I. Nancy Little called the meeting to order following a long meeting of the Special Projects Committee at 11:15 a.m. The following were present:

Nancy Little, Chair
Douglas C. Chalgian, Vice Chair
Mark K. Harder, Treasurer

Council Members

Josh Ard
Ellen Sugrue Hyman
Marilyn A. Lankfer
Patricia M. Ouellette
Robert P. Tiplady, II

Susan M. Allan
Amy N. Morrissey
Rebecca A. Schnelz
Marlaine C. Teahan

Robin D. Ferriby
J. David Kerr
Shaheen I. Imami
Hon. David M. Murkowski
Richard J. Siriani

Ex-Officios
John E. Bos
Robert D. Brower, Jr.
Michael J. McClory

Others
Rebecca Bechler, Public Affairs Associates
Barb Bialko
Constance L. Brigman
Rhonda M. Clark
Chris Edgar
II. Excused Absences – Robert M. Taylor
   Hon. Kathryn A. George
   George W. Gregory
   Harold Schuitmaker
   James B. Seward
   Thomas F. Sweeney

III. Introduction of Guests

IV. Minutes of the Council Meeting of December 13, 2008

J. David Kerr moved and Marilyn Lankfer seconded that the proposed minutes be corrected by listing Rebecca Schnelz as an excused absence. The minutes were then approved as corrected.

V. Treasurer's Report  Mark K. Harder

Mark Harder submitted his Treasurers report, a copy of which is attached. It was approved.

VI. Chairperson's Report  Nancy L. Little

Nancy Little reported that:

A. The State Bar extended an invitation for the Section to hold its annual meeting on September 16 – 18, 2009 in conjunction with the State Bar meeting. No one expressed any interest in changing the Section annual meeting. The Council took no action.

B. The State Bar communicated that it was holding a “Law School for Legislators.” Nancy Little assigned this to the Relations with State Bar Committee (Thomas Sweeney Chair was absent, but Amy Morrissey said she would follow up. Mark Harder volunteered to present the Michigan Trust Code.
VII. Report of Committee on Special Projects  Amy M. Morrissey/Richard J. Siriani

Amy Morrissey reported that the Special Projects Committee recommended the following changes to the Michigan Trust Code and Estates and Protected Individuals Code.

Approve proposed Sections 7108, 7110, 7111, 7303, 7405, 7413, 7414, 2501, 7604, 7704, 7809, and 7904 except that the words “without court approval” be added to subsection (5) of Section 7108 and “civil action” be added to Section 7904.

Also Mark Harder be authorized to remove (4) from the proposed revised Section 7405 if requested to do so by the attorney general.

Also MTC committee and Mark Harder be authorized to make conforming changes to EPIC in line with revised Section 2501.

Also Mark Harder, with consultation of MTC committee, be authorized to revise MTC to address issue of whether portions or all of Section 7809 will or won’t be modifiable, so as to address concerns of the Michigan Probate Judges Association.

And that with these final changes the MTC be recommended to the Michigan legislature.

With the consent of all present the above report was accepted, it was so resolved and the Council directed Mark Harder to implement it.

VII. Standing Committee Reports

A. Internal Governance

1. Budget  George W. Gregory

   No report.

2. Bylaws  Marilyn A. Lankfer

   No report.

3. Michael Irish Award  Brian V. Howe

   No Report.
4. Long-Range Planning  
Douglas G. Chalgian / Lauren M. Underwood

No Report.

5. Nominations  
Michael McClory

No report.

6. Relations with the State Bar  
Thomas F. Sweeney

No report.

7. Annual Meeting  
Harold Schuitmaker

No report.

B. Education & Advocacy Services for Section Members

2. Amicus Curiae  
Ellen Sugrue Hyman

John Bos reported on the Griffin Trust case, in which he represents a party, and which deals with the issue of whether and when a terror clause in a trust agreement may be enforced or disregarded. Mr. Bos asked for an amicus brief to support his client’s position. The matter as assigned to the amicus committee for review and recommendation, to be discussed again at the February meeting.

2. Continuing Education & Annual Probate Institute  
Douglas Chalgian

No report.

3. Section Journal  
Nancy L. Little

No report.

4. State Bar Journal  
Amy M. Morrissey

No report.
5. Pamphlets Ellen Sugrue Hyman
   No report.

6. Electronic Communication Josh Ard
   No report.

C. Legislation and Lobbying

1. Legislation Harold G. Schuitmaker/John R. Dresser/George W. Gregory (lobbying activities)
   No report.

   No report.

3. Michigan Trust Code Mark K. Harder
   No report, the Michigan Trust Code being extensively discussed during the Special Projects Committee Meeting and all matters being resolved as part of its report.

   No report.

D. Ethics, Professionalism and Standards

1. Ethics J. David Kerr
   J. David Kerr gave a brief report about the Michigan Supreme Court endorsing non-refundable retainers.

2. Unauthorized Practice & Multidisciplinary Practice Bob Taylor
   No report.
3. Specialization and Certification  
   James B. Steward

   Written report attached.

4. Practice Management  
   Patricia Ouellette

   No report.

E. Administration of Justice

1. Contested and Uncontested Probate Proceedings  
   Shaheen I. Imami / Douglas G. Chalgian

   No report.

2. Uniformity of Practice  
   Derek A. Walters

   Derek Walters gave a brief report on the committee's efforts to improve communications with Probate Registrars.

F. Practice Issues, Related Areas & Liaisons

1. Charitable Giving/Exempt Organizations  
   Robin D. Ferriby

   Robin Ferriby gave a report on the economic situation having a tremendous impact on charitable giving and other matters.

2. Transfer Tax  
   Thomas F. Sweeney

   Robin Ferriby reported that Michigan unlike many other states does not have a “pick up tax,” so that if there is a return of the death tax credit, Michigan will get no money and will instead send this potential revenue to the Federal government.

3. Guardianships and Conservatorships  
   Constance Brigman

   No report.
4. Business Law/Liaison to Business Section ▶ John R. Dresser
   No report.

5. Elder Law/Liaison to Elder Law Section ▶ Amy R. Tripp
   No report.

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 Tax 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
    Marlaine Teahan reported that while the Committee will have work to do with respect to the adoption of the Michigan Trust Code (MTC), the MTC has recommended that the policy continue to be that trusts are no Judicial matters and therefore, the number of new SCAO forms, if any, should be kept to the minimum.

12. Trust Institutions and Liaison with Michigan Bankers Association ▶ Susan Allen, Chair
    No report.

No report.

14. Law School Liaison – Josh Ard

No report.

X. Other Business - Law School for Legislators program (Michigan Bar Sponsors)

Discussed as part of the Chair’s report and assigned to the the Relations with State Bar Committee (Thomas Sweeney Chair was absent, but Amy Morrissey said she would follow up. Mark Harder volunteered to present the Michigan Trust Code.

XII. Adjournment

There being no further business, Nancy Little announced the meeting adjourned at 12:00 noon.
Sign In

Doug Chalgian
Marlaine C. Teahan
Marilyn A. Lankfert
Tess Sullivan
Phil Harter
Josh Ard
J. David Kee
Jill Goodell
DAN MARSH
David Muzikowski
Bob Brower
Chris Edgar
Jeanne Murphy
Rebecca Schnetz
Derek A. Walters
Amy Morrissey
Richard D. Skenn
Ellen Sugrue Hyman
Barb Bialko
Kathleen Goetses
John E. Bos
Mark E. Kellogg
Rhonda H. Clark
Rick Mills
Pat Quellette
Mark Pasquale
SHAHEEN IMANI

Michael J. McClay
Kristin Arnett
Susan Allen
Rebecca Beagler
Constance Biggman
Valerie Jeffery
Robyn Ferraby
Robert Tipplady
Mark Harder
Nancy Ketter

Excused:
Katherine New
George Kiegous
## Probate and Estate Planning Section
### Treasurer's Report as of December 31, 2008

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### Additional Information

- **Fund Balance**: $171,477
Sec. 7108 (Principal Place of Administration)

(1) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if either of the following applies:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction.

(b) All or part of the administration occurs in the designated jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the qualified trust beneficiaries.

(3) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (2), may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(4) The trustee shall notify the qualified trust beneficiaries of a proposed transfer of a trust's principal place of administration not less than 63 days before initiating the transfer. The notice of proposed transfer shall include all of the following:

(a) The name of the jurisdiction to which the principal place of administration is to be transferred.

(b) The address and telephone number at the new location at which the trustee can be contacted.

(c) An explanation of the reasons for the proposed transfer.

(d) The date on which the proposed transfer is anticipated to occur.

(c) In a conspicuous manner, the date, not less than 63 days after the giving of the notice, by which a qualified trust beneficiary must commence a proceeding to notify the trustee in writing of an objection to disapprove the proposed transfer or be barred from doing so.

(5) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified trust beneficiary notifies the trustee in writing of an objection to the proposed transfer on or before the date specified in the notice.

(56) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 7704.
(7) The views of an adult beneficiary shall be given weight in determining the suitability of the trustee and the place of administration.
Section 7110 (Others Treated as Qualified Beneficiaries)

(1) A charitable organization expressly named in the terms of a trust to receive distributions under the terms of a charitable trust has the rights of a qualified trust beneficiary under this article if 1 or more of the following are applicable to the charitable organization on the date the charitable organization's qualification is being determined:

(a) The charitable organization is a distributee or permissible distributee of trust income or principal.

(b) The charitable organization I would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 2722 has the rights of a qualified trust beneficiary under this article.

(3) The attorney general of this state has the following rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266, with respect to a charitable trust having its principal place of administration in this state, but does not have the rights of a qualified trust beneficiary:

(a) The rights provided in the supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) The right to notice of any judicial proceeding and to any nonjudicial settlement agreements pursuant to section 7111.
Section 7111 (Nonjudicial Settlement Agreements)

(1) Except as otherwise provided in subsection (2), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(2) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement agreement may not be used to accomplish the termination or modification of the trust.

(3) Matters that may be resolved by a nonjudicial settlement agreement include all of the following:

(a) The interpretation or construction of the terms of the trust.

(b) The approval of a trustee's report or accounting.

(c) Direction to a trustee to perform or to refrain from performing a particular act or to grant to or to withhold from a trustee any power.

(d) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(e) Transfer of a trust's principal place of administration.

(f) Liability of a trustee for an action relating to the trust.

(4) Any interested person or trustee may request the court to approve or disapprove a nonjudicial settlement agreement. On a determination that the representation as provided in part 3 was adequate, that the agreement does not violate a material purpose of the trust, and that the agreement contains terms and conditions the court could have properly approved, the court shall enter an order approving the agreement.

(5) As used in this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.
Section 7303 (Representation by Fiduciaries and Parents)

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute, all of the following apply:

(a) A conservator, plenary guardian, or partial guardian having authority to act with respect to the trust may represent and bind the estate that the conservator, plenary guardian, or partial guardian controls.

(b) An agent under a durable power of attorney having authority to act with respect to the trust may represent and bind the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(c) A guardian having authority to act with respect to the trust may represent and bind the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power has authority to act.

(d) A trustee may represent and bind the beneficiaries of the trust.

(e) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(f) A parent may represent and bind the parent's minor or unborn child if a conservator, plenary guardian, or partial guardian has not been appointed.
Section 7405 (Charitable Purposes; Enforcement)

(1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes, any purpose described in section 501(c)(3) of the Internal Revenue Code, 26 USC 501, or other purposes the achievement of which is beneficial to the community.

(2) If the terms of a charitable trust do not identify a particular charitable purpose or beneficiary, the court may select 1 or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

(3) The settlor or a named beneficiary of a charitable trust, or the attorney general of this state, among others, may maintain a proceeding to enforce the charitable trust. The right of the settlor of a charitable trust to enforce the trust is personal to the settlor and may not be exercised by any of the following:

(a) The settlor's heirs, assigns, and beneficiaries.

(b) The settlor's fiduciary, other than the trustee of the charitable trust the enforcement of which is being sought.

(c) An agent of the settlor acting pursuant to a durable power of attorney, unless the right to enforce the trust is expressly conferred on the agent by the power of attorney.

(4) Subsection (3) does not affect or limit any enforcement rights that are created in a gift agreement or other governing instrument.
Section 7413 (Cy Pres)

(1) Except as otherwise provided in subsections (2) or (3), if a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, no alternative taker is named or provided for, and the court finds the settlor had a general, rather than a specific, charitable intent, all of the following apply:

(a) The trust does not fail, in whole or in part.

(b) The trust property does not revert to the settlor or the settlor's successors in interest.

(c) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's general charitable intent.

(2) If the terms of a charitable trust confer a power on the trustee, or another person designated in the trust or gift, to modify or terminate either the charitable trust, a charitable gift to that trust, or the charitable purpose of such trust or gift, the terms of the trust prevail over the power of the court under subsection (1) to apply cy pres to modify or terminate the trust.

(3) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision takes effect, either of the following applies:

(a) The trust property is to revert to the settlor and the settlor is still living.

(b) Less than 9050 years, or such other time, including perpetuity, as is set forth in the terms of the trust, have elapsed since the date of the trust's creation.
Section 7414 (Modification or Termination of Uneconomic Trust)

(1) After 63 days after notice to the qualified trust beneficiaries, and also to the attorney general of this state in the case of a charitable trust, the trustee of a trust consisting of trust property having a total value less than $50,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The $50,000.00 amount expressed in this section shall be adjusted each year as provided in section 1210.

(2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in the manner provided for in the terms of the trust, if any, and otherwise to the current income beneficiaries or, if there are no current income beneficiaries, in the manner directed by the court.

(4) This section does not apply to an easement for conservation or preservation.
Section 7601 (Capacity of Settlor of Revocable Trust)

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Section 2501 (Who May Make Will)

(a) An individual 18 years of age or older who is of sound mind has sufficient mental capacity may make a will.

(b) An individual has sufficient mental capacity if all of the following requirements are met:

(1) The individual has the ability to understand that he was providing for the disposition of his property after death.\(^1\)

(2) The individual has the ability to know the nature and extent of his property.

(3) The individual knows the natural objects of his bounty.

(4) The individual has the ability to understand in a reasonable manner the general nature and effect of his act in signing the will.\(^2\)

---

\(^1\) Subsections (1), (2), and (3) drawn from Michigan Civil Jury Instructions 170.41, which state:

A decedent had sufficient mental capacity to make a will if at the time [he / she] made the document [he / she] had—

the ability to understand that [he / she] was providing for the disposition of [his / her] property after [his / her] death, and

the ability to know the nature and extent of [his / her] property, and

the ability to know the natural objects of [his / her] bounty, and

the ability to know the manner in which the document disposed of [his / her] property.

\(^2\) Subsection (4) taken from In re Erickson, 202 Mich App 329 (1993):

The test of mental capacity to contract is whether the person in question possesses sufficient mind to understand in a reasonable manner the nature and effect of the act in which the person is engaged.
Section 7604 (Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust Property)

(1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(a) Two years after the settlor's death.

(b) FourSix months after the trustee sent the person a notice informing the person of all of the following:

(i) The trust's existence.

(ii) The date of the trust instrument.

(iii) The date of any amendments known to the trustee.

(iv) A description copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.

(v) The settlor's name.

(vi) The trustee's name and address.

(vii) The time allowed for commencing a proceeding.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless either of the following apply:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust.

(b) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 63 days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.
Section 7704 (Vacancy in Trusteeship; Appointment of Successor)

(1) A vacancy in a trusteeship occurs if 1 or more of the following occur:

(a) A person designated as trustee rejects the trusteeship.
(b) A person designated as trustee cannot be identified or does not exist.
(c) A trustee resigns.
(d) A trustee is disqualified or removed.
(e) A trustee dies.
(f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If 1 or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

(3) If a vacancy in a trusteeship of a noncharitable trust is to be filled, the vacancy shall be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.
(b) By a person appointed by the court.

(4) If a vacancy in a trusteeship of a charitable trust is to be filled, the vacancy shall be filled in the following order of priority:

(a) In the manner designated by the terms of the trust.

(b) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General concurs in the selection.

(c) By a person appointed by the court.

(45) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary upon the showing of good cause.
Section 7809 (Trust Protectors; Exercise of Powers)

(1) A trust protector, other than one who is a beneficiary of the trust, is presumptively a fiduciary who, as such, is required subject to exercise his or her specified powers in good faith with regard to the purposes all of the trust and the interests of the beneficiaries, and is liable for any loss that results from the breach of his or her fiduciary duties, following:

   (a) Is a fiduciary to the extent of the powers, duties and discretions granted to him under the terms of the trust.

   (b) In exercising or refraining from exercising any power, duty, or discretion, shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

   (c) Is liable for any loss that results from the breach of his or her fiduciary duties.

(2) Except as otherwise provided in subsection (3), the trustee shall act in accordance with a trust protector’s exercise of the trust protector’s specified powers, duties, and discretions and is not liable for so acting.

(3) If either any of the following applies to a trust protector’s attempted exercise of a specified power, duty, or discretion, the trustee shall not act in accordance with the attempted exercise of the power unless the trustee receives direction from the court:

   (a) The exercise is contrary to the terms of the trust.

   (b) The exercise would constitute a breach of any fiduciary duty that the trust protector owes to the beneficiaries of the trust.

(4) A trustee is not liable for any loss that results from any of the following:

   (a) The trustee’s compliance with a direction of a trust protector, unless the attempted exercise was described in subsection (3).

   (b) The trustee’s failure to take any action that requires a prior authorization of the trust protector if the trustee timely sought but failed to receive the authorization.

   (c) Seeking a determination from the court regarding the trust protector’s actions or directions.

   (d) The trustee’s refraining from action pursuant to subsection (3).

(5) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.
(6) By accepting an appointment to serve as a trust protector of a trust registered in this state or having its principal place of administration in this state, the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust protector.
DATE: December 23, 2008
TO: Registered Lobbyists and Lobbyist Agents
FROM: Michigan Department of State, Bureau of Elections
SUBJECT: 2008 WINTER AND 2009 SUMMER FINANCIAL REPORTS

Please keep this memo for future reference as it contains detailed information on both the Winter and Summer Financial Reports due in 2009. This memo is available on the Bureau of Election's website. A postcard reminder will be sent to you prior to the Summer Financial Report due date.

Each Lobbyist and Lobbyist Agent registered under the Lobby Registration Act must file a Lobby Registration Financial Report by 4:00 p.m. on Monday, February 2, 2009.

Each Lobbyist and Lobbyist Agent registered under the Lobby Registration Act must file a Lobby Registration Financial Report by 4:00 p.m. on Monday, August 31, 2009.

Each report must be submitted even if there are no lobbying activities or expenditures to disclose for the period covered by the report. See page 2 of this memo for information on filing your Lobby Financial Report electronically!

2008 Winter Report Filing Deadline and Coverage Dates

• The 2008 Winter Report is due on February 2, 2009.
• The 2008 Winter Report covers the period from August 1, 2008 through December 31, 2008.

2009 Summer Report Filing Deadline and Coverage Dates

• The 2009 Summer Report is due on August 31, 2009.
• The 2009 Summer Report covers the period from January 1, 2009 through July 31, 2009.

File on Time!

A report that is hand-delivered, mailed by first class mail or sent via an overnight delivery service must reach this office before 4:00 p.m. on the due date. Be sure to allow ample mailing time if sending first class. A report that is sent by registered or certified mail and postmarked two or more calendar days before the filing deadline will be accepted as timely regardless of when it arrives.

Late Filing Fees

For the 2008 Winter Financial Report Summary, a $21.00 late filing fee will be assessed each calendar day a required report is late, up to a maximum fee of $630.00 (30 calendar days late).
For the 2009 Summer Financial Report Summary, a $22.00 late filing fee will be assessed each calendar day a required report is late, up to a maximum fee of $660.00 (30 calendar days late).

**Terminating a Registration**

A registrant that no longer meets the definition of a lobbyist or lobbyist agent may request termination by completing Item 5d on the Financial Report Summary form.

**Required Disclosure and Thresholds for 2008 and 2009**

- The Financial Report Summary form must be filed by all registrants. This form must be filed even if there are no lobbying activities or expenditures to disclose for the reporting period. A brief description of any lobbying activity during the period or an indication there was no activity must be provided under Item 6. Any lobbying expenditures are disclosed by category under Item 7.

- The Itemized Expenditures form is filed with the Financial Report Summary form only if the registrant meets the thresholds for itemizing:
  1) financial transactions of $1,075.00 or more for 2008 and $1,125.00 or more for 2009; or
  2) travel and lodging expenditures for public officials in excess of $700.00 for 2008 and in excess of $725.00 for 2009; or
  3) food and beverage expenditures for individual public officials in excess of $53.00 per month for 2008 and in excess of $55.00 per month in 2009; or
  4) group food and beverage expenditures for public officials in excess of $325.00 for the year to date for 2008 and in excess of $350.00 for the year to date for 2009.

The total of all food and beverage expenditures is always disclosed on the Financial Reports Summary form under Item 7a, Food and Beverage for Public Officials.

**Electronic Filing Program Available**

The Lobby Electronic Filing Program or “e-Lobby” is available for filing the Lobby Financial Report Summary, Itemized Expenditures and amendments online through an Internet form. The form is fast and easy to use. Go to www.Michigan.gov/sos to find more information on filing electronically or contact the Bureau of Elections.

**Paper Reporting Forms**


**Questions?** If you have any questions, please phone us at (517) 373-2540 or write us at the address below. The following address may also be used to send reports by first class, registered or certified mail.

Michigan Department of State, Bureau of Elections  
Post Office Box 20126  
Lansing, Michigan 48901-0726

You may visit our office or use the following address for an overnight delivery service for the submission of your filing at:

Richard H. Austin Building-1st Floor  
430 W. Allegan Street  
Lansing, Michigan 48918

Enclosure: 2009 Lobby Act Thresholds, Fees and Penalties
THE MICHIGAN LOBBY REGISTRATION ACT
(PUBLIC ACT 472 OF 1978, MCL 4.411 - MCL 4.431)
2009 REPORTING THRESHOLDS, FEES AND PENALTIES

Public Act 83 of 1986 requires the adjustment of the various reporting thresholds, fees and penalties provided under the Lobby Registration Act on January 1 of each year to reflect the percentage of change in the consumer price index for Detroit. The thresholds, fees and penalties effective from January 1, 2009 through December 31, 2009 are as follows:

LOBBYIST AGENT – An individual, firm or other type of organization that is compensated or reimbursed to lobby public officials on behalf of an employer or client (refer to Lobbyist below). A person compensated or reimbursed more than $575.00 during any 12-month period for lobbying must register within 3 calendar days as a Lobbyist Agent under the Act. Any person entering into a contract to receive more than this threshold during any 12-month period immediately becomes a Lobbyist Agent and must register within 3 calendar days.

LOBBYIST – Typically a corporation, association or any other type of organization that compensates or reimburses a Lobbyist Agent, or other employee, to lobby public officials. Individuals usually meet the definition of a Lobbyist Agent rather than a Lobbyist. A person whose expenditures are more than $2,250.00 during any 12-month period for lobbying, or who spends more than $575.00 during any 12-month period to lobby a single public official, must register within 15 calendar days as a Lobbyist under the Act. The state, or a political subdivision of the state, becomes a Lobbyist immediately upon contracting for a Lobbyist Agent regardless of the amount spent for lobbying and must register within 15 calendar days. Any person entering into a contract to exceed these thresholds during any 12-month period immediately becomes a Lobbyist and must register within 15 calendar days.

FINANCIAL TRANSACTIONS - Transactions of $1,125.00 or more between a registered Lobbyist or Lobbyist Agent and a public official, a member of a public official's immediate family or a business with which the individual is associated must be reported.

TRAVEL AND LODGING FOR PUBLIC OFFICIALS - Travel and lodging paid for or reimbursed to a public official, in connection with public business, in excess of $725.00 must be reported.

FOOD AND BEVERAGE FOR PUBLIC OFFICIALS - The name and office or title of each public official on whose behalf more than $56.00 in food and beverages was purchased during any month, or on whose behalf more than $350.00 in food and beverages was purchased between January 1 and the close of books for the reporting period, must be reported.

EMPLOYEES - The name and address of each person employed, compensated or reimbursed by a registrant for lobbying in excess of $22.00 during any 12-month period must be reported.
GIFT - A "gift" is defined as a payment, advance, forbearance, or the rendering or deposit of money, services or anything of value, the value of which exceeds $56.00 during any 1-month period. A gift may consist of a single item or multiple goods or services, including tickets to events, that total more than this threshold. The Act prohibits Lobbyists and Lobbyist Agents from providing "gifts" to public officials.

EXEMPT EXPENDITURES - Expenditures for lobbying of less than $12.00 made for goods or services for which a receipt or proof of purchase is not normally available do not have to be reported.

LATE FILING FEES - A $22.00 late filing fee will be assessed for each calendar day a required registration or report is late up to a maximum of $660.00.

PERSON - Under Section 6(1) of the Act a person is defined as “a business, individual, proprietorship, firm, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly, including a state agency or a political subdivision of the state.”

LOBBYING - Under Section 5(2) of the Act lobbying is defined as “communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action.”

LOBBYABLE PUBLIC OFFICIALS – State level officials, as defined under the Act, who may exercise personal discretion when making a decision concerning legislative or administrative actions are considered “lobbyable.” Under the Act, Section 5(9) defines an official in the legislative branch and Section 5(10) defines an official in the legislative branch. A list of lobbyable officials is available at: www.michigan.gov/sos.

FINANCIAL REPORTS – A Financial Report Summary must be filed twice each year by all Lobbyists and Lobbyist Agents even if a registrant has no activities or expenditures to disclose for the reporting period. A required registration or report that is sent by certified or registered mail at least two calendar days before a filing deadline will be considered timely regardless of the date of receipt. Additional information, registration and reporting forms are available at: www.michigan.gov/sos.

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CONTACT THE BUREAU OF ELECTIONS - Telephone: (517) 373-2540

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For overnight delivery services, or to visit our office:  
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Web site: www.michigan.gov/sos

(Revised 12/5/08)
Recently, bank failures made all of us insecure, and the Emergency Economic Stabilization Act of 2008 increase of the base limit of FDIC insurance from $100,000 to $250,000 per depositor made us feel better. However, what was not as widely publicized was that the increase was temporary. Unless extended, the coverage limit will return to $100,000 for checking, savings, money market accounts and certificates of deposit at insured banks on January 1, 2010. This may present problems for you and your clients, especially with certificates of deposit that could be a longer term. It makes it even more important that you understand the FDIC regulations applicable to bank deposits and their various forms of ownership, and that you explore, research, and keep track of, how accounts are owned.

The F.D.I.C. has a website, [www.fdic.gov.deposit](http://www.fdic.gov.deposit), which gives examples of various forms of ownership that can increase the insured amount beyond the $100,000 or now $250,000 temporary insurance amount depending on ownership. It is certainly worthwhile to review the rules for single, joint, revocable trust, and irrevocable trust accounts because a depositor could have over $2,000,000 insured in various accounts in one bank depending on the number of joint owners, beneficiaries, and terms of the trusts. In particular, the F.D.I.C. has EDIE the Estimator, a tool to calculate the FDIC insurance coverage for each bank that you have deposits in at [www.fdic.gov/edie/index.html](http://www.fdic.gov/edie/index.html). One needs to have records of all the deposit accounts, current balances, and names of all account owners and beneficiaries in order to get definitive answers from EDIE. Using this tool may help you sleep better or provide you with a plan to move funds or add beneficiaries prior to January 1, 2010. Another source of information is an article by Ruth Shaw in 33 Estates, Gifts and Trust Journal, (11-08) “Get More Bang for Your Buck- Or How to Maximize FDIC Deposit Insurance Coverage”

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SPECIALIZATION AND CERTIFICATION COMMITTEE REPORT

This Committee is reorganizing and will be meeting shortly to continue the work started by the predecessor Committee last year. This report will serve as a recap of the Committee’s prior activities.

When this Committee was formed, the Probate & Estate Planning Council gave this Committee the task of developing a pilot project for legal specialization in Michigan, including the following goals:

1. Promoting excellence and professionalism among lawyers;
2. Providing a benchmark for informed decisions by clients, referring lawyers, and hiring attorneys who are looking for lawyers with proficiency in a particular practice area;
3. Providing the opportunity for all lawyers to develop the status of “specialist” by meeting clear, public, non-discriminatory standards for specialization;
4. Helping lawyers compete with non-lawyer professionals who adopt the status of certified specialists in particular fields;
5. Enhancing the image of lawyers with the public.

The Committee previously identified five phases which it would try to address in the creation of the pilot project:

(1) defining and delineating the probate and estate planning practice;

(2) drafting a set of proposed enabling rules intended to govern legal specialization in general by the Michigan Supreme Court;

(3) drafting a set of proposed rules intended to govern legal specialization of probate and
estate planning lawyers, including examination and peer review requirements to ensure proficiency;

(4) identifying and obtaining sources of funding for the pilot project and creating proposed budgets for the duration of the pilot project; and

(5) presenting the proposed pilot project to the Michigan Supreme Court and the State Bar of Michigan for comment and approval.

The first part, defining the practice of Trusts, Estate and Probate law for purposes of the specialization criteria was completed last year.

The second phase, consisting of drafting a set of proposed enabling rules, was started last year, but not yet completed. The current Committee will be working on this task first. This second phase of the task involved discussion of a considerable amount of detail relating to the proposed rules, including interplay between the rules, which has slowed the process down. Nevertheless, we hope to move forward as expeditiously as reasonably feasible.

The current Committee on Specialization and Certification consists of the following:

- James B. Steward, Chairperson
- William J. Ard
- George W. Gregory
- Wendy Parr
- Patricia Ouelette

Any other members of the Council who would like to be part of this Committee should contact the Chairperson.

RESPECTFULLY SUBMITTED,

James B. Steward, Chairperson
Specialization and Certification Committee