

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

**March 20, 2010
University Club
Lansing, Michigan**

Minutes

I. Call to Order

The Chair of the Section, Harold Schuitmaker, called the meeting to order at 10:25 a.m.

II. Excused Absences

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

Harold Schuitmaker, Chair	Patricia Ouellette
George Gregory, Vice Chair	Ellen Sugrue Hyman
Mark Harder, Secretary	Josh Ard
Marilyn Lankfer, Treasurer	Shaheen Imami
David Kerr	Richard Siriani
Amy Morrissey	Hon. David Murkowski
Hon. Darlene O'Brien	James Steward
James P. Spica	Susan Allan
Marlaine Teahan	Rob Tiplady
Robin Ferriby	Bob Taylor
Rebecca Schnelz	

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

Henry Grix
Hon. Phil Harter
Nancy Little
Michael McClorey

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

Tom Sweeney
Doug Chalgian, Chair-Elect

III. **Introduction of Guests**

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

Constance Brigman
Kathleen Goetsch
Belinda Fitzpatrick
Georffrey Vernon
Sarah Meinhart
Chris Ballard

J.V. Anderton
Derek Walters
Kristin Arnett
Mark Kellogg
Meg Lentz
Dan Cogan
Lorraine New

IV. **Minutes of February 20, 2010 Meeting of the Council**

Minutes of the February 20, 2010, meeting of the Council had been previously distributed with the Agenda for the meeting. Upon motion by Ms. Lankfer with support from Mr. Ferriby, the minutes were unanimously approved. Mr. Harder reported that the rule of construction legislation to address questions raised by the one year repeal of the federal estate tax also was approved by electronic ballot since the February meeting, by a vote of 18-0 with one abstention. Four members of the Council did not vote.

V. **Treasurer Report – Marilyn Lankfer**

Ms. Lankfer distributed a financial report through February 2010 (**Attachment 1**). Dues revenues remain lower than a year ago, but are above the budgeted amount. Expenses are below budget. Ms. Lankfer will review how the changes in Journal printing will affect the Section’s finances and budget. She expects that Journal printing expenses will be materially lower now that much of the Journal distribution occurs electronically. She also requested expenses reimbursement requests be submitted regularly and not be held.

VI. **Chairperson’s Report**

Mr. Schuitmaker received several items of correspondence. A letter from the Disability Network will be given to Mr. Harder for inclusion in the Minutes (**Attachment 2**).

Despite all of their considerable efforts to educate the bar, ICLE indicates that questions are arising about how best to prepare for the effective date of the Michigan Trust Code. ICLE has asked for the Section to communicate to its members that ICLE has significant educational offerings available. Mr. Harder and Mr. Schuitmaker will prepare and circulate an e-blast to the Section.

An inquiry has been received regarding whether insurable interest legislation is being pursued. Ms. Bechler has advised Mr. Schuitmaker no efforts to adopt legislation are being pursued at this time and that the Section will need to initiate action if legislative changes will happen. Members of the Council discussed the desirability of such

legislation. Mr. Harder and Mr. Ferriby will report at the April meeting where the matter stands with NCCUSL and in other states.

As previously reported, the Alternative Dispute Resolution Section of the State Bar would like to hold a joint program with the Probate and Estate Planning Section. Mr. Schuitmaker continues to discuss this subject with representatives from the ADR Section.

Mr. Schuitmaker informed the Council that Elder Law Section is holding a seminar on Friday, March 26, 2010, and invites members of the Probate and Estate Planning Section to attend.

VII. Report of the Committee on Special Projects – Amy M. Morrissey

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

CSP discussed a proposed change to the statute authorizing the principal residence exemption and agreed to appoint a committee to work with Michigan Bankers Association to draft statutory clarifications in this area with respect to property held in trusts. This effort is in response to assessors' frequent denials of the exemption when the residence is held in trust, even though the Treasury Department's guidelines interpret the statute to permit the exemption. Jim Steward, Rob Tiplady, Jim Spica, George Gregory, Sue Allen, and Harold Schuitmaker will serve on the Committee.

Connie Brigman reviewed UAGPPJA in the final form recommended by the Guardianship Committee (**Attachment 3**). It will be further considered in April.

VIII. Standing Committee Reports

A. Internal Governance

1. Budget – George Gregory

Mr. Gregory reported the Section is in a good financial position.

2. Bylaws – Marilyn Lankfer

No report.

3. Michael Irish Award – Brian Howe

No report.

4. Long Range Planning – Doug Chalgian/Nancy Little

No report.

5. Nominations – Doug Mielock

No report.

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

No report.

7. Annual Meeting – George Gregory

Mr. Gregory reported that the Annual Meeting of the Section has been scheduled for September 11 and the meeting will likely be held at the University Club of Michigan State University in Lansing.

Mr. Harder asked that Council members review the tentative dates for 2010-11 and advise Mr. Chalgian of conflicts that have been overlooked.

B. Education and Advocacy Services for Section Members

1. *Amicus Curiae* – Ellen Sugrue Hyman

No report.

2. Continuing Education and Annual Probate Institute – George Gregory

Mr. Gregory distributed a short report (**Attachment 4**) concerning registrations to date for the Probate Institute and recent attendance at programs regarding the Michigan Trust Code. He also reviewed several additional upcoming programs that are being co-sponsored by the Section and ICLE.

3. Section Journal – Nancy L. Little

Ms. Little reported that electronic delivery has been implemented for members of the Section who were admitted in Michigan after January 1, 1990. Electronic distribution is expected to save the Section significant amounts. She has received some comments in favor and some opposed to the change, but feels the transition has been generally accepted. Mr. Imami asked that the Journal be electronically distributed in a format that allow full text searching, which will increase its utility.

Ms. Little also noted that the current issue is scheduled for delivery in April. The issue that follows will be devoted to charitable topics.

4. State Bar Journal – Amy M. Morrissey

Ms. Morrissey reported that the theme issue, focused mostly on the MTC, is scheduled for the May issue of the Michigan Bar Journal. Five articles

on the Michigan Trust Code and an article on estate taxes will be published.

5. Pamphlets – Ellen Sugrue Hyman

Ms. Hyman reported that several pamphlets are being reviewed by various members of the Committee.

6. Electronic Communications – Josh Ard

No report.

C. Legislation and Lobbying

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

The legislation to require a form of acceptance of powers of attorney is being drafted by the Legislative Service Bureau. If the legislation is available, it will be distributed at the next meeting.

The Governor has proposed extending the sales tax to legal services. The State Bar opposes burdening access to justice by levying a tax on legal services. Mr. Kerr moved, with support from Mr. Siriani, to express the Section's opposition to making legal services subject to sale tax. The motion was approved by a vote of 21-0 with no abstentions.

2. Power of Attorney Act – Daniel P. Marsh and Doug Chalgian

Mr. Schuitmaker stated that he has sent Mr. Marsh a letter expressing his appreciation for the Power of Attorney Committee's efforts and asked the Secretary to remove this topic from future Agendas.

3. Michigan Trust Code – Mark K. Harder

Mr. Harder reported that the MTC technical corrections bill has been drafted and reviewed. We are awaiting introduction.

The Probate Institute will feature a Michigan Trust Code track. Mr. Harder asked members to advise him if they were aware of any particular topics or items that speakers should be sure to address because of widespread questions or confusion about provisions.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

No report.

2. Unauthorized Practice & Multidisciplinary Practice – Bob Taylor

Mr. Taylor reported that discussions continue with the Attorney General concerning a case involving a trust mill.

3. Specialization and Certification – James B. Steward

Mr. Steward reports that the committee continues to work on matters related to a specialization certification.

4. Practice Management – Patricia Ouellette

No report.

E. Administration of Justice

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

No report.

2. Uniformity of Practice – Rhonda Clark

No report.

F. Practice Issues, Related Areas & Liaisons

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

Mr. Ferriby reported on several matters. A limitation on the value of the deduction for charitable contributions has been resurrected in Washington. Passage of the Uniform Prudent Management of Institutional Funds Act is becoming better known within the charitable and nonprofit community, but some confusion about its meaning and scope continues.

He reported that a lobbying group is seeking to increase the required membership in nonprofit organizations to five members. The Council of Michigan Foundations opposes this effort.

The Detroit Medical Center has been sold and will be operated as a for profit entity. For clients that have named this organization or its affiliates as donees with respect to their charitable giving, these individuals will need to amend their estate planning documents.

The recent court of appeals decision, *In re Upjohn Estate*, Mich Ct. App. Case No. 278668 (Feb. 23, 2010), was discussed.

Mr. Ard noted a recent Illinois case in which the court revoked the charitable status of a hospital “because it was not charitable enough”. Mr. Ferriby reported that the amount of charitable care being provided by nonprofit hospitals is also a concern at the national level.

2. Transfer Tax – Thomas F. Sweeney

Mr. Harder reported that at the recent ACTEC annual meeting several matters related to the transfer tax were of keen interest. Prospects for transfer tax legislation this year remain uncertain. Some observers feel that the estate and generation skipping transfer taxes will be repealed for all of 2010 and that the estate tax exempt amount will revert, at least temporarily, to \$1 million in 2011. He also described proposed legislation that will limit the utility of grantor retained annuity trusts. The legislation recently was approved by the House Ways and Means Committee. Mr. Ferriby remind members that if the estate tax returns in 2011 in its 2001 form, the state death tax credit will be restored, as will Michigan’s estate tax.

3. Guardianships and Conservatorships – Constance Brigman

No further report.

4. Business Law/Liaison to Business Law Section – John R. Dresser

No report.

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

No report.

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

No report.

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

No report.

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

No report.

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

Ms. New reported that Tax Section has been urging Congress to act on estate taxes. She also reported that the Tax Section’s annual seminar is May 20 and is being co-sponsored with ICLE. The Tax Section is also

seeking articles on fiduciary income, estate, and gift tax matters for the Michigan Tax Journal.

10. State Bar Liaison – Richard J. Siriani

Mr. Siriani reported that the State Bar remains concerned and vigorously opposes levying sales taxes on legal services.

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

Ms. Teahan announced that there will be a meeting in September with State Court Administrative Office to review rules and forms. The due date is June for any submissions to be considered at the meeting.

The Michigan Trust Code court rules become effective on April 1. The comment period continues to run. To Ms. Teahan's knowledge no further comments have been submitted.

Ms. Teahan also reported that work continues on statutory and court rule changes allowing all appeals from probate court to proceed directly to the court of appeals. The Court of Appeals has assigned a staffer to work with the Probate Section's committee on this matter.

Mr. Schuitmaker reported that he is seeking a volunteer to serve on State Court Administrative Office's court rules and forms committee.

12. Trust Institutions and Liaison with Michigan Bankers Association – Susan Allan

No report.

13. Michigan Probate Judges Association Liaison – Hon. Phillip Harter/Hon. David M. Murkowski/Hon. Darlene O'Brien

Judge Murkowski indicated that the MPJA board met recently. They have concerns about the proposed changes to the slayer statute and feel it is poorly drafted.

14. Law School Liaison – Josh Ard

No report.

IX. Other Business

None.

X. **Hot Topics**

None.

XI. **Adjournment**

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

Respectfully submitted

Mark K. Harder
Secretary

HD94611-6

ATTACHMENT 1

Financial Report

**Probate and Estate Planning Section
Treasurer's Report as of February 28, 2010**

	December 2009 Actual	January 2010 Actual	February 2010 Actual	Year to Date Actual	2009-10 Budget	Variance
Revenue						
Membership Dues	\$7,035	\$2,660	\$2,100	\$117,915	\$111,510	\$6,405
Publishing Agreements		85		85	1,875	(1,790)
Other					1,350	(1,350)
Total Receipts	\$7,035	\$2,745	\$2,100	\$118,000	\$114,735	\$3,265
Disbursements						
Journal			10,017	10,017	37,500	(27,483)
Chairperson's Dinner	2,953			2,953	4,000	(1,047)
Travel	1,060	1,397	1,259	4,865	12,000	(7,135)
Lobbying		4,000		10,000	24,000	(14,000)
Meetings	1,759	978		3,841	9,000	(5,159)
Publishing Agreements					1,125	(1,125)
Support for Annual Institute					6,000	(6,000)
Amicus Briefs					5,000	(5,000)
Listserv	70	70	70	350	850	(500)
Postage					900	(900)
Telephone		9	30	51	500	(449)
Other			75	75	1,000	(925)
Total Disbursements	\$5,842	\$6,454	\$11,451	\$32,151	\$101,875	(\$69,724)
Increase	\$1,193	-\$3,709	-\$9,351	\$85,848	\$12,860	\$72,988

Additional Information

Fund Balance \$ 213,977

ATTACHMENT 2

Letter from the Disability Network

Disability Network Southwest Michigan

Fiscal Year 2008-2009 Activities & Accomplishments

As Disability Network Southwest Michigan moves into our 4th decade of service providing, we must continue to improve our methods of generating funds. Our Planned Giving program is an example of this and we are proud to offer it to donors as it supports our mission and services. Please take a moment to learn about us.

Disability is a natural part of the human condition. Disability does not discriminate – people with disabilities come from all race, gender, social and religious backgrounds.

Disability Network is the first stop for people with disabilities and their families in Southwest Michigan. In Fiscal Year 2008-2009, experienced Disability Network staff served more than 3,800 individuals providing:

- **Information and referral services (I&R)** – with toll-free access to guidance on rights and resources as well as information on services, workshops, a library of books, brochures, video and audio tapes and web-based resources and information. Over 1,950 calls were received during the past year.
- **Support and Assistance Services** provides people with disabilities intensive, short-term education and assistance to overcome barriers that are limiting their ability to obtain or maintain self-sufficiency.
- **Independent living skills assistance** – staff assist people with disabilities in accessing community resources in order to become self sufficient. 215 people were provided extensive Independent Living supports during the past year.
- **Nursing home transition services** provide individuals a choice for community based living as a viable alternative to nursing home residency. Services include individual assessment, transition plan development, accessible housing information, home assessment and support services for independent living. In 2004, the average cost of one year of nursing home care exceeded \$50,000 per person – 62% of which is paid with public money – many times over what in-home care and supports would cost. Last year Disability Network successfully transitioned 30 people out of a nursing home and into community living.
- **Occupational therapy** services to assess accessibility needs and independent living issues for home or workplace modifications, adaptive equipment or assistive technology needs.
- **Ramp Up** is a program high in demand throughout our service area. Ramps are built for individuals with mobility challenges. During the 2009 building season, the Ramp Up volunteers from First United Methodist Church of Kalamazoo constructed 8 ramps in Kalamazoo County and collaborated on another 3 ramps in Van Buren County.

- **Employment support** including benefits counseling to learn how returning to work affects Social Security, housing and health care benefits, a loan fund for assistive technology for persons with disabilities who want to start home based business and classes on how to disclose a disability to an employer in order to receive effective job accommodations. Over 151 people received benefits counseling support during the past year.
- **Specialized driver assessment and education services** to help acquire or regain the skill to drive & increasing independence. Over 45 people received driving evaluations and training in the past year.
- **Peer support groups** offers people with disabilities an opportunity to socialize and share in a supportive, group setting. Disability Network supports Spinal Cord & Brain Injury survivors and a Women with Disabilities support group. Over 35 people with disabilities participated in these groups during the last year.
- **Community Education** provides educational opportunities for people with disabilities and employers on disability issues to enhance awareness of vocational and pre-vocational services. ADA & Employment workshops for managers and human resource professionals were held this past year in 3 counties. Workshops designed to help people with disabilities decide *How, When & Why to Disclose a Disability to an Employer* were present in 5 counties. A total of 122 individuals participated in Disability Network workshops during the year.
- **ADA compliance assessments and technical assistance** for businesses and local governments to create a plan to correct deficits in complying with various disability laws.
- **Grassroots Advocacy Teams** involve groups of people with disabilities choosing what systems need to change in our local communities and directing that change with Disability Network staff support. TAG (Transportation Advocacy Group) Team along with Friends of Transit worked very hard behind the scenes and out front publicly to get the Transit millage passed this year. ACCESS Team continues to identify accessibility issues in the community and work with city and county officials in rectifying those issues.

ATTACHMENT 3

Draft of the Uniform Adult Guardianship Protective Proceedings Jurisdictional Act

ARTICLE 1

GENERAL PROVISIONS

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

Sec. 102. As used in this act:

- (a) “Adult” means an individual who has attained 18 years of age.
- (b) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5520.
- (c) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5520.
- (d) “Guardianship order” means an order appointing a guardian.
- (e) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.
- (f) “Incapacitated person” means an adult for whom a guardian has been appointed.
- (g) “Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.
- (h) “Person,” except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(i) “Protected person” means an adult for whom a protective order has been issued.

(j) “Protective order” means an order appointing a conservator or other order related to management of an adult’s property.

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

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

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

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

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

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

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

Sec. 105. (1) In a guardianship or protective proceeding in this state, a court of

this state may request the appropriate court of another state to do any of the following:

- (a) Hold an evidentiary hearing;
- (b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (c) Order that an evaluation or assessment be made of the respondent;
- (d) Order any appropriate investigation of a person involved in a proceeding;
- (e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (a) or any other proceeding, any evidence otherwise produced under paragraph (b), or any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d);
- (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;
- (g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504.

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

Sec. 106. (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in

another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

ARTICLE 2
JURISDICTION

Sec. 201. (1) In this article:

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

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

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

(d) “Temporary absence” means an absence where it is reasonable to assume that the respondent intends to return to their principal residence and the respondent continues to maintain their principal residence. Evidence that an absence is temporary and is not

intended as a permanent change of abode includes but is not limited to any of the following circumstances: absence due to vacation, business, education, illness, treatment, rehabilitation or an absence related to military service.

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

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

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

(c) The location of the respondent's property. and

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

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

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

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

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

(i) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum.

(ii) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

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

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

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

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

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

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

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

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

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

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

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

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

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

(a) Any expressed preference of the respondent.

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

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

- (d) The distance of the respondent from the court in each state.
- (e) The financial circumstances of the respondent's estate.
- (f) The nature and location of the evidence.
- (g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- (h) The familiarity of the court of each state with the facts and issues in the proceeding.
- (i) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Sec. 207. ~~(4)~~ If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (a) Decline to exercise jurisdiction.
- (b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction.
- (c) Continue to exercise jurisdiction after considering:
 - (i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction.
 - (ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 206(c).

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.

~~(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this act.~~

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

Sec. 209. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under Section 204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply: (1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 203 before the appointment

or issuance of the order. (2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

ARTICLE 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

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

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

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

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

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

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

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

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the

other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

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

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

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

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

(a) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 302.

(b) the documents required to terminate a guardianship or conservatorship in this state.

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

(2) Notice of a petition under subsection (1) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The

notice must be given in the same manner as notice is required to be given in this state.

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

(4) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

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

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

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

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

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

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under [insert

statutory references to this state's ordinary procedures law for the appointment of guardian or conservator] if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

ARTICLE 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

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

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

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

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

(i) Registration of Foreign Guardianship / Conservatorship

(ii) Notice of Intent to File Foreign Guardianship / Conservatorship with Proof of Service.

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

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

(2) The incapacitated person, protected person, foreign guardian or foreign conservator submits to the personal jurisdiction of the courts of this state in a proceeding related to the guardianship or conservatorship if either of the following occur:

(a) Registration of a copy of the foreign guardianship or conservatorship order with a court of this state.

(b) The performance of an act by a guardian, conservator, incapacitated person or protected person in this state that would give the state jurisdiction over a guardian, conservator, incapacitated person or protected person.

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

ARTICLE 5

MISCELLANEOUS PROVISIONS

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

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

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

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

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

ATTACHMENT 4

Report of the Continuing Education and Annual Probate Institute Committee

Continuing Education and Annual Probate Institute

Committee Report to the

Council of the Probate & Estate Planning Section

March 20, 2010

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

	<u>2009</u>	<u>2010</u>
Eight weeks out	212	321
Total	647	???

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

The Section is co-sponsoring the following upcoming seminars:

- **Estate Planning in Times of Estate Tax Uncertainty: Your Two Hour Survival Guide** on 3/31 in Plymouth. A panel of 4 practitioners will cover the current law and its impact; pitfalls, opportunities and planning; and what to do in one's practice. This seminar has been advertised for less than a month, but more than 150 lawyers have registered to participate in person or by live webcast.
- **2010 Medicaid and HealthCare Planning Update** (4/7 in Grand Rapids and 4/22 in Plymouth) and the **Advising Clients on VA Benefits** seminar on 4/22 in Plymouth.
- **Drafting an Estate Plan for an Estate Under \$5 Million** (5/26 in Plymouth) - a limited enrollment seminar in the Probate & Estate Planning Certificate Program

- There are eight one-hour **Michigan Trust Code Preview** webcasts each featuring Mark Harder and one other member of the Section's MTC Committee. Seven of the eight have been released so far, with the final one becoming available on April 1. These are free to ICLE Partners and cost \$39 each for non-Partners. About one hundred lawyers have watched each of the webcasts to date.