Probate and Estate Planning Section

Agenda

Saturday, September 8, 2012
8:30 a.m.

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

NOTICE OF MEETINGS

ANNUAL MEETING OF THE MEMBERS OF THE PROBATE AND ESTATE PLANNING SECTION,
MEETING OF THE COUNCIL OF THE SECTION,
AND MEETING OF THE SECTION’S COMMITTEE ON SPECIAL PROJECTS

SEPTEMBER 8, 2012

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

The above stated meetings of the Section will be held at the University Club of Michigan State University, on Saturday, September 8, 2012, at the above address. The Section’s Committee on Special Projects meeting will begin at 8:30 a.m., followed at 10:15 a.m. by the Annual Meeting of the Members of the Section, to be followed immediately thereafter by a meeting of the Council of the Section.

Amy Morrissey
Secretary

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

Schedule and Location of Future Meetings
All at University Club, Lansing, MI, except October meeting
Meetings Begin at 9:00 a.m. unless otherwise noted on Meeting Notice

The following is a list of 2012-2013 meeting dates

September 8, 2012
(Annual Meeting Precedes Council Meeting)

October 27, 2012 -
Haworth Inn & Conference Center, Holland, Michigan

November 17, 2012
December 15, 2012
January 19, 2013
February 16, 2013
March 16, 2013
April 13, 2013
June 8, 2013
September 21, 2013
ANNUAL MEETING OF THE MEMBERS
OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE
STATE BAR OF MICHIGAN

September 8, 2012
Lansing, Michigan

Agenda

I. Call to Order

II. Approval of Minutes of September 17, 2011 Annual Meeting of the Section

III. Chairperson’s Report – George Gregory

IV. Treasurer Report – Shaheen Imami

V. Elections of Council Members and Officers

VI. Other Business

VII. Adjournment

Respectfully submitted

Amy N. Morrissey
Secretary
I. Call to Order

II. Excused Absences

III. Introduction of Guests

IV. Minutes of June 9, 2012 Meeting of the Council

V. Treasurer Report – Shaheen Imami

VI. Chairperson’s Report – George Gregory
   A) Inventory Attorney

VII. Standing Committee Reports
   A) Budget – Shaheen Imami
   B) Bylaws – Rebecca Schnelz
   C) Long Range Planning – Mark Harder
   D) Nominations – Nancy Little
   E) Annual Meeting – Mark Harder
   F) Awards – Doug Mielock
   G) Committee on Special Projects – Jim Steward/Marlaine Teahan
   H) Legislation – Marlaine Teahan
      1) Senate Bills 1215-1218
   I) Amicus Curiae – Ellen Sugrue-Hyman
J) Probate Institute – Tom Sweeney

K) State Bar Journal – Amy Morrissey

L) Pamphlets – Ellen Sugrue-Hyman

M) Section Journal – Nancy Little

N) ListServ/Electronic Communication/Technology – Josh Ard

   1) Inappropriate discussion on listserv – moderator role and suggestions on monitoring listserv content

O) Ethics – David Kerr

P) Unauthorized Practice and Multidisciplinary Practice – Bob Taylor

Q) Court Rules, Procedures and Forms – Marlaine Teahan

VIII. Ad Hoc Committees

   A) Updating Michigan Estate/Trust Law – Rob Tiplady

   B) Insurance – Tom Sweeney

   C) TBE property and Trusts – Mark Kellogg

   D) Transfer on Death Deed – Josh Ard

   E) Online Guidance for Non-Lawyers – Rebecca Schnelz

   F) Decanting – Jim Spica

   G) Power of Attorney – Meg Lentz

   H) Statute of Repose – Doug Mielock

   I) Transfer Tax – Lorraine New

   J) Guardianships, Conservatorships and End of Life – Connie Brigm

   K) Specialization and Certification – Jim Steward

   L) ICLE Community – Amy Morrissey

   M) Fiduciary Exception to Attorney-Client Privilege – George Bearup

IX. Specialty Areas and Liaisons

   A) Charitable Giving/Exempt Organizations – Robin Ferriby
B) ICLE – Jeanne Murphy and Lynn Chard
   1) Report on Section Community
C) Probate Registers – Rebecca Schnelz
D) Elder Law/Liaison to Elder Law Section – Amy Tripp
E) Business Law/Liaison to Business Law Section – John Dresser
F) Liaison with Michigan Bankers Association – Susan Allan
G) Family Law/Liaison to Family Law Section – Pat Ouellette
I) Tax Section Liaison – Fred Hoops III
J) Liaison to State Bar – Edward Haroutunian
K) Law School Liaison – Josh Ard
L) Liaison to SCAO Forms Committee – Marlaine Teahan
M) Alternate Dispute Resolution Section Liaison – Sharri L. Rolland-Phillips
N) Solutions on Self-help – Rebecca Schnelz and Kathleen Goetsch

X. Other Business

XI. Hot Topics

XII. Adjournment

Respectfully submitted

Amy N. Morrissey
Secretary
MINUTES OF THE ANNUAL MEETING
OF THE PROBATE AND ESTATE PLANNING SECTION

September 17, 2011

University Club, East Lansing, Michigan

1. The meeting was called to order by Chairperson, Doug Chalgian, at 10:30 a.m.

2. The members of the Section present are listed on the attached list.

3. The minutes of the annual meeting of September 11, 2010, upon a motion duly made by Shaheen Imami, and seconded by Meg Lentz, were approved.

4. The only other scheduled order of business was the election of officers and new members of the Council of the Section. Nominees had been reported at the June 2011 meeting of the Council.

Nancy Little, Chair of the nominating committee, then recommended the following nominees for appointment to the Council and for election as officers for the upcoming year, beginning after the September 2011 meeting and ending after the conclusion of the September 2012 meeting.

Chairperson: George W. Gregory
Chairperson Elect: Mark Harder
Vice Chairperson: Thomas F. Sweeney
Secretary: Amy Morrissey
Treasurer: Shaheen Imami

Nominees for a second three year term as members of the Council, commencing at the conclusion of this meeting and ending at the 2012 Annual Meeting of the Section were:

Hon. David M. Murkowski
J. David Kerr
Robert M. Taylor

Nominees for a first three year term as members of the Council, commencing at the conclusion of this meeting and ending at the 2012 Annual Meeting of the Section were:

Christopher A. Ballard
George F. Bearup
Nancy A. Welber
Following presentation of the nominees by the Chair of the nominating committee, the Chair called for a vote. The above nominees were appointed or elected with the consent of all of the members of the Section present.

5. The Chair asked whether there was any other business a section member wished to bring to the meeting. Rick Siriani moved that the Section guidelines used by the Nominating Committee each Spring be included in this October’s packet and that in the future, beginning for the council year 2011-12, that the guidelines be published in the Winter issue of the Section Journal. He stated that the purpose was to publicize the Section members that they may make known to the Nominating Committee their interest in being elected or appointed to Council positions before the committee meets. Doug Chalgian seconded the motion. The Chair then called for a vote and the motion was approved by all members of the Section present.

6. There being no further business to come before the Section, the meeting was adjourned at 10:45 a.m.

Respectfully submitted,

Thomas F. Sweeney
Secretary
JOINT MEETING OF THE MEMBERS
AND
THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE
STATE BAR OF MICHIGAN

September 17, 2011
University Club
Lansing, Michigan

Annual Meeting of Section

Section Members in Attendance

Douglas G. Chalgian
George W. Gregory
Mark K. Harder
Amy N. Morrissey
Thomas F. Sweeney
Susan M. Allan
W. Josh Ard
Constance L. Brigman
Ellen Sugrue Hyman
Shaheen I. Imami
Marguerite M. Lentz
Hon. David M. Murkowski
Hon. Marlene O'Brien
Patricia M. Ouellette
Rebecca A. Schmelz
Richard J. Siriani
James P. Spica
James B. Steward
Robert P. Tiplady II
John E. Bos
Hon. Phillip E. Harter
Michael S. McClory
Harold G. Schuitmaker
Susan S. Westerman
Chris Ballard
Melissa Mysliwiec
Kathleen Goetsch
Fred Hoops
Jill Goodell
Sharri L. Rolland Phillips
Karl Barr
Nancy Welber
Steve L. Jones
Keven Ducomb
Brittany D.W. Catterick
Lorraine Na
Tom McKenney
Rick Mills
Dan Cogan
Geoffrey Vernon
Jeanne Murphy
Lynn Chard
Michael Lichterman
Nancy L. Little
Katie Lynwood
Tess Sullivan
Mark Lang
COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF THE
STATE BAR OF MICHIGAN

June 9, 2012
University Club
Lansing, Michigan

Minutes

1. Call to Order

The Chair of the Section, George Gregory called the meeting to order at 10:20 a.m.

2. Attendance

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

George Gregory, Chair Meg Lentz
Amy Morrissey, Secretary Hon. Darlene O’Brien
Shaheen Imami, Treasurer Pat Ouellette
Josh Ard Rebecca Schnelz
Chris Ballard Robert Taylor
George Bearup Marlaine Teahan

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

Mark Harder Hon. David Murkowski
Tom Sweeney Jim Spica
Susan Allan Jim Steward
Connie Brigman Ellen Sugrue-Hyman
David Kerr Rob Tiplady
Nancy Welber

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

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

Doug Chalgian Nancy Little
Phil Harter Mike McClory
E. Others in Attendance:

Rebecca Bechler
W. Jerry Byrd
Lynn Chard
Rhonda M. Clark-Kreuer
Keven DuComb
Kathleen Goetsch
Jill Goodell
Carol Hogan
Steve Jones
Mark E. Kellogg
Michael Lebenbom
Michael Lichterman
David P. Lucas
Rick Mills
Jeanne Murphy
Lorraine New
Neal Nusholtz
Shari L. Rolland Phillips
David Skidmore
Serene Zeni

3. Internal Governance

A. Minutes of April 14, 2012 Meeting of the Council

Minutes of the April 14, 2012, meeting of the Council had been previously distributed for the meeting. Upon motion by Meg Lentz with support from Shaheen Imami, the minutes were approved.

B. Treasurer Report

Shaheen Imami discussed the financial reports for March 31, 2012 and April 30, 2012, previously distributed with the Agenda for the meeting (Attachment 1 to the meeting materials). Mr. Imami indicated that the fund balance as of April 30, 2012, was approximately $245,902. Upon motion by Pat Ouellette, with support from Marlaine Teahan, the Treasurer’s Report was accepted.

C. Chairperson’s Report

George Gregory reported that Gail Anderson will serve as our Section’s liaison to the Real Property Law Section.

Mr. Gregory thanked Kathleen Goetsch for attending the 3rd Annual Justice Initiatives Summit – Solutions on Self Help and submitting a report.

Mr. Gregory reported that House Bills 5154 (Uniform Principal and Income Act) and 5237 (estate tax) both came out of Senate finance committee.

D. Standing Committee Reports

1. Budget

Shaheen Imami reported that the Section budget had been updated to reflect Council approval of leadership conference approved at a prior Council meeting.
2. Nominations

A Report of the Nominations Committee including a slate of Council Members and Officers for the 2012-13 fiscal year was submitted by the Nominations Committee and distributed prior to the meeting and is incorporated by reference (Attachment 2 to the meeting materials). Upon motion by Marguerite Lentz with support from Shaheen Imami, the report of the Nominations Committee was accepted and the slate approved by Council. There were no nominations from the floor.

3. Committee on Special Projects

Pat Ouellette reviewed the Specialization Committee’s work (see Attachment 3 of the meeting materials). Marlaine Teahan reported that CSP will continue review of the Specialization Committee’s work in September.

Lynn Chard provided some background on specialization; some states are governed by their state bar association and others by the state supreme court. Our Section committee has suggested that our Supreme Court govern this because they have the ability to enforce the rules. There are rules that govern the certification overall, then separate rules for implementation and details. The certification boards consist of members of the legal profession only.

CSP discussed the fiduciary exception to the attorney-client privilege and case law finding that discovery was permitted for communications with trustee during the course of administration but once the breach of fiduciary issue arises, the communications between the attorney and the client/fiduciary was privileged. Mr. Gregory appointed an ad hoc committee to review the statutes and court rules of Michigan and other states and make a recommendation to the Council as to whether Michigan should have legislation or a change in court rule in this area. Committee Members are as follows: George Bearup (Chair), David Skidmore, Kal Goren, Shaheen Imami, Serene Zeni, and Mike McClory.

Website issues were also discussed by CSP.

4. Legislation

George Bearup reported on the status of legislation in other states on tenancies by the entireties and creditor protection for real property held in trusts. Mr. Gregory appointed the following members to form an ad hoc committee to research and make recommendation: Mark Kellogg (Chair), David Lucas, Rick Mills, Mike Lichterman, Gail Anderson and Rhonda Clark.

Josh Ard reported that the repository for advance care directives was enacted, i.e., the Peace of Mind Registry; the registry is run by private registry company that advocates organ donation. Doctors and hospitals are immune from liability if they rely on the Registry.
5. Probate Institute

There are approximately 300 people registered for Plymouth and a very large attendance in Acme. For future Institutes, ICLE is considering audio taping some of the sessions, constructing some advanced and basic sessions during off time, and introducing more interactive sessions and mentoring opportunities; perhaps a panel of probate judges.

6. Section Journal

Nancy Little reported that an upcoming Journal issue will have article on estate planning and employee benefits.

7. Listserve

Section members are now receiving a message to join the Section listserve when they join the Section.

8. Ethics

There is an Opinion on virtual offices coming out soon, but it is very fact specific. The SBM is looking at the ownership by attorneys of subsidiaries operating functions of law office, which, if performed by a non-lawyer would not be the unauthorized practice of law; also exploring law firms offering tax services.

9. Unauthorized Practice of Law (UPL)

The UPL committee will look into the new Peace of Mind Registry and the creation of forms. Bob Taylor reported that on August 1, the SBM UPL Committee, in conjunction with our Section and the Elder Law and Disability Rights Section, and with the help of attorney volunteers, will put on informational seminars for senior citizens in various geographic locations in Michigan, on estate planning decisions and the perils of trust mills. Speak with Mr. Taylor if you would like to participate. David Kerr volunteered.

10. Court Rules/Forms

Marlaine Teahan reported that on May 24, 2012, changes to MCR 1.109 approving the use of electronic signatures and notarization became effective immediately pursuant to Supreme Court Order 2006-47,

Ms. Teahan also reported that the Supreme Court granted an extension of time until September for our Section and others to submit a brief concerning the Court’s Constitutional power to make the proposed rule change in MCR 5.801. The Appellate Practice Section and the MPJA also concur with the rule change. There are some who believe that a legislative change, rather than a court rule
change, is needed. It was considered that the Section communicate with the Michigan Legislature about revising the Revised Judicature Act, specifically Sections 861 and 863.

E. **Ad Hoc Committees**

1. **Updating Michigan Estate/Trust Law**

   Michael Lichterman reported that the Committee is on track to present a proposal in October.

2. **Online Guidance for Non-Lawyers**

   Kathleen Goetsch reported on the 3rd Annual Justice Initiatives Summit – Solutions on Self Help; her report was distributed prior to the meeting *(Attachment 7 to the meeting materials)*. The project has an interest in domestic, consumer and landlord tenant matters; helping pro per clients. There are plans to publicly launch the self-help website soon.

3. **Power of Attorney**

   Marguerite Lentz reported that SB 92 is now law - PA 451.

4. **Transfer Tax**

   Lorraine New reported that there are fewer IRS attorneys handling estate tax audits – one attorney for Michigan – Kathleen Heffner.

5. **Guardianships, Conservatorships and End of Life**

   Michael Lebenbom reported on the guardians and DNR bills currently under review as circulated prior to the meeting *(Attachment 10 to meeting materials)*. He noted that DNRPA does not current apply in nursing facilities. The legislation seeks to amend a section of EPIC and the DNRPA; specifically, the amendment to MCL 5314 would permit a guardian to sign a DNR with certain requirements to the extent ordered by the court. Regarding DNRPA, considerable changes are proposed to the form previously presented, but mostly clean-up of typos. There are notable changes concern actual notice and the need to track the forms. The Committee attempted to mesh DNRPA and EPIC changes to allow guardians to sign DNR in facility setting.

   Nancy Little moved to support changes to DNRPA and guardians bills as drafted by the Committee and circulated prior to the meeting (attached to the minutes) and with authority in the Committee to make non-substantive changes. Josh Ard supported the motion. A hand vote of Council members present was taken: 12 in support; 0 opposed; 0 abstaining; 11 absent from vote.
Rhonda Clark reported that a final Committee draft of the family consent legislation should be ready in September. The topic of medical facility waivers was the only topic remaining for discussion.

F. Specialty Areas and Liaisons

1. ICLE

Web resources for Section members are available now. ICLE will run usage reports by end of July.

There are some items to be completed on the website. EPIC Q&A will be linked to the sourcebook; projected for Fall of 2013. All probate sourcebook owners will have access to EPIC Q&A. In the statutes, attorneys will be able to link to EPIC Q&A that relate to a particular statute.

Next phase of the Section website is to think about online “community” and interactivity. (eg. Web 2.0; social media.). Currently doing some of this for ICLE partners; categorizing posts by those with most frequently hits. The ICLE Community will be another area of website with discussions, blogs, etc. The Section needs to be mindful of social networking policies of SBM. Mr. Gregory appointed the following to an ad hoc committee to explore the ICLE Community and issues of using ICLE blogs versus the listserve: Amy Morrissey (Chair), Nancy Little, Marlaine Teahan, Shaheen Imami, Serene Zeni.

G. Adjournment

There being no other business brought before the Council, Marguerite Lentz moved to adjourn; George Bearup supported. The meeting was adjourned at 11:59 a.m.

Respectfully submitted,

Amy Morrissey
Secretary
May 25, 2012

George Gregory  
Chairperson  
Probate and Estate Planning Council  
2855 Coolidge Hwy Ste 103  
Troy, MI  48084

Re: Nominating Committee Report for the Council Year 2011-2012

Dear George:

I write this letter on behalf of Douglas Chalgian, Harold Schuitmaker, and myself – the Nominating Committee of the Probate and Estate Planning Council. Pursuant to Article IV, Section 1 of the Bylaws of the Probate and Estate Planning Section, the Nominating Committee is charged to submit nominations for Council officers and members of the Council at the meeting of the Council prior to the Annual Meeting of the Section.

The Nominating Committee met in person and also had numerous communications. Names of several well-qualified candidates were considered, giving weight to the criteria established by the Committee (attached). We submit the following nominations for officers and members of the Probate and Estate Planning Council:

**OFFICERS**

Chairperson  
Mark K. Harder

Chairperson Elect  
Thomas F. Sweeney

Vice Chairperson  
Amy N. Morrissey

Secretary  
Shaheen I. Imami

Treasurer  
James B. Steward

**MEMBERS**
For a second full three-year term, beginning with the Annual Meeting in September 2012 and continuing until the election at the Annual Meeting in 2015:

W. Josh Ard

Patricia M. Ouellette

James P. Spica

For a first full three-year term, beginning with the Annual Meeting in September 2012 and continuing until the election at the Annual Meeting in 2015:

Rhonda M. Clark-Kreuer (St. Louis)

David P. Lucas (Battle Creek)

David L. Skidmore (Grand Rapids)

For the Council’s information, a Roster showing the current terms of the Council members are enclosed with our report. Thanks to you and the Council for considering the report of the Nominating Committee.

Respectfully submitted on behalf of the Nominating Committee,

Nancy L. Little
MEMORANDUM

To:        George Gregory
From:      Kathleen Goetsch
Date:      4/16/2012
Re:        3rd Annual Justice Initiatives Summit

George:

I want to give you a report and summary on the 3rd Annual Justice Initiatives Summit – Solutions on Self Help which I attended today.

Two things first: Thank-you for the opportunity to represent the Probate Council. It was an honor and a day well spent.

2nd – no one needs to worry, the State Bar is not interested in undermining the practice of law – especially those of us in the probate and estate planning world.

My initial impression from the materials Becky Schnelz e-mailed me included -- ok so there are folks who appear in court and do not have attorneys representing them – SO WHAT? The problems described in the materials cited California, Texas, Alaska, and Minnesota – and many of the problems described involved a large non-English speaking community, Alaska – remote areas (and I suspect not a dearth of attorneys). As to the Michigan initiative, I thought is this a solution looking for a problem?

I went with an open mind. Within the 1st 10 minutes I realized that Michigan shares many of the same challenges as other states with regard to self-represented people. This initiative and summit is truly an effort to address the unrepresented who appear in Michigan Courts or the formal identification “SRP” “Self-Represented Person”. The initiative and summit are attempting to address an unmet need in
the Michigan Justice System. It is not an attempt to undermine the practice of law. And more importantly it is an initiative driven by attorneys who want to help the judicial system – a real alternative to legal zoom and other sites – where the only interest is the Walmart model – put the competition out of business and make money for the owners.

There is a pilot program that is scheduled for a “soft launch” in May – June of this year. The pilot program is an interactive self help website addressed at very limited targets – which include 1.) small claims/business/consumer/landlord tenant law 2.) Family Law 3.) Domestic Violence 4.) Expungement & 5.) Civil infractions/tickets. With the exception of the 1st 2 areas – these are all areas of practice that likely are not substantial income generating areas for most attorneys. The business/consumer/landlord are targeted at those people who truly cannot afford attorneys and/or the issues/results are not cost-effective to either retain an attorney – or cost effective for the attorney to represent the individual. As to small claims the web-site will assist the individual in collecting on their judgment – which by the way there is a case interpreting a small claims judgment which essentially says – once in small claims always in small claims - ergo once you have a small claims judgment you cannot have an attorney prepare and process collection remedies (yeah go figure). With regards to landlord tenant – there are some cases that just do not make sense to hire an attorney (keeping in mind that I represent a major landlord in Livingston County). For instance – if you have only 1 or 2 units for lease – as far as an attorney is concerned -- you make your money in “bulk” in landlord tenant matters – not on single appearances. Generally when I appear on behalf of my landlord – there are minimally 6 cases in one appearance – and my manager prepares all the notices, summons & complaints -- I am a little bit more than a “warm-body” appearance – but not much more.

The domestic matters that are targeted -- address those situations that most likely are individuals who are at subsistence level -- whose income is less than $10,000 per year. They will more than likely NEVER be our paying clients - if they are ever our clients at all. The statistics presented at the summit centered on Berrien County, largely populated by low income individuals – in Berrien County in at least 80% of the divorce cases involve 1 self represented party – and in at
least 50% of the cases – neither party has an attorney. This was an eye-opening statistic to me – because the other significant part of my practice is domestic law – and fortunately I practice in a fairly well-to-do county – where I would guess that the statistics are almost reversed – 20% of the domestic cases involve both parties self representing and likely only 30 – 40% of the cases with one party being self represented – and of those being self represented they have consulted with an attorney or an attorney mediator.

The section regarding domestic matters is designed to prompt/encourage those people with more complex matters – division of real property, 40lks, or alimony to seek assistance of counsel.

The domestic violence (do) matters - unless present during the actual divorce proceedings most attorneys do not get involved in the PPO process. From a practical standpoint unless the parties to the DV case are high income individuals – or people with a lot to lose –police officers, volunteer firefighters – an attorney cannot make any money on the representation.

The same is true as to expungements and traffic civil infractions (although judging from the increase in my insurance rates for a speeding ticket I received from a deputy on my way to the 2010 probate institute in Acme – perhaps there is $$$$$ to be made in contesting traffic tickets – but again you have to have someone with the disposable income – and the thought process “I would rather pay my attorney the $$$$ to fight the ticket – than the insurance company – IT’S THE PRINCIPLE -- yeah well we have all had those clients – who when the principle comes home to roost often question their ideals)

The other VERY IMPORTANT take away – is that the Probate Council has made a great impression on the State Bar of Michigan. Janet Welch appears to me to be very sensitive to our concerns and our needs. Of the groups represented at this summit (there were more than 30 representatives) only the Family Law, Consumer Law, Law Practice Management, ADR, Elder Law and Probate Sections were individually represented.
Truly this initiative is going to take a great deal of education of the judiciary and attorneys. What was clear from the summit is that the people who will be serviced by this self-help initiative are not our clients or would-be clients – they are: 1.) people who cannot afford an attorney – at any rate; 2.) people who think they cannot afford an attorney and/or 3.) people who do not trust attorneys at all.

The “National Expert – John Greacen – from New Mexico introduced the concept of “disintermediation” it is a sociology concept that essentially means “the removal of the ‘professional/middleman’ from the picture” the examples he cited:

- Pumping gas
- Fixing our own homes
- Selling our own homes
- Trading stocks without a brokers advice
- Self medicating – through Web MD and other sites
- Home schooling
- Self representation in court

At the conclusion of the day – what is clear is that the practice of law is ever changing – which is what I love about it – I truly love academics (and in my other life I will likely be a college professor) and learning. Learning means adaptation – if we as a profession do not adapt – we will not survive.

Where this leaves our committee on self-help – I don’t know. I would guess that if this web-site is successful and there is continuing funding for it – it will look to expand to other areas of the law – probate would be a logical area – which perhaps we should be ahead of the curve? I will leave that discussion to you and the council.

I know this is a long memo – please feel free to edit and share whatever you wish with the council and the members of the listserve. I believe this is an important subject which does require a lot of education – for attorneys, judges and litigants.

Kathleen Goetsch
Guardianship and Conservatorship Committee Report for June 9, 2012 Probate and Estate Planning Council Meeting

Committee members participating:
Connie Brigman, Jill Goodell, Rebecca Schnelz, Rhonda Clark-Kreuer, Ellen Sugrue-Hyman, Josh Ard, Phil Harter, and Michael Bartnik

**TOPIC:**

**Family Consent Law**

Revisions made per April PEPC:
- Grammatical changes to (a).
- Removed “incompetent” from (c)(1)
- Removed first sentence in (c)(2)
- Added annulment and separate maintenance to (d)(1)(i)
- Revised (d)(1)(v) to say grandparent or grandchild.
- Adding a liability protection section for healthcare providers (Jill).

**Revised version for discussion at June 9, 2012 PEPC meeting**

Decisions by health care representative.

(a) General rule -- A health care representative may make a health care decision for an individual who is at least 18 years of age or is an emancipated minor, so long as the individual’s attending physician has determined that he or she is unable to make health care decisions; the individual does not have a patient advocate designation; and, the individual does not have a guardian with the power to make health care decisions.

(b) Application -- A health care representative may make medical treatment or care decisions for the individual.
(c) Extent of authority of health care representative --

1. A health care representative is not authorized to withdraw life-sustaining treatment on behalf of an individual.

2. A health care representative shall act in accordance with the standards of care applicable to fiduciaries when making health care decisions for an individual.

3. A health care representative shall not exercise a power concerning the individual’s healthcare, if the individual could not have exercised the power on his or her own behalf.

4. A health care representative’s authority under this act is suspended whenever the individual regains the ability to participate in his or her own healthcare decisions.

(d) Who may act as health care representative --

1. Any adult member of the following classes, in descending order of priority, may act as health care representative:

   i. the spouse, unless an action for divorce, annulment, or separate maintenance is pending

   ii. an adult child

   iii. a parent

   iv. an adult brother or sister, or

   v. a grandchild or grandparent.

2. An individual with a higher priority who is willing to act as a health care representative may assume the authority to act even though another individual has previously assumed that authority.
(e) **Binding effect; liability of provider; exception** -- [Jill’s section is still being discussed at the committee level so we don’t have a recommendation to the Council on this section yet]

[Suggestion 1: A health care provider acting in accordance with the standards of care applicable to the provider’s scope of practice shall not be liable for reliance upon representations made by an individual regarding his or her priority to act as health care representative or for a health care representative’s health care decisions made on behalf of another individual.]

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

A person providing medical treatment to a patient is bound by a health care representative's instructions so long as the health care representative's instructions are consistent with generally accepted community practice standards of treatment. - End of suggestion 2]

[Suggestion 3 - Shall be immune from civil and regulatory liability which might otherwise be incurred]

(f) **Dispute** -- If a dispute arises under this act, a petition may be filed with the probate court in the county in which the patient resides or is located requesting the court’s determination.

(g) **Relation to other laws** -- This act does not abrogate any rights that exist at common law or under any other statute.
A bill to amend 1998 PA 386, entitled, the “Estates and protected individuals code,” by amending sections 5305, 5314, (MCL 700.5305, 700.5413) as amended by 2000 PA 469.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 5305. (1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:

(a) Personally visiting the individual.

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

(c) Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, the right to contest the petition, to request limits on the guardian's powers, INCLUDING A LIMITATION ON THE GUARDIAN'S AUTHORITY TO CONSENT TO A
PHYSICIAN DO-NOT-RESUSCIATE ORDER FOR THE WARD, to object to a particular person being appointed guardian, to be present at the hearing, to be represented by legal counsel, and to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.

(d) Informing the individual of the name of each person known to be seeking appointment as guardian.

(E) INFORMING THE INDIVIDUAL THAT IF A GUARDIAN IS APPOINTED, THE GUARDIAN MAY HAVE THE POWER TO CONSENT TO A PHYSICIAN DO-NOT-RESUSCIATE ORDER ON BEHALF OF THE INDIVIDUAL, AND REPORT TO THE COURT IF THE INDIVIDUAL OBJECTS TO HAVING A DO-NOT-RESUSCIATE ORDER.

(F) Making determinations, and informing the court of those determinations, on all of the following:

(i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following alternatives:

(A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.

(B) Appointment of a conservator or another protective order under part 4 of this article.

(C) Execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or duration.

(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

(iii) Whether the individual wishes to be present at the hearing.

(iv) Whether the individual wishes to contest the petition.
(v) Whether the individual wishes limits placed on the guardian's powers.

(vi) Whether the individual objects to a particular person being appointed guardian.

(2) The court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).

(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.

Sec. 5314. Whenever meaningful communication is possible, a legally incapacitated individual's guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. Except as limited TO THE EXTENT A
GUARDIAN OF A LEGALLY INCAPACITATED INDIVIDUAL IS GRANTED POWERS BY THE COURT under section 5306, a legally incapacitated individual's guardian is responsible for the ward's care, custody, and control, but is not liable to third persons by reason of that responsibility for the ward's acts. In particular and without qualifying the previous sentences, a guardian has all of the following powers and duties, except as modified by court order:

(a) To the extent that it is consistent with the terms of an order by a court of competent jurisdiction relating to the ward's detention or commitment, the guardian is entitled to the custody of the person of the guardian's ward and may establish the ward's place of residence within or without this state. A ward's guardian shall visit the ward within 3 months after the guardian's appointment and not less than once within 3 months after each previous visit. The guardian must notify the court within 14 days of a change in the ward's place of residence.

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

(c) A guardian may THE POWER TO give the consent or approval that is necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(D) THE POWER TO GIVE CONSENT TO A PHYSICIAN DO-NOT-RESUSCITATE ORDER ON BEHALF OF A WARD. THE COURT ORDER SHALL STIPULATE THAT A DO-NOT-RESUSCITATE ORDER SHALL BE VALID ONLY IF THE FOLLOWING CONDITIONS ARE MET:

(i) THE GUARDIAN HAS PHYSICALLY VISITED AND ATTEMPTED, WHERE POSSIBLE, MEANINGFUL COMMUNICATION WITH THE WARD NOT MORE THAN 14 DAYS PRIOR TO CONSENTING TO THE DO-NOT-RESUSCITATE ORDER.

(ii) THE GUARDIAN HAS CONSULTED DIRECTLY WITH THE WARD'S ATTENDING PHYSICIAN AS TO THE SPECIFIC MEDICAL INDICATIONS WARRANTING THE DO-NOT-RESUSCITATE ORDER.

(iii) NOT LESS THAN ANNUALLY AFTER A DO-NOT-RESUSCITATE ORDER IS FIRST EXECUTED, THE GUARDIAN HAS COMPLIED WITH SUBDIVISIONS (i) AND (ii) TO REARRANGE CONSENT FOR AND EFFECTIVENESS OF A DO-NOT-RESUSCITATE ORDER.

(E) If a conservator for the ward's estate is not appointed, a guardian may THE POWER TO do any of the following:

(i) Institute a proceeding to compel a person under a duty to support the ward or to pay money for the ward's welfare to perform that duty.

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for the ward's support, care, and education.

The guardian shall not use money from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished
the ward unless a charge for the service is approved by court order made upon notice to at least 1 of the ward's next of kin, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.

(f) The guardian shall report the condition of the ward and the ward's estate that is subject to the guardian's possession or control, as required by the court, but not less often than annually. The guardian shall also serve the report required under this subdivision on the ward and interested persons as specified in the Michigan court rules. A report under this subdivision must contain all of the following:

(i) The ward's current mental, physical, and social condition.
(ii) Improvement or deterioration in the ward's mental, physical, and social condition that occurred during the past year.
(iii) The ward's present living arrangement and changes in his or her living arrangement that occurred during the past year.
(iv) Whether the guardian recommends a more suitable living arrangement for the ward.
(v) Medical treatment received by the ward.
(vi) Whether the guardian has consented to, reaffirmed, or rescinded a do-not-resuscitate order on behalf of the ward during the past year.
(vii) Services received by the ward.
(viii) A list of the guardian's visits with, and activities on behalf of, the ward.
(ix) A recommendation as to the need for continued guardianship.

(g) If a conservator is appointed, the guardian shall pay to the conservator, for management as provided in this act, the amount of
the ward's estate received by the guardian in excess of the amount the
guardian expends for the ward's current support, care, and education. The
guardian shall account to the conservator for the amount expended.
A bill to amend 1978 PA 368, entitled, the “Public health code,” by amending sections 1053, 1054, and adding sections 1068, 1069, 1070. (MCL 333.1053, 333.1054) as amended by ...

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1052. As used in this act:

(A) “ACTUAL NOTICE” MEANS THAT AN ATTENDING PHYSICIAN OR THE DELEGATEE OF THAT ATTENDING PHYSICIAN, OR THE ADMINISTRATOR OF A HEALTH FACILITY OR THAT ADMINISTRATOR’S DESIGNEE HAS BEEN PHYSICALLY PRESENTED WITH A WRITTEN ORDER OR A WRITTEN REVOCATION OF AN ORDER FROM A DECLARANT, PATIENT
ADVOCATE, OR GUARDIAN.

(a) "Attending physician" means the physician who has primary responsibility for the treatment and care of a declarant OR WARD.

(b) "Declarant" means a person who has executed a do-not-resuscitate order or on whose behalf a do-not-resuscitate order has been executed as provided in section 3 or 5.

(c) "DELEGATEE" MEANS AN INDIVIDUAL TO WHOM A PHYSICIAN HAS DELEGATED THE AUTHORITY TO PERFORM 1 OR MORE SELECTED ACTS, TASKS, OR FUNCTIONS UNDER SECTION 16215 OF THE PUBLIC HEALTH CODE, BEING SECTION 333.16215 OF THE MICHIGAN COMPILED LAWS.

(d) "Do-not-resuscitate order" means a document executed as prescribed in section 3 or 5 directing that, in the event that a patient AN INDIVIDUAL suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, a nursing home, or a mental health facility owned or operated by the department of community health, resuscitation will not be initiated.

(e) "Do-not-resuscitate identification bracelet" or "identification bracelet" means a wrist bracelet that meets the requirements of section 7 and is worn by the A declarant OR A WARD while a do-not-resuscitate order is in effect.

(f) "Emergency medical technician" means that term as defined in section 20904 of the public health code, MCL 333.20904.

(g) "Emergency medical technician specialist" means that term as defined in section 20904 of the public health code, MCL 333.20904.
"Hospital" means that term as defined in section 20106 of the public health code, MCL 333.20106.

"Medical first responder" means that term as defined in section 20906 of the public health code, MCL 333.20906.

"Nurse" means a licensed practical nurse or a registered professional nurse as defined in section 17201 of the public health code, MCL 333.17201.

"Order" means a do-not-resuscitate order.

"Organization" means a company, corporation, firm, partnership, association, trust, or other business entity or a governmental agency.

"Paramedic" means that term as defined in section 20908 of the public health code, MCL 333.20908.

"Physician" means an individual licensed to engage in the practice of medicine or the practice of osteopathic medicine and surgery pursuant to article 15 of the public health code, MCL 333.16101 to 333.18838.

"Patient advocate" means an individual designated to make medical treatment decisions for a patient under sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

"Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.
"Vital sign" means a pulse or evidence of respiration.

Sec. 1053. (1) Subject to section 5, an individual who is 18 years of age or older and of sound mind may execute a do-not-resuscitate order on his or her own behalf. A patient advocate of an individual who is 18 years of age or older may execute a do-not-resuscitate order on behalf of that individual.

(2) An order executed under this section shall be on a form described in section 4. The order shall be dated and executed voluntarily and signed by each of the following persons:

   (a) The declarant or another person who, at the time of the signing, is in the presence of the declarant and acting pursuant to the directions of the declarant, OR THE DECLARANT'S PATIENT ADVOCATE.

   (b) The declarant's attending physician.

   (c) Two witnesses 18 years of age or older, at least 1 of whom is not the declarant's spouse, parent, child, grandchild, sibling, or presumptive heir.

   (3) The names of the declarant, THE DECLARANT'S PATIENT ADVOCATE WHERE APPLICABLE, the attending physician, and each witness shall be printed or typed below the corresponding signatures. A witness shall not sign an order unless the declarant OR PATIENT ADVOCATE appears to the witness to be of sound mind and under no duress, fraud, or undue influence.

   (4) At any time after an order is signed and witnessed, the declarant, THE DECLARANT'S PATIENT ADVOCATE, or an individual designated by the declarant may apply an identification bracelet to the declarant's wrist.

   (5) A declarant OR PATIENT ADVOCATE who executes an order under this
section shall maintain possession of the order and shall have the order
accessible within his or her THE DECLARANT’S place of residence or other
setting outside of a hospital, a nursing home, or a mental health facility
owned or operated by the department of community health.

Sec. 1054. A do-not-resuscitate order executed under section 3 shall
include, but is not limited to, the following language, and shall be in
substantially the following form:

“DO-NOT_RESUSCITATE ORDER

I have discussed my health status with my physician,
_____________________________. I request that in the event my heart and
breathing should stop, no person shall attempt to resuscitate me. This
order is effective until it is revoked by me. Being of sound mind, I—
voluntarily execute this order, and I understand its full import.
_____________________________ ______________
(Declarant's signature) (Date)

_____________________________
(Type or print declarant's full name)

_____________________________ ______________
(Signature of person who signed for (Date)—
declantr, if applicable)

_____________________________
(Type or print full name)

THIS PHYSICIAN DO-NOT_RESUSCITATE ORDER IS ISSUED BY
_____________________________, ATTENDING PHYSICIAN FOR
______________________________.
(TYPE OR PRINT DECLARANT'S FULL NAME)

USE THE APPROPRIATE CONSENT SECTION BELOW:

A. DECLARANT CONSENT

I HAVE DISCUSSED MY HEALTH STATUS WITH MY PHYSICIAN. I REQUEST THAT IN THE EVENT MY HEART AND BREATHING SHOULD STOP, NO PERSON SHALL ATTEMPT TO RESUSCITATE ME. BEING OF SOUND MIND, I VOLUNTARILY EXECUTE THIS ORDER, AND I UNDERSTAND ITS FULL IMPORT. THIS ORDER IS EFFECTIVE UNTIL REVOKED BY ME.

_______________________________________  _______________
(DECLARANT'S SIGNATURE)    (DATE)

B. PATIENT ADVOCATE CONSENT

I AUTHORIZE THAT IN THE EVENT THE DECLARANT'S HEART AND BREATHING SHOULD STOP, NO PERSON SHALL ATTEMPT TO RESUSCITATE THE DECLARANT. I UNDERSTAND THE FULL IMPORT OF THIS ORDER AND ASSUME RESPONSIBILITY FOR ITS EXECUTION. AS A PATIENT ADVOCATE EXECUTING THIS ORDER, IT WILL REMAIN IN EFFECT UNTIL REVOKED.

______________________________________  _______________
(PATIENT ADVOCATE SIGNATURE)    (DATE)

________________________________________________
(TYPE OR PRINT PATIENT ADVOCATE NAME)

_____________________________________
(Physician's signature)    (Date)

_____________________________________
(Type or print physician's full name)
ATTESTATION OF WITNESSES

The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the individual DECLARANT has (has not) received an identification bracelet.

______________________________     ______________________________
(Witness signature) (Date)       (Witness signature) (Date)

______________________________   ______________________________
(Type or print witness's name)       (Type or print witness's name)

THIS FORM WAS PREPARED PURSUANT TO, AND IS IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT."

SEC. 1057. (1) A do-not-resuscitate identification bracelet shall possess features that make it clearly recognizable as a do-not-resuscitate identification bracelet including, but not limited to, all of the following:

(a) The identification bracelet shall be imprinted with the words “do-not-resuscitate order”, the name and address of the declarant OR WARD, and the name and telephone number of the declarant's OR WARD'S attending physician, if any.

(b) The words required under subdivision (a) shall be printed in a type size and style that is as easily read as practicable, given the size of the identification bracelet.

(2) An individual shall not apply a do-not-resuscitate identification bracelet to another individual unless he or she knows that the other individual is a declarant OR A WARD FOR WHOM AN ORDER HAS BEEN EXECUTED. An individual who violates this subsection is guilty of a misdemeanor,
punishable by imprisonment for not more than 2 years or a fine of not more
than $1,000.00, or both.

Sec. 1058. An attending physician who signs a declarant's or a ward's
do-not-resuscitate order under section 3 or 8 shall immediately make a copy
or obtain from the declarant, declarant's patient advocate, or guardian of
the ward a duplicate of the executed order and make that copy or duplicate
part of the declarant's or ward's permanent medical record.

Sec. 1059. If a person interested in the welfare of the declarant or a ward has reason to believe that an order has been executed contrary to
the wishes of the declarant or the best interests of the ward, the person
may petition the probate court to have the order and the conditions of its
execution reviewed. Upon a finding that an order has been executed contrary
to the wishes or best interests of a declarant or ward, the court shall
issue an injunction voiding the effectiveness of the order.

Sec. 1060. (1) A declarant or a patient advocate who executes an order
on behalf of a declarant may revoke an order at any time and in any manner
by which he or she is able to communicate an intent to revoke the order. If
the revocation is not in writing, a person who observes the revocation
shall describe the circumstances of the revocation in writing and sign the
writing. A patient advocate may revoke an order at any time by issuing the
revocation in writing and providing actual notice of the revocation to the
attending physician or the delegatee of the attending physician. Upon
revocation, the declarant, patient advocate, guardian, or attending
physician or a delegatee of the attending physician who has actual notice
of the revocation shall:
A) Destroy the order and

B) Remove the declarant's do-not-resuscitate identification bracelet, if the declarant is wearing a do-not-resuscitate identification bracelet.

C) WHERE APPLICABLE, PROVIDE ACTUAL NOTICE OF THE REVOCATION TO A FACILITY WHERE THE DECLARANT OR WARD RESIDES.

(2) A physician or physician's delegatee who receives actual notice of a revocation of an order shall immediately make the revocation, including, if available, the written description of the circumstances of the revocation required by subsection (1), part of the revoking declarant's OR THE WARD'S permanent medical record.

(3) A declarant's or patient advocate's revocation of an order is binding upon another person at the time that other person receives actual notice of the revocation.

(4) For purposes of subsections (1) and (2), a “delegatee” is an individual to whom a physician has delegated the authority to perform 1 or more selected acts, tasks, or functions under section 16215 of the public health code, being section 333.16215 of the Michigan Compiled Laws.

Sec. 1062. A person or organization is not subject to civil or criminal liability for withholding resuscitative procedures from an individual in accordance with this act.

Sec. 1064. A person or organization shall not require the execution of an order described in section 3, 5 or § 17 as a condition for insurance coverage, admittance to a health care facility, receiving health care benefits or services, or any other reason.
Sec. 1065. A life insurer shall not do any of the following because of the execution or implementation of an order:

(a) Refuse to provide or continue coverage to the declarant OR WARD.

(b) Charge the declarant OR WARD a higher premium.

(c) Offer a declarant OR WARD different policy terms because the declarant OR WARD has executed an order.

(d) Consider the terms of an existing policy of life insurance to have been breached or modified.

(e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the declarant OR WARD.

Section 1067. This act shall take effect August 1, 1996. (1) A GUARDIAN WITH THE POWER TO CONSENT TO A DO-NOT-RESUSCITATE ORDER UNDER SECTION 5314 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, BEING SECTION 700.5314 OF THE MICHIGAN COMPILED LAWS, MAY EXECUTE A DO-NOT-RESUSCITATE ORDER ON BEHALF OF A WARD AFTER COMPLYING WITH THE PROVISIONS OF SECTION 5314(D).

(2) AN ORDER EXECUTED UNDER THIS SECTION SHALL BE ON A FORM DESCRIBED IN SUBSECTION (8). THE ORDER SHALL BE DATED AND EXECUTED VOLUNTARILY AND SIGNED BY EACH OF THE FOLLOWING PERSONS:

(A) THE GUARDIAN.

(B) THE WARD’S ATTENDING PHYSICIAN.

(C) TWO WITNESSES 18 YEARS OF AGE OR OLDER, AT LEAST 1 OF WHOM IS NOT THE WARD’S SPOUSE, PARENT, CHILD, GRANDCHILD, SIBLING, OR PRESUMPTIVE HEIR.

(3) THE NAMES OF THE WARD, THE GUARDIAN, THE ATTENDING PHYSICIAN, AND
1 EACH WITNESS SHALL BE PRINTED OR TYPED BELOW THE CORRESPONDING SIGNATURES.

2 A WITNESS SHALL NOT SIGN AN ORDER UNLESS THE GUARDIAN APPEARS TO THE

3 WITNESS TO BE OF SOUND MIND AND UNDER NO DURESS, FRAUD, OR UNDUE INFLUENCE.

4 (4) AT ANY TIME AFTER AN ORDER IS SIGNED AND WITNESSED, THE WARD'S

5 GUARDIAN, ATTENDING PHYSICIAN, PHYSICIAN'S DELEGATEE, OR AN INDIVIDUAL

6 DESIGNATED BY THE GUARDIAN MAY APPLY AN IDENTIFICATION BRACELET AS

7 DESCRIBED IN SECTION 7 TO THE WARD'S WRIST.

8 (5) A GUARDIAN WHO EXECUTES AN ORDER UNDER THIS SECTION SHALL MAINTAIN

9 POSSESSION OF THE ORDER HAVE THE ORDER ACCESSIBLE IN THE WARD'S PLACE OF

10 RESIDENCE, OR WHERE APPLICABLE, PROVIDE A COPY OF THE ORDER TO THE

11 ADMINISTRATOR OF A FACILITY WHERE THE WARD RESIDES OR TO THE

12 ADMINISTRATOR'S DESIGNEE.

13 (6) AN ATTENDING PHYSICIAN WHO SIGNS A WARD'S DO-NOT-RESUSCITATE ORDER

14 UNDER SUBSECTION (2) SHALL IMMEDIATELY MAKE A COPY OR OBTAIN FROM THE

15 GUARDIAN A DUPLICATE OF THE EXECUTED ORDER AND MAKE THAT COPY OR DUPLICATE

16 PART OF THE WARD'S PERMANENT MEDICAL RECORD.

17 (8) A DO-NOT-RESUSCITATE ORDER EXECUTED UNDER THIS SECTION SHALL

18 INCLUDE, BUT IS NOT LIMITED TO, THE FOLLOWING LANGUAGE, AND SHALL BE IN

19 SUBSTANTIALLY THE FOLLOWING FORM:

20 "DO-NOT-RESUSCITATE ORDER

21 THIS PHYSICIAN DO-NOT-RESUSCITATE ORDER IS ISSUED BY

22 ________________________________, ATTENDING PHYSICIAN FOR

23 ________________________________.

24 (TYPE OR PRINT WARD'S FULL NAME)

25 I AUTHORIZE THAT IN THE EVENT THE WARD'S HEART AND BREATHING SHOULD
STOP, NO PERSON SHALL ATTEMPT TO RESUSCITATE THE WARD. I UNDERSTAND THE
FULL IMPORT OF THIS ORDER AND ASSUME RESPONSIBILITY FOR ITS EXECUTION. AS A
LEGALLY APPOINTED GUARDIAN EXECUTING THIS ORDER, IT WILL REMAIN IN EFFECT
FOR THE DURATION OF MY APPOINTMENT UNLESS REVOKED BY ME.

______________________________________  ________________
(GUARDIAN SIGNATURE)      (DATE)

________________________________________________
(TYPE OR PRINT GUARDIAN NAME)

_____________________________________ _______________
(PHYSICIAN'S SIGNATURE)    (DATE)

_____________________________________
(TYPE OR PRINT PHYSICIAN'S FULL NAME)

ATTESTATION OF WITNESSES
THE GUARDIAN WHO HAS EXECUTED THIS ORDER APPEARS TO BE OF SOUND MIND,
AND UNDER NO DURESS, FRAUD, OR UNDUE INFLUENCE. UPON EXECUTING THIS ORDER,
THE WARD HAS (HAS NOT) RECEIVED AN IDENTIFICATION BRACELET.

______________________________     ______________________________
(WITNESS SIGNATURE) (DATE)   (WITNESS SIGNATURE) (DATE)

______________________________   ______________________________
(TYPE OR PRINT WITNESS'S NAME)   (TYPE OR PRINT WITNESS'S NAME)

SEC. 1068. (1) A GUARDIAN WHO EXECUTES AN ORDER ON BEHALF OF A WARD
MAY REVOKE AN ORDER AT BY ISSUING THE REVOCATION IN WRITING AND PROVIDING
ACTUAL NOTICE OF THE REVOCATION TO THE ATTENDING PHYSICIAN OR A DELEGATEE
OF THE ATTENDING PHYSICIAN. UPON REVOCATION, THE GUARDIAN, OR ATTENDING
PHYSICIAN OR A DELEGATEE OF THE ATTENDING PHYSICIAN WHO HAS ACTUAL NOTICE OF THE REVOCATION SHALL DESTROY THE ORDER AND REMOVE THE WARD'S DO-NOT-RESUSCITATE IDENTIFICATION BRACELET, IF THE WARD IS WEARING A DO-NOT-RESUSCITATE IDENTIFICATION BRACELET.

(2) A PHYSICIAN OR PHYSICIAN'S DELEGATEE WHO RECEIVES ACTUAL NOTICE OF A REVOCATION OF AN ORDER SHALL IMMEDIATELY MAKE THE REVOCATION PART OF THE WARD'S PERMANENT MEDICAL RECORD.

(3) THE MEDICAL ADMINISTRATOR OF A FACILITY WHERE THE WARD RESIDES WHO IS RESPONSIBLE FOR THE OVERSIGHT OF THE WARD'S MEDICAL CONDITION AND WHO RECEIVES ACTUAL NOTICE OF A REVOCATION OF AN ORDER SHALL IMMEDIATELY MAKE THE REVOCATION PART OF THE WARD'S MEDICAL RECORD AT THE FACILITY.

(4) A GUARDIAN'S REVOCATION OF AN ORDER IS BINDING UPON ANOTHER PERSON AT THE TIME THAT OTHER PERSON RECEIVES ACTUAL NOTICE OF THE REVOCATION.

SEC. 1069. (1) A HEALTH PROFESSIONAL DESCRIBED IN SECTION 11(1)(A) THROUGH (G) WHO IS IN THE PRESENCE OF A WARD AND HAS REASON TO BELIEVE THE WARD HAS EXPERIENCED CESSATION OF BOTH RESPIRATION AND CIRCULATION SHALL DETERMINE IF THE WARD HAS 1 OR MORE VITAL SIGNS, WHETHER OR NOT THE HEALTH PROFESSIONAL VIEWS OR IS PROVIDED WITH AN ORDER DESCRIBED IN SECTION 17 THAT IS ALLEGED TO HAVE BEEN SIGNED BY THE WARD'S GUARDIAN.

(2) IF THE HEALTH PROFESSIONAL DETERMINES UNDER SUBSECTION (1) THAT THE WARD HAS NO VITAL SIGNS, AND IF THE HEALTH PROFESSIONAL DETERMINES THAT THE WARD IS WEARING A DO-NOT-RESUSCITATE IDENTIFICATION BRACELET OR IS PROVIDED WITH A DO-NOT-RESUSCITATE ORDER FOR THE WARD, HE OR SHE SHALL NOT ATTEMPT TO RESUSCITATE THE WARD.
ATTACHMENT 1
## Treasurer's Report as of May 31, 2012

### FY to Date 2011-12

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| **Disbursements**  |       |       |     |        |        |          |                         |
| Journal            | $3,750| $13,652| $27,500 | (13,848)| 50%         |                          |
| Chairperson's Dinner | $4,842 | $6,000 | (1,158) |         | 81%          |
| Travel             | $710  | $1,170| $10,297| $16,500 | (6,203) | 62%          |
| Lobbying           | $2,500| $2,500| $5,000| $22,000| $30,000| (8,000) | 73%          |
| Meetings*          | $896  | $1,423| $7,095| $12,000| (4,905) | 59%          |
| Long-range Planning | $0    | -     | $2,500| (2,500)| 0%          |
| Publishing Agreements | $0   | -     | -     | -     |          | 0%          |
| Support for Annual Institute | $850 | $4,963| $11,113| $12,000| (887) | 93%          |
| Amicus Briefs      | $280  | $850  | (570) |         | 33%          |
| Listserv           | $20   | $30   | $66  | $500   | (434) | 13%          |
| Postage            | $75   | $75   | $461 | $300   | $161 | 154%        |
| **Total Disbursements** | $2,500| $5,052| $16,411| $69,805| $118,250| (48,445) | 59%          |

|                    |       |       |     |        |        |          |                         |
| **Net Increase (Decrease)** | ($16,341)| $46,049| (2,550)| $48,599|        |                         |

### Additional Information

| Fund Balance | $229,561 |

*includes leadership conference
**includes copying, e-blast
Probate and Estate Planning Section  
Treasurer's Report as of June 30, 2012

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<th>June</th>
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<th>2011-12</th>
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<td></td>
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<td>Percentage</td>
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<tr>
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<td></td>
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* includes Institute sponsorship & reimbursements  
** includes leadership conference  
*** includes copying, e-blast
Probate and Estate Planning Section  
Treasurer's Report as of July 31, 2012

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<td>$3,110</td>
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<td>$3,750</td>
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<td>$13,652</td>
<td>$27,500</td>
<td>$(13,848)</td>
<td>50%</td>
</tr>
<tr>
<td>Chairperson's Dinner</td>
<td>$4,842</td>
<td></td>
<td></td>
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<td>$6,000</td>
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<tr>
<td>Listserv</td>
<td>$280</td>
<td>$850</td>
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<td>33%</td>
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<tr>
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<td>$500</td>
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<td>13%</td>
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**Additional Information**

Fund Balance $226,571

*includes Institute sponsorship & reimbursements  
**includes leadership conference  
***includes copying, e-blast
ATTACHMENT 2
July 26, 2012

Madelyne C. Lawry
Executive Director
Ingham County Bar Association
PO Box 66
Grand Ledge, MI 48837-0066

Dear Executive Director Lawry:

I am writing to let you know about a proposal developed by the Master Lawyers Section of the State Bar of Michigan and to invite your organization’s support.

As you may or may not be aware, the most recent State Bar membership data indicates that seventy-one (71%) percent of Michigan’s active lawyers in private practice are either solo practitioners or in a small law firm environment, which is defined as two to ten lawyers. Anecdotally, it appears that an increasing percentage of newly-licensed lawyers are opening solo practices, as are many lawyers who have found that reaching the traditional retirement age in a larger firm setting doesn’t necessarily translate to being able to retire.

Most especially for lawyers who practice alone, it is important to plan for how the practice will be wound down – particularly when that task may need to be done by someone else because the lawyer has died or become incapacitated. Absent such planning, the task often falls to nonlawyer office personnel or a surviving spouse or domestic partner to sort out how to identify what courts must be notified of the lawyer’s status, what to do with client files, and how to manage funds on hand in the operating and trust accounts.

We believe an important first step in addressing this potential risk is to require every lawyer that represents clients (other than a governmental entity, public body, or political subdivision) to identify an active member of the Bar who has agreed to act as an “inventory attorney” who will, in the event of death, disability or disappearance, take such action as is appropriate to protect the interests of the clients, including notifying the clients of the lawyer’s changed status, returning files and papers and, where appropriate, retaining files.

This requirement would be embodied in language to be added to Rule 2 of the Rules Concerning the State Bar of Michigan. In anticipation of the amended Rule’s adoption, sample agreements are being developed that would describe such topics as: (1) under what circumstances the inventory attorney’s obligations are triggered;
(2) whether the inventory attorney represents the appointing lawyer's interests or the clients' interests; and (3) whether the inventory attorney is paid and, if so, on what basis.

Enclosed is a draft of the proposed rule change. We invite your association’s comments and concerns and ask that you share this letter and the draft language with your members. Please provide any suggestions or questions to devans@mail.michbar.org, with a subject line that references “inventory attorney rule.”

We anticipate taking this proposal before the Representative Assembly at its next meeting on September 20, 2012, and, in so doing, will report about whatever responses we receive. If you believe that the proposed changes have merit, would you please take whatever steps are appropriate to determine whether your association can be identified as supportive of this change.

Sincerely,

[Signature]

Greg Ulrich
Chair, Master Lawyers Section
Rule 2, Rules Concerning the State Bar of Michigan

Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan, subject to the provisions of these rules. Law students may become law student section members of the State Bar. None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each member, upon admission to the State Bar and in the annual dues statement, must provide the State Bar with the member's correct name and address, and such other information as may be required. If the address provided by the member is a mailing address only, the member also must provide a street or building address for the member's building or residence. No member shall practice law in this state until such information has been provided. Members shall notify the State Bar promptly in writing of any change of name or address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office. Every member who represents any client other than a governmental agency, public body, or political subdivision, in the annual dues statement must identify and certify the name of an active member who has agreed to serve as inventory attorney in the event of the death, disability or disappearance of the reporting member. In the event the reporting member learns of the unavailability, incompetence or death of the inventory attorney, the reporting member shall identify to the State Bar within thirty days an active member of the State Bar who has agreed to serve as inventory attorney. The reporting member should maintain this information, together with instructions directing that the inventory attorney and the State Bar of Michigan be contacted upon the death, disability or disappearance of the reporting member. Upon receipt of such notification, the inventory attorney shall take such action as is appropriate to protect the interests of the clients, including but not limited to notifying clients of the changed status of the reporting member, returning files and papers as appropriate, and retaining files as appropriate. The Attorney Grievance Commission may assist the inventory attorney as co-counsel in this process. In the event the inventory attorney is unable or unwilling to act, MCR 9.119(G) shall apply. Every active member shall annually provide a certification as to whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds. The certification shall be placed on the face of the annual dues notice and shall require the member's signature or electronic signature.
ATTACHMENT 3
Subject: SB 1215 - SB 1218 Probate Code

The following public policy item was identified as being of interest to your particular committee or section. The State Bar may adopt a position on this matter. If you wish to submit comments for consideration, please do so by November 1, 2012. If your committee/section would like to consider this item but cannot do so by November 1st, please notify me to that effect and consideration may be postponed. Comments should be submitted via a template located at the Public Policy Resource Center.

Your participation in this process is highly valued and appreciated.

SB 1215 (Caswell) Court-Appointed Guardianship of Minors
Probate, guardians and conservators; State agencies (existing), human services. Probate; guardians and conservators; court-appointed guardianship of minors; replace references to family independence agency with department of human services and allow the court to assess costs of a court-ordered investigation against the parties. Amends secs. 5204, 5207, 5208, 5209 & 5213 of 1998 PA 386 (MCL 700.5204 et seq.).
Status: 07/18/12 Referred to Senate Judiciary

SB 1216 (Caswell) Court-Appointed Guardianship of Minors
Juveniles, other; Children, abuse or neglect; Human services, children's services. Juveniles; other; court-appointed guardianship of minors in EPIC cases; eliminate. Amends secs. 18 & 18g, ch. XIIA of 1939 PA 288 (MCL 712A.18 & 712A.18g).
Status: 07/18/12 Referred to Senate Judiciary

SB 1217 (Caswell) Probate Code
Juveniles, other. Juveniles; other; cross-reference to probate code; revise. Amends sec. 5 of 1996 PA 263 (MCL 400.1305).
Status: 07/18/12 Referred to Senate Judiciary

SB 1218 (Caswell) Youth Rehabilitation Services Act
Juveniles, other. Juveniles; other; youth rehabilitation services act; revise reference to juvenile code. Amends sec. 7 of 1974 PA 150 (MCL 803.307).
Status: 07/18/12 Referred to Senate Judiciary

Thank you,

Peter Cunningham
Director, Governmental Relations
State Bar of Michigan
Michael Franck Building
306 Townsend St., Lansing, MI 48933
Phone: 517/346-6325  Fax: 517/482-6248
Email: pcunningham@mail.michbar.org

Carrie A. Sharlow
Administrative Assistant, Governmental Relations

State Bar of Michigan
Michael Franck Building
306 Townsend Street
Lansing, MI  48933
P: 517-346-6317
F: 517-482-6248

csharlow@mail.michbar.org
www.michbar.org

8/21/2012
Summary Web Usage Report
Report date range: 5/1/2012 12:00:00 AM - 7/18/2012 12:00:00 AM
YTD: 7/1/2011 12:00:00 AM - 7/18/2012 12:00:00 AM

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New Lawyer Section Usage

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5/1/2012 12:00:00 AM - 7/18/2012 12:00:00 AM

Hits
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56 Ethics and Unauthorized Practice of Law
51 Winter 2011
37 Summer 2011
24 Who Can Represent a Minor, Where and How?
24 Transferring the Family Business: How Can I Be "Fair" To All My Children
14 Spring 2011
11 Ethics and Unauthorized Practice of Law
9 From the Desk of the Chairperson
9 Spring 2012
9 Michigan's New Trust Code Contains Fifteen Mandatory Rules That Affect Many Existing Trusts and All Future Trusts
6 Special Needs Trust Basics
5 Transferring the Family Business: How Can I Be "Fair" To All My Children
3 The Michigan Trust Code: Its Organization and Structure
3 Intestacy: A Comparison of the RPC and EPIC
3 The Ten Strategic Levels of Estate Planning (with Diagrams)
3 A Closer Look at the Michigan Trust Code: What's New - What's In - What's Next?
2 Rights of a Surviving Spouse
2 New Law Clarifies Funeral Rights
2 Top Ten Medicaid Planning Tips
2 Probate & Estate Planning Council Q & A
2 Fall 1995
2 Fall 1998
2 The Five Strategic Levels of Succession Planning for the Family Owned Business
2 The Best Web Sites for Michigan Lawyers
2 From the Desk of the Chairperson
2 EPIC's Antilapse Provisions: An Analysis
2 Navigating the Michigan Trust Code
2 Special Probate Procedures for Adult Conservatorships
2 Lady Bird Deeds
2 Tips for Drafting Revocable Trusts Under the New Michigan Trust Code
2 Winter 1997
2 Spring 1997
Fall 1997
2 Summer 2007
2 Spring 2008
2 Summer 2009
2 Winter 2009
1 Spring 2010
1 Summer 2010
1 Winter 2010
1 Summer 2008
1 Winter 2008
1 Spring 2009
1 Winter 2007
1 Spring 1998
1 Summer 1998
1 Summer 1997
1 Estate Planning for a Michigan Family with a Special Needs Child
1 Powerless: The Problem of Maenhoudt and the Much Needed Michigan Uniform Power of Attorney Act
1 Lifetime Lawsuit: Intentional Interference with a Gift or Inheritance
1 A Primer on Antilapse Statutes
1 Settling Claims for Decedents and Minors
1 Guardian ad Litem Immunity Revisited: Recent History
1 Michigan Irrevocable Life Insurance Trusts After the Chawla Decision: Satisfying the Insurable Interest Requirement
1 Estate Planning for Unmarried Couples: The Non-Marriage Penalty
1 Deviation from the Norm: Post Mortem Powers Not Reserved to a Person Representative
1 DRAFTING THE MARITAL DEDUCTION TRUST FOR THE QUALIFIED FAMILY-OWNED BUSINESS INTEREST DEDUCTION UNDER THE 1998 TAX ACT
1 Let the Dodge Brothers Drive You Home—Using the Dodge Act and Facilitative Mediation to Resolve Probate and Trust Litigation
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1 EPIC Rules of Construction and Interpretation for Transfers on Death
1 MAMMA ALWAYS LOVED YOU BEST: AN ALTERNATIVE TO THE FAMILY FEUD
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1 If It's the 1990s, It Must Be Time for Another Principal and Income Act
1 Uniform Principal and Income Act (1997) §§101–104
1 Overriding Antilapse Under EPIC
1 Intestate Succession: Heirs and Their Shares Under EPIC
1 Court Rule Changes
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1 The Quest for Uniformity of Practice Continues
1 Get the Inventory Right
1 Mediation in Probate and Estate Cases
1 Who Can Represent a Minor, Where and How?
1 Summer 1999
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1 Winter 2004
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HUI Q&A Title
19 May a minor’s tort claim be settled by a parent without court approval and how are the proceeds paid?
20 Assumes specific trust language, can a trust be merged into another trust with a different trustee under MCL 700.7437?
21 Does a conviction require incarceration for a felony constitute an absence or incapacity under MCL 700.7709?
22 Does the trustee have a duty to notify an heir specifically disinherited in a trust?
23 May a person who has been appointed as a fiduciary delegate his or her powers to a third party by the use of a power of attorney?
24 What protection from creditors are afforded to insurance proceeds payable to named beneficiaries, trust or decedent’s estates?
25 Are heirs inconsistent in a testamentary estate?
26 In an unsupervised administration, who must receive copies of the inventory and accounts?
27 After the death of the donor, can all partax agree to alter the distribution of assets?
28 Does the provision providing for non probate transfers on death cover a deed transferring real estate?
29 How does a foreign personal representative prove legitimacy?
30 On petition of the trustee of an Irrevocable trust, accompanied by written consent of all beneficiaries, may the probate court extend the term of a trust beyond the date of termination specified in the trust agreement?
31 What claims issues arise when the estate may be fraudulent?
32 What formal need to be filed to probate a will estate?
33 Is there a way to revoke an irrevocable trust under Michigan law other than through the court?
34 What needs to be included in a service of publication for commencing probate administrato?
35 When do the ante/post provisions apply to a trust?
36 Who must be served with a conservator’s accounting?
37 Who must receive notice of a trust’s existence?
38 Would an estate cited by an Order for Complete Estate Settlement need to be reopened to execute a deed conveying real estate?
39 When the sole beneficiary of an estate is a revocable trust, how should the distributions be made and how should the trust be completed?
40 What rights does wife have against living trust funded by husband with all his property on husband’s death?
41 What is the court’s responsibility once a personal representative files a resign?
42 May a bank account of a decedent be transferred by affidavit?
43 Is a trustee required, after the death of the grantor, to give an interested trust beneficiary a copy of the trust and its amendments?
44 Is there a presumption that a will will be revoked if the original cannot be found and what is the burden of proof?
45 May a trust that became irrevocable prior to April 1, 2010, be modified without court involvement for administrative reasons?
46 What elective share may a surviving spouse be entitled to if the will leaves everything to a trust which benefits the children of decedent and is such a share reduced by allowances?
47 May an attorney in fact exercise his principal’s authority as a trustee when the power of attorney is silent as to such authorization?
48 Is a foreign personal representative no longer able to disallow a claim?
49 Can distributions pursuant to summary administration be considered a fraudulent transfer when there are known creditors?
50 Is a petition for allowances equivalent to an election against the will?
51 If personal notice to a known creditor was not given with the four month publication period, is the statute of limitations for bringing claims now three years, regardless of the fact that personal notice was eventually provided and what is the personal representative’s liability?
52 In a joint revocable trust, must notice of the trust be given on the death of one settlor and must there be publication for creditors?
53 How are the ante/post provisions applied to a trust?
54 How is a joint debt of the decedent and a third party treated?
55 How should the trustee handle the situation of a missing trust beneficiaries?
56 How should will language describing individuals be applied? (Ref: section 3711) 972?
57 If a decedent resides in another state, does Michigan law of intestate succession control the distribution of property located in Michigan?
58 If a claim is paid with an insurance company, is there a provision that the insurance company will pay the claimant?
59 How in a trust where the beneficiary is an insurance with beneficiaries of, with the three children and two children of the marriage attended by a divorce?
60 How should assets be valued in a conservator’s inventory and accounting?
61 How many years before a person be appointed personal representative of a decedent’s estate?
62 If an IRA paid a section’s revocable trust, can the claimants be excluded and the distribution of trust assets be made?
63 Is the estate entitled to make a claim for the payment of the decedent’s estate?
64 Is there a state’s revocable trust can be amended or rejected by the named beneficiaries?
65 In the case of a claims which has been disallowed, may a court extend the deadline for filing a complaint?
66 Can the son or daughter of a protected individual, who is an executed conservator, designate a successor conservator for that individual by a written instrument such as a will?
67 Are the decedent’s class and subclasses deemed to be “heirs” for purposes of notifying the personal representative of decedent’s estate?
68 Are trust assets subject to subsequent creditors to when settlor cannot revoke the trust but has the power to withdraw all assets?
69 Are children of a decedent with a surviving spouse entitled to an exempt property allowance even if they are not mentioned or excluded in the will?
70 After an estate has been closed, do the personal representative retain authority to do particular acts specified by a court?
71 Does a widow’s election to take against her husband’s estate is she may have to take from the husband’s estate, to be funded by the survivorship interest?
72 Does a foreign domiciliary personal representative have priority to be appointed personal representative in Michigan?
73 Does a secured creditor have priority to estate assets other than the secured over secured creditors?
74 Does a conservator step into the role of trustees when presented individual’s wills trusts?
75 Do liens and encumbrances reduce the value of estate assets for determining if an estate is under $15,000 and qualifies for the summary small estate procedures?
76 Does the single qualification affect heirship rights after April 1, 2009?
77 Should the real estate located in another state be included in the base for computing the surviving spouse’s elective share in the Michigan estate?
78 May a marital home be held in trust for the surviving spouse under the prudent investor rule?
3. What is required to be filed to give a foreign personal representative the authority to act in Michigan?
4. Must there be a determination of heirs in every proceeding?
5. May a trust agreement eliminate the requirement of the trustee giving notice of the trust's existence to statutory beneficiaries?
6. What is the proper court for the inventory of a decedent's claim to the estate of a warning party?
7. What rights does a creditor have toproperty distributed by the will?
8. When is revocable trust property to be treated as owned by the trust rather than by the trustee?
9. When may an executed trust be treated as owned by the trust rather than by the trustee?
10. When and how much interest on a life estate, trust property, and property subject to an estate in present worth may be ascertained?
11. When may a nonresident decedent's estate be considered to be owned by the trust rather than by the trustee?
12. When must a trustee of a joint trust give notice of the claim?
13. When is a claim properly presented to an estate of a decedent?
14. When is the personal representative of a deceased estate allowed to accept a benefit in lieu of the estate?
15. What obligations does the personal representative owe to the court?
16. What is required to effectuate a transfer of an estate in present worth?
17. May a wrongful death claim be filed against an heir when notice of the claim has been filed against the decedent's estate and more than four months have elapsed since such publication?
18. In what circumstances with a revocable trust funded with life insurance, annuity, and profit sharing annuities, are these trusts deemed exempt from payment of estate taxes?
2. In a property settlement, how is the distribution of the estate to be handled when a final order of distribution is approved?
3. If a will is not in conformity with the law of the state where the testamentary body resides, can the testamentary body be heard?
4. Under what circumstances can a will be declared invalid?
5. In a will executed under duress, how is the right to challenge the will determined?
6. How does the court determine the validity of a testamentary body?
7. In a contest of a will, how is the validity of the will determined?
8. If a testamentary body is not in conformity with the law of the state, how is the testamentary body handled?
9. If a will is not in conformity with the law of the state, how is the testamentary body handled?
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61. If a will is not in conformity with the law of the state, how is the testamentary body handled?
1. Are the beneficiaries of a living trust entitled to obtain copies of the trust from the trustee?
2. Can a testamentary trust receive the right to withdraw money from a retirement plan?
3. Can a parent's will or testamentary trust be challenged by a minor child's guardian?
4. Can a person acting as an agent, under a general power of attorney convey real property that is in the grantor's trust or on behalf of the grantor?
5. Does a separate list of testate's personal property need to be original?
6. Does an estate need to be opened for a minor to approve a settlement for the minor in excess of $5,000?
7. Does an order to disburse liquid assets from the trust make the trust irrevocable or prevent the making of a new revocatory or new will or deed concerning real estate?
8. Does MCL 700.9811, "Probate Distributions," apply only to the final distribution of an estate?
9. Does the "agent" under a durable power of attorney executed prior to April 1, 2009 come under the provisions of EPIC?
10. Does a driver who is at fault in the death of a passenger forfeit rights to the passenger's estate?
11. Does a conservator need to get court approval to influence a ward's real estate?
12. Has EPIC significantly altered elder law?
13. Has summary administration of small estates been expanded to include estates where there is no surviving spouse or minor children?
14. Does the minimum value of the termination of a trust refer to separate trusts created after the death of the principal or to the cumulative value of the grantor's remaining trust property before death?
15. Does the probate court have jurisdiction to hear a dispute between a principal and former attorney-in-fact?
16. Is it possible for a specific devisee of real property listed to be appointed to receive the property when the trust terminates?
17. How is a power of attorney calculated?
18. Must the trustee of a revocable trust solely benefit the trust when the settlor becomes incapacitated?
19. Must the inventory of a decedent's estate include items such as life insurance policies and IRAs with designated beneficiaries?
20. Must the court authorize a grandparent to adopt a grandchild as a minor until the age of 18?
21. Must the will of a judgment creditor be opened to a husband's estate to serve a judgment on the estate for amounts owed to the wife?
22. Must a trust provide complete trust control of the trust to all beneficiaries?
23. Must an administratively closed estate be opened by petition and with what form?
24. Must the court terminate a trust when there is no consent of all beneficiaries?
25. Must the guardian of the estate be accountable for any accounting for the ward whose accounting was prepared by the guardian in his capacity as personal representative of the estate?
26. Must a facially adequate judge in an estate for a principal's deceased spouse where the principal has disappeared and spouse has no relief available?
27. Must an estate be assigned to the beneficiary of an unclassified will in a small estate proceeding?
28. Must judges be bound by a trial court's order?
29. Must a custodian be appointed to the beneficiary of an unclassified will in a small estate proceeding?
30. Must the probate court order a guardian to relinquish a property for divorce?
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42. Must a trustee provide complete trust control of the trust to all beneficiaries?
1. What is the duty to heirs discovered after the commencement of trust administration?
2. What is the effect on jurisdiction when a trust estate is located outside the state?
3. What is the procedure to contest a claim filed with the trustee after publication?
4. What is the procedure when an instrument purporting to be the last will and testament is filed after the appointment of a personal representative by application?
5. What should a trustee do when a will or sale of the property is being challenged by a third party?
6. What will language is sufficient to cause a trust to terminate and avoid the anti-anticipatory provisions?
7. When a "disinterested" co-trustee resigns, is such trustee under a duty to petition for a successor to be appointed?
8. When a living individual has no or her signature placed on a will or a beneficiary designation, who may witness the will?
9. When does a minor heir's share vest in the state?
10. When is a charitable beneficiary an interested person in a proceeding seeking approval of an agreement to modify the trust agreement?
11. When may we use the nonjudicial settlement provisions of the Michigan Trust Code (MTC)?
12. When is the effective date of publishing notice to creditors (deadlift notice) (PC 574) to time bar a creditor's claim?
13. When may a surviving spouse take against a trust?
14. When a spouse or estate is entitled to 1/2 claims, how are the property's shares calculated?
15. When a spouse elects to take against the will, how is the spouse's share calculated?
16. When administration has changed to supervised administration, for what periods must an accounting be filed with the court?
17. When an application is filed where a deceased spouse would have had priority for appointment and there is no estate commenced for that spouse, does notice need to be given to the deceased spouse's estate and, if so, how?
18. When children are entitled to receive their share by the terms of the trustor's will, can they still take from the estate under the anti-anticipatory provisions?
19. Where will leaves everything to living children if first wife predeceases, will dies and will is unchanged, may second wife take inter vivos share?
20. Who are interested persons for a petition to terminate a trust?
21. Who must receive the accounting in a trustable remainder trust when grantor is still living?
22. Where does the notice to creditors by a trustee need to be published?
23. When using the affidavit procedure, what is the proper procedure when additional assets are discovered after distribution which exceed the limit for such procedure?
24. When the sole asset of a trust is proceeds from an insurance policy and the insurance policy is in part pledged as collateral for a loan, how should the payment of other claims against the estate be determined?
25. When must a trustee pay an alimony claim and how must it be meted or repealed?
26. When payments are to be made out of specified insurance proceeds and the estate is insolvent, how do these claims and general claims?
27. When real estate is specifically devised and subsequently sold on land contract by the trustee, does the devisee receive only the balance of the land contract?
28. When reopening an estate, does the personal representative have to follow the same procedural requirements as in an initial estate administration?
29. Who will receive the same property when a will creates an alternate devisee for disclaimer?
30. Would default trustee voting rules apply to a trust created before April 1, 2007?
31. Would it ever be beneficial to the heirs of a deceased estate to probate an estate in Michigan where the only asset of the estate is a parcel of Florida real estate?
ATTACHMENT 5
MEMORANDUM

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

FROM: Mark Harder, Chair Elect
       Tom Sweeney, Vice Chair

DATE: August 23, 2012

SUBJECT: Proposed Two Year Operational Plan For Council

The incoming officers of the Council met this month to discuss the upcoming Council year, and we agreed to recommend for Council approval at the September meeting, the concept of a rolling two year operational plan that will describe ongoing projects undertaken by the Council. The reason for a two year time period is that many of our projects take longer than one year while the officer positions change every year. Because there is a natural dormancy of Council action during summer months the Council is only active for about nine months each year. We recognize that there will always be matters that arise during each year that may not be on the operational plan. These matters can be added if they are of sufficient importance to be dealt with immediately. If not, the matters can be added later. In either event, having a plan will provide the Chair and the Council with a roadmap for the work of the Council and assist in setting priorities when competing demands for the attention of the Council develop.

We contemplate that at the end of the first year of each two year operational plan, the unfinished projects on the plan would be rolled into a new two year operational plan which would include any new projects.

We are suggesting five general categories of matters which will be included in the operational plan as follows: (A) Statutory/Legislative Initiatives; (B) Court Rules, Proceedings and Practices; (C) Council Organization and Internal Procedures; (D) Professional Responsibility; and (E) Education and Service to the Public. While we envision that these five areas should cover most items coming before the Council, if there is a matter outside of any of these categories, it can always be added to the operational plan in a new category.

We view the operational plan differently than a strategic plan. A strategic plan generally applies during a longer time period and involves general goals. This plan would cover a shorter time period and describe to specific initiatives or projects.

We are asking for your assistance at the September Council meeting to provide us with your suggestions for either pending or new matters that should be considered as part of our operational plan for the next 24 months under any of the foregoing five categories. We also will use your input to help in prioritizing among the various suggestions. Based on your input at the
September meeting, the officers of the Council will develop a proposal to present for approval at the October Council meeting, which will describe the projects and prioritize them as part of the initial, operational plan.
## Officers for 2011-2012 Term

<table>
<thead>
<tr>
<th>Officer</th>
<th>Position</th>
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<tbody>
<tr>
<td>Chairperson</td>
<td>George W. Gregory</td>
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<tr>
<td>Chairperson Elect</td>
<td>Mark K. Harder</td>
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<tr>
<td>Vice Chairperson</td>
<td>Thomas F. Sweeney</td>
</tr>
<tr>
<td>Secretary</td>
<td>Amy N. Morrissey</td>
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<tr>
<td>Treasurer</td>
<td>Shaheen I. Imami</td>
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### Council Members for 2011-12 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>
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<tbody>
<tr>
<td>Ard, W. Josh</td>
<td>2009 (1st term)</td>
<td>2012</td>
<td>Yes (1 term)</td>
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<tr>
<td>Ouellette, Patricia M.</td>
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<td>2012</td>
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<tr>
<td>Hyman, Ellen Sugrue</td>
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<td>Spica, James P.</td>
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<td>Steward, James B.</td>
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<td>2013</td>
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<td>2013</td>
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<td>2013</td>
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<td>Lentz, Marguerite M.</td>
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<td>2013</td>
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<tr>
<td>Allan, Susan M.</td>
<td>2010 (1st term)</td>
<td>2013</td>
<td>Yes (1 term)</td>
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<td>O’Brien Hon. Darlene</td>
<td>2010 (1st term)</td>
<td>2013</td>
<td>Yes (1 term)</td>
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<tr>
<td>Murkowski, Hon. David M.</td>
<td>2011 (2nd term)</td>
<td>2014</td>
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<td>Kerr, J. David</td>
<td>2011 (2nd term)</td>
<td>2014</td>
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<td>Taylor, Robert M.</td>
<td>2011 (2nd term)</td>
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<td>No</td>
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<td>Ballard, Christopher A.</td>
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<td>Bearup, George F.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
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<tr>
<td>Welber, Nancy H.</td>
<td>2011 (1st term)</td>
<td>2014</td>
<td>Yes (1 term)</td>
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Ex Officio Members

John E. Bos                        James H. LoPrete
Robert D. Brower, Jr.              Richard C. Lowe
Douglas G. Chalgian                John D. Mabley
Raymond H. Dresser, Jr.            John H. Martin
Joe C. Foster, Jr.                 Michael J. McClory
Henry M. Grix                      Douglas A. Mielock
Hon. Philip E. Harter              Russell M. Paquette
Dirk C. Hoffius                    Patricia Gormely Prince
Brian V. Howe                      Douglas J. Rasmussen
Raymond T. Huetteman, Jr.          Harold G. Schuitmaker
Stephen W. Jones                   John A. Scott
Robert B. Joslyn                   Fredric A. Sytsma
James A. Kendall                   Lauren M. Underwood
Kenneth E. Konop                   W. Michael Van Haren
Nancy L. Little                    Susan S. Westerman
                                      Everett R. Zack
Standing Committees

**Budget**
Shaheen Imami, Chair
George Gregory
Amy Morrissey

**Bylaws**
Rebecca Schnelz, Chair
Robert P. Tiplady

**Long-Range Planning**
Mark Harder, Chair
Dirk Hoffius
Steve Jones
Nancy Little
Douglas Mielock
Susan Allan
Constance Brigman
David Kerr
Hon. Darlene A. O'Brien
James Spica
John Arenz
Rhonda Clark-Kreuer
Kevin Cotter
Wendy Par Holtvluwer

**Awards Committee**
Douglas Mielock, Chair
Amy Morrissey
Brian V. Howe
Hon. Phillip Harter

**Committee on Special Projects**
James B. Steward, Co-Chair
Marlaine Teahan, Co-Chair

**Legislation**
Marlaine Teahan, Chair
George W. Gregory
William J. Ard
Mark Kellogg
Harold Schuitmaker
Sharri L. Rolland-Phillips

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Melisa M. W. Mysliwiec

**Probate Institute**
Tom Sweeney, Chair

**State Bar Journal**
Amy Morrissey, Chair
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James B. Steward  
Marlaine C. Teahan  
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Patricia Ouellette  
Amy Tripp

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Mary Schrauben

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Rhonda M. Clark-Kreuer  
Steve Dunn

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David Kerr, Chair  
Robert Tiplady  
W. Josh Ard
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Shaheen Imami
Meg Lentz
Christine Savage
Hon. Phillip Harter
Chris Ballard
Richard Mills
Michael Lichterman
Henry Lee

**Insurance**
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Stephen C. Rohr
James Spica
Geoffrey Vernon
Steve Elkins

**Transfer on Death Deed**
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Katie Lynwood
Steve Dunn
George Bearup

**Online Guidance for Non-lawyers**
Rebecca Schnelz, Chair
Hon. Phillip Harter
Hon Darlene O'Brien
Marlaine Teahen
Kathleen M. Goetsch
Neal Nusholtz
Ellen Sugrue-Hyman
Mike Rutkowski

**Decanting Irrevocable Trusts**
James Spica, Chair
Mark Harder
Marilyn Lankfer
Meg Lentz
Richard Mills
Carol Sewell
Susan Allan

**Power of Attorney**
Meg Lentz, Chair
James B. Steward
Susan Allan
Rachel Zapczynski
Hon. David M. Murkowski

**Statute of Repose**
Douglas Mielock, Chair
John Scott
John Bos
Amy Morrissey
George Bearup

**Transfer Tax**
Lorraine New, Chair
Marguerite Lentz
Thomas F. Sweeney

**Guardianships, Conservatorships and End of Life**
Constance Brigman, Chair
Rhonda M. Clark-Kreuer
Hon. David M. Murkowski
Rebecca A. Schnelz
Hon. Phillip Harder
W. Josh Ard
Michael Bartnik

Ad Hoc Committees, continued
<table>
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<tr>
<th>Topic</th>
<th>Chairs and Members</th>
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<tbody>
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<td>Estate Recovery From a Probate and Estate Planning Perspective</td>
<td>Shaheen Imami, Chair, J. David Kerr, Constance Brigman, Hon. David Murkowski, Chris Ballard, Melisa Mysliwiec</td>
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<tr>
<td>Tenancy By The Entirety</td>
<td>Mark Kellogg, Chair, Rhonda Clark-Kreuer, David Lucas, Richard Mills</td>
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<td>Specialization and Certification</td>
<td>James B. Steward, Chair, W. Josh Ard, Wendy Parr, Patricia Ouellette, Ron Berridge, Richard Siriani, Belinda Fitzpatrick</td>
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<td>Specialty Areas &amp; Liaison</td>
<td>Amy Tripp</td>
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<td>Charitable Giving/Exempt Organizations</td>
<td>Robin D. Ferriby, Chair, Tracy A. Sonneborn, Rick Mills, Michael Bartnik</td>
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<td>Business Law and Business Law Section Liaison</td>
<td>John Dresser</td>
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<td>ICLE – Liaison</td>
<td>Jeanne Murphy, Chair, Tess Sullivan, George W. Gregory, Marguerite Lentz, W. Josh Ard, Hon. Phillip Harter (website only), Amy Morrissey</td>
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<tr>
<td>Liaison with Michigan Bankers Association</td>
<td>Susan Allen</td>
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<td>Probate Registers</td>
<td>Rebecca Schnelz, Chair, Michael McClory</td>
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<td>Elder Law/Liaison to Elder Law Section</td>
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<td>Tax Section Liaison</td>
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8/22/12

Fred Hoops, III  
**Liaison to the State Bar**
Edward L. Haroutunian

**Liaison to the SCAO Forms Committee**
Marlaine Teahan

**Liaison to the SOS Task Force**
Rebecca Schnelz
Kathleen Goetsch

**Law School Liaison**
Josh Ard
State Bar of Michigan

Section
Expense Reimbursement Form

Please Provide Account Number
Amount

Select a Section

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

Amount Total

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<th>Description &amp; Purpose</th>
<th>Mileage</th>
<th>Lodging/ Other Travel</th>
<th>Meals</th>
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I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

<table>
<thead>
<tr>
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<th>Title</th>
<th>Signature</th>
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Grand Total $0.00

Date Title Approved by (signature)

Reset Form Print Form
STATE BAR OF MICHIGAN
Section Expense Reimbursement Policies and Procedures

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

2. All out of pocket expenses must be itemized.

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

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

5. Spouse expenses are generally not reimbursable.

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

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

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

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

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

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

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

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

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

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

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

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

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