I. Call to Order

The Chair of the Section, Harold Schuitmaker, was unable to attend the meeting. In his absence Doug Chalgian, Chair-Elect, called the meeting to order at 10:25 a.m.

II. Excused Absences

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

Doug Chalgian, Chair-Elect
George Gregory, Vice-Chair
Mark Harder, Secretary
Marilyn Lankfer, Treasurer
Hon. David Murkowski
David Kerr
Bob Taylor
James Steward
Amy Morrissey
Hon. Darlene O’Brien
James P. Spica
Rob Tiplady
Marlaine Teahan
Richard Siriani
Patricia Ouellette
Ellen Sugrue Hyman
Susan Allan

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

Hon. Phil Harter
Doug Mielock
Nancy Little

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

Harold Schuitmaker, Chair
Josh Ard
Rebecca Schnelz
Shaheen Imami

The following officers and members of the Council were absent without excuse:

Tom Sweeney
Robin Ferriby
III. **Introduction of Guests**

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

- Rhonda Clark-Kreuer
- Constance Brigman
- Dan Cogan
- Lorraine New
- Michelle Marquardt
- Amy Tripp
- Dan Marsh
- Kathleen Goetsch
- Jeanne Murphy
- Derek Walters
- Mark Kellogg
- Jill Goodell
- Cynthia Andrews
- Anne Walter
- Serene Katranji-Zeni
- Chris Ballard
- Valerie Lafferty
- Hayley E. Rohn-Davé

IV. **Minutes of October 24, 2009 Meeting of the Council**

Minutes of the October 24, 2009, meeting of the Council had been previously distributed with the Agenda for the meeting. Upon motion by Mr. Harder, with support from Mr. Kerr, the minutes were unanimously approved.

V. **Treasurer Report – Marilyn Lankfer**

Ms. Lankfer asked members to consider contributing to the Hearts and Flowers Fund if they had not already done so. She also requested that she be notified if a Committee utilizes the Section’s conference call service so that she can more easily confirm the charges are proper when she receives our monthly billing statement. Finally, she reminded members they could provide her with their expense reimbursement forms at the meeting and reviewed who was eligible for reimbursement of mileage and other expenses.

VI. **Chairperson’s Report**

In Mr. Schuitmaker’s absence, Mr. Chalgian offered a report on his behalf. The cost of the Chair’s dinner was $3,400, which was significantly below budget.

Alan May’s letter (Attachment 1) concerning the *Graves* case was discussed. After discussion, the *Amicus Curiae* Committee will evaluate whether to submit a letter to the court regarding the clear error in the court’s statement and reasoning that the fiduciary represents “the estate” and encourage the court to modify its opinion.

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. Most of the CSP meeting was devoted to discussing the Guardianships and Conservatorships Committee’s work and review of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The
Guardianships and Conservatorships Committee’s Report is Attachment 2. The Guardianships and Conservatorships Committee will be considering the comments at a future meeting and return to the Committee on Special Projects or the Council with recommendations on whether UAGPPJA should be enacted and what modifications are appropriate.

VIII. Standing Committee Reports

A. Internal Governance

1. Budget – George Gregory

Mr. Gregory reported on behalf of the Budget Committee. He supplemented his earlier report with a new report. See Attachment 3. The Section annually subsidizes ICLE to allow probate judges to attend the annual Probate Institute free of charge and provides additional funds for a dinner for the speakers. $2,000 has been budgeted this Council year for this purpose. ICLE has requested additional support for the 2010 Institute to help celebrate the 50th anniversary of the Institute. The Budget Committee has recommended amending the budget to increase support for the Institute from $2,000 to $6,000 (an increase of $4,000). ICLE will use these funds to provide 50 discounts of $50, to allow 50 first time attendees to receive $50 registrations, and to make available drawings and raffles for $50 gift certificates and 50 ICLE publications. Upon motion by Mr. Siriani, with support from Ms. Morrissey, the Council unanimously approved amending the 2009-10 budget to increase support for the 2010 Institute from $2,000 to $6,000.

In connection with the discussion of this budget change, Mr. Gregory also reported on the Institute. Past Institute attendees who may have pictures from the event are encouraged to provide them to Mr. Schuitmaker. Mr. Gregory also reviewed the Agenda of speakers and topics and announced that the Agenda had been completed.

2. Bylaws – Marilyn Lankfer

Ms. Lankfer reported on the discussion of possible Bylaw changes at the Committee on Special Projects meeting that immediately preceded the Council meeting. The Committee will prepare an amendment to the Section’s Bylaws to permit law students to join the Section without charge. Ms. Lankfer also reported that her Committee will recommend a minor modification to eliminate a reference to a prior year.

The Committee on Special Projects had also discussed the Bylaws Committee’s review of the process for nominations to the Council and its officers. No changes to the Bylaws will be recommended. However, the Nominating Committee has been asked to develop a policy for the
nominating process that will provide greater openness and transparency to the process and make it easier for nominations from the floor at the last meeting of the Council year when nominations are made and the ballot is finalized for the September annual meeting of the Section.

Finally, the Bylaws Committee has reviewed the notice provisions of the Bylaws and the Committee on Special Projects discussed this matter. Currently the Section’s Bylaws do not have a notice provision and a request had been made to consider adding them. No action was taken and there was general view expressed at the meeting of the Committee on Special Projects that no change was needed. The Bylaws Committee will continue to review this matter.

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 – Douglas G. Chalgian
   No report.

B. **Education and Advocacy Services for Section Members**

1. *Amicus Curiae* – Ellen Sugrue Hyman

   Ms. Sugrue Hyman confirmed that the *Amicus Curiae* Committee will review the *Graves* case and provide a full report in December.

   The Committee is also considering a request from Pat Ouellette to file an *amicus* brief in *Tkachik v Mandeville*, a court of appeals domestic relations case. The Supreme Court has granted leave to appeal and will be hearing the case. See **Attachment 4**. The Committee will report in December with a recommendation whether to file a brief.
2. Continuing Education and Annual Probate Institute – George Gregory

Mr. Gregory offered no further report, having discussed the Institute as part of his Budget Committee report.

3. Section Journal – Nancy L. Little

Ms. Little reported that the next issue of the Journal will be published before the end of the year. It is devoted entirely to the Michigan Trust Code.

Ms. Little also expressed her thanks again to members of the Section for the support she received during the preceding year when she served as Chair and for the gifts in recognition of her tenure.

4. State Bar Journal – Amy M. Morrissey

No report.

5. Pamphlets – Ellen Sugrue Hyman

Ms. Sugrue Hyman reported she had received feedback from Council and Section members concerning the Section’s pamphlets. She expects the Council can begin reviewing one or two pamphlets each month beginning in December.

6. Electronic Communications – Josh Ard

No report.

C. Legislation and Lobbying

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

No report.


Mr. Marsh reported for the Committee. He began by reviewing the directions given the Committee at the September meeting of the Council in response to the Committee’s request for guidance. At the September meeting the Council asked the Committee to review the Uniform Durable Power of Attorney Act (UPOAA) promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and to compare it to H.B. 5196 and existing Michigan law and to consult with Mr. Schuitmaker regarding a course of action. Mr. Marsh reported he had subsequently discussed matters with Mr. Schuitmaker and Mr. Schuitmaker had agreed with the Committee’s intended course of action.
Since September the Committee has compared each of the 42 sections between the NCCUSL draft of the UPOAA and H.B. 5196 and has provided comments on each section. Recently, Rep. Switalski, the sponsor of H.B. 5196, has requested a meeting to solicit Mr. Marsh’s thoughts and comments regarding the bill.

Mr. Chalgian expressed his reservations about the Chair of the Durable Power of Attorney Committee, any members of the Committee, or Council members meeting with legislators when we have taken no position on H.B. 5196. He feels there is a significant risk that the legislators will construe statements as representing the view of the Council and Section. He hoped no meeting would occur until a position was taken and urged that if a meeting occurs the attendees should be very explicit about making clear that the attendees do not speak for the Council or the Section.

Messrs. Chalgian and Harder also each expressed their concerns about the lack of progress by the Committee in assisting the Council in developing a position and proposing legislation in this area. Each also expressed the concern that the legislature may act and pass poor legislation if the Council does not act.

Mr. Chalgian stated that he understands Mr. Schuitmaker intends to review and reconstitute the makeup of the Committee and its mission by the December meeting.

Mr. Marsh expressed his belief that criticisms of the work of the Committee were unfounded, that the Committee had worked hard and produced good reports, and that the Council has failed to provide clear and consistent guidance on its expectations for the Committee.

Mr. Kerr offered a motion directing the Durable Power of Attorney Committee to present at the next Council meeting a proposed statute that would be recommended for enactment. The motion was not supported.

Mr. Steward offered a motion that the Council go on record in opposition to H.B. 5196. The motion was not supported.

Mr. Kerr offered a motion directing the Power of Attorney Act Committee to provide the Council at the December meeting a plan and request for specific support of the Committee to produce a proposed Act. Mr. Spica offered support for the motion. Mr. Steward moved to amend the motion to direct the Committee to work in conjunction with the Elder Law Section to develop a proposed Act. The motion to amend did not receive support. After further discussion, the motion to direct the Committee to prepare a plan for proceeding and request for support was approved by a vote of 8-7.
Mr. Spica offered a motion, which received support from Ms. Teahan, expressing the view of the Council that members of the Committee should decline invitations from legislators to discuss power of attorney legislation pending a determination of the Council’s position. The motion was approved unanimously.

3. Michigan Trust Code – Mark K. Harder

Mr. Harder reported that the Committee would meet on Wednesday, December 2, 2009, to begin considering whether technical amendments to the Trust Code are needed or appropriate.

Mr. Harder also noted that he has been contacted by the Reporter for the Michigan Civil Jury Instructions requesting input regarding possible changes to the Instructions as a result of the enactment of the Michigan Trust Code. Mr. Harder requested that any Council or Section members with thoughts or comments please pass them along to him as soon as possible.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr

Mr. Kerr noted that the Graves decision, discussed earlier, has ethical implications for attorneys if the court’s decision changes the law that a fiduciary has a duty to “the estate” and not just to the fiduciary. Mr. Kerr and Ms. Lankfer will evaluate this matter and consult with the Amicus Curiae Committee and offer a report as needed at a future Council meeting.

2. Unauthorized Practice & Multidisciplinary Practice – Bob Taylor

No report.

3. Specialization and Certification – James B. Steward

No report.

4. Practice Management – Patricia Ouellette

No report.
E. **Administration of Justice**

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

   Judge Murkowski reported that he hopes to meet with Chief Court of Appeals Judge William Murphy to identify any concerns the court might have regarding the proposed changes to appeals of probate court decisions and the proposed changes to the jury trial rules that have been discussed at previous meetings of the Council.

2. **Uniformity of Practice – Derek A. Walters**

   No report.

F. **Practice Issues, Related Areas & Liaisons**

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

   No report.

2. **Transfer Tax – Thomas F. Sweeney**

   No report.

3. **Guardianships and Conservatorships – Constance Brigman**

   Because there had been an extended discussion concerning guardianship matters during the meeting of the Committee on Special Projects, Ms. Brigman had no further report.

   Mr. Chalgian expressed concern that he had noted several instances in which courts are unwilling to give guardians the power to issue Do Not Resuscitate instructions. He asked the Guardianships and Conservatorships Committee to consider whether this was a widespread practice and how to deal with it.

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

   No report.

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

   Ms. Tripp reported that the Elder Law Section was concerned whether the Michigan Trust Code would limit the ability of agents to create trusts for incapacitated settlors. She indicated that the Elder Law Section was prepared to work with the Michigan Trust Code Committee and the Council on this issue. Mr. Chalgian will participate in the December 2
meeting of the Michigan Trust Code Committee and will be available to ensure that the Elder Law Section’s concerns are understood by the MTC Committee.

Ms. Tripp also reported that on September 16 a class action lawsuit, *Miller v Michigan Dept. of Comm Health*, was filed. The Elder Law Section supports the lawsuit, which involves the manner in which Michigan administers federal rules concerning how medical expenses during the pre-eligibility period are treated when applying for Medicaid benefits.

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
   No report.

10. State Bar Liaison – Richard J. Siriani
    Mr. Siriani reported that he recently met with Chief Justice Kelly, who complimented Ms. Teahan and her Court Rules and Forms Committee on its handling of recent proposed changes to the Michigan Court Rules as a result of the enactment of the Michigan Trust Code.

11. Court Rules and Forms Committee Liaison – Marlaine C. Teahan
    Ms. Teahan reported for the Committee that the prospects look favorable for adoption by the Michigan Supreme Court of the Council’s recommended amendments to the Michigan Court Rules. Ms. Teahan and Judge Murkowski have been encouraged to attend the Administrative Committee meeting of the Supreme Court to answer any questions regarding the proposed rules. Ms. Teahan also noted that due to required notice, comment, and hearing requirements the court rule changes may not be effective until sometime between May and September.
12. Trust Institutions and Liaison with Michigan Bankers Association – Susan Allan

Ms. Allan reported that representatives from the Michigan Bankers Association will meet with the Michigan Treasury Department about repealing the last vestiges of the Michigan inheritance tax.

She also reported that the Michigan Bankers Association continues to work on a form of statutory financial power of attorney form.


Judge Murkowski reported the MPJA Executive Committee will meet on December 11, 2009. He reported that the Executive Committee has reservations about the Uniform Durable Power of Attorney Act.

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 12:00 p.m.

Respectfully submitted

Mark K. Harder
Secretary

HD94611-2
ATTACHMENT 1

Alan May Letter
October 29, 2009

Judge William C. Whitbeck  
State of Michigan Court of Appeals  
925 W. Ottawa  
P.O. Box 30022  
Lansing, MI 48909-7522

Judge Douglas B. Shapiro  
State of Michigan Court of Appeals  
925 W. Ottawa  
P.O. Box 30022  
Lansing, MI 48909-7522

Judge Alton T. Davis  
State of Michigan Court of Appeals  
925 W. Ottawa  
P.O. Box 30022  
Lansing, MI 48909-7522

RE: ESTATE OF CALVIN GRAVES, A PROTECTED INDIVIDUAL

Dear Judges Whitbeck, Davis and Shapiro:

I am writing this letter to you in my capacity as an annotator for the Michigan Probate and Estate Planning Journal, publisher of the Estate Bar Probate Section.

I have filed no Appearance in the attached matter referenced above, nor do I represent any of the parties.

I am writing to you about this published Opinion as it contains a glaring error. Your Honors found that the attorney, William Ford, represented the estate as well as the fiduciary. Your Honors cite Steinway v Bolden, 185 Mich App 234, 237-238; 460 NW2d 306 (1990). This case was overruled by the Michigan Supreme Court when it adopted MCR 5.117 (A). I enclose a photocopy for Your Honor’s review.

The rule and the Supreme Court annotation clearly says:

“Subrule A, amended April 1, 1992, clarifies that the attorney represents the fiduciary or trustee and not the estate”

I respectfully request that Your Honors give this matter your attention and redact this portion of your Opinion because of the above, as well as the negative impact that this Opinion would have and which the Supreme Court tried to obviate.
With utmost respect.

Yours truly,

KEMP KLEIN LAW FIRM

By: Alan A. May

AAM:jv:647156
Enclosures (2)

Xe: Harold G. Schuitmaker, Esq.
181 W. Michigan Ave., Ste. 1
P.O. Box 520
Paw Paw, MI 49079
State of Michigan
Court of Appeals

In the Matter of THE ESTATE OF CALVIN GRAVES, a Protected Individual.

THE ESTATE OF CALVIN GRAVES,

Plaintiff-Appellee,

v

COMERICA BANK,

Defendant/Cross-Plaintiff-Appellee,

v

PRESHUS GRAVES,

Defendant,

and

WILLIAM R. FORD,

Defendant/Cross-Defendant-Appellant.

Before: Davis, P.J., and Whitbeck and Shapiro, JJ.

Davis, J.

Defendant William R. Ford appeals as of right an order granting summary disposition in favor of the Estate of Calvin Graves, brought by the court-appointed special fiduciary, surcharging Ford personally for monies that Ford failed to ensure were properly deposited in a fiduciary account for Calvin Graves' benefit. We affirm.

Calvin Graves, born on March 5, 1997, was injured in an automobile accident on January 20, 2000. Preshus Graves, Calvin Graves' mother and next friend, commenced a civil action arising out of that accident, apparently on both of their behalfs. Preshus Graves filed a petition with the probate court to be appointed as conservator for Calvin Graves. Defendant Ford was
Preshus Graves’ attorney. The probate court issued letters of conservatorship to Preshus Graves containing the following restriction:

Funds to be received may not be used without prior written authority of this Court. Funds are to be deposited in an account; certificate of deposit; money market certificate; or a combination of these, in a bank; credit union; or savings and loan association insured by an instrumentality of the federal government which accepts these conditions: The funds may not be withdrawn from the depository until further order of this Court. Ownership of the funds must be in the conservator as fiduciary for the minor. The depository must complete a form entitled “Verification of Deposit in Fiduciary Account” and “Agreement on Withdrawal of Funds” and mail this form to this Court within five days from initial receipt of funds. The depository will thereafter, at least annually and as requested, furnish this Court a Verification of Funds on Deposit form. No real estate asset of the estate may be sold without further order of the Court.

Preshus Graves, through Ford as her attorney, filed an acceptance of appointment and bond of fiduciary, and Preshus Graves was appointed as Calvin Graves’ conservator. Ford received a “Notice to Attorney of Duties Under Conservatorship of a Minor” that included the following instructions:

Upon receipt of funds, you must accompany the fiduciary of the estate to the bank, credit union, or savings and loan association of their choice to deposit the funds in an insured account or certificate of deposit which identifies the account as being a fiduciary account. You are to see that the fiduciary furnishes the depository a copy of the Letters of Authority setting forth any limitations of powers and that the depository understands and accepts the funds with these limitations. You are further to see that the representative of the depository executes a Verification of Deposit in Fiduciary Account Form, which must be returned to this Court within 5 days from the deposit.

Preshus Graves also received a “notice to fiduciary of duties” that similarly specified that “ownership of the funds must be in the conservator as fiduciary for the minor.”

Preshus Graves subsequently petitioned the probate court, through Ford as her attorney, to approve a settlement in the underlying personal injury lawsuit. The probate court approved the settlement in the amount of $3,300.00 for a PIP claim and $6,000.00 for a third party claim, minus $3,177.30 for attorney fees and costs, for a total of $6,122.70. On the same day, Ford issued two checks from his client trust account, for $2,200.00 and $3,922.70, payable directly to Preshus Graves individually. Preshus Graves cashed both checks at Comerica Bank. Neither check was ever deposited into any sort of restricted account or any other sort of account for Calvin Graves’ benefit. Ford contends that he told Preshus Graves that the money was to be kept in a separate account, but he did not accompany Preshus Graves to the bank or communicate with the bank in any way. Preshus Graves admitted that Ford gave her a Verification of Deposit form, but she did not complete or return it. The probate court, after sending Ford and Preshus Graves repeated notices that they had failed to file an inventory and failed to file a verification of funds, removed Preshus Graves as Calvin Graves’ conservator.
The probate court appointed Richard J. Siriani as special fiduciary. Siriani immediately filed a “petition to surcharge Preshus Graves and William R Ford” for $6,000.00 plus fees, costs, and interest. Ford’s response was essentially to blame Preshus Graves: he denied any wrongdoing, and he stated that he told her “that the money would have to be separately maintained and accounted for,” that “upon learning of this situation” he told her to return the documents showing proof of deposit, that she promised to do so, and that “since that time, despite numerous calls or letters Ms. Graves has not responded.”

The trial court held a hearing on May 12, 2004. Ford alleges that he and his client, Preshus Graves, arrived at the probate court fully prepared to participate in the hearing, but Ford told Siriani prior to the hearing—off the record—that he had made Preshus Graves aware of her duties, whereupon Siriani told Ford that Ford would be released. Ford then chose to leave rather than accompany Preshus Graves to the hearing. At the hearing, Siriani told the probate court that he had “released Mr. Ford,” and Preshus Graves agreed to sign a promissory note to repay the money. The trial court did not enter any order pertaining to Ford.

Preshus Graves did not actually sign the promissory note. The trial court issued at least one show cause order and eventually issued a bench warrant for Preshus Graves’ arrest. The record suggests that Preshus Graves’ whereabouts may have become unknown.

In any event, more than half a year later, Siriani filed a notice of deficiency stating that the estate had not received any assets. On September 7, 2005, Siriani filed a motion to compel Ford to produce copies of the checks that he issued to Preshus Graves, “to determine whether or not there is any liability of individuals or institutions to reimburse the Estate for the net settlement.” The trial court issued an order compelling production of the checks, which Ford protested but with which he eventually complied. Siriani then filed a new petition to surcharge Comerica Bank, Preshus Graves, and Ford. The claims against Ford were similar to the claims made in the 2004 petition: generally, that Ford failed to take appropriate and necessary measures to ensure that the checks were deposited into a properly restricted account.

The parties all filed motions for summary disposition against each other. In relevant part, Ford asserted that the claims against him were barred pursuant to the doctrine of res judicata because he had been released on May 12, 2004. Ford also asserted that the probate court lacked jurisdiction, arguing that the only possible basis for the claims against him sounded in professional negligence and that “there was never any basis to surcharge him in the first place. On March 31, 2008, in a thorough opinion, the probate court rejected Ford’s arguments and entered summary disposition in favor of Siriani against Ford and denied Ford’s motion. The probate court then dismissed the bench warrant for Preshus Graves. Ford moved for reconsideration, which the probate court denied, observing that “the facts still remain that on May 28, 2003, even though the Letters of Conservatorship were restricted, Mr. Ford issued two checks to Preshus Graves, individually,” and those checks were never properly deposited.

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1 As noted, the settlement checks at issue actually totaled $6,122.70.
2 The claims against Comerica Bank are irrelevant to this appeal and will not be discussed.
Ford now appeals. This Court’s review of motions for summary disposition is de novo. 

Ford first argues that the trial court lacked subject matter jurisdiction. Specifically, Ford argues that the trial court could only have held him liable on the basis of professional negligence, which he asserts is outside the probate court’s jurisdiction. We disagree.

The probate court’s jurisdiction is determined by the pleadings. *In re Hatcher*, 443 Mich 426, 437-438; 505 NW2d 834 (1993). By statute, the probate court has exclusive subject matter jurisdiction over “a proceeding that concerns a guardianship, conservatorship; or protective proceeding.” MCL 700.1302(c). Additionally, the probate court has concurrent subject matter jurisdiction in cases involving protected individuals to “hear and decide a claim by or against a fiduciary or trustee for the return of property;” and “hear and decide a contract proceeding or action by or against an estate, trust, or ward.” MCL 700.1303(1)(h-i). The purpose of the concurrent jurisdiction is “to simplify the disposition of an action or proceeding involving a decedent’s, a protected individual’s, a ward’s, or a trust estate by consolidating the probate and other related actions or proceedings in the probate court.” MCL 700.1303(3). This is a case that concerns a conservatorship and in which the probate court is hearing and deciding an action by the estate for the return of property, and it is within the context of an already-existing probate case that is more efficiently and simply resolved by keeping it in the probate court.3

Ford next argues that the claims against him are barred by res judicata. We disagree.

“For the doctrine [of res judicata] to apply (1) the former suit must have been decided on the merits, (2) the issues in the second action were or could have been resolved in the former one, and (3) both actions must involve the same parties or their privies.” *Energy Reserves, Inc v Consumers Power Co.*, 221 Mich App 210, 215-216; 561 NW2d 854 (1997). Here, there was no decision on the merits in any prior action. The May 12, 2004, hearing that Ford relies on did not culminate in any order addressing Ford in any way. Ford’s liability was simply not addressed by the court at all, and if Ford did not attend the hearing, it was solely because he chose not to. Furthermore, whatever transpired at the May 12, 2004, hearing was part of the same, ongoing action regarding the administration of Calvin Graves’ estate, and res judicata is not applicable within the same action. *Harvey v Harvey*, 237 Mich App 432, 437; 603 NW2d 302 (1999); *Vandenberg v Vandenberg*, 253 Mich App 658, 663; 660 NW2d 341 (2002). Finally, the first petition was based only on the known fact that Calvin Graves’ settlement proceeds had not been properly deposited. Because Ford did not disclose significant facts pertaining to the checks he

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3 “An attorney may receive property that belongs to his or her client or a third party. In such cases, the attorney has a duty to notify all interested parties, safeguard the property, and promptly distribute the property to the rightful owners. See MRPC 1.15.” *Kasben v Hoffman*, 278 Mich App 466, 472; 751 NW2d 520 (2008). The “rightful owner” here was Calvin Graves, not his mother. As we discuss, by making the checks payable to Preshus Graves, personally instead of as Calvin’s conservator, Ford gave the money to the wrong person. Nevertheless, as we discuss infra, in our view, Ford’s liability here was not premised on professional negligence.

Finally, Ford argues that there exists no authority under which the probate court could sanction him because he did not violate any order, statute, rule or other law. We disagree in part.

We do agree that Ford did not violate any court order that we can identify. The “notice to attorney of duties” is a clear directive from the court, unambiguously explaining what responsibilities it expected the recipient to carry out. However, it is a notice, not an order. We find it inconceivable that Ford would have been unaware of the probate court’s expectations. However, because the document is a notice and not clearly a court order, Ford’s failure to carry out his responsibilities thereunder does not constitute violation of a court order.

Ford was Preshus Graves’ attorney, but because she was a personal representative, Ford’s “client” effectively includes the estate, not just the fiduciary thereof in her personal capacity. See Steinway v Bolden, 185 Mich App 234, 237-238; 460 NW2d 306 (1990). As a consequence, the attorney would be subject to a proceeding to surcharge pursuant to MCR 8.122 by a replacement fiduciary. Id., 236-238. A conservator is also a fiduciary of an estate, subject to the same obligations and standards as a trustee. MCL 700.1104(e); MCL 700.5416. The court is not permitted to impose a surcharge on a personal representative for any acts that were authorized at the time they were carried out. MCL 700.3703(2). By implication, the court is permitted to impose a surcharge for unauthorized acts. And the fulcrum of Ford’s liability is that he engaged in an unauthorized act by issuing Calvin Graves’ money to a person other than Calvin Graves or Calvin Graves’ conservator. Notwithstanding the fact that Preshus Graves was Calvin Graves’ conservator at the time, the checks were not made out to her in that capacity. Therefore, they were simply made out to an unauthorized third party, resulting in Calvin Graves’ estate losing the money altogether.

4 Specifically, that the checks had not even been properly made out: as noted, instead of making them payable to Preshus Graves as Calvin Graves’s conservator, Ford made them payable to Preshus Graves personally. The trial court reasonably found that Ford’s failure to disclose this fact constituted a failure to fully inform the court and was misleading to the court. However, the probate court did not, as Ford appears to believe, ever suggest that it found Ford to have engaged in any intentional deception.

5 Ford additionally argues that Siriani was responsible for Ford not being dismissed at the May 12, 2004, hearing. Apparently, Ford met Siriani outside the courtroom prior to the hearing, and, despite being fully prepared to participate in the hearing — in which his client did participate and signed the promissory note — allegedly entered into some agreement, off the record, to the effect that Siriani “released” him. Ford concludes that Siriani precluded him from making a record or asking the trial court to dismiss him. However, it is clear that he voluntarily chose not to participate in the hearing.
In summary, there was no genuine question of material fact that Ford gave Calvin Graves’ settlement money to the wrong person, that he failed to execute his duty to refrain from disgorging Calvin Graves’ money to unauthorized third parties, and that as a consequence the money was never received into Calvin Graves’ estate. The probate court’s conclusion that Ford was liable for the surcharge against him was correct.

Affirmed.

/s/ Alton T. Davis
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro
MCR 5.114 Signing and Authentication of Papers

(A) Signing of Papers.
   (1) The provisions of MCR 2.114 regarding the signing of papers apply in probate proceedings except as provided in this subrule.
   (2) When a person is represented by an attorney, the signature of the attorney is required on any paper filed in a form approved by the State Court Administrator only if the form includes a place for a signature.
   (3) An application, petition or other paper may be signed by the attorney for the petitioner, except that an inventory, account, acceptance of appointment, and sworn closing statement must be signed by the fiduciary or trustee. A receipt for assets must be signed by the person entitled to the assets.

(B) Authentication by Verification or Declaration.
   (1) An application, petition, inventory, accounting, proof of claim, or proof of service must be either authenticated by verification under oath by the person making it, or, in the alternative, contain a statement immediately above the date and signature of the maker: “I declare under the penalties of perjury that this _________ has been examined by me and that its contents are true to the best of my information, knowledge, and belief.” Any requirement of law that a document filed with the court must be sworn may be met by this declaration.
   (2) In addition to the sanctions provided by MCR 2.114(E), a person who knowingly makes a false declaration under subrule (B)(1) is in contempt of court.

History
5.114 Am. eff. Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002
5.114(A) Am. eff. Apr 1, 1992

Note
MCR 5.114 includes the provisions of PCR 110.2 and 111.3. In addition, the rule incorporates the provisions of MCR 2.114 regarding the signing of papers and the sanctions for violation of those requirements.

Former subrule (A)(1) (now [A][3]) has been amended effective April 1, 1992, to allow a person filing a paper on a form approved by the State Court Administrator to rely on the lack of a signature block on the form. The provision of former subrule (A)(2) on signing of papers by a minor in a proceeding to change a name has been moved to MCR 5.781 [renumbered as MCR 3.613 effective May 1, 2002].

Effective Apr 1, 2000, subrule (B)(1) is amended to correspond with MCL 600.852.

MCR 5.117 Appearance by Attorneys

(A) Representation of Fiduciary. An attorney filing an appearance on behalf of a fiduciary shall represent the fiduciary.

(B) Appearance.
   (1) In General. An attorney may appear by an act indicating that the attorney represents an interested person in the proceeding. An appearance by an attorney for an interested person is deemed an appearance by the interested person. Unless a particular
rule indicates otherwise, any act required to be performed by an interested person may be performed by the attorney representing the interested person.

(2) **Notice of Appearance.** If an appearance is made in a manner not involving the filing of a paper served with the court or if the appearance is made by filing a paper which is not served on the interested persons, the attorney must promptly file a written appearance and serve it on the interested persons whose addresses are known and on the fiduciary. The attorney’s address and telephone number must be included in the appearance.

(3) **Appearance by Law Firm.**
   (a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney’s appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the client.
   (b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court-ordered conference or trial.

(C) **Duration of Appearance by Attorney.**
   (1) **In General.** Unless otherwise stated in the appearance or ordered by the court, an attorney’s appearance applies only in the court in which it is made or to which the action is transferred and only for the proceeding in which it is filed.
   (2) **Appearance on Behalf of Fiduciary.** An appearance on behalf of a fiduciary applies until the proceedings are completed, the client is discharged, or an order terminating the appearance is entered.
   (3) **Termination of Appearance on Behalf of Personal Representative.** In unsupervised administration, the probate register may enter an order terminating an appearance on behalf of a personal representative if the personal representative consents in writing to the termination.
   (4) **Other Appearance.** An appearance on behalf of a client other than a fiduciary applies until a final order is entered disposing of all claims by or against the client, or an order terminating the appearance is entered.
   (5) **Substitution of Attorneys.** In the case of a substitution of attorneys, the court in a supervised administration or the probate register in unsupervised administration may enter an order permitting the substitution without prior notice to the interested persons or fiduciary. If the order is entered, the substituted attorney must give notice of the substitution to all interested persons and the fiduciary.

(D) **Right to Determination of Compensation.** An attorney whose services are terminated retains the right to have compensation determined before the proceeding is closed.

*History*

5.117 Am. eff. Apr 1, 1992; Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002
5.117(C) Am. eff. Feb 1, 1995
Note
MCR 5.117 includes the provisions of PCR 908.1 and 908.2.
Subrule A, amended effective April 1, 1992, clarifies that the attorney represents the fiduciary or trustee and not the estate.
A new subrule (C)(3), effective February 1, 1995, is added to permit withdrawal of an attorney for an independent personal representative without hearing or supervision if the independent personal representative consents in writing.

MCR 5.118 Amending or Supplementing Papers
(A) Papers Subject to Hearing. A person who has filed a paper that is subject to a hearing may amend or supplement the paper
(1) before a hearing if notice is given pursuant to these rules, or
(2) at the hearing without new notice of hearing if the court determines that material prejudice would not result to the substantial rights of the person to whom the notice should have been directed.
(B) Papers Not Subject to Hearing. A person who has filed a paper that is not subject to a hearing may amend or supplement the paper if service is made pursuant to these rules.

History
5.118 Am. eff. Apr 1, 1992; Feb 1, 1995; Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002

Note
MCR 5.118 is taken from PCR 110.3.
Effective April 1, 1992, former MCR 5.102(C) has been incorporated into this rule as subrule (B).

MCR 5.119 Additional Petitions; Objections; Hearing Practices
(A) Right to Hearing, New Matter. An interested person may, within the period allowed by law or these rules, file a petition and obtain a hearing with respect to the petition. The petitioner must serve copies of the petition and notice of hearing on the fiduciary and other interested persons whose addresses are known.
(B) Objection to Pending Matter. An interested person may object to a pending petition orally at the hearing or by filing and serving a paper which conforms with MCR 5.113. The court may adjourn a hearing based on an oral objection and require that a proper written objection be filed and served.
(C) Adjournment. A petition that is not heard on the day for which it is noticed, in the absence of a special order, stands adjourned from day to day or until a day certain.
(D) Briefs; Argument. The court may require that briefs of law and fact and proposed orders be filed as a condition precedent to oral argument. The court may limit oral argument.

History
5.119 Am. eff. Apr 1, 1992; Apr 1, 2000, on interim basis and adopted eff. Jan 1, 2002
ATTACHMENT 2

Report of the Guardianships and Conservatorships Committee
1. Roll Call. Please note that Kristin Arnett resigned from the committee and is no longer with her firm.

   X Connie Brigman connie@brigmanlaw.com
   ABSENT Doug Chalgian chalgian@mielderlaw.com
   EXC Jim Steward (excused) jsteward@stewardsheridan.com
   X Rhonda Clark-Kreuer clarkkreuer@gmail.com
   X Rebecca Schnelz schnelzr@oakgov.com

   ABSENT Valerie Ferrero Lafferty vlafferty@elderlawofmi.com
   ABSENT Hon David M. Murkowski David.Murkowski@kentcountymi.gov
   EXC Josh Ard (excused) josh@ardlaw.com

2. Review of last year. At the June 6, 2009 meeting we were asked to present the UAGPPJA to the council for 2009-2010 in digestible pieces.

3. Preview of this year. The plan for this year is to present the UAGPPJA to the council as follows:

   ___ Nov. 21, DD Guardianships (Article I)
   ___ Dec. 12, Temporary absence and first in time rules (Article II Section 201(d) & Sec. 203)
Jan. 16, Patient advocates and unjustifiable conduct (Article II Sec. 207)

Feb. 20, Notice provisions for respondents without home state (Article II Sec. 208)

Mar. 20, Registration of foreign orders (Article IV Secs. 401 and 402)

Apr. 17, Fallback date for all else that prevails.

4. Josh and Judge Murkowski were assigned review of DD Guardianships last year. Josh will be out of town at the next council meeting. Rhonda volunteered to present in Josh's place but she will first make contact with Josh and Judge Murkowski. Connie will send to Rhonda what Josh has already prepared.

5. Here are the issues for Nov. 21 presentation on DD Guardianships: (thank you Josh)

   Michigan is in the minority of states that have two separate guardianship systems (note that guardians under the mental health code have more powers over property since there isn’t a separate conservatorship under the mental health code) Reference MCL 330.1600-330.1644.

   For the uniform law to work it has to be tweaked at both ends:

   There should be a single screen for proceedings under both EPIC and the mental health code about whether MI courts should take the case

   If an order is to be domesticated, there needs to be a procedure first to determine whether to do it under EPIC or the mental health code or possibly both if a DD person has significant assets. Presumably, this requires amendments to both codes.

6. Proposed solutions:

   Revise MCL 300.1604 (Mental Health Code) to grant jurisdiction to appoint a guardian for a DD person if jurisdiction is allowed under the UAGPPJA.

   Revise UAGPPJA Secs. 102(b), 102(c), and 102(f) which are the definitions sections. Presently they only refer to EPIC sections that govern guardians, conservators and incapacitated persons under EPIC.

   Revise UAGPPJA Secs. 401 and 402 which pertain to registration of foreign orders for guardians and conservators to include a requirement that the court determine whether the foreign order is to be registered as Michigan DD order.
Transfer of an order under Article III Sec. 301(3). On its own motion, a court may have a hearing if a petition to transfer guardian order to Michigan is filed. Should Sec. 301(3) be revised to state that the court shall have a hearing when a petition to transfer an order is filed?

7. The proposed solutions should be drafted and presented to council at Nov. 21 meeting. Any handouts need to be emailed to the secretary NLT Nov. 13th I believe.

8. Next conference call is Dec. 2nd @ 4:30 PM to discuss temporary absence and the first in time rules for presentation at Dec. council meeting. The AGENDA for that call and the conference call # and pass code will be sent out Tuesday Dec. 1, so please check your email filters to make sure the email doesn't get routed to your junk mail. I would like for Jim Steward to be one of the presenters for that council meeting. Becky volunteered to be the second presenter, if she will be in town on Dec. 2nd. She will let me know if she will be available within the next two weeks.

Meeting was adjourned at 5:00 PM.

Respectfully submitted,

Connie Brigman
ATTACHMENT 3

Report on the 50th Annual Probate and Estate Planning Institute
Report on 50th Annual Probate and Estate Planning Institute

From: George Gregory

Date: November 21, 2009

Greenleaf Trust is sponsoring the speakers dinner at the City Opera House (November 5, 2009 e-mail).

A list of sponsors and the contribution each is giving is in the November 6, 2009 e-mail. We continue to solicit more/

In honor of the 50th Institute, the Probate Section and ICLE will jointly provide the following to participants:

First 50 registrants get a $50 discount
The First 50 new lawyers to register pay $50 to register
There will be 50 gift certificates for $50 (25 in both Traverse City and Plymouth)
We are soliciting other prizes
There will be a grand prize of 50 books (48 online plus John Cameron’s real estate book and Mark Harder’s EPIC/MTC with commentary)
ICLE will have 50% book deals

Cost to the section is $4,000 (we have budgeted $2,000 and that was for the Probate Judge’s attendance and entertainment at Traverse City), this requires an additional $4,000.

This requires a budget modification.

Harold Schuitmaker and others are gathering photos and other materials to prepare a display reflecting past Institutes (primarily photos and materials).

At the end of the attachments is a ten page listing of the outline to date. It is still a work in process, but is almost complete.
George W. Gregory

From: George W. Gregory [ggregory@gregoryonline.com]
Sent: Thursday, November 05, 2009 4:13 PM
To: 'Jeff Kirkey'
Cc: ggregory@gregoryonline.com; SJOHANSSON@GREENLEAFTRUST.COM
Subject: 50th Institute Speakers Dinner Update

Friday May 7th

City Opera House in Traverse City
106 East Front Street
Traverse City

Cocktails 6:00 – 6:30

Welcome from Greenleaf Trust (event sponsor)

5:30 Dinner
Hi George,

These are the confirmed sponsors. In addition I've contacted UBS, Key Bank, Wells Fargo, and Northern Trust and am waiting for responses. I'm still working on bullets.

Jeff

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<td>Acme lunch and Advanced EP Track</td>
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George W. Gregory

From: Jeff Kirkey [jkirkey@icle.org]
Sent: Friday, November 13, 2009 10:04 AM
To: gggregory@ggregoryonline.com
Subject: Section Support for the 50th Probate Institute

Hi George,

I'm following up on our phone discussion. Lynn, Shel, Stephanie and I have come up with what we think is an exciting list of giveaways and special features to build excitement before and during the 50th Institute. We are requesting the Section's support for this lineup, rather than a trinket. We think this is a much better way to go. Here is what we have in mind:

1) To encourage early sign ups, the first 50 registrants will receive a $50 ICLE gift certificate. This is meant to reward the folks who come year in and year out and get people motivated to sign up right away.

2) To encourage new lawyers (0-3 years in practice) to attend, we'll award scholarships. The first 50 new lawyers to register will pay just $50 as their registration fee. We want young lawyers to see all that the seminar has to offer. If they attend in 2010 we hope they'll make the institute a must-attend in the future. We'll put the full court press on them to join the Section.

3) During the institute we'll give away 50 $50 ICLE gift certificates (25 in Acme and 25 in Plymouth). We'll spread out the drawings. Everyone who is registered is eligible to win. We'll post winners in the lobby or on the screens in the seminar rooms. I believe that the EPIC/MTC with Commentary will get snatched up by many of the gift certificate winners because it costs just $95 and because the MTC will be red hot.

4) Also during the Institute, we'll give away some other great prizes like an iPod, resort golf weekends, etc. to attendees who drop off a business card. I'm planning to find some additional sponsors (including the Grand Traverse Resort and St. John's) for these prizes.

5) Finally, the grand prize (one at each location) will be 50 ICLE books - 48 online books plus 2 in print (the John Cameron book and Mark's EPIC/MTC w/Commentary). All registrants are eligible, but "must be present to win" on Saturday.

ICLE will also have some great 50% off book deals. Additionally, we wonder if the Section might want to award a free year of Section membership to non-members or raffle off a few.

We'd like to get the State Bar and the press involved. I think we should get the Bar to post announcements on its site. The Probate Section is the first section to hold a Seminar for 50 years! That's worthy of recognition. We'll get the legal newspapers to attend for some photo ops with the Chair and Council members.

So, my request is for the same $6000 contribution that I requested before. Now, however, the $6000 would be used to support:
1) judges' attendances
2) new lawyer scholarships
3) gift certificate giveaways
4) entertainment at the Acme reception

11/15/2009
The brochure, web site and signage will all recognize the Section for jointly sponsoring all these special features. We’re partners in this and that will be conveyed in lots of ways. As always, we’ll include a "Join the Section" form in the course materials.

Your support as a financial sponsor insures that this program is truly the biggest and best education and networking event in Michigan. I hope we can count on your financial support in 2010. Please let me know what you think.

Thanks and talk to you soon.

Jeff

Jeff Kirkey
ICLE
1020 Greene St.
Ann Arbor, MI 48109
(734) 936-3434 (direct)
(877) 229-4350 (toll free)
jkirkey@icle.org

11/15/2009
I just talked to her. She's going to call you soon (Wed. at the earliest). She wants to home in on what we really want her to cover in her 45 minutes on topic #2 (see below). I think she's concerned about the total return trusts bullets and she wants to talk to you about MI specifics. Please pin her down on bullets and send them to me.

Thanks

Emerging Issues Under the Uniform Prudent Investor Rule and the Uniform Principal and Income Act
*total return trusts

Proposal

Amendments to Uniform Act
Recent cases - nationally
(Retief 107)

Robert Wolfe Article had issues
An Act EC article

Retirement Plans - Drafting around
1090 Rule
Partnership Rules
S Corps - with Marital Trust
"Income" Trust

Refresher
George W. Gregory

From: Jeff Kirkey [jkirkey@icle.org]
Sent: Wednesday, November 18, 2009 5:38 PM
To: GGregory@GGregoryonline.com
Subject: Section Sponsorship of the Probate Institute

Hi George,

When we talked yesterday about the costs and benefits to the Section and ICLE, it made me think I should actually calculate that out. Here's the rundown:

1) To encourage early sign ups, the first 50 registrants will receive a $50 ICLE gift certificate.
$2,500

2) To encourage new lawyers (0-3 years in practice) to attend, we'll award scholarships. The first 50 new lawyers to register will pay just $50 as their registration fee.
$11,750 - the regular new lawyer price is $285 so the discount is $235 for 50 lawyers.

3) During the institute we'll give away 50 $50 ICLE gift certificates (25 in Acme and 25 in Plymouth).
$2,500

4) Grand prize (one at each location) will be 50 ICLE books - 48 online books plus 2 in print (the John Cameron book and Mark's EPIC/MTC w/Commentary).
$1,638 (this prize is valued at $819 x 2)

5) $50 Judges' attendances
$1,000

6) Entertainment at the Acme reception
$1,000

So the grand total of all of these is $20,388. The requested Section contribution is $6,000. ICLE's contribution is $14,388 (yes, I realize ICLE is not "out of pocket" the entire amount, but this is calculated on fair market value).

Let me know if you have any questions.

Thanks

Jeff

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Ann Arbor, MI 48109
(734) 936-3434 (direct)
(877) 229-4350 (toll free)
jkirkey@icle.org

11/18/2009
George W. Gregory

From: Jeff Kirkey [jkirkey@icle.org]
Sent: Thursday, November 19, 2009 3:31 PM
To: GGregory@GGregoryonline.com
Cc: Jeanne Murphy; Stephanie Law
Subject: Probate Institute Update
Attachments: schedule2.doc

Hi George,

Attached is the latest version of the schedule. I thought you might want this for the council meeting on Saturday. Jeanne Murphy will be attending.

Update:
1) I still need to hear back from John Scott, Susan Porter, and Cathy Jacobs. I have some, but they might not be final. John promised to talk to John Bos and get back to me by Monday. I left a voicemail today for Cathy. Please let me know when you talk to Susan Porter. I'm also still waiting on Lauren to let me know about her topic title. I've been badgering.

2) No new sponsors to report, but I placed calls to Northern Trust, Key Bank, Raymond James, and Wells Fargo today to check-in with these potential sponsors. I probably only have another week to hear from them before the marketing department says it's go-time with the brochure.

3) I'm working on brochure marketing copy right now. I'll probably send you my draft to see if you have any improvements. As you know, I'm anxious to hear back from you about Section sponsorship since that will affect some of the copy that goes in the brochure/on the web.

4) We have a design for the brochure cover that looks sharp.

5) The institute will be posted on the ICLE web site next Wednesday and will be open for registrations.

Please let me know if you need anything else.

thanks

Jeff

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(877) 229-4350 (toll free)
jkirkey@icle.org

11/19/2009
50th Annual Probate and Estate Planning Institute

Thursday – Saturday, May 6 – 8, 2010
Grand Traverse Resort and Spa, Acme

Friday – Saturday, June 18 – 19, 2010
The Inn at St. John’s, Plymouth

Cosponsored by the Probate & Estate Planning Section of the State Bar of Michigan

SESSION ONE

Plenary and Advanced Estate and Business Planning Track Moderator

George W. Gregory
George W Gregory PLLC
Birmingham

Disability Planning Track Moderator

Amy Rombyer Tripp
Chalgian & Tripp Law Offices PLLC
Jackson

Acme
Thursday Afternoon
May 6, 2010

Continental Breakfast (Plymouth Only)
7:30 a.m. – 8:30 a.m.

12:15 p.m. – 12:45 pm

BONUS: Power Tips for the ICLE Partnership and Online Library
*available resources explained
*advanced search options
*downloading and using forms
*live and archived webcasts
*what’s new

Demonstration by ICLE Staff

1:00 p.m. – 1:30 p.m.

Welcoming Remarks and Announcements
8:30 a.m. – 8:50 a.m.

Harold Schuitmaker
Chair, Probate & Estate Planning Section of the State Bar of Michigan
Schuitmaker Cooper Schuitmaker Cypher & Knotek PC
Paw Paw

Charles R. Toy (Acme Only)
President, State Bar of Michigan
Associate Dean, Thomas M Cooley Law School
Lansing

1:30 p.m. – 2:10 p.m.

Probate and Trust Law Cases
8:50 a.m. – 9:30 a.m.

Hon. Phillip E. Harter
Calhoun County Probate Court
Battle Creek
2:10 p.m. – 3:00 p.m.  Exercising Discretion in Discretionary Trusts
*ascertainable standard language
*drafting to solve problems that trustees face

Susan Porter
U.S. Trust, Bank of America Private Wealth Management
New York, NY

3:00 p.m. – 3:15 p.m.  Networking Break
Sponsored by Chemical Bank

Advanced Estate and Business Planning Track
Track Sponsored by U.S. Trust, Bank of America Private Wealth Management

3:15 p.m. – 4:00 p.m.  Emerging Issues Under the Uniform Prudent Investor Rule and the Uniform Principal and Income Act
*total return trusts

Susan Porter
U.S. Trust, Bank of America Private Wealth Management
New York, NY

Disability Planning Track

3:15 p.m. – 4:00 p.m.  Overview of Government Programs for the Elderly and Those With Disabilities
*Social Security Retirement and Disability
*Supplemental Security Income
*Medicare
*Medicaid
*Veterans Administration benefits
*eligibility, age, who, and when

Thomas V. Trainer
Kemp Klein Law Firm
Troy

Advanced Estate and Business Planning Track
Track Sponsored by U.S. Trust, Bank of America Private Wealth Management

4:00 p.m. – 4:30 p.m.  Succession Planning for the Closely Held Business
*buy-sell agreements
*303 redemptions
*IRC chapter 14
*family and non-family members

Julius H. Giarmarco
Giarmarco Mullins & Horton PC
Troy

Disability Planning Track

4:00 p.m. – 4:30 p.m.  How Government Benefit Programs View Asset Transfers
*distinguishing between needs- and non-needs-based programs
*the complete checklist

Amy Rombyer Tripp
Chaigian & Tripp Law Offices PLLC
Jackson

Advanced Estate and Business Planning Track
Track Sponsored by U.S. Trust, Bank of America Private Wealth Management

4:30 p.m. - 5:00 p.m.  Pre-Nuptial and Post-Nuptial Agreements and Their Interaction with Estate Planners
*separate property: gifted, inherited, and premarital
*pre-nuptial and post-nuptial agreements
*contracts to make a will
*enforceability of agreements in divorce
*model provisions
*ethics

George F. Bearup
Smith Haughey Rice & Roegge
Traverse City

Disability Planning Track

4:30 p.m. - 5:00 p.m.  Medicaid Changes A to Z
*BEMS and BAMS
*the black hole of the MI Bridges system
*status of patient pay amount litigation
*status of estate recovery

Lauretta K. Murphy
Miller Johnson
Grand Rapids

5:00 p.m. - 5:15 p.m.  Questions and Answers
12:20 p.m. - 12:30 p.m.

6:30 p.m. - 8:00 p.m.  RECEPTION - Sponsored by Comerica Bank (Acme Only)

Roundtable Lunch on Premises -- Bring Your Practice Questions and Get Them Answered - Sponsored by Stout Risius Ross Inc (Plymouth Only)

12:30 p.m. - 1:30 p.m.
SESSION TWO

Plenary and National Speaker Moderator

George W. Gregory

Michigan Trust Code Track

Mark K. Harder
Warner Norcross & Judd LLP
Holland

Acme
Friday Morning
May 7, 2010

7:30 a.m. – 8:30 a.m.

8:30 a.m. – 9:30 a.m.

Continental Breakfast

50 Years: Countless Estate Planning Tips in 60 Minutes
*tax apportionment traps
*income tax tricks
*disclaimer trusts and other contingent planning
*planning for SSI and Medicaid
*drafting for flexibility

Sebastian V. Grassi Jr.
Grassi & Toering PLC
Troy

Douglas G. Chalgian
Chalgian & Tripp Law Offices PLLC
East Lansing

Plymouth
Friday Afternoon
June 18, 2010

9:30 a.m. – 10:30 a.m.

Charitable Giving with Retirement Benefits
*reasons to fund charitable gifts with retirement benefits
*ways to leave retirement benefits to charity
*types of charitable entities suitable as beneficiaries

Natalie B. Choate
Nutter McClennen & Fish LLP
Boston, MA

Sponsored by the Community Foundation for Southeast Michigan

10:30 a.m. – 10:45 a.m.

Break

3:30 p.m. – 3:45 p.m.

National Speaker Track

10:45 a.m. – 11:45 a.m.

Death and Taxes: The Inherited Retirement Plan
*when and how a beneficiary should disclaim inherited retirement benefits
*differences between an inherited IRA and a regular IRA
*minimum required distributions — for year of death (and later)
*advising a surviving spouse
*cleanup strategies when the decedent named the wrong beneficiary
Natalie B. Choate
Nutter McLennan & Fish LLP
Boston, MA

Sponsored by the Community Foundation for Southeast Michigan

**Michigan Trust Code Track**

10:45 a.m. – 11:15 a.m.  
**It’s Official: The Michigan Trust Code and Its Key Provisions**  
*overview of the Code and its structure  
*underlying themes of the new Code  
*application to existing trusts  
Mark K. Harder  
Warner Norcross & Judd LLP  
Holland

**Michigan Trust Code Track**

11:15 a.m. – 11:45 a.m.  
**Drafting Under the MTC**  
*revocable trusts  
*irrevocable trusts  
*wills  
*durable powers of attorney  
*certificates of trusts  
Marilyn A. Lankfer  
Varnum LLP  
Grand Rapids

11:45 a.m. – 12:00 p.m.  
**Break**  
4:15 p.m. – 4:45 p.m.

**National Speaker Track**

12:00 p.m. – 1:00 p.m.  
**Lifetime Distribution Strategies for Retirement Benefits**  
*ten things you must consider when a client is rolling money from one plan to another  
*what to do the year the client turns 70½ — and what to do the year before!  
*the best way to take required and non-required distributions  
*reasons to take out money BEFORE you have to  
*the Roth IRA conversion decision  
Natalie B. Choate  
Nutter McLennan & Fish LLP  
Boston, MA

Sponsored by the Community Foundation for Southeast Michigan

**Michigan Trust Code Track**

12:00 p.m. – 12:30 p.m.  
**MTC Rules and Forms**  
*new Michigan court rules  
*how do the new rules impact estate planning and trust administration?  
*revised SCAO Forms  
Marlaaine C. Teahan  
Foster Zack PC  
Okemos
Michigan Trust Code Track

12:30 p.m. – 1:00 p.m.

Probate Litigation Under the MTC
*jurisdiction, venue, and choice of law
*settlements
*statute of limitations for trust contests
*removal of trustee
*reformation, modification, and termination of trusts
*statute of limitations for breach of trust
*court award of costs and expenses in litigation

Douglas A. Mielock
Foster Swift Collins & Smith PC
Lansing

1:00 p.m. – 2:00 p.m.

Roundtable Lunch on Premises – Bring Your
Practice Questions and Get Them Answered (Acme only) - Sponsored by
U.S. Trust, Bank of America Private Wealth Management

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SESSION THREE

Moderators

Plenary & Michigan Speaker Track Moderator
George W. Gregory

The Future of Estate Planning Track Moderator
Douglas G. Chalgian

Acme
Saturday Morning
May 8, 2010

7:30 a.m. – 8:30 a.m.
Continental Breakfast

8:30 a.m. - 8:50 a.m.
The Landscape in Lansing and Recent Legislation for Probate and Estate Planners
Harold Schuitmaker

8:50 a.m. - 9:30 a.m.
View from the Register's Counter
*MTC changes from the court's perspective
*how the courts handle common scenarios
*court rules, forms, and more
Jill Koney Daly (Both)
Probate Register
Oakland County Probate Court
Pontiac

Michael J. McClory (Both)
Chief Deputy Probate Register
Wayne County Probate Court
Detroit

Susan B. Flakne (Acme only)
Probate Register
Kent County Probate Court
Grand Rapids

Donald J. Housey (Plymouth only)
Probate Register
Macomb County Probate Court
Mount Clemens

9:30 a.m. – 10:00 a.m.
Probate Litigation: The Five Biggest Mistakes I See from the Bench
*the long arm of probate jurisdiction
*heirs apparent (and unapparent)
*the three most important court rules to keep you on track
*staying out of your judge's doghouse
Hon. Milton L. Mack Jr.
Chief Judge
Wayne County Probate Court

Plymouth
Saturday Morning
June 19, 2010

7:30 a.m. – 8:30 a.m.

8:30 a.m. - 8:50 a.m.

8:50 a.m. - 9:30 a.m.

9:30 a.m. – 10:00 a.m.
Detroit

10:00 a.m. – 10:15 a.m.

**Break**

10:00 a.m. – 10:15 a.m.

*Michigan Speaker Track*

10:15 a.m. – 10:45 a.m.

**Dealing with a Bankrupt Estate**
*what is a bankrupt estate?
*who do you want in charge?
*who gets paid?
*dealing with secured and unsecured creditors
*later problems with the IRS

George W. Gregory

*The Future of Estate Planning Track*

10:15 a.m. – 10:45 a.m.

**Building a Successful Estate Planning Practice: A Roadmap for New Lawyers**
*fundamentals of first-class estate planning
*practical tips on organizing your practice
*getting involved in the community
*effective and ethical strategies for advertising your practice
*time-honored tips for delivering great client service

Michele Marquardt (Both)
DeMent and Marquardt PLC
Kalamazoo

Christopher M. Brown (Acme only)
Miller Johnson
Grand Rapids

Adam M. Lett (Acme only)
Smith Haughey Rice & Roegge PC
Traverse City

Jane M. Gootz Nelson (Acme only)
Stroup Erhart & Lyons PC
Petoskey

Shirley A. Kaigler (Plymouth only)
Jaffe Raitt Heuer & Weiss PC
Southfield

Michael P. Witzke (Plymouth only)
Witzke Berry PLLC
Bloomfield Hills

Nathan L. Stull (Plymouth only)
Stull Law PLC
Farmington Hills

*Michigan Speaker Track*

10:45 a.m. – 11:15 a.m.

**Drafting Effective Joint Trusts**
*when to use and not use
*funding issues
*what about disclaimer trusts?
*advantages and disadvantages

Michele C. Marquardt
DeMent and Marquardt PLC  
Kalamazoo

**The Future of Estate Planning Track**

10:45 a.m. – 11:15 a.m.

*Ethics for the Next 50 Years*
*changes in practice and the ethical responses*
*the eternal question - who is your client?*
*incapacitated former client issues*
*globalization, technology, and ethical dilemmas*

Catherine A. Jacobs  
Loomis Ewert Parsley Davis & Gotting PC  
Lansing

**Michigan Speaker Track**

11:15 a.m. – 11:45 a.m.

*Maximizing the Value of Your Practice and Assuring a Worry-Free Retirement*
*selling your practice*
*grooming a successor to take over your practice*
*merging with another firm*
*shutting down your practice*
*transitioning to something new using your legal skills*

John A. Scott  
John A Scott PC  
Traverse City

and

John E. Bos  
Chalgian & Tripp Law Offices PLLC  
East Lansing

**Michigan Speaker Track**

11:45 a.m. – 12:15 p.m.

*Handling the Death or Disability of a Lawyer: When Falling to Plan Forces You to Be Reactive*
*who should be in charge?*
*moving ongoing cases*
*client communication*
*how to collect your accounts receivable*
*ethical responsibilities*
*malpractice tail insurance*

Lauren M. Underwood  
Lauren M Underwood PC  
Bingham Farms

**The Future of Estate Planning Track**

11:15 a.m. – 12:15 p.m.

*It's Not Your Father's Buick, Anymore: Estate Planning for the Next Generation(s) of Clients (Special Video Presentation)*
*a new approach to drafting estate plans for the next generation of clients*

Jeffrey N. Pennell  
Emory University School of Law
Atlanta, GA

12:15 p.m. – 12:30 p.m.

Questions and Answers

12:15 p.m. – 12:30 p.m.

Adjourn
ATTACHMENT 4

Supreme Court Order
Granting Leave to Appeal in *Tkachik v Mandeville*
On order of the Court, the application for leave to appeal the February 5, 2009 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed whether, when a husband has abandoned his wife for the year and a half preceding her death, and the wife alone has made mortgage, tax, and insurance payments on property held as tenants by the entirety, the wife (or her estate) may receive contribution for the husband’s share of these payments.