

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

**December 14, 2013
Lansing, Michigan**

Minutes

I. Call to Order

In the absence of the Chair, the Chair-elect of the Section, Amy N, Morrissey, called the meeting to order at 10:26 a.m.

II. Attendance

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

Morrissey, Amy N.
Steward, James B.
Teahan, Marlaine C.
Allen, Susan M.
Ard, W. Josh
Bearup, George F.
Brigman, Constance L

Clark-Kreuer, Rhonda M.
Kerr, J. David
Lucas, David P.
Ouellette, Patricia M.
Spica, James P.
Vernon, Geoffrey R.
Welber, Nancy H.

A total of 14 council members and officers were present representing a quorum.

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

Sweeney, Thomas F.
Imami, Shaheen I.
Ballard, Christopher A.
Lentz, Marguerite M.
Marquardt, Michele C.

Murkowski, Hon. David M.
New, Lorraine F.
Skidmore, David L.J.M.
Taylor, Robert M.

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

None.

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

McClory, Michael S.

E. Others in attendance:

Rebecca Bechler
Robert M. O'Reilly
Rick Mills
Jeffrey B. Linden

Nazneen H. Syed
Katie Lynwood
Kathleen M. Goetsch
Amy E. Peterman

Joe Viviano
Bradley Vauter

III. Introduction of Guests

IV. Minutes of November 16, 2013, Meeting of the Council

The minutes of the November 16, 2013, Meeting of the Council were included with the meeting materials posted on the Section's web page prior to the meeting. A few minor corrections were noted. Motion by James P. Spica, second by Marlaine C. Teahan to approve the minutes as corrected. The motion was approved on a voice-vote with no nays or abstentions.

V. Treasurer Report – Marlaine C. Teahan

Marlaine C. Teahan advised Council that the financial reports for October and November had not yet been received from the State Bar. She expects that information to be received by the time of our next meeting.

Ms. Teahan also advised that she has received several checks for contributions to the Hearts and Flowers Fund, and reminded members to make those checks payable to her to make it easier to deposit, with a notation that it is for the hearts and flowers fund.

VI. Chairperson's Report – Thomas F. Sweeney

In the absence of the Chair, the Chair-elect of the Section, Amy N. Morrissey, presented the Chairperson's report. Several matters of possible interest to the Section were noted:

The IRS mileage reimbursement rate starting with January, 2014, will be \$0.56 per mile.

As noted in the By Laws Committee report, we hope to complete our proposed revisions to the By Laws in time to have them acted upon at the September 2014 annual meeting.

The Insurable interest legislation has been reported out of committee; that legislation could be passed by end of January 2014.

The information we are receiving from Representative Pettalia's office is that his office is working on a draft technical correction bill to provide clarification of the residential uncapping change which passed last year [see MCL 211.27(a)]. However, we do not know at this point whether it will be in the form we are suggesting

Potential legislation for removal of Dower has again been mentioned, but no definite proposal yet. The Family law section is interested in this and may oppose the change.

Bills have been introduced to allow a person to name a funeral representative (Senate bill 0731 and House Bill 5162). These concepts have been discussed at Council over the years and also at SCAO; we may want to discuss these Bills at CSP in January;

Probate Court fees structure – no definite proposed changes yet. Our Court Rules, Procedures and Forms Committee discussed this issue at its November and December 2013 meetings. See that Committee's reports attached to our December 2013 Agenda materials.

VII. Report of the Committee on Special Projects – Marguerite C. Lentz

In the absence of Marguerite C. Lentz, Nancy H. Welber presented the following report for CSP:

- CSP discussed the report presented at the meeting by George F. Bearup, Chairperson of the Real Estate Committee. That Committee's sub-committee met again on December 13, 2013, and prepared a slightly revised technical amendment proposal to clarify MCL 211.27a(7)(s). See the sub-committee's report dated December 13, 2013, attached hereto as Attachment A. The Committee recommends presenting the proposed technical correction, as set forth in its December 2013 report, to Representative Pettalia (the original bill's sponsor). Motion by Nancy H. Welber, seconded by J. David Kerr, to approve the Committee's recommendation. The motion was approved on a Council vote of 14-0, with no nays and no abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.
- CSP again discussed several proposed revisions to our current Bylaws as presented by the Bylaws Committee and made several suggestions. (See materials included with Meeting Agenda). That Committee will continue its work on proposed revised Bylaws and bring those back to CSP for further discussion.
- Jim Spica presented to CSP an overview of the "directed trustees" proposal which would amend the Michigan Trust Code to provide a statutory structure permitting separation of fiduciary responsibility between separate trustees for specified duties and obligations. (See Mr. Spica's memo and the proposal attached to the meeting materials). Such trustees would not be co-trustees. The proposal is being developed by the Updating Michigan Law Committee and is not simply a copy of what currently appears in some other states. This proposal will be reviewed and discussed at future CSP meetings.

VIII. Standing Committee Reports

A. Internal Governance

1. Budget – James B. Steward

No report. The budget for this year was approved at our last meeting.

2. Bylaws – Nancy H. Welber

No further report – the committee’s report appears under CSP.

3. Awards – Douglas A. Mielock

No report.

4. Planning – Amy N. Morrissey

No Report.

5. Nominating – Douglas G. Chalgian

No Report.

6. Annual Meeting – Amy N. Morrissey

No Report.

B. Education and Advocacy Services for Section Members

1. *Amicus Curiae* – David L. Skidmore

No Report.

2. Probate Institute – Shaheen I. Imami

No report.

3. State Bar and Section Journals – Amy N. Morrissey

Ms. Morrissey reported that work on articles for the upcoming Probate & Estate Planning theme issue is continuing and is on track.

4. Citizens Outreach – Constance L. Brigman

Ms. Brigman noted the need to update our guardianship pamphlet. Josh Ard noted that the Medicaid pamphlet which appears on our web page is out of date; he thinks that the Committee updated that pamphlet, but the updated version is not on the web page. The Committee will look into this to make sure that only a current version of the pamphlet appears on our web page.

5. Electronic Communications – William J. Ard

No report.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

No report in addition to the matters noted under the Chairperson’s report and CSP report.

2. Updating Michigan Law – Marguerite Munson Lentz

In the absence of Ms. Lentz, Mr. Spica reported that the Committee is continuing to work on a proposed bill to deal with digital assets. As reported last month, that Committee’s belief is that a “stand alone” bill will be better than trying to fit these concepts into EPIC. As also reported last month the Committee will be meeting with the general counsel bankers’ representative(s) to discuss their concerns about the proposed domestic asset protection trust (“DAPT”) legislation.

3. Insurance Committee – Geoffrey R. Vernon

Mr. Vernon reported that SB 31-32 regarding insurable interests was reported out of committee and is on the Senate Floor. The Bills come up for a vote in January. There does not appear to be opposition, so the chances of passage are good.

4. Artificial Reproductive Technology – Nancy H. Welber

Nancy H. Welber reported that the Committee is working on developing a form for use at clinics along with a proposed corresponding statute; this could become model for the rest of the States. The proposed statute would deal with intestate succession and also affect social security benefits. All members are reminded to contact Nancy if you have suggestions for changes that would address those issues.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr -

No report

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

In the absence of Mr. Taylor, J. David Kerr reported that the Unauthorized Practice of Law committee of the Michigan State Bar will again be sponsoring programs similar to last year: ‘who do you trust’. August 6 is the target for the presentations for 2014. He asked those in attendance to think about locations that could be good to include

for these presentations, particularly areas of the state that didn't have any presentations last year.

3. Specialization and Certification – James B. Steward

No Report.

E. Administration of Justice

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

In the absence of Ms. Marquardt, Ms. Teahan reported that the Committee met on December 6, 2013, and discussed issues relating to: possible identity theft concerns regarding information included on probate court filings for guardianships, conservatorships, etc., and again discussed the inventory fees vs filing fees issue. The Committee is also continuing to work on obtaining input from various groups that have an interest in the proposed court of appeals jurisdiction and procedural changes – no additional responses as of the December 2013 meeting. See the Committee meeting minutes for November 6, 2014, and December 4, 2014, attached as Attachment B for additional details.

2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No Report.

F. Areas of Practice

1. Real Estate – George F. Bearup

See CSP discussion re technical correction proposal.

2. Transfer Tax Committee – Lorraine F. New

No report

3. Charitable and Exempt Organization – Christopher A. Ballard

No Report.

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

James B. Steward reported that he participated (by phone) in a meeting held at Cusmano Kandler & Reed Inc. in Lansing on December 14, 2013, to discuss Senate Bill 466 which would have Michigan adopt the Uniform Adult Guardianship and Protective Proceedings Act (UAGPPA), together with companion SB 465 which would amend EPIC to make the UAGPPA the basis for determining Michigan probate court jurisdiction for

guardianship and conservatorship proceedings. At that meeting, Mr. Steward presented the history of our review and concerns regarding that proposed uniform act, and our strong position that the uniform act should not be adopted in Michigan without substantial changes (but then, it would not be “uniform”). AARP and others believe that an act such as this should be adopted in all the States, so this question may come up again.

G. Liaisons

1. Alternative Dispute Resolution Section Liaison –

Sharri L. Rolland Phillips has resigned as the Alternative Dispute Resolution Section Liaison. We do not have a liaison to that Section at present.

2. Business Law Section Liaison – John R. Dresser

No Report.

3. Elder Law Section Liaison – Amy R. Tripp

No Report.

4. Family Law Section Liaison – Patricia M. Ouellette

No Report.

5. ICLE Liaison – Jeanne Murphy

No Report.

6. Law Schools Liaison – William J. Ard

No Report.

7. Michigan Bankers Association Liaison – Susan Allan

No Report.

8. Michigan Probate Judges Association Liaison – Hon. Judge David M.

Murkowski

No Report.

9. Probate Registers Liaison – Rebecca A. Schnelz

In the absence of Ms. Schnelz, Michael McClory reported that HB 4064 has passed as 2013 PA 199 (see MCL 600.2137; 600.8344; 600.1428), along with HB 4532 (2013 PA 201; see MCL 600.832; 600.859; 600.1427) but the provisions for allowing the

Probate Courts to charge fees for on-line access to court records was removed from the bills before they were passed. Probate courts are not authorized to charge fees for access to court documents. It is too expensive to set up online access without some way to generate revenue to pay for those costs.

10. SCAO Liaisons – Marlaine C. Teahan, Constance L. Brigman, Rebecca A. Schnelz

See report attached hereto as Attachment C which outlines several forms changes approved by SCAO, and the reasons for those changes.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz

No Report.

12. State Bar Liaison – Richard Siriani

No Report.

13. Taxation Section Liaison – George W. Gregory

See report attached hereto as Attachment D.

IX. Other Business

None.

X. Hot Topics

None.

XI. Adjournment

Meeting adjourned by Chair-elect, Amy N, Morrissey, at 11:35 a.m.

ATTACHMENT A



SMITH HAUGHEY

RICE & ROEGGE

ATTORNEYS AT LAW

MEMORANDUM

TO: Probate and Estate Planning Council

FROM: George F. Bearup, Real Estate Committee Chair

DATE: December 13, 2013

RE: Clarification of MCL 211.27(a)(7)(s): Intra-Family Residential "Uncapping" Exemption.

Background: After November's Council meeting a subcommittee consisting of Jeff Ammon, James Ramer, David Fry and myself discussed the type of amendment that is more likely to be acceptable to Representative Peter Pettalia who is the original sponsor of the current exemption.

David Fry had been in frequent contact with Representative Pettalia's office and discussed with his Chief Legislative Assistant the need for an amendment to the exemption to more clearly express the will of the legislature. Apparently one of Representative Pettalia's motives for the original exemption was to protect the transfer of family farms from one generation to the next.

The subcommittee observed that the entire real property tax statute is confusing with respect to "uncapping" transfers. The property tax statute is in two parts: one part, MCL 211.27a(6), defines which transfers are "uncapping" transfers, while the second part, MCL 211.27a(7), attempts to define what kinds of transfers are not "uncapping" transfers. The problem is that both parts include exceptions to the general rules stated in the other part.

While the subcommittee debated whether we should consider amendments to both subsections (6) and (7), since both contain descriptions of the kind of transfers which we wish to clarify that are not "uncapping" intra-family transfers, we decided to err on the side of "the possible over the perfect" in order to not attract any more opposition for our efforts to clarify what intra-family residential transfers are exempt from the "uncapping" rules.

Proposed Amendment: The subcommittee's proposed amendment follows:

Amendment to MCL 211.27a(6)(d):

(d) A conveyance by distribution from a trust, except as provided in subsection (7)(s).

Amendment to MCL 211.27a(7)(s):

(s) Beginning December 31, 2013, a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential real property does not change following the transfer. As used in this subdivision, (i) "residential real property" means real property classified as residential real property under section 34c; and (ii) "transferor" shall include (a) a person for whom another is acting in a fiduciary capacity, including a conservator, as defined in MCL 700.1103(h), a guardian as defined in MCL 700.1104(l), a personal representative as defined in MCL 700.1106(o), and a trustee of a trust, as defined in MCL 700.1107(o); and (b) shall include a testator as defined in MCL 700.1107(m) of a will as defined in MCL 700.1108(b) and a settlor of a trust, as defined in MCL 700.7103(i); and (iii) "transferee" shall include a beneficiary as defined in MCL 700.1103(d). A change in trust beneficiaries that adds to or substitutes a person or persons related to the present beneficiary or beneficiaries by blood or affinity to the first degree is not a transfer with respect to residential real property held in the trust. A transfer of an ownership interest in a corporation, limited liability company, limited partnership or other legal entity that owns residential real property between persons related by blood or affinity to the first degree is not a transfer with respect to residential real property held in the entity.

Proposed Action Steps:

1. Our intention is for David Fry to submit this proposed amendment as a "technical correction" to Representative Pettalia's office to confirm that Representative Pettalia is supportive of this proposed technical correction. We believe that he will be supportive, as he has recognized the need for a technical correction, and he has indicated that he is willing to sponsor a technical correction to the exemption, but only so long as he has the clear backing of the State Bar of Michigan.
2. If Representative Pettalia finds the proposed technical correction acceptable, the subcommittee will communicate with Representative Pettalia our commitment to obtain the endorsement of the technical correction by the Probate and Estate Planning Council, the Real Estate Section and the Tax Law Section of the State Bar of Michigan.
3. We will then ask for the Probate and Estate Planning Council's formal support of the proposed technical correction.
4. We will then seek to obtain formal support from the Real Estate and Tax Sections to the Council's formal endorsement of the proposed technical correction.

George F. Bearup
Chairperson, Real Estate Committee

ATTACHMENT B

December 6, 2013

Michigan Court Rules, Procedures and Forms Committee
MINUTES OF MEETING
(REVISED)

Meeting location: Conference Call on Tuesday, November 6, 2013 at 7:30 a.m.

Meeting Participants: Michele C. Marquardt (Chairperson), Judge Murkowski, JV Anderton, Doug Mielock, Marlane Teahan, Rhonda Clark Kreuer and Rebecca Schnelz.

- Supreme Court Rule changes
 - Court of Appeals - Publications
 - "Peace of Mind" Registry
 - MCR5.104(A)(2) vs. 5.114 (B)
 - Inventory Fee/Filing Fee
-

Projects: Inventory Fee vs. Filing Fee

1. Marlane: **What we need to do:**
Judge Mack brought up RJA 871. This change is very difficult for court staff because paperwork is too burdensome. Judge Murkowski said to raise filing fee or eliminate filing fee. Dave Skidmore prepared a report comparing state by state fees (this was not reviewed at the meeting). Depending on what Judge Homan says, our group may ultimately decide not to get to a review of what other states are doing. It was suggested that RJA 871 is not practical and suggested a sliding fee. Marlane passed on a idea from Judge Mack through Mike McClory suggesting an increase in the small estate fee from \$25.00 to \$125.00, but that could eat up the whole estate sometimes. (Research other

States and decide if it's worth it.)

Doug suggested that this may be beyond our scope. We don't know how fee adjustment affect the budgets of the Court Administrators. Perhaps better on their plate.

Marlaine: \$425.00 as filing fee would approximate filing and inventory fees now.

Doug: Shouldn't a Trust in litigation also require an "Inventory" fee for Court time and expenses? The idea of the fee is that the Probate matter requires monitoring. Might there be an increased filing fee for Trust litigation?

Becky: Depends on the magnitude of the litigation. But again, is that our charge as a committee? Trust Supervision fee is a possibility. We could be supportive of this concept for the Court Administrators. Marlaine asked Becky if the burden is still as great as it was when RJA 871 was enacted. Becky said State developed something and it seems to be working. It is additional work, and the reporting is a hassle. The report is due in 2015 to summarize the impact of change in Inventory fee. SCAO did not want this change.

Doug: We could propose ideas but change has to come elsewhere.

Marlaine: Our charge then as suggested by Judge Mack was to investigate whether an increased filing fee would be more efficient than an Inventory fee.

Judge Murkowski: Perhaps a graduated fee on Trust cases would work.

Becky: How might that work?

Judge Murkowski: Maybe SCAO is the answer. Judge Homan is the new chair of SCAO, and he may be open to ideas.

Doug: Asked for pie chart of fees to Probate Court. No filing fees from Guardianships/Conservatorships.

Becky said that of Motion fees, 47% of Inventory fee stays with Probate Court. Probate Court is funded by county, not fees.

Civil filing fees go towards SCAO.

Judge Murkowski offered to approach Judge Homan.

2. Marlaine: Has not heard from other stakeholders in Court of Appeals project. On hold for now. Marlaine will send follow-up emails.
3. Peace of Mind Registry: Hasn't moved forward. On-line register of MPOA and organ donation.
4. Becky: MCR 5.104(A)(2) - States that Proof of Service may be by copy of Notice of Hearing etc. Makes it sound like only a copy is ok for service purposes.
Judge Murkowski: 2(a) seems wrong.
Doug: There is not "or" or "and".

Becky: Will contact Amy at SCAO to see history or if there is an error.

5. **Identity theft did not come up in the fall at SCAO or in Court Administrators.**

Marlaine: Will follow up.

Becky: SCAO may be addressing rewriting the forms as part of their overall look at forms to make them easier to read.

6. PC666 and PC667: On our list for years. PC 667 doesn't even seem to be required statutorily. Becky is re-writing this court form as part of a project for "Plainspeak". She will present to us as well.

Meeting adjourned: 9:00 a.m.

Next Meeting Wednesday, December 4, 2013 at 4:00 p.m.

Respectfully Submitted,

Michele

Michele C. Marquardt

December 6, 2013

Michigan Court Rules, Procedures and Forms Committee
MINUTES OF MEETING

Meeting location: Conference Call on Wednesday, December 4, 2013 at 4:00 p.m.

Meeting Participants: Michele C. Marquardt (Chairperson), Judge Harter and Marlaine Teahan

- Identify Theft
 - Court of Appeals Project
 - Inventory Fee/Filing Fee
-

Discussions

1. **Update regarding Identity Theft**
JV Anderton voiced concerns about Social Security numbers, bank account numbers on Conservatorships and Accountings. Marlaine followed up with SCAO. An analyst will research and follow up.
Judge Harter: The Court needs information on fiduciaries as a path to follow if things don't proceed properly (deceased estate/conservatorship).
2. **Court of Appeals Project:** No one is getting back to Marlaine from Probate Court of Appeals. The Judges' Association met November 19, 2013. Appellate practice section has questions to the sub-committee. Mike McClory in same building with Judge in charge. Mike has tried to get information, but he is still waiting. Clerk of Court for Judge Glazier says their time is currently consumed by other matters.

3. **Inventory Fee/Filing Fee**: Michele Asked Judge Harter how he views the Inventory fee matter.

J. Harter: It's there to pay for Probate Court work, but it doesn't. It's a graduated scale, but has nothing to do with the size of the Estate. Filing fees across the board would work better, especially if increased for a contested case.

Marlaine asked if issue is almost one of a "trial fee", so one that contested matters might cost more than uncontested matters.

J. Harter: Change could be unfair to someone, but Court time is greater for contested matters. Judge Harter also thought we might better to leave this issue with Court Administrators. Perhaps we should not try to legislate. Converting to something else will be bad for the probate section, because we might end up collecting fee for legislature. We might analyze the Inventory fee, but not get rid of it. We might suggest try a trial fee, but would still have Inventory fee. It would lessen the amount of work Court has to do. May not ultimately get this issue resolved. We also may not like the outcome if we get involved in Inventory fee legislation.

Meeting adjourned: 4:30 p.m.

There will not be a meeting in January.

Respectfully Submitted,

Michele

Michele C. Marquardt

ATTACHMENT C

Report of Liaison to the SCAO Estates and Trusts Forms Committee

Presented by Marlaine C. Teahan

December 14, 2013

This past year, three decedent's estates forms were modified and two new forms were developed. These forms were released to probate courts during the first week of December. The revised and new forms are attached and discussed below.

Decedent's Estates forms that were modified:

PC 556, Petition and Order for Assignment (cannot use old version after 12-31-13)

PC 577, Inventory (cannot use old version after 12-31-13)

PC 595, Order for Complete Estate Settlement (can use old version until depleted)

Newly developed Decedent's Estates forms:

PC 681 (NEW), Petition for Approval of Sale of Real Estate (Decedent Estate)

PC 682 (NEW), Order Regarding Sale of Real Estate (Decedent Estate)

PC 556, Petition and Order for Assignment, and PC 577, Inventory, were significantly modified to comply with the amendment of MCL 600.871, effective on March 28, 2013. This amendment allows for the deduction of liens, on PC 556 and PC 577, from the date of death values of real property when the real property is encumbered by or used as security for an indebtedness. The Supreme Court issued guidance to probate courts that this reduction in values is applicable only for deaths on or after the effective date of the statutory amendment. Even though the revisions to PC 556 and PC 577 repeat this guidance, it has been discovered that a couple of probate courts are interpreting the statute differently. A probate practitioner would be wise to find out the practice of each court in which he or she practices to most effectively represent the client in completing either a probate Inventory or a Petition and Order for Assignment. Time will tell whether all probate courts' actual practice becomes uniform.

PC681 and 682 are brand new forms providing a mechanism for obtaining approval by a personal representative for the sale of real estate. Prior to the December 2012 release of probate court forms, most petitions by a personal representative to sell real estate were done using conservatorship forms PC 646 and PC 647. The 2012 changes to PC 646 and PC 647 made these form unsuitable for use in a decedent's estate; the new forms were developed to provide similar forms a decedent's estate.

Note that since a personal representative is authorized by EPIC to sell real estate without court authority, unless the Letters of Authority are so restricted, this form is not required whenever a personal representative sells real property owned by an estate. Obtaining court approval is often obtained when there are fighting devisees, when the personal representative is purchasing real estate, or when the sale's price is below the appraised value, among other reasons.

A complete discussion of these changes and the creation of the new forms is found in the attached minutes of the September 5, 2013 meeting of the SCAO Estates and Trusts Forms Committee.¹

While not discussed or modified at the Estates and Trusts forms committee, it is worth noting that the SCAO Guardianship/Conservatorship and the SCAO Mental Health forms committees modified the forms below with a distribution in December 2013 to the probate courts:

Guardian and Conservator forms:

PC 625, PC 626, PC 632, PC 634, PC 650, PC 651, PC 666, PC 666a, PC 675, PC 683, PC 684, and PC 685

Mental Health forms:

PCM 218, PCM 217a, PCM 209, PCM 204

¹ While the minutes state that the meeting was on September 6, 2013, it really took place on September 5, 2013.

STATE OF MICHIGAN PROBATE COURT COUNTY OF	PETITION AND ORDER FOR ASSIGNMENT	FILE NO.
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Estate of _____, decedent **XXX-XX-**
Last four digits of SSN

PETITION

I, _____, represent that:
Name and relationship

1. Decedent died on _____ .
Date
2. Decedent was a resident of _____ in this county.
City/Township
- Decedent lived outside of Michigan and left an estate within this county to be administered.
3. The decedent's personal and real property, gross values, and lien amounts (if any) are listed below. The values of all property are calculated as of the decedent's date of death. *For real property only, if the date of death is on or after March 28, 2013, the gross value of a parcel can be reduced by any lien amount on that parcel; however, the remaining inventory value of that parcel cannot be less than zero. For personal property, the gross value and inventory value are the same. (Attach separate sheet if necessary.)

Legal description of real property	Gross value	Lien amount	Inventory value(less lien)*
Legal description of real property	Gross value	Lien amount	Inventory value(less lien)*
Description of personal property	Gross value		Inventory value
Description of personal property	Gross value		Inventory value
Description of personal property	Gross value		Inventory value
Description of personal property	Gross value		Inventory value
Totals	Total Gross Value		Total Inventory Value

4. Funeral and burial expenses are \$ _____ .
The following persons have paid the following amounts toward the funeral and burial expenses: (Statements and receipts are attached.)

NAME	AMOUNT	NAME	AMOUNT

The amount of funeral and burial expenses remaining unpaid is \$ _____ .
The gross value of the decedent's property remaining after payment of funeral and burial expenses does not/will not exceed \$15,000 as adjusted annually for cost of living.

(SEE SECOND PAGE)

Do not write below this line - For court use only

5. The name and address of the surviving spouse or, if there is not a spouse, the name, age, relationship, and address of each of the decedent's heirs are as follows:

NAME	AGE	RELATIONSHIP	ADDRESS		
			Street address		
			City	State	Zip
			Street address		
			City	State	Zip

6. I REQUEST that the property listed above be assigned as follows:

- a. for funeral and burial expenses, \$ _____ to _____, \$ _____
to _____, and \$ _____ to _____.
- b. to the surviving spouse, _____.
- c. to the following heirs in the stated proportions, _____.

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Attorney signature

Date

Name (type or print) Bar no.

Petitioner signature

Address

Address

City, state, zip Telephone no.

City, state, zip Telephone no.

ORDER ASSIGNING ASSETS

7. IT IS ORDERED that the property described above is assigned as follows:

- a. for funeral and burial expenses, \$ _____ to _____, \$ _____
to _____, and \$ _____ to _____.
- b. to the surviving spouse, _____.
- c. to the following heirs in the stated proportions, _____.

For 63 days from the date of this order, the share of each heir other than a surviving spouse or minor child shall be subject to any unsatisfied debt of the decedent up to the value of property received through this order.

Date

Judge Bar no.

I certify that I have compared this copy with the original on file and that it is a correct copy of the original.

Date

Deputy register

**STATE OF MICHIGAN
PROBATE COURT
COUNTY OF**

**INVENTORY
 AMENDED
(DECEDENT ESTATE)**

FILE NO.

In the matter of _____

I, _____, personal representative, submit the following as a complete and accurate inventory of all the assets of the estate and the fair market valuations as of _____ .
Name (type or print) Date of death

PERSONAL PROPERTY AND REAL PROPERTY DESCRIPTION If property has been used to secure a loan (including an equity line of credit), show the nature and amount of the lien. Definitions and instructions for completing the inventory are below and on the other side of this form. The values of all property are calculated as of the decedent's date of death. *For real property only, if the date of death is on or after March 28, 2013, the gross value of a parcel can be reduced by any lien amount on that parcel; however, the remaining inventory value of that parcel cannot be less than zero. For personal property, the gross value and inventory value are the same. (Attach separate sheet if necessary.)			
Legal description of real property	Gross value	Lien amount	Inventory value(less lien)*
Legal description of real property	Gross value	Lien amount	Inventory value(less lien)*
Description of personal property	Gross value	Lien amount	Inventory value
Description of personal property	Gross value	Lien amount	Inventory value
Description of personal property	Gross value	Lien Amount	Inventory value
Description of personal property	Gross value	Lien Amount	Inventory value
Description of personal property	Gross value	Lien Amount	Inventory value
Description of personal property	Gross value	Lien Amont	Inventory value
Totals	Total Gross Value		Total Inventory Value

I declare under the penalties of perjury that this inventory has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Attorney signature

Signature

Attorney name (type or print) Bar no.

Name (type or print)

Address

Address

City, state, zip Telephone no.

City, state, zip Telephone no.

USE NOTE: If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

DEFINITIONS:

- **Real property** means land, including a building or house that is built on the land.
- **Personal property** means everything that a person owns except real property. Personal property includes bank accounts and checking accounts.

INSTRUCTIONS TO COMPLETE THE INVENTORY:

1. List all real and personal property in the column "**Personal Property and Real Property Description.**"
2. When listing real property, provide the legal description of the property and the name of any other owner.
 - a. If real property has been used to secure a loan (including an equity line of credit), show the nature and amount of the lien, and reduce the gross value (value as of date of death) by the amount of the lien, but the inventory value cannot be less than zero.
 - b. If the value of real property is determined by an appraisal, include the appraiser's name and address and a description of the property appraised.
 - c. If this form is filed in a guardianship, real property that the ward owns jointly or in common with others must be listed along with the type of ownership. The court may require additional information to support the value of property that is stated in the inventory.
 - d. For each parcel of real property, calculate the value individually.
3. When listing personal property, provide enough detail to adequately determine the value. Some items should be listed separately and some items should be combined under one category. Provide the name and address of each financial institution listed. The address of a financial institution shall be either that of the institution's main headquarters or the branch used most frequently by the personal representative.
 - a. Examples of items that should be listed and valued separately are:
 - Automobiles
 - Jewelry
 - Bank accounts
 - Antiques
 - Furniture
 - Any other individual item of high value (such as a fur coat)
 - Prepaid burial contracts
 - Life insurance (cash value)
 - Annuities
 - Mutual funds
 - Stocks and bonds
 - b. Examples of items that can be listed in categories are:
 - Household items such as dishes, flatware, curtains, linens, utensils, clothing, furnishings, etc. can be grouped into several categories or combined into one category.
 - Multiple copies or pieces of a specific item that have the same value such as stocks and bonds.
 - c. If personal property has been used to secure a loan, show the nature and amount of the lien, but do not deduct the lien amount from the gross value (value as of the date of death) of any item of personal property.
 - d. If the value of personal property is determined by an appraisal, include the appraiser's name and address and a description of the property appraised.
 - e. If this form is filed in a guardianship, personal property that the ward owns jointly or in common with others must be listed along with the type of ownership. The court may require additional information to support the value of property that is stated in the inventory.

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF _____

ORDER FOR
COMPLETE ESTATE SETTLEMENT

FILE NO. _____

Estate of _____

1. Date of hearing: _____ Judge: _____ Bar no. _____

THE COURT FINDS:

- 2. Notice of hearing was given to or waived by all interested persons.
- 3. The time for presenting claims has expired.
- 4. The final account is correct and ought to be allowed.
- 5. a. The assets of the estate have been distributed, and all claims properly presented have been paid, settled, or disposed of.
 b. The schedule for distribution and payment of claims correctly identifies the manner in which assets remaining in the estate shall be paid and/or distributed.
- 6. a. No Michigan estate or inheritance tax is due.
 b. Michigan estate tax or inheritance tax has been paid in full. (Evidence of full payment from Michigan Department of Treasury is attached.)

7. Decedent's heirs are determined as follows: _____

- 8. Decedent died
 - a. intestate.
 - b. with a valid, unrevoked will dated _____ with codicil(s) dated _____.

IT IS ORDERED:

- 9. The decedent died intestate.
- 10. The will and codicil(s) are valid and admitted to probate.
- 11. The final account is approved.
- 12. Fiduciary fees and/or attorney fees are approved except _____.
- 13. Distributions already made or as set forth in the schedule for distribution and payment of claims are approved.
- 14. Authority of the personal representative is terminated.
- 15. The personal representative is discharged from liability.
- 16. The bond is cancelled.
- 17. Estate administration is closed.
- 18. Upon filing evidence of payment of the claims and distributions as set forth above (if any), the authority of the personal representative may be terminated and an order of discharge entered.
- 19. Decedent's heirs are as determined in item 7 above.

Date Judge Bar no.

Attorney name (type or print) Bar no.

Address

City, state, zip Telephone no.

Do not write below this line - For court use only

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF

PETITION FOR APPROVAL OF
SALE OF REAL ESTATE
(DECEDENT ESTATE)

FILE NO.

Estate of _____

- 1. I am the personal representative of this estate.
- 2. I intend to sell the following real estate (provide legal description): _____

for the purpose of _____

to _____ for \$ _____ on the following
Name (type or print)

terms and conditions (specify terms and conditions or attach purchase agreement): _____

_____ . Attached

is a copy of the most recent assessor's statement or tax statement showing the state equalized value of the property, which is

\$ _____. The current unpaid mortgage and unpaid taxes on this property are \$ _____.

- 3. It is in estate's best interests to sell the real property for the following reasons:

_____ .

- 4. The value of the remaining personal property is \$ _____ and the real property is \$ _____ .
The amount of unpaid debts and taxes is \$ _____. The personal representative is currently bonded for a
total amount of \$ _____ .

- 5. The interested parties, their addresses, and their representatives are identical to those appearing on the initial petition except
as follows: (For each person whose address changed, list the name and new address; attach separate sheet if necessary.)

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

Bond is set at \$ _____ .

Date: _____

Authorized signature: _____

6. **I request** that the court approve this sale of real estate and determine whether a bond needs to be filed.

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Attorney signature

Date

Attorney name (type or print)

Bar no.

Signature

Address

Address

City, state, zip

Telephone no.

City, state, zip

Telephone no.

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF

ORDER REGARDING
SALE OF REAL ESTATE
(DECEDENT ESTATE)

FILE NO.

Estate of _____

1. Date of hearing: _____ Judge: _____ Bar no.

2. _____, as personal representative of the estate, petitioned for
Name court approval of sale of real estate.

THE COURT FINDS:

3. Notice of the hearing was given to or waived by all interested persons.

4. It is in the estate's best interest to sell or otherwise dispose of the real estate.

5. Bond was filed and approved by the court.

6. The legal description of the real estate is:

IT IS ORDERED:

7. The sale of the property described above, to _____ for the sum
Name of buyer of \$ _____ and payable on the terms and conditions set forth in the petition, is approved.

8. A written appraisal of the real estate must be provided to the court within _____ days.

9. The sale is denied.

Date

Judge

Attorney name (type or print) Bar no.

Address

City, state, zip Telephone no.

Do not write below this line - For court use only



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

September 27, 2013 (Amended October 25, 2013)

MICHIGAN COURT FORMS COMMITTEE
Estates and Trusts Committee
Minutes of September 6, 2013 Meeting

Present: Hon. Thomas Brunner, Manistee County Probate Court
Keven DuComb, Attorney, Westerman & Morrissey PC
James Duquet, Livingston County Probate Court
Hon. Shana Lambourn, Ogemaw County Probate Court
April Maycock, Wayne County Probate Court
Mike McClory, Wayne County Probate Court
Marlaine Teahan, Attorney, Fraser, Trebilcock, Davis & Dunlap
Colin Boes, State Court Administrative Office (staff)
Amy Garoushi, State Court Administrative Office (staff)

Absent: George Strander, Ingham County Probate Court
Angela Tripp, Attorney, Michigan Poverty Law Program
Jonie Mitts, Judicial Information Systems (staff)
Julia Norton, State Court Administrative Office (staff)

Meeting called to order, 9:40 a.m.

1. Identifying Information

The committee considered whether there was any interest in creating a form for listing interested persons. The committee first considered whether there were certain forms that would benefit from an attached sheet that allowed for extra space for interested persons. After discussing the issue, the committee concluded that it was unnecessary and would likely be a waste, as many times additional sheets for identifying interested parties are not necessary. The committee also discussed the possibility of a check box and a general attachment for interested persons being used. However, some committee members noted that the form itself should contain the interested persons, not an entirely separate sheet, and it was necessary to include it on the form to comply with the court rule.

The committee also considered whether a general interested persons sheet should be created for use. While there was some support for this proposition, SCAO staff reminded the committee that if such a form was created, it would be mandatory to use that form. Several committee members commented that they preferred the flexibility of using their own interested person forms and that it would be detrimental to be forced to use one form created by the SCAO. Also, SCAO staff noted that some of the concerns regarding unrepresented persons obtaining additional sheets for listing interested persons may be alleviated as Michigan Legal Help continues to develop additional materials for use.

The committee agreed that no general interested persons form should be created at this time.

The committee also discussed the concept of a facesheet in general, which could be used for information useful for the file, but which would not be part of the public record of pleadings. However, the committee noted that in the past where courts have tried to require additional information not specifically required by law it has created problems. It was also noted that the technology committee was working on possible modifications to the court rules to accommodate issues with public records and online access. The committee also questioned what benefit there would be to having a facesheet in the context of estates and trusts. No specific benefit could be discerned at this time.

The committee decided not to proceed with the creation of a facesheet.

2. Service

The committee discussed MCR 5.104(A) and whether probate court forms should include more detailed instructions regarding service for the benefit of unrepresented individuals. The committee discussed that there would be a number of difficulties in including such detailed instructions and that it would be a large project to create the instructions for each individual form. Addition of service information would require consideration of manner of service, method of service, and time of service, among other issues. Some members commented it seemed like it would be too difficult to create notice instructions.

SCAO staff noted that instructions are generally not created to accompany forms unless there is a statutory mandate requiring the creation of such instructions. SCAO staff also noted that Michigan Legal Help is available and will continue to develop material, including probate materials, in the future. It was suggested that committee members visit the Michigan Legal Help website to get some idea of the type of information it provides. However, some committee members also noted that not everyone in the legal community fully supports the idea of the Michigan Legal Help website.

During this discussion, the committee also was informed by SCAO staff that sometime in the future there will be further consideration of modifying our forms to be more plain language oriented. Also, other significant modifications will be considered (i.e.

modifying the masthead). However, SCAO noted major changes, such as a change to the masthead, would not occur without some form of consultation.

The committee decided that no changes regarding instructions relating to service should be made at this point.

3. PC 556, Petition and Order for Assignment

The committee considered changes to PC 556, which was recently revised to accommodate the amendment to MCL 600.871, but required further clarification. A proposed modified version of the form, submitted by the Probate and Estate Planning section of the State Bar of Michigan, was considered as a starting point for modification to the form.

The committee determined that a multiple column approach for listing property would be best. This approach would allow a column to describe the property, a column for gross value, a column for lien amount (for real property only), and a column for the inventory value. While there was some discussion about whether the property section should be split into subparts a. and b., the committee ultimately concluded it would be better for all property to be contained in one chart, with captions explaining which boxes were for real property and which boxes were for personal property. SCAO staff noted that an a. and b. approach would result in certain information being repeated.

The committee also discussed adding the word “legal” before description of property. Initially, there was some hesitation regarding whether this would be providing too much information. Some committee members suggested it should be up to the individual to include a legal description if it were necessary for their purpose, such as for transfer of title or insurance. However, after further discussion, the committee determined that the real property lines should ask for the legal description of the property. This would at least put the individual filling the form out on some notice that the legal description of the property would likely be necessary for future transactions relating to the property.

Due to the change in the way real property is treated versus personal property, lines were specifically designated for either real or personal property. The proposed language in the form was also modified to add the word “only” after the phrase “for real property” to emphasize that the lien deduction only applies to real property.

Three lines will be deleted from the bottom of the form, as the committee determined the area left for court use only was rarely used and the space would be better used in adding an additional line to each real property box and ensuring the space between item 3 and 4 was retained.

The committee also discussed modifying the language in item 3 on the current form to make it clear that the form can only be used when the gross value of the estate, after funeral and burial expenses, will not exceed \$15,000 as adjusted for the cost of living.

The committee agreed that the word total should be removed and the word gross should be added in its place.

The committee discussed confusion arising from the \$15,000 figure as adjusted for inflation and possibly modifying the way it is written. Some members noted that the language used tracks the language of the statute. Members noted that there are frequently individuals who do not understand where to find the information or that it is adjusted yearly. The committee considered adding a statutory citation to MCL 700.3982, but ultimately determined the statutory citation would likely result in further confusion. Instead, the committee determined it would be helpful to add the word “annually” after the word “adjusted” on the form, to provide some notice that the figure is adjusted annually.

After a suggestion by SCAO staff, the committee determined that item 3 and item 4 should switch places on the form. The committee determined item 3 makes more sense after item 4. This is because item 4 provides the values to be used in determining that the value of the property does not exceed the statutory limit described in item 3. Therefore, it would be better if the calculation of the value came first on the form.

The committee also agreed that it was necessary to include a line indicating that, “[t]he values of all property are calculated as of decedent’s date of death.” The committee noted that frequently, petitions are received years after the individual died and some individuals will try to use a date other than the date of death in order to reduce the value of the decedent’s property. The committee agreed the form should make clear the valuation must be as of the date of death, as required by statute.

The committee also agreed that item 4 should include the following language: “For real property only, if the date of death is on or after March 28, 2013, the gross value of the parcel can be reduced by any lien amount on that parcel; however, the remaining value (inventory) of that parcel cannot be less than 0.”¹ The committee agreed this language was necessary so that the form is clear that only where the date of death is on or after the date of the statutory amendment can the lien amount be deducted from the value of the real property. It was agreed that this was important because there are frequently petitions where the decedent died many years earlier and would not qualify for the reduction. By including both the date of death and this disclaimer on the form, the committee believed it would result in fewer cases where an individual erroneously tries to deduct the lien from real property for a decedent who died before March 28, 2013. The committee discussed whether anything relating to the current sunset provision for the lien deductions should be included, but after some discussion it was determined it would only create confusion. SCAO staff noted if the law is actually allowed to reach the sunset provision without amendment, the form could be modified at that time.

¹ **Staff Note:** During typesetting, comments were received from a committee member indicating that instead of saying “the remaining value (inventory),” it would make more sense for it to say, “the remaining inventory value.” The comment indicated this was more consistent with the phrase “inventory value” as used on the chart. SCAO staff agreed and the change was made.

The committee also determined that it was important to note that the inventory value of an individual property cannot be less than \$0. It was agreed that this should be noted on the form because the statute does not allow for a value of less than \$0 for each parcel for purposes of determining the total inventory value.

The committee also determined there should be a place for the total gross value, in order to have a number to work from in determining whether the decedent's estate qualifies under the statutory limit, after deducting funeral expenses. However, SCAO staff noted that the gross value cannot be used to input reporting data that is required by statute. The reporting system is set up so that each piece of property and each lien is entered separately and the calculations result from that entry. The information relating to gross value, lien amount, and inventory value must be entered separately because the legislature and others may wish to use the underlying data in different ways that would require more than just the total gross value.

The form was approved as revised.

4. PC 572, Letters of Authority for Personal Representative
PC 573, Notice of Appointment and Duties of Personal Representative

The committee considered whether instructions regarding who must receive a copy of the form should be included. A request from a friend of the court office was considered asking that both of these forms be modified to explain that the friend of the court is required to be provided with a copy pursuant to MCL 700.3705.

Some committee members noted that it might be helpful to have such guidance on the form. The committee discussed that it might help the personal representative know what their duties were to include this information. SCAO staff noted that the instructions do not currently contain any of the other notice requirements and instead the instructions are limited to reporting duties. While there was some initial support for the proposal, after further discussion, the committee determined the addition of the requested notice information could be problematic. The committee noted that the requested modification could open up other issues regarding what forms should include notice requirements. The committee also discussed that the form cannot provide the personal representative with all the information pertaining to the scope of their duties. The committee members agreed that the form cannot provide all the necessary information and including the notice requirement goes beyond what is necessary on the form.

There was also discussion about the notice requirements in general and whether PC 572 and PC 573 should have a proof of service provision included on the form. Some on the committee initially indicated this might be a good idea, but other members of the committee noted there is no requirement that a proof of service be filed and adding something to the form beyond what is required by law could be problematic. SCAO staff

noted that if there was a desire to have a proof of service filed with forms like these, it would require an amendment of the court rules.

The committee concluded there was no interest at this time in modifying either form to indicate notice requirements. However, the committee noted that if there was a larger interest shown in changes of this nature to the form, such as from the friend of the court association, it could be reconsidered at a later date. SCAO will follow up internally to determine if there is another way for friend of the court offices to obtain the information they need.

5. PC 577, Inventory

The committee considered a draft of modifications provided by the Probate and Estate Planning Section of the State Bar of Michigan. The proposed changes were made in order to accommodate the amendment of MCL 600.871.

The committee considered the layout of the form relating to the list of property. After some discussion, the committee determined it would be best to have separate boxes for personal property and real property, instead of blank boxes to be used for either type of property. The committee determined that the form should be modified so that both the real and personal property lines have an option for a lien amount. This is necessary because the inventory is required to indicate any liens on both real and personal property. However, in order to further clarify that the lien cannot be deducted for personal property, the workgroup determined that item 3.c. on the instructions should be modified to add the phrase “of any item of personal property” to the end to make it clear that liens are not deducted from personal property. The committee also determined a use note should be added above the lines for listing property indicating that, “for personal property, the gross value and inventory value are the same.” The committee believed this addition would help avoid confusion and explain that for personal property the inventory value will be the same as the gross value.

The committee also discussed whether the heading “total value of property” in the final column should be modified. After a brief discussion, the committee determined the word “total” could be misleading. The committee determined that the phrase “total value” should be replaced with “inventory value” to make it clear what is being totaled and because that is more accurate as to what the law requires.

The committee determined that the box for date of qualification as a fiduciary was not needed for this form, as the form is now being tailored solely for use in a decedent’s estate. However, the committee, after some discussion, determined it would be useful to retain a line for the date of death, as this information is used in a number of contexts and would provide an easy reference point for determining the decedent’s date of death.

The committee also discussed whether the blank line asking for a title should be modified to read personal representative. Some committee members believed there could be an

occasional circumstance where someone other than the personal representative might need to utilize the form. The committee discussed whether it would be worth leaving the blank line asking for title for those possible occasions, given that the vast majority of the time the form would be used by the personal representative. After some discussion, the committee determined that the form should be modified to replace the blank title line with the words "personal representative." The committee concluded that it would be better to have the form preprinted for use by a personal representative and that in the rare occasion where someone else might want to file an inventory in a decedent's estate, that individual would need to create their own form for use.

The committee also determined that the parentheses as they appeared on the draft form should be modified so that only the phrase "including an equity line of credit" was in parentheses.

The committee considered whether the instructions above the area for listing property should be modified to indicate the limitations on when it is appropriate to deduct the lien amount from real property. The committee determined that the form should be modified to make it clear that liens should only be deducted from real property where the date of death is on or after March 28, 2013. The committee determined this was necessary because only decedents with a date of death on or after that date may have liens on real property subtracted from the gross value for purposes of determining the inventory value. The committee concluded that without such information appearing on the form, mistakes in this respect would be much more likely.

The committee also discussed the instructions and concluded a number of changes were required. The committee determined that item 2.a. should be clarified so that it is clear how the calculation for reducing real property by the value of the lien works. To this end, the committee determined the following language should be added: "[A]nd reduce the gross value (value as of date of death) by the amount of the lien, but the inventory value cannot be less than 0." The committee determined that it was useful to reiterate that the value must be as of the date of death, not some other time.

The committee also discussed that there were frequently times when inventories were filed and a negative inventory value was used. This negative value is used in an attempt to reduce the overall inventory value. However, the committee noted that the law does not allow a negative inventory value for any individual property and that the value cannot be less than \$0. The committee decided that adding the following phrase would help avoid confusion in this regard, "but the inventory value cannot be less than 0." The committee also discussed that this issue, pertaining to claims of an inventory value less than \$0 on real property, was related to confusion regarding how the inventory value was to be calculated. To this end, the committee determined an instruction clarifying that each item must be calculated separately should be included. Therefore, the committee determined that an item d. should be added under item 2. on the instructions to indicate: "For each parcel of real property, calculate the value individually."

The committee also discussed whether the use note should be retained that indicated: “Do not use this form if you are a conservator. Use form PC 674. You must serve this completed inventory on all interested persons as required by Michigan Court Rule 5.105 and 5.125.” The committee first discussed removing the first two sentences, relating to the use of another form if the case involved a conservatorship. The committee discussed whether this warning was still necessary, given that the other changes being made to the form make it clear this form is for use by a personal representative in a decedent’s estate case. The committee determined this portion of the note should be removed and that the words “Decedent Estate” should be added to the title box to make it clear when this form is to be used.

The committee next considered whether the remainder of the note, pertaining to service on interested persons, should be retained. While there was initially some support for retaining the service information, the committee questioned why it was included on this form and not others. Further, there was discussion as to whether the citations were accurate and whether it was even an accurate description of the service requirements. The SCAO staff noted that this form had been one selected to have notice requirements included, based on a perceived need, but that the form could be adjusted. Ultimately, the committee concluded the form should not include the language regarding service.

The committee also determined there should be a place for the total gross value, in order to have a number to work from in determining whether the decedent’s estate qualifies under the statutory limit, after deducting funeral expenses. However, SCAO staff noted that the gross value cannot be used to input reporting data. The reporting system is set up so that each piece of property and each lien is entered separately and the calculations result from that entry. The information is to be entered for each property separately because the legislature and others may wish to use the underlying data in different ways that would require more than just the total gross value.

The form was approved as revised.

Staff Note: Given the modifications requested on this form, spacing became an issue. In order to accommodate the additions to the form, it was determined one of the lines for listing real property would be removed. The decision to remove that line allowed for all 6 personal property lines to be retained and for the form to remain one page. It was determined that this form was less likely to be used in circumstances where there were more than two pieces of real property and that the personal property lines should be retained instead.

During typesetting, comments were received from a committee member indicating that instead of saying “the remaining value (inventory),” it would make more sense for it to say, “the remaining inventory value.” The comment indicated this was more consistent with the phrase “inventory value” as used on the chart. SCAO staff agreed and the change was made.

Additionally, the identifier (DECEDENT ESTATE) was added to the title of this form.

6. PC 595, Order for Complete Estate Settlement

The committee considered a request for clarification on this form regarding the differences between items 14, 15, and 18. It was noted that many people, including some attorneys, have trouble understanding how to use these items on this form. Specifically, it was requested that the items be further clarified so that the difference between a termination in item 14 and a discharge in item 15 is clear. It was also requested that item 18 be clarified as well, so that it will be clear when it would be used.

The committee discussed the differences in these items. The committee noted that the discharge related to the liability of the personal representative being discharged from claims against them. This does not automatically happen and does not always occur when the authority of the personal representative is terminated. The committee concluded that this distinction could be made clearer on the form by modifying item 14 to read: "Authority of the personal representative is terminated." The committee believed that replacing the word "appointment" with the word "authority" would make it clearer to users of the form what was being accomplished when that box was checked.

The committee also discussed the language of item 15. Initially, the committee considered using the language "discharged from further liability," but some members questioned whether this tracked the language of the law. Instead, it was suggested that the language used be "from liability." The committee concluded that by adding the words "from liability" after the word "discharged" would help clarify what the personal representative was being discharged from and help distinguish item 15 from item 14.

The committee also discussed item 18 and concluded that the word "appointment" should be replaced with the word "authority" so that it was clearer and consistent with the new wording of item 14. The committee believed these changes would make it sufficiently clear item 18 is used where the court will allow for both the termination of authority and discharge of liability, but needs to wait to enter the order until the personal representative no longer needs the authority to pay claims and make distributions.

The form was approved as revised.

7. Petition and Order for Approval to Sell Real Estate (Decedent Estate)

The committee discussed whether there was an interest in creating a petition and order for approval to sell real estate in decedent's estate cases. Previously, PC 646 and PC 647 could be used for this purpose, but they were reworked as a result of amendments to MCL 700.5423 and are now limited to use in conservatorships. The committee discussed whether such a form should be created, given that the personal representative is not required to obtain court approval for the sale of real estate the same way a conservator may be in certain circumstances. After a significant discussion regarding whether a form

should be created, the committee decided it would be beneficial to have a petition form and order form available for use in decedent's estate cases. The committee noted that while the personal representative is not required to get court approval for a sale, the personal representative may want to in some circumstances. This might be done in order to help preclude possible challenges to the determination by other parties dissatisfied with the sale.

The committee determined that a modified version of the petition for approval of real estate, based on the previous version of PC 646, was appropriate. However, the committee believed the blank line asking for the title should be replaced with the words "personal representative" because that is the individual who would generally be asking for court approval of a real estate sale. The committee determined it would be better to have the form ready for use by the vast majority of cases where it would be used and leave the other individuals who might wish to petition the court to create their own document. Generally, where there is not an SCAO form that fits a specific situation, it would not appear to violate the requirements of MCL 600.855, that SCAO forms be used in these cases, for an individual to craft their own document based on a specific need not covered by SCAO forms.

The committee also determined that the word "decedent" should be added at the end of the first line, so that it is clear this is for use in decedent's estates and the name listed should be that of the decedent.

Staff Note: A comment was received from a committee member noting that most forms for use in decedent estate cases do not list decedent at the end of the first line. SCAO staff agreed and removed this phrase from the first line. Instead, (DECEDENT ESTATE) was added to the title.

The committee also discussed modifying the line asking for the terms and conditions. The committee noted that a purchase agreement is frequently attached and that the line should be clarified to indicate a purchase agreement could be attached. However, other committee members noted that a purchase agreement was not always available when the petition was filed. Therefore, after some discussion, the committee decided that an explanatory parenthetical should be added that states: "(specify terms and conditions or attach purchase agreement)." The committee believed that it would be helpful to reiterate that the form could either be completed by indicating the terms and conditions on the form, or, when possible, by attaching the purchase agreement. Item 3 was modified to remove the reference to the protected individual, because that term was not applicable to a decedent's estate petition. Item 4 was modified to remove the term fiduciary, as it was not pertinent to a decedent's estate form, and instead replace it with the term "personal representative." Item 5 was also eliminated, as it was not applicable to decedent's estates.

After a lengthy discussion about the citations that would be appropriate for the newly modified form, the committee concluded that MCR 5.207, MCL 700.3704, MCL 700.3415, and MCL 700.3505 should be included on the form. The committee also

discussed whether all of the information in item 4 was necessary, but ultimately determined this information should be retained on the form because it is useful for the court to review the financial condition of the estate to get a better idea of why the personal representative might want to sell the real estate.

An accompanying order regarding sale of real estate form was also adopted, based on a template from the previous version of PC 647. The form was modified to remove the blank line that asked for the type of fiduciary. Instead, item 2 will say “as the personal representative of the estate,” to mirror the way the petition form will read. The committee also determined that the citations on the order regarding sale of real property form should be MCL 700.3415, MCL 700.3505, and MCL 700.3704.

The two new forms were approved as revised.

Meeting adjourned, 2:30 p.m.

Respectfully submitted,

Colin F. Boes

cc: Jennifer Warner
Anne Boomer
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ATTACHMENT D

Taxation Section Liaison
Report to the Probate & Estate Planning Section
December 2013

The Taxation Section is waiting to see if the new Treasurer will follow up on Treasury proposals made by the former Treasurer.

The Taxation Section does not have a lobbyist, but is working on:

1. A Michigan "offer in compromise" program.
2. Tax Tribunal Reform (Judges should be lawyers with tax backgrounds)/
3. Apportioning multistate income for Michigan income tax purposes.

Eric Skinner, the IRS Area Counsel reported that the following people in IRS Appeals have or will soon resign (spellings may not be correct):

Ted Stein
Bob Reinhart
Mike Holcomb
Pat Bender
Leonard Bartold

The Michigan Supreme Court has requested, and the Taxation Section, will file an amicus brief in *Ford Motor Company v. Department of Treasury, State of Michigan, Supreme Court*, No. 141332. The issues revolve around what is a "claim for refund" for Michigan tax purposes. (For Michigan purposes interest on a refund starts to run when there is a "claim for refund." As the brief is not yet written the issues may be slightly recast in the brief.

If you are a member of the Taxation Section you can for no additional charge join the Estates and Trust Committee and get e-mails about its activities. (There are 615 persons who are members of both sections). You can also join other committees. Unlike our committee meetings, Taxation Section Committee meetings are typically about 75% continuing legal education and new matters discussion.

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Upcoming events which might interest Probate & Estate Planning Section Members:

Valuation Issues. (RPLS State and Local Tax Committee and Tax Section State and Local Tax Committee) 3:00 p.m. on December 20, 2013. Offices of Stout Risius Ross, 4000 Town Center, 20th Floor, Southfield.

"Net Investment Income Tax (3.8% Medicare Tax): An Overview and Planning Considerations" , (Estates and Trusts Committee) January 22, 2014 - probably at the Southfield Office of Warner, Norcross

Other Trusts and Estates Committee meetings (topics and locations to be announced)
May 8, 2014
September 18, 2014

Annual Tax Conference, May 22, 2014, 9:00 am - 5:00 pm, Plymouth which will include a presentation by Thomas Bergh of Varnum which will include employee benefits, estates and trusts and *Windsor* (same sex marriage).

The Employee Benefits Committee of the Taxation Section is in the process of creating its own listserv.

If one is a member of the Taxation Section one can sign up for Committees at the Taxation Section's website with the State

The creation of the new Michigan Court of Claims from the Michigan Court of Appeals (as opposed to the Ingham County Circuit Court) is not proceeding without hitches at least from a tax point of view.

I told the Taxation Section Council about the Probate & Estate Planning Section's interest in revising MCL 211.27a(7)(s) and the various points of view on the Probate & Estate Planning Section Council. In the following discussion it was apparent that the Taxation Section had an interest in this area as well and that it had its own resources and sources of information (for example Lynn Gandhi, the Taxation Section Chair stated that (1) Treasury was sympathetic to trusts that made immediate distributions to beneficiaries (trusts that serve the same function as simple wills) and (2) part of the background of the legislation was family farms. I suggested that the Taxation Section and the Probate & Estate Planning Section might want to form a joint committee (there is precedent in the Michigan Estate Tax Act). The Taxation Section will treat the formation of a joint committee as an item of new business at its December meeting.

PERSONAL SUGGESTIONS PRESENTLY ENDORSED ONLY BY ME:

1. We add the topic of a joint committee to the of agenda of the Committee on Special Projects and/or Tom Sweeney contact Lynn Gandhi about this. (A united front would probably be preferable and less confusing to legislators.)

2. My personal position resembles the following:

(s) Beginning December 31, 2013, a transfer of real property if the transferee is related to the transferor by blood or affinity to the first degree. As used in this subdivision "transferor" shall include those who act on behalf of a person including but not limited to an agent, conservator, guardian, personal representative, trustee, limited liability company manager or member, or any

other person acting on behalf of another. As used in this subdivision a transferee includes one or more or a combination of individuals, trusts, limited liability companies, corporations or other entity, as long as all of such individuals, trust's current income and principal beneficiary(ies) of the subject real estate portion of the trust's assets, limited liability company members, corporations' shareholders, or other entities beneficial owners are related to the transferor by blood or affinity to the first degree .

Revenue Impact: None immediately. Unless home owners, rental property owners and family owned farm owners are willing to give up the limited liability afforded and possible management arrangements available through trusts, limited liability companies, corporations and other entities authorized by the Michigan legislature for those purposes, then those families who use those devices would pay more property taxes over time and this forgone revenue will decrease the amount collected by local governmental entities based on property taxes.

Respectively submitted

George W. Gregory, Liaison