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

June 8, 2013
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:36 a.m.

II. Attendance

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

Harder, Mark K.                     Lucas, David P.
Imami, Shaheen I.                  Lentz, Marguerite M.
Steward, James B.                  Murkowski, Hon. David M.
Sweeney, Thomas F.                  O'Brien, Hon. Darlene
Allen, Susan M.                     Schnelz, Rebecca A.
Ard, W. Josh                       Skidmore, David L.J.M.
Ballard, Christopher A.            Spica, James P.
Bearup, George F.                  Taylor, Robert M.
Brigman, Constance L.              Teahan, Marlaine C.
Clark-Kreuer, Rhonda M.            Welber, Nancy H.
Kerr, J. David

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:

Morrissey, Amy N.
Ouellette, Patricia M.

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
Harold G. Schuitmaker
E. **Others in attendance:**

- Carol M. Hogan
- Lorraine New
- Linsey Aten
- Robert Tiplady, III
- Jeanne Murphy
- Neal Nusholtz
- Julie Paquette
- Michael Lichterman
- Rick Mills
- Sharri L. Roland Phillips
- Amy Peterman
- Mark E. Kellogg
- Naznee H. Syed
- Loukas P. Kalliantasis
- Geoffrey R. Vernon
- Robert Ragosich

III. **Minutes of the April 13, 2013, Meeting of the Council**

Shahseen I. Imami presented the minutes of the April 13, 2013, Council meeting. The Hon. Darlene O'Brien moved for approval with support from Marguerite M. Lentz. 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. Receipts and expenditures remain on track with the budget.

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

Mark K. Harder presented the Chairperson’s report:

- Letter from Photographical Historical Society
- Letter to Sen. Jones re digital assets legislation
- Report from Naznee H. Syed regarding the SBM Diversity Summit. Ms. Syed noted that she would have liked the summit to more directly address the manner in which diversity will or might be accomplished. She also commented that it was not practical enough, but too theoretical.

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

Marlaine C. Teahan reported that CSP heard from Court Rules Committee and Domestic Asset Protect Trust Committee (“DAPT Committee”) regarding the proposed amendment of various court rules, the creation of new probate court forms, and the status of the domestic asset protection trust (“DAPT”) legislation.

Ms. Teahan proposed package amendment to the various court rules discussed during CSP (MCR 5.125(B)(2), MCR 5.208(C)(1), MCR 5.208(F), MCR 5.108(B), MCR 5.125(C)(6), (19), (22), (24), & (27) as amended as CSP, and MCR 5.403(A)). Ms. Teahan moved for approval, with support by Marguerite M. Lentz. A friendly amendment was introduced by the
The motion was approved on a Council vote of 21-0, with no abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.

Ms. Teahan next moved for approval of PC 556, PC 577, and PC 632, with support from Ms. Lentz. The motion was approved on a Council vote of 21-0, with no abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.

Robert Tiplady, III, presented the DAPT legislation, with minor modifications proposed by James P. Spica. Ms. Lentz moved for approval, with support and a friendly amendment from Shaheen I. Imami to recommend the proposal to the Legislature, find a sponsor, work with the Legislative Services Bureau, and to permit the DAPT Committee to make non-substantive changes during the process. During the comment period, James B. Steward would like to see the proposal expanded to include lower income individuals & ability to protected primary residences. Mr. Steward also noted some concerns about a trustee's ability to charge a trust related to litigation. The motion was approved on a Council vote of 18-3, with no abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Shaheen I. Imami

No report.

2. Bylaws – Nancy H. Welber

Nancy H. Welber reported on proposed changes to the Section’s bylaws. She addressed the potential of non-lawyer or out of state lawyers as associate members. A discussion ensued regarding the propriety and needs served by such membership & designation. Ms. Welber will take the proposals back to the committee for further work.

3. Awards – Douglas A. Mielock

No report.

4. Planning – Thomas F. Sweeney

No report.

5. Nominating – Harold G. Schuitmaker

Harold G. Schuitmaker reported on the committee’s nominations for Council officers for FY 2013-2014 and members for a three-year term beginning in 2013:

- Thomas F. Sweeney was nominated to become Chair;
• Amy N. Morrissey was nominated to become Chair-Elect;
• Shaheen I. Imami was nominated to become Vice-Chair;
• James B. Steward was nominated to become Secretary;
• Marlaine C. Teahan was nominated to become Treasurer;
• Michele Marquardt, Lorraine New, and Geoffrey R. Vernon were nominated as new Council members each for a three-year term beginning in 2013;
• Constance C. Brigman, Marguerite M. Lentz, and Susan M. Allen were nominated for a second, three-year term beginning in 2013; and
• No other nominations were made from the floor and the nominating slate was closed at the direction of the Chair, Mark K. Harder.

6. Annual Meeting – Thomas F. Sweeney

No report.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L.J.M. Skidmore

No report.

2. Probate Institute – Amy N. Morrissey

No report.

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

William J. Ard reported recommended policies and procedures for the Section’s webpage and listserve. Mr. Ard focused on removing outdated information from webpage and penalizing those who approve posting privileges on listserve. For the latter, he recommended a sliding scale of penalties to maintain free-flowing information. He also noted that a full-time moderator is impractical. He would like the enforcement of policies reserved to the committee or its chair.
C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

Christopher A. Ballard noted the existence of proposed cremation legislation offered by Henry Woloson – and while it has not been introduced, it apparently with the Legislative Services Bureau. Mr. Ballard recommended, with support by Rhonda Clark-Kreuer, that the Section support the proposal in principal to allow him to work with Mr. Woloson. The measure was approved on a voice-vote with no nays or absentions.

2. Updating Michigan Law – Marguerite Munson Lentz

No report.

3. Insurance Committee – Thomas F. Sweeney

No report.

4. Artificial Reproductive Technology – Nancy H. Welber

No report.

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

Jim referred to his report.

E. Administration of Justice

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

Marlaine C. Teahan discussed MCR 7.205(F) and a proposal by Janet Welch to extend the period from 6 months to 12 months. Shaheen I. Imami moved to oppose such an extension, with support from Rhonda Clark-Kreuer. The motion was approved on a Council vote of 14-1-2. This is a PUBLIC POLICY POSITION to be reported to the SBM, if the proposal is introduced.

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

George F. Bearup referred to his report in the materials.
F. Areas of Practice

1. Real Estate – George F. Bearup
   George F. Bearup referred to his report in the materials.

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

3. Charitable and Exempt Organization – Christopher A. Ballard
   No report.

4. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman
   No report.

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

Michael McClory reported on pending legislation regarding online access to court files.

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

Thomas F. Sweeney asked for committee chairs to report whether each is interested in continuing in current positions or assuming new positions. Also, he noted the dates for the remaining 2013 meetings as follows: September 21, 2013 (MSU University Club); October 12, 2013 (Townsend Hotel, Birmingham); November 16, 2013 (MSU University Club); and December 14, 2013 (MSU University Club).

IX. Hot Topics

None.

X. Adjournment

Meeting adjourned by Mark K. Harder at 12:11 p.m.
I. Call to Order

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:20 a.m.

II. Attendance

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

- Harder, Mark K.
- Imami, Shaheen I.
- Morrissey, Amy N.
- Sweeney, Thomas F.
- Allen, Susan M.
- Ard, W. Josh
- Bearup, George F.
- Brigman, Constance L.
- Kerr, J. David
- Lucas, David P.
- Lentz, Marguerite M.
- O’Brien, Hon. Darlene
- Ouellette, Patricia M.
- Schnelz, Rebecca A.
- Skidmore, David L.
- Spica, James P.
- Taylor, Robert M.
- Teahan, Marlaine C.
- Welber, Nancy H.

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:

- Ballard, Christopher A.
- Clark-Kreuer, Rhonda M.
- Lentz, Marguerite M. (partial)
- Murkowski, Hon. David M.
- Steward, James B.

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.
- Harter, Phillip E.
- Westerman, Susan S.
E. Others in attendance:

John Dresser
Kurt Olson
Carol M. Hogan
Stephen L. Elkins
Geoffrey Vernon
Robert Tiplady
Melisa Mysliwiec
Loukas P. Kalliantasis
Keven DuComb
Neal Nusholtz
Kathleen Goetsch
Joe Viviano
Rick Mills
Julie Paquette
Mark E. Kellogg
Jeanne Murphy
Michael Lichterman
Lorraine F. New
Nazneen H. Syed
Katie Lynwood

III. Minutes of the March 16, 2013, Meeting of the Council

Shaheen I. Imami presented the minutes of the March 16, 2013, Council meeting. Shaheen I. 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

Mark K. Harder presented the Treasurer's report. Receipts and expenditures remain on track with the budget.

V. Chairperson’s Report – Mark K. Harder

Mark K. Harder presented the Chairperson’s report:

- Referenced letter to Carl Ver Beek declining request for funding for Making Choices Michigan, Inc.

- Discussed the Section’s final letter to Michael Gadola regarding Project Wildcat, as well as letter from Health Care Association of Michigan (“HCAM”) and a related legal memorandum on HCAM’s behalf.

- Nazneen H. Syed will be attending the Diversity Summit on the Section’s behalf.

- Discussed issue raised by Henry Woloson related to the power and authority to make funeral/burial arrangements. It was noted that the Section has attempted to pursue the issue in the past, but with little success because of the funeral directors’ lobby.

VI. Report of the Committee on Special Projects – Marlaine C. Teahan
Marlaine C. Teahan reported that CSP heard from DAPT committee and discussed changes to Sections 3(c) and 5 through 9. It was noted that the proposed legislation is intended to be prospective. The goal is to move forward with approval of proposed legislation at the June 2013 meeting.

VII. Standing Committee Reports

A. Internal Governance

1. Budget – Shaheen I. Imami
   No report.

2. Bylaws – Nancy H. Welber
   Nancy H. Welber reported that some changes are in the works.

3. Awards – Douglas A. Mielock
   No report.

4. Planning – Thomas F. Sweeney
   Thomas F. Sweeney reported that he is still working on meeting schedule for 2013-2014 year. The October meeting will be October 12, 2013, at the Townsend Hotel in Birmingham, Michigan.

5. Nominating – Harold G. Schuitmaker
   George W. Gregory reported that an e-blast would go out to the Section members regarding the nominating procedure and notice. Some concerns were raised about the usefulness of posting a notice in the Journal giving the timing of the upcoming issue.

6. Annual Meeting – Thomas F. Sweeney
   No report.

B. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore
   Patricia M. Ouellette noted that an amicus request was denied primarily based on the fact that the issue rested on an exercise of discretion by the judge. Additionally, some concerns were raised about what position should be adopted by the Section if the request were accepted.

2. Probate Institute – Amy N. Morrissey
   Amy N. Morrissey reported that invitations to the speakers’ dinner went out, so responses would be appreciated. She reminded everyone of the dates for the sessions in Acme and
Plymouth. Finally, she noted that some spaces were still open for the Jonathon Blattmacher presentation.

3. State Bar and Section Journals – Amy N. Morrissey
No report.

4. Citizens Outreach – Rebecca A. Schmelz
No report.

5. Electronic Communications – William J. Ard
No report.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard
No report.

2. Updating Michigan Law – Marguerite Munson Lentz
Marguerite Munson Lentz reported that the committee is looking at something more substantive than the recently introduced digital assets bill sponsored by Senator Bieda. Mark K. Harder noted that he relayed to Rebecca Bechler that the proposed legislation is deficient as presently drafted and the Section would like some time to provide thoughtful input. Ms. Bechler will notify the chair of judiciary. There was some discussion of the sources for the Section’s proposed legislation and the existence of a discussion draft of Fiduciary Access to Digital Assets Act by NCCUSL.

3. Insurance Committee – Thomas F. Sweeney
Thomas F. Sweeney reported that the insurable interest legislation has not made it to the House yet, but he expects some movement by spring.

4. Artificial Reproductive Technology – Nancy H. Welber
Nancy H. Welber reported the perceived mission of the committee.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr
No report.

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

- Proposed changes to MCR 5.125(C)(6) and (27) to clarify IPs for examination of accounts. There was some discussion questioning the effect of the removal of “claimant.” The committee will re-work the proposed changes based on such concerns.

- Proposed changes to MCR 5.108 regarding time of service by mail for transfers of guardianship or conservatorship. Constance L. Brigman proposed that 14-day period should commence after the application is filed.

- Proposed change to MCR 5.403 to add “guardian serving in another state.”

- Proposed changes to MCR 5.125(C)(19), (22), & (24):
  - (19) to reflect changes in transfer of foreign guardianships;
  - (22) same issues as (19); and
  - (24) same issues, but for foreign conservatorships.

- ADM 2011-31 related to appellate procedures. Ms. Teahan recommended that the Section not take a position.

- The proposed changes to MCR 5.801 and appeals are ready to be presented to the Michigan Supreme Court as all of the interested groups have signed-off.

- Ms. Teahan recommended that the Section withdraw its request for additional meetings because of SCAO indicated that issues can be addressed on an ad hoc basis.

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

George W. Gregory discussed the new “tax nugget” and the shifting of taxation among jurisdictions based on a PLR regarding Delaware Incomplete Non-Grantor Trust.

Nancy H. Welber discussed federal budget items that may affect planning and taxation.

3. Charitable and Exempt Organization – Christopher A. Ballard

No report.

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

Constance L. Brigman reported regarding:

- The role of the guardian ad litem and whose interests are represented;
- The termination of the guardian ad litem; and
- Do-Not-Resuscitate (“DNR”) legislation was passed unanimously by House committee. She noted that some issues may exist regarding the interpretation by courts and handling by hospitals.

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

No report.

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

No report.

VIII. **Other Business**

None.

IX. **Hot Topics**

Recent appellate decisions addressing real parties in interest, standing, and conservatorship PIP benefits were discussed.

X. **Adjournment**

Meeting adjourned by Mark K. Harder at 11:40 a.m.
Probate and Estate Planning Council
Treasurer’s Report
for 6-08-2013

Income/Expense Report

Attached is the income and expense reports for March and April 2013 (unaudited). The dues revenue at the end of April 2013 is about $450 higher than through April 2012, and more than $500 over the total revenue budgeted for this year. Therefore, we are very much on target with the projected revenue as shown in the budget.

The attached reports now reflect the increase in the budget line item for “Other” to $1,000 from the previous figure of $300 (some of my prior reports incorrectly showed a figure of $100 for the “Other” line, which was the figure from last year). This change was approved by Council at the March meeting, and now includes up to $750 allocated to support for this year’s Young Lawyers Summit.

All expenses appear to be on track to remain within budget.

Expense Reimbursement Requests

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

Also, as previously noted, the Bar has revised the expense reimbursement form to include the new mileage rate on some of the lines. This is available on the State Bar website at: http://www.michbar.org/generalinfo/pdfs/sectexp.pdf

Again this month, I’ve also attached a blank (non fillable) pdf copy of the expense reimbursement form at the end of this report which can be printed off directly and filled out manually

Jim Steward
Council Treasurer
## Probate and Estate Planning Section
### Treasurer’s Report as of March 31, 2013

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<tr>
<th></th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>FY to Date Actual</th>
<th>Budget 2012-13</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
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<td><strong>Revenue</strong></td>
<td></td>
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<tr>
<td>Membership Dues</td>
<td>$3,220</td>
<td>$840</td>
<td>$175</td>
<td>$116,165</td>
<td>$115,000</td>
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<td>Other</td>
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<td><strong>Disbursements</strong></td>
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<td>Journal</td>
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<td>Chairperson’s Dinner</td>
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<td>$10,102</td>
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<td>Long-range Planning</td>
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<td>$1,000</td>
<td>$(1,000)</td>
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<td>0%</td>
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</tr>
<tr>
<td>Publishing Agreements</td>
<td>$-</td>
<td></td>
<td>$0</td>
<td>$-</td>
<td>$-</td>
<td>0%</td>
<td></td>
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<tr>
<td>Support for Annual Institute</td>
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<td>$5,126</td>
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<td>Amicus Briefs</td>
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<td>Postage</td>
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<td>Telephone</td>
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<td>Other**</td>
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<td>Total Disbursements</td>
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<td>$13,952</td>
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<td>$51,745</td>
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<td>Increase</td>
<td>$64,420</td>
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<td></td>
<td></td>
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<td>69,470</td>
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### Additional Information

- Fund Balance: $265,426

*Includes e-blast & other electronic communications to members
**Includes copying costs; budget for this line increased to $1,000 & now includes $750 for Young Lawyers’ Summit
***Includes $25,000 allocated to "Amicus Fund" for extra amicus brief expenses in excess of current budget amount
### Probate and Estate Planning Section  
**Treasurer's Report as of April 30, 2013**

<table>
<thead>
<tr>
<th>FY to Date</th>
<th>Budget 2012-13</th>
<th>Variance</th>
<th>Year to Date Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td>March</td>
<td>April</td>
<td>$116,270</td>
</tr>
</tbody>
</table>

#### Revenue

<table>
<thead>
<tr>
<th></th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>$116,270</th>
<th>$115,000</th>
<th>$1,270</th>
<th>101%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership Dues</td>
<td>$840</td>
<td>$175</td>
<td>$105</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Publishing Agreements</td>
<td>$475</td>
<td>$350</td>
<td></td>
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<tr>
<td>Other</td>
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<td>$350</td>
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<td>Total Receipts</td>
<td>$840</td>
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<td>$115,000</td>
<td>$1,270</td>
<td>101%</td>
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#### Disbursements

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<tr>
<th></th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>$116,270</th>
<th>$115,000</th>
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<tbody>
<tr>
<td>Journal</td>
<td>$6,389</td>
<td>$75</td>
<td>$10,214</td>
<td>$27,500</td>
<td>(17,286)</td>
<td>37%</td>
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</tr>
<tr>
<td>Chairperson's Dinner</td>
<td>$4,406</td>
<td>$6,500</td>
<td>(2,094)</td>
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<tr>
<td>Travel</td>
<td>$2,258</td>
<td>$1,350</td>
<td>$983</td>
<td>$11,086</td>
<td>$18,000</td>
<td>(6,915)</td>
<td>62%</td>
</tr>
<tr>
<td>Lobbying</td>
<td>$5,000</td>
<td>$17,500</td>
<td>$30,000</td>
<td>(12,500)</td>
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</tr>
<tr>
<td>Meetings</td>
<td>$1,015</td>
<td>$3,429</td>
<td>$12,000</td>
<td>(8,571)</td>
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<td></td>
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<tr>
<td>Long-range Planning</td>
<td>$5,000</td>
<td>$17,500</td>
<td>$30,000</td>
<td>(12,500)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Support for Annual Institute</td>
<td>$5,126</td>
<td>$1,140</td>
<td>$6,516</td>
<td>$13,000</td>
<td>(6,484)</td>
<td>50%</td>
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</tr>
<tr>
<td>Amicus Briefs</td>
<td>$75</td>
<td>$75</td>
<td>$75</td>
<td>$450</td>
<td>$1,400</td>
<td>(950)</td>
<td>32%</td>
</tr>
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<td>Electronic Communications*</td>
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<td>$75</td>
<td>$75</td>
<td>$450</td>
<td>$1,400</td>
<td>(950)</td>
<td>32%</td>
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<tr>
<td>Postage</td>
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<td>$1</td>
<td>$100</td>
<td>$100</td>
<td>(99)</td>
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</tr>
<tr>
<td>Telephone</td>
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<td>$13</td>
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<td>$129</td>
<td>$250</td>
<td>(121)</td>
<td>51%</td>
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<tr>
<td>Other**</td>
<td>$75</td>
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<td>$155</td>
<td>$480</td>
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<td>(520)</td>
<td>48%</td>
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<tr>
<td>Total Disbursements</td>
<td>$13,952</td>
<td>$7,554</td>
<td>$2,465</td>
<td>$54,210</td>
<td>$120,750</td>
<td>(66,540)</td>
<td>45%</td>
</tr>
</tbody>
</table>

**Net Increase (Decrease)**  
$$62,060 \quad $ (5,050) \quad $ 67,110$$

#### Additional Information

- Fund Balance  
  $ 263,065

*includes e-blast & other electronic communications to members

**includes copying costs; budget for this line increased to $1,000 & now includes $750 for Young Lawyers' Summit

***includes $25,000 allocated to "Amicus Fund" for extra amicus brief expenses in excess of current budget amount
### State Bar of Michigan
506 Townsend St., Lansing MI 48933-2012, 0800 508-1442

**Section Expense Reimbursement Form**

Select a Section

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Description &amp; Purpose</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>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>0.565</td>
<td>$0.00</td>
<td></td>
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<td>$0.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.565</td>
<td>$0.00</td>
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<tr>
<td></td>
<td></td>
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<td>$0.00</td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>0.565</td>
<td>$0.00</td>
<td></td>
<td></td>
<td>$0.00</td>
</tr>
</tbody>
</table>

I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Grand Total $0.00

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
<th>Approved by (signature)</th>
</tr>
</thead>
</table>
STATE BAR OF MICHIGAN
Section Expense Reimbursement Policies and Procedures

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

2. All out of pocket expenses must be itemized.

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

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

5. Spouse expenses are generally not reimbursable.

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

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

8. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
   A. Tickets should be at the best rate available for as direct a path as possible.

9. 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.

10. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.

11. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

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

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

14. 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.).

15. 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.

16. 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.

17. 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.

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.
April 19, 2013

Hon. Elwood L. Brown        Mark K. Harder
St. Clair County Probate Court Warner Norcross & Judd LLP
201 McMorran Blvd Rm 2200     85 E 8th St Ste 310
Port Huron, MI 48060          Holland, MI 49423

Dear Judge Brown and Mr. Harder:

Thank you for your recent letter concerning a document that was circulated by the Assistant State Long Term Care Ombudsman. As I understand it, this document, entitled “Health Care Decision-Making for a Resident in a Nursing Home,” was recently removed from the website of the Office of Services to the Aging and is undergoing thorough review and revision. I further understand that the concerns of many interested parties with respect to the document, including those expressed by the Probate and Estate Planning Section of the State Bar, are being taken into consideration as part of that review. Finally, I believe the document was intended to be strictly informational and fact-based, and that it did not set official policy for the State of Michigan.

Should you have any further questions or concerns about the document or the review process, I suggest you contact Sarah Slocum, Director of the State Long Term Care Ombudsman program, or Kari Sederburg, Director of the Office of Services to the Aging. Thank you for bringing your concerns to my attention.

Sincerely,

Michael Gadola
Legal Counsel

cc: Kari Sederburg
Sarah Slocum
April 25, 2013

Mark K. Harder, Esq.
Chair, Probate and Estate Planning Section
State Bar of Michigan
85 E. 8th St., Ste. 310
Holland, MI 49423

Re: Disposition of Photographs and Photographic Equipment

Dear Mr. Harder,

The Michigan Photographic Historical Society is a 501(c)(3) Michigan educational corporation (see miphs.org). We are writing you about the possibility of assisting in the disposition of collectible or antique photographs and photographic equipment, items that often pose a problem for those handling estates.

We are frequently contacted by decedents’ survivors left with one or many items of photographic equipment and photographs. They do not know how to get fair value for it. At no charge, we can usually provide an informal assessment of the items, an informed opinion about which items are likely to have collector value and which should be donated to organizations such as Goodwill Industries or The Salvation Army.

For those items which have more than nominal value, we offer two options for MiPHS involvement. First, the items can be donated to the Society, and we will attempt to sell them to support our mission and corporate purposes. We would provide a written receipt listing the donated item(s), which may be useful for tax or estate purposes.

The second method involves consignment of the items to MiPHS. We would conduct a silent auction at our next twice-a-year photogaphica sale. These sales are well advertised, and are the most popular of their kind in Michigan. We photograph each auction item, and place the photos and descriptions on our website in advance of the auction. We are experienced with silent auctions, and the consignors have been extremely pleased with the results. MiPHS retains a portion of the auction proceeds.

We believe it would benefit your Section members and their clients if this information, or this letter, is provided to them. For additional information, please contact me at my address or email as listed in the Emeritus Section of the State Bar Directory, or contact the MiPHS President, Cynthia Motzenbecker, at the address below.

Sincerely,

[Signature]

Martin K. Magid, P23183
U.S. Administrative Law Judge (Retired)
Member of the Board, Michigan Photographic Historical Society
May 20, 2013

VIA E-MAIL

Senator Rick Jones
915 Farnum Building
Lansing, Michigan

Re: S.B. 293

Dear Sen. Jones:

I understand that the Senate Judiciary Committee is scheduled to take testimony on Tuesday, May 21, 2013, concerning S.B. 293, which would amend Section 3715 of the Estates and Protected Individuals Code to make explicit the power of a personal representative of a decedent’s estate to deal with social media, blogging, and e-mail accounts. I am writing to make you and the members of the Senate Judiciary Committee aware of the ongoing work of the Section with respect to the general subject matter of S.B. 293.

The Council of the Probate and Estate Planning Section of the State Bar of Michigan has not taken any formal position on S.B. 293. Due to the relatively recent introduction and scheduling of S.B. 293 for testimony, the Section will not take a position prior to the Council’s next meeting on June 8, 2013, and is unable to send a representative to the hearing to give testimony. However, the Section is intensely interested in any legislation that would affect the Estates and Protected Individuals Code and the administration of decedent’s estates, trusts, guardianships, and conservatorships.

Earlier this year I asked a Committee of the Council of the Probate and Estate Planning Section to draft a statute that would address digital assets and that the Section could recommend to the legislature for its consideration. Specifically, the Committee has been charged with developing a comprehensive statute that would address all of the issues raised by digital assets in the context of decedent’s estates, trusts, guardianships and conservatorships, and not just the issues related to decedent’s estates. The Committee has met several times, with its most recent meeting having occurred this past Friday. The Committee is actively considering the laws passed in other states, as well as the Uniform Law Commission’s draft of the Fiduciary Access to Digital Assets Act. While I do not have a timetable for when the Committee would have a draft bill ready for submission and consideration by the legislature, I would encourage the Judiciary...
Committee and sponsors of S.B. 293 to delay action to give our Committee time to complete its assessment of the best practices for legislation involving digital assets in the context of estates, trusts, guardianships and conservatorships, and to work with the Committee and sponsors to develop a bill that will meet the needs of citizens in all of these contexts in which the issues of digital assets arise.

Senator Jones, if you, your staff or the Committee’s staff have any questions or desire to discuss this matter further please do not hesitate to contact me at your convenience.

Sincerely,

Mark K. Harder
Chairperson, Probate and Estate Planning Section

C: Senator Tonya Schuitmaker (via e-mail)
    Senator Tory Rocca (via e-mail)
    Senator Steven M. Bieda (via e-mail)
    Council of the Probate and Estate Planning Section, State Bar of Michigan
A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 3206, 3207, 3208, 3209, and 3614 (MCL
700.3206, 700.3207, 700.3208, 700.3209, and 700.3614), sections
3206 and 3209 as amended by 2012 PA 63, section 3207 as amended by
2010 PA 325, and section 3208 as added and section 3614 as amended
by 2006 PA 299.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,
part 28 and article 10 of the public health code, 1978 PA 368, MCL
333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection
(11) — (12), A FUNERAL REPRESENTATIVE APPOINTED UNDER SUBSECTION
(2), a person with priority under subsections (2) to (4) to
(3) to
(5), or a PERSON acting under subsection (5) to (6), (7), or (8), or
(9) is presumed to have the right and power to make decisions about
funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent. The handling, disposition, or disinterment of a body shall be under the supervision of a person licensed to practice mortuary science in this state.

(2) AN INDIVIDUAL MAY DESIGNATE A PERSON TO ACT AS THE INDIVIDUAL'S FUNERAL REPRESENTATIVE. THE DESIGNATION SHALL BE IN WRITING, SIGNED, WITNESSED IN THE SAME MANNER AS PROVIDED FOR A PATIENT ADVOCATE DESIGNATION IN SECTION 5506(4), DATED, AND EXECUTED VOLUNTARILY. A DESIGNATION UNDER THIS SUBSECTION MAY BE INCLUDED IN A PATIENT ADVOCATE DESIGNATION. A PERSON DESIGNATED AS A FUNERAL REPRESENTATIVE HAS THE RIGHTS AND POWERS UNDER SUBSECTION (1).

(3) If a funeral representative is not designated under subsection (2), the surviving spouse or, if there is no surviving spouse, the individual or individuals 18 years of age or older, in the highest order of priority under section 2103, and related to the decedent in the closest degree of consanguinity, have the rights and powers under subsection (1).

(4) If a funeral representative is not designated under subsection (2) and if the surviving spouse or the individual or individuals with the highest priority as determined under subsection (2) do not exercise their rights or powers under subsection (1) or cannot be located after a good-faith effort to contact them, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority.
priority under section 2103 who are related to the decedent in the
next closest degree of consanguinity. If the individual or each of
the individuals in an order of priority as determined under this
subsection similarly does not exercise his or her rights or powers
or cannot be located, the rights or powers under subsection (1)
pass to the next order of priority, with the order of priority
being determined by first taking the individuals in the highest
order of priority under section 2103 and then taking the
individuals related to the decedent in the closest or, as
applicable, next closest degree of consanguinity in that order of
priority.

(5) +4—If 2 or more individuals share the rights and powers
described in subsection (1) as determined under subsection (2)—or
(3) OR (4), the rights and powers shall be exercised as decided by
a majority of the individuals. If a majority cannot agree, any of
the individuals may file a petition under section 3207.

(6) +5—If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER
SUBSECTION (2) AND IF no individual described in subsections (2)—
and—(3) AND (4) exists, exercises the rights or powers under
subsection (1), or can be located after a sufficient attempt as
described in subsection +(9)—(10), and if subsection (6)—(7) does
not apply, then the personal representative or nominated personal
representative may exercise the rights and powers under subsection
(1), either before or after his or her appointment.

(7) +6—If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER
SUBSECTION (2) AND IF no individual described in subsections (2)—
and—(3) AND (4) exists, exercises the rights or powers under
subsection (1), or can be located after a sufficient attempt as 
described in subsection (9)—(10), and if the decedent was under a 
guardianship at the time of death, the guardian may exercise the 
rights and powers under subsection (1) and may make a claim for the 
reimbursement of burial expenses as provided in section 5216 or 
5315, as applicable.

(8) (7)—If A FUNERAL REPRESENTATIVE IS NOT DESIGNATED UNDER 
SUBSECTION (2) AND IF no individual described in subsections (2) 
and (3) AND (4) exists, exercises the rights or powers under 
subsection (1), or can be located after a sufficient attempt as 
described in subsection (9)—(10), if the decedent died intestate, 
and if subsection (6)—(7) does not apply, a special personal 
representative appointed under section 3614(c) may exercise the 
rights and powers under subsection (1).

(9) (8)—If there is no person under subsections (2) to (7)—(8) 
to exercise the rights and powers under subsection (1), 1 of the 
following, as applicable, shall exercise the rights and powers 
under subsection (1):

(a) Unless subdivision (b) applies, the county public 
administrator, if willing, or the medical examiner for the county 
where the decedent was domiciled at the time of his or her death.

(b) If the decedent was incarcerated in a state correctional 
facility at the time of his or her death, the director of the 
department of corrections or the designee of the director.

(10) (9)—An attempt to locate a person described in subsection 
(2) or (3) OR (4) is sufficient if a reasonable attempt is made in 
good faith by a family member, personal representative, or
nominated personal representative of the decedent to contact the
person at his or her last known address, telephone number, or
electronic mail address.

(11) (10) This section does not void or otherwise affect an
anatomical gift made under part 101 of the public health code, 1978
PA 368, MCL 333.10101 to 333.10123.

(12) (11) If a funeral representative is not designated under
subsection (2) and if all of the following apply, subsections (2) to (8) do not apply and the designated person has the
rights and the powers under subsection (1):

(a) The decedent was a service member who designated a person
to direct disposition of the service member's remains according to
a statute of the United States or a regulation, policy, directive,
or instruction of the department of defense.

(b) The designated person is the surviving spouse, an adult
blood relative, or an adoptive relative of the decedent or, if the
surviving spouse, an adult blood relative, or an adoptive relative
of the decedent cannot be found, a person standing in loco
parentis.

(c) The designated person is able and willing to exercise the
rights and powers enumerated in subsection (1).

(13) (12) As used in this section:

(a) "Armed forces" means that term as defined in section 2 of
the veteran right to employment services act, 1994 PA 39, MCL
35.1092.

(b) "Michigan national guard" means that term as defined in
section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.
(c) "Nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

(d) "Service member" means a member of the armed forces, a reserve branch of the armed forces, or the Michigan national guard.

Sec. 3207. (1) If there is a disagreement as described in section 3206(4)–3206(5) or if a funeral representative is not designated under section 3206(2) and 1 or more of the individuals described in section 3206(2) or (3)–3206(3) or (4) cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

(a) An individual with the rights and powers under section 3206(1).

(b) A funeral establishment that has custody of the decedent's body.

(2) Venue for a petition filed under subsection (1) is in the county in which the decedent was domiciled at the time of death.

(3) On receipt of a petition under this section, the court shall set a date for a hearing on the petition. The hearing date shall be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and the hearing shall be served not less than 2 days before the date of the hearing on every individual who has highest priority as determined under section 3206(2) and (3), 3206(3) and (4), unless the court orders that service on every such individual is not
required. Unless an individual cannot be located after a reasonable
good-faith effort has been made to contact the individual, service
shall be made on the individual personally or in a manner
reasonably designed to give the individual notice. Notice of the
hearing shall include notice of the individual's right to appear at
the hearing. An individual served with notice of the hearing may
waive his or her rights. If written waivers from all persons
entitled to notice are filed, the court may immediately hear the
petition. The court may waive or modify the notice and hearing
requirements of this subsection if the decedent's body must be
disposed of promptly to accommodate the religious beliefs of the
decedent or his or her next of kin.

(4) If a funeral establishment is the petitioner under this
section, the funeral establishment's actual costs and reasonable
attorney fees in bringing the proceeding shall be included in the
reasonable funeral and burial expenses under section 3805(1)(b) or
the court may assess such costs and fees against 1 or more parties
or intervenors.

(5) In deciding a petition brought under this section, the
court shall consider all of the following, in addition to other
relevant factors:

(a) The reasonableness and practicality of the funeral
arrangements or the handling or disposition of the body proposed by
the person bringing the action in comparison with the funeral
arrangements or the handling or disposition of the body proposed by
1 or more individuals with the rights and powers under section
3206(1).
(b) The nature of the personal relationship to the deceased of
the person bringing the action compared to other individuals with
the rights and powers under section 3206(1).

(c) Whether the person bringing the action is ready, willing,
and able to pay the costs of the funeral arrangements or the
handling or disposition of the body.

Sec. 3208. (1) **IF A FUNERAL REPRESENTATIVE IS NOT**

DESIGNATED UNDER SECTION 3206(2), AN individual other than a person
with priority under subsections (2) to (4), SECTION 3206(3) TO (5)
or acting under subsection (5), (6), (7), or (8), SECTION 3206(6),
(7), (8), OR (9) may file an action in the circuit court to
challenge the presumption to be determined as the individual who
has the authority to exercise the rights and powers under section
3206(1).

(2) Venue for an action filed under this section is in the
county in which the decedent was domiciled at the time of death.

Sec. 3209. (1) A funeral establishment is not required to file
a petition under section 3207 and is not civilly liable for not
doing so.

(2) The designation of a **FUNERAL REPRESENTATIVE UNDER SECTION**

3206(2), THE DESIGNATION OF A person as described in section
3206(11)—3206(12), or the order of priority determined under
section 3206(2) and (3)—3206(3) AND (4) may be relied upon by a
funeral establishment. A funeral establishment is not a guarantor
that a person exercising the rights and powers under section
3206(1) has the legal authority to do so. A funeral establishment
does not have the responsibility to contact or independently
investigate the existence of relatives of the deceased, but may
rely on information provided by family members of the deceased.

(3) A funeral establishment, holder of a license to practice
mortuary science issued by this state, cemetery, crematory, or an
officer or employee of a funeral establishment, holder of a license
to practice mortuary science issued by this state, cemetery, or
crematory may rely on the terms of sections 3206 and 3207 and this
section and the instructions of a person described in section
3206(2) to (8)-(9) or (11)-(12), or of an individual determined in
an action under section 3208 to be the party to exercise the rights
and powers under section 3206(1), regarding funeral arrangements
and the handling, disposition, or disinterment of a body and is not
civilly liable to any person for the reliance if the reliance was
in good faith.

Sec. 3614. A special personal representative may be appointed
in any of the following circumstances:

(a) Informally by the register on the application of an
interested person if necessary to protect the estate of a decedent
before the appointment of a general personal representative or if a
prior appointment is terminated as provided in section 3609.

(b) By the court on its own motion or in a formal proceeding
by court order on the petition of an interested person if in either
case, after notice and hearing, the court finds that the
appointment is necessary to preserve the estate or to secure its
proper administration, including its administration in
circumstances in which a general personal representative cannot or
should not act. If it appears to the court that an emergency
exists, the court may order the appointment without notice.

(c) By the court on its own motion or on petition by an interested person to supervise the disposition of the body of a decedent if section 3206(7)–3206(8) applies. The duties of a special personal representative appointed under this subdivision shall be specified in the order of appointment and may include making arrangements with a funeral home, securing a burial plot if needed, obtaining veteran's or pauper's funding where appropriate, and determining the disposition of the body by burial or cremation. The court may waive the bond requirement under section 3603(1)(a).

The court may appoint the county public administrator if the county public administrator is willing to serve. If the court determines that it will not be necessary to open an estate, the court may appoint a special fiduciary under section 1309 instead of a special personal representative to perform duties under this section.
I. Introduction.

At the February 2013 meeting of the Committee on Special Projects, CSP recommended to suspend further work at the Council-level on further fine-tuning the draft rules in order to survey the MSC, the SBM, & other sections with which the Section has liaisons to determine and assess levels of interest in the concept and related issues (e.g., funding) and report back to the Council at the June 2013 meeting.

In April 2013, the Committee reviewed and approved final draft letters to be sent to Janet Welch, Executive Director of the State Bar of Michigan, Lynn Chard, Executive Director of the Institute of Continuing Legal Education, and the Chairs of several sections of the State Bar, to wit: Appellate Practice Section, Business Law Section, Family Law Section, Elder Law and Disability Rights Section, Real Property Law Section, and the Taxation Section. Those letters were then sent out. Copies of those letters are attached.

II. Contact with the State Bar, ICLE, and other Sections.

A. Section Response.

I spoke with the Chairperson of the Family Law Section, Traci Rink on May 15, 2013, regarding the letter. She mentioned that the Family Law Section had explored the possibility of a specialization concept previously, but did not get very far into what that would require as a formal matter, and that’s about the time that ICLE started its certificate program. She has informally discussed this with some other members of the Council and they may be interested. Basically, they would like more information. So, her suggestion was perhaps to hold a phone conference or a morning meeting, or something of that nature, during which our Committee can discuss the concepts.
with their Council, or perhaps their executive committee. One of their issues is what sort of costs would be involved.

I also spoke with the Chairperson of the Business Law Section, Marguerite Donahue, and she indicated some interest as well. They had not discussed this at a Council Meeting, but likely will do so on June 8th. She would also like to have more information.

This issue did not come before the Elder Law and Disability Rights Section Council at its May meeting (perhaps because I was not able to attend that meeting), so I raised it at the meeting on June 1st. There are at least two members of that Council who are completely opposed to the concept altogether.

The reasons stated so far by these attorneys are as follows:

1. Doctor specialization has become a problem for affordable delivery of medical services by increasing the cost to the public. Having certified specialists in certain legal fields will also likely will increase the cost of legal services to the public.

2. A Certified Specialist program will entrench the larger firms for handling cases for which specialist certification is available and be a disadvantage to small firms and solo practitioners.

3. They are concerned that you will have to become a certified specialist to be able to advertise that you do that work.

4. At least one of the members feels that the requirements would be too lenient and so would have no meaning and would actually end up hurting the public, because the public would view those who have the certification as having more knowledge of a particular area than they really do.

There was not time to have a thorough discussion, so the matter was tabled by the Chairperson to discuss at their next meeting in August. He feels that they’re going to need more information.

We have not yet received any other contact from the other Sections. Therefore, some follow-up will be needed to obtain more responses.

B. State Bar Input.
I spoke with Janet Welch, the Director of the State Bar, regarding the concept. She acknowledges that different Sections of the State Bar have looked into this concept previously, but it never went further than simply the concept phase. One problem she sees is that in Michigan, we don’t have any experience with regard to mandatory continuing legal education and how to incorporate that concept into the Certification of Specialists program. She noted that we are apparently one of the last States in the nation that does not have mandatory CLE for lawyers.

She mentioned and recognizes, as do we, that there is the uncertainty regarding how many of members of the State Bar generally would be in favor of such a program, versus ambivalent or strongly against such a program.

She also mentioned the issue of how to handle the testing. We should be able to use some model tests and testing structure from other states as a starting point. Of course, one of the main questions in that regard would be what questions would be on the exam? Someone has to be in charge of formulating those questions. [I also discussed this issue with Lynn Chard, see below]. This Committee, and our draft rules, envision that the subject matter and focus for test questions would come from Michigan attorneys who are already recognized as experts in this area (perhaps a committee of the particular Section Council comprised of members selected by that Council) who would formulate the questions, or at least the topics of the exam questions, which would then be approved by the applicable Specialization Committee for each particular specialty.

Janet also noted that if we are to ultimately put such a program into operation, we must first develop a proposal to present to the Supreme Court in a manner so that the Supreme Court would not automatically reject the concept. This was a recognized goal of our Committee from the start, the idea being to put together a definite suggested rule structure which had been reviewed and approved by our Council, and then present that suggested program to the Supreme Court as a concrete proposed pilot plan.

Janet suggested that we could perhaps form a “work group” of one or two representatives from the State Bar, at least one representative from ICLE, probably one or two representatives from the Probate Council, and perhaps representatives from some of the other Section Councils as well, to identify concerns and try to find answers and solutions to some of these uncertainties, while at
the same time involving more members of the State Bar in discussing the concept.

C. ICLE Input.

I next spoke with Lynn Chard, Executive Director of the Institute of Continuing Legal Education, and she also viewed the lack of mandatory CLE in Michigan as being a problem in getting this system into place, because we have no official CLE system, no official data base, and no rules regarding what CLE programs would be approved, or what standards there would be for approving such CLEs.

Some States have a system for approving CLE providers, rather than approving individual programs at the State level, but some States actually approve programs at the State level, or perhaps do both.

Lynn mentioned that ICLE does structure some of their programs so that they will qualify as CLE in other States. However, she feels that some of these other State’s rules actually can be a hindrance in putting together good relevant programs, because of the formality of submitting the program for approval, lag time and expense in getting it approved, etc., etc. In fact, ICLE does not use a web-cast structure that will qualify for mandatory CLE credits for other States, because of the difficulty in getting that sort of thing approved. This type of barrier is something we need to keep in mind when going over the wording of the actual rules so we can make the system as workable and inexpensive as reasonably possible.

ICLE is looking at ways to modify their current certificate program and also want to improve the seminar presentations to enhance the learning process. Lynn feels that the technology that's available, or becoming available, can actually improve this whole continuing education system, so we would want to make the Certification Rules flexible enough to accommodate technology changes. ICLE also expects to be experimenting soon with a self-testing component for some of their programs to better enhance and reinforce the learning process, and may also move to a testing component for their certificate program. Since the testing for the Certified Specialist program needs to be more formal, we would need to enlist some experts in the area of testing to develop the test structure, but the content would need to come from Michigan attorneys. Therefore, the test component for the Certified Specialist program does involve more expense than the type of test that
would be a component of a seminar program itself.

As far as the structure for developing the Certified Specialist test, Lynn feels we first need to decide on the areas of knowledge that want to test for, and then develop the actual questions from that.

She’s also aware that you would need the Bar Association’s support, as well as the Supreme Court’s support. In this regard, one question is when to approach the Supreme Court and how best to do that.

Lynn feels that a mandatory CLE program would make Michigan look a bit better to the public, and that being the only State in the nation that does not have such a program could be viewed as providing a negative view of Michigan lawyers. However, our proposed Certified Specialist program does not propose mandatory continuing education for all Michigan attorneys, only for those who want to qualify for the Certified Specialist program.

II. Committee Discussion.

The Committee discussed the above at its meeting held on June 3rd. In general we feel that all of these issues can be addressed by educating other Sections on what the proposed rules will actually cover, revising those rules as appropriate to address concerns raised by other attorneys, and looking at how other States operate their programs. We can also review some of the continuing education programs for other professions (of which there are many) to try to identify those programs that provide flexibility and keep costs down.

One issue we need to make clear is that this would be a purely voluntary program, and no attorney would be prohibited from practicing in a particular area simply because he/she is not certified in that area. That is, an attorney doesn’t have to become a certified specialist to practice in a certain area. This is already mentioned in the draft Rules.

Also, the Committee does not view the Certified Specialist program as dependent on Michigan adopting a mandatory continuing legal education requirement for all Michigan attorneys,
and we are not making such a proposal. Under our draft system, an attorney wouldn’t have to take any CLEs, unless you wanted to try to become certified as a specialist.

Council started this project several years ago because we believed this would be a benefit to the State of Michigan and Michigan attorneys. Many of us still believe that to be true. For these last several years, the Specialization & Certification Committee has been working to develop draft Certified Specialist rules by reviewing the rules of many of the other States and incorporating those provisions which we felt would work best for Michigan. However, other practitioners in Michigan have not been exposed to these concepts in the same manner that we have. Therefore, it will be necessary to present more information to the various Section Councils so that they can evaluate not only the concept, but how this concept would apply to them. This is important so that each Section can make a more informed decision, rather than just making assumptions without concrete information. As a result, it appears to us that we need to provide more direct information in the form of articles, etc., regarding the concept of specialization generally, and as envisioned in the draft Rules we have prepared so far. Unfortunately, that means more time will be needed to assemble and disseminate that information.

**In Summary**, the Committee believes it is necessary to proceed with the discussions that we have now started, provide educational information to these other sections, learn their concerns and views, and make modifications to the plan where feasible to make it more acceptable and cost effective. Also, we can no longer do this entirely on our own. As Council and CSP have observed, we have a definite draft rule structure in hand, and even though further fine-tuning is needed, it is time to enlist the input and help from ICLE, other sections, and the State Bar itself.

**Janet, Lynn and I will be attending the Upper Michigan Legal Institute on Mac Island on June 14th.** We will be meeting together at that time to go over these issues further. Any other members of this Committee or the Council who will be there and are interested in being part of the meeting please let me know. I do not yet have the exact time and location, but hope to have that settled shortly.

JBS:jb
MEMORANDUM

TO: Probate and Estate Planning Council

FROM: George F. Bearup

RE: Should the Fiduciary Exception to the Attorney-Client Privilege Extend to Trust and Estate Beneficiaries?

The subcommittee of the Probate and Estate Planning Council is unable to make a formal recommendation to the Council on this question. It seeks direction from the Council on whether to proceed with a formal proposal.

The subcommittee consists of David Skidmore, Ken Konop, Kal Goren, Shaheen Imani, and ad hoc member, David Kovac, who acts as liaison with The Michigan Banker’s Association (MBA) – Trust Council.

The subcommittee is unable to reach a consensus on whether the fiduciary exception to the attorney-client privilege should be recognized in Michigan. Some attorneys who regularly handle probate litigation on behalf of beneficiaries believe that an exception to the attorney-client privilege is warranted in limited situations. Other attorneys who regularly represent fiduciaries believe that no exception should be recognized to the longstanding attorney-client privilege.

The MBA endorses the “no exception” position. It believes Michigan should consider adopting a rule of evidence (like Florida) or a statute by an amendment to the Michigan Trust Code (like Ohio) that expressly announces that there is no exception to the attorney-client privilege. If the Probate Council endorses the “no exception” position, the MBA is willing to prepare the draft legislation/or court rule for the Council’s consideration.

If the Probate Council concludes that there should be a recognized exception to the attorney-client privilege, then the subcommittee needs guidance with regard to: (i) statutory, court rule, or rule of evidence change? (ii) whether the source of payment of the attorney’s fees should make a difference to identify when the exception exists? (iii) whether the exception should extend to other fiduciaries, e.g., guardians, conservators, Personal Representatives, etc.

Previously a research memo was prepared with regard to this topic which is attached to provide some background to the common law rule, the recognized exception, the difficulty of identifying a “bright-line” test when the exception might apply, and how some states have addressed the issue.

George F. Bearup, Subcommittee Chair
The attorney-client privilege is one of the “oldest and most established” evidentiary privileges. *United States v. Jicarilla Apache Nation*, 131 S.Ct. 2313, 2318 (2011). Nevertheless, the application of the privilege is often opaque when a beneficiary of a trust seeks to uncover communication between a trustee and an attorney. Within this context, courts and legislatures are sharply divided. In some jurisdictions, a beneficiary is prohibited from discovering communication between a trustee and an attorney. In other jurisdictions, a beneficiary may discover such communication, provided the communication was *administrative*. *Wynne v. Humberston*, 27 Beav. 421, 423-424, 54 Eng. Rep. 165, 166 (1858); *Tablev v. Marshfield* 2 Dr. & Sm. 549, 550-551, 62 Eng. Rep. 728, 729 (1865). Ultimately, disagreements center on whether the beneficiary should be considered the attorney’s *client*.

Michigan law does not address the exception. MCR 5.117(a) only provides: Representation of Fiduciary.

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1. In *Jicarilla Apache Nation, Supra*, the U.S. Supreme Court expressly addressed the fiduciary exception to the attorney-client privilege.

English courts first developed the fiduciary exception as a principal of trust law in the 19th century. The rule was that when the trustee obtained legal advice to guide the administration of the trust, and for the trustee’s own defense and litigation, the beneficiaries were entitled to the production of documents related to that advice. . . the courts reasoned that normally attorney-client privilege did not apply in this situation because the legal advice was sought for the beneficiary’s benefit and was obtained at the beneficiary’s expense by using trust funds to pay the attorney’s fees. . . the fiduciary exception quickly became an established feature of English common law. . . but did not appear in this country until the following century. American courts seemed first to have expressed skepticism. See In Re: Prudence Bonds Corp., 76 F.Supp 643, 647 (E.D.N.Y. 1948) declining to apply the fiduciary exception to the trustee of a bond holding corporation, because of the “important right of such a corporate trustee. . . to seek legal advice and nevertheless act in accordance with its own judgment.” By the 1970’s, however, American courts began to adopt the English common-law rule. See Garner v Wolfinbarger, 430 F.2. 1093, 1103-1104 (C.A. 5, 1970) (allowing shareholders upon a showing of “good cause” to discover legal advice given to corporate management.)
I. Majority Rule: Only the Fiduciary is the Client

The majority rule is that the trustee is the client. There are two (2) main reasons that courts and legislatures have supported this rule: (1) a general reluctance to recognize an exception to the attorney-client privilege; and (2) a fiduciary exception to the attorney-client privilege creates too much uncertainty, which discourages open and honest communication, which perhaps even discourages a trustee to seek legal advice. *Huie v. DeShazo*, 922 S.W.2d (Tex. 1996).

*Texas.* In *Huie, supra*, the court explained that without the exclusive right to the attorney-client privilege, the trustee – fearing “second guessing” by the beneficiary – might neglect or avoid legal advice, and thus, the trust would be adversely affected. The court held that “only the trustee, not a trust’s beneficiary, is the client and is entitled to assert the attorney-client privilege.”

*California.* In *Wells Fargo Bank v. Superior Court*, 990 P.2d 591, 594 (Cal. 2000), the court held that “there is no authority under California law for requiring a trustee to produce communications protected by the attorney-client privilege.” To reach its decision the court noted that “a trustee can keep beneficiaries ‘reasonably informed’ and provide ‘a report of information’ without necessarily having to disclose privileged communications.” *Id.*

*Massachusetts.* In *Spinner v. Nutt*, 631 N.E.2d 542, 544 (Mass. 1994), the court held that an attorney “advising a trustee owe[s] no duty to beneficiaries, only to their clients – the trustees.” To reach its decision the court explained that “conflicting loyalties” between the beneficiaries and the trustee would interfere with the attorney-client relationship. *Id.* at 544-46.

*Florida.* In *First Union Nat’l Bank v. Turney*, 824 So.2d 172 (Fla. Dist. Ct. App. 2001), the court rejected the fiduciary exception. *Id.* at 186 (holding that “an attorney represents a single client, the trustee”). The court noted that without the guarantee of the attorney-client privilege, the trustee might be thrust into conflict with the settlor’s intentions, which are frequently different than the wishes of the beneficiaries. See Louis H. Hamel Jr., “Trustee’s Privileged Counsel: A Rebuttal,” 21 ACTEC Notes 156 (1995); Charles F. Gibbs & Cindy D. Hanson, “The Fiduciary Exception to a Trustee’s Attorney/Client Privilege,” 21 ACTEC Notes 236 (1995).

II. Minority Rule: The Fiduciary and the Beneficiary are Both Clients if the Communication is Administrative.

The minority rule is that the fiduciary and the beneficiary are both clients if the communication is administrative. Courts and legislatures have reached this conclusion because: (1) administrative matters are ultimately for the benefit of the beneficiary; and (2) the attorney is generally paid out of trust funds. However, the latter (source of payment) rationale lost traction – even in Delaware – as courts and the legislature have recognized that who pays is not

a. Delaware. In Riggs Nat’l Bank of Wash. v. Zimmer, 355 A.2d 709 (Del. Ch. 1976), the court noted that the beneficiary is the "real" client of the attorney. Accordingly, the court held that trust beneficiaries are privy to attorney-client communication between a trustee and an attorney when the communication pertains to an administrative matter.


c. Pennsylvania. In Follansbee v. Gerlach, 56 Pa.D. & C.4th 483 (County Ct. 2002), the court reasoned that a beneficiary has an essential right to complete information. Accordingly, the court held that a beneficiary may view attorney-client communications with regard to administrative matters.

III. Minority Rule: How do Courts Determine Whether a Matter is Administrative or Defensive?

Under the minority rule, the fiduciary and the beneficiary are both clients if the communication is administrative. However, it is difficult to determine whether the subject matter of the communication is administrative in nature. Accordingly, most courts tend to focus on two (2) factors to make this determination.

1. Payment of the Attorney. Though not dispositive, courts will consider who pays the attorney as a factor in the determination of who the client actually is. In Riggs, the court viewed it as a "significant factor." Id. at 711-12("the payment of the law firm out of the trust assets [was] a significant factor . . . ").

In Fischel v. Equitable Life Assurance, 191 F.R.D. 606, 609 (N.D. Ca. 2000) the court explained that "while generally the fiduciary exception applies to matters of trust administration,

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2 "Except as provided in the governing instrument, a fiduciary may retain counsel in connection with any claim that has or might be asserted against the fiduciary, and the payment of counsel fees and related expenses from the fund with respect to which the fiduciary acts as such shall not cause the fiduciary to waive or be deemed to have waived any right or privilege including, without limitation, the attorney-client privilege. However, in the event that the fiduciary is found to have breached some fiduciary duty, the Court may, in its discretion, deny such fiduciary the right to have some part or all of such fees and expenses paid from such fund and may require the fiduciary to reimburse any such fees and expenses that have previously been paid."

3 "Whenever an attorney-client relationship exists between a lawyer and a fiduciary, communications between the lawyer and the fiduciary shall be subject to the attorney-client privilege unless waived by the fiduciary, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. The existence of a fiduciary relationship between a fiduciary and a beneficiary does not constitute or give rise to any waiver of the privilege for communications between the lawyer and the fiduciary."
the attorney-client privilege reasserts itself as to any advice that a fiduciary obtains to protect itself from liability.”

The Restatement (Second) of Trusts takes a similar approach when it suggests that a trustee must pay for legal advice out of his own pockets in order to retain the attorney-client privilege.

2. A Divergence of Interests. Another way to determine whether a matter is administrative or defensive is to consider whether there exists a divergence of interests. In Jacob v. Barton, 877 So. 2d 935, 937 (Fla. Dist. Ct. App. 2004), the court noted that “[t]o the extent that the lawyers’ work concerns the dispute with [the beneficiary], their client is the trustee, not the beneficiary.” See also Barnett Banks Trust Co. v. Compson, 629 So. 2d 849, 851 (Fla. Dist. Ct. App. 1993). Clearly, attorney advice after a lawsuit begins will prove a divergence of interests because the communication is defensive.

Also, there is generally a divergence of interests when the issue pertains to trustee compensation. Wachtel v. Health Net, 482 F.3d 225, 234 (3d Cir. 2006).

But other bright lines are more elusive. See Black v. Pitney Bowes, No. 05 Civ. 108 (GEL), 2006 U.S. Dist. LEXIS 92263, at *3-7 (S.D.N.Y. Dec. 21, 2006). Courts might consider whether the fiduciary has a legitimate personal interest in the legal advice sought. But words like legitimate, personal, and interest all lend themselves to a court’s discretion. See, e.g., Wachtel v. Health Net, Inc., 482 F.3d 225, 232 (3d Cir. 2007).

IV. Uniform Rule: The Fiduciary is the Sole Client if the Communication is “Defensive”

Regardless of jurisdiction, courts and legislatures tend to agree that a fiduciary is the sole client if he or she has assumed a defensive posture against the beneficiary. Accordingly, if a fiduciary retains an attorney in a personal, defensive, non-administrative capacity, in anticipation of litigation or after its commencement, the fiduciary is solely entitled to the attorney-client privilege. Restatement (Second) of Trusts § 173 cmt. B (1959)(which explains that a trustee retains the attorney-client privilege if the trustee obtains counsel “at his own expense and for his own protection.”). See also United-States v. Mett, 178 F.3d 1058, 1063-64 (9th Cir. 1999)(which noted that where a fiduciary seeks advice of counsel for his own personal defense in contemplation of adversarial proceedings against beneficiaries, the trustee has the attorney-client privilege).

V. A handful of other states had addressed the question of the fiduciary exception to the attorney-client privilege by statute.

Florida.

90.5021. Fiduciary-Client Privilege

(1) For purposes of this Section, a client acts as a fiduciary when serving as a personal representative or a trustee as defined in SS. 731.201 and 736.0103, an administrator ad litem as described in S. 733.308, a curator as described in S. 733.501, a guardian or a guardian ad litem as
defined in S. 744.102, a conservator as defined in S. 710.102, or an attorney-in-fact as described in Chapter 709.

(2) A communication between a lawyer and a client acting as a fiduciary is **privileged and protected from disclosure** under S. 90.502 to the same extent as if the client were not acting as a fiduciary. In applying S. 90.502 to a communication under this Section, only the person or entity acting as a fiduciary is considered a client of the lawyer. (emphasis added.)

(3) This section does not affect the crime or fraud exception to the attorney-client privilege as provided in S. 90.502(4)(a).

**New York.** New York Civil Practice Law and Rule Section 4503, *Attorney:*

Confidential communication privileged. Unless the client waives the privilege, an attorney or his or her employee, or any person who obtains without the knowledge of the client evidence of a confidential communication made between the attorney or his or her employee and the client in the course of professional employment, shall not disclose, or be allowed to disclose such communication, nor shall the client be compelled to disclose such communication, in any action, disciplinary trial or hearing, or administrative action, proceeding or hearing conducted by or on behalf of any state, municipal or local governmental agency or by the legislature or any committee or body thereof. Evidence of any such communication obtained by any such person, and evidence resulting therefrom, shall not be disclosed by any state, municipal or local governmental agency or by the legislature or any committee or body thereof. The relationship of any attorney and client shall exist between a professional service corporation organized under article fifteen of the business corporation law to practice as an attorney and counselor-at-law and the clients to whom it renders legal services.

(1) Personal Representative.

(A) For purposes of the attorney-client privilege, if the client is a personal representative and the attorney represents the personal representative in that capacity, in the absence of an agreement between the attorney and the personal representative to the contrary:

(i) *No beneficiary of the estate is, or shall be treated as, the client of the attorney solely by reason of his or her status as beneficiary; and*

(ii) *The existence of a fiduciary relationship between the personal representative and a beneficiary of the estate does not by itself constitute or give rise to any waiver of the
privelege for confidential communications made in the course of professional employment between the attorney or his or her employee and the personal representative who is the client.
(emphasis added.)

Ohio. Ohio is currently looking at proposed legislation on the exception. *Schwartz and Langsam, attorney-client privilege: Representing Trustees in Ohio*, 19 Ohio Prob. L.J. 236 (July/August 2009) suggesting that Ohio appears to be aligned with majority view.

Ohio R.C. 5815.16: A lawyer to a fiduciary such as a trustee is not the lawyer, i.e., *owes no duties or obligations, to those the fiduciary serves:*

A. Absent an express agreement to the contrary, an attorney who performs legal services for a fiduciary, by reason of the attorney performing those legal services for the fiduciary, has no duty or obligation in contract, tort or otherwise to any third-party to whom the fiduciary owes fiduciary obligations.

B. As used in this Section fiduciary means a trustee under an express trust or an executor or administer of a decedent’s estate. (emphasis added.)

VI. Practical Realities

While many jurisdictions obviously reject the notion that a beneficiary is the client of the fiduciary’s attorney, beneficiaries may see thing with an entirely different perspective, particularly where trust funds are used to pay for the fiduciary’s legal advice. Beneficiaries may reach this expectation when they are informed of their fiduciary’s continuing duty to inform and report. See MCL 700.7814(1):

(1) A trustee is directed to keep the qualified trust beneficiaries reasonably informed about the administration of the trust and material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a trust beneficiary’s request for information related to the administration of the trust.

(2) A trustee shall do all of the following: (a) upon the reasonable request of a trust beneficiary to promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary’s interest and relative information about the trust property.
ATTACHMENT  9
MINUTES OF MEETING OF
REAL ESTATE SUBCOMMITTEE OF THE
PROBATE AND ESTATE PLANNING COUNCIL

A meeting of the Real Estate Subcommittee of the Probate and Estate Planning Council was held on May 28, 2013.

PRESENT: George Bearup, Nazneen Syed, Mike Lichterman, and Mark Kellogg.

1. Public Act 497 of 2012. George circulated prior to the meeting a proposed change to MCL 211.27a(s) expanding the scope of who constitutes a transferor for purposes of the exemption from the “uncapping” of taxable value on transfers. That proposed change is attached to these minutes.

2. Entireties Legislation. David Kerr reported to George, via email, that he was unable to attend the meeting, but that he was still working on the proposed entireties legislation relating to the applicability and propriety of adopting entireties legislation where real property is transferred to a revocable grantor Trust that would retain its entireties classification (and thus its creditor protection features.) David is conducting a summary of comparable legislation passed in Maryland, Virginia, Hawaii, and Missouri, all of which address the preservation of entireties classification when title to real estate is transferred to a revocable grantor Trust. Each state has a different type of treatment, so we hope to adopt the best features of each statutory legislation.

3. Transfer on death legislation. We are still putting on a “back burner” the adoption of the “Uniform Transfer on Death” Act in Michigan. This would enable a real property owner to transfer real estate at death via beneficiary designation. Depending on how the Michigan Tax Commission interprets Public Act 497 of 2012 and the receptivity of third-parties to “Mary Carter Deeds” may have a bear on whether this project remains a lower priority or if it is brought to a higher priority to be addressed sometime next fall.

Next Meeting. George will schedule another meeting for some time in late June.
THE REAL ESTATE SUBCOMMITTEE RECOMMENDS
THE FOLLOWING PROPOSED CHANGE TO P.A. 497 OF 2012

MCL 211.27a describes what constitutes a “transfer of ownership,” and what qualifies as an exemption for purposes of “uncapping” the taxable value of real estate. A “transfer of ownership” does not include:

(s) Beginning December 31, 2013, a transfer of residential real property if the transferee is related to the transferor by blood or affinity to the first degree and the use of the residential property does not change following the transfer. As used in this subdivision, “residential real property” means real property classified as residential real property under Section 34c.

Bulletin 5 of 2013, of the State Tax Commission, published May 13, 2013, addressed P.A. 497 of 2012, Transfer of Ownership, by providing the following additional definitions:

- “Transferee” is defined as the person to whom the conveyance is made.
- “Transferor” is defined as one who conveys a title, right or interest in the property.
- “Affinity” to the first degree includes the following relationship: spouse, father or mother, father or mother of the spouse, son or daughter, including adopted children and son or daughter of the spouse.

A proposed technical correction to P.A. 497 of 2012 is necessary to address transfers of residential real estate by a fiduciary.

The proposed change is to add the following to the last sentence of MCL 211.27a(s):

“ As used in this subdivision:

(i) “residential real property” means real property classified as real property under Section 34c; and

[Proposed additional language]

(ii) “transfer” shall include those who act on behalf of a person including a conservator, as defined in MCL 100.1103(h), a guardian as defined in MCL 700.1104(1), a personal representative as defined in MCL 700.1106(o), and a trustee, as defined in MCL 700.1107(o) of a revocable trust as defined in MCL 700.7103(h).”

George F. Bearup
Chairman

SHRR 252838v1
Attachment 10
# 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>Description &amp; Purpose</th>
<th>Mileage</th>
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I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Date | Title | Signature
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Grand Total $0.00

Date | Title | Approved by (signature)
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Reset Form
Print Form
Section Expense Reimbursement Policies and Procedures

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

2. All out of pocket expenses must be itemized.

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

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

5. Spouse expenses are generally not reimbursable.

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

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

8. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.
   A. Tickets should be at the best rate available for as direct a path as possible.

   B. First class tickets will not be reimbursed in full but will only be reimbursed up to the amount of the best or average coach class ticket available for that trip.

   C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.

   D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

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

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

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

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

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

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

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

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

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

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