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

January 19, 2013
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:35 a.m.

II. Attendance

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

Harder, Mark K.       Lentz, Marguerite M.
Imami, Shaheen I.     Murkowski, Hon. David M.
Morrissey, Amy N.     O’Brien, Hon. Darlene
Steward, James B.     Ouellette, Patricia M.
Allan, Susan M.       Schnelz, Rebecca A.
Ard, W. Josh          Spica, James P.
Ballard, Christopher A. Taylor, Robert M.
Bearup, George F.     Teahan, Marlaine C.
Clark-Kreuer, Rhonda M. Welber, Nancy H.
Lucas, David P.

A total of 19 council members and officers were present representing a quorum.

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

J. David Kerr
David Skidmore
Thomas F. Sweeney
Constance Brigman

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

None.

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

George W. Gregory       Michael S. McClory
Phillip E. Harter       Harold G. Schuitmaker
Nancy L. Little
E. **Others in attendance:**

Amy E. Peterman
Sharri L. Rolland Phillips
Rick Mills
Michael Lichterman
Neal Nusholtz
Daniel Cogan
Mieke V. Weissert
Kathleen Goetsch
Joe Viviano
Robert Tiplady
Jill Goodell

Ken Seavoy
Thomas H. Berger
Carol M. Hogan
Lorraine New
Nazneen H. Syed
Gillian B. Gray
Geoffrey Vernon
Anthea E. Papista
Loukas P. Kalliantasis
Rebecca Bechler

III. **Minutes of the December 15, 2012, Meeting of the Council**

Shaheen I. Imami presented the minutes of the December 15, 2012. Mr. Imami moved for approval with support from Hon. Darlene O'Brien. The motion was approved on a voice-vote with no nays or abstentions.

IV. **Treasurer’s Report**

James B. Steward presented the Treasurer’s report. Mr. Steward reported that receipts for the current fiscal year are higher than for the same period in the prior fiscal year; however, the fund balance is slightly lower than the September 2012 preliminary report. He also reiterated the new mileage rate for 2013. He noted that a thank you note was received from Melissa Mysliewicz for birth gift from Hearts and Flowers.

V. **Chairperson’s Report – Mark K. Harder**

Mark K. Harder presented the Chairperson’s report:

- Nazneen Syed has been appointed to the Real Estate Committee.

- Mr. Harder received a call from Judge Milton Mack and Mike McClory regarding ideas to respond to the fiscal impact of the new inventory legislation allowing for an offset of mortgage liens against inventory values for real property. One idea is to drop the inventory fee in favor of increased fees. The issue was referred to the Court Rules Committee.

- Mr. Harder discussed the impact of *Mattison* case and whether the Section should look into legislative changes/responses to the ruling and the plain language of EPIC. He noted that the two concurring opinions by Michigan Supreme Court strongly urged the Legislature to address the issue. The issues raised in *Mattison* have also been discussed at Heckerling and ACTEC meetings. There was some discussion related to time limits and post-death reproductive rights. Mr. Harder noted that the
overarching issue is whether to be proactive or reactive and elicited volunteers for a committee.

VI. Report of the Committee on Special Projects – Marlaine C. Teahan

Marlaine C. Teahan reported that CSP heard from the Domestic Asset Protection Trust (“DAPT “) sub-committee regarding Sec. 5 of the draft DAPT legislation:

- Discussed Sec. 5 - including interaction with the uniform fraudulent transfers act and applicable statute of limitations.
- Distinguished Alaska and Delaware statutes in terms of spousal rights vis a vis public letter ruling's from the IRS regarding exemptions from the settlor's taxable estate.
- Vigorous discussion on public policy issues underlying the statute. Issues were raised with respect to honesty, provisions for child support and spousal support, and scam artists.
- The committee will look at the periods in Sec. 5.d and: (a) whether they should be lengthened; and (b) whether a limit on the percentage of net worth or liquid assets should be created.
- A suggestion was made to include a notice provision to a potential spouse in prenuptial negotiations.

Ms. Teahan also noted that next CSP meeting will be at 8:30 a.m. beginning in February with the focus on specialization and certification proposals, including funding and support issues.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Shaheen I. Imami
   No report.

2. Bylaws – Nancy H. Welber
   No report.

3. Awards – Douglas A. Mielock
   No report.

4. Planning – Thomas F. Sweeney
   No report.

5. Nominating – Harold G. Schuitmaker
Harold G. Schuitmaker reported that the committee is working on nominations and hopes to have a slate by Spring 2013, but it will be talking more in February.

6. Annual Meeting – Thomas F. Sweeney

No report.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

No report.

2. Probate Institute – Amy N. Morrissey

Amy N. Morrissey urged members to sign-up, as there is still some room for Jonathon Blattmacher's special presentation.

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

Amy N. Morrissey reported that the probate-specific issue is slated for 2014. She asked anyone with ideas for article to contact her. Nancy L. Little reported that the current issue of the Section journal is at the printer and should be delivered shortly. Ms. Little noted the surprisingly low number (~500) signed up for a hard-copy of the Section journal.

4. Citizens Outreach – Rebecca A. Schnelz

Rebecca A. Schnelz reported on efforts to get the SBM to update the website and the creation of attorney searching capability. Ms. Schnelz spoke to someone at LegalAid regarding the self-help website. She also discussed the interview process integrated into the website to notify an individual that he or she should contact an attorney.

5. Electronic Communications – William J. Ard

William J. Ard reported that he is seeking suggestions for what might make things more efficient and is considering code of conduct for the Section list-serve. Mr. Ard reported that future topics may include updating material on the website and looking at highlighting social media.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Christopher A. Ballard presented a summary of significant 2012 legislation that passed and did not pass. Mr. Ballard also reported that the new session includes the following: SB 8 allowing publication of legal notices in online papers; and SB 31-32 regarding insurable interest legislation. Rebecca Bechler reported that the Senate will be taking up the insurable interest legislation in the coming week, with Mark K. Harder expected to attend hearing on behalf of the Section. George W. Gregory suggested that Mr. Ballard’s legislation summary might be posted
on the Section’s page at the SBM website. Mr. Ballard also noted that some clarification has been urged regarding the uncapping legislation for transfers out of trusts to parents or children. Mr. Harder noted that similar issues exist with principle residence exemption and referred the issue to the Real Estate Committee. Mr. Harder noted that Ms. Bechler is monitoring the post-death reproductive issues raised in Mattison.

2. Updating Michigan Law – Marguerite Munson Lentz

No report.

3. Insurance Committee – Thomas F. Sweeney

Mark K. Harder reported that a hearing is scheduled before the Senate regarding the insurable interest legislation.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

No report.

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

No report.

3. Specialization and Certification – James B. Steward

James B. Steward reported that the committee is continuing to work on its presentation to CSP. Mr. Steward noted funding issues existed, as well as the basic question of whether the SBM will support the proposal. These issues will be discussed at next CSP meeting.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Marlaine C. Teahan

Marlaine C. Teahan reported and discussed:

- A letter to SCAO from Mark K. Harder about adding an additional meeting each year. Hon. Darlene O’Brien reported that the MPJA was polled and many comments were made. Ms. Teahan indicated more discussion on the issue will occur at the next committee meeting.


- The committee is working with Constance L. Brigman regarding rules to implement the new foreign guardianship legislation.
2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No report.

F. Areas of Practice

1. Real Estate – George F. Bearup

No report.

2. Transfer Tax Committee – Nancy H. Welber

Nancy H. Welber reported on the memorandum prepared by Thomas F. Sweeney and attached to the agenda regarding the numerous tax changes under the fiscal-cliff legislation. Ms. Welber’s highlights included:

- Permanent changes to the IRC regarding the federal estate tax exemption.

- The current exemption for 2013 is $5.25MM and will grow for COLA, with a new 40% rate. Portability is maintained, but Ms. Welber cautioned that it is not a panacea (GST not portable).

- Ms. Welber noted some grumbling that the retirement plan distribution period might be shortened to 5 years for non-spouse and non-minor beneficiaries in order to create more revenue.

- Fiduciary income tax changes included making trusts and estates subject to new Medicare surtax and the interaction with net investment income.

- The AMT patch is permanent and COLA adjusted.

- The highest individual rate is triggered at $400M, with phase outs for itemized deductions beginning at $250M. The Medicare surtax will begin hitting at $200M for individuals and $250M for married couples, while the capital gains rate increases to 20% beginning at top bracket.

- Charitable contribution rollover from IRA for exists for January 2013 only, with a number of cautions and restrictions along with December 31, 2013 sunset.

There was a discussion about how to share the information with the Section.

3. Charitable and Exempt Organization – Christopher A. Ballard

No report.

4. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman
Michael S. McClory reported that possible issues exist with MCL 700.5433 because there was an elimination of the ability by a conservator to just file letters in Michigan. Mr. McClory noted that now it appears that a conservator will have to commence a limited proceeding in the probate court.

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips

Sharri L. Rolland Phillips reported on the last ADR section meeting and discussions about fundraising, membership, and its potential need for lobbyist.

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

Patricia M. Ouellette reported that the next Family Law Section meeting is next week.

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.


Hon. David M. Murkowski reported that MPJA is concerned about the impact of the inventory legislation on the probate courts’ finances. He noted that some questions exist about the effective date of the legislation and when is it triggered, i.e., on the date of death or the date inventory is due or presented. He also discussed the onerous reported requirements imposed by SCAO. He noted that funding options include the possibility of increasing filing fees. Finally, he suggested that some of the apparent resistance by respondents in an MPJA survey to more SCAO rules committee meetings relates to concerns about more reporting requirements coming from SCAO.
Hon. Darlene O’Brien discussed that SCAO is looking at guidelines again and eliciting comments. Judge Murkowski raised the issue of time-measurements that relate to contested trust proceedings, e.g. case coding does not allow for the change from an uncontested matter to a contested matter within trust and decedent’s estate matters. Under current guidelines, the time available is too short.

9. Probate Registers Liaison – Rebecca A. Schnelz

Rebecca A. Schnelz reported that the probate registers are looking at how to implement new legislation, primarily related to the inventory legislation.

10. SCAO Liaisons – Marlaine C. Teahan

No report.

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

No report.

12. State Bar Liaison – David R. Brake

No report.

13. Taxation Section Liaison – Frederick H. Hoops, III

No report.

VIII. Other Business

None.

IX. Hot Topics

None.

X. Adjournment

Meeting adjourned by Mark K. Harder at 11:45 a.m.
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

December 15, 2012
Lansing, Michigan

Minutes

I. Call to Order

The Chair-Elect of the Section, Thomas F. Sweeney, called the meeting to order at 10:33 a.m.

II. Attendance

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

Imami, Shaheen I. – Secretary
Morrissey, Amy N. – Vice-Chair
Steward, James B. – Treasurer
Sweeney, Thomas F. – Chair-Elect
Allan, Susan M.
Ballard, Christopher A.
Bearup, George F.
Brigman, Constance L.
Clark-Kreuer, Rhonda M.
Kerr, J. David
Lucas, David P.
Lentz, Marguerite M.
O’Bien, Hon. Darlene
Ouellette, Patricia M.
Skidmore, David L.
Spica, James P.
Teahan, Marlaine C.
Welber, Nancy H.

A total of 18 council members and officers were present representing a quorum.

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

Harder, Mark K. – Chair
Taylor, Robert M.
Schnelz, Rebecca
Murkowksi, Hon. David M.
Ard, W. Josh

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

None.

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

Douglas A. Mielock
E. **Others in attendance:**

Geoffrey Vernon          Michael Lichterman  
Jill Goodell              Sharri L. Roland Phillips  
Nazneen H. Syed           Rick Mills  
Robert Tiplady            Mark E. Kellogg  
Joe Viviano               Katie Lynwood  
Anthea Papista            Kurt Olson  
Steve Jones                Jeanne Murphy  

III. **Minutes of the November 17, 2012, Meeting of the Council**

Shaheen I. Imami presented the minutes of the November 17, 2012, meeting and noted the correction of typographical errors. David Kerr moved for approval with support from George Bearup. The motion was approved on a voice-vote with no nays or absentions.

IV. **Treasurer’s Report**

James B. Steward presented the Treasurer's report. Mileage rate for 2013 increased to $.565/mile.

V. **Chairperson’s Report – Mark K. Harder**

Thomas F. Sweeney, the Chair-Elect, presented the Chairperson’s report in Mark K. Harder’s absence:

- After many years of trying, the statute of repose passed the Legislature. Special thanks were given to Christopher A. Ballard and Rebecca Bechler for last-minute efforts.

- Nazneen H. Syed was added to the Amicus Committee.

VI. **Report of the Committee on Special Projects – Marlaine C. Teahan**

Marlaine C. Teahan reported that CSP heard from the Domestic Asset Protection Trust (“DAPT “) sub-committee regarding qualified dispositions and whether Medicaid and other special needs trusts need to be integrated into the proposed legislation. Ms. Teahan also discussed the Specialization Committee report regarding the proposed physical location requirement (which is recommended by CSP) and a discussion related to hours/work requirements in the context of part- and full-time practice.

VII. **Standing Committee Reports**

A. **Internal Governance**

1. Budget – Shaheen I. Imami

No report.
2. Bylaws – Nancy H. Welber

No report.

3. Awards – Douglas A. Mielock

No report.

4. Planning – Thomas F. Sweeney

Thomas F. Sweeney reported the updated table of contents for the newly created Council
Members' handbook. Marlaine C. Teahan moved for approval, with support from George F.
Bearup, and approved on a Council vote of 18-0, with no abstentions.

5. Nominating – Harold G. Schuitmaker

No report

6. Annual Meeting – Thomas F. Sweeney

Thomas F. Sweeney reported that the Section’s annual meeting is scheduled for
September 21, 2013.

B. Education and Advocacy Services for Section Members

1. *Amicus Curiae* – David L. Skidmore

No report.

2. Probate Institute – Amy N. Morrissey

Jeanne Murphy reported that notices and invitations to the Probate Institute were sent out.

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

Amy N. Morrissey reported that 537 members have chosen to receive a hard-copy of the
Probate Journal. J. David Kerr commented that the request to elect a hard-copy was sent via
email to members who may not use email. A general discussion occurred regarding available
methods of notifying older section members of the Section’s news.

4. Citizens Outreach – Rebecca A. Schnelz

No report.

5. Electronic Communications – William J. Ard

No report.
C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Christopher A. Ballard reported that the statute of repose, decanting, inventory, and foreign guardianship transfer legislation are waiting for Governor Snyder's signature. Insurable interest legislation did not pass, as it was stuck in committee due to lack of time (it was noted that this affects ILITs). Mr. Ballard will prepare a memo summarizing legislative changes in 2012, including those during the lame-duck session.

2. Updating Michigan Law – Marguerite Munson Lentz

No report.

3. Insurance Committee – Thomas F. Sweeney

Thomas F. Sweeney confirmed that the insurable interest legislation did not pass.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

No report.

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

No report.

3. Specialization and Certification – James B. Steward

No report.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Marlaine C. Teahan

Marlaine C. Teahan reported that the proposed amendment to MCR 2.105 (regarding the imposition of “diligent inquiry”) was not adopted by the MSC.

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

No report.

F. Areas of Practice

1. Real Estate – George F. Bearup

No report.
2. Transfer Tax Committee – Nancy H. Welber

No report

3. Charitable and Exempt Organization – Christopher A. Ballard

Chris Ballard reported that William Blumenfeld, of the Michigan AG’s office, will be joining the committee. Mr. Ballard also mentioned the status of a re-write of charitable trustee's act.

4. Transfer Tax – Thomas F. Sweeney

No report.

5. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman

Constance L. Brigman reported:

- SB 539 passed with a minor change "other jurisdiction" changed to "other state." A change also was made in subsection 2 regarding appointments and priority.
- David L. Skidmore continues working on GAL issues.
- The status of a letter to the MPJA regarding powers of a plenary guardian.
- There are some developments regarding POLST. Specifically, it is expected that some guidelines will be published, but apparently without any of the suggestions from our Section. A discussion occurred regarding a family's ability to consent to end-of-life decisions absent express authority, including existing law regarding the same versus the practice by some to permit such consent. It was noted that Delaware pulled its POLST program because procedures were being used on people who are not terminally ill – and the same concern exists in Michigan, so a perception exists that POLST is a dangerous idea and that any procedure should be based on "principles."

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips

No report.

2. Business Law Section Liaison – John R. Dresser

No report

3. Elder Law Section Liaison – Amy R. Tripp
J. David Kerr reported regarding pending legislation (which may have passed) on posting notice for landlord-tenant disputes.

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.

Judge Darlene O’Brien reported that the MPJA’s executive committee wants her to remain as liaison to the Section despite her transition to the criminal/family law docket. Judge O’Brien commented on SCAO’s performance measures and case-flow guidelines – noting that another committee will be convened by SCAO. There was some discussion related to the passage of time as a component of resolving post-death disputes.

Thomas F. Sweeney noted the revenue implications of the recently-passed inventory legislation (which he discussed with Judge Milton Mack separately). Idea to make-up the short fall resulting from the deduction of liens include an increased and/or an increase in the filing fees by $300.00.

Judge O’Brien will send a copy of the current case-flow guidelines to attach to minutes.

9. Probate Registers Liaison – Rebecca A. Schnelz
No report.

10. SCAO Liaisons – Marlaine C. Teahan
Marlaine C. Teahan reported on whether SCAO should meet more than once per year and suggested that twice per year may be more appropriate. A letter will be sent by Mark K. Harder to SCAO requesting the additional meeting.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz
No report.
12. State Bar Liaison – David R. Brake
   No report.

13. Taxation Section Liaison – Frederick H. Hoops, III
   No report.

VIII. **Other Business**
   None.

IX. **Hot Topics**
   None.

X. **Adjournment**
   Meeting adjourned at 11:20 a.m.
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

November 17, 2012
Lansing, Michigan

Agenda

I. Call to Order

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:33 a.m.

II. Attendance

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

Harder, Mark K. – Chair
Imami, Shaheen I. – Secretary
Morrissey, Amy N. – Vice-Chair
Steward, James B. – Treasurer
Sweeney, Thomas F. – Chair-Elect
Allan, Susan M.
Ard, W. Josh
Bearup, George F.
Brigman, Constance L.
Clark-Kreuer, Rhonda M.
Kerr, J. David
Lucas, David P.
Lentz, Marguerite M.
Murkowski, Hon. David M.
Ouellette, Patricia M.
Schnelz, Rebecca A.
Skidmore, David L.
Spica, James P.
Taylor, Robert M.
Teahan, Marlaine C.
Welber, Nancy H.

A total of 21 council members and officers were present representing a quorum.

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

Christopher A. Ballard
Hon. Darlene O’Brien

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

None.

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

Gregory, George W.
McClory, Michael S.
Mielock, Douglas A.
E. Others in attendance:

Lorraine New  
Michael Lichterman  
Loukas Kalliantasis  
Nina Dodge Abrams  
Amy Peterman  
Carol M. Hogan  
Kevin DuComb  
Neal Nusholtz  
Kathleen Goetsch  
Paul Renzo  
John Dresser  
Nazneen Syed  
Navjyot Francis  
Kurt A. Olson  
Daniel Cogan  
Joe Viviano  
Rick Mills

III. Minutes of October 27, 2012, Meeting of the Council

Shaheen I. Imami presented the minutes of the October 27, 2012, meeting and discussed minor changes to the version supplied in the materials packet to identify committees in CSP report and some additions to Probate Institute report. The Hon. David J. Murkowski, with support from Amy N. Morrissey, moved for the approval and acceptance of the amended minutes. The motion was approved on a voice-vote with no nays or abstentions.

IV. Treasurer’s Report

James B. Steward presented the Treasurer's report and noted that the 2012-2013 budget was already approved. Mr. Steward also requested personal contributions by council members to the Hearts and Flowers Fund of $35.00.

V. Chairperson’s Report – Mark K. Harder

Mark K. Harder presented the Chairperson’s report:

- Melisa Marie-Werkema Mysliwiec welcomed baby girl – Marlaine C. Teahan will help coordinate an appropriate gift from the Hearts and Flowers Fund.
- SBM invited our participation in its annual meeting (which typically coincides with the Section’s annual meeting).
- Marlaine C. Teahan was appointed to continue as the Section’s representative on the SCAO court forms committee.
- The status of the Statute of Repose was discussed. Mr. Harder indicated that the proposed changes previously adopted by the Council are likely to be accepted. He further stated that it is unclear if the Statute of Repose constitutes a “Keller” issue by the SBM that would allow other sections to chime in separately. Regardless, it is possible that the proposed statute may get a hearing in first half of December 2012. Patricia M. Oullette said that Family Law Section is supportive, but has not taken a formal position. After some discussion it was
suggested that Ms. Oullette get a formal policy position from Family Law Section.

- The operational plan developed by Thomas F. Sweeney was discussed. Amy N. Morrissey moved to accept the proposed operational plan, with support from Marlaine C. Teahan. After some discussion related to insurable interest legislation, the adoption of the operational plan was approved on a Council vote of 21-0 in favor of the motion, with no abstentions.

VI. Report of the Committee on Special Projects – Marlaine C. Teahan

Marlaine C. Teahan reported that CSP recommended to the Council that the inventory issue raised relative to the Michigan Rules of Professional Conduct be addressed via a letter by J. David Kerr consistent with his report to CSP. Specifically, Mr. Kerr recommended to CSP the following language:

The Ethics Committee recommends that if proceedings are necessary that they be in the Probate Court. To implement this recommendation the Ethics Committee recommends, that the proposed amendment to Rule 2 be amended as set forth in the attachment and that the recommendation change be sent to the Representative Assembly for consideration. The Ethics Committee recommends that the recommended change be sent with the statement that the Probate and Estate Planning Council neither supports nor opposes the change to Rule 2, but if the change does take place recommends that proceedings be in the Probate Court.

Ms. Teahan moved for approval of CPS's suggested approach in dealing with the proposed idea of an inventory attorney, which was supported by Mr. Kerr. A discussion occurred about the use of absolute language (i.e., "all") impacting matters pending in courts other than probate court. The proposed solution was to send Mr. Kerr's amended language with a recommendation that such language be adopted. This proposal was considered a friendly amendment and approved on a Council vote of 21-0 in favor of the motion, with no abstentions.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Shaheen I. Imami

No report.

2. Bylaws – Nancy H. Welber

No report.

3. Awards – Douglas A. Mielock

No report.
4. Planning – Thomas F. Sweeney

No report.

5. Nominating – Harold G. Schuitmaker

No report.

6. Annual Meeting – Thomas F. Sweeney

No report.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

David L. Skidmore discussed the Mattison case presently pending in the Michigan Supreme Court on question certified from U.S. District Court for the Western District of Michigan in 2007. Mr. Skidmore recommended that no brief be submitted because the case social security survivors benefits for children conceived and born after death (frozen sperm utilized to fertilize post-death) and EPIC was clear on the definition of "heir." After some discussion regarding the perception by Mr. Skidmore and others that the Social Security Administration adequately and correctly briefed the issue, Amy N. Morrissey, with support from James B. Steward, moved that the Council submit an amicus brief adopting the Social Security Administration's argument and conclude that children are not heirs if they are not conceived and in gestation at the time of a decedent's death. for a “me too” brief supporting SSA conclusion that kids not heirs. Subsequent Discussion included the distinction between policy position and our interpretation of the applicable statute. The motion failed on a vote of 7-12, with two abstentions.

2. Probate Institute – Amy N. Morrissey

Amy N. Morrissey reported that:

- There will be one headliner each day of the Institute: Jonathan Blattmachr (three topics); Lou Harrison (two topics); and Robert Fleming (three topics).

- Mr. Blattmachr will present an extra, interactive session on Wednesday afternoon for approximately three hours. This session will be for an additional fee, with limited enrollment and advanced topics.

- There will be a heavy emphasis on new lawyers with a “Core Concepts” track, a special “open floor” Q&A on Friday afternoon, plus networking lunches in both locations.

- A track unique to each location (Trust & Estate Administration in Acme and Litigation in Plymouth) will be recorded and posted on the Institute web page so everyone gets access to extra MP3s and materials.
3. State Bar and Section Journals – Amy N. Morrissey
   No report.
4. Citizens Outreach – Rebecca A. Schnelz
   No report.
5. Electronic Communications – William J. Ard
   No report.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

   Nancy L. Welber reported on U.S. HB 895 (education savings plans) and the proposed exemption of such plans from bankruptcy, along with the possible interaction with Michigan law in light of MCL 600.5451 and exemption amounts.

2. Updating Michigan Law – Marguerite Munson Lentz

   Marguerite Munson Lentz reported on the status of the domestic asset protection trust legislation ("DAPT"). Ms. Lentz hopes to get copy of legislation to CSP in December to determine if it should be taken up as a whole or piecemeal. There was some general discussion relating to excepted creditors and IRC 2036 issues. Nancy L. Welber commented on the possible impact of differences between the Restatement 2nd and Restatement 3rd (creation of a property right, with resulting impact on completed gifts, IRC 2036/2038).

3. Insurance Committee – Thomas F. Sweeney

   Thomas F. Sweeney reported about the status of insurable interest legislation.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr
   No report.

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

   Robert M. Taylor reported about the status of trust mills.

3. Specialization and Certification – James B. Steward
   No report.
E. Administration of Justice

1. Court Rules, Procedures and Forms – Marlaine C. Teahan

Marlaine C. Teahan reported that new forms should be available on December 1, 2012. Ms. Teahan also reported on the status of proposed revisions to MCR 5.801 and forms for patient advocate registry – she will keep council advised of developments.

Connie Brigman reported about changes to guardianship forms that make old forms obsolete:

- PC 626, Notice to Alleged Incapacitated Individual on Petition to Appoint Guardian
- PC 627, Acceptance of Appointment and Report of Guardian Ad Litem of Alleged Incapacitated Individual
- PC 631, Order Regarding Appointment of Guardian of Incapacitated Individual
- PC 633, Letters of Guardianship
- PC 640, Order Regarding Appointment of Conservator
- PC 642, Order Appointing Guardian Ad Litem/Attorney/Lawyer Guardian Ad Litem
- PC 645, Letters of Conservatorship
- PC 646, Petition for Approval of Sale of Real Estate
- PC 647, Order Regarding Sale of Real Estate
- PC 666, What you Need to Know Before Filing a Petition to Appoint a Guardian for an Incapacitated Adult
- PC 666a, What you Need to Know Before Filing a Petition to Appoint a Guardian for an Incapacitated Adult (Large Print) New Form, Guardian’s Report of Additional Cash/Property in Estate New Pamphlet, Notice of Legally Incapacitated Individual’s Rights

Ms. Brigman noted that these forms were revised/developed pursuant to PA 173, which went into effect October 1, 2012. These forms are available on the SCAO website.

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

No report.

F. Areas of Practice

1. Real Estate – George F. Bearup
No report.

2. Transfer Tax Committee – Nancy H. Welber

No report

3. Charitable and Exempt Organization – Christopher A. Ballard

No report

4. Transfer Tax – Thomas F. Sweeney

No report.

5. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman

Constance L. Brigman reported on:

- Possible revisions to EPIC in the guardianship arena (the Section’s interests are being headed by David Skidmore), such as role of guardians ad litem and legislation related to do-not-resuscitate orders.

- The foreign guardianship bill previously addressed by the Council has been set for hearing (the Hon. Milton L. Mack has been assisting).

- The interpretation of MCL 700.5306 and whether powers are required to be listed for plenary guardianships. Ms. Brigman discussed PA Act 173 (and referenced the proposed letter and materials attached to the CSP agenda). The proposed changes not adopted by SCAO because they were not required by the statute and to do otherwise would create large uniformity issues among counties.

- Guardianships for minors under 18 years of age were discussed (SB 1338).

W. Josh Ard discussed family consent issue and a proposed letter related to the same. Ms. Brigman said the purpose was to work with other stakeholders and suggested that we work through our lobbyist. Mr. Ard believes such an approach will tread lightly and not alarm other stakeholders.

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips

No report.

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.

   No report.

9. Probate Registers Liaison – Rebecca A. Schnelz
   No report.

10. SCAO Liaisons – Marlaine C. Teahan
    No report.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz
    No report.

12. State Bar Liaison – David R. Brake

   Amy N. Morrissey reported that she attended one of two focus groups held by the State Bar of Michigan, in which Section leaders were asked to provide feedback on the SBM’s strategic planning initiatives and services to members. She reported that the SBM’s Strategic Planning Workgroup Recommendations for 2011 – 2013 are posted on its website. Some other sections have mentorship programs, including outreach to law students. She reported that an opportunity might exist to learn more about role of the SBM board of commissioners and representative assembly. SBM is focusing on educating public regarding UPL and limits on SBM’s powers for UPL.

13. Taxation Section Liaison – Frederick H. Hoops, III
No report.

VIII. **Other Business**

None.

IX. **Hot Topics**

None.

X. **Adjournment**

Meeting adjourned at 12:02 p.m.
December 3, 2012

Mark K Harder
Chairperson Probate & Estate Planning Session
Warner Norcross & Jude LLP
83 East 8th Street Suite 310
Holland, MI 49233-3528

Re: 2012 PA 173-Powers of Full Guardians/Guardianship Orders

Dear Mr. Harder:

I am in receipt of your letter of November 28, 2012 regarding the above Referenced Public Act.

I will forward your letter to the membership of the Michigan Probate Judges Association. If I receive any responses or questions that are of concern to the membership, I will pass them along to you and discuss the matters with you, or refer that particular judge that has a concern directly to you.

Thank you for the information.

Sincerely,

Elwood L. Brown
President, Michigan Probate Judges Association
Memorandum

TO: Probate and Estate Planning Council
FROM: Marlaine C. Teahan, Chair
Court Rules, Forms and Procedures Committee
RE: Proposed amendment to MCR 2.105 – not adopted
DATE: December 10, 2012

On December 5, 2012, the Michigan Supreme Court issued the attached Order regarding ADM 2011-14. The Court declined to adopt a proposed amendment to MCR 2.105 that would have required a “diligent inquiry” in support of a request for substituted service to require an online search if party has access to Internet.

The SBM opposed the adoption of this rule change and our section was informally polled by email. We, too, opposed the proposal for a variety of reasons.
Order

December 5, 2012

ADM File No. 2011-14

Proposed Amendment of
Rule 2.105 of the
Michigan Court Rules

On order of the Court, the proposed amendment of Rule 2.105 of the Michigan Court Rules having been published for comment at 491 Mich 1221-1222 (Part 4, 2012), and an opportunity having been provided for comment and at a public hearing, the Court declines to adopt the proposed amendment. This administrative file is closed without further action.

Marilyn Kelly, J., would adopt the proposed amendment.
### Old Business  
**Presenter Name:** Connie Brigman

**Discussion:** SB 539 (Transfer of Foreign Guardianship) Voted out of House Judiciary 11-29-12

- Family Consent Letter (regarding other stakeholders to contact) – Becky Bechler will recommend recipients.
- PA 173 Letter (regarding what must be specified in an order for full guardianship) has been delivered to MPJA
- SB 1338 Sitting in Senate Judiciary since 10-17-12. Sen. Hildenbrand. (Judge Murkowski & Ellen to follow up.)

**Conclusions:** Family Consent Letter needs recipient. SB 1338 needs a substitute bill.

<table>
<thead>
<tr>
<th>Action Items:</th>
<th>Person Responsible:</th>
<th>Deadline:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make list of recipients to discuss at December PEPC</td>
<td>Josh</td>
<td>12-07-12</td>
</tr>
</tbody>
</table>

### New Business  
**Presenter Name:** David Skidmore

**Discussion:** MCL 700.5305(1)(f) regarding the duties of a GAL: ‘The GAL must make determinations and inform the court: (1) if there are alternatives to a full guardian and (2) if not, what should be done in addition to appointing a guardian.’

**Discussion:** MCL 700.5306a(1)(e) regarding rights of the ward ‘If not represented by legal counsel, [the ward has a right] to the appointment of a guardian ad litem to represent the individual on the petition to appoint a guardian, as provided in section 5303.’

**Discussion:** MCL 700.5303(3) regarding the term “represent.” (3) … Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court shall appoint a guardian ad litem to represent the person in the proceeding.”

**Discussion:** PC 626 at bullet point 4: “You have the right to have a guardian ad litem appointed to represent you if you are not represented by an attorney.”

**Conclusions:**

1. See also conservatorships!
2. David asks: (a) I.D. disconnection between the real world (b) List rights and responsibilities to court versus to ward for a GAL versus an attorney (c) Proposed fix that is likely going to incorporate more of the UPC into EPIC.

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<tr>
<th>Action Items: Progress reports</th>
<th>Person Responsible:</th>
<th>Deadline:</th>
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</thead>
<tbody>
<tr>
<td>Guardian’s area: Where EPIC &amp; Court rules conflict with our real world experience of what a GAL does</td>
<td>Josh Ard</td>
<td>12-6-12</td>
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<tr>
<td>Mandatory court-appointed attorney – when it does make sense and when it does not</td>
<td>Ellen Sugrue-Hyman</td>
<td>12-6-12</td>
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<tr>
<td>Practical real world description of GAL vs. atty</td>
<td>Kurt A. Olson</td>
<td>12-6-12</td>
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<tr>
<td>Conservator’s area: Where EPIC &amp; court rules conflict with our real world experience of what a GAL does</td>
<td>Michael J. McClory</td>
<td>12-6-12</td>
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</tbody>
</table>
Shaheen,

SB 539, Transfer of Foreign Guardianship/Conservatorship, is progressing to a second reading in the House. There have been two changes, neither of which were substantive, that I was authorized to make on behalf of the Probate and Estate Planning Section. They should be included with the materials for informational purposes only.

Here are the two changes:

(1) We gave the ombudsman back his two subsections and the word "shall" in exchange for allowing us to keep the foreign guardian at the top of the list of priorities.

- Originally, we moved the language from subsection two into subsection three and converted "shall" to "may" for the entire list.
- We placed the foreign guardian or conservator to position one on that list.
- The result was one list of priorities.

(2) Some persons in the House feared that a court might allow a guardian from a different country to transfer their order. Changed foreign jurisdiction to "another state." State is defined in EPIC to be a state or territory of the U.S.

H-1 is attached to this email and it reflects change #1. Also attached to this email are the changes to H-1 that reflect change #2.

Original language of SB 539 as introduced and passed by the Senate. Italicized text is what we struck out. The ALL CAPS is the amended language that we added.

GUARDIANS OF INCAPACITATED INDIVIDUALS

MCL 700.5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward’s property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney-in-fact through a durable power of attorney.

(3) If a person is not designated under subsection (2) or a person designated under
subsection (2) is not suitable or willing to serve. (2) The court may appoint as a 
guardian an individual who is related to the individual who is the subject of the petition in 
the following order of preference:

(A) A GUARDIAN PREVIOUSLY APPOINTED, QUALIFIED, AND SERVING IN 
GOOD STANDING IN ANOTHER JURISDICTION.
(B) A PERSON THE INCAPACITATED INDIVIDUAL NOMINATED TO SERVE AS 
THEIR GUARDIAN.
(C) A PERSON THE INCAPACITATED INDIVIDUAL NAMED AS ATTORNEY-INFACT 
IN THEIR DURABLE POWER OF ATTORNEY.

(a) (D) The legally incapacitated individual’s spouse. This subdivision shall be 
considered to include a person nominated by will or other writing signed by a deceased 
spouse.
(b) (E) An adult child of the legally incapacitated individual.
(c) (F) A parent of the legally incapacitated individual. This subdivision shall be 
considered to include a person nominated by will or other writing signed by a deceased 
parent.
(d) (G) A relative of the legally incapacitated individual with whom the individual has 
resided for more than 6 months before the filing of the petition.
(e) (H) A person nominated by a person who is caring for the legally incapacitated 
individual or paying benefits to the legally incapacitated individual.

(4) (3) If none of the person as designated or listed in subsection (2) or (3) is suitable or 
AND willing to serve, the court may appoint any competent person who is suitable and 
with to serve, including a professional guardian as provided in section 5106

Thank you for your support,

Constance L. Brigman
Law Office of Constance L. Brigman
Grand Rapids, Michigan
A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5313 and 5433 (MCL 700.5313 and 700.5433), section 5313 as amended by 2000 PA 463, and by adding sections 5202a and 5301a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 5202A. (1) IF A GUARDIAN HAS NOT BEEN APPOINTED IN THIS
2 STATE AND A PETITION FOR THE APPOINTMENT OF A GUARDIAN IS NOT
3 PENDING IN THIS STATE, A GUARDIAN APPOINTED, QUALIFIED, AND SERVING
4 IN GOOD STANDING IN ANOTHER JURISDICTION MAY BE APPOINTED
5 IMMEDIATELY AS TEMPORARY GUARDIAN IN THIS STATE ON FILING WITH A
6 COURT IN THIS STATE AN APPLICATION FOR APPOINTMENT, AN
7 AUTHENTICATED COPY OF THE GUARDIAN'S APPOINTMENT IN THE OTHER
8 JURISDICTION, AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF
GUARDIANSHIP FOR THE TEMPORARY GUARDIAN EXPIRE 28 DAYS AFTER THE
DATE OF APPOINTMENT.

(2) WITHIN 14 DAYS AFTER APPOINTMENT AS TEMPORARY GUARDIAN
UNDER SUBSECTION (1), THE GUARDIAN SHALL GIVE NOTICE TO ALL
INTERESTED PERSONS OF HIS OR HER APPOINTMENT AND THE RIGHT TO
OBJECT TO THE APPOINTMENT. ON FILING PROOF OF SERVICE OF THE NOTICE
WITH THE COURT, THE TEMPORARY GUARDIAN SHALL BE APPOINTED FULL
GUARDIAN AND THE COURT SHALL ISSUE LETTERS OF GUARDIANSHIP
ACCORDINGLY.

(3) IF AN OBJECTION IS FILED TO A GUARDIANSHIP UNDER THIS
SECTION, THE GUARDIANSHIP CONTINUES UNLESS A COURT IN THIS STATE
ENTERS AN ORDER REMOVING THE GUARDIAN.

SEC. 5301A. (1) IF A GUARDIAN HAS NOT BEEN APPOINTED IN THIS
STATE AND A PETITION FOR THE APPOINTMENT OF A GUARDIAN IS NOT
PENDING IN THIS STATE, A GUARDIAN APPOINTED, QUALIFIED, AND SERVING
IN GOOD STANDING IN ANOTHER JURISDICTION MAY BE APPOINTED
IMMEDIATELY AS TEMPORARY GUARDIAN IN THIS STATE ON FILING WITH A
COURT IN THIS STATE AN APPLICATION FOR APPOINTMENT, AN
AUTHENTICATED COPY OF THE GUARDIAN'S APPOINTMENT IN THE OTHER
JURISDICTION, AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF
GUARDIANSHIP FOR THE TEMPORARY GUARDIAN EXPIRE 28 DAYS AFTER THE
DATE OF APPOINTMENT.

(2) WITHIN 14 DAYS AFTER APPOINTMENT AS TEMPORARY GUARDIAN
UNDER SUBSECTION (1), THE GUARDIAN SHALL GIVE NOTICE TO ALL
INTERESTED PERSONS OF HIS OR HER APPOINTMENT AND THE RIGHT TO
OBJECT TO THE APPOINTMENT. ON FILING PROOF OF SERVICE OF THE NOTICE
WITH THE COURT, THE TEMPORARY GUARDIAN SHALL BE APPOINTED FULL
GUARDIAN AND THE COURT SHALL ISSUE LETTERS OF GUARDIANSHIP ACCORDINGLY.

(3) IF AN OBJECTION IS FILED TO A GUARDIANSHIP UNDER THIS SECTION, THE GUARDIANSHIP CONTINUES UNLESS A COURT IN THIS STATE ENTERS AN ORDER REMOVING THE GUARDIAN.

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney-in-fact through a durable power of attorney. IN THE FOLLOWING ORDER OF PRIORITY:

(A) A PERSON PREVIOUSLY APPOINTED, QUALIFIED, AND SERVING IN GOOD STANDING AS GUARDIAN FOR THE LEGALLY INCAPACITATED INDIVIDUAL IN ANOTHER JURISDICTION.

(B) A PERSON THE INDIVIDUAL SUBJECT TO THE PETITION Chooses TO SERVE AS GUARDIAN.
(C) A PERSON NOMINATED AS GUARDIAN IN A DURABLE POWER OF ATTORNEY OR OTHER WRITING BY THE INDIVIDUAL SUBJECT TO THE PETITION.

(D) A PERSON NAMED BY THE INDIVIDUAL AS A PATIENT ADVOCATE OR ATTORNEY IN FACT IN A DURABLE POWER OF ATTORNEY.

(3) If a person is not designated under subsection (2) or a person designated under subsection (2) is not suitable or willing to serve, the IF THERE IS NO PERSON CHOSEN, NOMINATED, OR NAMED UNDER SUBSECTION (2), OR IF NONE OF THE PERSONS LISTED IN SUBSECTION (2) ARE SUITABLE OR WILLING TO SERVE, THE court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in
subsection (2) or (3) ARE suitable or willing to serve, the
court may appoint any competent person who is suitable and willing
to serve, including a professional guardian as provided in section
5106.
Sec. 5433. (1) If a conservator has not been appointed in this
state and a petition in a protective proceeding is not pending in
this state, a conservator appointed, in the state in which the
protected individual resides may file in a court of this state, in
a county in which property belonging to the protected individual is
located, QUALIFIED, AND SERVING IN GOOD STANDING IN ANOTHER
JURISDICTION MAY BE APPOINTED IMMEDIATELY AS TEMPORARY CONSERVATOR
IN THIS STATE ON FILING WITH A COURT IN THIS STATE AN APPLICATION
FOR APPOINTMENT, an authenticated copy of letters of appointment
and of any bond. After the filing, the domiciliary foreign
conservator may exercise as to property in this state all the
powers of a conservator appointed in this state and may maintain an
action or proceeding in this state subject to any conditions
imposed upon nonresident parties generally. IN THE OTHER
JURISDICTION, AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF
CONSERVATORSHIP FOR THE TEMPORARY CONSERVATOR EXPIRE 28 DAYS AFTER
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CONSERVATOR AND THE COURT SHALL ISSUE LETTERS OF CONSERVATORSHIP
1 ACCORDINGLY.

2 (3) IF AN OBJECTION IS FILED TO A CONSERVATORSHIP UNDER THIS
3 SECTION, THE CONSERVATORSHIP CONTINUES UNLESS A COURT IN THIS STATE
4 ENTERS AN ORDER REMOVING THE CONSERVATOR.
Rep. _____________ offered the following amendments to Senate Bill No. 539 (H-1):

1. Amend page 1, line 4, after "ANOTHER" by striking out "JURISDICTION" and inserting "STATE".

2. Amend page 1, line 8, by striking out "JURISDICTION," and inserting "STATE,".

3. Amend page 2, line 16, after "ANOTHER" by striking out "JURISDICTION" and inserting "STATE".

4. Amend page 2, line 20, by striking out "JURISDICTION," and inserting "STATE,".

5. Amend page 3, line 25, after "ANOTHER" by striking out "JURISDICTION" and inserting "STATE".

6. Amend page 5, line 11, by striking out "JURISDICTION" and inserting "STATE".

7. Amend page 5, line 19, by striking out "JURISDICTION," and inserting "STATE,".
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(4) (3) If none of the person as designated or listed in subsection (2) or (3) is suitable or
AND willing to serve, the court may appoint any competent person who is suitable and
willing to serve, including a professional guardian as provided in section 5106

Thank you for your support,

Constance L. Brigman
Law Office of Constance L. Brigman
Grand Rapids, Michigan
Probate and Estate Planning Council
Treasurer’s Report
1-19-2013

Income/Expense Reports

Attached is the audited income and expense report result for the fiscal year ended Sept 30, 2012. Note that the final ending fund balance for that year is about $6,000 less than the preliminary report submitted in October, 2012, due to additional expenses being included as part of the year end wrap up. However, that ending fund balance is about $17,500 higher than at the end of September 2011.

Also attached is the report for November 2012 (unaudited). Note that the dues revenue at the end of November 2012 is almost $2,400 higher than November 2011.

Also note that the addition of the Electronic Communications expense line (which is budgeted at $4,150) as not yet been added to the spreadsheet reports.

New Mileage Reimbursement Rate Effective 1/1/2013

The IRS has increased the business mileage reimbursement rate to 56.5 cents per mile effective with all miles driven beginning January 1, 2013. The new business mileage reimbursement rate is an increase of 1 cent per mile, as compared to the current rate of 55.5 cents per mile.

The State Bar of Michigan follows the IRS reimbursement rate for business miles driven. Therefore, please use the new rate on your expense reimbursement forms for all business miles driven beginning 1/1/2013.

Expense Reimbursement Requests

Please keep in mind that the State Bar wants all expenses submitted to the State Bar of Michigan within 30 days of when the expense was incurred.

The Bar has revised the expense reimbursement form to include the new mileage rate on some of the lines. This available on the State Bar website at:

Hearts and Flowers Fund:

We received a thank you card from Melisa Mysliwiec for the $100 gift card sent from the Hearts & Flowers fund.

Jim Steward
Council Treasurer
## Probate and Estate Planning Section

### Treasurer's Report as of September 30, 2012

<table>
<thead>
<tr>
<th></th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>FY to Date</th>
<th>2011-12</th>
<th>Variance</th>
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<td>$2,500</td>
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<td>$500</td>
<td>98%</td>
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<tr>
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<td>$444</td>
<td>$11,557</td>
<td>$12,000</td>
<td>$116,060</td>
<td>$115,000</td>
<td>$1,060</td>
<td>104%</td>
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<tr>
<td>Support for Annual Institute</td>
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<td>$11,557</td>
<td>$12,000</td>
<td>$116,060</td>
<td>$115,000</td>
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<td>104%</td>
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<td>$75</td>
<td>$150</td>
<td>$880</td>
<td>$116,060</td>
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<td>104%</td>
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<tr>
<td>Listserv</td>
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<td>$14</td>
<td>$93</td>
<td>$116,060</td>
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<td>$116,060</td>
<td>$115,000</td>
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<tr>
<td><strong>Total Disbursements</strong></td>
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<td>$20,432</td>
<td>$20,432</td>
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### Additional Information

- Fund Balance $201,005
- *includes Institute sponsorship & reimbursements
- **includes leadership conference
- ***includes copying, e-blast
Probate and Estate Planning Section  
Treasurer's Report as of November 30, 2012

<table>
<thead>
<tr>
<th></th>
<th>September</th>
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<th>November</th>
<th>FY to Date</th>
<th>Actual</th>
<th>2012-13 Budget</th>
<th>Variance</th>
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<td>Other</td>
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<td>$12,000</td>
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<td>$-</td>
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<td>$10,000</td>
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</table>

*includes copying, e-blast
Memorandum

To: Probate and Estate Planning Council

From: Christopher A. Ballard

Re: Summary of 2012 Legislation Affecting Probate and Estate Planning

Date: January 10, 2013

Following is a list of bills that the Legislation Committee had been following in 2012.

Legislation Enacted

SB 92 (PA 141, effective 10/1/2012). Requires attorney-in-fact to sign a written acknowledgment in order to exercise powers under a power of attorney.

SB 192 (PA 596, effective 3/28/2013). Allows a probate estate to deduct the amount of any mortgage debt when computing the probate inventory fee.

SB 461 (PA 173, effective 10/1/2012). Provides additional protections to legally incapacitated individuals.

SB 539 (PA 545, effective 1/2/2013). Establishes a mechanism by which an out-of-state guardian or conservator could be appointed to manage the affairs of a minor or legally incapacitated adult/protected individual residing in Michigan.

SB 557-560 (PA 160, effective 6/12/2012). Modifies the presumptions regarding paternity under EPIC.

SB 723 (PA 179, effective 6/19/2012). Creates a “peace of mind” directory, a voluntary internet collection of advance directives, to be maintained by the Department of Community Health.

SB 895 (PA 553, effective 1/2/2013). Exempts 529 plans from collection.


SB 1296 (PA 582, effective 1/2/2013). Statute of repose for attorneys.

SB 1320 (PA 569, effective 1/2/2013). Revises and recodifies the Michigan Professional Corporations Act.

HB 4753 (PA 497, effective 12/31/2013). Keeps value of residential property capped for property tax purposes if transferred to a parent or child.

HB 5237 (PA 303, effective 9/25/2012). Corrects previous legislation regarding deemed allocations under formula provisions in estate planning documents for people who died in 2010.

HB 5441 (PA 210, effective 10/1/2012). Revises duties of GAL to include taking an inventory of cash and assets that are readily convertible into cash.

Legislation that failed

SB 404-406. Estate recovery.

SB 777. Disclosure requirements regarding life insurance.

SB 907. Would allow principal residence exception to be claimed by a trust if a beneficiary of the trust is residing in the house.

SB 1102-1103. Clarifying insurable interest of trusts.

HB 5929. Give PR the ability to control online accounts.

HB 5983. Give PR the ability to control online accounts.
Question:

Does Michigan law allow the Supreme Court, by court rule, to change the jurisdiction of the Court of Appeals and the Circuit Court? Further, is an amendment of MCR 5.801 a proper exercise of the Supreme Court’s authority if the amendment directs that all probate court appeals shall be heard by the Court of Appeals, including orders, sentences and judgments involving estates, trusts, guardianship matters under the Estates and Protected Individuals Code and the Mental Health Code, and other orders affecting the rights and interests of a person under the Mental Health Code?

Answer:

Yes, the Supreme Court has the authority to promulgate court rules that change the jurisdiction of both the Court of Appeals and the Circuit Court and can therefore amend MCR 5.801 to direct all of the probate court appeals enumerated above to the Court of Appeals.

Analysis:

The Michigan Constitution provides that the "jurisdiction of the court of appeals shall be provided by law and the practice and procedure therein shall be prescribed by rules of the supreme court." Const 1963, art 6, § 10. The Constitution also provides that the Circuit Court's jurisdiction is "of other cases and matters as provided by rules of the supreme court." Const 1963, art 6, § 13.

The Supreme Court’s power to authorize appeals of right to the Court of Appeals from orders of the Probate Court (at least with respect to all matters falling within the scope of the Estates and Protected Individuals Code) has been specifically conferred by § 1305 of the Estates and Protected Individuals Code (“EPIC”). MCL 700.1305. This law is a specific grant of authority from the legislature to the Supreme Court to modify the power of the appellate court for probate court appeals by court rule. EPIC Section 1305 provides:

“Appellate review, including the right to appellate review or interlocutory appeal and provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments. and the power of the appellate court, is governed by the revised judicature act of 1961 and by supreme court rule.”

The Revised Judicature Act (“RJA”) grants rule-making power to the Supreme Court. MCL 600.223. MCR 7.203(A)(2) and MCR 7.203(B)(4) recognize and declare the Supreme Court’s authority to supplement the jurisdiction of the Court of Appeals by Supreme Court rule. MCR 7.203(A)(2) provides that the Court of Appeals has jurisdiction of an appeal of right filed by an aggrieved party from any ‘judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule.” MCR 7.203(B)(4) provides that
the Court of Appeals may grant leave to appeal "any other judgment or order appealable to the Court of Appeals by law or rule."

The Supreme Court has defined the jurisdiction of the Court of Appeals and the Circuit Courts for purposes of all appeals from all orders and judgments of the probate court by its promulgation of MCR 5.801. MCR 5.801(A) currently provides that “An interested person aggrieved by an order of the probate court may appeal as provided by this rule.” By amending MCR 5.801(B)(1), effective April 1, 2010, to include appeals from all final orders affecting the rights or interests of a party to a civil action commenced in the probate court, the Supreme Court did exactly what we are asking it to do now – make a rule change that expands the Court of Appeal's jurisdiction. The Supreme Court has this power, by law and by rule, and has exercised it repeatedly in this and in other Court rule changes.

In conclusion, a further amendment to MCR 5.801 to provide that appeals of all probate court matters, involving estates, trusts, guardianship matters under the Estates and Protected Individuals Code and the Mental Health Code, and other orders affecting the rights and interests of a person under the Mental Health Code, shall be appealable to the Court of Appeals is a proper exercise of the Supreme Court’s power granted to them by the legislature.
TO: Probate and Estate Planning Council  
FROM: Thomas F. Sweeney  
DATE: January 9, 2013  

SUBJECT: A few comments on the “American Taxpayer Relief Act of 2012 (“ATRA”)”

A. Estate Gift and Generation Skipping Transfer Taxes  
   1. The $5 million base used to determine the credit against the tax will continue with cola adjustments which should bring the 2013 amount to $5.250 million. This amount will continue to apply to lifetime gifts, death time transfers and GST transfers.  
   2. The 37% and 39% rate brackets have returned, but that only affects the applicable credit. The new tax rate above the exemption amount is 40% rather than either 35% for the last three years, or 45% which was the rate before 2010.  
   3. Application of the DSUE (Deceased Spouse’s Unused Exemption) for portability purposes in the second spouse’s estate has been clarified.

B. Fiduciary Income Tax  
   Trusts or estates will be subject to the new Medicare income tax based on the lesser of net investment income or adjusted gross income that exceeds the income amount at which the highest tax rate applies to a trust or estate (apparently $11,950). If income is distributed or distributable under the instrument, the tax apparently does not apply.

C. Individual Income Tax  
   There is now a permanent patch for AMT purposes with exemptions of $50,600 (S) and $78,500 (M). Apparently these amounts will be subject to cola. Although the alternative tax “patch” has been permanently installed, there are four other significant changes affecting individual income taxation. Two of these are pegged to taxable income and two are pegged to adjusted gross income. To avoid all of them, adjusted gross income needs to be under $250,000(S) or $300,000(M).  
   1. Taxable Income (other than long-term capital gain or qualified dividend income) for taxpayers having taxable income in excess of $400,000 (Single) or $450,000 (Joint)
(Married) will be taxed at a new higher rate of 39.6%. \[This is the one we have heard most about\]

2. The phase-out of deductions for personal exemptions and itemized deductions is being reinstated and the phase-out will commence when adjusted gross income exceeds $250,000 (S) or $300,000 (M).

3. The 3.8% Medicare income tax will apply to net investment income when adjusted gross income exceeds $200,000 (S) or $250,000 (M). \[Investment income includes capital gains\].

4. A new 20% tax rate has been added for long term capital gain and qualified dividend income when taxable income exceeds $400,000 (S) or $450,000 (M).

This means that there will be several possible long term capital gain/qualified dividend rates including a (i) 15% rate if the taxpayer has falls below both the $400,000/($450,000(M) long term capital gain/qualified dividend taxable income threshold and the $200,000($250,000(M) adjusted gross income Medicare tax threshold and (ii) 18.8% rate when taxable income is below the long term capital gain/qualified dividend taxable income threshold of $400,000(S) or $450,000 (M), but above the Medicare tax threshold of $200,000/$250,000 adjusted gross income. Finally, (iii) if the taxpayer is above both of those thresholds, the tax rate on long term capital gain and qualified dividend income will be 23.8%.

Between the additional rate brackets added by ARTA; the different thresholds in ARTA for the 39.6% bracket, phase out of personal exemptions and itemized deductions, 3.8% net investment income tax, and the 20% capital gains tax; and existing threshold for the 0.9% additional Medicare Tax ($200,000(S) and $250,000 (M)), ARTA has managed to increase the complexity of the Internal Revenue Code exponentially.

D. Charitable Contribution Rollover

Charitable contribution rollovers for IRA owners who are over age 70½ are reinstated for 2012 and 2013. For 2012 only, an eligible account owner may make a payment to charities by January 31, 2013 if he or she received an IRA distribution during December, 2012. The account owner can elect on his or her 2012 1040 to have that payment to charity (up to the amount of the December IRA distribution and not to exceed $100,000) be treated as if it occurred on December 31, 2012. Other than allowing the direct payment, the other requirements for a charitable rollover must be met. For 2013, the usual charitable direct rollover rules apply.

This memo is based on information I’ve received which I believe to be reliable but I have not gone through the statute to confirm this information. These are only a few key points and other provisions of this lengthy bill may provide exceptions or limitations.
Report from meeting of Guardianship and Conservatorship Committee for January 19, 2013 Probate and Estate Planning Council meeting.

The committee met by conference call on January 3, 2013.

Present were Connie Brigman, Jill Goodell, Rhonda Clark-Kreuer, Josh Ard, Kurt Olson, Rebecca Schnelz and Judge Harter (ret.)

Excused were David Skidmore, Mike McClory

We discussed the recently passed foreign guardianship transfer bill and the pending Guardians and DNR bill.

David Skidmore was not present, thus a report on the work done reviewing the duties of a GAL was not available.

We also discussed the POST initiative and our wish to contact other stakeholders regarding a Family Consent bill. Josh Ard renewed his offer to speak with his neighbor who works with Public Affairs Associates.

Becky Schnelz expressed an urgent concern to move forward on updating the Michigan Court Rules in consideration of the foreign guardianship transfer bill.
### Expense Reimbursement Form

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

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<th>Date</th>
<th>Description &amp; Purpose (Note start &amp; end point for mileage.)</th>
<th>Mileage</th>
<th>Lodging/Other Travel</th>
<th>Meals (Self + attach list of guests)</th>
<th>Miscellaneous (i.e. copying, phone, etc.)</th>
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<td>$0.00</td>
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</table>

I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as a [Title].

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

Grand Total $0.00

I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as a [Title].

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
<th>Approved by (signature)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>
General Policies
1. Requests for reimbursement of individual expenses should be submitted as soon as possible following the event and no later than two weeks following the close of the fiscal year in which the expense is incurred so that the books for that year can be closed and audited.

2. All out of pocket expenses must be itemized.

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

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

5. Spouse expenses are generally not reimbursable.

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

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

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

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

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

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

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

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

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

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

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

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

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