VIII. **Call to Order**

The Chair of the Section, Harold Schuitmaker, called the meeting to order at 10:10 a.m.

IX. **Excused Absences**

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

- Harold Schuitmaker, Chair
- Doug Chalgian, Chair Elect
- George Gregory, Vice Chair
- Marilyn Lankfer, Treasurer
- David Kerr
- Hon. Darlene O’Brien
- James P. Spica
- Robin Ferriby
- Amy Morrissey
- Rebecca Schnelz
- Ellen Sugrue Hyman
- Josh Ard
- James Steward
- Susan Allan
- Tom Sweeney
- Shaheen Imami
- Bob Taylor
- Patricia Ouellette
- Rob Tiplady

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

- Nancy L. Little
- Douglas A. Mielock
- Susan S. Westerman

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

- Mark Harder, Secretary
- Hon. David Murkowski
- Richard Siriani

The following officer and member was absent without excuse:

- Marlaine Teahan
X. **Introduction of Guests**

Members of the Council, officers, and guests introduced themselves. The following guests were in attendance:

- Constance Brigman
- John Dresser
- Meg Lentz
- Rhonda Clark
- Lorraine New
- Christopher Ballard
- Bill Morrison
- Kathleen Goetsch
- Amy Tripp
- Cindy Andrews
- Belinda Fitzpatrick
- Jill Goodell
- Nancy Welker
- Derek A. Walters
- Jeanne Murphy
- Karl Barr
- Kim Winokur
- Steve Jones
- Mark E. Kellogg
- Becky Bechler
- Melinda V. Sheets
- Kurt A. Olson
- Amy L. Glenn
- Rick Mills

XI. **Minutes of March 20, 2010 Meeting of the Council**

Minutes of the March 20, 2010, meeting of the Council had been previously distributed with the Agenda for the meeting. It was noted that Lorraine New was present at the meeting. Upon motion by Marilyn Lankfer with support from Robin Ferriby, the minutes were unanimously approved subject to the correction that Lorraine New was at the meeting.

XII. **Treasurer Report – Marilyn Lankfer**

Marilyn Lankfer distributed a financial report through March 2010 (*Attachment 1*). Ms. Lankfer indicated that the fund balance as of the end of March was approximately $200,000. She also distributed information about the Estate Planning and Probate Journal costs and the relatively small reduction in postage costs due to electronic distribution. (*Attachment 2*). She suggested that we review these costs, other expenses, and the fund balance in the context of overall planning for the Council.

There was a general discussion of different ways to make the Probate Journal searchable. Currently Section members can search for words and phrases within an edition but cannot search across issues. In addition, there are two levels of searches which could be set up: a "Bookmark" search and an "Index Page" search. Jeanne Murphy of ICLE will check on the feasibility of using the ICLE search engine to expand members' search capabilities.

XIII. **Chairperson’s Report**

Harold Schuitmaker reported that the State Bar wanted to know if the Council wanted a booth at the Bar's Annual Meeting. There was general consensus among Council members that they did not want to staff a booth.
XIV. **Report of the Committee on Special Projects – Amy M. Morrissey**

Amy Morrissey reported on the meeting of the Committee on Special Projects that preceded the Council meeting.

Connie Brigman reviewed the Uniform Adult Guardianship Protective Proceedings Jurisdictional Act (the "UAGPPJA") as recommended by the Guardianship Committee. The Committee on Special Projects approved several changes. (Attachment 3). Upon motion by Ms. Morrissey and seconded by George Gregory, the final form was approved subject to concurrence by the probate judges. 18 approved; one dissented.

XV. **Standing Committee Reports**

A. **Internal Governance**

1. **Budget – George Gregory**

George Gregory projected a surplus of approximately $20,000 and a fund balance of approximately $150,000 for the 2009 – 2010 fiscal year. Mr. Gregory explained that costs are down because the Council has not filed any amicus briefs recently (although with the new Michigan Trust Code there is likely to be an increase in amicus briefs), the Council has obtained sponsorships for many of its events, and in general has made a concerted attempt to reduce expenses. All of these factors have resulted in a significant fund balance. Mr. Gregory suggested that the Council consider a 5 dollar dues cut which could be in place for 3 to 4 years. Robert Tiplady brought up the concern that if the Section is going to establish Estate Planning and Probate Specialties, there will be significant front end costs and the Probate Section will need to cover these costs. David Kerr suggested that the Council look at ways of serving its members more. For example, he suggested making Judge Harder's website searchable, doing more education on the MTC, and in general making information more readily available. Shaheen Imami suggested improving the Estate Planning and Probate Section's State Bar Website. On the other hand, there was some concern expressed by others that if the Council has an active spend down program, there will be a sense of entitlement by the recipients. There was a general consensus among Council members that it needs to develop a short and long term plan in order to prepare an appropriate budget for the coming year.

2. **Bylaws – Marilyn Lankfer**

No report.

3. **Michael Irish Award – Brian Howe**

Mike McClory is working on the Michael Irish Award.
4. **Long Range Planning – Doug Chalgian/Nancy Little**

No report.

5. **Nominations – Doug Mielock**

Doug Mielock distributed a tentative draft of criteria the Nominations Committee will use for nominating members to the Council and to Officer positions ([Attachment 4](#)). Mr. Mielock encourages people to submit names for nominations to any member of the Committee. (The Nominations Committee consists of the past three chairs of the Council: Douglas A. Mielock, chair, Lauren M. Underwood, and Nancy L. Little.)

6. **Relations with the State Bar – Thomas F. Sweeney**

No report.

7. **Annual Meeting – George Gregory**

No report.

B. **Education and Advocacy Services for Section Members**

1. **Amicus Curiae – Ellen Sugrue Hyman**

No report.

2. **Continuing Education and Annual Probate Institute – George Gregory**

Mr. Gregory distributed a report ([Attachment 5](#)) concerning registrations to date for the Probate Institute and recent attendance at programs regarding the Michigan Trust Code. He indicated that as of the date of this meeting, 382 have signed up for the Institute, 100 more than last year. He also reviewed several additional upcoming programs that are being co-sponsored by the Section and ICLE.

3. **Section Journal – Nancy L. Little**

4. **Nancy Little reported that the next issue of the Probate Journal focuses on charitable giving.**

5. **State Bar Journal – Amy M. Morrissey**

6. **Mr. Morrissey reported that the Probate Section's theme issue of the State Bar Journal comes out in May, and it focuses on the Michigan Trust Code.**
7. Pamphlets – Ellen Sugrue Hyman

Ms. Hyman reported that the Pamphlets Committee finished a draft of the Estate Administration pamphlet and it will be included in the materials for the Council's next meeting. The Committee is currently working on pamphlets on Living Trusts and Acting for Individuals Who Are Incapacitated.

8. Electronic Communications – Josh Ard

Mr. Ard reported that there is now an easy link to ICLE training on our State Web Page.

C. Legislation and Lobbying

1. Legislation – Harold G. Schuitmaker/John R. Dresser/George Gregory

Mr. Schuitmaker reported that legislation to require acceptance provisions for powers of attorney has not been introduced yet.

2. Michigan Trust Code – Mark K. Harder

Becky Bechler reported that the three technical correction bills for the Michigan Trust Code will be introduced Tuesday, April 20th.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

Mr. Kerr reported that the Council's comments to the proposed Ethics Rules were posted but he has received no response.

2. Unauthorized Practice & Multidisciplinary Practice – Bob Taylor

No report.

3. Specialization and Certification – James B. Steward

Mr. Steward reported that the Committee continues to meet on rules and qualifications for a specialization certification.

4. Practice Management – Patricia Ouellette

No report.
E. Administration of Justice


   Mr. Imami reported that the Committee would like to clarify Michigan law regarding the right to a jury trial. Nationally, there appear to be two different approaches: 1) any issue of fact goes to the jury; 2) there are no jury trials in probate court unless specifically provided for by statute.

2. Uniformity of Practice – Rhonda Clark

   No report.

F. Practice Issues, Related Areas & Liaisons

1. Charitable Giving/Exempt Organizations – Robin D. Ferriby

   The Probate and Estate Planning Journal issue on charitable giving already has five articles in place for its upcoming issue.

   Mr. Ferriby indicated that the Southeast Michigan Community Foundation will likely again be a sponsor for next year's Institute, although there are no guarantees.

2. Transfer Tax – Thomas F. Sweeney

   Mr. Sweeney reported that he received a revised draft of the Council's proposed legislation regarding the presumption of a decedent's intent regarding federal estate tax credits and exemptions during 2010. (Attachment 6). He reported that the changes to the Council's draft were not substantive.

   Mr. Sweeney also reported on a proposal regarding the federal estate and generation skipping transfer tax floating around in the House Ways and Means Committee which would permit an election by estates of persons dying in 2010 about whether or not to be subject to the estate tax. The estate would have a choice of either electing to pay no estate tax and be limited to the basis adjustment rules now in place or electing to use a retroactively adopted credit shelter amount with a full basis adjustment. This would deal with the constitutional issue of retroactivity since using the credit shelter amount would be a voluntary election. Lorraine New informed the Council that there is still no IRS form to obtain a step up in basis, although it appears that the estate has until April 15th of next year to file the form.
3. Guardianships and Conservatorships – Constance Brigman

Senator Papageorge is not in a rush to introduce guardianship legislation and would welcome comments. The Council will submit its legislation as a proposal. Ms. Brigman will review the personal jurisdiction provisions of the UAGPPJA with the probate judges. If they request changes to the final form approved by the Council, members will be contacted for a vote by e-mail.


No report.

5. Elder Law/Liaison to Elder Law Section – Amy R. Tripp

Last year the Elder Law and Disability Rights Section filed a class action (Miller, et al. v. Olszewski) alleging that DHS was violating federal law and not allowing Medicaid recipients to reduce their patient pay and apply it to pre-eligibility medical expenses (PEME). As a result of the lawsuit, DHS has issued a new policy indicating that any PEME incurred within 3 months of eligibility may be offset against the patient pay amount.

6. Family Law/Family Law Section Liaison – Patricia M. Ouellette

No report.

7. Real Property Law/Real Property Section Liaison – Daniel P. Marsh

No report.

8. State Bar Section to Section Action Team Liaison – Robert Tiplady

No report.

9. Tax and Taxation Section Liaison – Lorraine F. New

No report.

10. State Bar Liaison – Richard J. Siriani

No report.

11. Court Rules and Forms Committee Liaison – Marlaine C. Teahan

No report.

12. Trust Institutions and Liaison with Michigan Bankers Association – Susan Allan
   No report.

14. Law School Liaison – Josh Ard
   No report.

15. Insurable Interest – Mark Harder/Robin Ferriby
   Mr. Ferriby followed up on the issue of whether a trust can have an insurable interest in a life insurance policy. He informed us that NCCUSL is working on a uniform act dealing with insurable interests. Mr. Schuitmaker recommended that we wait to see what happens on a national level. No action was taken by the Council.

XVI. Other Business
   None.

XVII. Hot Topics
   None.

XVIII. Adjournment
   There being no further business, the Council meeting was adjourned at 11:30 a.m.

Respectfully submitted

Marilyn A. Lankfer
Acting Secretary
ATTACHMENT 1

Financial Report
### Probate and Estate Planning Section

#### Treasurer’s Report as of March 31, 2010

<table>
<thead>
<tr>
<th></th>
<th>January 2010 Actual</th>
<th>February 2010 Actual</th>
<th>March 2010 Actual</th>
<th>Year to Date Actual</th>
<th>2009-10 Budget</th>
<th>Variance</th>
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<tr>
<td><strong>Revenue</strong></td>
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<td></td>
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<tr>
<td>Membership Dues</td>
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<td>$2,100</td>
<td>$70</td>
<td>$117,985</td>
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<td>1,875</td>
<td>(1,790)</td>
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<td></td>
<td></td>
<td>1,350</td>
<td>(1,350)</td>
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<td><strong>Total Receipts</strong></td>
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<td>$2,100</td>
<td>$70</td>
<td>$118,070</td>
<td>$114,735</td>
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<td><strong>Disbursements</strong></td>
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<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Journal</td>
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<td></td>
<td>37,500</td>
<td>(27,483)</td>
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<td>Chairperson’s Dinner</td>
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<td></td>
<td>2,953</td>
<td>(1,047)</td>
<td></td>
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<td>Travel</td>
<td>1,397</td>
<td>1,259</td>
<td>798</td>
<td>5,661</td>
<td>12,000</td>
<td>(6,338)</td>
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<td>Lobbying</td>
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<td>2,000</td>
<td>12,000</td>
<td>24,000</td>
<td>(12,000)</td>
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<tr>
<td>Meetings</td>
<td>978</td>
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<td>(3,373)</td>
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<td>Support for Annual Institute</td>
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<td>6,000</td>
<td>(6,000)</td>
<td></td>
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<tr>
<td>Amicus Briefs</td>
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<td>5,000</td>
<td>(5,000)</td>
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<td>Listserv</td>
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<td>70</td>
<td>70</td>
<td>420</td>
<td>860</td>
<td>(430)</td>
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<tr>
<td>Postage</td>
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<td>900</td>
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<td>Telephone</td>
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<td>25</td>
<td>76</td>
<td>500</td>
<td>(424)</td>
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<td>Other</td>
<td>75</td>
<td>110</td>
<td>185</td>
<td>1,000</td>
<td>(815)</td>
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<tr>
<td><strong>Total Disbursements</strong></td>
<td>$6,454</td>
<td>$11,451</td>
<td>$4,787</td>
<td>$36,939</td>
<td>$101,875</td>
<td>($64,936)</td>
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<tr>
<td><strong>Increase</strong></td>
<td>-$3,709</td>
<td>-$9,351</td>
<td>-$4,717</td>
<td>$81,131</td>
<td>$12,860</td>
<td>$68,271</td>
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**Additional Information**

**Fund Balance**

$199,909
ATTACHMENT 2

Probate and Estate Planning Journal: Review of Costs
### Probate Estate Planning Journal Review

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>1/29/10</th>
<th>8/25/09</th>
<th>4/15/09</th>
<th>1/30/09</th>
<th>10/23/08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantity</td>
<td>1,500</td>
<td>2,400</td>
<td>2,900</td>
<td>3,040</td>
<td>3,150</td>
</tr>
<tr>
<td>Page Count</td>
<td>84 Text Pages</td>
<td>32 Text Pages</td>
<td>44 Text Pages</td>
<td>52 Text Pages</td>
<td>56 Text Pages</td>
</tr>
<tr>
<td>Production Cost</td>
<td>$4,793.00</td>
<td>$2,695.00</td>
<td>$3,891.00</td>
<td>$4,371.00</td>
<td>$4,634.00</td>
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<tr>
<td>Alterations/Mics</td>
<td>$35.00</td>
<td>$75.00</td>
<td>$72.50</td>
<td>$187.50</td>
<td>$75.00</td>
</tr>
<tr>
<td>Mailing Charges</td>
<td>$164.66</td>
<td>$164.28</td>
<td>$188.72</td>
<td>$193.60</td>
<td>$194.05</td>
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<tr>
<td>NCOA</td>
<td>$25.00</td>
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<td>$25.00</td>
<td>$25.00</td>
<td>$25.00</td>
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<tr>
<td>Postage</td>
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<td>$1,503.12</td>
<td>$1,598.20</td>
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<tr>
<td>Shipping/Samples</td>
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<td>$9.35</td>
<td>$9.70</td>
<td>$20.20</td>
<td>$25.88</td>
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<tr>
<td>TOTAL With Postage</td>
<td>$6,266.70</td>
<td>$4,004.07</td>
<td>$5,569.00</td>
<td>$6,300.42</td>
<td>$6,527.13</td>
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<tr>
<td>Rough Cost Per Booklet</td>
<td>$4.18</td>
<td>$1.67</td>
<td>$1.92</td>
<td>$2.07</td>
<td>$2.07</td>
</tr>
</tbody>
</table>

Cost Saving Features: Prepaying postage and saving 10% surcharge

Pre-Pay Postage Examples: $121.75 $103.54 $138.22 $150.31 $159.82

Less Pages: Current font and leading size could be reduced. More info onto a page.

Less Pages: Change formatting of top headers and bottom page #’s slightly to fit more info to a page.

Different Stock: Using white text instead of cream color (would have to run figures to establish exact amount)

Biggest difference in costs: The biggest aspect in the comparison of costs is the number of pages to each edition. The most recent version had the highest number of pages divided by the least # of books.

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Steve DeNolf
The F.P. Horak Company
616-560-5930
ATTACHMENT 3

UAGPPJA Final Report of Committee and Approved Draft
ARTICLE 1

GENERAL PROVISIONS

Sec. 101. This act shall be known and may be cited as the “uniform adult guardianship and protective proceedings jurisdiction act.”

Sec. 102. As used in this act:

(a) “Adult” means an individual who has attained 18 years of age.

(b) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5520.

(c) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5520.

(d) “Guardianship order” means an order appointing a guardian.

(e) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(f) “Incapacitated person” means an adult for whom a guardian has been appointed.

(g) “Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(h) “Person,” except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(i) “Protected person” means an adult for whom a protective order has been issued.
(j) “Protective order” means an order appointing a conservator or other order related to management of an adult’s property.

(k) “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

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

(m) “Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

(n) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Sec. 103. A court of this state may treat a foreign country as if it were a state for the purpose of applying this article and articles 2, 3, and 5.

Sec. 104. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Sec. 105. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following: (a) Hold an evidentiary hearing:
(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (a) or any other proceeding, any evidence otherwise produced under paragraph (b), or any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d);

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Sec. 106. (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.
(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.
ARTICLE 2
JURISDICTION

Sec. 201. (1) In this article:

(a) “Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.

(b) “Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian. or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition. However, regardless of how long a respondent has been physically present in a state it will be the respondent’s home state, if it is the state chosen by respondent’s agent appointed under a legally valid, unrevoked instrument that authorizes an agent to make respondent’s care and placement decisions.

(c) “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(d) “Temporary absence” means an absence during which the respondent continues to maintain their principal residence with the intent to return to it as their principal residence. Evidence that an absence is temporary and is not intended as a permanent change of abode includes but is not limited to any of the following circumstances: absence due to vacation, business, education, illness, treatment, rehabilitation or an absence related to military service. A
petitioner who seeks to establish that this state is the respondent’s home state has the burden of establishing prima facie proof that any absence used to qualify this state as the respondent’s home state was a temporary absence as defined in this subsection.

(2) In determining under Sections 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider all of the following:

(a) The location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding.

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence.

(c) The location of the respondent’s property.

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.

**Sec. 202.** This article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

**Sec. 203.** A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if 1 or more of the following apply:

(a) This state is the respondent’s home state.

(b) On the date the petition is filed, this state is a significant-connection state and either of the following apply:

   (i) The respondent does not have a home state or a court of the respondent’s home state has declined to exercise jurisdiction because this state is a more appropriate forum.
(ii) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(A) A petition for an appointment or order is not filed in the respondent’s home state.

(B) An objection to the court’s jurisdiction is not filed by a person required to be notified of the proceeding.

(C) The court in this state concludes that it is an appropriate forum under the factors set forth in Section 206.

(c) This state does not have jurisdiction under either paragraph (a) or (b), the respondent’s home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States.

(d) The requirements for special jurisdiction under Section 204 are met.

Sec. 204. (1) A court of this state lacking jurisdiction under Section 203 has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state.

(b) Issue a protective order with respect to real or tangible personal property located in this state.

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301.
(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent’s home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Sec. 205. Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Sec. 206. (1) A court of this state having jurisdiction under Section 203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all of the following factors:

(a) Any expressed preference of the respondent.

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation.

(c) The length of time the respondent was physically present in or was a legal resident of this or another state.

(d) The distance of the respondent from the court in each state.
(e) The financial circumstances of the respondent’s estate.

(f) The nature and location of the evidence.

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

(h) The familiarity of the court of each state with the facts and issues in the proceeding.

(i) If an appointment were made, the court’s ability to monitor the conduct of the guardian or conservator.

Sec. 207. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction.

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent’s property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction.

(c) Continue to exercise jurisdiction after considering:

(i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court’s jurisdiction.

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 206(3).

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.
(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney’s fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this act.

Sec. 208. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent’s home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent’s home state. The notice must be given in the same manner as notice is required to be given in this state.

Sec. 209. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under Section 204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply: (1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 203 before the appointment or issuance of the order. (2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state
shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.
ARTICLE 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

Sec. 301. (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition under subsection (1) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court’s own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1).

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state.

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person.

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state
if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 201(2).

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person.

(c) Adequate arrangements will be made for management of the protected person’s property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 302. (b) the documents required to terminate a guardianship or conservatorship in this state.

Sec. 302. (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state’s provisional order of transfer.

(2) Notice of a petition under subsection (1) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.
(3) On the court’s own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1).

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) unless either of the following apply:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 301 transferring the proceeding to this state.

(6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person’s incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5102 to 700.5520 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.
ARTICLE 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

Sec. 401. If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in a county of this state where the ward is located and intends to temporarily reside by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office, following the procedure set forth in this Article.

Sec. 402. If a conservator has been appointed in another state and a petition for the appointment of a conservator is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order conservatorship order in a county where the ward has property in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond, following the procedure set forth in this Article.

Sec. 403. A foreign guardian or conservator who wishes to register a guardianship or protective order conservatorship order in this state shall do all of the following:

   (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state, subject to any conditions imposed upon nonresident parties. Properly file all of the following in both the appointing court and in the court where registration is properly sought:

      (i) Notice of Intent to File Foreign Guardianship / Conservatorship with Proof of Service.
      (ii) Registration of Foreign Guardianship / Conservatorship
(2) A court of this state may grant any relief available under this act and other law of this state to enforce a registered order. Notice of an intent to file a foreign guardianship or conservatorship shall be properly served not later than 28 days prior to filing of a registration. Service of a notice of an intent to file a foreign guardianship or conservatorship shall be upon those persons who would be entitled to a notice of a petition for the appointment of a guardian or conservator protective order under the notice rules for filing of a petition for a guardian or conservator in this state and also under the same or similar rules in the state that appointed the guardian or conservator. However, the manner for providing notice will be in the same manner as required for the giving of notice of a petition for a guardianship or conservatorship in this state.

Sec. 404. (1) Upon registration of a foreign guardianship or conservatorship, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state. including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties. A guardian or conservator whose order is registered in Michigan may maintain actions and proceedings in this state.

(2) In addition to any other method of obtaining personal jurisdiction over an individual under Michigan law, an incapacitated person, protected person, foreign guardian or foreign conservator consents to the personal jurisdiction of the courts of this state in a proceeding related to the guardianship or conservatorship if they perform an act in this state that will give the state jurisdiction over a guardian, conservator, incapacitated person or protected person. Registration of a copy of the foreign guardianship or conservatorship order with a court of this state is an act in this state that gives this state jurisdiction over a guardian, conservator, incapacitated person or protected person for matters related to the guardianship or conservatorship.

(3) A court of this state may grant any relief available under this act and other laws of this state to enforce a registered order.
ARTICLE 5

MISCELLANEOUS PROVISIONS

Sec. 501. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 502. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Sec. 503. (1) This act applies to guardianship and protective proceedings begun on or after the effective date of this act.

(2) Articles 1, 3, and 4 and Sections 501 and 502 apply to proceedings begun before the effective date of this act, regardless of whether a guardianship or protective order has been issued.

Enacting section 1. This act does not take effect unless Senate Bill No. ___ or House Bill No. ____ (request no. 07777’08 a) of the 94th Legislature is enacted into law.
INTRODUCTION

The Guardianship and Conservatorship Committee began a review of the Michigan draft of the Uniform Adult Guardianship and Protective Proceedings Act (UAGPPJA) in the Fall of 2008. Because the Committee believed the UAGPPJA merited an in-depth review, the Committee requested that the UAGPPJA not be introduced in Michigan until the Committee had completed its study.

The Committee was asked to recommend to the Council whether the Act should be adopted in whole or in part. The Committee presented its final recommendation at the April 17, 2010 Council meeting. The Council agreed with our recommendation and approved the UAGPPJA subject to communication with Judge Mack and the Michigan Probate Judges Association. Friendly amendments were added to the Michigan draft at Sec. 201(1)(b) and Sec. 404(2).

COMMITTEE MEMBERSHIP AND VOLUNTEERS TAKING PART IN THIS STUDY:

Constance L. Brigman, Chairperson
Josh Ard
Doug Chalgian
Rhonda Clark-Kreuer
Valerie Lafferty
Michael McClory
Hon. David M. Murkowski
Rebecca Schnelz
Jim Steward

SCOPE AND METHOD OF STUDY

The Committee studied each article in order to understand its operation and functionality. We later focused on these topics: (1) Applicability of the UAGPPJA to Michigan developmental disability (DD) guardianships since those guardianships are under the mental health code, (2) supplying a definition of the term “temporary absence” in Section 201, (3) clarification of the
differences between Sec. 203(b)(i) and Sec. 203(b)(ii), (4) allowing a patient advocate under a legally valid, unrevoked patient advocate designation to select the home state for the ward, (5) eliminating the sanctions for unjustifiable conduct without eliminating the provisions for declining jurisdiction due to unjustifiable conduct, and (6) registration of foreign orders.

BACKGROUND OF THE UAGPPJA

The UAGPPJA is intended to address multiple state jurisdiction, transfer of cases between states, and recognition and enforcement of foreign guardianship and conservatorship orders.

Article II of the UAGPPJA creates a three-level priority system for determining which state has jurisdiction to appoint a guardian or conservator. An individual’s home state has primary jurisdiction, followed by a state with “significant connections.” The third and final level applies where neither the home state nor any significant connection state is the most appropriate forum.

Article III of the UAGPPJA contains procedures for transferring a guardianship or conservatorship case from one state to another and for accepting such a transfer. Other provisions encourage communication between courts in such cases.

Finally, Article IV facilitates enforcement of guardianship and conservatorship orders in other states by allowing a guardian or conservator to register those orders in other states.

The UAGPPJA was enacted in 13 states in 2008 and 2009. In addition, Alabama, Connecticut, Florida, Indiana, Iowa, Kansas, Kentucky, Maryland, New Mexico, South Carolina, Tennessee, and Texas are studying it. Florida withdrew the UAGPPJA 2-24-09. Kansas’s Judicial Council recommended against the UAGPPJA on Dec. 4, 2009.

COMMITTEE’S REVIEW OF UAGPPJA AND CURRENT MICHIGAN LAW

Michigan’s probate code for adult guardianships and conservatorships does not address all of the issues covered by the UAGPPJA. Specific differences arise in the areas of jurisdiction, transfer, and recognition and enforcement of out-of-state orders.
A. Jurisdiction

The UAGPPJA creates a three-level priority system for determining which state has jurisdiction to appoint a guardian or conservator for an individual: (1) the home state has primary jurisdiction, a priority which continues for six months after a move to another state; (2) a state which has significant connections with the individual may exercise jurisdiction if there is no home state, the home state has declined jurisdiction, or there is no dispute as to jurisdiction; and (3) another state may exercise jurisdiction if there is no home state or significant connection state or if all such states have declined jurisdiction. Sec. 203 of the UAGPPJA.

Michigan courts have personal jurisdiction over individuals who are present in the state at the time process is served;\(^1\) who are domiciled in Michigan when process is served;\(^2\) or, who consent to personal jurisdiction in Michigan.\(^3\)

Michigan probate courts have subject matter jurisdiction over (1) the affairs and estate of a protected individual who is domiciled in this state,\(^4\) (2) a nonresident’s property that is located in this state,\(^5\) (3) property coming into the control of a fiduciary that is subject to the laws of this state,\(^6\) and (4) an incapacitated individual present in this state.\(^7\) A person is not required to be present in Michigan for a minimum duration of time before a Michigan court acquires jurisdiction to hear a petition for guardianship or conservatorship of that individual.

Michigan law has a limited comity provision for interstate guardianships. If a guardianship proceeding is in a county other than the proposed ward’s county or state of residence, and a guardian has been appointed elsewhere, then the courts must communicate with one another to decide which court shall retain jurisdiction.\(^8\)

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\(^1\) MCL 600.701(1)
\(^2\) MCL 600.701(2)
\(^3\) MCL 600.701(3)
\(^4\) MCL 700.1301(a)
\(^5\) MCL 700.1301(b)
\(^6\) MCL 700.1301(b)
\(^7\) MCL 700.1301(c)
\(^8\) MCL 700.5317(2)
B. Transfer

The UAGPPJA contains procedures for transferring a guardianship or conservatorship to another state and for accepting such a transfer. Sections 301 and 302. To transfer a case, court orders are needed from both the transferring state and the receiving state. To ensure continuity, the transferring court cannot dismiss its proceeding until it receives an order from the receiving court accepting the case. To expedite the transfer, the court in the accepting state must accept the transferring court’s finding of incapacity and selection of the guardian or conservator.

Michigan’s probate code does not provide for a guardian or conservator appointed in another state to file a petition in Michigan requesting that the Michigan court give full faith and credit to the prior adjudication in the other state and appoint a guardian or conservator in Michigan.

C. Recognition and Enforcement of Out-of-State Orders.

The UAGPPJA allows a guardian or conservator to register a guardianship or conservatorship in another state by filing it as a foreign judgment. Secs. 401 and 402. Once the order has been registered, the guardian or conservator may exercise all powers authorized under the order except as prohibited by Michigan law. Sec. 403.

Michigan’s probate code does not provide for registering foreign guardians and conservators; however, the Uniform Enforcement of Foreign Judgments Act does require Michigan courts to give full faith and credit to an order of a court of another state.9 Also, a foreign conservator may take possession of personal property located in Michigan without a local proceeding.10

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9 MCL 691.1172
10 MCL 700.5432
D. Michigan is Experiencing the Problems Addressed by the UAGPPJA

Committee members are aware of problems that have arisen from individuals bringing a proposed ward to Michigan to defeat an existing or proposed guardianship elsewhere. The Committee is also aware of problems that have arisen from transferring or recognizing out-of-state orders in guardianship or conservatorship cases.

Based on the feedback from the Committee, Michigan would benefit from either adopting the UAGPPJA or from borrowing portions of the UAGPPJA that would benefit Michigan’s existing probate code.

E. Adopting the UAGPPJA Could Create Problems

Guardians appointed in other states who wish to transfer their out-of-state order to Michigan will not be able to do so if their ward is a developmentally disabled adult. Michigan’s DD guardianships are under the mental health code. The UAGPPJA is applicable to EPIC and not to the mental health code as it is now proposed. Advocates from the DD community have not embraced the UAGPPJA. However, this is a community that wants to avoid guardianships. Allowing guardians to transfer guardianships across state lines will make it more difficult for a DD individual to get rid of a guardian that they do not want.

The Committee was initially concerned that the lack of a definition of temporary absence might be a problem for Michigan residents that regularly winter over in other states. We supplied a definition of temporary absence that is derived from the tax code, has caselaw construing it, and that conforms to the spirit of the UAGPPJA.11

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11 The Committee added Sec. 201(1)(d). “Temporary absence” means an absence during which the respondent continues to maintain their principal residence with the intent to return to it as their principal residence. Evidence that an absence is temporary and is not intended as a permanent change of abode includes but is not limited to any of the following circumstances: absence due to vacation, business, education, illness, treatment, rehabilitation or an absence related to military service. A petitioner who seeks to establish that this state is the respondent’s home state has the burden of establishing prima facie proof that any absence used to qualify this state as the respondent’s home state was a temporary absence as defined in this subsection. See also, Hein v. Comm’r, 28 T.C. 826 (1957), acq. 1958-2 C.B. 6, where a taxpayer claimed head of
The UAGPPJA’s jurisdiction provisions give first priority to the proposed ward’s home state. The home state is determined with reference to where the proposed ward resided for the six months leading up to the petition. There will be cases when a patient advocate exists yet a limited guardianship is also necessary. Michigan law gives deference to the patient advocate.\(^\text{12}\) Therefore, the Committee amended the Michigan draft of the UAGPPJA at Sec. 201(b) to give jurisdictional deference to the state that the patient advocate chooses for the patient’s medical care.\(^\text{13}\)

The UAGPPJA is particularly concerned with “granny snatching.”\(^\text{14}\) Section 207 allows a court to decline to exercise jurisdiction if it determines that it acquired jurisdiction because of a party’s unjustifiable conduct.\(^\text{15}\) It also allows the court to assess against that party costs, expenses and fees, including attorney’s fees, that were incurred due to a party’s unjustifiable conduct.\(^\text{16}\) Unjustifiable conduct is not a defined term. The Committee was not unanimous that a party’s “righteous” motives would be deterred by this sanction provision. Absent a compelling reason to change the American Rule in Michigan, the Committee chose to delete Sec. 207(2) of the UAGPPJA.

The UAGPPJA is also concerned with multiple jurisdiction issues. The Committee determined that Sec. 203(b)(i) does not have what we call a “first-in-time” rule. Sec. 203(b)(ii), however, does have such a rule. If a petition is brought in a significant connection state, and the household status based on his sister. The sister was continuously confined to a nursing home for several years including the entire year under consideration. The sister had been a member of the taxpayer’s household prior to confinement and the taxpayer paid all her nursing home expenses. It was unlikely that the sister would return to the home. The court held that the sister’s stay in the nursing home was temporary because if she did recover, neither she nor the taxpayer intended to terminate her relationship with the taxpayer’s home. See also, Juvelis v. Snider, 68 F.3d 648 (3rd Cir. 1995), providing that an incapacitated person is presumed to not be able to form intent to change their domicile.

\(^{12}\) MCL 700.5306(2)
\(^{13}\) Sec. 201(1)(b). “… However, regardless of how long a respondent has been physically present in a state it will be the respondent’s home state, if it is the state chosen by respondent’s agent appointed under a legally valid document that authorizes an agent to make respondent’s care and placement decisions.” Id.
\(^{15}\) Sec. 207(1)(a)
\(^{16}\) Sec. 207(2)
respondent either does not have a home state or a court of the respondent’s home state has declined jurisdiction because this state is a more appropriate forum, then this state has jurisdiction. Therefore, the first-in-time rule does not apply to Sec. 203(b)(i). If a respondent does not have a home state, then it is possible under Sec. 203(b)(i) for there to be more than one petition filed and both states would have jurisdiction until the courts applied appropriate forum analysis\(^{17}\) and agreed on which state is the more appropriate forum. Sec. 203(b)(ii), however, requires a petition to be filed first.\(^ {18}\) Sec. 203(b)(ii) would not apply if the respondent did not have a home state. What if the respondent had a home state and it declines jurisdiction in favor of Michigan, but the Michigan petitioner files one day after someone else filed a petition in Florida? The hopeful answer is that Florida would conclude that is not an appropriate forum under Sec. 203(b)(ii)(C). The Committee concluded that the mechanics of solving multiple jurisdiction issues will continue to run smoothly if the courts communicate with one another. The UAGPPJA at least provides a framework for the courts to communicate about interstate jurisdictional issues.

The registration of foreign guardians has been difficult for the Committee. If a guardian is operating in Michigan under the supervision of a foreign court, then a Michigan court cannot remove him. There may not be any interested parties in Michigan to report his misconduct. Michigan would lack routine subject matter jurisdiction over the guardianship based on physical presence alone because the UAGPPJA revises MCL 700.1301 to that extent.\(^ {19}\) Still, a Michigan court can exercise personal jurisdiction over the guardian and ward and that would allow

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\(^{17}\) Sec. 206(3) provides the factors to apply.

\(^{18}\) On the date the petition is filed, this state is a significant-connection state and either of the following apply: (ii) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state and any other significant-connection state… Sec. 203(b)(ii) [emphasis added]

\(^{19}\) (Revised) Sec. 1301. Except as otherwise provided in this act, this act applies to all of the following:
(a) The affairs and estate of a decedent or missing individual who is domiciled in this state.
(b) A nonresident’s property that is located in this state or property coming into the control of a fiduciary that is subject to the laws of this state.
(c) A minor in this state.
(d) Survivorship and related accounts in this state.
(e) A trust subject to administration in this state.
(f) An incapacitated individual or the affairs and estate of a protected individual if a court of this state has jurisdiction under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
Michigan adult protective services to intervene. The Committee revised Sec. 404(2) to ensure that registration of a foreign guardianship provides consent to specific personal jurisdiction.

In addition, our revised definition of “emergency” does not require the absence of a person who is willing and has authority to act. Therefore, Michigan can still appoint an emergency guardian based on physical presence alone.

Other matters of note: A foreign guardian cannot perform any act in Michigan that is prohibited here for guardians - euthanasia for example. The foreign order will be construed in a manner that conforms to the law of the rendering state, which will require Michigan courts to communicate with courts of other states more often. If a foreign guardian is haled into court in Michigan for misconduct, then a Michigan court will determine which state’s laws applies to the guardian’s alleged misconduct. As a preliminary matter, a foreign guardian is required to report to the rendering state according to the law of the rendering state. If, however, the foreign guardian operates outside of his appointed duties (misconduct) and neglects or harms a ward physically present in Michigan, then the foreign guardian will be haled into a Michigan court for violation of Michigan law.

**RECOMMENDATION**

The Committee recommends the UAGPPJA for Michigan. Unlike Kansas that already has laws similar to the UAGPPJA, Michigan’s EPIC contains nothing like the UAGPPA. If the UAGPPJA is not enacted here, then EPIC should at least borrow from the UAGPPJA: EPIC should provide for transfers of orders without re-litigating incapacity and choice of guardian and/ or conservator. Also, the UAGPPJA provisions that address comity between states regarding multiple-jurisdiction guardianships and conservatorships should be added to EPIC. It is understood that some courts may find the UAGPPJA burdensome on the front end, because it...

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20 MCL 600.701(e)

21 (2) The incapacitated person, protected person, foreign guardian or foreign conservator submits to the personal jurisdiction of the courts of this state in a proceeding related to the guardianship or conservatorship if they perform an act in this state that would give the state jurisdiction over a guardian, conservator, incapacitated person or protected person. Registration of a copy of the foreign guardianship or conservatorship order with a court of this state is an act in this state that gives the state jurisdiction over a guardian, conservator, incapacitated person or protected person for matters related to the guardianship or conservatorship.

22 Sec. 201(1)(a) “Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety, or welfare, and for which the appointment of a guardian is necessary. Id.

23 Sec. 204(1).
will require training and new procedures. The UCCJEA was similarly burdensome when it was first implemented. However, the elderly are increasingly mobile and they are a significantly growing population. The UAGPPJA will likely be more of a help than a burden as the number of adult interstate guardianship jurisdiction cases increase for all Michigan probate courts.
ATTACHMENT 4

Nomination Committee Criteria for New Council Members and Officers
Probate and Estate Planning Council

Nominations Committee

The Nominations Committee considers the following factors in making its nomination decisions:

For new Council members:

1. Prior attendance at CSP/Council meetings and participation on CSP/Council committees.

2. Prior contributions to the probate and estate planning bar, including through speaking (e.g. ICLE presentations) and writing (e.g., Section Journal articles).

3. Portion of the individual’s practice committed to probate and estate planning.

4. Contribution to the diversity of the Council, including in the following areas:
   a. geography (e.g. representation in areas of the state currently proportionately underrepresented on the Council);
   b. law firm size;
   c. representation of the areas of private law practice, government (probate court), and banking (professional trustee); and
   d. gender, race, and ethnicity.

For Officer positions:

Contributions to the Council as a Council member.
ATTACHMENT 5

Report of the Continuing Education and Annual Probate Institute Committee
The marketing campaign for the 50th Annual Probate & Estate Planning Institute (May 6-8 in Traverse City and June 18-19 in Plymouth) is in full force. There have been two mailings of the brochure with three upcoming, supplemented with periodic email messages. Registrations are well ahead of last year's pace. Current registration statistics (both locations):

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Video replays for the New Michigan Trust Code and 19th Annual Drafting Estate Planning Documents continue with excellent enrollments. ICLE worked with the Genessee County Bar Foundation to hold videos in Grand Blanc at a special price for Genessee County Bar members. When combining the live presentations and the video replays, there are more than 2,000 registrations for these MTC seminars.

The Section is co-sponsoring the following upcoming seminars:

- **Estate Planning in Times of Estate Tax Uncertainty: Your Two Hour Survival Guide** on 3/31 in Plymouth. A panel of 4 practitioners will cover the current law and its impact; pitfalls, opportunities and planning; and what to do in one's practice. This seminar has been advertised for less than a month, but more than 150 lawyers have registered to participate in person or by live webcast.

- **2010 Medicaid and HealthCare Planning Update** (4/7 in Grand Rapids and 4/22 in Plymouth) and the **Advising Clients on VA Benefits** seminar on 4/22 in Plymouth.

- **Drafting an Estate Plan for an Estate Under $5 Million** (5/26 in Plymouth) - a limited enrollment seminar in the Probate & Estate Planning Certificate Program
There are eight one-hour Michigan Trust Code Preview webcasts each featuring Mark Harder and one other member of the Section’s MTC Committee. Seven of the eight have been released so far, with the final one becoming available on April 1. These are free to ICLE Partners and cost $39 each for non-Partners. About one hundred lawyers have watched each of the webcasts to date.
Continuing Education and Annual Probate Institute
Committee Report to the
Council of the Probate & Estate Planning Section
April 2010

The 50th Annual Probate & Estate Planning Institute (May 6-8 in Traverse City and June 18-19 in Plymouth) is fast approaching. Current registration statistics (for both locations):

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<th>2009</th>
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<td>Five weeks out</td>
<td>299</td>
<td>382</td>
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<td>Total</td>
<td>647</td>
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In celebration of 50 years, we're planning to have lots of memorabilia on hand including handbooks from 20+ years of the institute, photos from past years, fun facts from the past 50 years and more. If you have ideas for things that might be of interest to the audience or anything to contribute yourself, please contact Jeff Kirkey at 877-229-4350 or jkirkey@icle.org.

Estate Planning in Times of Estate Tax Uncertainty: Your Two Hour Survival Guide was held 3/31 in Plymouth. A panel of 4 practitioners covered the current law and its impact; pitfalls, opportunities and planning; and what to do in one's practice. More than 115 lawyers attended in person and 185 by live webcast.

The Section is co-sponsoring the following upcoming seminars:

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Michigan Probate Section
Guardianship and Conservatorship Committee Report

1. The Committee met on April 7th @ 4:30 by conference call. The following were in attendance:
   - Connie Bigman
   - Josh Ard
   - Jim Steward
   - Rebecca Schnetz
   - Mike McClory
   - Valerie Lafferty
   - Hon. David Murkowski's absence is excused.

2. The Committee discussed the registration of foreign orders under UAGPPJA Article IV and agreed that we do not see how we can improve it further.

   a. Regarding the interpretation of a foreign order, the order is enforced (1) according to its terms and (2) according to the laws of the rendering state but with the exception that (3) the guardian cannot do something in Michigan that is prohibited by Michigan law. See Sec. 404(1) first sentence. For example, if Michigan law prohibits a guardian from discontinuing life support absent X, Y, and Z then the guardian needs X, Y, and Z to disconnect life support so long as the ward is located in Michigan. On the other hand, if Michigan law allows a guardian to disconnect life support but the law of state X where the guardian was appointed does not permit the same, then the guardian should not be able to disconnect life support on the ward in Michigan. "[T]he guardian's authority is not derived from the ward, but from the appointing court for which the guardian acts as agent, exercising those powers conferred by statute or by court." Mack v. Mack, 618 A.2d 744, 750 (Md. 1993). It is helpful to remember that these guardians are registered in Michigan, not transferred to Michigan. They are still under the supervision of a foreign court and bound by the law of the state that is supervising them.

   b. Some states construe their guardianship orders such that all rights not explicitly granted to the guardian are retained by the ward. Other states construe their orders the opposite. A registered order will be construed according to the rendering state's interpretation. This will require calling the rendering court for instruction until the ABA publishes one of their handy state-by-state comparison charts.

   c. Regarding what to do with foreign guardians who are bad boys in Michigan, we will have personal jurisdiction over the foreign guardian. See Sec 404(2). We can have him into court in Michigan to answer for damages or throw him into jail for criminal behavior. We cannot remove him as guardian because we did not appoint him. See In re Guardianship of Ralph DeCaligny, No. C3-93-1269, 1994 Minn. App. LEXIS 126 (Minn. Ct. App. Feb. 1, 1994) where a
Minnesota probate court removed a guardian appointed by New Mexico only to be reversed on appeal.

d. Regarding what to do with routine matters concerning foreign guardians in Michigan, the duration of the guardianship will be governed by the rendering state but most other procedural matters will be governed by Michigan law so long as Michigan is the forum state. See Symeonides' Twenty-Third Annual Choice-of-Law Survey (2009) for examples involving interstate jurisdiction concerning support and custody issues with children.

e. Regarding what to do with emergencies, Michigan will still be able to remove the ward from harm until the issuing state enters an order removing the guardian. Compare this to statutes authorizing children to be removed by police or protective services from the custody of a parent who has legal custody of the child. It doesn't matter that the parent's legal custody was granted by another state. All that matters is that the child is in Michigan and is at risk of harm. Nothing new under the sun here.

f. Mike mentioned that local providers may need assistance in interpreting foreign orders, since they won't know what the foreign guardian is allowed to do under the rendering state's law. Excellent point. The guardian may need to petition for an instruction from the probate court for the benefit of Michigan care providers.

g. In an era where registration in another state is a possibility, then a guardian's orders may need to become more specific on points of law that are widely variant. As Josh pointed out, some states allow euthanasia; others do not. If State X does not allow euthanasia and State X issues the order that is registered elsewhere, then a family may ask for the order to give notice of their state law.

3. Other matters:

a. Typos were identified in the drafts.

b. The order of Sec. 403(1)(i) and (ii) should be reversed in order.

c. Everyone agreed to the changes made in response to last PEPC regarding Sec. 201(1)(a) [changes to emergency definition], Sec. 201(1)(b) [home state definition changed from power of attorney to "document"], and Sec. 404(2) [personal jurisdiction over foreign guardian].

d. It was mentioned that Connie has tried to present the UAGPPJA to the Elderlaw and Disability Advocacy Section in March then April 2010. Josh is going to assist in that regard.
e. Becky noted that there will be DD orders that guardians want to transfer to Michigan. She isn't sure how to respond.

See Sec. 301(4):

"The court shall issue an order provisionally granting a petition to transfer a guardianship and direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state...." [emphasis added]

See Sec. 302(4):

"The court shall issue a final order provisionally granting a petition filed under subsection (1) unless either of the following apply:

(a) an objection is made and the objector establishes that transfer of the proceeding would contrary to the best interests of the incapacitated or protected person...." [emphasis added]

See Sec. 302(8):

"The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of a conservator or guardian to seek appointment as a conservator or guardian in this state...." [emphasis added]

(Sec. 301 applies when a Michigan guardian asks Michigan for permission to transfer their guardianship to another state. Sec. 302, on the other hand, applies when Michigan has been asked to accept a provisional order to transfer a guardianship to Michigan.)

Sec. 302(6) allows Michigan to conform an order to Michigan law after it is transferred. But one cannot even apply the UAGPPJA to DD guardianships because the UAGPPJA modifies EPIC and not the mental health code which governs DD guardianships.

Thanks, Becky. This is an important point that we are still working on.
ATTACHMENT 6

Revised Draft of the Council's Proposed Legislation Regarding the Presumption of a
Decedent's Intent Regarding Federal Estate Tax Credits and Exemptions During 2010
MEMORANDUM

Date:    April 14, 2010
To:      The Honorable Mark Meadows, State Representative
Attn:    Susan Schmidt
From:    Timothy D. Reeves, Legal Counsel
Re:      Bill Request No. 0659210, presumption of decedent's intent regarding federal estate
tax credits and exemptions during 2010.

Enclosed with this memorandum is a draft of a bill prepared in response to your request. I made
some changes to the language that was provided, and so I thought it best to provide you with a
draft first, so that you and other interested parties may review it to make sure that my changes
are appropriate.

Please note that I thought it necessary to amend existing section 1213 of the estates and protected
individuals code, MCL 700.1213, in light of the new section. Because of that, I thought it best to
number the new section 1213a, although it would also make sense to make it section 2723 as the
proposed language suggested.

Most of the other changes are, I hope, fairly minor and, as always, are meant only to clarify and
make the language more readable, not to make any substantive changes. I would point out the
changes to the final subsection. I thought it best not to give the section a "sunset" date. I believe
the intent is better accomplished by leaving the section "on the books" so that it still applies to
the estates of decedents who die during 2010 even in 2011 and later. The applicability is
controlled by the first subsection even if the section remains effective after December 31, 2010.

If you have any questions, and it you wish to make any changes to the draft or request bluebacks,
please don't hesitate to contact me.

TDR:klg

Enclosure
revenue code of 1986, 26 U.S.C. USC 2057, if that deduction is
elected. Unless specifically stated otherwise, AND SUBJECT TO
SECTION 1213A, the reference to the unified credit or exemption
equivalent, or to the family-owned business deduction, shall be
considered to refer to the credit, exemption, or deduction as it
exists at the time of death of the individual.

SEC. 1213A. (L) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4),
A WILL, TRUST, OR BENEFICIARY DESIGNATION OF OR BY A DECEDENT WHO
DIES AFTER DECEMBER 31, 2009 AND BEFORE JANUARY 1, 2011 SHALL BE
PRESUMED TO REFER TO THE FEDERAL ESTATE TAX AND FEDERAL GENERATION-
SKIPPING TRANSFER TAX LAWS AS THEY APPLY TO ESTATES OF DECEDENTS
WHO DIE ON DECEMBER 31, 2009 IF EITHER OF THE FOLLOWING APPLIES TO
THE WILL, TRUST, OR BENEFICIARY DESIGNATION:

(A) THE WILL, TRUST, OR BENEFICIARY DESIGNATION CONTAINS A
FORMULA REFERRING TO THE UNIFIED CREDIT, ESTATE TAX EXEMPTION,
APPLICABLE EXEMPTION AMOUNT, APPLICABLE CREDIT AMOUNT, APPLICABLE
EXCLUSION AMOUNT, TAXABLE ESTATE, GROSS ESTATE, ESTATE TAX VALUE,
GENERATION-SKIPPING TRANSFER TAX EXEMPTION, GST EXEMPTION, MARITAL
DEDUCTION, MAXIMUM MARITAL DEDUCTION, UNLIMITED MARITAL DEDUCTION,
INCLUSION RATIO, APPLICABLE FRACTION, OR ANY SECTION OF THE
INTERNAL REVENUE CODE OF 1986, 26 USC 1 TO 9834, RELATING TO THE
FEDERAL ESTATE TAX OR GENERATION-SKIPPING TRANSFER TAX.

(B) THE WILL, TRUST, OR BENEFICIARY DESIGNATION MEASURES A
SHARE OF AN ESTATE, TRUST, OR CONTRACTUAL BENEFIT SUBJECT TO A
BENEFICIARY DESIGNATION BASED ON THE AMOUNT THAT CAN PASS FREE OF
FEDERAL ESTATE TAX OR THE AMOUNT THAT CAN PASS FREE OF FEDERAL
GENERATION-SKIPPING TRANSFER TAX OR BASED ON A SIMILAR PROVISION OF
FEDERAL ESTATE TAX OR FEDERAL GENERATION-SKIPPING TRANSFER TAX LAW.

(2) A presumption that arises under subsection (1) is a

rebuttable presumption that the decedent intended that the

applicable formula be construed as provided in subsection (1). A

fiduciary of an estate, trust, or contractual benefit subject to a

beneficiary designation under which the presumption is applicable

shall give notice to each beneficiary whose interest is affected by

the presumption. A beneficiary whose interest is affected by the

presumption or a fiduciary of the will, trust, or contractual

benefit subject to a beneficiary designation may commence a

proceeding to determine whether the decedent intended that the

formula be construed as provided under subsection (1), solely for

the purpose of determining the intent of the decedent regarding the

formula under this section, the court may consider the surrounding

circumstances and the rules of construction. A person who commences

a proceeding under this section has the burdens of proof and

persuasion in establishing the decedent's intent that the formula

should not be construed as provided in subsection (1). A proceeding

under this subsection shall be commenced within whichever of the

following is earlier:

(A) two years after the decedent's death.

(B) six months after the fiduciary sent the beneficiary a

notice of the presumption under this subsection.

(3) A presumption under subsection (1) does not apply with

respect to a will, trust, or beneficiary designation that is

executed or amended after December 31, 2009, or that manifests an

intent that a contrary rule shall apply if the decedent dies on a
DATE ON WHICH THERE IS NO THEN-APPLICABLE FEDERAL ESTATE OR
GENERATION-SKIPPING TRANSFER TAX.
(4) IF THE FEDERAL ESTATE TAX OR FEDERAL GENERATION-SKIPPING
TRANSFER TAX BECOMES APPLICABLE BEFORE JANUARY 1, 2011, THE
REFERENCE IN SUBSECTION (1) TO JANUARY 1, 2011 SHALL REFER INSTEAD
TO THE EARLIER DATE ON WHICH THE TAX TAKES EFFECT.
(5) THIS SECTION IS A REMEDIAL RESPONSE TO CHANGES IN THE
FEDERAL ESTATE TAX AND GENERATION SKIPPING TRANSFER TAX AND TAKES
EFFECT RETROACTIVELY ON JANUARY 1, 2010.
A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 1213 (MCL 700.1213), as amended by 2000 PA 54,
and by adding section 1213a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1213. If an individual includes a provision in a will,
trust document, or beneficiary designation that is designed to
reduce federal estate tax liability to zero or the lowest possible
amount payable by describing a portion or amount measured by
reference to the unified credit, the exemption equivalent, other
credits, or other deductions, then unless specifically stated
otherwise, the reference to the credits, exemption, or deductions
shall be considered to include a reference to the family-owned
business deduction available under section 2057 of the internal