>80%</td>
<td></td>
</tr>
<tr>
<td>Section:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Why?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>-----</td>
<td>----</td>
</tr>
<tr>
<td>1. What percentage of your practice includes matters pertaining to probate, trusts, estate planning, estate administration, guardianships and conservatorship, and tax planning?</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>2. How many attorneys are employed by your employer?</td>
<td>5-10</td>
<td>20+</td>
</tr>
<tr>
<td>3. How many years have you been practicing law?</td>
<td>2-5</td>
<td>10+</td>
</tr>
<tr>
<td>4. What can the Probate &amp; Estate Planning Section do to help you with your practice?</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>5. What do you dislike most about the Probate &amp; Estate Planning Section?</td>
<td>Can't say there's anything</td>
<td>None</td>
</tr>
<tr>
<td>6. What do you like most about the Probate &amp; Estate Planning Section?</td>
<td>Its monitoring of proposed legislation, support of annual institute, legislative initiatives</td>
<td>None</td>
</tr>
<tr>
<td>7. What other section(s) of the State Bar of MI are you a member of? Why are you a member of these sections?</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>8. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>9. If you are not currently a member of the Probate &amp; Estate Planning Section: Why?</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>10. Have you previously been a member, why did you end membership and when?</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>1. What percentage of your practice includes matters pertaining to probate, trusts, estate planning, estate administration, guardianships and conservatorship, and tax planning?</td>
<td>2. How many attorneys are employed by your employer?</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>60%</td>
<td>5-2</td>
<td>0-2</td>
</tr>
<tr>
<td>50%</td>
<td>1-2</td>
<td>10-20</td>
</tr>
<tr>
<td>10%</td>
<td>1-2</td>
<td>20+</td>
</tr>
<tr>
<td>40%</td>
<td>1-2</td>
<td>20+</td>
</tr>
<tr>
<td>80%</td>
<td>1-2</td>
<td>2-5</td>
</tr>
<tr>
<td>80%</td>
<td>5-10</td>
<td>10-20</td>
</tr>
<tr>
<td>100%</td>
<td>1-2</td>
<td>20+</td>
</tr>
<tr>
<td>40%</td>
<td>5-10</td>
<td>20+</td>
</tr>
<tr>
<td>75%</td>
<td>2-2</td>
<td>10-20</td>
</tr>
<tr>
<td>100%</td>
<td>5-10</td>
<td>5-10</td>
</tr>
<tr>
<td>35%</td>
<td>1-2</td>
<td>20+</td>
</tr>
<tr>
<td>80%</td>
<td>5-10</td>
<td>5-10</td>
</tr>
<tr>
<td>50%</td>
<td>5-10</td>
<td>2-5</td>
</tr>
<tr>
<td>80%</td>
<td>1-2</td>
<td>5-10</td>
</tr>
</tbody>
</table>
## Survey Results
### 55th Annual Probate and Estate Planning Institute (ACME)

<table>
<thead>
<tr>
<th>Question</th>
<th>Percentage of Respondents</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What percentage of your practice includes matters pertaining to probate, trusts, estate planning, estate administration, guardianships and conservatorship, and tax planning?</td>
<td>100%</td>
<td>1-2</td>
</tr>
<tr>
<td>2. How many attorneys are employed by your employer?</td>
<td>100%</td>
<td>1-10</td>
</tr>
<tr>
<td>3. How many years have you been practicing law?</td>
<td>100%</td>
<td>0-10</td>
</tr>
<tr>
<td>4. What can the Probate &amp; Estate Planning Section do to help you with your practice?</td>
<td>75%</td>
<td>0-2</td>
</tr>
<tr>
<td>5. What do you dislike most about the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>1-20</td>
</tr>
<tr>
<td>6. What do you like most about the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>0-10</td>
</tr>
<tr>
<td>7. What other Section(s) of the State Bar of MI are you a member of? Why are you a member of these Sections?</td>
<td>100%</td>
<td>0-10</td>
</tr>
<tr>
<td>8. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>0-10</td>
</tr>
<tr>
<td>9. If you are not currently a member of the Probate &amp; Estate Planning Section: Why?</td>
<td>100%</td>
<td>0-10</td>
</tr>
<tr>
<td>10. Have you previously been a member, why did you end membership and when?</td>
<td>100%</td>
<td>0-10</td>
</tr>
</tbody>
</table>

### Specifics
- **Percentage of Respondents**: Represents the proportion of respondents who selected each option.
- **Description**: Details related to the specific feedback or preferences expressed by the respondents.

*Note: The table contains responses to various questions related to the role and benefits of the Probate & Estate Planning Section, as well as reasons for membership and previous membership.*
<table>
<thead>
<tr>
<th>Question</th>
<th>Percentage</th>
<th>Group</th>
<th>Number of Years</th>
<th>Action/Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What percentage of your practice includes matters pertaining to probate, trusts, estate planning, estate administration, guardianships and conservatorship, and tax planning?</td>
<td>100%</td>
<td>2-2</td>
<td>10-20</td>
<td>Nothing</td>
</tr>
<tr>
<td>2. How many attorneys are employed by your employer?</td>
<td>90%</td>
<td>10-20</td>
<td>20+</td>
<td>Continue to provide quality CLE</td>
</tr>
<tr>
<td>3. How many years have you been practicing law?</td>
<td>85%</td>
<td>10-50</td>
<td>10-20</td>
<td>Publicize section/council meetings more</td>
</tr>
<tr>
<td>4. What can the Probate &amp; Estate Planning Section do to help you with your practice?</td>
<td>70%</td>
<td>1-2</td>
<td>20+</td>
<td>Help me understand what resources are offered. I am on one of the probate and estate planning listservs that I receive via email</td>
</tr>
<tr>
<td>5. What do you dislike most about the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>2-2</td>
<td>10-20</td>
<td>Consistency - I like knowing when and where meetings take place each year. Also, you provide a lot of very useful practical information to members</td>
</tr>
<tr>
<td>6. What do you like most about the Probate &amp; Estate Planning Section?</td>
<td>85%</td>
<td>50+</td>
<td>5-10</td>
<td>Legislative updates, educational opportunities, networking opportunities</td>
</tr>
<tr>
<td>7. What other Section(s) of the State Bar of MI are you a member of?</td>
<td>100%</td>
<td>10-50</td>
<td>10-20</td>
<td>Keep making bar journal</td>
</tr>
<tr>
<td>8. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td>100%</td>
<td>1-2</td>
<td>10-20</td>
<td>Nothing - help create inexpensive resources. I do a lot of pro bono work. Insurance is costly too.</td>
</tr>
<tr>
<td>9. If you are not currently a member of the Probate &amp; Estate Planning Section:</td>
<td>85%</td>
<td>50+</td>
<td>10-20</td>
<td>Inform of changes or potential changes in state law that affects this practice area</td>
</tr>
<tr>
<td>10. Have you previously been a member, why did you end membership and when?</td>
<td>75%</td>
<td>1-2</td>
<td>20+</td>
<td>Inform of changes or potential changes in state law that affects this practice area</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>50+</td>
<td>10-20</td>
<td>Inform of changes or potential changes in state law that affects this practice area</td>
</tr>
<tr>
<td></td>
<td>85%</td>
<td>10-20</td>
<td>5-10</td>
<td>Keep up with the listserv, form guidance, resources</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Good community - Business Law (maybe; and Real Estate (maybe)</td>
</tr>
<tr>
<td>Question</td>
<td>Percentage</td>
<td>Number of Responses</td>
<td>Details</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------------</td>
<td>---------------------</td>
<td>------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>1. What percentage of your practice includes matters pertaining to probate, trusts, estate planning, administration, guardianships and conservatorship, and tax planning?</td>
<td>10%</td>
<td>2-10+</td>
<td>Continue these programs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>95%</td>
<td>2-10+</td>
<td>Provide information on proposed legislation, new legislation, practice efficiencies</td>
<td></td>
</tr>
<tr>
<td></td>
<td>80%</td>
<td>5-20</td>
<td>Have ICLE estate planning templates available on HotDocs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>80%</td>
<td>5-20</td>
<td>More topical webinars</td>
<td></td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>1-2</td>
<td>Nothing</td>
<td></td>
</tr>
<tr>
<td>2. How many attorneys are employed by your employer?</td>
<td>5-10</td>
<td>2-5</td>
<td>Continue providing great information for the practice - continue working on legislation and other matters pertinent to our practice</td>
<td></td>
</tr>
<tr>
<td></td>
<td>35%</td>
<td>10-20</td>
<td>Keep up the current work with seminars and literature</td>
<td></td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>10-20</td>
<td>The sections attention to court rules and legislation is an excellent way</td>
<td></td>
</tr>
<tr>
<td></td>
<td>70%</td>
<td>5-10</td>
<td>Keep up what you do now</td>
<td></td>
</tr>
<tr>
<td>3. How many years have you been practicing law?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. What can the Probate &amp; Estate Planning Section do to help you with your practice?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. What do you dislike most about the Probate &amp; Estate Planning Section?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. What do you like most about the Probate &amp; Estate Planning Section?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. What other Section(s) of the State Bar of MI are you a member of?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Are you currently a member of the Probate &amp; Estate Planning Section?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. If you are not currently a member of the Probate &amp; Estate Planning Section:</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Have you previously been a member, why did you end membership and when?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Attachment 7
Secretary's Note: After submission of the Tax Nugget, below, the Internal Revenue Service released Notice 2015-57, which delays the due date for filing that statement until February 29, 2016, giving the Treasury Department and the IRS time to prepare the necessary guidance implementing the new reporting requirements. [http://www.irs.gov/pub/irs-drop/n-15-57.pdf](http://www.irs.gov/pub/irs-drop/n-15-57.pdf)

TAX NUGGET

September 2015

What Happened When You Were On Summer Break

Effective July 31, 2015, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, P.L. 114-41 contains new requirements that affect tax reporting requirements and impose new information return requirements. Key provisions include:

- Income tax basis used to compute gain or loss on sale or exchange of property must be consistent with values reported for estate tax purposes, but only for property that increases estate tax, net of allowable credits (effective immediately);

- New required income tax basis information reporting by estates required to file estate tax returns (effective immediately);

- Changes to tax return due dates and automatic extensions of time to file for partnership, C corporation and S corporation income tax returns;

- Treasury mandated to make regulatory adjustments to maximum extension of certain return due dates for Forms 1065, 1041, 5500, 5227, 990, 6069, 8870, 3520-A, 3520, Fin Cen report 114;

- Clarification that overstatement of income tax basis can trigger the income tax’s six-year statute of limitations. Act § 2005 clarifies that an overstatement of basis can trigger the 6-year income tax statute of limitations on assessment and collections that applies when gross income is understated by more than 25 percent. The Act accomplishes this by providing that, overstatement of basis is treated the same as understatement of gross income. This change overturns the Supreme Court’s holding in United States v. Home Concrete & Supply LLC, 132 S. Ct. 1836 (2012).

Income tax basis consistency with estate tax value under new IRC § 1014(f)

Effective for property with respect to which an estate tax return is filed after July 31, 2015, Internal Revenue Code § 1014 has been amended to add new § 1014(f). The new provisions require that income tax basis of property reported for income tax purposes must not exceed the value of property determined and reported in a decedent’s estate tax return, but the rule doesn’t apply to all taxable estates. The date of the decedent’s death doesn’t affect the effective date – property reported on any estate tax return filed after July 31, 2015 is potentially subject to Code § 1014(f). That includes returns timely filed by the original due date and the extended due date, as well as late-filed returns.

The basis consistency rule only applies to property that increases estate tax liability, net of credits against the tax. It could be questioned which properties reported in an estate tax return specifically increase estate tax liability, but it could also be said that all properties contribute pro rata to all estate tax liability – an approach that harmonizes with general tax apportionment principles.
Property that qualified for a marital deduction in the estate tax return of the first spouse to die and that is includible in the taxable estate of a surviving spouse will increase estate tax in the surviving spouse’s estate, if that estate generates an estate tax. Thus, marital deduction property can be subject to basis consistency requirements after the surviving spouse dies.

Property that qualifies for an estate tax deduction can’t be said to increase the estate tax liability of an estate. Examples include property for which the marital deduction or the charitable deduction is claimed. Because such property doesn’t increase estate tax, the new consistency requirement arguably won’t apply.

Because estate tax returns are required and basis consistency rules apply only if there’s an estate tax to pay, the basis consistency rule appears not to apply to returns filed in order to elect portability of a deceased spouse’s unused exclusion amount. One consequence of not being subject to basis consistency is that relaxed DSUE reporting rules lifting the requirement to report certain property values under Treas. Regs. § 20.2010-2(a)(7)(ii) aren’t likely to be negated in practice by basis consistency requirements.

Estate tax returns that reduce the estate tax to zero by reason of a marital deduction and/or a charitable deduction also fall outside the consistency requirements.

§ 1014(f)(3) provides that the value of property is “determined” if shown on an estate tax return and that value has not been contested by the Secretary before the statute of limitations on assessment and collections expires. In the absence of an estate tax return, the Secretary may determine the value and, if not contested, that value is treated as “determined.”

Information Reporting of Estate Tax Value

Basis consistency introduces new reporting requirements for the executor of an estate under new Code § 6035, Basis Information To Persons Acquiring Property From Decedent.

Reporting is due on the date when the Secretary provides. But that date must be no later than 30 days after the date when estate tax return is required to be filed or, if earlier, 30 days after the date when the return is actually filed. Apparently, if no return is timely filed, information reporting is nevertheless required to be filed no later than 30 days after the date when estate tax return would have been required to be filed.

Each report must furnish to the Secretary and to each person who holds a beneficial interest in property subject to reporting the property’s description as reported in the estate tax return, its value reported in the estate tax return, and such other information as the Secretary may prescribe. Although reporting will soon be due for some estates, the IRS has, so far, had no chance to issue forms and instructions to do so.

The Code § 6018 information reporting requirement isn’t the same as the § 1014(f) consistency requirement. For example, the estate of a decedent that meets the filing requirement may have no tax due because the estate tax marital deduction reduces the estate tax to zero. § 6018 information reporting is required, but there’s no § 1014(f) consistency requirement.

Those holding a beneficial interest in property includible in the decedent’s gross estate may be required to file basis information reporting when an estate tax return must be filed under Code § 6018(b). That estate tax filing requirement is imposed when two conditions are met. First, the executor must be unable to make a complete return as to any part of the gross estate of the decedent. In such a case, the executor is required, under § 6018(b), to provide information to the Secretary that includes a description of the part of the gross estate the executor is unable to report, as well as the name of every person holding a legal or beneficial interest therein. Second, the Secretary must notify each such person about the requirement
that each such person is required to file an estate tax return as to the part of the gross estate the executor was unable to report.

**Judicial Doctrine of Duty of Consistency Could Still Apply** While the new statutory rules force consistency only in specified circumstances discussed above, the judicial doctrine of duty of consistency will continue to have vitality. For example, in *Janis v. Commissioner*, No. 04-4443-ag, 469 F.3d 256, 2nd Cir. (2006), aff’g T.C. Memo. 2004-117 (2004) an estate’s beneficiaries sold inherited artwork. In reporting the taxable gains for income taxes, those beneficiaries sought to deduct the value of the artwork as reported on a decedent’s estate tax return, but without giving regard to fractional interest discounts that reduce the value of the artwork for estate tax purposes. Affirming the Tax Court, the Court of Appeals held that income tax basis must reflect those valuation discounts.

**Expansion of Penalty Provisions** The Code § 6724(d)(1) list of information returns subject to penalty for failure to file such a return has been expanded to include the new income tax basis information returns required under § 6035.

Code § 6662, imposing an accuracy-related penalty on underpayments, has been expanded to impose that penalty on “any inconsistent estate basis”. That item is now included in the § 6662(b) list of items subject to penalty, at new paragraph 8. Under new § 6662(k), inconsistent estate basis exists “if the basis of property claimed on a return exceeds the basis as determined under section 1014(f).”

Both of the new penalties apply to property with respect to which an estate tax return is filed after July 31, 2015.

Valuations for taxable estates now have the potential to incur either estate tax penalties for understating values or the new income tax accuracy penalties for overstating values. The latter penalty could apply to the estate, or to a beneficiary who receives property from an estate. For estates with no estate taxes due, including returns filed to elect portability of the deceased spouse’s unused exclusion amount, the new basis consistency rule and its related accuracy related penalty for overstating values don’t apply (because there has to be a tax payable for the consistency rules to apply). That a penalty can apply for both undervaluation and overvaluation heightens the need to obtain a defensible appraisal when estate taxes will be incurred.

*Credit to Steve Leimbergs Estate Planning Newsletter- Summary of :
Mike Jones & DeeAnn Thompson: How Tax Practice Is Affected by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*
I Want to Hear from the I.R.S. How About You?

Have you heard that you will be hearing less from the IRS, especially if you prepare and file estate tax returns, Form 706? Recently IRS announced that it is no longer, as a matter of course, issuing closing letters for estate tax returns filed after June 1, 2015. You will get one at the conclusion of an audit but you will not automatically hear if a return is accepted as filed. You can request a closing letter, but not with the return or for four months after filing. We are told that information about closing letter requests can be obtained from the IRS Service Center in Cincinnati at (866) 699-4083. However, the information does not say that a telephone call will result in a closing letter being issued.

Since the Closing Letter was routinely requested by Probate Courts, necessary for property transfers from an estate and as a green light for distribution of an estate’s property, questions may arise about when the decedent’s property can be distributed and about potential liability of the personal representative/executor during the three year statutory period. At this time, one can still file Form 5495, Request for Discharge from Personal Liability under Internal Revenue Code section 2204 or 6905. It must be filed separately from the return. This reduces the time for notifying the Executor of the amount of the tax to 9 months from the date the written request for discharge of personal liability was received. Of course, even if the executor is discharged from liability, the IRS can still assess tax deficiencies against the executor if he or she has any of the decedent’s property. In addition, debts due to the IRS must be paid first if the executor knew or should have had notice or failed to exercise due care in determining if such obligations existed before distribution of the estate’s assets.
Form 4810, Request for Prompt Assessment under Internal Revenue Code section 6501(d) can be used to request prompt assessment of tax, such as for the decedent’s final 1040. It cannot be used for federal estate taxes. Form 4810 must be filed separately from any other document and tax should then be assessed within 18 months of the written request. If the decedent failed to report substantial amounts of gross income (more than 25% of the gross income reported) or filed a false or fraudulent return, Form 4810 will not work to shorten the assessment period. However, it may relieve the executor of personal liability if he did not have knowledge of the unpaid tax.

Use of Forms 4810 and 5495 can help reduce the liability of Personal Representatives/Executors but they do not help with the problem of distribution of estate assets before the federal estate tax has been determined.

At a recent American College of Trust and Estate Counsel (ACTEC) meeting, a Treasury representative suggested that one could, if it was needed at all, request a transcript by completing Form 4506T. This form is not designed for obtaining a Form 706 transcript but for income tax. An estate tax return is much more complex than an income tax return, and has more opportunity for challenges and surprises, making a closing letter more important. We normally do not have heirs waiting for a release on a 1040 for distribution, for example, and audit potential on a 706 is much greater than a 1040. We find the form 4506T a totally unacceptable alternative, since one does not know when the Service will complete their review of the 706 and does not know when to request such a transcript. It may have to be done multiple times. Our experience in requesting transcripts by mail which are promised in ten working days is a lack of response even after months. Calling the IRS to request a transcript is a multi-hour project, which results in our calls being lost half the time. As a result, we suggest a
form and a practice of requesting a closing letter four months after submission of an estate tax return. Requests should be carefully documented and sent by registered mail, return receipt requested. Given the demands on the diminished staff at the Service Center, it is difficult to predict how long the response to closing letters will take. While the IRS will save some printing and mailing costs, requesting a closing letter puts the responsibility on the practitioner. Don’t be waiting for the closing letter that will not come!

Practitioners have raised the question whether a closing letter request will force a review of the return, perhaps triggering an audit that might not otherwise happen. Prior practice had IRS doing an initial review to distinguish between returns with audit potential and those that should be accepted as filed. If audits regularly occur following the request for the closing letter, one might choose to wait patiently or call the Service Center for updates.